



This document is scheduled to be published in the Federal Register on 10/19/2016 and available online at <https://federalregister.gov/d/2016-25322>, and on FDsys.gov

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

Docket No. FAA-2016-9288

Hazardous Materials: Emergency Restriction/Prohibition Order

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Emergency Restriction/Prohibition Order

SUMMARY: This document provides Emergency Restriction/Prohibition Order No. FAA-2016-9288, issued October 14, 2016 and effective at 12 pm (noon) Eastern Daylight Time (EDT), October 15, 2016 to Samsung Galaxy Note 7 Users and air carriers. The Emergency Order prohibits persons from offering for air transportation or transporting via air any Samsung Galaxy Note 7 device on their person, in carry-on baggage, in checked baggage, or as cargo; requires individuals who inadvertently bring a Samsung Galaxy Note 7 device onto an aircraft immediately power off the device, not use or charge the device while aboard the aircraft, protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight; requires air carriers to alert passengers to the prohibition against air transport of Samsung Galaxy Note 7 devices, in particular, immediately prior to boarding, and to deny boarding to a passenger in possession of a Samsung Galaxy Note 7 device unless and until the passenger divests themselves and their baggage of the Samsung Galaxy Note 7 device; and requires that if an air carrier flight crew member identifies that a passenger is in possession of a Samsung Galaxy Note

7 device while the aircraft is in flight, the crew member must instruct the passenger to power off the device and not to use or charge the device onboard the aircraft and protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight.

DATES: The Emergency Restriction/Prohibition Order provided in this document is effective at 12 pm (noon) Eastern Daylight Time (EDT) on October 15, 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; e-mail: ryan.land@faa.gov.

SUPPLEMENTARY INFORMATION: The full text of Emergency Restriction/Prohibition Order No. FAA-2016-9288 issued October 14, 2016 is as follows:

This Emergency Restriction/Prohibition Order (Order) is issued by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. 5121(d) and will be effective at 12:00 pm (noon) Eastern Daylight Time (EDT), October 15, 2016. This Order is issued to all persons who transport or offer a Samsung Galaxy Note 7 device for air transportation in commerce within the United States. Individuals who own or possess a Samsung Galaxy Note 7 device may not transport the device on their person, in carry-on baggage, in checked baggage, nor offer the device for air cargo shipment. This prohibition includes all Samsung Galaxy Note 7 devices. Samsung Galaxy Note 7 devices are properly classified as lithium ion batteries contained in equipment, UN3481, Class 9 (49 CFR 172.101).

By this Order, DOT is:

* prohibiting persons from transporting or offering for air transportation a Samsung Galaxy Note 7 device, by either carrying it on their person or in carry-on baggage when boarding an aircraft, placing the Samsung Galaxy Note 7 device in checked baggage, or shipping it via air as cargo;

* requiring air carriers to alert passengers to the prohibition against air transport of a Samsung Galaxy Note 7 device, in particular, immediately prior to boarding and to deny boarding to a passenger in possession of a Samsung Galaxy Note 7 device unless and until the passenger divests themselves and their baggage, including carry-on and checked, of the Samsung Galaxy Note 7 device;

* requiring that persons who inadvertently bring a Samsung Galaxy Note 7 device onto an aircraft immediately power off the device, do not use or charge the device while aboard the aircraft, protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight; and

* requiring that if an air carrier flight crew member identifies that a passenger is in possession of a Samsung Galaxy Note 7 device while the aircraft is in flight, the crew member must instruct the passenger to power off the device, do not use or charge the device while aboard the aircraft, protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight.

Upon information derived from the Samsung Galaxy Note 7 device recall issued September 15, 2016, recent incidents of a dangerous evolution of heat with Samsung Galaxy Note 7 replacement devices, Samsung's October 11, 2016 decision to stop manufacturing and selling Samsung Galaxy Note 7 devices due to the inability to identify the root cause of the incidents, and the U.S. Consumer Product Safety Commission (CPSC) recall of all Samsung Galaxy Note 7 device issued October 13, 2016, the Secretary of Transportation (Secretary) has found an unsafe condition and that an unsafe practice exists and constitutes an imminent hazard to the safety of air transportation. For more detailed information see "Background/Basis for Order" below.

EFFECTIVE AT 12 PM (NOON) EASTERN DAYLIGHT TIME, OCTOBER 15, 2016,
ANY PERSON IDENTIFIED BY THIS ORDER:

- 1) Shall not transport, nor offer for transportation, via air a Samsung Galaxy Note 7 device. By virtue of this Order and the CPSC recalls, the Samsung Galaxy Note 7 devices are now forbidden for transportation by air. For purposes of this Order, transporting or offering for transportation includes bringing a Samsung Galaxy Note 7 device aboard an aircraft on your person (e.g., in your pocket), bringing a Samsung Galaxy Note 7 device aboard an aircraft in carry-on baggage, offering a Samsung Galaxy Note 7 device in checked baggage, and offering a Samsung Galaxy Note 7 device for air cargo shipment (e.g. Federal Express or United Parcel Service).
- 2) Shall ensure that a prohibited Samsung Galaxy Note 7 device inadvertently brought aboard an aircraft is immediately powered off, not used or charged while aboard the aircraft, protected from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and kept on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight.

AIR CARRIER REQUIREMENTS

By virtue of this Order and the CPSC recalls, the Samsung Galaxy Note 7 device is a forbidden hazardous material. In accordance with 49 CFR part 175, air carriers must not accept these devices for air transportation by knowingly permitting a passenger to board an aircraft with a Samsung Galaxy Note 7 device. Damaged or recalled lithium ion batteries, including those contained in equipment, are not permitted to be transported by air, and a Samsung Galaxy Note 7 device is categorized as “forbidden.” 49 CFR 173.21(c). Air carriers are required to make passengers aware of the prohibition against transport of Samsung Galaxy Note 7 devices aboard aircraft on their person, in carry-on or checked baggage, and as air cargo. Air carriers must also alert passengers to this prohibition immediately prior to boarding. If an air carrier representative identifies that a passenger is in possession of a Samsung Galaxy Note 7 device prior to boarding the aircraft, the air carrier must deny boarding to the passenger unless and until the passenger divests themselves, including on their person and in checked and carry-on baggage, of the Samsung Galaxy Note 7 device. If an air carrier flight crew member identifies that a passenger is in possession of a Samsung Galaxy Note 7 device while the aircraft is in flight, the crew member must instruct the passenger to power off the device, not use or charge the device while aboard the aircraft, protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight.

This Order applies to all persons who transport Samsung Galaxy Note 7 devices, or offer them for transportation, by air in commerce (as defined by 49 U.S.C. 5102(1)) to, from, and within the United States, and their officers, directors, employees, subcontractors, and agents. This

Order is effective at 12 pm (noon) Eastern Daylight Time (EDT), October 15, 2016, and remains in effect unless rescinded in writing by the Secretary, or until it otherwise expires by operation of regulation and/or law.

JURISDICTION

The Secretary has the authority to regulate the transportation of lithium ion batteries contained in equipment in commerce. 49 U.S.C. 5103(b). The Secretary has designated lithium ion batteries contained in equipment, UN 3481, as a hazardous material subject to the requirements of the HMR. 49 U.S.C. 5103(a); 49 CFR 172.101. Persons who offer for transportation, or transport, lithium ion batteries contained in equipment by air in commerce to, from, and within the United States are 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, persons who transport or offer for transportation lithium ion batteries contained in equipment in commerce, including by air, are subject to the authority and jurisdiction of the Secretary 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

An imminent hazard, as defined by 49 U.S.C. 5102(5), constitutes the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury, or a 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 that death, illness, injury or endangerment may occur.

A Samsung Galaxy Note 7 device may cause an ignition or a dangerous evolution of heat or become a fuel source for fire. Samsung and CPSC acknowledged this fact with the September 15, 2016 recall, Samsung's October 11, 2016 announcement that it was suspending the manufacture and sale of the Samsung Galaxy Note 7 device, and the October 13, 2016 Samsung and CPSC expanded recall covering all Samsung Galaxy Note 7 devices. Furthermore, persons have experienced incidents of dangerous evolution of heat with the recalled Samsung Galaxy Note 7 devices. 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. Therefore, each offering and transportation of a Samsung Galaxy Note 7 device constitutes an imminent hazard.

A. Samsung Galaxy Note 7 Recall and Incidents

On September 15, 2016, Samsung and the CPSC recalled certain Samsung Galaxy Note 7 devices sold prior to September 15, 2016. The recall was based on a finding that the lithium ion battery in a Samsung Galaxy Note 7 device "can overheat and catch fire." Samsung offered either a refund or replacement Samsung Galaxy Note 7 device. Subsequently, there were reported incidents of the replacement Samsung Galaxy Note 7 devices overheating and/or catching fire. In a decision announced on October 11, 2016, Samsung stopped production and sale of Samsung Galaxy Note 7 devices. On October 13, 2016, Samsung and the CPSC expanded the recall to include all Samsung Galaxy Note 7 devices because they "can overheat and catch fire."

B. DOT Actions to Mitigate the Safety Risk of Samsung Galaxy Note 7 Devices in Air Transportation

In the wake of Samsung Galaxy Note 7 device incidents, the Federal Aviation Administration (FAA) and Pipeline and Hazardous Materials Safety Administration (PHMSA) have taken a number of steps to mitigate the safety risk of Samsung Galaxy Note 7 devices in air transportation. On September 8, 2016, the FAA issued a statement strongly advising passengers not to turn on or charge a Samsung Galaxy Note 7 device aboard an aircraft, nor stow a Samsung Galaxy Note 7 device in any checked baggage. On September 15, 2016, PHMSA issued a Safety Advisory Notice to inform the public about the risks associated with transporting damaged, defective, or recalled lithium batteries or portable electronic devices, including the Samsung Galaxy Note 7 device recalled by the CPSC. The Safety Advisory Notice required that persons who wish to carry the recalled Samsung Galaxy Note 7 device aboard an aircraft must (1) turn off the device; (2) disconnect the device from charging equipment; (3) disable all applications that could inadvertently activate the phone; protect the power switch to prevent its unintentional activation; and (4) keep the device in carry-on baggage or on your person.

On September 16, 2016, the FAA issued general guidance to airlines about the rules for carrying recalled or defective lithium batteries and lithium battery-powered devices aboard an aircraft. Specifically, the FAA noted that (1) U.S. hazardous materials regulations prohibit air cargo shipments of recalled or defective lithium batteries and lithium battery-powered devices; (2) passengers may not turn on or charge the devices when they carry them aboard the aircraft; (3) passengers must protect the devices from accidental activation; and (4) passengers must not pack them in checked baggage. On September 16, 2016, the FAA issued a Safety Alert for Operators (SAFO), recommending the following action by air operators: (1) ensure that operator personnel responsible for cargo processing know and understand that damaged or recalled lithium

batteries—including those installed in equipment and devices—are forbidden on aircraft as air cargo; and (2) ensure that operator personnel responsible for passenger processing and cabin safety know and understand that damaged or recalled lithium batteries—including those installed in devices—may be restricted from carriage or use on the aircraft. On October 10, 2016, the FAA issued updated guidance on the Samsung Galaxy Note 7 device, urging passengers aboard an aircraft to power down and not use, charge, or stow in checked baggage, any Samsung Galaxy Note 7 device.

Notwithstanding the above DOT actions, and in light of continued risks identified by Samsung and CPSC associated with Samsung Galaxy Note 7 devices, the further action described in this Order is necessary to eliminate unsafe conditions that create an imminent hazard to public health and safety and the environment.

REMEDIAL ACTION

To eliminate or abate the imminent hazard:

- 1) Persons covered by this Order shall not transport, nor offer for transportation, via air any Samsung Galaxy Note 7 device.
- 2) Air carriers are required to alert passengers to the prohibition against air transport of Samsung Galaxy Note 7 devices, in particular, immediately prior to boarding and to deny boarding to a passenger in possession of a Samsung Galaxy Note 7 device unless and until the passenger divests themselves and carry-on or checked baggage of the Samsung Galaxy Note 7 device.
- 3) Persons covered by this Order who inadvertently bring a prohibited Samsung Galaxy Note 7 device aboard an aircraft must immediately power off the device, leave it powered off until no longer aboard the aircraft, not use or charge the device while

aboard the aircraft, protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight.

- 4) When a flight crew member identifies that a passenger is in possession of a Samsung Galaxy Note 7 device while the aircraft is in flight, the crew member must instruct the passenger to power off the device, not use or charge the device while aboard the aircraft, protect the device from accidental activation, including disabling any features that may turn on the device, such as alarm clocks, and keep the device on their person and not in the overhead compartment, seat back pocket, nor in any carry-on baggage, for the duration of the flight.

RESCISSION OF THIS ORDER

This Order remains in effect until the Secretary 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, in which case the Secretary will issue a Rescission Order.

FAILURE TO COMPLY

Any person failing to comply with this Order is subject to civil penalties of 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

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*, a review of this action may be filed.

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 addressed to U.S. DOT Dockets, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12-140, Washington, DC 20590 (<http://Regulations.gov>). Furthermore, 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 Secretary 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 Secretary may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment the case to the Office of Hearings for a formal hearing on the record).

EMERGENCY CONTACT OFFICIAL

If you have any questions concerning this Emergency Restriction/Prohibition Order, you should call PHMSA Hazardous Materials Information Center at 1-800-467-4922 or email at phmsa.hm-infocenter@dot.gov.

Issued in Washington, DC on October 14, 2016

Patricia A. McNall
Deputy Chief Counsel
Federal Aviation Administration

[FR Doc. 2016-25322 Filed: 10/14/2016 4:15 pm; Publication Date: 10/19/2016]