

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

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ASO SC D Beaufort, SC [Amended]

Beaufort MCAS/Merritt Field, SC
(Lat. 32°28'50" N, long. 80°43'09" W)
Beaufort Executive Airport
(Lat. 32°24'44" N, long. 80°38'04" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.6-mile radius of Beaufort MCAS/Merritt Field, excluding that airspace within a 1-mile radius of the Beaufort Executive Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

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ASO SC E2 Beaufort, SC [Amended]

Beaufort MCAS/Merritt Field, SC
(Lat. 32°28'50" N, long. 80°43'09" W)
Beaufort Executive Airport
(Lat. 32°24'44" N, long. 80°38'04" W)

That airspace extending upward from the surface within a 5.6-mile radius of Beaufort MCAS/Merritt Field, excluding that airspace within a 1-mile radius of the Beaufort Executive Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

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ASO SC E5 Beaufort, SC [Amended]

Beaufort MCAS/Merritt Field, SC
(Lat. 32°28'50" N, long. 80°43'09" W)
Beaufort Executive Airport
(Lat. 32°24'44" N, long. 80°38'04" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Beaufort MCAS/Merritt Field and a 6.5-mile radius of Beaufort Executive Airport.

Issued in College Park, Georgia, on May 2, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–10187 Filed 5–11–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[FAA–2018–0432]

Notice of Final Policy and Procedures on the Temporary Closure of Airports for Non-aeronautical Purposes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: This notice announces the Final Policy and procedures for an airport sponsor requesting approval of the temporary closure of a federally obligated airport for a non-aeronautical purpose. Under federal law, the Secretary of Transportation may approve a project grant application for an airport development project only if the Secretary receives written assurances that a proposal to close the airport temporarily for a non-aeronautical purpose must first be approved by the Secretary. Airport operators that have accepted Federal financial assistance are obligated to maintain the airport for public aviation use. Under certain conditions, an airport sponsor may temporarily close the airport or part of the airport for a non-aeronautical event, if the FAA approves the airport sponsor's request in advance of a non-aeronautical event. The Secretary's review and approval, delegated to the Federal Aviation Administration, constitutes a Federal Action that requires an assessment under the National Environmental Policy Act. The FAA adopts this policy statement to provide additional guidance for airport operators to comply with the requirements of the statute and obtain an FAA decision in a timely manner for the conduct of their non-aeronautical event at the airport.

DATES: Effective June 12, 2023.

FOR FURTHER INFORMATION CONTACT: Lorraine Herson-Jones, (202) 267–3085; Lorraine.herson-jones@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Airport Sponsor Obligations

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) or other Office of Airport grants have agreed to comply with certain Federal laws and policies included in each grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97–248), as amended and recodified at 49 U.S.C. 47107(a)(1), and the contractual airport sponsor assurances require that the sponsor make the airport available for aviation use. Title 49 U.S.C. 47107(a)(8) requires grant agreements to include an assurance that “a proposal to close the airport temporarily for a non-aeronautical purpose must first be approved by the Secretary [of Transportation].” This requirement is implemented by Grant Assurance 19, *Operation and Maintenance*, which incorporates the requirement that a temporary airport closure for a non-aeronautical purpose be first approved by the Secretary. The Secretary's approval authority has been delegated to the FAA as part of the administration of the AIP. It is the longstanding policy of the FAA that airport property be available for aeronautical use unless a particular non-aeronautical use is approved by the FAA.

Each year many sponsors of federally obligated airports request temporary closures of a ramp, taxiway, runway or an entire airport for a non-aeronautical event, typically for a period of one to three days. The FAA must approve any such request in advance before the event can take place. While the FAA offices generally applied similar criteria to the evaluation of requests for temporary closure, the agency has not provided uniform guidance for sponsors on the process to request a temporary closure. The FAA believes that a more detailed description of what is needed to support a request for temporary closure of airport facilities, and a clear listing of the obligations of an airport sponsor before, during and after a closure, will benefit both the airport sponsors and the FAA offices handling these requests. Conducting an event on airport property is a complex undertaking. Whether the purpose is an aeronautical event (e.g., air show) or non-aeronautical event, and whether the event requires a full closure of the airport or simply a closure of a ramp or taxiway, the event will require detailed planning and preparation that should not be taken lightly. The airport sponsor's primary responsibility is to

operate a safe airport providing access to aviation community.

The FAA affirms in this Notice that federally assisted airports should remain open for aviation use. Where an airport sponsor does request a temporary closure of airport facilities for a nonaeronautical event, this Notice describes the required contents of a request, and the criteria for the FAA's approval.

Summary of Key Provisions

The policy statement provides a standard request process for approval of nonaeronautical events at a federally obligated airport, and a detailed explanation of the measures an airport sponsor will need to take in order to protect the airport and comply with the terms of the FAA grant agreements. In summary:

- The airport sponsor should meet with the local FAA office no later than 120 days before the event to discuss their plans and develop a timetable for FAA review and approval.
- The airport sponsor must file Form 7460 Notice of Proposed Construction or Alteration at least 90 days before the event.
- The airport sponsor should submit at least 60 days in advance a written request for temporary closure to the FAA that addresses justification, the benefit to civil aviation, timetable, map, safety, communications with airport users, environmental review, and financial issues for review and approval.
- The airport sponsor must follow the Process for Notification of Airport Users including Notice to Air Missions (NOTAM).

II. Discussion of Public Comments

The FAA received public comments on the proposed policy from National Business Aviation Association, National Air Transportation Associations (NATA), San Carlos Airport & Pilots Association, the California Pilots Association, Georgia Department of Transportation, City of Manassas Airport Department, Manassas, Virginia and airport operators and airport users. In general, most commenters support the FAA's proposed policy regarding approval of the temporary closure of a federally obligated airport for a nonaeronautical purpose; however, one commenter objected to any approval of closing an entire airport for nonaeronautical events.

1. Burden of the Overall Approval Process

Manassas Regional Airport representative indicated that the entire application process for "Temporary

Airport Closure" seems very cumbersome. While some airports may become familiar with the process, smaller airport may have difficulty completing the process, which may ultimately dissuade them from hosting events. The commenter also inquired about the possibility of using a temporary event permit process rather than an agreement with the event promoter.

The Final Policy: The primary purpose of this policy is to outline a more defined process that sponsors can follow to comply with the law, 49 U.S.C. 47107(a)(8) requiring the Secretary of Transportation (delegated to the FAA) to approve the closure of an airport for nonaeronautical event. In implementing the requirements of this statute, the FAA has several objectives: first, the airport sponsor will continue to operate the airport safely. The airport sponsor has a plan identifying the necessary labor and resources to ensure that this objective is met. Second, the airport sponsor has taken the necessary steps to notify the airport users including air carriers, fixed base operators, and tenants of the impending event and, when possible, take steps to alleviate the impact of the event on airport users. Fixed base operators and tenants rely on uninterrupted airport access to conduct business and earn a livelihood. When airport access is denied or restricted, it can have a detrimental impact on airport users. Third, that the Federal investment in the airport is protected. The Federal Government invests over \$3.8 billion annually to maintain the Nation's airports and ensure that these assets are available for the purpose for which they were designed.

Regarding the suggestion of a permit versus a written agreement, the airport sponsor is responsible for licensing and procurement. Whether it is a permit or agreement, the document between a sponsor and the event promoter must assign responsibility for essential tasks, ensure safety, and contain indemnification and hold harmless provisions to protect the sponsor for damages, liabilities, and judgments. The document must protect the airport from damage and ensure that the airport be repaired or restored at the promoter's cost.

2. Clarification of the Term "Federally Obligated Airports"

National Business Aviation Association recommends the FAA clarify the term "federally obligated" airports, to identify the sources of an airport sponsors Federal obligations.

The Final Policy: FAA Order 5190.6B, Airport Compliance Manual, September 30, 2009 indicates that a sponsor's Federal obligations can include: (a) Grant agreements issued under the FAA administered airport development grant programs including the Airport Improvement Program (AIP) under 49 U.S.C. 47101, *et seq.*; (b) Instruments of surplus property transfer issued under the provisions of section 13(g) of the Surplus Property Act of 1944, as amended 49 U.S.C. 47151–47153; (c) Instruments of nonsurplus conveyance issued under section 16 of the 1946 Airport Act, as amended; under section 23 of the 1970 Airport Act, as amended; or under section 516 of the AAlA, as amended following recodification as 49 U.S.C. 47125.

3. Authority To Approve the Closure of an Entire Airport

National Business Aviation Association stated that the FAA "cannot allow closure of an entire airport". The FAA can only allow a partial closure for nonaeronautical purpose.

The Final Policy: Although closures of entire airports for nonaeronautical purposes should be rare and allowed only when there is a benefit to civil aviation, Congress clearly anticipated the possibility of requests for airport closures. Title 49 U.S.C. 47107(a)(8) requires grant agreements to include an assurance that "a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary [of Transportation]." Further, FAA Order 5190.6B, Section 7.21(b)(1) states: "An airport developed or improved with federal funds may not be closed to use the airport facilities for special outdoor events, such as sports car races, county fairs, parades, car testing, model airplane events, etc., without FAA approval." Closures of any portion of an airport for nonaeronautical purposes must receive FAA approval. Impacts to aviation need to be thoroughly assessed and considered. Therefore, closing the only runway at an airport should be avoided, if possible.

4. The Need for an Emergency Response Plan

National Air Transportation Association recommends the FAA require an emergency response plan (beyond the safety plan), scalable to the event and activities planned. This plan should include incident command structure, responsible agencies, emergency contacts, and mutual aid and evacuation routes.

The Final Policy: The airport operator is responsible for care, control, and

protection of property and people on an airport. Whether it is a small general aviation airport or a major air carrier airport. The services can range from a dedicated on-airport fire department or first responder services in the community that respond to accidents at the airport. Best management practices dictate that support services are engaged and participate in the planning of the event. Each airport should already have emergency procedures for handling incidents and accidents at the airport. The FAA encourages airport sponsors to conduct emergency response planning and develop a plan based upon their needs and scope of the event. An “emergency plan” requiring an incident command structure is too prescriptive; local officials are in the best position to decide the resources required.

5. Schedule of Submissions

National Air Transportation Association recommends the FAA adopt a schedule of submission setting a deadline for submitting documents for approval—similar to the 120-day period required for construction events on the airport by FAA Form 7460—Notice of Alteration and Construction. NATA also suggests that the application for an event follow a prescribed timetable with FAA approval due dates.

Manassas Regional Airport representative suggested a 90-Day review period in lieu of 100-Days. Manassas Regional Airport representative mentioned that there is a clear lead-time for a 7460 form, there is no mention of a lead-time for submitting a proposal to the Region or ADO. Manassas Regional Airport representative requested that the FAA consider allowing a single proposal submission for recurring events, rather than requiring a new application every year.

The Final Policy: Regarding the schedule for submission, as a first step in planning a public event at an airport, the airport operator should meet with the local FAA Airports District Manager or Regional Office (RO) as soon as possible. An initial meeting should occur at least 120 days before the planned event. Airport managers know that the closure of the airport, a runway or aircraft movement area will result in an impact to airport users. The Airport manager’s objectives must be, first, determine if it is possible to conduct the event safely with the minimum disruption to the airport users. Second, identify what steps the airport can take to ensure minimum disruption and impact to airport users. Airport managers know that in certain cases FAA Form 7460, Notice of Proposed

Construction or Alteration must be filed and a Notice to Air Missions must be issued. The event constitutes a Federal Action; therefore, the FAA will review the airport manager’s environmental submission and provide an approval. FAA examines a temporary closure request on a case-by-case basis.

FAA acknowledges single proposal submission for recurring events repeat are typically easier to review and less of an administrative burden for promoters. The FAA will leave this decision to the discretion of the local FAA office for nonaeronautical events that do not require closure of aircraft movement (e.g., promotes uninterrupted aeronautical use of airports and airport facilities). For situations involving a closure of aircraft movement areas, each event will be treated as a new event.

6. Potential Impacts on Aviation

San Carlos Airport Pilots and California Pilots Association (Pilots Association) believes the airports should remain available for aviation purposes. A “proposed nonaeronautical use of an airport should not prevent the airport from realizing its economic potential. The Pilots Association also urges FAA to consider the collective impact of multiple short closures on airport operations. The Pilots Association recommends better coordination between the airport sponsor and aeronautical tenants and users; tenants and users should have an opportunity to give feedback on potential closures. The Pilots Association asks that FAA require certification of notifications to stakeholders of the event and provide an opportunity to give feedback. The Pilots Association also recommends the airport sponsor should post all airport funds and resources used to subsidize the event and any physical damages or personnel injuries the direct result of the event.

The Final Policy: FAA’s Policy and Procedures Concerning the Use of Airport Revenue (64 FR 7704) February 16, 1999 permits the use of airport property for public recreational purposes and addresses the use of airport funds to support community activities and for participation in community events. The expenditures are directly and substantially related to the operation of the airport. The airport sponsor may consider the “directly and substantially related to air transportation” standard to be met if the contribution has the intangible benefit of enhancing the airport’s acceptance in local communities impacted by the airport. The use of airport property and the expenditure of airport revenue for a

nonaeronautical event must be performed in accordance with an airport sponsor’s grant assurance obligations. Airport revenue cannot be used toward conducting the event (e.g., use of airport staff must be reimbursed, equipment rental, and advertisement of the event cannot be funded in part or whole by the airport). The FAA acknowledges the airport sponsor should keep records of any inspection and repair costs, resulting from a nonaeronautical event. While the FAA will not require an airport sponsor to post event expenditures, this information is an integral part of an airport sponsor’s request and should be publicly available.

Regarding the impact of multiple short closures on airport operations, the Federal government makes a capital investment in a local airport to address the needs of aeronautical users and improve the airport’s access to the National Airport System. An airport sponsor’s justification for capital improvements does not include justifying the need for facilities to support auto races, fun runs or other nonaeronautical events. These events are treated as rare occurrences or as incidental events. When federally funded assets intended to support access to the National Airport System are regularly used for nonaeronautical events, it raises questions about the need for a Federal investment in the airport.

Regarding the suggestion that the FAA require certification of notifications to stakeholders of the event and provide an opportunity to give feedback, the FAA recognizes airport sponsors are in the best position to understand airport users’ specific needs for airport access and generally act in the airport’s best interest. The FAA expects airport sponsors to work with airport users to minimize the impact on airport users. The FAA encourages more intensive outreach to ensure safety and efficiency during the review process. The policy currently provides a baseline requirement to notify tenants and users. Airport users have redress through the Part 13 informal complaint process or the formal Part 16 complaint.

7. Block Grant States Procedures

Georgia Department of Transportation recommends that sponsors in Block Grant states coordinate with the Block Grant Agency by submitting an application in writing, in advance, and provide a schedule for various steps in the application process.

The Final Policy: Airport sponsors in Block Grant states should submit Temporary Closure requests to Block

Grant State agencies who will work with the FAA to complete the review.

8. Pilot Input

Theodore Gablin asked for a method for pilots to object to the request to perform nonaeronautical activities and suggested penalties for a sponsor that fails to comply with the policy.

The Final Policy: FAA Policy requires airport sponsors to consult with airport users and tenants regarding planned nonaeronautical events that may result in airport closures or a restriction on airport operations. The FAA expects that airport sponsors will work with airport users to resolve differences and develop a plan to minimize impacts to airport users. Airport users have redress to the FAA through the Part 13 informal complaint process or the formal Part 16 complaint.

9. Clarification on Obtaining Fair Market Value

Manassas Regional Airport representative asked for clarity on how airports obtain fair market value for runways and taxiways.

The Final Policy: Airport operators can obtain comparable land rental values from on-airport ground lease rates for nonaeronautical use, adjacent airport land or information rental rates from local commercial realtors or the city's community economic development agency.

10. Suggested New 7460 Forms

Manassas Regional Airport representative suggested that Form 7460 include temporary closures for nonaeronautical activities and create a separate form to prevent confusion among crane/construction companies and event sponsors.

The Final Policy: The FAA believes that Form 7460 is adequate for identifying obstructions connected with nonaeronautical activities on an airport. The FAA cannot create a separate notice for cranes. FAA Form 7460 is required by regulation to evaluate the effect of proposed construction or alteration on air navigation. Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C. 44718. The FAA Form 6000–26 (08/13) Airport Sponsor Strategic Event Submission is used by airport sponsors to notify the FAA of projects or events, which will result in runway or taxiway closures, or navigational aid outages etc. This form should be submitted 60 days prior to the event to the FAA Air Traffic Organization (ATO).

11. Proof of Nonprofit Status

Manassas Regional Airport representative suggested that airport sponsors should require nonprofit charitable organizations submit proof of their status.

The Final Policy: The FAA agrees that the airport sponsor's examination of a promoter's nonprofit status is good business practice.

12. Addressing Nonaeronautical Events That Occur Along With Aeronautical Events

Manassas Regional Airport representative asked that the FAA consider addressing temporary closures of airports for nonaeronautical purposes associated with aeronautical events (example: closing down a taxi lane for vehicle parking for an airshow). Basic guidelines for temporary closures for aeronautical purposes are described in FAA Order 5190.6B, Section 7.21(b)(2).

The Final Policy: FAA Order 5190.6B, paragraph 7.21 Temporary Closing an Airport for Special Event discusses both aeronautical and nonaeronautical events. Aeronautical events can include air shows, fly-ins, and aviation conventions. These events are normally used to promote some aspects of aviation. Airport funds can be used to support community activities if the expenditures are "directly and substantially related to air transportation" standard to be met if the contribution has intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport. Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA's Policy Concerning the Use of Airport Revenue (Revenue Use Policy) (64 FR 7704) February 16, 1999. Nonaeronautical events, such as auto races, carnivals, fun runs, are events that could be conducted off-airport and are not promoting aviation. Air Shows require a certificate of waiver authorization from the FAA Flight Standards. The FAA considers the event aeronautical if the majority of activities are aeronautical and promote aviation. However, if the majority of the events are nonaeronautical, this policy applies. Airport sponsors should consult the Revenue Use Policy and FAA Order 5190.6B, paragraph 17.14 Property for Community Purpose and paragraph 17.15, Exception for Community Use.

III. Policy on the Temporary Closure of Airports for Nonaeronautical Purposes

A. Introduction

The FAA believes that the primary purpose of public airports is to serve aeronautical users and therefore, airports should remain open and available for aviation use. However, under certain circumstances, an airport sponsor may request the FAA's approval of temporary closures for nonaeronautical activities or purposes, such as car shows, county fairs, parades, model airplane events, running events and fireworks. The FAA will not approve a closure if it would result in a negative impact to civil aviation.

In most cases, the impact to aviation, safety, security, liability, and other risks will outweigh the financial and community goodwill benefits promised to the airport for nonaeronautical activities. Closures of entire airports or closures of the only runway at an airport should be highly scrutinized, and only allowed when there is a net benefit to the airport. A nonaeronautical use of an airport should not prevent the airport from realizing its economic potential nor diminish its role in the system of airports.

Moreover, airport sponsors must not allow any nonaeronautical activity that will damage or impact the useful life of airport pavements, signs, markings, lighting or other infrastructure. Under Grant Assurance 11, airport sponsors are required to implement a pavement preventative maintenance program to ensure the useful life of the pavement is protected. As a result, car racing events should not be approved on recently rehabilitated (resurfaced or reconstructed) pavements. Moreover, airports are generally unsuitable locations for high velocity auto events, such as drag racing, and are likely to require additional liability insurance and crowd protection. These high-risk events should be highly scrutinized by both the sponsor and the ADO or region.

This policy provides procedures for airport sponsors who choose to submit a request for such closures and establishes benchmarks for safety for a nonaeronautical event.

B. Request for Temporary Airport Closure

To request a temporary airport closure for a nonaeronautical event, an airport sponsor must meet with the FAA at least 120 days to discuss their plans and develop a timetable for FAA review and approval. Within 60 days of the event, the airport sponsor must submit a written request for the event that includes the information outlined

below. In Block Grant states, the airport sponsor must submit the request to the State Block Grant Agency with a copy to the FAA Regional Airports Office or Airport District Office (ADO). The airport sponsor must provide sufficient information and assurances to indicate that each requirement has been or will be satisfied. The written request must address:

1. *Impact on aeronautical activities.* An estimate of the number of impacted aircraft operations (scheduled services, commercial, general aviation, military) and how this number was determined.
2. *Justification.* A written statement describing the nonaeronautical event and a justification for the event at the airport. If an event would require that aircraft operations be suspended during the event, a proposal must identify why closure of the airport is necessary, and how the proposed nonaeronautical use justifies loss of the use of the airport for the duration of the event. The statement should address alternative off-airport locations considered, and why these locations are not viable. The justification must also clearly identify the net benefit of the event to civil aviation.
3. *Timing.* The dates of the proposed closure periods including set up and take down period. Identify whether this is an annual or one-time event.
4. *Map.* A map depicting:
 - a. Location of nonaeronautical activity on airport (e.g., spectator areas, parking areas, staging areas, fueling, concession areas, closed areas),
 - b. Areas to be used for the nonaeronautical activity that have been developed or improved with Federal funds (identify the grant number and anticipated impact to the Federal investment),
 - c. Impacted Navigational Aids (NAVAIDs),
 - d. Location and description of elements that may affect the National Airspace System (NAS), and
 - e. Structures or other elements that may require a form 7460 application.
5. *Communications.* The request must document the airports sponsor's communications with airport users to discuss the details of the event, and address concerns and mitigate the impact of the event on users to the extent possible. The following contacts should be notified:
 - a. Tenants, fixed base operators (FBO), airlines, and local users,
 - b. Air traffic control tower,
 - c. Local aviation organizations,
 - d. Airport security and local law enforcement agencies, and
 - e. FAA Flight Standards District Office.

6. *Safety.* For a proposed closure of the airport to operations or a closure of any part of the airfield movement area or proposed obstructions to movement area associated safety clearances, the sponsor must prepare a Safety Plan, in coordination with local or state public safety officials, to include at least the following items:

- a. Special markings for the event, and removal and restoration of markings after the event.
- b. Notice to tenants and pilots, including appropriate NOTAMs and other methods.
- c. Reporting and marking of any structures affecting protected zones or surfaces.
- e. If applicable, a description of the mutual aid fire and rescue agreements and whether there needs to be a presence of mutual aid safety services during the event.
- d. Safe separation between aircraft operations and the public. These may include: special taxi routes, restricted access to terminal gates, crowd control, designated vehicular routes, staging areas, and structural barriers to protect the viewing public. The Sponsor and the event promoter are responsible for the safety of attendees; Sponsor will ensure that the event promoter provides sufficient barricades to ensure the public is protected.
- e. Sponsor's determination and analysis that there is no adverse effect on the airport's approved security plan.
- f. Where necessary to maintain the safety, security and efficiency of airport operations, Regions or ADOs should use applicable elements from the FAA Advisory Circular 150/5370-2, Operational Safety on Airports during Construction.
- g. The airport sponsor must provide timely advance notice of the nonaeronautical event to pilots and airport tenants, and to the Air Traffic Control (ATC) tower if applicable. The sponsor must issue appropriate NOTAMs to advise itinerant pilots of any limited availability of the airport during the event. The sponsor must provide advance notice to airport businesses and other tenants of any effect on use of airport property during the event. The sponsor should provide a Draft of the NOTAM(s) to be issued for the event.
- h. Filing of a Form 7460 may be necessary to obtain the FAA review of any temporary structures on the airport and use of airport property. The Form 7460 can be filed prior to or with the request for approval of closure, but must be filed no later than 90 days prior to the event to allow time for the FAA to

review, comment and response from proponent.

i. Post-event inspection and repair of any damage to airport property to assess the airport property prior to re-opening for aeronautical uses to identify and fix:

1. Damage to pavements, lighting, signs, markings and other airport infrastructure.
2. Temporary markings HAZMAT issues (if applicable).
3. Conduct Foreign Object Debris (FOD) sweep.
4. Identification of the party who will be responsible for funding any repairs and a timeframe within which the repairs will be made.
5. Indicate impacts to NAVAIDs and procedures for taking these out and in service.
6. Procedures and equipment to delineate closed areas (e.g., X on runways, fencing, gates, barricades).
7. *Financial.* The airport must recover fair market value (FMV) payment for the nonaeronautical use of airport property to the extent required by the *Revenue Use Policy*. Therefore, the airport sponsor must document how the airport will be compensated for the use of the airport for nonaeronautical events. The airport sponsor should assess the condition of airfield facilities and airport property in the event areas before the event, and have the event proponent acknowledge that condition in writing. The airport sponsor's agreement with the event sponsor must include the event proponent's binding written agreement to restore airport property to its pre-event condition and repair all damage to airport facilities resulting from the event. All repairs and restoration of property must be completed at the expense of the event proponent in a timely manner and in conformance with FAA standards. The sponsor should understand the following:
 - a. The airport sponsor must receive full compensation for the time of airport personnel and the use of airport resources for the event (e.g. police/airport operations overtime pay), but not necessarily staff time for review of the event.
 - b. Airport funds and resources may not be used to subsidize the event, except insofar as the event will be staged by the airport sponsor itself. Use of airport property for a nonaeronautical purpose at below fair market value payment is considered a subsidy.
 - c. The airport sponsor's agreement with the event promoter should contain the event promoter's binding written agreement to indemnify and hold harmless the airport sponsor for any damages, liabilities or judgments against

the airport sponsor relating to the use of the airport for the event.

d. For an event proposed by a commercial/for-profit party:

1. Financial benefits must be equal to at least the fair market value of the subject property use.

2. In-kind services or benefits must be equivalent to FMV compensation.

3. Airport revenue cannot be used toward conducting the event (*e.g.*, use of airport staff must be reimbursed, equipment rental, advertisement of the event cannot be funded in part or whole by the airport).

4. The event should also generate intangible benefits for the airport such as community goodwill and community interest.

e. For an event organized by a non-profit/charitable organization or by the airport sponsor itself on its own behalf. In all non-profit nonaeronautical cases there needs to be a benefit to the airport that clearly outweighs the loss or displacement of aeronautical activities. Examples of benefits to the airport may include:

1. Advertising for the airport included in the event advertising at no cost to the airport.

2. A percentage of ticket sales paid to the airport.

3. Intangible benefits (*e.g.*, community goodwill, increasing local awareness of the airport, encouraging local and community support of the airport, generating an interest in airport use).

IV. Airshows and Aeronautical Events

While 49 U.S.C. 47107(a)(8) and Grant Assurance 19 do not require Office of Airports approval of the temporary closure of an airport for aeronautical events in the processes of issuing an airshow waiver Flight Standards Service (AFS) will describe the safety conditions for the FAA's approval of the event. However, the AFS waiver relates to aircraft operations and the separation between aircraft operations and the viewing public. AFS will coordinate the ground operations plan with Regions and ADOs as appropriate. Events that are primarily nonaeronautical with an air show or other aeronautical event as an incidental activity should be reviewed by the Region or ADO.

V. Environmental Analysis Requirement

Approval of the closure of airport facilities for a nonaeronautical event is a Federal action that requires environmental review, under the National Environmental Policy Act (NEPA). The level of review will vary depending on the nature of the proposed event and should be

coordinated with the RO/ADO for review and approval.

Issued in Washington, DC.

Kevin C. Willis,

Director, Office of Airport Compliance and Management Analysis.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0168]

RIN 1625-AA08

Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of the Bush River and Otter Point Creek, in Maryland. This action is necessary to provide for the safety of life on these navigable waters located at Edgewood, MD during a high-speed power boat race on May 13, 2023 and May 14, 2023. This regulation prohibits persons and vessels (other than those already at berth at the time the regulation takes effect) from being in the regulated area unless authorized by the Captain of the Port, Sector Maryland-National Capital Region (COTP), or a designated representative.

DATES: This rule is effective from 9 a.m. on May 13, 2023, through 7 p.m. on May 14, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0168 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 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard; telephone 410-576-2596, email MDNCRWaterways@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

§ Section

U.S.C. United States Code

II. Background Information and Regulatory History

On November 11, 2022, the Kent Narrows Racing Association (KNRA) notified the Coast Guard that it will be conducting the Harford County Spring Nationals Inboard Hydroplane Race on May 13, 2023 and May 14, 2023 from 9 a.m. to 7 p.m. on both days. The high-speed power boat racing event consists of approximately 60 participating racing boats—including composite and wood hull inboard hydroplanes—12 to 28 feet in length. In response, on March 23, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD (88 FR 17467). There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the high-speed power boat race. During the comment period that ended April 24, 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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the high-speed power boat race scheduled to take place on May 13, 2023 and May 14, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event and for vessels that operate within the specified waters of the Bush River and Otter Point Creek. The purpose of this rule is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 23, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a regulated area from 9 a.m. on May 13, 2023 through 7