deviations, which included minimizing land-based traffic impacts from bridge openings, the timing and number of transits, and flotilla requirements. The City had urged more use of weekend openings due to the greater impacts of weekday daytime openings on vehicular traffic. The temporary deviation established "windows" for openings on Saturdays and Sundays from 7:00 a.m. to 2:00 p.m., moved the Tuesday and Thursday evening starting time forward to 6:30 p.m., established a Wednesday opening "window" between 10:30 a.m. and 2:30 p.m., and added a similar daylight opening for a Federal holiday on October 11, 1993.

On November 29, 1993, the Coast Guard imposed a fifth temporary deviation schedule pursuant to which all recreational boats were required to traverse the river only on weekends during the months following the Fall, 1993 season (58 FR 62532). The Coast Guard invited public comment concerning each of these temporary deviations, and the submittals that it has received have been duly considered in the formulation of this final rule.

## 2. The 1994 Proposed Final Rule

Following the 1993 boating season, the Coast Guard determined that it had obtained sufficient information to promulgate a new permanent rule. Therefore, on 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). That notice proposed to implement a new drawbridge rule that would have required bridges to open for noncommercial vessels during the Spring, Summer, and Fall seasons on Saturdays and Sundays during the day, and on Tuesday and Thursday evenings. During the Winter, the bridges would be required to open on demand, provided that 12-hour advance notice had been given. This schedule reflected elements of the City's request for an approach that would include 24-hour notice, flotillas of 5 to 25 boats, Saturday and Sunday openings from 7:00 a.m. to 7:00 p.m., and Tuesday and Thursday openings from 6:30 p.m. to midnight. The NPRM stated that the Coast Guard had preliminarily determined these days and times were in the best interest of boaters, would provide for safety, and would meet the traffic needs of the City. The Coast Guard invited public comments to be filed, scheduled a hearing on the matter, and received 132 submissions commenting on the proposal. The hearing held on January 20, 1994 in Chicago was attended by 107 persons, of

whom 32 made oral statements or furnished data on the proposed regulations. Comments received ranged from those urging that no weekday openings of Chicago draws should be allowed even at night, to those urging the 1976 Rule, which allowed ondemand openings, should remain in place.

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 (59 FR 18298). As proposed, this rule provided for evening openings on Tuesdays and Thursdays, and openings during the day on Saturdays and Sundays. The rule also provided for Wednesday daylight openings from April 15 through June 15, and specified a flotilla size of between 5 and 25 vessels as a condition for weekday boat runs. In promulgating the rule, the Coast Guard relied on the views expressed during the comment period and at the January 20, 1994 hearing, and on a traffic study submitted by the City of

The 1994 rule was challenged in court by Crowley's Yacht Yard, Inc., one of the boatyards located along the Chicago River. On September 26, 1994, the United States District Court for the District of Columbia issued a decision in the case of Crowley's Yacht Yard, Inc. v. Peña (C.A. No. 94-1152 SSH). rescinding the new rule published on April 18, 1994, and reinstating the previous regulations, that is, the 1976 Rule. The Court's decision, which is published at 863 F. Supp. 18 (D.D.C. 1994), concluded 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 that the data set forth in the traffic study provided by the City were suspect since the study took place, in part, during the "Taste of Chicago" festival, which resulted in increased vehicular traffic.

## 3. The Fall, 1994 Temporary Deviation

Following the Court's decision, the Coast Guard authorized a new temporary deviation to the 1976 Rule for the period October 11, 1994 through December 5, 1994. This temporary deviation was prompted by urgent concerns expressed by the City of Chicago regarding the effect of the reinstated 1976 Rule and was necessitated by the beginning of the "Fall Return" when boaters took their vessels from Lake Michigan to the Chicago River boatyards for winter storage. A notice of this temporary deviation, together with a request for comments, was published on October

24, 1994 (59 FR 53351). The deviation provided for openings of bridges on 24hour advance notice 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 remaining Fall season. In addition, from October 11 through October 23 the temporary deviation required that, upon 24-hour advance notice, the bridges 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 bridges were to be opened for vessel passage between the hours of 10:30 a.m. and 1:30 p.m. on Wednesdays. A 5 to 25 boat flotilla requirement was also imposed as a condition for weekday passages, with only the upper limitations on flotilla size applied to weekend runs. Crowley's Yacht Yard, Inc. challenged the Fall, 1994 temporary deviation before the same court that had stricken the 1994 rule, but the Court denied Crowley's motion to strike the temporary deviation, thereby allowing it to remain in effect throughout the remainder of the Fall. 1994 season.

Following the issuance of the Fall, 1994 deviation, the Coast Guard formally requested the City of Chicago to prepare a new traffic study, and to provide other information that could be used in arriving at a new final rule. The City responded by citing the difficulties of beginning a new traffic study that late into the Fall, 1994 boating season. Instead, it suggested that a study should be conducted during the Spring, 1995

The Coast Guard received 21 comments concerning the deviation that was in effect during the Fall, 1994 season. Data supplied by the City of Chicago indicate that, of the 540 sailboats that returned to winter storage during the Fall, 1994 deviation, 455 traversed the Chicago River on weekends. Specifically, 245 sailboats returned in 16 runs on Saturdays, and 210 transited in 13 runs on Sundays. By contrast, 85 sailboats returned on weekdays and weeknights in a total of 11 runs. Based on these data, the City urged that no future weekday daylight bridge openings were required and that all boaters' needs could be accommodated with weekend openings. However, the City stated that if a temporary deviation was to be implemented for the Spring, 1995 season when Chicago proposed to conduct its traffic study, at the most, bridges should only be required to open on weekends during the day, Wednesday during the day, and Tuesday and Thursday evenings. Chicago also urged that flotilla size