



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

OCT 01 2014

Ronald B. Turk
Assistant Director
Office of Field Operations
U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Ave., NE
Washington, DC 20226

Ref. No. 14-0150

Dear Mr. Turk:

This responds to your request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if Taser Brand conducted electrical weapons (CEW) and CEW cartridges are authorized by the HMR to be carried aboard a passenger-carrying aircraft by armed law enforcement officers (LEO) under the authority provided in 49 CFR 1544.219. You are concerned because Part 8, § 1.1.1 of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) was recently revised to prohibit electro-shock weapons carried by passengers and crew members, U.S. airlines are now refusing to allow armed LEOs the ability to carry such weapons aboard passenger-carrying aircraft.

Provided the conditions of 49 CFR 1544.219 are met, an armed LEO is authorized under § 173.54(f) of the HMR to carry a loaded firearm aboard a passenger-carrying aircraft. Under § 175.1, such authorization applies to any aircraft of U.S. registry anywhere in air commerce. However, unlike a loaded firearm, an electro-shock weapon may contain explosive charges, compressed gases, and lithium batteries. No exceptions for the carriage of electro-shock weapons by LEOs are provided under the HMR.

Unlike Part 8 of the ICAO Technical Instructions, § 175.10 of the HMR only specifies what hazardous materials are permitted to be transported by a passenger or crew member. In other words, unless an exception is explicitly provided by the HMR (e.g., an armed LEO traveling under 49 CFR 1544.219), all hazardous materials are prohibited in passenger or crew member baggage or when carried on one's person.

Thank you for bringing this to our attention. We recognize the importance of the duties performed by LEOs and we intend to address the issue in a future rulemaking action. 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 long horizontal stroke extending to the right.

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



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

99 New York Ave NE
Washington, DC 20226
www.atf.gov

Stevens
175.10
Exceptions
14-0150

U.S. Department of Transportation
Pipeline and Hazardous Materials Administration
Attention: Patricia Klinger, Deputy Director
Governmental, International and Public Affairs
1200 New Jersey Avenue, SE
Mail Stop E27-330
Washington, DC 20590

Dear Ms. Klinger:

We understand that your agency issues Hazardous Materials Regulations and that these regulations have defined electroshock weapons (further identified as Taser Conducted Electrical Weapons) as dangerous goods, which are prohibited on commercial aircraft within the United States.

This regulation is causing a significant hardship for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The nearly two thousand special agents employed by ATF are assigned the duties of enforcing the federal firearm and explosives laws specifically targeting the nation's most violent criminals. All of our agents are issued firearms and required to be available for duty at any time. In addition, ATF has five full-time Special Response Teams (SRT) based around the country to facilitate the high risk law enforcement operations that ATF agents are frequently involved in. ATF agents and SRT members are also issued less lethal devices, which include the Taser Conducted Electrical Weapons (CEW). In fact, ATF was one of the first federal agencies to issue and use the Taser CEW as a use of force option for its agents.


ATF special agents often use commercial airlines when traveling to do their jobs. ATF agents are required by agency policy and allowed by federal law to carry firearms on their person while traveling on commercial airlines, yet are not allowed to carry their government issued Taser CEWs on their person or in checked baggage. This regulation is putting ATF special agents as well as all other agencies at risk by not having access to their required defensive equipment both while flying and at their travel destinations. In fact, ATF agents have been requested by airline employees to assist with the subduing of unruly potentially dangerous passengers during flights on several occasions.

Patricia Klinger, Deputy Director

The ATF Special Response Teams average over 200 operations a year throughout the USA and its territories. The Transportation Safety Agency (TSA) has specific regulations written into its operational directives expediting the check-in process of ATF-SRT equipment at airports due to the frequent travel of our agents; however, ATF-SRT has to ship its Taser CEWs to operational locations and may or may not have these critical less lethal devices available due to time constraints.

ATF respects your agency's role in keeping airline travel safe. We have reviewed your documentation reflecting concerns with Taser CEWs containing lithium batteries and nitrogen firing mechanisms. ATF agents have been carrying and using Taser CEWs for 10 years with zero safety issues. We believe that Taser CEWs and their internal components are safe when carried by law enforcement officers on their persons onboard aircraft in conjunction with their firearms as well as when properly packed in baggage. We hope that you can review this regulation to provide a remedy that will provide law enforcement officers with an exception to allow carriage of Taser CEWs when traveling on commercial airlines.

Sincerely,

A handwritten signature in black ink, appearing to read "R. B. Turk". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Ronald B. Turk
Assistant Director
Office of Field Operations

Boothe, Deborah (PHMSA)

From: Stevens, Michael (PHMSA)
Sent: Wednesday, September 03, 2014 10:30 AM
To: Muller, Christopher; Muller, Christopher
Cc: Benedict, Robert (PHMSA); Suchak, Neal (PHMSA); DerKinderen, Dirk (PHMSA); Foster, Glenn (PHMSA); Klinger, Patricia (PHMSA); Boothe, Deborah (PHMSA)
Subject: RE: Electro-shock weapons carried by LOEs on aircraft

Chris—That was a great explanation. That said, we will issue the letters to DOI, DOJ (BATF), and Taser with your revision. Thanks again!

Michael

From: Muller, Christopher [mailto:Christopher.Muller@ole.tsa.dhs.gov]
Sent: Wednesday, September 03, 2014 10:06 AM
To: Stevens, Michael (PHMSA); Muller, Christopher
Cc: Benedict, Robert (PHMSA); Suchak, Neal (PHMSA); DerKinderen, Dirk (PHMSA); Foster, Glenn (PHMSA); Klinger, Patricia (PHMSA)
Subject: RE: Electro-shock weapons carried by LOEs on aircraft

Michael,

There are two aspects that I believe are central to the issue, one is the electro-shock device and that the change should be broadly written to encompass all (within reason) devices rather than giving Taser an unfair advantage; and two that other issued equipment (e.g. flashlights, sighting devices, night vision, etc) that may contain hazmat are likewise granted an exemption. The pressurized devices I refer to is simply addressing non-aerosol dispersants of chemical or natural irritants and has no reference to the nitrogen charge in the Taser cartridge.

Thanks again

Chris

REGARDS,

Christopher Muller

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From: michael.stevens@dot.gov [<mailto:michael.stevens@dot.gov>]
Sent: Thursday, August 28, 2014 12:27 PM
To: Muller, Christopher
Cc: robert.benedict@dot.gov; Neal.Suchak@dot.gov; Dirk.DerKinderen@dot.gov; Glenn.Foster@dot.gov; patricia.klinger@dot.gov
Subject: Electro-shock weapons carried by LOEs on aircraft
Importance: High

Good Afternoon Mr. Muller,

I've attached three letters related to electro-shock weapons (e.g., Tasers) and the applicability of the Federal Hazardous Materials Regulations (49 CFR Parts 171-180) on carriage by a Law Enforcement Officer (LEO) under the authority provided by 49 CFR 1544.219. All three letters are identical and represent the Department's (FAA and PHMSA) position on the matter. We wanted to be certain our assumptions were correct. Thanks in advance for your time.

Regards,

Michael

Michael Stevens
Transportation Specialist (Regulations)
Standards and Rulemaking Division
Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
US Department of Transportation
1200 New Jersey Avenue, S.E. (E24-409)
Washington, DC 20590
(202) 366-8553

Boothe, Deborah (PHMSA)

From: Boothe, Deborah (PHMSA)
Sent: Tuesday, August 26, 2014 10:38 AM
To: DerKinderen, Dirk (PHMSA); Benedict, Robert (PHMSA)
Subject: FW: Tasers on planes
Attachments: 14-0127 (FAA edits).docx

Importance: High

Good morning!

Attached are the FAA edits on this interp letter Michael was reviewing for me! Michael has a couple of identical letters from different requesters, so, we now have a uniform response for all three letters! I will be moving this 14-0127 letter along for your review today!

Have a great day!

Debbie

From: Stevens, Michael (PHMSA)
Sent: Tuesday, August 26, 2014 10:34 AM
To: Boothe, Deborah (PHMSA)
Subject: FW: Tasers on planes

FYI

From: Richard.Bornhorst@faa.gov [mailto:Richard.Bornhorst@faa.gov]
Sent: Friday, August 22, 2014 1:29 PM
To: Stevens, Michael (PHMSA)
Subject: RE: Tasers on planes

Michael,

Attached are my edits. I think we are on the same page with this. In terms of a possible regulatory action, I guess we can look at the next available miscellaneous rule or is HM-218H still available? If yo have any questions let me know. I am here until 4pm.

Regards,

Rick

From: Stevens, Michael (PHMSA)
Sent: Friday, August 22, 2014 12:43 PM
To: Richard Bornhorst
Subject: FW: Tasers on planes
Importance: High

Rick—Since you are out next week, I wanted to follow-up to see if you had a chance to look at my draft interp on electro-shock weapons? Thanks again.

Federal Aviation Administration
Office: (202) 267-9443
Cell: (202) 731-9985

From: Lawler, Gregory [mailto:greg_lawler@ios.doi.gov]
Sent: Wednesday, August 20, 2014 3:25 PM
To: Richard Bornhorst
Subject: Tasers on planes

Richard,

Following up, do you have any status on this issue?

Many thanks,
Greg

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Greg Lawler
Chief, Operations and Policy
Office of Law Enforcement and Security
Department of the Interior
Washington, D.C.
(202) 208-1570
Greg_Lawler@ios.doi.gov