

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****33 CFR Part 334****Disestablishment of Restricted Area for Pascagoula Naval Station, Pascagoula, MS**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Direct final rule.

SUMMARY: The U.S. Navy (USN) requested that the U.S. Army Corps of Engineers (Corps) disestablish the restricted area at the former Naval Station Pascagoula in Pascagoula, Mississippi. The restricted area was established on November 9, 1992. The purpose of the restricted area was to reduce safety hazards and security risks and protect persons and property from dangers encountered in the area. As a result of the 2005 Base Realignment and Closure Act, the Naval Station was closed on June 1, 2007, and the property transferred to the State of Mississippi.

DATES: This rule is effective October 26, 2009 without further notice, unless the Corps receives adverse comment by September 28, 2009. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You may submit comments, identified by docket number COE-2009-0036, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number COE-2009-0036 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street, NW., Washington, DC 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2009-0036. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or Mr. John B. McFadyen, U.S. Army Corps of Engineers, Mobile District, at 251-690-3222.

SUPPLEMENTARY INFORMATION: By letter dated June 25, 2009, the Director, USN Base Realignment and Closure Program Management Office Southeast requested the removal of the restricted area at USN Station Pascagoula. The request was made because the 2005 Base Realignment and Closure Act closed the installation and subsequently transferred the property to the State of Mississippi on June 1, 2007. In response to this request by the USN, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending the regulations in 33

CFR part 334 by disestablishing the restricted area.

The Corps is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comment. The Corps regulations governing restricted areas state that notice of proposed rulemaking and public procedures are not needed before publishing a final rule revoking a restricted area regulation (see 33 CFR 334.5(b)).

In the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to disestablish this restricted area if adverse comments are filed. This rule will be effective on October 26, 2009 without further notice unless we receive adverse comment by September 28, 2009. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Procedural Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps has determined that the removal of this restricted area and the addition of the new restricted area would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps expects that the final rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared and it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above. If we receive adverse comment,

an environmental assessment will be prepared for the subsequent final rule.

d. *Unfunded Mandates Act*. The final rule does not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

§ 334.786 [Removed]

■ 2. Remove § 334.786.

Dated: August 14, 2009.

Michael G. Enschi,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–20295 Filed 8–26–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

Regulatory Guidance Concerning Applicability of the Federal Motor Carrier Safety Regulations to Mobile Cranes Operated in Interstate Commerce

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA announces a revision of the regulatory guidance concerning the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to mobile cranes operated in interstate commerce. The regulatory guidance is presented in a question-and-answer format. The guidance is generally applicable to drivers, commercial motor vehicles (CMVs), and motor carrier operations subject to the FMCSRs. All prior interpretations and regulatory guidance

concerning the applicability of the FMCSRs to operations of mobile cranes in interstate commerce issued in the Federal Register, as well as memoranda and letters, may no longer be relied upon as authoritative if they are inconsistent with the guidance published today. This guidance will provide the motor carrier industry and Federal, State, and local law enforcement officials with uniform information for assessing the applicability of the FMCSRs to the operations of mobile cranes.

DATES: *Effective Date:* This regulatory guidance is effective on August 27, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, (202) 366–5370, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe regulations on CMV safety. The regulations shall prescribe minimum safety standards for CMVs. At a minimum, the regulations shall ensure that—(1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMV is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators. (49 U.S.C. 31136(a)) Section 211 of the 1984 Act also grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate.” (49 U.S.C. 31133(a)(8) and (10))

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

This document provides regulatory guidance to the public with respect to the applicability of the Federal Motor

Carrier Safety Regulations (FMCSRs) to the operations of mobile cranes in interstate commerce.

Members of the motor carrier industry and other interested parties may also access the guidance in this document through the FMCSA’s Internet site at <http://www.fmcsa.dot.gov>.

Specific questions addressing any of the interpretive material published in this document should be directed to the contact person listed earlier under **FOR FURTHER INFORMATION CONTACT**, or the FMCSA Division Office in each State.

Basis for the Notice

The CMVs are defined in 49 CFR 390.5 as any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Paragraph (1) of the definition applies to the vehicles that are the subject of this notice.

Question 9 under 49 CFR 390.5 of the existing regulatory guidance concerns the applicability of the FMCSRs to mobile cranes. The current guidance was published in the November 17, 1993 **Federal Register** (58 FR 60734) and again in the April 4, 1997 **Federal Register** (62 FR 16370). It reads as follows:

Question 9: Are mobile cranes operating in interstate commerce subject to the FMCSRs?

Guidance: Yes, the definition of CMV encompasses mobile cranes.

In a September 21, 2000, decision concerning a civil penalty enforcement case entitled *In the Matter of Williams Equipment Corporation* (Docket No. FHWA–1997–2433), the Acting Chief Safety Officer (CSO) of FMCSA found this regulatory guidance “unpersuasive.” The Acting CSO cited *Christensen v. Harris County*, 120 S.Ct. 1655, 1657 (2000):