from the 1976 on-demand rules, that weekday transits were necessary to boaters and to the boatyards that serve them, and that the vehicular and pedestrian disruption noted by the City and other commenters was, in the view of the boating interests, exaggerated. Some of these parties claimed that flotilla requirements were potentially dangerous because a large grouping of sailboats in the Chicago River at any one time heightened the potential for collisions. Some boating commenters also stated that night transits of the Chicago River are inherently dangerous and should not be allowed under the rule.

Boating representatives also appeared at the hearing and continued to voice their need to traverse the Chicago River unencumbered by schedules and, at a minimum, to have the opportunity for daytime weekday transits. Boating interests reiterated their claim that nighttime passages are inherently dangerous, and some charged that flotilla requirements result in large numbers of vessels transiting the river at one time which pose safety risks. The boatyards stated that their client base was shrinking as the result of more restricted bridge openings, and expressed concern that their viability as commercial enterprises was at stake if the Coast Guard moved away from an on-demand approach. Boating interests argued that it was the City's burden to justify any change in the 1976 Rule, and that the City had not provided evidence demonstrating a need for change.

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 covering the period from April 15, 1995 to July 13, 1995 (60 FR 18006). The temporary schedule departed from the on-demand approach proposed in February, and instead set forth a schedule of daytime and evening openings on Tuesdays and Thursdays as well as weekend openings, maximum sizes for flotillas, and 24-hour advance notice prior to opening, except in emergencies. The temporary deviation attempted to recognize the concerns of the City and business interests by limiting weekday openings. It also addressed and attempted to accommodate 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, including daylight hours on two weekdays. The advance notice requirement was included to allow scheduling of bridge openings by the City, while still being responsive to

unanticipated needs for transits by boats

Crowley's Yacht Yard, Inc. challenged the legality of the Spring, 1995 deviation in court. On May 18, 1995, the United States District Court for the District of Columbia vacated the April 10, 1995 temporary deviation and reinstated the 1976 Rule in effect previously, as promulgated at 33 CFR 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 Administrative Procedure 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. The administrative record containing the comments summarized above thereafter was filed with the Court, but the Court refused to reconsider its ruling.

Although the resinstated 1976 Rule provides for opening the bridges "on signal" except during rush hours, the drawbridges in fact operated throughout the Spring and Summer of 1995 on scheduled weekend and limited weekday openings through voluntary cooperative agreements between the principal boatyards and the City. This schedule, which was agreed to by the boatyards, was virtually identical to that set forth in the Spring, 1995 temporary deviation that was invalidated by the Court's order upon challenge by Crowley's Yacht Yard, Inc.

Following the March public hearing, the Coast Guard compiled its own summation of boating activity during the Spring of 1995. Coast Guard data show a total of 583 boats transiting between April 15 and July 5, 1995. The City bridge log tallied 498 South Branch and 85 North Branch transit; the Coast Guard observed 488 of those transits. Using the City bridge logs as the baseline number for the boat volume, 73 percent of the South Branch transits occurred during the weekend compared to 79 percent North Branch; 74 percent of the total vessel traffic occurred during the weekend. The Spring outbound monthly breakdown shows April 1995 with 59 transits (10%) over a 15-day period; May 1995 with 371 transits (64%) over a 30-day period; June 1995 with 141 transits (21%) over a 30-day period; and July 1995 with 12 transits (2%) over five days. A total of 52 flotillas was recorded.

5. Negotiated Rulemaking

Simultaneously with the publication of the Spring, 1995 temporary deviation, the Coast Guard published on April 10, 1995 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 (60 FR 18061). Negotiated rulemaking committees provide greater opportunity for meaningful public participation in government decisionmaking.

As detailed above, there have been a wide variety of temporary deviations and a permanent rule addressing bridge operating schedules on the Chicago River. There have also been periods when boatyard owners and City representatives, under the aegis of the Coast Guard, have worked together to schedule openings notwithstanding the availability of an on-demand or other lenient regulatory schedule for openings. The Coast Guard believed that this evidence of cooperation by all interested parties could provide a chance for successful rulemaking through a formal negotiated rulemaking process. Using an experienced and impartial facilitator, the Coast Guard contacted representatives of the City, commercial interests, boatyards, and boaters. They agreed to negotiate in good faith. The Coast Guard chartered a negotiated rulemaking committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 561 et seq.) (FACA).

The negotiating committee, consisting of representatives of the City of Chicago, Chicago commercial interests, boatyards on the Chicago River system (including Crowley's), the Chicago Yachting Association, and the Coast Guard, met repeatedly to share views and attempted to come to consensus on the best possible operating parameters for the operation of the City of Chicago bridges. Meetings of the committee were open to the public, with opportunities for public input afforded at the end of the committee's formal discussion.

The Organizational Protocols under which the committee met provided that the committee would operate by consensus, meaning there must be no dissent by any member in order for the committee to be viewed as having achieved its goal. The committee's goal was to develop a written statement outlining a permanent schedule for Chicago bridge openings, including proposed rule language ready for publication in the Federal Register. If the committee reached a final consensus on all issues, including the proposed rule language, the Coast Guard could use the consensus language in its notice of proposed rulemaking, and committee members would refrain from commenting negatively on the consensus-based language. If the committee did not reach consensus on