



WORKING PAPER

**DANGEROUS GOODS PANEL (DGP)
MEETING OF THE WORKING GROUP OF THE WHOLE**

Abu Dhabi, United Arab Emirates, 7 to 11 November 2010

Agenda Item 5: Resolution, where possible, of the non-recurrent work items identified by the Air Navigation Commission or the panel

5.1: Approvals and Exemptions

**FINAL REVIEW OF PROPOSED AMENDMENT TO ANNEX 18 ARISING FROM DGP/22
REGARDING APPROVALS AND EXEMPTIONS**

(Presented by the Secretary)

SUMMARY

This paper invites the working group to discuss comments received from States and international organizations on the amendments to Annex 18 regarding approvals and exemptions.

Action by the DGP-WG is in paragraph 2.

1. INTRODUCTION

1.1 A State letter (AN 11/27.1.10-10/44) was issued by ICAO seeking comments from States and international organizations on the amendments to Annex 18 which were proposed by DGP/22 and modified by the Air Navigation Commission during its review of the DGP/22 Report. The amendment to Annex 18 relates to definitions and to approvals and exemptions. A number of comments were received which disagreed with the language used in the amendments to paragraph 2.1.3 of the Annex, in particular the words “provides an adequate means of safe transport”. The amendments to paragraph 2.13 are reproduced in Appendix A to this working paper and the comments are reproduced in Appendix B.

1.2 The Air Navigation Commission will be conducting its final review of the amendment to Annex 18 at the end of November. The working group is invited to discuss the comments received so that the Secretary can provide the ANC with the DGP’s position.

2. ACTION BY THE DGP-WG

2.1 The DGP-WG is invited to discuss the contents of Appendix B to this working paper which relate to the following text in paragraph 2.1.3 of Annex 18:

- a) “provides an adequate means of safe transport”; and
- b) “If none of the criteria for granting an exemption are relevant for the State(s) of Overflight, they may grant an exemption based on **recognition of the authorization granted by another State concerned.**”

APPENDIX A

EXTRACT FROM PROPOSED AMENDMENT TO ANNEX 18

CHAPTER 2. APPLICABILITY

2.1 General applicability

2.1.1 The Standards and Recommended Practices of this Annex shall be applicable to all international operations of civil aircraft.

2.1.2 Where specifically provided for in the Technical Instructions, the States concerned may grant an approval provided that in such instances an overall level of safety in transport which is at least equivalent to the level of safety provided for in the Technical Instructions is achieved.

2.1.3 In cases instances of extreme urgency or when other forms of transport are inappropriate or when full compliance with the prescribed requirements is contrary to the public interest, the States concerned may grant an exemptions from these provisions provided that in such cases every effort shall be made to achieve an overall level that provides an adequate means of safety in transport which is equivalent to the level of safety provided by these provisions. For the State of Overflight, If if none of the criteria for granting an exemption are relevant, an exemption for the State(s) of Overflight, they may be grant an exemption based on recognition of the authorization granted based solely on whether it is believed that an equivalent level of safety in air transport has been achieved by another State concerned.

Note 1.— For the purpose of approvals, “States concerned” are the States of Origin and the Operator, unless as otherwise specified in the Technical Instructions.

~~Note 2.—~~ The For the purposes of exemptions, “States concerned” are the States of Origin, Operator, transit, overflight and destination of the consignment and the State of the Operator.

Note 3.— Guidance for the processing of exemptions may be found in the Supplement to the Technical Instructions (Part S-1, Chapter 1, paragraphs 1.2 and 1.3).

~~Note 2.—~~ Refer to 4.2 for dangerous goods normally forbidden for which States may grant an exemption.

~~Note 3.—~~ Refer to 4.3 for dangerous goods forbidden for transport by air under any circumstances.

Note 4.— It is not intended that this Annex be interpreted as requiring an operator to transport a particular article or substance or as preventing an operator from adopting special requirements on the transport of a particular article or substance.

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APPENDIX B

COMMENTS RECEIVED FROM STATES AND INTERNATIONAL ORGANIZATIONS ON THE PROPOSED AMENDMENT TO PARAGRAPH 2.1.3 OF ANNEX 18

Ecuador

(Note.— See appropriate partial language version of this AN-WP for original text.)

2) Comment on the phrase “that provides an adequate means of safe transport”

This phrase may be misinterpreted by States and should be revised.

Russian Federation

(Note.— See appropriate partial language version of this AN-WP for original text.)

In para. 2.1.3, delete the phrase “that provides an adequate means of safe transport” and insert the phrase “provided that everything possible will be done to achieve an equivalent level of safety of the transport of dangerous goods by air which ensures compliance with the Technical Instructions”. With reference to the standards of the Technical Instruction, which are based on UN standards, the above wording clarifies the content of the standard and renders it more understandable for implementation;

In para. 2.1.3, delete the phrase “recognition of the authorization granted by another State concerned”.

IFALPA

While we agree with the majority of the proposals, we cannot endorse the language proposed in paragraph 2.1.3, in particular the change from an "equivalent level of safety" to "an adequate level of safety", and must therefore respectfully disagree with the State letter.

IFALPA believes this change would result in a reduction in the level of safety for dangerous goods shipped under an exemption. Such exemptions are granted to provide relief from the prescriptive regulations of the Technical Instructions in instances of extreme urgency, when other forms of transport are inappropriate, or when full compliance with the prescribed requirements is contrary to the public interest. Nevertheless, the safety of the crew members and any passengers on the aircraft must be ensured. By mandating an "equivalent" level of safety, an exemption would need to prescribe additional safety measures, such as improved packaging requirements or reduced quantity limits, in order to ensure that the overall safety of the shipment was equivalent to the requirements prescribed in the Technical Instructions. The application of an "adequate" level of safety could result in an interpretation by the issuing State that the provisions of the exemption result in an adequate level of safety, despite providing relief from certain regulatory requirements, without any compensating additional safety provisions. This would result in an overall reduction in the level of safety of the shipment. IFALPA recommends retaining the requirement that an "equivalent level of safety" be maintained for dangerous goods shipped under an approval or exemption.