

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
Department of Natural Resources**
(DLS Control No. 15-061)

Overview and Legal and Fiscal Impact

These regulations modify existing provisions governing boat livery operations and requirements specific to personal watercraft livery operations and establish requirements and restrictions specific to jetpack vessel livery operations. The regulations also prohibit personal watercraft and jetpack vessels owned or leased by livery vessel owners operating in Worcester County from being operated in specified locations.

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: 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. 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 period 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 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. 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) establish regulations governing the personal and commercial use of jetpack vessels (COMAR 08.18.40); (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

Similar to the emergency regulations implemented in 2014, these regulations (1) update and modify existing provisions governing boat livery operations and requirements specific to personal watercraft livery operations and (2) establish requirements and restrictions specific to jetpack vessel livery operations. More specifically, the regulations:

Boat Livery Operations

- require the record kept by a livery owner for each vessel rented to show (1) the name and address of the person operating or riding on the vessel at the time of departure rather than the name of the person renting and (2) emergency contact information;
- clarify that a livery owner, agent, or employee may not rent or lease a vessel to an *operator* born after July 1, 1972, unless the operator has a specified boating safety certificate;

Personal Watercraft Livery Operations

- require that both the personal watercraft operator and the renter sign a statement included in the rental contract indicating that the renter or operator has read and understands certain posted regulations;
- require a livery owner that has entered into a certain agreement with the department to provide guides certified by the department to oversee operators of personal watercraft in specified waters;

Jetpack Vessel Livery Operations

- require a jetpack vessel livery owner to take specified actions pertaining to the jetpack regulations in COMAR 01.18.40, including prominently displaying the regulations and advising renters and riders to read the regulations;
- prohibit a jetpack vessel livery owner, agent, or employee from (1) allowing a vessel to depart the premises unless the operator is an agent or employee trained and certified in the operation of jetpack vessels and (2) leasing or renting a jetpack vessel to a rider under the age of 14 years;
- require a jetpack vessel livery owner, agent, or employee to (1) operate the jetpack vessel for all rentals and (2) when operating a jetpack vessel on specified tidal and navigable waters, possess a valid U.S. Coast Guard license for the operation of an uninspected passenger vessel;

- require the rescue vessel used in a jetpack vessel livery operation to have a specified “international orange” flag 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 (1) unless the rider is trained in the proper use of the jetpack vessel by the manufacturer or its authorized representative and (2) in marked or unmarked navigational channels;
- authorize a jetpack vessel livery owner, agent, or employee to initiate operation of a jetpack vessel in an area of water with a depth of at least four feet, but require the operator to then move to an area of water with a depth of at least six feet;
- require all jetpack vessel livery observers to possess a valid first aid and CPR certificate;

Prohibited Areas

- prohibit the operation at any time 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 specified penalties and fines.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 8-704(b), 8-712, and 8-712.2 of the Natural Resources Article as legal authority for these regulations. While § 8-704(b) authorizes the department to adopt a program relating to, among other things, the placement and mooring of buoys, the department should have cited all of § 8-704. 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.

With the addition of all of § 8-704, the cited 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 is necessary for these regulations in order 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 (1) substitute the defined term “vessel” for the undefined term “boat” in COMAR 08.04.08.01 as appropriate to clarify that the regulations apply to livery operations for all types of vessels, including personal watercraft and jetpack vessels and (2) revise the citation of statutory authority to include all of § 8-704 of the Natural Resources Article.

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.

Contact Information

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

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