6(b) CLEARED:

___ No Mfrs Identified
✓ Excepted Not CPSC Juris.
___ Mfrs Notified
___ Comments Processed

283

ADVISORY OPINION

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Memorandum

TO : Sandi Shimasaki, CAAL

DATE: November 20, 1981

THROUGH: Philip Bechtel, Acting Director, CAAL

THROUGH: Margaret A. Freeston, Acting General Counsel

FROM : Stephen Lemberg, Assistant General Counsel

SUBJECT: Jurisdiction over inflatable life rafts

This memorandum responds to your October 31, 1981 note requesting our opinion on the Commission's jurisdiction over the inflatable life raft that is described in a July 7, 1981 letter from Mr. Richard Wollenberg. In a September 1, 1981 letter to Mr. Wollenberg, the Coast Guard has stated that "there are no provisions in the regulations enforced by the Coast Guard by means of which it would be possible to recall all rafts identical to [the one described in the July 7 letter]."

Based on the information available to us, our legal opinion is that the Commission does not have jurisdiction over the inflatable life rafts. Although the life rafts are undoubtedly used by consumers, the definition of "consumer product" specifically excludes:

> boats which could be subject to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 4151 et seq.); vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by action taken under any statute referred to in this subparagraph. 15 U.S.C. 2052(a)(1)(G).

Although the Coast Guard does not currently have any regulations that cover the life rafts, it does have jurisdiction over them, under the statutes cited at 15 U.S.C. 2052(a)(1)(G). (We confirmed this in a November 9 conversation with N. W. Lemley, the author of the September 1 letter.) Regardless of whether the Coast Guard has acted or ever intends to act against the life rafts, the Consumer Product Safety Act clearly excludes them from our jurisdiction because the risk of injury associated with their use <u>could be</u> eliminated or reduced by action taken under the statutes enforced by the Coast Guard.

ROYCE & WOLLENBERG
ATTORNEYS AT LAW
POST OFFICE BOX C
SITKA, ALASKA 99835

TELEPHONE (907) 747-3258

WILLIAM G. ROYCE
RICHARD H. WOLLENBERG

October 2, 1981

David W. Thome
Director, Corrective Actions Division
Compliance and Administrative Litigation
U.S. Consumer Product Safety Commission
Washington D.C. 20207

Dear Mr. Thome:

Thank you for your letter of September 29, 1981, which I received on October 2, 1981. Hopefully, this letter will reach you in a more timely manner than the last one did, apparently, either due to the mail or your agency.

I am enclosing a copy of a brochure on the life raft on board the F/V NORRONA. In addition, I am enclosing a letter from N.W. Lemley, Chief, Survival Systems Branch, Merchant Marine Technical Division. You will note from his letter that the Coast Guard, in fact, does not have any provisions in the regulations which it enforces, which will allow it to take action on the defective life raft in question. As the life raft in question is an uninspected life raft, and the Coast Guard does not in any way regulate it, it seems only appropriate that the Consumer Product Safety Commission regulate the matter. I do not understand how the Coast Guard can be said to have jurisdiction of a raft which is not subject to Coast Guard inspection or Coast Guard approval.

I appreciate your action on this matter. However, given the response by the Coast Guard which seems to be appropriate, your agency certainly should take jurisdiction. If your agency will not take jurisdiction, I would appreciate a further explanation.

Yours very truly,

ROYCE & WOLLENBERG

By Richard H. Wollenberg
Richard H. Wollenberg

enclosures

cc: Peter Hall, USCG

RHW:caj

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS: (G-MMT-
U.S. COAST GUARD
WASHINGTON, D.C. 20593
PHONE: (202) 426-144

16714/160.051/GEN
1 September 1981

Mr. Richard H. Wollenberg
Royce & Wollenberg Attorneys at Law
P.O. Box C
Sitka, AK 99835

Dear Mr. Wollenberg:

Subj: Unapproved Inflatable Liferafts

Ref : (a) Your letter of 7 July 1981 to the Consumer Product Safety Commission, Washington, DC.

Your above letter was forwarded to the Coast Guard for reply.

From the description given in your letter, the raft carried aboard the F/V NORRONA was not Coast Guard-approved under our requirements for such equipment, 46 CFR 160.051. Fishing vessels and motorboats of the "uninspected" category in the marine inspection regulations are not required to have rafts. Consequently, the operators of such vessels can avail themselves of rafts of any description whatever or omit them altogether at their own discretion.

In light of the above circumstances, there are no provisions in the regulations enforced by the Coast Guard by means of which it would be possible to recall all rafts identical to that aboard the NORRONA as urged in your letter.

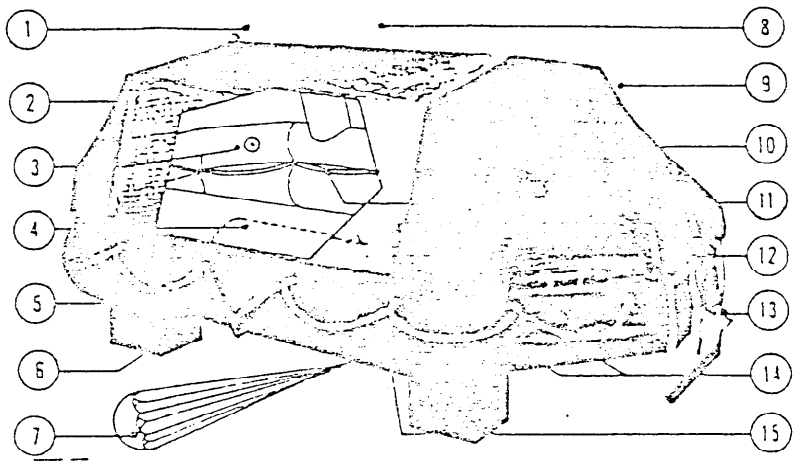
Sincerely,

N. W. LEMLEY
Chief, Survival Systems Branch
Merchant Marine Technical Division
By direction of the Commandant

cc: Consumer Product Safety Commission

THE SEA-JAY ELLIOT

YFC INFLATABLE LIFERAFTS FOR SMALL VESSELS (Not subject to USCG



CLASSES OF EQUIPMENT

STANDARD

1. Painter, 50 ft.
2. Canopy, integral, 1
3. CO_2 inflation system, automatic, 1
4. Self-streaming sea anchor, 1
5. Attachment points, 2
6. Righting strap, 1
7. Lifeline, interior, 1
8. Lifeline, exterior, 1
9. Floating heaving line 100 ft. and quoit, 1
10. Paddles, 2
11. Automatic beacon light, 1
12. Inflating pump, 1
13. Pressure relief valve plugs, 2
14. Leak-stopper clamps, 3
15. Repair kit, 1
16. Floating sheath knife, 1
17. Survival manual, 1
18. Boarding hand grips, 2
19. Sponges, 2
20. Bailer, 1
21. Flashlight, waterproof, 1
22. Spare batteries, 2
23. Spare bulb, 1
24. Signal whistle, 1

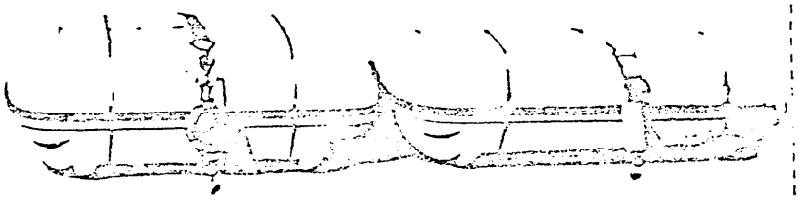
OCEAN

Includes items 1-24 above plus the following. Exceeds requirement of Board of Trade "E" Class XII boats under 70 ft.; Royal Ocean Racing Club; 1968 Cruising Club of America; CCA Newport-Bermuda Race.

25. Red handflares, 3
26. Parachute signals, 2
27. Signal mirror, 1
28. First aid kit, 1
29. Seasick pills, per person, 6
30. Grad. drinking cup, 1
31. Canned water, per person, 1 pint
32. Canned rations, per person, 8 oz.
33. Can openers, 2

OPTIONAL

Many other items may be added (with oversize containers of side packs if required) such as: EPIRB (Automatic radio SOS and Beacon).
Solar Still (Makes about 1 qt. water per day, enough for two persons).
Inflatable Floor Insert (For low temperature insulation)



MANUAL/HYDROSTATIC RELEASE — MANUAL RELEASE

RELEASE/INFLATION MAY BE MANUAL OR ACTUATED AUTOMATICALLY BY THE SINKING VESSEL

The container may be secured to the deck with a simple nylon strap; a quick pull on an orange tab releases it. Where manual/automatic release is desired, a RAFTGO hydrostatic release is installed. Pushing a plunger releases the container manually. If the liferaft in its container, however, goes down with the ship for any reason, it will release automatically at about 15 feet float.

ELLIOT LIFERAFTS HAVE SAVED OVER 500 LIVES

Here are the features that made it possible

1. Automatic beacon light to lo
2. Heaving line to pull survivors
3. Valve for inserting topping-up
4. Survival equipment pack (Sea
5. Lifelines provide grip for pers
6. Water pockets fill with water
7. Sea anchor to head raft into drift to under one knot in
8. Rainwater collector.
9. Integral canopy gives expo
10. Safety knife to cut painter, c
11. Interior lifeline-rough water
12. Boarding ladder.
13. Painter/towline attachment p
14. Either buoyancy tube will su
15. CO_2 cylinder for automatic in

4 PERSON — 6 PERSON — 8 PERSON

SIZES OF RUBBER-GLASS CONTAINERS WEIGHTS WITH RAFT & EQUIP.	WITH STANDARD EQUIPMENT				WITH OCEAN EQUIPMENT			
	L	W	H	WT	L	W	H	
4 PERSON	34	23½	13	64	34	23½	13	
6 PERSON	"	"	"	81	37½	25	13	
8 PERSON	42	"	"	82	42	23½	13	
10 PERSON	45½	25	15½	92	45½	25	13½	

Dimensions in inches

VALISES: Valises may be 1-3 inches smaller containers, and 10 to 12 pounds lighter.

INFLATION: The YFC inflation system uses ponents as those used in the USCG-approved rafts—your best assurance of dependable in

CAPACITY RATING OF YFC RAFTS	ACTUAL FLOOR AREA (SQ. FT.)	USCG FLOOR AREA REQUIREMENT
4 PERSONS	19.3	16
6 PERSONS	24.8	24

CACA
CAAL
Jurisdiction 2
CCC

81 AUG 31 P1:13

July 7, 1981 (Aug. 18, 1981)

Consumer Product Safety Commission
Washington, D.C. 20207 - Attn: Elizabeth Haught

We would like to report and request investigation on a product defect, namely an inoperable life raft. The names and addresses of the parties involved are as follows:

Manufacturer:	C.J. Hendry Co. 139 Townsend St. San Francisco, California 94107
Dealer:	Nordby Supply Company 2600 W. Commodore Way Seattle, Washington
Victims:	Dennis Hicks, Tom Ovington and Robert Larson P. O. Box 1477 Sitka, Alaska 99835
Name of Product:	The Sea-Jay Elliot YFC Inflatable Life Raft for Small Vessels

On December 6, 1979, the Fishing Vessel Norrona, carrying the three above-mentioned victims, started to take in water in Whale Bay, near Sitka, and rapidly began to sink. The Norrona was about a 40 foot craft which was operating at the time as a fish packer. The three crew members had very little time and were only able to free their Sea-Jay Elliot life raft in its cannister and put a couple of survival suits over the side. After the three were in the water they were unable to get the survival suits on in 6 foot seas. They reached the life raft and pulled as hard as they could on the lanyard to inflate it automatically, but with no result. They attempted to break into its cannister but were unable to do so. The life raft remained in its cannister completely unusable. When they were rescued by the vessel St. Lazaria they cut the lanyard which was tied to one life-ring, but the cannister drifted off. All three victims lived, although one was classified as a near-drowning and was admitted to the hospital with a body temperature of 80°. Two of the victims experienced heart problems at the time.

It should be pointed out that this particular life raft had had its 5 year special inspection by Nordby the April of that year. This particular brand was not required to be Coast Guard inspected. A life raft is only used in life-threatening conditions and must operate properly. It did not, in fact, function in a life-threatening situation such as was faced by the victims. Despite all efforts it did not inflate. We urge prompt investigation and recall of this potentially dangerous product so that no more lives are put in danger. Please advise us as soon as possible on the course of action your agency will take on this matter. If our office can be of any assistance to you, please contact us.

Very truly yours,

ROYCE & WOLLENBERG
Attorneys at Law

By
Richard H. Wollenberg

RHW/TV/nr

(301) 492-6608
Elizabeth Haught
(Corrective Actions Division)

Room 230
5401 Westbard
Wash. D.C. 20207
Attn

Miss Haught:

I will be going back to school at the end of the month, so contact Mr. Wollenberg if you have any more information on what can be done about this problem. Thank you very much for your assistance and it was nice talking to you!

Terry Vineberg