

views. A decision of the Board following completion of the remand shall be the final decision of the Board and shall be subject to judicial review.

(f) Pursuant to Section 406(c) of the Act, in conducting its review of the decision of a Hearing Officer, the Board shall set aside a decision if it determines that the decision was:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(g) In making determinations under paragraph (g), above, the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(h) Record: what constitutes. The complaint and any amendments, notice of hearing, answer and any amendments, motions, rulings, orders, stipulations, exhibits, documentary evidence, depositions, 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, and any cross-petition, shall constitute the record in the case.

#### *§8.02 Compliance with final decisions, requests for enforcement*

(a) 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 parties to the proceedings with a compliance report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved.

(b) The Office may require additional reports as necessary;

(c) If the Office does not receive notice of compliance in accordance with paragraph (a) of this Section, the Office shall make inquiries to determine the status of compliance. If the Office cannot determine that full compliance is forthcoming, the Office shall report the failure to comply to the Board and recommend whether court enforcement of the decision should be sought.

(d) 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.

(e) Upon receipt of a report of non-compliance or a petition for enforcement of a final decision, or as it otherwise determines, the Board may issue a notice to any person or party to show cause why the Board should not seek judicial enforcement of its decision or order.

(f) Within the discretion of the Board, it may direct the General Counsel to petition the Court for enforcement of a decision under Section 406(e) of the Act whenever the Board finds that a party has failed to comply with its decision and order.

#### *§8.03 Judicial review*

Pursuant to Section 407 of the Act, a party aggrieved by a final decision of the Board under Section 406(e) in cases arising under Part A of Title II of the Act may file a petition for review with the United States Court of Appeals for the Federal Circuit.

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

§9.01 Attorney's Fees and Costs

§9.02 Ex parte Communications

§9.03 Settlement Agreements

§9.04 Revocation, amendment or waiver of rules

##### *§9.01 Attorney's fees and costs*

(a) Request. No later than 20 days after the entry of a Hearing Officer's decision under Section 7.17 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 request for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. The Board or the Hearing Officer, after giving the respondent an appointment to reply, shall rule on the request.

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

(1) accurate and contemporaneous time records;

(2) a copy of the terms of the fee agreement (if any);

(3) the attorney's customary billing rate for similar work; and

(4) an itemization of costs related to the matter in question.

##### *§9.02 [Reserved—Ex parte Communications]*

##### *§9.03 Settlement agreements*

(a) Application. This Section applies to formal settlement agreements between parties under Section 414 of the Act.

(b) Informal Resolution. At any time before a covered employee files a complaint under Section 405, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute, so long as the resolution does not require a waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

(c) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval.

##### *§9.04 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.

Signed at Washington, D.C., on this 13th day of November, 1995.

R. Gaul Silberman,  
Executive Director, Office of Compliance.

#### TRIBUTE TO ALEX BING

Mr. DOLE. Mr. President; I know I speak for all Members of the Senate in extending our condolences to the family of Alex Bing, who passed away on September 28, 1995.

At the time of his death, Alex had worked for the Senate for 10 years as a valued employee of the Sergeant at Arms' environmental service operation.

In 1992 and 1993 Alex was selected as the environmental services' Employee of the Year, in recognition of his outstanding performance and attendance record.

Alex's primary responsibility was the care and maintenance of the Minton tile floors located throughout the Senate wing of the Capitol Building.

Alex was a dedicated and loyal employee who took great pride in his work. As a result of his dedication, many visitors to the Capitol have been provided the opportunity to view this historic building at its very best.

All those who knew Alex knew him as a kind, quiet, and caring person. He will be missed by all.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m., having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:31 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

The PRESIDING OFFICER. The Senator from Alaska is recognized.

#### ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION ACT—CONFERENCE REPORT

Mr. MURKOWSKI. Mr. President, on behalf of Senator DOLE, I ask that the Chair lay before the Senate the conference report to accompany S. 395, the Alaska Power Administration bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 395) to authorize and direct the Secretary of Energy to sell the Alaska Power Marketing Administration, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 6, 1995.)

Mr. MURKOWSKI. Mr. President, it is my understanding that the Senator from Washington, who is here, has agreed to 2 hours equally divided on this issue.