



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

MAY 08 2015

Mr. Ben Pritchett
Hazardous Material Specialist
Southwest Airlines Co.
P.O. Box 36611, HDQ-1SE
Dallas, TX 75235

Reference No. 14-0217

Dear Mr. Pritchett:

This responds to your November 10, 2014 email regarding the transportation of a passenger-provided lithium ion battery-powered mobility aid under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) with regards to its determination as an assistive device under the Department's aviation disability regulation, 14 CFR Part 382 (Part 382).

In the scenario provided, a passenger offers for transport as checked baggage, a diver propulsion vehicle equipped with two lithium ion batteries rated at 296 watt hours (Wh) each. This device is used for propelling a scuba diver through water. To determine if this device met the criteria for an assistive device under Part 382, we contacted the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) for clarification. The Enforcement Office explains that Part 382 defines an assistive device as any piece of equipment that assists a passenger with a disability to hear, see, communicate, or perform other functions of daily life. Devices that assist a person with a disability to engage in recreational activities do not qualify as an assistive device for the purpose of Part 382. However, if the device is necessary for work then it would be considered an assistive device as major life activities include not only hearing, seeing, and walking but also working. As such, airlines would only be required to treat the diver propulsion vehicle as an assistive device if the qualified individual with a disability is a diver by profession or needs the device for the purpose of carrying out professional activities (e.g., a professional photographer). Airlines are required to transport qualified assistive devices free of charge.

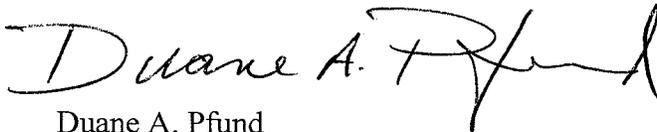
You ask if the ACPD does not require carriers to accept a device as an assistive device under 14 CFR Part 382, would PHMSA prohibit a carrier from accepting the same device for transport under the exceptions for passengers in 49 CFR § 175.10.

In a final rule published on January 19, 2011 (76 FR 3308; HM-215K), § 175.10(a)(17) of the HMR was revised to authorize lithium ion battery-powered mobility aids (e.g., wheelchairs). This authorization was intended to mirror the provisions in Part 8 of the International Civil Aviation Organization's (ICAO) Technical Instructions (TI) that allow

carriage of a passenger-provided mobility aid powered by a lithium ion battery. The ICAO TI in Part 8, Table 8-1, describe mobility aids as "Mobility aids (e.g. wheelchairs) powered by lithium ion batteries, for use by passengers whose mobility is restricted by either a disability, their health or age, or a temporary mobility problem (e.g. broken leg)." While this descriptive text is not included in the HMR, the provisions of § 175.10(a)(17) apply to "a wheelchair or other mobility aid" and this wording is intended to connote that the mobility aid is related to an assistive need. Therefore, unless the passenger offering the diver propulsion vehicle has a mobility-related disability that is aided by the use of the device and needs the device for working, it is the opinion of this Office that it would not meet the intent of an assistive device under Part 382 or the mobility aid exceptions for passengers in 49 CFR § 175.10 and should be offered for transport as cargo. Equipment powered by lithium ion batteries must be consigned under the entries "Lithium ion batteries," "Lithium ion batteries contained in equipment" or "Lithium ion batteries packed with equipment" as appropriate.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Duane A. Pfund". The signature is written in a cursive style with a large, stylized initial "D".

Duane A. Pfund
International Standards Coordinator
Standards and Rulemaking Division

Wiener
\$175.10
Exceptions
14-0217

Dodd, Alice (PHMSA)

From: Ciccarone, Michael CTR (PHMSA)
Sent: Monday, November 10, 2014 1:57 PM
To: Hazmat Interps
Subject: FW: Interpretation Letter Request
Attachments: Dive Logic Dive Scooter.pdf

Shante/Alice,

Please submit this for a formal letter of interpretation. Mr. Pritchett called into the HMIC and spoke with me.

His company address is:
Ben Pritchett
Southwest Airlines Co.
2702 Love Field Dr.
HDQ-1SE
Dallas, TX 75235

Thanks,

Mike

From: Ben Pritchett [<mailto:Ben.Pritchett@wnco.com>]
Sent: Monday, November 10, 2014 11:53 AM
To: PHMSA HM InfoCenter
Cc: Todd Hargrove
Subject: Interpretation Letter Request

Good Morning,

Please see the attached interpretation letter request regarding the acceptance of assistive devices powered by lithium ion batteries. Please contact me if further clarification is needed.

Thank you for your assistance with this matter.

Sincerely,

Ben Pritchett
Hazardous Materials Specialist
Safety & Security
Office: 214-792-5584
Cell: 585-217-6780
Fax: 214-792-4700

Southwest

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Southwest

November 10, 2014

U.S. DOT
PHMSA Office of Hazardous Materials Standards
ATTN: PHH-10
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Interpretation Letter Request

I am writing to obtain clarification regarding the acceptance of assistive devices powered by lithium ion batteries under 49 CFR Part 175.10 and the classification of a device as an assistive device under 14 CFR Part 382.

In this scenario, a passenger offers for transport as checked baggage a diver propulsion vehicle (Logic Dive Gear Genesis 600) equipped with two lithium ion batteries rated at 296 Watt-hours each. This device is used for propelling a SCUBA diver through the water.

To determine if this device could be classified as an assistive device under 14 CFR Part 382, the DOT Aviation Consumer Protection Division (ACPD) was contacted for clarification. The response was that "airlines generally would not be required to treat this device as an assistive device under 14 CFR Part 382". Under Part 382, airlines would only be required to treat the device as an assistive device if the qualified individual with a disability is a diver by profession.

My question is; if the ACPD side of DOT does not *require* carriers to accept a device as an assistive device under Part 382, would PHMSA *prohibit* a carrier from accepting said device for transport under Part 175.10?

Thank you for your assistance in this matter. Feel free to contact me at Ben.Pritchett@wnco.com or 214-792-5584 if further clarification is needed.

Sincerely,



Ben Pritchett
Hazardous Materials Specialist