

to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.9 Retainer agreements.

(a) When a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

Appendix A to Part 1611

LEGAL SERVICES CORPORATION 2005 POVERTY GUIDELINES *

Size of family unit	48 Contiguous States and the District of Columbia ⁱ	Alaska ⁱⁱ	Hawaii ⁱⁱⁱ
1	\$11,963	\$14,938	\$13,763
2	16,038	20,038	18,450
3	20,113	25,138	23,138
4	24,188	30,238	27,825
5	28,263	35,338	32,513
6	32,338	40,438	37,200
7	36,413	45,538	41,888
8	40,488	50,638	46,575

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

ⁱ For family units with more than eight members, add \$4,075 for each additional member in a family.

ⁱⁱ For family units with more than eight members, add \$5,100 for each additional member in a family.

ⁱⁱⁱ For family units with more than eight members, add \$4,688 for each additional member in a family.

Victor M. Fortuno,

Vice President & General Counsel.

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BILLING CODE 7050-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 551

[Docket No. NHTSA-2005-21972]

RIN 2127-AJ69

Service of Process on Foreign Manufacturers and Importers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends NHTSA's regulation on service of process on foreign manufacturers and importers to clarify existing regulatory requirements by rephrasing the regulation in a plain language, question and answer format and inserting an appendix containing a suggested designation form for use by foreign manufacturers and their agents. It also will enhance communications between foreign manufacturers and the agency by spelling out existing requirements for providing notice to NHTSA of changes in company name, address and product names, and changing the office to which foreign manufacturers must submit designation and related documents to reflect organizational changes occurring since the regulation was adopted.

EFFECTIVE DATE: This final rule becomes effective October 7, 2005.

Petitions: Any petitions for reconsideration of today's final rule must be received by NHTSA not later than September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Sade, Office of the Chief Counsel, at (202) 366-1834, facsimile (202) 366-3820. You may send mail to Ms. Sade at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA published a rule on December 25, 1968 that established a procedure for foreign manufacturers, assemblers and importers of motor vehicles and motor vehicle equipment (hereinafter referred

to as "foreign manufacturers") to designate an agent for service of process in the United States. Over time, NHTSA has found that many foreign manufacturers have submitted incomplete designation documents containing common errors and omissions. Often NHTSA receives designation documents not properly dated or signed, or otherwise lacking information necessary to effect a valid designation or replacement of agent under the regulation. NHTSA has found also that foreign manufacturers often fail to provide adequate notice to NHTSA of changes in company name, address and product names or trademarks.

This document clarifies existing regulatory requirements by rephrasing 49 CFR part 551, subpart D in a plain language, question and answer format and inserting an appendix containing a suggested designation form for use by foreign manufacturers and their agents. It also will enhance communications between foreign manufacturers and the agency by spelling out requirements for providing notice to NHTSA of changes in company name, address and product names, marks, or other designations of origin. Finally, it changes the NHTSA office to which foreign manufacturers must submit documents, as a result of organizational changes that have occurred in the agency since the regulation was adopted.

The purpose of the amendments is to make clearer the requirements of 49 CFR part 551, subpart D and improve communications between the agency and foreign manufacturers, thereby reducing the burdens associated with repeated filings to correct common errors. Since they are technical amendments only and make no substantive changes to the regulation, pursuant to 5 U.S.C. 553(b)(3)(B) prior notice and comment are not required.

Statutory Basis for the Final Rule

Section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. 30164) requires a foreign manufacturer offering a motor vehicle or motor vehicle equipment for importation into the United States to designate a permanent resident of the United States as its agent upon whom service of notices and processes may be made in administrative and judicial proceedings. This final rule revises a regulation that implements that statutory requirement at 49 CFR Part 551, Subpart D.

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements but to clarify existing regulatory requirements and update the address to which foreign manufacturers must submit designation and related documents. This rule will not impose any additional burden on any person. Rather, by making more clear existing regulatory requirements and directing agent submissions to a NHTSA office with enhanced document tracking capabilities, it will reduce the burden on foreign manufacturers, who now often submit incomplete agent documents several times before satisfying the regulation's requirements, and also frequently submit such documents to NHTSA offices not involved in administering this regulation. The agency believes that this impact is minimal and does not warrant the preparation of a regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the

quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely clarifies existing requirements of a final rule published on December 25, 1968 and changes the office to which foreign manufacturers submit agent documents. Foreign manufacturers and importers of motor vehicles and motor vehicle equipment, regardless of size, will not be significantly affected because this rule does not change the regulatory requirements with which they are required to comply. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information mandated by this regulation in OMB Clearance No. 2127-0040, which expires on May 31, 2006.

G. Civil Justice Reform

Pursuant to Executive Order 12988, "Civil Justice Reform," we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

This rule does not implicate any technical standards developed by voluntary consensus standards bodies.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to E.O. 13045 because it is not "economically significant" as defined under E.O. 12866, and does not concern an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

List of Subjects in 49 CFR Part 551

Designation of an agent for service, Form and content of designation, Method of service.

■ For the foregoing reasons, Subpart D of 49 CFR Part 551 is revised to read as follows:

PART 551—PROCEDURAL RULES

Subpart D—Service of Process on Foreign Manufacturers and Importers

Designation of an Agent for Service of Process

Sec.

- 551.45 What is the purpose of this subpart?
 551.46 Who must comply with this subpart and when?
 551.47 Who may serve as an agent for a foreign manufacturer?
 551.48 May an official of a foreign manufacturer serve as its agent?
 551.49 May a foreign manufacturer replace its agent?
 551.50 May more than one foreign manufacturer designate the same person as agent?

551.51 May an agent assign performance of its functions to another individual or entity?

551.52 How long will a foreign manufacturer's designation of agent remain in effect?

Form and Contents of Designation

- 551.53 What is the required format for a designation?
 551.54 What are the required contents for a designation?
 551.55 What information must a Designation by Foreign Manufacturer contain?
 551.56 What information must an Acceptance by Agent contain?
 551.57 Who may sign the Designation by Foreign Manufacturer?
 551.58 Who may sign the Acceptance by Agent?
 551.59 May the same individual sign both the Designation by Foreign Manufacturer and Acceptance by Agent?
 551.60 When must the Designation by Foreign Manufacturer be signed?
 551.61 When must the Acceptance by Agent be signed?
 551.62 Where should a foreign manufacturer mail the designation?
 551.63 May a foreign manufacturer submit a designation by email or facsimile?
 551.64 What if designation documents submitted by a foreign manufacturer do not comply with this subpart?
 551.65 What if a foreign manufacturer changes its name, address or product names or marks?

Method of Service of Process

- 551.66 What is the legal effect of service of process on an agent?
 551.67 Where and how may an agent be served?
 551.68 What if an agent cannot be served?

Authority: 49 U.S.C. 30164.

Subpart D—Service of Process on Foreign Manufacturers and Importers Designation of an Agent for Service of Process

§ 551.45 What is the purpose of this subpart?

The purpose of this subpart is to establish a procedure for foreign manufacturers, assemblers and importers of motor vehicles and motor vehicle equipment to designate an agent in the United States on whom service of administrative or judicial notices or processes may be made.

§ 551.46 Who must comply with this subpart and when?

(a) All foreign manufacturers, assemblers, and importers of motor vehicles or motor vehicle equipment (hereinafter referred to as "foreign manufacturers") must comply with this subpart before offering a motor vehicle or item of motor vehicle equipment for importation into the United States.

(b) Unless and until a foreign manufacturer appoints an agent in accordance with the requirements of this subpart, it may not import motor vehicles or motor vehicle equipment into the United States.

§ 551.47 Who may serve as an agent for a foreign manufacturer?

Only an individual, a domestic firm or a domestic corporation that is a permanent resident of the United States may serve as an agent under this subpart.

§ 551.48 May an official of a foreign manufacturer serve as its agent?

(a) Generally no; an agent must be a permanent resident of the United States. Typically officials of foreign manufacturers and importers are not United States residents.

(b) Occasionally an official of a foreign manufacturer also serves as an official of a domestic firm or corporation or is a permanent resident of the United States. In such cases, the official may serve as agent and sign the designation documents both on behalf of the foreign manufacturer and as agent. However, the foreign manufacturer must submit to NHTSA, along with the designation documents, a letter explaining that the individual signing the designation is both an official of the foreign manufacturer with authority to appoint an agent and a permanent resident of the United States or official of a domestic firm or corporation. If NHTSA does not receive an explanatory letter at the same time it receives the designation, the agency will deem the designation insufficient under this subpart and reject the submission.

§ 551.49 May a foreign manufacturer replace its agent?

(a) Yes, a foreign manufacturer may replace its agent in the same way it originally designated the agent. It must submit designation documents that meet the form and content requirements identified in the following section of this subpart. Until NHTSA receives designation documents meeting those requirements or a letter withdrawing an existing designation, the individual or domestic corporation originally designated will continue to serve as its agent for service of process.

(b) A foreign manufacturer that has withdrawn but not replaced its agent may not continue to import motor vehicles or motor vehicle equipment into the United States. In order to do so, it must appoint a new agent in accordance with the requirements of this subpart.

§ 551.50 May more than one foreign manufacturer designate the same person as agent?

Yes, any number of foreign manufacturers separately may designate the same person as agent.

§ 551.51 May an agent assign performance of its functions to another individual or entity?

No, an agent may not assign performance of its functions.

§ 551.52 How long will a foreign manufacturer's designation of agent remain in effect?

(a) A designation of agent remains in effect until replaced or withdrawn by a foreign manufacturer.

(b) A foreign manufacturer that has withdrawn but not replaced its agent may not continue to import motor vehicles or motor vehicle equipment into the United States. In order to do so, it must appoint a new agent in accordance with the requirements of this subpart.

Form and Contents of Designation**§ 551.53 What is the required format for a designation?**

(a) All documents submitted under this subpart must be:

- (1) Original documents;
- (2) Written in English; and
- (3) Signed in ink.

(b) For each signature, the document must indicate in English:

- (1) The date of signature; and
- (2) The name and title of the individual who signed the document.

(c) As long as documents submitted by a foreign manufacturer and its agent contain all required information (identified in §§ 551.54, 551.55 and 551.56 below), there is no mandatory format for the designation

(d) NHTSA encourages foreign manufacturers to use the suggested designation form set forth in the Appendix to this subpart. If completed and executed properly by both a foreign manufacturer and its agent, this form will comply fully with the requirements of §§ 551.53 through 551.65.

§ 551.54 What are the required contents for a designation?

The suggested designation form set forth in the Appendix, if completed and signed properly by a foreign manufacturer and its agent, contains all of the information necessary to create a valid designation under this subpart. Specifically, a valid designation must contain:

- (a) A Designation by Foreign Manufacturer; and
- (b) An Acceptance by Agent.

§ 551.55 What information must a Designation by Foreign Manufacturer contain?

A Designation by Foreign Manufacturer must contain:

(a) A statement that the designation is in valid form and binding on the foreign manufacturer under the laws, corporate bylaws or other requirements governing the making of designations at the place and time where it is made;

(b) The full legal name, principal place of business and mailing address of the foreign manufacturer;

(c) All trade or brand names, marks, logos or other designations of origin under which the foreign manufacturer's products will be sold; and

(d) The signature in ink, and the name and title of the official or employee signing the designation on behalf of the foreign manufacturer, who must have authority to appoint an agent.

§ 551.56 What information must an Acceptance by Agent contain?

An Acceptance by Agent must contain:

(a) The full legal name, mailing address and telephone number of the agent;

(b) A statement that the agent accepts the designation and understands that (s)he may not assign performance of the agent's functions under the designation to another person or entity, and that the designation shall remain in effect until it is withdrawn or replaced by the foreign manufacturer;

(c) The signature in ink of the agent, or an official or employee of the domestic firm or corporation serving as the agent, who must authority to sign for the firm or corporation; and

(d) The name and title of the individual signing the acceptance.

§ 551.57 Who may sign the Designation by Foreign Manufacturer?

Only an official or employee of the foreign manufacturer with authority to appoint an agent may sign the Designation by Foreign Manufacturer.

§ 551.58 Who may sign the Acceptance by Agent?

Only the agent, in the case of an individual, or an official or employee, in the case of a domestic firm or corporation serving as the agent with authority to sign for that firm of corporation, may sign the Acceptance of Agent.

§ 551.59 May the same individual sign both the Designation by Foreign Manufacturer and Acceptance by Agent?

(a) Generally no; the Designation by Manufacturer must be signed by an official or employee of the foreign

manufacturer and the Acceptance by Agent must be signed by the foreign manufacturer's agent, in the case of an individual, or by an official or employee, in the case of a domestic firm or corporation serving as its agent.

(b) Occasionally an official of a foreign manufacturer also serves as an official of a domestic firm or corporation or is a permanent resident of the United States. In such cases, the official may serve as agent and sign the designation documents both on behalf of the foreign manufacturer and as agent. However, the foreign manufacturer must submit to NHTSA, along with the designation documents, a letter explaining that the individual signing the designation is both an official of the foreign manufacturer with authority to appoint an agent and a permanent resident of the United States or official of a domestic firm or corporation. If NHTSA does not receive an explanatory letter at the same time it receives the designation, the agency will deem the designation insufficient under this subpart and reject the submission.

§ 551.60 When must the Designation by Foreign Manufacturer be signed?

(a) The foreign manufacturer must sign the Designation by Foreign Manufacturer on or before the date that the agent signs the Acceptance by Agent. It is not possible for an individual or entity to accept a designation as agent until on or after the date on which a foreign manufacturer makes the designation.

(b) If the Designation by Foreign Manufacturer is dated after the Acceptance by Agent, NHTSA will deem the designation insufficient under this subpart and reject the submission.

§ 551.61 When must the Acceptance by Agent be signed?

(a) The agent, in the case of an individual, or an employee or official, in the case of a domestic firm or corporation serving as agent, must sign the Acceptance by Agent on or after the date that the manufacturer signs the Designation by Foreign Manufacturer. It is not possible for an individual or entity to accept a designation as agent until on or after the date on which the foreign manufacturer makes the designation.

(b) If the Acceptance by Agent is dated before the Designation by Foreign Manufacturer, NHTSA will deem the designation insufficient under this subpart and reject the submission.

§ 551.62 Where should a foreign manufacturer mail the designation?

Foreign manufacturers must mail their designations to the Office of the

Executive Secretariat, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street, SW, Washington, DC 20590. No other NHTSA office is authorized to accept designation documents. To avoid delays, the agency suggests using express mail services.

§ 551.63 May a foreign manufacturer submit a designation by email or facsimile?

No, the statute requires designation documents submitted by foreign manufacturers to contain original ink signatures. NHTSA will reject designation documents submitted via email or facsimile, as they do not satisfy this requirement.

§ 551.64 What if designation documents submitted by a foreign manufacturer do not comply with this subpart?

Designations of agent are binding on the foreign manufacturer even when their form and contents do not comply

with this subpart, unless rejected by the agency.

§ 551.65 What if a foreign manufacturer changes its name, address or product names or marks?

(a) A foreign manufacturer must provide written notice to NHTSA of any changes in its name, address or marks, trade names, or other designations of origin appearing on its products.

(b) Foreign manufacturers should mail notices to the Office of the Executive Secretariat, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street, SW., Washington, DC 20590. To avoid delays, the agency suggests using express mail services.

Method of Service of Process

§ 551.66 What is the legal effect of service of process on an agent?

Service on an agent of administrative or judicial notices or process is deemed to be service on a manufacturer.

§ 551.67 Where and how may an agent be served?

An agent may be served at the agent's office or usual place of residence, by registered or certified mail addressed to the agent with return receipt requested, or by any other manner authorized by law.

§ 551.68 What if an agent cannot be served?

If an agent cannot be served because the agent cannot be located, has ceased to exist or does not receive correctly addressed mail, service may be made by posting the notice or process in the Office of the Secretary of Transportation.

BILLING CODE 4910-59-P

APPENDIX: SUGGESTED DESIGNATION OF AGENT FOR SERVICE OF PROCESS UNDER 49 U.S.C. § 30164 and 49 C.F.R. Part 551, Subpart D

PART A: DESIGNATION BY FOREIGN MANUFACTURER

Pursuant to 49 U.S.C. § 30164 and 49 C.F.R. Part 551, Subpart D, the Foreign Manufacturer listed below hereby designates the following Agent on whom service of all administrative and judicial processes and notices may be made. This designation is for service of process only and for no other purpose. It shall remain in effect until it is withdrawn or another Agent is designated in accordance with the requirements of 49 U.S.C. § 30164 and 49 C.F.R. Part 551, Subpart D.

The Manufacturer identified below hereby certifies:

- 1. This designation is in valid form and binding on the Manufacturer under the laws, corporate bylaws or other requirements governing the making of designations at the place and time where it is made.
2. The full legal name, principal place of business and mailing address of the Manufacturer are:
3. The Manufacturer's products will be sold under the following trade or brand names, marks, logos or other designations of origin (List all names, marks, logos or designations):
4. The full legal name, principal place of business, mailing address and telephone number of the Agent are:

By: Signature of Manufacturer's Authorized Representative / / Month / Day / Year
Printed Name Title

PART B: ACCEPTANCE BY AGENT

The undersigned hereby accepts appointment as Agent solely for the purpose of service of process on the Manufacturer under 49 U.S.C. § 30164 and 49 C.F.R. Part 551, Subpart D. I understand that this appointment shall remain in effect until withdrawn or replaced by the Manufacturer in accordance with the requirements of 49 U.S.C. § 30164 and 49 C.F.R. Part 551, Subpart D. I understand also that I may not assign performance of my functions under this Designation to another person.

By: Signature of Agent / / Month / Day / Year
(Date of acceptance must be on or after date of designation)
Printed Name Title

TO AVOID DELAYS, LEAVE NO SPACES BLANK; DO NOT SEND VIA FACSIMILE OR EMAIL

Mail original documents with ink signatures only to: Office of the Executive Secretariat, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street, SW, Washington, DC 20590