

§ 329.15

- (iii) Approximate discharge volumes: Maximum, Minimum, Mean:
- (iv) Fall per mile:
- (v) Extent of tidal influence:
- (vi) Range between ordinary high and ordinary low water:
- (vii) Description of improvements to navigation not listed in paragraph (c)(5) of this section:
- (4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce:
- (5) Authorized projects:
 - (i) Nature, condition and location of any improvements made under projects authorized by Congress:
 - (ii) Description of projects authorized but not constructed:
 - (iii) List of known survey documents or reports describing the waterbody:
- (6) Past or present interstate commerce:
 - (i) General types, extent, and period in time:
 - (ii) Documentation if necessary:
- (7) Potential use for interstate commerce, if applicable:
 - (i) If in natural condition:
 - (ii) If improved:
- (8) Nature of jurisdiction known to have been exercised by Federal agencies if any:
- (9) State or Federal court decisions relating to navigability of the waterbody, if any:
- (10) Remarks:
- (11) Finding of navigability (with date) and recommendation for determination:

§ 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the division engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the division engineer. If a need develops for an emergency determination, district engineers may act in reliance on a finding prepared as in section 329.14 of this part. The report of findings should then

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be forwarded to the division engineer on an expedited basis.

(b) Where determinations have been made by the division engineer, inquiries regarding the *navigability* of specific portions of waterbodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that _____ (River) (Bay) (Lake, etc.) is a navigable water of the United States from _____ to _____. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the *jurisdiction* of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or

(2) If not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each district office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the division engineer; changes are not considered final until a determination has been made by the division engineer.