

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting dates.

Dated: December 18, 2002.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 02-32303 Filed 12-23-02; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**Docket No. 010222048-2313-07**

#### The State Uniform Commercial Code Exception of the Electronic Signatures in Global and National Commerce Act

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

**ACTION:** 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; state commercial law; consumer law covering utility services, residential property foreclosures and defaults, and insurance benefits; product recall notices; and hazardous materials documents. 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 state uniform commercial code exception to the ESIGN Act. See 15 U.S.C. § 7003(a)(3). NTIA will publish separate notices requesting comment on

the other exceptions listed in section 103 of the ESIGN Act.<sup>1</sup>

**DATES:** Written comments and papers are requested to be submitted on or before February 24, 2003.

**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 one-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\\_ucc@ntia.doc.gov](mailto:esignstudy_ucc@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:** For questions about this request for comment, 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](mailto: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: probate and

<sup>1</sup>Comments 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 part of a separate review of the Act. Notices have been published on the court documents, hazardous materials, product recall, family law documents, housing default, and insurance cancellation notices exceptions to ESIGN. See 67 Fed.Reg. 56277, 56279, 59828, 61599, 63379, 69201, and 75849.

domestic law matters; state commercial law; consumer law covering utility services, residential default and foreclosure notices, and insurance benefits cancellation notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for contracts governed by the Uniform Commercial Code as in effect in any state is found in section 103(a)(3) of the Act:

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

(a) *Excepted Requirements.*— The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

\* \* \* \*

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

\* \* \* \*

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.

#### Contracts and Records Governed by State Uniform Commercial Code

The ESIGN exception for contracts governed by state uniform commercial code (UCC) provisions, other than sections 1-107, 1-206, Articles 2 and 2A, precludes the formation or establishment of these contracts by electronic means.<sup>2</sup> Contracts based on the other provisions of the uniform commercial code are excepted or exempt from the application of ESIGN's provisions, and therefore, are not legally valid if executed electronically or

<sup>2</sup>Section 1-107 allows for waiver or renunciation of a claim or right after breach without a writing; section 1-206, the statute of frauds, requires a written contract for sale of property in excess of \$5,000 in amount or value of remedy; Articles 2 and 2A govern sales and lease transactions, respectively.

signed with an electronic signature. This general rule does not apply, however, to transferable records under Title II of the ESIGN Act. See 15 U.S.C. § 7021(a). For the purposes of Title II, a "transferable record" is an electronic record that would be a note under Article 3 of the uniform commercial code if the electronic record were in writing; the issuer of the electronic record expressly has agreed is a transferable record; and relates to a loan secured by real property. *Id.* The provisions of Title II, therefore, allow the use of electronic signatures for transferable records under Article 3 of the uniform commercial code,<sup>3</sup> although not included among the ESIGN exceptions in Title I. See *e.g.*, 15 U.S.C. § 7003(a)(3).

Each state's commercial law controls whether electronic transactions are allowed under that state's uniform commercial code. While some states' rules require parties to execute commercial contracts in written form, several states have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that incorporate or exclude commercial transactions under the uniform commercial code from the application of the state electronic transactions laws. See National Conference of Commissioners on Uniform State Laws at <http://www.nccusl.org/nccusl/LegislativeByState.pdf>. Forty-six states have adopted the version of UETA recommended by NCCUSL or their own version of UETA. Of the states that have passed UETA laws, most of them have expressly excluded contracts governed by select uniform commercial code provisions from the operation of the state electronic transactions laws.<sup>4</sup> The remaining states have passed state UETA laws that do not contain language that expressly excludes all uniform commercial code provisions. These statutes may contain general provisions, however, that make the substantive commercial law controlling and require

an examination of the commercial code to determine whether certain electronic commercial transactions are legally valid.

Some state legislatures and state courts have also enacted the Uniform Computer Information Transactions Act (UCITA). Most UCITA laws specify that if there is conflict between their provisions and those of the state uniform commercial code, the latter is controlling. Consequently, if a state's regulations regarding electronic signatures contains an exception for certain transactions governed by the uniform commercial code, then the uniform commercial code will control, regardless of what UCITA allows.

### The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of whether the exceptions set out in section 103 of the Act 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 state uniform commercial code law exception is intended to evaluate the current status of the law regarding this issue in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of state uniform commercial code provisions for the purpose of recommending changes to those regulations, but to advise Congress of the current state of law and practice regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific federal and state rulemaking proceedings concerning contracts governed by state uniform commercial codes.

### Invitation to Comment

NTIA requests that interested parties, including members of the bar, courts and consumer representatives, 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 from all parties that

may be affected by the removal of the state uniform commercial code exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and commercial law practitioners. The comments will assist NTIA in evaluating the potential impact of the removal of this exception from ESIGN on consumers, companies, practitioners, and state electronic transactions laws. 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. Discuss state Uniform Electronic Transactions Act (UETA) provisions that either include or exclude any sections of the State Uniform Commercial Code provisions that are also exceptions to section 101 of the ESIGN Act.

2. Describe state uniform commercial code provisions that are excluded from the state electronic transactions laws or the ESIGN Act and that require written documents for commercial contracts and transactions. Indicate whether there other state or federal regulations that require commercial contracts and transactions covered by the state uniform commercial codes to be excluded from the operation of ESIGN or the state UETA laws.

3. Discuss whether and how the inclusion of all state uniform commercial code contracts and transactions under the requirements of ESIGN and the state UETA laws would affect consumers. How would this affect companies?

4. Discuss all state uniform commercial code provisions that may need to be modified to accommodate interstate, online transactions.

5. Are there issues surrounding the execution of commercial documents covered by the exception, such as authentication and privacy, that should be considered?

6. How would the removal of the state uniform commercial code exception from ESIGN affect federal or state commercial law?

7. Describe the types of commercial transactions and contracts that would either benefit from or be harmed by the removal of the state uniform commercial code exception to ESIGN.

8. Would the economic impact be greater on consumers or a particular industry if the exception is eliminated from ESIGN?

Please provide copies of studies, reports, opinions, research or other

<sup>3</sup>Title II also notes that "[d]elivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection." 15 U.S.C. § 7021(d). The Code explains why an electronic signature would still be enforceable without delivery (UCC § 4-110), possession (UCC § 3-301), or endorsement (UCC § 3-205) of the instrument.

<sup>4</sup>See *e.g.*, New Mexico H.B. 232, available at <http://www.nccusl.org/nccusl/pubdrafts.asp> (excludes Articles 3, 4, 4A, 5, 8, and 9 of the Uniform Commercial Code from ESIGN). Approximately 43 states have an exception for specific uniform commercial code provisions. For a list of states that have adopted electronic transactions laws, see the National Conference of Commissioners on Uniform State Laws website, available at <http://www.nccusl.org/nccusl/legislativebystate.pdf>.

empirical data referenced in the responses.

Dated: December 19, 2002.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 02-32405 Filed 12-23-02; 8:45 am]

**BILLING CODE 3510-60-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

December 18, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting a limit.

**EFFECTIVE DATE:** December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://www.otexa.ita.doc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 645/646 is being increased to address a data discrepancy in these categories (see 67 FR 72922, published on December 9, 2002).

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also

see 66 FR 63219, published on December 5, 2001.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 18, 2002.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 24, 2002, you are directed to increase the current limit for Categories 645/646 to 1,382,047 dozen<sup>1</sup>, as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02-32288 Filed 12-23-02; 8:45 a.m.]

**BILLING CODE 3510-DR-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Removing a Company From List of Companies in Macau From Which Customs Shall Deny Entry to Textiles and Textile Products

December 20, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs directing Customs not to apply the directive regarding denial of entry to shipments from a certain company.

**EFFECTIVE DATE:** December 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

#### SUPPLEMENTARY INFORMATION:

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 2001.

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

In a notice and letter to the Commissioner of Customs, dated August 27, 2002, and published in the **Federal Register** on September 3, 2002 (67 FR 56282), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies in Macau; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Mei Lai, one of the listed companies, should not be subject to that directive. Effective on December 20, 2002, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by this company. CITA expects that Customs will conduct additional on-site verifications of this company's production when possible.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 20, 2002.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: In the letter to the Commissioner of Customs, dated August 27, 2002 (67 FR 56282), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies in Macau; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Mei Lai, one of the listed companies, should not be subject to that directive. Effective on December 20, 2002, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by this company. CITA expects that Customs will conduct additional on-site verifications of this company's production when possible.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,  
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02-32539 Filed 12-20-02; 2:06 pm]

**BILLING CODE 3510-DR-S**