

and procedures governing the RMC consultation process and the role of RMC members. In addition to the RMC, the rule requires DCOs to establish one or more market participant risk advisory working groups (RWGs) that must convene at least twice a year, and adopt written policies and procedures related to the formation and role of the RWG.

I appreciate that the staff took many commenters' suggestions to make the rule more flexible for DCOs while still adhering to the Part 39 Core Principles. For example, the final rule does not categorically treat a DCO's proposal to clear a new product as a matter that could materially affect the DCO's risk profile, but instead provides flexibility to determine materiality on a case-by-case basis and to then require RMC consultation pursuant to § 39.24(b)(11). Staff recognized that this could result in unnecessary administrative costs and delays in launching new products, and, importantly, that DCOs are uniquely situated to determine what constitutes a new product.

Providing Regulatory Clarity To Promote Compliance

I appreciate that the staff made revisions to certain rule provisions in response to my concerns regarding regulatory clarity. If a rule is confusing, it can actually inhibit compliance simply because it is unclear what the Commission's expectations are for our registered entities or registrants. Mind-reading is not a good approach for rule implementation.

For example, the preamble to the final rule now provides further clarification that DCOs have flexibility on how they structure the RMC, and the difference between a DCO structuring an RMC as an advisory committee to satisfy § 39.24(b)(11), and the risk management committee of a board of directors, especially for public companies and their subsidiaries and affiliates.

Proposed § 39.24(b)(11) required a DCO to maintain governance arrangements that establish one or more RMCs, and a DCO's board of directors to consult with, and consider and respond to input from, its RMC(s) on all matters that could materially affect the risk profile of the DCO, including any material change to the DCO's margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products.

My concern—reflected in various comment letters—was that the proposal was unclear whether an RMC was required to be structured as a board-level committee, or if the RMC could be structured as an advisory committee, *and* the DCO could still have a separate risk management committee of the board of directors for corporate governance purposes. I appreciate that the preamble to the final rule now clarifies that if a DCO structures its RMC as an advisory committee to satisfy the requirements of § 39.24(b)(11), it may also have a separate board-level risk management committee that is comprised of members of the board of directors that is not subject to § 39.24(b)(11).

If the DCO's RMC for purposes of § 39.24(b)(11) was a board-level committee, our RMC requirements would potentially

conflict with existing standards for corporate governance. I was concerned the proposal inaccurately suggested a requirement that the RMC must be structured as a board-level committee, and consequently, that DCOs had to appoint clearing members and customers to their boards of directors to meet the requirements of § 39.24(b)(11), among other changes to board procedures and processes. How a firm establishes board committees and delegates responsibilities is an important corporate governance decision and process, and subject to existing corporations law and other regulations.⁶ Comment letters reflected these concerns and confusion, especially since the SEC has proposed similar (but not identical) risk management committee requirements for clearing agencies, and *does* require that clearing agencies establish a board-level risk management committee.

In addition, at my request, the staff has removed the word "independent" from the final rule text with respect to members of an RMC for purposes of § 39.24(b)(11), because this issue was already addressed by the rule's requirements for conflicts of interest policies and risk-based input, and it is different from the concept of "independence" for outside board directors. This issue becomes particularly acute if the RMC is structured as a board-level committee, or if a board director is serving on an RMC that is structured as an advisory committee. I do not believe that the Commission should interpret or opine on corporate governance law or Delaware corporations law requirements regarding the duties of the board of directors, including fiduciary duties. I believe that the proposal's concept of "independence" was more akin to input by RMC members that is informed by expertise with avoidance of conflicts of interest, and the final rule appropriately reflects this.

Conclusion

In closing, I'd like to thank my fellow Commissioners and the staff for addressing my concerns, and especially thank the staff for their hard work on this rule designed to provide a forum for stakeholders to be engaged in the sound risk management of our clearing system for derivatives markets. The diverse viewpoints provided by stakeholders, including clearing members and their customers, should help to increase the dialogue between DCOs and clearing members and result in enhanced resilience for CCPs.

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⁶ See, e.g., Matteo Tonello, "Should Your Board Have a Separate Risk Committee?" Harvard Law School Forum on Corporate Governance (Feb. 12, 2012) (based on a Conference Board Director Note by Carol Beaumier and Jim DeLoach, which was adapted from Board Perspectives: Risk Oversight, Profitviti, Issue 24, October 2011), available at <https://corpgov.law.harvard.edu/2012/02/12/should-your-board-have-a-separate-risk-committee/>.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0462]

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 a high-speed power boat event, which will either take place as scheduled (on July 15, 2023) or on an alternate date (July 16, 2023), in case of inclement weather. 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 8 a.m. on July 15, 2023, to 5 p.m. on July 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about 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.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
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, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River from 9 a.m. to 5 p.m. on July 15, 2023. The individually-timed power boat speed runs event consists of approximately 40 participants competing on a designated, marked linear course located on Back River between Porter Point to the south and Stansbury Point to the north. The event is being staged out of Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. In the event of inclement weather on July 15,

2023, the event will be conducted from 9 a.m. to 5 p.m. on July 16, 2023. Potential hazards from the high-speed power boat event include collisions between participants operating within and adjacent to the designated navigation channel and with vessels operating within that channel or within approaches to local marinas and boat facilities and waterfront residential communities. The COTP Maryland-National Capital Region has determined that these potential hazards would be a safety concern for anyone participating in this event and for other vessels operating within specified waters of Back River. In response, on June 15, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Back River, Baltimore County, MD (88 FR 39206). There, we stated why we issued the NPRM and we invited comments on our proposed regulatory action related to this event. During the comment period, which ended June 30, 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**. As there are fewer than 30 days remaining before 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**. Delaying the effective date of this rule would delay the implementation of safety measures necessary to respond to the potential safety hazards associated with this marine event. These potential hazards include collisions between participants operating within and adjacent to the designated navigation channel and with vessels not affiliated with the event operating within that channel and within approaches to local marinas, boat facilities, and waterfront residential communities. Immediate action is needed to protect participants, spectators, and other persons and vessels during the high-speed power boat 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 high-speed power boat event to be held on July 15, 2023 (or on a rain date of July 16, 2023) will be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, in or near the event area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 1, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM other than the addition of language specifying the effective date of the rule and the deletion of an extraneous definition of “aerobatics box.”

This rule establishes special local regulations effective from 8 a.m. on July 15 to 6 p.m. on July 16, 2023 and subject to enforcement from 8 a.m. to 6 p.m. on each of those days. The regulated area will cover 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 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 “Course Area,” “Buffer Area,” and “Spectator Areas.”

The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9 a.m. to 5 p.m. on July 15, 2023, (with an alternate date of July 16, 2023 in case of inclement weather). The COTP and the Coast Guard Event PATCOM will 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 will be 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 participants in the 2023 Tiki Lee’s Shootout on the River 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. Vessel traffic will be able to transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel neither registered with the event sponsor as a participant nor assigned as an official patrol will be considered a spectator. An official Patrol is any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board 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 will be required to operate at a safe speed that minimizes wake while within the regulated area, and 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. 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

a total of 10 hours during which the area will be subject to enforcement. This waterway mainly supports 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 V.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 the Coast Guard’s 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 shoreside activities in the event area lasting for 10 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 § 100.501T05–0462 to read as follows:

§ 100.501T05–0462 2nd Annual Tiki Lee’s Shootout on the River, 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) *Course Area.* The course area is a polygon in shape measuring

approximately 1,400 yards in length by 50 yards in width. The area is bounded by a line commencing at position latitude 39°16'14.98" N, longitude 076°26'57.38" W, thence east to latitude 39°16'15.36" N, longitude 076°26'55.56" W, thence south to latitude 39°15'33.40" N, longitude 076°26'49.70" W, thence west to latitude 39°15'33.17" N, longitude 076°26'51.60" W, thence north to and terminating at the point of origin.

(3) *Buffer Area*. The buffer area is a polygon in shape measuring approximately 100 yards in east and west directions and approximately 150 yards in north and south directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16'18.72" N, longitude 076°27'01.74" W, thence east to latitude 39°16'20.36" N, longitude 076°26'52.39" W, thence south to latitude 39°15'29.27" N, longitude 076°26'45.36" W, thence west to latitude 39°15'28.43" N, longitude 076°26'54.94" W, thence north to and terminating at the point of origin.

(4) *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:

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 "2nd Annual Tiki Lee's Shootout on the River" 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 effective from 8 a.m. on July 15, 2023 to 5 p.m. on July 16, 2023.

(f) *Enforcement periods*. This section will be subject to enforcement from 8 a.m. to 6 p.m. on July 15, 2023, and from July 15, 2023, from 8 a.m. to 6 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.

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