

## WCSC SUPPORTING STATEMENT (0710-0006)

1. The authority for the U. S. Army Corps of Engineers to collect data on vessel operations and cargo movements is given by Section 11 of 42nd Stat 1043; Rivers and Harbors Appropriation Act of 1922 as amended by PL 99-662. The Rivers and Harbors Appropriation Act states:

SEC.11. "That owners, agents, masters, and clerks of vessels and other craft plying upon the navigable waters of the United States, and all individuals and corporations engaged in transporting their own goods upon the navigable waters of the United States, shall furnish such statements relative to vessels, passengers, freight, and tonnage as may be required by the Secretary of War: Provided, That this provision shall not apply to those rafting logs except upon a direct request upon the owner to furnish specific information.

That every person or persons offending against the provisions of this section shall, for each and every offense, 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. In addition the Secretary may access a civil penalty of up to \$2,500, per violation, against any person or entity that fails to provide timely, accurate statements required to be submitted pursuant to this section by the Secretary."

The enactment of PL 99-662, the 1986 Water Resources Development Act, has mandated the Department of the Treasury to collect user fees from shippers using Federal navigation projects. The shipper's name, IRS number, and exemption code were added to the **ENG Form 3925** to provide Treasury a means of verifying the collection of this new user fee. The Corps of Engineers uses one basic form with three variations to accommodate certain types of vessel operating companies. ENG Form 3925 is directed to vessel companies that operate self-propelled vessels. ENG Form 3825B is directed to vessel companies that operate non self-propelled vessels (barges). ENG Form 3925P is directed to vessel companies that operate passenger vessels. ENG 3925C is directed to vessel companies that operate container vessels. Each of these forms is issued to collect similar data. The Corps provides the forms to the vessel operating companies.

2. The information collected is the basic data from which the Corps of Engineers compiles and publishes waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, rehabilitation projects, and operations and maintenance of existing projects. It is also used by other Federal agencies involved in transportation and security. This data collection program is the sole source for domestic navigation statistics. If this data collection effort is not performed, domestic waterborne commerce statistics will not be available. Beginning April 1, 1987, the data has been given to the U. S. Customs and Border Protection to verify receipts of the Harbor Maintenance Tax. Note: The Supreme Court has held that the Harbor Maintenance Tax is unconstitutional for exported but not imported or domestic cargo.

3. The reporting procedures for selected companies with adequate computer resources have been automated. These companies submit coded reports on electronic media. The percent of records from automated companies is approximately 60% in 2005. Companies who submit automated reports have greatly reduced the burden hours for providing the government data. There are a number of companies that use a computer printout to report their vessel movements to WCSC. These computer printouts are accepted in lieu of **ENG Form 3925 or 3925B** as long as the information is presented in a format similar to **ENG Form 3925 or 3925B**. The Navigation Data Center will continue to assist vessel operating companies in providing data using automation.

4. The WCSC is the sole authorized collector of data on domestic waterborne commerce and provides same to Maritime Administration (MARAD), Department of Energy (DOE), Tennessee Valley Authority (TVA), Interstate Commerce Commission (ICC), the Coast Guard, State taxing agencies, U. S. Customs and Border Protection - Department of Treasury, the Internal Revenue Service and the Department of Homeland Security.

There is no other source for waterborne commerce data that provides origin, destination, commodity, tons, etc. for domestic vessel movements on U.S. waterways. The origin, destination, commodity, and tonnage information is required to perform cost/benefit studies and provide a rationale for allocation of resources related to the Corps navigation function.

5. This data collection program does involve small businesses or other small entities; however, the economic impact is minimal. Corps of Engineers employees assist small businesses with form preparation, training and supplies. The Corps provides all companies with forms, envelopes and supplies at no cost and pays for all mailing costs.

For manual data entry there are no further simplifications of procedures that are feasible. The small business organization always has the option to submit the reports on diskette or an approved equivalent such as a computer printout.

6. This data collection program provides the sole source for waterborne commerce statistics on domestic waterways. As referenced in paragraph 4, the ability to use waterborne commerce statistics to perform cost/benefit studies is mandatory for a rational, defensible allocation of the Corps annual navigation budget (approximately \$1.5 billion).

The Navigation Data Center does require that respondents report vessel movements on a monthly basis rather than quarterly. 33 CFR Part 207 (Attachment) specifies on page 3, paragraph 207.800, (5) that timely means monthly submissions.

7. There are three areas of concern with regard to monthly versus quarterly submission of vessel operation reports: users of waterborne statistics, enforcement of the WCSC data collection program and data processing of vessel operation reports.

a. Users of Waterborne Statistics.

(1) Without monthly data WCSC would not be able to respond to inquiries for monthly or seasonal data.

(a) During the great flood of 1993 the Navigation Data Center furnished critical data to agencies and the press with regard to the impact of closing down navigation on the upper reaches of the Mississippi River. The data requested was monthly data.

(b) During the drought of 1988 the Navigation Data Center furnished monthly data to agencies monitoring that disaster. This again was monthly data and seasonal data.

(c) After the Valdez oil spill in Prince William Sound in 1989, the WCSC received many data requests for transportation of petroleum products. The data requested was monthly data.

(2) Quarterly submissions would reduce the quality and accuracy of the published statistics.

(a) The quality would be negatively affected because WCSC would not receive some of the reports until 3-4 months after the vessel movement was complete. Consequently, questions that occur with regard to a specific movement that was completed 3-4 months in the past would be difficult to resolve.

(b) Delinquent vessel operators will not appear as delinquent until 3-4 months later. Recovering these delinquent reports would be more difficult than with monthly reports.

(3) Quarterly submissions would delay the availability of the statistics. The number one concern of the users of waterborne statistics is timeliness.

(4) Quarterly submissions would make it difficult to integrate foreign import/export data with domestic navigation data. Import/export data is collected monthly.

(5) The Operations and Maintenance Business Information Link (OMBIL) has added a new responsibility to WCSC. Tonnage and vessel movement data must be submitted on a quarterly basis. Information on tonnages and trips is used to produce performance measures for navigation projects as well as Corps offices. Late monthly vessel submissions must be estimated. This system could not tolerate entire quarters being late.

b. Enforcement of the WCSC Data Collection Program.

(1) The enforcement function within WCSC would be negatively impacted. The delinquency rate would increase because it would not be apparent that the vessel operator has failed to submit vessel operation reports until 3-4 months after the fact. The system would be less effective and require additional human resources.

(2) The Navigation Data Center currently furnishes the U. S. Customs and Border Protection monthly detail records for verification of the collection of the Harbor Maintenance Tax. The monthly data facilitates their auditing procedures.

c. Data Processing of Vessel Operation Report.

(1) The Navigation Data Center has employed various contractors to perform the coding and keying function in past years. The work flow is a serious concern for a contractor. With quarterly submissions the work flow becomes cyclical and presents the contractor with staffing problems. When a contractor has staffing problems the quality of his/her work is reduced. This brings more problems in-house.

(2) The quarterly submissions and cyclical work flow would negatively impact the allocation of human resources within the government enforcement function.

This data collection program does require the respondents to submit ENG Form 3925, 3925B, 3925P, 3925C or an authorized automated equivalent on a monthly basis. There are no legal obstacles to reducing the burden. The ability of vessel companies to submit their data electronically or on computer printout is already reducing the burden. Companies must report all of their vessel/commodity movements regardless of the reporting time frame.

According to 33 CFR 207, the term *timely* is defined as within 30 days after the close of the month in which the vessel movement or non-movement takes place. For vessel movements terminating in June the reports are due by the last working day of July. This does not place an undue burden on vessel operators.

This data collection program does not require multiple copies of the vessel operation report nor does it require respondents to maintain records for more than three years.

The origin, destination, commodity, and tonnage data obtained by this data collection program cannot be generalized from any source.

All classifications and procedures have been reviewed by OMB.

Release of Commercial Statistics, Trade Secrets, Disclosure of Confidential Information.

(a) Commercial Statistics. The Corps of Engineers policy on the release of commercial statistics is given in 33 CFR 209.320:

“The collection of commercial statistics pertaining to rivers, harbors, and waterways, and annual reports thereof to Congress, 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 that 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.”

On the reverse side of the cover of each pad of ENG Forms 3925/3925B/3925P/3925C the following passage is printed:

“Data specific to individual reporting companies are considered confidential and protected from unauthorized disclosure under the Trade Secrets Act (18 U.S.C. Chapter 93, Section 1905) unless otherwise authorized by law. In order to minimize the reporting burden on vessel operating companies, the Corps of Engineers will furnish data to other Federal agencies in accordance with the Paperwork Reduction Act (44 U.S.C. 3510(a)).”

(b) Confidential Information. Title 18, U.S. Code Chapter 93 Sec. 1905 – Disclosure of Confidential Information states:

“Whoever, being an officer or employee of the United States or of any department or agency thereof, published, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by a person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, c. 645, 62 Stat. 791.”

On the reverse side of each (ENG Form 3925/3925P) the following passage is printed.

“PRIVACY ACT STATEMENT: Submission of an Internal Revenue Service Number or a Social Security Number is mandatory for cargo moves subject to the harbor maintenance fee. These identification numbers are solicited under the authority of Executive Order 9397 and Public Law 99-662 (Attachment 2). The identification number provides unique identification of the party liable for payment of the Harbor Maintenance Tax. The number will be given to the U.S. Customs Service to compare the information provided on the ENG Form 3925/3925P with information submitted on summary sheets accompanying the payment of the fee. Failure to submit the appropriate identification number can result in a fine of not more than \$5,000.00 or imprisonment not to exceed 2 months and/or an assessment of a civil penalty up to \$2,500.00 per violation. (Section 11 of the Rivers and Harbors Appropriation Act of 1922 as amended by PL 99-662, 33 USC 555).”

(c) Rule of Three. The Rule-of-Three is used to screen data when released to the general public. The rule states that it is required that at least three vessel operating companies carry a particular commodity from an area of origin to an area of destination in order to release it to the public. If there are less than three operators carrying the commodity then that commodity is grouped with some other commodity to form a more general commodity that satisfies the Rule-of-Three.

(d) Petroleum Product Movement Data. PL 99-662, The 1986 Water Resources Development Act, Section 919 requires that the Corps of Engineers release petroleum product movement data to the State taxing agencies upon request. Since the Navigation Data Center is the sole source for domestic waterborne commerce, it is obligated to share this data. The statistics are released to the general public in aggregated form. All other released are screened on a need-to-know basis.

8. A copy of the Federal Register announcement was published on January 26, 2007: Volume 72, No. 17, page 3804. (See attached) No comments were received.

The U. S. Army Corps of Engineers has been working closely with the waterborne transportation industry. The Waterborne Commerce Statistics Center (WCSC) staff attended several industry meetings such as the Transportation Research Board Conference (Jan 2006), the National Waterways Conference (Sep 2006), the International Workboat Show (Nov 2006), and the Gulf Intracoastal Canal Association Convention (Aug 2006). The WCSC staff participated in these conferences with visual displays and various materials related to the waterborne commerce statistics program. The individuals in attendance at these meetings have access to WCSC staff to discuss any problems they might have had with their program. Every effort has been made to minimize the impact on private industry.

The staff of the Enforcement Office, WCSC, plans periodic visits to respondents to assist and train staff employees of the respondent in the correct completion of **ENG Form 3925, 3925B, 3925P and 3925C**. This provides the staff of WCSC an excellent opportunity to discuss the availability of data, frequency of collection, clarity of instructions, etc. with the respondent.

9. The WCSC has not offered any payment or gift to respondents.

10. Addressed in Item 7 of this Supporting Statement.

11. There are no sensitive data items on the forms.

12. Burden Hours. The estimated burden hours are based upon a response which contains an average of 8 vessel movements for each response. In numerous discussions with respondents we have estimated the time required to complete these forms as follows:

**ENG Form 3925** - approx. 23 minutes or 0.3767 hours per form

**ENG Form 3925B/P/C** - approx. 18 minutes or 0.3050 hours per form

**Automated Reporting Procedures** - We estimate that each response (average of 8 vessel movements per response) will have some type of burden associated with that response. While the computer may generate the magnetic medium or computer printout for submission to WCSC, there had to be a computer operator, data entry clerk, review personnel, and computer resources expended. The best estimate that we have been able to determine is approximately 1 minute per response or 1 minute for each 8 vessel movements submitted electronically or on computer printout.

Table 1 estimates the total burden hours to the public.

**Table 1. Annual Reporting Burden**

|                                  | ENG Forms<br>3925/B/P<br>Automated<br>Submission | ENG Forms 3925<br>Manual Submission | ENG Forms<br>3925/B/P/C Manual<br>Submission |
|----------------------------------|--|-------------------------------------|--|
| # of Respondents                 | 198  | 265                                 | 760  |
| # of Responses per<br>Respondent | 304  | 64                                  | 156  |
| Total Annual Responses           | 60,192   | 16,960                              | 118,560                                      |
| Hours per Response               | 0.01666  | 0.3767                              | 0.3050                                       |
| Total Hours                      | 1,003  | 6,389                               | 36,161                                       |

The total estimated burden hours are 43,553. The estimated cost of these burden hours is calculated below. The hourly wage figure is based off the civil service pay scale. The Corps of Engineers would use a GS-06 employee to complete VORs. The average hourly pay for a GS-06 step 5 is \$17.16

$$43,553 \text{ hours} \times \$17.16 \text{ per hour} = \$747,369$$

13. None.

14. Federal Costs. This data collection program does not encompass federal costs associated with collection requirements. Federal costs are estimated below.

The Corps of Engineers uses a private contractor and 6 civil service employees to collect VORs. Contract services cost approximately \$510,000 per year. Table 2 estimates the government pay for the civil servant employees.

**Table 2. Civil Service Pay to Process VORs**

| <b>Grade</b> | <b># Employees</b> | <b>Average Annual Base Pay</b> | <b>Total Pay per Grade</b> |
|--------------|--------------------|--------------------------------|----------------------------|
| GS-8         | 3                  | \$46,668                       | \$140,004                  |
| GS-11        | 2                  | \$65,834                       | \$131,668                  |
| GS-12        | 1                  | \$78,899                       | \$78,899                   |

The total government cost is estimated at \$860,571.

15. Burden increased as there was an increase in the number of respondents.

16. The data collection program operates on an annual cycle January – December of each year. The first reports for a new calendar year are not due until the end of February of the next year, however, many vessel operating companies submit their reports in the month for the previous month. WCSC will close out the year with the March/April time frame trying to collect delinquent reports. A technical review is then performed. Distribution can then be made of the data in electronic form in database format. Printing follows the technical review as early as possible. WCSC reports to Congress through the “Waterborne Commerce of the United States (WCUS) Parts 1-5”. These publications contain statistics for ports and waterways by commodity, traffic, and tonnage. Even before the printed copies are made, the data is placed on our web page for easy access.

17. Form Expiration Dates. The Corps of Engineers again recommends that the ENG forms be approved without expiration dates. If the forms have an expiration date, we must print new forms each time the data collection program is extended. We would then have to destroy reams of forms with the previous expiration data. The inclusion of the expiration date could also cause a drastic logistic problem with the distribution of current forms. We have many cases where the vessel company policy is for each vessel to store copies of the forms aboard the vessels. It is extremely difficult to make distribution through the company to each vessel.

The Corps works very hard to maintain a good working relationship with the respondents and the expiration date is an unnecessary cause of friction. Built-in obsolescence of government forms serves a useful purpose in some data collection programs; however, it is counterproductive in the case of an existing on-going data collection program such as this one in the Corps of Engineers.

18. This data collection program does not have any exceptions to the certification statement.

19. This collection will not use statistical methods.