

The coverage of each section of the act is determined by provisions of the section itself. The coverage provisions of each section differ because the policy considerations differ in relation to the subject matter covered. Therefore the coverage of the act must be determined by examining the provisions of each section; this is done in the following comparisons.

2. *Comparison of S. 1664 with sections 4, 5, 6, and 7 of the APA*

The definitions which determine the substantive coverage of S. 1664 are section 3(a), "Administrative program" and 3(c), "Administrative procedure." The effect of each of these is discussed below.

a. *Section 3(a), "Administrative program."*—As used in S. 1664, "Administrative program" is defined largely by reference to the Administrative Procedure Act itself.

Subject to exclusions later noted, "administrative program" is defined to include any Federal function which involves determination of rights, privileges, and obligations of private persons through "rule making" and "adjudication," as defined in section 2 of the act. These references to the APA make clear that the terms are used with identical meanings in S. 1664 and the APA, and also that both the bill and the act start from an inclusive coverage of agencies having rulemaking and adjudicatory functions, even though the terms, standing alone, do not determine the coverage in either case because of subsequent provisions.

Likewise the exclusions from S. 1664 are generally spelled out by reference to exclusions from the relevant sections of the APA, as follows:

(1) *Item 3(a)(1).*—Any "function" or "matter" excluded by items (1) and (2) of section 4 of the APA. "rulemaking," is, by item 3(a)(1), excluded entirely from S. 1664 unless it involves some proceeding or decision making subject to the procedural requirements of sections 7 and 8 of the act or it involves the imposition of penalties on private persons through agency action, not subject to sections 7 and 8. Any matter subject to sections 7 and 8 and the imposition of any penalty on private persons through agency action alone is within the purview of the Conference. Therefore, through the provisions of 3(a)(1) of S. 1664, the coverage of the bill with respect to "function" or "matter," as those terms are used in section 4 of the APA, is kept consistent with the coverage of section 4 (rulemaking), section 5 (adjudication), section 7 (hearings), and section 8 (decisions) of the APA. (This is done in a single item for simplicity in drafting and interpretation of the bill.)

(2) *Item 3(a)(2).*—Any matter excluded from the coverage of the APA by section 5 (1), (3), (5), and (6) is excluded from the coverage of S. 1664 by item 3(a)(2). This makes section 5 of the act and the bill consistent in coverage in these respects, since any personnel matter, excluded by 5(2) of the act, and military, naval, or foreign affairs functions, excluded by 5(4) of the act, are likewise excluded from S. 1664 by the provisions of 3(a)(1), discussed above.

It should be noted, however, that the effective coverage of section 3(a) of S. 1664 is broader than the effective coverage of sections 4 and 5 of the APA in a number of respects:

(1) Under the provisions of section 4(a) of the act certain prescribed procedures apply to rulemaking only when a substantive statute requires a hearing, and section 4(b) of the act invokes the procedural requirements of sections 7 and 8 only where agency rules are required by a substantive statute to be made on the record after opportunity for an agency hearing. Under the provisions of section 5 of the act the procedures prescribed by that section apply only when a substantive statute requires that an agency determination be based on the record after opportunity for an agency hearing. The coverage of S. 1664 is not thus limited by reference to the hearing provisions of other statutes.

(2) S. 1664 also covers any proceedings and adjudicatory determinations subject to the procedural requirements of sections 7 and 8 of the act through court decisions in specific cases, as well as those covered by sections 4 and 5 of the APA.

In addition, S. 1664 covers any instance of adjudication in which an agency may impose penalties on private persons through agency action not subject to sections 7 and 8 of the APA. In this respect the coverage of S. 1664 is broader than any of the APA sections here being compared.