require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 6 hours on the day of the event.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assignment.

Environmental Assessment

The Coast Guard considered the environmental impact of this action consistent with Section 2.B. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water, Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–07–061 is added to read as follows:

§ 100.35–07–061 City of Miami, FL.

(a) *Regulated Area.* (1) The regulated area consists of all navigable waters on Biscayne Bay south of Rickenbacker Causeway and north from

(1) 24–33.65N, 081–48.47W; thence to,
(2) 24–33.95N, 081–48.30W; thence to,
(3) 24–34.05N, 081–48.45W; thence to,
(4) 24–33.58N, 081–48.70W; thence to,
(5) 24–31.18N, 081–51.10W; thence to,
(6) 24–31.18N, 081–48.88W; thence to,
(7) 24–32.94N, 081–48.82W.

(Datum: NAD 1983)

(b) *Special Local Regulations.* (1) Entry into the regulated area, by other than event participants, is prohibited unless otherwise authorized by the patrol commander.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to take immediate steps to avoid collision. The display of a red distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

(c) *Effective Dates.* This section is effective from 10 a.m. to 4 p.m. on November 8 and November 12, 1995.

Dated: September 13, 1995.

Roger T. Rufe, Jr.,

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

[FR Doc. 95–24918 Filed 10–5–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD09–95–023]

RIN–2115–AE47

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the operating regulations governing the drawbridges owned and operated by the City of Chicago over the Chicago River system. This final rule establishes the times when, and the conditions under which, the bridges need to open for the passage of commercial and recreational vessels, and requires advance notice of a recreational vessel's time of intended passage through the bridges. The rule allows additional drawbridge openings for flotillas of five or more recreational vessels. The regulations have one set of rules for the period of high vessel activity, from April 1 through November 30, 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 made 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 across 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 are more numerous than in any other major city in the United States and have a correspondingly great impact on vehicular traffic. This action accommodates the needs of vehicle traffic while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on November 19, 1995.

ADDRESSES: 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 telephone number is (216) 522–3993.

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

SUPPLEMENTARY INFORMATION:

Regulatory History

A. Overview

The final rule that is published today is the culmination of over two years of analysis by the Coast Guard concerning what restrictions, if any, should be applicable to the opening of drawbridges in downtown Chicago. This has proven to be a highly contentious issue, and the task of arriving at a final rule has been difficult. During the past two years, the Coast Guard has sought and received public comments on 10 separate occasions (7 requests for comments on deviations, 1 request for comments on the regulatory negotiation process, and 2 requests for comments on Notices of Proposed Rulemaking). During this time, the Coast Guard also has conducted three public hearings, and has attempted to establish new rules during the course of what proved to be an unsuccessful negotiated rulemaking proceeding.

As discussed below, Chicago presents unique drawbridge problems since there are 26 drawbridges over the Chicago River in the heart of the City's commercial district. Every time the bridges are required to open, the flow of vehicular and pedestrian traffic is interrupted. On the other hand, sailboat owners who sail their boats on Lake Michigan historically have stored their boats during the winter at yards located along the river, and the transits to and

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

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

In 1988, the Congress redefined the focus of the statute by directing for the first time that, ''any rules and regulations made in pursuance of this section shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year and during times of the day, when scheduled openings would help reduce motor vehicle delays and congestion on roads and highways linked by drawbridges.'' Pub. L. No. 100–448, 102 Stat. 1846.

The balancing of interests between the boaters and boatyards in Chicago on the one hand, and the bridge owners and users, on the other, is the heart of the Chicago drawbridge controversy. It is obvious from the history of these proceedings and the litigation they have spawned that the wishes of the City, its citizens, the boaters, and the boatyards diverge greatly and cannot all be accommodated fully. As a consequence, the Coast Guard has conducted an exhaustive review of the extensive record before it and has independently balanced all of the competing concerns in determining what rule best serves the public interest consistent with the drawbridge statute and the 1988 amendment to it. The Coast Guard believes that the rule published today fully satisfies the requirements of that law and the public interest by ensuring the drawbridges in Chicago are opened under a schedule that allows reasonable navigation opportunities for the passage of vessels while also reducing motor vehicle traffic delays and congestion on Chicago's roads and highways to the extent practical and feasible.

B. History of the Proceeding

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

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

1. The 1993 and 1994 Temporary Deviations

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

On May 12, 1993, the Coast Guard published a temporary deviation from the 1976 Rule to allow the City of Chicago to limit weekday openings for recreational vessels (58 Fed. Reg. 27933). The temporary deviation was effective from April 26, to May 31, 1993. It was implemented to evaluate the usefulness of requiring flotillas, in response to a request by the City of Chicago that claimed it was unduly burdensome to open bridges for a single vessel and that sought a schedule that would have restricted openings to Saturdays and Sundays. Discussions with the Coast Guard resulted in the consideration of flotilla requirements for the first time. Specifically, the City proposed a temporary deviation that provided for bridge openings conditioned upon receipt of 24-hour notice on Saturdays and Sundays from 6 a.m. to 7 p.m. for organized flotillas of 5 to 25 vessels, and on Tuesday and Thursday evenings from 6:30 p.m. until passage was completed for similarly-sized flotillas.

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

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

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

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 on-demand 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 Chicago.

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 24-hour 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 season.

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

limits and advanced scheduling should be required.

The remainder of the other comments received by the Coast Guard following the issuance of the Fall, 1994 temporary deviation were from boaters or boating interests, and these comments took the position that the Coast Guard should establish a schedule that was more flexible to boaters. These comments generally urged the Coast Guard to implement a temporary rule that allowed a continuation of on-demand openings. Specific comments stated that allowing large flotillas presents inherent dangers to boaters, that some weekday openings are required by boaters, and that special circumstances may require boats to traverse the river at other than scheduled times, such as for repair or in emergencies.

4. The 1995 Temporary Deviation

Given the schedule for the City of Chicago to prepare its traffic study, it was not possible for the Coast Guard to implement a new final rule in time for the Spring, 1995 season. Therefore, it was necessary for another temporary deviation to be implemented for that season. Based on the comments received on the Fall, 1994 deviation, on February 16, 1995, the Coast Guard published a Notice proposing to adopt a new temporary schedule for the Spring, 1995 season that, if finalized, would have allowed on-demand openings of bridges, except during rush hour, and subject to a 24-hour notice requirement (60 Fed. Reg. at 8942). Other than the notice requirement, this proposal would have been similar to the provisions in the 1976 Rule. The Notice ''encourage[d] interested persons to submit written data or views concerning the operation of drawbridges during this deviation period'' and also scheduled a public hearing on the issue for March 9, 1975 (*Id.* at 8941). The Coast Guard stated in its Notice that:

> [T]he hearing will provide 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 are to be made to the deviation prior to its becoming effective on April 15, 1995.

Id.

The Coast Guard received 80 comments in response to the February 16 Notice. In contrast to the 21 comments received on the prior deviation, the vast majority of the comments received on this Notice took the position that the Coast Guard should not implement a temporary or final drawbridge schedule that allowed a return to on-demand drawbridge openings.

A large number of commenters urged that the Coast Guard should modify its proposed 90-day schedule so that there would be limited, if any, weekday openings of Chicago bridges. By and large, these individuals and Chicago commercial interests stated that the disruptive effect of bridge openings that they had experienced during weekday business hours simply was not in the public interest. Some commenters also stated that the temporary schedule ultimately adopted by the Coast Guard should include requirements for minimum flotilla size to lessen the total number of drawbridge openings.

Aside from general concerns relating to traffic disruption, many commenters stated that their particular business interests were harmed by on-demand openings. These included, among others, taxi cab companies, couriers, parcel delivery services, an ambulance company, hotels, associations, parking companies, property management firms, a bank, DePaul University, Union Station, and AMTRAK.

Accompanying Chicago's submission were letters from both Illinois Senators, 7 Representatives, and 5 alderman calling for a rule that did not allow on-demand bridge openings, particularly on weekdays. Finally, the City urged that while in its view all sailboats could easily be accommodated only with weekend openings, the City was nonetheless amenable to the imposition of a temporary schedule ''of reasonable regulations limiting flotilla size and requiring bridge lifts only on weekends, Tuesday and Thursday evenings and Wednesdays during the day'' for testing purposes.

Representatives from the City of Chicago in their comments to the docket, and in testimony at the public hearing, claimed that all needs of sailboaters could be accommodated by weekend openings. Chicago representatives stated that multiple openings of Chicago's bridges exacerbate problems relating to these aging structures, and pointed out that the total budget for all Chicago bridges is $20 million per year, of which $10 to $20 million goes for rehabilitation of drawbridges. The City claimed that the cost of opening drawbridges averages between $5,000 and $8,000 per boat run, and that the total cost of raising the bridges for the 82 runs under the 1994 deviation was $460,000. Chicago representatives also stated that on-demand bridge openings could not be handled without significant realignment of its bridge tender staff. The City noted that the costs of maintaining and operating the Chicago draws are incurred almost exclusively for the benefit of recreational boaters.

Chicago also produced evidence concerning the potential impact of delays resulting from on-demand bridge openings on emergency fire and rescue efforts. Comments of the City of Chicago Department of Police Traffic Section summarized the potential delays to police, fire and rescue vehicles posed by weekday drawbridge openings, and noted that there is no radio contact with drawbridge tenders.

The Chicago Fire Commissioner, the District Chief of the First District Fire Department, and an employee of the Chicago Department of Environment testified concerning the problems that potentially and actually arise in getting to fire or rescue sites when drawbridges are open, particularly on weekdays. The Deputy Chief of Police for Special Functions and the Commander of the Chicago Police Department and Traffic Section provided similar testimony concerning the effects of bridge openings on law enforcement and other police activities. Others testifying included the Chief of Trauma and Critical Care of Northwestern Memorial Hospital who, citing the need to move serious trauma patients to treatment within fifteen minutes, urged ''as a health care worker * * * stopping all bridges opening in Chicago.''

A representative of the Chicago Development Council, comprised of ''sixty-seven companies which represent over 70 million square feet of commercial real estate space in Chicago's central area'' urged that on-demand drawbridge openings did not properly weigh the needs of Chicago's other citizens. Similar testimony was offered by a representative of the Chicagoland Chamber of Commerce. The Deputy Commissioner for the Department of Planning and Development stated that ''the potential damage to the City of Chicago that would result in the proposed bridge lift [on-demand] regulation far exceeds the benefit to recreational boaters or the recreational boating industry.'' The Director of the Mayor's Office of Special Events offered testimony as to the detrimental effects on tourism of traffic jams caused by bridge openings. All of these statements were consistent with similar statements made by Chicago commercial concerns to the public docket urging that commercial detriment would result from delays relating to on-demand weekday bridge openings.

Boating interests presented their views in 7 comments filed with the Coast Guard. The boating interests urged that no basis had been shown to depart

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

some or all issues, the Coast Guard would draft a notice of proposed rulemaking consistent with any agreed-upon issues, and committee members would retain their right to comment positively or negatively on those aspects of such a notice of proposed rulemaking that were not based on final consensus.

The committee met under the guidance of an experienced neutral facilitator on June 5, 14, 20, 28 and July 12, 1995. Detailed summaries of committee meetings were provided by the facilitator and, after review and approval by the committee, were made available to the public and included in the public docket. During the five, 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.

During the first meeting of the committee, there was an indication that there might be consensus for Saturday and Sunday daytime openings and weekday evening openings, and that only weekday daytime scheduling would be controversial. In the absence of any offers from the other members of the committee to draft regulatory language that would serve as a basis for discussion, the Coast Guard offered to provide a draft schedule for the committee to use at the next meeting.

The second committee meeting was held on June 14, 1995. At that meeting, a representative of Civiltech Engineering, Inc., presented information from the ''Downtown Bascule Bridge Traffic Delay Study'' which that firm had prepared for the City. The City agreed to distribute copies of the backup data volume of the study and to have the Civiltech representative attend the next meeting to answer any further questions. The Coast Guard presented a revised draft of regulatory language for discussion and suggested that the committee should focus on provisions covering recreational vessels. The committee discussed the factors to be addressed in the regulations, including notice requirements, if any, for bridge openings; seasons of the year (i.e., Spring Breakout, Fall Return); direction of passage; days of the week; and hours of the day. While there was some tentative agreement on a number of these items, the central issue of whether and how often drawbridges would be required to open during the daytime on weekdays remained very much unresolved.

The third committee meeting was held on June 20, 1995. There was further discussion at that time of the Civiltech study before the committee turned to the Coast Guard's revised draft of the regulatory language which reflected the tentative areas of agreement from the previous meeting. The committee discussed weekend passage issues including: 20-hour advance notice; no trips out to Lake Michigan starting after noon; no trips in from the lake after 1:00 p.m.; and two bridge lifts per weekend day. After much discussion of weekday daytime openings, however, no member could suggest an approach to this topic that might be mutually acceptable.

The Coast Guard suggested that as of that date, without further study of recently submitted data, and in the absence of consensus, it was inclined to issue a proposed rule covering the Spring and Fall seasons with basic components that included two openings on Saturdays and Sundays, at least one weekday daytime opening, and at least two weekday evening openings.

Most of the committee members found that those terms either provided too few or too many openings. The City stated it strongly preferred no daytime weekdays openings and fewer weekday evening openings. The Chicago Yachting Association stated that Tuesday and Thursday daytime openings are necessary to accommodate the reasonable needs of boaters.

At the fourth meeting held on June 28, 1995, the committee discussed the revised draft language prepared by the Coast Guard and gave contrasting grounds for opposing it, again, with some members arguing that it was too strict and others arguing that it was too lenient. For discussion purposes, the facilitator proposed a schedule framework with the following components: one daytime lift on Wednesday, evening lifts on Mondays and Fridays, two lifts each on Saturdays and Sundays, a minimum flotilla size of 5 boats, opportunities for additional openings for flotillas of 5 or more boats, and an overall cap on the number of boat runs per season. Boaters or their representatives would be required to provide the City with 20-hour advance notice for all of the openings, except for the evening openings which would require 6-hour notice. In addition, the Coast Guard indicated specific operational parameters that might be associated with any schedule of openings that might be developed. The City and Chamber of Commerce agreed to study the facilitator's proposal and the Coast Guard's operational issues. The boatyards and the Yachting Association, however, indicated that their framework would require at least two specified weekday openings. The boating interests also pressed for openings on Tuesday, Wednesday, and Thursday evenings in addition to the Monday and Friday evening boat runs that had been proposed to accommodate transits from and to the lake so that non-emergency repairs could be accomplished without affecting weekend sailing. The boating interests further indicated that they strongly preferred that no maximum number of trips per season be included in the framework. The meeting concluded with the respective frameworks of the Chicago Yachting Association and the facilitator still on the table, but without consensus. The Coast Guard agreed to prepare new drafts of the regulatory language using the facilitator's framework for a starting point.

The last meeting was held on July 12, 1995. The committee discussion started with the two alternative schedule frameworks presented during the previous meeting. The Coast Guard reminded the committee members that its statutory obligation was to ensure the safe passage of vessel traffic while, to the extent practicable and feasible, reducing motor vehicle delays and congestion. The Coast Guard representative further pointed out that it was not the role of the agency to promote one set of economic interests over others and, to that end, any subsequent regulations must be grounded on the best available data on the issues of traffic access, delays, and congestion. The members could not find common ground in either of the two alternatives. A number of variations were discussed, but ultimately consensus simply could not be found on any suggested approach. The negotiated rulemaking concluded with the Coast Guard restating its determination to publish a proposed rule on schedule, which would be finalized in the Fall of 1995.

Despite the fact that the committee did not reach consensus, the Coast Guard nevertheless gained valuable information and insight concerning the issues in this rulemaking from the negotiated rulemaking process.

Discussion of Traffic Study and Recommendations

A. Overview

In the Spring of 1995, the Coast Guard had requested that the City of Chicago prepare a new traffic study to determine the effects of bridge openings on traffic in Chicago's Central Business District. The City of Chicago retained a traffic engineering firm, Civiltech Engineering, Inc., to perform 15-minute directional traffic counts at eleven bridges on fourteen days, and to document their findings in a comprehensive report. The

resulting analysis, entitled City of Chicago Downtown Bascule Bridge Traffic Delay Study, was completed on June 9, 1995 and transmitted to the U.S. Coast Guard Ninth District.

The study was presented and discussed during the negotiated rulemaking process summarized above. In response to questions raised during a review of this document by the City of Chicago, the U.S. Coast Guard, and other parties participating in the negotiated rulemaking, the traffic consultants prepared an addendum to the original study. This addendum was completed on July 20, 1995. Following a review by the City of Chicago, the addendum was transmitted to the U.S. Coast Guard Ninth District, but was not received in time for its findings to be reflected in the Federal Register Notice of August 2, 1995 that announced the proposed regulations. The addendum to the traffic study was entered into the public docket along with the traffic study report of June 9. While the addendum provided greater detail on calculations of delay time, placement of traffic counters (including those on Lakeshore Drive), documentation of delays to emergency vehicles, and other areas addressed in the June 9 report, the addendum did not present findings that were either significant additions to, or contradictory to, the basic findings set forth in the June 9 report.

The traffic study findings presented in this section were summarized from information contained in both the June 9 report and the addendum to that report. The traffic study analyzed more than 35 traffic counts during the Fall of 1994 and Spring of 1995, and avoided collecting any data during holiday and special event periods that may have skewed the data. The Spring, 1995 survey monitored 31 of the 35 boat runs that were scheduled (2 weekend runs and 2 weekday evening runs were not monitored). Of the total number of boat runs that took place during the study period, 22 runs occurred on weekends, 11 runs occurred on weekdays during daytime hours, and only 2 took place on weekday evenings.

To identify average durations of bridge opening and closing cycles during the 1995 Spring Breakout period, nearly 600 individual bridge openings were monitored. The study also attempted to quantify the effect of bridge openings on emergency vehicles by documenting their presence in traffic queues during boat runs. In addition, pedestrian counts were taken on four days at the eleven bridge locations to augment the vehicle traffic data.

The traffic study found that the majority of bridges in downtown Chicago are not exposed to traffic surges normally associated with commuter traffic and instead have traffic volumes that peak sharply on weekday mornings, then decline by an average of only 15 percent and remain at elevated levels into the early evening. By contrast, bridges on major commuter routes such as Lakeshore Drive carried larger volumes of vehicles and experienced traffic surges which peaked sharply in the morning and afternoon rush hours and returned to more moderate flows during off-peak hours. The traffic data collected for this study are consistent with data collected through other planning activities such as the Chicago Area Transportation Study.

Vehicular traffic counts were obtained by using mechanical ''road tube'' counters with electronic timers and by conducting on-site manual counts. Vehicular traffic counts were taken manually when mechanical counting stations could not be placed in close proximity to bridges, or when existing stations could not record traffic that might enter or exit the roadway prior to reaching the bridge or the counting station. Manual counting stations were established at Lakeshore Drive, the Ohio/Ontario Feeder Ramp, and Congress Parkway to record the substantial traffic volumes that actually passed over these bridges.

The Lakeshore Drive bridge, which carries the most vehicles of any structure in this study, had mechanical traffic counters installed at the bridge approaches to confirm the historical traffic counts recorded for this major commuter route. Data from mechanical counting stations for the Lakeshore Drive bridge were consistent with those previously recorded by the Illinois DOT for weekday, weekend, and weekly traffic conditions. The study consultant also performed aerial video surveillance of traffic on several dates during the study period to augment the observations of on-site ground crews monitoring vehicle and pedestrian traffic.

At the time of the Coast Guard's proposed rule, traffic counts for Lakeshore Drive were tentatively discounted by 50 percent while the Coast Guard awaited additional submissions from Chicago concerning whether the reported counts were artificially high due to placement of the mechanical traffic counters in a manner that would have recorded vehicles that did not in fact pass over the bridge. The detailed description of the data collection procedures that was documented in the traffic study addendum revealed that traffic counts were taken by observers actually stationed at the Lakeshore Drive bridge, and supplemented with data from mechanical ''road tube'' counters, thereby confirming the original counts in the traffic study report of June 9.

Pedestrian traffic counts were conducted at the eleven study bridges between 10 a.m. and 4 p.m. on ''typical'' (i.e., no special events) Mondays, Wednesdays, Fridays, and Saturdays. An average of 3,050 pedestrians were counted crossing the eleven study bridges during a typical, non-rush hour, 15-minute period on weekdays. By comparison, only 690 pedestrians were counted crossing these bridges during an average typical weekend 15-minute period. By multiplying these pedestrian counts by the average delays associated with the bridge openings discussed below, it was possible to determine the percentage of total delay experienced by pedestrians as opposed to delays for vehicle occupants.

B. Estimates of Delay

To calculate total person-hours of delay associated with bridge openings, the traffic study measured delays to vehicle occupants and pedestrians at 11 of the downtown bridges during 5 weekday and 3 weekend boat runs. The analysis of traffic delay utilized a computer program (TRAF–NETSIM) developed by the Federal Highway Administration that is a nationally and internationally accepted model for traffic simulation and evaluation. The study did not attempt to calculate the delays incurred by vehicles or pedestrians that took alternative routes to avoid waiting for bridges to close, or the delays which these diversions created for other traffic. Thus, the total city-wide delays associated with bridge openings are likely to be somewhat greater than those reported in the study.

The traffic study monitored bridge openings to determine the effect of flotilla size on the duration of bridge openings and traffic delays. The act of opening a bridge involves sounding a warning, lowering safety gates, and clearing the bridge deck before the leaf(s) can be raised. Once boats have cleared the bridge, the leaf(s) must be lowered and locked and the gates raised before ground-based traffic can resume. In assessing the effect of flotilla size on average bridge ''gate down'' time, the study found that passage of a single boat produced 6.7 minutes of gate down time, while accommodating flotillas of up to 5 boats took one minute longer. Flotillas of up to 10 boats and more than 10 boats had respective gate down times of 8.2 and 9.4 minutes. The study concluded that the majority of time required to open a bridge is attributable

to mechanical and safety constraints rather than flotilla size, and that if minimizing delays is an objective of bridge lift operations, minimum flotilla sizes should be considered when regulating these openings.

Data analysis for the 11 bridge sites showed that average weekday boat runs resulted in a total of 2,024 person-hours of delay, while weekend boat runs caused an average of 1,034 person-hours of delay. Data from the 11 study sites were extrapolated to estimate boat run delays at all of the 25 downtown bridge based on historic vehicle and pedestrian traffic data provided by the Chicago Department of Transportation (DOT) and the Illinois DOT. Based upon these extrapolations, it was estimated that average weekday boat runs would generate 2,724 person-hours of delay and weekend runs would produce 1,260 person-hours of delay. In summary, the person-hours of delay attributable to weekend bridge openings were found to be less than half of those caused by weekday openings.

The consultant also expressed findings of traffic delay in terms of the average number of persons and vehicles affected by bridge openings that accommodated the passage of an average-sized flotilla. On-site monitoring of the Spring, 1995 Breakout boat runs found that an average weekday flotilla included 7 boats and that bridges took an average of 8 minutes to open and close and 4 minutes for ground-based traffic to recover (12 total minutes of delay). Using the number of vehicles, vehicle occupants, and pedestrians as metrics, the consultant estimated that a weekday boat run of 7 boats caused a 12-minute delay for an average of 13,620 people and 5,360 vehicles. A similar quantification of impacts for people and vehicles was calculated based on weekend boat runs that averaged 12 boats per flotilla. An average weekend boat run of 12 vessels produced 12-minute delays for 6,300 people and 3,540 vehicles.

C. Impacts on Emergency Services

At the request of the City of Chicago, the traffic study also documented instances where emergency vehicles were delayed by bridge openings. The City has historically voiced its concern that bridge openings compromise police, fire department, and ambulance services by impeding their response to emergency calls and by delaying their return to their bases of operation. Delays by emergency response vehicles were documented in the traffic study by the notes of on-site traffic monitors, in Mobile Intensive Care Unit Report logs maintained by the Chicago Fire Department, and in the Bridge Lift Logs of the Chicago DOT. The traffic study found that 83 percent of the weekday boat runs were associated with the delay of at least one emergency vehicle, and similar delays were recorded for 26 percent of the weekend runs.

D. Study Findings Relevant to Final Rule

The traffic analysis for downtown Chicago found consistent patterns of normal vehicle and pedestrian movement (i.e., no special events) that were directly attributable to factors of time of day and days of the week. Outlined below are the major factors that were considered in formulating the final rule. The following conclusions of the study are shown with a list of the relevant study findings.

(a) If traffic impacts and their consequent delays are to be minimized, maximum opportunity should be afforded to schedule boat runs on weekends and evenings rather than during weekday daylight hours.

(1) Pedestrian and vehicle traffic volumes on weekdays were approximately double those recorded on weekends.

(2) Weekday evening traffic volumes on most downtown streets fall to levels that are at or below those which are experienced on weekend mornings.

(b) If boat runs are to be made on weekdays, the runs should be scheduled during times when bridge lifts would generate the least amount of vehicular and pedestrian traffic delay.

(1) Weekday vehicle traffic volumes on commuter routes (e.g., Lakeshore Drive) peak sharply during morning and evening rush hours (i.e., 7:00–10:00 a.m. and 4:00–7:00 p.m) and return to more moderate volumes during off-peak hours.

(2) Other streets in the study sample had weekday traffic volumes that remained fairly consistent throughout the day, declining only slightly from morning/evening peak periods.

(3) Pedestrians experienced 22 percent of the total person-hours of delay associated with weekday daytime boat runs and 11 percent of the total person-hours of delay created by weekend boat runs.

(c) If a future schedule for boat runs is to reflect recent patterns of boaters' requests for transit, at least some opportunity should be afforded for periodic weekday daytime and evening runs.

(1) For boat runs monitored during the study period, 92 of 359 boats (25 percent) made runs on weekdays/evenings.

(d) If provisions for weekday daylight boat runs are to be sensitive to the impacts of bridge lifts on traffic delays, requirements for minimum flotilla size should be considered.

(1) The time needed to carry out the mechanical process and safety precautions during bridge lifts exceeds that which is usually required for the transit of boats in Chicago.

(2) Bridge lifts to accommodate flotillas of up to 5 boats produced delays only 15 percent greater than those generated by single-boat passages.

(3) Of the eleven weekday daylight runs that were monitored during the study, two runs accommodated only one boat and two others accommodated two and three boats, respectively.

(e) Bridge lifts to accommodate boat runs do impact emergency vehicles, with far greater impacts associated with weekday daytime boat runs than with weekend runs.

(1) At least one emergency vehicle was impacted during 83 percent of the weekday boat runs monitored in the study; only 26 percent of the weekend boat runs delayed at least one emergency vehicle.

The 1995 Final Rule

When the participants in the negotiated rulemaking proceeding were unable to reach consensus, the Coast Guard published a new Notice of Proposed Rulemaking (NPRM) on August 2, 1995 (60 FR 39287). The Notice proposed to adopt a new Final Rule that would set the following schedule for the opening of Chicago drawbridges during the boating season:

(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 after 10 a.m., 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.

After reviewing the comments received, the Coast Guard's final rule adopts this schedule, which the Coast

Guard has concluded best serves the public interest. As explained in the NPRM, the Coast Guard thought that the rule reasonably accommodated the needs of boaters and vehicular and pedestrian traffic. As the following analysis shows, the comments received on the NPRM do not alter the basis for this determination. However, the NPRM itself was based upon an extensive array of information compiled over the last two years, and reflected the Coast Guard's confidence that this bridge opening schedule represents the best possible balance of all interests that can be achieved. The final rule also continues the past practice of allowing vessels to transit the river in emergencies under special arrangements and without flotilla requirements.

Two openings on each of the weekend days with no flotilla requirements were selected to accommodate what is generally agreed and shown by the administrative record to be the busiest and most appropriate time period for the heavy Spring Breakout and Fall Return recreational traffic. The Coast Guard found significant concurrence with this approach during the negotiated rulemaking, although no consensus was reached. These openings are on days that have been most-utilized by boaters and also are days when daytime vehicular traffic is at its lowest volume.

Monday and Friday weekday evening openings with significantly shorter (6 hour) advance notice were provided to meet any possible late supplements to demands for breakout and return passages, and to meet the need of a single boater to have access for non-emergency repairs at the beginning of a week in order to return to the lake for the next weekend's recreation. Although concerns have been raised by boaters about the safety of evening passages, a passage beginning shortly after 6:30 p.m. would be conducted in daylight during the extended daylight hours that coincide with most of the boating season. Moreover, these evening hours are intended as a supplement to the weekend and Wednesday daytime openings provided by the rule. Past data and experience indicate that fewer boaters may actually use this option, but it is there for those who need it. As noted above, the possibility of Monday and Friday evening openings was discussed at length by all parties in the course of the negotiated rulemaking proceeding. While no consensus was reached on this issue, the Coast Guard believes that openings on these evenings provide some of the additional flexibility sought by boating interests, and can help to accommodate scheduling of mid-week repairs at the boatyards. The scheduled times of these openings should also minimize negative impacts on vehicular traffic.

It should be noted that, in addition to considering the needs of boaters to make normal repairs during the boating season, the Coast Guard recognizes that situations may arise where a true emergency repair involving the substantial value of a boat may occur that cannot be accommodated by scheduled openings. The Coast Guard's rule explicitly provides that the general requirement, Subpart A, in 33 CFR Part 117, direct the opening of bridges for vessels in distress where a delay would endanger life or property.

A Wednesday post-morning rush hour opening without flotilla requirements was selected based on information in the administrative record supporting Wednesday as a weekday chosen historically by boaters for transit, and to minimize the time between potential single vessel passages. The Coast Guard believes that providing a scheduled weekday opening with 20-hour advance notice will provide the necessary predictability and notification time to minimize the impact on congestion and avoid unacceptable delays to emergency vehicles. The Coast Guard recognizes that weekday daytime drawbridge openings are disruptive to vehicular traffic, but this fact must be weighed against the constraints of providing only evening passages to boaters. Ultimately, the Coast Guard believes that a Wednesday daytime openings, in addition to weekend openings, is a reasonable compromise. The need to accommodate mid-week daytime transits for non-emergency repairs was addressed by both the boaters and the boatyards. The boatyards claimed that they had experienced a decline in their summer repair business, although no documentation was submitted to confirm their losses. The need for both daytime and evening weekday openings also received the attention of the participants during the negotiated rulemaking proceeding. The Coast Guard believes that a balanced schedule of predictable bridge openings is in the public interest and will benefit all parties from the standpoint of planning future activities.

The regulations allow additional non-rush hour openings to be scheduled for flotillas of five or more vessels with 20-hour advance notice. This provision responds to the assertion of the boating interests that flexibility in the schedule can reduce the overall number of openings. Based on previous usage of the Chicago River by sailboaters, it is anticipated that this provision will be used primarily to schedule additional breakout and return passages, but it could also be used to bundle trips for non-emergency repair work. Although the City asserts that any allowance for openings for supplemental flotillas will compromise the other scheduled openings' reductions of traffic delays and congestion, the Coast Guard expects that the advance scheduling of these openings and their announcement in the media would provide appropriate notice to land-based traffic and emergency services. Moreover, the flotilla requirement will also serve to reduce the frequency of disruptions caused by additional passage opportunities.

Finally, the Coast Guard decided not to adopt two other potential variations to the regulations. Although there have been concerns raised by many boaters about the safety of evening passages, scheduling openings for all or more weekday evenings had been suggested by various boating interests during the negotiated rulemaking. The Coast Guard has concluded that the volume of recreational traffic simply does not require additional scheduled evening openings, especially in light of the provision for supplemental flotilla openings, and in light of the boaters' oft-stated position that they do not prefer to transit the river at night. On a second issue, the City had requested that the Coast Guard implement a procedure to penalize boaters who are ''no-shows'' at pre-arranged openings. The Coast Guard has not been presented with any data indicating that boaters are abusing agreements on openings and therefore such a regulatory response would not be warranted.

The comments received by the Coast Guard and the positions articulated at the August 22, 1995 hearing indicate that a compromise such as the new rule is required, and underscores what has been apparent from the outset of this proceeding. The Chicago boating interests and the City of Chicago, along with its non-boating commercial enterprises, have diametrically opposed and strongly held views concerning when Chicago's bridges should be required to open. Any solution will necessarily be a compromise that will not fully accommodate the needs of any one party.

Approximately 25 businesses, associations, organizations and individuals who were not boaters or otherwise affiliated with sailing claimed that the Coast Guard's proposed rule was too permissive. These commenters stated that bridge openings impeded vehicular and pedestrian traffic in the Chicago downtown area, that weekday openings impermissibly constrained

commerce, and that openings undermine the critical need of Chicago's substantial business and residential communities for uninterrupted access to the Loop. These commenters included individuals, businesses, commercial centers, taxicab companies, a delivery service, real estate concerns, office buildings, the Chicagoland Chamber of Commerce, DePaul University, and community associations. All of these parties opposed the proposed rule and urged that there is no necessity for Chicago bridges to open except on weekends and occasional weekday evenings.

By contrast, the majority of boaters or other parties affiliated with sailing viewed the proposed rule as being too strict, and that there was no need to change the on-demand approach embodied in the 1976 Rule. These commenters urged that daylight openings are required in order to safely transit the Chicago River, that evening openings are inherently dangerous, that large flotillas create the potential for collisions, that boaters should have the right to unfettered passage on the river, and that maintenance problems were the real reason for bridge-related delays. Virtually all of these commenters claimed that on-demand openings every day were required. These parties also urged that unexpected situations required passage on the river without long advance notice and flotilla requirements.

The claim by the boating community that they should have the right to unfettered passage on the river is at odds with the 1988 statutory change in 33 U.S.C. 499 that specifically requires the Coast Guard to balance land and water transportation needs. The comment that maintenance problems were a major cause of bridge-related delays is also inconsistent with findings of the traffic study commissioned by the City of Chicago. In fact, the traffic study found that 1995 bridge opening cycle times were 20 percent faster than 1994 cycle times—a condition which the traffic study attributed to fewer malfunctions, better maintenance, more efficient bridge crews, and more efficient boat operations.

During the course of the August 22, 1995 hearing, testimony was heard from eight parties. On behalf of the City, Mr. Roger Kiley, Chief of Staff to the Mayor, opposed the proposed rule, urging that bridge openings should be allowed only on weekends and on weekday evenings, with minimum and maximum flotilla sizes. Mr. Kiley stated that over the years the number of sailboats requesting bridge openings remained a relatively constant 550 to 650 boats. Mr. Kiley urged that the issue is whether ''these few recreational boats need unimpeded access to the river in light of the overwhelming data submitted by the City and the lack of any contrary data provided by the boatyards.'' Mr. Kiley argued on behalf of Chicago that the Coast Guard's proposed rules do not properly balance the needs of ''more than 5,000 vehicles affected each time bridges open during the weekday'' and the ''thousands of pedestrians and public transit users who are similarly inconvenienced.'' Mr. Kiley stated that traffic backups occasioned by bridge openings can extend a half-mile or more, and that it can take up to ten or more minutes following closure of a bridge for traffic to return to normal. The City argued that the Coast Guard's proposed rule would accord too much flexibility to boaters and ''fails to strike the necessary balance between boating and land-based transportation interests.''

Dr. Marcel Martin, Chief of Trauma and Critical Care at Northwestern Memorial Hospital, testified that delays in transporting patients to emergency rooms negatively affect the ability of medical staff to resuscitate patients. In Dr. Martin's words, ''a few minutes may make a difference between life and death.'' Dr. Martin questioned the usefulness of the provisions in the proposed rule allowing drawbridges to close for emergency vehicles in light of these time constraints, and similarly questioned the Coast Guard's conclusion that other routes could be utilized by emergency vehicles. In Dr. Martin's view this raised the possibility of an unacceptable ''compromise in time.''

Mr. Grant Crowley testified on behalf of Crowley's Yacht Yard, Inc. Mr. Crowley stated that the re-examination of the Chicago drawbridge rules was originally occasioned by Chicago's desire to build a new transit system, the Circulator. Mr. Crowley also questioned the viability of traffic data submitted by the City, including that for Lakeshore Drive, and took the position that the boatyards should not be required to produce economic data that supported the continuation of the 1976 Rule. He argued that traffic is not inordinately delayed by bridge openings and that the rulemaking process is, in his opinion, arbitrary and capricious. Mr. Crowley further stated that, in his view, traffic returns to normal in four minutes following the closure of bridges. He additionally urged that requiring bridges to open 150 times per year is not unreasonable since other Chicago bridges open much more frequently than this.

Mr. Vic Peterson of AAA Boatyard stated that this company had lost income from summer boat repairs as a result of restricted openings of Chicago drawbridges. He urged that reasonable passage had to be assured by any new rule.

Mr. Bernard Ford spoke on behalf of the Chicagoland Chamber of Commerce, which he characterized as the largest business organization in Chicago. Mr. Ford discounted any effect of the proposed Circulator transit system on the pending rulemaking. He stated that the Chamber of Commerce did not favor the proposed rule and originally wanted a rule that would have been even more restrictive than that proposed by Chicago. Mr. Ford said that the Chamber of Commerce's review of the data submitted by the City indicate that ''no weekday daytime bridge openings are needed.

Finally, three boat owners testified. They variously claimed that bridge problems were directly related to maintenance problems, that night travel is ''definitely more hazardous than daytime travel,'' that allowing large flotillas keeps the bridges up longer and such flotillas are potentially hazardous to boaters, that individual boaters need the opportunity to transit alone for repairs or in emergencies, that boat owners, unlike vehicles, have no alternative routes for transit, and that bridge openings are not realistically a problem for downtown businesses.

Analysis of the Final Rule

The long and detailed preamble to this final rule is due to the complex nature of the issues involved, the lengthy public process that preceded that final rule document, and the prior litigation on this subject. Supporters of the two main interest groups have tended to present maximalist positions: boating interests have claimed that no changes to a well-functioning regulation are needed, and the land-based interests have claimed that a schedule that limits openings to weekends and perhaps weekday evenings is all that is necessary. The Coast Guard believes there is a reasonable, practical, and feasible middle ground, and has concluded that there is ample reason to implement its final rule.

As stated in the notice announcing the establishment of the negotiated rulemaking committee, the Coast Guard is committed to proceeding to a final rule for the end of the 1995 boating season when recreational vessels are leaving Lake Michigan for winter storage. In the absence of a consensus-based rule, the Coast Guard's final rule is based on the extensive administrative

record that the Coast Guard has assembled to date, the information obtained from the negotiation process, and its professional judgment. In particular, the Coast Guard's final rule incorporates weekend openings, advance notice requirements, and weekday evening openings that received support by some committee members, although not unanimous consensus in a formal committee report. Weekday openings were clearly the most contentious issue, which the Coast Guard is resolving by scheduling one mid-week opening without flotilla requirements and authorizing unlimited opportunities for additional openings for flotillas of at least five vessels. The Coast Guard's solution does not match the negotiating position of either the City, which bargained for no weekday openings, or the boatyards and boaters which wanted on-demand openings every day of the week. On this issue, the Coast Guard determined that a compromise was necessary to meet the needs of both groups and the public interest. The analysis of the final rule can be best summarized by responding to the comments submitted to the NPRM public docket by the attorney for Crowley's Yacht Yard, Inc. and by the City of Chicago.

Written comments to the August 2, 1995 NPRM public docket submitted by the attorney for Crowley's, one of the boatyards on the Chicago River, discussed five topics. Each of these topics is addressed below in the Coast Guard's detailed response to this submission. However, no changes to the operating schedule proposed in the NPRM were made as a result of these comments because they did not offer any additional material facts for the Coast Guard to consider.

The first comment asserts that no legitimate reason has been identified for altering an existing regulation that has worked well for many years. The City of Chicago requested that the Coast Guard initiate a rulemaking to change a basically on-demand system that provided maximum flexibility and access for waterborne transportation. The City and every non-boating interest that has participated in this two-year proceeding has argued that the current system is not equitable to the surface transportation needs of commercial, emergency, and other traffic in a major metropolitan center. The City's request was made in the context of a legislative change that now requires the Coast Guard, acting on the delegation of the Secretary of Transportation, to the extent practical and feasible, to establish rules that provide a schedule of openings that will help reduce traffic delays and congestion. The Coast Guard's decision to change the regulations is consistent with its statutory mandate and supported by the traffic study submitted by the City and analyzed elsewhere in the preamble.

The statement that the existing regulation is working well is simply incorrect and is belied by the record, which contains ample evidence that on-demand openings are opposed by all non-boating parties in Chicago and have a disruptive effect on Chicago traffic and commerce, as is indicated not only by comments but by the traffic study. Furthermore, the actual operations under the existing regulation are based on agreements by the boatyards and the City to schedule openings. This approach has required significant and continuing involvement by, and costs to, the Coast Guard as shown in letters and other documents in the administrative record: to remind the parties to initiate scheduling, to facilitate compromises, to interpret agreements, to monitor implementation, and to mediate disagreements. The final rule, by contrast, gives notice to the public of the operating procedures and schedule to be followed and allows Coast Guard resources to be properly focused on enforcement.

The second comment asserts that there is no basis for the NPRM and, by extension, the adoption of the proposal as a final rule. The comment is based on a perception of significant flaws in the traffic study requested by the Coast Guard and submitted by the City of Chicago. The Coast Guard's analysis and use of the study findings to support its final determination are explained separately in the preamble. In addition, the comment overlooks significant information that the Coast Guard received from the negotiated rulemaking and other data available to it. As discussed under the section on the negotiated rulemaking, the Coast Guard has based its new regulations on matters addressed in the public record, including areas where support, although not consensus, was reported in the negotiation process. Given the record of this proceeding, there is clearly a basis for an NPRM proposing a reasonable compromise aimed at accommodating the public interest.

The third comment asserts that important Coast Guard reports were ignored in developing the proposed regulations. As mentioned above, the absence of predictable and permanent regulations in this area has required significant Coast Guard resources to be applied to facilitate bridge openings. For the 1995 Spring Breakout, Coast Guard personnel were assigned to observe and report on drawbridge openings for recreational boaters. The purpose of these reports was to ensure that agreements between the boatyards and the City were carried out and that passage of boats was achieved safely. These reports were not intended to record traffic impacts or to supplement professionally-conducted traffic studies, but to the extent that this information has been relevant to traffic and boating operations it has been considered, as discussed above.

In developing the proposed rules, adopted without change as final by this document, the Coast Guard has relied on the following: traffic study findings and data submitted by the City of Chicago, the reports on and experience gained from an unsuccessful negotiated rulemaking, analyses of numerous submissions to this and earlier rulemaking and administrative dockets, and the Coast Guard's professional judgment gained from monitoring and overseeing the operation of the Chicago drawbridge system and other drawbridges throughout the United States. All of this played a part in formulating the new rule.

The fourth comment asserts that certain elements of the rulemaking are arbitrary and capricious. Again, this is simply not so. The Coast Guard's final rule is based on exhaustive consideration of the factors discussed above and on its determination that a predictable schedule that still affords flexibility to the boaters and predictability to the City will stabilize the relationship between the boatyards and the City, meet to a substantial degree the expressed concerns of all groups, and reduce Coast Guard involvement in day-to-day disputes. As is evident from the discussion in this preamble, there is ample support in both the record and the law for the rule that the Coast Guard has adopted.

The fifth comment criticizes the Coast Guard's response to various administrative requirements beyond the Administrative Procedure Act. Despite the expedited schedule for issuing a NPRM, the requisite discussions in response to the Regulatory Flexibility Act and Executive Order 12866 were included in the NPRM. This matter is addressed more fully in the following section of this preamble. The discussion there fully supports the Coast Guard's determination made in this final rule.

Significant comments on the August 2, 1995 NPRM were also received from the City of Chicago. Chicago opposed implementation of the proposed rule, and objected to the rationale outlined by the Coast Guard. Chicago stated that the rule ''provides none of the relief that the

City sought'' and that it ''perpetuates weekday daytime openings to meet the needs of less than 100 boaters'' despite the fact that ''at least 3000 vehicles are delayed each time a bridge is opened.'' The City of Chicago also stated that despite a specific request in the NPRM that the boatyards provide data to show how they are in fact negatively impacted by a rule containing scheduled openings, no such data were ever provided. In the absence of such data, the City of Chicago urged that weekend openings are all that is required.

As discussed previously, the Coast Guard is not unmindful of these concerns. But the Coast Guard has determined for the reasons articulated by the boatyards and boaters that some weekday openings should be allowed. While quantitative data were not supplied by the boatyards, concerns about any overly-restrictive access schedule were voiced by many boaters. The approach adopted in the final rule, which allows weekday openings only on Wednesdays, is a reasonable accommodation between the needs of boaters for the flexibility afforded by some weekday daytime passages and the needs of Chicago and its citizens to limit daylight openings to a schedule that is predictable and that does not unnecessarily result in vehicle delays and congestion on Chicago streets. The specific points raised in Chicago's comments are discussed below.

First, the City states that it should not be required to raise two or more bridges at a time since this places undue burdens on the bridge system and on traffic. As the City notes, however, drawbridge openings are in large respect dependent on flotilla size. Thus, the more opportunity there is for boaters to transit the river, the more reasonably-sized individual flotillas can be. While on-demand openings have the potential for repeated disruption of Chicago traffic, in the Coast Guard's view the rule affords enough reasonable windows of opportunity for boaters to schedule their runs between the boatyards and Lake Michigan so as to encourage reasonably-sized flotillas to be formed. The rule's provision for additional boat runs for flotillas of 5 or more boats provides more opportunities for river passages, gives the City and boatyards the flexibility to accommodate reasonably-sized flotillas as necessary, and accommodates additional vessels at the earliest available time. The Coast Guard believes this approach answers the expressed needs of boaters for flexibility and reduces the potential disruption to Chicago traffic occasioned by large flotillas that might be required if daylight openings were more restricted. This approach also minimizes the problems concerning the opening of the Lake and Wells Street bridges, which the City notes are dependent on Chicago Transit Authority train movements.

Second, the City states that the rule should impose a means to prevent or curtail the possibility that boaters will request a bridge opening and then not show up at the scheduled time. As previously noted, the Coast Guard is not adopting such a provision at this time since no data have been provided to the Coast Guard that would confirm a problem concerning ''no shows.'' As a result, the Coast Guard does not believe that this matter is a significant problem that necessitates regulatory intervention.

Third, the City states that the rule ''ignores the impact on emergency vehicle response times.'' The rule does not ignore this issue, and the potential for emergency vehicles being delayed by bridge openings has in fact received the Coast Guard's careful attention. The Coast Guard has noted, and discussed above, the fact that the traffic study commissioned by the City reports instances of emergency vehicle delays occasioned by bridge openings, and that the possibility of these delays is greatest during weekday daylight openings. Limiting the times at which bridges are opened, of course, limits the times when these delays could occur. The Coast Guard recognizes fully that weekend openings run less of a risk of delaying emergency vehicles since traffic is lighter than on weekdays, and concomitantly that allowing daylight weekday openings—even when limited solely to Wednesdays—runs the risk that emergency vehicles will be delayed as a result. But again, the Coast Guard has concluded that there is a basis and a need for allowing some limited, non-weekend, daylight openings. The Coast Guard believes that its approach of allowing Wednesday daylight openings accommodates reasonably the stated needs of boaters for weekday passages, while minimizing the likelihood of emergency vehicle delays.

Fourth, the City states that the Coast Guard may be wrong in its premise that bridge openings on the North and South Branch bridges do not impact Chicago traffic as much as openings on the Main Branch of the river. The data in the traffic study bear out the Coast Guard's conclusion, and in developing the final rule the Coast Guard has considered these data on the impacts of bridge openings on vehicle traffic crossing the North and South Branch bridges. The Coast Guard's decision to restrict openings to weekends, specific weekday evenings, and one weekday during daylight hours, is designed to practically address the needs of boaters without unduly disrupting the substantial vehicular traffic that passes over the North and South Branch bridges during weekday daylight hours.

The City also addresses several other issues. It takes exception with Coast Guard's statement in the preamble of the NPRM that there is evidence of deterioration in Chicago's bridges and notes that it has made great investments in its bridges. Nonetheless, Chicago's own prior comments, as well as the traffic study the City commissioned, have noted occasions of bridge malfunctions. Chicago also states that the Michigan Avenue bridge accident and freight tunnel flooding in 1992 should not be characterized as the basis for the City's request for new bridge regulations. These events were discussed by the City in prior correspondence, but as is evident from the analysis set forth in this preamble, the rule that the Coast Guard is adopting results from an extensive review of the articulated needs of the public, including boaters, vehicular traffic, individuals, and businesses, not from these past extraordinary events.

Chicago also recommends that, due to reconstruction, the Randolph and Loomis Street bridges should now be placed under the 30-minute notice requirement for commercial bridge openings, and that the Ogden Avenue bridge has been removed and therefore should be deleted from the lists of bridges subject to 30-minute notice requirement by commercial vessels. The Coast Guard agrees and has adopted this last comment.

Reasons for Effective Date

In the notice announcing the formation of the negotiated rulemaking committee, the Coast Guard indicated its intent to have rules in place during the Fall, 1995 recreational boating season. That intent was repeated in the NPRM. Due to the time needed to produce a fully comprehensive and explanatory final rule, this final rule is being published shortly after the beginning of the Fall Return.

As this final rule was being written, representatives of the City of Chicago and boating interests met on September 20, 1995 under the auspices of the Coast Guard and agreed on a schedule for the 1995 Fall Return. This temporary schedule tracks closely to the final rule and includes openings on Saturday and Sunday mornings, Wednesday mornings following rush hour, along with approximately five scheduled supplemental weekday openings. It is the expectation of the Coast Guard,

based on the agreement of the City and the boatyards, that this schedule will bring the 1995 boating season to an amicable and successful conclusion. Therefore, the Coast Guard has made this rule effective on November 19, 1995, following the expiration of the Fall Return schedule agreed upon by the City and the boatyards. It should be emphasized that the flexibility and scheduling aspects of the Coast Guard's rule are consistent with the schedule agreed to by the boatyards and the City. This indicates that future seasonal boat runs should be able to proceed under the rule without untoward problems for the City or the boatyards and without continued diversion of Coast Guard resources.

Regulatory Process

A. Regulatory Evaluation

The Coast Guard has determined that this rule is not a significant rulemaking activity under Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has received extensive information from the City of Chicago on the costs associated with operating drawbridges to accommodate transits of recreational sailboats. Despite repeated requests to the boatyards, these businesses have provided the Coast Guard only with general allegations of lost profits and have not provided the Coast Guard with comparable information on the financial impacts that they would experience as a result of a more limited schedule of drawbridge openings. The final rule is not seen as having a significant adverse economic impact on any other businesses.

No requirements for commercial transits are affected by this rulemaking. As a matter of record, most commercial transits consist of barges which typically do not require bridge openings. In addition, there are virtually no recreational vessel transits during the off-season and the requirements governing recreational transits during the off-season are expected to have little or no economic impact.

The rule does not constitute 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 Coast Guard has determined that the regulation will substantially advance the governmental purpose of balancing the needs of land-based transpiration and the navigational rights of recreational boaters. The provisions for supplemental openings for flotillas of five or more vessels and the provision ensuring access by all single vessels on five out of the seven days in each week should minimize the economic impact, if any, on the boatyards.

B. Small Entities

The Regulatory Flexibility Act requires an assessment of whether the rule would have a significant economic impact on a substantial number of small entities. The Coast Guard has concluded the rule would not have such an impact and, therefore, a detailed regulatory flexibility analysis has not been undertaken. Nonetheless, the Coast Guard has weighed the potential impact of the rule on small entities.

For this rule, 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. However, the Coast Guard also received a number of comments from other small businesses in the area that asserted that on-demand openings adversely affected their operations. The small businesses that objected to the on-demand openings included, among others, taxi companies, delivery services, and small shops in downtown Chicago.

As discussed elsewhere in the preamble, the Coast Guard has carefully considered the views of the boatyards and of other small businesses that might be affected. The rule allows scheduled openings on five days of the week for single vessels in addition to allowing additional openings at all times, other than rush hour periods, for flotillas of five or more vessels. This approach is more flexible to boating interests than any of the prior temporary schedules implemented by the Coast Guard and also provides more opportunities for transit than did the 1994 rule. As noted above, the rule provides for drawbridge openings on days and at times when sailboaters have traditionally traversed the river. Specifically, the schedule provided for in the rule is also consistent with the requirements of boatyards as evidenced by the fact that it would accommodate recreational transits on the dates and at the time times agreed to by the boatyards during those periods in the past two years when drawbridge openings have been set pursuant to negotiations between the City and the boatyards. There is no basis for concluding that the boatyards will be significantly harmed by such an approach. As a result, the Coast Guard has concluded that the rule should have no significant impact on the operations of the boatyards. In addition to allowing on-demand openings for boats needing emergency repairs, the openings prescribed by the rule will allow any vessel that needs non-emergency repairs to transit the river for mid-week service and return to Lake Michigan in time for sailing on the following weekend.

This provision answers expressed concerns by boaters and the boatyards during the comment periods and the negotiated rulemaking process. The schedule of boat runs emphasizes openings on evenings and weekends, and this will minimize the impact of openings on other small businesses in the area. While these entities by and large called for no weekday openings at all, the Coast Guard has determined, as explained above, that some such openings are necessary to meet the navigational needs of boaters. The schedule of openings and advance notice requirements set forth in the rule affords more certainty and predictability to this process and therefore will be more beneficial to small business than a continuation of the 1976 on-demand rule.

Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This 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 in common with other drawbridge regulations, persons desiring passage of a vessel have to make their requests known to the operator of a drawbridge some time in advance. This advance notice is normally a single phone call, even when there is a flotilla of several vessels. 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 new rules.

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this regulation involves only an area within Chicago and, therefore, 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); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

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 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 draw of the Cermak Road bridge 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

Randolph Street
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
South Loomis Street

West Fork of the South Branch

South Ashland Avenue
South Damen Avenue

Chicago River, North Branch

Division Street
Grand Avenue
Chicago Avenue
North Halsted 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 per day.

(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 (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 St.

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
N. Halsted St.

(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, and North Damen Avenue

bridges across the North Branch of the Chicago River, and the draws of the N. Halsted St. 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 of this part apply to the passage of all vessels and the operation of all bridges on the Chicago River.

Dated: October 2, 1995.

G.F. Woolever,

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

[FR Doc. 95–24916 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5309–5]

Clean Air Act Promulgation of Extension of Attainment Date for PM–10 Nonattainment Area in Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action serves to grant a 1-year attainment date extension for the Denver, Colorado particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) nonattainment area. This action is based on monitored air quality data for the national ambient air quality standard for PM–10 during the years 1992–94 and EPA's evaluation of the applicable state implementation plan (SIP).

DATES: This final rule is effective on December 5, 1995, unless adverse comments are received by November 6, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and Colorado Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 293–1754.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements and EPA Actions Concerning Designation and Classification

On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law (see generally, 42 U.S.C. section 7407(d)(4)(B)). These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the PM–10 standards prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 Federal Register notice). A Federal Register notice announcing the areas designated nonattainment for PM–10 upon enactment of the Act was published in 56 FR 11101 (March 15, 1991). A subsequent Federal Register notice correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a Federal Register notice published on November 6, 1991 (56 FR 56694). All other areas in the Nation not designated nonattainment at enactment were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act). Additional PM–10 areas were designated nonattainment in subsequent Federal Register actions.

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit SIPs to provide for the attainment of the PM–10 NAAQS. Pursuant to section 189(a)(2), those SIP revisions were to be submitted within one year of enactment of the Act (November 15, 1991). The SIP revisions were to provide for implementation of RACM/RACT by December 10, 1993 and attainment by December 31, 1994.

B. Application for a 1-Year Extension of the Attainment Date

If the State does not have the necessary number of consecutive clean years of data to show attainment of the NAAQS, a State may apply for an extension of the attainment date. Pursuant to section 188(d) of the Act, a State may apply for, and EPA may grant, a 1-year extension of the attainment date if the State has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area; and (2) the area has measured no more than one exceedance of the 24 hour PM–10 standard in the year preceding the extension year, and the annual mean concentration of PM–10 in the area for such year is less than or equal to the standard. If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or does not qualify for an attainment date extension, the area will be reclassified as serious by operation of law.

The authority delegated to the Administrator to extend attainment dates for moderate areas is discretionary. Section 188(d) of the Act provides that the Administrator ''may'' extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas. In exercising this discretionary authority for PM–10 nonattainment areas, EPA will examine the air quality planning progress made in the moderate areas. EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM–10 planning obligations for the area. In order to determine whether the State has substantially met these planning requirements, the EPA will review the State's application for the attainment date extension to determine: (1) Whether the State has adopted and substantially implemented control measures submitted to address the requirement for implementing RACM/RACT in the moderate nonattainment area; and (2) that reasonable further progress is being met for the area. RFP for PM–10 nonattainment areas is determined to be linear emissions reductions made on an annual basis which will provide progress toward the eventual attainment of the NAAQS in the area. If the State cannot make a sufficient demonstration that the area has complied with the extension criteria