

Answer. None.

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

Answer. In explaining the meaning of "official record," the Attorney General's Manual on the Administrative Procedure Act (1947), page 24, states:

"The term 'official record' is difficult of definition. 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'.

"Section 3(c) does not purport to define 'official record'. Each agency must examine its functions and the substantive statutes under which it operates to determine which of its materials are to be treated as matters of official record for the purposes of the section. Indicative of the types of records which are considered official records by Congress are maps, plats, or diagrams in the custody of the Secretary of the Interior (5 U.S.C. 488), records, books or papers in the General Land Office (28 U.S.C. 672), and registration statements filed with the Securities and Exchange Commission under the Securities Act (15 U.S.C. 77f).

"The great mass of material relating to the internal operation of an agency is not a matter of official record. For example, intra-agency memoranda 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; in addition they usually involve matters of internal management and, in view of their nature, must commonly be kept confidential."

AID would, of course, include as matters of official record those items listed in the first paragraph of the above statement. Excluded would be items described in the last paragraph. The net effect would be that "matters of official record" within AID for purposes of section 3 of the Administrative Procedure Act comprise (a) papers filed with AID pursuant to statute or AID rules; (b) all documents embodying agency actions such as orders,¹ rules,² and licenses; and (c) the pleadings, transcripts of testimony, and exhibits in formal proceedings. All documents reflecting research and analysis preliminary to official agency action (and these constitute "the great mass of material relating to the internal operation of AID") would not be included as matters of "official record."

REPLY FROM THE COMPTROLLER OF THE CURRENCY

THE COMPTROLLER OF THE CURRENCY,
THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., March 19, 1965.

Hon. JOHN E. MOSS,
Chairman, Foreign Operations and Government Information Subcommittee,
House of Representatives.

DEAR MR. MOSS: Your letter of February 12, 1965, addressed to the Secretary of the Treasury, asks a number of questions concerning the availability of information from Treasury agencies and the extent to which such availability is responsive to the requirements of the Administrative Procedure Act of 1946. This letter responds to such questions insofar as they relate to the Comptroller of the Currency.

1. In general, section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002) applies to the Comptroller of the Currency.

¹ Defined by sec. 2(d) of the act as "the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rulemaking but including licensing."

² Defined by sec. 2(c) of the act as "the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency."

³ Defined by sec. 2(e) of the act as "the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission."