AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(a) The public will not be permitted in areas where their presence would subject themselves or Government operating personnel to serious accident hazards.

(b) The public will not be permitted in areas where their presence would interfere with any phases of navigation operations.

(c) The public will be given access to all areas other than those specified under paragraphs (a) and (b) of this section, subject only to the normal legal requirements with respect to property and personal rights.

§ 209.320 Policy on release of commercial statistics.

The collection of commercial statistics pertaining to rivers, harbors, and waterways, and annual reports thereof to Congress, are required by the River and Harbor Act of June 23, 1866 (14 Stat. 70), the act of February 21, 1891 (26 Stat. 766), the River and Harbor Act of June 13, 1902 (32 Stat. 376), the River and Harbor Act of July 25, 1912 (37 Stat. 201), the River and Harbor Act of September 22, 1922 (42 Stat. 1043), and Pub. L. No. 16, February 10, 1932 (47 Stat. 42). It is the policy of the Department to hold in strict confidence any data or information which has been furnished by shippers and others upon the understanding that it will not be disclosed and will only be used in the compilation of port or waterway statistics. In case Federal or State agencies or local interests request other than general information made permissible hereunder, their attention will be called to the policy indicated in this section.

§ 209.325 Navigation lights, aids to navigation, navigation charts, and related data policy, practices and procedure.

(a) *Purpose.* This regulation prescribes the policy, practice and procedure to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities.

(b) This regulation will be applied by all elements of the Corps of Engineers with Civil Works responsibilities.

(c) *Reference.* Public Law 85–480, Publication Authority (72 Stat. 279).

(d) *Cooperation with Coast Guard.* (1) District Engineers will consult with the Coast Guard District Commander during design of channel and harbor improvement projects to discuss the aids to navigation requirements and all other facets of the projects that involve Coast Guard responsibility. Project material furnished direct to Coast Guard Commanders will include:

(i) Information as to the authorization by Congress of a project involving changes affecting aids, such as channel limits, breakwaters, including a copy of the project document;

(ii) The proposed operations on such projects during the next fiscal year, to be furnished annually on the release of the budget estimates;

(iii) Plans showing the final location of the channel limits or structures to be furnished at the time work is undertaken.

(2) Changes in channel limits affecting navigation aids, made under general or specific provisions of the law, should be made the subject of a conference with the Coast Guard District Commander. He will be promptly informed as to the approval of such changes and the probable date of completion of the work.

(3) District Engineers will furnish direct to the various Coast Guard District Commanders, for their immediate information, any facts which may come to their attention in connection with their duties which will be of benefit to the Coast Guard in maintaining its system of aids to navigation. This should include statements as to the displacement of or defects in any such aids to navigation.

(4) If work involving harbor or channel improvements directly affects any existing aids to navigation or any structures of the Coast Guard, Districts Engineers will, when practicable, give notice to the Coast Guard District Commander sufficiently in advance to permit taking such steps as may be deemed necessary by the Coast Guard. If the Coast Guard District Commander specifically requests that the affected structure be replaced, the District Engineer will inform him of the estimated cost and will proceed with the work if so authorized by the Chief of Engineers. On completion of the work, the

District Engineer will promptly furnish the Coast Guard District Commander, for settlement, an account of the expense incurred.

(e) *Navigation Aids of the Corps of Engineers.* (1) Whenever channel dredging or other channel improvements are being performed, necessary temporary markers, such as ranges and light poles, should be installed and maintained by the District Engineer pending the installation of permanent aids by the Coast Guard. The Coast Guard desires that information regarding aids to navigation installed or maintained by District Engineers in connection with harbor or channel improvement be furnished promptly. Such information is needed for inclusion in Notice to Mariners as published by the Coast Guard, and where desirable on the charts of the waters concerned.

(2) District Engineers will notify the Coast Guard District Commander in every case where aids to navigation for marking works of harbor or channel improvements are established or discontinued. Notice should be given of such aids as may be of use or interest to general navigation. Notice need not be given as to such buoys, lights, or fog signals as are of temporary or unimportant character, or of importance only to the Corps of Engineers. Omit also lights or fog signals on ferry slips and on piers used only by certain vessels, and stakes, bushes, and barrel buoys marking shallow and little-used channels.

(3) In placing aids to navigation in connection with harbor or channel improvement works, District Engineers should see that they do not conflict in character or otherwise with other aids to navigation in the vicinity. District Engineers should confer with the Coast Guard District Commander on this subject.

(4) The necessary blank forms for reporting information regarding Corps of Engineers aids will be furnished upon request by the Coast Guard District Commander.

(5) It is essential that the Coast Guard by furnished with information for publication concerning markers installed by the Corps of Engineers as temporary aids to navigation, for new improvements, in advance of permanent aids, and also concerning other markers that may be established in connection with Corps of Engineers operations that may also serve as important aids to navigation. Care will be exercised to see that all markers established are not misleading to general navigation and do not interfere with aids to navigation estabished by the Coast Guard.

(f) *Colors of dredging buoys established by Corps of Engineers.* (1) In order to distinguish buoys placed and maintained by the Corps of Engineers for dredging purposes from aids to navigation placed by the Coast Guard, Corps buoys will be painted white with the top 2 feet painted light green.

(2) If buoys with special markings are needed to indicate the different sides of the navigable channel, prior arrangements will be made with the Coast Guard District Commander having jurisdiction.

(g) *Information to be furnished by the Corps of Engineers.* (1) District Engineers responsible for harbors and waterways shown on charts of the National Ocean Survey (NOAA), will report the channel conditions promptly, using standard tabular forms, to:

Director, Defense Mapping Agency, ATTN: Hydrographic Center, Washington, D.C. 20390.

National Oceanic and Atmospheric Administration, ATTN: National Ocean Survey C–32, Rockville, Md. 20852.

Commandant and District Commanders, U.S. Coast Guard.

(2) Channel survey drawings furnished to the Coast Guard are to include:

(i) Either NAD 27 or State Plane grids.

(ii) Plots of the positions of aids to navigation.

(iii) Written notations of the coordinates in NAD 27 or State Plane Coordinates of the fixed aids to navigation found during the survey.

(3) The standard tabular forms with illustrated data follow:

(i) For channels 400 feet wide and greater (ENG Form 4020–R).

(ii) For channels 100 to 400 feet wide (ENG Form 4021–R).

[———————— Harbor, ———————— (State)]

Name of channel	Date survey	Project			Minimum depths in channel entering from seaward		
		Feet width	Miles length	Feet depth	Left outside quarter feet	Mid-channel for half project width feet	Right outside quarter feet
Kings Island Channel	3–78	300	1.14	26	24	23	26
Whitehall Channel	3–78	200	1.81	26	27	26	25

ENG FORM 4021–R (Jul 59)

(iii) For channels less than 100 feet in width, report controlling depths only based on at least 80 percent of project width, 40 percent on either side of centerline. (The submission of tabular forms is not required for channels having a project depth less than 10 feet except coastal inlets and harbors of refuge.)

(4) The tabulations of depths should be amplified by footnotes or otherwise to show clearly and definitely the location of controlling shoals, tendency of shoals to recur, and all other critical information of special value and importance for safe navigation of the channel. Reaches of channel not presently named should be identified in the tabular form by reference to chartered aids or features, or assigned identifying names, numbers or letters. For localized irregular project areas where the application of the tabular form would not be practical, the controlling depth based on a safe navigable width will be described as well as unusual or critical conditions of shoaling.

(5) The prompt dissemination of the latest detailed information concerning channel conditions is of utmost importance, and necessary measures will be taken to insure that such information is reported without delay simultaneously to the U.S. Naval Oceanographic Office, the Coast Guard, the National Ocean Survey and Defense Mapping Agency. When a dangerous shoaling is found during the progress of a survey, information thereon will be furnished immediately to the abovementioned agencies, so that such information may be made available to mariners promptly, and buoys shifted to mark the shoal. Descriptions of any dredging or other operations in important channels in tidal waters—either in progress and not already reported, or soon to be undertaken—together with a statement of the work and expected duration, will also be reported in order that Naval and other vessels may be warned to look out for dredges and other plant, temporary markers and lights.

(6) District Engineers having charge of improvements of harbors and waterways shown on charts of the Defense Mapping Agency or of the National Ocean Survey will send to both offices promptly, as ascertained for the correction of such charts, the following information: Descriptions of changes in channel location and depth, or of obstructions that may be discovered, with such prints and other information as may be necessary to permit the existing charts to be corrected to date. All maps should contain sufficient data to permit the fixed plane or reference, bench marks, base lines, etc., to be determined and located. The survey stations should be shown and, when no unreasonable expenditure of time or labor is involved, the map will show one or more triangulation station(s) of the National Ocean Survey in such a way as to facilitate connection of old or new work. The source of authority for the shoreline and topography should be stated on the map. The data supplied should indicate what charts are affected.

(7) When any survey of areas covered by charts of the Defense Mapping Agency or the National Ocean Survey is completed, a print of each tracing will be sent direct to both the Defense Mapping Agency and the National Ocean Survey. It is not necessary that tracings be fully complete as to form

and title when such prints are made. An informal manuscript title marked ''Advance Sheets'', and containing a description sufficient to identify the locality and to identify the source of the map, will be sufficient.

(8) Information relative to the improvement of harbors and waterways such as dredging operations, and precautions rendered necessary due to the presence of dredging or other plant will, when considered necessary, be brought to the attention of vessel owners or operators regularly using the waterway. This will be done through issuing bulletins or notices by District Engineers.

(h) *Special Reports.* Changes affecting navigation will be made promptly whenever information of immediate concern to navigation becomes known. Items of information especially desired are channel conditions as revealed by surveys, changes in channel conditions, either by natural causes or by dredging or other work, changes in approved projects for improvement with statements of results expected from proposed operations, descriptions of proposed dredging or other Federal work of improvement such as breakwater, pier, and revetment construction or alterations, descriptions of proposed or completed municipal or private improvements in or affecting navigable waters. Additional items of information desired are descriptions of wrecks, uncharted shoals, and other obstructions to navigation and particulars as to proposed or completed removal of same, changes in buoys or lights, erection of new, or changes in existing bridges, new or revised Federal or local rules and regulations for harbors and channels, and establishment or existence of danger areas in navigable waters. Reproductions of drawings or sketches which will be helpful in interpreting the data shall accompany the reports. The reports will not be limited to a reference to an accompanying drawing or sketch, but will contain a complete description in form suitable for publication in notices to mariners and the monthly supplements to the U.S. Coast Pilot. In this respect, the reports will provide enough information that a single notification to navigational interests will suffice. In the case of dredging or construction work, the bare statement that work will commence or has commenced on a certain date is insufficient. All additional information possible, such as probable duration of operations and object of work, will be given—the latter in the case of dredging being such data as the area to be covered and the depth expected to be provided. The reports required by this paragraph will be identified by reference to the appropriate Engineer Manual or regulation and will be numbered consecutively by each District during the calendar year, starting with number 1 at the beginning of each year.

(i) *Information pamphlets, maps, brochures and other material.* (1) Pub. L. 85–480, approved 2 July 1958, authorizes the Chief of Engineers to publish information pamphlets, maps, brochures, and other material on river and harbor, flood control, and other Civil Works activities, including related public park and recreation facilities under his jurisdiction, as he may deem to be of value to the general public.

(2) This Public Law authorizes the Chief of Engineers to provide for the sale of any of the material prepared under authority of the act—and of publications, charts, or other material prepared under his direction pursuant to other legislative authorization or appropriation, and to charge therefor a sum of not less than the cost of reproduction.

(3) District Engineers are authorized to publish the material covered in paragraph 8a above, and to sell such material. Except for material specifically prepared for free distribution to the general public, the charges for such other published information will be not less than the cost of its reproduction.

(4) Condition survey maps or charts, sold or otherwise distributed to the public, showing depths will specifically state the date or dates that the surveys were made. They shall also have the following notation printed or stamped thereon:

''The information depicted on this map represents the results of surveys made on the dates indicated and can only be considered as indicating the

general conditions existing at that time.''

[43 FR 19661, May 8, 1978]

§ 209.335 Publication.

(a) Section 4 of the Administrative Procedure Act requires publication of general notice of proposed rule making in the FEDERAL REGISTER (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law), except to the extent that there is involved: (1) Any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. Except where notice of hearing is required by statute, this requirement does not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) General notice of proposed rule making published in accordance with the above will include: (1) A statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 209.340 Laboratory investigations and materials testing.

(a) *Purpose.* The purpose of this section is to define and establish policies and procedures applicable to the performance of investigations and tests at Corps of Engineers laboratory installations for other governmental agencies and private organizations.

(b) *Applicability*. This regulation applies to Corps of Engineers Divisions and Districts operating soils, concrete, water quality and hydraulic laboratories, and to the Inter-Agency Sedimentation Project.

(c) *References.* (1) AR 37–20.

(2) AR 37–27.

(3) ER 1–1–6.

(4) ER 10–1–3, Appendix XIII.

(5) ER 1110–1–8100.

(6) ER 1140–2–303.

(d) *Policy*. Subject to the authority limitations contained in paragraph (f) of this section, laboratory investigations and materials testing may be performed for other agencies of the Federal Government, State and local units of government, foreign governments and private firms under the following conditions:

(1) The work will be performed on a cost reimbursable basis.

(2) Work may be performed for State and local units of government, foreign governments or private firms only when it is firmly established that private commerical laboratory facilities capable of performing such work are not available, or because of location or for other reasons it is clearly impractical to utilize such private commerical laboratory services. The requesting entity must further certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(3) Performance of the work will not interfere with provisions of services essential to the mission of the Corps.

(4) Performance of the work will not require an increase in the permanent staff of the facility.

(5) Performance of the work will not require expansion of normal facilities.

(6) The work is within the scope of authorized activities of the laboratory at which the work is to be performed.

(7) Performance of the work will not be adverse to the public interest.

(8) Prior to undertaking laboratory investigations or materials testing for private firms, written certification will be obtained from such firms stating that the results of the work will not be used in litigation or for promotional purposes.

(e) *Terms of providing reimbursement for work performed*—(1) *Federal agencies.* Reimbursement for work for the Department of Defense, the Department of the Army, and other Federal Agencies will be in accordance with the procedures prescribed in AR 37–27.

(2) *State and local units of Government.* Funds to cover the total estimated cost of the work or an initial increment of