"SECTION 2. No person who has served 2 terms as a Senator shall be eligible for election or appointment to the Senate. For purposes of this section, the election or appointment of a person to fill a vacancy in the Senate shall be included as 1 term in determining the number of terms that such person has served as a Senator if the person fills the vacancy for more than 3 years.

"SECTION 3. No term beginning before the date of the ratification of this article shall be taken into account in determining eligibility for election or appointment under this article.".

**SA 3788.** Mr. MORAN submitted an amendment intended to be proposed by him to the bill S. 2410, to authorize appropriations for fiscal year 2015 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title XVI, add the following:

**SEC. 1647. ALIGNMENT AND OPERATIONAL REPORTING OF CYBER RED TEAMS OF AIR NATIONAL GUARD.**

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall determine the appropriate alignment and operational reporting for the personnel and capacity of the cyber red teams of the Air National Guard of the United States.

(2) ANALYSIS.—The determination required by paragraph (1) shall include an analysis regarding the rebalance of personnel or capacity of the cyber red teams of the Air National Guard of the United States with respect to cyber red team requirements of the Air Force, cyber team requirements of the United States Cyber Command, and assimilation into the cyber mission force of the Department of Defense.

(b) LIMITATION.—The Secretary may not reduce or rebalance the personnel or capacity of the cyber red teams of the Air National Guard of the United States unless the Secretary submits to the congressional defense committees a certification that—

(1) the capabilities to be reduced or rebalanced are not required by components of the Department of Defense that use cyber red team capabilities; or

(2) based on the findings of the Secretary with respect to the determination made under subsection (a), such capabilities will be retained under an altered operational reporting construct.

**SA 3789.** Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill S. 2410, to authorize appropriations for fiscal year 2015 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, strike line 23 and all that follows through page 188, line 4.

## NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. TESTER. Mr. President, I would like to announce that the Committee on Indian Affairs will meet during the session of the Senate on Wednesday, September 10, 2014, in room SD–628 of the Dirksen Senate Office Building, at 2:30 p.m., to conduct an oversight hearing to receive testimony on "Irrigation Projects in Indian Country." Those wishing additional information may contact the Indian Affairs Committee at (202) 224–2251.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 9, 2014, at 10 a.m. to conduct a hearing entitled "Wall Street Reform: Assessing and Enhancing the Financial Regulatory System."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate of September 9, 2014, at 10 a.m. in room SD–406 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 9, 2014, at 4 p.m., to hold a hearing entitled, "CLOSED/TS/SCI: Arms Control Compliance Issues."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, on September 9, 2014, at 10 a.m., in room SD–430 of the Dirksen Senate Office Building, to conduct a hearing entitled "Hearing on the nomination of Sharon Block to serve as a Member of the National Labor Relations Board."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 9, 2014, at 10:30 a.m. to conduct a hearing entitled "Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on September 9, 2014, at 10 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled "Judicial Nominations."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on September 9, 2014, at 10 a.m. in room SH–216 of the Hart Senate Office Building to conduct a hearing entitled "The State of VA Health Care."

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. FRANKEN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 9, 2014, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. LEE. Mr. President, I ask unanimous consent that Benji McMurray, a detailee in my office from the Federal Public Defender's Office in Salt Lake City, be granted floor privileges during the duration of the debate on Senate Joint Resolution 19.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. HIRONO. Mr. President, I ask unanimous consent that privileges of the floor be granted to the following member of my staff, Maeve Whelan-Wuest, for the duration of today, September 9, 2014.

The PRESIDING OFFICER. Without objection, it is so ordered.

## NOTICE OF PROPOSED RULEMAKING ("NPRM"), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

Mr. LEAHY. Mr. President, I ask unanimous consent that the attached documentation from the Office of Compliance be printed in the RECORD.

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

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
*Washington, DC, September 9, 2014.*

Hon. PATRICK J. LEAHY,
*President Pro Tempore of the Senate,*
*Washington, DC.*

DEAR MR. PRESIDENT: Section 210(e) of the Congressional Accountability Act ("CAA"), 2 U.S.C. §1331(e), requires the Board of Directors of the Office of Compliance ("the Board") to issue regulations implementing Section 210 of the CAA relating to provisions of Titles II and III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12131–12150, 12182, 12183 and 12198, made applicable to the legislative branch by the CAA. 2 U.S.C. §1331(b)(1).

Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting ''such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.''

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the President Pro Tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 304(b)(2) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

All inquiries regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA–200, 110 2nd Street, S.E., Washington, DC 20540; (202) 724–9250.

Sincerely,

BARBARA L. CAMENS,
*Chair of the Board of Directors,*
*Office of Compliance.*

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE: NOTICE OF PROPOSED RULEMAKING (''NPRM''), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

REGULATIONS EXTENDING RIGHTS AND PROTECTIONS UNDER THE AMERICANS WITH DISABILITIES ACT (''ADA'') RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS, NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. §1331, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (''CAA'').

**Background:**

The purpose of this Notice is to propose substantive regulations that will implement Section 210 of the CAA, which provides that the rights and protections against discrimination in the provision of public services and accommodation under Titles II and III of the ADA shall apply to entities covered by the CAA.

**What is the authority under the CAA for these proposed substantive regulations?**

Section 210(b) of the CAA 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 the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Office of Congressional Accessibility Services;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

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 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Section 210(e) of the CAA requires the Board of Directors of the Office of Compliance (''the Board'') 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).

Additional authority for proposing these regulations is found in CAA Section 304, which sets forth the procedure to be followed for the rulemaking process in general, including notice and comment; Board consideration of comments and adoption of regulations; transmittal to the Speaker and President Pro Tempore for publication in the Congressional Record; and approval by the Congress.

**Are there ADA public access regulations already in force under the CAA?**

Yes. The CAA was enacted on January 23, 1995. It applied to the legislative branch of the federal government the protections of 12 (now 13) statutes that previously had applied to the executive branch and/or the private sector, including laws providing for family and medical leave, prohibiting discrimination against eligible veterans, and affording labor-management rights and responsibilities, among others. The CAA established the Office of Compliance as an independent agency to administer and enforce the CAA. The OOC administers an administrative dispute resolution system to resolve certain disputes arising under the Act. The General Counsel of the OOC has independent investigatory and enforcement authority for other violations of the Act, including certain portions of the ADA, 42 U.S.C. §§12131–12150, 12182, 12183, & 12189.

As set forth in the previous answer, the CAA requires the Board to issue regulations implementing the statutory protections provided by the CAA. *See, e.g.*, CAA Sections 202(d) (Family and Medical Leave Act of 1993), 206(c) (Veterans' Employment and Reemployment), 212 (d) (Federal Service Labor Management Relations Act). 2 U.S.C. sections 1312(d), 1316(c), 1351(d). The Board's regulations ''shall be the same as substantive regulations promulgated by the Attorney General and Secretary of Transportation . . . except insofar as 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.'' 2 U.S.C. §1331(e)(2).

The CAA does not simply apply to the legislative branch the substantive protections of these laws, and direct that the implementing regulations essentially mirror those of the executive branch. The statute further provides that, while the CAA rulemaking procedure is underway, the corresponding executive branch regulations are to be applied. Section 411 of the Act provides:

**''Effect of failure to issue regulations.**

In any proceeding under section 1405, 1406, 1407, or 1408 of this title . . . if the Board has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the hearing officer, Board, or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.''

This statutory scheme makes plain that ADA public access regulations are presently in force. First, regulations virtually identical to these were adopted by the Board, presented to the House of Representatives and the Senate on September 19, 1996, and published on January 7, 1997. 142 Cong. Rec. S10984–11018 and 143 Cong. Rec. S30–66. No action was taken and thus the regulations were not issued. As set forth above, in these circumstances the CAA applies ''the most relevant substantive executive agency regulations,'' i.e., the Departments of Justice (''DOJ'') and Department of Transportation (''DOT'') ADA public access regulations. 2 U.S.C §1411.

A contrary interpretation would render meaningless several sections of the CAA. For example, Congress directed the AOC and other employing offices to conduct an initial study of legislative branch facilities from January 23, 1995 through December 31, 1996, ''to identify any violations of subsection (b) of [section 210], to determine the costs of compliance, and to take any necessary corrective action to abate any violations.'' 2 U.S.C. section 1331(f)(3). Congress instructed the OOC to assist the employing offices by ''arranging for inspections and other technical assistance at their request.'' *Id.* The CAA was enacted on January 23, 1995. No implementing regulations could have taken effect as of that date. Plainly, Congress intended the employing offices and the OOC to look to the DOJ and DOT ADA public access regulations, with which the CAA explicitly required employing offices to comply, when conducting the initial study and abatement actions.

Other sections of the CAA support this reading. For example, the CAA requires the Board to exclude from labor relations regulations employees of Member offices, Senate and House Legislative Counsel, the Congressional Budget Office and several other employing offices if the Board finds a conflict of interest or appearance thereof. 2 U.S.C. §1351(e)(1)(B). Where, as here, a statute explicitly provides for certain regulatory exemptions, it would be illogical to interpret language that expressly provides for regulatory compliance to mean anything else. When Congress intended to exempt employing offices from regulations, the CAA did so explicitly.

**Why are these regulations being proposed at this time?**

As set forth in the previous answer, the CAA requires employing offices to comply with ADA public access regulations issued by the DOJ and DOT pursuant to the ADA. The CAA also requires the Board to issue its own regulations implementing the ADA public access provisions of the CAA. The statute obligates the Board's regulations to be the same as the DOJ and DOT regulations except to the extent that the Board may determine that a modification would be more effective in implementing ADA public access protections. CAA section 210(e)(2). These proposed regulations will clarify that covered entities must comply with the ADA public access provisions applied to public entities and accommodations to implement Titles II and III of the ADA. Congressional approval and Board issuance of ADA public access under the CAA will also eliminate any question as to the ADA public access protections that are applicable in the legislative branch.

The Board adopted proposed regulations and presented them to the House of Representatives and the Senate in 1996. The regulations were published on January 7, 1997, during the 105th Congress. 142 Cong. Rec. S10984–11018 and 143 Cong. Rec. S30–66. No Congressional action was taken and therefore the regulations were not issued. The Board adopted the present proposal, with updated proposed regulations, to facilitate Congressional consideration of the ADA regulations.

**Which ADA public access regulations are applied to covered entities in 2 U.S.C. § 1331(e)?**

Section 210(e) of the CAA requires the Board to issue regulations that are ''the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions . . . 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.'' 2 U.S.C. § 1331(e).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the DOJ and/or the DOT to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are ''substantive regulations'' within the meaning of section 210(e). See, e.g., 142 Cong. Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations).

See also *Reves v. Ernst & Young*, 494 U.S. 56, 64 (1993) (where same phrase or term is used in two different places in the same statute, it is reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of the same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the DOJ and DOT, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA. As explained more fully below, the Board proposes to adopt the following otherwise applicable regulations of the DOJ published at Parts 35 and 36 of Title 28 of the Code of Federal Regulations (''CFR'') and those of the DOT published at Parts 37 and 38 of Title 49 of the CFR:

1. DOJ's regulations at Part 35 of Title 28 of the CFR: The DOJ's regulations at Part 35 implement subtitle A of Title II of the ADA (sections 201 through 205), the rights and protections of which are applied to covered entities under section 210(b) of the CAA. See 28 CFR § 35.101 (Purpose). Therefore, the Board determines that these regulations will be adopted in the proposed regulations under section 210(e).

2. DOJ's regulations at Part 36 of Title 28 of the CFR: The DOJ's regulations at Part 36 implement Title III of the ADA (sections 301 through 309). See 28 CFR § 36.101 (Purpose). Section 210(b) only applies the rights and protections of three sections of Title III with respect to public accommodations: prohibitions against discrimination (section 302), provisions regarding new construction and alterations (section 303), and provisions regarding examinations and courses (section 309). Therefore, only those regulations in Part 36 that are reasonably necessary to implement the statutory provisions of sections 302, 303, and 309 will be adopted by the Board under section 210(e) of the CAA.

3. DOT's regulations at Parts 37 and 38 of Title 49 of the CFR: The DOT's regulations at Parts 37 and 38 implement the transportation provisions of Title II and Title III of the ADA. See 49 CFR §§ 37.101 (Purpose) and 38.1 (Purpose). The provisions of Title II and Title III of the ADA relating to transportation and applied to covered entities by section 210(b) of the CAA are subtitle B of Title II (sections 221 through 230) and certain portions of section 302 of Title III. Thus, those regulations of the Secretary that are reasonably necessary to implement the statutory provisions of sections 221 through 230, 302, and 303 of the ADA will be adopted by the Board under section 210(e) of the CAA.

The Board proposes not to adopt those regulatory provisions of the regulations of the DOJ or DOT that have no conceivable applicability to operations of entities within the Legislative Branch or are unlikely to be invoked. See 141 Cong. Rec. at S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 210(e) requires a regulation. See section 411 of the CAA, 2 U.S.C. § 1411.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. With the exception of these technical and nomenclature changes and additional proposed regulations relating to the investigation and inspection authority granted to the General Counsel under the CAA, the Board does not propose substantial departure from otherwise applicable regulations.

The Board notes that the General Counsel applied the above-referenced standards of Parts 35 and 36 of the DOJ's regulations and Parts 37 and 38 of the DOT's regulations during the past inspections of Legislative Branch facilities pursuant to section 210(f) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of disability standards under section 210, as well as the responsibility for inspecting covered facilities to ensure compliance. According to the General Counsel's final inspection reports, the Title II and Title III regulations encompass the following requirements:

1. Program accessibility: This standard is applied to ensure physical access to public programs, services, or activities. Under this standard, covered entities must modify policies, practices, and procedures to ensure an equal opportunity for individuals with disabilities. If policy and procedural modifications are ineffective, then structural modifications may be required.

2. Effective communication: This standard requires covered entities to make sure that their communications with individuals with disabilities (such as in the context of constituent meetings and committee hearings) are as effective as their communications with others. Covered entities are required to make information available in alternate formats such as large print, Braille, or audio tape, or use methods that provide individuals with disabilities the opportunity to effectively communicate, such as sign language interpreters or the use of pen and paper. Primary consideration must be given to the method preferred by the individual.

3. ADA Standards for Accessible Design: These standards are applied to architectural barriers, including structural barriers to communication, such as telephone booths, to ensure that existing facilities, new construction, and new alterations, are accessible to individuals with disabilities.

The Board recognizes that, as with other obligations under the CAA, covered entities will need information and guidance regarding compliance with these ADA standards as adopted in these proposed regulations, which the Office will provide as part of its education and information activities.

**How do these regulations differ from those proposed by the Board on January 7, 1997?**

These regulations are very similar to those proposed by the Board in 1997; however, there are three significant differences:

1. These regulations have been updated to incorporate the changes made in the DOJ and DOT regulations since 1997. One of the most significant changes made by the DOJ occurred on September 15, 2010 when the DOJ published regulations adopting the 2010 Standards for Accessible Design (''2010 Standards''). The 2010 Standards became fully effective on March 15, 2012 and replaced the 1991 Standards for Accessible Design (''1991 Standards'') that were referenced in the regulations proposed by the Board in 1997. These regulations incorporate by reference the pertinent DOJ and DOT regulations that are in effect as of the date of the publication of this notice, which means that the 2010 Standards will be applied. The Board has also changed the format of the incorporated regulations. Rather than reprinting each of the regulations with minor changes to reflect different nomenclature used in the CAA (i.e., changing references to ''Assistant Attorney General,'' ''Department of Justice,'' ''FTA Administrator,'' ''FTA regional office,'' ''Administrator,'' and ''Secretary'' to ''General Counsel''), these regulations contain a definitional section in § 1.105(a) which make these changes and incorporates the DOJ and DOT regulations by reference.

2. Unlike the Board in 1997, the current Board has decided not to propose adoption of the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. § 35.140. The Board notes that since 1997 most courts considering this issue have decided that employees of public entities must use the procedures in Title I of the ADA to pursue employment discrimination claims and that these claims cannot be pursued under Title II. *See, e.g., Brumfield v. City of Chicago*, 735 F.3d 619 (7th Cir. 2013); *Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Okla.*, 693 F.3d 1303 (10th Cir. 2012); *Zimmerman v. Or. Dep't of Justice*, 170 F.3d 1169 (9th Cir. 1999). The prohibition against employment discrimination because of disability in Title I of the ADA is incorporated into section 201(a)(3) of the CAA. 2 U.S.C. § 1311(a)(3). Under section 210(c) of the CAA, ''with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 1311 of this title.'' 2 U.S.C. § 1331(c). Similarly, under section 225(e) of the CAA, ''[o]nly a covered entity

who has undertaken and completed the procedures in sections 1402 and 1403 of this title may be granted a remedy under part A of this subchapter.'' 2 U.S.C. §1361(e). When taken together, these sections of the CAA make it clear that the exclusive method for obtaining relief for employment discrimination because of disability is under section 201, which involves using the counseling and mediation procedures contained in sections 402 and 403 of the CAA. For these reasons, the Board has found good cause not to incorporate the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140, into these regulations.

3. In Parts 2 and 3 of these regulations, the Board has proposed regulations relating to the two unique statutory duties imposed by the CAA upon the General Counsel of the Office of Compliance that are not imposed upon the DOJ and DOT: (1) the investigation and prosecution of charges of discrimination using the Office's mediation and hearing processes (section 210(d) of the CAA) and (2) the biennial inspection and reporting obligations (section 210(f) of the CAA). Parts 2 and 3 of these regulations were not contained in the regulations proposed in 1997; however, the Board has determined that there is good cause to propose these regulations to fully implement section 210 of the CAA. *See*, 2 U.S.C. §1331(e)(1). In formulating the substance of these regulations, the Board has directed the Office's statutory employees to consult with stakeholders and has considered their comments and suggestions.

The Board has also reviewed the biennial ADA reports from the General Counsel and considered what the General Counsel has learned since 1995 while investigating charges of discrimination and conducting and reporting upon ADA inspections. Of particular note is the regulation proposed as §3.103(d) which addresses concerns raised by oversight and appropriations staff over finding a cost-efficient process that would allow better identification and elimination of potential ADA compliance issues during the pre-construction phases of new construction and alteration projects.

*Procedural Summary:*

**How are substantive regulations proposed and approved under the CAA?**

Pursuant to Section 304 of the CAA, 2 U.S.C. §1384, the procedure for proposing and approving such substantive regulations provides that:

(1) the Board of Directors propose substantive regulations and publish a general notice of proposed rulemaking in the Congressional Record;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking;

(3) after consideration of comments by the Board of Directors, the Board adopt regulations and transmit notice of such action (together with the regulations and a recommendation regarding the method for Congressional approval of the regulations) to the Speaker of the House and President [P]ro [T]empore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication.

For more detail, please reference the text of 2 U.S.C. §1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

**Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?**

As required by Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the Senate and the Deputy Executive Director for the House of Representatives.

**Has the Board of Directors previously proposed substantive regulations implementing the ADA public access provisions pursuant to 2 U.S.C. §1331?**

Yes. Proposed regulations were previously adopted by the Board and presented to the House of Representatives and the Senate on September 19, 1996. The regulations were published on January 7, 1997. 142 Cong. Rec. S10984–11018 and 143 Cong. Rec. S30–66. No Congressional action was taken on these regulations.

**What is the approach taken by these proposed substantive regulations?**

The Board will follow the procedure as enumerated above and as required by statute. The Board will review any comments received under step (2) of the outline above, and respond to the comments and make any changes necessary to ensure that the regulations fully implement section 210 of the CAA and reflect the practices and policies particular to the legislative branch.

**What responsibilities would covered entities have in effectively implementing these regulations?**

The CAA charges covered entities with the responsibility to comply with these regulations. CAA §210, 2 U.S.C. §1331.

**Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?**

No. The Board of Directors has identified no ''good cause'' for proposing different regulations for these entities and accordingly has not done so. 2 U.S.C. §1331(e)(2).

**Are these proposed substantive regulations available to persons with disabilities in an alternate format?**

This Notice of Proposed Regulations is available on the OOC's web site, www.compliance.gov, which is compliant with Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Annie Leftwood, Executive Assistant, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9250; TDD: 202–426–1912; FAX: 202–426–1913.

*30 Day Comment Period Regarding the Proposed Regulations*

**How long do I have to submit comments regarding the proposed regulations?**

Comments regarding the proposed regulations of the OOC set forth in this Notice are invited for **a period of thirty (30) days** following the date of the appearance of this Notice in the *Congressional Record*.

**How do I submit comments?**

Comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. It is requested, but not required, that an electronic version of any comments be provided either on an accompanying computer disk or e-mailed to the OOC via its web site. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number).

**Am I allowed to view copies of comments submitted by others?**

Yes. Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

*Summary:*

The Congressional Accountability Act of 1995, PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of thirteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 210 of the CAA applies that the rights and protections against discrimination in the provision of public services and accommodations established by 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 Legislative Branch entities covered by the CAA. The above provisions of section 210 became effective on January 1, 1997. 2 U.S.C. §1331(h).

The Board of Directors of the Office of Compliance is now 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.

In addition to inviting comment in this Notice, the Board, through the statutory appointees of the Office, sought consultation with the stakeholders regarding the development of these regulations. The Board also notes that the General Counsel of the Office of Compliance has completed inspections of covered facilities for compliance with disability access standards under section 210 of the CAA during each Congress since the CAA was enacted and has submitted reports to Congress after each of these inspections. 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 §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 regarding the House of Representatives entities is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) Certain Congressional instrumentalities. It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol (including the Botanic Garden), the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

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

*Supplementary Information:*

The regulations set forth below (Parts 1, 2, and 3) are the substantive regulations that the Board of Directors of the Office of Compliance are proposing pursuant to section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 210, the method of identifying entities responsible for correcting a violation of section 210, and the list of executive branch regulations incorporated by reference which define and clarify the prohibition against discrimination on the basis of disability in the provision of public services and accommodations. Part 2 contains the provisions pertaining to investigation and prosecution of charges of discrimination. Part 3 contains the provisions regarding the periodic inspections and reports to Congress on compliance with the disability access standards. These three parts correspond to the three general duties imposed upon the Office of Compliance by section 210 which are as follows:

1. Under section 210(e) of the CAA, the Board of Directors of the Office of Compliance must promulgate substantive regulations which implement the rights and protections provided by section 210. 2 U.S.C. §1331(e)(1).

2. Under Section 210(d) of the CAA, the General Counsel of the Office of Compliance must receive and investigate charges of discrimination alleging violations of the rights and protections provided by Titles II and III of the ADA, may request mediation of such charges upon believing that a violation may have occurred, and, if mediation has not succeeded in resolving the dispute, may file a complaint and prosecute the complaint through the Office of Compliance's hearing and review process 2 U.S.C. §1331(d).

3. Under section 210(f) of the CAA, the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, must conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

**Regulations proposed in Part 1.**

**§1.101 Purpose and scope.** This section references and cites the sections of Title II and III of the ADA incorporated by reference into the CAA, follows the statutory language of the CAA to identify the covered entities and the statutory duties of the General Counsel of the Office of Compliance and describes how the regulations are organized.

**§1.102 Definitions.** This section describes the abbreviations that are used throughout the regulations.

**§1.103 Authority of the Board.** This section describes the authority of the Board of Directors of the Office of Compliance to issue regulations under section 210 of the CAA and the intended effect of the technical and nomenclature changes made to the regulations promulgated by the Attorney General and Secretary of Transportation.

**§1.104 Method for identifying the entity responsible for correcting violations of section 210.** The regulation in this section is required by section 210(e)(3) of the CAA. This regulation hues very closely to the DOJ Title III regulation set forth in 28 C.F.R. §36.201 which in turn is based on the statutory language in 42 U.S.C. §12182(a) (one of the ADA statutory sections incorporated by reference in section 210(b) of the CAA). Under section 302 of the ADA, owners, operators, lessors and lessees are all jointly and severally liable for ADA violations. *See, e.g.*, *Botosan v. McNally Realty*, 216 F.3d 827, 832 (9th Cir. 2000). The proposed regulation allows consideration of relevant statutes, contracts, orders, and other enforceable arrangements or relationships to allocate responsibility. The term ''enforceable arrangement'' is used intentionally since certain indemnification and contribution contracts allocating liability under the ADA have been found to be unenforceable. *See, e.g.*, *Equal Rights Center v. Archstone-Smith Trust*, 602 F.3d 597 (4th Cir. 2010, *cert denied*, 131 S. Ct. 504 (2010). Although the concepts of ''ownership'' or ''leasing'' do not appear to apply to Legislative Branch facilities on Capitol Hill, the Architect of the Capitol does have statutory superintendence responsibility for certain legislative branch buildings and facilities, including the Capitol Building, which includes duties and responsibilities analogous to those of a ''landlord''. See 40 U.S.C. §§163–166 (Capitol Building), 167–175 and 185a (House and Senate office buildings), 193a (Capitol grounds), 216b (Botanical Garden) and 2 U.S.C. §141(a)(1) (Library of Congress buildings). The Board believes that, where two or more entities may have compliance obligations under section 210(b) as ''responsible entities'' under the proposed regulations, those entities should have the ability to allocate responsibility by agreement similar to the case of landlords and tenants with respect to public accommodations under Title III of the ADA. Thus, the proposed regulations adopt such provisions modeled after section 36.201(b) of the DOJ regulations. However, by promulgating this provision, the Board does not intend any substantive change in the statutory responsibility of entities under section 210(b) or the applicable substantive rights and protections of the ADA applied thereunder. See 142 Cong. Rec. at S270 (final rule under section 205 of the CAA substitutes the term ''privatization'' for ''sale of business'' in the Secretary of Labor's regulations under the Worker Adjustment Retraining and Notification Act).

**§1.105 Regulations incorporated by reference.** As explained above, consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the DOJ and/or the DOT to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are ''substantive regulations'' within the meaning of section 210(e). *See, e.g.*, 142 Cong. Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the DOJ and DOT, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA.

In **section 1.105(a)(1),** the Board has modified the nomenclature used in the incorporated regulations to comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. With the exception of these technical and nomenclature changes and additional proposed regulations relating to the investigation and inspection authority granted to the General Counsel under the CAA, the Board does not propose substantial departure from otherwise applicable regulations. The dates referenced in section 1.105(a)(2) reflect that the ADA public access provisions of the CAA became effective on January 1, 1997 rather than effective date of the ADA which was January 26, 1992. 2 U.S.C. §1331(h). The three year provision in section 1.105(a)(3) was developed after consultation with the Office of the Architect of the Capitol regarding what would be a reasonable time frame for implementing these provisions of the regulations. In several portions of DOJ and DOT regulations, references are made to dates such as the effective date of the regulations or effective dates derived from the statutory provisions of the ADA. The Board proposes to substitute dates which correspond to analogous periods for the purposes of the CAA. In this way covered entities under section 210 may have the same time to come into compliance relative to the effective date of section 210 of the CAA afforded public entities subject to Title II of the ADA. In the Board's judgment, such changes satisfy the CAA's ''good cause'' requirement. In section 1.105(a)(4), which was also developed based upon consultations with the Office of the Architect of the Capitol (''AOC''), the Board modified the exception for ''historic'' property to include properties, buildings, or facilities designated as an historic or heritage assets by the AOC. This was necessary because the DOJ regulations limit the definition of historic properties to those ''listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law'' 28 C.F.R. §35.104. While there are certainly properties on Capitol Hill which have historically significant features that are worthy of preservation, these properties are not eligible for listing on the National Register of Historic Places or considered historic under State of local law. *See*, *Historic Preservation Act of 1966*, 16 U.S.C. 470g (exempting the White House and its grounds, the Supreme Court building and its grounds, and the United States Capitol and its related buildings and grounds from the provisions of the Historic Preservation Act).

In section **1.105(b),** the Board has adopted a rule of interpretation to cover the few instances where there are differences between regulations implementing Title II and Title III of the ADA. The CAA is unique in that it applies both Title II and Title III provisions to covered public entities. The public accommodation provisions of Title III of the ADA are otherwise only applicable to private entities. *See*, 42 U.S.C. §12181(7). This section of the regulation reflects the Board's determination that Congress applied provisions of both Title II and Title III of the ADA to legislative branch entities to ensure that individuals with disabilities are provided the most access to public services, programs, activities and accommodations provided by law.

In section **1.105(c),** the Board has listed the specific DOJ regulations incorporated into the regulations being issued under section 210 of the CAA. As noted earlier, the Board has adopted all of the DOJ regulations implementing Titles II and III of the ADA with the following exceptions:

1. The Board is not incorporating the DOJ regulations regarding retaliation or coercion (28 C.F.R. §§35.134 & 36.206). Sections 35.134 and 36.206 of the DOJ's regulations implement section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 28 CFR pt. 35, App. A at 464 & pt. 36, App. B at 598 (section-by-section analysis). Sections 35.134 and 36.206 are not provisions which implement a right or protection applied to covered entities under section 210(b) of the CAA and, therefore, they will not be included within the adopted regulations. The Board notes, however, that section 207 of the CAA provides a comprehensive retaliation protection for employees (including applicants and former employees) who may invoke their rights under section 210, although section 207 does not apply to nonemployees who may enjoy rights and protections against discrimination under section 210.

2. As noted above, unlike the Board in 1997, the current Board has decided not to propose adoption of the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140. The Board notes that since 1997 most courts considering this issue have decided that employees of public entities must use the procedures in Title I of the ADA to pursue employment discrimination claims and that these claims cannot be pursued under Title II. *See, e.g., Brumfield v. City of Chicago*, 735 F.3d 619 (7th Cir. 2013); *Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Okla.*, 693 F.3d 1303 (10th Cir. 2012); *Zimmerman v. Or. Dep't of Justice*, 170 F.3d 1169 (9th Cir. 1999). The prohibition against employment discrimination because of disability in Title I of the ADA is incorporated into section 201(a)(3) of the CAA. 2 U.S.C. §1311(a)(3). Under section 210(c) of the CAA, ''with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 1311 of this title.'' 2 U.S.C. §1331(c). Similarly, under section 225(e) of the CAA, ''[o]nly a covered entity who has undertaken and completed the procedures in sections 1402 and 1403 of this title may be granted a remedy under part A of this subchapter.'' 2 U.S.C. §1361(e). When taken together, these sections of the CAA make it clear that the exclusive method for obtaining relief for employment discrimination because of disability is under section 201, which involves using the counseling and mediation procedures contained in sections 402 and 403 of the CAA. For these reasons, the Board has found good cause not to incorporate the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140, into these regulations.

3. The Board has not incorporated Subpart F of the DOJ's regulations (28 C.F.R. §§35.170–35.189), which set forth administrative enforcement procedures under Title II. Subpart F implements the provisions of section 203 of the ADA, which is applied to covered entities under section 210 of the CAA. Although procedural in nature, such provisions address the remedies, procedures, and rights under section 203 of the ADA, and thus the otherwise applicable provisions of these regulations are ''substantive regulations'' for section 210(e) purposes. See 142 Cong. Rec. at S5071–72 (similar analysis under section 220(d) of the CAA). However, since section 303 of the CAA reserves to the Executive Director the authority to promulgate regulations that ''govern the procedures of the Office,'' and since the Board believes that the benefit of having one set of procedural rules provides the ''good cause'' for modifying the DOJ's regulations, the Board proposes to incorporate the provisions of Subpart F into the Office's procedural rules, to omit provisions that set forth procedures which conflict with express provisions of section 210 of the CAA or are already provided for under comparable provisions of the Office s rules, and to omit rules with no applicability to the Legislative Branch (such as provisions covering entities subject to section 504 of the Rehabilitation Act, provisions regarding State immunity, and provisions regarding referral of complaints to the Justice Department). See 142 Cong. Rec. at S5071–72 (similar analysis and conclusion under section 220(d) of the CAA).

4. The Board has not incorporated Subpart G of the DOJ's regulations, which designates the Federal agencies responsible for investigating complaints under Title II of the ADA. Given the structure of the CAA, such provisions are not applicable to covered Legislative Branch entities and, therefore, will not be adopted under section 210(e).

5. The Board has not incorporated the insurance provisions contained in 28 C.F.R. §36.212. Section 36.212 of the DOJ's regulations restates section 501(c) of the ADA, which provides that the ADA shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, so long as such practices are not used to evade the purposes of the ADA. Section 501(c) of the ADA is not incorporated by reference into section 210 of the CAA. Because section 36.212 implements a section of the ADA which is not incorporated into the CAA and appears intended primarily to cover insurance companies which are not covered entities under the CAA, the Board finds good cause not to incorporate this regulation.

6. The Board has not incorporated Subpart E of the DOJ's regulations (sections 36.501 through 36.599) setting forth the enforcement procedures under Title III of the ADA. As the Justice Department noted in its NPRM regarding subpart E, the Department of Justice does not have the authority to establish procedures for judicial review and enforcement and, therefore, ''Subpart E generally restates the statutory procedures for enforcement''. 28 CFR pt. 36, App. B at 638 (section-by-section analysis). Additionally, the regulations derive from the provisions of section 308 of the ADA, which is not applied to covered entities under section 210(b) of the CAA. Thus, the regulations in subpart E are not promulgated by the Attorney General as substantive regulations to implement the statutory provisions of the ADA referred to in section 210(b), within the meaning of section 210(e).

7. The Board has not incorporated Subpart F of the DOJ's regulations which establishes procedures to implement section 308(b)(1)(A)(ii) of the ADA regarding compliance with State laws or building codes as evidence of compliance with accessibility standards under the ADA. 28 CFR pt. 36, App. B at 640 (section-by-section analysis). Section 308 is not one of the laws applied to covered entities under section 210(b) of the CAA and, therefore, these regulations will not be adopted under section 210(e).

In section **1.105(d),** the Board has listed the specific DOT regulations incorporated into the regulations being issued under section 210 of the CAA. As noted earlier, the Board has adopted all of the DOT regulations implementing Titles II and III of the ADA with the following exceptions:

1. Although the Board has adopted the definitions in section 37.3 of the DOT's regulations, relating to implementation of Part II of Title II of the ADA (sections 241 through 246), those definitions dealing with public transportation by intercity and commuter rail are not adopted because sections 241 through 246 of the ADA were not within the rights and protections applied to covered entities under section 210(b) and, therefore, the regulations implementing such sections are not substantive regulations of the DOT required to be adopted by the Board within the meaning of section 210(e). Accordingly, the Board will give no effect to the definitions of terms such as ''commerce,'' ''commuter authority,'' ''commuter rail car,'' ''commuter rail transportation,'' ''intercity rail passenger car,'' and ''intercity rail transportation,'' which relate to sections 241 through 246 of the ADA.

2. Although the Board has adopted the Nondiscrimination regulation set forth in section 37.5 of the DOT's regulations, subsection (f) of section 37.5 of the this regulation relates to private entities primarily engaged in the business of transporting people and whose operations affect commerce. This subsection implements section 304 of the ADA, which is not a right or protection applied to covered entities under section 210(b) of the CAA. See 56 Fed. Reg. 13856, 13858 (April 4, 1991) (preamble to NPRM regarding Part 37). Therefore, it is not a regulation of the DOT included within the scope of rulemaking under section 210(e) of the CAA and will not be considered by the Board to be included in these regulations.

3. Several portions of the DOT's regulations refer to obligations of entities regulated by state agencies administering federal transportation funds. See, e.g., sections 37.77(d) (requires filing of equivalent service certificates with state administering agency), 37.135(f) (submission of paratransit development plan to state administering agency) and 37.145 (State comments on paratransit plans). Any references to obligations not imposed on covered entities, such as state law requirements and laws regulating entities that receive Federal financial assistance, will be considered excluded from these proposed regulations.

4. The Board has not adopted section 37.11 of the DOT's regulations relating to administrative enforcement because it does not implement any provision of the ADA applied to covered entities under section 210 of the CAA. Moreover, the enforcement procedures of section 210 are explicitly provided for in section 210(d) (''Available Procedures''). Accordingly, this section will not be included within the incorporated regulations. The subject matter of enforcement procedures is addressed in the Office's procedural rules and in Part 2 of these regulations.

5. Certain sections of Subparts B (Applicability) and C (Transportation Facilities) of the Secretary's regulations were promulgated to implement sections 242 and 304 of the ADA, provisions that are not applied to covered entities under section 210(b) of the CAA or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.21(a)(2) and (b) (relating to private entities under section 304 of the ADA and private entities receiving Federal assistance from the Transportation Department), 37.25 (university transportation systems), 37.29 (private taxi services), 37.33 (airport transportation systems), 37.37(a) and 37.37(e)–(g) (relating to coverage of private entities and other entities under section 304 of the ADA), and 37.49–37.57 (relating to intercity and commuter rail systems). Similarly, the Board proposes modifying sections 37.21(c), 37.37(d), and 37.37(h) and other sections where references are made to requirements or circumstances strictly encompassed by the provisions of section 304 of the ADA and, therefore, not applicable to covered entities under the CAA. See, e.g., sections 37.25–37.27 (transportation for elementary and secondary education systems).

6. Subpart D (sections 37.71 through 37.95) of the DOT's regulations relate to acquisition of accessible vehicles by public entities. Certain sections of subpart D were promulgated to implement sections 242 and 304 of the ADA, which were not applied to covered entities under section 210(b) of the CAA, or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.87–37.91 and 37.93(b) (relating to intercity and commuter rail service).

7. Subpart E (sections 37.101 through 37.109) of the DOT's regulations relates to acquisition of accessible vehicles by private entities. Section 37.101, relating to acquisition of vehicles by private entities not primarily engaged in the business of transporting people, implements section 302 of the ADA, which is applied to covered entities under section 210(b). Therefore, the Board will adopt section 37.101 as part of its section 210(e) regulations. Sections 37.103, 37.107, and 37.109 of the regulations implement section 304 of the ADA, which is inapplicable to covered entities under the ADA. Therefore, the Board

proposes not to include them within its substantive regulations under section 210(e) of the CAA.

8. Part 37 of the DOT's regulations includes several appendices, only two of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (Modifications to Standards for Accessible Transportation Facilities, ADA Accessibility Guidelines for Buildings and Facilities), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 49 CFR pt. 37, App. A. Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and other in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title II and Title III of the ADA. See 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes). The Board proposes not to adopt Appendix B, which gives the addresses of FTA regional offices. Such information is not relevant to covered entities under the CAA. The Board also proposes not to adopt Appendix C, which contain forms for certification of equivalent service. These forms appears to be irrelevant to entities covered by the CAA and therefore will not be adopted by the Board. Finally, the Board will adopt Appendix D to Part 37, the section-by-section analysis of Part 37. The Board notes that the section-by-section analysis may have some relevance in interpreting the sections of Part 37 that the Board has adopted.

9. The Board proposes to adopt, with minimal technical and nomenclature changes, the regulations contained in Part 38 and accompanying appendix, with the exception of the following subparts which the Board has determined implement portions of the ADA not applied to covered entities under section 210(b) of the CAA and/or the Board believe have no conceivable applicability to legislative branch operations: Subpart E, Commuter Rail Cars and Systems; and Subpart F, Intercity Rail Cars and Systems.

In **section 1.105(d),** the Board has proposed the adoption of one regulation promulgated by the Access Board, 36 C.F.R. §1190.34, relating to the accessibility of leased buildings and facilities. While the DOJ does not have a regulation pertaining to leased buildings and facilities, the Access Board has promulgated this regulation that sets minimal accessible standards whenever the federal government leases a building or facility (or a portion thereof). Generally, this regulation requires that fully accessible space be leased when available, but also sets some minimal accessibility requirements when fully accessible spaces are not available. These minimum requirements include at least one accessible entrance, an accessible route to major function areas, an accessible toilet, and accessible parking (if that is included in the rent). If there is no space available that meets even these minimal requirements, the regulation does contain an exception that would permit the short term leasing of spaces that do not even meet these minimal standards. The most common ADA public access complaint received by the General Counsel from members of the public relates to the lack of ADA access to spaces being leased by legislative branch offices. The Board therefore finds good cause to clarify the ADA access obligations regarding leased spaces by adopting 36 C.F.R. §1190.34.

**Regulations proposed in Part 2.**

**§2.101 Purpose and scope.** This section references and notes that Part 2 of these regulations implements section 210(d) of the CAA which requires that the General Counsel accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. It also notes that by procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by section 210(d) of the CAA. The Board notes that the Executive Director is proposing amendments to the Office's Procedural Rules that do include provisions relating to section 210(d) of the CAA.

**§2.102 Definitions.** This section provides definitions for the undefined terms used in section 210(d) of the CAA. In §2.102(a), the term ''charge'' is defined in a manner consistent with the Supreme Court's decision in *Fed. Express Corp. v. Holowecki,* 552 U.S. 389, 402 (2008). In §2.102(b), the definition of the term ''file a charge'' clarifies how charges can be presented to the General Counsel by listing the methods by which the General Counsel has accepted charges in the past. In §2.102(c), the term ''occurrence of the alleged violation'' is defined in a manner that includes both isolated acts of discrimination and continuing violations. *See, e.g., Havens Realty Corp. v. Coleman,* 455 U.S. 363, 380 (1982). In §2.102(d), the term ''the rights and protections against discrimination in the provision of public services and accommodations'' is defined by referencing the specific sections of Titles II and III that are incorporated into the CAA in section 210(b)(1). 2 U.S.C. §1331(b)(1).

**§2.103 Investigatory Authority.** This section explains the investigatory methods that the General Counsel will use when investigating charges of discrimination and clarifies the duty of cooperation owed by all parties. The language used to describe the investigatory methods listed in §2.103(a) is derived from the Supreme Court's decision in *Dow Chemical Co. v. United States,* 476 U.S. 227, 233 (1986) which describes what is intended when an agency is granted investigatory authority that is not otherwise defined in the statute. The duty to cooperate with investigations described in §2.103(b) is implicit in the CAA. By empowering the General Counsel to investigate potential violations of the the ADA, Congress expressed its expectation that legislative branch employees and offices would cooperate fully with investigations conducted by the General Counsel pursuant to this authority. This regulation is consistent with prior policy guidance the General Counsel has provided to covered entities.

**§2.104 Mediation.** This section explains when the General Counsel will request mediation of a charge of discrimination. The language in §2.104(a) is derived from section 210(d)(2) of the CAA. 2 U.S.C. §1331(d)(2). The explanation of what happens when mediation results in a settlement is contained in §2.104(b) and is consistent with the language in section 210(d)(3) and with the General Counsel's past practice of closing cases that are resolved during mediation. The language in §2.104(c) is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

**§2.105 Complaint.** The language in this section is is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

**§2.106 Intervention by charging individual.** The language in this section is is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

**§2.107 Remedies and Compliance.** This section describes the remedies available and the compliance dates when a violation of section 210 is found. The remedy language in §2.107(a) is based upon the statutory language in section 210(c) of the CAA. 2 U.S.C. §1331(d)(3). The allowance of attorney's fees and costs described in §2.107(a)(1) is based upon the language in 28 C.F.R. §35.175 & 36.505 which recognize that attorney's fees may be awarded under both Titles II and III of the ADA. The availability of compensatory damages described in §2.107(a)(2) derives from sections 210(c) and of the CAA which incorporates by reference the remedies contained sections 203 and 308(a) of the ADA. Section 203 of the ADA provides that the remedies set forth in the Rehabilitation Act (at 29 U.S.C. §794a) shall be the remedies for violations of Title II of the ADA. The Supreme Court has made clear that the remedies available under Title II of the ADA and the Rehabilitation Act are ''coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964'' which includes compensatory, but not punitive, damages. *Barnes v. Gorman,* 536 U.S. 181, 185 (2002). The language in §2.107(a)(1) & (a)(2) requiring that payment be made by the covered entity responsible for correcting the violation is from section 415(c) of the CAA which requires that funds to correct ADA violations ''may be paid only from funds appropriated to the employing office or entity responsible for correcting such violations.'' 2 U.S.C. §1415(c). The compliance date set forth in §2.107(b) is from section 210(d)(5) of the CAA. 2 U.S.C. §1331(d)(5).

**§2.108 Judicial Review.** This section is from section 210(d)(4) of the CAA. 2 U.S.C. §1331(d)(4).

**Regulations proposed in Part 3.**

**§3.101 Purpose and scope.** This section references and notes that Part 3 of these regulations implements section 210(f) of the CAA which requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections, describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement. It also notes that by procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by section 210(d) of the CAA. The Board notes that the Executive Director is proposing amendments to the Office's Procedural Rules that do include provisions relating to section 210(f) of the CAA.

**§3.102 Definitions.** This section defines terms used in section 210(f) of the CAA which are not defined in the statute. In §3.102(a), the term ''facilities of covered entities'' is defined. The term ''facility'' is defined in 28 C.F.R. §35.104, which is incorporated by reference into these regulations. See §1.105(c). ''Facilities of covered entities'' is defined to include all facilities where covered entities provide public programs, activities, services or accommodations, including those facilities designed, maintained, altered or constructed by a covered entity. Because the General Counsel's inspections under section 210(f) of the CAA are focused upon finding barriers to access in facilities, the term ''violation'' is defined in §3.102(b) as any barrier to access caused by noncompliance with the applicable standards. The definition of ''estimated cost and time needed for abatement'' was developed in consultation with Office of the Architect of the Capitol which proposed that reporting regarding estimated abatement cost and time be provided using a range of dollar amounts and dates due to the difficulty in precisely estimating such costs and dates.

**§3.103 Inspection authority.** This section describes the general scope of the General

Counsel's inspection authority [§3.103(a)] and recognizes that the General Counsel has the right to review information and documents [§3.103(b)], receive cooperation from covered entities [§3.103(c)], and become involved in pre-construction review of alteration and construction projects [§3.103(d)].

The general scope of authority in §3.103(a) is derived from the language in section 210(f)(1) of the CAA. 2 U.S.C. §1331(f)(1). This subsection also describes the discretion that the General Counsel has exercised when conducting these inspections since the enactment of the CAA.

The document and information review described in §3.103(b) recognizes that a thorough inspection of facilities can require the review of documents and other information to ascertain whether a covered entity is in compliance with the ADA. The language in this subsection is based upon prior policy guidance the General Counsel has provided to covered entities.

The duty to cooperate with inspections described in §3.103(c), like the duty to cooperate with investigations described in §2.103(b), is implicit in the CAA. By empowering the General Counsel to inspect all facilities for potential violations of the the ADA, Congress expressed its expectation that legislative branch employees and offices would cooperate fully with such inspections conducted by the General Counsel pursuant to this authority. This regulation is consistent with prior policy guidance the General Counsel has provided to covered entities.

The pre-construction review of alteration and construction projects described in §3.103(d) was developed after consultation with the Office of the Architect of the Capitol and addresses concerns raised by oversight and appropriations staff over finding a cost efficient process that would allow better identification and elimination of potential ADA compliance issues during the pre-construction phases of new construction and alteration projects.

**§3.104 Reporting, estimating cost & time and compliance date.** This section describes the reporting obligations of the General Counsel set forth in section 210(f)(2) of the CAA. 2 U.S.C. §1331(f)(2). The language in §3.104(a) is directly from section 210(f)(2) of the CAA. Subsection 3.104(b) merely recognizes that the General Counsel needs the cooperation of covered entities to provide the cost and time estimates for abatement required by section 210(f)(2). The compliance date set forth in §3.104(c) is from section 210(d)(5) of the CAA. 2 U.S.C. §1331(d)(5).

**Proposed Regulations:**

**PART 1—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995**

**§1.101 PURPOSE AND SCOPE**
**§1.102 DEFINITIONS**
**§1.103 AUTHORITY OF THE BOARD**
**§1.104 METHOD FOR IDENTIFYING THE ENTITY RESPONSIBLE FOR CORRECTING VIOLATIONS OF SECTION 210**
**§1.105 REGULATIONS INCORPORATED BY REFERENCE**

**§1.101 Purpose and scope.**

(a) **CAA.** Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') in Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Title 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 the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Office of Congressional Accessibility Services;

(5) the United States Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance;

Title II of the ADA prohibits discrimination on the basis of disability in the provision of public services, programs, activities by any ''public entity.'' Section 210(b)(2) of the CAA provides that for the purpose of applying Title II of the ADA the term ''public entity'' means any entity listed above that provides public services, programs, or activities. Title III of the ADA 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 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(d) of the CAA requires that the General Counsel of the Office of Compliance accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. If the General Counsel believes that a violation may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation. 2 U.S.C. §1361(d).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and to report to Congress on compliance with disability access standards under Section 210. 2 U.S.C. §1331(f).

(b) **Purpose and scope of regulations.** The regulations set forth herein (Parts 1, 2, and 3) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to Section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under Section 210, the method of identifying entities responsible for correcting a violation of Section 210, and the list of executive branch regulations incorporated by reference which define and clarify the prohibition against discrimination on the basis of disability in the provision of public services and accommodations. Part 2 contains the provisions pertaining to investigation and prosecution of charges of discrimination. Part 3 contains the provisions regarding the periodic inspections and reports to Congress on compliance with the disability access standards.

**§1.102 Definitions.**

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) ***Act*** or ***CAA*** means the Congressional Accountability Act of 1995 (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) ***ADA*** means the Americans With Disabilities Act of 1990 (42 U.S.C. §§12131–12150, 12182, 12183, and 12189) as applied to covered entities by Section 210 of the CAA.

(c) ***Covered entity and public entity*** include any of the entities listed in §1.101(a) that provide public services, programs, or activities, or operates a place of public accommodation within the meaning of Section 210 of the CAA. In the regulations implementing Title III, ***private entity*** includes ***covered entities***.

(d) ***Board*** means the Board of Directors of the Office of Compliance.

(e) ***Office*** means the Office of Compliance.

(f) ***General Counsel*** means the General Counsel of the Office of Compliance.

**§1.103 Authority of the Board.**

Pursuant to Sections 210 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections against discrimination on the basis of disability in the provision of public services and accommodations under the ADA. Section 210(e) of the CAA directs the Board to promulgate regulations implementing Section 210 that are ''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.'' 2 U.S.C. §1331(e). Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of Section 210 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Attorney General and the Secretary of Transportation. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Attorney General and/or the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulations or of the statutory provisions of the CAA upon which they are based.

**§1.104 Method for identifying the entity responsible for correction of violations of section 210.**

(a) **Purpose and scope.** Section 210(e)(3) of the CAA provides that regulations under Section 210(e) include a method of identifying, for purposes of this section and for categories of violations of Section 210(b), the entity responsible for correcting a particular violation. This section sets forth the method for identifying responsible entities for the purpose of allocating responsibility for correcting violations of Section 210(b).

(b) **Violations.** A covered entity may violate Section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title II or Title III of the ADA.

(c) **Entities Responsible for Correcting Violations.** Correction of a violation of the rights and protections against discrimination is the responsibility of the entities listed in subsection (a) of Section 210 of the CAA that provide the specific public service, program, activity, or accommodation that forms the basis for the particular violation of Title II or Title III rights and protections and, when the violation involves a physical access barrier, the entities responsible for designing, maintaining, managing, altering or constructing the facility in which the specific public service program, activity or accommodation is conducted or provided.

(d) **Allocation of Responsibility for Correction of Title II and/or Title III Violations.** Where more than one entity is found to be an entity responsible for correction of a violation of Title II and/or Title III rights and protections under the method set forth in this section, as between those parties, allocation of responsibility for correcting the violations of Title II or Title III of the ADA may be determined by statute, contract, order, or other enforceable arrangement or relationship.

**§ 1.105 Regulations incorporated by reference.**

(a) **Technical and Nomenclature Changes to Regulations Incorporated by Reference.** The definitions in the regulations incorporated by reference (''incorporated regulations'') shall be used to interpret these regulations except when they differ from the definitions in § 1.102 or the modifications listed below, in which case the definition in § 1.102 or the modification listed below shall be used. The incorporated regulations are hereby modified as follows:

(1) When the incorporated regulations refer to **"Assistant Attorney General," "Department of Justice," "FTA Administrator," "FTA regional office," "Administrator," "Secretary,"** or any other executive branch office or officer, **"General Counsel"** is hereby substituted.

(2) When the incorporated regulations refer to the date **"January 26, 1992,"** the date **"January 1, 1997"** is hereby substituted.

(3) When the incorporated regulations otherwise specify a date by which some action must be completed, the date that is three years from the effective date of these regulations is hereby substituted.

(4) When the incorporated regulations contain an exception for an **"historic"** property, building, or facility that exception shall apply to properties, buildings, or facilities designated as an **historic** or **heritage asset** by the Office of the Architect of the Capitol in accordance with its preservation policy and standards and where, in accordance with its preservation policy and standards, the Office of the Architect of the Capitol determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

(b) **Rule of Interpretation.** When a covered entity is subject to conflicting regulations implementing both Title II and Title III of the ADA, the regulation providing the most access shall apply.

(c) **Incorporated Regulations from 28 C.F.R. Parts 35 and 36.** The following regulations from 28 C.F.R. Parts 35 and 36 that are published in the Code of Federal Regulations on the effective date of these regulations are hereby incorporated by reference as though stated in detail herein:

**§ 35.101 Purpose.**

**§ 35.102 Application.**
**§ 35.103 Relationship to other laws.**
**§ 35.104 Definitions.**
**§ 35.105 Self-evaluation**
**§ 35.106 Notice.**
**§ 35.107 Designation of responsible employee and adoption of grievance procedures.**
**§ 35.130 General prohibitions against discrimination.**
**§ 35.131 Illegal use of drugs.**
**§ 35.132 Smoking.**
**§ 35.133 Maintenance of accessible features.**
**§ 35.135 Personal devices and services.**
**§ 35.136 Service animals**
**§ 35.137 Mobility devices.**
**§ 35.138 Ticketing**
**§ 35.139 Direct threat.**
**§ 35.149 Discrimination prohibited.**
**§ 35.150 Existing facilities.**
**§ 35.151 New Construction and alterations.**
**§ 35.152 Jails, detention and correctional facilities.**
**§ 35.160 General.**
**§ 35.161 Telecommunications.**
**§ 35.162 Telephone emergency services.**
**§ 35.163 Information and signage.**
**§ 35.164 Duties.**
**§ 36.101 Purpose.**
**§ 36.102 Application.**
**§ 36.103 Relationship to other laws.**
**§ 36.104 Definitions.**
**§ 36.201 General.**
**§ 36.202 Activities.**
**§ 36.203 Integrated settings.**
**§ 36.204 Administrative methods.**
**§ 36.205 Association.**
**§ 36.207 Places of public accommodations located in private residences.**
**§ 36.208 Direct threat.**
**§ 36.209 Illegal use of drugs.**
**§ 36.210 Smoking.**
**§ 36.211 Maintenance of accessible features.**
**§ 36.213 Relationship of subpart B to subparts C and D of this part.**
**§ 36.301 Eligibility criteria.**
**§ 36.302 Modifications in policies, practices, or procedures.**
**§ 36.303 Auxiliary aids and services.**
**§ 36.304 Removal of barriers.**
**§ 36.305 Alternatives to barrier removal.**
**§ 36.306 Personal devices and services.**
**§ 36.307 Accessible or special goods.**
**§ 36.308 Seating in assembly areas.**
**§ 36.309 Examinations and courses.**
**§ 36.310 Transportation provided by public accommodations.**
**§ 36.402 Alterations.**
**§ 36.403 Alterations: Path of travel.**
**§ 36.404 Alterations: Elevator exemption.**
**§ 36.405 Alterations: Historic preservation.**
**§ 36.406 Standards for new construction and alterations.**
**Appendix A to Part 36—Standards for Accessible Design.**
**Appendix B to Part 36—Preamble to Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations (Published July 26, 1991).**

(d) **Incorporated Regulations from 49 C.F.R. Parts 37 and 38.** The following regulations from 49 C.F.R. Parts 37 and 38 that are published in the Code of Federal Regulations on the effective date of these regulations are hereby incorporated by reference as though stated in detail herein:

**§ 37.1 Purpose.**
**§ 37.3 Definitions.**
**§ 37.5 Nondiscrimination.**
**§ 37.7 Standards for accessible vehicles.**
**§ 37.9 Standards for accessible transportation facilities.**
**§ 37.13 Effective date for certain vehicle specifications.**
**§ 37.21 Applicability: General.**
**§ 37.23 Service under contract.**
**§ 37.27 Transportation for elementary and secondary education systems.**
**§ 37.31 Vanpools.**
**§ 37.37 Other applications.**
**§ 37.41 Construction of transportation facilities by public entities.**
**§ 37.43 Alteration of transportation facilities by public entities.**
**§ 37.45 Construction and alteration of transportation facilities by private entities.**
**§ 37.47 Key stations in light and rapid rail systems.**
**§ 37.61 Public transportation programs and activities in existing facilities.**
**§ 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.**
**§ 37.73 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.**
**§ 37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.**
**§ 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.**
**§ 37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.**
**§ 37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.**
**§ 37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.**
**§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.**
**§ 37.105 Equivalent service standard.**
**§ 37.121 Requirement for comparable complementary paratransit service.**
**§ 37.123 ADA paratransit eligibility: Standards.**
**§ 37.125 ADA paratransit eligibility: Process.**
**§ 37.127 Complementary paratransit service for visitors.**
**§ 37.129 Types of service.**
**§ 37.131 Service criteria for complementary paratransit.**
**§ 37.133 Subscription service.**
**§ 37.135 Submission of paratransit plan.**
**§ 37.137 Paratransit plan development.**
**§ 37.139 Plan contents.**
**§ 37.141 Requirements for a joint paratransit plan.**
**§ 37.143 Paratransit plan implementation.**
**§ 37.147 Considerations during FTA review.**
**§ 37.149 Disapproved plans.**
**§ 37.151 Waiver for undue financial burden.**
**§ 37.153 FTA waiver determination.**
**§ 37.155 Factors in decision to grant an undue financial burden waiver.**
**§ 37.161 Maintenance of accessible features: General.**
**§ 37.163 Keeping vehicle lifts in operative condition: Public entities.**
**§ 37.165 Lift and securement use.**
**§ 37.167 Other service requirements.**
**§ 37.171 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.**
**§ 37.173 Training requirements.**
**Appendix A to Part 37—Modifications to Standards for Accessible Transportation Facilities.**
**Appendix D to Part 37—Construction and Interpretation of Provisions of 49 CFR Part 37.**
**§ 38.1 Purpose.**
**§ 38.2 Equivalent facilitation.**
**§ 38.3 Definitions.**
**§ 38.4 Miscellaneous instructions.**
**§ 38.21 General.**
**§ 38.23 Mobility aid accessibility.**
**§ 38.25 Doors, steps and thresholds.**
**§ 38.27 Priority seating signs.**
**§ 38.29 Interior circulation, handrails and stanchions.**
**§ 38.31 Lighting.**
**§ 38.33 Fare box.**
**§ 38.35 Public information system.**
**§ 38.37 Stop request.**
**§ 38.39 Destination and route signs.**
**§ 38.51 General.**
**§ 38.53 Doorways.**
**§ 38.55 Priority seating signs.**
**§ 38.57 Interior circulation, handrails and stanchions.**

§ 38.59 **Floor surfaces.**
§ 38.61 **Public information system.**
§ 38.63 **Between-car barriers.**
§ 38.71 **General.**
§ 38.73 **Doorways.**
§ 38.75 **Priority seating signs.**
§ 38.77 **Interior circulation, handrails and stanchions.**
§ 38.79 **Floors, steps and thresholds.**
§ 38.81 **Lighting.**
§ 38.83 **Mobility aid accessibility.**
§ 38.85 **Between-car barriers.**
§ 38.87 **Public information system.**
§ 38.171 **General.**
§ 38.173 **Automated guideway transit vehicles and systems.**
§ 38.179 **Trams, and similar vehicles, and systems.**
**Figures to Part 38.**
**Appendix to Part 38—Guidance Material.**

(e) **Incorporated Regulation from 36 C.F.R. Part 1190**. The following regulation from 36 C.F.R. Part 1190 that is published in the Code of Federal Regulations on the effective date of these regulations is hereby incorporated by reference as though detail herein:

**§ 1190.3—Accessible buildings and facilities: Leased.**

**PART 2—MATTERS PERTAINING TO INVESTIGATION AND PROSECUTION OF CHARGES OF DISCRIMINATION.**

**§ 2.101 PURPOSE AND SCOPE**
**§ 2.102 DEFINITIONS**
**§ 2.103 INVESTIGATORY AUTHORITY**
**§ 2.104 MEDIATION**
**§ 2.105 COMPLAINT**
**§ 2.106 INTERVENTION BY CHARGING INDIVIDUAL**
**§ 2.107 REMEDIES AND COMPLIANCE**
**§ 2.108 JUDICIAL REVIEW**

**§ 2.101 Purpose and Scope.**

Section 210(d) of the CAA requires that the General Counsel accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. Part 2 of these regulations contains the provisions pertaining to investigation and prosecution of charges of discrimination. By procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by Section 210.

**§ 2.102 Definitions.**

(a) ***Charge*** means any written document from a qualified individual with a disability or that individual's designated representative which suggests or alleges that a covered entity denied that individual the rights and protections against discrimination in the provision of public services and accommodations provided in Section 210(b)(1) of the CAA.

(b) ***File a charge*** means providing a charge to the General Counsel in person, by mail, by electronic transmission, or by any other means used by the General Counsel to receive documents. Charges shall be filed within 180 days of the occurrence of the alleged violation.

(c) ***The occurrence of the alleged violation*** means the later of (1) the date on which the charging individual was allegedly discriminated against; or (2) the last date on which the service, activity, program or public accommodation described by the charging party was operated in a way that denied access in the manner alleged by the charging party.

(d) ***The rights and protections against discrimination in the provision of public services and accommodations*** means all of the rights and protections provided by Section 210(b)(1) of the CAA through incorporation of Sections 201 through 230, 203, 303, and 309 of the ADA and by the regulations issued by the Board to implement Section 210 of the CAA.

**§ 2.103 Investigatory Authority.**

(a) **Investigatory Methods.** When investigating charges of discrimination and conducting inspections, the General Counsel is authorized to use all the modes of inquiry and investigation traditionally employed or useful to execute this investigatory authority. The authorized methods of investigation include, but are not limited to, the following: (1) requiring the parties to provide or produce ready access to: all physical areas subject to an inspection or investigation, individuals with relevant knowledge concerning the inspection or investigation who can be interviewed or questioned, and documents pertinent to the investigation; and (2) requiring the parties to provide written answers to questions, statements of position, and any other information relating to a potential violation or demonstrating compliance.

(b) **Duty to Cooperate with Investigations.** Charging individuals and covered entities shall cooperate with investigations conducted by the General Counsel. Cooperation includes providing timely responses to reasonable requests for information and documents (including the making and retention of copies of records and documents), allowing the General Counsel to review documents and interview relevant witnesses confidentially and without managerial interference or influence, and granting the General Counsel ready access to all facilities where covered services, programs and activities are being provided and all places of public accommodation.

**§ 2.104 Mediation.**

(a) **Belief that violation may have occurred.** If, after investigation, the General Counsel believes that a violation of the ADA may have occurred and that mediation may be helpful in resolving the dispute, prior to filing a complaint, the General Counsel may request, but not participate in, mediation under subsections (b) through (d) of Section 403 of the CAA between the charging individual and any entity responsible for correcting the alleged violation.

(b) **Settlement.** If, prior to the filing of a complaint, the charging individual and the entity responsible for correcting the violation reach a settlement agreement that fully resolves the dispute, the General Counsel shall close the investigation of the charge without taking further action.

(c) **Mediation Unsuccessful.** If mediation under (a) has not succeeded in resolving the dispute, and if the General Counsel believes that a violation of the ADA may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation.

**§ 2.105 Complaint.**

The complaint filed by the General Counsel shall be submitted to a hearing officer for decision pursuant to subsections (b) through (h) of Section 405 of the CAA. The decision of the hearing officer shall be subject to review by the Board pursuant to Section 406 of the CAA.

**§ 2.106 Intervention by Charging Individual.**

Any person who has filed a charge may intervene as of right, with the full rights of a party, whenever a complaint is filed by the General Counsel.

**§ 2.107 Remedies and Compliance.**

(a) **Remedy.** The remedy for a violation of Section 210 of the CAA shall be such remedy as would be appropriate if awarded under Section 203 or 308(a) of the ADA.

(1) **Attorney Fees and Costs.** In any action commenced pursuant to Section 210 of the CAA by the General Counsel, when a charging individual has intervened, the hearing officer and the Board, in their discretion, may allow the prevailing charging individual a reasonable attorney's fee, including litigation expenses, and costs, and the covered entity responsible for correcting the violation shall pay such fees, expenses and costs from its appropriated funds as part of the funds to correct violations of Section 210 under Section 415(c) of the CAA.

(2) **Compensatory Damages.** In any action commenced pursuant to Section 210 of the CAA by the General Counsel, when a charging individual has intervened, the hearing officer and the Board, in their discretion, may award compensatory damages to the prevailing charging individual, and the covered entity responsible for correcting the violation shall pay such compensatory damages from its appropriated funds as part of the funds to correct violations of Section 210 under Section 415(c) of the CAA.

(b) **Compliance Date.** Compliance shall take place as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the order requiring correction becomes final and not subject to further review.

**§ 2.108 Judicial Review.**

A charging individual who has intervened or any respondent to the complaint, if aggrieved by a final decision of the Board, may file a petition for review in the United States Court of Appeals for the Federal Circuit, pursuant to Section 407 of the CAA.

**PART 3—MATTERS PERTAINING TO PERIODIC INSPECTIONS AND REPORTING.**

**§ 3.101 PURPOSE AND SCOPE**
**§ 3.102 DEFINITIONS**
**§ 3.103 INSPECTION AUTHORITY**
**§ 3.104 REPORTING, ESTIMATED COST & TIME AND COMPLIANCE**

**§ 3.101 Purpose and scope.**

Section 210(f) of the CAA requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections, describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement. Part 3 of these regulations contains the provisions pertaining to these inspection and reporting duties. By procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise this statutory authority provided by Section 210.

**§ 3.102 Definitions.**

(a) ***The facilities of covered entities*** means all facilities used to provide public programs, activities, services or accommodations that are designed, maintained, altered or constructed by a covered entity and all facilities where covered entities provide public programs, activities, services or accommodations.

(b) ***Violation*** means any barrier to access caused by noncompliance with the applicable standards.

(c) ***Estimated cost and time needed for abatement*** means cost and time estimates that can be reported as falling within a range of dollar amounts and dates.

**§ 3.103 Inspection authority.**

(a) **General scope of authority.** On a regular basis, at least once each Congress, the General Counsel shall inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA. When conducting these inspections, the General Counsel has the discretion to decide which facilities will be inspected and how inspections will be conducted. The General Counsel may receive requests for ADA inspections, including anonymous requests, and conduct inspections for compliance with Titles II and III of the ADA in the same manner that the General Counsel receives and investigates requests for inspections under Section 215(c)(1) of the CAA.

(b) **Review of information and documents.** When conducting inspections under Section 210(f) of the CAA, the General Counsel may request, obtain, and review any and all information or documents deemed by the General Counsel to be relevant to a determination of whether the covered entity is in compliance with Section 210 of the CAA.

(c) **Duty to cooperate.** Covered entities shall cooperate with any inspection conducted by the General Counsel in the manner provided by §2.103(b).

(d) **Pre-construction review of alteration and construction projects.** Any project involving alteration or new construction of facilities of covered entities are subject to inspection by the General Counsel for compliance with Titles II and III of the ADA during the design, pre-construction, construction, and post construction phases of the project. The Office of the Architect of the Capitol shall, within one year from the effective date of these regulations, develop a process with the General Counsel to identify potential barriers to access prior to the completion of alteration and construction projects that may include the following provisions:

(1) Design review or approval;

(2) Inspections of ongoing alteration and construction projects;

(3) Training on the applicable ADA standards;

(4) Final inspections of completed projects for compliance; and

(5) Any other provision that would likely reduce the number of ADA barriers in alterations and new construction and the costs associated with correcting them.

**§3.104 Reporting, estimating cost & time and compliance date.**

(a) **Reporting duty.** On a regular basis, at least once each Congress, the General Counsel shall prepare and submit a report to Congress containing the results of the periodic inspections conducted under §3.103(a), describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement.

(b) **Estimated cost & time.** Covered entities shall cooperate with the General Counsel by providing information needed to provide the estimated cost and time needed for abatement in the manner provided by §2.103(b).

(c) **Compliance date.** All barriers to access identified by the General Counsel in its periodic reports shall be removed or otherwise corrected as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the report describing the barrier to access was issued by the General Counsel.

**Recommended Method of Approval:**

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and entities and facilities of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and entities and facilities of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered entities and facilities be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 9th day of September, 2014.

BARBARA L. CAMENS,
*Chair of the Board, Office of Compliance.*

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
*Washington, DC.*

Hon. PATRICK J. LEAHY,
*President Pro Tempore of the Senate, Washington, DC.*

DEAR MR. PRESIDENT: Section 303(a) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. I383(a), requires that, with regard to the initial proposal of procedural rules under the CAA, the Executive Director "shall, subject to the approval of the Board [of Directors], adopt rules governing the procedures of the Office . . . publish a general notice of proposed rulemaking" and "shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal."

Having obtained the approval of the Board as required by Section 303(b) of the CAA, 2 U.S.C. I383(b), I am transmitting the attached notice of proposed procedural rulemaking to the President pro tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following the receipt of this transmittal. In compliance with Section 303(b) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA–200, 110 2nd Street SE., Washington, DC 20540; 202–724–9250.

Sincerely,

BARBARA J. SAPIN,
*Executive Director,*
*Office of Compliance.*

Attachment.

FROM THE EXECUTIVE DIRECTOR OF THE OFFICE OF COMPLIANCE: NOTICE OF PROPOSED RULEMAKING ("NPRM"), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE, NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. §1383, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED ("CAA").

INTRODUCTORY STATEMENT

Shortly after the creation of the Office of Compliance (Office) in 1995, Procedural Rules were adopted to govern the processing of cases and controversies under the administrative procedures established in subchapter IV of the Congressional Accountability Act of 1995 (CAA) 2 U.S.C. 1401–1407. The Rules of Procedure were amended in 1998 and again in 2004. The existing Rules of Procedure are available in their entirety on the Office of Compliance's web site: *www.compliance.gov*. The web site is fully compliant with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

Pursuant to section 303(a) of the CAA (2 U.S.C. 1383(a)), the Executive Director of the Office has obtained approval of the Board of Directors of the Office of Compliance regarding certain amendments to the Rules of Procedure.

After obtaining the Board's approval, the Executive Director must then "publish a general notice of proposed rulemaking . . . for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal." (Section 303(b) of the CAA, 2 U.S.C. 1383(b)).

NOTICE

**Comments** regarding the proposed amendments to the Rules of Procedure of the Office of Compliance set forth in this NOTICE are invited for **a period of thirty (30) days** following the date of the appearance of this NOTICE in the Congressional Record. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov), this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to Annie Leftwood, Office of Compliance, at 202/724–9272 (voice). Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided via e-mail to: Annie Leftwood: annie.leftwood@compliance.gov. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non toll-free number). Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. Copies of submitted comments will be available for review at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION

The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 13 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within that Branch. Section 303 (2 U.S.C. 1383) directs that the Executive Director, as the Chief Operating Officer of the agency, adopt rules of procedure governing the Office of Compliance, subject to approval by the Board of Directors of the Office.

The rules of procedure establish the process by which alleged violations of the 13 laws made applicable to the Legislative Branch under the CAA will be considered and resolved. Subpart A covers general provisions pertaining to scope and policy, definitions, and information on various filings and computation of time. Proposed Amendments to Subpart A provide for electronic filing and clarify requirements and procedures concerning confidentiality. Subpart B provides procedures for counseling, mediation, and election between filing an administrative complaint with the Office of Compliance or filing a civil action in U.S. District Court. A new Subpart C of the Procedural Rules sets forth the proposed rules and procedures for enforcement of the inspection, investigation and complaint sections 210(d) and (f) of the CAA relating to Public Services and Accommodations under Titles II and III of the Americans with Disabilities Act (ADA). Subpart C has been reserved for these rules since 1995. Because the Office of the General Counsel conducts ADA inspections and investigates ADA charges using procedures that are similar to what are used in its Occupational, Safety and Health (OSH) inspections and investigations conducted under section 215 of the CAA, the procedural rules are similar to what are contained in Subpart D of the Procedural Rules relating to OSH inspections and investigations. The proposed Amendments to Subpart D clarify potential ambiguities in the rules and procedures and make modifications in terminology to better comport with the statutory language used in Section 215 of the CAA. Subparts E, F, and G include the process for the conduct of administrative hearings held as the result of the filing of an administrative complaint. Subpart H sets forth the procedures for appeals of decisions by hearing officers to the Board of Directors of the Office of Compliance and for appeals of decisions by the Board of Directors to the United States Court of Appeals for the Federal Circuit. Proposed Amendments to Subpart H also reference procedures for other proceedings before the Board. Subpart I of the Rules contain other matters of general applicability to the dispute resolution process and to the operation of the Office of Compliance, including proposed Amendments concerning attorney's fees and violations of formal settlement agreements.

These proposed amendments to the Rules of Procedure are the result of the experience of the Office in processing disputes under the CAA since the original adoption of these Rules in 1995. The proposed Amendments to Subpart D of the Procedural Rules reflect the experience of the Office of General Counsel in conducting OSH inspections and investigations since 1995.

EXPLANATION REGARDING THE TEXT OF THE PROPOSED AMENDMENTS

Material from the 2004 version of the Rules is printed in roman type. The text of the proposed amendments shows ***[****deletions in italicized type within bold italics brackets****]*** and **added text in bold.** Only subsections of the Rules that include proposed amendments are reproduced in this NOTICE. The insertion of a series of small dots (. . . . .) indicates additional, unamended text within a section has not been reproduced in this document. The insertion of a series of asterisks (* * * * *) indicates that the unamended text of entire sections of the Rules have not been reproduced in this document. For the text of other portions of the Rules which are not proposed to be amended, please access the Office of Compliance web site at www.compliance.gov.

**PROPOSED AMENDMENTS**

**Subpart A—General Provisions**

**§ 1.01 Scope and Policy**
**§ 1.02 Definitions**
**§ 1.03 Filing and Computation of Time**
**§ 1.04 Availability of Official Information**
**§ 1.05 Designation of Representative**
**§ 1.06 Maintenance of Confidentiality**
**§ 1.07 Breach of Confidentiality Provisions**

**§ 1.01 Scope and Policy.**

These rules of the Office of Compliance govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Parts A, B, C, and D of title II of the Congressional Accountability Act of 1995. The rules include **definitions,** 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 **under Part A of title II.** The rules also address the procedures for **compliance, investigation and enforcement under Part B of title II,** [*variances*] and for compliance, investigation, [*and*] enforcement**, and variance** under Part C of title II**. The rules include** [*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 Definitions.**

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

. . . . .

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

. . . . .

(3) the [*Capitol Guide Service*] **Office of Congressional Accessibility Services;**

(4) the **United States** Capitol Police;

. . . . .

(9) for the purposes stated in paragraph (q) of this section, the [*General Accounting*] **Government Accountability** Office or the Library of Congress.

. . . . .

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

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

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

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

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

. . . . .

(4) the [*Capitol Guide Service*] **Office of Congressional Accessibility Services,** the **United States** Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance; or

(5) for the purposes stated in paragraph [*(q)*] **(r)** of this section, the [*General Accounting*] **Government Accountability** Office and the Library of Congress

**(j) *Designated Representative.*** The term ''designated representative'' means an individual, firm, or other entity designated in writing by a party to represent the interests of that party in a matter filed with the Office.

. . . . .

**—Re-letter subsequent paragraphs—**

[*(o)*]**(p)** *General Counsel*. The term ''General Counsel'' means the General Counsel of the Office of Compliance **and any authorized representative or designee of the General Counsel.**

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

[*(q)*]**(r)** *Coverage of the* [*General Accounting*] **Government Accountability** *Office and the Library of Congress and their Employees*. The term ''employing office'' shall include the [*General Accounting*] **Government Accountability** Office and the Library of Congress, and the term ''covered employee'' shall include employees of the [General Accounting] Government Accountability Office and the Library of Congress, for purposes of the proceedings and rulemakings described in subparagraphs (1) and (2):

. . . . .

**§ 1.03 Filing and Computation of Time**

(a) *Method of Filing. Documents may be filed in person,* **electronically, by facsimile (FAX),** or by mail, including express, overnight and other expedited delivery. [*When specifically requested by the Executive Director, or by a Hearing Officer in the case of a matter pending before the Hearing Officer, or by the Board of Directors in the case of an appeal to the Board, any document may also be filed by electronic transmittal in a designated format, with receipt confirmed by electronic transmittal in the same format. Requests for counseling under section 2.03, requests for mediation under section 2.04 and complaints under section 5.01 of these rules may also be filed by facsimile (FAX) transmission. In addition, the Board or a Hearing Officer may order other documents to be filed by FAX. The original copies of documents filed by FAX must also be mailed to the Office no later than the day following FAX transmission.*] The filing of all documents is subject to the limitations set forth below. **The Board, Hearing Officer, the Executive Director, or the General Counsel may, in their discretion, determine the method by which documents may be filed in a particular proceeding, including ordering one or more parties to use mail, FAX, electronic filing, or personal delivery. Parties and their representatives are responsible for ensuring that the Office always has their current postal mailing and e-mail addresses and FAX numbers.**

. . . . .

(2) ***[****Mailing****]*** ***By Mail.***

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

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

(3) ***[****Faxing Documents****]*** ***By FAX.*** 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 **if received by 11:59 p.m. Eastern Time. Faxed documents received after 11:59 p.m. Eastern Time will be deemed filed the following business day.** A FAX filing will be timely only if the document is *received* no later than ***[****5:00 PM****]*** **11:59 p.m.** 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.****]*** **The time displayed as received by the Office on its FAX status report will be used to show the time that the document was filed. When the Office serves a document by FAX, the time displayed as sent by the Office on its FAX status report will be used to show the time that the document was served. A**

**FAX filing cannot exceed 75 pages, inclusive of table of contents, table of authorities, and attachments. Attachments exceeding 75 pages must be submitted to the Office in person or by electronic delivery. The date of filing will be determined by the date the brief, motion, response, or supporting memorandum is received in the Office, rather than the date the attachments, were received in the Office.**

**(4) *By Electronic Mail.* Documents transmitted electronically will be deemed filed on the date received at the Office at oocefile@compliance.gov, or on the date received at the Office of the General Counsel at OSH@compliance.gov if received by 11:59 p.m. Eastern Time. Documents received electronically after 11:59 p.m. Eastern Time will be deemed filed the following business day. An electronic filing will be timely only if the document is received no later than 11:59 p.m. Eastern Time on the last day of the applicable filing period. Any party filing a document electronically bears the responsibility for ensuring both that the document is timely and accurately transmitted and for confirming that the Office has received the document. The time displayed as received by the Office will be used to show the time that the document has been filed. When the Office serves a document electronically, the time displayed as sent by the Office will be used to show the time that the document was served.**

**(b) *Service by the Office.* At its discretion, the Office may serve documents by mail, FAX, electronic transmission, or personal or commercial delivery.**

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

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

[*(d) Service or filing of documents by certified mail, return receipt requested. Whenever these rules permit or require service or filing of documents by certified mail, return receipt requested, such documents may also be served or filed by express mail or other forms of expedited delivery in which proof of date of receipt by the addressee is provided.*]

[*§9.01*] **§1.04 Filing, Service, and Size Limitations of Motions, Briefs, Responses and Other Documents.**

(a) *Filing with the Office; Number **and Format.*** **One copy of requests for counseling and mediation, requests for inspection under OSH, unfair labor practice charges, charges under titles II and III of the ADA,** [*one original and three copies of*] all motions, briefs, responses, and other documents must be filed [*,whenever required,*] with the Office [*or Hearing Officer*]. [*However, when a party aggrieved by the decision of a Hearing Officer or a party to any other matter or determination reviewable by the Board files an appeal or other submission with the Board, one original and seven copies of any submission and any responses must be filed with the Office. The Office, Hearing Officer, or Board may also request a*]A party [*to submit*] **may file** an electronic version of any submission in a [*designated*] format **designated by the Executive Director, General Counsel, Hearing Officer, or Board,** with receipt confirmed by electronic transmittal in the same format.

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

. . . . .

(d) *Size Limitations.* Except as otherwise specified [*by the Hearing Officer, or these rules,*] no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 **double-spaced** pages, [*or 8,750 words,*] exclusive of the table of contents, table of authorities and attachments. The Board, the **Executive Director,** or Hearing Officer may [*waive, raise or reduce*] **modify** this limitation **upon motion and** for good cause shown**;** or on [*its*] **their** own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8–1/2″ x 11″). **To the extent that such a filing exceeds 35 double-spaced pages, the Hearing Officer, Board, or Executive Director may, in their discretion, reject the filing in whole or in part, and may provide the parties an opportunity to refile.**

[*§9.02*] **§1.05 Signing of Pleadings, Motions and Other Filings; Violation of Rules; Sanctions.**

**(a) *Signing.*** 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. **In the case of an electronic filing, an electronic signature is acceptable.** 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.

**(b) *Sanctions.*** 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*] **their** own initiative,[*shall*] **may** 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*].

[*§1.04*] **§1.06 Availability of Official Information.**

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

. . . . .

(c) *Copies of Forms.* Copies of blank forms prescribed by the Office for the filing of complaints and other actions or requests may be obtained from the Office **or on line at www.compliance.gov.**

. . . . .

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

[*§1.05*]**§1.07 Designation of Representative.**

**(a)** [*An employee, other charging individual or*] **A** 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. **No more than one representative,** [*or*] **firm, or other entity may be designated as representative for a party, unless approved in writing by the Hearing Officer or Executive Director.** The representative may be, but is not required to be, an attorney. **If the representative is an attorney, he or she may sign the designation of representative on behalf of the party.**

(b) *Service Where There is a Representative.* [*All service*] **Service** of documents shall be [*directed to*] **on** the representative unless **and until such time** as the represented [*individual, labor organization, or employing office*] **party or representative, with notice to the party,** [*specifies otherwise and until such time as that individual, labor organization, or employing office*] notifies the Executive Director, **in writing,** of [*an amendment*] **a modification** 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 **those who are** unrepresented [*individuals or entities*]**,** with service of the documents, however, directed to the representative[*, as provided*].

**(c) *Revocation of a Designation of Representative.* A revocation of a designation of representative, whether made by the party or by the representative with notice to the party, must be made in writing and filed with the Office. The revocation will be deemed effective the date of receipt by the Office. At the discretion of the Executive Director, General Counsel, mediator, hearing officer, or Board, additional time may be provided to allow the party to designate a new representative as consistent with the Act.**

*[§1.06]* **§1.08 [Maintenance of] Confidentiality.**

(a) *Policy.[In accord with section 416 of the Act, it is the policy of]* **Except as provided in sections 416(d), (e), and (f) of the Act,** the Office *[to]* **shall** maintain *[, to the fullest extent possible, the]* confidentiality in counseling, mediation, **and** *[of]* the proceedings and deliberations **of hearing officers and the Board in accordance with sections 416(a),(b), and (c) of the Act.** *[of the participants in proceedings conducted under sections 402, 403, 405 and 406 of the Act and these rules.]*

(b)*[At the time that any individual, employing office or party, including a designated representative, becomes a participant in counseling under section 402, mediation under section 403, the complaint and hearing process under section 405, or an appeal to the Board under section 406 of the Act, or any related proceeding, the Office will advise the participant of the confidentiality requirements of section 416 of the Act and these rules and that sanctions may be imposed for a violation of those requirements.]* ***Participant.* For the purposes of this rule, participant means an individual or entity who takes part as either a party, witness, or designated representative in counseling under Section 402 of the Act, 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.**

**(c) *Prohibition.* Unless specifically authorized by the provisions of the Act or by these rules, no participant in counseling, mediation or other proceedings made confidential under Section 416 of the Act ("confidential proceedings") may disclose a written or oral communication that is prepared for the purpose of or that occurs during counseling, mediation, and the proceedings and deliberations of hearing officers and the Board.**

**(d) *Exceptions.* Nothing in these rules prohibits a party or its representative from disclosing information obtained in confidential proceedings when reasonably necessary to investigate claims, ensure compliance with the Act or prepare its prosecution or defense. However, the party making the disclosure shall take all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information. These rules do not preclude a mediator from consulting with the Office, except that when the covered employee is an employee of the Office a mediator shall not consult with any individual within the Office who might be a party or witness. These rules do not preclude the Office from reporting statistical information to the Senate and House of Representatives.**

**(e) *Waiver.* Participants may agree to waive confidentiality. Such a waiver must be in writing and provided to the Office.**

**(f) *Sanctions.* The Office will advise the participants of the confidentiality requirements of Section 416 of the Act and that sanctions may be imposed by the Hearing Officer for a violation of those requirements. No sanctions may be imposed except for good cause and the particulars of which must be stated in the sanction order.**

*[§1.07* **Breach of Confidentiality Provisions.**

*(a) In General. Section 416(a) of the CAA provides that counseling under section 402 shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations. Section 416(b) provides that all mediation shall be strictly confidential. Section 416(c) provides that all proceedings and deliberations of Hearing Officers and the Board, including any related records shall be confidential, except for release of records necessary for judicial actions, access by certain committees of Congress, and, in accordance with section 416(f), 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.*

*(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.*

*(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.*

*(d) Contents or Records of Confidential Proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes 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 a confidential proceeding.*

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

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

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

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

*(4) in lieu of any of the foregoing orders or in addition thereto, the Hearing Officer shall require the party violating the confidentiality provisions or the representative advising him, or both, to pay, at such time as ordered by the Hearing Officer, the reasonable expenses, including attorney fees, caused by the violation, unless the Hearing Officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal of the final decision of the Hearing Officer under section 406 of the Act. No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.]*

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

**§2.01 Matters Covered by Subpart B**
**§2.02 Requests for Advice and Information**
**§2.03 Counseling**
**§2.04 Mediation**
**§2.05 Election of Proceedings**
**§2.06 Filing of Civil Action**

**§2.01 Matters Covered by Subpart B.**

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

. . . . .

**(10) Chapter 35 (relating to veteran's preference) of title 5, United States Code**

**(11) Genetic Information Nondiscrimination Act of 2008.**

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

* * * * *

**§2.03 Counseling.**

(a) *Initiating a Proceeding; Formal Request for Counseling.* *[In order]* **To** initiate a proceeding under these rules **regarding an alleged violation of the Act, as referred to in section 2.01(a), above**, an employee shall file a written request for counseling with the Office*[]*. [*regarding an alleged violation of the Act, as referred to in section 2.01(a), above.*] **The written formal request for counseling should be on an official form provided by the Office and can be found on the Office's website at www.compliance.gov.** *[All requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.]*

(b) *Who May Request Counseling*. A covered employee **who, in good faith**, believes that he or she has been or is the subject of a violation of the Act as referred to in section 2.01(a) may formally request counseling.

. . . . .

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

(e) *Confidentiality and Waiver*.

(1) Absent a waiver under paragraph 2, below, all counseling shall be **kept** strictly confidential **and shall not be subject to discovery. All participants in counseling shall be advised of the requirement for confidentiality and that disclosure of information deemed confidential could result in sanctions later in the proceedings**. Nothing in these rules shall prevent a counselor from consulting with personnel within the Office concerning a matter in counseling, except that, when the person being counseled is an employee of the Office, the counselor shall not consult with any individual within the Office who might be a party or witness without the consent of the person requesting counseling. Nothing contained in these rules shall prevent the Executive Director from **compiling and publishing statistical information such as that required by Section 301(h)(3) of the Act**. [*so long as that statistical information does not reveal the identity of the employees involved or of employing offices that are the subject of a request for counseling.*]

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

. . . . .

(g) *Role of Counselor* [*in Defining Concerns*]. The counselor [*may*] **shall:**

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

(2) obtain the name and title of the person(s) whom the employee claims has engaged in a violation of the Act**, e-mail address, if known**, and the employing office in which this person(s) works;

. . . . .

(5) obtain the name, **business and e-mail** address**es**, and telephone number of the employee's representative, if any, and whether the representative is an attorney.

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

[*(j)*] **(i)** *Duration of Counseling Period*. The period for counseling shall be 30 days, beginning on the date that the request for counseling is [*received by the Office*] **filed by the employee in accordance with section 1.03(a) of these rules**, unless the employee **requests in writing on a form provided by the Office to reduce the period** and the [*Office*] **Executive Director** agrees [*to reduce the period*].

[*(h)*] **(j)** *Role of Counselor in Attempting Informal Resolution*. In order to attempt to resolve the matter brought to the attention of the counselor, the counselor must obtain a waiver of confidentiality pursuant to section 2.03(e)(2) of these rules. If the employee executes such a waiver, the counselor may:

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

(2) reduce to writing any formal settlement achieved and secure the signatures of the employee, his or her representative, if any, and a member of the employing office who is authorized to enter into a settlement on the employing office's behalf; and, pursuant to section 414 of the Act and section 9.05 of these rules, seek the approval of the Executive Director. Nothing in this subsection, however, precludes the employee, the employing office or their representatives from reducing to writing any formal settlement.

(k) *Duty to Proceed*. An employee who initiates a proceeding under this part shall be responsible at all times for proceeding, regardless of whether he or she has designated a representative, **and shall notify the Office in writing of any change in pertinent contact information, such as address, e-mail, fax number, etc.** An employee, however, may withdraw from counseling once without prejudice to the employee's right to reinstate counseling regarding the same matter, provided that the request to reinstate counseling **must be in writing and** is [*received in*] **filed with** the Office not later than 180 days after the date of the alleged violation of the Act and that counseling on a single matter will not last longer than a total of 30 days.

(l) *Conclusion of the Counseling Period and Notice*. The Executive Director shall notify the employee in writing of the end of the counseling period[*,*] by [*certified mail, return receipt requested,*] **first class mail**, [*or by*] personal delivery evidenced by a written receipt, **or electronic transmission**. The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

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

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and these rules, the Executive Director, **in his or her sole discretion**, may recommend that the employee use the [*grievance*] **internal** procedures of the Architect of the Capitol or the Capitol Police **pursuant to a Memorandum of Understanding (MOU) between the Architect of the Capitol and the Office or the Capitol Police and the Office addressing certain procedural and notification requirements**. The term "[*grievance*] **internal** procedure(s)" refers to **any** internal procedure of the Architect of the Capitol and the Capitol Police, **including grievance procedures referred to in section 401 of the Act**, that can provide a resolution of the matter(s) about which counseling was requested. Pursuant to section 401 of the Act when the Executive Director makes such a recommendation, the following procedures shall apply:

(i) The Executive Director shall recommend **in writing** to the employee that the employee use **an** [*grievance*] **internal** procedure of the Architect of the Capitol or of the Capitol Police, as appropriate, for a period generally up to 90 days, unless the Executive Director determines, **in writing, that** a longer period is appropriate [*for resolution of the employee's complaint through the grievance procedures of the Architect of the Capitol or the Capitol Police*]. **Once the employee notifies the Office that he or she is using the internal procedure, the employee shall provide a waiver of confidentiality to allow the Executive Director to notify the Architect of the Capitol or the Capitol Police that the employee will be using the internal procedure.**

**(ii) The period during which the matter is pending in the internal procedure shall not count against the time available for counseling or mediation under the Act.**

**(iii) If the dispute is resolved to the employee's satisfaction, the employee shall so notify the Office within 20 days after the employee has been served with a final decision.**

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

(A) within 60 days after the expiration of the period recommended by the Executive Director, **or longer if the Executive Director has extended the time period,** if the matter has not resulted in a final decision **or a decision not to proceed;** or

(B) within 20 days after service of a final decision **or a decision not to proceed,** resulting from the [*grievance*] **internal** procedures [*of the Architect of the Capitol or of the Capitol Police Board.*]

[*(iii) The period during which the matter is pending in the internal grievance procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is resolved to the employee's satisfaction, the employee shall so notify the Office within 20 days after the employee has received service of the final decision resulting from the grievance procedure. If no request to return to the procedures under these rules is received within 60 days after the expiration of the period recommended by the Executive Director the Office will issue a Notice of End of Counseling, as specified in section 2.04(i) of these Rules.*]

**(v) If a request to return to counseling is not made by the employee within the time periods outlined above, the Office will issue a Notice of the End of Counseling.**

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

(3) Notice in Final Decisions when Employees Have Not Initiated Counseling with the Office. When an employee raises in the internal procedures of the Architect of the Capitol or of the Capitol Police [*Board*] an allegation which may also be raised under the procedures set forth in this subpart, any [*final*] decision **issued** [*pursuant to the procedures of the Architect of the Capitol or of the Capitol Police Board should*] **under such procedure, shall, pursuant to the MOU with the Office,** include notice to the employee of his or her right to initiate the procedures under

these rules within 180 days after the alleged violation occurred.

(4) Notice in Final Decisions when There Has Been a Recommendation by the Executive Director. When the Executive Director has made a recommendation under paragraph 1 above, the Architect of the Capitol or the Capitol Police *[Board should]* **shall, pursuant to the MOU with the Office,** include with the final decision notice to the employee of his or her right to resume the procedures under these rules within 20 days after service on the employee of the final decision and shall transmit a copy of the final decision, settlement agreement, or other final disposition of the case to the Executive Director.

**§ 2.04 Mediation.**

(a) **[Explanation] Overview.** Mediation is a process in which employees, employing offices and their representatives, if any, meet separately and/or jointly with a *[neutral]* **mediator** trained to assist them in resolving disputes. As *[parties to]* **participants in** 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]* **mediator** has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to section 416 of the Act.

(b) *Initiation.* Not more than 15 days after receipt by the employee of the notice of the conclusion of the counseling period under section 2.03(l), the employee may file with the Office a written request for mediation. **Except to provide for the services of a mediator and notice to the employing office, the invocation of mediation shall be kept confidential by the Office.** The request for mediation shall contain the employee's name, **home and e-mail** address**es**, *[and]* telephone number, and the name of the employing office that is the subject of the request. Failure to request mediation within the prescribed period *[will]* **may** preclude the employee's further pursuit of his or her claim. **If a request for mediation is not filed within 15 days of receipt of a Notice of the End of Counseling, without good cause shown, the case will be closed and the employee will be so notified.**

. . . . .

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

(e) *Duration and Extension.*

. . . . .

(2) The *[Office]* **Executive Director** may extend the mediation period upon the joint written request of the parties, or of the appointed mediator on behalf of the parties*[, to the attention of the Executive Director]*. The request shall be written and filed with the *[Office]* **Executive Director** no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefore, 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]* **Executive Director.**

(f) *Procedures.*

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

(2) The Agreement to Mediate. At the commencement of the mediation, the *[neutral]* **mediator** will ask the *[parties]* **participants and/or their representatives** to sign an agreement prepared by the Office (''the Agreement to Mediate''). The Agreement to Mediate will **define what is to be kept confidential during mediation and** set out the conditions under which mediation will occur, including the requirement that the participants adhere to the confidentiality of the process **and a notice that a breach of the mediation agreement could result in sanctions later in the proceedings.** The Agreement to Mediate will also provide that the parties to the mediation will not seek to have the counselor or the *[neutral]* **mediator** participate, testify or otherwise present evidence in **any subsequent administrative action under section 405 or** any civil action under section 408 of the Act or any other proceeding.

*(g) Who May Participate.* The covered employee*[,]* **and** the employing office *[, their respective representatives, and the Office may meet, jointly or separately, with the neutral. A representative of the employee and a representative of the employing who has actual authority to agree to a settlement agreement on behalf of the employee or the employing office, as the case may be, must be present at the mediation or must be immediately accessible by telephone during the mediation .]* **may elect to participate in mediation proceedings through a designated representative, provided, that the representative has actual authority to agree to a settlement agreement or has immediate access by telephone to someone with actual settlement authority, and provided further, that should the mediator deem it appropriate at any time, the physical presence in mediation of any party may be required. The Office may participate in the mediation process through a representative and/or observer. The mediator will determine, as best serves the interests of mediation, whether the participants may meet jointly or separately with the mediator.**

(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]* **9.03** of these rules.

(i) *Conclusion of the Mediation Period and Notice.* If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice *[to the employee]* will be *[sent by certified mail, return receipt requested, or will be]* personally delivered evidenced by a written receipt, **or sent by first class mail, e-mail, or fax.** *[, and it]* **The notice will specify the mode of delivery** and also *[notify]* **provide information about** the employee**'s** *[of his or her]* right to elect to file a complaint with the Office in accordance with section 405 of the Act and section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section *[2.06]* **2.07** of these rules.

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

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

**(k) *Violation of Confidentiality in Mediation.* An allegation regarding a violation of the confidentiality provisions may be made by a party in a mediation to the mediator during the mediation period and, if not resolved by agreement in mediation, to a Hearing Officer during proceedings brought under Section 405 of the Act.**

. . . . .

**§ 2.05 Election of Proceeding.**

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

. . . . .

(2) file a civil action in accordance with section 408 of the Act and section *2.06* **2.07**, below in the United States *[District Court]* **district court** for the district in which the employee is employed or for the District of Columbia.

(b) A covered employee who files a civil action pursuant to section *[2.06]* **408 of the Act and section 2.07 below**, may not thereafter file a complaint under section **405 of the Act and section 5.01 below** on the same matter.

**§ 2.06 Certification of the Official Record**

**(a) Certification of the Official Record shall contain the date the Request for Counseling was made; the date and method of delivery the Notification of End of Counseling Period was sent to the complainant; the date the Notice was deemed by the Office to have been received by the complainant; the date the Request for Mediation was filed; the date and method of delivery the Notification of End of Mediation Period was sent to the complainant; and the date the Notice was deemed by the Office to have been received by the complainant.**

**(b) At any time after a complaint has been filed with the Office in accordance with section 405 of the Act and the procedure set out in section 5.01, below; or a civil action filed in accordance with section 408 of the Act and section 2.07 below in the United States district court, a party may request and receive from the Office Certification of the Official Record.**

**(c) Certification of the Official Record will not be provided until after a complaint has been filed with the Office or the Office has been notified that a civil action has been filed in district court.**

**§ [2.06] 2.07 Filing of Civil Action.**

. . . . .

*(c) Communication Regarding Civil Actions Filed with District Court.* The party filing any civil action with the United States District Court pursuant to sections 404(2) and 408 of the Act shall provide a written notice to the Office that the party has filed a civil action, specifying the district court in which the civil action was filed and the case number. **Failure to notify the Office that such action has been filed may result in delay in the preparation and receipt of the Certification of the Official Record.**

**Subpart C—Compliance, Investigation, and Enforcement under Section 210 of the CAA (ADA Public Services)—Inspections and Complaints**

**§ 3.01 Purpose and Scope**
**§ 3.02 Authority for Inspection**
**§ 3.03 Request for Inspections by Members of the Public**
**§ 3.04 Objection to Inspection**
**§ 3.05 Entry Not a Waiver**
**§ 3.06 Advance Notice of Inspection**
**§ 3.07 Conduct of Inspections**
**§ 3.08 Representatives of Covered Entities**
**§ 3.09 Consultation with Individuals with Disabilities**
**§ 3.10 Inspection Not Warranted; Informal Review**
**§ 3.11 Charge filed with the General Counsel**
**§ 3.12 Service of charge or notice of charge**
**§ 3.13 Investigations by the General Counsel**
**§ 3.14 Mediation**
**§ 3.15 Dismissal of charge**
**§ 3.16 Complaint by the General Counsel**
**§ 3.17 Settlement**
**§ 3.18 Compliance date**

**§ 3.01 Purpose and Scope.**

**The purpose of sections 3.01 through 3.18 of this subpart is to prescribe rules and procedures for enforcement of the inspection and complaint provisions of sections 210(d) and (f) of the CAA. For the purpose of sections 3.01 through 3.18, references to the "General Counsel" include any authorized representative of the General Counsel. In situations where sections 3.01 through 3.18 set forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the General Counsel or the General Counsel's designee determines that an alternative course of action would better serve the objectives of section 210 of the CAA.**

**§ 3.02 Authority for Inspection.**

**(a) Under section 210(f)(1) of the CAA, the General Counsel is authorized to enter without delay and at reasonable times any facility of any entity listed in section 210(a) ("covered entities"), to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any facility, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any covered entity, employee, operator, or agent; and to review records maintained by or under the control of the covered entity.**

**(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government (and/or by any congressional committee or other authorized entity within the Legislative Branch) in the interest of national security, and for which security clearance is required as a condition for access to the area(s) to be inspected, the individual(s) conducting the inspection shall have obtained the appropriate security clearance.**

**§ 3.03 Requests for Inspections by Members of the Public and Covered Entities.**

**(a) *By Members of the Public.***

**(1) Any person who believes that a violation of section 210 of the CAA exists in any facility of a covered entity may request an inspection of such facility by giving notice of the alleged violation to the General Counsel. Any such notice shall be reduced to writing on a form available from the Office, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the person or the representative of the person. A copy shall be provided to the covered entity 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. If the person making the request is a qualified individual with a disability, as defined by section 201(2) of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12131(2)), the request for inspection shall be considered a charge of discrimination within the meaning of section 210(d)(1) of the CAA.**

**(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 facility, any person may notify the General Counsel's designee, in writing, of any violation of section 210 of the CAA which he or she has reason to believe exists in such facility. Any such notice shall comply with the requirements of subparagraph (1) of this section.**

**(b) *By Covered Entities*. Upon written request of any covered entity, the General Counsel or the General Counsel's designee shall inspect and investigate facilities of covered entities under section 210(d) of the CAA. Any such requests shall be reduced to writing on a form available from the Office.**

**§ 3.04 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 covered entity, operator, agent, or employee, in accordance with section 3.02 or to permit a representative of employees to accompany the General Counsel's designee during the physical inspection of any facility in accordance with section 3.07, 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.**

**§ 3.05 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 under section 210 of the CAA.**

**§ 3.06 Advance Notice of Inspections.**

**(a) Advance notice of inspections may not be given, except in the following situations:**

**(1) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;**

**(2) where necessary to assure the presence of representatives of the covered entity and employees or the appropriate personnel needed to aid in the inspection; and**

**(3) in other circumstances where the General Counsel determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.**

**(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the General Counsel or by the General Counsel's designee.**

**§ 3.07 Conduct of Inspections.**

**(a) Subject to the provisions of section 3.02, 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 facility 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 3.02 which he or she wishes to review. However, such designation of records shall not preclude access to additional records specified in section 3.02.**

**(b) The General Counsel's designee shall have authority to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately, any covered entity, 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 measuring devices, testing equipment, or other equipment used to assess accessibility or compliance with the ADA Standards.**

**(c) In taking photographs and samples, the General Counsel's designees shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. The General Counsel's designees shall comply with all employing office safety and health rules and practices at the workplace or location being inspected, and they shall wear and use appropriate protective clothing and equipment.**

**(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the covered entity.**

**(e) At the conclusion of an inspection, the General Counsel's designee shall confer with the covered entity or its representative and informally advise it of any apparent ADA 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 accessibility in the facility.**

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

**§ 3.08 Representatives of Covered Entities.**

**(a) The General Counsel's designee shall be in charge of inspections and questioning of persons. A representative of the covered entity shall be given an opportunity to accompany the General Counsel's designee during the physical inspection of any facility for the purpose of aiding such inspection. The General Counsel's designee may permit additional representatives from the covered entity to accompany the designee where he or she determines that such additional representatives will further aid the inspection. A different covered entity 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 authority to resolve all disputes as to whom is the representative authorized by the covered entity for the purpose of this section.

(c) If in the judgment of the General Counsel's designee, good cause has been shown why accompaniment by a third party who is not the requestor or an employee of the covered entity (such as a sign language interpreter, braille reader, architect or accessibility expert) 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 (and/or by any congressional committee or other authorized entity within the Legislative Branch) 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.

§ 3.09 Consultation with Individuals with Disabilities

The General Counsel's designee may consult with individuals with disabilities concerning matters of accessibility to the extent he or she deems necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any person shall be afforded an opportunity to bring any violation of section 210 of the CAA which he or she has reason to believe exists in the facility to the attention of the General Counsel's designee.

§ 3.10 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 exists under section 210 of the CAA, he or she shall notify the party making the request of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the General Counsel and, at the same time, providing the covered entity with a copy of such statement. The covered entity may submit an opposing written statement of position with the General Counsel and, at the same time, provide the complaining party with a copy of such statement. Upon the request of the complaining party or the covered entity, the General Counsel, at his or her discretion, may hold an informal conference in which the complaining party and the covered entity may orally present their views. After considering all written and oral views presented, the General Counsel shall affirm, modify, or reverse the designee's determination and furnish the complaining party and the covered entity 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 3.03(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 notice of alleged violation meeting the requirements of section 3.03(a)(1).

§ 3.11 Charge filed with the General Counsel.

(a) Who may file.

(1) Any qualified individual with a disability, as defined in section 201(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131(2)), as applied by section 210 of the CAA, who believes that he or she has been subjected to discrimination on the basis of a disability in violation of section 210 of the CAA by a covered entity, may file a charge against any entity responsible for correcting the violation with the General Counsel. A charge may not be filed under section 210 of the CAA by a covered employee alleging employment discrimination on the basis of disability; the exclusive remedy for such discrimination are the procedures under section 201 of the CAA and subpart B of the Office's procedural rules.

(b) When to file. A charge under this section must be filed with the General Counsel not later than 180 days from the date of the alleged discrimination.

(c) Form and Contents. A charge shall be written or typed on a charge form available from the Office. All charges shall be signed and verified by the qualified individual with a disability (hereinafter referred to as the "charging party"), or his or her representative, and shall contain the following information:

(i) the full name, mail and e-mail addresses, and telephone number(s) of the charging party;

(ii) the name, mail and e-mail addresses, and telephone number of the covered entit(ies) against which the charge is brought, if known (hereinafter referred to as the " respondent");

(iii) the name(s) and title(s) of the individual(s), if known, involved in the conduct that the charging party claims is a violation of section 210 and/or the location and description of the places or conditions within covered facilities that the charging party claims is a violation of section 210;

(iv) a description of the conduct, locations, or conditions that form the basis of the charge, and a brief description of why the charging party believes the conduct, locations, or conditions is a violation of section 210; and (v) the name, mail and e-mail addresses, and telephone number of the representative, if any, who will act on behalf of the charging party.

§ 3.12 Service of charge or notice of charge.

Within ten (10) days after the filing of a charge with the General Counsel's Office (excluding weekends or holidays), the General Counsel shall serve the respondent with a copy of the charge, except when it is determined that providing a copy of the charge would impede the law enforcement functions of the General Counsel. Where a copy of the charge is not provided, the respondent will be served with a notice of the charge within ten (10) days after the filing of the charge. The notice shall include the date, place and circumstances of the alleged violation of section 210. The notice may not include the identity of the person filing the charge if that person has requested anonymity.

§ 3.13 Investigations by the General Counsel.

The General Counsel or the General Counsel's designated representative shall promptly investigate each charge alleging violations of section 210 of the CAA. As part of the investigation, the General Counsel will accept any statement of position or evidence with respect to the charge which the charging party or the respondent wishes to submit. The General Counsel will use other methods to investigate the charge, as appropriate.

§ 3.14 Mediation.

If, upon investigation, the General Counsel believes that a violation of section 210 may have occurred and that mediation may be helpful in resolving the dispute, the General Counsel may request, but not participate in, mediation under subsections (b) through (d) of section 403 of the CAA and the Office's procedural rules thereunder, between the charging party and any entity responsible for correcting the alleged violation.

§ 3.15 Dismissal of charge.

Where the General Counsel determines that a complaint will not be filed, the General Counsel shall dismiss the charge.

§ 3.16 Complaint by the General Counsel.

(a) After completing the investigation, and where mediation under section 3.14, if any, has not succeeded in resolving the dispute, and where the General Counsel has not settled or dismissed the charge, and if the General Counsel believes that a violation of section 210 may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation.

(b) The complaint filed by the General Counsel under subsection (a) shall be submitted to a hearing officer for decision pursuant to subsections (b) through (h) of section 405 of the CAA. Any person who has filed a charge under section 3.11 of these rules may intervene as of right with the full rights of a party. The procedures of sections 405 through 407 of the CAA and the Office's procedural rules thereunder shall apply to hearings and related proceedings under this subpart.

§ 3.17 Settlement.

Any settlement entered into by the parties to any process described in section 210 of the CAA shall be in writing and not become effective unless it is approved by the Executive Director under section 414 of the CAA and the Office's procedural rules thereunder.

§ 3.18 Compliance Date.

In any proceedings under this section, compliance shall take place as soon as possible, but not later than the fiscal year following the end of the fiscal year in which the order requiring correction becomes final and not subject to further review.

Subpart D—Compliance, Investigation, Enforcement and Variance Process under Section 215 of the CAA (Occupational Safety and Health Act of 1970)—Inspections, Citations, and Complaints

§ 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
§ 4.10 Inspection Not Warranted; Informal Review
§ 4.11 Citations
§ 4.12 Imminent Danger
§ 4.13 Posting of Citations
§ 4.14 Failure to Correct a Violation for Which a Citation Has Been Issued; Notice of Failure to Correct Violation; Complaint
§ 4.15 Informal Conferences

Rules of Practice for Variances, Limitations, Variations, Tolerances, and Exemptions

§ 4.20 Purpose and Scope
§ 4.21 Definitions
§ 4.22 Effect of Variances
§ 4.23 Public Notice of a Granted Variance, Limitation, Variation, Tolerance, or Exemption
§ 4.24 Form of Documents
§ 4.25 Applications for Temporary Variances and other Relief
§ 4.26 Applications for Permanent Variances and other Relief
§ 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**

* * * * *

**§ 4.02 Authority for Inspection.**

(a) 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 **where covered employees work ("place of employment")** *】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 **maintained by or under the control of the covered entity.** *【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 on a form available from the Office, 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.

* * * * *

(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.

* * * * *

**§ 4.10 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 **in writing**. The complaining party may obtain review of such determination by submitting **and serving** a written statement of position with the General Counsel*【,】* and *【, at the same time, providing】* the employing office *【with a copy of such statement by certified mail】*. The employing office may submit **and serve** an opposing written statement of position with the General Counsel*【,】* *【and 【, at the same time, provide】* the complaining party *【with a copy of such statement by certified mail】*.

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 orally present their views. After considering all written and oral views presented, the General Counsel shall 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.

* * * * *

**§ 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*】 **including** any **occupational safety or health standard promulgated by the Secretary of Labor under Title 29 of the U.S. Code, section 655, or of any other regulation** *【standard】*, rule or order promulgated pursuant to section 215 of the CAA, has occurred, he or she shall issue 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,】* either a citation or a notice of de minimis violations that 【have】 **has** no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall 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. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation **unless the violation is continuing or the employing office has agreed to toll the deadline for filing the citation.**

* * * * *

**§ 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. **When a citation contains security information as defined in Title 2 of the U.S. Code, section 1979, the General Counsel may edit or redact the security information from the copy of the citation used for posting or may provide to the employing office a notice for posting that describes the alleged violation without referencing the security information.** The employing office shall take steps to ensure that the citation **or notice** is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each citation, **notice**, 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.

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**§ 4.15 Informal Conferences.**

At the request of an affected employing office, employee, or representative of employees, 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. Any settlement entered into by the parties at such conference shall be subject to the approval of the Executive Director under section 414 of the CAA and section **【9.05】 9.03** 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.

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**Subpart E—Complaints**

**§ 5.01 Complaints**

**§ 5.02 Appointment of the Hearing Officer**

**§ 5.03 Dismissal, Summary Judgment, and Withdrawal of Complaint**

**§ 5.04 Confidentiality**

**§ 5.01 Complaints.**

(a) *Who May File.*

(1) An employee who has completed **the** mediation **period** under section 2.04 may timely file a complaint with the Office alleging any violation of sections 201 through 207 of the Act*【.】*, **under the Genetic Information Nondiscrimination Act, or any other statute made applicable under the Act.**

(2) The General Counsel may **timely** file a complaint alleging a violation of section 210, 215 or 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. **In cases where a complaint is filed with the Office sooner than 30 days after the date of receipt of the notice under section 2.04(i), the Executive Director, at his or her discretion, may return the complaint to the employee for filing during the prescribed period without prejudice and with an explanation of the prescribed period of filing.**

. . . . .

(c) *Form and Contents.*

(1) *Complaints Filed by Covered Employees.* A complaint shall be **in writing and may 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 and **e-mail** addresse**s**, and telephone number(s) of the complainant;

. . . . .

(v) a brief description of why the complainant believes the challenged conduct is a violation of **the Act or the relevant sections of the Genetic Information Nondiscrimination Act** and the section(s) of the Act involved;

. . . . .

(vii) the name, **mailing and e-mail** addresses, 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 in writing, signed by the General Counsel or his designee and shall contain the following information:

(i) the name, **mail and e-mail** address**es, if available,** 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;

* * * * *

(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]* **or first class mail, e-mail, or facsimile** with a copy of the complaint or amended complaint and *[a copy of these rules]* **written notice of the availability of these rules at www.compliance.gov. A copy of these rules may also be provided if requested by either party.** 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.]* **In answering a complaint, a party must state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it by an opposing party.** Failure to *[file an answer]* **deny an allegation, other than one relating to the amount of damages,** 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.

(g) ***Motion to Dismiss.* In addition to an answer, a respondent may file a motion to dismiss, or other responsive pleading with the Office and serve one copy on the complainant. Responses to any motions shall be in compliance with section 1.04(c) of these rules.**

(h) ***Confidentiality.* The fact that a complaint has been filed with the Office by a covered employee shall be kept confidential by the Office, except as allowed by these rules.**

**§ 5.02 Appointment of the Hearing Officer.**

Upon the filing of a complaint, the Executive Director will appoint an independent Hearing Officer, who shall have the authority specified in sections 5.03 and 7.01(b) below. The Hearing Officer shall not be the counselor involved in or the *[neutral]* **mediator** who mediated the matter under sections 2.03 and 2.04 of these rules.

**§ 5.03 Dismissal, Summary Judgment and Withdrawal of Complaints.**

* * * * *

(f) *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 **and may be with or without prejudice to refile at the Hearing Officer's discretion.**

(g) *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 **and may be with or without prejudice to refile at the Hearing Officer's discretion.**

(h) ***Withdrawal From a Case by a Representative.* A representative must provide sufficient notice to the Hearing Officer and the parties of record of his or her withdrawal. Until the party designates another representative in writing, the party will be regarded as *pro se.***

**§ 5.04 Confidentiality.**

Pursuant to section 416(c) of the Act, except as provided in sub-sections 416(d), (e) and (f), 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]* **may** result in the imposition of **procedural or evidentiary** 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.]* See also sections *[1.06] [1.07]* **1.08** and 7.12 of these rules.

**Subpart F—Discovery and Subpoenas**

**§ 6.01 Discovery**
**§ 6.02 Requests for Subpoenas**
**§ 6.03 Service**
**§ 6.04 Proof of Service**
**§ 6.05 Motion to Quash**
**§ 6.06 Enforcement**

**§ 6.01 Discovery.**

(a) *[Explanation]* ***Description.*** Discovery is the process by which a party may obtain from another person, including a party, information, not privileged, reasonably calculated to lead to the discovery of admissible evidence, for the purpose of assisting that party in developing, preparing and presenting its case at the hearing. **No discovery, oral or written, by any party shall** *[This provision shall not be construed to permit any discovery, oral or written, to]* be taken **of, or** from, **an** employee of the Office **of Compliance,** *[or the]* counselor*[(s)]*, or **mediator** *[the neutral(s) involved in counseling and mediation.]***, including files, records, or notes produced during counseling and mediation and maintained by the Office.**

(b) ***Initial Disclosure.*** *[Office Policy Regarding Discovery. It is the policy of the Office to encourage the early and voluntary exchange of relevant and material nonprivileged information between the parties, including the names and addresses of witnesses and copies of relevant and material documents, and to encourage Hearing Officers to develop procedures which allow for the greatest exchange of relevant and material information and which minimizes the need for parties to formally request such information.]* **Within 14 days after the pre-hearing conference and except as otherwise stipulated or ordered by the Hearing Officer, a party must, without awaiting a discovery request, provide to the other parties: the name and, if known, mail and e-mail addresses and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses; and a copy or a description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.**

(c) *Discovery Availability.* Pursuant to section 405(e) of the Act, *[the Hearing Officer in his or her discretion may permit]* **the parties may engage in** reasonable prehearing discovery. *[In exercising that discretion, the Hearing Officer may be guided by the Federal Rules of Civil Procedure.]*

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

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

* * * * *

(d) *Claims of Privilege.*

**(1) Information Withheld.** Whenever a party withholds information otherwise discoverable under these rules by claiming that it is privileged or confidential or subject to protection as hearing or trial preparation materials, the party shall make the claim expressly **in writing** and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. **A party must make a claim for privilege no later than the due date for the production of the information.**

**(2) Information Produced As Inadvertent Disclosure. If information produced in discovery is subject to a claim of privilege or of protection as hearing preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Hearing Officer or the Board under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.**

**§ 6.02 Request for Subpoena.**

(a) *Authority to Issue Subpoenas.* At the request of a party, a Hearing Officer may issue subpoenas for the attendance and testimony of witnesses and for the production of correspondence, books, papers, documents, or other records. The attendance of witnesses and the production of records may be required from any place within the United States. However, no subpoena by any party may be issued for the attendance or testimony of an employee *[with]* **of** the Office of Compliance, **a counselor, or a mediator, including files, records, or notes produced during counseling and mediation and maintained by the Office. Employing offices shall make their employees available for discovery and hearing without requiring a subpoena.**

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

* * * * *

**Subpart G—Hearings**

**§ 7.01 The Hearing Officer**
**§ 7.02 Sanctions**
**§ 7.03 Disqualification of the Hearing Officer**
**§ 7.04 Motions and Prehearing Conference**

**§ 7.05 Scheduling the Hearing**
**§ 7.06 Consolidation and Joinder of Cases**
**§ 7.07 Conduct of Hearing; Disqualification of Representatives**
**§ 7.08 Transcript**
**§ 7.09 Admissibility of Evidence**
**§ 7.10 Stipulations**
**§ 7.11 Official Notice**
**§ 7.12 Confidentiality**
**§ 7.13 Immediate Board Review of a Ruling by a Hearing Officer**
**§ 7.14 Proposed Findings of Fact and Conclusions of Law; Posthearing Briefs**
**§ 7.15 Closing the record**
**§ 7.16 Hearing Officer Decisions; Entry in Records of the Office; Corrections to the Record; Motions to Alter, Amend or Vacate the Decision.**

**§ 7.01 The Hearing Officer.**

. . . . .

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

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(14) maintain **and enforce** the confidentiality of proceedings; and

. . . . .

**§ 7.02 Sanctions.**

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

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

**[***(a)***]****(A)** draw an inference in favor of the requesting party on the issue related to the information sought;

**[***(b)***]****(B)** stay further proceedings until the order is obeyed;

**[***(c)***]****(C)** prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

**[***(d)***]****(D)** permit the requesting party to introduce secondary evidence concerning the information sought;

**[***(e)***]****(E)** strike, **in whole or in part,** **[***any part of***]** the complaint, briefs, answer, or other submissions of the party failing to comply with the order, **as appropriate;**

**[***(f)***]****(F)** direct judgment against the non-complying party in whole or in part; or

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

(2) *Failure to Prosecute or Defend*. If a party fails to prosecute or defend a position, the Hearing Officer may dismiss the action with prejudice or **[***rule for the complainant***]** **decide the matter, where appropriate.**

. . . . .

(4) ***Filing of frivolous claims.* If a party files a frivolous claim, the Hearing Officer may dismiss the claim, in whole or in part, with prejudice or decide the matter for the party alleging the filing of the frivolous claim.**

(5) ***Failure to maintain confidentiality.* An allegation regarding a violation of the confidentiality provisions may be made to a Hearing Officer in proceedings under Section 405 of the CAA. If, after notice and hearing, the Hearing Officer determines that a party has violated the confidentiality provisions, the Hearing Officer may:**

**(A) direct that the matters related to the breach of confidentiality or other designated facts be taken as established for purposes of the action, as the prevailing party claims;**

**(B) prohibit the party breaching confidentiality from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;**

**(C) strike the pleadings in whole or in part;**

**(D) stay further proceedings until the breach of confidentiality is resolved to the extent possible;**

**(E) dismiss the action or proceeding in whole or in part; or**

**(F) render a default judgment against the party breaching confidentiality.**

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

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**§ 7.04 Motions and Prehearing Conference.**

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(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, **except that the Executive Director may, for good cause, extend up to an additional 7 days the time for serving notice of the prehearing conference.**

(c) *Prehearing Conference Memoranda*. The Hearing Officer may order each party to prepare a prehearing conference memorandum. **At his or her discretion, the Hearing Officer may direct the filing of the memorandum after discovery by the parties has concluded.** **[***That***]** **The** memorandum may include:

. . . . .

(3) the specific relief**, including, where known, a calculation** of **[***the amount of***]** **any** monetary relief **[***,***]** **or damages** that is being or will be requested;

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

. . . . .

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

**§ 7.05 Scheduling the Hearing.**

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

**§ 7.06 Consolidation and Joinder of Cases.**

. . . . .

(b) ***Authority*. The Executive Director prior to the assignment of a complaint to a Hearing Officer; a Hearing Officer during the hearing; or t**he Board **[***, the Office, or a Hearing Officer***]** **during an appeal** may consolidate or join cases on their own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties, taking into account the confidentiality requirements of section 416 of the Act.

**§ 7.07 Conduct of Hearing; Disqualification of Representatives.**

. . . . .

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

. . . . .

**(f) Failure of either party to appear, present witnesses, or respond to an evidentiary order may result in an adverse finding or ruling by the Hearing Officer. At the discretion of the Hearing Officer, the hearing may also be held in absence of the complaining party if the representative for that party is present.**

**[***(f)***]****(g)** 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.

**§ 7.08 Transcript.**

. . . . .

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

. . . . .

**§ 7.12 Confidentiality.**

**(a)** Pursuant to section 416 of the Act **and section 1.08 of these Rules,** 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**s** 416(d), (e), and (f) of the Act **and section 1.08(d) of these Rules.** 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.

(b) ***Violation of Confidentiality.* An allegation regarding a violation of confidentiality occurring during a hearing may be resolved by a Hearing Officer in proceedings under Section 405 of the CAA. After providing notice and an opportunity to the parties to be heard, the Hearing Officer, in accordance with section 1.08(f) of these Rules, may make a finding of a violation of confidentiality and impose appropriate procedural or evidentiary sanctions, which may include any of the sanctions listed in section 7.02 of these Rules.**

**§ 7.13 Immediate Board Review of a Ruling by a Hearing Officer.**

. . . . .

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

[*(b)*]**(c)** *Standards for Review.* In determining whether to **certify and** forward a request for interlocutory review to the Board, the Hearing Officer shall consider **all of** the following:

. . . . .

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

(d) *Hearing Officer Action.* If **all** the conditions set forth in paragraph [*(b)*]**(c)** above are met, the Hearing Officer shall **certify and** forward a request for interlocutory review to the Board for its immediate consideration. Any such submission shall explain the basis on which the Hearing Officer concluded that the standards in paragraph [*(b)*]**(c)** have been met. **The decision of the Hearing Office to forward or decline to forward a request for review is not appealable.**

(e) *Grant of Interlocutory Review Within Board's Sole Discretion.* **Upon the Hearing Officer's certification and decision to forward a request for review,** [**T**]*t*he Board, in its sole discretion, may grant interlocutory review. **The Board's decision to grant or deny interlocutory review is not appealable.**

. . . . .

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

[*(h)*]**(g)** *Procedures before Board.* Upon its [*acceptance of a ruling of the Hearing Officer for*] *decision to grant* interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

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

**§ 7.14 Proposed Findings of Fact and Conclusions of Law; Posthearing Briefs.**

[*(a)*] *May be* [*Filed*] ***Required.*** The Hearing Officer may [*permit*] require the parties to file **proposed findings of fact and conclusions of law and/or** posthearing briefs on the factual and the legal issues presented in the case.

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

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

**§ 7.15 Closing the Record of the Hearing.**

(a) Except as provided in section 7.14, the record shall be closed at the conclusion of the hearing. However, when the Hearing Officer allows the parties to submit **argument, briefs, documents or** additional evidence previously identified for introduction, **the record will remain open for as much time as the judge grants for that purpose** [*additional evidence previously identified for introduction, the Hearing Officer may allow an additional period before the conclusion of the hearing as is necessary for that purpose*].

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

**§ 7.16 Hearing Officer Decisions; Entry in Records of the Office; Corrections to the Record; Motions to Alter, Amend or Vacate the Decision.**

. . . . .

(b) **The Hearing Officer's written decision shall:**

**(1) state the issues raised in the complaint;**

**(2) describe the evidence in record;**

**(3) contain findings of fact and conclusions of law, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record;**

**(4) contain a determination of whether a violation has occurred; and (5) order such remedies as are appropriate under the CAA.**

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

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

[*(d)*]**(e)** If there is no appeal of a decision and order of a Hearing Officer, that decision becomes a final decision of the Office, which is subject to enforcement under section 8.03 of these rules.

**(f) Corrections to the Record. After a decision of the Hearing Officer has been issued, but before an appeal is made to the Board, or in the absence of an appeal, before the decision becomes final, the Hearing Officer may issue an erratum notice to correct simple errors or easily correctible mistakes. The Hearing Officer may do so on motion of the parties or on his or her own motion with or without advance notice.**

**(g) After a decision of the Hearing Officer has been issued, but before an appeal is made to the Board, or in the absence of an appeal, before the decision becomes final, a party to the proceeding before the Hearing Officer may move to alter, amend or vacate the decision. The moving party must establish that relief from the decision is warranted because: (1) of mistake, inadvertence, surprise, or excusable neglect; (2) there is newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new hearing; (3) there has been fraud (misrepresentation, or misconduct by an opposing party; (4) the decision is void; or (5) the decision has been satisfied, released, or discharged; it is based on an earlier decision that has been reversed or vacated; or applying it prospectively is no longer equitable. The motion shall be filed within 15 days after service of the Hearing Officer's decision. No response shall be filed unless the Hearing Officer 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 Hearing Officer unless so ordered by the Hearing Officer.**

**Subpart H—Proceedings before the Board**

**§ 8.01 Appeal to the Board**
**§ 8.02 Reconsideration**
**§ 8.03 Compliance with Final Decisions, Requests for Enforcement**
**§ 8.04 Judicial Review**
**§ 8.05 Application for Review of an Executive Director Action**
**§ 8.06 Exceptions to Arbitration Awards**
**§ 8.07 Expedited Review of Negotiability**
**§ 8.08 Procedures of the Board in Impasse Proceedings**

**§ 8.01 Appeal to the Board.**

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

. . . . .

(3) [*Upon written delegation by the Board,*] **In any case in which the Board has not rendered a determination on the merits,** the Executive Director is authorized to: determine any request for extensions of time to file any post-petition for review document or submission with the Board [*in any case in which the Executive Director has not rendered a determination on the merits,*]**; determine any request for enlargement of page limitation of any post-petition for review document or submission with the Board; or require proof of service where there are questions of proper service.** [*Such delegation shall continue until revoked by the Board.*]

. . . . .

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

(e) The Board may remand the matter to [*the*] **a** Hearing Officer for further action or proceedings, including the reopening of the record for the taking of additional evidence. **The decision by the Board to remand a case is not subject to judicial review under Section 407 of the Act. The procedures for a remanded hearing shall be governed by subparts F, G, and H of these Rules.** The Hearing Officer shall render a decision or report to the Board, as ordered, at the conclusion of proceedings on the remanded matters. *【Upon receipt of the decision or report, the Board shall determine whether the views of the parties on the content of the decision or report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views.】* A decision of the Board following completion of the remand shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review **under Section 407 of the Act.**

. . . . .

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

. . . . .

**(j) An appellant may move to withdraw a petition for review at any time before the Board renders a decision. The motion must be in writing and submitted to the Board. The Board, at its discretion, may grant such a motion and take whatever action is required.**

**§ 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. **The decision to grant or deny a motion for reconsideration is within the sole discretion of the Board and is not appealable.**

**§ 8.03 Compliance with Final Decisions, Requests for Enforcement.**

(a) Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to section 407 **of the Act**, and except as provided in sections 210(d)(5) and 215(c)(6) of the Act, a party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all 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 or 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. **A party may also file a petition for attorneys fees and/or damages unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of the appeal pursuant to Section 407 of the Act.**

. . . . .

(d) **To the extent provided in Section 407(a) of the Act and Section 8.04 of this section, the appropriate** *【Any】* party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

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. . .

**§ 8.05 Application for Review of an Executive Director Action.**

**For additional rules on the procedures pertaining to the Board's review of an Executive Director action in Representation proceedings, refer to Parts 2422.30—31 of the Substantive Regulations of the Board, available at www.compliance.gov.**

**§ 8.06 Expedited Review of Negotiability Issues.**

**For additional rules on the procedures pertaining to the Board's expedited review of negotiability issues, refer to Part 2424 of the Substantive Regulations of the Board, available at www.compliance.gov.**

**§ 8.07 Review of Arbitration Awards.**

**For additional rules on the procedures pertaining to the Board's review of arbitration awards, refer to Part 2425 of the Substantive Regulations of the Board, available at www.compliance.gov.**

**§ 8.08 Procedures of the Board in Impasse Proceedings.**

**For additional rules on the procedures of the Board in impasse proceedings, refer to Part 2471 of the Substantive Regulations of the Board, available at www.compliance.gov.**

**Subpart I—Other Matters of General Applicability**

***【§ 9.01 Filing, Service and Size Limitations of Motions, Briefs, Responses and other Documents.***

***§ 9.02 Signing of Pleadings, Motions and Other Filings; Violations of Rules; Sanctions】***

*【§ 9.03】* **§ 9.01 Attorney's Fees and Costs**

*【§ 9.04】* **§ 9.02 Ex parte Communications**

*【§ 9.05】* **§ 9.03 Settlement Agreements**

*【§ 9.06】* **§ 9.04 Revocation, Amendment or Waiver of Rules**

***【§ 9.01 Filing, Service, and Size Limitations of Motions, Briefs, Responses and Other Documents.***

*(a) Filing with the Office; Number. One original and three copies of all motions, briefs, responses, and other documents, must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer or a party to any other matter or determination reviewable by the Board files an appeal or other submission with the Board, one original and seven copies of any submission and any responses must be filed with the Office. The Office, Hearing Officer, or Board may also request a party to submit an electronic version of any submission in a designated format, with receipt confirmed by electronic transmittal in the same format.*

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

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

*(d) Size Limitations. Except as otherwise specified by the Hearing Officer or these rules, no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 pages, or 8,750 words, exclusive of the table of contents, table of authorities and attachments. The Board, the Office, Executive Director, or Hearing Officer may waive, raise or reduce this limitation for good cause shown or on its own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8½" x 11").*

*§ 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, the Executive Director, 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.】*

*【§ 9.03】* **§ 9.01 Attorney's Fees and Costs.**

*(a) Request*. No later than *【20】* **30** days after the entry of a **final** *【Hearing Officer's】* decision **of the Office,** *【under section 7.16, or after service of a Board decision by the Office the complainant, if he or she is a】* **the** prevailing party*【,】* may submit to the Hearing Officer **or Arbitrator** who *【heard】* **decided** the case *【initially】* a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. *【All motions for attorney's fees and costs shall be submitted to the Hearing Officer.】* The Hearing Officer **or Arbitrator**, after giving the respondent an opportunity to reply, shall rule on the motion. Decisions regarding attorney's fees and costs are collateral and do not affect the finality or appealability of a final decision issued by the *【Hearing Officer】* **Office.** *【A ruling on a motion for attorney's fees and costs may be appealed together with the final decision of the Hearing Officer. If the motion for attorney's fees is ruled on after the final decision has been issued by the Hearing Officer, the ruling may be appealed in the same manner as a final decision, pursuant to section 8.01 of these Rules.】*

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

. . . . .

(3) the attorney's customary billing rate for similar work **with evidence that the rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices;** ***[and]***

(4) an itemization of costs related to the matter in question***[.]*** **; and**

**(5) evidence of an established attorney-client relationship.**

***[§9.04]*****§9.02 Ex parte Communications.**

(a) *Definitions*.

. . . . .

(3) For purposes of section ***[9.04]*** **9.02**, 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.

. . . . .

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

**(2) The Hearing Officer or the Office may initiate attempts to settle a matter informally at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, and they may agree to any limits on the waiver.**

—Renumber subsequent paragraphs in subsection—

***[§9.05]*** **§9.03 Informal Resolutions and Settlement Agreements.**

(b) *Formal Settlement Agreement*. The parties may agree formally to settle all or part of a disputed matter in accordance with section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval. **The settlement is not effective until it has been approved by the Executive Director.** If the Executive Director does not approve the settlement, such disapproval shall be in writing, shall set forth the grounds therefor, and shall render the settlement ineffective.

(c) *Requirements for a Formal Settlement Agreement*. A formal settlement agreement requires the signature of all parties or their designated representatives on the agreement document before the agreement can be submitted to the Executive Director **for signature. A formal settlement agreement cannot be submitted to the Executive Director for signature until the appropriate revocation periods have expired.** A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise permitted by law.

(d) *Violation of a Formal Settlement Agreement*. If a party should allege that a formal settlement agreement has been violated, the issue shall be determined by reference to the formal dispute resolution procedures of the agreement. **Parties are encouraged to include in their settlements specific dispute resolution procedures.** If the ***[particular]*** formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation ***[of the agreement]*****, the Office may provide assistance in resolving the dispute, including the services of a mediator as determined by the Executive Director.** ***[the following dispute resolution procedure shall be deemed to be a part of each formal settlement agreement approved by the Executive Director pursuant to section 414 of the Act:]*** **Where the settlement agreement does not have a stipulated method for resolving violation allegations,** ***[Any complaint]*** **an allegation** ***[regarding]*** **of** a violation ***[of a formal settlement agreement may]*** **must** be filed with the Executive Director no later than 60 days after the party to the agreement becomes aware of the alleged violation. Such ***[complaints may be referred by the Executive Director to a Hearing Officer for a final decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these Rule.]*** **allegations will be reviewed, investigated or mediated, as appropriate, by the Executive Director or designee.**

***[§9.06]*** **§9.04 Payments required pursuant to Decisions, Awards, or Settlements under section 415(a) of the Act.**

Whenever a **final** decision or award pursuant to sections 405(g), 406(e), 407, or 408 of the Act, or an approved settlement pursuant to section 414 of the Act, require the payment of funds pursuant to section 415(a) of the Act, the decision, award, or settlement shall be submitted to the Executive Director to be processed by the Office for requisition from the account of the Office of Compliance in the Department of the Treasury, and payment. **No payment shall be made from such account until the time for appeal of a decision has expired.**

***[§9.07]*** **§9.05 Revocation, Amendment or Waiver of Rules.**

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

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

## CLIFFORD P. HANSEN FEDERAL COURTHOUSE CONVEYANCE ACT

## ALBUQUERQUE, NEW MEXICO, FEDERAL LAND CONVEYANCE ACT

Mr. BROWN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 423, S. 1934, and Calendar No. 418, S. 898 en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the bill (S. 1934) to direct the Administrator of General Services to convey the Clifford P. Hansen Federal Courthouse back to Teton County, Wyoming, which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 1934

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Clifford P. Hansen Federal Courthouse Conveyance Act''.*

***SEC. 2. DEFINITIONS.***

*In this Act:*

*(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of General Services.*

*(2) COUNTY.—The term ''County'' means Teton County, Wyoming.*

*(3) COURTHOUSE.—The term ''Courthouse'' means—*

*(A) the parcel of land located at 145 East Simpson Street, Jackson, Wyoming; and*

*(B) the building located on the land described in subparagraph (A), which is known as the ''Clifford P. Hansen Federal Courthouse''.*

***SEC. 3. CONVEYANCE OF FEDERAL COURTHOUSE TO TETON COUNTY, WYOMING.***

*(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator shall offer to convey to the County all right, title, and interest of the United States in and to the Courthouse.*

*(b) CONSIDERATION.—In exchange for the conveyance of the Courthouse to the County under this Act, the Administrator shall require the County to pay to the Administrator—*

*(1) nominal consideration for the parcel of land described in section 2(3)(A); and*

*(2) subject to subsection (c), consideration in an amount equal to the fair market value of the building described in section 2(3)(B), as determined based on an appraisal of the building that is acceptable to the Administrator.*

*(c) CREDITS.—In lieu of all or a portion of the amount of consideration for the building described in section 2(3)(B), the Administrator may accept as consideration for the conveyance of the building under subsection (b)(2) any credits or waivers against lease payments, amounts expended by the County under facility maintenance agreements, or other charges for the continued occupancy or use by the Federal Government of the building.*

*(d) RESTRICTIONS ON USE.—The deed for the conveyance of the Courthouse to the County under this Act shall include a covenant that provides that the Courthouse will be used for public use purposes.*

*(e) COSTS OF CONVEYANCE.—The County shall be responsible for paying—*

*(1) the costs of an appraisal conducted under subsection (b)(2); and*

*(2) any other costs relating to the conveyance of the Courthouse under this Act.*

*(f) PROCEEDS.—*

*(1) DEPOSIT.—Any net proceeds received by the Administrator as a result of the conveyance under this Act, as applicable, shall be paid into the Federal Buildings Fund established under section 592 of title 40, United States Code.*

*(2) EXPENDITURE.—Amounts paid into the Federal Buildings Fund under paragraph (1) shall be available to the Administrator, in amounts specified in appropriations Acts, for expenditure for any lawful purpose consistent with existing authorities granted to the Administrator.*

*(g) ADDITIONAL TERMS AND CONDITIONS.—The Administrator may establish such additional terms and conditions with respect to the conveyance under this Act as the Administrator considers to be appropriate to protect the interests of the United States.*

The Senate proceeded to consider the bill (S. 898) to authorize the Administrator of General Services to convey a parcel of real property in Albuquerque, New Mexico, to the Amy Biehl High School Foundation.

Mr. BROWN. Madam President, I ask unanimous consent that the amendment to S. 1934 be agreed to, the bills, as amended if amended, be read a third time and passed en bloc, and that the title amendment to S. 1934 be agreed to, and that the motions to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1934), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.