

Proposed Rules

Federal Register

Vol. 70, No. 112

Monday, June 13, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Huntington-05-002]

RIN 1625-AA00

Safety Zone; Huntington, WV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the waters of the Ohio River. This safety zone is needed to protect participating vessels and mariners during the Huntington Challenge Tunnel Boat Race. With the exception of participating vessels and mariners, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before July 13, 2005.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard, Marine Safety Office Huntington, 1415 Sixth Avenue, Huntington, West Virginia 25701, Attn: Petty Officer Andrew Caldwell. Marine Safety Office Huntington maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Huntington, 1415 Sixth Avenue, Huntington, West Virginia, 25701 between 8 a.m. and 4 p.m., Monday through Friday except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) Andrew Caldwell, Marine Safety Office Huntington, WV, at (304) 529-5524, extension 2119.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Huntington 05-002], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Huntington at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Big Sandy Superstore Arena will be conducting the Huntington Challenge Tunnel Boat Race on August 13 and 14, 2005. Race boats will be traveling at a very high rate of speed and at times may not be able to stop to avoid a collision if spectator or other vessels are operating in close proximity of the race course. A safety zone is needed to protect the race boats, operators and spectators from the potential safety hazards associated with this boat race.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone for the waters of the Ohio River beginning at mile 307.5 and ending at mile 308.8, extending the entire width of the river. With the exception of participant vessels and those mariners operating participant vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative. The term "participant vessel" includes all vessels registered

with race officials to race or work in the event. They include race boats, rescue boats, tow boats and picket boats associated with the race. This rule is effective from 10 a.m. on August 13, 2005 until 7 p.m. on August 14, 2005. This rule will only be enforced from 10 a.m. until 7 p.m. on each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port Huntington or a designated representative. The Captain of the Port Huntington will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This regulation will only be in effect for nine hours each day and notifications to the maritime community will be made through broadcast notice to mariners. During non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port Huntington or a designated representative. Additionally, 30-minute breaks will be scheduled every three hours to allow awaiting vessels to pass through the safety zone. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners and operators of commercial and recreational vessels intending to transit the Ohio River during the effective period. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 10 a.m. until 7 p.m. on each day that it is effective; (2) During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Huntington or a designated representative; and (3) 30-minute breaks will be scheduled every three hours to allow awaiting vessels to pass through the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small businesses, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Andrew Caldwell at (304) 529–5524, extension 2119. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action”

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

Under figure 2–1, paragraph (34)(g), of the Instruction, as “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this proposed rule.

Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08–053 is added to read as follows:

§ 165.T08–053 Safety Zone; Ohio River, Mile 307.5 to 308.8 Huntington, WV.

(a) *Definition.* As used in this section—

Participant Vessel includes all vessels registered with race officials to race or work in the event. These vessels include race boats, rescue boats, tow boats and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: all waters of the Ohio River beginning at mile 307.5 and ending at mile 308.8, extending the entire width of the river.

(c) *Effective date.* This rule is effective from 10 a.m. on August 13, 2005 until 7 p.m. on August 14, 2005.

(d) *Periods of Enforcement.* This rule will be enforced from 10 a.m. until 7 p.m. on each day that it is effective. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(e) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all persons and vessels except participant vessels and those vessels specifically authorized by the Captain of the Port Huntington or a designated representative.

(2) Persons or vessels other than participating vessels and mariners requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington or designated on-scene patrol personnel. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 25, 2005.

J.M. Michalowski,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 05–11589 Filed 6–10–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2004–014]

RIN: 9000–AK19

Federal Acquisition Regulation; Buy–Back of Assets

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by revising the contract cost principle regarding depreciation. The proposed rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sales and leaseback arrangement.

DATES: Interested parties should submit comments in writing on or before August 12, 2005, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004–014 by any of the following methods:

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

Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.

E-mail: farcase.2004-014@gsa.gov. Include FAR case 2004–014 in the subject line of the message.

Fax: 202–501–4067.

Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004–014 in all correspondence related to this case. All comments received will be posted without change to [http://](http://www.acqnet.gov/far/ProposedRules/proposed.htm)

www.acqnet.gov/far/ProposedRules/proposed.htm, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAR case 2004–014.

SUPPLEMENTARY INFORMATION:

A. Background

In response to public comments related to FAR 31.205–16 (submitted under FAR Case 2002–008), the Councils revised the proposed rule to state that the disposition date is the date of the sale and leaseback arrangement, rather than at the end of the lease term. During the deliberations on this case, the Defense Contract Audit Agency brought to the Councils' attention a concern regarding the cost treatment when a contractor "buys back" an asset after a sale and leaseback transaction is recognized under the revised proposed rule. The Councils recognized this concern, not just for sale and leaseback arrangements, but also for assets that are purchased, depreciated, sold, and repurchased. As such, the issue involves a myriad of situations where a contractor depreciates an asset or charges cost of ownership in lieu of lease costs, disposes of that asset, and then reacquires the asset. The Councils recognized this issue required research and deliberation and established a new case (FAR Case 2004–014) to address this buy–back issue.

The Councils recognize that there are situations when a contractor can and will reacquire an asset after relinquishing title, in either a sale and leaseback arrangement or simply a typical sale and subsequent repurchase. It appears that the only area that currently requires coverage is in the case of a sale and leaseback arrangement. The coverage related to a sale and leaseback arrangement is needed as a result of the changes made under FAR Case 2004–005, Gains and Losses (see **Federal Register** 70 FR 33673, dated June 8, 2005).

Currently, no situations in which the Government was at risk in the areas of typical sale and reacquisition, or capital leases were identified. FAR 31.205–11(f) and 31.205–36(b)(3) currently provide coverage for typical sale and reacquisition transactions at less than arm's-length. In addition, FAR 31.205–11(i) requires contractors to treat leases meeting the definition of a capital lease in FAS–13 as an asset owned by the contractor. The subsequent acquisition