

WorkSafe Services

PO Box 160
Saint John NB E2L 3X9
Phone 506 632-2200
Toll free (Claims) 1 800 222-9775
N.E. Regional Office 1 800 561-2524
Web www.whscc.nb.ca

Services de travail sécuritaire

Case postale 160
Saint John NB E2L 3X9
Téléphone 506 632-2200
Sans frais (Réclamations) 1 800 222-9775
Bureau de la Région du N.-E. 1 800 561-2524
Web www.whscc.nb.ca



April 26, 2006

"The Employer"

The Chief Compliance Officer is writing in response to the employer's email dated December 13, 2005, in which the employer requests a deviation from having employees who operate forklift trucks in certain areas of the employer's operation. The Section of the Regulation affected by this deviation is the *Occupational Health and Safety Act*, General Regulation 91-191, Section 216(6) that states:

An operator of an industrial lift truck shall use the seat belts or restraining devices referred to in Subsection 5 while the industrial life truck is in motion.

An employer shall ensure that powered mobile equipment that has been fitted with a roll-over protective structure is provided with

a) seat belts for the operator and passengers that comply with or exceed whichever of the following Society of Automotive Engineers' Recommended Practices is appropriate:

(i) SAE J386 NOV97, "Operator Restraint Systems for Off-Road Work Machines";

(ii) SAE J117 JAN 1970, "Dynamic Test Procedure – Type 1 and Type 2 Seat Belt Assemblies"; or

(iii) SAEJ800 APR 86, "Motor Vehicle Seat Belt Assembly Installations"; or

b) where the wearing of seat belts is impracticable, restraining devices such as shoulder belts, bars, gates, screens or other similar devices designed to prevent the operator and passengers from being thrown outside the rollover protective structure.

Based on the information contained in the employer's email, the employer's request for a deviation is for clamp truck operators who have stated that mandatory usage of seat belts is not necessary when loading containers and transporting the containers from the a Storage Building (Shipping Shed). The process to which the deviation applies is described as follows:

During container loading activities the operator picks up a nearby roll of paper and stores it in a shipping container. He then backs out of the container and exits the lift truck to grab and manually install protective packaging material inside the container. He then gets back into his truck, picks up, and places another roll inside the container. He then backs out of the container again and exits the clamp truck to install more packaging material. This process is repeated until the container is fully loaded.

It is for this task only that the employer is requesting the operators be exempted from wearing seatbelts. The employer indicates that the lift truck used for this is propane powered and each truck is equipped with a speed limiter, which restricts the maximum speed to 7 km per hour and according to the employer's recent email the trucks are also equipped with falling object protection (FOPS).

As the employer is aware Section 216(4) of General Regulation 91-191 requires that industrial lift trucks be equipped with roll-over protective structures (ROPS) where a hazard exists from rolling over during the operation of such equipment. In addition, Section 216(5) and 216(6) requires that industrial lift trucks that are fitted with ROPS be equipped with seat belts or restraining devices and that operators of such trucks use seat belts or restraining devices.

If the employer's workplace has determined that there are no hazards from rolling over, then the employer is not obligated to comply with Sections 216(4)(5) or (6) and a deviation is not required. In order to determine hazards from rolling over, the employer should conduct a hazard analysis of the work being carried out in conjunction with industrial life truck operators and the JHSC and based on the outcome of the employer's analysis take appropriate measures to ensure the safety of the operators.

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

Regards,

Chief Compliance Officer