



工 作 文 件

危险物品专家组 (DGP)

第二十三次会议

2011年10月11日至21日，蒙特利尔

议程项目2： 拟定对《危险物品安全航空运输技术细则》(Doc 9284号文件)的修订建议，以便纳入2013年—2014年版

运营人的收运责任

(由J. McLaughlin提交)

概要

本份工作文件旨在继续大西洋城举行的危险物品专家组全体工作组会议 (DGP-WG/11, 2011年4月4日至8日)的讨论，内容涉及收运 (参见 DGP/23-WP/3 号文件第 3.2.43 段)，以及“未申报的”危险物品和“错误申报的”危险物品术语的定义 (参见 DGP/23-WP/3 号文件第 3.2.6 段)，因其有关建设性知识的原则。

危险物品专家组的行动：鼓励危险物品专家组更广泛地讨论作为收运程序一部分的运营人责任。如本份工作文件第 1.2 段所述，各项要求似已得到充分列举。因此，可以根据本份工作文件的建议，删除 DGP-WG/11 会议暂时接受的与这一问题有关的“未申报的”危险物品和“错误申报的”危险物品术语的定义。关于未申报的危险物品和错误申报的危险物品的定义及报告要求的建议，载于 DGP/23-WP/46 号文件。

1. INTRODUCTION

1.1 At the DGP Working Group of the Whole meeting in Atlantic City (DGP-WG/11, 4 to 8 April 2011) there was considerable discussion and support for proposed amendments related to acceptance requirements (DGP/23-WP/3, paragraph 3.2.43 refers) and definitions for the terms “undeclared” and “misdeclared” dangerous goods (DGP/23-WP/3, paragraph 3.2.6 refers). The proposal to introduce new definitions for the terms “undeclared” and “misdeclared” in particular encouraged panel members to consider the burdens imposed upon the operator when dangerous goods are not offered in compliance with the Technical Instructions (DGP-WG/11-WP/53, paragraph 1.3 refers). Nothing in this

paper is intended to alter or in any way address a shipper's responsibility to offer dangerous goods to air carriers in compliance with the Technical Instructions.

1.2 Prior to incorporating the proposals referenced above into the Technical Instructions, the DGP is invited to consider that operator responsibilities are already enumerated in the Technical Instructions. These responsibilities are necessary and in the interests of transportation safety. There are at least two sections of the Technical Instructions that address operator requirements for the acceptance and recognition of dangerous goods, regardless of how they are offered.

1.2.1 Part 7;1, 1.1 of the Technical Instructions reads as follows:

1.1 CARGO ACCEPTANCE PROCEDURES

1.1.1 Operators' acceptance staff must be adequately trained to assist them in identifying and detecting dangerous goods presented as general cargo.

1.1.2 Cargo acceptance staff should seek confirmation from shippers about the contents of any item of cargo where there are suspicions that it may contain dangerous goods, with the aim of preventing undeclared dangerous goods from being loaded on an aircraft as general cargo. Many innocuous-looking items may contain dangerous goods, and a list of general descriptions which, experience has shown, are often applied to such items is shown in Chapter 6.

1.2.2 Part 1;4 (Table 1-4 and Table 1-5) of the Technical Instructions requires that every job function receive training in the recognition of undeclared dangerous goods. This is required for operators who transport dangerous goods (Table 1-4) and operators who do not accept dangerous goods (Table 1-5).

1.3 Collectively, the Technical Instructions place a high burden on operators, one that goes beyond inspecting formally offered dangerous goods for compliance and consistency. Operators who choose not to transport dangerous goods are subject to these provisions in the Technical Instructions, as are employees of any operator working exclusively with unregulated cargo.

1.4 The Technical Instructions and the United States regulations/case law both equate an operator's responsibility in accepting and transporting formally declared dangerous goods with instances where the operator "should have known" or "had reason to know" dangerous goods were being offered. In other words, an operator would be equally responsible for compliance under the Technical Instructions (stowage, loading, inspection for leakage, providing notice to the pilot in command, etc.) in the examples below. The only difference would be that the operator would already be in non-compliance if they were to accept the shipment in Example 2 (as general cargo or dangerous goods).

1.4.1 **Example 1:** UN 1203 (Gasoline) is declared as dangerous goods, and is appropriately marked, labeled, documented, and packaged.

1.4.2 **Example 2:** A packaged is offered as general cargo. The words "gasoline" or "flammable liquid" are written on the package.

1.5 The principle behind this working paper generally, and paragraph 1.4 specifically is referred to in the United States as constructive knowledge. It is synonymous with the idea that an operator “should have known” or “had reason to know” dangerous goods were offered. The rationale is twofold.

1.5.1 First, United States legislation requires air carriers to operate with the highest degree of care. That is, air carriers have a responsibility to assure, to the maximum extent possible, the safety and well-being of their passengers and crew. This is consistent with common carriers in all modes of transportation trusted with the safety of passengers and crew which go beyond non-commercial operations.

1.5.2 A second and closely related rationale for operators to employ constructive knowledge is the high risk inherent in dangerous goods — declared and undeclared. The higher the risk, the higher the degree of care that is needed. As the Supreme Court of the United States has stated, when dangerous products are involved, “the probability of regulation is so great that anyone who is aware that he is in possession of them ... must be presumed to be aware of the regulation”

1.6 For reasons cited in paragraphs 1.5.1 and 1.5.2, a high duty of care is imposed on operators. With this duty of care required, the next question is with what degree of scrutiny must operators apply constructive knowledge principles in order to become aware of (undeclared) dangerous goods? In the United States, courts have held that the duty of care does not exceed that of a “reasonable man” of “ordinary prudence under the circumstances”. The “reasonable person’s” ability to detect undeclared shipments is not that of a dangerous goods expert, but is instead the perspective of a reasonable employee whose training is in compliance with Part 1;4 of the Technical Instructions. For purposes of enforcement, constructive knowledge is the same as having had actual knowledge of an undeclared or misdeclared shipment. That is, a hazardous communication was made to the operator, who improperly accepted (and potentially transported) the shipment.

1.7 What a “reasonable man” with “ordinary prudence under the circumstances” would do is always question of fact, likely to require adjudication in enforcement actions. Clearly a marking of “gasoline” or “flammable when wet” on a shipment would cause a reasonable man with training in the recognition of undeclared dangerous goods to have constructive knowledge that dangerous goods may be present. Items listed in Part 7; 6 (Provisions to Aid Recognition of Undeclared Dangerous Goods) may also contribute to constructive knowledge. Generally, constructive knowledge can be derived from one (or a combination) of the following indicia visible upon acceptance: Transport documentation, markings, labels, placards, packagings (including outside containers and overpacks), and the condition of such packagings. As required in Part 7;1.1.2, operators should “seek confirmation from shippers about the contents of any item of cargo where there are suspicions that it may contain dangerous goods”.

1.8 When a State certifies an air carrier to operate, the operator accepts responsibility to operate not only safely, but in highest degree of care. This degree of care triggers civil aviation administration (CAA) requirements to employ constructive knowledge principles when accepting *any* shipment. That is, an air carrier is as responsible for accepting and transporting dangerous goods when formally declared (actual knowledge) as they are when they a reasonable person trained according to

Part 1;4 of the Technical Instructions “should have known” or “had reason to know” of a dangerous goods shipment.

1.9 Proposals such as those made at DGP-WG/11 (DGP/23-WP/3 paragraphs 3.2.6 and 3.2.43) also warrant discussion by DGP in terms of the implications for State enforcement. As evident in paragraph 2, this paper proposes no new language. Therefore, even if States were not to subscribe to constructive knowledge principles, the regulatory standards already in Annex 18 would permit other States to hold operators up to this threshold of safety and bring enforcement actions accordingly. In the United States, constructive knowledge is a legal doctrine. By amending the Technical Instructions to encompass more than Standards and Recommended Practices, these proposals would encroach upon each State’s enforcement prerogative, a prerogative Annex 18 clearly reserves for each State. To retain their enforcement prerogatives, States would be required to file variations, resulting in an even greater burden for operators to navigate between States acceding to these proposals and those seeking to maintain the current language in the Technical Instructions as a regulatory standard.

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附录 A

对 DGP-WG/11 所商定修订的拟议修改

第 7 部分

运营人的责任

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第 1 章

收运程序

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1.3 收运检查

1.3.1 运营人不得受理使用航空器运输危险物品的包装件、合成包装件、放射性物质专用箱或如 1.4 中描述的装有危险物品的集装器或其他类型的货物托盘，除非运营人已经使用检查单核查了下列内容：

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删除 “[在清楚可见的情况下]”（这是 DGP-WG/11 提出的建议）（参见 DGP/23-WP/3 号文件第 3.2.43 段）：

- g) 组合包装件或单一包装件的外包装由有关的包装说明允许使用，在清楚可见的情况下其类型是随附的危险物品运输文件写明的类型，并由有关的包装说明允许使用；

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第 1 部分

概论

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第 3 章

一般说明

3.1 定义

删除错误申报的危险物品和未申报的危险物品的定义（DGP-WG/11 会议上提出的建议）（参见 DGP/23-WP/3 号文件第 3.2.6 段）：

~~错误申报的危险物品 系指下列情况下交付航空运输的危险物品：~~

~~a) 在危险物品运输文件上进行了不正确的说明，倘若进行了正确说明，便不会被接收承运；
或~~

~~b) 根据第 7 部分 1.3 的要求进行收运检查后发现它们不符合《技术细则》。~~

~~[注：对收运检查过程中发现的不符合《技术细则》的情况没有要求进行报告，但发现重大问题（如不正确地使用包装件）时，运营人可能选择进行报告。]~~

~~未申报的危险物品 系指交付航空运输但没有随附危险物品运输文件、以电子形式提供托运物的有关信息、或替代文件（在允许的情况下）的危险物品。~~

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