

*Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

*National Environmental Policy Act*

As a companion document to the NPRM, NPS issued the Personal Watercraft Use Environmental Assessment for Pictured Rocks National Lakeshore and subsequent errata sheet. The environmental assessment was available for public review and comment for the period August 1 through November 15, 2004. A Finding of No Significant Impact (FONSI) was signed on September 9, 2005. To request a copy of these documents contact Superintendent, Pictured Rocks National Lakeshore, N8391 Sand Point Road, P.O. Box 40, Munising, MI 49862-0040. A copy of the Environmental Assessment, errata sheet, and FONSI may also be found at <http://www.nps.gov/piro/pwc>.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

*Administrative Procedure Act*

This final rule is effective upon publication in the **Federal Register**. In accordance with the Administrative Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.32(d), is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in this preamble, the final rule is a part 7 special regulation for Pictured Rocks National Lakeshore that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of PWC in units of the national park system unless an individual park area has designated the use of PWC by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (69 FR 51788) on August 23, 2004, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedure Act, pursuant to the exception in paragraph (d)(1), waives the section 553(d) 30-day waiting period

when the published rule "grants or recognizes an exemption or relieves a restriction." In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period before the effective date does not apply to Pictured Rocks National Lakeshore final rule.

**List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

**PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

■ 1. The authority for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8-137 (1981) and DC Code 40-721 (1981).

■ 2. Amend § 7.32 by adding paragraph (d) to read as follows:

**§ 7.32 Pictured Rocks National Lakeshore.**

\* \* \* \* \*

(d) *Personal Watercraft (PWC)*. (1) PWC are allowed on the waters within Pictured Rocks National Lakeshore, from the western boundary of the lakeshore to the east end of Miners Beach.

(2) PWC may be launched only from a designated launch site at Sand Point.

(3) PWC users may beach their craft only at Sand Point Beach and Miners Beach.

(4) The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: October 19, 2005.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-21426 Filed 10-26-05; 8:45 am]

**BILLING CODE 4312-52-U**

**LIBRARY OF CONGRESS****Copyright Office****37 CFR Part 202**

[Docket No. RM 2005-9]

**Preregistration of Certain Unpublished Copyright Claims**

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Interim regulation.

**SUMMARY:** Pursuant to the Artists' Rights and Theft Prevention Act of 2005, the Copyright Office is publishing an interim regulation governing the preregistration of unpublished works that are being prepared for commercial distribution in classes of works that the Register of Copyrights has determined have had a history of pre-release infringement.

**EFFECTIVE DATE:** November 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Charlotte Douglass, Principal Legal Advisor, P.O. Box 70400, Washington, DC 20024-0400, Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** On April 27, 2005, President Bush signed the Family Entertainment and Copyright Act ("FECA"). Pub. L. No. 109-9, 119 Stat. 218. Title I of FECA is the Artists' Rights and Theft Prevention Act of 2005, or "ART Act," which among other things addresses copyright infringement of works committed prior to their authorized commercial distribution, or pre-release infringement. Section 104 directs the Copyright Office to conduct a rulemaking proceeding to establish a procedure for preregistration of unpublished works that are being prepared for commercial distribution.

Specifically, Section 104 provides that "Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published." 17 U.S.C. 408(f)(1). Preregistration is a new procedure in the Copyright Office that permits such an action to serve as a place-holder for limited purposes - notably where a copyright owner needs to sue for infringement while a work is still being prepared for commercial release.

Congress also assigned the Register to determine which works are eligible for preregistration by directing that "the regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution." 17 U.S.C. 408(f)(2). Thus, falling in one or more of the classes so determined by the Register is a precondition to eligibility for preregistration, and applications for works that do not appear to fall within these classes should not be entertained.

On July 22, 2005, the Register of Copyrights initiated this rulemaking

proceeding pursuant to the ART Act's Section 408(f)(2) with publication of a Notice of Proposed Rulemaking ("NOPR"). 70 FR 42286. The Copyright Office received ten initial comments and five reply comments related to proposals of one or more classes of works or to general preregistration procedure. The Office also received a large number of comments in response to a Supplemental Notice of Proposed Rulemaking published August 4, 2005, which sought information relating to browser compatibility for those expected to file the electronic preregistration form. The Office made this inquiry after learning that persons attempting to use the Office's new online preregistration system, which was still in development, may have difficulties if they used web browsers other than Microsoft Internet Explorer.

In order to preregister, applicants must use the Office's online preregistration system, which will be accessible from the Copyright Office's home page at <http://www.copyright.gov>. While the Office is attempting to address browser compatibility issues, initially some applicants may experience difficulties if they are using browsers other than Internet Explorer. For applicants who are unable to use the online preregistration system, information will be available on the Copyright Office website on how to preregister their works.

In order to comply with the ART Act's requirement that regulations to establish procedures for preregistration be issued by October 24, the Office is now issuing the following interim regulations. It is anticipated that final regulations, which will be identical or very similar to the interim regulations, will be published within the next few weeks, along with a more detailed discussion of the comments received in response to the notice of proposed rulemaking and of the Office's responses to those comments. For further information in the meantime, please refer to the July 22 notice of proposed rulemaking, as supplemented by the following brief explanation.

The Register's determination today adopts the liberalized classes named and discussed below. The Register has now carefully reviewed the record in this rulemaking proceeding to determine the classes of works that have had a history of infringement prior to authorized commercial distribution. Based on that review of the comments, it appears that the case has been made for eligibility for preregistration of the following classes of works upon their fulfillment of the conditions specified in 37 CFR 202.16:

- (i) Motion pictures;
- (ii) Sound recordings;
- (iii) Musical compositions;
- (iv) Literary works being prepared for publication in book form;
- (v) Computer programs (including videogames); and
- (vi) Advertising or marketing photographs.

Many copyright owners urged that much or all of the information provided on applications for preregistration be maintained as confidential records by the Copyright Office. The Register cannot accept the proposition that the public should be denied access to the preregistration records. As an office of public record administering a system of registration and recordation the purpose of which is to provide information regarding copyright ownership to the public, the Copyright Office is not disposed to receive and maintain private information. The Office is subject to the Freedom of Information Act ("FOIA"), and it may or may not be able to refuse release of records based on applicable FOIA exceptions. To preclude accessibility to information related to a preregistration is inconsistent with the very concept of preregistration and registration systems.

The Office does not believe that the alleged risks of making such information public pose serious danger to copyright owners. The information required to preregister a work need not be detailed and need not include confidential information. To the extent that a title is demanded, it is sufficient to provide a "working title"; moreover, the risk of cybersquatting can easily be mitigated if the copyright owner obtains the applicable domain name prior to or simultaneously with preregistration. Information such as anticipated release dates is not immutable; it should be understood that when a preregistration made at an early stage in a work's preparation states an *anticipated* date of release, that date is at best a prediction and is hardly a binding commitment.

Accordingly, the preregistration record will be a public record, and information from the preregistration records will be available on the Copyright Office Web site.<sup>1</sup>

The Office has abandoned its proposal that, in order to be eligible for preregistration, a work must already be subject to a contract for distribution of the work with an established distributor of works. However, a person preregistering a work must certify,

<sup>1</sup> Due to the ongoing conversion of the online copyright catalog to a Voyager database, preregistration records will probably not be available online until sometime in December.

under penalty of law, that the work is in fact being prepared for commercial distribution and that the applicant has a reasonable expectation that the work will be commercially distributed to the public.

Commenters also asserted that distribution is already extensively occurring online, and in some genres, exclusively so. Therefore, the Office will not limit the coverage of this regulation to work being prepared for commercial distribution in physical format. Any class of work that the Register determines has had a history of pre-release infringement may be preregistered without regard to whether the work is intended to be distributed in physical formats or is intended for online distribution.

Additional information relating to preregistration may be found in the help pages of the Office's online preregistration system, which will be accessible from the Copyright Office's home page at <http://www.copyright.gov>. The online preregistration system, which is in its final stages of preparation, will go online, and preregistration will be available, on November 15.

#### List of Subjects in 37 CFR Part 202

Claims, Copyright, Registration requirements.

#### Interim Regulation

- In consideration of the foregoing, the Copyright Office issues this interim rule amending part 202 of 37 CFR, chapter II, in the manner set forth below:

#### PART 202 – PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

- 1. The authority citation for part 202 is revised to read as follows:

**Authority:** 17 U.S.C. 408(f), 702

- 2. The heading of Part 202 is revised to read as set forth above.
- 3. A new § 202.16 is added to read as follows:

#### § 202.16 Preregistration of copyrights.

(a) *General.* This section prescribes rules pertaining to the preregistration of copyright claims in works eligible for preregistration under Section 408(f) of 17 U.S.C.

(b) *Definitions.* For the purposes of this section –

(1) A work is in a *class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release* if it falls within one of the following classes of works:

- (i) Motion pictures;
- (ii) Sound recordings;
- (iii) Musical compositions;
- (iv) Literary works being prepared for publication in book form;
- (v) Computer programs (including videogames); or
- (vi) Advertising or marketing photographs.

(2) A work is *being prepared for commercial distribution* if:

(i) The claimant, in a statement certified by the authorized preregistering party, has a reasonable expectation that the work will be commercially distributed to the public; and

(ii) Preparation of the work has commenced and at least some portion of the work has been fixed in a tangible medium of expression, as follows:

(A) For a motion picture, filming of the motion picture must have commenced;

(B) For a sound recording, recording of the sounds must have commenced;

(C) For a musical composition, at least some of the musical composition must have been fixed either in the form of musical notation or in a copy or phonorecord embodying a performance of some or all of the work;

(D) For a literary work being prepared for publication in book form, the actual writing of the text of the work must have commenced;

(E) For a computer program, at least some of the computer code (either source code or object code) must have been fixed; and

(F) For an advertising or marketing photograph, the photograph (or, in the case of a group of photographs intended for simultaneous publication, at least one of the photographs) must have been taken.

(3) A work *eligible for preregistration* is a work that is:

- (i) Unpublished;
- (ii) Being prepared for commercial distribution; and
- (iii) In a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release.

(c) *Preregistration.* (1) *General.* A work eligible for preregistration may be preregistered by submitting an application and fee to the Copyright Office pursuant to the requirements set forth in this section.

(2) *Works excluded.* Works that are not copyrightable subject matter under title 17 of the U.S. Code may not be preregistered in the Copyright Office.

(3) *Application form.* An application for preregistration is made using Electronic Form PRE. The application must be submitted electronically on the

Copyright Office website at: <http://www.copyright.gov>.

(4) *Preregistration as a single work.*

For the purpose of preregistration on a single application and upon payment of a single preregistration fee, all copyrightable elements that are otherwise recognizable as self-contained works, that are to be included and first published in a single unit of publication, and in which the copyright claimant is the same, shall be considered a single work eligible for preregistration.

(5) *Fee.* (i) *Amount.* The filing fee for preregistration is \$100.

(ii) *Method of payment.* (A) Copyright Office deposit account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services and for those who file applications electronically. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits in that account. Deposit Account holders can charge preregistration fees against the balance in their accounts instead of using credit cards for each request of service. For information on Deposit Accounts, please download a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office," or write the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

(B) Credit cards, debit cards and electronic funds transfer. The online preregistration filing system will provide options for payment by means of credit or debit cards and by means of electronic funds transfers. Applicants will be redirected to the Department of Treasury's Pay.gov website to make payments with credit or debit cards, or directly from their bank accounts by means of ACH debit transactions.

(C) No refunds. The preregistration filing fee is not refundable.

(6) *Description.* No deposit of the work being preregistered should be submitted with an application for preregistration. The preregistration applicant should submit a detailed description, of not more than 2,000 characters (approximately 330 words), of the work as part of the application. The description should be based on information available at the time of the application sufficient to reasonably identify the work. Generally, the Copyright Office will not review descriptions for adequacy, but in an action for infringement of a preregistered work, the court may evaluate the adequacy of the description to determine whether the preregistration actually describes the work that is

alleged to be infringed, taking into account the information available to the applicant at the time of preregistration and taking into account the legitimate interest of the applicant in protecting confidential information.

(i) For motion pictures, such a description should include the following information to the extent known at the time of filing: the subject matter, a summary or outline, the director, the primary actors, the principal location of filming, and any other information that would assist in identifying the particular work being preregistered.

(ii) For sound recordings, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the work or works recorded, the performer or performing group, the genre of the work recorded (e.g., classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the titles of the musical compositions being recorded, the principal recording location, the composer(s) of the recorded musical compositions embodied on the sound recording, and any other information that would assist in identifying the particular work being preregistered.

(iii) For musical compositions, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the lyrics, if any, the genre of the work (for example, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the performer, principal recording location, record label, motion picture, or other information relating to any sound recordings or motion pictures that are being prepared for commercial distribution and will include the musical composition, and any other detail or characteristic that may assist in identifying the particular musical composition.

(iv) For literary works in book form, the identifying description should include to the extent known at the time of filing: the genre of the book, e.g., biography, novel, history, etc., and should include a brief summary of the work including, the subject matter (e.g., a biography of President Bush, a history of the war in Iraq, a fantasy novel); a description (where applicable) of the plot, primary characters, events, or other key elements of the content of the work; and any other salient characteristics of the book, e.g., whether it is a later edition or revision of a previous work, as well as any other detail which may assist in identifying the literary work in book form.

(v) For computer programs (including videogames), the identifying description should include to the extent known at the time of filing, the nature, purpose and function of the computer program, including the programming language in which it is written, any particular organization or structure in which the program has been created; the form in which it is expected to be published, e.g. as an online-only product; whether there have been previous versions (and identification of such previous versions); the identities of persons involved in the creation of the computer program; and, if the work is a videogame, also describe the subject matter of the videogame and the overall object, goal or purpose of the game, its characters, if any, and the general setting and surrounding found in the game.

(vi) For advertising or marketing photographs, the description should include the subject matter depicted in the photograph or photographs, including information such as the particular product, event, public figure, or other item or occurrence which the photograph is intended to advertise or market. To the extent possible and applicable, the description for photographs should give additional details which will assist in identifying the particular photographs, such as the party for whom such advertising photographs are taken; the approximate time periods during which the photographs are taken; the approximate number of photos which may be included in the grouping; any events associated with the photographs; and the location and physical setting or surrounding depicted in the photographs. The description may also explain the general presentation, e.g., the lighting, background scenery, positioning of elements of the subject matter as it is seen in the photographs, and should provide any locations and events, if applicable, associated with the photographs.

(7) *Review of preregistration information.* The Copyright Office will conduct a limited review of applications for preregistration, in order to ascertain whether the application describes a work that is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release. However, a work will not be preregistered unless an applicant has provided all of the information requested on the application and has certified that all of the information provided on the application is correct to the best of the applicant's knowledge.

(8) *Certification.* The person submitting an application for preregistration must certify on the application that he or she is the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of the work submitted for this preregistration; that the information given in this application is correct to the best of his or her knowledge; that the work is being prepared for commercial distribution; and that he or she has a reasonable expectation that the work will be commercially distributed to the public.

(9) *Effective date of preregistration.* The effective date of a preregistration is the day on which an application and fee for preregistration of a work, which the Copyright Office later notifies the claimant has been preregistered or which a court of competent jurisdiction has concluded was acceptable for preregistration, have been received in the Copyright Office.

(10) *Notification of preregistration.* Upon completion of the preregistration, the Copyright Office will provide the claimant official notification by email of the preregistration.

(11) *Certification of preregistration.* A certified copy of the official notification may be obtained in physical form from the Certification and Documents Section of the Information and Reference Division at the address stated in § 201.1(a)(3) of this chapter.

(12) *Public record of preregistration.* The preregistration record will also be available to the public on the Copyright Office website, <http://www.copyright.gov>.

(13) *Effect of preregistration.* Preregistration of a work offers certain advantages to a copyright owner pursuant to 17 U.S.C. 408(f), 411 and 412. However, preregistration of a work does not constitute prima facie evidence of the validity of the copyright or of the facts stated in the application for preregistration or in the preregistration record. The fact that a work has been preregistered does not create any presumption that the Copyright Office will register the work upon submission of an application for registration.

(14) *Petition for recognition of a new class of works.* At any time an interested party may petition the Register of Copyrights for a determination as to whether a particular class of works has had a history of copyright infringement prior to authorized release that would justify inclusion of that class of works among the classes of works eligible for preregistration.

Dated: October 19, 2005

**Marybeth Peters,**  
*Register of Copyrights.*

Approved by:

**James H. Billington,**  
*The Librarian of Congress.*

[FR Doc. 05-21381 Filed 10-26-05; 8:45 am]

BILLING CODE 1410-30-S

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2005-21048]

#### Federal Motor Vehicle Safety Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

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**SUMMARY:** This document denies a petition for rulemaking submitted by Honda Motor Co., Ltd. (Honda), to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems." Honda requested that FMVSS No. 213 be amended to limit the weight of all child restraint systems used with the 3-year-old dummy. Honda stated that such an amendment would assure the proper operation of weight-based occupant detection systems used to meet the air bag suppression requirements of FMVSS No. 208, "Occupant crash protection."

**FOR FURTHER INFORMATION CONTACT:**

*For Non-Legal Issues:* Mr. Tewabe Asebe, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-2365.

*For Legal Issues:* Mr. Chris Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-2992, Facsimile: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On May 12, 2000, NHTSA issued a final rule for advanced air bags, amending FMVSS No. 208 to, among other things, minimize injuries to small adults and young children due to air bag deployment (65 FR 30680). To address the risk air bags pose to young children in child restraint systems, the agency amended FMVSS No. 208 to include a number of alternative tests, one of which requires the front passenger air