
Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at [https://www.regulations.gov](https://www.regulations.gov) and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### 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 is proposing 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Notice No. 0170.1.

2. Add §165.T13–0247 to read as follows:

§ 165.T13–0247 Safety Zone(s); Safety Zone; I–6 Bridge Construction Project, Columbia River, Vancouver, WA.

   (a) Location. The following area is a safety zone: All navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°37′17.7″ N/122°40′31.4″ W, southwest to 45°37′12.1″ N/122°40′35.0″ W, southeast to 45°37′08.8″ N/122°40′22.1″ W, thence northeast to 45°37′15.0″ N/122°40′18.3″ W, and along the shoreline back to the beginning point.

   (b) Definitions. As used in this section, designated representative means any Coast commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Columbia River (COTP) to act on his behalf, or a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River in the enforcement of the safety zone.

   (c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

   (2) Vessel operators desiring to enter or operate within the safety zone may contact the COTP on-scene designated representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

   (d) Enforcement period. This safety zone is in effect from 12:01 on September 6, 2020 through 11:59 p.m. on September 26, 2020. It will be subject to enforcement this entire period unless the Captain of the Port, Columbia River determines it is no longer needed. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.


J.C. Smith,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2020–13128 Filed 6–19–20; 8:45 am]

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### LIBRARY OF CONGRESS

#### Copyright Office

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**Exemptions to Permit Circumvention of Access Controls on Copyrighted Works**

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

**ACTION:** Notification of inquiry and request for petitions.

**SUMMARY:** The United States Copyright Office is initiating the eighth triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”), to consider possible temporary exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. In this proceeding, the Copyright Office is again providing a streamlined procedure for the renewal of exemptions that were granted during the seventh triennial rulemaking. If renewed, those current exemptions would remain in force for an additional three-year period (October 2021–October 2024). Members of the public seeking the renewal of current exemptions should submit petitions as described below; parties opposing such renewal will then have the opportunity to file comments in response. The Office is also accepting petitions for new exemptions to engage in activities not currently permitted by existing exemptions, which may include proposals that expand upon a current exemption. Those petitions, and any renewal petitions that are meaningfully opposed, will be considered pursuant to a more comprehensive rulemaking process similar to that of the seventh rulemaking, including three rounds of written comment, followed by public hearings, which may be conducted virtually.

**DATES:** Written petitions for renewal of current exemptions must be received no later than 11:59 p.m. Eastern Time on July 22, 2020. Written comments in response to any petitions for renewal must be received no later than 11:59 p.m. Eastern Time on September 8, 2020. Written petitions for new exemptions must be received no later than 11:59 p.m. Eastern Time on September 8, 2020.

**ADDRESSES:** Written petitions for renewal of current exemptions must be completed using the form provided on the Office’s website at https://www.copyright.gov/1201/2021/renewal-petition.pdf. Written petitions proposing new exemptions must be completed using the form provided on the Office’s website at https://www.copyright.gov/1201/2021/new-petition.pdf. The Copyright Office is using the regulations.gov system for the submission and posting of public petitions and comments in this proceeding. All petitions and comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting petitions and comments are available on the Copyright Office website at https://www.copyright.gov/1201/2021. If electronic submission is not feasible, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, regans@copyright.gov or Kevin R. Amer, Deputy General Counsel, kamer@copyright.gov. They can be reached by telephone at (202) 707–3000.

### SUPPLEMENTARY INFORMATION:

**I. The Digital Millennium Copyright Act and Section 1201**

The Digital Millennium Copyright Act ("DMCA") has played a pivotal role in the development of the modern digital economy. Enacted by Congress in 1998 to implement the United States’ obligations under two international treaties, two the DMCA was intended to

foster the growth and development of a thriving, innovative, and flexible digital marketplace by making digital networks safe places to disseminate and use copyrighted materials. It did this by, among other things, providing new legal protections for copyrighted content made available in digital formats.

These protections, codified in section 1201 of title 17, United States Code, seek to balance the interests of copyright owners and users, including the personal interests of consumers, in the digital environment. Section 1201 protects technological measures (also called technological protection measures or TPMs) used by copyright owners to prevent unauthorized access to or use of their works. Section 1201 contains three separate protections for TPMs. First, it prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works (also known as access controls). Access controls include, for example, a password requirement limiting access to an online service to paying customers or an authentication code in a video game console to prevent the playing of pirated copies. Second, the statute prohibits trafficking in devices or services primarily designed to circumvent access controls. Finally, it prohibits trafficking in devices or services primarily designed to circumvent TPMs used to protect the exclusive rights of the copyright owner of a work (also known as copy controls). Copy controls protect against unauthorized uses of a copyrighted work once access has been lawfully obtained. They include, for example, technology preventing the copying of an e-book after it has been downloaded to a user’s device. Because title 17 already provides remedies for copyright infringement, there is no corresponding ban on the act of circumventing a copy control. All these prohibitions supplement the preexisting rights of copyright owners under the Copyright Act of 1976 by establishing separate and distinct causes of action independent of any infringement of copyright.

Section 1201 contains a number of specific exemptions to these prohibitions, to avoid curtailing legitimate activities such as security testing, law enforcement activities, or the protection of personally identifying information. In addition, to accommodate changing marketplace conditions and ensure that access to copyrighted works for other lawful purposes is not unjustifiably diminished, the statute provides for a rulemaking proceeding where temporary exemptions to the prohibition on circumventing access controls may be adopted by the Librarian of Congress, upon the recommendation of the Register of Copyrights, in consultation with the Assistant Secretary for Communications and Information of the Department of Commerce. In contrast to the permanent exemptions set out by statute, exemptions adopted pursuant to the rulemaking must be reconsidered every three years. By statute, the triennial rulemaking process only addresses the prohibition on circumvention of access controls; the statute does not grant the authority to adopt exemptions to the anti-trafficking provisions.

For an exemption to be granted through the triennial rulemaking, it must be established that “persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition.10 In their ability to make noninfringing uses under [title 17] of a particular class of copyrighted works.” In evaluating the evidence, several statutory factors must be weighed: “(i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (v) such other factors as the Librarian considers appropriate.”

II. Overview of the Rulemaking Process

To assess whether the implementation of access controls impairs the ability of individuals to make noninfringing uses of copyrighted works, the Copyright Office solicits exemption proposals from the public and develops a comprehensive administrative record using information submitted by interested parties. Based on that record, the Register provides a written recommendation to the Librarian concerning which exemptions are warranted based on that record. The recommendation includes proposed regulatory text for adoption and publication in the Federal Register.

The rulemaking process for the eighth triennial proceeding will be generally the same as the process followed in the seventh proceeding. This includes the streamlined procedure introduced in the seventh proceeding through which members of the public may petition for current temporary exemptions that were granted during the previous rulemaking to remain in force for an additional three-year period (October 2021–October 2024).

With this notification of inquiry, the Copyright Office is initiating the petition phase of the rulemaking, calling for the public to submit petitions both to renew current exemptions, as well as any comments in support of or opposition to such petitions, and to propose new exemptions. This two-track petition process is described below. After the close of the petition phase, the Office will publish a notice of proposed rulemaking (“NPRM”) to initiate the next phase of the rulemaking process, as described below. Video tutorials explaining section 1201 in general and the rulemaking process can be found on the Office’s 2011 rulemaking web page at https://www.copyright.gov/1201.

III. Process for Seeking Renewal of Current Exemptions

In the prior rulemaking, the Copyright Office introduced a streamlined process

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2 See House Manager’s Report at 6 (noting Congress’s intention to “support new ways of disseminating copyrighted materials to users, and to safeguard the availability of legitimate uses of those materials by individuals”).


7 See U.S. Copyright Office, Section 1201 of Title 17, at 1, iii, 43–45 (June 2017), https://www.copyright.gov/policy/1201/section-1201-full-report.pdf (“Section 1201 Study”).


12 Id. 1201(a)(1)(C).

13 Id. 1201(a)(1)(C), (ii)(1)(E).

14 Id. 1201(a)(1)(C).

15 Id.

16 See H.R. Rep. No. 105–796, at 64 (1998) (Conf. Rep.) (“It is the intention of the conferees that . . . the Register of Copyrights will conduct the rulemaking, including providing notice of the rulemaking, seeking comments from the public, consulting with the Assistant Secretary for Communications and Information of the Department of Commerce and any other agencies that are deemed appropriate, and recommending final regulations in the report to the Librarian.”; see also H.R. Rep. No. 106–464, at 149 (1999) (Conf. Rep.) (“Thus the Copyright Office shall conduct the rulemaking under section 1201(a)(1)(C) . . . .”).
to facilitate the renewal of previously adopted exemptions for which there was no meaningful opposition.17 This process was initiated shortly after the Office concluded a comprehensive public policy study of section 1201.18 In that study, following careful analysis of relevant legal principles and noting a broad consensus of stakeholders supporting an expedited process to consider renewal of such exemptions, the Office concluded that "the statute itself requires that exemptions cannot be renewed automatically, presumptively, or otherwise without a fresh determination concerning the next three-year period. . . . [A] determination must be made specifically for each triennial period."19 The Office further determined, however, that "the statutory language appears to be broad enough to permit determinations to be based upon evidence drawn from prior proceedings, but only upon a conclusion that this evidence remains reliable to support granting an exemption in the current proceeding."20

Those seeking readoption of a current exemption may petition for renewal by submitting the Copyright Office’s required fillable form, available on the Office’s website at https://www.copyright.gov/1201/2021/renewal-petition.pdf. This form is for renewal petitions only. The Office has a separate form, discussed below, for petitions for new exemptions.

Scope of Renewal. Renewal may only be sought for current exemptions as they are currently formulated, without modification. This means that if a proponent seeks to engage in any activities not currently permitted by an existing exemption, a petition for a new exemption must be submitted. Where a petitioner seeks to engage in activities that expand upon a current exemption, the Office recommends that the petitioner submit both a petition to renew the current exemption, and, separately, a petition for a new exemption. In such cases, the petition for a new exemption need only discuss those issues relevant to the proposed expansion of the current exemption. If the Office recommends readoption of the current exemption, then only those discrete aspects relevant to the expansion will be subject to the more comprehensive rulemaking procedure described below.

Automatic Reconsideration. If the Office declines to recommend renewal

17 82 FR 29804 (June 30, 2017).
18 See generally Section 1201 Study.
19 Id. at 142.
20 Id. at 143.
justification is called into question. This attestation tells the Office that the prior rulemaking record from when the current exemption was originally granted is still ripe and applicable in considering whether or not the same exemption is appropriate for the subsequent triennial period. Only after finding the old record to still be germane can the Office rely upon it in deciding, pursuant to 17 U.S.C. 1201(a)(1)(C), whether to recommend renewal.

C. Comments in Response to a Petition To Renew an Exemption

Any interested party may respond to a petition to renew a current exemption by submitting comments. While the primary purpose of these comments is to allow for opposition to renewing the exemption, comments in support of renewal are also permitted. Although no form is being provided for such comments, the first page of any responsive comments must clearly identify which exemption’s readoption is being supported or opposed. While participants may comment on more than one exemption, a single submission may not address more than one exemption. For example, a party that wishes to oppose the renewal of both the wireless device unlocking exemption and the jailbreaking exemption must file separate comments for each.21 The Office acknowledges that this format may require some parties to repeat certain general information (e.g., about their organization) across multiple submissions, but the Office believes that the administrative benefits of creating self-contained, separate records for each exemption will be worth the modest amount of added effort involved.

Opposition to a renewal petition must be meaningful, such that, from the evidence provided, it would be reasonable for the Office to conclude that the prior rulemaking record and any further information provided in the renewal petition are insufficient to support recommending renewal of an exemption. For example, a change in case law might affect whether a particular use is noninfringing, new technological developments might affect the availability for use of copyrighted works, or new business models might affect the market for or value of copyrighted works. Such evidence could cause the Office to conclude that the prior evidentiary record is too stale to rely upon for an assessment affecting the subsequent three-year period. The Office may also consider whether opposition is meaningful only as to part of a current exemption.

Unsupported conclusory opinion and speculation will not be enough for the Office to refuse to recommend renewing an exemption it would have otherwise recommended in the absence of any opposition, or to subject consideration of this exemption to the more comprehensive rulemaking procedure.

IV. Process for Seeking New Exemptions

Those seeking to engage in activities not currently permitted by an existing exemption, including activities that expand upon a current exemption, may propose a new exemption by filing a petition using the Copyright Office’s required fillable form, available on the Office’s website at https://www.copyright.gov/1201/2021/new-petition.pdf. Use of the Office’s prepared form is mandatory, and petitioners must follow the instructions contained in this notice and on the petition form. As in the seventh rulemaking, a separate petition must be filed for each proposed exemption. The Office anticipates that it will, once again, receive a significant number of submissions, and requiring separate submissions for each proposed exemption will help both participants and the Office keep better track of the record for each proposed exemption. Although a single petition may not encompass more than one proposed exemption, the same party may submit multiple petitions.

The petition form has two components:

1. Petitioner identity and contact information. The form asks for each petitioner (i.e., the individual or entity proposing the exemption) to provide its name and the name of its representative, if any, along with contact information. Petitioners and/or their representatives should be reachable through the provided contact information for the duration of the rulemaking proceeding. Multiple petitioning parties may jointly file a single petition.

2. Description of the proposed exemption. At this stage, the Office is only asking petitioners to briefly explain the nature of the proposed new or expanded exemption. The information that would be most helpful to the Office includes the following, to the extent relevant: (1) The types of copyrighted works that need to be accessed; (2) the physical media or devices on which the works are stored or the services through which the works are accessed; (3) the purposes for which the works need to be accessed; (4) the types of users who want access; and (5) the barriers that currently exist or which are likely to exist in the near future preventing these users from obtaining access to the relevant copyrighted works.

To be clear, petitioners do not need to propose precise regulatory language or fully define the contours of an exemption class in the petition. A short, plain statement describing the nature of the activities the petitioners wish to engage in is sufficient. Although there is no page limit, the Office anticipates that petitioners will be able to adequately describe in plain terms the relevant information in a few sentences. The Office’s petition form includes examples of what it regards as a sufficient description of a requested exemption.

Nor does the Office intend for petitioners to deliver the complete legal and evidentiary basis for their proposals in the petition, and specifically requests that petitioners not do so. Rather, the sole purpose of the petition is to provide the Office with basic information about the uses of copyrighted works that are adversely affected by the prohibition on circumvention. The Office will then use that information to itself formulate categories of potential exemptions, and group similar proposals into those categories, for purposes of the next, more substantive, phase of the rulemaking beginning with the publication of the NPRM.

Indeed, as during the previous two rulemakings, even the NPRM will not “put forward precise regulatory language for the proposed classes, because any specific language for exemptions that the Register ultimately recommends to the Librarian will necessarily depend on the full record developed during this rulemaking.”22 Rather, the proposed categories of exemptions described in the NPRM will “represent only a starting point for further consideration in the rulemaking proceeding, and will be subject to further refinement based on the record.”23 Thus, proponents will have the opportunity to further refine or expound upon their initial petitions during later phases of the rulemaking.

V. Notice of Proposed Rulemaking

Following receipt of all petitions, as well as comments on petitions for

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21 Commenters may, however, respond to multiple petitions to renew the same exemption in a single submission. For instance, if the Office receives six petitions in favor of readopting the current wireless device unlocking exemption, a commenter can file a single comment that addresses points made in the six petitions. That comment, however, may not address petitions to readopt the jailbreaking exemption.

22 82 FR at 29807 (quoting 79 FR 73856, 73859 (Dec. 12, 2014)).

23 Id. (internal quotation marks and citation omitted).
I. Introduction

On June 11, 2020, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports. The Petition identifies the proposed analytical changes filed in this docket as Proposal Three.

II. Proposal Three

Background. The Postal Service’s current In-Office Cost System (IOCS) design uses a multi-stage probability sample to randomly select craft employees, including city carriers, and then an interval of work time from the employee’s tour for a “snapshot” of work activities in the work interval. Petition, Proposal Three at 1. The Postal Service states that moving data collectors to distant delivery units for carrier readings is costly so that in FY 2019, of over 250,000 individual readings scheduled on city carriers, over 85 percent were conducted by telephone. Id. The Postal Service asserts that the availability of detailed clocking data from the Time and Attendance Collection System (TACS) allows reshaping of the sampling design to improve sampling efficiency and data quality. Id. The Postal Service explains that in Docket No. RM2019–6, the Commission approved the modelling of all Special Purpose Route (SPR) carrier costs using TACS data and econometric equations.

Proposal. The Postal Service states that Proposal Three would change IOCS system design for city carriers to a cluster sampling utilizing census data from TACS to enable on-site data collection at locations and times where and when city carriers are working on the premises. Petition, Proposal Three at 3. Rather than sampling individual employees, the proposed design would sample blocks of time and then subsample clusters of carriers working during those blocks of time. Id. The Postal Service asserts that this new design improves data quality with more on-site data rather than telephone readings and, thereby, improves data collection efficiency. Id. at 1.

24 See 79 FR 55687, 55692 (Sept. 17, 2014) (explaining that part of the purpose of providing the information in the petition phase is so the Office can “confirm that the threshold requirements of section 1201(a) can be met”); see also 79 FR at 73859 (noting that three petitions sought an exemption which could not be granted as a matter of law and declining to put them forward for comment).