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The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at <http://www.msha.gov>.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the comment period on October 14, 2003.

Dated: August 21, 2003.

**John R. Correll,**

*Deputy Assistant Secretary of Labor for Mine Safety and Health.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Parts 1, 3 and 7

RIN 1024-AD07

#### Boating and Water Use Activities

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to revise rules that regulate boating and water use activities in areas administered by the NPS. The proposed rule is intended to address changing visitor use patterns, changing technologies, compelling boating and water safety issues, and the evolution of related statutory authorities. The goal is to provide for greater consistency with United States Coast Guard (USCG) regulations and state laws and regulations, establish rules which will be more clearly understood by the visiting public, and which can be more effectively communicated and enforced by NPS personnel. Promulgation of the proposed rule will eliminate many requirements which are ineffective or out of date and apply new rules which

will provide flexibility in managing safety, resource preservation, and public use needs throughout the National Park System.

**DATES:** Comments must be received by December 24, 2003.

**ADDRESSES:** Comments should be sent to Kym Hall, Special Assistant, National Park Service, 1849 C Street NW, Room 3145, Washington, DC 20240. Email: [WASO\\_Regulations@nps.gov](mailto:WASO_Regulations@nps.gov). Fax: (202) 208-4684.

**FOR FURTHER INFORMATION CONTACT:** Kym Hall, (202) 208-4206.

**SUPPLEMENTARY INFORMATION:** The regulations contained in parts 1 through 7 of Title 36 of the Code of Federal Regulations (CFR) are the basic mechanisms used by the National Park Service (NPS) to protect the natural and cultural resources of the parks and to protect visitors and property within the parks. Parts 1 through 6 are general regulations applicable to all areas of the National Park System, with some exceptions, while part 7 contains special regulations, which have been found necessary for individual parks as supplements to the general regulations. Part 3 is specific to boating and water activities. The part 3 regulations were last revised in 1983. Although amendments and additions have been made from time to time since 1983, this was usually in response to new situations for which the existing regulations were not sufficient. For example, personal watercraft (PWC) were addressed in 36 CFR 3.24, April, 2000. Between 1983 and the present, the evolution of statutory authorities, changing visitor use patterns, new technologies, and continued boating and water safety issues coupled with evolving national trends to address such issues, all revealed that a comprehensive review of part 3 regulations was needed.

A work group of experienced employees from a wide variety of parks with water-based recreation and resources management responsibilities was established to work on part 3. The work group included an experienced State Boating Law Administrator, representing the National Association of State Boating Law Administrators (NASBLA). Park superintendents were asked to provide comments regarding boating and water safety issues apart from those addressed in the existing part 3, and comments were received from sixteen parks and from the staff at the NPS Washington Office. All comments were evaluated by the workgroup. Some of the comments were incorporated into the proposed rule. Other comments were more

appropriately addressed in section(s) of 36 CFR other than part 3. Some comments, specific to an individual park's circumstances, are more appropriately addressed as special regulations in part 7.

The NPS faced several situations where parks were unclear about enforcing USCG regulations and/or state laws and regulations. Specifically, an issue arose about the applicability of USCG regulations on a tour boat being operated on Crater Lake which is a non-navigable body of water. Lake Mead was also presented with a requirement to provide lifeguards on beaches because of Nevada state water use regulations. In addition to these specific questions, there has been some general confusion about the order of applicability or hierarchy of adopting USCG regulations and state laws and regulations in relation to NPS specific regulations contained in part 3. The required order of applicability, or hierarchy, of boating and water use regulations on park waters is as follows:

1. Regulations in Title 36, Code of Federal Regulations (CFR) will apply over any comparable law or regulation.
2. Laws and regulations of the USCG adopted pursuant to § 3.2 (a) will apply over any comparable state law or regulation.
3. Non-conflicting state boating safety laws and regulations that are not addressed by either 36 CFR or by the USCG are adopted pursuant to 3.2(b). The NPS is not adopting state water use laws or regulations unless specifically indicated in part 3.

The work group took several factors into consideration while discussing regulations to be changed, deleted, or written anew. Those factors include compliance with the NPS mission, safety issues, resource protection issues, clarity of existing regulations, reducing NPS regulations where possible and the uniformity of regulations with the USCG, the states, and among units of the National Park System to the extent possible. As a result of the review, the proposed changes to part 3 are expected to be more clearly understood by the public and be more effectively communicated and enforced by NPS employees. In addition the changes will enhance the NPS focus on safety and resource preservation issues, provide flexibility to address changing technologies, maintain minimum regulation necessary to address safety and resource preservation and provide for greater consistency in enforcement of NPS, USCG regulations and state boating laws and regulations.

## Section-By-Section Analysis

### Organizational Summary

The National Park Service (NPS) has prepared the following organizational summary to assist in the location and analysis of the proposed revisions.

NUMBERING	
Old	New
3.1 Applicable Regulations .....	3.2
3.2 NPS Distinctive Identification.	Deleted
3.4 Accidents .....	3.5
3.5 Inspections .....	3.4
3.6 Prohibited Operations .....	3.8
3.7 Noise Abatement .....	3.14
3.20 Water Skiing .....	3.11
3.21 Swimming and Bathing ....	3.15
3.22 Surfing .....	Deleted
3.23 SCUBA and Snorkeling ...	3.17
3.24 Regulation of Personal Watercraft.	3.9
New sections	
3.1 Applicability and Scope	
3.6 Operator Age for Power Vessels	
3.7 Personal Floatation Devices (PFDs)	
3.10 Operating Under the Influence	
3.12 Marine Sanitation Devices	
3.13 Sunken, Grounded, Disabled Vessels	
3.16 Swim Beach Areas	
3.18 Submersibles	

#### *Section 1.4 What Terms Do I Need To Know?*

In order to enhance clarity and consistency, ten definitions have been included in this section. One, defining vessel, is a revision of the current definition; it has been revised to more adequately describe the applicability of these regulations to all craft including tubes, rafts and other inflatable devices; surfboards, sailboards, and other rigid devices, specifically when these are used as a means of transportation. Nine others are added in order to reduce confusion in interpretation of regulations or to address issues new to part 3: dive flag, flat wake speed, harbor, manned submersible, power-driven vessel, sailing vessel, sewage, underwater diving, and un-manned submersible. The rationale for the addition of these terms appears in the preamble relative to the appropriate section.

#### *Section 3.1 What Is the Applicability and Scope of This Section?*

This section is added to include a description of the applicability of part 3 to all park waters. Other laws applicable have been removed from this section and now appear in § 3.2.

The objective of the regulations in this part is to provide for the proper

management of boating and other water use activities within parks. Park waters are all waters that are subject to the jurisdiction of the NPS. This includes both navigable waters within the congressionally established boundaries of a park area and non-navigable waters where the United States owns or administers the lands and waters within the boundaries of a park area. Examples of park areas with navigable waters within the boundaries include Biscayne National Park, Assateague Island National Seashore, and Channel Islands National Park. Examples of park areas with non-navigable waters where the United States has jurisdiction over the lands and waters within the boundaries include Crater Lake National Park, Yellowstone National Park, and Glacier National Park or other areas with inland lakes and ponds.

Section 1.2 defines the primary applicability and scope of the NPS regulations found in 36 CFR parts 1 through 5, and parts 7 and 13. In § 1.2(a)(1) and (2) the NPS provides that the regulations in Chapter 1 apply, respectively, on lands and waters located within boundaries of park areas that are either federally owned or NPS-administered. While in § 1.2(a)(3) it states that the regulations shall apply to all waters subject to Federal jurisdiction that are located within National Park System boundaries.

In addition to the general regulatory authority delegated by Congress in 16 U.S.C. 3, the NPS has been authorized to “[p]romulgate regulations concerning boating and other activities on or relating to waters located within areas of the National Park System. This includes waters subject to the jurisdiction of the United States: provided, that any regulations adopted pursuant to this section shall be complementary to, and not in derogation of, the authority of the United States Coast Guard to regulate the use of waters subject to the jurisdiction of the United States [.]” 16 U.S.C. 1a–2(h). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

#### *Section 3.2 Do Other Boating Laws and Regulations Apply To Me When I Operate My Boat on Park Waters?*

The current § 3.2 pertains to “National Park Service distinctive identification”. This is considered an unnecessary regulation since boat markings are addressed in NPS Director’s Order 9 and Reference Manual 9. This regulation is deleted.

The proposed § 3.2(a) identifies USCG laws and regulations adopted with the addition of Title 33 and title 46 United

States Code. Proposed paragraph (b) identifies applicable state laws and regulations adopted as non-conflicting boating safety laws and regulations, and it is not the intent of this section to include non-boating water-use laws and regulations including but not limited to swimming, bathing, beach management or SCUBA diving unless specifically adopted in a section of the part 3 regulations.

The intent of this section, a revision of the existing 3.1, is to clarify and emphasize that the NPS is seeking to apply existing federal and state law to its management of boating activities. Except in situations of specific need as identified and proposed in the part 3 revision, the NPS will enforce the laws and regulations of the United States Coast Guard and the state within whose exterior boundaries a park area or a portion thereof is located. The NPS is encouraging each park to develop an administrative file of all state laws and regulations the park intends to adopt under § 3.2(b).

This regulation continues to adopt USCG laws and regulations in order to promote uniformity of boating regulations throughout the National Park System. While the USCG’s jurisdiction and therefore the application of laws and regulations by the USCG is limited to navigable waters, the NPS jurisdiction is not similarly restricted to navigable waters. The NPS adoption of the laws and regulations of the USCG makes them part of the NPS regulations and are subject to the same applicability and scope provisions as other NPS promulgated regulations. As such, the NPS applies pertinent USCG laws and regulations to all waters within park areas, whether the waters are navigable or non-navigable.

As directed by Congress in 16 U.S.C. 1a–2(h), this regulation recognizes the USCG laws and regulations as the guiding federal standard for regulating boating activities. However, this regulation also provides the opportunity for individual park areas to enforce state laws and regulations or NPS regulations where there is a specific need for public safety reasons, or in order to protect wildlife and the other resources, values, and purposes of a park area.

#### *Section 3.3 Am I Required To Obtain a Permit To Operate a Vessel in a Park Area?*

This section continues to allow the superintendent to manage boating use within park areas that may effect park resources or the visiting public by requiring a permit to operate a vessel in park waters. Recognizing the uniqueness of park areas, a

superintendent may require a permit to ensure communication of hazards, special conditions, specific policies, closures, equipment requirements or other restrictions (36 CFR 1.5 and 1.7). It also establishes factors that the superintendent should consider when determining requirements for the issuance of a permit (36 CFR 1.6).

#### *Section 3.4 For What Purposes May My Vessel Be Inspected?*

This section is changed to include the inspection of marine sanitation devices, and other pollution and noise abatement requirements within the authority of authorized persons, and to include noise level as one of those violations for which a vessel's use may be suspended.

The previous language in this section established the authority of authorized persons to stop and board vessels for the purposes of inspection and to terminate the voyage of vessels found in an unsafe condition as specified. This authority is in keeping with that granted to boarding officers of the USCG and many of the states.

The use of marine sanitation devices (MSDs) and discharge of sewage from vessels into park waters has come under increasing scrutiny as environmental awareness has grown. Park staff found that to simply adopt USCG regulations or state laws and regulations was ineffective. USCG regulations regarding the certification of MSDs give appropriate guidance regarding the devices themselves but do not address their use in waters of the National Park System. Park staff is increasingly required to inspect MSDs aboard vessels and to manage their use while on park waters.

Another issue of increasing importance faced by park management and enforcement staff has been the regulation of noise created by some power-driven vessels. NPS has made an attempt at such management for some time but was hampered by its own regulations. In this proposal NPS will enhance its ability to significantly improve this capability in proposed § 3.14.

It is the intent of this section to clearly authorize park staff to inspect vessels for compliance with marine sanitation device use, and with appropriate noise level requirements regardless of whether the vessel is underway. Further, the proposed language more clearly defines responsibilities to correct not only hazardous conditions but conditions involving pollution of park waters and excessive noise levels.

#### *Section 3.5 Do I Have To Report an Accident Involving a Vessel to the National Park Service?*

This section was formerly numbered 3.4 and is renumbered here to provide a more logical flow to the rules in Part 3 for the benefit of both the public and NPS staff.

The language in this section is changed to include only vessel accidents as opposed to the current term "incidents". Existing paragraph (a) is divided into proposed paragraphs (a), (b), and (c) in order to provide clarity. Proposed paragraph (a) identifies the vessel operator as the responsible reporting party. It also identifies a total property damage dollar value threshold for mandatory reporting of vessel accidents to the NPS. Proposed paragraph (b) identifies that otherwise the owner or an occupant of the vessel must assume this responsibility if the owner is incapable of doing so. The existing paragraph (b), which deals with "failure to report", is considered unnecessary and is deleted. A person who fails to report an accident would violate the reporting requirements of proposed paragraph (a). Proposed paragraph (c) identifies that the NPS reporting requirements may not fulfill the reporting requirements for the United States Coast Guard and the state.

It is the intent of the proposed changes in this rule to clarify for the public their responsibilities in vessel accident reporting. The changes in language to this section more clearly define who is required to report a vessel accident.

#### *Section 3.6 What Age Must I Be To Operate a Power Driven Vessel?*

This section is an addition to part 3. The intent of this section is to address a minimum age requirement for the operator of a power-driven vessel. Currently there is no NPS regulation establishing a minimum operator age. This has become a safety issue of growing concern as a result of changing technologies, increasingly crowded waterways, and a more complete understanding of the development of motor skills with age. Vessel operators can significantly impact the health, safety, and well being of other boaters and of park resources. This section establishes a minimum age of 16 to be the unsupervised operator of a power-driven vessel on park waters. It also allows children between the ages of 12 and 15 to operate power-driven vessels under the direct supervision of an adult.

There is a national trend to establish a minimum age for vessel operators in response to accident data. According to

the NASBLA, 43 states have established a minimum age for the operation of power-driven vessels. Those ages range from 10 to 18, with several states setting 16 as a minimum and many other states requiring an adult to be present to supervise a child operator. In the interest of conforming with state regulations when possible and to reduce the potential for confusion of the boating public, this section is applicable in parks located in states that have adopted no minimum age for the operator of a power-driven vessel. If a park is located within a state that has different age requirements for operators of power-driven vessels then that state's regulation is adopted in lieu of this section.

#### *Section 3.7 Who Must Wear a Personal Flotation Device (PFD)?*

This section is an addition to part 3. The intent of this section is to enhance visitor safety in the boating environment through identifying circumstances when children will be required to wear PFDs and to encourage superintendents to examine other activities that might appropriately require wearing of PFDs.

PFDs required by this section must be USCG approved Type I, II, or III PFDs, in serviceable condition and of the correct size for the person wearing it, in accordance with 33 CFR 175.11-175.23. Type V are eliminated because they are identified for specific functions and uncommon in recreational boating.

This section requires children 12 years of age or younger to wear a PFD when aboard a vessel underway, except while in an enclosed cabin or below deck, and authorizes the superintendent to determine other circumstances that require that PFDs be worn. This is not intended to preclude children from playing on inflatable devices, without wearing a PFD, when close to shore or the devices are not being used as a method of transportation.

According to NASBLA, 32 of 50 states, Puerto Rico and the District of Columbia now require children to wear PFDs. The majority of those states require children 12 years of age and younger to wear PFDs.

NASBLA supports an age requirement of 12 years of age and younger nationwide, and has referenced work completed by Ballestreri Consulting Inc. involving research surrounding the physiological, emotional and motor skill changes that occur around the age of 12. Ballestreri Consulting's work suggests that prior to that age, children have neither the motor skills nor the emotional skills to put on a PFD in an emergency situation. The American Academy of Pediatrics recommends that

“\* \* \* 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

safe recreational use and for effective enforcement.

Additionally, the prohibition of operating around a diver's marker needed enhancement and has been moved to paragraph (b)(1). This is a change that enhances the prohibition formerly found in paragraph (d)(2) that limits vessels "within 100 feet of a diver's marker" to a speed less than "5 mph". The recommended change prohibits "operating a power-driven or sailing vessel within 100 feet of a diver's marker." Excepted are "vessels in support of dive operations" which must "maintain a flat wake speed".

This paragraph responds to a safety issue long confused in the minds of both boat operators and underwater divers. Under the previous rules, a vessel was allowed to approach a dive flag when not in excess of 5 mph. At the same time, divers have been taught that a boat must avoid a dive flag. Many boating safety classes (USCG Auxiliary for example) also taught that a boat must avoid a dive flag. It is the intent of this regulation to establish a safety zone around underwater diving activities in order to reduce conflict and accidents between underwater divers and vessels. At the same time boats in support of diving activities are allowed to function as intended.

Paragraph (e) is renumbered as (b)(4). Deletes "vessel not propelled by hand" and adds "power-driven or sailing vessel" to the description of prohibited vessels. Amends "location" to "shoreline" designated as a swimming beach. Amends "in excess of 5 mph or creating a wake" to "flat wake speed".

This will clarify for the visiting public and for park staff the intent of the rule regulating vessel operation in proximity to designated swimming beaches. The prohibition under the former regulation restricted the operation of a vessel, other than a manually propelled vessel, to beyond 500 feet of a location designated as a swimming beach. There has been considerable confusion regarding how to measure the distance of 500 feet in relation to the designated swimming beach. The intent of this recommended change is to clearly define the point at which the 500 feet distance is to be measured with the result of more clearly and consistently defining the safety zone at designated swim beaches. It is expected that a resulting consistency in management, education, and enforcement actions will result and will enhance visitor safety.

Paragraph (f) is renumbered as (b)(5). Amends "a vessel propelled by machinery" to "power-driven vessel". Amends "transom" to "top edge of the transom". Adds "motor cover or other

unsafe positions" to the description of prohibited activity. Deletes the exemption for a vessel "being maneuvered for anchoring, mooring or casting off moorings". Amends "operating in excess of 5 mph" to "being operated above flat wake speed".

Changes recommended to this section include changing the term "flat wake speed" instead of "5 mph or creating a wake", and changing "a vessel propelled by machinery" to "power-driven vessel".

These are recommended in order to provide consistency in terminology throughout part 3. Also recommended herein is the deletion of the allowance for unsafe riding when a vessel "is being maneuvered for anchoring, mooring, or casting off moorings" since this is redundant. A vessel engaged in such maneuvers will be already in compliance since its speed will be at "flat wake speed" in order to complete the maneuver.

Paragraph (g) is renumbered as (a)(5) without change.

Paragraphs (h) and (i) are combined and renumbered as (a)(2). Deletes reference to "trailers" and to "a vessel propelled by machinery". This clarifies the condition under which vessels may be launched in a park by combining the former paragraphs 3.6(h) and (i). The superintendent must designate launch sites and if local circumstances require may establish further conditions. The original paragraphs were redundant and resulted in some confusion. The proposed changes reduce the potential for confusion and enhance education and enforcement capability.

Paragraph (j) is renumbered as (a)(3). Amends "vessel propelled by machinery" to "power-driven vessel". Deletes "directly" from "not directly accessible by road."

Use of the term "power-driven vessel" rather than "vessel propelled by machinery" provides consistency throughout part 3. It is the intent of this proposal that the meaning of the paragraph is not altered.

Paragraph (k) is renumbered as (a)(1). Adds hovercraft. Airboats were previously prohibited in this section and that prohibition continues. The addition of hovercraft to part 3 is a result of new technologies increasingly available to the boating public and since this surface effect craft has the ability to be used on and over a variety of surfaces, including water. The ability to navigate into areas not accessible to other vessels or vehicles would open, in many cases, sensitive habitat to degradation and is inconsistent with the NPS mission. Due to the unique operating characteristics of hovercraft,

the prohibition of hovercraft will also appear in part 2 of this chapter.

Paragraph (l) is renumbered as (a)(4). Amends "size, length or width restrictions" to "length, width, or horsepower restrictions". Adds the criteria used by the USCG to measure vessel length. This continues the authority of the superintendent to restrict the size of vessels using national park waters. It is herein proposed to add language to this paragraph that identifies horsepower restriction as one of those criteria that may be established by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. The work group considered a proposal to establish these vessel size restrictions in part 3. However, it was clearly demonstrated that individual park needs vary considerably. The authority to establish size restrictions will remain with the park superintendent.

This rule proposes language that identifies the USCG standard for measuring vessels and it is the intent of this paragraph that this standard be used in all NPS areas.

### *Section 3.9 May I Operate a Personal Watercraft (PWC) in Park Waters?*

This section has been renumbered from 3.24 to 3.9 and replaces 3.24 (a) and (b) with additions.

Over the past several years the NPS has been working to propose personal watercraft (PWC) use in some areas of the National Park System. As PWC rules are finalized there will be a need to regulate some types of their activity. It is the intent of this section to provide parks having authorized PWC use, rules to govern certain operations of PWC that are as consistent as possible with those of the states. Accordingly, the work group used the NASBLA model act as its guide. This act was developed by NASBLA in concert with the USCG and the Personal Watercraft Industry Association. The NPS agrees with these entities that PWC are sufficiently unique in their operation and safety issues that some specific regulations are necessary for these vessels.

Paragraph (a) of this section requires PWC use to be authorized with the promulgation of a special regulation. This requirement is carried over from 36 CFR 3.24(a) and (b). A PWC is defined under existing NPS regulations located at 36 CFR 1.4. Paragraphs (b)(1) through (b)(4) are designed to reduce conflicts between PWC operators and other vessels and improve safety. To adhere to the goal of consistency with the states, the NPS is proposing in paragraph (b)(5) that if a park area is within a state that regulates the operation of PWC, then the more restrictive state regulation applies

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.

Several factors prevented its inclusion in the proposed regulations:

1. According to the EPA and the Federal Water Pollution Control Act, gray-water is not a pollutant or contaminant.

2. Vessels are not usually constructed with holding tanks for gray-water. Most vessels are constructed so that water generated from the shower, bath, laundry and sinks is plumbed to a small sump that is periodically (often automatically) discharged overboard, or is directly discharged overboard.

3. There is no requirement in the USCG regulations for carriage or certification of gray-water holding or a discharge device as there is with MSDs.

4. The nature of water resources vary considerably throughout the National Park System, and the impact of gray-water should be evaluated in each environment by appropriate professionals such as biologists or hydrologists.

The work group concluded that gray-water issues should be dealt with on a case-by-case basis at the park level and that the focus of this section is more appropriately directed toward "black-water" (sewage) containment aboard vessels.

#### *Section 3.13 Am I Required To Remove a Sunken, Grounded, or Disabled Vessel?*

USCG regulations clearly cover the removal of sunken or grounded vessels in navigable waters if the vessel poses a navigational hazard or immediate environmental threat.

The USCG generally ensures that the owner mitigate the hazard or threat by salvaging the vessel completely or by eliminating the object or substance which poses the threat (*i.e.*; removing masts to provide ample clear draft for vessel traffic, pumping out fuel from submerged tanks, towing disabled vessels to deeper water where they are purposely sunk). Depending on location, depth, insurance issues, time period after the sinking or disabling, the owners may decide it more cost effective to leave the vessel where it foundered (sank), grounded, or disabled once they have taken care of the navigational or environmental hazard.

In non-navigable waters, owners may not even be required to fully address these factors. It should be noted that the terms founder and sunken are synonymous with each other for the purposes of this regulation.

In recognizing the unique natural and cultural resources of park waters, shorelines, and submerged areas, the NPS proposes to empower superintendents with the clear authority

to order owners of these vessels to remove them under clearly defined conditions. Removal would also include associated equipment, debris, and cargo from the vessel. Although the "tradition of the sea" has been to discard things overboard where they are out of sight and out of mind (even the USCG still approves of towing ships out to sea to sink them when they are no longer salvageable in some cases), this may not be in the best interest of park resources. Ultimately, this decision should be made by the NPS rather than by the vessel's owner.

The wording for this regulation was taken almost verbatim from 36 CFR 2.17(c)(1-3) regarding downed aircraft. The situation of downed aircraft in parks is very similar to that of sunken vessels, with the main difference being that one can easily see the aircraft, but cannot generally see the sunken vessel.

Disabled vessels were included in this regulation since they can easily founder or ground if action by the owner is not taken immediately. The regulation again gives authority to the superintendent to require action by the owners, which may prevent more serious problems later on.

Component parts, equipment and associated cargo may become detached from the vessel during the foundering, but can pose just as much or more problems to park resources than the vessels themselves. Therefore, they are included in the removal requirements. Examples of this would be lines, cables, shipping containers, lumber, vehicles, or a wide variety of cargo transported on board vessels.

Although there was some discussion to include the term "abandoned vessels" in this regulation, it was decided that this covers a wider range of vessels than was intended for this purpose. 36 CFR 2.22 "Property" covers the subject of abandoned property of any type sufficiently. Some parks requested authority to recover costs associated with vessel removal, however, we believe that authority already exists under 36 CFR 2.22(b)(4).

#### *Section 3.14 What Is the Maximum Noise Level for the Operation of a Vessel?*

This section is revised with the intent of updating the testing standards for noise level enforcement to encompass more recent standards adopted by the Society of Automotive Engineers (SAE). To accommodate the review of part 3 in its entirety this section is renumbered from 3.7 to 3.14.

The current testing procedures outlined in § 3.7 are appropriate for tests conducted in a laboratory or test facility

but are impractical for field law enforcement use. They are difficult and cumbersome to use, thus rendering this regulation ineffective.

Noise abatement has not only continued as a concern on all waterways but has grown in importance as an issue addressed by the visiting public and park staff. According to the Reference Guide To State Boating Laws (2001—Sixth Edition), published by NASBLA, thirty-one states set maximum noise level for vessels. In order to meet the stated work group objective of uniformity with state regulations wherever possible, the rule proposed for noise testing and regulation is modeled after the NASBLA model act. This act has also been adopted whole or in part by many states. Since there is still some inconsistency among the states, with some not regulating noise level, a rule in part 3 is the most effective means to provide a standard applicable across the National Park System. The standards adopted are SAE J-2005 and SAE J-1970. These standards may be obtained through the Society of Automotive Engineer's Web site at <http://www.SAE.org>. These standards are sound testing procedures that allow the measurement of noise level for either stationary vessels or vessels underway. These procedures are more readily used in the field than the current testing procedures. The ease in use of these procedures places less of a burden on the boating public and will result in more effective management of noise level with the result of enhancing the visitor experience. The maximum decibel levels remain the same.

#### *Section 3.15 May I Swim or Wade in Park Waters?*

This section is renumbered from the current § 3.21. The title of the regulation is amended from "Swimming and bathing" to "Swimming and wading".

The title of the section is modified by replacing the term "bathing" with "wading" in order to clarify the range of activities intended for coverage under this rule. "Bathing", as used to refer to the act of swimming, is largely an outdated term and may have more meaning to modern visitors as a term that addresses the act of "cleansing" the body using soap or cleansing agents. Bathing violations could be addressed under 36 CFR 2.14(a)(6).

Paragraphs (a)(1) and (2) of existing § 3.21 are deleted. Paragraph (a)(3) of existing § 3.21 is deleted. The work group decided there was no uniform set of circumstances service-wide regarding swimming from vessels underway, given the variety of water conditions that exist throughout the National Park

System. It is recommended that individual parks deal with this issue on an as-needed basis through designation of this restriction by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. Paragraph (b) of existing § 3.21 is renumbered as a stand-alone regulation, § 3.17.

*Section 3.16 What Regulations Apply to Swimming Areas and Beaches?*

This section has been moved from paragraph (b) of existing § 3.21. The word "sporting" is deleted from the description of activities that may be restricted by the superintendent in order to provide greater flexibility to deal with swimming beach safety issues. These regulations distinguish between swimming areas (in the water) and swimming beaches (on the land).

*Section 3.17 May I Snorkel or Underwater Dive in Park Waters?*

The part 3 work group is recommending the promulgation of a new regulation to manage underwater activities. The title is amended from "SCUBA and snorkeling" to "Snorkeling and underwater diving".

In section 1.4, a definition of "underwater diving" was added to reflect new diving technologies. It encompasses compressed air as well as mixed gas and surface supplied air.

Paragraph (a) allows "snorkeling and underwater diving in park waters except where designated as closed". This is a change from the previous regulation that identified "swimming, docking, or mooring areas" as closed to these activities. Superintendents will now have the authority to designate waters that are closed utilizing §§ 1.5 and 1.7 of this chapter.

In Section 1.4, the term "dive flag" was added. Several states' dive flag standards were examined. If there were differences, they were most often found in the size of the flag. Many states had no standard and, as a result, the work group recognized a need for an NPS standard and chose the standard most often encountered in other regulations.

Paragraph (c) establishes the relationship in horizontal distance between a diver and the dive flag. It is not the intent of the work group that a diver's vertical distance from the flag be considered in this regulation. Regardless of depth, a diver must be within a 100-foot horizontal radius of the dive flag.

Paragraph (d) allows parks to adopt state laws or regulations that may apply a dive flag requirement to snorkeling as well as to underwater diving. It is not the intent of this section to require a dive flag for snorkeling in parks that are within states with no requirement.

Since section 3.2 allows only for the adoption of state boating safety laws and regulations, this section is added to allow parks to adopt specific state water use regulations or laws that require dive flags for snorkelers.

*Section 3.18 May I Operate a Submersible in Park Waters?*

The part 3 work group is proposing the promulgation of a new regulation to manage submersibles within the national park areas. Definitions of manned and unmanned submersible appear in § 1.4 of this part. The regulation is established to manage, through the permit process, use that is consistent with the NPS mission to protect life, property and park resources. It is the intent of this section to allow the superintendents the discretion to establish conditions for permits.

Over the last several years, several park areas, particularly those with large bodies of water, have experienced an increase in the use of submersibles. The threat to the safety of visitors and submerged natural, cultural or historic resources far outweigh any inconveniences to the public that may result from implementation of the regulation.

Manned recreational submersibles are appearing on the retail market and although somewhat expensive for the average individual, operation requires very little in terms of training. It should also be noted that an automobile easily transports some of these submersible vessels giving the owner ready access to national park areas.

If the operation of these vessels remains unregulated, the potential for boating accidents increases significantly. For example, a submersible coming to the surface in front of an oncoming vessel without warning and without allowing either party sufficient time to maneuver out of harms way.

The use of remotely operated devices is included in the proposed new regulation. The documented use of these devices in national park areas has been primarily for official search and rescue/recovery operations. There is no intent to preclude the use of these devices for administrative purposes. However, the NPS recognizes these devices can easily be used to locate and loot submerged natural, cultural or historical resources. Therefore, the NPS proposes the requirement for a permit for private individuals.

**Superintendent's Authority**

Throughout this document, the Superintendent is given latitude to

manage specific types of uses or activities based on local park needs or issues under the authority of 36 CFR 1.5 and 1.7. Exercising this authority may be accomplished using the authority as cited (§§ 1.5 and 1.7) or through promulgation of a special regulation (part 7).

*Part 7*

Several parks had existing marine sanitation regulations that were promulgated because there were no service-wide regulations covering the disposal of marine waste. Since MSD regulations are being proposed, the park specific regulations are now redundant and are proposed for removal as well. Other types of boating and water-use regulations also became redundant and have been deleted accordingly.

**Compliance With Other Laws**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This rule only relates to the general operation of vessels on park waters and other water based activities but does not propose changes that would alter the numbers of users to a particular area. No economic impacts are likely to be recognized as a result of these regulations.

b. This rule will not create inconsistencies with other agencies' actions. These regulations only impact users of NPS areas and are written to provide greater consistency with the USCG and other state laws.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues. Although this rule is a rewrite of the entire Part 3, it does not propose any significant changes to the way the public currently participates in water based activities. It does provide for greater consistency with state regulations that the public is more likely familiar with.

*Regulatory Flexibility Act*

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule affects vessel operation and imposes requirements that are generally already required by most states. There are no

regulations proposed that would likely change the amount of users to an NPS unit nor are there regulations that impose any restrictions on concessions or other vessel or water related businesses.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. This rule is not expected to have any economic affect on local communities or businesses because the scope of the regulations focuses on the way in which vessels are operated, not the amount of vessels to an area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. This rule has no association with costs for consumers nor does it impose any restrictions on businesses or governments of any kind.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule has no association with businesses or uses outside NPS areas.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. This rule has no affect on government entities, only the visiting public.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### *Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule is generally focused on safety regarding water use and vessel activity and does not impose any regulations on lands or waters outside the NPS or on any private property.

#### *Federalism*

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. This rule is focused on providing clearer interpretation of existing regulations and consistency with USCG regulations and state laws and regulations in order to make it easier for the visiting public to comply with regulations.

#### *Paperwork Reduction Act*

This regulation does not require an information collection under the Paperwork Reduction Act.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and have determined that this rule is covered by a categorical exclusion adopted by this federal agency in accordance with the Council on Environmental Quality regulations, 40 CFR 1500–1508. The DOI Manual contains the categorical exclusions applicable to the National Park Service and the exceptions of the use of a categorical exclusion. The effect of the categorical exclusion to identify a category of activities that individually or cumulatively do not have significant effect on the human environment and therefore are exempt from the requirements to prepare an environmental impact statement. The federal action proposed in this rule is described in the categorical exclusion listed in the Departmental Manual at 516 DM 6, appendix 7, section 7.4.A(10) and none of the exceptions to the use of the categorical exclusions listed at 516 DM 2, appendix 2 are applicable.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, “Consultation and Coordination with Tribal Governments”, and 512 DM 2:

We have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. This rule only pertains to water use and vessel operations on waters inside NPS boundaries and does not propose to change use patterns or amounts so is not likely to affect any tribes near an NPS unit with water use.

*Drafting Information:* The primary authors of this regulation were Jay Lippert, Fire Island National Seashore;

Art North, Delaware Water Gap National Recreation Area; Bonnie Foist, Everglades National Park; Jerry Case, Pinnacles National Monument; Bob McKeever (retired), and Kym Hall, Regulations Program Manager, National Park Service.

*Public Participation:* If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Email to: [WASO\\_Regulations@nps.gov](mailto:WASO_Regulations@nps.gov). Fax: (202) 219-8835. Please include “Part 3 Rules” in the subject line and your name and return address in the body of your message. Finally, you may hand deliver comments to Kym Hall, 1849 C Street NW., Room 7248, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

#### **List of Subjects**

##### *36 CFR Part 1*

National Parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

##### *36 CFR Part 3*

Marine safety, National parks, Reporting and recordkeeping requirements.

##### *36 CFR Part 7*

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR Parts 1, 3 and 7 as follows:

#### **PART 1—GENERAL PROVISIONS**

1. The authority for Part 1 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460 1–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

- 2. Amend § 1.4 as follows:
  - a. Add the following definitions in alphabetical order.
  - b. Revise the existing definition of vessel.

**§ 1.4 What terms do I need to know?**

\* \* \* \* \*

*Dive flag* means a flag not less than 12 inches square, red in color, with a white stripe running diagonally from the top of the staff to the opposite lower corner. The white stripe shall be one-fifth the width of the flag.

\* \* \* \* \*

*Flat wake speed* means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per.

*Harbor* means a natural or artificially improved body of water providing protection for vessels, which may include anchorage, mooring or docking facilities.

\* \* \* \* \*

*Manned submersible* means any vessel that carries or is capable of carrying passenger(s) within the confines of the vessel below the surface of the water.

\* \* \* \* \*

*Power-driven vessel* means any vessel propelled by machinery.

\* \* \* \* \*

*Sailing vessel* means any vessel under sail provided, if propelling machinery is fitted, it is not being used.

\* \* \* \* \*

*Sewage* means human body waste or the waste from a toilet or other receptacle intended to receive or retain body waste.

\* \* \* \* \*

*Underwater diving* means the use of any apparatus, whether self contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water, enabling that person to obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water. Underwater diving would include, but is not to be limited to use of SCUBA; surface supplied air, mixed gas, or re-breathers.

\* \* \* \* \*

*Un-manned submersible* means any device operated by remote control, used or capable of being used, to search or collect below the surface of the water. This definition does not apply to a device being used lawfully for fishing.

\* \* \* \* \*

*Vessel* means every type or description of craft capable of free flotation, other than a seaplane on the

water, used or capable of being used as a means of transportation on or through the water. Non-traditional vessels such as a tube, raft or other inflatable device; surf board, sailboard, and other rigid device are vessels when being used as a means of transportation on or through the water.

\* \* \* \* \*

**PART 3—BOATING AND WATER USE ACTIVITIES**

3.–4. Part 3 is revised to read as follows:

Sec.

- 3.1 What is the applicability and scope of this part?
- 3.2 Do other boating laws and regulations apply to me when I operate my boat on park waters?
- 3.3 Am I required to obtain a permit to operate a vessel in a park area?
- 3.4 For what purposes may my vessel be inspected?
- 3.5 Do I have to report an accident involving a vessel to the National Park Service?
- 3.6 What age must I be to operate a power driven vessel?
- 3.7 Who must wear a Personal Flotation Device (PFD)?
- 3.8 What vessel operations are prohibited?
- 3.9 May I operate my personal watercraft (PWC) in park waters?
- 3.10 What are the regulations regarding operating a vessel while under the influence of alcohol and/or drugs?
- 3.11 May I use a vessel to tow a person for water skiing or other similar activities?
- 3.12 What conditions apply to the use of Marine Sanitation Devices (MSD)?
- 3.13 Am I required to remove a sunken, grounded, or disabled vessel?
- 3.14 What is the maximum noise level for the operation of a vessel?
- 3.15 May I swim or wade in park waters?
- 3.16 What regulations apply to swimming areas and beaches?
- 3.17 May I snorkel or underwater dive in park waters?
- 3.18 May I operate a submersible within park waters?

**Authority:** 16 U.S.C. 1, 1a–2(h), 3.

**§ 3.1 What is the applicability and scope of this part?**

The applicability of the regulations in this part is described in § 1.2 of this chapter.

**§ 3.2 Do other boating laws and regulations apply to me when I operate my boat on park waters?**

(a) In addition to the regulations contained in this part, applicable laws and regulations of the United States Coast Guard apply to govern vessels and their operation on all waters (navigable and non-navigable) subject to NPS jurisdiction. Title 14 United States Code, Title 33 United States Code, Title 46 United States Code, and the United

States Coast Guard regulations in 33 CFR Chapter I, 46 CFR Chapter I and III, and 49 CFR Chapter IV apply to such operation. Therefore, Federal regulations authorizing an action by the “captain of the port” or another officer or employee of the United States Coast Guard, authorize a like action by the superintendent.

(b) Unless specifically addressed by the regulation in paragraph (a) of this section, vessels and their operation on all waters subject to NPS jurisdiction are governed by non-conflicting boating safety laws and regulations of the state within whose interior boundaries a park area or portion thereof is located.

**§ 3.3 Am I required to obtain a permit to operate a vessel in a park area?**

Generally, you are not required to obtain a permit to operate a vessel in a park area. However, in certain circumstances, taking into consideration public safety, protection of park resources, weather and park management objectives or other factors, the superintendent may require a permit for use of a vessel within a park area, pursuant to §§ 1.5 and 1.7 and consistent with § 1.6 of this chapter.

**§ 3.4 For what purposes may my vessel be inspected?**

(a) An authorized person may at any time stop and/or board a vessel to examine documents, licenses or permits relating to operation of the vessel, and to inspect the vessel to determine compliance with regulations pertaining to safety equipment, vessel capacity, marine sanitation devices, and other pollution and noise abatement requirements.

(b) An authorized person who identifies a vessel being operated without sufficient life saving or firefighting devices, in an overloaded or other unsafe condition, as defined in United States Coast Guard regulations, or in violation of a noise level specified in § 3.15(a) of this part, may direct the operator to suspend further use of the vessel until the condition is corrected.

**§ 3.5 Do I have to report an accident involving a vessel to the National Park Service?**

(a) The operator of a vessel involved in an accident involving total property damage exceeding \$2000, injury, or death or disappearance of a person must report the accident to the superintendent as soon as practical, but in any event within 24 hours of the accident.

(b) If the operator is physically incapable of making the report, the owner or an occupant of the vessel must

report the accident to the superintendent.

(c) Filing a report with the superintendent may not satisfy applicable United States Coast Guard, state or local accident reporting requirements.

**§ 3.6 What age must I be to operate a power driven vessel?**

(a) No person under the age of sixteen (16) years may operate a power-driven vessel on park waters except that a person twelve (12) to fifteen (15) years of age may operate a power-driven vessel if a person at least eighteen (18) years of age is on board the vessel.

(b) If a park area is located within a state having a similar requirement specifying a different age or having different conditions, then the applicable state law is adopted in lieu of paragraph (a) of this section.

**§ 3.7 Who must wear a Personal Floatation Device (PFD)?**

(a) Any child 12 years of age or younger must wear USCG approved Type I, II, or III PFD when aboard a vessel underway, except while inside an enclosed cabin. If a park area is located within a state having a similar requirement specifying a different age or with different conditions, then applicable state law applies in lieu of this paragraph (a).

(b) Paragraph (a) does not apply to a vessel that requires inspection by the U.S. Coast Guard when that vessel is certified for carrying passengers for hire pursuant to 46 CFR Chapter I or III.

(c) The Superintendent may require that a PFD be worn on designated waters or during designated water based activities in accordance with §§ 1.5 and 1.7 of this chapter.

**§ 3.8 What vessel operations are prohibited?**

(a) The following operations are prohibited:

(1) Launching or operating an airboat or hovercraft.

(2) Launching or recovering a vessel, except at a launch site designated by the superintendent.

(3) Operating a power-driven vessel on waters not accessible by road.

(4) Operating a vessel in excess of a length, width or horsepower restriction established by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter. For the purposes of this paragraph, vessel length is measured according to criteria established in 46 CFR Chapter I or III.

(5) Attaching a vessel to or interfering with a marker, navigation buoy or other navigational aid.

(b) The following operations are inherently unsafe and therefore prohibited:

(1) Operating a power-driven or sailing vessel within 100 feet of a diver's flag except a vessel in support of dive operations, which may not be operated in excess of flat wake speed.

(2) Failing to observe restriction(s) established by a regulatory marker.

(3) Operating a vessel in excess of flat wake speed:

(i) In designated areas, or

(ii) Within 100 feet of:

(A) A downed water skier, (B) Person swimming, wading, fishing or floating with the aid of a non-motorized inflatable or rigid buoyant device;

(C) Designated launch site; or

(D) Manually propelled, anchored or drifting vessel unless the park is located within a state specifying different conditions then that state law is adopted in lieu of this paragraph.

(4) Unless a designated area is marked otherwise, operating a power-driven or sailing vessel within 500 feet of a shoreline designated as a swimming beach. This prohibition does not apply in locations such as a river, channel, or narrow cove where passage is restricted to less than 500 feet. In such restrictive locations where swim beaches are designated, the operation of a vessel in excess of a flat wake speed is prohibited.

(5) Operating a power-driven vessel while a person is riding on the decking over the bow, gunwales, top edge of the transom, motor cover, or in any other unsafe position when the vessel is being operated above a flat wake speed. Provided however, that this provision does not apply when that portion of the vessel is designed and constructed for the purpose of carrying passengers safely at all speeds.

(6) Operating a vessel, or knowingly allowing another person to operate a vessel in a negligent manner, by failing to exercise that degree of care which a reasonable person, under like circumstances, would demonstrate in order to prevent the endangering of the life, limb, or property of a person(s) through the operator's lack of knowledge, inattention, or general carelessness.

(7) Operating a vessel or knowingly allowing another person to operate a vessel in a grossly negligent manner, by willfully and wantonly creating an unreasonable risk of harm to person(s) or property, regardless of whether the operator intended to cause harm.

**§ 3.9 May I operate my personal watercraft (PWC) in park waters?**

(a) A person may operate a PWC in park areas only where authorized by special regulation.

(b) Where authorized, operation of a PWC on park waters is subject to the following conditions:

(1) No person may operate a PWC unless each person aboard is wearing a type I, II, or III PFD approved by the United States Coast Guard.

(2) A person operating a PWC equipped by the manufacturer with a lanyard-type engine cut-off switch must attach such lanyard to his person, clothing, or PFD, as appropriate for the specific vessel.

(3) No person may operate a PWC anytime between sunset and sunrise.

(4) No person may operate a PWC by jumping the wake, becoming partially airborne or completely leaving the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake.

(5) If a park area is located within a state that has more restrictive regulations for the operation of PWC, then applicable state law applies in lieu of paragraphs (b)(1) through (b)(4) of this section.

**§ 3.10 What are the regulations regarding operating a vessel while under the influence of alcohol and/or drugs?**

(a) Operating or being in actual physical control of a vessel is prohibited while:

(1) Under the influence of alcohol or a drug or drugs or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if state law that applies to operating a vessel while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits apply rather than the limits specified in this paragraph.

(3) These provisions also apply to an operator who is or has been legally entitled to use alcohol or drugs.

(b) At the request or direction of an authorized person who has probable cause to believe that an operator of a vessel has violated provisions of paragraph (a) of this section, the operator must submit to one or more testing procedures of the blood, breath, saliva or urine for the purpose of determining blood alcohol and/or drug content.

(1) Refusal by an operator to submit to a test is prohibited and proof of

refusal may be admissible in any related judicial proceeding.

(2) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(3) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(c) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(d) The provisions of paragraph (c) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

**§ 3.11 May I use a vessel to tow a person for water skiing or other similar activities?**

(a) The towing of a person by a vessel is allowed only in designated waters, and in accordance with conditions established by the superintendent pursuant to §§ 1.5 and 1.7 of this chapter.

(b) Towing a person using a parasail, hang-glider or other airborne device may be allowed only in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

(c) Where towing is designated, the following conditions apply:

(1) Towing is allowed only between the hours of sunrise and sunset.

(2) In addition to the boat operator, a person at least 12 years of age must be present to observe the action of the person being towed.

(3) A person being towed must wear a United States Coast Guard approved type I, II, or III PFD.

(4) A person being towed may not commit any act in a manner that endangers, or is likely to endanger, any person or damage property.

(5) Operating a vessel that does not have the capacity to carry the person(s) being towed in addition to the operator and observer is prohibited.

**§ 3.12 What conditions apply to the use of Marine Sanitation Devices (MSD)?**

(a) Discharging sewage from any vessel, whether treated or not, in park waters is prohibited.

(b) The owner or operator of any vessel that is equipped with toilet facilities and/or an MSD that is capable of discharge into park waters, must lock or otherwise secure the valves or mechanism of the device in a manner that prevents discharge while within the boundaries of park area waters. For the purposes of this section, a deck mounted pump-out fitting is not considered to be an overboard discharge outlet and is not subject to these requirements, when used in conjunction with an approved pump-out facility.

(c) The superintendent may require the owner and/or operator of the vessel to have all discharge outlets disconnected from through-hull fittings and have both ends of the disconnected line(s) capped or plugged in order to prevent the ability to discharge, pursuant to §§ 1.5 and 1.7 of this chapter.

(d) The superintendent may modify the requirements of this section through a special regulation.

**§ 3.13 Am I required to remove a sunken, grounded or disabled vessel?**

(a) Except as provided in paragraph (b) of this section, the owners or authorized salvager of a sunken, grounded, or disabled vessel must remove the vessel, all component parts and equipment, and all associated cargo thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to:

(1) Establish a reasonable date by which vessel removal operations must be complete;

(2) Determine times and means of access to and from the vessel, and

(3) Specify the manner or method of removal.

(b) The superintendent may waive the requirements of paragraph (a) of this section or prohibit removal of the vessel, equipment or cargo upon a written determination that:

(1) The removal would constitute an unacceptable risk to human life;

(2) The removal would result in extensive resource damage; or

(3) The removal is impracticable or impossible.

**§ 3.14 What is the maximum noise level for the operation of a vessel?**

(a) A person may not operate a vessel at a noise level exceeding:

(1) 75dB(A) measured utilizing test procedures applicable to vessels

underway (Society of Automotive Engineers SAE—J1970); or

(2) 88dB(A) measured utilizing test procedures applicable to stationary vessels (Society of Automotive Engineers SAE—J2005).

(b) An authorized person who has reason to believe that a vessel is being operated in excess of the noise levels established in paragraph (a) of this section, may direct the operator of the vessel to submit the vessel to an on-site test to measure the noise level.

**§ 3.15 May I swim or wade in park waters?**

Swimming or wading is allowed in waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

**§ 3.16 What regulations apply to swimming areas and beaches?**

(a) The superintendent may designate areas as swimming areas or swimming beaches pursuant to §§ 1.5 and 1.7 of this chapter.

(b) Within designated swimming areas, the use of a surfboard or similar rigid device is prohibited.

(c) The superintendent may prohibit the use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or swimming beaches pursuant to §§ 1.5 and 1.7 of this chapter.

**§ 3.17 May I snorkel or underwater dive in park waters?**

(a) Snorkeling and underwater diving is allowed in park waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

(b) In waters open to the use of vessels, a diver must prominently display a dive flag.

(c) A diver must remain within a 100' horizontal radius of the dive flag.

(d) If applicable state law or regulation requires a snorkler to display a dive flag, that provision of state law or regulation applies.

**§ 3.18 May I operate a submersible within park waters?**

The use of manned or unmanned submersibles may only occur in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

**PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

5. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

6. Section 7.45 is amended by removing and reserving paragraph (e)(8).
7. Section 7.48 is amended by removing and reserving paragraph (d).
8. Section 7.57 is amended by removing and reserving paragraph (c).
9. Section 7.70 is amended by removing and reserving paragraph (c).
10. Section 7.79 is amended by removing paragraph (c).

Dated: August 14, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife, and Parks.*

[FR Doc. 03-21333 Filed 8-21-03; 4:26 pm]

**BILLING CODE 4312-52-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA267-0402b; FRL-7526-7]

#### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from general spray coating operations, surfactant manufacturing, and storage tanks at petroleum facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by September 25, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814; and  
South Coast Air Quality Management  
District, 21865 East Copley Drive,  
Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, EPA Region IX, (415) 947-4111.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: SCAQMD 481—Spray Coating Operations, SCAQMD 1141.2—Surfactant Manufacturing, and SCAQMD 1178—Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-21591 Filed 8-25-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 279-0401b; FRL-7526-5]

#### Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management District's portion of the California State

Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the Sacramento Metropolitan ozone nonattainment area. We are proposing to approve a local rule that regulates these emission sources under the Clean Air Act as amended in 1990.

**DATES:** Any comments on this proposal must arrive by September 25, 2003.

**ADDRESSES:** Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

You can inspect copies of the submitted State Implementation Plan revisions and EPA's technical support document at our Region IX office during normal business hours. You may also see copies of the submitted revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.  
Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rule: Sacramento Metropolitan Air Quality Management District Rule 307, Clean Air Act Fees. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-21589 Filed 8-25-03; 8:45 am]

**BILLING CODE 6560-50-P**