

Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

### Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

### 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 amends 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. From 12:01 a.m. on April 2, 2005 to 11:59 p.m. on April 10, 2005 add temporary § 165.T01-011 to read as follows:

#### § 165.T01-011 Security and Safety Zone; TOPOFF 3, New London, CT.

(a) *Locations.* (1) *Fort Trumbull Safety and Security Zone.* The following area is a safety and security zone: All waters of the Thames River in an area bounded as follows: beginning at the end of the New England Seafood pier at approximate position 41°20'49.7" N, 072°05'41.6" W, thence running in an easterly direction to position 40°20'50.9" N, 072°05'36.5" W, thence in a southeasterly direction to position 41°20'43.1" N, 072°05'19.7" W, then south to position 41°20'34.9" N, 072°05'19.6" W, thence southwesterly to a point on the western shore of the Thames River at position, 41°20'26.6" N, 072°05'38.9" W, thence northerly along the western shore of the Thames River

to a position on the shore of the Thames River at position 41°20'29.3" N, 072°05'39.7" W, thence along the shore of the Thames River to the point of beginning.

(2) *Ocean Beach Safety and Security Zone.* The following area is a safety and security zone: All waters of Long Island Sound off of New London, Connecticut in an area bounded as follows: beginning at a position on the shore of New London Connecticut at position 41°18'31.4" N, 072°05'39.6" W, thence running southeasterly to position 41°18'29.3" N, 072°05'36.9" W, thence running position southwesterly to position 41°18'11.8" N, 072°06'2.8" W, thence running northwesterly to position 41°18'14.5" N, 072°06'6.1" W, thence running northeasterly along the shore to the point of beginning.

(b) *Effective date.* This rule is effective from 12:01 a.m. on April 2, 2005 until 11:59 p.m. on April 10, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: March 22, 2005.

**Peter J. Boynton,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 05-6143 Filed 3-24-05; 12:37 pm]

**BILLING CODE 4910-15-P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 174

[USCG-2003-15708]

RIN 1625-AA75

#### Terms Imposed by States on Numbering of Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Coast Guard is correcting the preamble to a final rule that appeared in the **Federal Register** of March 18, 2005 (70 FR 13102). The final

rule expands the number of conditions that a State may require in order for owners to obtain vessel numbering certificates in that State. The preamble to the final rule contains an error in the regulatory evaluation.

**DATES:** Effective April 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Audrey Pickup, Office of Boating Safety, at Coast Guard Headquarters, telephone 202-267-0872.

**SUPPLEMENTARY INFORMATION:** In rule FR Doc. 04-28227 published in the **Federal Register** of March 18, 2005 (70 FR 13104), correct the two paragraphs that appear on page 13104 under the heading "Regulatory Evaluation" to read:

"This final 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 (OMB) has not reviewed it under that Order.

"We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary."

Dated: March 22, 2005.

**Steve Venckus,**

*Chief, Regulations and Administrative Law, United States Coast Guard, DHS.*

[FR Doc. 05-5968 Filed 3-25-05; 8:45 am]

**BILLING CODE 4910-15-P**

### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 202

[Docket No. RM 2005-3]

#### Registration of Claims to Copyright, Group Registration of Published Photographs

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

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office of the Library of Congress is amending its final regulations concerning group registration of published photographs to limit to 750 the number of photographs that may be identified on continuation sheets submitted with a single application form and filing fee. The regulation continues to place no limit on the number of photographs that may be included in a single group registration when the applicant elects not to use continuation sheets and instead identifies the date of publication for each photograph on the deposited image and the applicant meets the other

regulatory requirements for group registration of published photographs. The regulation also clarifies that the date of publication for each photograph may be identified in a text file on the CD-ROM or DVD that contains the photographic images or on a list that accompanies the deposit and provides the publication date for each image.

**DATES:** Effective March 28, 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:** The copyright law permits a claim to copyright to be registered in the Copyright Office at any time during the subsistence of the copyright, when an application form is accompanied by the appropriate deposit of a copyrightable work and a filing fee. 17 U.S.C. 408(a). Section 408(b) generally requires the deposit of two complete copies or phonorecords of a published work, but it authorizes the Register of Copyrights by regulation to reduce the number deposited for particular classes. 17 U.S.C. 408(c)(1). The Register may also ameliorate the requirement for individual registrations where a group of separately published related works is sought to be registered together. *Id.* The legislative history of the 1976 Copyright Act offers "a group of photographs by one photographer" as a possibly appropriate grouping. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 154 (1976).

In 2001, after notice, public comment, and careful consideration, the Office established a regulation permitting group registration of published photographs. 37 CFR 202.3(b)(9). 66 FR 37142 (July 17, 2001). That rule permitted an unlimited number of photographs that were taken by the same person and published within the same calendar year, and for which the copyrights are owned by the same person or entity, to be registered with one application and fee. An applicant may choose from three options to register such a group: The applicant may either (1) submit a group of photographs published within three months before receipt in the Copyright Office and give the range of dates within that period on the application for registration at space 3b; (2) submit a group of photographs published within a calendar year, give the range of dates within that period on the application for registration at space 3b, and identify with each deposited image the date of its publication; or (3) submit a group of photographs published within a

calendar year, give the range of dates within that period on the application for registration at space 3b, and identify each photograph on a continuation sheet noting thereon its date of publication.<sup>1</sup>

During the rulemaking process for group registration of photographs, the Office proposed a rule that would limit the number of photographs that could be registered in a group to no more than 500. 65 FR 26162, 26166 (May 5, 2000). In response to the request for comments, many depositors asserted that the number of photographs should not be so limited. 66 FR 37143, 37145 (July 17, 2001). One commenter stated that some photographers took more than 500 images in one or two days. Another commenter noted that she produced thousands of images per quarter. *Id.* In response, the Office issued a final rule that did not limit the number of photographs that could be submitted with one group photograph claim. The Office stated that:

In light of the comments from photographers observing that the proposed 500-photo limit is too low, the Office has reexamined its reasons for proposing such a limit. The Office has concluded that the administrative burdens of processing a group registration of a large number of photos in excess of 500 would be acceptable. Therefore, the final rule contains no limitation on the number of photographs that may be included in a group.

66 FR 37148.

On the basis of this assumed technical capability of the Office system to handle a large number of photos, the Office did not contemplate that it would receive continuation sheets listing nearly 15,000 photographs, nor did it contemplate that the production of such certificates would be as disruptive as it has been to Office operations. Recent experience with the end-stage processing of continuation sheets of a group of photographs that include more than 750 photographs listed on more than 50 continuation sheets has proved administratively burdensome. Whatever the technical capability of Office equipment might be to produce certificates with an unlimited number of continuation sheets, the practical reality of doing so requires an excessive amount of staff, time, equipment, and materials. As a consequence, the cost effectiveness of making these group registrations, at the current filing fee of

\$30.00 per group, is seriously out of balance.

To relate recent empirical evidence, one recent claim consisted of a staggering total of 1,776 continuation sheets. The Office required three hours for initial processing of the claim, including stamping, examining, labeling, scanning and packaging the claim for imaging. The next step to process the claim, producing the image for the registration record, required four and one-half hours to complete and used 1777 registration number bar code labels. To print the 1777 page certificate took an additional one and one-half hours during which no other printing could be accomplished on that equipment. Then, the certificate had to be packaged and mailed, at an inordinate expenditure of three and one-half reams of certificate paper, postage and packaging costs. Altogether, at the end stage of the registration process, this single registration required more than 12 hours to complete. Making matters worse, the Office currently has on hand 15 additional claims of this kind, at various stages in registration processing. Each of these claims is accompanied by continuation sheets ranging from approximately 1090 to 2423 in number. The Office production structure for registration of claims simply does not accommodate such a time frame for a single registration—group or otherwise—in a system which registered nearly 661,500 claims in fiscal year 2004.

At the time the final rule on group registration of photographs was announced in 2001, the Copyright Office did not predict that the amount of staff time, equipment usage, and production materials that would be required to produce certificates with a large number of continuation sheets would prove so impracticable as to undermine the Office's productivity. In view of recent claims that the Office has received, including three claims of 2068, 2118 and 2423 pages respectively, as well as other claims that it anticipates receiving should this registration pattern take hold, the Office has determined that it must now limit to 50 the number of continuation sheets that may accompany a group registration for published photographs. The amended regulation allows for 750 photos to be listed on the continuation sheets that are part of the application and made part of the certificate of registration, and permits the applicant to submit additional claims in groups of 750 or fewer photographs with additional filing fees for registration where the continuation sheet option is preferred. Applicants may continue to submit

<sup>1</sup> The regulation encouraged applicants to use the latter option because the registration certificate, of which the continuation sheets are a part, serves as prima facie evidence of the date of publication of a work when it is registered within five years of first publication.

applications for group registration of photographs without any limitation on the number of photographs if they select one of the options that does not involve use of continuation sheets.

At some future time, the Office may be able to resume group registration for photographs with an unlimited number of continuation sheets. When the Office's business processing systems have been re-engineered, new information technology systems will be employed to accomplish much of the processing of claims digitally and it may at that time be possible to liberalize the current restriction.

The Office is also clarifying that when an applicant for group registration of photographs elects not to use continuation sheets to identify dates of publication, the option that permits the dates of publication to be identified "on the deposited image" does not require that the date of publication appear on the deposited image itself. In order to make this clear, § 202.3(b)(9)(iv) is being amended to state that the date of publication may be provided in any of four different ways: Either (1) on each deposited image, (2) in a text file on the CD-ROM or DVD that contains the deposited photographic images, (3) on a list that accompanies the deposit and provides the publication date for each image, or (4) on the continuation sheet provided by the Copyright Office.

A notice and comment period is normally required prior to promulgation of a regulation. Administrative Procedure Act, 5 U.S.C. 553(b). The Office has already conducted notice and comment on this issue and has given this issue consideration in promulgating its final rule (*See* Notice of Proposed Rulemaking, Registration of Claims to Copyright, Group Registration of Photographs, 65 FR at 26165 (May 5, 2000); Final Regulation, Registration of Claims to Copyright, Group Registration of Photographs, 66 FR at 37148 (July 17, 2001).) That rule concluded that the administrative burden of processing a group registration of a large number of photos in excess of 500 would be acceptable based on a projection of what such processing would involve. 66 FR 37148. As detailed above, however, actual experience has proved otherwise. Based on recent experience, the Office has determined that currently it is administratively unfeasible to continue to accept applications for group registrations of photographs with more than 50 continuation sheets.

The APA waives the requirement for notice and comment when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that

notice and public procedure are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 552(b)(B). It is impracticable to conduct prepublication notice and comment where compliance with the normal APA procedures would jeopardize the agency's assigned missions. *See* S. Rep. No. 752, 79th Cong., 1st Sess. 14 (1945); S. Doc. No. 248, 79th Cong., 2d Sess. 140, 148, 157 (1946). Although the Office provides a host of other services, a primary duty of the Copyright Office is to register claims to copyright. 17 U.S.C. 701(b); 410(a). Prompt registration is central to the mission of the Office because it meets the needs of applicants, obtains new works for Library of Congress collections, and promotes creativity by effectively administering the national registry.

Providing notice and comment for this rulemaking would be impracticable because it has become apparent that providing such notice and awaiting and evaluating comments would have potentially serious adverse impacts on the Office's ability to comply with its statutory duties. At an increasing rate, the Office is receiving group photograph claims with escalating numbers of continuation sheets. As noted above, three recent claims have involved applications containing as many as 2423 pages. The Office cannot consistently process thousands of continuation sheets with one claim and provide registration services for the volume of claims it is charged with managing each year. Further delay would aggravate the threat that this pattern will continue to uncontrollable proportions, thus indicating that notice and comment would in fact be counterproductive. If the Office provided prior notice and comment for its rule limiting the number of photographs identified on continuation sheets as part of a group claim, the delay would exacerbate the present difficulties by permitting continued large submissions and perhaps even encouraging a flurry of such submissions in order to take advantage of the existing rules before the amendment's effective date, jeopardizing even more the Office's ability to fulfill its responsibility under the copyright law.

Specifically, pre-publication notice and comment would harm the Office's registration processing function for the reason that the continued submission of claims in this manner could affect the pendency of overall registrations. The time between filing for registration and receiving a registration certificate may increase, and the Office's expense in processing these extremely large group registrations would have no reasonable

relationship to the fee charged. If the Office were to devote a disproportionate amount of time to register such large group claims, its ability to provide timely and cost effective service to the public at large would be negatively affected. On the other hand, from an applicant's point of view, the number limit is only being placed on registrations made under one group option. The other options will remain open for an unlimited number of photographs with one application form and one filing fee, currently \$30.00.

Section 553 of the Administrative Procedure Act also provides for a notice of not less than 30 days before the effective date of a regulation, except as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d)(3). The reasons for expedited rulemaking here are to ease an immediate administrative burden and to forestall the likelihood of even further administrative hardship. The Office has only recently begun to receive applications for group registrations of photographs containing hundreds of continuation sheets, but recent experience indicates that such applications will continue to be received, perhaps at an increasing pace. The Office cannot take the risk of becoming inundated with a last-minute rush of large continuation-sheet submissions to take advantage of the final days of the present rule. The amendment's immediate effective date will preclude the submission of an overwhelming number of late claims, which would further exacerbate the negative effect such registrations have on the Copyright Office's processing operations.

As part of the "good cause" calibration of the APA's section 553(d)(3), the necessity for immediate implementation must be balanced against the necessity for affected persons to have a reasonable time to prepare for the effective date of the new rule. To date, it appears that the exceptionally large continuation sheet claims are being submitted by only one entity. The Office is directly notifying that entity of this amendment to the group registration regulation which has been necessitated due to problems caused by registration in this manner. For registration materials that have been received by the Copyright Office before the effective date of this amendment but are still being processed, the rules issued in 2001 will continue to apply, although in particular cases, the Office may request that the applicant resubmits separate applications, each with no more than 50 continuation sheets. In such cases, no additional fees

will be assessed and the effective date of registration will be the date the group of photographs was originally submitted in conformity with then current regulations. With respect to any applications including more than 50 continuation sheets that are received by the Office on or after the effective date of this amendment, the applicant will be given the option of obtaining a registration certificate that does not include the continuation sheets, with the continuation sheets being included with the deposit to identify the dates of publication of the photographic images as permitted under § 202.3(b)(9)(iv).

This amendment is therefore issued as a final rule effective on the date it is published in the **Federal Register**.

**Regulatory Flexibility Act**

The Copyright Office, though located in the Library of Congress and part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612. Nevertheless, the Register of Copyrights has considered the effect of a proposed amendment on small businesses. This amendment continues to offer photographers, who usually constitute small businesses, the ability to register their copyrights in large groups for a modest fee while it ensures that the Copyright Office can process those registrations in an efficient manner and at a reasonable cost.

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

Claims, Copyright.

**Final Regulation**

■ For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

**PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT**

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408, 702.

■ 2. Section 202.3 is amended as follows:

- (a) By revising paragraph (b)(9)(iv);
- (b) By redesignating paragraphs (b)(9)(v) through (ix) as paragraphs (vi) through (x); and
- (c) By adding a new paragraph (b)(9)(v).

The additions and revisions to § 202.3 read as follows:

**§ 202.3 Registration of copyright.**

\* \* \* \* \*

- (b) \* \* \*
- (9) \* \* \*

(iv) If the photographs in a group were all published on the same date, the date of publication must be identified in

space 3b of the application. If the photographs in a group were not all published on the same date, the range of dates of publication (e.g., February 15-September 15, 2004) must be provided in space 3b of the application, and the date of publication of each photograph within the group must be identified either:

- (A) On each deposited image;
  - (B) In a text file on the CD-ROM or DVD that contains the deposited photographic images;
  - (C) On a list that accompanies the deposit and provides the publication date for each image; or
  - (D) On a special continuation sheet provided by the Copyright Office. Dates of publication must be provided in a way that clearly identifies the date of publication for each individual photograph in the group.
- (v) If the applicant chooses to identify the date of publication for each photograph in the group on a continuation sheet, the application may include no more than 50 continuation sheets identifying no more than 750 photographs. For these purposes, the applicant must use the special continuation sheet for registration of a group of photographs made available by the Copyright Office.

\* \* \* \* \*

Dated: March 18, 2005.

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 05-6059 Filed 3-25-05; 8:45 am]

**BILLING CODE 1410-30-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 3**

**RIN 2900-AM14**

**Exclusions From Income and Net Worth Computations**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations to exclude from income and net worth computations in the pension and parents' dependency and indemnity compensation programs benefits or payments received pursuant to the Medicare Prescription Drug Discount Card and Transitional Assistance Program in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This

amendment is necessary to conform the regulations to statutory provisions.

**DATES:** *Effective date:* March 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Maya Ferrandino, Consultant (211A), Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7232.

**SUPPLEMENTARY INFORMATION:** All income is countable when VA determines entitlement to income-based benefits unless specifically excluded by law. Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Public Law 108-173, added section 1860D-31 to the Social Security Act (42 U.S.C. 1395w-141), creating a Medicare prescription drug discount card and transitional assistance program. This program allows Medicare beneficiaries to pool their purchasing power to secure substantial discounts on their medicines. Medicare beneficiaries at or below 135 percent of the federal poverty level can qualify for \$600 in additional assistance for the remainder of 2004 and another \$600 in 2005. The drug discounts and \$600 in transitional assistance became available on June 1, 2004.

A provision of the MMA clarifies the potential interaction between the drug discount card and transitional assistance and VA's pension and parents dependency and indemnity compensation benefits by stating that, "[t]he availability of negotiated prices or transitional assistance under this Section shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program." Section 1860D-31(g)(6) of the Social Security Act. Therefore, the transitional assistance program and any savings associated with the prescription drug discount card are not income or net worth for VA purposes. This document amends 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory change.

This final rule merely restates statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and the delayed effective date provisions of 5 U.S.C. 552 and 553.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).