

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