She has left behind many warm memories, not just for her family but for a multitude of her friends and acquaintances. The mayor said he has childhood friends who, 40 years later, can still describe the smell and taste of a typical Helen Riley summer dinner.

She also leaves behind the legacy of a gracious lady who became a role model, not just for her family, but for her community, of a life well-lived.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, September 18, 1996 the Federal debt stood at $5,193,856,710,104.18.

One year ago, September 18, 1995, the Federal debt stood at $4,963,469,000,000.

Five years ago, September 18, 1991, the Federal debt stood at $3,627,589,000,000.

Ten years ago, September 18, 1986, the Federal debt stood at $2,108,613,000,000.

Fifteen years ago, September 18, 1981, the Federal debt stood at $976,715,000,000. This reflects an increase of more than $4 trillion ($4,17,141,710,104.18) during the 15 years from 1981 to 1996.

FOREIGN OIL CONSUMPTION: HERE'S WEEKLY U.S. BOX SCORE

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending September 13, the U.S. imported 7,572,000 barrels of oil each day, 393,000 less than the 7,965,000 imported during the same week a year ago.

Nevertheless, Americans relied on foreign oil for 54 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States obtained about 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970s, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 7,572,000 barrels a day.

Mr. PELL. Mr. President, it appears to me that we find ourselves in a pleasant predicament when it comes to education appropriations for fiscal year 1997. On each side of the aisle we have leadership packages that would add some $2.3 billion in additional funding to education.

In several areas, the Democratic package, of which I am a cosponsor, is larger than the Republican package. It would, for instance, add $585 million to the Pell Grant program in order to fund a $2,700 maximum grant for the coming year. It would also add funds to the Goals 2000 Program, to the Professional Development Program for Teachers, to Education Technology, and to important higher education programs, such as TRIO and the SSIG Program.

In other areas, however, the Republican package is larger. In areas such as Title I, Adult Education, the SEOG Program, College Work Study, and Special Education, the Republican package contains more funding than the Democratic package.

Mr. President, there is a solution to the dilemma with which we are faced that is in the best interests of our nation. It is also an outcome that would get us out of a bipartisan battle, and bring the spirit of bipartisanship back to education policy making and appropriations. Very simply, I believe we should take the higher number from each package, put them together, and pass a package for which we can all take credit.

This would mean more money for education, and to my mind, that would be very good news, indeed. It would mean better funding in such critical areas as Pell Grants, Title I, Professional Development for Teachers, Special Education, and the campus-based student aid programs.

Instead of discussing which proposal is better in which area, we should resolve the dilemma and conclude an agreement that is in the best interests not of one political party or the other but of the American people.

NOTICE OF ADOPTION OF AMENDMENTS TO PROCEDURAL RULES

Mr. THURMOND. Mr. President, pursuant to section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1383(b)), a notice of adoption of amendments to procedural rules was submitted by the Office of Compliance, U.S. Congress. The notice publishes adopted amendments to the rules governing the procedures for the Office of Compliance under the Congressional Accountability Act.

Section 304(b) requires this notice and the amendments to the rules be printed in the CONGRESSIONAL RECORD. Therefore I ask unanimous consent that the notice and amendments be printed in the RECORD.

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: AMENDMENTS TO PROCEDURAL RULES

NOTICE OF ADOPTION OF AMENDMENTS TO PROCEDURAL RULES

Summary: After considering comments to the Notice of Proposed Rulemaking published July 11, 1996 in the Congressional Record, the Executive Director has adopted and is publishing amendments to the rules governing the procedures for the Office of Compliance under the Congressional Accountability Act of 1995 (P.L. 104-1, 109 Stat. 3). The amendments to the procedural 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, D.C. 20540–1999. Telephone No. 202–724–9250.

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. S 19239 (daily ed., Dec. 22, 1995)). The 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.

Pursuant to section 303(b) of the CAA, the Executive Director published for comment a Notice of Proposed Rulemaking in the Congressional Record on July 11, 1996 (142 Cong. R. S7685-88, H7450-54 (daily ed., July 11, 1996)) inviting comments regarding the proposed amendments to the procedural rules. Three comments were received in response to the NPR: two from Congressional offices and one from a labor organization. After full consideration of the comments received, the Executive Director has, with the approval of the Board, adopted these amendments to the procedural rules.

II. Consideration of Comments and Conclusions

A. Definition of participant

One commenter suggested deleting the terms ''labor organization'' and ''employing office'' from the definition of ''participant'' found at section 1.07(c) of the proposed rules. The commenter noted that a ''party'' is included in the definition of participant and the term ''party'' is defined in section 1.02(i) of the rules as including a labor organization or employing office.

The final rule, as adopted and approved, incorporates the modification suggested by the commenter.

B. Contents or records of confidential proceedings

One commenter asked that section 1.07(d) of the rules be revised to reflect the commenter s understanding that ''an employing office may acknowledge the existence of a complaint and the general allegations being made by an employee, and the employing office may deny the allegations.'' This commenter further requested that the phrase ''information forming the basis for the allegation,'' found in the same section of the rules, be defined. According to the commenter, the phrase is ambiguous. The commenter did not, however, identify the asserted ambiguity.

The statute requires that the filing of a complaint and its subject matter be kept confidential. Thus, it is not permissible under the statute, as enacted—much less the procedural rules implementing the statute—for an employing office to disclose the information described. Moreover, no ambiguity has been identified or is apparent which would warrant modifying the proposed rule. Accordingly, the rule has been adopted and approved without modification.

C. Requests for extension of the mediation period

Two commenters correctly point out that, although it was noted in the preamble of the NPR that section 2.04(e)(2) is proposed to be modified to allow oral as well as written requests for the extension of the mediation period, the actual text of the proposed revision was inadvertently omitted. Although neither commenter stated an objection to the substance of the proposed revision, one commenter requested that the text of the proposed amendment be published and the comment period be extended prior to its adoption.

The proposed amendment, and its intent, were clearly explained in the NPR so as to give sufficient notice of the proposed modification. And as the adoption of the amended rule will not work a disservice to any party to a mediation, but rather will enable all parties to more fully utilize the mediation process, the proposed modification to the rule has been adopted and approved.

D. Answer to complaint

All three commenters expressed concern that proposed section 5.01(f) could be interpreted to foreclose a respondent from raising certain affirmative defenses or interposing certain denials. One commenter further urged the adoption of a specific rule that would allow the filing of a motion to dismiss or a motion for a more definitive statement in lieu of an answer.

With respect to the request that the Executive Director adopt a rule allowing for the filing of the specific motions suggested, it is noted that, although not specifically provided for, such matters are already permitted under the existing procedural rules. Thus, no modification is necessary.

As to the commenters' other concerns, the language of section 5.01(f), as adopted and approved, has been clarified to provide that only affirmative defenses that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived if not raised in an answer. In addition, the rule has been modified to describe the circumstances under which motions for leave to amend an answer to raise defenses or interpose denials will be granted.

E. Withdrawal of complaints

One commenter argued that the requirement contained in section 5.03 that the withdrawal of a complaint be approved by a Hearing Officer should be deleted because, according to the commenter, under the CAA a complaint may be withdrawn at any time. In the commenter's view, a rule requiring Hearing Officer approval of such a withdrawal is ''an inappropriate exercise of the Executive Director's authority.'' This commenter further took issue with the distinction made in the rule between approval of the withdrawal of a complaint by a covered employee, which must always be approved by a Hearing Officer, and the withdrawal of a complaint by the General Counsel, which may occur without Hearing Officer approval prior to the opening of a hearing.

Contrary to the commenter's assertion, it is entirely appropriate and, indeed, the norm in our legal system to require approval of the withdrawal of an action after formal proceedings have been initiated. *See, e.g.*, Federal Rule of Civil Procedure 41. Moreover, the different restrictions placed on covered employees and the General Counsel are also appropriate. Under section 220 of the CAA, and the regulations adopted by the Board pursuant to section 220(d) to implement section 220, the General Counsel's prosecutorial discretion has been properly acknowledged by permitting the General Counsel to withdraw a complaint without Hearing Officer approval prior to the opening of the hearing. Accordingly, the final rule, as adopted and approved, has not been modified.

F. Objections not made are deemed waived

Two commenters expressed the concern that proposed section 7.01(e) could operate to work a disservice to unrepresented parties or to preclude Board consideration of appropriate matters on appeal.

The rule, as adopted and approved, has been modified. Further, it is noted that a Hearing Officer is always free to consider issues about which objections were not made.

G. Reconsideration

One commenter asked that proposed section 8.02 be clarified to advise parties concerning how the filing of a motion for reconsideration of a Board decision affects the requirements for filing an appeal of that decision.

The final rule makes clear that the filing of a motion for reconsideration does not relieve a party of the obligation to file a timely appeal.

H. Judicial review

One commenter asserted that section 8.04 should be deleted either as superfluous because it merely reiterates parts of section 407 of the CAA or as confusing because it does not incorporate all of section 407.

Section 8.04 incorporates the provisions of section 407 that are applicable to the provisions of the CAA that are currently in effect. As section 8.04 is neither superfluous nor confusing, the proposed rule has been adopted and approved unmodified.

I. Signing of Pleadings, motions and other filings; violation of rules; sanctions

One commenter recommended that ''the Board further elaborate'' on proposed section 9.02 and that there be an extension of time to comment ''after the Board provides further explanation.'' In the event the commenter's recommendation was not accepted, the commenter proposed adding the requirement that a pleading must be warranted by a ''non-frivolous'' argument. Another commenter objected to the possible sanction of attorney s fees, arguing that it could have a chilling effect on individual complainants.

Section 9.02 of the rules is virtually identical to Rule 11 of the Federal Rules of Civil Procedure. Rule 11 has a rich history and tradition and is an essential procedural part of any sound dispute resolution scheme. Therefore, further explanation or modification is unnecessary and, the rule, as adopted and approved, is the same as that proposed.

J. Ex parte communications

Two commenters asked for a definition of the term ''interested person'' as used in proposed section 9.04. One of these commenters argued that, as drafted, the proposed rule appeared to be so broad as to restrict access to the Office of Compliance personnel, including the Executive Director and Deputy Executive Directors. The same two commenters also urged the deletion of proposed section 9.04(e)(2), which provides that censure or the suspension or revocation of the privilege of practice before the Office is a possible sanction for engaging in prohibited communications. Both commenters considered such sanctions to be too harsh and questioned the authority of the Board to impose such sanctions. The third commenter urged that section 9.04(c)(3)(iii) be modified to disallow communications on matters of general significance because, according to the commenter, such communications could have an impact on specific pending matters. This commenter also expressed concern about the imposition of sanctions on unrepresented complainants who might inadvertently violate the prohibitions on ex parte communications.

In response to the commenters' concerns, the Executive Director is modifying section 9.04(a)(1) to define ''interested person'' for the purposes of the rule. But, contrary to one commenter s understanding, the rule only prohibits interested persons from engaging in prohibited communications with Hearing Officers and Board members; nothing in the proposed or adopted rule prohibits contact with Office of Compliance personnel, including the Office's statutory appointees. Indeed, interaction between Office personnel and employing offices, covered employees, labor organizations and their agents, as well as other interested individuals or organizations, is encouraged.

With respect to proposed section 9.04(e)(2), the sanctions of censure or suspension or revocation of the privilege of practice before the Board, although substantial, may properly be imposed in certain circumstances. However, as they are available to the Board under section 9.04(e)(1), proposed section 9.04(e)(2) has been omitted from the final rule. In addition, to further address concerns, language has been added to section 9.04(e)(1) to confirm that sanctions shall be commensurate with the nature of the offense.

K. Informal resolutions and settlement agreements

One commenter offered specific suggested revisions to proposed section 9.05(a). The commenter believed that these revisions are necessary to make it clear that section 9.05 applies only after a covered employee has initiated counseling.

The proposed rule, by its terms, applies only in instances where a covered employee has filed a formal request for counseling. Moreover, in the NPR, it was specifically noted that the rule is being amended to make it clear that section 9.05 of the rules applies only where covered employees have initiated proceedings under the CAA. Accordingly, the proposed rule has been adopted and approved without modification.

L. Additional comments

Two of the commenters also offered several comments and suggestions on existing procedural rules and other matters that were not the subject of or germane to the proposals in the NPR. For example, the commenters suggested: (1) changes in the special procedures for the Architect of the Capitol and Capitol Police; (2) a rule allowing parties to negotiate changes to the Agreement to Mediate; (3) a procedure by which the parties, instead of the Executive Director, would select Hearing Officers; (4) procedures by which the Office would notify employing offices of various matters; (5) additional requirements for the filing of a complaint; (6) changes in counseling procedures; and (7) a procedure which would allow parties to petition for the recusal of individual Board members.

As there was no notice given to the public or interested persons that such amendments to the procedural rules were being considered, it would be inappropriate to amend the rules in the manner requested by the commenters. However, the Office will consider the comments as part of its ongoing review of its operations and, to the extent appropriate, may issue another notice of proposed rulemaking at an appropriate time to address some or all of these comments.

Signed at Washington, D.C., on this 18th day of September, 1996.

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

Adopted Amendment to the Procedural Rules

A. Comparison table

The rules have been reorganized and re-ordered; as a result, some sections have been

moved and/or renumbered. Cross-references in appropriate sections of the procedural rules have been modified accordingly. The 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. Text of 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 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(e)

(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 may be oral or written and shall be noted 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.

§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 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 207 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 complaint 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 complaint 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 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 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 defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived. A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense 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 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 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 prior 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 evidentiary objection not timely made before a Hearing Officer shall, in the absence of clear error, be deemed waived on appeal to the Board.

§ 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 relieve a party of the obligation to file a timely appeal or 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 of:

(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 *interested person outside the Office* means any covered employee and agent thereof who is not an employee or agent of the Office, any labor organization and agent thereof, any employing office and agent thereof, and any individual or organization and agent thereof, who is or may reasonably be expected to be involved in a proceeding or a rulemaking, 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, a 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 prohibitions 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 rules, 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 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.

(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 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. Sanctions shall be commensurate with the seriousness and unreasonableness of the offense, accounting for, among other things, the advertency or inadvertency of the prohibited communication.

(2) 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.

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice publishes proposed regulations to implement section 210 and section 215 of the Congressional Accountability Act of 1995.

Section 210 concerns the extension of rights and protections under the Americans with Disabilities Act of 1990 relating to public services and accommodations. Section 215 concerns the extension of rights and protections under the Occupational Safety and Health Act of 1970.

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement Section 210 of the Congressional Accountability Act of 1995 (''CAA''), 2 U.S.C. §§1301–1438, as applied to covered entities of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment and public access statutes to covered entities within the Legislative Branch. Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by sections 201 through 230, 302, 303, and 309 of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to certain covered entities. 2 U.S.C. §1331(b). The above provisions of section 210 are effective on January 1, 1997. 2 U.S.C. §1331(h).

In addition to inviting comment in this Notice, the Board, through the statutory appointees of the Office, sought consultation with the Department of Justice and the Secretary of Transportation regarding the development of these regulations in accordance with section 304(g)(2) of the CAA. The Civil Rights Division of the Justice Department and the Department of Transportation provided helpful comments and assistance during the development of these regulations. The Board also notes that the General Counsel of the Office of Compliance has completed an inspection of all covered facilities for compliance with disability access standards under section 210 of the CAA and has submitted his final report to Congress. Based on information gleaned from these consultations and the experience gained from the General Counsel's inspections, the Board is publishing these proposed regulations, pursuant to section 210(e) of the CAA, 2 U.S.C. §1331(e).

The purpose of these regulations is to implement section 210 of the CAA. In this Notice of Proposed Rulemaking (''NPRM'' or ''Notice'') the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities. Accordingly:

(1) *Senate.* It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) *House of Representatives.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal