

Deputy Attorney General, the Administrative Assistant Attorney General, and the heads of the Department's operating units. These directives cover the whole spectrum of "housekeeping" functions, including budget, fiscal, and accounting procedures, personnel matters, property administration, operational instructions, and so forth. In some cases, rules relating to matters of internal management have been published. See, for example, 28 C.F.R. part 15 (defense suits against Federal employees arising out of their operation of motor vehicles), part 42 (equal employment opportunity policy and procedure), part 44 (employee-management cooperation in the Department), and part 46 (employee grievance procedure), even though such rules govern only Federal agencies and employees. In most instances, such rules have not been published because they are of no interest to the general public.

Explanation.—In many instances, directives issued by the Department are not "rules" within the meaning of APA section 2(c), since they do not "implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements" of the Department. Instead, as in the case of the directives referred to in 9, above, they are merely instructions to staff.

11. Question. What is your agency's definition of "official record" as used in section 3(c) of the APA?

Answer. The "Attorney General's Manual on the Administrative Procedure Act," 1947, defines "official record" as follows (at pp. 24-25):

* * * In general, it may be stated that matters of official record will include (a) applications, registrations, petitions, reports, and returns filed by members of the public with the agency pursuant to statute or the agency's rules, and (b) all documents embodying agency actions, such as orders, rules, and licenses. In formal proceedings, the pleadings, transcripts of testimony, exhibits, and all documents received in evidence or made a part of the record are 'matters of official record.'

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The great mass of material relating to the internal operation of an agency is not a matter of official record. For example, intra-agency memorandums and reports prepared by agency employees for use within the agency are not official records since they merely reflect the research and analysis preliminary to official agency action. Intra-agency reports of investigations are, in general, not matters of official record; * * *.

APPENDIX

DOCUMENTS ISSUED BY THE DEPARTMENT OF JUSTICE IMPLEMENTING SECTION 3 OF THE ADMINISTRATIVE PROCEDURE ACT

1. Order 3695, supplement 7, December 21, 1948 (public inspection of registration statements of certain organizations carrying on activities within the United States), 28 CFR 10.10.
2. Order No. 3229 (revised), January 13, 1953 (subpena of information from the files of the Department of Justice (superseded by order No. 260-62, listed below), 18 F.R. 1368.
3. Order No. 3464, supplement No. 4 (revised), January 13, 1953 (release of certain information from the files upon specific authorization of the Attorney General only).
4. Memorandum of January 13, 1953; authorization under order No. 3464, supplement No. 4 (revised), (delegating to all attorneys of the Department of Justice in charge of litigation authority to reveal information from Department files to the extent necessary to discharge their duties).
5. Order No. 116-56, May 15, 1956 (cooperation with congressional committees).
6. Order No. 124-56, August 6, 1956 (registration of persons having knowledge of foreign espionage or sabotage and public examination of registration statements), 28 CFR 12.40 and 12.41.
7. Order No. 138-56, December 13, 1956 (registration of foreign agents and public examination of registration statements), 28 CFR 5.600 and 5.601.
8. Memo No. 243 to all U.S. attorneys, January 31, 1958 (production of statements and reports of witnesses in criminal cases under the Jencks law).
9. Memo No. 276 to all U.S. attorneys, March 24, 1960 (disclosure of information in FBI reports to Federal officials).
10. Order No. 246-61, June 29, 1961 (consent judgment policy), 26 F.R. 6026.
11. Order No. 250-61, October 3, 1961 (registration of Communist organizations and certain members thereof and public inspection of registers), 26 F.R. 9509.