In my native State of Nevada, many people own firearms and the vast majority of them use their guns responsibly and safely. It is their right to do so, guaranteed in the United States Constitution. It is not some privilege granted at the whim of Congress or any other part of government. So I will work on a bipartisan basis to protect and safeguard that right.

I will work to pass this bill, and I think we have the votes to pass it.

Toward the end of last year, we tried to consider this bill in the United States Senate. Unfortunately, we didn't have enough time left in the first session of this Congress to consider this bill in a fair manner.

Now the time has come to pass this bill.

We will now debate and vote on the amendments that Senators want to offer to this bill, and then we will pass it. And when we do, we will be standing up for the Constitution and the rights of every American citizen.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

SECOND NOTICE OF PROPOSED PROCEDURAL RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be entered into the RECORD today pursuant to section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)).

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Second Notice of Proposed Amendments to the Procedural Rules.

Introductory statement:

On September 4, 2003, a Notice of Proposed Amendments to the Procedural Rules of the Office of Compliance was published in the Congressional Record at S11110, and H7944. As specified by the Congressional Accountability Act of 1995 (''Act'') at Section 303(b) (2 U.S.C.1384(b)), a 30 day period for comments from interested parties ensued. In response, the Office received a number of comments regarding the proposed amendments.

At the request of a commenter, for good reason shown, the Board of Directors extended the 30 day comment period until October 20, 2003. The extension of the comment period was published in the Congressional Record on October 2, 2003 at H9209 and S12361.

On October 15, 2003, an announcement that the Board of Directors intended to hold a hearing on December 2, 2003 regarding the proposed procedural rule amendments was published in the Congressional Record at H9475 and S12599. On November 21, 2003, a Notice of the cancellation of the December 2, 2003 hearing was published in the Congressional Record at S15394 and H12304.

The Board of Directors of the Office of Compliance has determined to issue this Second Notice of Proposed Amendment to the Procedural Rules, which includes changes to the initial proposed amendments, together with a brief discussion of each proposed amendment. As set forth in greater detail herein below, interested parties are being afforded another opportunity to comment on these proposed amendments.

The complete existing Procedural Rules of the Office of Compliance may be found on the Office's web site: www.compliance.gov.

How to submit comments:

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, 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 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 post card with their submission.

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.

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. 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 of Compliance. The rules of procedure generally establish the process by which alleged violations of the 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 procedures for processing Occupational Safety and Health investigations and enforcement, as well as the process for the conduct of administrative hearings held as the result of the filing of an administrative complaint under all of the statutes applied by the Act, and for appeals of a decision by a hearing officer to the Board of Directors of the Office of Compliance, and for the filing of 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.

How to read the proposed amendments:

The text of the proposed amendments shows [deletions within brackets], *and added text in italic*. Textual additions which have been made for the first time in this second notice of the proposed amendments ***are shown as italicized bold.*** Textual deletions which have been made for the first time in this second notice of the proposed amendments [[are bracketed with double brackets.]] 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 stars (* * * * *) 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 PROCEDURAL RULE 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 2004.

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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,* ***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.* 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. . . . .

Discussion: The electronic filing option is in addition to existing filing procedures, and represents the decision of this agency to begin to explore the process of migration toward electronic filing. In response to comments, the Board has added Board of Directors authorization authority to ensure that the Executive Director cannot unilaterally assume Board authority regarding a matter pending before the Board. Because of limits in available technology, it will remain necessary to designate a particular format for electronic transmittal. Requiring a designated format does not impose an undue burden, since electronic filing is not required. Stipulating a web address and system for confirmation of receipt of electronic transmittal is not appropriate for a formal rule, since all documents will not necessarily be filed at the same address, and not all filing requires proof of receipt. Not including such information also better safeguards the security of document filing.

(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 [[delivery to]] ***date of receipt by*** *the addressee is provided.*

Discussion: Section 1.03(a)(2)(i) permits ''other expedited delivery'' of documents being filed for which proof of delivery is not required. However, there is no similar provision with regard to certified mail, return receipt requested. Such a service method is specifically required in Sections 2.03(1), 2.04(i), and 5.01(e). Particularly in view of the lengthened time required to process mail through the U.S. Postal Service since 9–11, the Board has determined that additional flexibility in the use of other mail delivery services is also needed as an alternative to certified mail, return receipt requested.

* * * * *

1.05 Designation of Representative.

AMENDMENT DELETED (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.*]]

Discussion: Upon further consideration, the Board has deleted this proposed amendment. The Board does not agree with the assertion by a commenter that the current version of this rule is in excess of the authority of this Board under the Act.

* * * * *

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* counseling [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.

Discussion: The purpose of this amendment is to delete the undefined term ''formal'', and require simply that the request be made in written form. Several commenters suggested that institution of a requirement that the counseling request be in writing would constitute a ''waiver'' of the statutory requirement of absolute confidentiality in counseling mandated by section 416(a) of the Act. Requiring a written counseling request does not constitute or suggest a ''waiver'' of confidentiality in any way. Such a waiver may only occur when ''the Office and a covered employee . . . agree to notify the employing office of the allegations.'' 2 U.S.C. 1416(a). The process for such a waiver is set out in the existing Procedural Rules at section 2.03(e)(2), which requires a written waiver form. A written request for counseling is an entirely different document.

. . . . .

(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, S.E., Washington, D.C. 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, S.E., Washington, D.C. 20540–1999; telephone 202–724–9250; FAX 202–426–1913; TDD 202–426–1912.]

Discussion: This amendment conforms to the requirement that a written request for counseling must be filed with the Office.

. . . . .

(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, *or by personal delivery* ***evidenced by a written receipt.*** 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.

Discussion: This amendment reflects the provision of flexibility to the Office in providing notice. In response to comments, we have added the requirement for appropriate documentation in the case of personal delivery. A suggestion that a copy of the end of counseling notice be served on ''opposing counsel'' would cause a violation of the confidentiality requirement for counseling required by section 416(a) of the Act, and would contradict the non-adversarial nature of counseling.

. . . . .

(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]] ***resulted in a final decision***; 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.

(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.*** [[or i]] ***I***f no request to return to the procedures under these rules is received within [[the applicable time period]] ***60 days after the expiration of the period recommended by the Executive Director***, the Office will [[consider the case to be closed in its official files]] ***issue a Notice of End of Counseling, as specified in section 2.04(i) of these Rules.***

Discussion: The amendment reflects the Board's conclusion that controversies referred to agency grievance procedures may be close to disposition at or near the end of the stipulated referral period. In such circumstances, the requirement for a return by the employee to the Office's procedures within 10 days can actually have the effect of disrupting the completion of the grievance process. Therefore, the Board proposes an extension of that time frame to 60 days. The time during which a controversy has been referred to an agency grievance proceeding assumes that there will have been joinder of issues between the employee and the employing office. Certainly, there can be no doubt that the employing office has been placed on notice of the existence of the controversy. The amended proposal ensures that the employee will not be penalized by reason of an employing office's failure to process a grievance in a timely manner by stipulating that the Office will issue an end of counseling Notice to the parties 60 days after the end of the referral period. A commenter's suggestion that the referral time frame unlawfully extends counseling beyond the 30 day maximum period ignores section 401 of the Act, which specifically stipulates that all time during which a matter is referred to the grievance procedures of the Architect of the Capitol or the Capitol Police ''shall not count against the time available for counseling or mediation.'' Issuing a Notice of End of Counseling is preferable to administrative closure of a case, since the closure may penalize an employee who is still waiting for the employing office to issue a final decision.

* * * * *

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 ***or of the appointed mediator on behalf 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.

Discussion: The amendment assures that an adequate record of such a request be made. In response to comments, the Board has added language allowing the assigned mediator to submit the request on behalf of the parties.

. . . . .

(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]* ***personally*** *delivered*, ***evidenced by a written receipt***, 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.

Discussion: The purpose of this amendment is to reflect the provision of the flexibility of personal delivery. In response to comments, the Board has also formalized the requirement that proof of delivery be evidenced by a written receipt.

* * * * *

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] ***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.***

Discussion: The Office has the responsibility to be aware of judicial applications and interpretations of the Act. In this regard, see also proposed rule 9.06. In response to comments, the Board has replaced the proposed requirement that a copy of the complaint be provided, with a notice of filing of a civil action. The Office also intends to include notice of this requirement in its Notice of End of Mediation.

AMENDMENT DELETED: [[(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.]]

Discussion: Upon further consideration, the Board has deleted this proposed amendment.

* * * * *

§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.]] ***With respect to any report authorized under section 215(c)(1) or 215(e)(2) of the Act that is intended by the General Counsel for general public distribution, the General Counsel shall, before making such general public distribution, first transmit a copy thereof to the responsible employing office(s), together with a notification that the employing office(s) has 10 days within which to submit any written comments that it wishes to be appended in their entirety as an appendix to the report. In the event the General Counsel declines to append to the report timely submitted comments of an employing office, the General Counsel shall not issue the report for general public distribution, and will promptly notify that office in writing of the basis for such declination. Upon written request to the Board of Directors submitted by the employing office within 10 days of the date of notification of declination by the General Counsel, with a copy thereof served on the General Counsel, the Board of Directors shall promptly review the matter, including any submission filed by the General Counsel within 10 days of the employing office's request, and issue a final and non-appealable decision determining the issue of inclusion of the employing office's comments prior to the general public distribution of the report. In no event shall the General Counsel be required by the Board to delay issuance of a report covered by this procedure for more than 15 days after the employing office's request for review is submitted to the Board of Directors.***

Discussion: The proposed amendment, as reworded, provides a mechanism for employing office comments to be appended to reports issued by the General Counsel regarding Occupational Safety and Health inspections. The Board has amended the proposal to clarify further the categories of OSH reports resulting from inspection requests. The Board has extended the time periods within which the dispute resolution procedure takes place. The Board has also added a requirement that any General Counsel declination must be provided in writing to the employing office.

* * * * *

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

. . . . .

(d) Summary Judgment. A Hearing Officer may, after notice and an opportunity ***for the parties to address the question of summary judgment,*** *[[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. ***A final decision under section 5.03(a)–(c) which does not resolve all of the claims or issues in the case(s) before the Hearing Officer may not be appealed to the Board in advance of a final decision entered under section 7.16 of these rules, except as authorized pursuant to section 7.13 of these rules.***

([e]*f*) . . . . .

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

Discussion: Hearing Officers have plenary authority to conduct hearings and make final decisions, including summary judgment, pursuant to section 405 of the Act. The amendments more adequately reflect the existing authority of Hearing Officers. In response to a comment, the Board has included the requirement that the parties be given the opportunity to address the issue. The Board has also addressed the circumstance of a partial disposition of a case.

* * * * *

§ 7.02 Sanctions

(a) The Hearing Officer may impose sanctions on a party's representative [[for inappropriate or unprofessional conduct]] ***necessary to regulate the course of the hearing.***

(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*) . . . . .

Discussion: In response to comments, and upon further consideration, the Board has amended this proposal to better reflect existing statutory authority. Section 556(c)(5) of the Administrative Procedure Act, referenced in section 405(d)(3) of the Act, specifically authorizes a presiding official to ''regulate the course of the hearing''. The amendment authorizes a Hearing Officer to carry out that responsibility when required by a representative's conduct.

* * * * *

§ 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 ***written*** *delegation by the Board, 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.*** *Such delegation shall continue until revoked by the Board.*

. . . . .

Discussion: The amendment authorizes the Executive Director to perform the ministerial act of granting extensions of time in which to file documents when specifically authorized to do so by the Board. In response to comments, the Board has required written delegation of authority, and has limited that delegation to submissions after a petition for review has been filed. The Board has also prohibited such a delegation in any case in which the Executive Director has issued a determination on the merits in the underlying proceeding.

* * * * *

§ 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* ***matter or*** *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]]* ***request*** *a party to submit an electronic version of any submission on a disk in a designated format.*

. . . . .

Discussion: The addition of ''other matter or determination reviewable by the Board'' is intended to address: collective bargaining representation decisions made pursuant to Part 2422 of the Office of Compliance Rules regarding labor-management relations, negotiability determinations made pursuant to Part 2424 of the same Rules, review of arbitration awards under Part 2425 of the same Rules, determination of bargaining consultation rights under Part 2426 of the same Rules, requests for general statements of policy or guidance under Part 2427 of the same Rules, enforcement of standards of conduct decisions and orders by the Assistant Secretary of Labor for Labor Management Relations pursuant to Part 2428 of the same Rules, and determinations regarding collective bargaining impasses pursuant to Part 2470 of the same Rules. The term ''matter'' was included by the Board on further consideration, because some of the procedures referenced in the labor-management relations Rules are addressed to the Board in the first instance. Submission by electronic version is in addition to the existing methods for filing submissions. This addition reflects the decision of this agency to begin exploring the process of migration toward electronic filing. Because of limits in available technology, it remains necessary to designate a particular format for electronic disk transmittal. In response to comments, the Board has amended the proposal to allow for a ''request'' rather than a requirement. The availability of submissions on disk, particularly of lengthy documents, can save the Office time and expense in handling such documents.

* * * * *

§ 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] *T*he Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion.

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Discussion: This amendment clarifies the rules to exclude the filing of motions for attorney's fees with the Board of Directors.

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§ 9.05 Informal Resolutions and Settlement Agreements.

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(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]] ***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. 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.

Discussion: The Board disagrees with comments that assert the Office has no statutory authority to settle disputes regarding the alleged violation of settlement agreements. Under section 414 of the Act, the Executive Director is clearly given plenary authority to approve all settlement agreements under the Act entered into at any stage of the administrative or judicial process. No settlement agreement can ''become effective'' unless and until such approval has been given. The Office is concerned that many settlement agreements do not include provisions for disposition of controversies regarding alleged violations of the agreement. Rather than consider initiating a practice of withholding approval of settlement agreements which do not include provisions setting forth dispute resolution procedures, the Office is providing all parties, by notice and rule, the option to include their own dispute resolution provisions, or default to the dispute resolution procedure stipulated in this proposed Rule when they enter into a settlement agreement. The word ''permitted'' was inserted in place of ''required'' as a clarification, since in this context a rescission of an approved agreement would rarely, if ever, be required by operation of law.

[[§ 9.06 Destruction of Closed Files. Closed case files regarding counseling, mediation, hearing, and/or appeal ***to the Board of Directors*** *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.]]

Discussion: The Executive Director and the Board of Directors have been made aware that the Office of Compliance appears to be an agency covered by the requirements of the Federal Records Act (found at Title 44 of the U.S. Code). The Records Act requires that an agency consult with the Archivist of the United States regarding any record destruction program. Therefore, the Executive Director and the Board are withdrawing this proposal at this time, and will issue a new Notice regarding this subject matter after the requirements of the Federal Records Act have been satisfied.

***§9.0[7]6** Payment**s** [[of]] **required pursuant to** 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.*

Discussion: This proposed rule reflects the existing procedure for processing payments under section 415(a) of the Act. Since section 415 does not authorize automatic stays of judgments or awards pending appeal, parties are advised to seek such a stay from the appropriate forum. Adding an automatic stay of payment until all appeals have been exhausted would require an amendment of the Act.

*§9.0[6]***7 Revocation, Amendment or Waiver of Rules.**

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AGRICULTURE SECURITY: PROTECTING AMERICA'S FOOD FROM FARM TO FORK

Mr. AKAKA. Mr. President, I rise today to call attention to the urgent need to prepare America against an attack on our agriculture. The Nation's agriculture industry is crucial to our prosperity. Yet it does not receive the protection it needs. Our food supply system is vulnerable to accidental or intentional contamination that would damage our economy, and, most importantly, could cost lives.

There is no need to question whether animal-borne diseases can actually threaten the United States. Look to last December's mad cow disease outbreak: only one cow was found to be infected, and yet the U.S. beef industry was thrown into a tailspin from which it still has not recovered. As a result: American cattle prices fell by 20 percent; some predict beef exports will fall by 90 percent from 2003 to 2004; and more than 40 foreign countries have instituted bans on American beef, most of which will not be lifted in the near future. This fallout resulted from the infection of only two cows.

In the beginning of February, a version of the avian influenza, a disease sweeping through Southeast Asian poultry that has killed at least 22 people to date, was discovered on two Delaware chicken farms. It also surfaced in New Jersey and Pennsylvania, and a far more contagious strain was later reported in Texas. While the two strains found in these States carry no know risk to humans, this discovery illustrates how easily an animal-borne disease can break out in the United States. Only four farms and one live chicken market have tested positive for the disease. Yet this discovery resulted in the slaughter of over 92,000 chickens in the U.S. to date and a ban on American poultry exports in a number of Asian countries and the European Union.

We should learn two things from these recent outbreaks: No. 1, the cost to the agriculture community for even a small outbreak is high, and, No. 2, we must be prepared for the unexpected.

While the emergence of mad cow and the avian flu in American agriculture has been detrimental, it has not come close to causing the amount of damage a larger outbreak could create.

Imagine if either of these diseases spread across the Nation instead of being contained to just a few farms.

Or worse, imagine if the strain of the avian flu that is currently claiming human lives in Asia was found in the United States.

In these scenarios, the outbreak would have been far more difficult to contain and much more costly to our Nation.

A 1994 Department of Agriculture study said that if a foreign animal disease became entrenched in the United States, it would cost the agriculture industry at least $5.4 billion. A 2002 report by the National Defense University predicted that this figure would be three to fives times greater today. On a smaller scale, an outbreak that only penetrated 10 farms could have as much as a $2 billion economic impact.

Earlier this month, the President released Homeland Security Presidential Directive 9, HSPD–9, aimed at addressing many of these concerns. HSPD–9 is a great first step. It signals the administration is aware of the vulnerability in our agriculture sector and considers this to be a homeland security priority.

Under HSPD–9, the President directed the Department of Homeland Security to ensure the execution of a number of much needed security measures, including the following: Develop surveillance and monitoring systems for animal and plant disease and the food supply that provide early detection of poisonous agents; develop nationwide laboratory networks for food, veterinary, and plant health that ensures communication and coordination between related facilities; and develop a National Veterinary Stockpile that contains enough vaccine and antiviral products to respond to the most damaging animal diseases.

But the President's initiative does not go far enough because it fails to address a number of serious shortcomings with the current governmental response to agriculture security, such as: Lack of communication between Federal agencies; insufficient coordination with, and funding for, State and local officials; inadequate international collaboration; and the impeding nature of some State and local laws to effective response plans.

To address these many concerns, I introduced two bills, S. 427, the Agriculture Security Assistance Act, and S. 430, the Agriculture Security Preparedness Act, to increase the coordination in confronting the threat to America's agriculture industry and provide the needed resources. My legislation provides for more targeted State and local funding and a better-coordinated Federal system.

The Agriculture Security Assistance Act would assist States and communities in responding to threats to the agriculture industry by authorizing funds for: Animal health professionals to participate in community emergency planning activities to assist farmers in strengthening their defenses against a terrorist threat; a biosecurity grant program for farmers and ranchers to provide needed funding to better secure their properties; and the use of sophisticated remote sensing and computer modeling approaches to agricultural diseases.

The Agriculture Security Preparedness Act would enable better interagency coordination within the Federal Government by: Establishing senior level liaisons in the Departments of Homeland Security, DHS, and Health and Human Services to coordinate with the Department of Agriculture, USDA, and all other relevant agencies on agricultural disease emergency management and response; requiring DHS and USDA to work with the Department of Transportation to address the risks associated with transporting animals, plants, and people between and around farms; requiring the Attorney General to conduct a review of relevant Federal, State, and local laws to determine if they facilitate or impede agricultural security; and directing the State Department to enter into mutual assistance agreements with foreign governments to facilitate the share of resources and knowledge of foreign animal diseases.

Over 30 Federal agencies have jurisdiction over some part of the response process in the event of a breach of agricultural security. In a report on the United State's preparedness for responding to animal-borne diseases issued in August 2003, Trust for America's Health, a nonprofit, nonpartisan organization founded to raise the profile of public health issues, stated that, ''The U.S. is left with a myriad of bureaucratic jurisdictions that respond to various aspects of the diseases, with little coordination and no clear plan for communicating with the public about the health threats posed by animal-borne diseases.'' Protecting America's agriculture and its citizens requires Federal agencies to know who is responsible for what portion of the prevention and response to an attack on our agriculture.

State and local officials, and the communities they serve, are the front