

Dated: February 6, 2001.

**Dennis Puccinelli,**

*Executive Secretary.*

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## FEDERAL TRADE COMMISSION

### DEPARTMENT OF COMMERCE

#### National Telecommunications and Information Administration

#### Request for Comment and Notice of Public Workshop: Electronic Signatures in Global and National Commerce Act

**AGENCIES:** Federal Trade Commission, and the National Telecommunications and Information Administration, Department of Commerce.

**ACTION:** Notice requesting public comment and academic papers and announcing public workshop.

**SUMMARY:** Section 105(b) of the Electronic Signatures in Global and National Commerce Act ("ESIGN" or "the Act"), Public Law 106-229, 114 Stat. 464 (2000), requires the Federal Trade Commission ("FTC" or "the Commission") and the Secretary of Commerce to study and report to Congress on the benefits and burdens of requiring consumer consent to receive information electronically pursuant to § 101(c)(1)(C)(ii). In connection with preparing this report, the FTC and the National Telecommunications and Information Administration ("NTIA") seek public comment and academic papers and plan to hold a public workshop to inform this study.

**DATES:** Written comments and papers are requested to be submitted on or before March 16, 2001. The workshop will be held on April 3, 2001, from 8:30 a.m. until 5:00 p.m., at the Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**ADDRESSES:** Six hard copies of each written comment or paper should be submitted to: Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Ave., NW., Washington, DC 20580. An additional copy of written comments should be sent to: Sallianne Fortunato, National Telecommunications and Information Administration, Room 4716, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Alternatively, comments and papers may be submitted to the following email addresses: "*esign-study@ftc.gov*" and "*esign-study@ntia.doc.gov*." The content of any comments or papers submitted by email

should be organized in sequentially numbered paragraphs. All submissions should be captioned "ESIGN Study-Comment P004102."

To enable prompt review and accessibility to the public, written comments and papers also should be submitted to the FTC, if possible, in electronic form, on a 3½ inch computer disk, with a label stating the name of the person or entity submitting the comment and the name and version of the word processing program used to create the document. Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format. Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

Written comments and papers will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this notice and, to the extent possible, all comments or papers received in electronic form in response to this notice available to the public through the Internet at the following addresses: *http://www.ftc.gov* and *http://www.ntia.doc.gov*.

**FOR FURTHER INFORMATION:** For questions about this request for comment and academic papers and notice of public workshop, contact: April Major, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202-326-2972; Marianne Schwanke, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202-326-3165; or Sallianne Fortunato, Telecom Policy Analyst, Office of Policy Analysis and Development, National Telecommunications and Information Administration (NTIA), Room 4716, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202-482-1880.

#### SUPPLEMENTARY INFORMATION:

#### I. Background: Electronic Signatures in Global and National Commerce Act

On June 30, 2000, Congress enacted ESIGN to facilitate the use of electronic records and signatures in interstate or

foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Under the Act, businesses that are required to provide or make available information to consumers in writing may provide consumers with that information using electronic records only if the consumer affirmatively consents in a manner that reasonably demonstrates the consumer's ability to access the electronic record. The Act requires the Secretary of Commerce and the Federal Trade Commission to study the burdens and benefits of this specific consent requirement on consumers and electronic commerce and submit a report to Congress by June 30, 2001.

#### II. Statutory Language Requiring a Report to Congress

The statutory language requiring the Secretary of Commerce and the Federal Trade Commission to submit a report to Congress regarding the benefits and burdens of requiring consumer consent to electronic transactions is found in § 105 (b) of ESIGN and is set forth below.

#### Sec. 105. Studies

\* \* \* \* \*

(b) *Study of Electronic Consent.*—Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

The language of § 105(b) specifically limits its scope to § 101(c)(1)(C)(ii) which reads:

#### Sec. 101(c) Consumer Disclosures

(1) *Consent to Electronic Records.*—Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if:

\* \* \* \* \*

(C) the consumer—

\* \* \* \* \*

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.

\* \* \* \* \*

In summary, if a statute, regulation, or other rule of law requires information relating to a transaction to be provided or made available to a consumer in writing, § 101(c) allows this information to be provided or made available electronically only if certain consumer protection conditions are met. Section 101(c)(1)(C)(ii) is one such condition and provides that the consumer must consent electronically or confirm his or her consent electronically, in a manner that reasonably demonstrates the consumer's ability to access the information.

Under § 105(b), the Federal Trade Commission and the Secretary of Commerce are tasked with submitting to Congress a report that evaluates five aspects of § 101(c)(1)(C)(ii). First, we must assess the benefits to consumers of the procedures required by § 101(c)(1)(C)(ii). Second, we are to identify any burdens imposed by these procedures. Third, we must balance the benefits and burdens and discuss whether the benefits outweigh the burdens. Fourth, we are to consider whether the absence of the consent procedure would increase consumer fraud. Finally, we are to suggest improvements or changes to the statutory language that we deem appropriate.

### III. Invitation To Comment

The FTC and NTIA request that interested parties, including industry members, electronic commerce businesses, consumer representatives, law enforcement, regulatory agencies, and academics, submit written comments on any issue of fact, law, or policy that may inform the study of the procedure required by § 101(c)(1)(C)(ii). We invite comment on E-SIGN generally to inform our examination of the narrower issues associated with the consumer consent procedure found in § 101(c)(1)(C)(ii). Please provide copies of any studies, surveys, research, or other empirical data referenced in responses. The questions set forth below are intended only as examples of the issues relevant to our examination. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

### General Issues

1. How does the requirement of section 101(c)(1)(C)(ii) of the E-SIGN Act, that businesses allow consumers an opportunity to provide consumer consent or confirmation of consent electronically prior to providing consumers electronic versions of information, affect electronic commerce? How will electronic commerce be affected in the future by this requirement?

2. What statutory changes, if any, should be made to the E-SIGN Act to assist businesses and consumers in domestic and/or international business markets in implementing and adapting to the consumer consent and consent confirmation provisions under section 101(c)(1)(C)(ii) of the Act?

3. What, if any, are the benefits and burdens to consumers and electronic commerce resulting from the affirmative consent provisions in the statute? Do any such benefits outweigh any burdens?

4. What, if any, improvements or changes should Congress make to the statutory language of section 101(c)(1)(C)(ii)?

5. Are there any additional issues that should be considered during this study?

### Business Issues

6. If your business provides information electronically to consumers that is required by law to be in writing, do you request that consumers provide electronic consent or confirm their consent before the electronic information is transmitted?

7. Describe in detail the method used to obtain electronic consumer consent.

8. If you allow consumers to provide electronic consent to receive legally-required information electronically, please explain whether the electronic consent practice of your business is a result of section 101(c)(1)(C)(ii) of the E-SIGN Act. Explain any other legal basis for this practice.

9. For what types of transactions do you seek electronic consumer consent or confirmation prior to sending information electronically that is required by law to be sent to consumers in writing?

10. Provide an estimate of the percentage of business transactions you conduct per month that requires the production of legally-required information to consumers in written form.

11. Does your business incur additional costs directly related to providing customers with the option of electronically consenting to or confirming the consent to receive

information electronically, whether or not you provide the information pursuant to section 101(c)(1)(C)(ii)?

12. Are there burdens associated with providing information electronically to consumers that is required by law to be provided to them in written form? Are there burdens associated with allowing consumers to provide electronic consent or confirmation of consent prior to receiving the electronic information from your business pursuant to section 101(c)(1)(C)(ii)?

13. Explain any economies or benefits to your business resulting from the distribution of information electronically to consumers (e.g. storage, administrative processing), whether or not the information is provided pursuant to section 101(c)(1)(C)(ii). Are there economies or benefits related to allowing customers to provide electronic consent or confirmation of consent prior to receiving electronic information as required by E-SIGN?

14. Do the benefits of providing electronic versions of information that is legally required to be provided in writing outweigh the burdens of allowing consumers an opportunity to provide electronic consent or confirmation of consent in order to receive the information?

15. Describe any feedback you have received from consumers or employees regarding the electronic consumer consent or confirmation procedures your business employs, also specifying whether the procedures are those required by E-SIGN or were in place prior to E-SIGN.

16. Describe the methods your business uses to verify:

A. That a consumer's consent or confirmation demonstrates the consumer's ability to access the requested information; and

B. That the electronic consents and confirmations are provided by the customers entitled to and intended to receive the electronic information.

17. What method, if any, in addition to the consent procedure in section 101(c)(1)(C)(ii) of the E-SIGN Act could be employed to prevent consumer fraud? Would consumer fraud increase in the absence of the consent procedure of section 101(c)(1)(C)(ii)?

18. With regard to international business transactions, explain whether your company requests electronic consumer consent or consent confirmation prior to sending information electronically that is required to be provided to the consumer in written form. If so, explain if the method has had positive or negative consequences in international commerce.

19. If your business does not provide consumers the opportunity to receive information electronically by sending an electronic consent or consent confirmation, explain why your business does not provide this opportunity. Discuss any implementation problems.

#### Consumer Issues

20. As a consumer, how often do you conduct electronic transactions in which you request information electronically or agree to receive legally-required information electronically?

21. Have you obtained information electronically that was required by law to be provided to you in writing? If so, did the company or business provide an opportunity for you to provide electronic consent or confirm your consent before sending an electronic version of the information to you?

22. For an electronic transaction that provided an opportunity for you to submit electronic consent or consent confirmation before you received the information electronically, describe the effect of the process on you as a consumer. Were you made aware of any legal requirements regarding your options to receive the information in a different manner, such as on paper? If so, were you made aware of the legal requirements before you consented or confirmed your consent to receive the information in an electronic format?

23. As a consumer, what are the benefits, if any, of receiving electronic versions of information required by law to be provided in written form?

24. Explain whether the benefits of receiving electronic versions of information outweigh any burdens associated with providing electronic consent or consent confirmation prior to receiving the information.

#### Technology Issues

25. Are software programs that enable consumers to provide electronic consent or consent confirmation to companies readily available? Describe.

26. What technology or methods are available that would enable companies to verify that electronic consent or consent confirmation is transmitted by the specific persons entitled to receive electronic information?

27. Please explain whether additional technology is necessary to accomplish either the electronic consumer consent or company verification methods discussed in Questions 25 and 26, above.

28. Does the development of newer technologies impact the implementation of the consumer consent and consent confirmation provisions of section

101(c)(1)(C)(ii) of the E-SIGN Act? If so, how.

#### IV. Public Workshop

Staff of the FTC and NTIA will conduct a public workshop to discuss issues raised by the comments received in response to this notice. Notification of interest in participating in the public workshop should be submitted in writing, separately from comments, to April Major, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or to Sallianne Fortunato, Telecom Policy Analyst, Office of Policy Analysis and Development, National Telecommunications and Information Administration (NTIA), Room 4716, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We will select a limited number of parties from among those who submit comments to represent the significant interests affected by the issues raised in the notice. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the workshop will be open to the general public. The discussion will be transcribed and the transcription placed on the public record. The FTC and NTIA will consider the views and suggestions made during the workshop, in conjunction with the written and email comments, in formulating its report to Congress.

Parties will be selected on the basis of the following criteria:

1. The party submits a comment during the comment period.
2. During the comment period the party notifies FTC or NTIA of its interest in participating in the workshop.
3. The party's participation would promote a balance of interests being represented at the workshop.
4. The party's participation would promote the consideration and discussion of a variety of issues raised in this notice.
5. The party has expertise in activities affected by the issues raised in this notice.
6. The number of parties selected will not be so large as to inhibit effective discussion among them.
7. The party agrees to review the comments of all of the other workshop participants prior to the workshop.

The workshop will be held on April 3, 2001, from 8:30 a.m. until 5:00 p.m., at the FTC, 600 Pennsylvania Ave, NW., Washington, DC. Prior to that date, parties selected will be provided with copies of the comments from all other

participants selected to participate in the workshop.

#### Public Participation

The workshop will be open to the public and is physically accessible to people with disabilities. To facilitate entry to the Federal Trade Commission building, please have a photo identification available and/or a U.S. Government building pass, if applicable. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Sallianne Fortunato at least three (3) days prior to the meeting via the contact information provided above.

**Donald S. Clark,**

*Secretary, Federal Trade Commission.*

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

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**BILLING CODE 6750-01-U**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Tuesday, March 20, 2001, 8:00 a.m.-6:00 p.m.; Wednesday, March 21, 2001, 8:00 a.m.-5:00 p.m.

Public participation sessions will be held on: Tuesday, March 20, 2001, 12:15-12:30 p.m., 5:45-6:00 p.m.; Wednesday, March 21, 2001, 11:45-12:00 noon, 4:05-4:20 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

**ADDRESSES:** Doubletree Hotel Downtown, 1800 Fairfax, Boise, Idaho 83702, (208) 344-7691.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy Lowe, INEEL Cab Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522-1662 or visit the Board's Internet home page at <http://www.ida.net/users/cab>.

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Board:* The purpose of the Board is to make recommendations