

information section" in a statute concerned primarily with procedural requirements for "rule making" and "adjudication" is uncertainty concerning the meaning of terms and requirements in section 3 and the extent to which section 3 should be construed in the light of other sections of the Administrative Procedure Act, e.g., section 4: "Rule Making" and section 5: "Adjudications."

Section 3(a)(3) lays down requirements for publication of "substantive rules adopted as authorized by law." The act does not define such rules although it contains in section 2 a definition of "rule" which would appear to be broader than "substantive rule." On the other hand, section 4, which lays down requirements for "rule making," narrows the scope of rules involved by expressly excluding from its application various U.S. "functions" (e.g., foreign affairs) and "matters" (e.g., public loans, grants, benefits, and contracts). Section 3(b) lays down publication requirements for "all rules." These rules are presumably different from the "substantive rules" referred to in section 3(a)(3), but the point is not clear and the definition of "substantive rules" remains uncertain.

The meaning of "adjudication" in section 3(b) likewise requires clarification. Section 2 of the act defines "adjudication" very broadly as the Agency process for formulating an order which is defined as the "whole or any part of the final disposition * * * of any agency in any matter other than rule making but includes licensing". Section 3, however, does not refer merely to "adjudication" but to "adjudication of cases" which imports a more limited meaning than "adjudication" as defined in section 2. Section 4 in prescribing the requirements for "adjudication" is even more limited, referring to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing". The exact meaning of "adjudication of cases" in section 3(b) is not clear considered either as standing alone, or in conjunction with other sections of the act, or in the light of AID's operations which are so dissimilar from the proceedings described by the Attorney General as "adjudications."

The definitions contained in the act are not precise. This was recognized by the Attorney General in commenting on a committee print of the bill which became the act:

The definitions given in section 2 are of very broad character. It is believed, however, that this scope of definition will not be found to have any unexpected or unfortunate consequences in particular cases, inasmuch as the operative sections of the act are themselves carefully limited. (Attorney General's Manual on the Administrative Procedure Act, 1947, p. 126.)

The operative sections of the act on "rulemaking" and "adjudications" and their limitations on definitions are not, however, incorporated in section 3 dealing with "public information" and are of questionable utility in clarifying the requirements of section 3.

In summary we think the requirements of section 3 are neither clear nor beyond debate as they apply to the functions of AID and, probably, of other agencies as well. In interpreting these requirements for preparation of replies to the specific questions raised by the subcommittee we have relied upon the Attorney General's Manual on the Administrative Procedure Act (1947), and the Administrative Procedure Act, Legislative History, 79th Congress, 2d session (S. Doc. 248) as well as the language of the act itself. We believe our interpretations are sound, but we recognize that other interpretations could be made.

Question 1. Generally, to what functions of your agency does 5 U.S.C. 1002 apply? Are there any divisions, bureaus, branches or other constituent units of your agency to which the section does not apply?

Answer. We consider that section 3 of the APA (5 U.S.C. 1002) is generally applicable to AID and its functions save those expressly excepted by section 3; namely, functions requiring secrecy in the public interest or matters relating solely to the internal management of the Agency. There are, of course, many activities of the Agency which are not affected by particular parts of section 3. There are no divisions, bureaus, branches, or other constituent units of AID to which section 3 would not apply when they are engaged in functions or matters coming within the purview of section 3.

Question 2. In what official or unofficial publication, and at what intervals, does your agency publish: (a) Descriptions of its central and field organization (see sec. 3(a)(1) of the APA)?

Answer. Descriptions of central field organizations. A four-page summary of AID's organization structure appears in the United States Government Orga-