

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.*

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## **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](mailto: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://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

[www.acqnet.gov/far/ProposedRules/proposed.htm](http://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

of title to the asset is not a disposition and therefore no gain or loss need to be considered. In addition, the GAAP treatment of the acquisition of an asset under a capital lease, which in effect steps-up the value of the asset, would result in an unallowable cost, based on the intent of the FAR as shown in FAR 31.205-52, Asset valuations resulting from business combinations.

The Councils recommend revising FAR 31.205-11, Depreciation, to include specific language regarding the treatment of assets reacquired after entering into a sale and leaseback arrangement. The Councils believe this will eliminate potential disagreements regarding the allowable depreciation expense of assets involved in a sale and leaseback arrangement.

The Councils believe that, for Government contract costing purposes, a contractor should not benefit or be penalized for entering into a sale and leaseback arrangement. The Government should reimburse the contractor the same amount for the subject asset as if the contractor had retained title throughout the service life of the asset. Therefore, the Councils recommend that the determination of allowable depreciation expense of the reacquired asset consider—

- Any gain or loss recognized in accordance with FAR 31.205-16(b);
- Any depreciation expense included in the calculation of the normal cost of ownership for the limitations at FAR 31.205-11(h)(1) and 31.205-36(b)(2); and
- The depreciation expense taken prior to the sale and leaseback arrangement.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant

economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. For fiscal year 2003, only 2.4 percent of all contract actions were cost contracts awarded to small business. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004-014), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 8, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

### PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205-11 by—

- a. Revising paragraph (g);
- b. Removing paragraph (h); and
- c. Redesignating paragraph (i) as (h).

The revised text reads as follows:

### 31.205-11 Depreciation.

\* \* \* \* \*

(g) Whether or not the contract is otherwise subject to CAS, the following apply:

(1) The requirements of 31.205-52 shall be observed.

(2) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205-16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(3)(i) In the event the contractor reacquires property involved in a sale and leaseback arrangement, allowable depreciation of reacquired property shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement—

(A) Adjusted for any allowable gain or loss determined in accordance with 31.205-16(b); and

(B) Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title under 31.205-11(h)(1) and 31.205-36(b)(2).

(ii) As used in this paragraph (g)(3), “reacquired property” is property that generated either any depreciation expense or any cost of money considered in the calculation of the limitations under 31.205-11(h)(1) and 31.205-36(b)(2) during the most recent accounting period prior to the date of reacquisition.

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