

Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe the current developments with respect to electronic filing and electronic access procedures for court documents, if any, in federal, state or local rules and regulations.

2. Discuss whether all types of federal or state court documents (pleadings, briefs, motions, orders, etc.) are available in an electronic format. If not, describe court documents that have been excluded from court filing or access systems and explain the basis for their exclusion.

3. Discuss whether documents may be filed electronically in all types of cases (i.e., civil, criminal, bankruptcy) and are available for public access in electronic formats?

4. If access to documents is limited based on case type, for what kinds of cases is access restricted (e.g., juvenile or adoption cases)? Please discuss what interests may be served by these access restrictions and whether it is necessary to retain the court documents exception to preserve and protect the interest(s).

5. Discuss whether the current Uniform Electronic Transactions contain exceptions for court orders, notices, and documents.

6. Describe any state or federal regulations, other than ESIGN and UETA, that preclude electronic filing or access to court documents.

7. Given the current developments in federal court regulations with respect to electronic transactions in this area, is it necessary to retain the court documents exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

8. Given the current development in state court regulations with respect to electronic transactions in this area, is it necessary to retain the court documents exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

9. Discuss any unique issues surrounding the electronic filing, delivery, or service of court documents (such as authentication, privacy, and security) that should be considered in determining whether to eliminate the court documents exception from ESIGN.

10. Are there technological issues that either enable or impair electronic filing and electronic access to court documents? Please describe in detail the available technology that enables electronic filing and electronic access to court documents and records.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: August 28, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 020816197-2197-01

Request for Comments on the Hazardous Materials and Dangerous Goods Shipping Papers Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, codified at 15 U.S.C. §§ 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; certain provisions of state uniform commercial codes; utility service cancellations, real property foreclosure and defaults; insurance benefit cancellations; product recall notices; and any document required to accompany hazardous materials or dangerous goods. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the hazardous materials and dangerous goods documents exception to ESIGN. See 15 U.S.C. § 7003(b)(3). NTIA will publish separate notices requesting comment on the other

exceptions listed in section 103 of the ESIGN Act.¹

DATES: Written comments and papers are requested to be submitted on or before November 4, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., N.W., Washington, DC 20230. Paper submissions should include a three and half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy-hazmat@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., N.W., Washington, DC 20230, telephone (202) 482-1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202)482-7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court records,

¹Comments submitted in response to *Federal Register* notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as a separate review of the Act.

probate and domestic law matters; state commercial law; consumer law covering utility services, real property defaults and foreclosures, and insurance benefits; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for the transportation and handling of hazardous materials, pesticides, or other toxic or dangerous materials is found in section 103(b) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

* * *

(b) Additional Exceptions.— The provisions of section 101 shall not apply to—

* * *

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

* * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.

(1) Evaluation required.— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Hazardous Materials Documents and DOT Shipping Paper Regulations

As authorized by the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101–51270), the Department of Transportation's (DOT) Research and Special Programs Administration (RSPA) has authority to regulate the transportation of hazardous materials in commerce. RSPA has subsequently developed a comprehensive set of regulations that govern the safe transportation of hazardous materials (Hazardous Materials Regulations; 49 CFR Parts 171–180). The Hazardous Materials Regulations (HMR) address a comprehensive approach to hazardous materials transportation, including: documentation that must accompany

shipments (shipping papers and emergency response information); other hazardous communication requirements, including hazard warning labels and placards; packaging marking; and packaging manufacture and use requirements.

Every state has adopted, and currently enforces, regulations that are consistent with the HMR for the transportation of hazardous materials. These requirements, including those addressing hazard communication, are generally consistent with the international recommendations and requirements for the shipment of hazardous materials issued by the United Nations Committee on the Transport of Dangerous Goods, the International Maritime Organization, and the International Civil Aviation Organization.

RSPA requires physical, hard copy shipping papers and emergency response information to accompany each shipment of hazardous materials. The shipping paper must remain on the transport vehicle or with the shipment while in transportation to serve as part of the hazard communication system. In addition to providing information to the transporter, the shipping paper and other aspects of the hazard communication system allows emergency responders (e.g., firefighters and police officers) to quickly and safely identify the hazardous materials being transported in case of an emergency. The shipping paper allows emergency responders to make critical decisions concerning evacuation radii, personal protection equipment, fire dispersants, and response strategy.

RSPA recently published a final rule which requires shippers and carriers of hazardous materials to retain a copy of each hazardous material shipping paper or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier. *See* 67 FR 46123, July 12, 2002; 49 CFR 172.201(e). This requirement is consistent with section 5110(e) of Federal hazmat law which requires that a copy of each shipping paper be retained for a period of one year after shipment of the hazardous materials ends. Electronic images of shipping papers are authorized. An electronic image includes an image transmitted by facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine.

In addition, the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to regulate the transportation of hazardous wastes,

which are also regulated by DOT as hazardous materials. *See* 42 U.S.C. § 6923(a), (b)(1976). Since the enactment of the ESIGN Act in 2000, both DOT and EPA have initiated rulemaking proceedings to revise their regulations regarding the transportation and handling of hazardous wastes to allow specific hazardous waste information to be transmitted electronically between generators, treatment and disposal facilities, and state governments. On May 22, 2001, EPA published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* requesting comment on its proposal. *See* 66 FR 28239. The Notice proposed to change EPA's hazardous waste regulations, which establish a manifest system to track shipments of hazardous waste from a generator's site to the site where the hazardous waste is to be managed. *See* 40 CFR parts 262 through 265; 45 FR 12724, February 26, 1980.

The central purpose of the uniform hazardous waste manifest (UHWM) system is to provide documentation showing chain of custody of the hazardous waste at all times, where the waste is destined for disposition, and when the waste arrives at the disposal facility. The UHWM system allows generators, shippers, and waste handlers to use a single form to satisfy both EPA's manifest requirements and DOT's shipping paper requirements. *See* 49 FR 10490, March 20, 1984. Thus, the UHWM can also serve as a DOT-required shipping paper conveying essential emergency information during transportation, such as the proper shipping name and hazard class of a material, and the telephone number where more information about the material can be obtained.

EPA's NPRM proposes to modify the UHWM regulations to allow waste handlers (generators, transporters, and treatment, storage or disposal facilities) the option of preparing, transmitting, signing, and storing their manifests electronically. *See* 66 FR 28240, 28266. This proposal includes a standard for signing the manifest with electronic signatures, electronic data interchange (EDI) and Internet file standards, and computer security standards. The EPA proposal, however, also contains a requirement that a paper copy of the electronic manifest accompany the shipment in order to satisfy the HMR requirement that a shipping paper accompany each hazardous materials shipment for emergency response purposes.

In connection with EPA's notice, RSPA, issued an NPRM proposing to revise its regulations on the use of the UHWM for hazardous waste shipments.

RSPA's proposed regulatory changes parallel EPA's proposal. *See* 66 FR 41490, August 8, 2001. Specifically, RSPA proposes to modify title 49 of the Code of Federal Regulations, part 172.505 to provide that a printout of the electronic manifest or a separate shipping paper must accompany the shipment of hazardous waste when an electronic manifest is used. *Id.* at 41491.

Both EPA's and DOT's proposed and current regulations regarding hazardous materials and hazardous wastes will be impacted by elimination of the ESIGN Act's hazardous and dangerous materials documents exception. Thus, the section 103 evaluation initiated by this Notice has implications for companies that engage in the manufacture, sale, transportation, and disposal of hazardous materials. It also has implications for emergency responders who rely on the immediate availability of critical information in the event of a release of hazardous materials in transportation.²

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the hazardous materials documents exception is intended to evaluate the current status of federal and state regulations and practices, and the course of dealing among companies that handle and transport hazardous wastes, in preparation for a report to Congress on whether the exception of documents related to the transportation and handling of hazardous materials

² Several federal agencies have various responsibilities concerning hazardous materials and dangerous substances. There are also numerous state agencies and organizations that act to protect the public from misuse, mishandling, or errors in labeling of hazardous materials. EPA and DOT have proposed regulations implicating the transmission of electronic documents that provide notice regarding hazardous materials. Reference to these agencies is not intended to exclude other agencies that play a valuable role in protecting consumers.

remains necessary to protect consumers. The purpose of this evaluation is not to review or analyze federal and state regulations and rules relating to hazardous materials documents for the purpose of recommending changes to those regulations, but rather to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on federal and state procedures or rulemaking proceedings concerning hazardous materials documents.

Due to the comprehensive nature of EPA and DOT's rulemaking proceedings and the scope of the issues raised therein, NTIA may consider comments submitted in those proceedings in the preparation of the report to Congress.³

Invitation to Comment

NTIA requests that all interested parties submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment on ESIGN generally to assist in evaluating the narrower issues associated with the substantive law governing the hazardous materials and dangerous substances documents exception. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe federal, state and local regulations, laws, and ordinances that require documentation for handling of hazardous materials and dangerous substances.

2. Describe the current developments with respect to electronic documentation and recordkeeping, if any, in federal, state or local regulation of hazardous materials or dangerous substance handling.

3. Discuss what effect, if any, the removal of the hazardous and dangerous materials documents exception in section 103(b)(3) from ESIGN Act would have on the ability of state and federal agencies to perform their missions.

4. What effective means of hazard communication would be available if a paper copy of the hazardous materials shipping paper is eliminated or made optional?

5. Given the current developments in Federal regulations with respect to

³ The NTIA Request for Comments and resulting evaluation, however, have no legal effect on existing EPA or DOT rules or their ongoing regulatory proceedings.

electronic transactions in this area, is it necessary to retain the hazardous materials exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

6. Given the current developments in State regulations with respect to electronic transactions in this area, is it necessary to retain the hazardous materials exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

7. If the ESIGN Act continues to except hazardous materials, pesticides, and other toxic or dangerous materials shipping documents from the ESIGN Act requirements, how will that impact EPA's electronic hazardous waste manifest proposed rule?

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: August 28, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

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COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 September 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001-2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, August 26, 2002.

Charles H. Atherton,

Secretary.

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