



WORKING PAPER

DANGEROUS GOODS PANEL (DGP)

TWENTY-SECOND MEETING

Montréal, 5 to 16 October 2009

Agenda Item 3: Development of recommendations for amendments to the *Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284)* for incorporation in the 2011-2012 Edition

ENFORCEMENT

(Presented by G. A. Leach)

SUMMARY

This working paper offers guidance to States in respect of enforcement.

Action by the DGP: The DGP is invited to consider adding a new Chapter 6 to Part 7 of the *Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc. 9284SU)* as presented in the appendix. It is suggested that perhaps this could act as a place holder with further guidance on enforcement being added in the future.

1. INTRODUCTION

1.1 In the United Kingdom there have been numerous occasions when shippers have complained that their consignment of dangerous goods has failed an acceptance check for very minor reasons. This is despite “Note 1” under Part 7;1.3 of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284)* which states that minor discrepancies should not be considered as a reason to reject a consignment. Some examples of such rejections include the omission of a “.” in a not otherwise specified proper shipping name (n.o.s.), the omission of a “(“ around a technical name of an n.o.s. entry and very slight variations in label colour or format.

1.2 Whilst it may appear that the apparent cause of unjustified rejections is the over zealous application of the requirements by the operator or handling agent, it is suggested that the attitude of some regulators may play a large part in the issue, because there have been cases of regulators levying large fines on operators or handling agents for accepting consignments with errors, however small. Consequently, operators and handling agents have little choice but to reject such consignments.

1.3 Whilst regulators may feel that by strictly applying the requirements they are improving safety, it is suggested the opposite may be true; if a shipper has gone to the trouble, effort and cost of

correctly packaging, documenting, marking and labelling their consignment only to have it rejected, they may feel that it would be far easier not to declare the dangerous goods at all i.e. send the consignment as undeclared dangerous goods, which poses a far greater risk than the omission of a “.” or “(“.

1.4 A similar issue arises with the reporting of incidents. Part 7;4.4 and 4.5 of the Technical Instructions and Part S-5;4.5 of the Supplement refer to the reporting of dangerous goods accidents and incidents and instances of undeclared or misdeclared dangerous goods found in cargo or baggage. It is suggested the main aim of requiring the reporting of dangerous goods incidents and accidents is to enable people to learn from such incidents so as to prevent recurrences. It can also identify deficiencies in the Technical Instructions. However, for such a scheme to work, it is important that reporters are able to report without fear of retribution due to mistakes they or their company may have made. For example, if dangerous goods which did not comply with the Technical Instructions were found after they had been carried by air, it would be desirable for this to be reported. However, the discoverer may feel inhibited about making a report because of the possible consequences for his colleagues or employer in having accepted them for carriage.

1.5 It is suggested that it would be appropriate to offer guidance to States in the Supplement on the subject of enforcement.

APPENDIX

PROPOSED AMENDMENT TO THE SUPPLEMENT TO THE TECHNICAL INSTRUCTIONS

Part S-7

STATE'S RESPONSIBILITIES

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Chapter 6

ENFORCEMENT

6.1 Part 7;1 of the Technical Instructions requires an operator to conduct an acceptance check on packages containing dangerous goods and their associated documentation to ensure, as far as possible, that the requirements of the Technical Instructions have been met. Generally, operators must not accept dangerous goods for carriage by air if the acceptance check reveals errors in the consignment. However, Note 1 under 7;1 advises that minor discrepancies in documentation, marking or labelling should not be considered as a reason for rejecting a consignment. Experience has shown that rejection of dangerous goods for minor reasons increases the likelihood of the goods being re-presented for carriage undeclared. Consequently, States should not penalize operators and handling agents who accept dangerous goods despite minor discrepancies being noted.

6.2 Part 7;4.4 and 4.5 of the Technical Instructions and Part S-7;4 refer to the reporting by the operator of dangerous goods accidents and incidents, instances of undeclared or misdeclared dangerous goods found in cargo and forbidden dangerous goods discovered in baggage. The primary aim of any incident reporting system should be to further flight safety and not to punish. Consequently States should ensure the free and uninhibited reporting of:

- a) dangerous goods accidents and incidents;
- b) occasions when undeclared or misdeclared dangerous goods are discovered in cargo; and
- c) discoveries of dangerous goods, not permitted under 8; 1.1.2 of the Technical Instructions, in passengers' baggage.

When an operator reports an incident caused by their unpremeditated or inadvertent non-compliance with the requirements of the Technical Instructions, States should not commence legal proceedings against them, except where there has been a dereliction of duty amounting to gross negligence or a report about the occurrence has already been received from another source.

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