

ESA. This permit was issued in accordance with, and is subject to, part 222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Modification to Permit Issued

Notice was published on August 23, 2002, that SWFSC applied for a modification to permit 1044 to take threatened Central California Coast steelhead associated with a life history diversity study and density study in Soquel Creek, CA. Modification 2 to Permit 1044 was issued on November 12, 2002, authorizing takes of juvenile, threatened, Central California Coast steelhead. Modification 2 is valid for the duration of the permit.

Permit 1044M2 expires June 30, 2007.

Dated: December 4, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048-2293-06

The Health and Life Insurance Cancellation Notices Exception of 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; 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, 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 health and life insurance cancellation notices exception to the ESIGN Act. See 15 U.S.C. 7003(b)(2)(C). 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 February 10, 2003.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., NW., 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_@insnot@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., NW., 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

¹ 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.

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 will not apply to contracts and records governed by statutes and regulations regarding: probate and domestic law matters; state commercial law; consumer law covering utility services, residential default and foreclosure notices; insurance benefits cancellation notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for health and life insurance cancellation notices is found in section 103(b)(2)(C) of the Act:

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

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

* * * *

(2) any notice of—

* * * *

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities)—

* * * *

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.

Health and Life Insurance Cancellation Notices

Information regarding life and health insurance rates and benefits is widely distributed through electronic means, including Internet websites and facsimiles. The ESIGN Act exception for life and health insurance cancellation notices excludes insurance cancellation notices sent to consumers by an

electronic method from the operation of the statute. The rules and regulations governing termination and cancellation notices for life and health insurance benefits are governed, in part by Federal law, but primarily by state law.

The Department of Labor, Pension Welfare Benefits Administration (PWBA), and the Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS), have Federal regulatory authority for the distribution of information regarding life and health insurance to Federal employees and to Medicare and Medicaid recipients. As early as 1997, before the passage of ESIGN, these agencies proposed rules to allow the release of information regarding health and life insurance benefits in electronic format. *See, e.g.*, 62 FR 16979 (April 8, 1997). Since that time, both agencies have conducted rulemaking proceedings to incorporate standards for the electronic transmission of certain health insurance information. The CMS adopted standards for electronic transactions regarding health plans, health care clearinghouses, and certain health care providers in August 2000. *See* 65 FR 50312 (August 17, 2000). CMS recently proposed an amendment to its rules to improve Medicare and Medicaid programs, and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health insurance information. *See* 67 FR 38050 (May 31, 2002). The CMS's regulations require health providers and organizations to provide: written notice to Medicare enrollees of the termination of a risk contract; notice by mail to Medicare enrollees of a health maintenance organization (HMO) or covered medical provider's (CMP) intention not to renew a contract; and 60 days' notice of a contract termination initiated by the HMO or CMP. *See* 42 CFR 417.488(a), 417.492(a)(ii), and 417.494(b)(iv)(4).

The Labor Department's PWBA also recently issued regulations governing the disclosure of pension and health plan information through electronic media. *See* 67 FR 17264 (April 9, 2002). Under new rules that became effective on October 9, 2002, the administrator of a group health plan may furnish certain documents to plan enrollees, beneficiaries, and other persons entitled to the information using electronic media. *See* 29 CFR 2520.104b-1(c).

With respect to state laws, some states' regulations require health and life insurance companies to provide

written notice to policyholders before the effective date of a policy cancellation or nonrenewal. For example, the Florida statute provides that a health insurance provider must provide the insured written notice at least 45 days prior to cancellation or nonrenewal. Fla.Stat. § 408.909(7) (2002). The South Carolina Code provides that an insurer must give an insured at least 31 days' written notice of nonrenewal of a health insurance policy. S.C. Code Ann. § 38-71-335.

The use of electronic means to transmit health and life insurance cancellation notices, therefore, would represent a departure from Federal and state rules that require companies to transmit information in writing through postal delivery. Approximately forty-three states have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that incorporate or exclude state-exclusive areas from the application of the state's electronic transactions law. *See* National Conference of Commissioners on Uniform State Laws at <http://www.nccusl.org/nccusl/LegislativeByState.pdf>. Of the states that have passed these laws, several have expressly excluded health and life insurance cancellation notices from the operation of the state electronic transactions laws.² For example, North Carolina's electronic transaction law provides that the law does not apply to "any notice of the cancellation or termination of health insurance or benefits, or life insurance or benefits, excluding annuities." *See* N.C. Gen. Stat. § 66-313(e)(3) (2000). A large number of the remaining states have passed state uniform electronic transactions laws that do not contain language that expressly excludes health and life insurance cancellation notices. These states' statutes may contain general provisions, however, that makes the substantive insurance law controlling, which requires an examination of the insurance codes in these states to determine whether electronic health and life insurance cancellation notices are legally valid. Information regarding changes in state or Federal law to allow electronic transmission of cancellation notices for life and health insurance would assist in

² The following states have enacted electronic transactions laws that include an exception for health and life insurance cancellation notices: Alabama, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Mississippi, New Jersey, New Mexico, and North Carolina. *See e.g.*, Md Code Ann., Com. Law § 21-201(B)(4)(III); N.C. Gen. Stat. § 66-313(E)(3) (2001); and National Conference of Commissioners on Uniform State Laws, available at <http://www.nccusl.org/legislativebystate.pdf>.

the evaluation of whether consumers would be adequately protected if the life and health insurance cancellation notices exception is eliminated from the ESIGN Act.

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 is intended to examine the current status of Federal and state regulations that govern, and practices of companies that issue life and health insurance cancellation notices, 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 Federal and state regulations and rules relating to life and health insurance cancellation notices for the purpose of recommending changes to those regulations, but 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 ongoing specific Federal and state procedures or rulemaking proceedings concerning life and health insurance cancellation notices.

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 life and health insurance cancellation notices exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and insurance or benefits law practitioners. The comments will assist NTIA in evaluating the potential impact of the removal of this exception from

ESIGN on consumers, insurers, 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. What methods, if any, are available to protect health and life insurance consumers if the exception for life and health insurance cancellation notices is eliminated from the ESIGN Act? Discuss.

2. Discuss state and municipal health and life insurance regulations, laws, and ordinances that require written notice to consumers for cancellation or termination of insurance benefits.

3. Discuss any state regulations that allow companies to transmit health and life insurance cancellation notices by electronic methods.

4. How would the removal of the insurance cancellation notices exception to ESIGN affect health and life insurance consumers? How would the removal of the exception affect the provision of notice by health and life insurance companies to their customers? Please discuss.

5. What effect would the removal of the exception have on current state and Federal policies concerning cancellations of life and health insurance? Discuss.

6. If the ESIGN Act is amended to eliminate the health and life insurance cancellation notice exception, what other changes, if any, should be made to the Act to maintain consumer protection laws? What changes would be necessary, if any, to maintain current state and Federal policies concerning the content and timing of health and life insurance termination and cancellation notices?

7. What are the benefits for health and life insurance customers, and insurance companies that may result from electronic notice of cancellation of insurance benefits?

8. List any issues regarding delivery, timing, authentication, and privacy for health and life insurance benefits cancellation notices that can and should be resolved prior to removal of the exception from the Act?

9. Discuss current electronic methods that are used to provide life and health insurance information to customers (e.g., executed contracts, quotes provided, benefits statements).

10. Describe any consumer protection mechanisms employed by companies that use electronic methods to transmit health and life insurance information to consumers.

11. Have states and companies developed electronic notification procedures for the transmission of health and life insurance information? If so, discuss:

a. the receipt verification procedures that have been implemented;

b. regulations that have been updated to reflect electronic signature technologies; and

c. current state regulations that require the retention of a separate paper copy.

12. Discuss any other issues (such as privacy and state consumer protection laws) that may be affected if insurance cancellation notices are included under the requirements of section 101 of the ESIGN Act.

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

Dated: December 4, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

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DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Mission Environmental Impact Statement (EIS) for Aberdeen Proving Ground (APG), Maryland

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the APG Draft Mission EIS for public review and comment. The EIS provides APG and its stakeholders an analysis of the environmental impacts resulting from all reasonably foreseeable future mission activities at APG, located in northeastern Maryland.

DATES: The public comment period will end 45 days after the publication of the notice of availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Anyone wishing to receive a copy of the Draft EIS or the EIS Executive Summary may send a postcard or letter with their name and address to: U.S. Army Garrison Aberdeen Proving Ground, Directorate of Safety, Health and Environment, ATTN: AMSSB-GSH-ER (Buddy Keesee), Aberdeen Proving Ground, MD 21005.

FOR FURTHER INFORMATION CONTACT: Buddy Keesee at (410)-278-6755, or via

email at

buddy.keesee@usag.apg.army.mil.

SUPPLEMENTARY INFORMATION: The Army proposes to provide for the future operation of APG, located in Maryland at the northern end of the Chesapeake Bay. APG is composed of two principal areas separated by the Bush River: the Aberdeen Area situated north of the river and the Edgewood Area to the south. Three alternatives have been identified and assessed for the future operation of APG: (1) Alternative A: future planned activities plus mitigation alternative (proposed action), (2) Alternative B: future planned activities alternative, and (3) Alternative C: no action alternative. The future planned activities plus mitigation alternative (Alternative A) would provide for the Army's future operation of APG through the adoption of a comprehensive environmental baseline assessment of APG mission activities for use in environmental management decision-making, to include the analysis of cumulative effects, as well as the implementation of a mitigation program to nullify any potential adverse impacts of all reasonable foreseeable future mission activities. Alternative A is distinct from the other alternatives as it represents a comprehensive approach to the management of the APG environment. The future planned activities alternative (Alternative B) would encompass all reasonable foreseeable future mission activities. However, individual actions requiring National Environmental Policy Act documentation would be implemented piecemeal and a means for comprehensive environmental management, including a current environmental baseline, would not be established. The no action alternative (Alternative C) is defined as the continuation of current ongoing mission activities at approximately the same levels, intensities, rates, and conditions as they currently exist (*i.e.*, status quo). Under no action, the baseline established by the 1978 installation-wide EIS would be the only comprehensive point of reference for the analysis of environmental effects, including cumulative effects. Mitigation measures would be implemented on a project-by-project basis.

The analysis in the Draft Mission EIS indicates that no significant adverse impacts that cannot be avoided, minimized, or mitigated are anticipated to occur under the proposed action (Alternative A) or the no action alternative (Alternative C). Although there is an opportunity to mitigate future adverse impacts under the