

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

E. 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting only two hours that will prohibit entry within 840 feet of the fireworks display barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08-0895 to read as follows:

§ 165.T08-0895 Safety Zone; Galveston Bay, Galveston, TX.

(a) *Location.* The following area is a safety zone: All navigable waters within an 840-foot radius of a fireworks display barge, located in Galveston Bay, TX at 29°32'52.72" N, 95°00'54.38" W, on the south side of the channel.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Houston-Galveston (COTP) in the enforcement of the regulated areas.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, no person will be permitted to enter, transit, anchor, or remain within the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. If authorization is granted, persons and vessels receiving such authorization must comply with the lawful instructions of the COTP or designated representative.

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF-FM channel 16 or by telephone at 866-539-8114.

(d) *Enforcement period.* This section will be enforced from 8 p.m. until 10 p.m. on November 9, 2024.

Dated: October 22, 2024.

Keith M. Donohue,

Captain, U.S. Coast Guard, Captain of the Port Sector Houston-Galveston.

[FR Doc. 2024-24987 Filed 10-25-24; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2024-0043]

Changes in Post-Registration Audit Selection for Affidavits or Declarations of Use, Continued Use, or Excusable Nonuse in Trademark Cases

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Policy update.

SUMMARY: To promote the accuracy and integrity of the trademark register, the United States Patent and Trademark Office (USPTO or Office) is amending its practice concerning the selection of registrations for audit during the post-registration maintenance process. When the USPTO implemented its audit program in 2017, it announced that it would conduct random audits of certain affidavits or declarations filed each year. To promote the accuracy and integrity of the trademark register, the USPTO is adding additional directed audits to its practice.

DATES:

Effective date: This policy change is effective October 28, 2024.

Comments due: Written comments must be received on or before November 27, 2024 to ensure consideration.

ADDRESSES: Written comments must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via the portal, commenters should go to www.regulations.gov/docket/PTO-T-2024-0043 or enter docket number PTO-T-2024-0043 on the www.regulations.gov homepage and select the “Search” button. The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this document and select the “Comment” button, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe portable document format (PDF) or Microsoft Word format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not possible, please contact the USPTO using the contact information below in the **FOR FURTHER INFORMATION CONTACT** section of this document for special instructions.

FOR FURTHER INFORMATION CONTACT: Montia Pressey, Office of the Deputy Commissioner for Trademark Examination Policy, at 571-272-8944 or TMPolicy@uspto.gov.

SUPPLEMENTARY INFORMATION: On January 19, 2017, the USPTO published in the **Federal Register** a final rule making permanent the program under which it conducts audits of the affidavits or declarations of continued use or excusable nonuse filed pursuant to section 8 of the Trademark Act (the Act) (15 U.S.C. 1058), and affidavits or declarations of use in commerce or excusable nonuse filed pursuant to section 71 of the Act (15 U.S.C. 1141k) (collectively, affidavits or declarations). See Changes in Requirements for Affidavits or Declarations of Use, Continued Use, or Excusable Nonuse in Trademark Cases (82 FR 6259). The final rule provided the USPTO with the authority to request additional information in connection with the submission of an affidavit or declaration under sections 8 or 71 to assess and promote the accuracy and integrity of the trademark register.

As explained in the final rule, the post-registration audit program benefits the public because it facilitates the USPTO’s ability to assess and promote the integrity of the trademark register by encouraging accuracy in the identification of goods or services for which use in commerce or continued use is claimed. The accuracy of the trademark register serves an important purpose for the public, as it is a reflection of marks that are actually in use in commerce in the United States for the goods/services identified in the registrations listed in the register. The public relies on the register to determine whether a chosen mark is available for use or registration. If a party’s search of the register discloses a potentially confusingly similar mark, that party may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, proceedings to cancel the registration or oppose the application of the disclosed mark, civil litigation to resolve a dispute over the mark, or changing plans to avoid use of the party’s chosen mark. If a registered mark is not in use in commerce in the United States, or is not in use in commerce in connection with all the goods or services identified in the registration, these costs and burdens may be incurred unnecessarily. An accurate and reliable trademark register helps parties avoid such needless costs and burdens.

The statutory requirements in sections 8 and 71 exist to enable the USPTO to clear the register by canceling, in whole or in part, registrations for marks that are not in use in commerce for all or some of the goods or services identified in the registration. The final rule furthered this statutory purpose by allowing the USPTO to assess whether marks are actually in use for some or all of the goods or services covered by a registration, and to require deletion and/or cancellation of those goods or services for which a mark is not in use (and for which excusable nonuse does not apply).

To that end, the final rule provided the USPTO with the authority to require the submission of information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to ensure that the register accurately reflects marks that are in use in commerce in the United States for all the goods or services identified in the registrations, unless excusable nonuse is claimed in whole or in part. This authority was not limited to random audits. However, because the USPTO previously announced that selection for

the audits would be done on a random basis, the agency now provides notice that it amends its practice under 37 CFR 2.161(b) and 7.37(b) to include directed audits.

Since the final rule was adopted in 2017, the USPTO has become aware of circumstances in which the accuracy and integrity of the trademark register would benefit from directed audits in addition to the current practice of random audits. Specifically, the USPTO discovered systemic efforts to subvert the requirements for use in commerce of a mark to support registration.

First, the USPTO became aware of an ongoing issue of applicants submitting specimens that were digitally created or altered or were mockups and thus did not show actual use in commerce, as is required. That awareness led to the publication in July 2019 of Examination Guide 3-19, Examination of Specimens for Use in Commerce: Digitally Created/Altered or Mockup Specimens, which was later incorporated into the Trademark Manual of Examining Procedure.

Second, the enactment of the Trademark Modernization Act in 2020, and its implementation by the USPTO in 2021, resulted in the creation of two new post-registration proceedings that allow the Office to examine whether a registered mark is, or was at the time of registration, in use in commerce for goods or services covered by the registration. See Changes To Implement Provisions of the Trademark Modernization Act of 2020, 86 FR 64300 (November 17, 2021). Certain disturbing trends have been discovered since the implementation of these proceedings, such as the use of specimen farms. These are websites that do not sell products in the ordinary course of trade. Instead, they provide applicants or registrants with documents to submit to the USPTO that appear to satisfy the requirement to show use of the mark in commerce on the goods recited in the application or registration. No two specimen farm websites are exactly alike, but many have the following: (1) incomplete contact information, blank pages, or missing or incomplete product descriptions; (2) place-holder text on many pages; (3) the same, sometimes incorrect, product information for multiple product listings; and/or (4) products that cannot be purchased in or shipped to the United States. Additional information about specimen farms has been published on the USPTO website at www.uspto.gov/trademarks/protect/challenge-invalid-specimens.

The USPTO plans to conduct directed audits of section 8 and 71 affidavits or declarations when the registration file

and/or the post-registration maintenance documents exhibit certain attributes that call into question whether a mark is in use in commerce in the ordinary course of trade. Among other things, these audits will focus on registration files in which it appears that a specimen accepted during examination or submitted with a section 8 or 71 affidavit or declaration was digitally altered, consistent with the parameters set forth in Examination Guide 3–19, or comprised printouts from a website determined to be a specimen farm. Under the directed audit program, the initial office action may request proof of use for all or some of the goods or services covered by the registration, in addition to other information deemed relevant to the USPTO to determine whether the mark is in use in commerce in the ordinary course of trade or whether the elements of excusable nonuse apply. The procedures will otherwise follow those for random audits.

After considering any public comments received in response to this notice, the USPTO will publish information about the program on its Post Registration Audit Program web page at www.uspto.gov/trademarks/maintain/post-registration-audit-program. The USPTO will likewise publish future changes to the post-registration audit program on its website.

These changes will better position the audit program to address obvious issues with registration, thus protecting the integrity of the federal trademark registration system and improving the overall accuracy of the trademark register.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2023–5]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: In this final rule, the Librarian of Congress adopts exemptions to the provision of the Digital Millennium Copyright Act (“DMCA”) that prohibits circumvention of technological measures that control access to copyrighted works. As required under the statute, the Register of Copyrights, following a public proceeding, submitted a recommendation to the Librarian of Congress (“Register’s Recommendation”) regarding proposed exemptions. After careful consideration, the Librarian adopts final regulations based on the Register’s Recommendation.

DATE: Effective October 28, 2024.

FOR FURTHER INFORMATION CONTACT:

Rhea Efthimiadis, Assistant to the General Counsel, by email at mef@copyright.gov or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: The Librarian of Congress, pursuant to section 1201(a)(1) of title 17, United States Code, has determined in this ninth triennial rulemaking proceeding that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply for the next three years to persons who engage in certain noninfringing uses of specified classes of such works. This determination is based on the Register’s Recommendation.

The discussion below summarizes the rulemaking proceeding and the Register’s recommendations, states the Librarian’s determination, and adopts the regulatory text specifying the exempted classes of works. A more complete discussion of the rulemaking process, the evidentiary record, and the Register’s analysis with respect to each proposed exemption can be found in the Register’s Recommendation at www.copyright.gov/1201/2024/.

I. Background

A. Statutory Requirements

In 1998, as part of the Digital Millennium Copyright Act (“DMCA”), Congress added section 1201 to title 17 to provide greater legal protection for copyright owners in the emerging digital environment. Section 1201 generally makes it unlawful to “circumvent a technological measure that effectively controls access to” a copyrighted work.¹

Congress established a set of permanent exemptions to the prohibition on circumvention, as well a procedure to put in place limited temporary exemptions. Every three years, the Librarian of Congress, upon

the recommendation of the Register of Copyrights, is authorized to adopt temporary exemptions, with respect to certain classes of copyrighted works, to remain in effect for the ensuing three-year period. Congress established this rulemaking as a “fail-safe” mechanism² to ensure that the prohibition on circumvention would not adversely affect the public’s ability to make lawful uses of copyrighted works, including activities protected by the fair use doctrine.³

The triennial rulemaking occurs through a formal public process administered by the Register, who consults with the Assistant Secretary for Communications and Information of the Department of Commerce.⁴ Participants must meet specific legal and evidentiary requirements in order to qualify for a temporary exemption. The Register’s recommendations are based on her conclusions as to whether each proposed exemption meets those statutory requirements.⁵ As prescribed by the statute, she considers whether the prohibition on circumvention is having, or is likely to have, adverse effects on users’ ability to make noninfringing uses of a particular class of copyrighted works. Petitioners must provide evidence sufficient to allow the Register to draw such a conclusion.

B. Rulemaking Standards

Congress has specified the legal and evidentiary requirements for the section 1201 rulemaking proceeding; these standards are discussed in greater detail in the Register’s Recommendation⁶ and the Copyright Office’s 2017 policy study on section 1201.⁷ The Register will recommend granting an exemption only “when the preponderance of the evidence in the record shows that the conditions for granting an exemption have been met.”⁷ The evidence must

² *Id.* at 1201(a)(1)(B)–(D).

³ *Id.* at 1201(a)(1)(C).

⁴ The Office has provided detailed analyses of the statutory requirements in its 2017 policy study on section 1201 and elsewhere. See U.S. Copyright Office, Section 1201 of Title 17 at 105–127 (2017), <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf> (“Section 1201 Report”).

⁵ Register of Copyrights, Section 1201 Rulemaking: Ninth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights (Oct. 2024), https://cdn.loc.gov/copyright/1201/2024/2024_Section_1201_Registers_Recommendation.pdf (“Register’s Recommendation”).

⁶ Section 1201 Report at 111–12.

⁷ *Id.*; accord Register of Copyrights, Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 12–13 (Oct. 2018). References to the Register’s recommendations in prior rulemakings

¹ 17 U.S.C. 1201(a)(1)(A).