Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of TSP Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its interfund transfer regulations to limit the number of interfund transfer requests to two per month. After a participant has made two interfund transfers in a calendar month, the participant may make additional interfund transfers only into the Government Securities Investment (G) Fund until the first day of the next calendar month.

DATES: Comments must be received on or before April 9, 2008. Comments submitted in response to the interim regulation need not be resubmitted; they will be considered as part of this rulemaking process.

ADDRESSES: Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Megan Graziano on (202) 942–1644.

SUPPLEMENTARY INFORMATION: The Thrift Savings Plan (TSP) was established by the Federal Employees' Retirement System Act of 1986 (FERSA). FERSA created a new retirement program for Federal employees which consists of a reduced defined benefit plan component supplemented by a defined contribution retirement savings and investment program commonly known as the TSP.

Statutory Basis and History of TSP Interfund Transfers

After three years of study, the Congress determined that the TSP would be a passive, long-term investment vehicle. This approach is consistently reflected throughout the legislative history of the enabling legislation. The statute requires two opportunities each year for participants to transfer their investments among the TSP investment funds. 5 U.S.C. 8438(d). Additional opportunities may be provided under regulations issued by the Executive Director.

This ''interfund transfer'' (IFT) program was first implemented in 1988 under regulations which coupled two annual IFT opportunities with the then-statutory twice-a-year contribution open seasons. The March 1989 booklet entitled *Summary of the Thrift Savings Plan for Federal Employees* introduced participants to the concept of interfund transfers as follows:

> You can transfer funds only twice a year, once in connection with each open season. Please consider this before you decide on the allocation of your contributions among the Funds. Your Plan contributions are invested for your retirement, and you should make your investment decision with this long-term goal in mind.

This long-term investment strategy (as opposed to a short-term strategy of market-timing) remains an essential element of the TSP. The April 2007 TSP Fund Information sheets recommend a ''buy and hold'' strategy with periodic—as opposed to frequent—rebalancing.

The enactment of legislation removing restrictions on TSP investments led to the first Agency review of the TSP interfund transfer policy. Until 1990, employees covered by the Federal Employees' Retirement System (FERS) were allowed to invest only a percentage of their own contributions outside the Government Securities Investment (G) Fund. All employer contributions and all contributions by employees covered by the Civil Service Retirement System could, by law, be invested only in the G Fund.

The Agency asked Congress to ease these restrictions in order to simplify program administration. Congress ended the restrictions as part of the Thrift Savings Plan Technical Amendments of 1990. Going forward, all participants were to be allowed to invest or reinvest in any TSP fund. In preparing for implementation, the Agency reexamined the policy of two-a-year interfund transfers during open seasons due to the anticipated growth in the volume of IFTs.

In conducting this review, the Executive Director identified four considerations:

—The practices of other plans;
—administrative/operational concerns;
—costs; and
—service to participants.

The Executive Director recommended that the Agency's Board members approve de-linking IFTs from open seasons and allow up to four transfers a year. These transfers were linked to the TSP's then monthly valuation cycle, thus allowing a transfer in any month up to four times a year. This policy was based on the following findings: Other plans were liberalizing allowable IFTs; IFT request processing would be spread over more months, eliminating operational bottlenecks; trading costs would be reduced by processing smaller trades on twelve days rather than larger trades on two days each year; and, participants who missed an IFT deadline would no longer have to wait six months for another opportunity.

In making his recommendation, the Executive Director cautioned that allowing more frequent transfers simply ''to satisfy the demand of a relatively small group of participants, could result in increases in administrative costs to all participants which would be difficult to justify. I would also be concerned that such a policy would be viewed as encouraging participants to focus on market conditions each month in making their asset allocations. Such a short term focus would not be consistent with the Board's policy of encouraging long term financial planning for retirement.''

Thus, the initial two-a-year IFT regulatory requirement was liberalized, by regulation, but only after careful study and a clear restatement of the fundamental long-term investment policy.

In 1995, the policy was again reconsidered. The goal was to ensure that any participant withdrawing an account balance be permitted to transfer to the G Fund while withdrawal processing was completed.

The 1995 policy review examined the same elements as the 1990 review. The Agency research found that, rather than allow one special withdrawal-based transfer, the trend among defined contribution plans was to allow at least

12 IFTs each year (this also happened to be the greatest number possible under the monthly-valued system then in place at the TSP). By that time, administrative/operational concerns were minimized for the TSP because IFT requests had largely migrated from paper processing to telephone keypad entry. After a thorough review, the Agency expanded IFT opportunities to one-a-month, twelve-a-year in April 1995.

In October 1995, the Agency began designing a new TSP record keeping system. The initial plan anticipated that the new system should accommodate unlimited IFTs and have the capability to levy a charge if it was later determined that charges were necessary or desirable. However, by 1997, it was clear that frequent trading was still not a problem in the TSP. Further action on a design that would assess a charge for frequent trading was discontinued.

A staff review regarding IFTs in 1998 found that the policy adopted in 1995 continued to achieve the intended policy goals. The review found that 91 percent of participants who made IFTs requested one (75 percent) or two (16 percent) during the year. Just 42 participants requested the maximum of 12.

From an administrative/operational perspective, IFT requests were processed without bottlenecks via the ThriftLine (telephone keypad) and were being migrated to an even more efficient processing environment on the new TSP Web site.

From an investment perspective, transfers were netted each month, thus offsetting uncorrelated ''buys'' with ''sells'' before the monthly IFT amounts were forwarded to the asset manager for investment. Further, under Agency contracts, the asset manager executed ''cross trades'' with other institutional investors in its commingled funds, reducing trading costs and minimizing deviations from the indexes tracked by the TSP.

Participants were satisfied with the level of service, which was comparable to what was being offered in private sector plans. Further, allowing 12 unrestricted interfund transfers a year—the maximum possible number under a monthly-valued system—had had no adverse effect on administrative operations or trading costs. Therefore, no restrictions were initially required when the TSP moved from its monthly-valued record keeping system to a daily-valued platform in 2003. This had the effect of increasing interfund transfer opportunities from one per month, executed at month end, to one per business day.

The Agency monitored interfund transfer activity by observing the overall number of transfers and periodically determining whether ''frequent trading'' was becoming a problem. For example, in 2004, the Executive Director requested a check of 2003 data which disclosed 150 participants were requesting frequent IFTs for the apparent purpose of short-term market timing. There was no apparent adverse consequence of this activity on other participants in the TSP.

The Problem

This situation began to change in 2006. As the number of interfund transfers increased and as a small number of participants with relatively large account balances engaged in frequent interfund transfers, a pattern started to emerge. These participants began to focus on the International Index Investment (I) Fund, which tracks the Morgan Stanley Europe, Australasia, and Far East Index. The attraction may have been based on the notion that by the noon Eastern Time deadline for submitting an IFT request, a participant might anticipate whether overseas markets would open up or down. Since an IFT request is processed based on the closing price for the previous day, this was seen as an opportunity for arbitrage. Although ''fair valuation'' was introduced to eliminate the arbitrage potential, some participants, nevertheless, continued this behavior. Moreover, over the past year, this behavior has become more frequent and less random.

This activity disrupts the Agency's carefully designed cost-minimization efforts in three distinct ways: Increased transaction costs (including commissions paid to brokers, transfer taxes, and market impact); increased futures/cash position; and forgone interest.

Market impact, which is impossible to calculate in advance, is a major problem generated by the correlated actions of those individuals attempting to actively manage their TSP investments based on anticipated short-term market movements.

By statutory design, the TSP funds are passive, long-term ''pooled'' investments required to replicate the performance of selected broad index funds. The intent of IFTs is to allow periodic rebalancing. There are many benefits inherent in this arrangement established by the original statute. However, the vast majority of participants who follow this long-term strategy are subjected to greater risk when a determined cohort of participants frequently moves funds in anticipation of market movements.

Simply stated, when this small cohort rapidly removes funds in anticipation of short-term market losses, any losses which in fact materialize are spread over fewer remaining participants and are therefore more severe for those who maintain the long-term approach. Those who rapidly shift out secure the higher value based on the closing price for the day, while the remaining investors bear the losses when the shares are sold at the lower opening price on the following business day.

An extreme example would involve a large, highly-correlated Friday afternoon transfer by market timers wishing to eliminate their exposure in the I Fund based on anticipated market losses due to world events. If those events come to pass, in particular during a three-day U.S. weekend, world markets could fall dramatically, and the smaller number of remaining investors would bear the totality of the losses.

Defenders of this practice argue that the market timers might guess wrong, and, in such a case, positive earnings would be spread over a smaller investor base. They also argue that they are only controlling their own funds.

This rationale, however, ignores the fact that, by their actions, these market timers are exposing passive, long-term investors to a risk they never agreed to accept. These bystanders are simply using the TSP in the passive, long-term method for which it was designed.

Additionally, the market timers are forcing the fund manager to take extraordinary measures to mitigate the adverse impact of an investment behavior for which the TSP was not designed. These extraordinary measures generate costs borne by all participants and adversely affect the plan manager's ability to precisely replicate the performance of the selected indexes.

Frequent rapid fire transfers in the TSP reached a zenith in October, 2007. One example:

—On October 19, $371 million was transferred into the I Fund.
—On October 24, three business days later, $391 million was transferred out of the I Fund.
—;$295 million of those transactions was attributable to 2,018 participants who purchased on 10/19 and redeemed on 10/24.
—323 of these participants transferred $250,000 or more for a total of $110 million on each day.
—In the previous 60 days, these 323 participants had completed 5,804 exchanges of the I Fund for a total dollar amount of $1.9 billion. Two

hundred and seventy-eight of those participants with large accounts went on to repurchase the I Fund two days later on October 26.

—1,656 participants bought the I Fund on October 19, sold it on October 24 and repurchased it on October 26.

Limits Established by Other Funds/ Plans

The Agency is not alone in recognizing the problems caused by frequent traders. Indeed, there are supplemental plans offered by some U.S. Government agencies, which have taken measures to reduce interfund transfer activity. The FDIC Savings Plan charges a 2 percent redemption fee on shares of the international stock fund which are not held for at least 90 days. The Thrift Plan for the Employees of the Federal Reserve System does not allow participants to redeem shares of any fund for 14 days after purchase.

Beginning with the ''late trading'' scandal of 2003, the mutual fund industry began to place limits on trading. Trading limits imposed by major mutual fund groups include:

Mutual fund group	Trade limit	Time frame
AIM Funds	4 exchanges	1 calendar year.
Ariel Capital Management	4 round trip exchanges	1 year.
Federated	2 trades	30 days.
Harbor	3 round trips (in/out within 30 days)	12 months.
Hotchkiss and Wiley	1 round trip	12 month period.
ING	4 trades	360 days.
Janus	4 round trips	12 months (may reject even before this limit is reached.)
Neuberger and Berman	1 trade	60 days.
Northern	2 trades	90 days.
PBHG	4 trades	360 days.
Royce	1 trade	30 days.
Van Eck	6 trades	360 days.
Vanguard	After sale cannot repurchase	60 days.

Defined contribution plans which offer mutual funds as their investment choices can pass on the funds' restrictions or impose more stringent restrictions of their own. The Hewitt survey entitled *Trends and Experience in the 401(k) Plans 2007* found that 73 percent of surveyed plans have placed restrictions on some or all of their funds.

While the Securities and Exchange Commission (SEC) has no direct oversight authority with respect to the TSP, its views on frequent trading and specifically its directive to mutual fund board members is instructive.

The SEC's rule 22c–2(a)(1) under the Investment Company Act of 1940, which authorizes mutual funds to impose redemption fees when it is determined that such fees are in a fund's best interest, took effect in October 2006. In the release adopting this rule (Inv. Co. Ac Rel. No. IC–26782, March 11, 2005), the SEC noted, ''Excessive trading in mutual funds occurs at the expense of long-term investors, diluting the value of their shares. It may disrupt the management of a fund's portfolio and raise the fund's transaction costs because the fund manager must either hold extra cash or sell investments at inopportune times to meet redemptions.''

According to the SEC: ''Under the rule [22c–2], the board of directors must either (i) approve a fee of up to 2% of the value of shares redeemed, or (ii) determine that the imposition of a fee is not necessary or appropriate. *Id.* A board, on behalf of the fund, may determine that the imposition of a redemption fee is unnecessary or inappropriate because, for example, the fund is not vulnerable to frequent trading or the nature of the fund makes it unlikely that the fund would be harmed by frequent trading. Indeed, a redemption fee is not the only method available to a fund to address frequent trading in its shares. As we have stated in previous releases, funds have adopted different methods to address frequent trading, including (i) restricting exchange privileges; (ii) limiting the number of trades within a specified period; (iii) delaying the payment of proceeds from redemptions for up to seven days (the maximum delay permitted under section 22(e) of the Act); (iv) satisfying redemption requests in-kind; and (v) identifying market timers and restricting their trading or barring them from the fund.''

In its review of the best practices of the mutual fund industry's efforts to curb frequent trading, the Agency learned that the exact mechanisms funds employ to deter frequent trading are many and varied depending on unique circumstances, but they share two common themes: Fees or transaction limitations.

Many fund families charge redemption fees for shares which are redeemed within 30, 60, or 90 days of purchase. T. Rowe Price, for example, levies fees on 27 funds, including a 2 percent redemption fee on shares of its International Index Fund and a 0.5 percent fee on shares of its Equity Index 500 and Extended Equity Market Index Funds, if they are sold within 90 days of purchase. TIAA–CREF (with $400 billion of assets under management and 3 million participants) charges a redemption fee of 2 percent on shares of its International Equity, International Equity Index, High Yield II, Small-Cap Equity, Small-Cap Growth Index, Small-Cap Value Index or Small-Cap Blend Index Funds redeemed within 60 days of purchase. We noted particularly that the fee is a percentage of the dollar amount transacted, not a flat processing charge.

When brokerage firms charge $10 to execute a stock trade, they know exactly how much it costs them to make that transaction. Mutual fund managers (and the TSP) cannot determine the exact amount of costs to the plan from interfund transfer activity for the following reasons. First, each day, a price for each fund is determined based on closing stock prices for that day. However, the fund manager does not execute every stock trade at that closing price. Any difference is market impact and is charged or credited to the fund, thus impacting the returns of the long-term holders. Second, to accommodate the large trades which result from frequent IFT activity, managers must keep a larger liquidity pool, which causes performance to deviate from that of the index. Lastly, for the TSP, when the liquidity pool is depleted as a result of a number of large trades in a row, cash due to the TSP is not received for up to three days, costing participants forgone interest. None of those three costs is calculable in advance, and all three are different every single day. Because it is impossible to determine how much to charge for each transaction, mutual fund families assess a percentage of the dollar amount transacted.

Many fund families employ trading restrictions similar to Vanguard's whereby an investor may not repurchase any fund within 60 days after a redemption.

We would also note that both TIAA–CREF and Vanguard, among others, use a double-barreled approach by charging a fee on top of the trading restrictions for some funds. For example, if an investor sells the Vanguard Developed Markets Index Fund (similar to the TSP's I Fund) within 60 days of purchasing it, that investor is charged a 2% fee AND cannot repurchase the fund for 60 days.

Proposed TSP Solution

The hallmark of the TSP is simplicity. Although the problem described above may not be amenable to a single solution (as evidenced by the multi-layered restrictions including monthly limits/no-buyback rules/redemption fees imposed by various private sector funds and plans), the Agency is currently proposing a straightforward rule that will allow two unrestricted transfers each month, followed by unlimited opportunities to transfer amounts to the Government Securities Investment (G) Fund. Our analysis on the effect of such a limitation shows that it would have reduced the historic levels of November 2007 trade dollar volumes by 53%.

In developing its recommendation, the Agency chose not to pursue redemption fees because it is impossible to correctly assign the exact costs to those who are making interfund transfers. Additionally, imposing a percentage fee would deny our participants the ability to go to the safe harbor of the G Fund at any time for no charge. The Agency considers that capability to be of paramount importance. A fee-based system would especially punish an infrequent trader who may wish to redeem within 30, 60, or 90 days (depending on the policy) because the market is declining. In this situation, the participant could face losing two percent of his/her investment in addition to the market decline, a worst case scenario.

Further, our approach is more liberal than most, if not all, of the restrictions reviewed. It allows participants to rebalance up to twice a month. Indeed, our two investment consultants, Mercer and Ennis Knupp, have conducted studies showing that rebalancing an account more than monthly or quarterly is ineffective. We therefore consider our approach to be more accommodating than necessary for optimal rebalancing frequency and demonstrably more liberal than the policies of 40 record keepers which use the same processing system as the TSP.

The advantages of our current approach include ease of understanding by the 3.9 million TSP participants as well as administrative simplicity. In fact, the Agency's proposal will affect a very small number of TSP participants. Our review of 2007 data shows that more than 99% of participants requested 12 or fewer interfund transfers. The Agency expects that, when coupled with our educational and outreach efforts, this structural limit of two per month will virtually eliminate the problems associated with frequent interfund transfer activity.

The Executive Director has sent a letter to every one of the 3.9 million participants explaining the situation and reminding all participants that the TSP was designed by Congress to be a passive, long-term vehicle designed to replicate the selected indexes.

Participants whose frequent transfer requests reflect an effort to time the markets (*i.e.*, those who request interfund transfers in reaction to, or anticipation of, short-term market conditions) might still affect the returns of others in the pooled investments, as well as the Plan's ability to replicate the indexes, through less frequent yet more determined activity. This has the potential to become a significant problem as account balances grow over time. If participants with large account balances request large interfund transfers in a non-random manner, the Agency may reconsider imposing the more restrictive limitations employed by other plans and mutual funds. If additional restrictions prove necessary, the Agency will announce additional rulemaking at a future date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. It will affect only Thrift Savings Plan participants and beneficiaries. To the extent that limiting interfund transfers is necessary to curb excessive trading, very few, if any, ''small entities,'' as defined in 5 U.S.C. 601(6), will be affected by the final rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government and because the interfund transfer limitations are likely to affect primarily federal employees, members of the uniformed services, and an insubstantial number of financial advisors who may provide advice in connection with the Fund.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Gregory T. Long,
Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474 (b)(5) and (c)(1).

2. Amend § 1601.32, by revising paragraph (b) to read as follows:

§ 1601.32 Timing and Posting Dates.

* * * * *

(b) *Limit.* There is no limit on the number of contribution allocation requests. A participant may make two unrestricted interfund transfers (account rebalancings) per account (e.g., civilian or uniformed services), per calendar month. An interfund transfer will count toward the monthly total on the date posted by the TSP and not on the date requested by a participant. After a participant has made two interfund transfers in a calendar month, the participant may make additional interfund transfers only into the G Fund until the first day of the next calendar month.

[FR Doc. E8–4776 Filed 3–7–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2007–0147]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create special local regulations to regulate recurring marine events in the Fifth Coast Guard District. These regulations would apply to all permitted events listed in the table attached to the regulation, and include events such as regattas, and marine parades. These regulations are being proposed to reduce the Coast Guard's administrative workload and expedite public notification of events.

DATES: Comments and related material must reach the Coast Guard on or before April 9, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0147 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov.*

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at (757) 398–6204. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0147), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2007–0147) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation currently includes events such as sailing regattas, power boat races, swim races and holiday parades. Currently, there are over 60 annually recurring marine events and many other non-recurring events within the district. In the past, the Coast Guard regulated these events by creating individual special local regulations on a case by case basis. Most of these events required only the establishment of a regulated area and assignment of a patrol commander to ensure safety. Issuing individual, annual special local regulations has created a significant administrative burden on the Coast Guard. From 2005 to 2007 the Coast Guard created over 100 temporary regulations for marine events in the Fifth District. The numbers are expected to rise in 2008 with the growing popularity of water sports activities.

Additionally, for the majority of these events, the Coast Guard does not receive notification of the event, or important details of the event are not finalized by event organizers, with sufficient time to publish a notice of proposed rulemaking and final rule before the event date. The Coast Guard must therefore create