

several other statutory provisions) and established by regulation at 32 CFR 199.17.

(ii) Partnership Program providers provide services in facilities of the uniformed services under the authority of 10 U.S.C. 1096 and the CHAMPUS program. They are similar to providers providing services under TRICARE Resource Sharing Agreements, except that payment arrangements are different. Those functioning under TRICARE Resource Sharing Agreements are under special payment arrangements with the TRICARE managed care contractor; those under the Partnership Program file claims under the standard CHAMPUS program on a fee-for-service basis.

(2) *Special rule for TRICARE Resource Sharing Agreements.* Services provided in facilities of the uniformed services in whole or in part through personnel or other resources supplied under a TRICARE Resource Sharing Agreement are considered for purposes of this Part as services provided by the facility of the uniformed services. Thus, third party payers will receive a claim for such services in the same manner and for the same costs as any similar services provided by a facility of the uniformed services.

(3) *Special rule for Partnership Program providers.* For inpatient services for which the professional provider services were provided by a Partnership Program provider, the professional charges component of the total inpatient DRG rate will be deleted from the claim from the facility of the uniformed services. The third party payer will receive a separate claim for professional services directly from the individual health care provider. The same is true for the professional services provided on an outpatient basis under the Partnership Program. Claims from Partnership Program providers are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program.

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July 28, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09-95-023]

RIN 2115-AE47

Drawbridge Operation Regulations; Chicago River, Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: The Coast Guard is proposing changing the operating regulations governing the drawbridges over the Chicago River system, most of which are owned and operated by the City of Chicago. This proposed rule would establish the times when, and the conditions under which, the bridges need to open for the passage of commercial and recreational vessels, and require advance notice of a recreational vessel's time of intended passage through the bridges. Special provisions would be added to provide drawbridge openings for flotillas of five or more recreational vessels. The proposed regulations have one set of rules for the period of high vessel activity, 1 April through 30 November, and other rules for the remainder of the year. Further, certain bridges on the North Branch of the Chicago River have been deleted from the previous permanent rule because they no longer exist or are no longer in the route of commercial or recreational vessels. The changes are being proposed in response to a request by the City of Chicago to reduce the number of required bridge openings. That request was premised on the unique situation in Chicago, where 26 bridges cross the Chicago River and its North and South branches in the very heart of the City. As a result, City officials asserted that drawbridge openings in Chicago have a greater potential impact on vehicular traffic than in any other major city in the United States. This action should accommodate the needs of vehicle traffic while providing for the reasonable needs of navigation. The Coast Guard will hold a public hearing on this proposal on August 22, 1995, in Chicago, IL.

DATES: Written comments on this proposed rulemaking must be received by August 30, 1995.

The hearing will be held on August 22, 1995, from 7 p.m. until 11 p.m.

ADDRESSES: Comments should be addressed to, and documents referenced in this preamble are available for

inspection and copying at, the office of the Commander (obr), Ninth Coast Guard District, room 2083, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The public hearing on August 22, 1995 will be held at the Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Malone, Bridge Branch, Ninth Coast Guard District, (216) 522-3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document were: Commander James M. Collin, U.S. Coast Guard, and Project Counsel; Mr. A.F. Bridgman, Jr., Chief, Regulations and Administrative Law Division, U.S. Coast Guard.

Request for Comments

The Coast Guard encourages interested persons to submit written data or views concerning this proposed rule. Persons submitting comments should include their names and addresses and identify this notice [CGD09-95-023]. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. The comment period has been limited to August 30, 1995, in order to enable the Coast Guard to have a final rule in effect by the end of the boating season.

Public Hearing

The Coast Guard will hold a public hearing on this proposal on August 22, 1995, from 7 p.m. until 11 p.m. at the Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, IL 60604. Attendance at the hearing is open to the public. Persons wishing to make oral presentations should notify Ms. Carolyn Malone at the number listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted at the hearing for inclusion in the public docket. Individuals making oral presentations at the hearing are encouraged to submit a written copy of their remarks for the rulemaking docket.

Regulatory History

Since the 1970's, the regulations for the operation of the bridges on the

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.

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

is unique in that no other major city has so many drawbridges incorporated into a downtown web of thoroughfares. Thus the potential for disruption of vehicular traffic related to openings of the drawbridges is greater in Chicago than in any other major city in the United States.

In recent years the number of boatyards on the Chicago River system has decreased. There also has been evidence of physical deterioration in bridge operations. Due to changes in the number of personnel utilized by the City to open the bridges, costs associated with operating the bridges have increased. Expanded commercial development outside of Chicago's "Loop" business district has generated additional vehicular and pedestrian traffic demands, raising concerns from City commercial interests as well as City officials. As a result, there has been growing disbelief on the part of the City and boatyards that voluntary cooperation among them would continue to provide for mutually satisfactory drawbridge operations. The City has desired increased predictability and a move away from an "on demand" opening schedule that leaves the City at the mercy of any boater's request to have up to 26 bridges, most owned by the City, open on demand. The City has asserted that the existing rule cost the City thousands of dollars in labor, caused thousands of hours of vehicle and pedestrian delay for each series of bridge openings, and benefited only a relatively few boat owners who chose to traverse the Chicago River without lowering the masts on their vessels. The boatyard owners also have wanted predictable drawbridge openings but were concerned that limited openings, particularly during weekday daylight hours, would adversely affect their business. The boaters were concerned that individual boaters would continue to have reasonable opportunity to traverse the river.

At the outset, the Coast Guard recognized that the situation involving the drawbridges over the Chicago River and its branches was both complex and unique. The Chicago River and the North and South branches divide the core portion of the third largest city in the United States into three segments. The main branch virtually bisects the downtown area, at the North edge of the Chicago Loop. There is virtually no vessel destination in the main branch. Recreational vessels that require bridge openings normally transit the entire main branch segment enroute to destinations on either Lake Michigan or the North or South branches, thus requiring the opening of all ten bridges

over the main branch. In addition, due to the confined nature of the Chicago River and the close proximity of the bridges, few recreational sailing vessels "cruise" on the river. These circumstances are drastically different from the normal situations addressed by drawbridge regulations. Virtually all of the Coast Guard's drawbridge regulations concern single bridges. The procedures and guidance in the Bridge Administration Manual (COMDTINST M16590.5A) primarily address those normal situations. Accordingly, in the Chicago situation the Coast Guard adopted a systems approach to analyzing the need for changes to the existing rules and, if changes were found to be appropriate, the nature of those changes. It was recognized that unique solutions might be required and that any revised rules that resulted should not be considered as setting a precedent for the drawbridge regulations where normal navigational and land traffic exists.

In addition, the Coast Guard realized that it was necessary to distinguish between the provisions of the existing permanent rule and the practices that had been followed, on a voluntary basis, in earlier years and during more recent times. The existing rule requires the bridges to be opened on demand, and bridge logs for the years prior to 1993 showed that bridges were opened frequently, during weekday daylight hours, for single vessel transits. In 1992, apparently related to an accident involving the Michigan Avenue bridge and the flooding of a tunnel under the main branch of the river, the City desired to limit weekday daylight openings, concentrate openings on weekends, and arrange for recreational vessels to transit in flotillas. Since 1993, weekday daylight openings have been limited through the voluntary practices of the boatyards in grouping vessels into flotillas for transits, particularly during the spring breakout and the return to winter storage in the fall. While this practice has worked, with varying degrees of friction, to limit the number of drawbridge openings and the consequent impact on land traffic, the statute obligates the Coast Guard to regulate drawbridge openings, where necessary. If there is a need to restrict the number of openings of the drawbridges over the Chicago River, the Coast Guard cannot leave it to the good will of the boatyard owners and individual boaters to limit their requests for openings. There are no market forces available to balance the needs of the recreational boater and the citizens of the City. It is the Coast Guard's

obligation to promulgate a rule which will balance the needs of land and maritime transportation and that clearly sets forth the rights and obligations of the bridge owner and the vessel owners.

It should be noted that the proposed rulemaking does not govern all the drawbridges on the Chicago River. The proposal only affects the bridges owned or operated by the City. With the exception of bridges which carry Chicago Transit Authority trains, the bridges carry vehicular and pedestrian traffic. There are four railroad bridges, not owned by the City, that are manned by bridge tenders 24 hours a day. These bridges would continue to open on signal for both commercial and recreational vessels.

Summary of Comments

Over the course of the history outlined above there have been two public hearings and many comments from a wide variety of special and public groups as well as individuals. Positions over the course of this two and one-half year process have run the spectrum from opening the bridges on demand, with no flotilla or advance notice restrictions, to opening only on weekends with a variety of restrictions. The following discussion briefly summarizes the positions of the interested parties, which have remained essentially unchanged since the City first requested a change to the existing regulations.

The City representatives have urged that weekday daylight openings are not necessary, since all outgoing and incoming vessels can be accommodated on weekends. Weekday openings are too disruptive to commercial vehicular traffic during business hours, emergency services, and midday pedestrian, public transit, and vehicular traffic. The City has submitted lengthy comments and data concerning the problems caused by multiple openings and the costs associated with maintaining and operating the aging drawbridges. Representatives of the City have attended hearings and discussed the potential impact of bridge openings on emergency response by police, fire, and rescue vehicles. In addition, City representatives have commented on the detrimental effects of vehicle delays on the environment and commercial development. The comments submitted on behalf of the City particularly oppose on demand openings.

Businesses in Chicago are not in favor of weekday daylight openings due to disruption of deliveries, public transportation, and emergency services. Comments to this effect have been received from taxi companies, couriers,

parcel delivery companies, an ambulance company, hotels, a bank, parking companies, property management firms, De Paul University, Union Station, AMTRAK, and business associations. The commercial and business interest comments particularly oppose on demand openings.

Representatives of the boatyards contended that predictable and readily available openings are essential to their continued business viability. They urged that provision for passage of single vessels must be retained and the rules should be as flexible as possible to account for peak traffic and unexpected vessels. They also urged that the regulations presently in effect should not be modified until data are collected for an entire navigation season to depict seasonal changes of impact.

Boating interests urged that requiring flotillas was too restrictive of the right to navigation and that openings during the weekday daylight hours were essential. Boating interests and individual boaters generally supported on demand openings, although some comments indicated that limited restrictions on weekday openings would be acceptable. They also indicated that if a change was necessary, there should be daylight openings during the weekdays and openings should not be restricted to strictly nighttime hours from Monday through Friday. Concerns were expressed about the difficulties encountered in arranging flotillas and the hazards to safe navigation presented by large numbers of vessels transiting the confined waters of the Chicago River. Some concerns were also expressed over the increased hazards to safety inherent in transiting the Chicago River and navigating on Lake Michigan at night.

The above summary contains the essence of the comments received by the Coast Guard over the past two and one-half years. The record of comments and data is voluminous. Some of the comments are duplicative, having been submitted directly to the Coast Guard and also included in submissions by the City. Extracts from the comments and references to the data can be found in the documents filed by both the plaintiff and the defendant in the litigation outlined above, copies of which have been included in the public record of this rulemaking.

The Coast Guard will continue to consider all comments previously received and all comments submitted in response to this notice of proposed rulemaking. It is not necessary to resubmit comments or data previously filed. Comments are desired that specifically address the methodology

employed by the Coast Guard in developing the proposed rule, as discussed below, the data on which the proposal is based, or that provide new data.

Proposed Rule

In light of all the comments thus far received, in writing and during public hearings, the Coast Guard is proposing a rule that it believes best accommodates the needs of the City and its citizens, the commercial interests, the boatyards, and the individual boater, while still conforming to the statutory mandate which, in the Coast Guard's view, requires balancing the requirement that drawbridges be opened for the passage of vessels with the requirement that, to the extent practical and feasible, the regulations should provide for scheduled openings that would help reduce motor vehicle delay and congestion.

The proposed regulation would have different rules apply to the period of high vessel activity from April 1 through November 30 of each year and the period of low activity, from December 1 through March 31 of the following year. As data, written comments, and presentations at hearings show, the recreational boating season is over well before November 30 and from December 1 through March 30 there is little vessel traffic on the Chicago River. The current regulations provide different rules for the period from April 1 through December 31, and January 1 through March 31, each year.

Other than the above change, the proposed rules maintain the existing provisions for commercial vessels. Editorial changes have been made to clarify the rules and adopt a new format, which separates the regulations for commercial vessels from those for recreational vessels. The proposed rules also eliminate reference to some bridges which no longer exist.

For recreational vessels, the existing permanent rule provides that bridges will open on signal from April 1 through December 31, except for specified rush hours. In some cases, where bridges are not continually manned, a delay of up to 30 minutes is permitted before opening the bridge. The proposed rules would impose the following limitations:

(1) On Saturdays and Sundays openings to accommodate two transits would be available each day, if requested 20 hours in advance of the intended time of passage, without regard to the number of vessels.

(2) Weekday daytime openings, with no minimum flotilla requirement,

would be limited to Wednesday morning, with 20-hour advance notice.

(3) On Monday and Friday evenings, after 6:30 p.m., the bridges would be required to open to accommodate transits, if requested 6 hours in advance, with no minimum flotilla requirement.

(4) In addition to the above openings, which would be available for the passage of one or more vessels, supplemental openings could be scheduled for flotillas of 5 or more vessels, with 20-hour advance notice. These openings could not be requested for rush hour periods.

(5) If requests were received for both outbound and inbound transits, the inbound transit would be scheduled to commence after the outbound transit had cleared Lakeshore Drive, so that only one opening of the Lakeshore Drive bridge could accommodate both transits.

The following discussion explains how these proposed rules were developed:

In crafting these regulations the Coast Guard took into account all the comments received from prior Chicago River rulemaking activities, in writing and at hearings, as well as views expressed and data furnished during the extensive negotiated rulemaking process. During the course of the negotiated rulemaking procedure the City of Chicago provided the Coast Guard and the committee with two volumes of traffic data to assist in determining the scope of the problems associated with bridge openings and to point out factors or parameters that would suggest solutions. They also had the consultant who prepared the study present at two meetings to answer questions on methodology and other study issues. In addition, the Coast Guard considered the voluntary practices followed by the boatyards and the City, which have demonstrated that using flotillas and scheduling openings in advance is a feasible means of reducing the number of drawbridge openings necessary to accommodate a major portion of the needs of recreational boaters.

First, the Coast Guard decided to concentrate on the situation affecting the 10 bridges across the Chicago River. While opening bridges across the North and South branches does impact land traffic in the downtown area, particularly traffic using the Ohio Street and Congress Street Parkway bridges, it is the Coast Guard's impression that the impact is not as immediate or as severe as the impact of opening the bridges on the Chicago River since, other than the two bridges mentioned, they are not primary arteries or are not in close proximity to the Chicago Loop. As

discussed above, whether a recreational vessel's transit originates on or terminates on either the North or South branch, and involves some or all of the bridges on either branch, the transit invariably involves opening all of the bridges on the Chicago River. If a beneficial and balanced approach is to be taken in modifying the existing regulations, the changes must address these bridges. In addition, it is the position of the Coast Guard that if a regulation can be developed that provides a reasonable balance between the needs of land and vessel traffic for the bridges on the Chicago River, a logical extension of those rules to the North and South branches would be appropriate.

The second step was to ascertain whether there was a demonstrable need to change the existing regulations. The traffic data presented by the City were based on directional traffic counts, taken at fifteen minute intervals, 24 hours per day, at certain bridges. Normal traffic flow counters and methodologies were used to record traffic activity for one week in the fall of 1994 and two weeks in the spring of 1995. The data showed that downtown Chicago traffic does not follow a typical urban traffic pattern. Rather than traffic levels increasing during the morning rush hour, decreasing during midday, and increasing again during the evening rush hour, the traffic increased in the morning, then declined slightly, but remained high until early evening. There was no significant variation in the traffic patterns or volumes between the two periods.

Although the traffic counts do not cover the full boating season, the Coast Guard has no reason to believe that there is substantially more or less vehicle traffic during the summer months. Chicago traffic does not appear to vary appreciably on a seasonal basis.

The study counted traffic during 1994 on the Lake Shore Drive, Michigan Avenue, Wells Street and LaSalle Street bridges. In 1995 the study counted traffic on the Lake Shore Drive, Michigan Avenue, Clark Street and Dearborn Street Bridges. It was determined that the location of the traffic counter on Lake Shore Drive was not in the best location to provide accurate traffic data for the bridge, since a substantial amount of traffic could exit before crossing the bridge, and some traffic may have been counted that did not cross the bridge. In lieu of disregarding the traffic on this major artery entirely, the volumes recorded for Lake Shore Drive were reduced by half for purposes of this proposed rule. The City has been requested to provide an

accurate traffic count for this bridge prior to the public hearing. While the Coast Guard has received additional data from the City, the Coast Guard has not yet analyzed this new information in light of the entire record. The Coast Guard will consider these newly submitted data, any revised data, and any comments on the accuracy of those data, before action on a final rule. The 1994 and 1995 data were extrapolated to the other downtown bridges. Based on this analysis, it is conservatively estimated that in excess of 3,000 vehicles are potentially affected by each sequence of bridge openings on weekdays between the hours of 10:15 a.m. to 3:15 p.m.

The average opening cycle for a bridge takes 8 minutes for a single vessel transit and 10 minutes for a flotilla of 10 or more vessels. There was no significant variation in the opening time associated with the number of vessels in a flotilla. The average time for vehicle traffic to return to normal after an opening was 4 minutes, although there was substantial variation between bridges which appears related to the volume of traffic on a particular bridge.

From these data the Coast Guard concluded that the existing permanent rule does not strike a reasonable balance between the needs of vehicular traffic and the needs of recreational boaters. The existing rule requires the drawbridges to be opened, on demand, as many times as recreational boaters want, within specified times. Other than the rush hour restrictions, the rule does not provide for regularly scheduled openings and the data indicate that openings have the potential for affecting a large number of vehicles during periods of heavy traffic.

There is no set formula for balancing the burden on vehicular traffic against the burden on marine traffic. The Bridge Administration Manual indicates that the length of delay caused by a bridge opening, by itself, does not justify restricting bridge openings. There is sound reason for this, since the amount of delay caused by a bridge opening can be the result of many factors, including some within the control of the bridge owner, from initial design of the bridge through current maintenance and operational practices. On heavenly traveled roads the delay to people in vehicles will invariably exceed the delay to people on recreational vessels, unless the time between required openings is extremely long. Any attempt to measure and weigh the value of waiting time to persons in vehicles and compare it to the value of unrestricted scheduling to boaters is misleading. As noted previously, the statute requires

the regulation to provide for scheduled openings to reduce motor vehicle traffic delays and congestion, where practical and feasible. The Coast Guard construes the statute as requiring only a common sense evaluation, on a broad level, of the impact of bridge openings on vehicular traffic and the reasonable expectations of the owners and operators of vessels to be able to use the navigable waters of the United States. In this instance the Coast Guard believes that an appropriate balance requires some restriction, beyond the current rush hour limitations, on the right of vessel owners and operators to request openings. The balance must reflect vehicular traffic needs and the peculiarities of the Chicago Loop and Must also accommodate the needs of boaters. A proper balance is not one that continues on demand openings except during rush hours. The voluntary restraint and scheduling efforts practiced by the boatyards and boaters do not cure the defects in the existing permanent rule. Since there are no market forces that are operable to limit or control exercise of the right to demand bridge openings, the Coast Guard concluded that revision of the existing rule was appropriate if a practical and feasible method of scheduling could be devised.

The third step was to analyze the available data to determine if there is a practical and feasible way to schedule or limit openings that would help reduce vehicle traffic delays and congestion on the roads and highways served by the bridges on the Chicago River. To do this, the Coast Guard analyzed available data from 1990 through July 5, 1995 concerning vessel transits of the Chicago River, concentrating on those transits that took place on weekdays. Data on several years of vessel traffic levels were provided by the City of Chicago, contained in their Drawbridge Study or previously furnished to the Coast Guard.

The number of vessels requesting transit each year ranged from a low of 461, in the spring of 1992, to a high of 662 in the fall of 1991. Of these, the number of vessels transiting on weekdays ranged from a high of 207 in the spring of 1990 to a low of 78 in the spring of 1993. Prior to 1993, approximately one-third of the vessel transits occurred on weekdays. In 1994 and 1995 the percentage of weekday transits decreased to 25% or less. It is noted that the data were influenced by the various restrictions in place since 1993, including the temporary deviation in effect from April 15, 1995 to May 18, 1995, and by the voluntary cooperative scheduling arranged between the

boatyards and the City that accommodated a substantial majority of vessel transits on weekends. These restraints favored flotillas of between 5 and 25 vessels on a run. Data available for spring transits in 1990 and 1991, where no restrictions were in effect, indicate that approximately 75% of the vessels transiting on weekdays did so in flotillas of 5 or more. Less than 100 vessels out of a total of 399 transited singly or in flotillas of less than 5 vessels, yet these vessel transits accounted for approximately two-thirds of the weekday openings.

Based on the data indicating that approximately one-quarter of the vessels utilizing daytime weekday openings are causing two-thirds of these openings, the Coast Guard believes that some restrictions on the number of daytime weekday openings that these vessels can request would help reduce traffic delays and congestion. It also appears that the use of flotillas is a practical and feasible means of providing for a large majority of the transits necessary to provide for the reasonable needs of navigation. It does not appear that providing on demand openings for single vessels on each weekday is necessary to accommodate the reasonable needs of navigation. The spring, 1995, breakout season appears to confirm the practicality of using flotillas. There were 69 openings during the period from April 15 to July 5. Of these, 41 were for flotillas of five or more vessels. Another 14 were for groups of from two to four vessels. Only 14 were for single vessels, of which 9 were on weekdays.

A review of the data showed that the greatest number of outbound vessels during the weekdays in April and May 1990 and 1991 occurred on Wednesday. Traditionally, Wednesday had been the day most used for outbound vessel movements prior to 1992. In 1994, a change to Tuesday and Thursday occurred after a temporary deviation of the drawbridge regulation was implemented. In 1995, the greatest number of outbound vessel movements occurred on Tuesday and Thursday due to the deviation in place and the voluntary agreement to follow that schedule after it was ruled invalid by the court.

The rule that the Coast Guard is proposing would not require the City to open the bridges for weekday transits of less than five vessels except on Monday and Friday evenings and on Wednesday morning. Monday and Friday evenings were selected to facilitate vessel transits from Lake Michigan to the boatyards for repairs or servicing after a weekend of sailing, and return to the Lake before the following weekend, a need that has been

repeatedly expressed by boating interests. Wednesday morning was selected based on the pattern existing in the absence of restrictions and to equalize the periods when vessels not traversing in flotillas of five or more could be denied passage. On any day except Tuesdays and Thursdays, a single vessel would be able to transit the Chicago River at some point during the day. This, the Coast Guard believes, reasonably accommodates the expressed need for opportunities to secure midweek repairs to vessels and return to Lake Michigan. The rule provides for openings at any time for emergencies, and nothing in the rule precludes the City from responding to other requests.

The boatyards and boaters have urged maximum flexibility in arranging and scheduling flotillas. The voluntary scheduling practices agreed to by the City and the boatyards during recent years was discussed during the negotiated rulemaking sessions and the possibility of including provisions in the regulations that would provide flexible arrangements for flotillas was considered. The Coast Guard has adopted the concept of encouraging the use of flotillas to limit the number of openings required by proposing to require openings for flotillas of five or more vessels. The Coast Guard has also adopted the practice of allowing the scheduling of these flotillas to be as agreed to between the City and the boatyards. The proposed rule does not restrict openings for vessels transiting in flotillas of five or more, except for requiring advance notice and maintaining the existing rush hour closure times; however, the proposed rule does not schedule these openings. Thus, the proposed rule provides the flexibility urged by the boatyards and boaters. As discussed later, the City's countervailing need for predictability of schedules and time to mobilize bridge opening teams is provided by proposing to require longer advance notice of a requested opening.

The fourth step was to determine whether restricting bridge operations to particular times of the day would help reduce vehicle delay and congestion. The data indicate that downtown Chicago traffic does not follow a typical urban traffic pattern. Rather than traffic levels increasing during the morning rush hours, decreasing during midday, and then increasing again for the evening rush hours, the traffic only decline slightly after morning rush hours and remained high until early evening. The lowest level of weekday daytime traffic occurred between 10 a.m. and noon. The traffic data support the existing rush hour closed periods,

which end at 6:30 p.m. Weekend traffic levels are lower than weekday levels, with the lowest levels occurring before 1 p.m.

In order for weekday daytime openings on the Chicago River to be least disruptive to vehicular traffic, the runs should start at 10 a.m. or as soon thereafter as practical. The first bridge would open at that time, with all other bridges following in sequence. Each bridge should be open as the vessel or lead vessel in a flotilla approaches, so that continuous movement of the vessel(s) can be maintained. Due to the proximity of the bridges, it may be necessary to have more than one bridge open at a time. For transits inbound from Lake Michigan, bridges on the North or South branches would continue this sequential opening pattern, depending on the destination of the vessel(s). For transits originating on the North or South branches, it will be necessary for the party requesting the run and the City to agree on the time for starting the run in order to have the vessel(s) arrive at the Franklin Street bridge as close to 10 a.m. as practical. Outbound transits will occur after 10 a.m. due to the rush hour restrictions on certain bridges on the North and South branches. This approach, which does not specify the exact time each bridge will open, is different from the usual drawbridge regulatory scheme but is based on the systems approach taken in this rulemaking. Comments are specifically requested on the feasibility of this approach and any problems that it may cause.

The fifth and final step was to determine whether requiring advance notice of a requested transit is appropriate and, if so, how much advance notice should be provided. The bridges are not manned continuously and, if the rule provides for restricted openings, it would be extremely burdensome to require all the bridges to be manned at all times. Due to the city's manpower constraints, the practice has been for necessary personnel to move from bridge to bridge as a vessel transit proceeds from Lake Michigan to the boatyards or in the opposite direction. The City has asserted that, at the present time, it requires assembling a crew of electricians and other tradesmen to ensure the satisfactory operation of the bridges. While efforts are underway to improve the operation of the bridges there is no reason to believe that this situation will improve in the near future. Thus, the City asserts a need for time to assign appropriate personnel and schedule their work hours to accommodate requested transits.

On the other hand, the boatyards and boaters have asserted that requiring a lengthy advance notice makes scheduling vessel transits difficult, especially when assembling a flotilla of 5 or more vessels. They also assert the unpredictability of single vessels desiring passage for maintenance or repairs.

In an attempt to accommodate these conflicting needs, the proposed rule provides for 20 hours advance notice for weekend and Wednesday daytime openings and for flotillas of 5 or more vessels. A 6 hour advance notice would be required for evening openings. Except for Sunday openings, these requirements should enable the City to arrange for the necessary personnel during normal business hours, either for an opening that evening or the next day, and would allow boaters and the boatyards to arrange for openings on relatively short notice. The Coast Guard believes that providing boaters an opportunity to request a Sunday opening, based on events occurring on Saturday, is appropriate and not unduly burdensome for the City.

The above discussion summarizes the analysis, methodology, and conclusions of the Coast Guard in arriving at this proposed rulemaking. During the many discussions with interested parties that have occurred, certain other issues were raised that are not determinative of the issues, but which still merit discussion.

The City expressed concern that runs would be scheduled in response to a request and crews mobilized, but that no vessels would show up. The available data do indicate that this has occurred, but the Coast Guard is unable to conclude that this is a problem requiring regulatory action. The statutes addressing drawbridge operation are generally directed at the responsibilities of the bridge owner and provide penalties for not opening the bridge when required to do so. No specific penalties are provided under these statutes penalizing the vessel operator who does not show up for a requested opening, although there are prohibitions against requesting unnecessary openings. The Coast Guard will monitor this situation and may address it in a separate rulemaking if it appears necessary.

The data on pedestrian delays caused by drawbridge openings were informative but did not contribute significantly to the Coast Guard's decisions in the formulation of this proposed regulation. The amount of delay to vehicles and the extent of the vehicle "backup" also did not contribute significantly to the formulation of this proposal. Delay to

land traffic caused by a drawbridge opening is unavoidable but can be mitigated by efficient operation of the bridges. The Coast Guard is not aware of any standardized method of determining the value of delay time and current procedures require only the submission of traffic count data. Therefore, the Coast Guard did not quantify delay time or assign a value to it to balance land traffic and vessel transits. The proposed action should reduce the number of openings and, therefore, the cumulative delay time of pedestrians and vehicles, which could be substantial, should be reduced.

During the negotiated rulemaking process, a letter from the boatyard's attorneys contained the following allegations concerning deficiencies in the traffic data presented by the City:

1. The letter asserted that the study grossly overstates the delay time by assuming each person is delayed 12 minutes.

Response: Coast Guard regulations, policy and procedures do not require data to be expressed in terms of person-hours of delay. The volume of vehicular and pedestrian traffic was considered, but delay time was not a determining factor in the rulemaking decision. Assigning a value to person-hours delay appears to be even more subjective than determining the impact of bridge openings on vehicles. Persons delayed could be engaged in personal affairs or on a business venture. The Coast Guard has not relied on estimates of person-hours of delay in formulating the proposed schedule of drawbridge openings in this rulemaking.

2. The letter asserted that, in addition to the methodological error described above, the placement of vehicle counters has led to a significant overstatement of bridge traffic.

Response: The location of the traffic counter on Lake Shore Drive was identified as being susceptible to recording traffic that did not cross the drawbridge over the Chicago River. The level of traffic recorded at the Lake Shore Drive counting station and projected for crossing the bridge may be subject to some inaccuracies. However, Lake Shore Drive Bridge is but one of 10 drawbridges on the main branch of the Chicago River. Although the data from Lake Shore Drive may be inaccurate, data from other bridges were considered accurate. As previously stated, the data pertaining to Lake Shore Drive were discounted for the purpose of developing this proposal and the City has been asked to provide more accurate data in time for the public hearing.

3. The letter asserts that, in addition to the above errors, the traffic data are

skewed by a failure to separate out delays caused by bridge malfunctions and other problems unrelated to boaters.

Response: The length of delays to land traffic caused by individual bridge opening was not a significant factor in formulating this regulation. Regardless of whether delays to land traffic were attributable to mechanical or other problems, the delay would not occur unless the bridge was opened for the passage of vessels. The length of the delay was not quantified or assigned a value in developing these proposed regulations.

4. The letter asserts that the evidence of delays to emergency vehicles is not believable.

Response: The information regarding documented cases of delays to emergency vehicles was requested by the Coast Guard to verify the cases reported by the City of Chicago. Impacts of drawbridges on emergency vehicle response were considered, but were not a determinative factor, in developing this proposed regulation. Emergency land vehicles are given special consideration, as stated in 33 CFR 117.31, which allows drawbridges to close for passage of emergency vehicles. In addition, readily available alternative routes exist. Requiring advance notice of requested opening will facilitate dispatching emergency vehicles when bridge openings occur.

5. The letter asserts that the conclusion that current restrictions on weekday daytime openings "only achieve a small reduction in land traffic impacts" and, therefore, support complete elimination of weekday daytime openings, is contradicted by the study's own data.

Response: The Coast Guard reviewed the data and has found that there is evidence of heavy vehicular traffic during most of the weekday hours, not just during rush hours. The proposed rule is based on evidence that there is a drop in weekday land traffic between 10 a.m. and noon. Bridge openings during that period would therefore have the least impact on land traffic, especially if the number of weekday openings is minimal. The proposed regulation provides that single vessels or flotillas of less than five vessels may request passage only on Wednesday in this time period.

The City asserts that there should be no continuation of on demand openings and expressed a desire for consistency and predictability to schedule bridge crews. The proposed restrictions on the days and times that openings can be requested for vessels not transiting in a flotilla of five or more, and the notification requirements, are designed

to accommodate those positions. The City also expressed major concerns about traffic and business disruption attributable to drawbridge openings. The data provided give evidence of patterns showing decreased traffic Saturday and Sunday mornings, weekday mornings near the 10 a.m. hour and during the evenings after 6:30 p.m. This proposal attempts to schedule openings to closely track the times when traffic and business disruption would be the least.

The boatyards' major concerns, as expressed through their comments, were that due to the unpredictable needs and desires of their customers they needed to be able to transit the river every day. The proposed rule addresses these concerns by allowing for daily transit for flotillas of 5 or more vessels, with advance notice. The boatyards said they needed access for repair work and to allow growth. Access by even a single vessel 5 days a week, with advance notice, addresses those needs. Boatyards also expressed a desire for some combination of predictability and flexibility. The notice requirements and supplementary openings in the proposal are designed to meet those concerns.

A major innovation in this rule is the addition of supplemental opening times. These unlimited openings, governed by a 20 hour notice requirement and a flotilla size of at least five vessels, allow the boatyards to schedule runs up or down the river as necessary: weekday daytime with rush hour limitations, weekends, or evenings.

Under this regime the boatyards would have a great amount of flexibility to meet the needs of their customers and grow, while at the same time, the notice and flotilla requirements would give the City enough lead time to meet its need for predictability in scheduling the complex series of openings necessary to accommodate a transit of the Chicago River system.

When looking at the spring 1995 period of cooperation between the competing interests, this proposed rule is designed to accommodate the needs expressed by the affected parties.

Regulatory Evaluation

This rule is not considered to be a significant rulemaking activity under Executive Order 12886 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The economic impact of the proposed rule cannot be accurately determined. Its primary impact is on weekday openings of the bridges. The number of openings for single vessels, or groups of

less than 5, should be substantially reduced. The number of these weekday runs each year has been approximately 60. If all these runs were eliminated, and no additional flotilla runs were added, the City could save approximately \$400,000 per year. Since single vessel transits could still occur on 5 days a week, not all these runs will be eliminated. Assuming these runs will be reduced 50%, the savings to the City would be under \$200,000 per year. However, the rule allows an unlimited number of flotilla runs to be scheduled, and it is impossible to predict how many will be actually utilized. Available data indicate that there are approximately 90 total runs per year. Assuming that flotilla runs increase by 10 per year due to the limitations on single vessel transits, the cost to the City would be approximately \$70,000. Thus, the net savings to the City are estimated to be approximately \$130,000 per year.

The boatyards have asserted that restricting openings of the drawbridges will adversely affect their business, because boaters will be unwilling to put up with the restrictions and will utilize boatyards in locations other than on the Chicago River. Information submitted to the Coast Guard indicates that the number of vessels using the affected boatyards has decreased and that utilizing alternative boatyards has increased. Some of this displacement is asserted to have been caused by the recent restrictions on drawbridge openings. Other displacements may be attributable to the inherent difficulties in transiting numerous drawbridges to get to the boatyards. Some loss of business may be due to different reasons, such as development of alternative facilities or personal choice of the boat owner. The Coast Guard has received assertions that the net income of the boatyards has been substantially reduced by past restrictions on bridge openings. This reduction appears to be a transfer of economic costs and benefits, and not an increased cost to the boat owner. The Coast Guard does not have an estimate of the dollar value of this transfer and invites comment on the economic impact of the proposed rules.

The Coast Guard has considered whether the proposed restrictions on bridge openings constitutes a "taking" under the Fifth Amendment to the Constitution, as discussed in E.O. 12630 and the Attorney General's Guidelines implementing that Order. The proposed regulation does not directly regulate the use of the boatyards' property, but it has been asserted that the restrictions will adversely affect their profit. It is the Coast Guard's position that the

proposed regulation will substantially advance the governmental purpose of balancing the needs of land transportation and the navigational rights of recreational boaters. The proposed provisions for supplemental openings, as required, for flotillas of 5 or more vessels and the provisions ensuring access by all vessels on 5 out of the 7 days in each week should minimize the impact on the boatyards. The Coast Guard does not believe that the proposed regulations have significant taking implications. However, comments and data on this issue are specifically requested.

Small Entities

The Regulatory Flexibility Act requires an assessment of whether the proposed rule would have a significant economic impact on a substantial number of small entities. For this proposal, the Coast Guard considers any business employing less than 500 persons to be a small entity. The four boatyards remaining on the North and South branches of the Chicago River are small businesses and they have asserted that restricting the drawbridge openings will adversely affect their businesses. The proposed rule is not seen as having a significant adverse economic effect on any other business.

As discussed above, the Coast Guard has carefully considered the boatyards' views and has proposed unlimited supplemental openings to give the boatyards considerable flexibility to satisfy their customers' needs. The five-boat minimum for flotillas is based on an analysis of the data on past voluntary practices, which indicated that this limit is feasible. The rule does restrict single vessel passages, but does not prohibit them. The restrictions are considered to be the minimum necessary to achieve the intent of the statute.

Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. The Coast Guard specifically request comments on the impacts of the proposed rule on small entities and will consider any information provided before promulgating the final rule.

Collection of Information

The proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). No reports or information would be submitted to the government. As is common with all other drawbridge regulations, persons

desiring passage of a vessel have to make their requests known to the operator of a drawbridge, frequently some time in advance. This advance notice is normally a single phone call. Advance notice has been required under the existing rule for drawbridges on the Chicago River and a simple verbal request for bridge openings would continue to be required under the proposed rules.

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this proposal, if adopted, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.391 is revised to read as follows:

§ 117.391 Chicago River.

The draws of the bridges operated by the City of Chicago shall operate as follows:

(a) For commercial vessels:

(1) From April 1 through November 30—

(i) The draws of the bridges across the Chicago River from its mouth to the junction of the North and South Branches, across the South Branch from the junction to and including the Roosevelt Road, and the Kinzie and Ohio Street bridges across the North Branch shall open on signal; except that, from Monday through Friday from 7:30 a.m. to 10:30 a.m., and 4 p.m. to 6:30 p.m., the draws need not be opened for the passage of commercial vessels.

(ii) The draws of the bridges across the North Branch of the Chicago River at Grand Avenue, the bridges across the

North Branch of the Chicago River north of the Ohio Street bridge to and including North Halsted Street, and bridges across the South Branch of the Chicago River north of South Halsted Street to, but not including Roosevelt Road, shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m., the draws need not open for the passage of commercial vessels.

(iii) The draws of the bridges across the North Branch of the Chicago River north of North Halsted Street and the South Branch of the Chicago River south of South Halsted Street shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m. the draws need not be opened for the passage of commercial vessels.

(iv) Subject to the restrictions in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the draws of the Randolph Street, Cermak Road, and Loomis Street bridges across the South Branch of the Chicago River, shall open on signal. The draws of the following bridges in Chicago shall open on signal if tended or within 30 minutes after notice is given to the City of Chicago Bridge Desk:

South Branch

Washington Street
Madison Street
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Congress Street (Eisenhower Expressway)
Harrison Street
Roosevelt Road
Eighteenth Street
Canal Street
South Halsted Street

West Fork of the South Branch

South Ashland Avenue
South Damen Avenue

Chicago River, North Branch

Grand Avenue
Chicago Avenue
North Halsted Street
Ogden Street
Division Street

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(b) For recreational vessels:

(1) From April 1 through November 30—

(i) The draws shall be scheduled to open, before 1 p.m., twice on Saturdays and twice on Sundays if requests for passage have been received at least 20 hours in advance. If the bridges have been authorized to remain closed for portions of a Saturday or Sunday to accommodate special events, openings shall be scheduled after 1 p.m. as necessary to provide two openings.

(ii) The draws shall open on Monday and Friday, after 6:30 p.m. Each opening requires notice that has been given at least 6 hours in advance of a vessel's requested time of passage.

(iii) The draws shall open on Wednesdays at 10 a.m., or as soon thereafter as practical, if a request for passage has been given at least 20 hours in advance.

(iv) The draws shall open at times in addition to those listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, after notice has been given at least 20 hours in advance requesting passage for a flotilla of at least five vessels. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, and the South Branch of the Chicago River need open on signal only if at least 48 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(3) Paragraph (b) of this section applies to the following listed bridges:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
LaSalle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Monroe Street
Madison Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road

18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(c) The following bridges need not be opened for the passage of vessels: The draws of the North Avenue, Cortland Street, Webster Avenue, North Ashland Avenue, Chicago and Northwestern Railroad, North Damen Avenue, and Belmont Avenue bridges across the North Branch of the Chicago River, and the draws of the North Halsted St. bridge, the Ogden Ave. bridge, the Division St. bridge and the Chicago, Milwaukee, St. Paul and Pacific Railroad bridge across the North Branch Canal.

(d) The opening signal for all Chicago River bridges is three short blasts or by shouting, except that four short blasts is the opening signal for the Chicago and Northwestern railroad bridge near Kinzie Street and the Milwaukee Road bridge near North Avenue and five short blasts is the opening signal for the Lake Shore Bridge when approaching from the north.

(e) The emergency provisions of § 117.31 apply to the passage of all vessels and the operation of all bridges on the Chicago River.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 95-18976 Filed 7-28-95; 2:49 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-5269-1]

Preparation, Adoption, and Submittal of State Implementation Plans; Appendix M, Test Methods 204, 204A-204F

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to add seven methods to appendix M of 40 CFR part 51 for capture efficiency (CE) testing to assist States in adopting enforceable CE measurement protocols into their State implementation plans (SIP's) for ozone. These proposed

methods, in conjunction with the protocols, would also improve EPA's ability to enforce State regulations to reduce volatile organic compounds (VOC) emissions in ozone nonattainment areas.

DATES: *Comments.* Comments must be received on or before October 2, 1995.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 16, 1995, hearing will be held on August 30, 1995, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Betty Sorrell at (919) 541-5582 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by August 16, 1995.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to Public Docket No. A-91-70 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M-1500 Waterside Mall (ground floor), and may be inspected from 8:30 a.m.-12 p.m. and 1:30 p.m.-3:00 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling 202-260-7548. A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Betty Sorrell (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5582.

Docket. A Docket A-91-70, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m.-12 p.m. and 1:30 p.m.-3:00 p.m., Monday through Friday, at the EPA's Air Docket Section Mail Code: 6102, Room M-1500, Waterside Mall (ground floor), 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell, Source Characterization Group A (MD-19), Emissions, Monitoring, and Analysis

Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-4825.

SUPPLEMENTARY INFORMATION: The proposed regulatory text of the proposed rule is not included in this **Federal Register** notice, but is available in Docket No. A-91-70 or by written or telephone request from the Air Docket (see **ADDRESSES**). If necessary, a limited number of copies of the Regulatory Text are available from the EPA contact persons designated earlier in this notice. This Notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of the phone call. Dial (919) 541-5742 for up to a 14400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541-5384.

I. Summary

On February 10, 1995, EPA released a document entitled "Guidelines for Determining Capture Efficiency" which recommended the use of a permanent total enclosure (PTE), temporary total enclosure (TTE), or a building enclosure for determining CE. The EPA is proposing to add seven test methods, needed to carrying out the recommended protocols, to appendix M in 40 CFR part 51. The methods being proposed today can be used by States in developing CE protocols for regulated coating and printing facilities employing a VOC capture system and control device. The use of alternative methods and protocols is discussed in the guidance document mentioned above.

Each of the EPA recommended protocols relies on the use of an enclosure to contain the VOC emitted from a process. Either a gas/gas protocol (gas-phase measurements only) or a liquid/gas protocol (both liquid- and gas-phase measurements) would be considered acceptable in conjunction with the construction of a TTE around the process. The gas/gas or liquid/gas protocol could also be employed in situations where the building or room around the process meet the requirements in proposed Method 204 for a TTE.

An owner or operator installing a PTE meeting the requirements in proposed Method 204 would not be required to perform CE testing, because the CE would be assumed to be 100 percent. Testing of the destruction or removal efficiency of the control device would