

NOTICE OF PROPOSED PROCEDURAL RULEMAKING REGULATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached document 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:

OFFICE OF COMPLIANCE,
Washington, DC, September 4, 2003.

Hon. TED STEVENS,
President Pro Tempore, U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: Pursuant to Section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)), I am transmitting on behalf of the Board of Directors the enclosed notice of proposed procedural rulemaking regulations under Section 303 of the Act for publication in the Congressional Record.

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

Sincerely,

SUSAN S. ROBFOGEL,
Chair.

OFFICE OF COMPLIANCE

THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995—PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE

INTRODUCTORY STATEMENT

Shortly after the creation of the Office of Compliance in 1995, Procedural Rules were adopted to govern the processing of cases and controversies under the administrative procedures established in Title IV of the Congressional Accountability Act of 1995 ("CAA," 2 U.S.C. 1401–1407). Those Rules of Procedure were slightly amended in 1998. 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. Having obtained 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 Bill Thompson, Executive Director or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202/724-9250 (voice) or 202/426-1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, SE., Room LA-200, Washington, DC 20540-1999. It is requested, but not required, that an electronic version of any comments be provided on an

accompanying computer disk. 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 postcard with their submission.

Copies of submitted comments will be available for review at the Office of Compliance, 110 Second Street, SE., Washington, DC 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 11 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. 1383) 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 of Compliance. The rules of procedure establish the process by which alleged violations of the 11 laws made applicable to the Legislative Branch under the CAA will be considered and resolved. The rules include 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. The rules also include the process for the conduct of administrative hearings held as the result of the filing of an administrative complaint, and for appeals of a decision by a hearing officer to the Board of Directors of the Office of Compliance, and for an appeal of a decision by the Board of Directors to the United States Court of Appeals for the Federal Circuit. The rules also contain other matters of general applicability to the dispute resolution process and to the operation of the Office of Compliance.

These proposed amendments to the Rules of Procedure are the result of the experience of the Office in processing disputes under the CAA during the period since the original adoption of these rules in 1995.

Explanation regarding the text of the proposed amendments: The text of the proposed amendments shows deletions within italicized brackets, and added text in italicized bold. Only subsections of the rules which 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 asterisk (* * * *) 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

PART I—OFFICE OF COMPLIANCE

Office of Compliance Rules of Procedure

As Amended—February 12, 1998 (Subpart A, section 1.02, "Definitions"), and as proposed to be amended in 2003.

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\$1.03 Filing and Computation of Time.

(a) *Method of Filing.* Documents may be filed in person or by mail, including express, overnight and other expedited delivery. **When specifically authorized by the Executive Director, any document may also be filed by electronic transmittal in a designated 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. . . .

(d) *Service or filing of documents by certified mail, return receipt requested. When 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 delivery to the addressee is provided.*

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1.05 Designation of Representative.

(a) An employee, other charging individual or party, a witness, a labor organization, an employing office, an entity alleged to be responsible for correcting a violation wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney. **During the period of counseling and mediation, upon the request of a party, if the Executive Director concludes that a representative of an employee, of a charging party, of a labor organization, of an employing office, or of an entity alleged to be responsible for correcting a violation has a conflict of interest, the Executive Director may, after giving the representative an opportunity to respond, disqualify the representative. In that event, the period for counseling or mediation may be extended by the Executive Director for a reasonable time to afford the party an opportunity to obtain another representative.**

* * * * *

2.03 Counseling.

(a) *Initiating a Proceeding; Formal Request for Counseling.* In order to initiate a proceeding under these rules, an employee shall [formally] **file a written request for coun-**

seling [from] **with** the Office regarding an alleged violation of the Act, as referred to in section 2.01(a) above. All [formal] requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.

(c) When, How, and Where to Request Counseling. A [formal] request for counseling **must be in writing, and [:(1)]** shall be [made] filed with the Office of Compliance at Room LA-200, 110 Second Street, SE., Washington, DC 20540-1999; telephone 202-724-9250; FAX 202-426-1913; TDD 202-426-1912, not later than 180 days after the alleged violation of the Act.[;] (2) may be made to the Office in person, by telephone, or by written request; (3) shall be directed to: Office of Compliance, Adams Building, Room LA-200, 110 Second Street, SE., Washington, DC 20540-1999; telephone 202-724-9250; FAX 202-426-1913; TDD 202-426-1912.]

(1) *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, **or by personal delivery.** 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 the Capitol Police.*

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

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

(A) within [10] **60** days after the expiration of the period recommended by the Executive Director, if the matter has not been resolved; or

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

2.04 Mediation.

(e) *Duration and Extension.*

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

(2) The Office may extend the mediation period upon the joint **written** request of the parties **to the attention of the Executive Director.** The request [may be oral or] **shall be** written and [shall be noted and] filed with

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

(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 hand delivered,** and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section 2.06 of these rules.

* * * * *

2.06 Filing of Civil Action.

(c) *Communication Regarding Civil Actions Filed with District Court.*

(1) *The party filing any civil action with the United States District Court pursuant to sections 404(2) and 408 of the Act should simultaneously provide a copy of the complaint to the Office.*

(2) *No party to any civil action referenced in paragraph (1) shall request information from the Office regarding the proceedings which took place pursuant to sections 402 or 403 related to said civil action, unless said party notifies the other party(ies) to the civil action of the request to the Office. The Office will determine whether the release of such information is appropriate under the Act and the Rules of Procedure.*

\$4.16 Comments on Occupational Safety and Health Reports. The General Counsel will provide to responsible employing office(s) a copy of any report issued for general distribution not less than seven days prior to the date scheduled for its issuance. If a responsible employing office wishes to have its written comments appended to the report, it shall submit such comments to the General Counsel no later than 48 hours prior to the scheduled issuance date. The General Counsel shall either include the written comments without alteration as an appendix to the report, or immediately decline the request for their inclusion. If the General Counsel declines to include the submitted comments, the employing office(s) may submit said denial to the Board of Directors which, in its sole discretion, shall review the matter and issue a final and non-appealable decision solely regarding inclusion of the employing office(s) comments prior to the issuance of the report. Submissions to the Board of Directors in this regard shall be made expeditiously and without regard to the requirements of subpart H of these rules. In no event shall the General Counsel be required by the Board to postpone the issuance of a report for more than five days.

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\$5.03 Dismissal, Summary Judgment, and Withdrawal of Complaints.

(d) *Summary Judgment. A Hearing Officer may, after notice and an opportunity to respond, issue summary judgment on some or all of the complaint.*

([d]e) *Appeal.* A [dismissal] **final decision** by the Hearing Officer made under section

5.03(a)-(c) or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01.

(e)ff)
(f)lg)

* * * * *

§7.02 Sanctions

(a) **The Hearing Officer may impose sanctions on a party's representative for inappropriate or unprofessional conduct.**

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

(a)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:

(1)a)
(2)b)
(3)c)
(4)d)

* * * * *

§8.01 Appeal to the Board.

(b)1 Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review to the Board, the appellant shall file and serve a supporting brief in accordance with section 9.01 of these rules. That brief shall identify with particularity those findings or conclusions in the decision and order that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

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

(3) **Upon delegation by the Board, the Executive Director is authorized to determine any request for extensions of time to file any document or submission with the Board. Such delegation shall continue until revoked by the Board.**

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§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 other determination reviewable by the Board files an appeal with the Board, one original and seven copies of both any appeal brief and any responses must be filed with the Office. **The Officer, Hearing Officer, or Board may also require a party to submit an electronic version of any submission on a disk in a designated format.**

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§9.03 Attorney's fees and costs.

(a) **Request.** No later than 20 days after the entry of a Hearing Officer's decision under section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. **All motions for attorney's fees and costs shall be submitted to the Hearing Officer.** [The Board or t] The Hearing Officer, after giving the respondent

an opportunity to reply, shall rule on the motion.

§9.05 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. **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 on the agreement document before the agreement can be submitted to the Executive Director. 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 required 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. If the particular formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation of the agreement, 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: Any complaint regarding a violation of a formal settlement agreement may 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 and binding decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these rules.**

§9.06 Destruction of Closed Files.

Closed case files regarding counseling, mediation, hearing, and/or appeal may be destroyed during the calendar year in which the fifth anniversary of the closure date occurs, or during the calendar year in which the fifth anniversary of the conclusion of all adversarial proceedings in relation thereto occurs, whichever period ends later.

§9.07 Payment of Decisions, Awards, or Settlements under section 415(a) of the Act.

Whenever a 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.

§9.06/78 Revocation, Amendment or Waiver of Rules.

50TH WEDDING ANNIVERSARY OF CAROLYN AND BLACKIE EVANS

Mr. REID. Madam President, I rise today to tell a happy story. In fact, it almost sounds like a Hollywood love story.

I first met Claude "Blackie" Evans in Henderson, NV, when I was the city at-

torney. Our first meeting involved a traffic issue that Blackie had before the municipal judge.

Blackie had come to Henderson from his hometown of Galena, KS. In fact, he hitchhiked to Nevada the day after he graduated from high school.

Blackie used to spend time at the Henderson Boys Club. He was a Golden Gloves boxer, and he fought in the ring there.

He also was a fighter out of the ring—he fought for his union brothers, and for all the working men and women of Nevada.

A few months after Blackie came to Henderson, his high school sweetheart followed him. Blackie had played football in high school and Carolyn was a cheerleader, and they made a great couple. On September 7, 1953, they were married in Las Vegas.

Blackie went to work at Titanium Metal Corp., and he and Carolyn started to raise a family. Over the next few years they would have four wonderful children: Steve, Sheree, Seanna, and Lisa.

They raised their kids and worked hard. After Blackie had been at the Timet factory for about 5 years, he was elected vice president of United Steelworkers Local 4856. Three weeks later, at age 23, he became the local's youngest president ever. He held that position for 12 years while also working in the plant.

In 1971, my former high school teacher Mike O'Callaghan, who had become Governor of Nevada, appointed Blackie as the Commissioner representing labor on the old Nevada Industrial Commission. The Evans family moved to Carson City, where Carolyn narrated tours through the Governor's Mansion in her spare time from raising four children.

In 1978, Blackie was elected secretary treasurer of the Nevada AFL-CIO, a position he held until his retirement in July 1999. He also served as a national vice president of the AFL-CIO. During this time, I often crossed paths with Blackie. Together, we worked to help the working families of Nevada.

Today, Blackie and Carolyn still live in Henderson, NV, the town he hitchhiked to some 50 years ago. Carolyn's mother Nadine Qualls, who turns 91 in November, lives with them.

They are blessed to have two grandchildren living in Henderson—Alex Bacon, 12, and Geena German, 7—and two grandchildren in Reno—Brittany Cassingham, 20, a student at UNR, and Cierra Cassingham, 16, a junior in high school.

On September 7, 2003, Blackie and Carolyn will celebrate 50 years of marriage. The celebration will be a tribute to their love of each other, and to the rich, productive life they have enjoyed together.

I congratulate Carolyn and Blackie on their wonderful marriage and family, and I wish them many more years of happiness together.