

Action

Notice of Emergency Restriction/Prohibition Order.

Summary

This notice provides Emergency Restriction/Prohibition Order No. FAA-2016-9156, issued September 16, 2016 to Braille Battery, Inc. The Emergency Order prohibits Braille Battery from offering for transportation and transporting, any lithium ion battery that is not in compliance with the HMR or the International Civil Aviation Organization (ICAO) Technical Instructions as permitted in the HMR; requires Braille Battery to maintain and make publicly available the complete test record issued by the testing facility for each lithium ion battery manufactured by Braille Battery proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria; requires Braille Battery to notify third party vendors that may offer for transportation, or transport, via air any lithium ion battery manufactured by Braille Battery that the third party vendor should not offer for transportation, nor transport, via air a Braille Battery lithium ion battery until Braille Battery confirms that the lithium ion battery is of a design type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria; prohibits Braille from using any "hazmat employee" that has not received training in accordance with the HMR; and prohibits Braille Battery from offering for transportation, or transporting, by air any hazardous materials requiring a DOT specification or UN standard packaging unless Braille Battery follows the applicable packing and closure instructions.

Dates

Effective Date: The Emergency Restriction/Prohibition Order provided in this notice was effective September 16, 2016.

For Further Information Contact

Ryan Landers, Office of the Chief Counsel, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone: (404) 305-5200; email: ryan.land@faa.gov.

Supplementary Information

As required by 49 CFR 109.19(f)(2), the full text of Emergency Restriction/Prohibition Order No. FAA-2016-9156 issued September 16, 2016 is as follows:

This notice constitutes an Emergency Restriction/Prohibition Order (Order) by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. 5121(d) and 49 CFR 109.17(a); and pursuant to delegation of authority to the Administrator, Federal Aviation Administration (Administrator), United States Department of Transportation. This Order is issued to Braille Battery, Inc., (Braille Battery) 6935 15th St. E Bldg 115, Sarasota, FL 34243. Upon information derived from recent Braille Battery lithium ion battery shipments and subsequent FAA investigations, the Administrator has found violations of the Federal Hazmat law (49 U.S.C. 5101, *et seq.*) or the Hazardous Materials Regulations (HMR) (49 CFR parts 171 to 180); an unsafe condition, and that an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. Specifically, Braille Battery's continued offering of lithium ion batteries for transport via air that are neither proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, nor properly classified and packaged, constitutes an imminent hazard under 49 U.S.C. 5121(d) and 5102(5). For more detailed information see "Background/Basis for Order" below.

Effective Immediately Braille Battery

(1) Shall not offer for transportation, nor transport, via air any lithium ion battery that is not in compliance with the HMR or the International Civil Aviation Organization (ICAO) Technical Instructions as permitted in the HMR. This includes, but is not limited to, all (1) lithium ion batteries of a design type that has not been proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, (2) lithium ion batteries of a type proven to meet the criteria in part III,

sub-section 38.3 of the UN Manual of Tests and Criteria, but exceed the watt-hour (Wh) rating limitations for the lithium ion battery type that meets the criteria, and (3) lithium ion batteries not properly packaged and prepared in compliance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions.

(2) Shall, for each lithium ion battery manufactured by Braille Battery proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, maintain and make publicly available the complete test record issued by the testing facility. If Braille Battery does not possess the complete test record issued by the testing facility for any lithium ion battery it manufactures, Braille Battery must immediately contact the testing facility(s) and obtain the complete test record. To assist third-party vendors and carriers in confirming that Braille Battery lithium ion batteries are in compliance with part III, sub-section 38.3 of the UN Manual of Tests and Criteria, Braille Battery must make the complete test record by the testing facility available via an internet Web site. While this Order is in effect and prior to offering or transporting via air, Braille Battery must add to the internet Web site any and all new test records obtained to show that its lithium ion battery(s) are of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. Additionally, Braille Battery must provide to the FAA any and all new test records showing that its lithium ion battery(s) are of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria prior to offering them for transportation, or transporting, via air.

(3) Shall notify any and all third party vendors that may offer for transportation, or transport, via air any lithium ion battery manufactured by Braille Battery that the third party vendor should not offer for transportation, nor transport, via air a Braille Battery lithium ion battery until Braille Battery confirms that the lithium ion battery is of a design type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria.

(4) Shall not utilize any "hazmat employee" (49 CFR 171.8) not properly trained in accordance with the HMR (49 CFR 172.700-704 and/or 173.185(c)(4)(v)) to perform a specific hazmat function covered by the HMR. This includes, but is not limited to, function-specific training concerning the requirements specifically applicable to the functions the employee performs (49 CFR 172.704(a)(2)). Braille Battery shall not utilize any hazmat employee trained per the HMR to perform the classification and packing function for air transportation if the hazmat employee does not demonstrate the ability to properly classify and package a lithium ion battery in compliance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions.

(5) Shall not offer for transportation, nor transport, by air any hazardous materials requiring a DOT specification or UN standard packaging unless Braille Battery follows the applicable packing and closure instructions.

This Order applies to Braille Battery, its officers, directors, employees, subcontractors, and agents. This Order is effective immediately and remains in effect unless rescinded in writing by the Administrator or his designee, or until it otherwise expires by operation of law.

Jurisdiction

The Secretary has the authority to regulate the transportation of lithium ion batteries in commerce. 49 U.S.C. 5103(b). The Secretary has designated lithium ion batteries, UN 3480, as a hazardous material subject to the requirements of the HMR. 49 U.S.C. 5103(a); 49 CFR 172.101. The Administrator has the authority to carry out the functions vested in the Secretary by 49 U.S.C. 5121 relating to the transportation or shipment of hazardous materials by air. 49 CFR 1.83(d)(1). Braille Battery offers for transportation or transports hazardous materials in commerce within the United States and therefore is a "person", as defined by 49 U.S.C. 5102(9), in addition to being a "person" under 1 U.S.C. 1 and a "person who offers" as defined by 49 CFR 171.8. Commerce is as defined by 49 U.S.C. 5102(1) and 49 CFR 171.8, and "transportation" or "transport" are as defined by 49 U.S.C. 5102(13) and 49 CFR 171.8. Accordingly, Braille Battery is subject to the authority and jurisdiction of the Administrator including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard. 49 U.S.C. 5121(d).

Background/Basis for Order

A. LITHIUM ION BATTERY HMR REQUIREMENTS

Shipping hazardous materials is inherently dangerous. The HMR and the ICAO Technical Instructions requirements for shipping lithium ion batteries via air, including the requirements that lithium ion batteries be properly classified, packaged, and of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, are meant to protect people and property. Lithium ion batteries not in compliance with these requirements may not be offered or transported via air. Braille Battery, as a lithium ion battery manufacturer, is responsible for ensuring that each lithium ion battery it manufactures is of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria before it is offered for transportation or transported. Furthermore, Braille Battery is responsible for ensuring that any lithium ion battery it offers for transportation, or transports, via air is properly classified and packaged. This Order ensures that Braille Battery lithium ion battery shipments will be transported in compliance with the HMR or the ICAO Technical Instructions.

B. BRAILLE BATTERY LITHIUM ION BATTERY SHIPMENTS

Upon reliable and credible information received in the course of investigations, the Administrator has learned Braille Battery is offering for air transport lithium ion batteries that do not meet the HMR or ICAO Technical Instructions requirements. On June 6, 2016, the FAA received notice from Federal Express regarding a Federal Express delivery truck that caught fire on June 3, 2016. In its notification, Federal Express indicated that four separate lithium ion battery packages offered by Braille Battery were onboard the delivery truck that caught fire. All four packages were offered for air transport and were transported via air prior to being loaded on the delivery truck that caught fire. Federal Express believes that one of the packages caused the fire. ⁽¹⁾

The FAA began an investigation into Braille Battery's shipment of lithium ion batteries. The investigation revealed that Braille Battery manufactured and offered for air transport the lithium ion batteries onboard the Federal Express delivery truck that caught fire on June 3, 2016. The investigation also revealed that Braille Battery does not have proof that the four Braille Battery lithium ion batteries meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. Further investigation found that Braille Battery possessed a three-page report allegedly issued by Intertek showing that the Braille Intensity and Braille Intensity 24v lithium ion batteries meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. However, Braille Battery could not produce the complete test report, and Intertek denies ever testing the Braille Intensity or Braille Intensity 24v lithium ion batteries or creating the summary report.

On June 15, 2016, FAA representatives notified Braille Battery that it could not transport lithium ion batteries lacking proof that they meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. Between July 14, 2016 and August 19, 2016, Braille Battery offered 20 lithium ion battery shipments for air transport to DHL Express. The 20 lithium ion battery shipments offered to DHL Express included approximately 103 lithium ion batteries. At least 3 of the lithium ion batteries were not of a type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. An additional 61 of the 103 lithium ion batteries offered to DHL Express are currently being investigated to determine if they meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria.

C. BRAILLE BATTERY CLASSIFICATION AND PACKAGING

The FAA's investigation also revealed that none of the above-referenced 103 lithium ion batteries offered to DHL Express were likely in compliance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions. Braille Battery employees who classify, prepare, and package lithium ion batteries for shipment fail to understand their function-specific requirements of how to properly classify or package a lithium ion battery under 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions. During a follow-up inspection at Braille Battery on September 7-8, 2016, the hazmat employees responsible for classification and packaging did not follow the UN specification box instructions.

Braille utilizes three Labelmaster UN specification boxes for lithium ion battery air transport shipments: (1) UA121212BSR; (2) UA151010BS; and (3) UA151414BS. The hazmat employees performing packaging did not follow the instructions for the three UN specification boxes. All three

UN specification boxes provided the following warning as to proper packaging: “This closure instruction includes the assembly procedures for this packaging design. Substitution of materials or a change to these closure instructions may cause non-compliance with regulations and void the test certification for the packaging.”

The packaging instructions for UN specification boxes UA121212BSR, UA151414BS, and UA151010BS all require the use of a liner bag and nylon ties around the article. Braille Battery hazmat employees were not utilizing the liner bags or nylon ties when packaging lithium ion batteries in the UN specification boxes UA121212BSR, UA151414BS, and UA151010BS. The packaging instructions for UN specification boxes UA121212BSR and UA151010BS also require that an absorbent pad be placed in the liner bag. Braille Battery hazmat employees did not understand that the absorbent pad was required, and Braille Battery did not possess the required absorbent pads when UN specification boxes UA121212BSR and UA151010BS were used. Additionally, UN specification boxes UA121212BSR and UA151414BS require the use of “3M 372 tape” and UN specification box UA151010BS requires the use of “3 mil, 3” wide hot melt tape” when closing the specification box. Braille Battery did not possess the required closure tape for any of the three UN specification boxes at any time when Braille Battery used the three UN specification boxes in the above-referenced shipments.

The Braille Battery hazmat employees' failure to properly prepare the UN specification boxes for lithium ion battery air shipments resulted in the lithium ion battery packages that appeared to carriers to be in compliance with the applicable HMR or ICAO Technical Instructions, Packing Instruction 965, but were actually not safe for air transportation.

D. FINDING OF IMMINENT HAZARD

An imminent hazard, as defined by 49 U.S.C. 5102(5) and 49 CFR 109.1, constitutes the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of death, illness, injury or endangerment. Shipments of lithium ion batteries that do not meet all the HMR or ICAO Technical Instructions requirements, including not meeting the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria and proper classification and packaging, may be of a design or condition that cannot be safely transported via air. They may cause an ignition or a dangerous evolution of heat or become a fuel source for fire. Just one fire incident poses a high risk of death, serious illness, severe personal injury, and danger to property and the environment. This risk is magnified when the fire or evolution of heat occurs aboard an aircraft during flight.

Further, Braille Battery's overall conditions and practices, including Braille Battery's (a) failure to adequately train its employees to ship the lithium ion batteries in accordance with the HMR and ICAO Technical Instructions, and (b) continued offering for air transport lithium ion batteries that were not tested in accordance with the UN Manual of Tests and Criteria despite FAA warnings, when taken together, constitute an imminent hazard.

Therefore, each continued offering and transportation of these untested, improperly classified and packaged lithium ion batteries constitutes an imminent hazard.

Remedial Action

To eliminate or abate the imminent hazard, Braille Battery must, prior to offering for transport or transporting via air, ensure that each lithium ion battery fully complies with all HMR or ICAO Technical Instructions requirements for lithium ion battery air transport. This includes maintaining a record of proof that the lithium ion battery type meets the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria and notifying third-party vendors that they should not ship via air a Braille Battery lithium ion battery of a type lacking proof that it meets the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria. This also includes ensuring that Braille Battery air transport shipments containing lithium ion batteries are classified and packaged in accordance with the HMR or ICAO Technical Instructions. Additionally, while this Order is in effect and prior to offering for transport or transporting via air, Braille Battery must, adequately demonstrate to the FAA

that its employees can properly classify and package a lithium ion battery. For each DOT or UN specification box Braille Battery intends to use for lithium ion battery shipments, Braille Battery employees must demonstrate to the FAA that they understand the DOT or UN specification box instructions and can successfully package a lithium ion battery following those instructions.

Rescission of This Order

This Order remains in effect until the Administrator determines that an imminent hazard no longer exists or a change in applicable statute or Federal regulation occurs that supersedes the requirements of this Order. Before Braille Battery may offer for transportation and/or transport any package subject to this Order, Braille Battery must be able to adequately demonstrate to the Administrator that its lithium ion battery shipments comply with all HMR requirements, including (1) having proof that the battery type meets the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria, and (2) that Braille Battery has trained all employees in accordance with how to classify and package a lithium ion battery in accordance with 49 CFR 173.185(b) and (c) or the ICAO Technical Instructions, and (3) Braille Battery follows all relevant closure instructions for UN or DOT specification packagings. After Braille Battery makes such demonstration for all lithium ion battery models it manufactures and offers for transportation via air, the Administrator will issue a Rescission Order. Until the Administrator has issued the Rescission Order, Braille Battery must not offer or transport via air any package covered by this Order.

Failure To Comply

Braille Battery or any person failing to comply with this Order is subject to civil penalties up to \$179,933 for each violation for each day they are found to be in violation (49 U.S.C. 5123). A person violating this Order may also be subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. 5124).

Right To Review

Any person to whom the Administrator has issued an Emergency Order is entitled to review of the order pursuant to 49 U.S.C. 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 500, *et seq.* Any petition seeking relief must be filed within 20 calendar days of the date of this Order (49 U.S.C. 5121(d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue SE., Washington DC 20590-0001 (ATTENTION: Office of Chief Counsel) (electronically to PHMSACHIEFCOUNSEL@DOT.GOV) and one copy addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590 (<http://Regulations.gov> under Docket #FAA-2016-9156) (49 CFR 109.19). Furthermore, one copy must be addressed to Federal Aviation Administration, United States Department of Transportation, 800 Independence Avenue SW., Washington DC 20591 (ATTENTION: Office of Chief Counsel, AGC-1) (49 CFR 109.19).

A petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. 554, the petition must state that a formal hearing is requested and must identify the material facts in dispute giving rise to the request for a hearing (49 CFR 109.19). A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of

Hearings, M-20, Room E12-320, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590 (FAX: (202) 366-7536).

Emergency Contact Official

If you have any questions concerning this Emergency Restriction/Prohibition Order, you should call Office of Hazmat Safety, at 202-437-7651.

Issued in Washington, DC, on September 22, 2016.

Reginald C. Govan,

Chief Counsel, Federal Aviation Administration.

[FR Doc. 2016-23332 Filed 9-27-16; 8:45 am]

BILLING CODE 4910-13-P

Footnotes

⁽¹⁾ The National Transportation Safety Board is investigating the cause of the fire