BEFORE THE U.S. DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Public Comment of SMART-TD Regarding Tesla's Special Permit Request for Transporting Lithium Batteries by Rail

April 25, 2025

These comments are on behalf of the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD), an organization representing approximately 100,000 transportation employees with active rail members working in all operating crafts, including engineers, conductors, trainmen, switchmen, and yardmasters.

On behalf of (SMART-TD), the largest labor organization representing rail workers in the United States, I submit this formal comment to express strong opposition to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) granting a special permit to Tesla, Inc. for the transport of lithium batteries by rail.

The proposed permit raises several alarming concerns related to both the inherent risk of the material in question and the practical implications for rail crews who will bear the burden of compliance, liability, safety enforcement, and emergency response on the ground.

1. Vague Parameters and Questionable Suitability for Rail

The permit fails to clearly define how much lithium may be shipped together or how many units may be stacked during transport, or the total permissible tonnage to be permitted in one train consist. This lack of clarity is unacceptable, particularly given the known volatility and fragility of lithium-based products. The extensive list of handling precautions included in the proposal itself is a clear admission of the dangerous nature of these materials. If the material requires “white glove” treatment to be shipped safely, it is not an appropriate fit for rail transport, which is defined by heavy loads, dynamic movement, and environmental exposure.

2. Potentially Dangerous Levels of Liability and Enforcement Burdens on Rail Crews

Railroad operating crews do not load railcars, prepare shipping documents, or design transport packaging. Yet, under this proposal, they could be held accountable for expired, improper, or missing permits, or for packaging violations completely outside their control. Our members are already under constant scrutiny and pressure. Exposing them to additional liability for administrative failures committed by shippers or carriers is both unfair and dangerous.

3. Inadequate and Unclear Incident Reporting Protocols

The permit's final page mandates that the permit holder report all incidents or face penalties. However, it does not make clear whether operating crews are expected to recognize and report incidents directly to PHMSA. In the event of a derailment or routine slack action that could compromise the packaging of lithium batteries, are rail workers required to assess and report the condition of hazardous cargo? If so, what protections or legal clarity will they be afforded? Without this, our members may be unjustly blamed for non-compliance or lack of reporting by the actual permit holder. Our members deserve clarity rather than the ambiguity offered by the request for this permit.

4. Inadequate Training Provisions for Rail Workers

The permit request refers broadly to the training of "hazmat employees." Per PHMSA definitions and policy, our rail crews will be considered hazmat employees under this permit if granted. This being said, critical questions remain unanswered:

- What specific training is required?
- Who is responsible for delivering it?
- How will compliance be enforced?

Based on SMART-TD's experience, the railroads have shown a consistently poor record of delivering comprehensive, consistent hazmat training to the frontline employees who need it most.

In fact, one Class I carrier has had its proposed new hire training curriculum rejected by the FRA multiple times in the last five years, so it continues to train new hires with outdated material. In 2022, Norfolk Southern's new hire training plan allocated just one morning (four hours of classroom instruction) to cover all hazardous materials training. This half-day approach to such a critical subject reflects a troubling disregard for safety and preparation. However, compounding this situation further is the fact that the carrier opts for the regulatory minimum of recurrent or recertification training and only subjects their workers to a series of six hours of computer based training modules every three years. The hazmat portion, which *could* include lithium batteries, typically, is no more than 30 minutes.

This track record does not inspire confidence that the carriers will take seriously their responsibility to train our men and women on emerging threats, such as the safe handling of hazardous materials like lithium batteries. This was evident in the 2023 BNSF derailment in DeSoto, WI, wherein rail cars carrying containers with lithium batteries spilled into the Mississippi River and subsequent miscommunication to the train crews on how to respond happened as a result. It was clear that the rail carrier did not have a plan in place, nor did they have one that aligned with public emergency responders. While BNSF was instructing crews to physically assess damage and inspect rail equipment, fire and hazmat personnel were advising them to stay clear of the derailed train, as an electrocution and fire risk was present due to the damage involved and the presence of water.

For the safety of rail workers and the public, any regulatory approval must be conditional upon clearly defined training standards. These standards must be mandated, enforced, and regularly audited by PHMSA. They cannot be left to the discretion of the railroads, whose track record shows they cannot be trusted to self-regulate in matters of safety and preparedness.

5. Broader Safety and Policy Inconsistencies

SMART-TD urges PHMSA to evaluate the consistency of this permit request with FRA's recent approval of 22 waivers for Parallel Systems to test lithium battery-powered autonomous rail cars, without comparable protections. If lithium materials require such intensive safety oversight to be

moved as cargo, then surely they warrant equal scrutiny when used as a propulsion source in freight movement. Lithium batteries are being used to power the autonomous rail cars in the research being carried out by Parallel Systems along with two subsidiaries of the Genessee and Wyoming Railway in the State of Georgia.

SMART-TD, along with the Brotherhood of Locomotive Engineers and Trainmen, and the AFL-CIO Transportation Trades Department, all cited the involvement of these batteries among our list of objections to FRA allowing these studies to be conducted. With the information provided through this request for permit, our fears and concerns surrounding this topic have been magnified.

The provisions in the current request for a special permit include in-depth descriptions of the packaging required to make these batteries safe to transport on the rail as cargo. It is difficult to believe that these requirements for packaging can be maintained while the batteries are actively in use, powering the autonomous rail vehicles.

This is a dangerous hypocrisy that must be addressed.

SMART-TD, as the largest labor organization in American Railroading, feels duty-bound to point out this inconsistency and seek clarification from PHMSA as both a federal regulator and a subject matter expert. We think it is fair to ask for clarification as to whether or not the use of lithium batteries in rail cars is considered a safe and sustainable practice for the rail industry to be pursuing. We would also like an answer to that question in light of the fact that the cars being used are fully automated and will have no “hazmat employee” present to identify or address any problems that may arise from their use in this capacity.

6. Transparency and Accountability

As an organization, there was internal debate as to the appropriateness of including the following point in our public comment; however, it is and will remain the elephant in the room. As a leader in the rail labor community and out of respect for the mission of both PHMSA and the Department of Transportation as a whole, SMART-TD feels compelled to make this cautionary statement formally.

To the knowledge of our organization, there remains no formalized tie between the owner and Chief Executive Officer (CEO) of Tesla Inc. and the newly formed Department of Government Efficiency (DOGE). This being said, Tesla CEO Elon Musk is undeniably the face of DOGE, and the architect of its mission.

This being said, federal entities such as PHMSA and the DOT granting Musk’s privately owned company a permit not commonly available to all other industries will cause a level of scrutiny. It is inescapable that DOGE, of which Musk is a “special government employee," can affect the staffing and funding levels of all government departments, including PHMSA and the DOT.

Granting of this permit could be portrayed as quid pro quo or, minimally, an allowance not readily available to companies within the same industry. It does not behoove SMART-TD nor rail labor as a whole for the American public to lose confidence in the impartiality and adherence to the mission of safety for PHMSA or any of our regulators.

With acknowledgement of the delicate nature of this topic and the scenario PHMSA and DOT find themselves in, this reality must be addressed.

In the eyes of SMART-TD, and in the best interest of our freight rail members, whose safety is directly tied to the stability of the products in their train consists, the request for this permit and the possibility of it being awarded must be weighed and considered in a fair and consistent manner.

Conclusion

Given the vague language, the high-risk nature of the cargo, the uncertain burden of responsibility, the systemic inadequacies in crew training, and the need for transparency, SMART-TD strongly urges PHMSA to deny this special permit request. Our members' safety, professional integrity, and legal exposure must not be sacrificed in the service of transporting hazardous materials ill-suited to the freight rail environment.

SMART-TD is thankful for the opportunity to participate in this public comment period. We hope PHMSA finds our objections and explanations useful in its decision-making process.

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