

mistakes in the operation of the signal lights or to their failure to operate.

[26 FR 11203, Nov. 28, 1961]

EDITORIAL NOTE: FOR FEDERAL REGISTER citations affecting § 207.750, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 207.800 Collection of navigation statistics.

(a) *Definitions.* For the purpose of this regulation the following terms are defined:

(1) *Navigable waters of the United States* means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR part 329 for a more complete definition of this term.)

(2) *Offenses and Violations* mean:

- (i) Failure to submit a required report.
- (ii) Failure to provide a timely, accurate, and complete report.
- (iii) Failure to submit monthly listings of idle vessels or vessels in transit.
- (iv) Failure to submit a report required by the lockmaster or canal operator.

(3) *Leased or chartered vessel* means a vessel that is leased or chartered when the owner relinquishes control of the vessel through a contractual agreement with a second party for a specified period of time and/or for a specified remuneration from the lessee. Commercial movements on an afreightment basis are not considered a lease or charter of a particular vessel.

(4) *Person or entity* means an individual, corporation, partnership, or company.

(5) *Timely* means vessel and commodity movement data must be received by the Waterborne Commerce Statistics Center within 30 days after the close of the month in which the vessel movement or nonmovement takes place.

(6) *Commercial vessel* means a vessel used in transporting by water, either merchandise or passengers for compensation or hire, or in the course of

business of the owner, lessee, or operator of the vessel.

(7) *Reporting situation* means a vessel movement by an operator that is required to be reported. Typical examples are listed in the instructions on the various ENG Forms. Five typical movements that are required to be reported by vessel operating companies include the following examples:

Company A is the barge owner, and the barge transports corn from Minneapolis, MN to New Orleans, LA, with fleeting at Cairo, IL.

(i) *Lease/Charter:* If Company A leases or charters the barge to Company B, then Company B is responsible for reporting the movements of the barge until the lease/charter expires.

(ii) *Interline movement:* A barge is towed from Minneapolis to Cairo by Company A, and from Cairo to New Orleans by Company B. Since Company A is the barge owner, and the barge is not leased, Company A reports the entire movement of the barge with an origin of Minneapolis and a destination of New Orleans.

(iii) *Vessel swap/trade:* Company A swaps barge with Company B to allow Company B to meet a delivery commitment to New Orleans. Since Company A has not leased/chartered the barge, Company A is responsible for filing the report. Company B is responsible for filing the report on the barge which is traded to Company A. The swap or trade will not affect the primary responsibility for reporting the individual vessel movements.

(iv) *Re-Consignment:* Barge is re-consigned to Mobile, AL. Company A reports the movements as originating in Minneapolis and terminating in Mobile. The point from which barge is re-consigned is not reported, only points of loading and unloading.

(v) *Fleeting:* Barge is deposited at a New Orleans fleeting area by Company A and towed by Company B from fleeting area to New Orleans area dock for unloading. Company A, as barge owner, reports entire movements from Minneapolis to the unloading dock in New Orleans. Company B does not report any barge movement.

(b) Implementation of the waterborne commerce statistics provisions of the River and Harbor Act of 1922, as

amended by the Water Resources Development Act of 1986 (Pub. L. 99-662), mandates the following.

(1) *Filing requirements.* Except as provided in paragraph (b)(2) of this section, the person or entity receiving remuneration for the movement of vessels or for the transportation of goods or passengers on the navigable waters is responsible for assuring that the activity report of commercial vessels is timely filed.

(i) For vessels under lease/charter agreements, the lessee or charterer of any commercial vessel engaged in commercial transportation will be responsible for the filing of said reports until the lease/charter expires.

(ii) The vessel owner, or his designated agent, is always the responsible party for ensuring that all commercial activity of the vessel is timely reported.

(2) The following Vessel Information Reports are to be filed with the Army Corps of Engineers, at the address specified on the ENG Form, and are to include:

(i) *Monthly reports.* These reports shall be made on ENG Forms furnished upon written request of the vessel operating companies to the Army Corps of Engineers. The forms are available at the following address: U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, Post Office Box 61280, New Orleans, Louisiana 70161-1280.

(A) All movements of domestic waterborne commercial vessels shall be reported, including but not limited to: Dry cargo ship and tanker moves, loaded and empty barge moves, towboat moves, with or without barges in tow, fishing vessels, movements of crew boats and supply boats to offshore locations, tugboat moves and movements of newly constructed vessels from the shipyard to the point of delivery.

(B) Vessels idle during the month must also be reported.

(C) Notwithstanding the above requirements, the following waterborne vessel movements need not be reported:

(1) Movements of recreational vessels.

(2) Movements of fire, police, and patrol vessels.

(3) Movements of vessels exclusively engaged in construction (e.g., pile-drivers and crane barges). NOTE: however, that movements of supplies, materials, and crews to or from the construction site must be timely reported.

(4) Movements of dredges to or from the dredging site. However, vessel movements of dredged material from the dredging site to the disposal site must be reported.

(5) Specific movements granted exemption in writing by the Waterborne Commerce Statistics Center.

(D) ENG Forms 3925 and 3925b shall be completed and filed by vessel operating companies each month for all voyages or vessel movements completed during the month. Vessels that did not complete a move during the month shall be reported as idle or in transit.

(E) The vessel operating company may request a waiver from the Army Corps of Engineers, and upon written approval by the Waterborne Commerce Center, the company may be allowed to provide the requisite information of the above paragraph (D), on computer printouts, magnetic tape, diskettes, or alternate medium approved by the Center.

(F) Harbor Maintenance Tax information is required on ENG Form 3925 for cargo movements into or out of ports that are subject to the provisions of section 1402 of the Water Resources Development Act of 1986 (Pub. L. 99-662).

(1) The name of the shipper of the commodity, and the shipper's Internal Revenue Service number or Social Security number, must be reported on the form.

(2) If a specific exemption applies to the shipper, the shipper should list the appropriate exemption code. The specific exemption codes are listed in the directions for ENG Form 3925.

(3) Refer to 19 CFR part 24 for detailed information on exemptions and ports subject to the Harbor Maintenance Tax.

(ii) *Annual reports.* Annually an inventory of vessels available for commercial carriage of domestic commerce and vessel characteristics must be filed on ENG Forms 3931 and 3932.

(iii) *Transaction reports.* The sale, charter, or lease of vessels to other

companies must also be reported to assure that proper decisions are made regarding each company's duty for reporting vessel movements during the year. In the absence of notification of the transaction, the former company of record remains responsible until proper notice is received by the Corps.

(iv) *Reports to lockmasters and canal operators.* Masters of self-propelled non-recreational vessels which pass through locks and canals operated by the Army Corps of Engineers will provide the data specified on ENG Forms 3102b, 3102c, and/or 3102d to the lockmaster, canal operator, or his designated representative in the manner and detail dictated.

(c) *Penalties for noncompliance.* The following penalties for noncompliance can be assessed for offenses and violations.

(1) *Criminal penalties.* Every person or persons violating the provisions of this regulation shall, for each and every offenses, be liable to a fine of not more than \$5,000, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed.

(2) *Civil penalties.* In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by this regulation may also be assessed a civil penalty of up to \$2,500 per violation under 33 U.S.C. 555, as amended.

(3) *Denial of passage.* In addition to these fines, penalties, and imprisonments, the lockmaster or canal operator can refuse to allow vessel passage.

(d) *Enforcement policy.* Every means at the disposal of the Army Corps of Engineers will be utilized to monitor and enforce these regulations.

(1) To identify vessel operating companies that should be reporting waterborne commerce data, The Corps will make use of, but is not limited to, the following sources.

(i) Data on purchase and sale of vessels.

(ii) U.S. Coast Guard vessel documentation and reports.

(iii) Data collected at Locks, Canals, and other facilities operated by the Corps.

(iv) Data provided by terminals on ENG Form 3926.

(v) Data provided by the other Federal agencies including the Internal Revenue Service, Customs Service, Maritime Administration, Department of Transportation, and Department of Commerce.

(vi) Data provided by ports, local facilities, and State or local governments.

(vii) Data from trade journals and publications.

(viii) Site visits and inspections.

(2) *Notice of violation.* Once a reporting violation is determined to have occurred, the Chief of the Waterborne Commerce Statistics Center will notify the responsible party and allow 30 days for the reports to be filed after the fact. If the reports are not filed within this 30-day notice period, then appropriate civil or criminal actions will be undertaken by the Army Corps of Engineers, including the proposal of civil or criminal penalties for noncompliance. Typical cases for criminal or civil action include, but are not limited to, those violations which are willful, repeated, or have a substantial impact in the opinion of the Chief of the Waterborne Commerce Statistics Center.

(3) *Administrative assessment of civil penalties.* Civil penalties may be assessed in the following manner.

(i) *Authorization.* If the Chief of the Waterborne Commerce Statistics Center finds that a person or entity has failed to comply with any of the provisions specified herein, he is authorized to assess a civil penalty in accordance with the Class I penalty provisions of 33 CFR part 326. Provided, however, that the procedures in 33 CFR part 326 specifically implementing the Clean Water Act (33 U.S.C. 1319(g)(4)), public notice, comment period, and state coordination, shall not apply.

(ii) *Initiation.* The Chief of the Waterborne Commerce Statistics Center will prepare and process a proposed civil penalty order which shall state the amount of the penalty to be assessed, describe by reasonable specificity the nature of the violation, and indicate

the applicable provisions of 33 CFR part 326.

(iii) *Hearing requests.* Recipients of a proposed civil penalty order may file a written request for a hearing or other proceeding. This request shall be as specified in 33 CFR part 326 and shall be addressed to the Director of the Water Resources Support Center, Casey Building, Fort Belvoir, Virginia 22060–5586, who will provide the requesting person or entity with a reasonable opportunity to present evidence regarding the issuance, modification, or revocation of the proposed order. Thereafter, the Director of the Water Resources Center shall issue a final order.

(4) *Additional remedies.* Appropriate cases may also be referred to the local U.S. Attorney for prosecution, penalty collection, injunctive, and other relief by the Chief of the Waterborne Commerce Statistics Center.

[56 FR 13765, Apr. 4, 1991]

PART 208—FLOOD CONTROL REGULATIONS

Sec.

- 208.10 Local flood protection works; maintenance and operation of structures and facilities.
- 208.11 Regulations for use of storage allocated for flood control or navigation and/or project operation at reservoirs subject to prescription of rules and regulations by the Secretary of the Army in the interest of flood control and navigation.
- 208.19 Marshall Ford Dam and Reservoir (Mansfield Dam and Lake Travis), Colorado River, Texas.
- 208.22 Twin Buttes Dam and Reservoir, Middle and South Concho Rivers, Tex.
- 208.25 Pensacola Dam and Reservoir, Grand (Neosho) River, Okla.
- 208.26 Altus Dam and Reservoir, North Fork Red River, Okla.
- 208.27 Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma.
- 208.28 Foss Dam and Reservoir, Washita River, Oklahoma.
- 208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.
- 208.32 Sanford Dam and Lake Meredith, Canadian River, Tex.
- 208.33 Cheney Dam and Reservoir, North Fork of Ninnescah River, Kans.
- 208.34 Norman Dam and Lake Thunderbird, Little River, Okla.
- 208.82 Hetch Hetchy, Cherry Valley, and Don Pedro Dams and Reservoirs.

AUTHORITY: Sec. 7, 58 Stat. 890; 33 U.S.C. 709.

§ 208.10 Local flood protection works; maintenance and operation of structures and facilities.

(a) *General.* (1) The structures and facilities constructed by the United States for local flood protection shall be continuously maintained in such a manner and operated at such times and for such periods as may be necessary to obtain the maximum benefits.

(2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law, shall appoint a permanent committee consisting of or headed by an official hereinafter called the “Superintendent,” who shall be responsible for the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all of the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States.

(3) A reserve supply of materials needed during a flood emergency shall be kept on hand at all times.

(4) No encroachment or trespass which will adversely affect the efficient operation or maintenance of the project works shall be permitted upon the rights-of-way for the protective facilities.

(5) No improvement shall be passed over, under, or through the walls, levees, improved channels or floodways, nor shall any excavation or construction be permitted within the limits of the project right-of-way, nor shall any change be made in any feature of the works without prior determination by the District Engineer of the Department of the Army or his authorized representative that such improvement, excavation, construction, or alteration will not adversely affect the functioning of the protective facilities. Such improvements or alterations as may be found to be desirable and permissible under the above determination shall be constructed in accordance