

June 29, 2010

"The Employer"

The Chief Compliance Officer is writing in response to the employer's email dated May 31, 2010, in which the employer requests a deviation from Section 51(1)(a) of General Regulation 91-191 that states:

**51(1)**Where an employee is exposed to a risk of drowning, the employee shall use

(a) a life jacket or buoyancy device that conforms to CGSB standard CAN/CGSB-65.7-M88, "Life Jackets, Inherently Buoyant Type" ,

In the employer's request the employer indicated that the floatation device is:

- Approved ULC and complies with UL1180;
- Light;
- Smaller which allows workers to move more freely; and
- Self floating (self-inflating).

In a follow-up email dated June 3<sup>rd</sup>, 2010, the employer provided, at the Chief Compliance Officer's request, a copy of the Manual for the 'NIV2000/NIV2500 Manual Inflation with Automatic Backup Personal Floatation Device'. The manual contains the following information:

- This Personal Floatation Device (PFD) is **NOT** recommended for non-swimmers or weak swimmers,
- The NIV2500 model has a built-in sailing harness that can cause injury if not properly used,
- The PFD shall **NOT** exhibit deterioration that could diminish its performance,
- The PFD must be properly armed with a full CO<sub>2</sub> cylinder, inflation system status indicator, and an accessible manual inflation lanyard,
- It is imperative that the inflatable PFD is properly adjusted to fit the person wearing it,
- The PFD is **NOT** to be worn underneath any type of clothing,
- It is important that employees wearing the PFD clearly comprehend and are comfortable deploying the device,
- The PFD can only be fitted with Nautilus NRK2000 Re-arm kit inflation mechanism parts,
- Rearming must follow the sequence set-out in the manual,
- The harness is designed to be worn by wearers at least 165 cm tall,
- When not in use, the harness rings can be secured by the two snaps on either side of the buckle,
- The harness has not been designed for fall arrest,
- The harness should be checked periodically,
- The PFD might not adequately inflate when used in below freezing temperature,
- The PFD must be checked between outings to be sure it is properly armed,
- Care and Maintenance instructions,
- Required inspections,
- The water sensing element should be replaced every two years,

- The manual inflation system is checked with the CO<sub>2</sub> cylinder removed by ensuring that the lever arm and piercing pin move freely when moving the lever attached to the pull tab several times down and up,
- How to test the PFD using the manual inflator,
- How to test the PFD using the oral inflator, and
- The PFD is **NOT** to be attached to a boat or barge.

Furthermore, information contained on the “Nautilus by Protexion” website indicate that NIV2500 PFD provides 35 pounds of buoyancy when inflated and is capable of self-righting **MOST** people from a face down position.

In order to determine why the Manual for the “NIV2000/NIV2500 Manual Inflation with Automatic Backup Personal Floatation Device” does not recommend this PFD for non-swimmers and weak swimmers, the parent company for Nautilus, Helly Henson, was contacted. A Helly Henson representative advised that the wording comes directly from Transport Canada. The Transport Canada web site entitled “A few words on lifejackets and personal flotation devices in Canada” ([http://www.tc.gc.ca/eng/marinesafety/debs-obs-equipment-lifejackets-few\\_words-1179.htm](http://www.tc.gc.ca/eng/marinesafety/debs-obs-equipment-lifejackets-few_words-1179.htm)) contains the following information:

- Inflatable PFDs are not for weak swimmers.
- The inflation time for these devices, although relatively short, may not be appropriate for persons that are not confident in the water.
- While devices fitted with an automatic inflation mechanism may appear to alleviate the problem for weak swimmers, one should remember that if the inflation mechanism failed to operate, only a person confident in the water will likely be able to successfully inflate the device using the back up inflation system.
- All Canadian approved inflatable PFDs are fitted with an oral inflation tube that will allow the device to be inflated orally should the CO<sub>2</sub> inflation mechanism fail.
- You must also be familiar with its limitations and know which boating activities they are approved for under the *Small Vessel Regulations*.

The boating activities to which the *Small Vessel Regulation* (<http://laws.justice.gc.ca/eng/SearchResults>) apply are as follow:

- (1) These Regulations apply in respect of
  - (a) a pleasure craft;
  - (b) a passenger-carrying vessel of not more than 15 gross tonnage that carries not more than 12 passengers and is not a human-powered vessel;
  - (c) a workboat of not more than 15 gross tonnage; and
  - (d) a human-powered vessel other than a pleasure craft.

(2) These Regulations do not apply in respect of

(a) a fishing vessel;

(b) a rescue boat or lifeboat that is carried on board a vessel exclusively to meet a requirement for life-saving appliances set out in other regulations made under the Act;

(c) a vessel in respect of which the *Special-purpose Vessels Regulations* apply; or

(d) an air cushion vehicle of more than 4 500 kg all up weight.

Based on the information outlined above, the request for a deviation from Section 51(1)(a) of General Regulation 91-191 is granted with the following conditions:

- **No employee** wearing the NIV2500 PFD shall work alone,
- Employees wearing the NIV2500 shall know how to swim,
- Employees wearing the NIV2500 shall clearly understand and be comfortable deploying the device
- Employees wearing the NIV2500 PFD shall be taller than 165cm,
- Employees wearing the NIV2500 PFD shall weight 36.3 kg or more,
- Employees wearing the NIV2500 PFD shall know its' limitations,
- Employees shall **NOT** wear the NIV2500 PFD underneath any clothing,
- The NIV2500 harness shall **NOT** be used for fall arrest,
- All NIV2500 PFD shall be inspected as required by the manufacturer,
- All NIV2500 PFD shall be maintained as required by the manufacturer,
- The NIV2500 shall **NOT** be used when temperature are at or below freezing,
- Any NIV2500 PFD showing deterioration shall be removed from service,
- The NIV2500 shall **NOT** be used for boating activities for which it is not approved for under the *Small Vessel Regulation*.

By copy of this letter, the Chief Compliance Officer has advised WorkSafeNB staff of the decision.

Yours truly,

Chief Compliance Officer