

Chicago River had provided for on signal openings seven days a week, except during rush hours Monday through Fridays. This regulation is referred to as the "permanent rule." On May 12, 1993, under the provisions of 33 CFR 117.43, the Coast Guard published (58 FR 27933) a deviation from the permanent rule to allow the City of Chicago to limit weekday openings for recreational vessels, to require advance notice for opening, and to require the recreational vessels to be organized in flotillas of five to twenty-five vessels for passage. Deviations such as this for not more than 90 days are utilized to evaluate suggested changes to drawbridge operation requirements. Subsequent deviations, with varying requirements, were published on June 16 (58 FR 33191), August 12 (58 FR 42856), October 21 (58 FR 54289) and November 29, 1993 (58 FR 62532).

On Wednesday, December 22, 1993, the Coast Guard published a notice of proposed rulemaking and notice of public hearing entitled Drawbridge Operation Regulation: Chicago River, IL (58 FR 67745). The Coast Guard received 132 letters commenting on this proposal. A public hearing was held on January 20, 1994 in Chicago, Illinois, attended by 107 persons, of whom 32 made oral statements or furnished data on the proposed regulations.

Following this notice and comment rulemaking, on April 18, 1994, the Coast Guard promulgated a new final rule for drawbridge operations on the Chicago River. This rule provided for evening openings on Tuesday and Thursday, Saturday and Sunday openings during the day, and Wednesday daylight openings from April 15 through June 15. It also specified a flotilla size of between 5 and 25 vessels.

On September 26, 1994, the United States District Court for the District of Columbia issued an order in the case of *Crowley's Yacht Yard, Inc., Plaintiff, v. Federico Pena, Secretary, United States Department of Transportation, Defendant*, (C.A. No. 94-1152 SSH), rescinding the new final rule published on April 18, 1994, and reinstating the previous regulations or permanent rule. The Court's decision was based on its conclusion that there was not a sufficient basis in the administrative record to support the Coast Guard's decision to allow weekday daylight openings only in the spring, and its view that a traffic study provided by the City was suspect since it took place in part during the "Taste of Chicago" festival, which resulted in increased vehicular traffic.

As a result of the Court decision and to gather data for future use, the District

Commander authorized a temporary deviation to the permanent rule for the period October 11, 1994 through December 5, 1994. A notice of this deviation, soliciting comments on the effect of the deviation, was published on October 24, 1994 (59 FR 53351). The deviation provided for openings of bridges, with a twenty-four hour advance notice to the City of Chicago, from 7 a.m. to 7 p.m. on Saturdays and Sundays, and on Wednesdays between the hours of 6:30 p.m. and 10 p.m., throughout the entire period. In addition, from October 11 through October 23 the draws were to be opened between the hours of 10:30 a.m. to 1:30 p.m. on Tuesdays and Thursdays, and from October 23 through December 5 the draws were to be opened for vessel passage between the hours of 10:30 a.m. and 1:30 p.m. on Wednesdays. Flotilla size was specified. The Coast Guard decided on this approach since it was consonant with public comments on behalf of the City and its citizens urging that "on demand" openings should not continue, and also with the boatyards which had stated that some weekday openings were necessary. Moreover, the schedule set forth in this deviation accommodated the Court's concern by providing weekday openings during the fall season.

The comment period ended on January 15, 1995. The Coast Guard received twenty-one comments on this deviation. The City expressed opposition to any new permanent regulation for the spring 1995 breakout. In support of its position, the City provided data concerning the number of boat runs during the preceding spring and fall seasons, including the number of boats traversing through the drawbridges and the number of times the individual drawbridges were opened and delays that occurred. The City was unable to provide a vehicular traffic count for the fall, but stated that it would provide traffic count statistics for the spring season. The City urged a deviation schedule allowing one weekday daylight opening and weekend openings. Comments from the boatyards favored the existing regulatory structure and also opposed a new permanent regulation for the spring breakout. Thirteen of the other twenty comments favored no change to the existing regulations and expressed opposition to establishing minimum and maximum flotilla sizes. Other comments indicated that, if a change is necessary, there should be weekday daylight openings and expressed opposition to flotilla sizes.

On February 16, 1995 (60 FR 8941), the Coast Guard published a Notice of

Intent to issue a temporary deviation for the spring breakout and announced a public hearing to discuss the proposed schedule in the deviation. The proposed deviation would have required the draws to open, except during rush-hours, for recreational vessels that had provided twenty-four hours notice of their intended passage through the draws. This proposal was published to provide a basis for discussion and comment. The proposal explicitly noted that any deviation ultimately issued for the spring 1995 season might differ as a result of comments received and positions expressed during the course of a public hearing scheduled for March 9, 1995.

The hearing provided all concerned parties with the opportunity to present oral and written statements, with supporting data, to the Coast Guard for evaluation to determine if any revisions should be made to the proposed deviation. A Coast Guard representative presided at the hearing which was well attended. In addition to individual comments by boaters and other interested persons, there were multiple presentations, primarily by representatives of three interested groups: the City of Chicago, the boatyards, and national level maritime organizations.

The vast majority of the 68 written comments were received from a wide variety of Chicago civic organizations and businesses, including property owners and managers and developers. Individual businesses commenting ranged from taxi companies and delivery services to Union Station, AMTRAK, and De Paul University. The City of Chicago, including the Chicago Police Department and members of the Chicago City Council, also submitted comments and additional data. These comments opposed the temporary deviation which would have allowed unrestricted weekday openings, other than during rush hours, and urged that openings be limited to weekends and evenings. They vigorously opposed any daytime weekday openings. The boating organizations and the boatyards favored a 24-hour notification with no additional restrictions other than during rush hours.

At the public hearing, City representatives stated that they have determined that weekday daylight openings are not necessary, since all outgoing and incoming vessels can be accommodated on weekends. They stated that weekday openings are too disruptive to emergency services, commercial vehicular traffic during business hours, and pedestrian and midday vehicular traffic.