

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
Department of Natural Resources**
(DLS Control No. 14-153)

Overview and Legal and Fiscal Impact

These regulations modify existing provisions governing boat and personal watercraft livery operations and add requirements and restrictions specific to jetpack vessel livery operations. The regulations also add provisions specifying locations where the operation of personal watercraft and jetpack vessels owned or leased by livery vessel owners operating in Worcester County is prohibited.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Natural Resources:

Boating: Boat Livery Operation: COMAR 08.04.08.01-.04

Legal Analysis

Background

According to the Department of Natural Resources, although jetpack or jet-propelled vessels have been in use in Florida, Texas, Arizona, and states on the West Coast, this type of vessel is new to Maryland. The department advises that Maryland waters offer unique situations where the use of the vessels may pose issues with safety, environmental impacts, effects on personal and private property, and the rights of citizens to recreate on the waters. Consequently, the department worked cooperatively with commercial livery operators to develop regulations specific to the safe operation of jetpack vessels. The department also sought the advice and opinions of the Maryland Boat Act Advisory Committee at the committee's meeting on April 24, 2014. As a result, in addition to this action relating to boat livery operations, the department has proposed two concurrent emergency actions to (1) establish new regulations generally governing the personal and commercial use of jetpack vessels on State waters (COMAR 08.18.40) and (2) modify existing regulations governing the use of personal watercraft (COMAR 08.18.02).

Summary of Regulations

The regulations modify existing provisions governing boat livery operations and requirements specific to personal watercraft livery operations. The regulations also add

requirements and restrictions specific to jetpack vessel livery operations. In addition, the regulations incorporate prohibitions on the operation of vessels in specified areas, which are based on provisions that are being repealed by concurrent action from the regulations governing personal watercraft (COMAR 08.18.02.06) and modified to apply to jetpack vessels as well as to personal watercraft. More specifically, the regulations:

Boat Livery Operations

- require the record kept by a livery boat owner for each boat rented to show the name and address of the person operating or riding rather than the name of the person renting;
- add a provision specifically requiring all livery boat owners and their agents to follow all federal, State, and local regulations;

Personal Watercraft Livery Operations

- require that personal watercraft operators, as well as renters, read certain posted regulations and sign a related statement in the rental contract;
- prohibit leasing or renting a personal watercraft unless the operator, rather than the renter, is at least 16 years old and, if required, possesses a boating safety certificate;

Jetpack Vessel Livery Operations

- require jetpack vessel livery operators to prominently display the jetpack vessel regulations in COMAR 08.18.40, advise renters and riders to read the regulations, include in the rental contract a statement that the renter and rider have read and understand the regulations, and require the renter and rider to sign the statement;
- prohibit leasing or renting a jetpack vessel unless the rider is at least 16 years old and possesses a certain boating safety certificate;
- exempt a rider from the boating safety certificate requirement if the livery operator has entered into a certain agreement with the department and complies by providing boating education materials to all riders, administering a written test to each rider, requiring a minimum score of 90%, and providing guides certified by the department to oversee the riders in certain State waters;
- require the rescue vessel used in livery operations to have an “international orange” flag, 12” x 12” in size and mounted on a pole 24 inches above the water, that remains visible until the rider is safely secured on the rescue vessel and out of the jet-propelled device;
- prohibit the operation of a jetpack vessel unless the rider is trained in the proper use of the jetpack vessel by the manufacturer or its authorized representative;
- require all livery operated jetpack vessels to have an operator that is not the rider;

- require that if the livery owner or the livery owner's agent or employee operates the jetpack vessel, the owner, agent, or employee must be licensed by the U.S. Coast Guard as an operator of an uninspected passenger vessel;
- prohibit the operation of a jetpack vessel on State waters in navigational channels, and marked or unmarked channels;
- require all jetpack vessel livery observers to possess a valid first aid and CPR certificate;

Prohibited Areas

- prohibit the operation of personal watercraft and jetpack vessels owned or leased by livery vessel owners operating in Worcester County in certain areas of the Atlantic Ocean, the Ocean City Inlet, Herring Creek, Turville Creek, Manklin Creek, and St. Martin River; and
- establish that a person violating the prohibition is subject to certain penalties and fines.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 8-704 and 8-712.2 of the Natural Resources Article as legal authority for the regulations. More specifically, § 8-704(a) establishes the broad authority of the department to adopt regulations necessary to carry out the provisions of the State Boat Act. As stated in § 8-702, the intent of the State Boat Act is to foster the development, use, and enjoyment of all the waters of Maryland. In addition, § 8-704(c)(1) requires the department to adopt regulations governing the numbering of vessels, safety equipment on vessels, and operations of vessels so that each vessel of a type or size may be operated with equal freedom or under similar requirements as other vessels of that type or size on all waters of the State. Section 8-712.2(b)(1) requires the department to adopt regulations that, among other things, establish criteria for a course of instruction in boating safety education, administer a verbal test when appropriate, and coordinate a statewide program of boating safety instruction and certification. Section 8-712.2(b)(3) authorizes any person approved by the department to offer the course of instruction in boating safety education.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Reason for Emergency Status

The department has requested emergency status beginning as soon as possible and continuing for 180 days. This emergency period is within the normal time frames approved by the committee. The department indicates that emergency status for the regulations is needed to allow commercial livery operators to continue with their business plans with respect to jetpack vessels for the summer of 2014, ensure safe operation of the vessels, and allow the simultaneous

study of the effects of the vessels on State waters. The department indicates that the study period will culminate with a public hearing.

Technical Corrections and Special Notes

Please note that the department has submitted replacement pages incorporating changes the department made after the emergency regulations were sent to the committee. The modifications clarify that certain provisions apply to operators of personal watercraft or riders of jetpack vessels, revise the citation of statutory authority, and correct cross references.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses in the State. The regulations allow a limited number of commercial livery operators to continue their business plans with respect to jetpack vessels for the summer of 2014 and may benefit other small businesses to the extent the jetpack vessel operations attract additional visitors to Ocean City. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Kathryn H. Selle – (410) 946/(301) 970-5350

Fiscal Analysis: Scott D. Kennedy – (410) 946/(301) 970-5510