

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
Department of Natural Resources**
(DLS Control No. 15-060)

Overview and Legal and Fiscal Impact

These regulations establish requirements and restrictions relating to the personal and commercial use of jetpack vessels on Maryland waters.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Natural Resources:

Boating – Speed Limits and Operation of Vessels: JetPack Vessel:
COMAR 08.18.40.01-.07

Legal Analysis

Background

As defined in the regulations, “jetpack vessel” refers to “a system whereby a jet propelled device is attached via a high pressure water hose to a boat unit that contains a jet pump. The boat unit intakes water and pumps it through the high pressure water hose to the jet propelled device, which is capable of elevating a rider from the surface of the water.” The “boat unit” includes a separately registered personal watercraft or a streamlined hull consisting of an engine and a water pump. The rider sits or stands on the “jet propelled device.” According to the Department of Natural Resources, although these types of vessels have been in use in Florida, Texas, Arizona, and states on the West Coast, jetpack vessels are 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. Consequently, in 2014, the department developed emergency regulations cooperatively with commercial livery operators, who are in agreement with the need for regulations specific to the safe operation of jetpack vessels. Those emergency regulations were implemented during the 2014 boating season. Testimony regarding issues that arose during that boating season was presented and considered at the public meeting of the Maryland Boat Act Advisory Committee on October 22, 2014. The issues raised at the public meeting included (1) whether the minimum depth of water required for jetpack vessel operation and the minimum age of riders should be lower for livery operations than for private use; and (2) problems with the requirement that each jetpack vessel have a pole-mounted orange flag.

The department further advises that the Deep Creek Lake Policy & Review Board has expressed concerns about the operation of jetpack vessels on the lake.

As a result, the department is proposing four concurrent emergency actions. In addition to these regulations, the proposed actions (1) update the regulations governing boat livery operations, including adding provisions specifically relating to jetpack vessels (COMAR 08.04.08); (2) make related modifications to the regulations governing the use of personal watercraft (COMAR 08.18.02); and (3) allow the use of jetpack vessels on Deep Creek Lake at specified times (COMAR 08.18.33).

Summary of Regulations

These regulations are similar to the emergency regulations implemented in 2014. However, these regulations (1) do not require each jetpack vessel to have a pole-mounted orange flag; (2) include specified exceptions for livery operations from the minimum depth and minimum age requirements; and (3) specifically state that a person who violates any provision of new Chapter 40 of COMAR 08.18 is subject to certain penalties and fines.

The emergency regulations are modeled on existing regulations governing the use of personal watercraft, but also contain definitions and provisions specific to the use of jetpack vessels. Among other things, the regulations:

- require that (1) jetpack vessels comply with all laws and regulations governing Class A vessels; and (2) jetpack vessels operated for recreational or commercial use be subject to all boating safety laws, unless otherwise provided in the regulations;
- prohibit the operation of a jetpack vessel unless a specified observer is on a navigable rescue vessel located between 100 and 300 feet from the rider;
- require each rider, instructor, and rescue vessel to display “international orange” markings or flags with a minimum size of 12” x 12”;
- require each operator, rider, and observer to be at least 16 years old, with an exception that a rider must be at least 14 years old if leasing or renting a jetpack vessel from a livery;
- require a rider to wear a water sport helmet and a high impact personal flotation device;
- prohibit a person from operating or giving permission to operate a jetpack vessel (1) in specified areas, with an exception for livery operations to initiate operation of a jetpack vessel in an area with a depth of at least four feet and then move to deeper water; (2) at specified times; or (3) if the jetpack vessel is not equipped with an engine cutoff switch;
- prohibit a rider from picking up another person or using a tandem harness;
- require certain operators, riders, and observers to carry a certificate of boater safety education;

- prohibit a person who is under the influence of alcohol or impaired by alcohol, drugs, or any controlled dangerous substance from acting as an observer, rider, operator, or instructor, or from giving permission to operate or observe a jetpack vessel;
- require a person who receives consideration for the use of a jetpack vessel to comply with the department's regulations for livery operations (COMAR 08.04.08); and
- require all jetpack vessels to be registered in accordance with COMAR 08.04.03 and all boat units to have a valid hull identification number and vessel registration.

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 these regulations. Section 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 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) requires the department to adopt regulations that, among other things, establish criteria for a course of instruction in boating safety education and coordinate a statewide program of boating safety instruction and certification.

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

Reason for Emergency Status

The department requests emergency status to begin May 6, 2015, and continue through October 31, 2015. This emergency period is within normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The department indicates that emergency status for the regulations is necessary to allow commercial livery operators to continue with their business plans for jetpack vessels for the summer of 2015, ensure safe operation of the vessels, and allow the simultaneous study of the effects of the vessels on State waters. The department further notes that the study period will culminate with a public hearing.

Technical Corrections and Special Notes

Please note that the department has indicated that it will submit replacement pages incorporating technical changes the department made after the emergency regulations were sent to the committee. The corrections include (1) deleting § 8-701(m) of the Natural Resources Article, which contains the definition of "personal watercraft," from the citation of statutory authority; and (2) deleting the term "rider" from Regulation .04M of COMAR 08.18.40, because

the department is not requiring a rider, who is not the person controlling the thrust of the vessel, to carry a certificate of boater safety education.

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 Department of Legislative Services concurs but notes that the department's description of the small business impact as "allow[ing] commercial livery operators the opportunity to continue with their business plans for the summer of 2015" may imply that the regulations allow the commercial jetpack livery operators to conduct business. Based on discussions with the department, however, it does not appear that these operators are prevented from conducting business in the absence of these regulations. These regulations do, however, establish standards that protect the viability of the industry and prevent existing operators from losing business to other operators that do not follow the same standards.

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