

Maritime Rules

Invitation to Comment

PART 91 AMENDMENT

NAVIGATION SAFETY RULES

Comments, please

You are invited to comment on a draft amendment to Part 91 - Navigation Safety Rules, which is now available from the Maritime Safety Authority.

What was Part 91 about?

Part 91, which came into force on 21 March 2003, replaces the Water Recreation Regulations 1974. It continues the basic navigation safety rules contained in those regulations with some modifications and additions to bring the requirements up to date with modern boating conditions and safety expectations.

Part 91 introduced new requirements for the carriage of personal flotation devices (buoyancy aids designed to be worn on the body) on pleasure craft. Provision is made for exemptions to these requirements in restricted circumstances where compliance with the rule is impractical or inappropriate. Part 91 also makes the wearing of personal flotation devices mandatory in some circumstances.

Part 91 also set a standard for the required personal flotation devices. The standard is taken from the New Zealand standard NZS 5823:2001. Part 91 provides that personal flotation devices meeting other national or international standards substantially complying with the New Zealand Standard may be accepted by the Director as complying. This is consistent with the policy applied to commercial ships. The intention of the rule in setting

this standard is to encourage compliance by facilitating choice and price competitiveness while retaining an acceptable level of safety.

The basis for Part 91 is found in section 36(t) and (tb) of the Maritime Transport Act 1994.

What is the proposed amendment to Part 91 about?

Subsequent to the coming into force of Part 91 on 21 March 2003, a number of issues have emerged concerning personal flotation devices (PFDs).

Specialist PFDs

First, it has become apparent that there is a large number of specialised fit-for-purpose, but non-certificated, buoyancy garments in existence – being manufactured, in shops and in use in various applications, principally kayaking and canoeing.

In consequence of the definition of PFD in Part 91 (which requires certification to the New Zealand standard, or to other national or international standard acceptable to the Director), the use of these devices does not satisfy the PFD carriage requirement in rule 91.4(1).

The kayaking/canoeing community has indicated that –

- non-standards approved PFDs they are using are more suited (and therefore safer) than the standards approved aids that are available
- the principal reasons for these PFDs not being standards approved is the cost to manufacturers of obtaining and maintaining certification
- the MSA did not consult with the kayak/canoeing fraternity (including PFD manufacturers) over the introduction of Part 91 to the extent that it should have
- while acknowledging that a safety standard is required, more time is needed to find an acceptable solution that will not unduly penalize PFD manufacturers and those using PFDs that do not comply with the requirements of Part 91.

Application of Part 91 PFD requirements to river guides operating under Part 80

A related issue is the relationship between Part 91's PFD requirements and those of Part 80 in respect of guides' buoyancy aids. These are not tied to any standard, recognizing the preference of guides for specialist devices that may not be standards-certified. While it was not intended to cover rafts in Part 91, legal advice holds that rafting guides must comply with the PFD requirements of rule 91.4.

This prospect has concerned rafting operators, which have raised objections, on grounds of both safety and cost.

Application to PFDs purchased prior to 21 March 2003

No savings provision is made in Part 91 to legitimize the large number of non-certificated PFDs in use prior to the rules coming into force. The carriage of such devices does not meet the requirements of rule 91.4 and, in consequence, their users are technically in breach of the law.

Proposed approach

It is proposed that rule 91.4 is amended to address the use of specialist PFDs on board paddle powered craft, including kayaks and canoes, by permitting the continued use of serviceable but non-certificated buoyancy aids in commercial applications until 21 March 2007 and until 21 March 2010 in pleasure craft applications. These periods are proposed to enable existing manufacturers of such PFDs, who may have already committed to production over the next quarter, to continue their lines and have an opportunity to sell their product to commercial and pleasure craft operators, who would then have an expectation of three and six years' service life respectively.

To address the rafting guide and existing (pre-21 March 2003) buoyancy aid issues, the amendment further:

- specifically removes any application of Part 91 PFD requirements to commercial rafts
- legitimates the use of non-certificated buoyancy aids purchased/or in use prior to Part 91 coming into force for a period of seven years (21 March 2010). This exception applies only in respect of pleasure craft.

The two end dates (21 March 2007 for recreational paddle craft that are not pleasure craft, and 21 March 2010 for pleasure craft only) have been selected to reflect the rigors and higher usage in commercial service, compared to, typically, more limited and periodic use on board pleasure craft.

Rules entry into force

The amended Part 91 will enter into force 28 days after its notification in the *Gazette*. This is expected to be in late March 2004.

Text of proposed amended rules

The text of the proposed amended rules is attached to this invitation to comment. This includes at annex the text of the proposed amendment to rule 91.4 set out in the context of the wider rule and relevant definitions.

Are you interested in commenting?

Time to make comments

The close off date for comments on Part 91 is 31 October 2003. Comments should be in our hands by that date.

Address for comments

Your comments may be communicated by the following means:

- e-mail to manager.standards@msa.govt.nz
- ordinary mail to PO Box 27006, Wellington
- fax (04) 494 1263
- delivery to the eighth floor, gen-i Tower, 109 Featherston Street, Wellington.

Please note that your submission is public information

Please indicate clearly if your comments are commercially sensitive, or if, for some other reason you consider they should not be disclosed.

We will acknowledge all submissions that we receive and once the rule is finalised you will receive a summary of the full consultation.

Submissions made by others

Subject to the rules of the Privacy and Official Information Acts, you may view the submissions made by other people at the Wellington office of the Authority between 8.30 am and 4.30 pm on weekdays, except statutory holidays. Please arrange this with the Manager, Safety and Environmental Standards beforehand on (04) 494 1242.

For further information on the rules programme see Maritime Safety Authority publications *Rules Review* and *Safe Seas Clean Seas*.

If you have not already done so, you are invited to put your name on the mailing lists for hard copies of drafts of the proposed rules that are of particular interest to you. (Use the list of proposed rules in the *Rules Review* to identify these.) Alternatively, you can use our e-mail notification system to alert you to the appearance of draft rules on the MSA website.

The lists are maintained by the Administrator, Safety and Environmental Standards at administrator.standards@msa.govt.nz or (04) 494 1239 (telephone) or (04) 494 1263 (fax), or by writing to Box 27006, Wellington.

All draft rules are available free of charge in hard copy or by downloading from www.msa.govt.nz

A.1 Entry into force

These amendments come into force 28 days after notification in the *Gazette*.

A.2 91.2 Definitions

Rule 91.2 is amended by inserting in the appropriate order the following definitions:

“**Commercial raft**” has the same meaning as in Part 80 – Marine Craft used for Adventure Tourism

“**Powered manually by means of paddles**” means powered by a craft’s occupant(s) using single or double bladed oars as a lever without the aid of a fulcrum provided by rowlocks, thole pins, crutches or like arrangements.”

A.3 91.3 Application

Rule 91.3 is amended by adding, as rule 91.3(4), the following rule:

“(4) Rules 91(4) and (6) shall not apply to any commercial raft.”

A.4 91.4 Personal flotation devices

Rule 91.4 is amended by adding, as rule 91.4(2) (f) and (g), the following rules:

“(f) any person in charge of a craft solely powered manually by means of paddles that is a pleasure craft until 21 March 2010, if a serviceable buoyancy aid designed to be worn on the body and appropriate to the activity is carried at all times for each person on board; and

“(g) any person in charge of a craft solely powered manually by means of paddles that is not a pleasure craft until 21 March 2007, if a serviceable buoyancy aid designed to be worn on the

body and appropriate to the activity is carried at all times for each person on board. “

A.5 Savings and transitional provision

Rule 91.22 is amended by adding, as rule 91.22(4), the following rule:

- “(4) For the purposes of rules 91.4(1) and (6) in respect of any person in charge of a pleasure craft¹, a buoyancy aid designed to be worn on the body purchased or in use prior to 21 March 2003 is deemed until 21 March 2010 to be a personal floatation device provided that that aid is appropriate to the activity and remains fit-for-purpose throughout this period.”

¹ Note this transitional provision applies only to pleasure craft as defined in Part 91 – that is, it does not apply to those recreational craft that are solely powered manually or solely powered by sail and used for commercial purposes.

Annex

PROPOSED AMENDED RULE 91.4 AND RELATED DEFINITIONS

“Personal flotation device” means any serviceable buoyancy aid that is designed to be worn on the body and that is certified by a recognised authority as meeting –

- (a) type 401, 402, 403, 404, 405, or 408 in NZ Standard 5823:1989 or NZ Standard 5823:2001; or
- (b) a national or international standard that the Director is satisfied substantially complies with types 401, 402, 403, 404, 405, or 408 of the NZ Standard 5823:1989 or NZ Standard 5823:2001:

“Pleasure craft” means a vessel that is used exclusively for the owner's pleasure or as the owner's residence, and is not offered or used for hire or reward; but does not include –

- (a) a vessel that is provided for transport or sport or recreation by or on behalf of any institution, hotel, motel, place of entertainment, or other establishment or business:
- (b) a vessel that is used on any voyage for pleasure if it is normally used or intended to be normally used as a fishing vessel or for the carriage of passengers or cargo for hire or reward:
- (c) a vessel that is operated or provided by any club, incorporated society, trust, or business:

“Powered manually by means of paddles” means powered by a craft's occupant(s) using single or double bladed oars as a lever without the aid of a fulcrum provided by rowlocks, thole pins, crutches or like arrangements:

“Recreational craft” means a vessel that is –

- (a) a pleasure craft; or
- (b) solely powered manually; or

- (c) solely powered by sail:

91.4 Personal flotation devices

- (1) No person in charge of a recreational craft may use it unless there are on board at the time of use, and in a readily accessible location, sufficient personal flotation devices of an appropriate size for each person on board.
- (2) Rule 91.4(1) and (6) shall not apply to –
 - (a) any surfboard or similar unpowered craft; and
 - (b) any sailboarder or windsurfer, if a wetsuit is worn at all times; and
 - (c) a diver on a boat of 6 metres or less in length overall that is used for recreational diving within 5 miles of shore, if a full body dive suit is worn at all times; and
 - (d) a person training for or participating in a sporting event, if the training or the event is supervised in accordance with the safety system of a national sporting organisation approved by the Director; and
 - (e) a member of a visiting foreign watersports team, if the person carries or wears a personal flotation device that is approved by the competent authority for use in that person's country of residence.
 - (f) *any person in charge of a craft solely powered manually by means of paddles that is a pleasure craft until 21 March 2010, if a serviceable buoyancy aid designed to be worn on the body and appropriate to the activity is carried at all times for each person on board; and*
 - (g) *any person in charge of a craft solely powered manually by means of paddles that is not a pleasure craft until 21 March 2007, if a serviceable buoyancy aid designed to be worn on*

the body and appropriate to the activity is carried at all times for each person on board.