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Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110502D]

Marine Mammals; File No. 774-1649-01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 774-1649-00 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038 (Principle Investigator: Rennie Holt, Ph.D.) has been amended.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713-2289.

SUPPLEMENTARY INFORMATION: On October 2, 2002, notice was published in the *Federal Register* (67 FR 61850) that an amendment of Permit No. 774-1649, issued November 14, 2001 (66 FR 58445), had been requested by the above-named organization. The requested amendment has been granted under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Amended Permit authorizes the Holder to capture, weigh, measure, tag and release southern elephant seal pups.

Dated: November 7, 2002.

Eugene T. Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-29085 Filed 11-14-02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 010222048-2243-05]

The Housing Foreclosure, Repossession, and Default Notices 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. 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 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 papers. 15 U.S.C. 7003(a),(b). 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 to provide information for this evaluation, specifically on the ESIGN exception for notices that communicate information regarding the primary residence of an individual concerning default, acceleration, repossession, foreclosure, eviction, and the right to cure (hereinafter referred to as "residential default, foreclosure, and

eviction notices"). See 15 U.S.C. 7003(b)(2)(B).

DATES: Written comments and papers are requested to be submitted on or before [sixty (60) days after publication in the *Federal Register*].

ADDRESSES: Written comments should be submitted to Josephine Scarlett, Senior Attorney, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Paper submissions should include a 3 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_default@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 Avenue, 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. 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 domestic law matters; state commercial law; consumer law covering utility services, residential property default, foreclosure, and eviction notices, and insurance benefits; product recall notices; and hazardous materials papers.

The statutory language providing for an exception to section 101 of ESIGN for notices of default, acceleration, repossession, foreclosure or eviction for a primary residence of an individual is found in section 103(b)(2)(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

* * * *

(2) any notice of—

* * * *

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

* * * *

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.

Housing Default, Acceleration, Repossession, Foreclosure, Eviction and Right to Cure Regulations

The ESIGN exception for residential default, foreclosure, and eviction notices prohibits creditors from sending electronic documents or information to consumers as notice of an impending foreclosure or eviction. Residential default, foreclosure, and eviction notices forwarded to consumers in electronic format are *not* required to be accorded legal validity and effect. Federal and state regulations governing foreclosures and evictions require that the creditors or landlords give consumer mortgagors and tenants written notice of default, foreclosure and eviction and that the notice be sent by certified or registered mail prior to action by the mortgagee or landlord to recover possession of the property. The regulations discussed herein are representative of the types of residential, default, foreclosure, and

eviction notice requirements that are covered by the ESIGN exception and are not intended to provide an exhaustive list of the existing statutory requirements governing housing default, foreclosure, and eviction notice under federal and state law.

The Department of Agriculture (USDA), the Federal Reserve Board (Board), the Department of Housing and Urban Development (HUD), the Department of Treasury (DOT), and the Department of Veteran's Affairs (VA) have federal regulatory oversight over the housing and mortgage industry and, more specifically, over single family mortgage loans and programs that guarantee or secure funding for housing. These regulations and laws govern the type of notice and the manner of service that mortgage companies, banks, and other lenders are required to provide consumers prior to taking action to foreclose on residential properties or to evict a tenant. The states have concurrent jurisdiction in these areas and, thus, also have laws that govern residential foreclosure proceedings and tenant eviction processes. Section 104 of ESIGN allows federal and state regulatory agencies that are responsible for rulemaking under any other statute to interpret the consumer provisions of ESIGN through interpretive rules, orders, and regulations. *See* 15 U.S.C.7004(b)(1).

The Farm Credit Administration (FCA) of the USDA has created new rules and amended others to remove regulatory barriers to electronic commerce for Farm Credit System institutions and their customers. 67 *FR* 16627, 16628 (2002); *see also* 12 CFR 609.910. FCA recognized the ESIGN exception for residential default, foreclosure, and eviction notices and concluded that some of its system institutions cannot use electronic notification to deliver some of the notices required under part 614 of the rules. *See id.* at 16632. These rules provide that a lender "shall provide written notice to the borrower that the loan may be suitable for restructuring" not later than 45 days before the lender begins foreclosure proceedings. *See* 12 CFR 614.4516, 614.4519.

Similarly, the notice rules of the Office of Thrift Supervision require a creditor to provide written notice by registered or certified mail with return receipt requested no later than 30 days before the creditor acts to foreclose or accelerate payments on a federally related loan or mortgage. *See* 12 CFR 590.4(h). The foreclosure rules of the Department of Veteran's Affairs require the Department to provide borrowers with certain written information

regarding the alternatives to foreclosure after receiving notice of default from the holder of a note on a loan guaranteed by the Department. *See* 38 U.S.C. 3732.

The Federal Reserve Board (Board) and Department of Treasury (DOT) have revised their regulations to authorize the electronic delivery of disclosures regarding certain home mortgages consistent with the ESIGN Act. In March, 2001, the Federal Reserve amended Regulation Z, 12 CFR part 226, in response to the ESIGN Act. *See* 66 *FR* 17329 (2001). Regulation Z implements the Truth in Lending Act, 15 U.S.C. section 1601 *et seq.*, and requires that creditors make certain written disclosures to consumers about the terms and cost of credit before the transaction is consummated. The Board interpreted ESIGN as containing special rules for use of electronic disclosures that may be provided only if the consumer affirmatively consents after receiving certain information. *Id.* at 17330. The amendment to Regulation Z allows depository institutions, creditors, lessors and others to provide information to consumers regarding financial transactions if the disclosures are clear and conspicuous and the creditor complies with the consumer consent provisions of section 101(c) of ESIGN. *Id.* at 17334. Specifically regarding notices relating to the primary residence of an individual, the Board amended its rules to permit a creditor to provide a single rescission notice by electronic communication to each consumer with an ownership interest in a dwelling who has affirmatively assented to electronic delivery of the notice. *Id.* at 17332, 17333; *see also*, 12 U.S.C. 226.15(b)(1) and 226.23.

The Board also amended Regulation B, to allow for electronic disclosure of information required by the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 *et seq.* *See* 66 *FR* 17779 (2001). ECOA prohibits discrimination by a creditor in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age, receipt of public assistance, or good faith reliance on provisions of the Consumer Credit Protection Act. 12 CFR part 202. Regulation B provides guidance on the timing and delivery of written disclosures required by ECOA. The Board's amendment of Regulation B requires that creditors comply with the consumer consent provisions of section 101(c) of ESIGN when making disclosures electronically by e-mail or through website postings. *See* 12 CFR 202.17(b). Recently, the Department of the Treasury's Office of the Comptroller of the Currency (OCC) also amended its

regulations, adding Subpart E, to facilitate the ability of national banks to conduct business using electronic technologies. *See* 67 FR 34992 (May 17, 2002); 12 CFR 7.5000 *et seq.*

The regulations of the Department of Housing and Urban Development (HUD) contain several requirements for residential default, foreclosure, and eviction notices to be provided to consumers of multifamily and single family housing.¹ HUD insures mortgages secured by multifamily housing projects under the National Housing Act. Mortgagees are required to notify HUD of a default on a HUD-insured loan within 30 days of the date of the initial event of default. *See* HUD Handbook 4350.4, Table 2, Default Dates and Deadlines. The procedures for nonjudicial foreclosure of multifamily properties are set forth in the Multifamily Mortgage Foreclosure Act of 1981. *See* 12 U.S.C. 3701 *et seq.* For these mortgages, HUD's foreclosure commissioner must serve notice of default and foreclosure by certified or registered mail, postage prepaid and return receipt requested to the owners, mortgagors, dwelling units, and other lienholders not less than 21 days prior to the foreclosure sale. *See* 12 U.S.C. 3708; *see also*, 24 CFR 27.15(a). Notice must be served by mail, publication, or posting on the secured property. *Id.* Notices under this section are deemed duly given upon mailing, regardless of whether the addressee actually receives the letter. *Id.* HUD's regulations do allow, under limited circumstances, the electronic transmission of information for some mortgage defaults and foreclosures. The lenders or mortgagees that hold multifamily housing mortgages insured or coinsured by HUD are allowed to fulfill reporting requirements for mortgage defaults and delinquencies by electronically submitting the information to HUD. 24 CFR 200.120.

HUD's Office of the Assistant Secretary for Housing also oversees the requirements for and the manner of eviction notices given to tenants of subsidized housing and HUD-owned projects. The regulations provide that a landlord's determination to terminate a tenancy must be in writing and served

on the tenant by first class mail or hand-delivery to an adult person at the residence no earlier than 30 days prior to the termination of the tenancy. *See* HUD Handbook 4350.3, Chapter 4, No. 4-21; 24 CFR 247.4.

HUD provides rental assistance for low income families under the public housing program, various Section 8 project-based assistance programs, and the section 8 tenant-based voucher program. Federal statutes and regulations set the tenancy requirements, however, the tenancies are governed by State law and procedure in all other respects. In all of the programs, tenants may be evicted for violations of the lease or other good cause. Under HUD's regulations, the landlord, owner, or public housing agency must give written notice of the grounds for eviction, and this notice may be combined with a notice to vacate issued under State law. *See* 24 CFR 880.607(c), 882.511(d), 966.4(l)(3), and 982.310(e).

The Single Family Mortgage Foreclosure Act of 1994, Pub. L. 103-227, requires several written notices and communications for single family mortgages during the pre-foreclosure, foreclosure sale, and mortgage collection processes. The regulations require that the mortgagees or lenders give the mortgagors in default on loans insured by HUD a written notice of delinquency. *See* 24 CFR 203.602. In addition, the regulations require that the foreclosure commissioner must serve notice of default and foreclosure sale by certified or registered mail, postage prepaid and return receipt requested on the current owner, occupants, mortgagors and lienholders not less than 21 days before the foreclosure sale. *See* 12 U.S.C. 3758; *see also* 24 CFR 27.103 and 27.105. For notices of default and acceleration, the lender or mortgagee must provide the borrower with written notice, by certified mail, that the loan is in default. 24 CFR 201.50. The lender, or mortgagee, is required to notify the mortgagor, or borrower, and each head of household who is actually occupying a unit of the property of its potential acquisition by HUD at least 60 days before the date on which the mortgagee reasonably expects to acquire title to the property. *See* 24 CFR 203.675.

We note that the states also have jurisdiction over the residential default, foreclosure, and processes as applied to the real estate located within state borders. In addition, the laws regarding default and eviction notices for most rental property are within the primary jurisdiction of the states. For example, Colorado provides that with respect to a default on any consumer loan secured

by a deed of trust or mortgage, recorded after January 1, 2002, which encumbers a dwelling, the owner of the evidence of indebtedness shall, not more than 45 days after initial default and at least 20 days prior to the recording of a notice of election and demand, or the initiation of a suit for foreclosure, provide written notice of such default and the opportunity to cure, to all persons liable on the debt at the address of the residence of each such person. Colorado Revised Statutes § 38-38-102.5(c)(2). Similarly, Georgia's rules regarding foreclosure provide that notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the secured creditor no later than 15 days before the date of the proposed foreclosure. Georgia Code Ann. § 44-14-162.2(a). The Georgia rules require that the notice shall be in writing and shall be sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the property address or to such other address as the debtor may designate by written notice to the secured creditor, and shall be deemed given on the official postmark day or day on which it is received for delivery by a commercial delivery firm. *Id.*

Just as the state requirements vary regarding the manner of notice provided to home owners and renters upon default, the state electronic transactions laws are also different. Approximately 39 states have enacted their own electronic transactions laws and ESIGN no longer applies to these states. Several of the states that have enacted electronic transactions laws have retained an exception for housing foreclosure and rental default notices. *See e.g.*, Ala. Code § 8-1A-3(c)(2)(b)(2001); 5 Ill.Comp.Stat. 175/5-106 (2001). The ESIGN Act continues to apply to the remaining states and, therefore, housing foreclosure and rental default notices that are transmitted or executed in an electronic format or using an electronic signature are *not* legally valid in those states without UETA laws. The various state and federal laws that require written notice control the manner in which housing consumers receive notice of the delinquencies that threatened ownership and tenancy rights. The removal of the foreclosure and rental default notices exception to the ESIGN Act would give mortgagees and landlords an additional method of communicating this information to consumers via any electronic format available to them, including but not limited to facsimile, electronic mail, and digital or wireless devices. Information

¹ This notice is not an interpretive statement of the applicability of ESIGN's provisions to HUD's multifamily and single family housing regulations, but is designed to provide information regarding the type of residential default, foreclosure, and eviction notices that may be issued to consumers pursuant to HUD's rules and regulations. As noted above regarding the Federal Reserve Board and the Farm Credit Administration's regulations, federal agencies may issue regulations and rulings to interpret the application of ESIGN's provisions on the specific statutes under their purview.

regarding the potential impact on state and federal laws, and on consumers of the removal of the foreclosure and rental default notices exception from the ESIGN Act would assist in this evaluation.

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 is intended to examine the current status of federal and state regulations that govern, and industry practices among companies that issue notices for residential default, foreclosure, and eviction 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 residential default, foreclosure, or eviction 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 residential default, foreclosure, and eviction notices.

Invitation to Comment

NTIA requests that all interested parties submit written comments on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comments on ESIGN generally that assists in evaluating the narrower issues associated with residential default, foreclosure, and eviction notices as governed by the substantive law in these areas. 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. Provide information regarding federal, state, and municipal regulations, laws, and ordinances that require written notice to consumers for residential defaults, foreclosures, and evictions.

2. Provide state Uniform Electronic Transactions Act (UETA) provisions that require written notice to consumers by excluding housing foreclosure, repossession, and default notices from the provisions of the statute.

3. Describe state or federal regulations, other than UETA or ESIGN laws, that require residential default, foreclosure, and eviction notices to be provided in written form or to be excluded from the operation of ESIGN or the applicable state UETA.

4. Provide information regarding federal, state, and municipal laws or regulations that allow notice to consumers regarding residential defaults, foreclosures, and evictions in an electronic format.

5. Discuss the impact that the removal of the residential default, foreclosure, and eviction notices exception from ESIGN, to allow mortgage or rental companies to send notices by electronic methods mail, may have on consumers and on federal or state consumer protection policies.

6. If it is necessary to retain the residential default, foreclosure, or eviction notices exception to the ESIGN requirements, discuss the interest that this exception continues to serve or protect.

7. Discuss the methods that are available for consumer protection, if the residential default, foreclosure, and eviction notices exception to ESIGN is eliminated from the statute. Describe the methods that may be used to verify:

- a. the notice was sent and/or received;
- b. the security of the transmission; and
- c. the recipient has the capability of receiving and reading the notice.

8. What effect, if any, would the elimination of the residential default, foreclosure, and eviction notices exception to ESIGN have on the mission of federal and state agencies and organizations that have regulatory authority over the process and service of notice of default, eviction and foreclosure?

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

Dated: November 12, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02-29025 Filed 11-14-02; 8:45 am]

BILLING CODE 3510-60-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Military Intelligence College Board of Visitors Closed Meeting

AGENCY: Joint Military Intelligence College, Defense Intelligence Agency, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, January 7, 2003, 0800 to 1700; and Wednesday, January 8, 2003, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, Defense Intelligence Agency Joint Military Intelligence College, Washington, DC 20340-5100, telephone: 202-231-3344.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the United States Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, Defense Intelligence Agency, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-28960 Filed 11-14-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.