

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
Department of Natural Resources**
(DLS Control No. 15-064)

Overview and Legal and Fiscal Impact

These regulations modify restrictions and exemptions relating to the use of personal watercraft on State waters. The regulations also repeal provisions establishing prohibited areas for the operation of personal watercraft owned or leased by livery vessel owners operating in Worcester County because the provisions are being incorporated by concurrent action in the regulations governing livery operations.

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 – Speed Limits and Operation of Vessels: Personal Watercraft:
COMAR 08.18.02.03, .04, .05, and .06

Legal Analysis

Background

In three other concurrent actions, the Department of Natural Resources is (1) establishing regulations governing the personal and commercial use of jetpack vessels, a type of vessel new to Maryland waters (COMAR 08.18.40); (2) making related revisions to the regulations governing boat livery operations, including transferring the prohibition on operating personal watercraft owned or leased by livery vessel owners in Worcester County from Regulation .06 to Regulation .08 (COMAR 08.04.08); and (3) allowing the use of jetpack vessels on Deep Creek Lake at specified times (COMAR 08.18.33). With the exception of the Deep Creek Lake regulations, these emergency regulations are similar to previous emergency regulations that were developed and implemented by the department for the 2014 boating season.

The department advises that it worked cooperatively with commercial livery operators to develop the regulations for the safe operation of jetpack vessels and personal watercraft. The department also discussed the regulations with other stakeholders, including the Maryland Boat Act Advisory Committee and the Deep Creek Lake Policy & Review Board. Testimony regarding issues that arose during 2014 was presented and considered at the public meeting of the Maryland Boat Act Advisory Committee on October 22, 2014.

Summary of Regulations

These regulations make the following changes that are identical to the emergency regulations implemented in 2014:

- define “restricted visibility” and prohibit the operation of a personal watercraft within an area of restricted visibility;
- repeal duplicative provisions and clarify that any person who leases, rents, or otherwise receives compensation for the use of personal watercraft must comply with the department’s regulations governing personal watercraft livery operations; and
- repeal provisions that establish prohibited areas for the operation of personal watercraft owned or leased by livery vessel owners operating in Worcester County.

In addition to changing the name of a heading, these regulations make the following new changes:

- modify an exemption from the restrictions and requirements applicable to the use of personal watercraft for specified activities that are approved by the department or the U.S. Coast Guard to exempt only activities approved by the department;
- clarify that a person who violates any provision of Chapter 2 of COMAR 08.18 is subject to certain penalties and fines; and
- add § 8-712.2 of the Natural Resources Article to the citation of legal authority for the regulations.

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 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 indicates that the study period will culminate with a public hearing.

Technical Corrections

Please note that the department has indicated that it will submit a replacement page incorporating a technical change the department made after the emergency regulations were sent to the committee. The correction adds § 8-712.2 of the Natural Resources Article to the citation of legal authority for the regulations.

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 these regulations make less substantive changes than other emergency regulations relating to jetpack vessels being proposed concurrently. In addition, 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