

comparisons are required and, if required, how they are conducted.

d. *Comment:* Several commenters viewed the FAIR Act as prohibiting an agency from converting commercial work from contract to in-house performance under any condition.

*Response:* The FAIR Act addresses only inventories of commercial activities that are performed by Federal employees. It does not address commercial activities that are performed through contract and, therefore, does not address the conversion of contract work to in-house performance.

e. *Comment:* Several commenters stated their view that the FAIR Act requires substantial changes to the Circular A-76 costing rules so that they incorporate "all costs," and in particular the costs listed in the parenthetical in Section 2(e) (i.e., the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs).

*Response:* Existing guidance already requires agencies, in conducting cost comparisons, to consider all the fair and reasonable costs addressed in Section 2(e) of the FAIR Act. (See 64 FR 10032). The Supplemental Handbook requires consideration of all costs to the taxpayer that could be expected to change as a result of a conversion to or from performance by in-house or contract employees.

f. *Comment:* Several commenters suggested that public-private competitions must be based on "best-value" principles. They were concerned that OMB's proposed guidance relies on "cost-only competitions," thus ignoring the potential use of the best-value approach in the cost comparison process.

*Response:* Existing guidance is not limited to "cost-only competitions." It also allows for best value tradeoffs between cost and other factors. The competitive-source selection process outlined at Part 1, Chapter 3, paragraph H of the Supplemental Handbook permits use of the best value source selection approach in the context of public-private competition.

#### 4. The FAIR Act "Challenge" Process

a. *Comment:* Section 3 of the FAIR Act provides for an administrative "challenge" process under which "interested parties" may challenge the agency's omission, or inclusion, of an activity on its FAIR Act inventory. Under this process, an "initial decision" is rendered by an agency official designated by the agency head. The interested party may then file an appeal of an adverse decision to the agency head. Several commenters suggested that, in the case of an appeal, the agency should publish its initial decision and the appeal in the **Federal Register** and request comments of other interested parties so that they may be considered by the agency head. It was further suggested that the final appeal should be reviewed by OMB, the Small Business Administration, the General Accounting Office, and relevant congressional appropriations and authorization committee staff.

*Response:* The requested procedures would go far beyond the FAIR Act. In addition,

since Section 3 provides the agency head with 10 days to decide an appeal, there is not sufficient time for the agency to solicit, receive, and consider public comments.

#### 5. Implementing the FAIR Act Via Revisions to A-76 & the Supplemental Handbook

*Comment:* A number of commenters suggested that OMB use an alternative vehicle to implement the FAIR Act guidance, such as issuing regulations or a separate circular, rather than making changes to the existing guidance on the performance of commercial activities contained in OMB Circular A-76 and its Supplemental Handbook.

*Response:* Circulars are a well-established vehicle for directing agencies on management of their activities. Circular A-76 already establishes the broad principles and the Revised Supplemental Handbook provides the specific definitions and direction on management of commercial activities, including the inventory and other activities that are codified by the FAIR Act. For this reason, it makes much more sense to revise the existing guidance than to develop a new circular. More importantly, however, OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time frame available and without confusion or wasted effort on the part of the agencies. Without revising the Handbook to conform to the FAIR Act, repetitive and competing guidance would exist in a number of areas. For example, the Handbook already requires agencies to develop an annual inventory of their commercial activities and specifies what information (data elements) is to be included. It also contains guidance for when and how agencies are to conduct cost comparisons and what costs should be included. These are all specific areas addressed by the FAIR Act. Ironically, the confusion that could result from issuing a new circular might slow agencies down rather than speeding them up.

Revising the Circular and Supplemental Handbook so that they conform to the FAIR Act is the best way to provide agencies with clear and prompt guidance on how to implement the Act.

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#### RAILROAD RETIREMENT BOARD

##### Proposed Data Collection Available for Public Comment and Recommendations

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including

whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Statement of Authority to Act for Employee; OMB 3220-0034.

Under Section 5(a) of the Railroad Unemployment Insurance Act (RUIA), claims for benefits are to be made in accordance with such regulations as the Railroad Retirement Board (RRB) shall prescribe. The provisions for claiming sickness benefits are provided by Section 2 of the RUIA are prescribed in 20 CFR 335.2. Included in these provisions is the RRB's acceptance of forms executed by someone else on behalf of an employee if the RRB is satisfied that the employee is sick or injured to the extent of being unable to sign forms.

The RRB utilizes Form SI-10, Statement Authority to Act for Employee, to provide the means for an individual apply for authority to act on behalf of an incapacitated employee and also to obtain the information necessary to determine that the delegation should be made. Part I of the form is completed by the applicant for the authority and Part II is completed by the employee's doctor. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to Form SI-10.

The estimated annual respondent burden is as follows:

*Form:* SI-10.

*Estimate of Annual Responses:* 400.

*Estimated Completion Time:* 6 minutes.

*Total Burden House:* 40.

#### ADDITIONAL INFORMATION OR COMMENTS:

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**  
Clearance Officer.

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