

“* * * children should wear lifejackets at all times when on or near the water.” The National Transportation Safety Board also recommends that children be required to wear PFDs.

The proposed rule exempts children inside an enclosed cabin or below deck from wearing a PFD. These individuals are in a more stable environment and risks of incidents resulting from falls overboard are significantly reduced.

Paragraph (a)(1) is intended to alleviate confusion by the boating public about the new regulation for children to wear PFDs. Although 32 states require children to wear PFDs, they have varying requirements. Since the boating public would be more familiar with existing state requirements, the NPS will defer to the state age for requiring children to wear PFDs. In the absence of a state requirement, the NPS requirement of age 12 or under would apply.

Paragraph (b) of this section relates to vessels that are inspected and certified under USCG regulations codified in Title 46 CFR to carry passengers for hire. These vessels are inspected annually by USCG personnel from a Marine Inspection Office and must be operated by a licensed captain. The higher standard of training, combined with the experience of individuals necessary to qualify for a USCG captain's license, and the fact that the vessels are subject to this rigorous inspection process, the wearing of PFDs by children is not required.

Paragraph (c) of this section is intended to clarify the superintendent's authority to require PFDs be worn on designated waters during specific water-based activities. However, it should be noted that the NPS has adopted 33 CFR 175.15 which applies to the carrying of PFDs for all persons on board a vessel. This paragraph emphasizes the potential need for wearing PFDs rather than just carrying them in certain waters or during certain water-based activities. There was considerable discussion by work group members regarding wearing PFDs during a wide variety of activities and circumstances that might be involved such as use of small inflatable, *i.e.* inner tubes, sail-boarding, or river rafting. It is clear that there is no uniform set of circumstances or conditions nationwide that allows the promulgation of a regulation sufficient to meet the needs of all national parks. This is an issue that is best left to superintendents to address through local restrictions utilizing §§ 1.5 and 1.7 of this chapter.

The part 3 work group feels strongly that with the promulgation of § 3.7, the potential for serious injury or death

would be significantly reduced service-wide. All requirements pertaining to proper size, type, serviceability and carriage requirements are adopted by the NPS and applicable in parks in accordance with § 3.2.

Section 3.8 What Vessel Operations Are Prohibited?

The regulations in this section are currently addressed in § 3.6. It is the intent of this section to address several issues of unsafe or otherwise prohibited vessel operations that are not effectively dealt with through the adoption of USCG laws and regulations or state laws and regulations since these entities either do not regulate the activity or there is wide disparity among the various regulations nationwide. These are generally activities that create an unsafe condition or conflict with the orderly management of park visitor use. The order of the violations has also changed to reflect the nature of the violations from those posing the least risk to life or property to those acts that pose the most risk.

Paragraph (a), which solely addressed “reckless or negligent operation” has been broken into two distinct violations; negligent operations and grossly negligent operations under (b)(6) and (b)(7). This was done in order to bring boater education and park staff training more into concert with terminology and enforcement philosophy used by the USCG. It is expected that this change, along with the clarified language that describes the regulated activity, will significantly reduce the misunderstandings experienced in many parks regarding enforcement and education of this issue.

The act of negligence can be distinguished by the vessel operator's *failure* to exercise care, caution or prudence. Generally, the operator is not willful or malicious in their actions. For example, maneuvering quickly, turning sharply or swerving within 100 feet of another vessel; weaving through congested traffic; operating a vessel in the vicinity of a motorized vessel in a manner that obstructs the visibility of either operator. A negligent act may have an increased risk of causing harm but usually does not result in property damage or physical injury.

The act of gross negligence can be distinguished by the vessel operator's disregard for the rights of others through “willful and wanton” actions and consciousness that personal injury or property damage is a probable consequence of their actions. Generally, the operator is willful or malicious in their actions. For example, operating any vessel at extremely high speeds,

operating a vessel within extremely close proximity to persons in the water, or causing a severe collision between vessels. A grossly negligent act has an increased risk of causing harm and usually results in property damage or physical injury; however, a person can be guilty of gross negligence without the damage or injury actually resulting.

Paragraph (b) of the current § 3.6, operating a vessel when under the influence of alcohol or controlled substance, has been removed from this section and is proposed as a stand-alone regulation in § 3.10.

Paragraph (c) is renumbered as (b)(2) with no change.

Paragraph (d) is renumbered as (b)(3). Amends “5 mph or creating a wake” to “flat wake speed”. Paragraph (b)(3)(ii) deletes diver's marker and swimmer from this paragraph and adds “a person swimming, wading, fishing, or floating with the aid of a non-motorized inflatable or rigid buoyant device, designated launch site, and manually-propelled, anchored, or drifting vessel.” Since numerous states have “speed in proximity” laws, this paragraph allows for the adoption of those laws to avoid conflict.

The work group found that there was no consistency in describing to the public the desired condition in zones that were intended to require a slow speed. Most of these areas intend to prevent damage or injury resulting from boat wakes. The variety of terms used to notify the boating public of these zones included “no wake”, “wakeless speed”, “5 mph”, “slow speed”, “idle”, and “flat wake.” Since a boat underway and making way creates some wake regardless of speed, the terms “no wake” and “wakeless speed” are not descriptive of the desired condition. “5 mph” may or may not create the desired condition and, in any case, is an action many boaters may not identify with since effective boat speedometers are rarely found on recreational vessels. Neither “slow speed” nor “idle” effectively address the desired condition.

“Flat wake speed” is proposed as the appropriate alternative since the desired condition, a minimal disturbance of the water by a vessel in order to prevent damage or injury, is described. The capability of park staff to educate the boater or to enforce this section is also enhanced.

The additions to paragraph (b)(3)(ii) reflect the experience of the work group in a wide variety of water-based recreation situations nationwide. Accidents and visitor complaints identify these additions as necessary for