

in lieu of paragraphs (b)(1) through (b)(4) of this section. In paragraph (b)(1) a person operating a PWC is required to wear rather than just carry a PFD. This is required because generally an operator or passenger rides on top of the vessel rather than in the confines of the hull, causing additional safety risks. In paragraph (b)(3) night operations are prohibited specifically for PWC.

It is the intent of this section that paragraphs (b)(1) through (b)(4) are applicable in park areas that may be located in a state that does not have more restrictive PWC regulations. Less restrictive state regulations are not adopted.

Section 3.10 What Are the Regulations Regarding Operating a Vessel While Under the Influence of Alcohol and/or Drugs?

This section is an amendment and expansion of the regulation found currently in § 3.6(b).

Operation of a vessel while under the influence of alcohol or drugs is proposed as a stand alone regulation due to the increased emphasis given this issue since part 3 was last reviewed and rewritten.

Further, the regulation in former paragraph 3.6(b) has been found through experience in prosecuting violations to be ineffective. This problem has been experienced in parks nationwide.

Coincident with the rise in boating under the influence awareness and enforcement, there has been an even greater emphasis on operation of a motor vehicle while under the influence. After considerable discussion, the work group came to realize that the regulations governing such activities vary considerably from state to state and that it was best that the NPS not rely on adopting state regulations in this instance.

Through Presidential Proclamation, the federal standard for blood alcohol level is now established at .08 BAC, while the states vary in their standards. This standard is to be employed whether involving vessels or motor vehicles.

With this as background, the work group examined 36 CFR 4.23 governing the operation of motor vehicles while under the influence of alcohol or drugs while in a National Park area. The group found that § 4.23 has been effective in the enforcement of motor vehicle DUI cases. As a result, the work group recommends adopting the language and methodology found in § 4.23 and application of the same standards to the boating environment with appropriate changes to address vessels rather than motor vehicles. While it is true that the

operation of vessels and motor vehicles differ in some ways, the impairment of the operator is established at the same level for both (.08 BAC) and the same standards are applicable for public education, staff training, enforcement, and prosecution.

Section 3.11 May I Use a Vessel To Tow a Person for Water Skiing or Other Similar Activities?

This section has been renumbered from 3.20 to 3.11. The title of this section is amended from “water skiing.” This change encompasses the variety of recreational devices that individuals may ride on or in while being towed by a vessel. Examples of these devices may include but are not limited to water-ski, inflatables, wake boards, knee boards and other rigid devices.

Paragraph (a) is amended to read, “allowed only in designated waters” instead of “prohibited, except in designated waters.” It also allows for the superintendents to identify how towing may occur utilizing §§ 1.5 and 1.7 of this chapter.

Paragraph (a)(1) is an addition to part 3 and prohibits the towing of persons attached to airborne devices unless allowed by the superintendent. Some parks have determined this to be an appropriate public use activity; others have found it to be inappropriate. It is the intent of this workgroup to provide superintendents the flexibility to permit this activity, if appropriate, under § 1.6. This prohibition is not intended to include similar devices when used as a form of propulsion.

Paragraph (b) is amended to read “* * * is designated, the following conditions apply” instead of “* * * is authorized, the following are prohibited.”

Paragraph (b)(1) is amended to read “Towing is allowed only * * *”

Paragraph (b)(2) is amended to read “In addition to the boat operator, a person at least 12 years of age must be present” instead of “Towing without one person (other than the operator)”.

The work group recommends the minimum age of 12 to be consistent with a majority of those states that have established a minimum age for observers. Twelve is also consistent with minimum age requirement for wearing of PFD’s as recommended elsewhere in part 3.

Paragraph (b)(3) is amended to require that persons being towed wear a “United States Coast Guard approved personal flotation device” rather than “a personal flotation device.”

Paragraph (b)(4) is an addition to part 3 and addresses unsafe acts committed by a person being towed. It was

identified by the work group that a person being towed might commit acts that endanger others through manipulating skis or other devices in a manner that is outside of the control of the vessel operator. The intent of the work group is to place a burden of responsibility on a person being towed to participate in this activity in a safe manner. It is not the intent of the work group to absolve the vessel operator of responsibility for unsafe operation, but to not hold the vessel operator responsible for acts solely under the control of the person being towed.

Paragraph (b)(5) is an addition to part 3 and is added to address the carrying capacity restrictions of the towing vessel. It is the intention of this regulation to assure compliance with the manufacturer’s recommended capacity limits on vessels. By assuring compliance with capacity limits, all individuals involved in a towing activity (operator, observer, other passengers, and person being towed), are guaranteed space on or in the vessel in a safe manner. This is intended to include individuals being towed by personal watercraft.

Section 3.12 What Conditions Apply to Marine Sanitation and the Use of Marine Sanitation Devices (MSD)?

This section is an addition to part 3. Neither the existing part 3 nor other Title 36 CFR regulations address the issue of Marine Sanitation Devices (MSDs) or their use on waters of the National Park System.

This section is proposed in order to clarify for the public and park staff the standard necessary to protect park resources with a consistent approach system-wide, while at the same time allowing the superintendent flexibility to accommodate local issues. This regulation provides clearer guidance, consistent with park standards, than is currently available in either USCG laws and regulations or state laws and regulations. USCG regulations regarding MSDs provide for the design of the devices, certification, and use in non-park waters but do not adequately address MSD use in park waters.

State laws vary such that an NPS System-wide standard is imperative to ensure the capability to effectively protect park resources. Part 2 regulations are not specific enough to the boating environment.

The proposed section does not address the issue of the discharge of “gray-water” from boats. The work group researched and discussed this issue as an agenda item brought forward as a concern for resource protection.