

Representatives of commercial interests stated their opposition to weekday openings due to disruption of deliveries, public transportation, and emergency services. Representatives of the boatyards stated that the permanent regulation in effect should not be modified until data are collected for an entire navigation season. They discussed their practice of voluntarily arranging flotillas to minimize the number of openings required, and asserted there was a need for individual vessels to transit the Chicago River system in order to obtain routine servicing or repairs. They asserted that failure to provide convenient access to the boatyards seriously affected their business, citing a reduction in the number of vessels utilizing their yards for winter storage as well as a decline in income from repairs. Representatives of the boaters stated that not all boats can participate in weekend flotillas, but they can join weekday daylight flotillas. In their opinion, nighttime navigation is not conducive to safety. Individual boaters also expressed concern over the safety of large flotillas transiting the confined waters of the Chicago River system. Representatives of national manufacturing and boating interests expressed concern that the right of free navigation was being unduly restricted by the proposed temporary deviation, and that if the Coast Guard restricted openings on the Chicago River, it would be a precedent for restricting navigation elsewhere.

As a result of the public hearing and a reassessment of all the comments received, the Coast Guard promulgated a temporary deviation to the operating schedule of the Chicago River Bridges on April 10, 1995 (60 FR 18006) covering the period from April 15, 1995 to July 13, 1995. The temporary deviation featured daytime and evening openings on Tuesdays and Thursdays as well as weekend openings, flotilla maximums, and 24-hour advance notice prior to opening. The temporary deviation recognized the concerns of the City and business interests by limiting weekday openings. It also addressed the concerns expressed by the boatyards and boaters by not requiring a minimum flotilla size and by providing for transits on four days of the week. The advance notice requirement was selected as being adequate to allow scheduling of bridge openings by the City, but responsive to unanticipated needs for transits by boats. It provided the basis for comparing the merits of an alternative schedule with previously imposed schedules. Simultaneously, the Coast Guard published on April 10,

1995 (60 FR 18061) a Notice of Intent to form a negotiated rulemaking committee to bring together representatives of all affected parties to attempt to reach consensus on a new permanent rule.

On May 18, 1995, the United States District Court for the District of Columbia vacated the April 10, 1995 temporary deviation and reinstated the permanent rule in effect previously, codified at 33 C.F.R. 117.391 (1993). The Court's decision was premised on its conclusion that the Coast Guard's authority to issue temporary deviations is subject to the Administrative Procedures Act constraints and that, while the Coast Guard had provided notice, comment, and a hearing, the Court did not have before it the administrative record on which the decision was based. Although the reinstated permanent rule provides for opening the bridges "on signal" except during rush hours, the drawbridges have been operating on scheduled weekend and limited weekday openings through voluntary cooperative agreements between the principal boatyards and the City.

Negotiated Rulemaking

As detailed above, there have been a wide variety of temporary deviations and one permanent rule addressing bridge operating schedules on the Chicago River. In addition, there have been two court challenges that have overturned these schedules and reinstated the pre-1993 operating regulations. There have also been periods of voluntary cooperation when boatyard owners and City representatives have worked together to establish scheduled openings within regulatory parameters. All of these activities have supported the idea that a formal negotiated rulemaking leading to a meeting of the minds and cooperation by all interested parties would provide the best chance for successful rulemaking. Utilizing an experienced and impartial facilitator, the Coast Guard contacted representatives of the City, commercial interests, boatyards, and boaters, and determined that they would participate in a negotiated rulemaking and received their assurances they would negotiate in good faith.

In light of the difficulties experienced in arriving at a drawbridge rule that best accommodates the needs of vehicular and boating traffic, as required by the 1988 amendment to 33 U.S.C. 499 which provides that rules and regulations governing drawbridges shall, to the extent practical and feasible, provide for regularly scheduled openings that would help reduce motor

vehicle traffic delays and congestion, the Coast Guard chartered a negotiated rulemaking committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App) (FACA). The negotiating committee, consisting of representatives of the City of Chicago, Chicago commercial interests, boatyards on the Chicago River system, the Chicago Yachting Association, and the Coast Guard, met to share views and attempted to come to consensus on the best possible operating parameters for the operation of the City of Chicago bridges. The committee met under the guidance of an experienced neutral facilitator, on June 5, 14, 20, 28 and July 12, 1995. During the day-long sessions the committee engaged in detailed discussions concerning the history of drawbridge operations, future concerns, and the goals sought by the interest groups represented. Despite a full and frank exchange of views, the presentation of several alternatives by the Coast Guard, and modifications suggested by members, the committee was unable to come to consensus on an appropriate operating schedule for the bridges. As stated in the notice announcing the establishment of the negotiated rulemaking committee, the Coast Guard is committed to proceeding with notice and comment rulemaking procedures in order to have a final rule in place by the end of the boating season in the fall, 1995, when recreational vessels leave Lake Michigan for winter storage. Accordingly, the Coast Guard has published this notice of proposed rulemaking and has scheduled a public hearing. In the absence of a consensus-based rule, this proposal is based on the extensive administrative record that the Coast Guard has assembled to date.

Summary of Issues

When the City of Chicago first came to the Coast Guard in 1993 with a request to change the bridge regulation that had been in existence since the 1970's, the Coast Guard began looking at whether that "on demand" regulation was appropriate. A primary factor in this review was the statutory change in 1988 that specifically requires the Coast Guard to balance land and water transportation needs. As amended in 1988, 33 U.S.C. 499 provides that rules and regulations governing drawbridges shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year, and during times of the day, when scheduled openings would help reduce motor vehicle traffic delays and congestion on roads and highways linked by drawbridges. As noted above, and detailed more fully below, Chicago