



CHILD WEAR OF PERSONAL FLOTATION DEVICES (PFDs) FEDERAL VERSUS STATE REQUIREMENTS

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There seems to be confusion when using cites 33 CFR 175.25 and 33 CFR 175.15(c). Both cites discuss the requirement for child wear of personal floatation devices (PFDs). When determining the proper cite, keep in mind that only when a State has failed to establish a State requirement for children to wear a PFD, does the federal requirement found at 33 CFR 175.15(c) apply. When a State has established a State requirement for child wear of a PFD, the federal cite 33 CFR 173.15(c) is not applicable. The state law takes precedence over the federal regulation.

33 CFR 175.15(c) provides that no person may operate a recreational vessel underway with any child under 13 years old aboard unless each such child is *either* wearing an appropriate PFD approved by the Coast Guard *or* below decks or in an enclosed cabin. If the child is observed above deck without a PFD, then a violation has occurred. If the child was below decks with no PFD, then no violation has occurred.

33 CFR 175.25 provides that where a State has established by statute that children aboard a recreational vessel of a certain age wear an appropriate PFD approved by the Coast Guard, that requirement *applies* on the waters subject to the State's jurisdiction. For example, the State of Ohio has established by statute that children under the age of 10 years old wear a PFD. A violation would not exist if a child of 11 years was not wearing a PFD aboard a recreational vessel on waters subject to Ohio jurisdiction. So knowing if a State requirement exists is the first factor in determining what cite is applicable. Secondly, knowing the child's age and location on the vessel when observed without a PFD is critical.

A narrative for an alleged violation for a child not wearing a PFD should indicate if the State has established a requirement for child wear of a PFD. If so, then 33 CFR 175.25 is applicable and the evidence should then support violation of the State requirement. Remember it is 33 CFR 175.25 that gives the authority for Coast Guard enforcement of the requirements of the State's statute. If the wrong cite is used, the case will most likely be dismissed.

When submitting a case don't just indicate there were children on board and not wearing a PFD. This is insufficient evidence. Boarding teams should always ask questions, seek evidence or document how they determine the age of the child and provide that information in the violation case. Evidence to support a conclusion that the child was of an age that required wear of a PFD, is almost always necessary to find a violation occurred. Similarly important is a good description as to where the child was located on the vessel when observed without a PFD and whether the vessel was underway at the time.