

ORAL TESTIMONY OF FIRST OFFICER MARK ROGERS, DIRECTOR, ALPA  
DANGEROUS GOODS PROGRAMS, AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL

BEFORE THE SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS  
MATERIALS  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
U.S. HOUSE OF REPRESENTATIVES

“REAUTHORIZATION OF THE DEPARTMENT OF TRANSPORTATION’S  
HAZARDOUS MATERIALS SAFETY PROGRAM”

NOVEMBER 16, 2009

Good afternoon, Chairwoman Brown, Ranking Member Shuster, and members of the Subcommittee. I am Mark Rogers, an airline pilot and Director of the Dangerous Goods Program for the Air Line Pilots Association, International. ALPA represents nearly 53,000 pilots who fly for 36 passenger and all-cargo airlines in the United States and Canada. On behalf of our members, I want to thank you for this opportunity to provide our perspective on the carriage of lithium batteries on airliners and specifically on H.R. 4016, the Hazardous Material Transportation Safety Act of 2009.

ALPA strongly supports this legislation and believes that it will help enhance safety. If lithium batteries shipped aboard airliners are damaged, defective, or improperly packaged, a fire may occur, leading to potentially catastrophic consequences. To mitigate this risk, it is necessary to remove the exceptions in place today and regulate lithium batteries as a hazardous material, including provisions for enhanced marking, labeling, testing, and packaging requirements. It is also necessary to ensure that if a fire does occur, the results are not catastrophic. This is accomplished by restricting the loading of lithium batteries to cargo compartments equipped with a fire suppression system capable of extinguishing a lithium battery fire, or when this is not possible, by placing the batteries in a fire-resistant container or in locations accessible to the crew. To further reduce the possibility of an uncontrollable fire, the total quantity of lithium batteries at any one location on the airplane must also be restricted. This bill accomplishes each of those important goals.

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It is important to note that the total quantity of lithium batteries at a single location cannot be restricted if the batteries are not first treated as fully regulated hazardous materials. With the exceptions in place today, packages containing lithium batteries are handled as general freight and are not subject to the acceptance check and loading restrictions applicable to other hazardous materials. The flight crew is currently not notified when thousands of batteries are loaded into an airliner cargo compartment and, as a result, they are not able to pass that information on to emergency personnel responding to an incident. ALPA is very pleased that this bill will align the regulations regarding lithium batteries with the risk they pose to transportation and restrict the quantity of batteries at any one location.

We are also pleased that the bill addresses the issuance of Special Permits and Approvals. These regulations will help ensure that lithium batteries are transported safely aboard airliners; deviations from these requirements should only be granted when an equivalent level of safety is achieved and those deviations are clearly in the public interest.

At least six additional fires involving lithium batteries aboard aircraft or in packages prepared for air transport have been documented since I testified before this Subcommittee in May. Although we support the deliberate NPRM process under most circumstances, the frequency and potentially catastrophic consequences of a lithium battery fire makes it obvious that we simply cannot afford to wait for that lengthy process before we take action. The last time that PHMSA proposed a rulemaking to address lithium batteries, four years passed before implementation. Nearly two years have passed since the NTSB issued recommendations to PHMSA to remove regulatory exceptions for lithium batteries and restrict the quantities of batteries at any single location on an aircraft. We must take action now to protect passengers, crewmembers, persons on the ground, aircraft and their cargo. Legislation is also needed to ensure that the regulations ultimately published by PHMSA will actually meet the standards which Congress establishes.

We also cannot wait for the international community to act. Last month, I participated in ICAO's Dangerous Goods Panel meeting which was held in Montreal, Canada. Although the U.S. representatives voted to end the regulatory exceptions for lithium batteries, their position

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was not adopted by the international body. ICAO also failed to adopt proposals to limit the number of batteries at a single location on an airliner. Because discussions in the current biennium have concluded, the earliest possible effective date for any new international lithium battery regulations adopted through the normal process would be January 1, 2013. International harmonization is a laudable goal and we believe that it will happen in due course, but safety must come first and cannot be subordinated to ICAO.

With a comprehensive domestic rule in place, the leadership of the United States in the international arena will be enhanced. PHMSA has yet to adopt the ICAO lithium battery provisions agreed to in 2007, which weakens the agency's ability to argue that even more restrictive provisions are necessary. Adopting the regulations outlined in this bill will allow the United States to propose international rulemaking based on those regulations and regain the lead on improving battery shipment safety worldwide.

In conclusion, I want to express ALPA's appreciation for this Committee's continued interest in the safe transport of lithium batteries aboard airliners. We feel the Hazardous Material Transportation Safety Act of 2009 will enhance the safety of commercial aviation, and is the right approach to address the dangers posed by lithium batteries to air transportation. Thank you for the opportunity to testify today. I would be pleased to address any questions that you may have.

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