Mr. President, I believe the competitive impact of an open skies agreement with Germany would be particularly acute in the United Kingdom and France. As a result, such an agreement would have the significant collateral benefit of strengthening our hand in negotiations with both the British and the French. Let there be no mistake, both British and French airports are today competing with other European airports for international travelers and statistics clearly show the trend favors countries with an open skies policy.

For instance, between 1992 and 1994, total passenger traffic between the United States and the Netherlands grew an astounding 56 percent. During the same period, total passenger traffic between the United States and the United Kingdom grew just 7.5 percent. What does this illustrate? It demonstrates that Amsterdam's Schiphol Airport is drawing passenger traffic originating in the United States away from United Kingdom airports, particularly Heathrow. The significance of this point is not fully appreciated until it is understood that currently passengers connecting onto British carriers at Heathrow alone account for more than 1 billion pounds a year in export earnings for the United Kingdom.

Since this is such a critical point, let me share another example of market forces driving passengers to European countries that have an open skies agreement with the United States. Between 1992 and 1994, the number of passengers traveling from Germany to the United States was more or less stable. During that same period, the number of German passengers choosing to travel to the United States via Amsterdam's Schiphol Airport increased approximately 80 percent.

The potential direct and indirect benefits of an open skies agreement with Germany are tremendous. As I have said, I believe Secretary Peña and Secretary Christopher should aggressively pursue this opportunity.

Mr. President, let me conclude by saying that the international aviation challenges we face in 1996 make it imperative that our negotiators continue to make decisions based on economic analysis with the goal of maximizing benefits for the United States economy. This was a successful formula in our 1995 international aviation negotiations. In 1996, it is critical we build on the lesson we learned over the past year.

EXHIBIT 1

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, November 21, 1995.

Sir. COLIN MARSHALL,

Chairman, British Airways, Berkeley Square House, 6th Floor, London, England.

DEAR SIR COLIN: With great interest I read your speech on United States/United Kingdom aviation relations delivered to the Wings Club in New York last week. Your call for a ''bigger, bolder and braver approach'' to liberalizing air service opportunities between our countries peaked the interest of many on this side of the Atlantic.

I agree with you that no two nations are better suited to have a fully liberalized transatlantic air service market than the United States and the United Kingdom. To the extent nations worldwide have embraced the Bermuda I and Bermuda II agreements as a model for restricting air service opportunities in their markets, such an initiative would undoubtedly serve as a shining example for open aviation markets globally. As you correctly observed, consumers benefit most when markets are open and competition is robust.

I hope we can continue the dialogue we started in London in July on how this vision can come to pass. In the meantime, please contact me or Michael Korens of my staff if I can be of assistance.

Sincerely,

LARRY PRESSLER,
Chairman.

EXHIBIT 2

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, December 1, 1995.

Hon. FEDERICO PEÑA,

Secretary, Department of Transportation, 400 Seventh Street, SW, Washington, DC.

DEAR SECRETARY PEÑA: As Chairman of the Senate Committee on Commerce, Science, and Transportation, I am writing to urge you to intensify your efforts to obtain an open skies aviation agreement with the Federal Republic of Germany. I am aware that some progress has been made in this regard. I believe, however, the importance of this initiative calls for renewed vigor on the part of both the Department of Transportation and the Department of State.

In addition to immediately creating additional new opportunities for our carriers in Germany, such an agreement would be enormously beneficial to our national interest in liberalizing air service markets throughout Europe. Simply put, an open skies agreement with Germany would bring considerable competitive pressure to bear on all European countries which currently restrict air service opportunities to our carriers.

For instance, I believe an open skies agreement with Germany would contribute significantly to our efforts to liberalize our air service relationship with the United Kingdom. Moreover, such an agreement would provide invaluable leverage in securing a bilateral aviation agreement with France.

Mr. Secretary, I am aware that you share my vision of an open skies agreement with Germany. As your efforts in that regard intensify, please contact me if I can be of assistance.

Sincerely,

LARRY PRESSLER,
Chairman.

NOTICE OF ADOPTION OF PROCEDURAL RULES

Mr. THURMOND. Mr. President, pursuant to Section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a Notice of Adoption of Procedural Rules, together with a copy of the adopted rules, was submitted by the Office of Compliance, U.S. Congress. These rules, first published in the RECORD of November 14, 1995, govern the procedures for consideration and resolution of alleged violation of the laws made applicable under Part A of Title II of the Congressional Accountability Act. (P.L. 104–1).

The Congressional Accountability Act specifies that the Notice and rules be printed in the Congressional RECORD, therefore I ask unanimous consent that the notice and adopted rules be printed in the RECORD.

Furthermore, the Office of Compliance has available, for review, a ''red-lined'' copy of the proposed rules which were published in the Congressional RECORD on November 14, 1995. This ''red-lined'' copy, along with the final rules, will enable interested parties to note the changes that were made.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: PROCEDURAL RULES

NOTICE OF ADOPTION OF PROCEDURAL RULES

Summary: Section 303 of the Congressional Accountability Act directs the Executive Director of the Office of Compliance to adopt rules governing the procedures of the office. After considering comments to the Notice of Proposed Rulemaking published November 14, 1995 in the Congressional Record, the Executive Director has adopted and is publishing rules to govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Part A of Title II of the Congressional Accountability Act (P.L. 104–1). Pursuant to Section 303(a) the rules have been approved by the Board of Directors, Office of Compliance.

For Further Information Contact: Executive Director, Office of Compliance, Room LA–200, 110 Second Street, S.E., Washington, DC 20540–1999. Telephone (202) 252–3100.

Background and summary

The Congressional Accountability Act of 1995 (''CAA''), PL 104–1, was enacted into law on January 23, 1995. 2 U.S.C. §1301 et. seq. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 301 of the CAA establishes the Office of Compliance as an independent office within that branch. Section 303 of the CAA directs that the Executive Director, the chief operating officer of the Office of Compliance, shall, subject to the approval of the Board, adopt rules governing the procedures for the Office of Compliance, including the procedures of Hearing Officers. The rules that follow establish the procedures by which the Office of Compliance will provide for the consideration and resolution of alleged violations of the laws made applicable under Part A of Title II of the CAA. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance.

To obtain input from interested persons on the content of these rules the Executive Director published for comment a Notice of Proposed Rulemaking in the Congressional Record on November 14, 1995 (141 Cong. R. S17012 (daily ed., November 14, 1995) (''NPR'')), inviting comments regarding the proposed rules. Seven comments were received in response to the proposed rules.

Comments were received from Members of Congress, employing offices and a management employee of the Architect of the Capitol expressing his personal view. After full consideration of the comments received, the Executive Director has, with the approval of the Board, adopted these procedural rules.

Summary and board's consideration of comments

Confidentiality and Sanctions

Summary of comments: Several commenters questioned whether the CAA empowers the Board, Hearing Officers, or the Office to impose sanctions for breaches of confidentiality. They also stated that, assuming sanctions can be imposed, the rules should provide more details as to what conduct may be sanctioned, what the sanctions will be, and how those sanctions will be imposed. One commenter noted that identifying possible sanctions will help forestall any due process challenges in the context of breaches of confidentiality.

Response: Section 1.07 sets forth the standard for imposing sanctions against individuals or employing offices that violate the confidentiality provisions of section 416 of the CAA. The form and procedures governing the imposition of sanctions are modeled after Rule 37(b) of the Federal Rules of Civil Procedure.

Section 1.07 makes clear that the confidentiality provisions prohibit any disclosure of information discussed or exchanged in the course of counseling under Section 402, mediation under Section 403 and Board hearings and deliberations under Sections 405 and 406 of the CAA. Section 1.07 of the rules only prohibits the use of information (including documents) which was obtained by the individual during the counseling, mediation or other proceedings. However, employees, employing offices and individuals that participate in counseling, mediation or other confidential proceedings are not prohibited by these rules from discussing or disclosing information that was obtained by that person outside the confidential proceedings. The Board believes that a confidentiality rule of this breadth appropriately balances the statutory mandates for confidentiality and the statutory mandate to have open and effective counseling, mediation, hearings and Board proceedings. Finally, this section makes clear that communications necessary for the pursuit or defense of claims under the CAA (communications with lawyers or other representatives) are not prohibited, even if such communications involve disclosure of the contents of confidential proceedings. The Board believes that these provisions adequately address the concerns expressed by some commenters that the confidentiality provisions not unduly limit the ability of employees and employing offices to engage in communications which the law should encourage and not discourage parties from utilizing the procedures of the CAA.

It is the intent of the Board that Section 1.07 and the confidentiality provisions apply to non-party participants such as witnesses and representatives. Such persons have voluntarily submitted to the jurisdiction of the Office of Compliance by participating in the proceedings, or are subject to the Office's jurisdiction by virtue of the subpoena power. Section 1.07 is part of the general authority of the Office of Compliance to set the rules and procedures of the Office, including the procedures of hearing officers, under Section 303(a) of the CAA. Section 1.07 is reasonably necessary to preserve the confidentiality of counseling, mediation and Board proceedings mandated by section 416 of the CAA.

Section 1.07 does not authorize sanctions against personnel of the Office of Compliance, as suggested by a commenter. Although the Board agrees that the confidentiality provisions apply to personnel of the Office of Compliance, the Board believes that violations by Office personnel can be adequately addressed as a disciplinary matter within the Office, not under Section 1.07.

Filings by Facsimile Transmission (FAX)

Summary of Comments: On the filing of documents by FAX, two commenters suggested that Sections 1.03 and 2.03 of the proposed rules should clearly state that a request for counseling can be filed by FAX. One commenter stated that the rules should allow ''all documents'' to be filed by FAX. Another commenter suggested that the rules expressly provide that, in order to expedite the pre-hearing and hearing processes, documents may be filed with a Hearing Officer by FAX.

Response: The language of Section 1.03(a) has been clarified to expressly provide that a formal request for counseling may be filed by FAX and a provision has been added to allow the Board or a Hearing Officer, in their discretion, to order documents to be filed by FAX. Generally, allowing all documents to be filed by FAX might impose undue burdens on the receivers of FAX submissions and interfere with the Office of Compliance's orderly handling of documents. Accordingly, the proposed rule has not been modified to allow for such filing.

Withdrawals of Requests for Counseling

Summary of Comments: Several commenters suggested that Section 2.03(k) of the proposed rules should limit an employee's right to reinstate counseling to situations in which the request for reinstatement of counseling is made within the 180-day period established by Section 402 of the CAA. One commenter also expressed concern about the prospect of covered employees extending their claims indefinitely by repeatedly withdrawing from counseling and then reinstating the counseling request until the 30-day limit is reached. Another commenter indicated that the 30-day statutory limit on the counseling period requires the 30 days to be consecutive with no hiatus.

Response: The revised rule permits a covered employee, who has begun counseling, to withdraw from counseling with a single opportunity to reinstate counseling so long as that reinstatement request occurs within 180 days after the alleged violation and the counseling period does not exceed a total of 30 days. This addresses the commenter's concerns regarding the timeliness of counseling and the possibility of extended processing of claims. Because the Board is of the view that allowing an aggregate of 30 days of counseling conducted during two separate time frames is permissible under the CAA, the proposed rule has not been further modified.

Grievance Procedures of the Architect of the Capitol or the Capitol Police

Summary of Comments: Commenters asked for clarification in Section 2.03(m) of the term ''grievance procedures of the Architect of the Capitol or the Capitol Police'' under Section 401 of the CAA. One commenter suggested that Section 203(m) also provide for the Executive Director to recommend to any covered employees that they use grievance procedures which may be instituted in the future in any other employing offices.

Response: The adopted and approved rule defines the term ''grievance procedures'' to include any internal procedure of the Architect of the Capitol or the Capitol Police that is capable of resolving the issue about which the employee of the Architect of the Capitol or the Capitol Police has sought counseling.

Section 2.03(m) of the proposed rules exists by virtue of Section 401 of the CAA and reflects the statutory authorization to toll the statutory counseling and mediation periods if an employee of the Architect of the Capitol or the Capitol Police accepts the recommendation of the Executive Director. The CAA expressly authorizes such tolling of the statutory time periods only with regard to an employee of the Architect of the Capitol or the Capitol Police, and does not permit tolling in other circumstances.

Discoverable Information

Summary of Comments: One commenter stated that Section 6.01 should not limit discovery to ''relevant'' information. Instead, the commenter suggested that, consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure, a hearing officer should allow discovery of any information ''reasonably calculated to lead to the discovery of admissible evidence.'' Another commenter requested that the rules specifically provide for discovery of requests for counseling and requests for mediation.

Response: The comments have been considered and the rule that has been adopted reflects the discovery standard of Rule 26(b)(1) of the Federal Rules of Civil Procedure. The rule does not, however, provide for the discovery of requests for counseling or mediation because that change in the rule is not necessary and could chill employees in their resort to counseling and mediation and hamper the effectiveness of those processes. To the extent that the commenter believes discovery is necessary to determine whether the applicable statutory requirements for filing a complaint have been met, the Office intends to include sufficient information in the notice of the end of the mediation period to allow such a determination by the employing office to be made.

Disqualification of Hearing Officers

Summary: Two commenters stated that Section 7.03 should provide that the denial of a motion to disqualify a Hearing Officer may be appealed directly to the Board, without review by the Executive Director.

Response: The Board has approved a rule that eliminates the requirement that the Executive Director review motions to disqualify a Hearing Officer and provides for Board review of the denial of a motion to disqualify during the appeal to the Board, if any, of the Hearing Officer's decision on the merits.

Admissibility of Evidence

Summary of Comments: Two commenters suggested that the procedural rules should not require a Hearing Officer to apply the Federal Rules of Evidence. One commenter was concerned that the reliance on the Federal Rules of Evidence would require a covered employee to retain an attorney. Another commenter stated that the rules should merely state that the Hearing Officer shall apply the provisions of the Administrative Procedure Act (Sec. 554 through 557 of the Title 5, U.S. Code) (APA), specifically Sec. 556(d) of Title 5, in hearing a case because Section 405(d)(3) of the CAA instructs that the hearing shall be conducted, ''to the greatest extent practicable, in accordance with the principles and procedures'' of those sections of the APA. This commenter asserts that the Federal Rules of Evidence set a ''more restrictive'' standard than that found in the APA and may limit the development of the hearing record.

Response: Section 7.09 of the rules has not been modified. The Federal Rules of Evidence clarify and more fully develop the APA provisions regarding evidentiary rulings. They are complementary, not contradictory, to the APA. In addition, the procedural rules require that the Federal Rules of Evidence be applied ''to the greatest extent practicable.'' Accordingly, a Hearing Officer, in his or her discretion, may adapt, or

depart from, these rules as warranted. Moreover, as the Federal Rules of Evidence are applicable in the federal courts, the adopted rule provides the collateral benefit of affording some uniformity between the administrative hearing process of the Office of Compliance and civil actions filed in the district courts under Section 408 of the CAA.

Informal Resolution of Disputes

Summary of Comments: Three comments were received with respect to Section 9.03(b) of the proposed rules. Two commenters questioned whether the informal resolution of disputes is permitted under the CAA in light of the requirements of Section 414. Another commenter stated that the proposed rule should be revised because resolution of disputes cannot exist without a mandatory waiver of a covered employees rights or the commitment by the employing office to an enforceable obligation.

Response: Section 9.03 of the rules has been reorganized to clarify its intent and meaning. Before a complaint is filed, an employee and an employing office may agree upon a mutually satisfactory arrangement, thereby resolving the dispute without a waiver by the employee or a commitment by the employing office to an enforceable obligation. The Board has considered the comments but is not persuaded that all early, mutually satisfactory resolutions of disputes between parties must be reduced to writing and approved by the Executive Director under Section 414 of the CAA. Section 9.03 of the rules recognizes that the policy underlying the CAA favors the early resolution of disputes and permits a covered employee for whom counseling and mediation has been successful to withdraw from the dispute resolution process without the requirement that such resolution be reduced to writing and submitted to the Executive Director for approval.

Attorney's fees and costs

Summary of Comments: One commenter suggested that Section 9.01(a) of the proposed rules be modified to prevent requests for attorney's fees during the pendency of an appeal of the Hearing Officer's decision. In this commenter's view, such requests would be ''premature'' because the Board could reverse a Hearing Officer's decision in the complainants favor, making an award of fees inappropriate.

Response: The Board has considered this comment in the context of the applicable provisions of the CAA. Under Section 225(a), if a covered employee is a ''prevailing party,'' the Hearing Officer, Board, or court, as the case may be, may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964. Similarly, Section 405(g) provides that the Hearing Officer shall order, at the time of the final decision, ''such remedies as are appropriate pursuant to title II'' of the CAA, which includes attorney's fees, if appropriate. These statutory sections contemplate that the Hearing Officer would make an attorney's fee award, if appropriate, without awaiting a decision disposing of the case on appeal.

In actions involving private sector parties, an award of attorney's fees and costs is not delayed ordinarily by an appeal of the decision on the merits. See generally Fed. R. Civ. P., 58, Fed. R. App. Proc., 4(a)(4). The Board has considered the comment and does not find any compelling reason to delay the Hearing Officer's decision on fees and costs simply because the decision on the merits is pending on appeal. Therefore, Section 9.01 of the procedural rules has not been modified.

Class Actions

Summary of Comments: One commenter questioned whether the proposed rules were intended to prohibit class actions and requested that the rules specifically set forth procedures governing class actions.

Response: The procedural rules that have been adopted do not purport to address whether and in what circumstances, if any, employees may pursue class claims. The issue is one that involves substantive legal questions that are not appropriately addressed in these procedural rules.

Additional Comments

Commenters suggested various technical and ministerial changes in the proposed rules which improved their clarity and effectiveness and were consistent with the policy underlying the particular provisions. Those changes have been made and are included in the published rules, which are ''red-lined'' to indicate all changes made.

Several other suggestions, such as what information the Office will include in certain notifications and how it will handle telephonic requests for counseling, will be and are best handled as part of the Office's internal operational process rather than codified in the procedural rules. Similarly, requests that the Senate Chief Counsel for Employment or the House Office of General Counsel receive certain notifications during the dispute-resolution process are best handled by House and Senate internal procedures rather than in the Office's procedural rules, particularly because the confidentiality provisions of the CAA preclude the Office from disclosing the existence of a particular proceeding to individuals other than the parties or their designated representatives. However, to the extent that the commenters sought such notification in order to file an amicus curiae brief, it should be noted that the Board may, in certain cases, solicit such briefs. In those cases the Board will employ appropriate safeguards to ensure that the identity of the participants in any proceeding is not disclosed.

Finally, commenters suggested other additions or modifications to the procedural rules such as not allowing additional time for filings when documents are served by mail, permitting more time for the filing of responses, the imposition of more formal and detailed discovery procedures, the holding of pre-hearing conference at a later date than that proposed, a requirement that parties file pre-hearing memoranda and limitations on a party's ability to object to testimony or the calling of a witness. The Board is of the view that the Office's procedures should be neither cumbersome nor onerous for the parties who wish to participate in the CAA's administrative dispute resolution process and that the short time frames under the CAA, particularly the 60-day period between complaint and hearing, should be fully available for the preparation and processing of claims. It is the Board's considered judgment that to incorporate the foregoing or similar suggestions in the procedural rules would have the undesired effect of discouraging the use of the administrative process and, thereby, encouraging the use of the federal civil process.

PART I—OFFICE OF COMPLIANCE RULES OF PROCEDURE

Subpart A—General Provisions

§1.01 Scope and policy

These rules of the Office of Compliance govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Part A of title II of the Congressional Accountability Act of 1995. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance. It is the policy of the Office that these rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

§1.02 Definitions

Except as otherwise specifically provided in these rules, for purposes of this Part;

(a) Act. The term ''Act'' means the Congressional Accountability Act of 1995;

(b) Covered Employee. The term ''covered employee'' means any employee of

(1) the House of Representatives;
(2) the Senate;
(3) The Capitol Guide Service;
(4) the Capitol Police;
(5) the Congressional Budget Office;
(6) the Office of the Architect of the Capitol;
(7) the Office of the Attending Physician;
(8) the Office of Compliance; or
(9) the Office of Technology Assessment.

(c) Employee. The term ''employee'' includes an applicant for employment and a former employee.

(d) Employee of the Office of the Architect of the Capitol. The term ''employee of the Office of the Architect of the Capitol'' includes any employee of the Office of the Architect of the Capitol, the Botanic Garden or the Senate Restaurants.

(e) Employee of the Capitol Police. The term ''employee of the Capitol Police'' includes civilian employees and any member or officer of the Capitol Police.

(f) Employee of the House of Representatives. The term ''employee of the House of Representatives'' includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(g) Employee of the Senate. The term ''employee of the Senate'' includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(h) Employing Office. The term ''employing office'' means:

(1) the personal office of a Member of the House of Representatives or a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(i) Party. The term ''party'' means the employee or the employing office.

(j) Office. The term ''Office'' means the Office of Compliance.

(k) Board. The term ''Board'' means the Board of Directors of the Office of Compliance.

(l) Chair. The term ''Chair'' means the Chair of the Board of Directors of the Office of Compliance.

(m) Executive Director. The term ''Executive Director'' means the Executive Director of the Office of Compliance.

(n) General Counsel. The term ''General Counsel'' means the General Counsel of the Office of Compliance.

(o) Hearing Officer. The term ''Hearing Officer'' means any individual designated by the Executive Director to preside over a hearing conducted on matters within the Office's jurisdiction.

§1.03 Filing and computation of time

(a) Method of Filing. Documents may be filed in person or by mail, including express, overnight and other expedited delivery. Requests for counseling under Section 2.03, requests for mediation under Section 2.04 and complaints under Section 2.06 of these rules may also be filed by facsimile (FAX) transmission. In addition, the Board or a Hearing Officer may order other documents to be filed by FAX. The original copies of documents filed by FAX must also be mailed to the Office no later than the day following FAX transmission. The filing of all documents is subject to the limitations set forth below.

(1) In Person. A document shall be deemed timely filed if it is hand delivered to the Office in: Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999, before 5:00 p.m. Eastern Time on the last day of the applicable time period.

(2) Mailing. (i) If mailed, including express, overnight and other expedited delivery, a request for mediation or a complaint is deemed filed on the date of its receipt in the Office.

(ii) A document, other than a request for mediation or a complaint, is deemed filed on the date of its postmark or proof of mailing to the Office. Parties, including those using franked mail, are responsible for ensuring that any mailed document bears a postmark date or other proof of the actual date of mailing. In the absence of a legible postmark a document will be deemed timely if it is received by the Office at Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999, by mail within five (5) days of the expiration of the applicable filing period.

(3) Faxing documents. Documents transmitted by FAX machine will be deemed filed on the date received at the Office at 202-252-3115. A FAX filing will be timely only if the Office receives the document no later than 5:00 PM Eastern Time on the last day of the applicable filing period. Any party using a FAX machine to file a document bears the responsibility for ensuring both that the document is timely and accurately transmitted and confirming that the Office has received a facsimile of the document. The party or individual filing the document may rely on its FAX status report sheet to show that it filed the document in a timely manner, provided that the status report indicates the date of the FAX, the receiver's FAX number, the number of pages included in the FAX, and that transmission was completed.

(b) Computation of Time. All time periods in these rules that are stated in terms of days are calendar days unless otherwise noted. However, when the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays and Federal government holidays shall be excluded in the computation. To compute the number of days for taking any action required or permitted under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing or service shall be included in the computation. When the last day falls on a Saturday, Sunday, or federal government holiday, the last day for taking the action shall be the next regular federal government workday.

(c) Time Allowances for Mailing of Official Notices. Whenever a person or party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her and the notice or document is served by regular, first-class mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added if a document is served by express mail or other form of expedited delivery. When documents are served by certified mail, return receipt requested, the prescribed period shall be calculated from the date of receipt as evidenced by the return receipt.

§1.04 Availability of official information

(a) Policy. It is the policy of the Board, the Office and the General Counsel, except as otherwise ordered by the Board, to make available for public inspection and copying final decisions and orders of the Board and the Office, as specified and described in paragraph (d) below.

(b) Availability. Any person may examine and copy items described in paragraph (a) above at the Office of Compliance, Adams Building, Room LA200, 110 Second Street, S.E., Washington, D.C. 20540-1999, under conditions prescribed by the Office, including requiring payment for copying costs, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Office. As ordered by the Board, the Office may withhold or place under seal identifying details or other necessary matters, and, in each case, the reason for the withholding or sealing shall be stated in writing.

(c) Copies of forms. Copies of blank forms prescribed by the Office for the filing of complaints and other actions or requests may be obtained from the Office.

(d) Final decisions. Pursuant to Section 416(f) of the Act, a final decision entered by a Hearing Officer or by the Board under Section 405(g) or 406(e) of the Act, which is in favor of the complaining covered employee or reverses a Hearing Officer's decision in favor of a complaining covered employee or reverses a Hearing Officer's decision in favor of a complaining covered employee shall be made public, except as otherwise ordered by the Board.

(e) Release of records for judicial action. The records of Hearing Officers and the Board may be made public if required for the purpose of judicial review under Section 407 of the Act.

(f) Access by committees of Congress. At the discretion of the Executive Director, the Executive Director may provide to the Committee on Standards of Official Conduct of the House of Representatives and the Select Committee on Ethics of the Senate access to the records of the hearings and decisions of the Hearing Officers and the Board, including all written and oral testimony in the possession of the Office. The identifying information in these records may be redacted at the discretion of the Executive Director. The Executive Director shall not provide such access until the Executive Director has consulted with the individual filing the complaint at issue, and until a final decision has been entered under Section 405(g) or 406(e) of the Act.

§1.05 Designation of representative

(a) An employee, a witness, or an employing office wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney.

(b) Service where there is a representative. All service of documents shall be directed to the representative, unless the represented individual or employing office specifies otherwise and until such time as that individual or employing office notifies the Executive Director of an amendment or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials by the represented individual shall be computed in the same manner as for unrepresented individuals with service of the documents, however, directed to the representative, as provided.

§1.06 Maintenance of confidentiality

(a) Policy. In accord with Section 416 of the Act, it is the policy of the Office to maintain, to the fullest extent possible, the confidentiality of the proceedings and of the participants in proceedings conducted under Sections 402, 403, 405 and 406 of the Act and these rules.

(b) At the time that any individual, employing office or party, including a designated representative, becomes a participant in counseling under Section 402, mediation under Section 403, the complaint and hearing process under Section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding, the Office will advise the participant of the confidentiality requirements of Section 416 of the Act and these rules and that sanctions may be imposed for a violation of those requirements.

§1.07 Breach of confidentiality provisions

(a) In general. Section 416(a) of the CAA provides that counseling under section 402 shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations. Section 416(b) provides that all mediation shall be strictly confidential. Section 416(c) provides that all proceedings and deliberations of Hearing Officers and the Board, including any related records shall be confidential, except for release of records necessary for judicial actions, access by certain committees of Congress, and publication of certain final decisions. See also Sections 1.06 and 2.10 of these rules.

(b) Prohibition. Unless specifically authorized by the provisions of the CAA or by order of the Board, the Hearing Officer or a court, or by the procedural rules of the Office, no participant in counseling, mediation or other proceedings made confidential under section 416 of the CAA (confidential proceedings) may disclose the contents or records of those proceedings to any person or entity.

(c) Participant. For the purposes of this rule, participant means any individual, employing office or party, including a designated representative, that becomes a participant in counseling under Section 402, mediation under Section 403, the complaint and hearing process under Section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

(d) Contents or records of confidential proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes the information disclosed by participants to the proceedings, and records disclosed by either the opposing party, witnesses or the Office. Notwithstanding these rules, a participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, information forming the basis for the allegation of a complaining employee may be disclosed by that

employee, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or representatives other than the complaining party's representative (or, in some cases, the Office) may not disclose that information. Nothing in these rules prohibit a bona fide representative of a party under Section 1.05 from engaging in communications with that party for the purpose of participation in the proceedings, provided that such disclosure is not made in the presence of individuals not reasonably necessary to the representative's representation of that party.

(e) Violation of confidentiality. Any complaint regarding a violation of the confidentiality provisions must be made to the Executive Director no later than 30 days after the date of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer. The Hearing Officer is also authorized to initiate proceedings on his or her own initiative, or at the direction of the Board, if the alleged violation occurred in the context of Board proceedings. Upon a finding of a violation of the confidentiality provisions, the Hearing Officer, after notice and hearing, may impose an appropriate sanction, which may include any of the sanctions listed in section 7.02 of these rules, as well as any of the following:

(i) An order that the matters regarding which the violation occurred or any other designated facts shall be taken to be established against the violating party for the purposes of the action in accordance with the claim of the other party;

(ii) An order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rending a judgment by default against the violating party;

(iv) In lieu of any of the foregoing orders or in addition thereto, the Hearing Officer shall require the party violating the confidentiality provisions or the representative advising him, or both, to pay, at such time as ordered by the Hearing Officer, the reasonable expenses, including attorney fees, caused by the violation, unless the Hearing Officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal of the final decision of the Hearing Officer under section 406 of the Act.

No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.

Subpart B—Procedures Applicable to Consideration of Alleged Violations of Part A of Title II of the Congressional Accountability Act of 1995

§2.01 Matters covered by subpart B

(a) These rules govern the processing of any allegation that Sections 201 through 206 of the Act have been violated and any allegation of intimidation or reprisal prohibited under Section 207 of the Act. Sections 201 through 206 apply to covered employees and employing offices certain rights and protections of the following laws:

(1) The Fair Labor Standards Act of 1938.

(2) Title VII of the Civil Rights Act of 1964.

(3) Title I of the Americans with Disabilities Act of 1990.

(4) The Age Discrimination in Employment Act of 1967.

(5) The Family and Medical Leave Act of 1993.

(6) The Employee Polygraph Protection Act of 1988.

(7) The Worker Adjustment and Retraining Notification Act.

(8) The Rehabilitation Act of 1973.

(9) Chapter 43 (relating to veterans' employment and reemployment) of title 38, United States Code.

(b) This subpart applies to the covered employees and employing offices as defined in Section 1.02(b) and (h) of these rules and any activities within the coverage of Section 201 through 206 and 207 of the Act and referenced above in Section 2.01(a) of these rules.

§2.02 Requests for advice and information

At any time, an employee or an employing office may seek from the Office informal advice and information on the procedures of the Office and under the Act and information on the protections, rights and responsibilities under the Act and these rules. The Office will maintain the confidentiality of requests for such advice or information.

§2.03 Counseling

(a) Initiating a proceeding; formal request for counseling. In order to initiate a proceeding under these rules, an employee shall formally request counseling from the Office regarding an alleged violation of the Act, as referred to in Section 2.01(a), above. All formal requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under Section 2.03(e)(2), below.

(b) Who may request counseling. A covered employee who believes that he or she has been or is the subject of a violation of the Act as referred to in Section 2.01(a) may formally request counseling.

(c) When, how and where to request counseling. A formal request for counseling:

(1) Shall be made not later than 180 days after the date of the alleged violation of the Act;

(2) May be made to the Office in person, by telephone, or by written request;

(3) Shall be directed to: Office of Compliance, Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999; telephone: (202) 252-3100; FAX (202) 252-3115; TDD (202) 426-1912.

(d) Purpose of counseling period. The purpose of the counseling period shall be: to discuss the employee's concerns and elicit information regarding the matter(s) which the employee believes constitute a violation(s) of the Act; to advise the employee of his or her rights and responsibilities under the Act and the procedures of the Office under these rules; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.

(e) Confidentiality and waiver. (1) Absent a waiver under paragraph 2, below, all counseling shall be strictly confidential. Nothing in these rules shall prevent a counselor from consulting with personnel within the Office concerning a matter in counseling, except that, when the person being counseled is an employee of the Office, the counselor shall not consult with any individual within the Office who might be a party or witness without the consent of the person requesting counseling. Nothing contained in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identity of the employees involved or of employing offices that are the subject of a request for counseling.

(2) The employee and the Office may agree to waive confidentiality of the counseling process for the limited purpose of contacting the employing office to obtain information to be used in counseling the employee or to attempt a resolution of any disputed matter(s). Such a limited waiver must be written on the form supplied by the Office and signed by both the counselor and the employee.

(f) Role of counselor in informing employee of his or her rights and responsibilities. The counselor will provide the employee with appropriate information concerning rights and responsibilities under the Act and these rules.

(g) Role of counselor in defining concerns. The counselor may:

(1) obtain the name, home and office mailing addresses, and home and office telephone numbers of the person being counseled;

(2) obtain the name and title of the person(s) whom the employee claims has engaged in a violation of the Act and the employing office in which this person(s) works;

(3) obtain a detailed description of the action(s) at issue, including all relevant dates, and the covered employees reason(s) for believing that a violation may have occurred;

(4) inquire as to the relief sought by the covered employee;

(5) obtain the name, address and telephone number of the employees representative, if any, and whether the representative is an attorney.

(h) Role of counselor in attempting informal resolution. In order to attempt to resolve the matter brought to the attention of the counselor, the counselor must obtain a waiver of confidentiality pursuant to Section 2.03(e)(2) of this chapter. If the employee executes such a waiver, the counselor may:

(1) conduct a limited inquiry for the purpose of obtaining any information necessary to attempt an informal resolution or formal settlement;

(2) reduce to writing any formal settlement achieved and secure the signatures of the employee, his or her representative, if any, and a member of the employing office who is authorized to enter into a settlement on the employing office's behalf; and, pursuant to Section 414 of the Act and Section 9.03 of these rules, seek the approval of the Executive Director. Nothing in this subsection, however, precludes the employee, the employing office or their representatives from reducing to writing any formal settlement.

(i) Counselor not a representative. The counselor shall inform the person being counseled that the counselor does not represent either the employing office or the employee. The counselor provides information and may act as a third-party intermediary with the goals of increasing the individual's understanding of his or her rights and responsibilities under the Act and of promoting the early resolution of the matter.

(j) Duration of counseling period. The period for counseling shall be 30 days, beginning on the date that the request for counseling is received by the Office unless the employee and the Office agree to reduce the period.

(k) Duty to proceed. An employee who initiates a proceeding under this part shall be responsible at all times for proceeding, regardless of whether he or she has designated a representative. An employee, however, may withdraw from counseling once without

prejudice to the employee's right to reinstate counseling regarding the same matter, provided that the request to reinstate counseling is received in the Office not later than 180 days after the date of the alleged violation of the Act and that counseling on a single matter will not last longer than a total of 30 days.

(l) Conclusion of the counseling period and notice. The Executive Director shall notify the employee in writing of the end of the counseling period, by certified mail, return receipt requested. The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

(m) Employees of the Office of the Architect of the Capitol and Capitol Police.

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and these rules, the Executive Director may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police. The term grievance procedures refers to internal procedures of the Architect of the Capitol and the Capitol Police that can provide a resolution of the matter(s) about which counseling was requested. Pursuant to Section 401 of the Act and by agreement with the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

(i) The Executive Director shall recommend to the employee that the employee use the grievance procedures of the Architect or of the Capitol Police Board, as appropriate, for a period generally up to 90 days, unless the Executive Director determines a longer period is appropriate for resolution of the employee's complaint through the grievance procedures of the Architect or the Capitol Police Board;

(ii) After having contacted the Office and having utilized the grievance procedures of the Architect or to the Capitol Police Board, the employee may notify the Office that he or she wishes to return to the procedures under these rules:

(A) within 10 days after the expiration of the period recommended by the Executive Director, if the matter has not been resolved; or

(B) within 20 days after service of a final decision resulting from the grievance procedures of the Architect or of the Capitol Police Board.

(iii) The period during which the matter is pending in the internal grievance procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is resolved to the employee's satisfaction, or if no request to return to the procedures under these rules is received within the applicable time period, the Office will consider the case to be closed in its official files.

(2) Notice to employees who have not initiated counseling with the Office. When an employee of the Architect of the Capitol or the Capitol Police raises in the internal procedures of the Architect or of the Capitol Police Board an allegation which may also be raised under the procedures set forth in this subpart, the Architect or the Capitol Police Board should advise the employee in writing that a request for counseling about the allegation must be initiated with the Office within 180 days after the alleged violation of law occurred if the employee intends to use the procedures of the Office.

(3) Notice in final decisions when employees have not initiated counseling with the Office. When an employee raises in the internal procedures of the Architect or of the Capitol Police Board an allegation which may also be raised under the procedures set forth in this subpart, any final decision pursuant to the procedures of the Architect of the Capitol or of the Capitol Police Board should include notice to the employee of his or her right to initiate the procedures under these rules within 180 days after the alleged violation occurred.

(4) Notice in final decisions when there has been a recommendation by the Executive Director. When the Executive Director has made a recommendation under paragraph 1 above, the Architect or the Capitol Police Board should include notice to the employee of his or her right to resume the procedures under these rules within 20 days after service on the employee of the final decision and shall transmit a copy of the final decision, settlement agreement, or other final disposition of the case to the Executive Director.

§ 2.04 Mediation.

(a) Explanation. Mediation is a process in which employees, employing offices and their representatives, if any, meet separately and/or jointly with a neutral trained to assist them in resolving disputes. As parties to the mediation, employees, employing offices and their representatives discuss alternatives to continuing their dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution. The neutral has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to Section 416 of the Act.

(b) Initiation. Not more than 15 days after receipt by the employee of the notice of the conclusion of the counseling period under Section 2.03(l), the employee may file with the Office a written request for mediation. The request for mediation shall contain the employee's name, address, and telephone number, and the name of the employing office that is the subject of the request. Failure to request mediation within the prescribed period will preclude the employee's further pursuit of his or her claim.

(c) Notice of commencement of the mediation period. The Office shall notify the employing office or its designated representative of the commencement of the mediation period.

(d) Selection of Neutrals; Disqualification. Upon receipt of the request for mediation, the Executive Director shall assign one or more neutrals to commence the mediation process. In the event that a neutral considers him or herself unable to perform in a neutral role in a given situation, he or she shall withdraw from the matter and immediately shall notify the Office of the withdrawal. Any party may ask the Office to disqualify a neutral by filing a written request, including the reasons for such request, with the Executive Director. This request shall be filed as soon as the party has reason to believe there is a basis for disqualification. The Executive Director's decision on this request shall be final and unreviewable.

(e) Duration and Extension. (1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint request of the parties. The request shall be written and filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Requests for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

(f) Procedures. (1) The Neutral's Role. After assignment of the case, the neutral will promptly contact the parties. The neutral has the responsibility to conduct the mediation, including deciding how many meetings are necessary and who may participate in each meeting. The neutral may accept and may ask the parties to provide written submissions.

(2) The Agreement to Mediate. At the commencement of the mediation, the neutral will ask the parties to sign an agreement (''the Agreement to Mediate'') to adhere to the confidentiality of the process . The Agreement to Mediate will also provide that the parties to the mediation will not seek to have the counselor or the neutral participate, testify or otherwise present evidence in any subsequent civil action under Section 408 of the Act or any other proceeding.

(g) Who may participate. The covered employee, the employing office, their respective representatives, and the Office may meet, jointly or separately, with the neutral. A representative of the employee and a representative of the employing office who has actual authority to agree to a settlement agreement on behalf of the employee or the employing office, as the case may be, must be present at the mediation or must be immediately accessible by telephone during the mediation.

(h) Conclusion of the Mediation Period and Notice. If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice to the employee will be sent by certified mail, return receipt requested and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with Section 405 of the Act and Section 2.06 of these rules or to file a civil action pursuant to Section 408 of the Act and Section 2.11 of these rules.

(i) Independence of the Mediation Process and the Neutral. The Office will maintain the independence of the mediation process and the neutral. No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under Section 405 of the Act with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(j) Confidentiality. Except as necessary to consult with the parties, their counsel or other designated representatives, the parties to the mediation, the neutral, and the Office shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process. This rule shall not preclude a neutral from consulting with the Office, except that when the covered employee is an employee of the Office a neutral shall not consult with any individual within the Office who might be a party or witness. This rule shall also not preclude the Office from reporting statistical information to the Senate and House of Representatives that does not reveal the identity of the employees or employing offices involved in the mediation. All parties to the action and their representatives will be advised of the confidentiality requirements of this process and of the sanctions that might be imposed for violating these requirements.

(k) Employees of the office of the Architect of the Capitol and the Capitol Police. At any time during the mediation period, the Executive Director may recommend that the

employee use the grievance procedures of the Architect of the Capitol and the Capitol Police in accordance with the procedures set forth in Section 203(m) of these rules.

§2.05 Election of proceeding

(a) Pursuant to Section 404 of the Act, not later than 90 days after a covered employee receives notice of the end of mediation under Section 2.04(h) of these rules, but no sooner than 30 days after that date, the covered employee may either:

File a complaint with the Office in accordance with Section 405 of the Act and the procedure set out in Section 2.06, below; or

File a civil action in accordance with Section 408 of the Act and Section 2.11 below in the United States District Court for the district in which the employee is employed or for the District of Columbia.

(b) A covered employee who files a civil action pursuant to Section 2.11, may not thereafter file a complaint under Section 2.06 on the same matter.

§2.06 Complaints

(a) Who may file. An employee who has completed mediation under Section 2.04 may timely file a complaint with the Office.

(b) When to file. A complaint may be filed no sooner than 30 days after the date of receipt of the notice under Section 2.04(h), but no later than 90 days after that notice.

(c) Form and contents. A complaint shall be written or typed on a complaint form available from the Office. All complaints shall be signed by the covered employee, or his or her representative, and shall contain the following information:

(1) the name, mailing address, and telephone number(s) of the complainant;

(2) the name, address and telephone number of the employing office against which the complaint is brought;

(3) the name(s) and title(s) of the individual(s) involved in the conduct that the employee claims is a violation of the Act;

(4) a description of the conduct being challenged, including the date(s) of the conduct;

(5) a brief description of why the complainant believes the challenged conduct is a violation of the Act and the Section(s) of the Act involved;

(6) a statement of the relief or remedy sought; and

(7) the name, address, and telephone number of the representative, if any, who will act on behalf of the complainant.

(d) Amendments. Amendments to the complaint may be permitted by the Office or, after assignment, by a Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to meet the new allegations; that the amendments relate to the violations for which the employee has completed counseling and mediation; and that permitting such amendments will not unduly prejudice the rights of the employing office or other parties, unduly delay the completion of the hearing or otherwise interfere with or impede the proceedings.

(e) Service of complaint. Upon receipt of a complaint or an amended complaint, the Office shall serve the employing office named in the complaint, or its designated representative, with a copy of the complaint or amended complaint and a copy of these rules. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) Answer. Within 15 days after service of a copy of a complaint or an amended complaint, the respondent employing office shall file an answer with the Office and serve one copy on the complainant. The answer shall contain a statement of the position of the respondent employing office on each of the issues raised in the complaint, including admissions, denials, or explanations of each allegation made in the complaint and any other defenses to the complaint. Failure to raise a claim or defense in the answer shall not bar its submission later unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§2.07 Appointment of the hearing officer

Upon the filing of a complaint, the Executive Director will appoint an independent Hearing Officer, who shall have the authority specified in Sections 2.09 and 7.01(b) below. The Hearing Officer shall not be the counselor involved in or the neutral who mediated the matter under Sections 203 and 2.04 of these rules.

§2.08 Filing, service, and size limitations of motions, briefs, responses and other documents

(a) Filing with the office; number. One original and three copies of all motions, briefs, responses, and other documents, must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer files an appeal with the Board, one original and seven copies of both any appeal brief and any responses must be filed with the Office.

(b) Service. The parties shall serve on each other one copy of all motions, briefs, responses and other documents filed with the Office, other than the request for counseling, the request for mediation and complaint. Service shall be made by mailing or by hand delivering a copy of the motion, brief, response or other document to each party, or if represented, the party's representative, on the service list previously provided by the Office. Each of these documents must be accompanied by a certificate of service specifying how, when and on whom service was made. It shall be the duty of each party to notify the Office and all other parties in writing of any changes in the names or addresses on the service list.

(c) Time limitations for response to motions or briefs and reply. Unless otherwise specified by the Hearing Officer or these rules, a party shall file a response to a motion or brief within 15 days of the service of the motion or brief upon the party. Any reply to such response shall be filed and served within 5 days of the service of the response. Only with the Hearing Officer's advance approval may either party file additional responses or replies.

(d) Size limitations. Except as otherwise specified by the Hearing Officer or these rules, no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 pages, or 8,750 words, exclusive of the table of contents, table of authorities and attachments. The Board, the Office or Hearing Officer may waive, raise or reduce this limitation for good cause shown or on its own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8-1/2″ x 11″).

§2.09 Dismissal of complaints

(a) A Hearing Officer may, after notice and an opportunity to respond, dismiss any claim that the Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted, including, but not limited to, claims that were not advanced in counseling or mediation.

(b) A Hearing Officer may, after notice and an opportunity to respond, dismiss a complaint because it fails to comply with the applicable time limits or other requirements under the Act or these rules.

(c) If any complainant fails to proceed with an action, the Hearing Officer may dismiss the complaint with prejudice.

(d) Appeal. A dismissal by the Hearing Officer made under Section 2.09(a)–(c) or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under Section 8.01.

(e) Withdrawal of Complaint by Complainant. At any time a complainant may withdraw his or her own complaint by filing a notice with the Office for transmittal to the Hearing Officer and by serving a copy on the employing office or representative. Any such withdrawal must be approved by the Executive Director.

§2.10 Confidentiality

Pursuant to Section 416(c) of the Act, all proceedings and deliberations of Hearing Officers and the Board, including any related records, shall be confidential. A violation of the confidentiality requirements of the Act and these rules could result in the imposition of sanctions. Nothing in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identify of the employees involved or of employing offices that are the subject of a matter.

§2.11 Filing of civil action

(a) Filing. Section 404 of the Act provides that as an alternative to filing a complaint under Section 408 of the Act and Section 2.06 of these rules, a covered employee who receives notice of the end of mediation pursuant to Section 403 of the Act and Section 2.04(h) of these rules may elect to file a civil action in accordance with Section 408 of the Act in the United States district court for the district in which the employee is employed or for the District of Columbia.

(b) Time for filing. A covered employee may file such a civil action no earlier than 30 days after receipt of the notice under the Section 2.04(h), but no later than 90 days after that receipt.

Subpart C—[Reserved (part B—Section 210—ADA Public Services)]

Subpart D—[Reserved (Part C—Section 215—OSHA)]

Subpart E—[Reserved (Part D—Section 220—LMR)]

Subpart F—Discovery and Subpoenas

§6.01 Discovery

(a) Explanation. Discovery is the process by which a party may obtain from another person, including a party, information, not privileged, reasonably calculated to lead to the discovery of admissible evidence, for the purpose of assisting that party in developing, preparing and presenting its case at the hearing. This provision shall not be construed to permit any discovery, oral or written, to be taken from employees of the Office or the counselor(s), or the neutral(s) involved in counseling and mediation.

(b) Office policy regarding discovery. It is the policy of the Office to encourage the early and voluntary exchange of relevant and material nonprivileged information between the parties, including the names and addresses of witnesses and copies of relevant and material documents, and to encourage Hearing Officers to develop procedures which allow for the greatest exchange of relevant and material information and which minimize the need for parties to formally request such information.

(c) Discovery availability. Pursuant to Section 405(e) of the Act, the Hearing Officer

in his or her discretion may permit reasonable prehearing discovery. In exercising that discretion, the Hearing Officer may be guided by the Federal Rules of Civil Procedure.

(1) The Hearing Officer may authorize discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; physical and mental examinations; and requests for admission.

(2) The Hearing Officer may make any order setting forth the forms and extent of discovery, including orders limiting the number of depositions, interrogatories, and requests for production of documents, and may also limit the length of depositions.

(3) The Hearing Officer may issue any other order to prevent discovery or disclosure of confidential or privileged materials or information, as well as hearing or trial preparation materials and any other information deemed not discoverable, or to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Claims of privilege. Whenever a party withholds information otherwise discoverable under these rules by claiming that it is privileged or confidential or subject to protection as hearing or trial preparation materials, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

§6.02 Request for subpoena

(a) Authority to issue subpoenas. At the request of a party, a Hearing Officer may issue subpoenas for the attendance and testimony of witnesses and for the production of correspondence, books, papers, documents, or other records. The attendance of witnesses and the production of records may be required from any place within the United States. However, no subpoena may be issued for the attendance or testimony of an employee of the Office of Compliance.

(b) Request. A request for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under paragraph (a) above shall be submitted to the Hearing Officer at least 15 days in advance of the date scheduled for the commencement of the hearing. If the subpoena is sought as part of the discovery process, the request shall be submitted to the Hearing Officer at least 10 days in advance of the date set for the attendance of the witness at a deposition or the production of documents. The Hearing Officer may waive the time limits stated above for good cause.

(c) Forms and showing. Requests for subpoenas shall be submitted in writing to the Hearing Officer and shall specify with particularity the witness, correspondence, books, papers, documents, or other records desired and shall be supported by a showing of general relevance and reasonable scope.

(d) Rulings. The Hearing Officer shall promptly rule on the request.

§6.03 Service

Subpoenas shall be served in the manner provided under rule 45(b) of the Federal Rules of Civil Procedure. Service of a subpoena may be made by any person who is over 18 years of age and not a party to the proceeding.

§6.04 Proof of service

When service of a subpoena is effected, the person serving the subpoena shall certify the date and the manner of service. The party on whose behalf the subpoena was issued shall file the server's certification with the Hearing Officer.

§6.05 Motion to quash

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the Hearing Officer before the time specified in the subpoena for compliance and not later than 10 days after service of the subpoena

§6.06 Enforcement

(a) Objections and Requests for enforcement. If a person has been served with a subpoena pursuant to Section 6.03 but fails or refuses to comply with its terms or otherwise objects to it, the party or person objecting or the party seeking compliance may seek a ruling from the Hearing Officer. The request for a ruling shall be submitted in writing to the Hearing Officer. However, it may be made orally on the record at the hearing at the Hearing Officer's discretion. The party seeking compliance shall present the proof of service and, except where the witness was required to appear before the Hearing Officer, shall submit evidence, by affidavit or declaration, of the failure or refusal to obey the subpoena

(b) Ruling by hearing officer. (1) The Hearing Officer shall promptly rule on the request for enforcement and/or the objection(s)

(2) On request of the objecting witness or any party, the Hearing Officer shall, or on the Hearing Officer's own initiative the Hearing Officer may, refer the ruling to the Board for review

(c) Review by the board. The Board may overrule, modify, remand or affirm the ruling of the Hearing Officer and in its discretion, may direct the General Counsel to apply in the name of the Office for an order from a United States district court to enforce the subpoena

(d) Application to an appropriate court; civil contempt. If a person fails to comply with a subpoena, the Board may direct the General Counsel to apply, in the name of the Office, to an appropriate United States district court for an order requiring that person to appear before the Hearing Officer to give testimony or produce records. Any failure to obey a lawful order of the district court may be held by such court to be a civil contempt thereof

Subpart G—Hearings

§7.01 The hearing officer

(a) Exercise of authority. The Hearing Officer may exercise authority as provided in paragraph (b) of this Section upon his or her own initiative or upon the motion of a party, as appropriate

(b) Authority. Hearing Officers shall conduct fair and impartial hearings and take all necessary action to avoid undue delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Rule on motions to disqualify designated representatives;

(3) Issue subpoenas in accordance with Section 6.02;

(4) Rule upon offers of proof and receive relevant evidence;

(5) Rule upon discovery issues as appropriate under Sections. 6.01 to 6.06;

(6) Hold prehearing conferences for the settlement and simplification of issues;

(7) Convene a hearing as appropriate, regulate the course of the hearing, and maintain decorum at and exclude from the hearing any person who disrupts, or threatens to disrupt, that decorum;

(8) Exclude from the hearing any person, except any complainant, any party, the attorney or representative of any complainant or party, or any witness while testifying;

(9) Rule on all motions, witness and exhibit lists and proposed findings, including motions for summary judgment;

(10) Require the filing of briefs, memoranda of law and the presentation of oral argument with respect to any question of fact or law;

(11) Order the production of evidence and the appearance of witnesses;

(12) Impose sanctions as provided under Section 7.02 of these rules;

(13) File decisions on the issues presented at the hearing;

(14) Maintain the confidentiality of proceedings; and

(15) Waive or modify any procedural requirements of Sections 6 and 7 of these rules so long as permitted by the Act.

§7.02 Sanctions

The Hearing Officer may impose sanctions upon the parties, under, but not limited to, the circumstances set forth in this Section.

(a) Failure to comply with an order. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought;

(2) Stay further proceedings until the order is obeyed;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(4) Permit the requesting party to introduce secondary evidence concerning the information sought;

(5) Strike any part of the complaint, briefs, answer, or other submissions of the party failing to comply with the order;

(6) Direct judgment against the non-complying party in whole or in part; or

(7) Order that the non-complying party, or the representative advising that party, pay all or part of the attorney's fees and reasonable expenses of the other party or parties or of the Office, caused by such non-compliance, unless the Hearing Officer or the Board finds that the failure was substantially justified or that other circumstances make an award of attorney's fees and/or expenses unjust.

(b) Failure to prosecute or defend. If a party fails to prosecute or defend a position, the Hearing Officer may dismiss the action with prejudice or rule for the complainant.

(c) Failure to make timely filing. The Hearing Officer may refuse to consider any request, motion or other action that is not

filed in a timely fashion in compliance with this Part.

§ 7.03 Disqualification of the hearing officer

(a) In the event that a Hearing Officer considers himself or herself disqualified, either because of personal bias or of an interest in the case or for some other disqualifying reason, he or she shall withdraw from the case, stating in writing or on the record the reasons for his or her withdrawal, and shall immediately notify the Office of the withdrawal.

(b) Any party may file a motion requesting that a Hearing Officer withdraw on the basis of personal bias or of an interest in the case or for some other disqualifying reason. This motion shall specifically set forth the reasons supporting the request and be filed as soon as the party has reason to believe that there is a basis for disqualification.

(c) The Hearing Officer shall promptly rule on the withdrawal motion. If the motion is granted, the Executive Director will appoint another Hearing Officer within 5 days. Any objection to the ruling of the Hearing Officer on the withdrawal motion shall not be deemed waived by further participation in the hearing and may be the basis for an appeal to the Board from the decision of the Hearing Officer under Section 8.01 of these rules. Such objection will not stay the conduct of the hearing.

§ 7.04 Motions and prehearing conference

(a) Motions. When a case is before a Hearing Officer, motions of the parties shall be filed with the Hearing Officer and shall be in writing except for oral motions made on the record during the hearing. All written motions and any responses to them shall include a proposed order, where applicable. Only with the Hearing Officer's advance approval may either party file additional responses to the motion or to the response to the motion. Motions for extension of time will be granted only for good cause shown.

(b) Scheduling of the prehearing conference. Within 7 days after assignment, the Hearing Officer shall serve on the employee and the employing office and their designated representatives written notice setting forth the time, date, and place of the prehearing conference.

(c) Prehearing conference memoranda. The Hearing Officer may order each party to prepare a prehearing conference memorandum. That memorandum may include:

(1) The major factual contentions and legal issues that the party intends to raise at the hearing in short, successive, and numbered paragraphs, along with any proposed stipulations of fact or law.

(2) An estimate of the time necessary for presentation of the party's case;

(3) The specific relief, including the amount of monetary relief, that is being or will be requested;

(4) The names of potential witnesses for the party's case, except for potential rebuttal witnesses, and the purpose for which they will be called and a list of documents that the party is seeking from the opposing party, and, if discovery was permitted, the status of any pending request for discovery. (It is not necessary to list each document requested. Instead, the party may refer to the request for discovery.)

(5) A brief description of any other unresolved issues.

(d) At the prehearing conference, the Hearing Officer may discuss the subjects specified in paragraph (c) above and the manner in which the hearing will be conducted and proceed. In addition the Hearing Officer may explore settlement possibilities and consider how the factual and legal issues might be simplified and any other issues that might expedite the resolution of the dispute. The Hearing Officer shall issue an order, which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the course of the proceeding, subject to later modification by the Hearing Officer by his or her own motion or upon proper request of a party for good cause shown.

§ 7.05 Scheduling the hearing

(a) Date, time, and place of hearing. The Office shall issue the notice of hearing, which shall fix the date, time, and place of hearing. In no event, absent a postponement granted by the Office, will a hearing commence later than 60 days after the filing of the complaint.

(b) Motions for postponement or a continuance. Motions for postponement or for a continuance by either party shall be made in writing to the Office, shall set forth the reasons for the request, and shall state whether the opposing party consents to such postponement. Such a motion may be granted upon a showing of good cause. In no event will a hearing commence later than 90 days after the filing of the complaint.

§ 7.06 Consolidation and joinder of cases

(a) Explanation. (1) Consolidation is when two or more parties have cases that might be treated as one because they contain identical or similar issues or in such other appropriate circumstances.

(2) Joinder is when one person has two or more claims pending and they are united for consideration. For example, where a single individual who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal, joinder might be warranted.

(b) The Board, the Office, or a Hearing Officer may consolidate or join cases on their own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties, taking into account the confidentiality requirements of Section 416 of the Act.

§ 7.07 Conduct of hearing; disqualification of representatives

(a) Pursuant to Section 405(d)(1) of the Act, the Hearing Officer shall conduct the hearing in closed session on the record. Only the Hearing Officer, the parties and their representatives, and witnesses during the time they are testifying, shall be permitted to attend, except that the Office may not be precluded from observing the hearings. The Hearing Officer, or a person designated by the Hearing Officer or the Executive Director, shall control the recording of the proceedings.

(b) The hearing shall be conducted as an administrative proceeding. Witnesses shall testify under oath or affirmation. Except as specified in the Act and in these rules, the Hearing Officer shall conduct the hearing, to the greatest extent practicable, in accordance with the principles and procedures in Sections 554 through 557 of title 5 of the United States Code.

(c) No later than the opening of the hearing, or as otherwise ordered by the Hearing Officer, each party shall submit to the Hearing Officer and to the opposing party typed lists of the hearing exhibits and the witnesses, excluding rebuttal witnesses, expected to be called to testify.

(d) At the commencement of the hearing, or as otherwise ordered by the Hearing Officer, the Hearing Officer may consider any stipulations of facts and law pursuant to Section 7.10, take official notice of certain facts pursuant to Section 7.11, rule on objections made by the parties and hear the examination and cross-examination of witnesses. Each party will be expected to present his or her cases in a concise manner, limiting the testimony of witnesses and submission of documents to relevant matters.

(e) If the Hearing Officer concludes that a representative of an employee, a witness, or an employing office has a conflict of interest, he or she may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits for hearing and decision established by the Act, the affected party will have a reasonable time to retain other representation.

§ 7.08 Transcript

(a) Preparation. An accurate electronic or stenographic record of the hearing shall be kept and shall be the sole official record of the proceeding. The Office shall be responsible for the cost of transcription of the hearing. Upon request, a copy of a transcript of the hearing shall be provided to each party, provided, however, that such party has first agreed to maintain and respect the confidentiality of such transcript in accordance with the applicable rules prescribed by the Office or the Hearing Officer in order to effectuate Section 416(c) of the Act. Additional copies of the transcript shall be made available to a party at the party's expense. Exceptions to the payment requirement may be granted for good cause shown. A motion for an exception shall be made in writing and accompanied by an affidavit or declaration setting forth the reasons for the request. Requests for copies of transcripts shall be directed to the Office. The Office may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) Corrections. Corrections to the official transcript will be permitted. Motions for correction must be submitted within 10 days of service of the transcript upon the party. Corrections of the official transcript will be permitted only upon approval of the Hearing Officer. The Hearing Officer may make corrections at any time with notice to the parties.

§ 7.09 Admissibility of evidence

The Hearing Officer shall apply the Federal Rules of Evidence to the greatest extent practicable. These rules provide, among other things, that the Hearing Officer may exclude evidence if, among other things, it constitutes inadmissible hearsay or its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 7.10 Stipulations

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 7.11 Official notice

The Hearing Officer on his or her own motion or on motion of a party, may take official notice of a fact that is not subject to reasonable dispute because it is either: (a) A matter of common knowledge; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Where a decision, or part thereof, rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§7.12 Confidentiality

Pursuant to Section 416 of the Act, all proceedings and deliberations of Hearing Officers and the Board, including the transcripts of hearings and any related records, shall be confidential, except as specified in Section 416(d), (e), and (f) of the Act. All parties to the proceeding and their representatives, and witnesses who appear at the hearing, will be advised of the importance of confidentiality in this process and of their obligations, subject to sanctions, to maintain it.

§7.13 Immediate board review of a ruling by a hearing officer

(a) Review strongly disfavored. Board review of a ruling by a hearing officer while a proceeding is ongoing (an ''interlocutory appeal'') is strongly disfavored. In general, a request for interlocutory review may go before the Board for consideration only if the Hearing Officer, on his or her own motion or by motion of the parties, determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention.

(b) Standards for review. In determining whether to forward a request for interlocutory review to the Board, the Hearing Officer shall consider the following:

(1) Whether the ruling involves a significant question of law or policy about which there is substantial ground for difference of opinion;

(2) Whether an immediate review of the Hearing Officers ruling by the Board will materially advance the completion of the proceeding; and

(3) Whether denial of immediate review will cause undue harm to a party or the public.

(c) Time for Filing. A motion by a party for interlocutory review of a ruling of the Hearing Officer shall be filed with the Hearing Officer within 5 days after service of the ruling upon the parties. The motion shall include arguments in support of both interlocutory review and the determination requested to be made by the Board upon review. Responses, if any, shall be filed with the Hearing Officer within 3 days after service of the motion.

(d) Hearing Officer Action. If the conditions set forth in paragraph (b) above are met, the Hearing Officer shall forward a request for interlocutory review to the Board for its immediate consideration. Any such submission shall explain the basis on which the Hearing Officer concluded that the standards in paragraph (b) have been met.

(e) Grant of Interlocutory Review Within Board's Sole Discretion. The Board, in its sole discretion, may grant interlocutory review.

(f) Stay Pending Review. Unless otherwise directed by the Board, the stay of any proceedings during the pendency of either a request for interlocutory review or the review itself shall be within the discretion of the Hearing Officer, provided that no stay shall serve to toll the time limits set forth in Section 405(d) of the Act.

(g) Denial of Motion Not Appealable; Mandamus. The grant or denial of a motion for a request for interlocutory review shall not be appealable. The Hearing Officer shall promptly bring a denial of such a motion, and the reasons therefor, to the attention of the Board. If, upon consideration of the motion and the reason for denial, the Board believes that interlocutory review is warranted, it may grant the review sua sponte. In addition, the Board may, in its discretion, in extraordinary circumstances, entertain directly from a party a writ of mandamus to review a ruling of a Hearing Officer.

(h) Procedures Before Board. Upon its acceptance of a ruling of the Hearing Officer for interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

(i) Review of a Final Decision. Denial of interlocutory review will not affect a party's right to challenge rulings, which are otherwise appealable, as part of an appeal to the Board under Section 8.01 from the Hearing Officer's decision issued under Section 7.16 of these rules.

§7.14 Posthearing briefs

(a) May Be Filed. The Hearing Officer may permit the parties to file posthearing briefs on the factual and the legal issues presented in the case.

(b) Length. No principal brief shall exceed 50 pages, or 12,500 words, and no reply brief 25 pages, or 6,250 words, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown; the Hearing Officer may in his or her discretion also reduce the page limits. Briefs in excess of 10 pages shall include an index and a table of authorities.

(c) Format. Every brief must be easily readable. Briefs must have double spacing between each line of text, except for quoted texts and footnotes, which may be single-spaced.

§7.15 Closing the record of the hearing

(a) Except as provided in Section 7.14, the record shall be closed at the conclusion of the hearing. However, when the Hearing Officer allows the parties to submit additional evidence previously identified for introduction, the Hearing Officer may allow an additional period before the conclusion of the hearing as is necessary for that purpose.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the hearing record except upon a showing that new and material evidence has become available that was not available despite due diligence prior to the closing of the record. However, the Hearing Officer shall make part of the record any motions for attorney fees, supporting documentation, and determinations thereon, and any approved correction to the transcript.

§7.16 Hearing Officer decisions; entry in records of the Office

(a) Pursuant to Section 405(g) of the Act, no later than 90 days after the conclusion of the hearing, the Hearing Officer shall issue a written decision.

(b) Upon issuance, the decision and order of the Hearing Officer shall be entered into the records of the Office.

(c) The Office shall promptly provide a copy of the decision and order of the Hearing Officer to the parties.

(d) If there is no appeal of a decision and order of a Hearing Officer, that decision becomes a final decision of the Office, which is subject to enforcement under Section 8.021 of these rules.

Subpart H. Proceedings Before the Board

§8.01 Appeal to the Board

(a) No later than 30 days after the entry of the decision and order of the Hearing Officer in the records of the Office, an aggrieved party may seek review of that decision and order by the Board by filing with the Office a petition for review by the Board. The appeal must be served on the opposing party or its representative.

(b) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review to the Board, the appellant shall file and serve a supporting brief in accordance with Section 2.08 of these rules. That brief shall identify with particularity those findings or conclusions in the decision and order that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

Unless otherwise ordered by the Board, within 21 days following the service of the appellant's brief, the opposing party may file and serve a responsive brief. Unless otherwise ordered by the Board, within 10 days following the service of the appellee's responsive brief, the appellant may file and serve a reply brief.

(c) Upon the request of any party or upon its own order, the Board, in its discretion, may hold oral argument on an appeal.

(d) Upon appeal, the Board shall issue a written decision setting forth the reasons for its decision. The Board may affirm, reverse, modify or remand the decision and order of the Hearing Officer in whole or in part. Where there is no remand the decision of the Board shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.

(e) The Board may remand the matter to the Hearing Officer for further action or proceedings, including the reopening of the record for the taking of additional evidence. The Hearing Officer shall render a decision or report to the Board, as ordered, at the conclusion of proceedings on the remanded matters. Upon receipt of the decision or report, the Board shall determine whether the views of the parties on the content of the decision or report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views. A decision of the Board following completion of the remand shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.

(f) Pursuant to section 406(c) of the Act, in conducting its review of the decision of a Hearing Officer, the Board shall set aside a decision if it determines that the decision was:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(g) In making determinations under paragraph (f), above, the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(h) Record. The complaint and any amendments, notice of hearing, answer and any amendments, motions, rulings, orders, stipulations, exhibits, documentary evidence, any portions of depositions admitted into evidence, and the transcript of the hearing (together with any electronic recording of the hearing if the original reporting was performed electronically) together with the Hearing Officer's decision and the petition for review, any response thereto, any reply to the response and any other pleadings shall constitute the record in the case.

§8.02 Compliance with final decisions, requests for enforcement

(a) Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to Section 407 of the Act, A party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all parties to the proceedings with a compliance

report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved.

(b) The Office may require additional reports as necessary;

(c) If the Office does not receive notice of compliance in accordance with paragraph (a) of this Section, the Office shall make inquiries to determine the status of compliance. If the Office cannot determine that full compliance is forthcoming, the Office shall report the failure to comply to the Board and recommend whether court enforcement of the decision should be sought.

(d) Any party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

(e) Upon receipt of a report of non-compliance or a petition for enforcement of a final decision, or as it otherwise determines, the Board may issue a notice to any person or party to show cause why the Board should not seek judicial enforcement of its decision or order.

(f) Within the discretion of the Board, it may direct the General Counsel to petition the Court for enforcement under Section 407(a)2 of a decision under Section 406(e) of the Act whenever the Board finds that a party has failed to comply with its decision and order.

§8.03 Judicial review

Pursuant to Section 407 of the Act, a party aggrieved by a final decision of the Board under Section 406(e) in cases arising under Part A of Title II of the Act may file a petition for review with the United States Court of Appeals for the Federal Circuit. The party filing a petition for review shall serve a copy on the opposing party or its representative.

Subpart I—Other Matters of General Applicability

§9.01 Attorney's fees and costs

(a) *Request*. No later than 20 days after the entry of a Hearing Officer's decision under Section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. The Board or the Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion.

(b) *Form of Motion*. In addition to setting forth the legal and factual bases upon which the attorney's fees and/or costs are sought, a motion for an award of attorney's fees and/or costs shall be accompanied by:

(1) accurate and contemporaneous time records;

(2) a copy of the terms of the fee agreement (if any);

(3) the attorney's customary billing rate for similar work; and

(4) an itemization of costs related to the matter in question.

§9.02 Reserved—Ex parte communications

§9.03 Informal resolutions and settlement agreements.

(a) Informal Resolution. At any time before a covered employee files a complaint under Section 405, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute, so long as the resolution does not require a waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

(b) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter in accordance with Section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval.

§9.04 Revocation, amendment or waiver of rules

(a) The Executive Director, subject to the approval of the Board, may revoke or amend these rules by publishing proposed changes in the Congressional Record and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the Congressional Record.

(b) The Board or a Hearing Officer may waive a procedural rule contained in this Part in an individual case for good cause shown if application of the rule is not required by law.

Signed at Washington, D.C., on this _____ day of _____ , 1995.

R. Gaull Silberman,
Executive Director, Office of Compliance.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:32 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 37. Concurrent resolution directing the Clerk of the House of Representatives to make technical changes in the enrollment of the bill (H.R. 2539) entitled ''An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 5:57 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 1655. An act to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

At 6:58 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2539. An act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulations of transportation and for other purposes.

ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker of the House, was signed on today, December 22, by the President pro tempore (Mr. THURMOND):

H.R. 1530. An act to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following measures were read the second time and placed on the calendar:

S. 1500. A bill to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, and for other purposes.

H. J. Res. 134. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 509, A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the town of Grand Lake, Colorado, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park (Rept. No. 104–199).

H.R. 562. A bill to modify the boundaries of Walnut Canyon National Monument in the State of Arizona (Rept. No. 104–199).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 1296. A bill to provide for the Administration of certain Presidio properties at minimal cost to the Federal taxpayer.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 605. A bill to establish a uniform and more efficient Federal process for protecting