extend her remarks and include extraneous material:)

Ms. NORTON, for 5 minutes, today.

(The following Member (at the request of Mr. CANADY of Florida) to revise and extend their remarks and include extraneous material:)

Mr. MCINTOSH, for 5 minutes, on July 12.

Mr. GUTKNECHT, for 5 minutes, on July 12.

Mr. EWING, for 5 minutes, today.

Mr. KINGSTON, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GUTIERREZ) and to include extraneous matter:)

Mr. RANGEL.
Mr. MARKEY.
Ms. DELAURO.
Mr. GIBBONS.
Mr. JACOBS.
Mr. COYNE.
Ms. KAPTUR.
Mr. DELLUMS.
Mr. ROMERO-BARCELO.
Mr. POMEROY.
Mr. LIPINSKI.
Mr. OBERSTAR.
Mr. ENGEL.
Ms. LOFGREN.
Mr. UNDERWOOD.
Mrs. MINK of Hawaii
Mr. PAYNE of New Jersey.
Mr. LEVIN.
Mr. MARTINEZ.
Mr. FIELDS of Louisiana.
Mr. LEWIS of Georgia.
Mr. GUTIERREZ.
Mr. SAWYER.
Mr. COSTELLO.
Mr. STUPAK.

The following Members (at the request of Mr. CANADY of Florida) and to include extraneous matter:)

Mr. FIELDS of Texas.
Mr. DORNAN.
Mr. GILMAN in three instances.
Mr. LONGLEY.
Mr. QUINN.
Mr. HYDE.
Mr. CRANE.
Mr. FLANAGAN.
Mr. TALENT.
Mr. FOX of Pennsylvania.
Mr. COLLINS of Georgia.
Mr. BEREUTER.
Mr. EWING.
Mr. KLUG.
Mr. CUNNINGHAM.
Mr. GOODLING.
Mr. FORBES.
Mr. BLUTE.
Mr. LEWIS of Kentucky.

ENROLLED BILLS SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 419. An act for the relief of Benchmark Rail Group, Inc.

H.R. 701. An act to authorize the Secretary of Agriculture to convey lands to the city of Rolls, Missouri.

ADJOURNMENT

Mr. CANADY of Florida. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 55 minutes a.m.), the House adjourned until today, Friday, July 12, 1996, at 9 a.m.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, July 10, 1996.

Hon. NEWT GINGRICH,
Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 303 of the Congressional Accountability Act of 1955 (2 U.S.C. §1383), I am transmitting the enclosed notice of proposed rulemaking for publication in the Congressional Record.

The Congressional Accountability Act specifies that the enclosed notice be published on the first day on which both Houses are in session following this transmittal.

Sincerely,

RICKY SILBERMAN,
Executive Director.

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

NOTICE OF PROPOSED RULEMAKING

Summary: The Executive Director of the Office of Compliance is publishing proposed amendments to the rules governing the procedures for the Office of Compliance under the Congressional Accountability Act (P.L. 104–1, 109 Stat. 3). The proposed amendments to the procedural rules have been proposed by the Board of Directors, Office of Compliance.

Dates: Comments are due within 30 days after publication of this Notice in the Congressional Record.

Addresses: Submit written comments (an original and ten copies) to the Executive Director, Office of Compliance, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999. Those wishing to receive notification of receipts of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 426–1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For Further Information Contact: Executive Director, Office of Compliance at (202) 724–9250. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 224–2705.

SUPPLEMENTARY INFORMATION

I. Background

The Congressional Accountability Act of 1995 (''CAA'' or ''Act'') was enacted into law on January 23, 1995. 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 303 of the CAA directs that the Executive Director of the Office of Compliance (''Office'') shall, subject to the approval of the Board of Directors (''Board'') of the Office, adopt rules governing the procedures for the Office, and may amend those rules in the same manner. The procedural rules currently in effect, approved by the Board and adopted by the Executive Director, were published December 22, 1995 in the Congressional Record (141 CONG. R. S19239 (daily ed., Dec. 22, 1995)). The proposed revisions and additions that follow amend certain of the existing procedures by which the Office provides for the consideration and resolution of alleged violations of the laws made applicable under Part A of title II of the CAA, and establish procedures for consideration of matters arising under Part D of title II of the CAA, which is generally effective October 1, 1996.

A summary of the proposed amendments is set forth below in Section II; the text of the provisions that are proposed to be added or revised is found in Section III. The Executive Director invites comment from interested persons on the content of these proposed amendments to the procedural rules.

II. Summary of Proposed Amendments to the Procedural Rules

(A) A general reorganization of the rules is proposed to accommodate proposed new provisions, and, consequently, to re-order the rules in a clear and logical sequence. As a result, some sections will be moved and/or renumbered. Cross-references in appropriate sections will be modified accordingly. These organizational changes are listed in the following comparison table.

Former section No.	*New section No.*
§2.06 Complaints	§5.01
§2.07 Appointment of the Hearing Officer	§5.02
§2.08 Filing, Service and Size Limitations of Motions, Briefs, Responses and Other Documents	§9.01
§2.09 Dismissal of Complaint	§5.03
§2.10 Confidentiality	§5.04
§2.11 Filing of Civil Action	§2.06
§8.02 Compliance with Final Decisions, Requests for Enforcement	§8.03
§8.03 Judicial Review	§8.04
§9.01 Attorney's Fees and Costs	§9.03
§9.02 Ex Parte Communications	§9.04
§9.03 Settlement Agreements	§9.05
§9.04 Revocation, Amendment or Waiver of Rules	§9.06

(B) Several revisions are proposed to provide for consideration of matters arising under section 220 (Part D of title II) of the CAA, which applies certain provisions of chapter 71 of title 5, United States Code relating to Federal Service Labor-Management Relations (''chapter 71''). For example, technical changes in the procedural rules will be necessary in order to provide for the exercise by the General Counsel and labor organizations of various rights and responsibilities under section 220 of the Act. These proposed revisions are as follows:

Section 1.01. ''Scope and Policy'' is proposed to be amended by inserting in the first sentence a reference to Part D of title II of the CAA in order to clarify that the procedural rules now govern procedures under that Part of the Act.

Section 1.02(c) is proposed to be amended to make the definition of the term ''employee'' consistent with the definition contained in the substantive regulations to be issued by the Board under section 220 of the CAA.

Section 1.02(i) is proposed to be amended to redefine the term ''party'' to include, as appropriate, the General Counsel or a labor organization.

A new section 1.02(j) defining ''respondent'' is proposed to be added. (The addition of subsection (j) will result in the subsequent subsections being renumbered accordingly.)

Section 1.05 ''Designation of Representative'' is to be revised to allow for a labor organization to designate a representative.

Section 1.07(c), relating to confidentiality requirements, is proposed to be amended to include a labor organization as a participant within the meaning of that section.

Section 7.04(b) concerning the scheduling of the prehearing conference is modified to substitute the word ''parties'' for ''employee and the employing office''.

(C) Modifications to subsections 1.07 (b) and (d), concerning confidentiality requirements, are proposed in order to clarify the requirements and restrictions set forth in these subsections, and to make clear that a party or its representative may disclose information obtained in confidential proceedings for limited purposes under certain conditions.

(D) Section 2.04 ''Mediation,'' is proposed to be amended in certain respects.

In section 204(a) the language ''including any and all possibilities'' would be modified to read ''including the possibility'' of reaching a resolution.

Section 204(e)(2) is proposed to be modified to allow parties jointly to request an extension of the mediation period orally, instead of permitting only written requests for such extensions.

Section 2.04(f)(2) is proposed to be revised to explain more fully the procedures involving the ''Agreement to Mediate''.

A new subsection 2.04(h) is proposed regarding informal resolutions and settlement agreements. (The subsections following the newly added subsection 2.04(h) would be renumbered accordingly.)

(E) Subpart E of the Procedural Rules had been reserved for the implementation of section 220 of the CAA. The Board has recently published proposed regulations pursuant to section 220(d) (142 Cong. R. S5070 and H5153 (daily ed., May 15, 1996)) and section 220(e) (142 Cong. R., S5552 and H5563 (daily ed., May 23, 1996)) to implement the applied provisions of chapter 71. In light of those proposed regulations and the proposed modifications of the procedural rules discussed herein, it is not necessary to reserve a subpart for procedures specific to the implementation of section 220.

(F) As discussed above, Subpart E is no longer reserved for procedural rules implementing section 220 of the CAA. However, as part of the general reorganization of the procedural rules, Subpart E will be entitled ''Complaints,'' and will consist of sections 206, 207, 209 and 210 moved from Subpart B and renumbered as shown in the comparison table, above.

In addition to proposed modifications to section 5.01 (formerly section 206) required by the implementation of section 220 (e.g. provision for the General Counsel to file or amend complaints and the addition of references to labor organizations as parties), section 5.01(e) is proposed to be amended to state how service of a complaint will be effectuated and section 501(f) is proposed to be amended to provide that a failure to file an answer or to raise a claim or defense as to any allegation(s) in a complaint or amended complaint shall constitute an admission of such allegation(s) and that affirmative defenses not raised in an answer shall be deemed waived. A respondent's motion for leave to amend an answer will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

Section 5.03 (formerly section 2.09) is proposed to be revised to reflect the General Counsel's role under section 220 of the CAA and to provide that a Hearing Officer, not the Executive Director, may approve the withdrawal of a complaint.

(G) Section 7.07, relating to the conduct of hearings, is proposed to be revised to include a new subsection (e), providing that ''[a]ny objection not made before a Hearing Officer shall be deemed waived in the absence of clear error.'' The current section 7.07(e) will be renumbered section 7.07(f), and it is proposed to be amended to provide that if the representative of a labor organization, as well as that of an employee or a witness, has a conflict of interest, that representative may be disqualified.

(H) Subpart H, relating to proceedings before the Board, is proposed to be amended in the following ways.

(1) A new subsection 8.01(i) is proposed to allow for amicus participation, as appropriate, in proceedings before the Board, in a manner consistent with section 416 of the CAA.

(2) A new section 8.02 ''Reconsideration'' is proposed to allow for a party to seek Board reconsideration of a final decision or order of the Board. The sections following section 8.02 in Subpart H would be renumbered accordingly.

(3) Section 8.04 ''Judicial Review'' is proposed to be revised to state that the United States Court of Appeals for the Federal Circuit shall have jurisdiction, as appropriate, over petitions under section 220(c)(3) and section 405(g) or 406(e) of the Act.

(I) A new section 9.02 ''Signing of Pleadings, Motions, and Other Filings; Violation of Rules; Sanctions'' is proposed to be added.

(J) A section had been reserved in the procedural rules for a provision on ex parte communications. The text of the proposed rule, which will be found at section 9.04 of the amended rules, is set forth in Section III, below.

(K) It is proposed that the opening sentence of section 9.05(a) (formerly 9.03(a)), ''Informal Resolutions and Settlement Agreements'' be modified to make it clear that section 9.05 applies only where covered employees have initiated proceedings under the CAA.

III. Text of Proposed Amendments to Procedural Rules

§ 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 Parts A and D 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(c)

Employee. The term ''employee'' includes an applicant for employment and a former employee, except as provided in section 2421.3(b) of the Board's rules under section 220 of the Act.

§ 1.02(i)

Party. The term ''party'' means: (1) the employee or the employing office in a proceeding under Part A of title II of the Act; or (2) the labor organization, individual employing office or employing activity, or, as appropriate, the General Counsel in a proceeding under Part D of title II of the Act.

§ 1.02(j)

Respondent. The term ''respondent'' means the party against which a complaint is filed.

§ 1.05 Designation of Representative.

(a) An employee, a witness, a labor organization, 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, labor organization, or employing office specifies otherwise and until such time as that individual, labor organization, 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 or entity shall be computed in the same manner as for unrepresented individuals or entities with service of the documents, however, directed to the representative, as provided.

§ 1.07(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. Nothing in these rules prohibits 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. Moreover, nothing in these rules prohibits a party or its representative from disclosing information obtained in confidential proceedings for the limited purposes of investigating claims, ensuring compliance with the Act or preparing its prosecution or defense, to the extent that such disclosure is reasonably necessary to accomplish the aforementioned purposes and provided that the party making the disclosure takes all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information.

§ 1.07(c)

Participant. For the purposes of this rule, participant means any individual, labor organization, 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.

§1.07(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. A participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, an employing office or its representatives may disclose information about its employment practices and personnel actions, provided that the information was not obtained in a confidential proceeding. However, an employee who obtains that information in mediation or other confidential proceeding may not disclose such information.

Similarly, 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 its representatives may not disclose that information if it was obtained in a confidential proceeding.

§2.04(a)

(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 the possibility 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.

§2.04(f)(2)

(2) *The Agreement to Mediate.* At the commencement of the mediation, the neutral will ask the parties to sign an agreement prepared by the Office (''the Agreement to Mediate''). The Agreement to Mediate will set out the conditions under which mediation will occur, including the requirement that the participants 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.

2.04(h)

Informal Resolutions and Settlement Agreements. At any time during mediation the parties may resolve or settle a dispute in accordance with section 9.05 of these rules.

§5.01 (formerly §2.06) Complaints

(a) *Who may file.*

(1) An employee who has completed mediation under section 2.04 may timely file a complaint with the Office alleging any violation of sections 201 through 107 of the Act.

(2) The General Counsel may file a complaint alleging a violation of section 220 of the Act.

(b) *When to file.*

(1) A complaint may be filed by an employee no sooner than 30 days after the date of receipt of the notice under section 2.04(i), but no later than 90 days after receipt of that notice.

(2) A complaint may be filed by the General Counsel after the investigation of a charge filed under section 220 of the Act.

(c) *Form and Contents.*

(1) Complaints filed by covered employees. 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:

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

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

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

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

(v) 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;

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

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

(2) Complaints filed by the General Counsel. A compliant filed by the General Counsel shall be typed, signed by the General Counsel or his designee and shall contain the following information:

(i) the name, address and telephone number of the employing office and/or labor organization alleged to have violated section 220 against which the compliant is brought;

(ii) notice of the charge filed alleging a violation of section 220;

(iii) a description of the acts and conduct that are alleged to be violations of the Act, including all relevant dates and places and the names and titles of the responsible individuals; and

(iv) a statement of the relief or remedy sought.

(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, as appropriate, relate to the violations for which the employee has completed counseling and mediation, or relate to the charge(s) investigated by the General Counsel; and that permitting such amendments will not unduly prejudice the rights of the employing office, the labor organization, or other parties, unduly delay the completeion 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 respondent, or its designated representative, by hand delivery or certified mail, 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 receipt of a copy of a complaint or an amended complaint, the respondent 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 on each of the issues raised in the complaint or amended complaint, including admissions, denials, or explanations of each allegation made in the complaint and any affirmative defenses or other defenses to the complaint.

Failure to file an answer or to raise a claim or defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defense not raised in an answer shall be deemed waived. A respondent's motion for leave to amend an answer will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§5.03 (formerly §2.09) Dismissed 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 with 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 the General Counsel or 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 5.03(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 Hearing Officer.

(f) *Withdrawal of Complaint by the General Counsel.* At any time to the opening of the hearing the General Counsel may withdraw his complaint by filing a notice with the Executive Director and the Hearing Officer and by serving a copy on the respondent. After opening of the hearing, any such withdrawal must be approved by the Hearing Officer.

§7.04(b)

Scheduling of the Prehearing Conference. Within 7 days after assignment, the Hearing Officer shall serve on the parties and their designated representatives written notice setting forth the time, date, and place of the prehearing conference.

§7.07(E)

(e) Any objection not made before a Hearing Officer shall be deemed waived in the absence of clear error.

§7.07(f)

(f) If the Hearing Officer concludes that a representative of an employee, a witness, a labor organization 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.

§8.01(i)

The Board may invite amicus participation, in appropriate circumstances, in a manner consistent with the requirements of section 416 of the CAA.

§8.02 Reconsideration

After a final decision or order of the Board has been issued, a party to the proceeding before the Board, who can establish in its moving papers that reconsideration is necessary because the Board has overlooked or misapprehended points of law or fact, may move for reconsideration of such final decision or order. The motion shall be filed within 15 days after service of the Board's decision or order. No response shall be filed unless the Board so orders. The filing and pendency of a motion under this provision shall not operate to stay the action of the Board unless so ordered by the Board.

§8.04 Judicial Review

Pursuant to section 407 of the Act—

(a) the United States Court of Appeals for the Federal Circuit shall have jurisdiction

over any proceeding commenced by a petition or:

(1) a party aggrieved by a final decision of the Board under section 406(e) in cases arising under part A of title II, or

(2) the General Counsel or a respondent before the Board who files a petition under section 220(c)(3) of the Act.

(b) The U.S. Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 405(g) or 406(e) with respect to a violation of part A or D of title II of the Act.

(c) The party filing a petition for review shall serve a copy on the opposing party or parties or their representative(s).

§9.02 Signing of Pleadings, Motions and Other Filings; Violation of Rules; Sanctions

Every pleading, motion, and other filing of a party represented by an attorney or other designated representative shall be signed by the attorney or representative. A party who is not represented shall sign the pleading, motion or other filing. The signature of a representative or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other filing; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other filing is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person who is required to sign. If a pleading, motion, or other filing is signed in violation of this rule, a Hearing Officer or the Board, as appropriate, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other filing, including a reasonable attorney's fee. A Hearing Officer or the Board, as appropriate, upon motion or its own initiative may also impose an appropriate sanction, which may include the sanctions specified in section 7.02, for any other violation of these rules that does not result from reasonable error.

§9.04 Ex parte Communications.

(a) *Definitions.*

(1) The term *person outside the Office* means any individual not an employee or agent of the office, any labor organization and agent thereof, and any employing office and agent thereof, and the General Counsel and any agent thereof when prosecuting a complaint proceeding before the Office pursuant to sections 210, 215, or 220 of the CAA. The term also includes any employee of the Office who becomes a party or a witness for a party other than the Office in proceedings as defined in these rules.

(2) The term *ex parte communication* means an oral or written communication (a) that is between an interested person outside the Office and a Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking; (b) that is related to a proceeding or a rulemaking; (c) that is not made on the public record; (d) that is not made in the presence of all parties to a proceeding or a rulemaking; and (5) that is made without reasonable prior notice to all parties to a proceeding or a rulemaking.

(3) For purposes of section 9.04, the term *proceeding* means the complaint and hearing proceeding under section 405 of the CAA, an appeal to the Board under section 406 of the CAA, pre-election investigatory hearing under section 220 of the CAA, and any other proceeding of the Office established pursuant to regulations issued by the Board under the CAA.

(4) The term *period of rulemaking* means the period commencing with the issuance of an advance notice of proposed rulemaking or of a notice of proposed rulemaking, whichever issues first, and concluding with the issuance of a final rule.

(b) *Exception to Coverage.* The rules set forth in this section do not apply during periods that the Board designates as periods of negotiated rulemaking.

(c) *Prohibited Ex Parte Communications and Exceptions.*

(1) During a proceeding, it is prohibited knowingly to make or cause to be made:

(i) a written ex parte communication if copies thereof are not promptly served by the communicator on all parties to the proceeding in accordance with section 9.01 of these Rules; or

(ii) an oral ex parte communication unless all parties have received advance notice thereof by the communicator and have an adequate opportunity to be present.

(2) During the period of rulemaking, it is prohibited knowingly to make or cause to be made a written or an oral ex parte communication. During the period of rulemaking, the Office shall treat any written ex parte communication as a comment in response to the advance notice of proposed rulemaking or the notice of proposed rulemaking, whichever is pending, and such communications will therefore be part of the public rulemaking record.

(3) Notwithstanding the prohibited set forth in (1) and (2), the following ex parte communications are not prohibited:

(i) those which relate solely to matters which the Board member or Hearing Officer is authorized by law, Office rules, or order of the Board or Hearing Officer to entertain or dispose of on an ex parte basis;

(ii) those which all parties to the proceeding agree, or which the responsible official formally rule, may be made on an ex parte basis;

(iii) those which concern only matters of general significance to the field of labor and employment law or administrative practice;

(iv) those from the General Counsel to the Office or the Board when the General Counsel is acting on behalf of the Office or the Board under any section of the CAA; and

(v) those which could not reasonably be construed to create either unfairness or the appearance of unfairness in a proceeding or rulemaking.

(4) It is prohibited knowingly to solicit or cause to be solicited any prohibited ex parte communication.

(d) *Reporting of Prohibited Ex Parte Communications.*

(1) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who determines that he or she is being asked to receive a prohibited ex parte communication shall refuse to do so and inform the communicator of this rule.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding who knowingly receives a prohibited ex parte communication shall (a) notify the parties to the proceeding that such a communication has been received; and (b) provide the parties with a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). If a proceeding is then pending before either the Board or a Hearing Officer, and if the Board or Hearing Officer so orders, these materials shall then be placed in the record of the proceeding. Upon order of the Hearing Officer or the Board, the parties may be provided with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(3) Any Board member involved in a rulemaking who knowingly receives a prohibited ex parte communication shall cause to be published in the Congressional Record a notice that such a communication has been received and a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). Upon order of the Board, these materials shall then be placed in the record of the rulemaking and the Board shall provide interested persons with a full opportunity respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(4) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly receives a prohibited ex parte communication and who fails to comply with the requirements of subsections (1), (2), or (3) above, is subject to internal censure or discipline through the same procedures that the Board utilizes to address and resolve ethical issues.

(e) *Penalties and Enforcement.*

(1) Where a person is alleged to have made or caused another to make a prohibited ex parte communication, the Board or the Hearing Officer (as appropriate) may issue to the person a notice to show cause, returnable within a stated period not less than seven days from the date thereof, why the Board or the Hearing Officer should not determine that the interests of law or justice require that the person be sanctioned by, where applicable, dismissal of his or her claim or interest, the striking of his or her answer, or the imposition of a some other appropriate sanction, including but not limited to the award of attorneys' fees and costs incurred in responding to a prohibited ex parte communication.

(2) Upon notice and hearing, the Board may censure or suspend or revoke the privilege of practice before the Office of any person who knowingly and willfully makes, solicits, or causes the making of any prohibited ex parte communication. Before formal proceedings under this subsection are instituted, the Board shall first provide notice in writing that it proposes to take such action and that the person or persons may show cause within a period to be stated why the Board should not take such action. Any hearings under this section shall be conducted by a Hearing Officer subject to Board review under section 8.01 of these Rules.

(3) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly makes or causes to be made a prohibited ex parte communication is subject to internal censure or discipline through the same procedures that the Board utilizes to address and resolve ethical issues.

§9.05(a)

(a) *Informal Resolution.* At any time before a covered employee who has filed a formal request for counseling 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.

Signed at Washington, D.C., on this 10th day of July, 1996.

R. GAULL SILBERMAN,
Executive Director,
Office of Compliance.

NOTICE OF ADOPTION OF REGULATIONS

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, July 9, 1996.

Hon. NEWT GINGRICH,
Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. §1384(b)), I am transmitting on behalf of the Board of Directors the enclosed notice of Adoption of Regulations and Submission for Approval for publication in the Congressional Record. The notice, which the Board has approved, is being issued pursuant to §220(d).

The Congressional Accountability Act specifies that the enclosed notice be published on the first day on which both Houses are in session following this transmittal.

Sincerely,

GLEN D. NAGER,
Chair of the Board.

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS, PROTECTIONS AND RESPONSIBILITIES UNDER CHAPTER 71 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS (REGULATIONS UNDER SECTION 220(d) OF THE CONGRESSIONAL ACCOUNTABILITY ACT)

NOTICE OF ADOPTION OF REGULATIONS AND SUBMISSION FOR APPROVAL

Summary: The Board of Directors of the Office of Compliance, after considering comments to its Notice of Proposed Rulemaking published May 15, 1996 in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations implementing section 220 of the Congressional Accountability Act of 1995, Pub. L. 104–1, 109 Stat. 3. Specifically, these regulations are adopted under section 220(d) of the CAA.

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, DC 20540–1999, Telephone: (202) 724–9250.

SUPPLEMENTARY INFORMATION

I. Background and Summary

The Congressional Accountability Act of 1995 (''CAA'' or ''Act'') was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered Congressional employees and employing offices. Section 220 of the CAA concerns the application of chapter 71 of title 5, United States Code (''chapter 71'') relating to Federal service labor-management relations. Section 220(a) of the CAA applies the rights, protections and responsibilities established under sections 7102, 7106, 7111 through 7117, 7119 through 7122 and 7131 of title 5, United States Code to employing offices and to covered employees and representatives of those employees.

Section 220(d) authorizes the Board of Directors of the Office of Compliance (''Board'') to issue regulations to implement section 220 and further states that, except as provided in subsection (e), such regulations ''shall be the same as substantive regulations promulgated by the Federal Labor Relations Authority [''FLRA''] to implement the statutory provisions referred to in subsection (a) except—(A) to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; or (B) as the Board deems necessary to avoid a conflict of interest or appearance of a conflict of interest.''

On March 6, 1996, the Board of Directors of the Office of Compliance (''Office'') issued an Advance Notice of Proposed Rulemaking (''ANPR'') that solicited comments from interested parties in order to obtain participation and information early in the rulemaking process. 142 Cong. R. S1547 (daily ed., Mar. 6, 1996).

On May 15, 1996, the Board published in the Congressional Record a Notice of Proposed Rulemaking (''NPR'') (142 Cong. R. S5070–89, H5153–72 (daily ed., May 15, 1996). In response to the NPR, the Board received three written comments, two of which were from offices of the Congress and one of which was from a labor organization.

Parenthetically, it should also be noted that, on May 23, 1996, the Board published a Notice of Proposed Rulemaking (142 Cong. R. S5552–56, H5563–68 (daily ed., May 23, 1996)) inviting comments from interested parties on proposed regulations under section 220(e). That subsection further authorizes the Board to issue regulations on the manner and extent to which the requirements and exemptions of chapter 71 should apply to covered employees who are employed in certain specified offices, ''except . . . that the Board shall exclude from coverage under [section 220] any covered employees who are employed in [the specified offices] if the Board determines that such exclusion is required because of (i) a conflict of interest or appearance of a conflict of interest; or (ii) Congress' constitutional responsibilities.'' Final regulations under section 220(e) will be adopted and submitted for Congressional approval separately.

II. Consideration of Comments and Conclusions

A. Investigative and adjudicatory responsibilities

In the NPR, the Board proposed that, like the FLRA , it would decide representation issues, negotiability issues and exceptions to arbitral awards based upon a record developed through direct submissions from the parties and, where necessary, through further investigation by the Board (through the person of the Executive Director). Under the Board's proposed rule, only unfair labor practice issues (and not representation, arbitrability or negotiability issues) would be referred to hearing officers for initial decision under section 405 of the CAA.

One commenter expressly approved of this proposal. Conversely, two commenters argued that the proposal violates the plain and unambiguous language of the statute, which they read as requiring the Board to refer all section 220 issues, including representation, arbitrability, and negotiability issues, to hearing officers for initial decision under section 405.

Contrary to the argument that the statutory text *unambiguously* requires referral of representation, arbitrability, and negotiability issues (as well as unfair labor practice issues) to hearing officers for initial decision pursuant to section 405, section 220(c)(1) simply does not define the ''matter[s]'' that must be referred to hearing officers for initial decision under section 405, much less specify that these ''matter[s]'' include disputed issues of representation, negotiability and/or arbitrability. Moreover, contrary to the assumption of the commenters, there is no sound reason to assume that the ''matter[s]'' that the Board must refer to hearing officers for initial decision under section 405 are co-extensive with the ''petition[s], or other submission[s]'' that the Board receives under section 220(c)(1). Since Congress did *not* require the Board to refer to a hearing officer for initial decision ''any petition or other submission'' that it receives under section 220(c)(1), but rather only ''any matter under this paragraph,'' the interpretive presumption in fact must be that the ''matter[s]'' which the Board must refer are not co-extensive with the ''petitions or other submissions'' that it receives under section 220(c)(1) (but, rather, are only a subset of them.) Whether or not this interpretative presumption can be overcome by other relevant interpretive materials, it is plain that, contrary to the assertion of the commenters, the statutory text is in fact seriously ambiguous about whether controversies involving representation, negotiability, and arbitrability issues are ''matter[s]'' within the meaning of section 220(c)(1) that must be referred to a Hearing Officer pursuant to section 405.

Moreover, as explained in the NPR, this textual ambiguity is best resolved by interpreting the statutory phrase ''matter'' in section 220(c)(1) to encompass only controversies involving disputed unfair labor practice issues. The term ''matter'' in section 220(c)(1) simply does not appear to refer to representation or other such issues arising out of the Board's ''investigative authorities.'' Indeed, section 220(c)(1) expressly contemplates that the Board may direct the General Counsel (and, a fortiori, not a hearing officer) to carry out these ''investigative authorities,'' which under chapter 71 include the authority, for example, to decide (and not, as one commenter suggests, merely to investigate) disputed representation issues such as whether an individual must be excluded from a unit because he or she is a supervisor.

Under chapter 71, only controversies involving unfair labor practice issues are subject to formal adversarial processes like those established by section 405; and nothing in the CAA's legislative history shows that Congress understood itself to be departing from chapter 71 in this respect. In these circumstances, under the CAA, the textual ambiguity must be resolved by reference to the interpretive presumption that Congress has subjected itself to the same rules that the executive branch is subject to under chapter 71.

Furthermore, contrary to the suggestion of one commenter, the reference in the last sentence of section 220(c)(2) to initial hearing officer consideration of unfair labor practice complaints does not detract in any way from the Board's construction of the term ''matter'' in section 220(c)(1). The Board's construction of the term ''matter'' in section 220(c)(1) simply does not render this reference in section 220(c)(2) to initial hearing officer consideration of unfair labor practice complaints ''redundant and meaningless,'' as the commenter claims; rather, the reference in section 220(c)(2) simply completes the statute's instruction to the General Counsel concerning how he should process a controversy involving an unfair labor practice issue (just as section 220(c)(1) in parallel instructs the Board concerning how it should process a controversy involving an unfair labor practice issue). Indeed, construing the phrase ''matter'' in section 220(c)(1) to encompass more than just controversies involving unfair labor practice issues would not in any way reduce the redundancy and lack of meaning that the commenter perceives (since, in all events, both section 220(c) (1) and (2) would effectively encompass