

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 under Section 407(a)2 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. The party filing a petition for review shall serve a copy on the opposing party or its representative.

#### 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 7.16 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. The Board or the Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion.

(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:

(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 Informal resolutions and settlement agreements.*

(a) 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.

(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.

#### *§ 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 \_\_\_\_\_ day of \_\_\_\_\_, 1995.

R. Gaull Silberman,

*Executive Director, Office of Compliance.*

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 3:32 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 37. Concurrent resolution directing the Clerk of the House of Representatives to make technical changes in the enrollment of the bill (H.R. 2539) entitled "An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

#### ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 5:57 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 1655. An act to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

At 6:58 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2539. An act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulations of transportation and for other purposes.

#### ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker of the House, was signed on today, December 22, by the President pro tempore (Mr. THURMOND):

H.R. 1530. An act to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes.

#### MEASURES PLACED ON THE CALENDAR

The following measures were read the second time and placed on the calendar:

S. 1500. A bill to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, and for other purposes.

H. J. Res. 134. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 509. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with the town of Grand Lake, Colorado, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park (Rept. No. 104-199).

H.R. 562. A bill to modify the boundaries of Walnut Canyon National Monument in the State of Arizona (Rept. No. 104-199).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 1296. A bill to provide for the Administration of certain Presidio properties at minimal cost to the Federal taxpayer.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 605. A bill to establish a uniform and more efficient Federal process for protecting

property owners' rights guaranteed by the fifth amendment.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Anthony Cecil Eden Quainton, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Director General of the Foreign Service.

Eric James Boswell, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State.

Joseph Lane Kirkland, of the District of Columbia, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Jeanne Moutoussamy-Ashe, of New York, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Tom Lantos, of California, to be a Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Toby Roth, of Wisconsin, to be a Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Rita Derrick Hayes, of Maryland, for the rank of Ambassador during her tenure of service as Chief Textile Negotiator.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COHEN (for himself and Mr. NUNN):

S. 1501. A bill to amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes; to the Committee on the Judiciary.

By Mrs. HUTCHISON (for herself and Mr. BREAUX):

S. 1502. A bill to amend the Tariff Act of 1930 to provide that the requirements relating to marking imported articles and containers not apply to spice products, coffee, or tea; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. DOLE, Mr. NICKLES, Mr. MCCAIN, Mr. GRASSLEY, Mr. THURMOND, Mr. KYL, Mr. D'AMATO, Mr. ABRAHAM, and Mrs. FEINSTEIN):

S. 1503. A bill to control crime by mandatory victim restitution, and for other purposes; to the Committee on the Judiciary.

By Mr. ABRAHAM:

S. 1504. A bill to control crime by mandatory victim restitution; to the Committee on the Judiciary.

By Mr. LOTT (for himself, Mr. BREAUX, and Mrs. HUTCHISON):

S. 1505. A bill to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ABRAHAM (for himself, Mr. LEVIN, Mr. ASHCROFT, Mr. COATS, Mr. NICKLES, and Mr. SANTORUM):

S. 1506. A bill to provide for a reduction in regulatory costs by maintaining Federal Average fuel economy standards applicable to automobiles in effect at current levels until changed by law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. THURMOND, and Mr. KENNEDY):

S. 1507. A bill to provide for the extension of the Parole Commission to oversee cases of prisoners sentenced under prior law, to reduce the size of the Parole Commission, and for other purposes; considered and passed.

By Mr. DOLE (for himself, Mr. WARNER, and Mr. STEVENS):

S. 1508. A bill to assure that all federal employees work and are paid; considered and passed.

By Mr. DASCHLE (for himself and Mr. PRESSLER):

S. 1509. A bill to amend the Impact Aid program to provide for hold-harmless with respect to amounts for payments relating to the Federal acquisition of real property, to permit certain local educational agencies to apply for increased payments for fiscal year 1994 under the Impact Aid program, and to amend the Impact Aid program to make a technical correction with respect to maximum payments for certain heavily impacted local educational agencies; considered and passed.

By Mr. WARNER:

S. 1510. A bill to designate the United States Courthouse in Washington, District of Columbia, as the "E. Barrett Prettyman United States Courthouse", and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S.J. Res. 45. A joint resolution proposing an amendment to the Constitution of the United States in order to ensure that private persons and groups are not denied benefits or otherwise discriminated against by the United States or any of the several States on account of religious expression, belief, or identity; to the Committee on the Judiciary.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ABRAHAM (for himself, Mr. SIMON, Mr. GRAHAM, and Mr. KENNEDY):

S. Res. 202. A resolution concerning the ban on the use of United States passports for travel to Lebanon; to the Committee on Foreign Relations.

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 203. A resolution to authorize testimony by Senate employee and representation by Senate Legal Counsel; considered and agreed to.

S. Res. 204. A resolution to authorize representation by Senate Legal Counsel, considered and agreed to.

S. Res. 205. A resolution to authorize testimony by Senate employees and representation by Senate Legal Counsel; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COHEN (for himself and Mr. NUNN):

S. 1501. A bill to amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes; to the Committee on the Judiciary.

THE PROTECTING CLASS ACTION PLAINTIFFS ACT OF 1995

Mr. COHEN. Mr. President, today I am introducing the Protecting Class Action Plaintiffs Act of 1995. This legislation is necessary to address a troubling number of instances where class action lawsuits have been filed on behalf of thousands, and in some cases, millions of Americans, but the suits have been settled in ways that do not promote the best interest of the plaintiffs.

A class action is a lawsuit in which an attorney not only represents an individual plaintiff, but in addition, the suit seeks relief for all those individuals who have suffered an injury similar to the plaintiff. For example, a suit brought against a pharmaceutical company by a person suffering from the side effects of a drug, can, if the court approves it as a class action, be expanded to cover all individuals who used that drug.

More often than not, these suits are settled. Settlement agreements provide monetary and other relief to class Members, protect defendants from future lawsuits, and stipulate how the plaintiffs' attorneys will be paid.

All class members are notified of the terms of the settlement and given the opportunity to exclude themselves from the class action if they do not want to be bound by the agreement. All class action settlements must be approved by a court.

Although the class action is an important part of our civil justice system, it is fraught with difficulties. The primary problem is that the client in a class action is a diffuse group of thousands of individuals scattered across the country, that is incapable of exercising meaningful control over the litigation. While in theory the class action lawyers must be responsive to their clients, in practice, the lawyers control all aspects of the litigation.

Moreover, when a class action is settled, the amount of the attorneys' fee, is negotiated between the plaintiffs' lawyers and the defendants. Yet, in most cases, the fee is paid by the class members—the only party that does not have a seat at the bargaining table.

In addition, class actions are now being used by defendants as a tool to limit their future liabilities. Class actions are being settled that cover all individuals exposed to a particular substance but whose injuries have not yet manifested themselves. As Prof. John Coffee of the Columbia Law School has written, "the class action is providing a means by which unsuspecting future