DOCKET NO. SA-228

EXHIBIT NO. 17Y

NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C.

FAA DANGEROUS GOODS ADVISORY BULLETIN
DGAB-02-01 and DGAB-99-02

(BY: WILLIAM WILKENING)

Transportation Security Administration
Civil Aviation Security
Dangerous Goods Advisory Bulletin
Information of Concern to Air Carriers

Subject: Transportation of Batteries and Devices That Contain Batteries

Number: DGAB-02-01 **Date: May 23, 2002**

INFORMATION: The Transportation Security Administration has recently became aware of several incidents where heat generated by batteries or devices containing batteries have caused the initiation of a fire. The recent incidents are lead acid nonspillable batteries reported to have been successfully tested in accordance with 49 CFR 173.159(d). These batteries have aviation related applications which may pose a danger to air carriers in several ways. The batteries are used in various configurations as power supplies in some aircraft. Air carriers could be using the batteries in aviation related equipment, shipping the batteries as non-revenue COMAT, or accepting the batteries as revenue cargo. A previous Dangerous Goods Advisory Bulletin alerting air carriers to the dangers of batteries and devices containing batteries generating heat was issued by the FAA on July 2, 1999. The Research and Special Programs Administration (RSPA) published an advisory guidance in the Wednesday, July 7, 1999 edition of the Federal Register under [Docket No. RSPA-99-5143 (Notice No. 99-8)] "Advisory Guidance; Transportation of Batteries and Devices That Contain Batteries" warning of the dangers of batteries initiating fires in air transportation. This guidance issued by RSPA included the following advisory:

> Even without a short-circuit condition existing, a component in circuitry connected to a battery may become heated to a point where combustion is initiated in the component itself, or in near-by combustible materials, even if the battery or the device in which the battery is installed functions normally. RSPA has become aware of several incidents in which devices that contain batteries, although shipped in compliance with Sec. 173.159, have produced dangerous quantities of hear while in transportation in commerce. RSPA is evaluating the conditions surrounding these incidents.

We urge air carriers accepting batteries and devices containing batteries as cargo to take extra precautions that electrical storage devices or articles that contain batteries are properly prepared and protected from short circuits and other conditions that may create heat, smoke, or fire. Any battery not properly protected is forbidden in air transportation regardless of whether it meets all other regulatory requirements. Airline passengers and other persons offering these devices for transport must take appropriate action to ensure that any battery-powered electrical device in carry-on or checked baggage or cargo is protected from short-circuiting or accidental activation while in transport.

W Wilkening

William Wilkening
Manager, Dangerous Goods and Cargo Security

Federal Aviation Administration
Civil Aviation Security
Dangerous Goods Advisory Bulletin

Information of Concern to Air Carriers

Subject: Transportation of Batteries and Devices That Contain Batteries

Number: DGAB-99-02 **Date: July 2, 1999**

INFORMATION: Based on several incidents where heat generated by batteries or devices containing batteries have caused smoke and/or the initiation of a fire, the Research and Special Programs Administration (RSPA) will publish advisory guidance in the Wednesday, July 7, 1999 edition of the Federal Register under [Docket No. RSPA-99-5143 (Notice No. 99-8)] "Advisory Guidance; Transportation of Batteries and Devices That Contain Batteries." The incidents described in the notice occurred while the batteries or devices containing batteries were in air commerce.

The advisory guidance issued by RSPA is intended to remind passengers, persons offering batteries and devices containing batteries as cargo, and air carriers that electrical storage devices or articles that contain batteries are forbidden in air transport unless properly prepared and protected from short circuits and other conditions that may create heat, smoke, or fire. Airline passengers and other persons offering these devices for transport must take appropriate action to ensure that any battery-powered electrical device in carry-on or checked baggage or cargo is protected from short-circuiting or accidental activation while in transport.

for William Wilkening
Program Manager
Dangerous Goods and Cargo Security

Our Finding That Compliance Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 208

It is manifest that Qvale has already invested considerable sums in its attempt to make the Bigua/Mangusta a viable commercial product, taking over the project from DeTomaso Automobili who lacked the financial resources to bring it to market. By the time production is scheduled to begin in September 1999, Qvale will have committed $10,000,000 to the enterprise. While denial of an exemption would not cause the failure of Qvale, it would result in total net losses of $4,800,000 before a car conforming to Standard No. 208 could be produced in 2000, as compared with total net losses of $4,124,025 with an exemption that would permit cars to be sold in the United States as of November 1999. Although an added loss of $700,000 may not appear significant in the overall context of an investment of $10,000,000, we note that Qvale cannot begin to generate any income at all until it is able to sell the Mangusta. Under the best of circumstances, the company anticipates net losses through 2001.

From Qvale's application, we surmise that DeTomaso Automobili intended to equip the Bigua with a Ford Mustang air bag system, but that its own financial difficulties prevented it from fully assessing its suitability to the vehicle's design. Since beginning the project early in 1998, Qvale has reviewed these efforts and determined that "significant re-engineering" is required to incorporate a conforming automatic restraint system. With its compliance project partners, Visteon and Isis, Qvale is working towards a conformance date less than a year away, May 2000. To allow for unanticipated difficulties it has asked for an exemption of 10 months past the anticipated date that the Mangusta will comply.

After reviewing these arguments, we find that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 208.

Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

We note with approval Qvale's intent to retrofit exempted vehicles with air bag systems when they become available for the estimated 200–250 Mangustas that will be sold under an exemption. We also note that the Mangusta will comply with all other applicable Federal motor vehicle safety standards.

Qvale is owned by a new American company which is hiring a sales and distribution staff for marketing the Mangusta in the United States. The principal subcontractor responsible for the engine, interior, air bags, and other parts, is also an American corporation.

After reviewing these arguments, we find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety.

Grant of NHTSA Temporary Exemption No. 99–8

For the reasons expressed above, Qvale Automotive Group, SrL, is hereby granted NHTSA Temporary Exemption No. 99–8, from S4.1.5.3 of 49 CFR 571.208 *Occupant Crash Protection*, expiring April 1, 2001.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: July 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–17236 Filed 7–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143; Notice No. 99–8]

Advisory Guidance; Transportation of Batteries and Devices That Contain Batteries

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: RSPA has become aware of several incidents that recently occurred where heat generated by batteries or devices that contain batteries have caused smoke and/or the initiation of a fire while the device or article was being transported in commerce. This suggests that some persons engaged in the offering of batteries and such devices for transportation may not be fully aware of the requirements and prohibitions of the Hazardous Materials Regulations (HMR) applicable to such devices. This advisory guidance is to remind anyone offering for transportation or transporting such devices that electrical storage devices or articles that contain batteries are forbidden from transportation unless properly packaged as to be protected from such an occurrence.

FOR FURTHER INFORMATION CONTACT: Eric Nelson, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: RSPA has been made aware of several incidents in which batteries or other devices that contain batteries have short-circuited or otherwise functioned in such a manner so as to generate heat, smoke, or initiate a fire while being transported in commerce. This advisory guidance is intended to remind persons offering for transportation, or personally transporting any battery or electrical device of their responsibility under the Hazardous Materials Regulations (49 CFR parts 171–180) that any battery or electrical device that could create sparks or generate heat may only be offered for transportation or transported when adequately protected from such an occurrence.

I. Background

In May, 1994, while being delivered to a handling agent by road, a shipment of small lithium batteries destined for Gatwick airport in London, England, was found emitting smoke from a Unit Loading Device. The shipment consisted of batteries, approximately the size of a dime and about 5mm high, which had been tossed loosely in a box. The batteries apparently short-circuited when exposed battery terminal tabs came into contact with other batteries, and subsequently started a fire that significantly damaged the shipment. The UK Civil Aviation Authorities investigated the incident. The shipper was fined £1200 with £300 additional costs being paid.

In February, 1996, 106 packaged lawnmowers with an electrical battery installed were offered to an air carrier for transportation. While in an air cargo facility, and after being transported on two separate flights, smoke was discovered coming from one of the boxes. Air cargo personnel determined that an installed battery was dislodged and short-circuited, causing the wiring, plastic housing, and battery to burn and melt. The air carrier immediately took action to locate the other packages, which were in the process of being transported to other destinations throughout the United States. The air carrier returned three airborne flights and two taxiing aircraft to the airport, and held 11 flights preparing to depart until all 106 packages were accounted for. Approximately 50 of the 106 lawnmower batteries short-circuited, and several burned sufficiently to char

the packaging in which they were being shipped.

A November, 1997 incident involved a fiberboard box packaging containing non-spillable, wet electric storage batteries offered to an air carrier for transportation. The shipment was picked up by a messenger service for delivery to the air carrier's cargo facility. The package was discovered burning prior to air transport, the probable cause of which was short-circuiting of the battery caused by storage of cables directly on top of the battery. The short-circuit generated enough heat to ignite nearby combustible materials.

RSPA has become aware of several other occurrences of passenger baggage that have been discovered smoldering or burning as a result of battery short-circuits. These batteries include camcorder, camera, or other dry-cell general use batteries that have short-circuited because of coming into contact with keys or other metallic items packed in proximity to the batteries. When such a short-circuit occurs, the temperature of the device or battery can quickly rise to a point that causes leakage of the battery or ignites nearby combustibles such as packaging materials or suitcase linings.

Based on these and other reports, RSPA is concerned that some persons offering for transportation or transporting batteries or devices that contain batteries may not be fully aware of the applicable provisions of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). During air transport, leakage from batteries, smoke and/or fire in cargo compartments can pose a grave risk to transportation safety.

The serious potential risks posed to flight safety by batteries and devices that contain batteries, in particular where the battery is not otherwise subject to regulation, is specifically addressed by RSPA and the International Civil Aviation Organization (ICAO). On March 5, 1999, RSPA published in the **Federal Register** (64 FR 10742) a final rule in Docket No. RSPA–98–4185 (HM–215C) that amended the Hazardous Material Table to add, among other things, special provision 130 to the entry, Battery, dry, not subject to the requirements of this subchapter. This special provision, codified at § 172.102, identifies conditions that must be met before dry batteries that are not otherwise subject to the HMR may be offered for transportation or transported in commerce. It reads as follows:

"130. Batteries, dry are not subject to the requirements of this subchapter only when they are offered for transportation in a manner that prevents the dangerous evolution of heat (for example, by the effective insulation of exposed terminals)."

In addition, § 173.21 (c) specifies that electrical devices that are likely to create sparks or generate a dangerous quantity of heat, unless packaged in a manner that precludes such an occurrence, may not be offered for transportation in commerce.

In the 1999/2000 edition of the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods, the following prohibitive statement appears in relation to electric storage batteries not listed in the Dangerous Goods List (Table 2–14) or otherwise subject to the provisions of, the Technical Instructions:

"Any electrical battery or battery-powered device having the potential of dangerous evolution of heat that is not prepared so as to prevent a short circuit (e.g., in the case of batteries, by the effective insulation of exposed terminals; or, in the case of equipment, by disconnection of the battery and protection of exposed terminals) is forbidden from transport." (Special Provision A123, pg. 2–12–8)

II. Requirements for the Transportation of Electrical Devices

Where the HMR permit batteries to be offered for transportation, either separately or installed in equipment, batteries must be protected against short circuits. The following discusses types of batteries which are regulated by the HMR. *Wet batteries:* Batteries, wet, filled with acid, UN 2794, and Batteries, wet, filled with alkali, UN 2795, are those that contain corrosive battery fluid, and are subject to the packing requirements of § 173.159. *Wet "non-spillable" batteries:* Batteries, wet, nonspillable, UN 2800, are wet batteries which are capable of withstanding leakage of battery fluid when subjected to vibration and pressure differential tests, as specified in § 173.159(d)(3). These batteries are excepted from all other requirements of the HMR, provided they meet the requirements of § 173.159 (d)(1), (d)(2), and (d)(3). *Batteries containing sodium:* Batteries, containing sodium, UN 3292, are batteries that contain a material that, by contact with water, are liable to become spontaneously flammable or give off flammable or toxic gas at a rate greater than 1 liter per kilogram of the material per hour. These batteries are subject to the packaging requirements of § 173.189. *Lithium batteries:* Lithium batteries, UN 3090, and Lithium batteries, contained in equipment, UN 3091, are batteries which contain lithium substances that react dangerously with water. Regulated batteries contain, for liquid cathodes, more than 0.5 grams of lithium per cell, or containing an aggregate of over 1.0 gram of lithium or lithium alloy, and batteries which contain solid cathodes, 1.0 gram of lithium or lithium alloy per cell, or an aggregate of over 2.0 grams of lithium or lithium alloy. These batteries are subject to the packaging requirements of § 173.185. Certain lithium batteries are not subject to the requirements of the HMR provided they meet the requirements of § 173.185(c). *Batteries containing potassium hydroxide solids:* Batteries, dry, containing potassium hydroxide solid, UN 3028, are those which contain corrosive solids, and are subject to the packaging requirements of § 173.213.

Dry batteries that are not otherwise subject to the requirements of the HMR are batteries such as rechargeable camera, cell phone, and dry carbon and alkaline batteries which are commonly used by consumers. These batteries are otherwise excepted from requirements of the HMR when offered for transportation or transported in commerce provided the battery is packaged in a manner that prevents the generation of a dangerous quantity of heat that may result from short-circuiting. For the purpose of § 173.21 (c), "dangerous quantity of heat" is considered, in part, to be a sufficient amount of energy to cause leakage of the battery contents, smoke or fire, or personal injury.

Even without a short-circuit condition existing, a component in circuitry connected to a battery may become heated to a point where combustion is initiated in the component itself, or in near-by combustible materials, even if the battery or the device in which the battery is installed functions normally. RSPA has become aware of several incidents in which devices that contain batteries, although shipped in compliance with § 173.159, have produced dangerous quantities of heat while in transportation in commerce. RSPA is evaluating the conditions surrounding these incidents.

An example is a November 1997 incident in which a device known commonly as an Uninterruptible Power Source was offered to an air carrier for transportation in commerce. An Uninterruptible Power Source, a device consisting of a battery with associated circuitry, is used both to provide electrical surge protection to computers and to supply emergency power to computers in the event of a loss of normal power. After being transported on at least one flight, the power source, packed in a fiberboard box, was

discovered burning and smoking at a cargo sort facility. A subsequent investigation revealed that the burning initiated in a printed circuit board, with the source of energy being a battery within the device.

Another example of a condition of a component in circuitry connected to a battery may become heated to a point where combustion is initiated in the component itself, or in near-by combustible materials, even when the device functions normally is a properly operating, high-intensity flashlight used by scuba divers. Such devices, packed in checked baggage and unintentionally activated (i.e., by movement of the on/off switch to the "on" position), have started fires in passenger baggage.

Airline passengers and persons who offer such electrical devices for transportation as carry on baggage, checked baggage, or as cargo, are responsible for assuring that appropriate means are taken to protect against dangerous levels of heat from inadvertent activation or short-circuit of the electrical device in transportation. Individuals who carry any battery-powered electrical device in their luggage should take care not to pack it in a manner that may lead to a short-circuit by contact with keys or other metallic articles, or its inadvertent activation while in transportation. To address this potential risk, the HMR contains an overriding provision in § 173.21, Forbidden materials and packages. Materials forbidden by § 173.21 may not be offered for transportation, or transported in commerce. This section extends the forbidden designation beyond materials specifically identified in the Hazardous Materials Table or elsewhere in the HMR, to various additional general categories including:

"Electrical devices which are likely to create sparks or generate a dangerous quantity of heat, unless packaged in a manner which precludes such an occurrence."

Any electrical device, even one not otherwise subject to the HMR (either by specific exception from the HMR, or because the device and its power source contains no material meeting the definition of a hazardous material), is forbidden from being offered for transportation, or transported, if the device is likely to produce sparks or a dangerous quantity of heat.

III. Reminder to Offerers and Transporters

Any persons who offers or transports a battery or an electrical device with an installed battery, including power sources, lights or torches, power tools, and other related articles are encouraged to carefully review this guidance, to examine all of their procedures, and where necessary, to take measures to prevent potential incidents in transportation. While evaluating whether such devices are likely to produce sparks or generate a dangerous quantity of heat, environmental conditions normally encountered in transportation must be taken into account, including temperature, humidity, vibration, impacts from rough handling and other relevant factors. In addition, the possibility of product manufacturing variations such as contamination, spacings, and loose parts should be taken into account.

Persons are reminded that the offering for transportation of any forbidden material in violation of the HMR subjects the offerer to enforcement action, including, but not limited to, significant civil penalties and appropriate judicial remedies. Furthermore, a willful violation of the HMR, or the reckless offering of a material for transportation in violation of the HMR, is subject to criminal penalties of up to 5 years in prison and/or fines.

Issued in Washington, DC, on June 28, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99-17123 Filed 7-6-99; 8:45 am]

BILLING CODE 4910-60-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Egyptian Art in The Age of the Pyramids"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the additional cultural objects to be included in the "Egyptian Art in The Age of the Pyramids," imported from abroad for temporary exhibition in the United States are for exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with a foreign lender. I also determine that the exhibition or display of the listed objects at the Metropolitan Museum of Art from September 13, 1999 to January 9, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or other information, please contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619-6981. The address is Room 700 U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547-0001.

Dated: June 29, 1999.

Les Jin,

General Counsel.

[FR Doc. 99-17091 Filed 7-6-99; 8:45 am]

BILLING CODE 8230-01-M