



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

December 6, 2019

Ms. L'Gena Shaffer
Senior Technical Consultant
Council on the Safe Transportation of Hazardous Articles (COSTHA)
10 Hunter Brock Lane
Queensbury, NY 12804

Reference No. 19-0101

Dear Ms. Shaffer:

This letter is in response to your August 7, 2019, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipment of data loggers containing lithium batteries. In your letter, you explain that a data logger is a piece of equipment used to track or monitor packages in transport. You are seeking clarification regarding the provisions for data loggers as discussed in the final report by the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) dated December 21, 2018 (ST/TG/AC.10/C.3/108). You note that while most data loggers are powered by small or excepted batteries and fuel cells, the number of data loggers in consignments often exceeds the amounts authorized for hazard communication exceptions specified in § 173.185(c)(3). Specifically, you ask whether data loggers used to track or monitor packages are subject to the requirements of the HMR.

The answer is yes. Data loggers offered as part of consignments are subject to all applicable requirements of the HMR. As stated in your letter, the HMR provide exceptions for smaller lithium cells or batteries as specified in § 173.185(c). However, consignments of data loggers containing lithium batteries that exceed the quantity limits in § 173.185(c)(3) are subject to the marking requirements in the HMR. The provisions adopted by the UNSCOE TDG have not been adopted into the HMR and, therefore, do not apply to your scenario.

When data loggers are in use, they must be in compliance with all applicable Federal Aviation Administration (FAA) requirements, including those in 14 CFR § 91.21 that address the operation of portable electronic devices aboard aircraft. Information and guidance to assist with the compliance of this requirement can be found in Advisory Circular (AC) 91.21-1D, titled Use of Portable Electronic Devices Aboard Aircraft. For additional information regarding the FAA requirements, or if you seek an interpretation of whether your particular devices meet the electronic transmission requirements contained in 14 CFR § 91.21, you may contact the FAA at the following address:

Federal Aviation Administration
Office of the Chief Counsel
Regulations Division
800 Independence Avenue SW
Washington, DC 20591

Additionally, the FAA Advisory Circular can be found here:
https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_91.21-1D.pdf

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a prominent flourish at the end.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Andrews

19-0101

Dodd, Alice (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, August 08, 2019 11:52 AM
To: Hazmat Interps
Subject: FW: COSTHA Interpretation request - Data Loggers
Attachments: COSTHA Interp request Data Loggers FINAL.pdf

Hi Alice and Ikeya,

Please see the interpretation request below.

Thank you,

Kathryn, HMIC

From: L'Gena Shaffer [mailto:Lgena@costha.com]
Sent: Wednesday, August 7, 2019 5:40 PM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Cc: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>; Lara Currie <Lara@currieassociates.com>; Tom Ferguson <Tom@currieassociates.com>; Ryan Paquet <Ryan@currieassociates.com>; Chris Yakush <Chris@currieassociates.com>; L'Gena Shaffer <Lgena@currieassociates.com>; Don Bossow <Don@currieassociates.com>; Anne Barry <Anne@currieassociates.com>
Subject: COSTHA Interpretation request - Data Loggers

Good Afternoon Shane,

Please find attached a request for a letter of interpretation regarding data loggers. Specifically that equipment used to track or monitor packages are considered part of the packaging or conveyance.

We look forward to your review and response.

Best regards,

L'Gena Shaffer, CDGP

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Council on Safe Transportation of Hazardous Articles

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Council on Safe Transportation of Hazardous Articles

August 7, 2019

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590
United States
cc: infocntr@dot.gov

Dear Mr. Kelley,

COSTHA would like to request a formal letter of interpretation regarding the provisions for equipment used to track or monitor packages in transport and adopted by the United Nations Subcommittee of Experts on the Transport of Dangerous Goods (UNSCOE TDG). Specifically, COSTHA would like to confirm that equipment used to track or monitor packages are considered part of the packaging or conveyance. Further, if the devices contain dangerous goods, such as lithium batteries or fuel cells, then these devices are not subject to regulation as long as they meet a few minimum requirements.

The Fifty-fourth (54th) session of the United Nations Sub-Committee of Experts on the Transportation of Dangerous Goods (UNSCOE) was held in Geneva, Switzerland November 24 through December 4, 2018. The final report of the meeting includes the adoption of provisions to Paragraph 5.5 of the UN Model Regulations indicating that equipment used to track or monitor packages are considered part of the packaging or conveyance.

Data loggers have become an essential tool in preventing spoilage in foods and pharmaceuticals, theft of medical equipment and other high value items and maintaining efficiency in all aspects of the supply chain. Most data loggers are powered by lithium batteries or fuel cells, items currently subject to labeling and documentation requirements in the 49 CFR.

Many shippers using data loggers as part of their daily operations would not otherwise fall under the provisions of the Hazardous Materials Regulations (HMR). While most data loggers are powered by small or excepted batteries and fuel cells, the number of loggers in a consignment often exceeds the hazard communication exceptions in §173.185(c)(3) forcing shippers to label packages and overpacks and provide adequate instruction to employees preparing the shipments.

Council on Safe Transportation of Hazardous Articles

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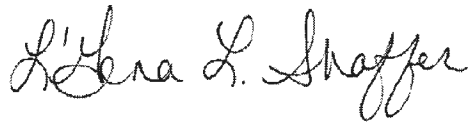
General Counsel
Richard Schweitzer, PLLC

During the UNSCOE meeting, it was agreed that data loggers powered by lithium batteries and fuel cells do not present a safety risk during transportation. To date, there are no recorded incidents that were caused by data loggers or indications that data loggers contributed to the severity of an incident.

We believe the UN Subcommittee made a clarification of the applicability of the regulations to data loggers with the adoption of Section 5.5.4 of the UN Model Regulations and would like to confirm PHMSA's position on whether equipment used to track or monitor packages are not subject to the requirements of the HMR when they are in use or intended for use during transport.

COSTHA requests PHMSA consider this request expeditiously due to the cost impacts to industry. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "L'Gena L. Shaffer". The signature is written in a cursive style with a large initial "L" and "S".

L'Gena Shaffer
Senior Technical Consultant