from these yards require periodic openings of the bridges. These transits to and from winter storage are commonly referred to as the Spring "Breakout" and Fall "Return." During the Spring Breakout in April, May, and early June, boats travel down the Chicago River to seasonal moorings on Lake Michigan. At the end of the boating season in late September, October, and November, the boats travel back up the river for off-season storage; this is the Fall Return. Thus, there are substantial numbers of sailboats traveling the river between the yards and Lake Michigan during the Spring and Fall seasons. In addition, in-season repair work at the boatyards necessitates transiting the river. Restricting the times at which drawbridges can be required to open potentially impinges on the ability of sailboat owners to traverse the Chicago River between the boatyards and Lake Michigan. On the other hand, not restricting the times at which drawbridges can be required to open potentially impinges upon vehicular traffic crossing the bridges at such

The governing statute concerning drawbridge rules is clear. It imposes a duty on all persons "owning, operating, and tending the drawbridges built \* across the navigable rivers \* \* \* of the United States, to open, or cause to be opened, the draws of such bridges \* \* under such rules and regulations as in the opinion of the Secretary of Transportation the public interests require to govern the opening of drawbridges for the passage of vessels." (33 U.S.C. 499.) The Secretary of Transportation has delegated this authority to the Commandant, U.S. Coast Guard. The authority has been delegated further to the cognizant Coast Guard District Commander.

In 1988, the Congress redefined the focus of the statute by directing for the first time that, "any rules and regulations made in pursuance of this section 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 delays and congestion on roads and highways linked by drawbridges." Pub. L. No. 100–448, 102 Stat. 1846.

The balancing of interests between the boaters and boatyards in Chicago on the one hand, and the bridge owners and users, on the other, is the heart of the Chicago drawbridge controversy. It is obvious from the history of these proceedings and the litigation they have spawned that the wishes of the City, its citizens, the boaters, and the boatyards

diverge greatly and cannot all be accommodated fully. As a consequence, the Coast Guard has conducted an exhaustive review of the extensive record before it and has independently balanced all of the competing concerns in determining what rule best serves the public interest consistent with the drawbridge statute and the 1988 amendment to it. The Coast Guard believes that the rule published today fully satisfies the requirements of that law and the public interest by ensuring the drawbridges in Chicago are opened under a schedule that allows reasonable navigation opportunities for the passage of vessels while also reducing motor vehicle traffic delays and congestion on Chicago's roads and highways to the extent practical and feasible.

## B. History of the Proceeding

Since 1976, the regulations for the operation of the bridges on the Chicago River have provided for "on-demand" openings seven days a week, except during rush hours on Mondays through Fridays.

This regulation is referred to in this preamble as the "1976 Rule." The 1976 Rule is a reference point for basic ondemand status. The regulatory language for temporary deviations is taken from the 1984 reorganization of 33 CFR Part 117.

## 1. The 1993 and 1994 Temporary Deviations

The provisions of 33 CFR 117.43 for many years have allowed a Chicago District Commander to authorize temporary deviations to regulations for no more than 90 days in order to evaluate suggested changes to drawbridge regulations. Notice of a temporary deviation is to be published in the Federal Register.

On May 12, 1993, the Coast Guard published a temporary deviation from the 1976 Rule to allow the City of Chicago to limit weekday openings for recreational vessels (58 Fed. Reg. 27933). The temporary deviation was effective from April 26, to May 31, 1993. It was implemented to evaluate the usefulness of requiring flotillas, in response to a request by the City of Chicago that claimed it was unduly burdensome to open bridges for a single vessel and that sought a schedule that would have restricted openings to Saturdays and Sundays. Discussions with the Coast Guard resulted in the consideration of flotilla requirements for the first time. Specifically, the City proposed a temporary deviation that provided for bridge openings conditioned upon receipt of 24-hour notice on Saturdays and Sundays from

6 a.m. to 7 p.m. for organized flotillas of 5 to 25 vessels, and on Tuesday and Thursday evenings from 6:30 p.m. until passage was completed for similarly-sized flotillas.

After discussions with the City and with boating interests, the Coast Guard adopted a schedule for the Spring, 1993 season which required bridges to open on twenty-four hours notice for flotillas of 5 to 25 vessels on Saturdays and Sundays during daylight hours and on Tuesday and Thursday evenings for flotillas of the same size (Id. at 27934). The Coast Guard noted that traditionally it had not specified flotilla requirements, but that such an approach might be appropriate in the context of Chicago, and that the temporary deviation would "provide an evaluation period which will provide the Coast Guard a valuable test of the reasonableness of such a regulatory structure" (Id.). On June 16, a second temporary deviation was published covering the period from June 1 to July 31, 1993 (58 Fed. Reg. 33191). This temporary deviation implemented a schedule which provided more daylight hours for passage. Many comments to the Coast Guard concerning the previous deviation had questioned the safety of evening passages and large flotilla trips, and the possibility of the City making greater efforts to shorten trip time. This temporary deviation expanded the temporary rules to cover Wednesday evenings in addition to Tuesday and Thursday evenings. It also established that vessels returning for necessary repairs and service shall give "advance notice" and be passed through with no flotilla requirement for inbound or outbound trips.

On August 12, a third temporary deviation was published which covered the period from August 1 to September 29, 1993 (58 FR 42856). This announcement solicited more information on the comments received during the two previous deviations which had indicated concern for safety of night trips and flotilla requirements. Schedule changes resulting from this deviation afforded more daylight hours for transit and eliminated flotilla sizes. A Wednesday morning opening at 11:00 a.m. was added to supplement the evening opening for that day. Openings continued to be provided on Tuesday and Thursday evenings, with 2 openings available on each of the weekend days.

On October 21, the Coast Guard implemented a fourth temporary deviation covering the period from October 1 to November 30, 1993 (58 FR 54289). This deviation addressed the same concerns that the City and boaters raised in comments on earlier