



WORKING PAPER

DANGEROUS GOODS PANEL (DGP)

TWENTY-THIRD MEETING

Montréal, 11 to 21 October 2011

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 9284SU) for incorporation in the 2013-2014 Edition

VOLUNTARY DISCLOSURE OF OPERATOR NON-COMPLIANCE

(Presented by J. McLaughlin)

SUMMARY

This working paper is intended to continue discussions held at DGP-WG/11 on the reporting of dangerous goods occurrences (DGP/23-WP/3, paragraph 3.2.45 refers). A proposal to add new guidance material on establishing voluntary self disclosure programmes in the Supplement is made. A proposal to remove the new requirement for reporting of dangerous goods occurrences agreed at DGP-WG/11 is also made (DGP/23-WP/3, paragraph 3.2.45 refers).

Action by the DGP: The DGP is invited to consider the language used in Appendix A to this working paper as a basis for providing guidance to States on operator voluntary disclosure programmes. The DGP is also invited to consider removing the requirement agreed in principle at DGP/23-WP/11 on reporting of dangerous goods occurrences (Appendix B).

1. INTRODUCTION

1.1 At the DGP Working Group of the Whole Meeting in Abu Dhabi (DGP-WG/10, 7 to 11 November 2010), there was considerable discussion and support for requiring air carriers to disclose when they are in violation of certain requirements under Part 7 of the Technical Instructions. Policies to encourage disclosure of non-compliance are in the interest of safety and consistent with safety management system principles. Proposals that reflect this intent should therefore be encouraged.

1.2 At the same time, the DGP is urged to consider the unique implications in *requiring* operators to report on their own non-compliance. The implications are distinct from requiring an operator

to report to States when shipments are offered in non-compliance. In these instances, States retain their prerogative to utilize all available enforcement tools on these non-compliant shippers. One of these tools can be a voluntary disclosure programme. To maintain this approach, DGP/23—WP/33 proposes that misdeclared dangerous goods whose noncompliance was ascertainable upon acceptance need not be reported to State authorities. This carve out allows for voluntary disclosure programmes while not restricting a State's prerogative to address non-compliance.

1.3 As noted at DGP-WG/11 (DGP/23-WP/3, paragraph 3.2.45 refers), instances of noncompliance, “may be indicative of a systemic weakness in an operator’s procedures which, if allowed to continue uncorrected, or if repeated in different, but likely circumstances, would create a hazard.” Therefore, when an operator is required to report (or voluntarily reports) on their own noncompliance, such disclosures should trigger actions by both the operator and the State. SMS principles would suggest the need for a compressive fix to address the problems underlying the non-compliance by the operator. The State would then engage the operator to submit a proposed mitigation plan for review as well as conduct oversight to ensure the plan is being both successfully implemented and yielding the intended outcomes. In the absence of an acceptable and completed mitigation plan, States should be able to respond to the non-compliance as if the non-compliance were found as a part of State oversight.

1.4 The DGP is also encouraged to consider and clarify who would be entitled to receive the disclosure proposed at DGP-WG/11-WP/55 (DGP/23-WP/3, paragraph 3.2.45). In particulate, whether it should be the State of the Operator, the State where non-compliance was observed, the State where non-compliance was caused, and/or the State(s) of Origin and Departure.

1.5 Aside from technical issues discussed above, the DGP is also encouraged to consider placing provisions of this nature as guidance in the Supplement to the Technical Instructions. This approach would be consistent with the Technical Instruction’s role of prescribing safety standards for regulated entities to meet. When noncompliance with a safety standard is discovered, it is the purview of the States to respond in a manner consistent with their applicable laws and civil aviation administration (CAA) policies. This principle originates from Chapter 11 (Section 11.1) of Annex 18 — *The Safe Transport of Dangerous Goods by Air* which states:

11.1 Inspection systems

Each Contracting State shall establish inspection, surveillance and enforcement procedures with a view to achieving compliance with its dangerous goods regulations.

1.6 To provide an example of a State-specific programme on operator disclosure of non-compliance, Appendix B to this working paper contains FAA’s Advisory Circular 121-37. This programme has been effective since 2006 and has been well received by operators and FAA alike. The most common instances of non-compliance have been related to NOTOC violations. The DGP should note that under this policy, disclosure is voluntary.

APPENDIX A

AMENDMENTS TO THE SUPPLEMENT
TO THE TECHNICAL INSTRUCTIONS

Part S-7

STATE’S RESPONSIBILITIES

(ADDITIONAL INFORMATION
FOR PART 7 OF THE
TECHNICAL INSTRUCTIONS)

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Chapter 6

ENFORCEMENT

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6.3 Voluntary Self Disclosure Programs (VSDPs)

6.3.1 States may wish to establish voluntary self disclosure programmes (VSDPs) in order to identify systemic deficiencies among operators, allow operators to focus resources on correcting causes of noncompliance, and ultimately promote and increase safety. To incentivize the use of this tool, States would allow relief from some or all punitive enforcement actions if obligations are satisfied following the initial disclosure. States should be clear which regulatory requirements are applicable to their VSDPs.

6.3.2 States should ensure that their dangerous goods VSDPs are properly integrated with their other CAA oversight functions and existing disclosure programs.

6.3.3 Elements of a VSDP should include:

Requirement

Information to be Included

A detailed report of the non-compliance.

Air carrier, station(s), suspected regulation(s) violated, aircraft involved, personnel involved, dangerous goods involved, and the date(s)/time of the noncompliance

A description of the immediate action

- When the immediate action was taken.
- A description of the immediate action outlining the immediate steps that were taken to cease the apparent violation.
- The Company official responsible for the immediate action (Name, title and contact information).

Analysis

- An analysis supported by evidence, as to why the non-compliance occurred, how it was detected, and the suspected scope of the problem.
- Reasons why the apparent violation was inadvertent.

Comprehensive Fix (Mitigation Plan)

- The corrective steps and actions proposed by the operator to prevent the apparent violation from recurring.
- Each corrective step should identify the individual or department responsible for implementing the corrective step and the time allotted for each step.
- Examples of types of questions or issues that a comprehensive fix should address are as follows:

Requirement

Information to be Included

- Whether the apparent violation involves equipment facilities, or individuals beyond those addressed in the initial notification and for which immediate action was taken.
- Whether procedural or organizational changes are necessary.
- How it will be determined whether any procedural or organizational changes are effective.
- What procedures will be developed to ensure that the affected area is periodically reviewed in the future so that concerns can be identified before a violation occurs?
- Who will be responsible for performing periodic reviews?
- To whom in the organization will the results of those periodic reviews be reported, and how will they be documented?
- The operator representative responsible for the comprehensive fix.

6.3.4 States are responsible for ensuring that proposed comprehensive fixes sufficiently address causes of noncompliance. Once this plan is approved, State oversight is required. States should clarify in their VDPs that insufficient fixes or implementation of fixes will subject operators to enforcement as if the noncompliance was discovered as part of an inspection.

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APPENDIX B

REMOVAL OF PROPOSED AMENDMENT TO THE TECHNICAL INSTRUCTIONS WHICH WAS AGREED IN PRINCIPLE AT DGP-WG/11

~~4.6—REPORTING OF DANGEROUS GOODS OCCURRENCES~~

~~An operator must report any occasion when:~~

- ~~— a) dangerous goods are discovered to have been carried when not loaded, segregated, separated and secured in accordance with Part 7, Chapter 2; or~~
 - ~~— b) dangerous goods are discovered to have been carried without information having been provided to the pilot in command in accordance with Part 7.4.1.~~
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APPENDIX C



U.S. Department
of Transportation

**Federal Aviation
Administration**

Advisory Circular

**Subject: VOLUNTARY DISCLOSURE
REPORTING PROGRAM – HAZARDOUS
MATERIALS**

Date: 01/31/06

Initiated by: ADG-1

AC No: 121-37

Change:

1. Purpose.

a. Holders of certificates under 14 CFR parts 119 and 125 and foreign air carriers issued operations specifications under 14 CFR part 129 (operators, you, your) who accept hazardous materials (HAZMAT) for transport by air may voluntarily disclose to the Federal Aviation Administration (FAA, we, us) violations of certain hazardous materials regulations (HMR) under the voluntary disclosure reporting program. This Advisory Circular (AC) provides guidance for you when reporting to FAA instances of noncompliance through this voluntary disclosure reporting program.

b. You are encouraged, but not required, to develop internal evaluation programs that monitor your compliance with the HMR and your policies and procedures so that you achieve a high-level of safety and security. However, you may voluntarily disclose certain apparent violations following the guidance contained in this AC, even though you have not established an internal evaluation program.

2. What Violations This AC May Cover.

The voluntary disclosure reporting program discussed in this AC applies to violations of 49 CFR part 175, which cover certain HAZMAT reporting, training, acceptance, loading, unloading, handling and stowage requirements. It does not apply to violations of 49 CFR parts 171, 172, and 173, or to violations of 14 CFR.

3. Why Do We Need This AC?

We believe that aviation safety is well served by incentives for you to identify and correct your own instances of noncompliance and to invest your resources in efforts to prevent a recurrence. Civil penalties under our compliance and enforcement program are considered a means to promote compliance with the regulations. In addition to the deterrence achieved by the appropriate use of civil penalties, the public interest is also served by positive incentives to promote and achieve compliance. Our policy of forgoing civil penalty actions when you detect a violation, disclose the violation to us, and take prompt corrective action to ensure the violation does not recur is designed to encourage compliance with the regulations, foster safe operating practices, and promote the development of internal evaluation programs.

4. Understanding The Key Terms And Phrases Used In This AC.

a. Evidence - written documentation or reports that support your analysis of the apparent violation and the resulting elements of the proposed comprehensive fix. Evidence may come from, among other things:

- (1)** Reviewing documents or manuals.
- (2)** Examining equipment.
- (3)** Observing activities.
- (4)** Interview data.

b. Appropriate FAA Regional HAZMAT Branch Manager (HAZMAT Branch Manager) – the HAZMAT Branch Manager in the regional office that holds the operators certificate or, in the case of a foreign air carrier, the regional office closest to the apparent violation. (See Appendix II)

c. Comprehensive Fix – corrective steps and actions to prevent the apparent violation you voluntarily disclosed under this AC from recurring.

d. Satisfactory Fix - a comprehensive fix that you have completed on schedule to FAA's satisfaction.

e. Implementation Period - the period of time, after you have initially notified us of the apparent violation and before the HAZMAT Branch Manager makes a final assessment.

5. How The Voluntary Disclosure Program Works.

a. We believe the open sharing of apparent violations and a cooperative, as well as, an advisory approach to solving problems will enhance and promote aviation safety. We will issue you a letter of correction, instead of a civil penalty action, for covered instances of noncompliance that are voluntarily disclosed to us under the terms of this AC. Once we issue the letter of correction, the case will be closed. However, we will reopen the case if you fail to complete the comprehensive fix in accordance with the letter of correction and we may take legal enforcement action.

b. This voluntary disclosure program consists of seven steps:

- (1)** You make the initial notification to the HAZMAT Branch Manager of an apparent violation.
- (2)** We respond to your initial notification and request your written report.

- (3) You provide a written report to the HAZMAT Branch Manager.
- (4) We evaluate your written report
- (5) We review the proposed Comprehensive Fix you submitted with the written report and concur or recommend changes.
- (6) You carry out your Comprehensive Fix and conduct a subsequent audit.
- (7) The HAZMAT Branch Manager makes a final assessment.

6. You Make The Initial Notification To The HAZMAT Branch Manager Of An Apparent Violation.

a. The voluntary disclosure reporting program applies only when you discover an apparent violation and notify the HAZMAT Branch Manager before we learn of the apparent violation. You must make the initial notification within 24 hours of the discovery of the apparent violation. (Exception: if we learn of the apparent 49 CFR part 175 violation through an Aviation Safety Action Program (ASAP) report, as described in AC 120-66, current edition, the operator may still submit it as described in this AC, provided the initial notification occurs within the time limit).

b. This notification may be in any form, such as telephonic, fax, e-mail, oral, or written. (See Appendix II for Regional HAZMAT office phone numbers.)

c. In your notification you should:

- (1) Describe the apparent violation, including the duration of time that it remained undetected, as well as how and when you discovered it.
- (2) Verify that noncompliance ceased after you identified it.
- (3) Describe the immediate action taken to terminate the conduct that resulted in the apparent violation and identify the person who was responsible for taking the immediate action.
- (4) Verify that you are continuing your ongoing evaluation to identify any systemic problems and determine the corrective actions necessary to prevent recurrence.
- (5) Identify the person and organization responsible for preparing the comprehensive fix.
- (6) Assure us that a detailed written report will be provided to the HAZMAT Branch Manager within 30 working days.

7. We Respond To Your Initial Notification And Request Your Written Report.

a. Once you notify the HAZMAT Branch Manager of the violation, we will respond with a written acknowledgement that we received your initial notification. The written acknowledgement is sent instead of a letter of investigation.

b. Our written acknowledgement will include a request for your written report, the report must be prepared as described in paragraph 8 of this AC and Appendix I. The HAZMAT Branch Manager will open an enforcement investigative report that will be closed out with a letter of correction, unless the comprehensive fix has not been completed.

8. You Provide A Written Report To The HAZMAT Branch Manager.

a. You must provide a written report to the HAZMAT Branch Manager within 30 working days after the initial notice of the apparent violation. The written report must (see Appendix I):

- (1) List the specific FAA regulations that may have been violated.
- (2) Describe the apparent violation, including time it remained undetected, as well as how and when you detected it.
- (3) Describe the immediate action you took to terminate the conduct that resulted in the apparent violation, including when it was taken, and who took it.
- (4) Explain why the apparent violation was inadvertent.
- (5) Provide evidence that demonstrates the seriousness of the apparent violation and your analysis of that evidence.
- (6) Describe the proposed comprehensive fix, outlining the planned corrective steps, and a time schedule for completing the fix. You must identify the company official responsible for completing the comprehensive fix.

9. We Evaluate Your Written Report.

a. We will evaluate and ensure that the following conditions are met when you report an apparent violation:

- (1) You have notified the HAZMAT Branch Manager of the apparent violation within 24 hours after detecting it and before we have learned of it by other means.
- (2) The apparent violation was inadvertent.
- (3) The apparent violation does not indicate a lack, or reasonable question of, your qualification to hold a certificate, or, in the case of a foreign air carrier, operations specifications.

(4) You took immediate action to terminate the conduct that resulted in the apparent violation.

(5) You have developed or are developing a comprehensive fix satisfactory to us. The comprehensive fix includes a follow-up self-audit to ensure that the corrective action taken prevents a recurrence or noncompliance. This self-audit is in addition to any audits we conducted.

b. Ordinarily, we will not forgo legal enforcement action if you inform us of the apparent violation during, or in anticipation of, our investigation/inspection or in association with an accident or incident.

10. We Review The Proposed Comprehensive Fix You Submitted With The Written Report And Concur Or Recommend Changes.

We will work with you to ensure that you accomplish the comprehensive fix

a. If the HAZMAT Branch Manager determines that the proposed comprehensive fix is acceptable, we will issue a letter of correction that includes the dates by which you must complete the comprehensive fix.

b. After we issue the letter of correction, the case is closed but remains subject to reopening if you do not complete the agreed-upon actions covered in the comprehensive fix to our satisfaction.

c. The HAZMAT Branch Manager has the authority to close the case.

11. You Carry Out Your Comprehensive Fix And Conduct A Subsequent Audit.

a. During the implementation period, we will continue to work with you. We may advise and assist you in correcting any identified systemic problems. You may change the corrective action(s) outlined in the comprehensive fix, if we concur with the change. When we concur with the change to a comprehensive fix, the HAZMAT Branch Manager will prepare an amended letter of correction that reflects this change.

b. Throughout the implementation period, we will assess and monitor your corrective efforts and top management's awareness of these efforts. If, during this period, we determine that the steps you have taken are not those documented in the comprehensive fix, we may rescind the letter of correction, reopen the Enforcement Investigative Report, and start appropriate legal enforcement action.

c. You then finish the agreed-upon comprehensive fix, which includes a self-audit to ensure that the corrective action taken prevents a recurrence of the noncompliance.

12. The HAZMAT Branch Manager Makes A Final Assessment.

a. At the conclusion of the implementation period, the HAZMAT Branch Manager makes a final assessment. If all elements of the comprehensive fix have been adequately accomplished, we will prepare a follow-up statement confirming the fix is satisfactory. The statement is placed in the Enforcement Investigative Report.

b. If the same or similar violations are discovered after we finish an Enforcement Investigative Report, we will not reopen the case unless we determine that you failed to carry out one or more of the elements of the comprehensive fix that the parties agreed on

13. Dispute Resolution

If a dispute occurs regarding FAA's acceptance of the proposed comprehensive fix or a modification to the originally accepted comprehensive fix, the HAZMAT Branch Manager or you may request that the issue be resolved at the next level of management within the FAA. The next level of management is the Regional Security and Hazardous Materials Division Manager.

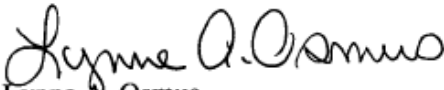
14. Applicability of the Freedom of Information Act (FOIA) to Voluntary Disclosure Records Submitted Under This AC.

FAA will protect records submitted for review under this voluntary disclosure reporting program to the extent allowed by law.

15. Repeated Violations After You Complete The Comprehensive Fix.

If a repeat violation occurs after you complete the satisfactory fix, the procedures outlined in this AC may apply to the disclosure of the repeated violation. We will determine whether the repeated violation will be accepted under this AC in each case, after evaluating the facts and circumstances surrounding the repeated violation.

16. For More Information, Contact The Regional HAZMAT Branch Manager (see Appendix II).



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APPENDIX I. SAMPLE FORMAT TO BE FOLLOWED WHEN SUBMITTING THE WRITTEN REPORT AS OUTLINED IN PARAGRAPH 8 OF THIS AC.

This is a suggested format to be used when preparing the written report to the Appropriate Regional HAZMAT Branch Manager. While an air operator or foreign air carrier should include at least all the elements specified below, the structure of the written report can be modified by the air operator or foreign air carrier to fit its particular needs.

A. General

1. Date.
2. Certificate type or equivalent.
3. Pertinent air carrier or foreign air carrier number or equivalent.
4. Company name.
5. Company address.
6. Company official filing report.
 - a. Name.
 - b. Position.
 - c. Telephone number.

B. Description Of Apparent Violation

1. Applicable 49 CFR.
2. Date apparent violation was discovered.
3. Location of discovery.
4. Company official who discovered the apparent violation.
 - a. Name.
 - b. Position.
 - c. Telephone number.
5. Date and time of initial notification to the Appropriate Regional HAZMAT Branch Manager.
6. Name of HAZMAT Branch Manager notified.

7. Company official making notification.

- a. Name.**
- b. Position.**
- c. Telephone number.**

8. Duration of time apparent violation remained undetected.

- a. Hours.**
- b. Cycles.**
- c. Days.**

C. Summary Of Apparent Violation

The summary should be a brief statement that describes the nature of the apparent violation and identifies the specific aircraft and hazardous material/substance, and/or individuals associated with the apparent violation.

D. Immediate Action

- 1. When the immediate action was taken.**
- 2. Description of the immediate action. (This description should outline the immediate steps that were taken to cease the apparent violation.)**
- 3. Company official responsible for the immediate action.**
 - a. Name.**
 - b. Position.**
 - c. Telephone number.**

E. Analysis.

- 1. Summary of evidence. (This summary should describe the scope of the apparent violation and explain how it was detected. In addition, conclusions reached regarding possible or probable systemic deficiencies, i.e., who, what, when, where, why, and how the noncompliance occurred, should be described.)**
- 2. Reasons why the apparent violation was inadvertent.**
- 3. Supporting documentation. (The evidence associated with the apparent violation should be attached. This evidence should include a statement regarding how the air operator or foreign air carrier determined the extent of the apparent violation.)**

F. Comprehensive Fix . The corrective steps and actions proposed by the air operator or foreign air carrier to prevent the apparent violation from recurring should be listed in this section. Each corrective step should identify the individual or department responsible for implementing and completing the corrective step and the time allotted for completion of each corrective step. Examples of types of questions or issues that a comprehensive fix should address are as follows:

- (1) Whether the apparent violation involves equipment facilities, or individuals beyond those addressed in the initial notification and for which immediate action was taken.
- (2) Whether procedural or organizational changes are necessary.
- (3) How it will be determined whether any procedural or organizational changes are effective.
- (4) What procedures will be developed to ensure that the affected area is periodically reviewed in the future so that concerns can be identified before a violation occurs?
- (5) Who will be responsible for performing periodic reviews?
- (6) To whom in the air operator's and foreign air carrier's organization will the results of those periodic reviews be reported, and how will they be documented?

G. Responsibility For Monitoring The Implementation Of The Comprehensive Fix.

- (1) Name.
- (2) Position.
- (3) Telephone number.
- (4) Signature.

H. FAA Acceptance (To Be Completed By The FAA).

- (1) Name.
- (2) Position (Regional HAZMAT Branch Manager).
- (3) Date.
- (4) Office.
- (5) Signature.

APPENDIX II. FAA's Regional HAZMAT Office Phone Numbers

New England Region
Burlington, MA
PHONE: (781) 238-7705
FAX: (781) 238-7716

Eastern Region
Jamaica, NY
PHONE: (718) 553-2596
FAX: (718) 977-6720

Southern Region
Atlanta, GA
PHONE: (404) 305-6831
FAX: (404) 305-6754

Great Lakes Region
Des Plain, IL
PHONE: (847) 294-7414
FAX: (847) 294-7816

Central Region
St. Ann, MO
PHONE: (314) 890-4842
FAX: (314) 423-0884

Southwest Region
Ft. Worth, TX
PHONE: (817) 222-5720
FAX: (817) 222-5990

Western-Pacific Region
Lawndale, CA
PHONE: (310) 725-3701
FAX: (310) 725-6879

Northwest Mountain Region
Renton, WA
PHONE: (425) 227-2706
FAX: (425) 227-2706
