

*Form Number(s)*: None.

*OMB Approval Number*: 0648-0179.

*Type of Request*: Regular submission.

*Burden Hours*: 102.

*Number of Respondents*: 51.

*Average Hours Per Response*: 2.

*Needs and Uses*: The Marine Mammal Protection Act (MMPA) mandates the protection and conservation of marine mammals and makes the taking, killing or serious injury of marine mammals, except under permit or exemption, a violation of the Act. An exemption is provided for Alaskan natives to take marine mammals if the taking is for subsistence or for creating and selling authentic native articles of handicraft and clothing. Possession of marine mammals and marine mammal parts by other than Alaskan natives is therefore prohibited. As native handicrafts are allowed by the MMPA to enter interstate commerce, an exemption is also needed to allow non-natives to handle the skins or other marine mammal product, whether to tan the pinniped hide or to act as an agent for the native to sell his handicraft products. Persons register for an exemption, and registered parties must file annual reports. The information is needed by NOAA to manage the program and provide for effective law enforcement.

*Affected Public*: Business or other for-profit organizations.

*Frequency*: On occasion; annually.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-26016 Filed 10-10-02; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

[I.D. 100802A]

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Report of Whaling Operations.

*Form Number(s)*: None.

*OMB Approval Number*: 0648-0311.

*Type of Request*: Regular submission.

*Burden Hours*: 48.

*Number of Respondents*: 52.

*Average Hours Per Response*: 30 minutes for a Captain to report and to mark gear; 5 minutes for a Native American whaling commission to enter a Captain's report into its report; and 5 minutes for a commission to fax a report to NOAA.

*Needs and Uses*: Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). Captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA. The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

*Affected Public*: Individuals or households, not-for-profit institutions.

*Frequency*:

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington,

DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-26017 Filed 10-10-02; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**Docket No. 010222048-2229-04**

### The Wills, Codicils, and Testamentary Trusts 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 benefits cancellations; product recall notices; and documents related to hazardous materials and dangerous substances. 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 for purposes of this evaluation, specifically

on the wills, codicils, and testamentary trusts exception to the ESIGN Act. See 15 U.S.C. § 7003(a)(1). 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 December 10, 2002.

**ADDRESSES:** Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, 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\\_wills@ntia.doc.gov](mailto:esignstudy_wills@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, 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: court documents and records, probate and domestic law matters; documents executed under certain provisions of state commercial law; consumer law covering utility services, real property foreclosures and defaults, and insurance benefit notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for wills, codicils and testamentary trusts is found in section 103(a) 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—

\* \* \* \*

(1) a State statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

\* \* \* \*

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.

**Wills, Codicils, and Testamentary Trusts**

Wills, codicils, and testamentary trusts are documents used by an owner (donor or testator) of real or personal property to transfer that property from the testator to other persons or entities (beneficiaries) after the death of the testator. State legislatures and state courts have primary jurisdiction for establishing procedures and rules that govern wills, codicils, and testamentary trusts when there is some relationship between the state, and either the property or the testator. The ESIGN exception for wills, codicils, and testamentary trusts means that when either of these documents is executed electronically or using an electronic

signature, the document is *not* required to be accorded the same legal validity or effect as a paper document. Section 102(a)(1) of ESIGN provides that the states may adopt electronic transactions statutes, however, that give the state exclusive jurisdiction with regard to electronic transactions that occur within the state. See 15 U.S.C. § 7002(a). This section allows states to modify, limit, or supersede the application of ESIGN to electronic transactions that occur within the state law by adopting either the Uniform Electronic Transactions Act (known as UETA) as approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL) or a statute that specifies an alternative procedure for the use and acceptance of electronic signatures, which complies with the provisions of ESIGN. See *id.*

States have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that exclude state-exclusive areas from the application of ESIGN or the state's electronic transactions law. Approximately thirty-nine states have adopted the version of UETA recommended by NCCUSL or their own version of UETA. See National Conference of Commissioners on Uniform State Laws at <http://www.nccusl.org/nccusl/LegislativeByState.pdf>. The legislative history of UETA enunciated by the NCCUSL provides a rationale for excluding certain types of documents from the scope of the law. *Id.* According to the legislative notes of the Drafting Committee for UETA, some exclusions were warranted while other areas should not be omitted from the state UETA laws. See *id.* at 13-16. The comments on the UETA final draft states that the exclusion of wills, codicils, and testamentary trusts is largely salutary given the unilateral context in which the records are created and the unlikely use of such records in "transactions" as defined by UETA. *Id.* at 14, n. 4. The notes provide that an electronic transaction is an interaction between two or more persons, while a document such as a will, trust, or health care power of attorney evidences a unilateral act that is not covered by the Act. *Id.* at 13.

The majority of the states that have passed UETA laws have expressly excluded wills, codicils, testamentary trusts from the operation of the state electronic transactions laws. *Id.* The absence of an exception in a state's UETA law for wills, codicils, and testamentary trusts, however, does not automatically make these documents subject to that law. If the underlying substantive law requires a paper writing

<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 a separate review of the Act. NTIA is also evaluating the court documents exception to ESIGN. See 67 *Fed.Reg.* 56277 (Sept. 3, 2002).

or prohibits the use of an electronic signature for the formation of these documents, electronic documents for wills, codicils, and testamentary trusts would not be legally valid. For example, the Maryland Code provides that every will shall be in writing, signed by the testator, attested to and signed by two or more credible witnesses in the presence of the testator. Md. Code Ann., Estates and Trusts, § 4-102. Although the law does not expressly preclude the use of electronic signatures or documents, the Maryland Rules do not consider a photocopy or facsimile copy of a will or codicil as an original document for purposes of filing with the Register of Wills. See Md. Code Ann., Estates and Trusts, Rule 6-108 (b). Alternatively, another state's substantive law governing wills and probate matters may allow documents to be formed in an electronic format or established using an electronic signature.

The legislative history of the ESIGN Act does not indicate the intent of the drafters in making an exception for wills, codicils, and testamentary trusts. However, the personal nature of the information disclosed in these documents and the relative privacy interests of the donor and beneficiaries may raise issues that do not arise in legal proceedings involving commercial or other civil matters. Information regarding changes in state law to allow electronic filings or access to documents pertaining to testamentary documents would assist in the evaluation of whether consumers would be adequately protected if the wills, codicils, and testamentary trusts exception to ESIGN is eliminated from the Act.

#### 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 wills, codicils, and testamentary trusts exception is intended to evaluate

the current status of the law and procedure 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 laws relating to these documents for the purpose of recommending that Congress draft legislation or propose changes to those laws 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 wills, codicils, or testamentary trusts.

#### 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 from all parties that may be affected by the removal of the wills, codicils, and testamentary trusts exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and estate law practitioners. The comments submitted will assist NTIA in evaluating the potential impact of the removal of the wills, codicils, and testamentary trusts exception from ESIGN on state estate law, 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. Describe state laws, if any, that allow for the creation, access, filing or probate wills, codicils, or testamentary trusts are by electronic means, including video or audio versions.

2. Discuss how statutes that require written documents for trusts, wills, and testamentary trusts may be affected if the exception is eliminated from the ESIGN Act.

3. State how consumers would be affected if the exception is eliminated from the ESIGN Act. Describe the laws or methods that would be available for consumer protection if the exception for wills, codicils, and testamentary trusts is eliminated from the Act.

4. Describe any state or federal law, other than ESIGN or UETA, that requires wills, codicils, and testamentary trusts to be excluded from the operation of ESIGN or the state uniform electronic transactions law.

5. Describe uniform laws that allow wills, codicils, or testamentary trusts to be created, authenticated, filed, or admitted to probate in an electronic format or using an electronic signature.

6. Discuss any unique issues surrounding the execution of wills, codicils, and testamentary trusts that may be considered in determining whether these documents may be processed in an electronic format. This list is not exhaustive and any other issue relevant to the execution of wills, codicils, or testamentary trusts may be discussed.

a. privacy and security of information contained in the will;

b. authentication of signatures for testator and witnesses;

c. retention and storage of electronic documents;

d. software compatibility and development; and

e. the impact of advances in technology during the lifetime of the donor on the probate process.

7. Discuss any other documents related to the probate, filing, or execution of wills, codicils and testamentary trusts that courts accept in electronic form (including but not limited to, letters of administration, notice of appointment of personal representative, notice of publication, personal notice to heirs).

8. Discuss whether any uniform laws governing wills, codicils, or testamentary trusts have been adopted and the impact on these laws if the ESIGN exception for these documents is eliminated (e.g., the Uniform Probate Code, the Uniform Intestacy, Wills, and Donative Transfers Act).

9. Provide a description of any instance in which wills, codicils, or testamentary trusts have been executed in an electronic format. Discuss whether there are plans to implement procedures for the on-line execution of such documents.

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

Dated: October 7, 2002.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 02-25942 Filed 10-10-02; 8:45 am]

**BILLING CODE 3510-60-S**