

National Railroad Adjustment Board and the Railroad Retirement Board; courts martial and military commissions; and military or naval authority exercised in the field in time of war or in occupied territory.

These exclusions carry over to S. 1664 through the definitions of "rule-making" and "adjudication," as used in section 3(a).

b. *Exclusions based on section 4 of the APA (rulemaking).*—Exclusions from section 4 of the APA (rulemaking) and from all of S. 1664 except as specified in 3(a) are (1) any military, naval, or foreign affairs function, or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(1) Military matters: Legislative history makes clear that the words "military or naval affairs" are not to be equated with the War Department or the Navy Department. Hence the civil functions of the Corps of Engineers, which include regulatory functions related to navigable waters, for example, would not be excluded as a military matter.

(2) Foreign affairs: "Foreign affairs" means those "affairs" which so affect relations with foreign governments that, for example, public rulemaking would clearly provoke definitely undesirable consequences." The Attorney General's Manual indicates the exemption is "applicable to most functions of the State Department and foreign affairs functions of other agencies." Exceptions would be matters not importantly affecting relations with other countries; this would seem to include most matters relating to passports or citizenship, for example, now handled by review boards created without express statutory authorization.

(3) Agency management or personnel: If a matter is solely the concern of the agency proper or is concerned with the internal management of the executive branch of the Federal Government, and therefore does not affect members of the public to any extent, it is excluded. For example:

(a) The Attorney General's Manual says "Most functions of the Bureau of the Budget." We can think of no exceptions.

(b) Interdepartmental committees established by the President for handling internal management problems.

(c) An agency's internal personnel and budget procedures, such as rules for vacation, leaves of absence, travel, etc.

(d) Functions of the Civil Service Commission (except for sec. 3, "Public Information") and of other agencies with respect to the administration of special personnel systems.

(4) Public property: Examples of matters excluded are:

(a) The sale or lease of public lands or of mineral, timber, or grazing rights;

(b) Management of ships by the Maritime Commission;

(c) Management of TVA properties;

(d) Management of the national forests;

(e) Actions affecting Indian lands;

(f) Public buildings management.

(5) Loans: Examples of matters excluded are:

(a) Loans by any Federal agency, such as Small Business Administration, Housing and Home Finance Agency, Commodity Credit Corporation, and the Farm Credit Administration.

(b) Loan guarantees, such as those of the Federal Housing Authority and the Veterans' Administration.

(6) Grants: Examples are:

(a) Subsidy programs, such as those in the aviation, maritime, and commercial fishing industries.

(b) All grant-in-aid programs, regardless of recipient.

(7) Benefits:

(a) Veterans' benefits.

(b) Federal employees' benefits of all kinds.

(c) OASI benefits up to the point where need for a formal hearing arises; hearings are subject to sections 7 and 8 through the procedural requirements of the Social Security Act.

(8) Contracts: Entirely excluded, except for debarment under the Walsh-Healey and Bacon-Davis Acts, where formal hearings are required.

c. *Exclusions based on section 5 of the APA (adjudication).*—

(1) Matters subject to a subsequent trial de novo in any court:

(a) Applies chiefly to matters subject to trial de novo in the U.S. Court of Claims, the U.S. Customs Court, the U.S. Court of Customs and Patent