

and expeditious manner at the appropriate time.

I am concerned, however, that this particular consent request would require that the minority give up the motion to proceed to the debate and the right to debate the resolution fully if we see some need to go beyond the 30 hours. And it does not allow amendments. So, with every assurance to the majority leader that we intend to work with him in expediting this matter in an objective and fair way, I will object this afternoon to the unanimous-consent request and pledge my support in working with him to resolve this matter without the need for such an agreement today.

The PRESIDING OFFICER. Objection is heard. The unanimous-consent request is not agreed to.

Mr. LOTT. Mr. President, I do want to say I appreciate the distinguished Democratic leader's comments. I know he is sincere in those and he knows that I will keep him informed of what is happening in the Rules Committee. It could be that the Rules Committee would come to the same conclusion that they did in the so-called Feinstein and the Coverdell matters. My only goal in asking this unanimous consent is that, if it does go beyond that, that there be some way it be brought to a reasonable conclusion with ample time for Senators to be able to have debate and discussion of the issues that are involved but without it being endlessly debated, or filibustered, if you will. But my hope is we can work through that. It may not even come to that, but I understand the Senator's position and I heard what he said and I am satisfied that, if we do need to work out some arrangement as to how something would be considered in the future, we will find a way to come to an amicable agreement. I thank the Senator for his comments.

NOTICE OF PROPOSED RULEMAKING

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

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: 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 pro-

cedures 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 approved 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, 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)). Amendments to these rules, approved by the Board and adopted by the Executive Director, were published September 19, 1996 in the Congressional Record (142 Cong. R. H10672 and S10980 (daily ed., Sept. 19, 1996)). The proposed revisions and additions that follow establish procedures for consideration of matters arising under Parts B and C of title II of the CAA, which are generally effective January 1, 1997.

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) Several revisions are proposed to provide for consideration of matters arising under sections 210 and 215 (Parts B and C of title II) of the CAA. For example, technical changes in the procedural rules will be necessary in order to provide for the exercise of various rights and responsibilities under sections 210 and 215 of the Act by the General Counsel, charging individuals and entities responsible for correcting violations. These proposed revisions are as follows:

Section 1.01 is proposed to be amended by inserting references to Parts B and C of title

II of the CAA in order to clarify that the procedural rules now govern procedures under those Parts of the Act.

Section 1.02(i) is proposed to be amended to redefine the term "party" to include, as appropriate, a charging individual or an entity alleged to be responsible for correcting a violation.

Section 1.03(a)(3) is to be revised to provide for, as appropriate, the filing of documents with the General Counsel.

Section 1.04(d) is proposed to be amended to provide for appropriate disclosure to the public of decisions under section 210 of the CAA and to provide, in accordance with section 416(f) of the CAA, that the Board may, at its discretion, make public decisions which are not otherwise required to be made public.

Section 1.05(a) is to be revised to allow for a charging individual or party or an entity alleged to be responsible for correcting a violation to designate a representative.

Sections 1.07(a), 5.04 and 7.12 are to be revised to make clear that Section 416(c), relating to confidentiality requirements, does not apply to proceedings under section 215 of the Act, but does apply to the deliberations of hearing officers and the Board under section 215.

Section 5.01(a)(2), (b)(2), (c)(2) and (d) is proposed to be amended to allow for the filing of complaints alleging violation of sections 210 and 215 of the CAA.

Section 7.07(f), relating to conduct of hearings, is to be revised to provide that, if the representative of a charging party or an entity alleged to be responsible for correcting a violation has a conflict of interest, that representative may be disqualified.

Section 8.03(a) relating to compliance with final decisions is to be revised to implement sections 210 and 215 of the CAA.

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 sections 210(d)(4) and 215(c)(5) of the Act.

(B) Proposed Subpart D of these regulations implements the provisions of section 215(c) of the CAA, which sets forth the procedures for inspections, citations, notices, and notifications, hearings and review, variance procedures, and compliance regarding enforcement of rights and protections of the Occupational Safety and Health Act, as applied by the CAA. Under section 215(c), any employing office or covered employee may request the General Counsel to inspect and investigate places of employment under the jurisdiction of employing offices. A citation or notice may be issued by the General Counsel to any employing office that is responsible for correcting a violation of section 215, or that has failed to correct a violation within the period permitted for correction. A notification may be issued to any employing office that has failed to correct a violation within the permitted time. If a violation remains uncorrected, the General Counsel may file a complaint against the employing office with the Office, which is submitted to a hearing officer for decision, with subsequent review by the Board. Under section 215(c)(4), an employing office may apply to the Board for a variance from an applicable health and safety standard. In considering such application, the Board shall exercise the authority of the Secretary of Labor under sections 6(b) and 6(d) of the Occupational Safety and Health Act of 1970 ("OSHAAct") to issue either a temporary or permanent variance, if specified conditions are met.

The Executive Director has modeled these proposed rules under section 215(c), to the greatest extent practicable, on the enforcement procedures set forth in the regulations

of the Secretary of Labor to implement comparable provisions of the OSHA Act (29 C.F.R., parts 1903 and 1905). The proposed rules do not follow provisions of the Secretary's regulations that are inapplicable, incompatible with the structure of the Office of Compliance, and/or inconsistent with the express statutory procedures of section 215(c) of the CAA. In addition, the Secretary has identified some provisions of Part 1903 as "general enforcement policies rather than substantive or procedural rules, [and thus] such policies may be modified in specific circumstances where the Secretary or his designee determines that an alternative course of action would better serve the objectives of the Act." 29 CFR §1903.1. These enforcement policies (such as the Secretary's policy regarding employee rescue activities, 29 C.F.R. §1903.14(f)) are not included in these rules. Enforcement policies, if any, should be issued by the General Counsel, to whom investigatory and enforcement authorities are assigned under section 215.

The Board finds that the proposed rules govern "procedures of the Office." Thus, they may appropriately be issued under section 303 of 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, B, C, 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 variances and compliance, investigation and enforcement under Part C of title II and 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(i)

(i) *Party*. The term "party" means: (1) an employee or employing office in a proceeding under Part A of title II of the Act; (2) a charging individual, an entity alleged to be responsible for correcting a violation, or the General Counsel in a proceeding under Part B of title II of the Act; (3) an employee, employing office, or as appropriate, the General Counsel in a proceeding under Part C of title II of the Act; or (4) a 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.

§1.03(a)(3)

(3) *Faxing documents*. Documents transmitted by FAX machine will be deemed filed on the date received at the Office at 202-426-1913, or, in the case of any document to be filed or submitted to the General Counsel, on the date received at the Office of the General Counsel at 202-426-1663. A FAX filing will be timely only if the document is received no later than 5:00 PM Eastern Time on the last day of the applicable filing period. Any party using a FAX machine to file a document bears the responsibility for ensuring both that the document is timely and accurately transmitted and confirming that the Office has received a facsimile of the document.

The party or individual filing the document may rely on its FAX status report sheet to show that it filed the document in a timely manner, provided that the status report indicates the date of the FAX, the receiver's FAX number, the number of pages included in the FAX, and that transmission was completed.

§1.04(d)

(d) *Final decisions*. Pursuant to section 416(f) of the Act, a final decision entered by a Hearing Officer or by the Board under section 405(g) or 406(e) of the Act, which is in favor of the complaining covered employee, or in favor of the charging party under section 210 of the Act, or reverses a Hearing Officer's decision in favor of a complaining covered employee or charging party, shall be made public, except as otherwise ordered by the Board. The Board may make public any other decision at its discretion.

§1.05(a)

(a) An employee, other charging individual or party, a witness, a labor organization, an employing office, or an entity alleged to be responsible for correcting a violation 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.

§1.07(a)

(a) *In General*. Section 416(a) of the CAA provides that counseling under section 402 shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations. Section 416(b) provides that all mediation shall be strictly confidential. Section 416(c) provides that all proceedings and deliberations of hearing officers and the Board, including any related records shall be confidential, except for release of records necessary for judicial actions, access by certain committees of Congress, and publication of certain final decisions. Section 416(c) does not apply to proceedings under section 215 of the Act, but does apply to the deliberations of hearing officers and the Board under section 215. See also sections 1.06, 5.04 and 7.12 of these rules.

SUBPART D COMPLIANCE, INVESTIGATION, ENFORCEMENT AND VARIANCE PROCEDURES UNDER SECTION 215 OF THE CAA (OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970)

Inspections, Citations, and Complaints

Sec.

- 4.01 Purpose and scope
- 4.02 Authority for inspection
- 4.03 Request for inspections by employees and employing offices
- 4.04 Objection to inspection
- 4.05 Entry not a waiver
- 4.06 Advance notice of inspection
- 4.07 Conduct of inspections
- 4.08 Representatives of employing offices and employees
- 4.09 Consultation with employees
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- 4.13 Posting of citations
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Rules of Practice for Variances, Limitations, Variations, Tolerances, and Exemptions

- 4.20 Purpose and scope
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- 4.25 Applications for temporary variances and other relief
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- 4.27 Modification or revocation of orders
- 4.28 Action on applications
- 4.29 Consolidation of proceedings
- 4.30 Consent findings and rules or orders
- 4.31 Order of proceedings and burden of proof

INSPECTIONS, CITATIONS AND COMPLAINTS

§4.01 Purpose and scope.

The purpose of sections 4.01 through 4.15 of this subpart is to prescribe rules and procedures for enforcement of the inspection and citation provisions of section 215(c)(1) through (3) of the CAA. For the purpose of sections 4.01 through 4.15, references to the "General Counsel" include any designee of the General Counsel.

§4.02 Authority for inspection.

Under section 215(c)(1) of the CAA, upon written request of any employing office or covered employee, the General Counsel is authorized to enter without delay and at reasonable times any place of employment under the jurisdiction of an employing office; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employing office, operator, agent or employee; and to review records required by the CAA and regulations promulgated thereunder, and other records which are directly related to the purpose of the inspection.

§4.03 Requests for inspections by employees and covered employing offices.

(a) *By covered employees and representatives.*

(1) Any covered employee or representative of covered employees who believes that a violation of section 215 of the CAA exists in any place of employment under the jurisdiction of employing offices may request an inspection of such place of employment by giving notice of the alleged violation to the General Counsel. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or the representative of the employees. A copy shall be provided to the employing office or its agent by the General Counsel or the General Counsel's designee no later than at the time of inspection, except that, upon the written request of the person giving such notice, his or her name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the General Counsel.

(2) If upon receipt of such notification the General Counsel's designee determines that the notice meets the requirements set forth in subparagraph (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he or she shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the notice.

(3) Prior to or during any inspection of a place of employment, any covered employee or representative of employees may notify the General Counsel's designee, in writing, of any violation of section 215 of the CAA which he or she has reason to believe exists in such place of employment. Any such notice shall comply with the requirements of subparagraph (1) of this section.

(b) *By employing offices*. Upon written request of any employing office, the General

Counsel or the General Counsel's designee shall inspect and investigate places of employment under the jurisdiction of employing offices under section 215(c)(1) of the CAA. Any such requests shall be reduced to writing on a form available from the Office.

§4.04 Objection to inspection.

Upon a refusal to permit the General Counsel's designee, in exercise of his or her official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employing office, operator, agent, or employee, in accordance with section 4.02 or to permit a representative of employees to accompany the General Counsel's designee during the physical inspection of any workplace in accordance with section 4.07, the General Counsel's designee shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The General Counsel's designee shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the General Counsel, who shall take appropriate action.

§4.05 Entry not a waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action or citation under the CAA.

§4.06 Advance notice of inspections.

Advance notice of inspections may be given under circumstances determined appropriate by the General Counsel.

§4.07 Conduct of inspections.

(a) Subject to the provisions of section 4.02, inspections shall take place at such times and in such places of employment as the General Counsel may direct. At the beginning of an inspection, the General Counsel's designee shall present his or her credentials to the operator of the facility or the management employee in charge at the place of employment to be inspected; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in section 4.02 which he or she wishes to review. However, such designation of records shall not preclude access to additional records specified in section 4.02.

(b) The General Counsel's designee shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately, any employing office, operator, agent or employee of a covered facility. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

(c) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employing office.

(d) At the conclusion of an inspection, the General Counsel's designee shall confer with the employing office or its representative and informally advise it of any apparent safety or health violations disclosed by the inspection. During such conference, the employing office shall be afforded an opportunity to bring to the attention of the General Counsel's designee any pertinent information regarding conditions in the workplace.

(e) Inspections shall be conducted in accordance with the requirements of this subpart.

§4.08 Representatives of employing offices and employees.

(a) The General Counsel's designee shall be in charge of inspections and questioning of persons. A representative of the employing office and a representative authorized by its employees shall be given an opportunity to accompany the General Counsel's designee during the physical inspection of any workplace for the purpose of aiding such inspection. The General Counsel's designee may permit additional employing office representatives and additional representatives authorized by employees to accompany the designee where he or she determines that such additional representatives will further aid the inspection. A different employing office and employee representative may accompany the General Counsel's designee during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) The General Counsel's designee shall have sole authority to resolve all disputes as to who is the representative authorized by the employing office and employees for the purpose of this section. If there is no authorized representative of employees, or if the General Counsel's designee is unable to determine with reasonable certainty who is such representative, he or she shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employing office. However, if in the judgment of the General Counsel's designee, good cause has been shown why accompaniment by a third party who is not an employee of the employing office (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the General Counsel's designee during the inspection.

(d) The General Counsel's designee may deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany the General Counsel's designee in areas containing such information.

§4.09 Consultation with employees.

The General Counsel's designee may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of section 215 of the CAA which he or she has reason to believe exists in the workplace to the attention of the General Counsel's designee.

§4.10 Inspection not warranted; informal review.

(a) If the General Counsel's designee determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a notice of violation under section 4.03(a), he or she shall notify the party giving the notice in writing of such determination. Upon the request of the complaining party or the employing office, the General Counsel, at his or her discretion, may hold an informal conference in which the complaining party and the employing office may present their views orally and in writing. After considering all written and oral views presented, the General Counsel may affirm,

modify, or reverse the designee's determination and furnish the complaining party and the employing office with written notification of this decision and the reasons therefor. The decision of the General Counsel shall be final and not reviewable.

(b) If the General Counsel's designee determines that an inspection is not warranted because the requirements of section 4.03(a)(1) have not been met, he or she shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of section 4.03(a)(1).

§4.11 Citations.

(a) If, on the basis of the inspection, the General Counsel believes that a violation of any requirement of section 215 of the CAA, or of any standard, rule or order promulgated pursuant to section 215 of the CAA, has occurred, he or she shall issue a citation to the employing office responsible for correction of the violation, as determined under section 1.106 of the Board's regulations implementing section 215 of the CAA. A citation may be issued even though after being informed of an alleged violation by the General Counsel, the employing office immediately abates, or initiates steps to abate, such alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the CAA, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(c) If a citation is issued for a violation alleged in a request for inspection under section 4.03(a)(1), or a notification of violation under section 4.03(a)(3), a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the General Counsel determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under section 4.03(a)(1) or a notification of violation under section 4.03(a)(3), the informal review procedures prescribed in 4.15 shall be applicable. After considering all views presented, the General Counsel shall affirm the previous determination, order a reinspection, or issue a citation if he or she believes that the inspection disclosed a violation. The General Counsel shall furnish the party that submitted the notice and the employing office with written notification of the determination and the reasons therefor. The determination of the General Counsel shall be final and not reviewable.

(e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of section 215 has occurred.

§4.12 Imminent danger.

(a) Whenever and as soon as a designee of the General Counsel concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for by section 215(c), he or she shall inform the affected employees and employing offices of the danger and that he or she is recommending the filing of a petition to restrain such conditions or practices and for other appropriate relief in accordance with section 13(a) of the OSHA Act, as applied by section 215(b) of the

CAA. Appropriate citations may be issued with respect to an imminent danger even though, after being informed of such danger by the General Counsel's designee, the employing office immediately eliminates the imminence of the danger and initiates steps to abate such danger.

§4.13 Posting of citations.

(a) Upon receipt of any citation under section 215 of the CAA, the employing office shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employing office's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employing offices are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employing office shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The pendency of any proceedings regarding the citation shall not affect its posting responsibility under this section unless and until the Board issues a final order vacating the citation.

(c) An employing office to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Board, and such notice may explain the reasons for such contest. The employing office may also indicate that specified steps have been taken to abate the violation.

§4.14 Failure to correct a violation for which a citation has been issued; notice of failure to correct violation; complaint.

(a) If the General Counsel determines that an employing office has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, he or she may issue a notification to the employing office of such failure prior to filing a complaint against the employing office under section 215(c)(3) of the CAA. Such notification shall fix a reasonable time or times for abatement of the alleged violation for which the citation was issued and shall be posted in accordance with section 4.13 of these rules. Nothing in these rules shall require the General Counsel to issue such a notification as a prerequisite to filing a complaint under section 215(c)(3) of the CAA.

(b) If after issuing a citation or notification, the General Counsel believes that a violation has not been corrected, the General Counsel may file a complaint with the Office against the employing office named in the citation or notification pursuant to section 215(c)(3) of the CAA. The complaint shall be submitted to a Hearing Officer for decision pursuant to subsections (b) through (h) of section 405, subject to review by the Board pursuant to section 406. The procedures of sections 7.01 through 7.16 of these rules govern complaint proceedings under this section.

§4.15 Informal conferences.

At the request of an affected employing office, employee, or representative of employ-

ees, the General Counsel may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, or notice issued by the General Counsel. The settlement of any citation or notice at such conference shall be subject to the approval of the Executive Director under section 414 of the CAA and section 9.05 of these rules. If the conference is requested by the employing office, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the General Counsel. If the conference is requested by an employee or representative of employees, the employing office shall be afforded an opportunity to participate, at the discretion of the General Counsel. Any party may be represented by counsel at such conference.

RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS

§4.20 Purpose and scope.

Sections 4.20 through 4.31 contain rules of practice for administrative proceedings to grant variances and other relief under sections 6(b)(6)(A) and 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, as applied by section 215(c)(4) of the CAA.

§4.21 Definitions.

As used in sections 4.20 through 4.31, unless the context clearly requires otherwise—

(a) *OSHAct* means the Williams-Steiger Occupational Safety and Health Act of 1970, as applied to covered employees and employing offices under section 215 of the CAA.

(b) *Party* means a person admitted to participate in a hearing conducted in accordance with this subpart. An applicant for relief and any affected employee shall be entitled to be named parties. The General Counsel shall be deemed a party without the necessity of being named.

(c) *Affected employee* means an employee who would be affected by the grant or denial of a variance, limitation, variation, tolerance, or exemption, or any one of the employee's authorized representatives, such as the employee's collective bargaining agent.

§4.22 Effect of variances.

All variances granted pursuant to this part shall have only future effect. In its discretion, the Board may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employing office involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the General Counsel, a hearing officer, or the Board until the completion of such proceeding.

§4.23 Public notice of a granted variance, limitation, variation, tolerance, or exemption.

Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be made public. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

§4.24 Form of documents.

(a) Any applications for variances and other papers that are filed in proceedings under sections 4.20 through 4.31 of these rules shall be written or typed. All applications for variances and other papers filed in variance proceedings shall be signed by the applying employing office, or its representative, and shall contain the information required by section 4.25 or 4.26 of these rules, as applicable.

§4.25 Applications for temporary variances and other relief.

(a) *Application for variance.* Any employing office, or class of employing offices, desiring

a variance from a standard, or portion thereof, authorized by section 6(b)(6)(A) of the OSHAct, as applied by section 215 of the CAA, may file a written application containing the information specified in paragraph (b) of this section with the Board. Pursuant to section 215(c)(4) of the CAA, the Board may refer any matter appropriate for hearing to a hearing officer under subsections (b) through (h) of section 405, subject to review by the Board pursuant to section 406. The procedures set forth at sections 7.01 through 7.16 of these rules shall govern hearings under this subpart.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps the applicant has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that (i) the applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date; (ii) the applicant is taking all available steps to safeguard its employees against the hazards covered by the standard; and (iii) the applicant has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this part;

(9) A statement that the applicant has informed its affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and of their right to petition the Board for a hearing.

(c) *Interim order*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The hearing officer to whom the Board has referred the application may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to paragraph (c)(1) of this section is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for

the order and other parties and the terms of the order shall be made public. It shall be a condition of the order that the affected employing office shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§4.26 Applications for permanent variances and other relief.

(a) *Application for variance.* Any employing office, or class of employing offices, desiring a variance authorized by section 6(d) of the OSHAct, as applied by section 215 of the CAA, may file a written application containing the information specified in paragraph (b) of this section, with the Board. Pursuant to section 215(c)(4) of the CAA, the Board may refer any matter appropriate for hearing to a Hearing Officer under subsections (b) through (h) of section 405, subject to review by the Board pursuant to section 406.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) A certification that the applicant has informed its employees of the application by (i) giving a copy thereof to their authorized representative; (ii) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (iii) by other appropriate means;

(6) Any request for a hearing, as provided in this part; and

(7) A description of how employees have been informed of the application and of their right to petition the Board for a hearing.

(c) *Interim order—(1) Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The hearing officer to whom the Board has referred the application may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to paragraph (c)(1) of this section is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be made public. It shall be a condition of the order that the affected employing office shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§4.27 Modification or revocation of orders.

(a) *Modification or revocation.* An affected employing office or an affected employee may apply in writing to the Board for a modification or revocation of an order issued under section 6(b)(6)(A), or 6(d) of the OSHAct, as applied by section 215 of the CAA. The application shall contain:

(i) The name and address of the applicant;

(ii) A description of the relief which is sought;

(iii) A statement setting forth with particularity the grounds for relief;

(iv) If the applicant is an employing office, a certification that the applicant has informed its affected employees of the application by:

(A) Giving a copy thereof to their authorized representative;

(B) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

(C) Other appropriate means.

(v) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employing office; and

(vi) Any request for a hearing, as provided in this part.

(b) *Renewal.* Any final order issued under section 6(b)(6)(A) of the OSHAct, as applied by section 215 of the CAA, may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

§4.28 Action on applications.

(a) *Defective applications.* (1) If an application filed pursuant to sections 4.25(a), 4.26(a), or 4.27 does not conform to the applicable section, the Hearing Officer or the Board, as applicable, may deny the application.

(2) Prompt notice of the denial of an application shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(4) A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

(b) *Adequate applications.* (1) If an application has not been denied pursuant to paragraph (a) of this section, the Office shall cause to be published a notice of the filing of the application.

(2) A notice of the filing of an application shall include:

(i) The terms, or an accurate summary, of the application;

(ii) A reference to the section of the OSHAct applied by section 215 of the CAA under which the application has been filed;

(iii) An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and

(iv) Information to affected employing offices, employees, and appropriate authority having jurisdiction over employment or places of employment covered in the application of any right to request a hearing on the application.

§4.29 Consolidation of proceedings.

On the motion of the Hearing Officer or the Board or that of any party, the Hearing Officer or the Board may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

§4.30 Consent findings and rules or orders.

(a) *General.* At any time before the receipt of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the Hearing Officer, after consideration of the nature of the proceeding, the requirements of the public

interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;

(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(3) A waiver of any further procedural steps before the Hearing Officer and the Board; and

(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Hearing Officer for his or her consideration; or

(2) Inform the Hearing Officer that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the Hearing Officer may accept such agreement by issuing his or her decision based upon the agreed findings.

§4.31 Order of proceedings and burden of proof.

(a) *Order of proceeding.* Except as may be ordered otherwise by the Hearing Officer, the party applicant for relief shall proceed first at a hearing.

(b) *Burden of proof.* The party applicant shall have the burden of proof.

§5.01(a)(2)

(a)(2) The General Counsel may file a complaint alleging a violation of section 210, 215 or 220 of the Act.

§5.01(b)(2)

(b)(2) A complaint may be filed by the General Counsel

(i) after the investigation of a charge filed under section 210 or 220 of the Act, or

(ii) after the issuance of a citation or notification under section 215 of the Act.

§5.01(c)(2)

(c)(2) Complaints filed by the General Counsel. A complaint filed by the General Counsel shall be in writing, signed by the General Counsel or his designee and shall contain the following information:

(i) the name, address and telephone number of, as applicable, (A) each entity responsible for correction of an alleged violation of section 210(b), (B) each employing office alleged to have violated section 215, or (C) each employing office and/or labor organization alleged to have violated section 220, against which complaint is brought;

(ii) notice of the charge filed alleging a violation of section 210 or 220 and/or issuance of a citation or notification under section 215;

(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.

§5.01(d)

(d) 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 and/or the citation or notification issued 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.

§5.04 Confidentiality.

Pursuant to section 416(c) of the Act, all proceedings and deliberations of Hearing Officers and the Board, including any related records, shall be confidential. Section 416(c) does not apply to proceedings under section 215 of the Act, but does apply to the deliberations of Hearing Officers and the Board under section 215. A violation of the confidentiality requirements of the Act and these rules could result in the imposition of sanctions. Nothing in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identity of the employees involved or of employing offices that are the subject of a matter.

§7.07(f)

(f) If the Hearing Officer concludes that a representative of an employee, a witness, a charging party, a labor organization, an employing office, or an entity alleged to be responsible for correcting a violation 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 shall be afforded reasonable time to retain other representation.

§7.12

Pursuant to section 416 of the Act, all proceedings and deliberations of Hearing Officers and the Board, including the transcripts of hearings and any related records, shall be confidential, except as specified in section 416(d), (e), and (f) of the Act. All parties to the proceeding and their representatives, and witnesses who appear at the hearing, will be advised of the importance of confidentiality in this process and of their obligations, subject to sanctions, to maintain it. This provision shall not apply to proceedings under section 215 of the Act, but shall apply to the deliberations of Hearing Officers and the Board under that section.

§8.03(a)

(a) Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to section 407 of the Act, and except as provided in sections 210(d)(5) and 215(c)(6), a party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all other parties to the proceedings with a compliance report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved.

§8.04 Judicial review.

Pursuant to section 407 of the Act, (a) the United States Court of Appeals for the Fed-

eral 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;

(2) a charging individual or respondent before the Board who files a petition under section 210(d)(4);

(3) the General Counsel or a respondent before the Board who files a petition under section 215(c)(5); or

(4) 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, B, C, 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).

Signed at Washington, D.C. on this 20th day of December, 1996.

RICKY SILBERMAN,
Executive Director,
Office of Compliance.

NOTICE OF ADOPTION OF REGULATION AND SUBMISSION FOR APPROVAL

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 adoption of regulation and submission for approval was submitted by the Office of Compliance, U.S. Congress. The notice contains final regulations related to the extension of rights and protections under the Americans With Disabilities Act of 1990 (Regulations under section 210 of the Congressional Accountability Act of 1995).

The Congressional Accountability Act requires this notice 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 ADOPTION OF REGULATION AND SUBMISSION FOR APPROVAL

Summary: The Board of Directors, Office of Compliance, after considering comments to its Notice of Proposed Rulemaking published September 19, 1996, in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations implementing section 210 of the Congressional Accountability Act of 1995 ("CAA").

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540-1999. Telephone: (202) 724-9250. TDD: (202) 426-1912.

SUPPLEMENTARY INFORMATION

Background and Summary

The Congressional Accountability Act of 1995 ("CAA"), P.L. 104-1, was enacted into law on January 23, 1995. 2 U.S.C. §§ 1301 *et seq.* In general, the CAA applies the rights and

protections of eleven federal labor and employment statutes to covered employees and 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 the provisions of Titles II and III (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 specified Legislative Branch entities. 2 U.S.C. §1331(b). Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of services, programs, or activities by any "public entity." Section 210(b)(2) of the CAA defines the term "public entity" for Title II purposes as any entity listed above that provides public services, programs, or activities. 2 U.S.C. §1331(b)(2). Title III of the ADA generally prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards.

Section 210(e) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1331(e). Section 210(e) further states that such regulations "shall be the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except 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." *Id.* Section 210(e) further provides that the regulations shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. 2 U.S.C. §1331(e).

On September 19, 1996, the Board published in the Congressional Record a Notice of Proposed Rulemaking ("NPR") (142 Cong. Rec. S11019 (daily ed., Sept. 19, 1996)). In response to the NPR, the Board received three written comments.¹ After full consideration of the comments received in response to the proposed regulations, the Board has adopted and is submitting these regulations for approval by the Congress.

1. Summary of Comments and Board's Final Rules

A. Request for additional rulemaking proceedings

One commenter requested that the Board withdraw its proposed regulations and engage in what it termed "investigative rulemaking," which apparently is to include discussions with involved parties regarding the nature and scope of the regulations. This request was also made by the commenter regarding the proposed rules under section 215, which the Board has discussed in the preamble to the final rules submitted concurrently with these rules. The Board determines that further rulemaking proceedings are not required for the reasons set forth in

¹One of these commenters made no comments regarding any specific portion of the proposed rules, except to encourage the Board to ensure that the anti-retaliation provisions of section 207 of the CAA are applied to the statutory and regulatory proceedings under section 210. As the Board noted in NPR, although section 207 provides a comprehensive retaliation protection for employees (including applicants and former employees who may invoke their rights under section 210), section 207 does not apply to nonemployees who may enjoy rights and protections against discrimination under section 210.