



## РАБОЧИЙ ДОКУМЕНТ

### ГРУППА ЭКСПЕРТОВ ПО ОПАСНЫМ ГРУЗАМ (DGP)

#### ДВАДЦАТЬ ТРЕТЬЕ СОВЕЩАНИЕ

Монреаль, 11–21 октября 2011 года

**Пункт 2 повестки дня.** Разработка рекомендаций относительно поправок к *Техническим инструкциям по безопасной перевозке опасных грузов по воздуху (Дос 9284)* в целях их внесения в издание 2013–2014 гг.

### ОБЯЗАННОСТИ ЭКСПЛУАТАНТА В ЧАСТИ, КАСАЮЩЕЙСЯ ПРИЕМКИ

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#### АННОТАЦИЯ

(В связи с ограниченными ресурсами переведены только аннотация и добавление.)

Настоящий рабочий документ ставит своей целью продолжить дискуссию, проводившуюся на совещании Рабочей группы полного состава DGP в Атлантик-сити (DGP-WG/11, 4–8 апреля 2011 года), по вопросу приемки (см. п. 3.2.43 документа DGP/23-WP/3) и определений терминов "незадекларированные" и "неправильно задекларированные" опасные грузы (см. п. 3.2.6 документа DGP/23-WP/3), поскольку они касаются принципов "конструктивного" знания.

**Действия DGP:** DGP рекомендуется провести широкое обсуждение вопроса об обязанностях эксплуатанта в части, касающейся процесса приемки. В п. 1.2 настоящего рабочего документа отмечается, что эти требования, как представляется, являются достаточными. Соответственно, относящиеся к этому вопросу определения терминов "незадекларированные" и "неправильно задекларированные" опасные грузы, предварительно принятые на совещании DGP/WG-11, можно исключить, как предлагается в настоящем рабочем документе. Предложение относительно определений и требований к представлению информации о незадекларированных и неправильно задекларированных опасных грузах содержится в документе DGP/23-WP/46.

## 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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## ДОБАВЛЕНИЕ А

### ПРЕДЛАГАЕМЫЙ ПЕРЕСМОТР ПОПРАВОК, СОГЛАСОВАННЫХ НА СОВЕЩАНИИ DGP-WG/11

#### Часть 7

### ОБЯЗАННОСТИ ЭКСПЛУАТАНТА

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#### Глава 1

### ПОРЯДОК ПРИЕМКИ

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#### 1.3 ПРИЕМОЧНАЯ ПРОВЕРКА

1.3.1 Эксплуатант не должен принимать к перевозке на борту воздушного судна грузовое место или внешнюю упаковку, содержащие опасные грузы, или грузовой контейнер, содержащий радиоактивный материал, или средство пакетирования грузов, или поддон другого типа, содержащие опасные грузы, как это описано в п. 1.4, если эксплуатант посредством использования контрольного перечня проверки не проверил следующее:

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*Исключить* слова "[при возможности визуального осмотра]" (которые были предложены на совещании DGP-WG/11 (см. п. 2.3.43 документа DGP/23-WP/3))

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- g) внешний упаковочный комплект комбинированного грузового места или отдельный упаковочный комплект допускается применимой инструкцией по упаковыванию и {при возможности визуального осмотра} соответствует типу, указанному в сопроводительном документе перевозки опасных грузов, и его использование допускается применимой инструкцией по упаковыванию;

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#### Часть 1

### ОБЩИЕ ПОЛОЖЕНИЯ

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#### Глава 3

### ИНФОРМАЦИЯ ОБЩЕГО ХАРАКТЕРА

#### 3.1 ОПРЕДЕЛЕНИЯ

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*Исключить* определения терминов "неправильно задекларированные" и "незадекларированные" опасные грузы (предложенные на совещании DGP-WG/11) (см. п. 3.2.6 документа DGP/23-WP/3)

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~~**Незадекларированные опасные грузы (Undeclared dangerous goods).** Опасные грузы, предъявленные к перевозке по воздуху без сопроводительного документа перевозки опасных грузов, информации, применимой к данной грузовой отправки, представленной в электронной форме, или там, где это допускается альтернативным документом.~~

~~Неправильно задекларированные опасные грузы (Misdeclared dangerous goods). Опасные грузы, предъявленные к перевозке по воздуху, когда:~~

~~— а) они неправильно описаны в документе перевозки опасных грузов (если бы они были описаны правильно, они не были бы приняты к перевозке);~~

~~— б) после приемочной проверки, требуемой п. 1.3 части 7, установлено, что они не отвечают требованиям Технических инструкций.~~

~~[Примечание. О несоответствиях с Техническими инструкциями, обнаруженных в ходе приемочной проверки, нет необходимости сообщать, хотя в случае обнаружения проблемы, имеющей важное значение (например, неправильное использование упаковочного комплекта), эксплуатант может предпочесть сообщить об этом.]~~

– КОНЕЦ –