



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2023-0461]

RIN 1625-AA08

### Special Local Regulation; Back River, Baltimore County, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters, located in Baltimore County, MD, during activities associated with an air show event which will be held on three separate occasions between July 14, 2023 and July 16, 2023. This rule prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

**DATES:** This rule is effective from 6 p.m. on July 14, 2023 through 4 p.m. on July 16, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0461 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST2 Hollie Givens, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2596, email [MDNCRMARINEEVENTS@USCG.MIL](mailto:MDNCRMARINEEVENTS@USCG.MIL).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows LLC of Clearfield, PA, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River Airshow from 7 p.m. to 8 p.m. on July 14, 2023, from 2 p.m. to 3 p.m. on July 15, 2023, and from 2 p.m. to 3 p.m. on July 16, 2023. High speed, low-flying civilian and military aircraft air show performers will operate within a designated, marked aerobatics box located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being held adjacent to Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and from near or actual collisions between waterway users and participants or spectator vessels if normal vessel traffic were allowed to interfere with the event. Additionally, these hazards could affect vessels in a designated navigation channel and adjacent to waterside residential communities if the locations of these activities were not restricted. In response to these potential hazards, on June 1, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Back River, Baltimore County, MD (88 FR 35802). There, we stated why we issued the NPRM to promulgate the special local regulation, which will be subject to enforcement beginning an hour before each show begins and ending an hour after it ends, and we invited comments on our proposed regulatory action related to this

air show. During the comment period, which ended July 3, 2023, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Because there are less than 30 days between now and the date of the event, it would be impracticable and contrary to the public interest to make the regulation effective 30 days after publication in the **Federal Register**. Doing so would delay safety measures necessary to respond to potential safety hazards associated with this marine event. Immediate action is needed to protect participants, spectators, and other persons and vessels during the air show event on these navigable waters.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the air show being held on three occasions, occurring between July 14, 2023 and July 16, 2023, will be a safety concern for anyone operating within certain waters of Back River in Baltimore County, MD near the event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published June 1, 2023. Except for the addition of language stating the rule's effective period, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes special local regulations from 7 p.m. on July 14, 2023 through 4 p.m. on July 16, 2023. The regulated area will cover all navigable waters of Back River within an area bounded by a line connecting the following point: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W,

thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This rule provides additional information about areas within the regulated area and their definitions. These areas include "Aerobatics Box" and "Spectator Areas."

The duration of the periods the special local regulations will be subject to enforcement, and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, which is scheduled from 7 p.m. to 8 p.m. on July 14, 2023, from 2 p.m. to 3 p.m. on July 15, 2023, and from 2 p.m. to 3 p.m. on July 16, 2023. The COTP and the Coast Guard Event PATCOM have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area is required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2023 Tiki Lee's Shootout on the River Airshow participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Operators of vessels already at berth desiring to move those vessels when the event is subject to enforcement are required to obtain permission before doing so. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols is considered a spectator. Official Patrols are any vessel assigned or approved by the

Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels are required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. Only participant vessels will be allowed to enter the aerobatics box. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

The regulatory text appears at the end of this document.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small, designated area of Back River for the 9 total hours during which the rule will be subject to enforcement. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule allows vessels and persons to seek permission to enter the regulated area, and vessel traffic will be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and

you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 9 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.501T05-0461 to read as follows:

**§ 100.501T05-0461 2023 Tiki Lee's Shootout on the River Airshow, Back River, Baltimore County, MD.**

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Aerobatics Box.* The aerobatics box is a polygon in shape measuring approximately 5,000 feet in length by 1,000 feet in width. The area is bounded by a line commencing at position latitude 39°16'01.2" N, longitude 076°27'05.7" W, thence east to latitude 39°16'04.7" N, longitude 076°26'53.7" W, thence south to latitude 39°15'16.9" N, longitude 076°26'35.2" W, thence west to latitude 39°15'13.7" N, longitude 076°26'47.2" W, thence north to and terminating at the point of origin.

(3) *Spectator Areas.* – (i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is

bounded by a line commencing at position latitude 39°15'20.16" N, longitude 076°26'17.99" W, thence west to latitude 39°15'17.47" N, longitude 076°26'27.41" W, thence north to latitude 39°16'18.48" N, longitude 076°26'48.42" W, thence east to latitude 39°16'25.60" N, longitude 076°26'27.14" W, thence south to latitude 39°15'40.90" N, longitude 076°26'31.30" W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area*. The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16'01.64" N, longitude 076°27'11.62" W, thence south to latitude 39°15'47.80" N, longitude 076°27'06.50" W, thence southwest to latitude 39°15'40.11" N, longitude 076°27'08.71" W, thence northeast to latitude 39°15'45.63" N, longitude 076°27'03.08" W, thence northeast to latitude 39°16'01.19" N, longitude 076°27'05.65" W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area*. The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15'30.81" N, longitude 076°27'05.58" W, thence south to latitude 39°15'21.06" N, longitude 076°26'56.14" W, thence east to latitude 39°15'21.50" N, longitude 076°26'52.59" W, thence north to latitude 39°15'29.75" N, longitude 076°26'56.12" W, thence west to and terminating at the point of origin.

(b) *Definitions*. As used in this section:

*Aerobatics Box* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by this section.

*Captain of the Port (COTP)*, Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to

act on his behalf.

*Event Patrol Commander* or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means a person or vessel registered with the event sponsor as participating in the “2023 Tiki Lee's Shootout on the River Airshow” event, or otherwise designated by the event sponsor as having a function tied to the event.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.*

(1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Effective period.* This section will be in effect from 6 p.m. on July 14, 2023 to 4 p.m. on July 16, 2023.

(f) *Enforcement periods.* This section will be subject to enforcement from 6 p.m. to 9 p.m. on July 14, 2023, from 1 to 4 p.m. on July 15, 2023, and from 1 to 4 p.m. on July 16, 2023.

Dated: July 6, 2023.

David E. O'Connell,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
[FR Doc. 2023-14681 Filed: 7/11/2023 8:45 am; Publication Date: 7/12/2023]