

Answer. Private parties are not required to deal with NASA pursuant to procedures not published in the Federal Register. NASA's programs come into contact with the public most frequently in the area of procurement. All applicable procurement regulations are published in the Federal Register. Other procedures formulated with a view to guidance of the public, e.g., settlement of tort claims, procedures before NASA boards, and patent waiver regulations are also published in the Federal Register. In instances where a member of the public wishes information or otherwise desires to deal with NASA for a purpose not covered by a formally established procedure, his request will be channeled to the cognizant office. However, in no instance will the request of a private individual be refused for failure to comply with a procedure not published in the Federal Register.

Question 9. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the Administrative Procedure Act or other authority?

Answer. The only circumstances under which NASA has refrained from publishing regulations, pursuant to section 3(1) of the Administrative Procedure Act, are those related primarily to the national defense and security.

Question 10. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the Administrative Procedure Act or other authority?

Answer. All regulations established by NASA are published as part of the NASA issuance system regardless of whether they affect only the actions of NASA employees or whether, in addition, they may have a direct effect upon members of the public. Thus, regulations on personnel, financial management, security, administrative operations, programs, etc., are published in the NASA Management Manual or other NASA publications concerned specifically with a particular subject matter. Publication in the Federal Register has heretofore been selective on the ground that the bulk of regulations concerned solely with administrative operations is of little concern to the general public. However, regulations of greater interest to the public or which affect private rights and obligations have been published in the Federal Register, e.g., procurement, tort claims, patent waivers, procedures before NASA boards, real property management, etc.

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

Answer: No guidelines are established in the Administrative Procedure Act for determining what is meant by "official record." However, NASA is subject, along with other agencies, to the statutes governing the disposition of public records which appear in chapter 10 of title 44 of the United States Code. 44 U.S.C. 306 defines "records" to include "all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the U.S. Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein." NASA would apply the same definition to the term "official record" as used in section 3(c) of the Administrative Procedure Act.

Enclosed herewith are two copies of a memorandum by the Administrator, NASA, and a policy directive specifying uniform criteria for the publication of materials within the NASA issuance system. These enclosures do not cover the subject of policies and procedures for the publication of regulations in the Federal Register, which will be the subject of a forthcoming issuance, a copy of which will be forwarded.

Sincerely yours,

RICHARD L. CALLAGHAN,
Assistant Administrator for Legislative Affairs.

REPLY FROM NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., March 15, 1965.

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

DEAR CONGRESSMAN MOSS: I am returning herewith a completed questionnaire on the provisions of 5 U.S.C. 1002 of 1946 as it applies to the organization and procedures of this Agency.

We trust that the information supplied by this Agency will be of use to the subcommittee in its study of Government information. Please call upon us for any additional information or classifications you may require.

Respectfully,

FRANK W. McCULLOCH, *Chairman.*

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. Title 5, United States Code, section 1002 applies to all functions of this Agency. There are no units of this Agency to which the provisions of title 5, United States Code, section 1002 do not apply.

Question 2. In what official or unofficial publication, and at what intervals, does your agency publish (a) Description of its central and field organization (see sec. 3(a) (1) of the Administrative Procedure Act);

Answer. Description of the Board's central and field organizations are published in the Federal Register. As changes are made they are also published in the Federal Register and given general as well as local publicity.

Question 2(b). Statements of the general course and method by which its functions are channeled and determined (see sec. 3(a) (2) of statute);

Answer. The general course and method by which the Board's functions are channeled and determined are issued and published in the Statements of Procedure issued simultaneously with the Board's Rules and Regulations. Such statements and any amendments thereto are also published in the Federal Register.

Question 2(c). Substantive rules adopted as authorized by law (see sec. 3(a) (3) of statute);

Answer. "Substantive rules" as such are not issued by the Board but are contained in the decisions of the Board which are sent to the parties, given general distribution, published in the legal reporting services and published in the bound volumes of Board Decisions.

Question 2(d). Statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public (see sec. 3(a) (3) of statute);

Answer. Statements of general policy or interpretations formulated and adopted by the Board are announced in its published decisions.

Question 2(e). Rules addressed to and served upon named persons in accordance with law (see sec. 3(a) (3) of statute).

Answer. The Board has no policy or requirement for formulating or adopting rules addressed to named persons in accordance with section 3(a) (3) of the Administrative Procedure Act. All changes in the Board's Rules and Regulations and Statements of Procedure are applicable to all parties equally and are published in the Federal Register in accordance with the statute.

Question 3. Please describe the manner in which your agency publishes, or, in accordance with published rule, makes available to public inspection, all final and interim opinions or orders in the adjudication of cases, pursuant to section 3(b) of the Administrative Procedure Act or other authority.

Answer. All Board's decisions in contested unfair labor practice cases (i.e. exceptions filed to interim decisions) and decisions in representation cases which contribute to information respecting Board policies are included in the bound volumes of the Board decisions printed by GPO, and are indexed, digested and published in the Labor Relations Reporter, Commerce Clearing House and Prentice-Hall reporting services. All Trial Examiner Decisions (interim decisions) and Board Decisions in unfair labor practice cases, as well as Board and Regional Director decisions in representation cases are made available to the general public in Washington and/or in the regional offices in which the particular case arises. In Washington, decisions are distributed daily, as issued, to news media and copies are available to the general public in the press room of

the Division of Information. Regional offices make copies available to the public by placing them on a table at or near the entrance to the regional office for a period of approximately 30 days; thereafter, copies are furnished on request.

The Division of Information also issues and distributes a weekly summary of NLRB cases, which includes a digest of every unfair labor practice case decision and order of the Board. Any interested individual or organization may receive the weekly summary upon request. The weekly summary contains the notice that a full text copy of any case summarized may be requested from the Division of Information.

Question 4. In what types of cases does your agency refrain from publishing interim and final opinions or orders where, in the opinion of your agency, good cause requires they be held confidential, pursuant to section 3(b) of the Administrative Procedure Act or other authority?

Answer. This is not applicable since the agency does not classify any of its decisions as confidential.

Question 5. In what circumstances are unpublished opinions and orders cited or used as precedents in other proceedings?

Answer. There are no circumstances in which unpublished Board decisions or orders are cited as precedent for other proceedings.

Question 6. What is the procedure for making available to the general public the records and files, interpretations, and legal opinions of your agency?

Answer. The official records and formal files of this agency are available for public inspection at any time upon request—see section 102.117 of the rules and regulations. We do not have any special issuances of "interpretations and legal opinions" as such, although they may be contained in Board decisions (in which case, see item 3 above).

Question 7. What limitations are placed upon the availability of records and files to the general public, either by statute, rule or practice?

Answer. Limitations placed on the availability of files, records, etc. are set forth in sections 102.117 and 102.118 of the Board's Rules and Regulations (as authorized by 60 Stat. 237, 1946, 5 U.S.C. sec. 1001 et seq.).

Question 8. In what circumstances are private parties dealing with your agency required in any manner to resort to organization or procedure not published in the Federal Register (see sec. 3(a) of the Administrative Procedure Act)?

Answer. None.

Question 9. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the Administrative Procedure Act or other authority?

Answer. None.

Question 10. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the Administrative Procedure Act or other authority?

Answer. None.

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

Answer. The designation of the "official record" as used by this agency is defined in sections 102.45 and 102.68 of the Board's Rules and Regulations as follows:

102.45(b). The charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer, and any amendments thereto, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the trial examiner's decision and exceptions and any cross-exceptions or answering briefs [as provided in 102.46] shall constitute the record in the [unfair labor practice] case.

102.68. The record in the [representation] proceeding shall consist of: the petition, notice of hearing with affidavit of service thereof, motions, ruling, orders, the stenographic report of the hearing and of any oral argument before the regional director, stipulations, exhibits, documentary evidence, affidavits of service, depositions, and any briefs or other documents submitted by the parties to the regional director or to the Board, and the decision of the regional director, if any.

REPLY FROM NATIONAL MEDIATION BOARD

NATIONAL MEDIATION BOARD,
Washington, D.C., March 10, 1965.

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

DEAR CONGRESSMAN MOSS: This is in response to your letter of February 12, 1965, requesting information regarding the application of section 3 of the Administrative Procedures Act of 1946 (5 U.S.C. 1002) to the operation of the National Mediation Board.

Section 5 U.S.C. 1002 applies to all functions of this Board. A statement of the operations, organization, and rules of the Board has been printed in the Federal Register. A pamphlet containing the Board's rules as they appear in Code of Federal Register, title 29, chapter X, is available to the public.

In addition, a description of the Board's operations, its organization and method of procedure is printed each year in the Annual Report of the National Mediation Board. Rules and general policy statements are also contained in this report. The report, in addition, summarizes major policy decisions of the Board made during the fiscal year. This report is given wide distribution throughout the industries served by the Board.

Opinions and orders of the Board are not held confidential by the Board; consequently, unpublished orders or opinions are not used as precedents.

The mediation function of the Board in assisting labor and management is such that by its very nature certain information and confidential reports contained in the Board's files are not open for public inspection. Part 1202.15 of the Board's rules outlines the policy and practice of the Board in regard to the non-disclosure of information and confidential mediation files. This part also, in response to your question, 11, indicates the Board's definition of official record.

Files, records and opinions of the Board which result from public hearings conducted in connection with the Board's activities are available without restriction to the general public.

The response to questions 8, 9, and 10 in each instance is none.

Attached are two copies of the Board's rules and the latest annual report.

If additional information on this questionnaire is desired, please contact the undersigned at code 128, extension 5822.

Very truly yours,

THOMAS A. TRACY,
Executive Secretary.

REPLY FROM NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE FOUNDATION,
Washington, D.C., March 16, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your letter of February 12, 1965, in which you request answers to specific questions relating to section 3 of the Administration Procedure Act of 1946 (5 U.S.C. 1002). Our answers are set forth below and are numbered in the same manner as the questions contained in your letter.

1. Insofar as 5 U.S.C. 1002 is applicable to the activities of the National Science Foundation, it applies to the Foundation as a whole. There are no particular units of the Foundation to which the section would not apply.

2 (a) and (b). A description of the organization of the Foundation is contained in the U.S. Government Organization Manual, published annually by the Office of the Federal Register, National Archives and Records Service, General Services Administration. In the 1964-65 edition of the manual this description appears on page 458. An organization chart of the Foundation appears on page 616 of the same volume. In addition, the annual report of the Foundation lists, by name, Foundation personnel in charge of the various offices and divisions of the Foundation, as well as the members of our advisory committees and panels. For example, such information is contained in appendix A of the annual report

of the Foundation for 1964, beginning on page 89. Further discussion of this point appears in item 8, below.

(c). The issuances which we consider to be substantive rules of the Foundation are published in the Federal Register. Thus, in the Federal Register of October 23, 1964, beginning on page 14540, the Foundation published its "Procedures and Criteria for Resolving Questions Involving Moral Character or Loyalty of Applicants for and Holders of National Science Foundation Fellowships." In addition, on December 4, 1964, the Foundation published in the Federal Register, beginning on page 16305, its regulation to effectuate the provisions of title VI of the Civil Rights Act of 1964.

(d). The Foundation has not had occasion to develop statements of general policy or interpretations for the guidance of the public.

(e). This item is not applicable to the Foundation.

3. The Foundation does not have occasion to adjudicate cases or to issue opinions or orders.

4. This is covered by item 3 above.

5. This item is also covered by 3 above.

6. The primary guidelines used by the Foundation for making available to the general public the records and files of the Foundation are set forth in a statement of the Federal Council for Science and Technology of February 11, 1963, entitled "Statement Relating to the Release of Information on Grants or Grant-type Contracts Made in Support of Non-Classified Basic Scientific Research at Non-profit Institutions," as amplified by the Foundation's letter to you of April 5, 1963. As indicated in that letter, a statement has been included in the Foundation's grant booklet pointing out that proposals submitted to the Foundation may be made publicly available. In addition, the procedures set forth in the letter relating to the release of information are being followed by the Foundation. The Foundation does not have occasion to render legal opinions affecting the general public so that the question of the availability of such opinions does not arise.

7. In general, the answer here would appear to be covered by the comments set forth in item 6. There are no limitations imposed upon such availability, either by statute, rule, or practice, except those limitations imposed by statutes of general applicability to Federal agencies as, for example, 18 U.S.C. 1905, relating to disclosure of confidential information by Federal offices or employees.

8. As indicated earlier, some organizational information about the Foundation is presently published in two places. In 1951, such information also was published in the "Notice" section of the Federal Register. As you may know, notices filed at that time were never codified, although present practice is to do so. Through an oversight, this material was allowed to go out of date. We appreciate your bringing the matter to our attention and are arranging to have organizational information about the Foundation republished in the Register in the near future.

Along with this material we will include the republishing of information relating to fellowships and grant programs of the Foundation, originally published in the Register in 1951 and 1955 but removed from the Register in 1960 because of its need for extensive revision. I understand that it was planned that the material would be updated and republished at that time. Such revision was unfortunately overlooked. In part due, I believe, to organizational changes which were taking place in the Foundation. I might point out, however, that information on Foundation grant and fellowship programs is distributed on an extremely wide basis. For example, announcements of the Foundation's Summer Fellowships for Secondary School Teachers of Science and Mathematics are mailed to every chief State school officer in the United States, to the principals of all secondary schools in the United States and to the presidents, graduate deans and science deans in colleges and universities supporting post-baccalaureate studies in science and mathematics. Furthermore, press releases explaining the program are provided to science and education journals which publish this information. In addition, 10,000 or more copies of our brochure on fellowships and traineeships are sent out in response to requests. Appropriately wide distribution is given to announcements and brochures relating to our other programs.

9. In no case has the Foundation refrained from publishing rules because of possible secrecy requirements.

10. In no circumstances has the Foundation refrained from publishing rules on the basis that the matter related solely to internal agency management.

11. The Foundation uses as its definition of "official record" that contained in 44 U.S.C. 366. This is the same definition used in the Federal Records Act of 1950.

The Foundation has not issued any internal regulations or directives to implement 5 U.S.C. 1002. We are enclosing, however, copies of the regulations recently published by the Foundation in the Federal Register, referred to in Item 2(c) above.

I have designated Mr. Charles B. Ruttenberg, Deputy General Counsel of the Foundation, to serve as liaison with the Committee staff in connection with your survey. He may be reached on code 183, extension 7853.

Sincerely yours,

LELAND J. HAWORTH, *Director.*

REPLY FROM RAILROAD RETIREMENT BOARD

RAILROAD RETIREMENT BOARD,
Chicago, Ill., March 11, 1965.

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

DEAR MR. MOSS: This is in reply to your letter of February 12, 1965, inquiring about the Board's operations under section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002), indicated as having been labeled the "public information section."

I should explain, at the outset, that the Board administers a retirement system for the payment of pensions and retirement and disability annuities to railroad employees, annuities to their spouses, and annuities or other benefits to their survivors; and a correlated unemployment insurance—employment service system for paying unemployment, maternity, and sickness benefits to, and securing the reemployment of, unemployed railroad workers. In its administration of these programs, the Board has the wage and service records of millions of railroad workers as well as hundreds of thousands of records of a personal nature covering such workers and their families, including reports of medical examinations.

With respect to the specific questions set forth in your letter:

1. Section 3 of the Administrative Procedure Act (5 U.S.C. 1002) applies to the Board's administration of the Railroad Retirement Act (45 U.S.C. 228a-228z) and the Railroad Unemployment Insurance Act (45 U.S.C. 351-367), which provide the above-described benefits relating to employees in the railroad industry. There are no divisions, bureaus, branches, or other constituent units to which this section does not apply.

2. (a) Descriptions of the Board's central and field organization are published in the Federal Register. These are ordinarily published annually in the special issue of the Federal Register entitled "U.S. Government Organization Manual," although changes of sufficient importance and effect might be published in a current Federal Register when adopted and also carried into the next publication of the manual.

(b) Statements of the general course and methods by which the Board's functions are channeled and determined are published in the Federal Register and codified in the Code of Federal Regulations (see 20 CFR 200.1). Substantial changes are published currently in the Federal Register, and the entire subject matter is reviewed and revised annually in connection with the supplementation of the Code of Federal Regulations. A new part, covering the Board's plan of operation during a national emergency, was recently published in the Federal Register (29 F.R. 15864, 16322); when printed in the Code of Federal Regulations, it will be part 395 (20 CFR 395).

(c) and (d) Substantive rules adopted as authorized by law, and statements of general policy or interpretations formulated or adopted by the Board for the guidance of the public, are published in the Federal Register and codified in the Code of Federal Regulations (see 20 CFR 201-370). Any changes in these regulations are published currently in the Federal Register and carried into the Code of Federal Regulations annually. Most of the regulations, other than those relating to procedures and appeals within the Board, consist of interpretations

of the acts which the Board administers. Examples of substantive rules may be found, however, in sections 250.1-250.6 and 345 of the regulations (20 CFR 250.1-250.6 and 345).

(e) Although there may have been a few rare instances, we are not aware of any Board rules having been addressed to and served upon named persons in accordance with law; if there have been any such rules, they have not been published. Rules of this nature might possibly be issued under sections 250.1-250.6 of the regulations (20 CFR 250.1-250.6), but in practice general instructions to all employers have been released, together with copies of the Board's regulations, and individual formal demands for particular compliance have not been necessary. (Copies of such instructions accompany the copies of the regulations we are submitting in compliance with the final paragraph of your letter.)

3 and 4. For the reasons mentioned in the answer to question 7, below, the Board does not publish its final orders in the adjudication of individual claims for benefits under the acts it administers. The legal principles forming the bases for its decisions are published in the regulations, and with respect to specific points of general interest legal principles are summarized in the administrative rulings and court review section of the Board's annual report, in the Board's monthly review in earlier years, and in Railroad Retirement Board—legal opinions with respect to some recent years.

5. Unpublished opinions and orders of the Board are not cited or used as precedents in other proceedings.

6. In addition to the methods noted in answer to question 3, above, opinions on particular questions are furnished to any interested persons upon request, the requirements noted in answer 7, below, having first been complied with, and the Board's records and files are available to inspection subject to the same requirements.

7. The availability of records and files to the general public is limited by the prohibition of disclosures from Board records appearing in section 12 (d) and (n) of the Railroad Unemployment Insurance Act (45 U.S.C. 362 (d) and (n)) and section 262.16 of the Board's regulations (20 CFR 262.16). The information and records not available to the public upon request are those which identify the individuals concerned and which consist either of medical information or any other information if its disclosure would not be in the interest of the individual. In addition, records (usually medical) received from the Social Security Agency or the Veterans' Administration are subject to any limitation upon disclosure imposed by the acts administered by those agencies (5 U.S.C. 139b(a)).

8. Private parties dealing with the Board are not required in any manner to resort to organization or procedure not published in the Federal Register. This may be qualified by noting that in infrequent cases the parties request the Board to vary its procedures, particularly appeal procedures, or the Board may suggest such a variance subject to agreement by the parties. It may also be noted that the instructions to employers, referred to in answer 2(e), above, do not appear in the Federal Register, but these are designed primarily to assist employers in complying with the requirements of the published regulations.

9. The Board has had no occasion to refrain from published rules involving any function of the United States requiring secrecy in the public interest, whether pursuant to section 3(1) of the Administrative Procedure Act or other authority.

10. Rules governing personnel activities and instructions to employees, administrative manuals, operating manuals, etc., concerning the manner in which the employees are to carry on their functions, are the types of materials relating solely to internal agency management which, pursuant to section 3(2) of the Administrative Procedure Act, are not published by the Board.

11. The Board's records and files maintained in the administration of the Railroad Retirement and Railroad Unemployment Insurance Acts are considered to be within the official record designation used in section 3(c) of the Administrative Procedure Act.

In compliance with the request in the final paragraph of your letter, I am transmitting herewith two copies of the Board's regulations (20 CFR 200-395) and the accompanying instructions to employers, together with two copies of the statement in the U.S. Government Organization Manual describing the central and field organization of the Board.

Sincerely yours,

HOWARD W. HABERMAYER, *Chairman.*

REPLY FROM THE RENEGOTIATION BOARD

THE RENEGOTIATION BOARD,
Washington, D.C., March 9, 1965.

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

DEAR MR. CHAIRMAN: This is in response to your letter dated February 12, 1965, requesting information on the relation of section 3 of the Administrative Procedure Act (5 U.S.C. 1002) to the activities of this agency. The paragraphs that follow are numbered to correspond with the questions in your letter.

1. The only functions of the Renegotiation Board are those delineated in the Renegotiation Act of 1951. Section 111 excludes such functions from the operation of the Administrative Procedure Act, except as to the requirements of section 3 thereof. Thus, section 3 applies to all the functions of this agency. There are no divisions, bureaus, branches, or other constituent units of this agency to which the section does not apply.

2. (a) Official descriptions of the central and field organization of the Board are published in the Federal Register in the form of Renegotiation Board Regulations from time to time, as changes are made, and annually in the U.S. Government Organization Manual. Publication thereof is also made in the Renegotiation Board Regulations manual printed by the Government Printing Office and available to the general public by subscription. The central and field organization is also described in a pamphlet entitled "Renegotiation—What It Is, How It Works," available to the general public.

(b) Statements of the general course and method by which the functions of the Board are channeled and determined are published officially in the Federal Register in the form of Renegotiation Board Regulations, as adopted from time to time. Publication thereof is also made in the manual of such regulations, referred to in (a) above. Explanations thereof are also furnished to the general public in a booklet entitled "Instructions for Filing Renegotiation Reports" and the pamphlet entitled "Renegotiation—What It Is, How It Works."

(c) Substantive rules adopted as authorized by law are published officially in the form of Renegotiation Board Regulations, as adopted from time to time. Publication is also made in the manual of such regulations.

(d) Statements of general policy and interpretations formulated and adopted by the Board for the guidance of the public are published officially in the Federal Register in the form of Renegotiation Board Regulations, as adopted from time to time. They are also published in the manual of such regulations. Additional guidance to the public is issued from time to time in the form of renegotiation rulings and renegotiation bulletins.

(e) The Board does not publish its orders to or agreements with contractors for the elimination of excessive profits (see 3 and 4, below).

3. The extent to which the Board makes its records available for public inspection is described in its regulations, as follows:

(a) Section 1480.4(a) of the Renegotiation Board Regulations provides:

(a) *The public.*—Upon request to the Secretary of The Renegotiation Board, Washington, D.C., any person may inspect during usual business hours, at the office of the Secretary, a copy of the transcript of any official Board actions granting exemptions of contracts from renegotiation under the act, except in cases where such Board action is of a nature required to be held confidential for good cause. The purpose of this paragraph (a) is to make available for public inspection Board actions on applications for exemptions, when such actions are not issued as regulations and are not required to be held confidential for good cause.

(b) Section 1480.8 of the Renegotiation Board Regulations provides:

Opinions and orders.—Except as authorized in section 1480.4(a), opinions and orders will not be published or made available to the public under section 3(b) of the Administrative Procedure Act, inasmuch as they are regarded as confidential for good cause shown, by reason of the confidential data furnished by contractors and relating to their business, and included therein. For the purposes of this paragraph, the term "opinion" includes a statement furnished pursuant to part 1477 of this subchapter and the term "order" includes an agreement to eliminate excessive profits, as well as a unilateral determination. Opinions and orders are not cited as precedents in any renegotiation proceedings.

4. The Board conducts only one type of case. All of its cases are proceedings to determine and eliminate excessive profits, if any, under the Renegotiation Act of 1951, as amended. Its practice with respect to the publication of interim and final opinions or orders is described in paragraph 3 above.

5. Opinions and orders of the Board are not cited, nor are they used, as controlling precedents in any renegotiation proceedings (see RBR 1480.8, quoted in paragraph 3 above, and RBR 1460.2(d)).

6. RBR 1480.4(d) provides that persons properly and directly concerned with any renegotiation proceeding, or their duly authorized representatives, may apply in writing to the Secretary to the Renegotiation Board for access to records of such proceeding, and that access will be granted at times and places which are convenient in the light of the physical location of the records to which access is sought. The procedure for obtaining access to actions of the Board granting exemptions of contracts from renegotiation is described in paragraph 3 above. Interpretations and legal opinions of the Board on particular matters are made available to the general public by the issuance of renegotiation rulings and renegotiation bulletins.

7. Part 1480 of the Renegotiation Board Regulations provides that renegotiation agreements, reports, records, files, correspondence, memorandums, and all other data, documents, and material which have been transferred to, or have been prepared by, the Board in connection with any renegotiation proceeding are not to be distributed, nor are their contents to be revealed, to any person other than as provided in such regulation or as may be prescribed by the Board in any specific instance. Limitations are imposed by the regulation upon the availability of the Board's records and files to the general public as follows:

(a) Pursuant to section 55(f)(1) of the Internal Revenue Code, access is not afforded to copies of Federal tax returns, revenue agents' reports, or other Federal tax data in the custody of the Board.

(b) Access is not afforded by the Board to any information or material classified as "Top Secret," or "Secret" or "Confidential" within the meanings assigned to those terms in Executive Order 10501 dated November 5, 1953 (18 F.R. 7049), or to any "restricted data" as that term is defined in the Atomic Energy Act of 1946, as amended.

(c) Pursuant to 18 U.S.C. 1905, access is not afforded to information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any contractor.

(d) When access is granted to "persons properly and directly concerned" in any renegotiation proceedings, pursuant to RBR 1480.4(d) (referred to in paragraph 6 above), this does not include access to "memoranda and reports prepared by Government employees for use within the Government or to any other material which, in the opinion of the Board, should be held confidential for good cause."

8. Private parties dealing with this agency are not required to resort to organization or procedure not published in the Federal Register.

9. Section 106(d)(4) of the Renegotiation Act of 1951 authorizes the Board to exempt from some or all of the provisions of the act, any contract or subcontract the renegotiation of which would jeopardize secrecy required in the public interest. Contracts and subcontracts exempted pursuant to this provision are not available for inspection under RBR 1480.4(a), quoted in paragraph 3 above.

10. Internal management instructions and directives of the Board are not available to the general public. These are of three types, as follows:

(a) *General orders.*—These are directives of the Board with respect to internal procedures relating to the operation of the renegotiation process.

(b) *Operational bulletins.*—These contain technical instructions by staff units of the Board to their own personnel.

(c) *Administrative orders.*—These provide instructions and procedures on matters not related to the renegotiation process, such as personnel, property, and funds.

11. The term "official record," as used in section 3(c) of the Administrative Procedure Act, in relation to this agency, is considered to mean all agreements, orders, reports, records, files, correspondence, memoranda and other data, documents or material relating to any renegotiation proceeding.

Two copies of the Board's regulations, as amended to date, are furnished herewith.

Sincerely yours,

LAWRENCE E. HARTWIG, *Chairman.*

REPLY FROM SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,
Washington, March 17, 1965.

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

DEAR MR. CHAIRMAN: This is in response to the inquiries in your letter of February 12, 1965, concerning the operation of section 3 of the Administrative Procedure Act, 5 U.S.C. 1002, with respect to the activities of this Commission. In addition to the answers below, we are providing copies of the Commission's recent comments to the Committee on Government Operations on H.R. 5012, which provide additional information relevant to the subject inquiries.

1. Congress has assigned to this Commission the responsibility of administering the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The Commission's functions under these statutes to which section 3 of the Administrative Procedure Act, 5 U.S.C. 1002, applies include rulemaking, adjudication, and examination of the various filings made with the Commission by private persons such a registration statements relating to public offerings of securities, broker-dealer registrations and reports and issuer reports. The Commission also has certain advisory functions to the courts in corporate reorganizations under chapter X of the Bankruptcy Act; the Commission adopts no substantive rules, opinions, or orders thereunder within the meaning of section 3 of the Administrative Procedure Act.

As shown more fully below and in the attached comment on H.R. 5012, the Commission makes public all of the information required by section 3 to be public and keeps private only materials permitted by that section or other statutes to be nonpublic.

2 (a), (b), (c), and (d). Descriptions of the Commission's central and field organization, statements of the general course and method by which its functions are channeled and determined, substantive rules, statements of general policy, interpretations, and amendments to the foregoing are published in the Federal Register, the Code of Federal Regulations (17 CFR Parts 200-286), and in pamphlet form and as individual releases made available to the public.

Changes in the above-described material are published in the Federal Register promptly upon adoption, are reflected in the supplements to and revisions of the Code of Federal Regulations, and are promptly distributed as individual releases, copies of which are included in pamphlet copies of rules and are also distributed by commercial publishers.

2(e). Pursuant to rule 25(c) of the Commission's Rules of Practice, 17 CFR 201.25(c), all final opinions, orders and rules, including rules that are addressed to and served upon named persons in accordance with law, are released for general public publication except where confidential treatment has for good cause been directed by the Commission. As rule 25(c) provides, copies of such material are published, mailed out on request and made available for public inspection. See attached comment on H.R. 5012 at page 2. Normally rules addressed to named persons take the form of "orders" entered on "opinions" rendered in proceedings conducted under various provisions of the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940. Such opinions, together with the Commission's other opinions, are published for general distribution and in bound volumes.

3. As described in answer 2(e), supra, pursuant to rule 25(c) of the Commission's Rules of Practice 17 CFR 201.25(c), all final opinions and orders are published, except where confidential treatment has for good cause been directed by the Commission. These are widely distributed. Interim opinions and orders are published or made available for public inspection in all except nonpublic proceedings. The Commission maintains public reference rooms where the public may examine all public documents; a detailed description of the material and the manner in which it is made available is published in 17 CFR 200.80.

4. As described in detail in the attached comment on H.R. 5012 at pages 2, 3, and 9, certain proceedings and opinions and orders therein are nonpublic. These include proceedings pursuant to specific statutory provisions requiring confidential treatment of documents filed by members of the public and certain proceedings of a disciplinary nature, where the unfairness of adverse

publicity should charges not be proved appears to outweigh possible disadvantages to the public.

5. The Commission does not cite or use unpublished opinions or orders as precedents in other proceedings.

The Commission's staff renders interpretative and advisory assistance to the public, as described in 17 CFR 202.2. Where there have been numerous interpretations dealing with a particular subject, the Commission sometimes publishes summaries of the views expressed. See answer No. 6, *infra*. On at least one occasion some years ago a brief submitted on behalf of the Commission in litigation referred to a body of such interpretations, even though they had not yet been summarized in a document made publicly available.

6. Public material in the Commission's records and files may be inspected in the Commission's public reference rooms during regular business hours. Copies of such material are sold to any person. Transcripts of public hearings may be purchased by anyone. See 17 CFR 200.80, rule 25 of the Commission's Rules of Practice, 17 CFR 201.25, and answer No. 3, *supra*.

Interpretations and legal opinions are expressed in Commission's decisions and substantive rules and also in briefs filed in courts on the Commission's behalf. When proposed substantive rules are published for public comment, interpretations or legal opinions are occasionally included with the explanation of the proposed rule. As described in answer No. 5, *supra*, and in the attached comment on H.R. 5012 at pages 4 and 6, the Commission's staff renders interpretative and advisory assistance to members to the public, as does the Commission itself on occasion, and summaries of a body of these interpretations are sometimes published for the general public. See, e.g., Statement of the Commission Regarding Limitations of the Availability of So-called "Private Offering Exemption," Securities Act Release No. 4552, November 6, 1962, 27 Fed. Reg 11316. See generally, 17 CFR 211, 231, 241, 251, 261, 271, 276, and 281. Commissioners and senior members of the staff also express their interpretations of statutes and rules in speeches, briefing conferences, law review articles, etc.

7. The past bulk of material contained in this Commission's files is public and the Commission makes every effort to have it readily available to the press and to individual members of the public. With respect to section 3 of the Administrative Procedure Act, we attempt to comply not only with the letter of its provisions but with the spirit thereof, as is shown in answers 2, 3, and 6, *supra*, and in the attached comments on H.R. 5012 at pages 1-2.

We are of the view, however, that certain material in the Commission's files should not be subject to general public scrutiny and limitations on its availability are accordingly imposed. Some material is accorded confidential treatment under certain statutory procedures, as described in the attached comment on H.R. 5012 at pages 2-3. Certain other material is treated as nonpublic to further the usefulness of the advisory assistance provided by the Commission's staff, to protect members of the public from unfair injury and to facilitate free communication among Government officials, all as described in the attached comment at pages 3-9. In addition, the Commission's investigatory files are treated as nonpublic to protect innocent persons, those who provide information concerning possible violations of law and the efficacy of our investigative and prosecutive activities.

8. The Commission does not require private parties dealing with it to resort to organization or procedure not published in the Federal Register.

9. The Commission does not utilize the provision in section 3 of the Administrative Procedure Act that excuses the publication of rules where there is involved a function of the United States requiring secrecy in the public interest.

10. The Commission does not publish its directives to the staff concerning internal agency management relating to such subjects as budgetary matters, travel, personnel administration and building, equipment and supplies management.

11. The materials which are available to the public as being matters of official record within the meaning of section 3(c) of the Administrative Procedure Act are described in answers numbers 3 and 6, *supra*, in rule 25 of the Commission's Rules of Practice, 17 CFR 201.25, and at 17 CFR 200.80. In addition, see the itemization of public materials in the enclosed list which the Commission has prepared and issued to the public entitled "Compilation of Documentary Materials Available in the SEC."

You have also asked us to provide two copies of every regulation, directive, order or other document issued by the Commission to implement 5 U.S.C. 1002. For the most part section 3 of the Administrative Procedure Act merely codified procedures that had already been followed by this Commission. Therefore the

Commission has not found it necessary to issue directives to implement that section's provisions. The classification of types of documents as public or non-public, the procedures under which public material is available to members of the public and related matters are set forth in various pamphlets, entitled "Organization, Procedures and Rules of Practice," at pages 16-18, "Rules of Practice and Rules Relating to Investigations," at pages 16-17 and 23, "United States Securities and Exchange Commission—Its Functions and Activities," at pages 25-30, as well as the aforementioned "Compilation of Documentary Materials Available in the SEC." Two copies of each of the foregoing are included herewith.

Sincerely yours,

BYRON D. WOODSIDE,
Commissioner.

REPLY FROM SELECTIVE SERVICE SYSTEM

NATIONAL HEADQUARTERS,
SELECTIVE SERVICE SYSTEM,
Washington, D.C., March 15, 1965.

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

DEAR MR. CHAIRMAN: The following is presented in response to your letter of February 12, 1965. Two copies of every regulation, directive, order, or other document issued by this agency to implement 5 U.S.C. 1002 are enclosed.

The functions performed by the Selective Service System are excluded from the operation of the Administrative Procedure Act, except as to the requirements of section 3 of such act, by the provisions of section 13(b) of the Universal Military Training and Service Act, as amended. Male persons registered with the Selective Service System are classified as available or not available for military service on the basis of information furnished to local boards by or on behalf of the individual registrants. Registrants are classified by some 4,000 local boards, subject to appeal to State appeal boards, and in some instances to the National Selective Service Appeal Board which acts for the President. The classifying boards do not write opinions concerning their determination of these classifications. There are approximately 30 million men registered with the Selective Service System and over 2 million individual classifications are determined annually by the local boards and appeal boards.

We submit the following answers to the questions asked in the subcommittee's letter. The answers have been given the same numbers as the questions.

1. Generally, section 3 of the Administrative Procedure Act applies to all functions of the Selective Service System with respect to the registration, examination, classification, selection, assignment, delivery for induction, and maintenance of records of the men registered under the Universal Military Training and Service Act, as amended. There are no segments of the System to which section 3 does not apply.

2. (a) Descriptions of the central and field organization of the System are published in the Federal Register as changes occur therein. These are published both in the form of regulations and as a statement of organization. These descriptions are also published annually in the U.S. Government Organization Manual.

(b) Statements of the general course and method by which the functions of the Selective Service System are channeled and determined are published in the same publications and in the same manner as are descriptions of its organization, as explained in 2. (a), above.

(c) Rules and regulations for the administration of the Universal Military Training and Service Act, as amended, and the Selective Service System are prescribed by the President in Executive orders and in proclamations fixing the ages and times for registration. These are published in the Federal Register. Included in such regulations are descriptions of the organization of the System and statements of the general course and methods by which its functions are carried out. The President has delegated to the Director of Selective Service authority to prescribe regulations governing the internal management of the System such as personnel and fiscal matters and the maintenance of its records.

These regulations, when codified, are also published in the Federal Register.

(d) Since its substantive regulations are prescribed by the President, the Selective Service System has not formulated or adopted any statements of general policy or interpretations for the guidance of the public.

(e) The System issues no rules addressed to and served upon named persons.

3. The Selective Service System does not adjudicate cases which require the preparation of final or interim opinions or orders. As mentioned previously, over 2 million individual classifications of registrants are determined annually by local and appeal boards. Section 6(h) of the Universal Military Training and Service Act, as amended, provides in part as follows:

* * * There shall be posted in a conspicuous place at the office of each local board a list setting forth the names and classifications of those persons who have been classified by such local board. * * *

A record of classifications is maintained at each local board, which is open to the public.

4. Since the System does not prepare interim or final opinions or orders in the adjudication of cases, this question is not applicable to its operations.

5. There are no cases in which opinions or orders in other proceedings are cited or used as precedents. Section 6(h) of the Universal Military Training and Service Act, as amended, provides that no deferment from induction into the Armed Forces "shall be made in the case of any individual except upon the basis of the status of such individual." Thus, the classification of a registrant must be determined solely on the basis of his own status without giving consideration to matters arising out of the cases of other registrants.

6. Since the System does not issue interpretations or legal opinions, there would remain the records and files of individual registrants which would be of interest to the public. There are available in the manner described in 7, below. There is no restriction on the availability of other files or records and requests that they be made available are seldom received.

7. Limitations have been placed upon the availability to the general public of the records and files of individual registrants because of the personal nature of the information contained therein involving such matters as the registrant's income and property, his family and marital status, his physical and mental condition, and that of members of his family, and other personal information required for the determination of his classification on the basis of his individual status.

Limitations placed upon the availability of records are prescribed by sections 1606.31 and 1606.32 of the Selective Service Regulations (32 CFR 1606.31 and 1606.32), as follows:

"1606.31. *What records confidential.*—Except as provided by law or by the regulations in this part, the records in a registrant's file and the information contained in such records shall be confidential.

"1606.32. *Availability and use of confidential records and information.*—(a) Information contained in records in a registrant's file may be disclosed or furnished to, or examined by, the following persons, namely:

"(1) The registrant, or any person having written authority dated and signed by the registrant: *Provided*, That, whenever the time of the expiration of such authority is not specified therein, no information shall be disclosed, furnished, or examined under that authority after the expiration of a period of one year from its date.

"(2) The legal representative of a deceased or incompetent registrant, or where there is no legal representative appointed for the estate of a deceased registrant, his next of kin: *Provided*, That proof of the registrant's death and proof of the relationship of the next of kin to the registrant have been submitted and are in his file. For the purpose of this subparagraph, the next of kin to the registrant shall be limited to his widow, child, mother, father, brother, or sister.

"(3) All personnel of the Selective Service System while engaged in carrying out the functions of the Selective Service System.

"(4) Any other agency, official, or employee, or class or group of officials or employees, of the United States or any State or subdivision thereof upon written request in individual cases, but only when and to the extent specifically authorized in writing by the State Director of Selective Service or the Director of Selective Service.

"(b) Information contained in records in a registrant's file may be disclosed or furnished to, or examined by, a United States Attorney and his duly authorized representatives, including agents of the Federal Bureau of Investigation, when-

ever the registrant has been reported to the United States Attorney as a delinquent or for prosecution for violating the Universal Military Training and Service Act, as amended, or the rules, regulations, or directions made pursuant thereto.

"(c) Notwithstanding any other provisions of the regulations in this part, information contained in any record in a registrant's file may be disclosed or furnished to, or examined by, any person having specific written authority from the Director of Selective Service. No person shall use any information so disclosed, furnished, or examined for any purpose other than that designated in such written authority.

"(d) No information shall be disclosed or furnished to, or examined by, any person under the provisions of this section, until such person has been properly identified as a person, or as the authorized representative of an agency, entitled to so obtain such information."

8. There are no circumstances under which private parties dealing with the Selective Service System would be required in any manner to resort to organization or procedure not published in the Federal Register.

9. The System has had no cases involving any function of the United States requiring secrecy in the public interest.

10. No rules or regulations prescribed by the Director of Selective Service which relate solely to the internal management of the Selective Service System are published in the Federal Register. Copies of such rules are distributed to all offices of the System and made available to its officers and employees.

11. The term "official record" as used in section 3(c) of the Administrative Procedure Act has been defined within the Selective Service System as meaning those records and files created or obtained by the System in carrying out its functions with respect to the registration, examination, classification, selection, assignment, and delivery for induction of persons registered under the Universal Military Training and Service Act, as amended. These official records are contained in the individual files of registrants.

Transmitted herewith are copies of each of the following:

1. Presidential registration proclamations.
2. Selective Service regulations.
3. Statement of organization—Federal Register.
4. Statement of organization—U.S. Government Organization Manual.

If I may be of further service, please call on me.

Sincerely yours,

LEWIS B. HERSHEY, *Director.*

REPLY FROM SMALL BUSINESS ADMINISTRATION

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., March 29, 1965.

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

DEAR CONGRESSMAN MOSS: This is in further reply to your letter of February 12, 1965, inquiring about interpretations and practices of the Small Business Administration under section 3 of the Administrative Procedure Act (5 U.S.C. 1002), the public information section.

With respect to the legal interpretation of section 3, SBA generally follows the guidelines on this section set forth in the Attorney General's Manual on the Administrative Procedure Act. Our policy is to release all agency information, except that required to be kept confidential to protect the public interest.

INFORMATION PUBLISHED

SBA regulations are codified in 13 Code of Federal Regulations, chapter 1. The agency publishes in the Federal Register from time to time (as changes occur) the following:

- (a) Descriptions of its central and field organizations;
- (b) Statements of the general course and method by which its functions are channeled and determined, including delegations of authority and location of field offices;
- (c) Substantive rules adopted as authorized by law;

(d) Statements of general policy and interpretations formulated and adopted by the agency for the guidance of the public;

(e) "Show cause" orders and other regulatory proceedings concerning small business investment companies licensed by the agency;

(f) Disaster declarations for financial assistance purposes under section 7(b) of the Small Business Act; and

(g) Exemptions from the antitrust laws provided for joint actions by small business concerns under sections 7(a) (6), 9(d), and 11 of the act.

Another important publication is SBA's annual report to the President and the Congress. This contains much data concerning agency programs, activities, and actions, as well as information on SBA's financial and administrative matters.

Agency actions providing financial assistance, and small business investment company licenses granted, are generally announced by means of press releases issued by SBA's Office of Public Information. Major policy determinations also are sometimes publicized by this means (and in speeches by agency officials) as well as by formal promulgation in the Federal Register. SBA also publicizes in appropriate localities, pursuant to Public Law 88-273, certain data relating to so-called conflict of interest transactions affecting small business investment company licensees.

INFORMATION MADE AVAILABLE

Except for matters involving solely internal agency management, current SBA rulings, directives, and interpretations (such as those contained in agency manuals, handbooks, or opinions) which are not published, are made available upon request to interested persons. This data is generally available both in Washington, D.C., and at SBA field offices throughout the country. With respect to small business investment company matters, the agency issues to all such licensees and to other interested persons who request it, a "guide" which contains pertinent SBA rules, interpretations of broad applicability, and policy and procedural information.

SBA's Office of Public Information maintains constant contact with members of the daily and business press corps, trade associations, chambers of commerce and similar groups in order to keep them informed of the agency's programs and objectives; issues news releases and reports on SBA programs and operations; and answers questions from the press on Agency activities. The Office also prepares and distributes fact sheets and leaflets on SBA programs, and informational materials to be issued locally by field offices of the agency.

Information is also available concerning particular SBA actions such as size determinations (whether a firm is a "small business" for purposes of SBA legislation), and procurement and technical assistance provided. Additionally, in circumstances set forth in agency manual SBA-100, chapter XVII (copy enclosed), banks and other financially interested persons may obtain certain data from SBA about firms receiving loans from the agency.

INFORMATION NOT MADE AVAILABLE

SBA does not make its records and files generally available to the public. The bases and necessity for this limitation are set forth in the attached agency regulations and manual provision concerning disclosure of information.

Neither does SBA disclose identifying information concerning applicants for assistance when such assistance was not granted by the agency. It is believed that such disclosure could injure the reputation of the affected firm.

Copies are enclosed herewith of part 102 and part 105 (sec. 105.6) of SBA regulations, and of chapter XVII of the SBA-100 manual.

I hope this information will be of assistance to the subcommittee. If any further data is needed, please contact Mr. Philip F. Zeidman, our General Counsel.

Sincerely,

EUGENE P. FOLEY, *Administrator.*

(NOTE.—Reference material in subcommittee files.)

REPLY FROM TENNESSEE VALLEY AUTHORITY

TENNESSEE VALLEY AUTHORITY,
OFFICE OF THE BOARD OF DIRECTORS,
Knoxville, Tenn., March 11, 1965.

Hon. JOHN E. Moss,
Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.

DEAR MR. MOSS: This is in response to your letter of February 12, 1965, concerning section 3 of the Administrative Procedure Act of 1946.

Before answering the specific questions raised in your letter, we should like to explain that TVA engages in very few activities of the type to which the Administrative Procedure Act is directed. The only area in which TVA exercises regulatory authority with respect to members of the general public is in the administration of section 26a of the Tennessee Valley Authority Act. Under this section, the TVA Board reviews and approves plans for the construction, operation, and maintenance of structures across, along, or in the Tennessee River or its tributaries which would affect navigation, flood control, or public lands or reservations. TVA's procedures for the administration of section 26a were published in the Federal Register and are included in the Code of Federal Regulations (18 C.F.R. 301.2-301.3).

TVA has also issued regulations giving effect to title VI of the Civil Rights Act of 1964. These regulations were published in the Federal Register of January 9, 1965 (30 F.R. 311).

The answers to your specific questions are as follows:

1. Title 5, United States Code, chapter 1002 applies to all the functions of TVA, except those within the specific exceptions stated in that section. There are no TVA divisions, bureaus, branches, or other units to which section 1002 does not apply.

2. (a) A description of TVA's central and field organization is included in the U.S. Government Organization Manual, which is published annually by the office of the Federal Register as a special edition of the Federal Register.

(b) Same as 2(a) above.

(c) TVA has not published such substantive rules.

(d) The limited amount of such material which TVA issues is published in the Federal Register and in the Code of Federal Regulations. Changes or revisions are published in the same manner.

(e) TVA does not issue rules addressed to and served upon named persons.

3. TVA's procedure for making available the information described in question 3 is stated in 18 CFR 301.1, a copy of which is enclosed.

4. TVA has not had a case such as that described in question 4.

5. TVA has not had a case which involved the situation described in question 5.

6. TVA's procedure for making available the information described in question 6 is stated in 18 CFR 301.1, a copy of which is enclosed.

7. The limitations which are placed upon the availability of TVA's records and files to the general public are stated in 18 CFR 301.1, a copy of which is enclosed.

8. Many of TVA's procurement contracts contain a disputes provision which establishes a procedure whereby the contractor and TVA may resolve any controversy through successive appeals to the contracting officer and to the TVA General Manager or his representative. The entire procedure is stated in the disputes provision which is included in each contract to which it is to apply. This procedure is not published in the Federal Register since, in our opinion, it is not the type of procedure contemplated by section 3(a) of the Administrative Procedure Act.

9. TVA has not had a case which involved the situation described in question 9.

10. TVA makes internal publication of an administrative release system which contains a large number of TVA policies, procedures and rules to guide the official actions expected of TVA employees. Also, many TVA offices and divisions issue instructions to guide the employees of that office or division. These documents are not published in the Federal Register because they relate solely to TVA's internal management. A copy of the TVA administrative release system is available at TVA's Washington office. We would be glad to make it available for examination by a member of your staff, if you so desire.

11. The only definition which TVA has made of the term "official record" as used in section 3(c) of the Administrative Procedure Act is contained in 18 CFR 301.1(a), a copy of which is enclosed.

We are enclosing two copies of the documents requested in the last paragraph of your letter. Miss Marguerite Owen, TVA's Washington representative (telephone 343-4537), will obtain for you any further information which you may wish to have. If we can be of further assistance, please let us know.

Sincerely yours,

AUBREY J. WAGNER, *Chairman.*

TITLE 18—CODE OF FEDERAL REGULATIONS

CHAPTER II—TENNESSEE VALLEY AUTHORITY

PART 301—PROCEDURES

Sec.

301.1 Public records.

301.2 Obtaining of approval for construction in the Tennessee River system.

301.3 Drawings, plans and designs.

AUTHORITY: §§ 301.1 to 301.3 issued under 48 Stat. 58, as amended; 16 U.S.C. 831-831dd. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 301.1 Public records.

Matters of official record of TVA shall be made available to persons properly and directly concerned, excepting matters relating solely to the internal management of TVA and excepting information held confidential for good cause found.

(a) *Scope.* Subject to the limitations stated above, matters of official record of TVA include invitations for the procurement of material or for construction, bids, and awards; maps, plans and diagrams of reservoir areas and other real property held by TVA, including easements and rights of way; and final decisions of the Board of Directors in regard to proceedings under section 26a of the Tennessee Valley Authority Act.

(b) *Requests.* Requests for such information shall be made in writing to the "Director of Information, Tennessee Valley Authority, Knoxville, Tennessee," and shall contain sufficient information (1) to identify the matter of official record sought to be made available, and (2) the circumstances which make the person making the request one who is properly and directly concerned.

(c) *Action upon requests.* Upon receipt of such a request, TVA shall promptly determine whether the matter can be made available under the provisions of this section and shall notify the person making the request (1) where and when the matter can be made available, or (2) that the matter is not available, giving the reasons therefor.

(d) *Manner of making available.* TVA shall not be required to make and furnish copies of such matters, but shall fulfill its obligation by making the matter available for inspection; where, however, for reasons of convenience or necessity TVA determines that it is more practicable to fulfill its obligation by furnishing a copy of the matter, TVA may fulfill its obligation by furnishing a certified true copy thereof.

[11 F.R. 177A-749, Sept. 11, 1946, redesignated at 13 F.R. 6749, Nov. 18, 1948]

REPLY FROM U.S. ARMS CONTROL AND DISARMAMENT AGENCY

U.S. ARMS CONTROL AND DISARMAMENT AGENCY,
Washington, March 16, 1965.

HON. JOHN E. MOSS,
*Chairman, Subcommittee on Foreign Operations and Government Information,
House of Representatives.*

DEAR MR. CHAIRMAN: I enclose detailed answers to the 11 questions posed in your letter of February 12, 1965.

That letter also requested two copies of any written document implementing 5 U.S.C. 1002, which deals with the publication of information, rules, opinions, orders and public records. ACDA has not issued such a document. None has been deemed necessary because ACDA is a small agency (approximately 200

employees) with only a handful of employees directly concerned with matters that might fall within the terms of 5 U.S.C. 1002. Those employees are, of course, fully aware of the requirements imposed by that statute.

Before issuance, all rules of the Agency are checked to determine whether publication in the Federal Register is required. In addition, periodic reviews of the Agency's activities and rules are undertaken to insure that the requirements of 5 U.S.C. 1002 are being met.

As the subcommittee's staff has already been informed by telephone, liaison with respect to the questions in the letter may be maintained with Mr. Alan Washburn, code 182, extension 7788.

Sincerely,

WILLIAM C. FOSTER.

1. The provisions of 5 U.S.C. 1002 apply to all functions of the U.S. Arms Control and Disarmament Agency (hereafter referred to as the Agency). There are no divisions, bureaus, branches, or other constituent units to which that section does not apply.

2. (a) and (b). The Agency annually publishes in the United States Government Organization Manual a description of its organization and a statement of the general course and methods by which its functions are channeled and determined. Comparable information, along with a statement of the means by which the public can obtain information, has been submitted to the Federal Register. Changes will be published in the Federal Register when they are made.

2 (c). The Agency has not yet published any substantive rules. Except as indicated below with respect to its contracts, the Agency has adopted no substantive rules applicable to the public. The Agency operates under the extensively detailed Federal Procurement Regulations, which have been published (41 CFR subtitle A). A few special Agency rules appropriate for publication and implementing or supplementing the Federal Procurement Regulations are in the process of formulation. Such Agency rules will be published in the Federal Register when ready in definitive form.

Under an agreement with the Agency, the Atomic Energy Commission is responsible for screening the results of security investigations of contractors' personnel. AEC actions on behalf of the Agency are taken in accordance with the established AEC procedures published in 10 CFR part 10. By contract provision and by other means, the Agency's contractors are informed of the applicability of the procedures in 10 CFR part 10. It has, therefore, not been deemed necessary for the Agency to republish those procedures.

2. (d) and (e) The Agency has not had any occasion to formulate and adopt statements of general policy or interpretations for the guidance of the public or to issue rules addressed to and served upon named persons. Consequently, no such documents have been published.

3, 4, and 5. The Agency has not adjudicated any cases and therefore, has not issued interim or final opinions or orders or used any such documents in other proceedings.

6 and 7. The Agency has not issued any interpretations or legal opinions. The following statements thus apply to the Agency's records and files.

The only statutes limiting the availability of the Agency's records and files to the public relate to security classification (18 U.S.C. 37, 42 U.S.C. 2274, 2277, and implementing Executive orders). Because the Agency functions in a highly sensitive area of foreign affairs and national defense, an appreciable portion of the Agency's records is classified because of security requirements.

There are no rules limiting the availability to the public of those portions of the Agency's records and files not controlled in the interest of the national defense or foreign policy. The practice is to make those portions freely available to persons properly and directly concerned. Except as described below, there are no formal procedures by which the Agency's records and files are made available. Since the Agency has barely 200 employees and only a single office in the United States, no such procedures are deemed necessary. Persons seeking information or documents are easily referred to the appropriate official.

Pursuant to section 2 of the Arms Control and Disarmament Act (22 U.S.C. 2551), the Agency is charged with ensuring "the dissemination * * * of public information concerning arms control and disarmament." To discharge this duty, as well as to provide maximum availability of information in conformity with the spirit of the Administrative Procedure Act, several procedures have been established for giving the public access to those portions of the Agency's

records and files not controlled in the interest of the national defense or foreign policy.

The most significant proposals and statements of the United States and other nations on arms control and disarmament are published in the annual publications, *Documents on Disarmament*. Various specific aspects of arms control and disarmament are also dealt with in other Agency publications. All these publications are widely distributed. They are sent to the persons and institutions, including public and institutional libraries, on a long mailing list. The publications are distributed free on request to the extent that the stockpile permits. They are also distributed through the Government Printing Office, and their availability from that source is announced in GPO catalogs.

The Agency's files also contain the verbatim reports of the Conference of the 18 Nation Disarmament Committee in Geneva. Arrangements are being made to have copies of those reports placed in depository libraries throughout the United States.

It is the Agency's practice to make wide distribution of the reports rendered to the Agency by research contractors and grantees. The procedure is to mail any of those reports not controlled in the interest of the national defense or foreign policy to the names on a mailing list that includes leading academic institutions, research centers, and 20 public depository libraries throughout the United States. The mailing list also includes the Defense Documentation Center, which publishes information about the research reports in the *Technical Abstract Bulletin* sent to Government agencies and contractors. The procedure then is for the Defense Documentation Center to forward reports to a Clearinghouse for Federal Scientific and Technical Information, maintained by the Department of Commerce. The Clearinghouse publishes information about the research reports in a biweekly catalog to which the public can subscribe. The Clearinghouse, on payment of the costs, will furnish copies of the research reports to the public.

Arrangements are also being made to have the Government Printing Office catalog, which is widely distributed, list all reports mentioned in the catalog issued by the Commerce Department's Clearinghouse.

To the extent that the Agency's stocks will permit, the practice is to give free to the public upon request any research report not controlled in the interest of national defense or foreign policy.

8. In no circumstances are private parties dealing with the Agency required in any manner to restore to organization or procedure not published in the Federal Register.

9. The Agency has had no occasion to refrain from publishing rules where there was involved a function of the United States requiring secrecy in the public interest.

10. The following are illustrative of the types of rules the Agency has refrained from publishing on the ground that they involve only internal management:

(a) Handling of documents, e.g., procedures for signing congressional mail; authorization to sign cables and correspondence; identification of papers and memoranda; clearance of telegrams referring to State Department or White House personnel or functions; procurement of reprints of published articles; distribution of action documents.

(b) Security classification procedures, e.g., automatic, time phased, downgrading, declassification, and decontrol of classified and administratively controlled documents; authorization to originate top secret classification; special rules for access to atomic weapons data.

(c) Duties of certain officers, e.g., duty officer procedures; nonfinal delegations of authority.

(d) Personnel matters, e.g., compensation; attendance and leave; grievances; incentive awards; conduct of employees (including conflicts of interest, outside employment, writing for publication, privilege of joining employee organizations).

(e) Supplies and services, e.g., official long-distance telephone calls; requisitioning procedures.

The Agency has also issued a number of instructions regarding the Agency's contracting program, for example, on the submission of proposals for and administration of research grants. Agency practice has been to make these instructions available to any contractor or prospective contractor that requested them or whom the Agency believed might have an interest in them. These instructions are being reviewed to determine which points, if any, should be incorporated into the forthcoming procurement regulations, which will be published in the Federal Register.

11. The Agency has taken as its guide on the meaning of "official record," as used in the Administrative Procedure Act of 1946, the following statement from the Attorney General's Manual on the Administrative Procedure Act (1947):

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.' * * *. The great mass of material relating to the internal operation of an agency is not a matter of official record.

The Agency has no matters of "official record" within the guidelines thus established. It has, therefore, not been necessary to formulate a precise definition.

The fact that the Agency has no matters of official record does not mean that public access to the Agency's files and records has been precluded. Some of the steps taken with respect to making files and records of the Agency available to the public are discussed above in response to questions 6 and 7.

REPLY FROM U.S. INFORMATION AGENCY

UNITED STATES INFORMATION AGENCY.

Washington, D.C., March 15, 1965.

Hon. JOHN E. MOSS,

*Chairman, Foreign Operations and Government Information Subcommittee,
House of Representatives.*

DEAR MR. MOSS: I am enclosing the information requested in your letter of February 12, to assist you in evaluating section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

While the Agency has not issued any specific regulation, directive, or order to implement 5 U.S.C. 1002, the Office of Administration is responsible, generally, for its implementation.

Miss June Miller, code 182, extension 3120, has been designated liaison officer for any additional information that you may require.

Sincerely yours,

STANLEY PRESENT,

General Counsel and Congressional Liaison.

1. Generally, 5 U.S.C. 1002 applies to the following functions of the U.S. Information Agency:

- (a) Informational Media Guaranty program.
- (b) Contract and Procurement operations.
- (c) Program facilitating the circulation abroad of U.S. visual and auditory materials of an educational, scientific and cultural character.
- (d) Federal Tort Claims procedure.

There are no elements or units of the Agency to which the section does not apply.

2. (a) Section 3(a)(1) of the APA: A description of the Agency's central and field organization is published annually in the U.S. Government Organization Manual.

The Federal Procurement Regulations (FPR), by which the Agency is guided in its contract and procurement operations, are published in the Federal Register. The Agency implementation of the FPR was initiated by publication of 41 CFR 19-1,000 through 19-1.108-2. Delegations of authority for procurement transactions to certain officials of the Agency are also published in the Federal Register.

The place and method whereby the public may secure information or make requests pertaining to the program listed in paragraph 1.c. above were published in the Federal Register on December 24, 1953, 22 CFR 502. For distribution abroad by USIS posts to ministries of education, heads of audiovisual centers, universities, professional organizations, etc., the Agency compiles and publishes a catalog entitled "U.S. Educational, Scientific, and Cultural Motion Pictures

and Filmstrips Selected and Available for Use Abroad." The history of the catalog is as follows:

Motion Picture Catalog, April 1950.

Motion Pictures and Filmstrips:

Supplement, June 1951.

July 1952.

Supplement, May 1954.

Science section, December 1956.

Education section, July 1959.

Science section supplement (currently being prepared).

Cultural section (currently being prepared).

Procedures pertaining to the Informational Media Guaranty program were published in the Federal Register on December 2, 1953, 22 CFR 501.

Procedures under the Federal Tort Claims Act were published in the Federal Register on August 10, 1955, and September 22, 1955, 22 CFR 511.

Both 22 CFR 501 and 502 are being updated.

(b) Section 3(a) (2) of the APA: See paragraph 2(a) above.

(c), (d), and (e). Section 3(a) (3) of the APA: Substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the Agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law.

Not applicable, except as stated in paragraph 2(a) above.

3. Not applicable.

4. Not applicable.

5. Not applicable.

6. See paragraph 7 below.

7. Limitations placed upon the availability of records and files to the general public are contained in the Agency's Manual of Operations and Administration, MOA III-526, Nonofficial Use of Records for Research Purposes, and MOA VIII-136, Dissemination of Classified Information. Copies of the pertinent sections are attached. The regulations pertaining to classified material are designed to carry out the requirements of E.O. 10501 which relates to safeguarding official information in the interest of the defense of the United States. The Foreign Service Act of 1946, as amended, section 612, also limits the availability of certain records and files to the general public. A copy of section 612 is attached.

8. Procedures for applicants for employment in the Foreign Service of the Agency, or for service in a Binational Center abroad have not as yet been published in the Federal Register.

9. None.

10. The Agency issues a Manual of Operations and Administration for the guidance of Agency personnel in the performance of their duties covering such subjects as communications and records, administrative services, personnel, finance, media operations, etc. The Agency also issues circulars and announcements that are for internal Agency management and information.

11. The Agency uses the definition in the Records Disposal Act of July 7, 1943, and amended July 6, 1945; i.e., the term "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. As used in section 3(c) of the Administrative Procedure Act, material relating to the internal operation of the Agency is not considered "official records."

FOREIGN SERVICE ACT OF 1946, AS AMENDED

TITLE VI—PERSONNEL ADMINISTRATION

Section 612—To Whom Records Shall Be Available

The correspondence and records of the Department relating to the officers and employees of the Service, including efficiency records as defined in section 601(1) but not including records pertaining to the receipt, disbursement, and accounting for public funds, shall be confidential and subject to inspection only

by the President, the Secretary, the Under Secretary, the Counselor of the Department, the legislative and Appropriations Committees of the Congress charged with considering legislation and appropriations for the Service or representatives duly authorized by such committees, the members of the Board of the Foreign Service, the Director General, and such officers and employees of the Government as may be assigned by the Secretary to work on such records. Under such regulations as the Secretary may prescribe and in the interest of efficient personnel administration, the whole or any portion of an efficiency record shall, upon written request, be divulged to the officer or employee to whom such record relates.

REPLY FROM U.S. TARIFF COMMISSION

U.S. TARIFF COMMISSION,
Washington, D.C., March 16, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR MR. CHAIRMAN: The following paragraphs contain the answers of the U.S. Tariff Commission to the questions concerning the effect of section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002) submitted in your letter of February 12, 1965. The numbering of the answering paragraphs corresponds to that of the questions.

1. It is the opinion of the Commission that those requirements of the public information section of the Administrative Procedure Act which are directed to an "agency" of the Government of the United States apply to the U.S. Tariff Commission, but that those requirements concerned with publicity to be given "substantive rules" or "final opinions or orders" are not so applicable. These latter requirements do not apply to the Commission, because it generates neither substantive rules nor final opinions or orders in the adjudication of cases. The primary duty of the Commission is to investigate and report upon tariff and foreign trade matters, as required by statute. It makes such investigations and reports at the request of the President, either branch of the Congress, the House Committee on Ways and Means, or the Senate Committee on Finance. Investigations into the effects on domestic industries of increased imports resulting from trade agreement concessions may be initiated by an industry, firm, group of workers, or other interested parties. The Commission also makes studies, surveys, or investigations on its own initiative. The facts found by the Commission in the course of these investigations may serve as the basis for a rule or order issued by some other arm of the Government. In some cases a determination of a certain nature by the Commission is a prerequisite to affirmative action by the Executive. In all of these cases, however, the affirmative action is by others, and the factfinding by the Commission is in no sense an order or rule.

The Tariff Commission has no divisions, bureaus, branches, or other constituent units to which the public information section does not apply to the degree stated above.

2. The Tariff Commission publishes in official and unofficial publications materials at the intervals described below:

(a) A description of the central and field organization of the Tariff Commission was published in 14 F.R. 7300 (1949). A description of the organization of the Commission and its functions also appears annually in the U.S. Government Organization Manual.

(b) Statements of "the general course and method" by which the "functions" of the Tariff Commission are "channeled and determined" appear in the Commission's Rules of Practice and Procedure. These rules are published in chapter II, parts 201-208, of title 19 of the Code of Federal Regulations. The rules were published in the Federal Register when promulgated, and all amendments and revisions of them have also been published in the Federal Register. Copies of the rules are available at both the Commission's Washington office and its New York City office.

(c) The Tariff Commission has adopted no "substantive" rules. The Commission has at times adopted certain procedural rules, but, as noted in *Ranger v. F.C.C.*, 294 F.2d 240, 244 (D.C. Cir. 1961), while "procedural requirements may and do occasionally affect substantive rights, * * * this possibility

does not make a procedural regulation a substantive one." Moreover, as noted above, the procedural regulations of the Tariff Commission are published in the Federal Register and elsewhere.

(d) The Tariff Commission issues no statements which it considers statements of general policy or interpretations formulated and adopted for the guidance of the public with the possible exception of its rules of procedure which are published in the Federal Register.

(e) The Tariff Commission does not formulate "rules" addressed to and served upon named persons.

3. It is the opinion of the Tariff Commission that it does not in any of its functions perform the agency process of "adjudication."

4. This question, which concerns agency forbearance from publishing interim and final opinions or orders where, in the opinion of the agency, good cause requires they be held confidential, does not apply to the Tariff Commission because it does not "adjudicate."

5. Unpublished opinions and orders are not cited or used as precedents in other proceedings by the Tariff Commission.

6. In accordance with its Rules of Practice and Procedure, published in the Code of Federal Regulations and the Federal Register, the Tariff Commission provides the following information and reports (except confidential business data as defined below) for inspection by persons concerned, on request to the Secretary of the Commission, either in the Washington office or in the New York City office of the Commission: (1) Applications, petitions, and other formal documents filed with the Commission, (2) notices to the public concerning Commission matters, (3) transcripts of testimony taken and exhibits submitted at hearings, (4) reports to the President, to either or both Houses of Congress, or to committees of Congress, release of which has been authorized by the President or the legislative body concerned, (5) reports and other documents issued for general distribution.

7. Reports to the President, to either or both Houses of Congress, or to committees of Congress, the release of which has not been authorized by the President, the legislative body or the committee concerned, and confidential business data are not available to the public. Confidential business data consist of any information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association, the disclosure of which is not authorized by law or by the party furnishing such information. The Commission may refuse to accept in confidence any information which it determines is not entitled to confidential treatment. In the event of such refusal, the person submitting such information will be notified thereof with a statement of the reasons and (if the information was submitted voluntarily) will be permitted to withdraw its tender.

8. Private parties dealing with the Tariff Commission are under no circumstances required in any manner to resort to organization or procedure not published in the Federal Register.

9. As the only "rules" within the meaning of the Administrative Procedure Act published by the Tariff Commission are those relating to its procedure, the Commission has not refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest.

10. The Tariff Commission has formulated no "rules" involving matters relating solely to internal agency management.

11. Those matters which the Tariff Commission considers to be "of official record" and thus made available in accordance with published rule to persons properly concerned are set out in answer No. 6. This published listing constitutes the Commission's interpretation of "matters of official record."

The Tariff Commission publishes to the extent permissible the results of all investigations. Notices of hearings to be held are published in all cases in the Federal Register. A number of Commission reports, determinations, findings, and recommendations are required by law to be submitted in confidence to the President and the Congress. In such cases publicity is given to the reports, determinations, findings, or recommendations only to the extent authorized by the President or the Congress. In all other cases, publication is made in the Federal Register, Treasury Decisions, and press releases. On occasion only a summary of the Commission's determination, or only the majority's opinion, is published in the Federal Register, because the Federal Register Act is understood to authorize no more.

We regret that we were unable to submit answers to the subcommittee's questionnaire by the requested deadline. The Commission has considered the question of the applicability of the Administrative Procedure Act to its functions on several occasions in the past, and reached conclusions on a number of points but not on all of them. It was therefore necessary to undertake additional research, which consumed a few days more time than we anticipated.

As requested, two copies of the Tariff Commission's Rules of Practice and Procedure, the description of Commission central and field organization, and a statement of the general course and method by which its functions are channeled and determined, are enclosed with this letter.

Sincerely yours,

BEN DORFMAN, *Chairman.*

REPLY FROM VETERANS' ADMINISTRATION

VETERANS' ADMINISTRATION,
Washington, D.C., March 15, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in response to your request for an answer to specific inquiries dealing with the availability of information from Federal departments and agencies.

The Veterans' Administration supports the principle of furnishing to the public as complete information concerning our operations as is feasible. We have taken great pains to see that information of interest to the public is made available. Our policy in this regard is set out in VA Manual MP-1 providing:

Both the veteran and the public are entitled to full information about VA. The Administrator's policy is that VA will release all available information about its activities, freely and frankly, to all information media. This policy must be carried out.

Pursuant to this policy, we actively engage in the distribution of information relative to benefits available and the procedures for prosecution of claims for such, through fact sheets, newspapers, periodicals, radio, and television announcements.

In addition to the normal avenues of dissemination of information to the public, the Veterans' Administration maintains contact offices in regional offices and makes contact representatives available to veterans when hospitalized.

These representatives not only furnish information as to how to proceed in individual claims but actually assist in the preparation and prosecution of the claim. We also, pursuant to section 3402(a)(2), title 38, United States Code, provide space and office facilities for representatives of national service organizations. These representatives, who assist veterans in the prosecution of claims, have available all Veterans' Administration publications and issues for their guidance, including those dealing with internal management and proceedings.

I wish to assure you that the Veterans' Administration, as a service agency, is ever mindful of its duty to ascertain that veterans and beneficiaries are fully informed as to the courses and procedures required to pursue their rights before the agency.

Answers to your specific inquiries are contained in the attachment hereto. If further information or clarification is needed, you are invited to contact Mr. A. T. Bronaugh, Acting Assistant General Counsel, code 148, extension 3050.

Sincerely,

W. J. DRIVER, *Administrator.*

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?

The provisions of 5 U.S.C. 1002 are generally held to apply to all functions of the Veterans' Administration.

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);

(b) Statements of the general course and method by which its functions are channeled and determined (see sec. 3(a)(2) of statute);

(c) Substantive rules adopted as authorized by law (see sec. 3(a)(3) of statute);

(d) Statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public (see sec. 3(a)(3) of statute); and

(e) Rules addressed to and served upon named persons in accordance with law (see sec. 3(a)(3) of statute).

(a) Organization structure, responsibilities, and field station localities appear annually in the U.S. Government Organization Manual, a special edition of the Federal Register and official handbook of the Federal Government. Changes and additions between editions appear, when practicable, in the notices section of the daily Federal Register.

(b), (c), and (d) Veterans' Administration Regulations (and regulatory portions of VA Instructions) and Veterans' Administration Procurement Regulations are published in the Federal Register. Veterans' Administration Regulations are basically rules of general applicability, implementing laws and Executive orders administered by or pertaining to the Veterans' Administration, and which govern relations with claimants, beneficiaries, and third parties outside the Veterans' Administration. Veterans' Administration Procurement Regulations are the policies and procedures of the Veterans' Administration pertaining to the procurement of supplies and nonpersonal services (including construction), which implement, supplement, or provide for deviation from the Federal Procurement Regulations.

Certain delegations of authority are codified in part 2, title 38, and others in part 8-75, chapter 8, title 41, C.F.R.

(e) The Veterans' Administration does not issue rules addressed to and served upon named persons as contemplated by section 3(a)(3) of the Administrative Practices Act.

3. Please describe the manner in which your agency publishes, or, in accordance with published rule, makes available to public inspection, all final and interim opinions or orders in the adjudication of cases, pursuant to section 3(b) of the Administrative Procedure Act or other authority.

The Veterans' Administration does not issue final and interim opinions and orders in the adjudication of cases determined on the record as contemplated in section 5 of the Administrative Procedures Act. The determinations of the Veterans' Administration in individual cases becomes a part of the record in that case, and are considered confidential in accordance with section 3301 of title 38, United States Code, which provides in part:

All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as follows.

Following the quoted language, certain specific exemptions are made under which material otherwise confidential may be released. In general, these permit disclosures to the claimant or his duly authorized agent or representative as to matters concerning himself alone, or when the information is required by process of a United States Court or by any department or other agency of the U.S. Government. One exception is the requirement that the amount of pension, compensation, or dependency and indemnity compensation of any beneficiary shall be made known to any person who applies for such information.

4. In what types of cases does your agency refrain from publishing interim and final opinions or orders where, in the opinion of your agency, good cause requires they be held confidential, pursuant to section 3(b) of the Administrative Procedure Act or other authority?

See 3 above.

5. In what circumstances are unpublished opinions and orders cited or used as precedents in other proceedings?

None. The only opinions or decisions cited or used as precedents are Administrator's Decisions and precedent opinions of the General Counsel.

6. What is the procedure for making available to the general public the records and files, interpretations and legal opinions of your agency?

Administrator's Decisions are available to the public in printed volumes, purchasable from the Government Printing Office. Formal opinions of the General Counsel, in other than individual claims, are printed and filed in the General Counsel's Office, and the Chief Attorney's Office, in field stations. They

may be supplied to persons, organizations or agencies when, in the opinion of the General Counsel, or of the service concerned, the public interest justifies or requires such action.

7. What limitations are placed upon the availability of records and files to the general public, either by statute, rule, or practice?

See 3 above.

8. In what circumstances are private parties dealing with your agency required in any manner to resort to organization or procedure not published in the Federal Register (see sec. 3(a) of the Administrative Procedure Act)?

None.

9. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the Administrative Procedure Act or other authority?

None.

10. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the Administrative Procedure Act or other authority?

In general, detailed requirements of internal procedure and administration are published in manuals and other agency issues.

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

This agency uses for general purposes the definition of official record that is contained in section 1 of the Records Disposal Act (44 U.S.C. 366), which provides:

* * * the word "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein.

SELECTED BOARDS, COMMITTEES, AND COMMISSIONS

REPLY FROM ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., February 19, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR MR. CHAIRMAN: This is in response to your questionnaire-letter of February 12 in regard to section 3 of the Administration Procedure Act of 1946.

Please be advised that this Commission's activities are limited to the study and analysis of intergovernmental problems. The Commission's recommendations are advisory, offered for the consideration of the executive and legislative branches of the several levels of Government. The Commission has no administrative responsibilities, does not engage in rulemaking, does not issue orders or licenses, nor exercise sanctions. We conclude, therefore, that the subcommittee's questionnaire is not applicable to this agency.

Sincerely yours,

L. L. ECKER-RACZ,
Acting Executive Director.

REPLY FROM CIVIL WAR CENTENNIAL COMMISSION

U.S. CIVIL WAR CENTENNIAL COMMISSION,
Washington, D.C., February 23, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR MR. MOSS: As our Chairman is abroad, please permit me to respond to your letter to him of February 12, requesting data about this Commission's practices under section 3 of the Administrative Procedure Act.

I doubt that the Administrative Procedure Act applies to our Commission since, as you will see from the enclosed copies of our statute (Public Law 85-305), our sole function is to plan and coordinate public observances of the centennial of the Civil War. These activities included public ceremonies, the encouragement of participation in the centennial by citizen groups, both public and private, and the stimulation of serious study of the Civil War.

In performing these functions we do not engage in rulemaking or adjudication. We have no benefits to grant or to withhold, no privileges to confer, to deny, to revoke, or to suspend. We examine no claims, process no applications, and issue no interpretations, opinions, regulations, orders, or notices. While our 25-member Commission decides what major commemorative activities we shall engage in, our 4-member staff—the only administrative unit we have—is too small to divide into subunits.

As to questions 6, 7, and 11 of your letter, we have never had occasion to set up a procedure for making our files and records available to the public, to define public record, or to place any limit on public access to our records. No member of the public has ever asked to see our records. They are, after all, pretty routine.

If we can be of further service, please call on us.

Sincerely yours,

EDMUND C. GASS,
Assistant Executive Director.

REPLY FROM COMMISSION ON CIVIL RIGHTS

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., March 26, 1965.

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

DEAR MR. MOSS: This is in response to your letter of February 12 addressed to the staff director and to Chairman Hannah concerning the applicability of 5 U.S.C. 1002, to this agency and related matters.

It should first be noted that this agency has no adjudicatory function. The agency's factfinding and investigatory functions have been determined to be similar to those of a congressional investigating committee (*Hannah v. Larche*, 363 U.S. 402 (1960)), and not subject to the adjudicatory proceedings provisions of the Administrative Procedures Act.

The Civil Rights Act of 1964 made substantial changes in Commission rules of procedure including the addition of section 102(1), a provision substantially like 5 U.S.C. 1002. The Commission, in compliance with the changes in its statute recently published in the Federal Register the required information as to its organization, procedures, and rules. Two copies of these materials are attached, together with two copies of the Commission's current statutory authority.

With this background, the following constitutes a response to the inquiries detailed in your letter of February 12:

1. Generally, the provisions of 5 U.S.C. 1002 apply to all functions of this agency. However, 5 U.S.C. 1002 should be compared with section 102(1) of the Commission statute.

2. Information on all matters referred to ((a)-(e)) is published in the Federal Register. No regular interval has been established for such publication. As changes in organization, functions, procedures, or rules are made they are immediately published in the Federal Register as required by statute.

3. Not applicable.

4. Not applicable.

5. Not applicable.

6. The agency does not render, nor is it empowered to render, interpretations and legal opinions. However, the ultimate duty of the Commission (sec. 104(b)) is to report to the President and the Congress on its activities, with findings and recommendations, where appropriate. This reporting duty is the vehicle for making public the work of the agency. Furthermore, as a part of its duty to be a national clearinghouse for civil rights information (sec. 104(a)(3)), the Commission has the duty of responding to requests for a wide variety of information pertinent to the subject field. Our information center, as a part of this clearinghouse activity, is open for public use. Other administrative and "working" files and records may be available in the discretion of the Commission and as the individual circumstances may dictate.

7. See section 102(1) of the Commission's statute (attached), and section 704.2 of chapter VII, title 45, Code of Federal Regulations (attached).

8. In no circumstances.

9. None.

10. In no circumstances.

11. Our definition of "official record" as used in section 3(c) of the APA would be "public record" as described in section 704.2 of chapter VII, title 45, Code of Federal Regulations (attached).

Further communication which may be needed to develop more comprehensive information on the above questions may be directed to Mr. Howard W. Rogerson, Deputy Staff Director, code 128, extension 28821.

I hope that the above information is adequately responsive to the inquiries contained in your letter of February 12.

Sincerely yours,

WILLIAM L. TAYLOR,
Staff Director-designate.

REPLY FROM COMMITTEE ON PURCHASES OF BLIND-MADE PRODUCTS

COMMITTEE ON PURCHASES OF BLIND-MADE PRODUCTS,
Washington, D.C., March 15, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR MR. CHAIRMAN: I have your letter of February 12, 1965, asking certain questions concerning this Committee's compliance with section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

I am the official of the Committee with whom your subcommittee may maintain liaison. My telephone number is Code 183, Extension 2093.

The following answers are numbered in the same order as your questions:

1. To understand our Committee's functions, it might be helpful to know that it is comprised of several members, representing various Government departments, and one private citizen, as required by the Blind-Made Products Act of 1938, 41 U.S.C. 46-48 (the Wagner-O'Day Act). Besides the Committee members there are a counsel and an executive secretary, both Government officials. Except the private citizen member, all of these officials are in the Government service. The Committee has never received an appropriation from the Congress, and the members, the counsel, and the executive secretary serve without pay in addition to their regular duties. The Committee has no other officials or employees. There are no divisions or other entities of the Committee. The sole functions of the Committee are to (i) determine the fair market price of commodities manufactured by the blind and offered for sale to the Federal Government by a nonprofit agency for the blind, (ii) to revise such prices, and (iii) to issue rules concerning specifications, delivery, and authorization of an agency to facilitate distribution of orders among the blind agencies.

2. (a) The Committee does not have a central or field organization.

(b) The Committee has no "general course and method by which its functions are channeled and determined."

(c) The substantive rules adopted by the Committee concerning the purchases of Blind-Made Products are published in 41 CFR, part 51-1. They also appear in the "Schedule of Blind-Made Products" issued in January and July of each year.

(d) See answer to (c) above.

(e) No rules are "addressed to and served upon named persons."

3. This committee does not render opinions or orders in the adjudication of cases.

4. Not pertinent.

5. None.

6. None.

7. None.

8. None.

9. None.

10. None.

11. This agency has had no occasion to define "official record." Enclosed are two copies of 41 CFR, part 51-1, and two copies of the Schedule of Blind-Made Products, dated January 1, 1965, the Schedule of Blind-Made Articles for Department of Defense Commissary Stores, and the Schedule of Blind-Made Articles for U.S. Navy Ship's Stores Office.

Sincerely yours,

L. F. DONAHUE,
Executive Secretary.

REPLY FROM CORREGIDOR-BATAAN MEMORIAL COMMISSION

CORREGIDOR-BATAAN MEMORIAL COMMISSION,
Washington, D.C., February 18, 1965.

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

DEAR MR. CHAIRMAN: In reply to your letter of February 12, 1965, requesting answers to a number of questions bearing on section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002), the following information is submitted: The legislative task of this Commission does not involve section 3 of the Administrative Procedure Act of 1946.

Consequently, answers to questions 1 through 11 inclusive would be "None."

In answer to the request contained in the last paragraph of your letter, I wish to say that because our activities have no bearing on 5 U.S.C. 1002, that no regulations, directives, orders, or documents have ever been issued by this agency.

If further information is desired please telephone Samuel G. Kelly, Executive Director, code 148, extension 3953.

Sincerely yours,

SAMUEL G. KELLY, *Executive Director.*

REPLY FROM DISTINGUISHED CIVILIAN SERVICE AWARDS BOARD

DISTINGUISHED CIVILIAN SERVICE AWARDS BOARD,
Washington, D.C., March 12, 1965.

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

DEAR MR. CHAIRMAN: Your letter of February 12, 1965, addressed to me as Executive Secretary, Distinguished Civilian Service Awards Board, asks for replies to a number of questions that relate generally to the functions of Federal agencies.

I do not believe that the function of the Distinguished Civilian Service Awards Board is of the type to which the questions are applicable.

The Board has only one function—that of submitting recommendations to the President concerning his annual selections for (a) the President's Award for Distinguished Federal Civilian Service, and (b) the President's Medal of Freedom.

This function is carried out entirely as a part-time responsibility and incidental duty by the Board members, who are the following:

George W. Ball, Under Secretary of State.
Nicholas deB. Katzenbach, Attorney General.
Anthony J. Celebrezze, Secretary, Health, Education, and Welfare.
W. Willard Wirtz, Secretary, Department of Labor.
Cyrus R. Vance, Deputy Secretary, Department of Defense.
Arthur S. Goldberg, Justice, Supreme Court.
Bob Hope, motion picture artist.
Dr. Lee A. Dubridge, president, California Institute of Technology.
Samuel I. Newhouse, newspaper publisher.
Mary McGrory, newspaper writer.

Generally the Board has two meetings each year—one on the Presidential Medal of Freedom and one on the President's Award for Distinguished Federal Service.

Staff service for the Board is also performed on a part-time basis by myself and several members of my staff.

In specific relation to 5 U.S.C. 1002 and in response to the items listed under question number 2 of your letter:

The Board has no central or field organization except for the 10 Board members and the Executive Secretary.

The function of the Board is to advise the President on two specific awards programs. Consequently the Board considers nominations submitted by Board members or others, and then makes recommendations to the President.

The Board has not promulgated substantive rules.

Since the function of the Board is to advise the President, there have been no general policy statements or interpretations to be issued to the public.

There have been no rules addressed to, or served upon, persons.

In response to the request in paragraph 2 of your letter, I have designated John D. Roth, code 183, extension 6132 to serve in any necessary further liaison capacity. If I can be of any further assistance, please do not hesitate to let me know.

Sincerely yours,

JOHN W. MACY, Jr.,

Executive Secretary, Distinguished Civilian Service Awards Board.

REPLY FROM DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY,
Washington, D.C., March 5, 1965.

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

DEAR MR. MOSS: In response to your letter dated February 12, 1965, it would appear that the provisions of 5 U.S.C. 1002 do not apply to the District of Columbia Redevelopment Land Agency.

The Land Agency is not a rulemaking, ratemaking, or license-issuing Agency within the objectives stated in the Administrative Procedure Act.

I hope that a short outline of the Agency's operations and functions may be somewhat more helpful than a question by question negative answer to your letter of February 12, 1965.

Because the Agency is not a rulemaking or ratemaking body, the rules and regulations which the Agency must follow and which are binding on the public, do not usually find their way into the Federal Register. In respect to federally assisted urban renewal projects, the Agency is subject to regulations promulgated by HHFA relating to relocation claims and payments.

The Agency, since late 1950 or early 1951, has been operating exclusively with funds authorized in the Housing Act of 1949, as amended and must, pursuant to contracts between the Agency and the HHFA Administrator acting on behalf of the United States, observe all of the applicable requirements of the three book "Urban Renewal Manual of Policies and Requirements for Local Public Agencies," which manual is available to the public at the U.S. Government Printing Office.

Of necessity, the Agency's procedures are fundamentally tied to its own enabling act, the District of Columbia Redevelopment Act of 1945, as amended. This act requires in section 6(b) as follows:

(b) For the exercise of the powers granted to the Agency by this Act for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extent of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped * * *."

Notwithstanding the fact that the Agency's procedures are not of a kind contemplated by the Administrative Procedure Act, there is ample promulgation of its public activities to insure that its actions are proper and legal and that a

private citizens' rights are not transgressed. I believe that in all instances due process is served.

Ample notice is given for the prerequisite public hearing held by the District of Columbia Commissioners on any redevelopment or urban renewal plan. In addition to the publication, in two daily newspapers of general circulation several times over a 30-day period of the notice of public hearing and the purpose therefor, there is further publication by distributing copies to all business, trade, and citizen organizations of a copy of the notice. This official public hearing is preceded by numerous informal neighborhood meetings which are calculated to inform the public as well as to seek their views on the particular plans and project.

In establishing the price for the acquisition of land from private property owners, the Agency procures two independent appraisals from a panel of qualified appraisers. Although not required to do so, the Agency discusses with each property owner, payment of a price determined by the Agency to be a fair market value based on the two land acquisition appraisals before it initiates any court actions.

When discussions between the Agency and the property owner are inconclusive and it appears that agreement with the owner cannot be reached, the Agency requests the Attorney General to initiate condemnation proceedings. All the Agency's title information is made available to the Attorney General. These proceedings are initiated in the U.S. District Court for the District of Columbia pursuant to the act of Congress entitled "An act to provide for the acquisition of land in the District of Columbia for the use of the United States," approved March 1, 1929 (45 Stat. 1415), (D.C. Code 1961, Ed-16-619 et seq.) or acts which may amend or supplement said act, in particular, act of December 23, 1963 (77 Stat. 577) (P.L. 88-241).

There is, of course, under rules 71A of the Federal Rules of Civil Procedures governing condemnation cases, provision for personal service by the U.S. Marshall's office which takes about 20 days for both foreign and local service and there is provision for publication, in a newspaper of general circulation for all not personally served, once a week for 3 successive weeks; in addition, a copy of the notice is mailed to all persons whose addresses are known and who have not been served.

After the Agency has acquired land, it proceeds to sell or lease project land. Before it sells or leases any land, it must obtain two bona fide reuse appraisals on the fair value of the land under the publicly approved urban renewal plan for the project area.

Although the Agency may sell or lease, it may do so without a public bidding but only after a public hearing, after 10 days' public notice by the Agency upon the proposed lease or sale and the provisions thereof (sec. 5-706(c), D.C. Code 1961 ed.).

The sales contracts, deeds and lease agreements contain provisions relating to land value, monthly carrying charges, rent, and tax payments (where leased), restrictions on use of the land pursuant to the urban renewal plan, dates for commencement and completion of construction and other matters relating to sale of stock and nondiscrimination. Covenants on four of these items enable the Agency to recapture the land in case of breach of covenant and default thereunder. A so-called condition subsequent provision is contained in our sales contracts and deeds which establishes this right.

After acquisition, the Agency's most intricate operation then begins; i.e., property management and family and business relocation. The Agency is required by the District of Columbia Redevelopment Act of 1945, as amended, and by the provisions of title I of the Housing Act of 1949, as amended, to provide assistance in rehousing persons to be displaced from any of its projects. In the relocation of persons, they must be rehoused in safe and sanitary accommodations within their financial means. Many of the people to be displaced are eligible for low-cost public housing owned and managed by the National Capital Housing Authority. The Housing Act provides for the payment of moving expenses and direct property losses for displacees. For a business, the act allows up to \$3,000 for direct property loss or moving expenses or for certified moving expenses only, an amount not to exceed \$25,000. Certain other payments are available for small businesses. This, of course, is of great aid to the Agency in its relocation program and helps to relieve the economic plight of those forced to move because of the requirements of the publicly approved urban renewal plan.

In carrying out its functions of demolition and construction of site improvements, the Agency is subject to the formal advertising procedures imposed on all Federal agencies by R.S. 3709. Professional consultant services may, of course, be obtained without competitive bidding.

Sincerely,

PHIL A. DOYLE, *Executive Director.*

REPLY FROM FEDERAL RADIATION COUNCIL

FEDERAL RADIATION COUNCIL,
Washington, D.C., March 12, 1965.

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

DEAR MR. CHAIRMAN: I am pleased to transmit to you the following information requested in your letter of February 12 pertaining to the application of section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

The following general information is provided as background to assist your staff in interpreting our answers to your questions.

The Federal Radition Council was established by Executive Order 10881 and made statutory by Public Law 86-373, section 274h. The purpose of the Council is to advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. Its membership consists of the Secretaries of Health, Education, and Welfare (present chairman); Agriculture; Commerce; Defense; and Labor; and the Chairman of the Atomic Energy Commission.

The Council staff consists of two professional personnel and two secretarial personnel. It is hired directly by the Council under its own budget. The positions are all civilian career appointment.

The Council issues two kinds of reports. One contains recommendations for the guidance of Federal agencies in the planning and implementation of their radiation protection activities. When approved by the President, these are published in the Federal Register. The other contains technical analyses but no recommendations. When approved by the President, these are published directly and are available through the Superintendent of Documents.

Your questions and our answers are as follows:

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. Section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002) applies to those reports of the Federal Radiation Council which have been approved by the President. The Council has no subordinate divisions, bureaus, or branches.

2. In what official or unofficial publication, and at what intervals, does your agency publish:

(a) Descriptions of its central and field organization (see section 3(a)(1) of the Administrative Procedure Act);

(b) Statements of the general course and method by which its functions are channeled and determined (see section 3(a)(2) of statute);

(c) Substantive rules adopted as authorized by law (see sections 3(a)(3) of statute);

(d) Statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public (see section 3(a)(3) of statute);

(e) Rules addressed to and served upon named persons in accordance with law (see section 3(a)(3) of statute)?

Answer 2. (a) As an advisory body to the President, the organization of the Federal Radiation Council is published in the U.S. Government Organization Manual. It has not been published in the Federal Register. The council has no field organization.

(b) Reports of the Council containing recommendations for consideration by the President are submitted in the form of a memorandum for the President. When approved by the President, the memorandum is published in the Federal Register. The background material supporting the recommendations is pub-

lished separately and is available through the Superintendent of Documents. (See attachments 1, 2, and 3). Reports containing technical information and conclusions for the information of the President are published separately and are available through the Superintendent of Documents when approved by the President. (See attachments 4, 5, and 6).

(c), (d), and (e). See the answer to 2(b). (The Federal Radiation Council has no rulemaking function).

3. Please describe the manner in which your agency publishes, or, in accordance with published rule, makes available to public inspection, all final and interim opinions or orders in the adjudication of cases, pursuant to section 3(b) of the Administrative Procedure Act or other authority.

Answer. Same as for 2(b).

4. In what types of cases does your agency refrain from publishing interim and final opinions or orders where, in the opinion of your agency, good cause requires they be held confidential, pursuant to section 3(b) of the Administrative Procedure Act or other authority?

Answer. None. See the answer to 2(b).

5. In what circumstances are unpublished opinions and orders cited or used as precedents in other proceedings?

Answer. None.

6. What is the procedure for making available to the general public the records and files, interpretations, and legal opinions of your agency?

Answer. See the answer to 2(b).

7. What limitations are placed upon the availability of records and files to the general public, either by statute, rule or practice?

Answer. See the answer to 2(b).

8. In what circumstances are private parties dealing with your agency required in any manner to resort to organization or procedure not published in the Federal Register (see section 3(a) of the Administrative Procedure Act)?

Answer. None.

9. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the Administrative Procedure Act or other authority?

Answer. None.

10. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the Administrative Procedure Act or other authority?

Answer. None.

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

Answer. The official record of the Federal Radiation Council consists of those reports approved by the President.

As requested in your letter, two copies each of FRC reports 1 through 6 are attached.

Sincerely yours,

PAUL C. TOMPKINS, *Executive Director.*

REPLY FROM FOREIGN-TRADE ZONES BOARD

THE FOREIGN-TRADE ZONES BOARD,
Washington, D.C., March 17, 1965.

HON. JOHN E. MOSS,
*Chairman, Subcommittee on Foreign Operations and Government Information,
Committee on Government Operations, Congress of the United States.*

DEAR MR. CHAIRMAN: In reply to your letter of February 12, enclosed is a detailed response to the questions which you asked concerning Foreign-Trade Zones Board activities with respect to section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

Also enclosed are two copies of a booklet entitled "Laws, Regulations, and Other Information Relating to Foreign-Trade Zones in the United States." This booklet contains Foreign-Trade Zones Board Regulations (15 CFR 400) into

which have been incorporated Board orders to date pertaining to implementation of the provisions of 5 U.S.C. 1002.

We appreciate the telephonic arrangements made with Mr. Archibald of your staff for an extension of time for submission of this report from March 15 to this time.

Sincerely yours,

RICHARD H. LAKE, *Executive Secretary.*

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.

Foreign-Trade Zones Board activity to which 5 U.S.C. 1002 is generally applicable includes administration of the Foreign-Trade Zones Act, as amended, and the establishment, operation, and maintenance of foreign-trade zones established thereunder. There are no constituent elements of the Board to which this section does not apply.

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).

Foreign-Trade Zones Board Regulations (15 CFR 400), which are published in the basic official publication of the Board, entitled "Laws, Regulations, and Other Information Relating to Foreign-Trade Zones in the United States" (copy attached). This publication is reprinted whenever stock level so warrants or Board regulations have been substantially revised. Any changes in Board regulations are formalized in Board orders which are published in the Federal Register and incorporated in published Board regulations.

(b) Statements of the general course and method by which its functions are channeled and determined (see sec. 3(a)(2) of statute).

See answer to 2(a), above. The booklet containing Board regulations also contains Bureau of Customs regulations pertaining to foreign-trade zones (19 CFR 30). Together, these regulations set forth the course and method by which Board actions are channeled and determined. They include the nature and requirements of formal procedures as well as forms and instructions for compliance with applicable laws and regulations.

(c) Substantive rules adopted as authorized by law (see sec. 3(a)(3) of statute).

See answers to 2(a) and 2(b), above.

(d) Statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public (see sec. 3(a)(3)).

See answers to 2(a) and (b), above.

(e) Rules addressed to and served upon named persons in accordance with law (see sec. 3(a)(3) of statute).

The Board does not issue special rules to named persons.

3. Please describe the manner in which your agency publishes, or, in accordance with published rule, makes available to public inspection, all final and interim opinions or orders in the adjudication of cases, pursuant to section 3(b) of the APA or other authority.

Foreign-Trade Zones Board orders in adjudication of cases are published in the Federal Register.

4. In what types of cases does your agency refrain from publishing interim and final opinions or orders where, in the opinion of your agency, good cause requires they be held confidential, pursuant to section 3(b) of the Administrative Procedure Act or other authority?

See answer to 3, above. There are no exceptions.

5. In what circumstances are unpublished opinions and orders cited or used as precedents in other proceedings?

See answers to 3 and 4, above.

6. What is the procedure for making available to the general public the records and files, interpretations and legal opinions of your agency?

Records and files of the Foreign-Trade Zones Board are maintained by the executive secretary of the Board and are available for public inspection at his office. In addition to the opportunity to physically inspect this material, members of the public who submit written requests for information contained in these records and files are furnished such information except under the circumstances discussed in 7, below.

7. What limitations are placed upon the availability of records and files to the general public, either by statute, rule or practice?

General policy with respect to formal applications filed with the Board in connection with proposed zones is that certain items of information are made available for general public information; and that the contents of such formal applications and supporting exhibits are made available to interested parties properly and directly concerned. Board Regulations (sec. 400.605) provide that other information concerning such applications, which is not made available for general public information, will not be made public except upon a showing satisfactory to the Board of the public necessity or desirability therefor, or with the consent of the applicant. In addition, as may be determined by the Board, certain matters of official record may be considered "confidential for good cause found" (sec. 3(c), 5 U.S.C. 1002), and upon that premise the Board may decline to make them available for inspection or otherwise.

8. In what circumstances are private parties dealing with your agency required in any manner to resort to organization or procedure not published in the Federal Register (see section 3(a) of the Administrative Procedure Act)?

Private parties dealing with the Foreign-Trade Zones Board are at no time required to resort to organization or procedure which is not provided for in Board regulations.

9. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the Administrative Procedure Act or other authority?

There have been no cases in which the Board has refrained from publishing rules due to a function of the United States requiring secrecy in the public interest.

10. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the Administrative Procedure Act or other authority?

There have been on circumstances requiring the Foreign-Trade Zones Board to refrain from publishing rules relating solely to internal agency management.

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

These records include: applications for grants to establish, operate, and maintain a zone; applications for modification of a grant; applications to release merchandise from a zone to United States customs territory; periodic reports by the grantee of each zone; schedules of rates and charges of the grantee for use of facilities and services within a zone; zone grantee's own rules, regulations, and practices for the operation of a zone; transcripts of the proceedings of public hearings held in connection with the investigation of applications for grants to establish zones and of other hearings of the Board relating to the operation and administration of zones; Board orders; and annual reports of the Foreign-Trade Zones Board to Congress.

REPLY FROM INDIAN ARTS AND CRAFTS BOARD

INDIAN ARTS AND CRAFTS BOARD,
U.S. DEPARTMENT OF THE INTERIOR,
Washington, March 16, 1965.

Hon. JOHN E. MOSS,
Chairman, Committee on Government Operations, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: We have your letter of February 12 requesting information regarding the informational services of the Indian Arts and Crafts Board as related to section 3 of the Administrative Procedure Act of 1946.

The Indian Arts and Crafts Board, created by an act of Congress in 1935, serves Indians, Eskimos, and the general public as an informational, promotional, and advisory clearinghouse for all matters pertaining to the development of authentic Indian and Eskimo arts and crafts. The Board publishes a series of fact sheets dealing with various aspects of Indian and Eskimo arts and crafts, in addition to the quarterly circular smoke signals. Two copies of each publication are enclosed for your information. These publications are available to the public upon request free of charge.

Other information regarding Indian and Eskimo arts and crafts is available to the public through the facilities of our library reference books. Because

these books are a part of the Board's permanent collection of reference books, they are not available on a loan basis. Hence, anyone desiring to use them must do so during office hours.

Mr. Graham E. Holmes, Assistant Commissioner of the Bureau of Indian Affairs, is liaison officer for this office. He may be reached at code 183, extension 5706.

Sincerely yours,

ROBERT G. HART, *General Manager.*

REPLY FROM INTERAGENCY COMMITTEE ON OCEANOGRAPHY

INTERAGENCY COMMITTEE ON OCEANOGRAPHY
OF THE FEDERAL COUNCIL FOR SCIENCE & TECHNOLOGY,
Washington, D.C., March 18, 1965.

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

DEAR CONGRESSMAN MOSS: This is in reply to your letter of February 12, 1965, inquiring about the public information policy of the Interagency Committee on Oceanography and its compliance with section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

The answers to your questions are as follows:

1. The function of the Interagency Committee on Oceanography (ICO) is to coordinate the participation of the various Federal agencies in the national oceanographic program. In doing so, the ICO prepares the national program and plans the program budget. Although the ICO does not deal directly with the general public in any business capacity, it does, in compliance with 5 U.S.C. 1002, provide information about its activities, and those of all of its panels or subdivisions, to individuals or organizations requesting it.

2(a). The organization of the ICO is described in the following publications:

A. The National Oceanographic program, fiscal year 1966, ICO Pamphlet No. 17, p. — v. —. A copy of this pamphlet is forwarded herewith as enclosure (1).

A similar description will be published in subsequent annual program documents.
B. National Oceanographic Program, 1965, Hearings Before the Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries of the 88th Congress, serial No. 88-23, GPO, p. 23 ff. —. A copy is attached as enclosure (2).

C. The Interagency Committee on Oceanography Roster. This unofficial publication contains an organizational grouping of the names of ICO members, observers, and panel representatives. A copy is attached as enclosure (3).

2(b). The means by which the ICO carries out its functions is delineated in the foreword to the National Oceanographic Program, fiscal year 1966, ICO Pamphlet No. 17 (see enclosure (1)).

2(c), (d), (e). The Interagency Committee on Oceanography is subordinate to the Federal Council for Science and Technology. The Council was established by Executive Order 10807 of March 18, 1959. A copy of this order is attached as enclosure (4). Accordingly, statements of rules and policies are the prerogative of the parent organization.

3, 4, 5. Not applicable. The Interagency Committee on Oceanography would not conventionally become involved in legal matters or, for that matter, in any situation requiring opinions, orders, citations, or interpretations, etc.

6. Records and files are made available to the general public upon informal request.

7. The ICO is not normally concerned with classified material. Accordingly, records of its activities are available to the general public. Exceptions might include, for instance:

- (a) Records of executive sessions.
- (b) Privileged material received from industrial organizations.
- (c) Intrabureau for official use only material.

8. Private parties normally deal directly with the ICO either by correspondence, telephone, or personal visit. Matters discussed involve only information about the progress of the national oceanographic program. The ICO commits neither agencies or persons in the Federal Government to dealings of any kind.

9. Not applicable.

10. Not applicable.

11. The ICO staff has never formally defined an official record; these are construed as being documents relating to the planning, coordination, execution, or control of the national oceanographic program. These documents may include directives, letters, or memorandums; they may originate in any of 20 Federal agencies.

In clarification of the above, it must be emphasized that the ICO is not a funded agency. It neither authorizes, directs, nor controls commitments or actions of any segment of the Federal Government. The Committee has no dealings with the general public except in the provision of information on request. As stated in Mr. Abel's letter to you of October 7, 1963 (in response to your letter of Aug. 8, 1963), these dealings are usually accomplished on a relatively informal basis. A copy of this previous correspondence is attached as enclosure (5).

I am enclosing two copies of each of the publications cited in the answer to question 2(a). If I can be of further assistance to you, please let me know. My telephone number is code 11, extension 83464.

Sincerely yours,

WILLIAM W. WINDOW, *Administrative Officer.*

REPLY FROM INTERDEPARTMENTAL SAVINGS BOND COMMITTEE

INTERDEPARTMENTAL SAVINGS BOND COMMITTEE,
Washington, D.C., March 12, 1965.

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

DEAR MR. MOSS: In reply to your request of February 12, 1965, it is our belief that section 3 of the Administrative Procedure Act of 1964 (5 U.S.C. 1002) has no application to the Interdepartmental Savings Bonds Committee. The Committee has no control of functions, issues no regulations, rules or orders, and does not adjudicate cases. The only records maintained, aside from internal operating records, are the reports of the various departments as to the execution and results of sales promotions plans. These reports are summarized and widely circulated. Copies will be furnished anyone on request.

The organization and functions of the Committee are set out in Executive Order 10626, which was published in title 20, Federal Register, page 5671. Two copies of the Executive order are attached. A statement of the Committee's general functions is published in the U.S. Government Organization Manual each year.

If for any reason a more detailed reply to your inquiry is desired, please contact Mr. John H. Grosvenor, Jr., code 184, extension 2238, who will obtain any information you may desire.

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

REPLY FROM MIGRATORY BIRD CONSERVATION COMMISSION

MIGRATORY BIRD CONSERVATION COMMISSION,
Washington, D.C., March 10, 1965.

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

DEAR MR. CHAIRMAN: The following information is furnished in reply to your request of February 12. Liaison can be maintained with the secretary of the Migratory Bird Conservation Commission whose telephone number is code 183, extension 4676.

Answers to your questions as they relate to the Migratory Bird Conservation Commission follow:

1. The only functions of the Migratory Bird Conservation Commission, which was created by section 2 of the Migratory Bird Conservation Act (45 Stat. 1222, as amended, 16 U.S.C. 715a), are to consider and pass upon areas recommended

by the Secretary of the Interior for purchase or rental under that act and to fix the price or prices at which such areas may be purchased or rented. Since these functions are prescribed by statute, 5 U.S.C. 1002 has limited application and the only part that may be applicable is the subsection relating to availability of matters of official record (5 U.S.C. 1002(c)). There are no divisions, bureaus, branches, or other constituent units of the Migratory Bird Conservation Commission.

2. (a) The Commission has no field organization. Its central organization is published in the annual report of the Migratory Bird Conservation Commission, which is presented to the Congress each year pursuant to section 3 of the Migratory Bird Conservation Act (16 U.S.C. 715b).

(b) Not published.

(c) The Commission has adopted no substantive rules.

(d) Since the Commission does not deal directly with the public there are no standards of general policy or interpretations formulated and adopted for the guidance of the public.

(e) The Commission does not address rules to and serve them upon named persons.

3, 4, and 5. Do not apply to the Migratory Bird Conservation Commission.

6. The summary of the minutes, boundary limits, and acreage of a proposed area, and the annual report of the Commission are available to the public upon request. The annual report contains tables showing by refuge the acres acquired and the total price paid.

7. The Commission retains as restricted material certain appraisal data pending acquisition of the land.

8. None.

9 and 10. Not applicable to the Commission's functions.

11. The official record of the Commission is defined as the summary of minutes, appraisal data, and correspondence.

Two copies of the Report of the Migratory Bird Conservation Commission for the fiscal year ended June 30, 1964, are enclosed.

Sincerely yours,

ALBERT J. RISSMAN,

Secretary, Migratory Bird Conservation Commission.

REPLY FROM PRESIDENT'S MISSILE SITES LABOR COMMISSION

PRESIDENT'S MISSILE SITES LABOR COMMISSION,
Washington, D.C., March 12, 1965.

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

DEAR CONGRESSMAN MOSS: This is in reply to your letter of February 12, 1965, concerning the provisions of section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

The following information is furnished in reply to your numbered questions:

1. The Commission was established by Executive Order 10946 on May 26, 1961, for the purpose of developing policies, procedures, and methods of adjustment for labor problems at missile and space sites. The functions of the Commission are set forth in detail in the Executive order, copy of which is enclosed. Briefly, the major functions of the Commission as stated in the Executive order are:

(a) The establishment of a Missile Site Labor Commission composed of an equal number of labor, management, and public members. The Secretary of Labor is the Chairman of the Commission and the Director of the Federal Mediation and Conciliation Service is Vice Chairman.

(b) The establishment of tripartite Missile Site Labor Relations Committees, including representatives of contracting agencies and the Federal Mediation and Conciliation Service, at missile and space sites.

(c) The Commission to consult with Government contracting agencies as well as the National Labor Relations Board. In turn, these agencies are required to cooperate with the Commission.

(d) The Commission to develop with Federal contracting agencies and the parties' implementation of the Executive order through collective bargaining agreements or other arrangements to assure no strikes or lockouts on missile sites.

(e) The Commission to take such other action to promote the policies of the order and make recommendations to Government agencies, management, and labor to assure efficient and economical completion of missile programs.

(f) The establishment of procedures to anticipate and resolve labor relations problems where voluntary procedures fail, and to utilize legal proceedings, so far as these will be effective.

There are no divisions, bureaus, branches or other constituent units of your agency to which the section does not apply.

2. (a) The Commission publishes annually a report to the President of the United States which describes the organization, functions, and accomplishments of the central and field organization of the Commission. Copies of our first and second annual reports are enclosed. The third annual report is in the process of being printed and will be published shortly. Executive Order 10946 was published in the Federal Register at the time of its issuance on May 26, 1961.

(b) Shortly after the Commission was created, a construction labor policy and an industrial labor policy were issued. These policies have been used to guide the Commission in the issuance of many decisions and recommendations concerning specific disputes. Copies of these policy statements and recommendations concerning statements, as well as decisions and recommendations, have always been furnished to all interested parties involved in the disputes, including other Government agencies, and have been released to the press.

(c) The Commission has not adopted any substantive rules as authorized by law: The Commission has issued decisions and recommendations, concerning specific disputes and labor-management problems on missile and space sites, which have been accepted by the parties on a voluntary basis.

(d) The disputes which come under the Commission's jurisdiction are always between private organizations; specifically, companies and unions working on missile and space sites. For this reason, statements of general policy or interpretations formulated for the guidance of the public are not required.

(e) As explained in 2(c) above, the Commission has not issued any rules addressed to or served upon named persons in accordance with law.

3. As stated in 2(b) above, copies of all decisions and recommendations of the Commission are furnished to all parties to the dispute and are released to the press. In addition, the Commission furnishes copies of all decisions and recommendations to scholars, university and public libraries, or any other interested individual, upon request.

4. There have been no Commission decisions or recommendations which were confidential and, therefore, not published.

5. Not applicable. See 4 above.

6. The records and files of the Commission are available to individuals and groups who have a direct and proper interest in the matter under consideration.

7. The nature of our operation precludes granting to the general public information which would violate the privacy or confidence of individuals or groups who may have placed the information before the Commission.

8. The private parties (companies and unions) dealing with the Commission have not been required to resort to organization or procedure not published in the Federal Register.

9. The Commission has handled no disputes involving a function of the United States requiring secrecy in the public interest.

10. The Commission has formulated no rules involving matters relating solely to internal agency management.

11. The Commission's definition of official record includes Commission decisions, recommendations, annual reports, and any other information in Commission files not held to be confidential for good cause.

If you desire any further information, please contact Mr. Richard P. Chambers of my staff, on code 110, extension 3553, and he will be happy to assist you.

Very truly yours,

JULIUS E. KUCZMA, *Executive Secretary.*

REPLY FROM NATIONAL AGRICULTURAL ADVISORY COMMISSION

U.S. DEPARTMENT OF AGRICULTURE,
NATIONAL AGRICULTURAL ADVISORY COMMISSION,
Washington, D.C., March 12, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR MR. MOSS: Reference is made to your letter of February 12, 1965, addressed to the Secretary, National Agricultural Advisory Commission. The letter contains a series of questions relating to the application of section 3 of the Administrative Procedure Act to such Commission.

The National Agricultural Advisory Commission was created by Executive Order 10472, dated July 20, 1953, as amended by Executive Order 10937, dated May 3, 1961. Copies of such executive orders are attached hereto. The sole function of the Commission is to review, at the request of the Secretary of Agriculture, the policies and administration of farm programs within the jurisdiction of the Department of Agriculture and advise the Secretary in regard thereto.

The Commission does not make rules for the guidance of the public; it issues no final opinions or orders in the adjudication of cases or otherwise; it does nothing on which the public must rely. Rather, it acts solely in an advisory capacity to the Secretary of Agriculture, and thus its functions are considered as relating solely to the internal management of the Department of Agriculture. The Commission has, therefore, been viewed as not being subject to section 3 of the Administrative Procedure Act.

The Commission has not attempted to develop a definition of "official records" as used in section 3(c) of the Administrative Procedure Act, since all of its records relate solely to the internal management of the Department of Agriculture. Such records consist of minutes of its meetings, recommendations, internal memoranda and reports, all of which are for use within the Department of Agriculture.

Because of the view that the functions of the Commission are matters relating solely to internal management of the Department of Agriculture, as that term is used in section 3 of the Administrative Procedure Act (5 U.S.C. 102), we have not attempted to answer specifically each question presented by you. However, if I can be of any further assistance in this matter, please call me on code 111, extension 3575.

Sincerely yours,

FRANK LOWENSTEIN,
Executive Secretary, National Agricultural Advisory Commission.

REPLY FROM NATIONAL CAPITAL HOUSING AUTHORITY

NATIONAL CAPITAL HOUSING AUTHORITY,
Washington, D.C., March 4, 1965.

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

DEAR MR. MOSS: This is in response to your letter of February 12, 1965, concerning section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002). Responses are numbered in accordance with specific questions contained in your letter.

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?

This agency, including constituent units, has considered its operations to come within the second exception of 5 U.S.C. 1002 provisions (matters relating to internal management) on the following basis:

(a) Agency operations involve the development and management of public housing in the District of Columbia for low-income families of the District.

(b) There is no field organization outside the District of Columbia, where the agency is located and operates.

(c) Dealings with the public involve the agency primarily with contractors in the development and maintenance of housing, with housing applicants, and with tenants in housing properties operated by the agency in the District of Columbia.

(d) The agency does not engage in rulemaking, order and adjudication, or licensing activity.

2. In what official or unofficial publication, and at what intervals, does your agency publish:

(a) Description of its central and field organization (see sec. 3(a)(1) of the Administrative Procedure Act);

(b) Statements of the general course and method by which its functions are channeled and determined (see sec. 3(a)(2) of statute);

(c) Substantive rules adopted as authorized by law (see sec. 3(a)(3) of statute);

(d) Statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public (see sec. 3(a)(3) of statute); and

(e) Rules addressed to and served upon named persons in accordance with law (see sec. 3(a)(3) of statute)?

The only publications issued by this agency are: the annual report published in accordance with the specific requirements of Public Law 307, 73d Congress, The District of Columbia Alley Dwelling Act, as amended (sec. 5(d)), and three brochures of informational nature which are program oriented and contain, only incidentally, information on organization and the "general course and methods by which * * * functions are channeled and determined." Copies of these publications are enclosed.

3. Please describe the manner in which your agency publishes, or, in accordance with published rule, makes available to public inspection, all final and interim opinions or orders in the adjudication of cases, pursuant to section 3(b) of the Administrative Procedure Act or other authority.

Not applicable.

4. In what types of cases does your agency refrain from publishing interim and final opinions or orders where, in the opinion of your agency, good cause requires they be held confidential, pursuant to section 3(b) of the Administrative Procedure Act or other authority?

Not applicable.

5. In what circumstances are unpublished opinions and orders cited or used as precedents in other proceedings?

Not applicable.

6. What is the procedure for making available to the general public the records and files, interpretations, and legal opinions of your agency?

Information is usually provided by telephone unless written inquiry is received in which case a written response is made.

7. What limitations are placed upon the availability of records and files to the general public, either by statute, rule, or practice?

Generally, there is no restrictions on the availability of records and files, except as provided by civil service regulation governing personnel files. Official need must be demonstrated in releasing personal information on tenants and housing applicants.

8. In what circumstances are private parties dealing with your agency required in any manner to resort to organization or procedure not published in the Federal Register (see sec. 3(a) of the Administrative Procedure Act)?

Private parties dealing with the agency are given appropriate information at the time of business contact; i.e., potential contractors receive specifications and proposals; housing applicants are given appropriate application and data forms to complete; tenants are given copies of leases, notices, data forms, etc., covering their occupancy in agency housing.

9. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the Administrative Procedure Act or other authority?

Not applicable.

10. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the Administrative Procedure Act or other authority?

See response to item 1 above.

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

The agency has not defined "official record" for such purpose.

If further information is desired concerning these matters, contact may be made with the agency's General Counsel, Mr. William R. Simpson, Jr. (code 128, extension 21571).

Sincerely yours,

WALTER E. WASHINGTON, *Executive Director.*

REPLY FROM NATIONAL CAPITAL TRANSPORTATION AGENCY

NATIONAL CAPITAL TRANSPORTATION AGENCY,
Washington, D.C., March 18, 1965.

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

DEAR MR. CHAIRMAN: Your letter, dated February 12, 1965, requested a report concerning the effect of section 3 of the Administrative Procedures Act of 1946 (5 U.S.C. 1002) on the activities of this Agency.

The National Capital Transportation Agency was established pursuant to Public Law 86-669 (74 Stat. 537) for the purpose of preparing a Transit Development Program for the National Capital region. The Agency performs no functions of a regulatory, judicial, or quasi-judicial nature under the purview of the Administrative Procedures Act of 1946.

I am designating Mr. Owen J. Malone, Acting General Counsel (telephone code 128, extension 6805) as the official to contact in the event your committee staff desires additional information concerning the functions of the Agency.

Sincerely yours,

C. DARWIN STOLZENBACH, *Administrator.*

REPLY FROM NATIONAL PARK TRUST FUND BOARD

NATIONAL PARK TRUST FUND BOARD,
U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, D.C., March 15, 1965.

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

DEAR MR. MOSS: This is in reply to your letter of February 12 to the Secretary, National Park Trust Fund Board, which was acknowledged by our letter of February 19, regarding the availability of information from Federal departments and agencies.

The Trust Fund Board, established by Public Law 201, 74th Congress, has five members who serve without compensation; three statutory members, including the Secretary of the Interior, the Secretary of the Treasury, and the Director of the National Park Service, and two members appointed by the President for 5-year terms. The Director of the National Park Service serves as Secretary of the Board and its official records are maintained by Service personnel as a part of their regular duties. The Board is authorized to accept, hold, and administer gifts or bequests of money, securities, and personal property for the benefit of, or in connection with, the National Park Service.

We have some doubt as to whether the questions contained in your letter generally apply to the Board's activities. The organization of the Board, duties of its officers, and procedures for conducting its business are published in the "Federal Register," and in turn included in the "Code of Federal Regulations," title 36, "Parks, Forests, and Monuments," chapter 1, part 9. Statements concerning the activities of the Board are furnished to interested parties upon request. The Board does not, however, have a headquarters or field organization, does not

adjudicate cases, issue interim or final opinions or orders, or otherwise engage in the activities referred to in your letter.

If there are any other questions regarding the Trust Fund Board, we would be glad to answer them. Mr. Carl O. Walker, Chief of Budget and Finance, National Park Service, code 183, extension 4567, will be pleased to act as liaison with the subcommittee.

Sincerely yours,

GEORGE B. HARTZOG, JR.,

Director, National Park Service, and Secretary, National Park Trust Fund Board.

REPLY FROM THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED,
Washington, D.C., February 19, 1965.

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

DEAR CONGRESSMAN MOSS: This will acknowledge receipt of your letter of February 12 requesting certain information from this Committee. Basically, our answer in general is the same that the late Gen. Melvin J. Maas wrote you as chairman on April 15, 1960; namely " * * * ever since 1947 the President's Committee has operated on the premise that everything possible should be done to advise and inform the American people as to our operations." With reference to your reply of April 18, 1960, we have never exercised classification authority under Executive Order 10501.

As to the specific questions:

1. By the very nature of our work it would seem to me that since we don't make rules, hold hearings, have any sanctions or powers, judicial review, etc., the Administrative Procedure Act does not apply to any functions of our work.

2. (a) We publish our plans, programs, operations, etc., in a number of ways, including the enclosed publications: This Is the President's Committee, Handbook for State and Community Committees, State Committee Organization and Financing.

(b) Enclosed is a copy of our Executive order, as amended, plus a recent statement of the Committee Executive Secretary to the Executive Committee which outlines staff activity and operations.

(c) Please see (b) above.

(d) We believe This Is the President's Committee meets this need.

(e) We have no such function.

3-10. We do not believe these questions are applicable to this volunteer Committee which operates in the area of persuasion, information, and education. Enclosed are copies of recent (a) annual meeting minutes, (b) digest of minutes of the Executive Committee, (c) report workshop for State Chairmen and Secretaries, and (d) the Fifth Annual National Meeting Employer Committee. Actually, very little that we do is not shared with the public.

11. We have never defined official record under the section referred to, nor do we now feel it applicable in view of the open nature of our work.

We are unable to supply you with any material as requested of our work. Should your staff wish further information or feel that the answers were in any way unresponsive to the question, please ask them to contact the Committee Executive Secretary, Mr. William P. McCahill, code 110, extension 3401, who has been with the Committee since its inception and is a former newspaperman.

Sincerely,

HAROLD RUSSELL, *Chairman.*

REPLY FROM THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

THE PRESIDENT'S COMMITTEE ON
EQUAL EMPLOYMENT OPPORTUNITY,
Washington, D.C., March 12, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR CONGRESSMAN MOSS: This concerns your recent letter asking for various information regarding this Committee's posture in relation to section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

As you may know the President's Committee on Equal Employment Opportunity is an interdepartmental committee created by Executive Order 10925, which was published in the Federal Register on March 7, 1961. The Committee, in the main, serves as an administrative and coordinating body over the equal employment opportunity activities of the Federal departments and agencies covered by the Executive order. The primary enforcement responsibility of the order rests with each individual agency.

Pursuant to authorization of the order, rules and regulations, largely concerned with internal operations of agencies affected by the order, were promulgated and published in the Federal Register on July 22, 1961. The order, itself, was amended and extended by Executive Order 11114, which was published in the Federal Register on June 24, 1963. Revised rules and regulations were promulgated and published in the Federal Register on September 6, 1963. Together, the orders and rules and regulations describe the general course and method of operations of this Committee.

Formal publications delineating the committee's operations are supplemented by posters and notices furnished by the contracting agencies and published by Government contractors, in accordance with the orders and the rules and regulations. Interpretations generally affect only internal management of agency operations, and are published in committee bulletins distributed to all contracting agencies. Where interpretations affect contractors, adequate notice is published by the contracting agency. The adjudication of "cases" is informal and is accomplished by the contracting agencies through mediation, negotiation, and conciliation, as required by the orders. It is felt that the agencies' decisions subject to review by this committee are matters within themselves which have no precedential value in relation to other allegations of discriminatory employment practices and do not fall within the meaning of 5 U.S.C. 1002.

To be sure, however, these decisions can be reviewed by any party upon request provided the request is determined to be in furtherance of the intent of the Executive orders.

It is also important to note that the committee has not refrained on any occasion from publishing rules because of secrecy in the public interest or due to the involvement of a matter related solely to internal agency management.

I hope the above information is of help in the important work your subcommittee is performing. If you have further questions in this regard, please call on me at the number indicated below.

Sincerely yours,

WILLIAM J. KENDRICK, *Executive Assistant.*

REPLY FROM PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING,
Washington, D.C., March 12, 1965.

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

DEAR CONGRESSMAN MOSS: This is in response to your letter of February 12 requesting certain information in regard to operations of this Committee under section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

The President's Committee on Equal Opportunity in Housing was created by Executive Order 11063 of November 20, 1962. In general, the Committee is

directed to coordinate the activities of Federal departments and agencies which have functions relating to housing, to recommend general policies and procedures to implement the order, to encourage educational programs by nongovernmental groups to eliminate the basic causes of discrimination in housing, and to make reports to the President as he may require or as the Committee may deem appropriate. By the terms of the order, departments and agencies subject to the order are primarily responsible for obtaining compliance with the purposes of the order. The Committee possesses no enforcement powers, but it uses its influence in its efforts to see to it that objectives of the order are achieved.

The Committee meets upon call of the Chairman which is not more often than once every 2 months. The Committee has a small staff of 11 persons with offices in the Executive Offices Building at the White House.

Operations of this Committee are limited to such extent that we do not believe that we have any pertinent information to submit in response to the specific questions listed in your letter. The Committee has adopted rules and procedures for its guidance which have been published in the Federal Register, of January 29, 1964. Two copies of the rules as published in pamphlet form are enclosed.

We would be glad to submit any additional information you may believe would be useful.

Sincerely,

DAVID L. LAWRENCE,

Chairman, President's Committee on Equal Opportunity in Housing.

REPLY FROM PRESIDENT'S COMMITTEE ON JUVENILE DELINQUENCY AND YOUTH CRIME

PRESIDENT'S COMMITTEE ON JUVENILE DELINQUENCY AND YOUTH CRIME,

Washington, D.C., March 4, 1965.

HON. JOHN E. MOSS,

*Chairman, Subcommittee on Foreign Operations and Government Information,
House of Representatives.*

DEAR CONGRESSMAN MOSS: In response to your inquiry of February 12, we are enclosing two copies of Executive Order 10940 of May 11, 1961, which established the President's Committee on Juvenile Delinquency and Youth Crime.

As you will note, the Committee is established to serve as a coordinating body working with the various Federal, State and local agencies, both public and private, which have youth-serving programs. It is not an operating agency; it does not administer programs, make grants or issue regulations.

In these circumstances, we do not believe that the questions you ask are pertinent to this Committee. If we have misunderstood your letter, or if you have any further questions, please do not hesitate to call us (code 13 X-27231).

With best wishes.

Sincerely,

Mrs. LYNN KIRK.

REPLY FROM PRESIDENT'S COMMITTEE FOR TRAFFIC SAFETY

THE PRESIDENT'S COMMITTEE FOR TRAFFIC SAFETY,

Washington, D.C., March 3, 1965.

HON. JOHN E. MOSS,

Chairman, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives.

DEAR REPRESENTATIVE MOSS: In your letter of February 12, 1965, you make inquiry concerning the operation of the President's Committee for Traffic Safety in relation to Act of 1946 (5 U.S.C. 1002). Inasmuch as many of the questions in your letter do not directly apply to the President's Committee, it is hoped the following will provide as much pertinent information as possible.

As you no doubt know, the President's Committee for Traffic Safety was created pursuant to Executive Order 10858, January 13, 1960 (amended by Executive Order 10868, October 10, 1961, copy of which is enclosed). You will note by section 2(a) of the order that this Committee's principal function is to promote the application of the action program which consists of 10 sections. Nine of

these sections provide broad recommendations concerning the services of Government agencies at the State and local levels. The 10th section recommends objectives concerning organized citizen support of State and local public officials with action program responsibilities.

All technical matters concerning the application of the action program are referred to one or more of the 36 national organizations that comprise the Advisory Council which was organized by the Committee as authorized under section 2(c) of the Executive Order 10858. A copy of the policy statement to guide the Advisory Council is enclosed.

The Committee's activities are intended to develop a better understanding of the action program and to stimulate broader activity by the public and private groups concerned with the application of the action program recommendations.

Therefore, the President's Committee functions as an educational public support organization, not as a body that renders judgments, opinions or decisions concerning the technical application of the action program by private organizations or governmental agencies.

Inasmuch as the purpose and activities of the President's Committee center around the action program, copies of this program are available to the public through the Government Printing Office (copies enclosed). Also, the Committee distributes thousands of copies of the action program annually to individuals and organizations—both public and private. A recent report to the President on the action program has been distributed widely to both private and public groups within the limitation of available funds (copy enclosed).

Pursuant to title 23-313 of the United States Code the Secretary of Commerce is directed to assist in carrying out the action program of the President and to cooperate with the highway departments and other agencies in this program to advance the cause of safety.

I sincerely trust that I have answered your inquiry fully. If there is any further information you require, please don't hesitate to contact me directly, phone code 112, extension 3557.

Sincerely yours,

WM. S. FOULIS,
Executive Director.

REPLY FROM PRESIDENT'S COUNCIL ON AGING

PRESIDENT'S COUNCIL ON AGING,
Washington, D.C., March 15, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Governmental Information Subcommittee,
House of Representatives.*

DEAR SIR: In reply to your letter of February 12, we can report that 5 U.S.C. 1002 does not apply to the President's Council on Aging.

Sincerely yours,

WARREN T. ROUDEBUSH,
Staff Director.

REPLY FROM PRESIDENT'S COUNCIL ON PHYSICAL FITNESS

PRESIDENT'S COUNCIL ON PHYSICAL FITNESS,
Washington, D.C., February 19, 1965.

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

DEAR MR. MOSS: In reference to your letter of February 12, it is our opinion that section 3 of the Administrative Procedure Act of 1946 (title 5 U.S.C. 1002) is not applicable to the President's Council on Physical Fitness. Our opinion is based on the fact that the Council does not engage in the adjudication of cases, disbursement of Federal moneys, rulesmaking or any matters "requiring secrecy in the public interest."

In the event that we might have misunderstood your request I will describe briefly the structure and operation of the Council.

The Council proper consists of seven Cabinet officers and the Administrator of the Housing and Home Finance Agency. The Council has a full-time staff of 12,

which consists of 4 men and clerical help. The Special Consultant to the President on Physical Fitness is the active director of the Council staff.

Although the Council is a White House agency, the Department of Health, Education, and Welfare provides it bookkeeping and other services.

Council policies are evolved by the Special Consultant, the Council staff, and the Interagency Advisory Group, which consists of the representatives of the Council members.

The Council's history, organization, and methods of operation are described in an information flyer sent to all persons directing inquiries to the Council.

The Council was established by Executive Order 11074 (Jan. 9, 1963), which was published in the Federal Register.

If we can be of further assistance to you in this study, please contact us again.

Sincerely,

STAN MUSIAL,

Consultant to the President on Physical Fitness.

REPLY FROM PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD,
Washington, D.C., March 15, 1965.

HON. JOHN E. MOSS,
*Chairman, Foreign Operations and Government Information Subcommittee,
Committee on Government Operations, House of Representatives.*

DEAR MR. MOSS: I wish to acknowledge receipt of your letter of February 12, 1965, wherein you make inquiry concerning the implementation of section 3-5 U.S.C. 1002 by the President's Foreign Intelligence Advisory Board.

This Board, pursuant to Executive Order 10938, dated May 4, 1961, functions as an advisory body to the President. It is responsible for conducting a continuing review and assessment of the activities of departments and agencies engaged in foreign intelligence activities and for reporting thereon to the President.

The Board's reports to the President deal with highly sensitive matters involving the national defense and security and accordingly are classified pursuant to Executive Order No. 10501.

The Board has had no occasion to issue any regulation, directive, rule, order, or other document of the kind referred to in the above referenced section of the United States Code.

I trust the above will be of assistance to you in connection with the study being made by the Foreign Operations and Government Information Subcommittee.

Sincerely yours,

J. PATRICK COYNE, *Executive Secretary.*

REPLY FROM RESOURCES ADVISORY BOARD (ATLANTA, GA.)

RESOURCES ADVISORY BOARD,
Atlanta, Ga., February 23, 1965.

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

DEAR MR. MOSS: Reference is made to your letter of February 12, 1965, addressed to the Chairman, U.S. Study Commission, on the Savannah, Altamaha, St. Marys, Apalachicola-Chattahoochee, and Perdido-Escambia River Basins and intervening area. Your letter was referred to the Resources Advisory Board inasmuch as the U.S. Study Commission is no longer in existence. Information on the organization and objectives of the Resources Advisory Board is enclosed.

The U.S. Study Commission, Southeast River Basins, was established in accordance with the provisions of Public Law 85-850, approved August 28, 1958. Section 3(1) of that act reads in part, "The Commission shall cease to exist within 3 months from the date of its submission to the President of its final report as provided for in section 9 of this act. * * *." In accordance with the provisions of this section, the U.S. Study Commission, Southeast River Basins, was termi-

nated on December 23, 1963. Notification of termination of the Commission was published in the Federal Register, volume 29, No. 28, dated February 8, 1964, on page 2314. The property and records of the Commission, except for the financial and related records, were disposed of by the General Services Administration; and the Department of Treasury took possession of and liquidated the Commission's financial affairs.

Mr. J. W. Woodruff, Columbus, Ga., was the chairman of the Study Commission during its entire existence. As Mr. Woodruff is chairman of the Resources Advisory Board and information on termination of the Study Commission is available to the Board, I am taking the liberty of furnishing the above information for him.

Sincerely yours,

CLARENCE M. CONWAY, *Executive Director.*

RESOURCES ADVISORY BOARD, SOUTHEAST RIVER BASINS

ORGANIZATION AND OBJECTIVES

The Resources Advisory Board, Southeast River Basins, is an organization of States embracing the eight river basins area shown on the map on the reverse side of this sheet. The board was organized early in 1964. It is concerned with the coordination and development of the land and water resources in the Southeast.

The Resources Advisory Board consists of a chairman selected from the area at large and members appointed by the Governors of Alabama, Florida, and Georgia. J. W. Woodruff, Jr., Columbus, Ga., is chairman. Members of the board in addition to Mr. Woodruff are: Leonard Beard, director, Alabama State Planning and Industrial Development Board, Montgomery; Tom Adams, secretary of state of Florida, Tallahassee; and Horace G. Caldwell, director, Georgia Department of State Parks, Atlanta.

The principal functions of the Resources Advisory Board are to encourage continued cooperation among the Federal, State, and local agencies in the field of land and water resources development in the Southeast; to review and encourage the development and implementation of the comprehensive plan for land and water resources development recommended in the report of the U.S. Study Commission, Southeast River Basins, 1963; and to keep up to date the recommended resources plan, making such revisions and modifications as necessary.

The records, files, and supporting data of the Study Commission are accessible to the board. The Study Commission was deactivated in December 1963 following the submission of its report to the Congress.

The area of interest of the board includes flood control and prevention; navigation; domestic and municipal water supplies; reclamation, irrigation, and drainage; hydroelectric power and industrial development; soil and forest conservation and utilization; fish and wildlife; recreation; salinity and sediment control; pollution abatement and protection of public health; hurricane protection and beach erosion control.

REPLY FROM VETERANS' DAY NATIONAL COMMITTEE

VETERANS' DAY NATIONAL COMMITTEE,
Washington, D.C., March 2, 1965.

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

DEAR MR. CHAIRMAN: This will acknowledge receipt of your February 12, 1965, letter in which inquiry was made of this committee relating to section 3 of the Administrative Procedure Act of 1946 (5 U.S.C. 1002).

I am enclosing a copy of a document entitled "Composition, Objectives, and Procedures of the Veterans' Day National Committee." I am also enclosing for your information a copy of our fact booklet.

I believe that you will conclude from these documents that most questions contained in your February 12 letter would not be applicable to this committee. The committee is a nongovernmental group, although the Administrator of Veterans' Affairs serves as its chairman, and certain Cabinet officials and Members of Congress serve as honorary committee members. The major congressionally

chartered veterans' organizations compose the executive committee and, together with the member organizations, provide all funds through annual dues assessments to implement committee objectives.

I trust that the foregoing information and enclosed material will provide your committee with adequate information concerning your inquiry; however, should you need additional information, please do not hesitate to contact me at Dudley 9-3923.

Sincerely,

GENE HOWARD, *Acting Secretary-Treasurer.*

REPLY FROM WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Arlington, Va., March 11, 1965.

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

DEAR MR. MOSS: We have your inquiry of February 12, 1965, concerning the study being made by your subcommittee into the availability of information from Federal departments and agencies.

The Washington Metropolitan Area Transit Commission is an interstate compact agency established by the Washington Metropolitan Area Transit Regulation Compact. This compact is an agreement by and between the Commonwealth of Virginia, the State of Maryland, and the District of Columbia with consent of Congress (Public Law 87-767) executed on the 22d day of December 1960. Article II of the compact states that the commission is an instrumentality of these States.

As the Administrative Procedure Act of 1946 is not applicable to agencies of the States, including the District of Columbia, the act is not applicable to this commission. Therefore, answers to your interrogatories have not been furnished.

If we may be of any assistance to you, please do not hesitate to call upon us.

Sincerely yours,

DELMER ISON, *Executive Director.*

LATE COMMENTS FROM DEPARTMENTS AND AGENCIES ON FEDERAL PUBLIC RECORDS LAW LEGISLATION

REPLY FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., May 14, 1965.

HON. WILLIAM L. DAWSON,
*Chairman, Committee on Government Operations,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests for the views of this Department on H.R. 5012 through H.R. 5021, H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, identical bills to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

For the reasons stated below, we recommend against the enactment of the proposed legislation.

1. These bills blend, and in our view undesirably confuse the basic accountability and informational responsibility of executive agencies to the American people with the quite separate obligation to make available, to those individual members of the public who have business with an agency or are affected by agency action in the conduct of their affairs, the records and other information needed by them in that connection and in the agency's possession. This becomes especially clear by comparing the sweeping and judicially enforceable requirement of the present bills that (with certain strictly limited exceptions) every agency make all its records promptly available to any person with the requirement of section 3 of the Administrative Procedure Act that (with broad exceptions) "matters of official record * * * be made available to persons properly and directly concerned."

Our objection on this score should not be construed as a disinclination to keep the general public properly informed about our activities and to be publicly accountable for our stewardship. On the contrary, it is our very strong policy, and we believe that we have a moral obligation, to make available to the public, as soon as possible, all information concerning programs and activities of the Department and its operating agencies which can be legitimately made available and which will be of use to the public in evaluating the effectiveness of these programs and activities and will aid the public in achieving improved health, education, and welfare.

This policy or obligation, however, the correlative of what is today often referred to as the "right (of the people) to know," should be primarily carried out through our regular program publication and informational services, published reports to the President and to Congress, press conferences, public addresses by agency officials, and the like. It cannot, without forbidding expense, be carried out by sifting the vast material in our files, as the bill seems to envision, to screen out that which cannot be legitimately disclosed, and open the rest to random public inspection as distinguished from inspection by persons properly and directly concerned. No provision has been made in our current budget for the hiring of additional personnel to compensate for the ensuing decrease of man-hours that would be available for employment upon our programs should the proposed legislation be enacted. Moreover, physical segregation of disclosable from nondisclosable material for the purposes of this bill could seriously interfere with the classification and arrangement of file material from the point of view of its greatest effectiveness in serving our program functions.

It should be emphasized in this connection that these bills are in no way concerned, indeed they expressly exclude from their scope, the question of the reach of the investigative power of the Congress vis-a-vis executive agencies.

2. The bills provide for eight closely circumscribed, to some extent overlapping, categories of records that are to be excepted from the duty of disclosure. These, again, are designed to narrow very substantially the ground rules laid down in section 3 of the Administrative Procedure Act, which, besides limiting the right of access to official records to "persons properly and directly concerned" (instead of all and sundry), except therefrom not only records protected from disclosure by other laws but also any records to the extent that there is involved any function of the United States "requiring secrecy in the public interest" or "relating solely to the internal management of an agency" and any "information held confidential for good cause found."

The exemptions in the present bills are substantially identical with the corresponding provisions of pending Senate bills (S. 1160, S. 1336) to amend section 3 of the Administrative Procedure Act, and those in turn are the outgrowth of earlier versions in the last Congress, one of which, S. 1666, passed the Senate. No doubt they reflect a bonafide effort to find a basis for accommodation between, on the one hand, a legitimate concern, in a democracy, for the widest public access to information about the activities of the Government and, on the other hand, the necessity of limiting that access in some matters in the public interest itself or in the interest of fairness to those who have submitted needed information to the Government in confidence. The effort, however, has not been successful, and this altogether apart from the question of basic approach discussed under point 1 of this report.

For example, clause (5) would exempt interagency or intraagency memorandums or letters "dealing solely with matters of law or policy." Just as in executive sessions of legislative committees, so in internal communication within and between executive agencies (as well as their advisory committees), the freest interchange of ideas and views is essential in the development of policy, whether the subject be a legislative proposal or program considered for submission to Congress, a possible change in administrative policy on the conduct of a program, or whatnot, and this is as true when matters of fact enter the picture as when, if ever, they do not. So, too, is complete latitude and freedom necessary for the exchange of views between members of an adjudicative body in an executive agency, just as it is in the judicial conference room or in communication between a judge and his law clerk. Such freedom would, inevitably, be seriously inhibited in all such cases by throwing such communications (when in writing) open to random public inspection. It should be emphasized that executive accountability to the public is in any event assured at the point of action, whether in the form of a legislative proposal submitted and justified to Congress, and administrative policy, or an adjudication, without subjecting such internal communications to public inspection.

Again, to mention another example, while the bills exempt from the requirement of public access certain types of records the disclosure of which would constitute an unwarranted invasion of personal privacy or reveal confidential business data, there is no general exemption of information obtained by the Government in confidence or of other matters involving the right of privacy, and even the specific exemptions are qualified in a way that makes their scope uncertain. We believe that in the absence of some compelling public interest in disclosure in a particular case, all information submitted to the Government in confidence, whether or not specifically exempted from disclosure by statute, should be held in confidence, and that any matter which, if disclosed, might constitute an unwarranted invasion of the rights of privacy of any individual or group should be carefully protected from indiscriminate disclosure.

3. Even if the bills' basic approach to assuring the proper discharge of executive accountability and informational responsibility; i.e., making all records that are not within specifically excepted categories available to any person, were itself a sound one, the enforcement provision is so devised as to make possible, in effect, nullification of the exceptions. Under this provision, agency officers could, on pain of punishment for contempt, be compelled, in an injunction suit, to make records and information available to any person unless the agency, through evidence adduced *de novo* in court, carries the burden of satisfying the court that the record or other information is excepted from the duty of disclosure. To demonstrate to the court that a particular record or information is excepted from the duty of disclosure might, in itself, necessitate disclosure of the privileged matter in open court. (It is also difficult to see why a complainant seeking access to records in, for example, Washington, D.C., should be entitled to sue where he resides, e.g., San Francisco, rather than being required to sue where the agency is or the records are.)

4. Finally, in view of the above-mentioned pendency of proposed amendments to the Administrative Procedure Act, we believe that whatever approach, if any, may be adopted by the Congress to the problems of the availability of agency records and disclosure of information, it is desirable to avoid duplication and overlap in the provisions of mutually independent statutes in this respect.

The Bureau of the Budget advises that it has no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

REPLY FROM FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION,
Washington, D.C., May 12, 1965.

HON. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations,
House of Representatives.

DEAR MR. CHAIRMAN: This is in response to your request for report and comment by the Federal Trade Commission on H.R. 5012, 89th Congress, 1st session, and similar bills; namely, H.R. 5013-5021, H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, entitled "to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records."

These bills would amend section 161 of the Revised Statutes, 5 U.S.C. 22, as amended, under which departments and agencies of the Government are authorized to prescribe regulations for the custody, use, and preservation of their records, papers, and property. The amendments proposed are designed to remove secrecy from Government action and insure the right of access to all public records. With these laudable objectives, the Federal Trade Commission is in full accord.

The Federal Trade Commission, as the committee is well aware, is primarily an enforcement agency with the broad statutory duty to prevent unfair methods of competition and unfair or deceptive acts and practices in commerce. In its adjudicative functions, therefore, the Commission is acting in a quasi-judicial capacity. Certain of the statutes it administers require the Commission to issue rules and regulations and to obtain and maintain compliance with them. To a limited degree, therefore, the Commission is a regulatory agency. The Commission also has specific statutory authority to gather and compile information concerning, and to investigate the organization, business, conduct, practices, and management of corporations, individuals, associations, and partnerships, and from time to time to make public such portions of the information so obtained, except trade secrets and names of customers (disclosure of which is prohibited by statute), as it deems expedient in the public interest. The Commission is empowered by statute to require corporations, partnerships, and individuals, whether or not they are under investigation by the Commission, to furnish information and documents concerning their business and operations.

In carrying out its statutory functions the Commission each year receives thousands of complaints from individuals, business firms, Members of Congress, and others concerning allegedly unfair business practices. Most of the Commission's investigations are initiated as a result of complaints of this nature. While most of these investigations do not result in formal adjudicatory proceedings, the Commission obtains information from many sources, much of which relates to the intimate operations of business firms.

Thus, in the performance of its statutory duties and in its efforts to gain the expertise it is expected to have, the Commission obtains much information, the disclosure of which could do serious harm to those who furnish the information and disclosure of which we do not believe would be in the public interest. Congress itself recognized the potential danger of undue disclosure of information coming into the Commission's possession, by making it a misdemeanor subject to fine and imprisonment for any officer or employee of the Commission to make public any information obtained by the Commission without its authority.

The Commission's existing policy with respect to the disclosure of information concerning its actions is described in detail in the publication of the Commission, *Organization, Procedures and Rules of Practice*, a copy of which is enclosed. (The sections pertaining to public and confidential information are secs. 1.131-1.134, to be found on pp. 26-29 of the publication.) It will be observed that the Commission now makes public, among other things, the pleadings, transcript of testimony, exhibits, and all documents received in evidence or made a part of the record in adjudicative proceedings (except evidence received in camera); petitions for the issuance, amendment, or repeal of rules and regulations issued pursuant to specific statutory authority, including petitions for exceptions; records of hearings in all rulemaking proceedings; agreements containing orders to cease and desist after acceptance by the Commission; and reports of compliance. The Commission just recently announced that it will publish texts or digests of advisory opinions which have general interest, subject to statutory restrictions against disclosure of trade secrets or names of customers and to considerations of the confidentiality of facts involved and of meritorious objec-

tions made by the requesting party to such publication. In actual practice, therefore, the Commission now makes public substantially all of its records except those containing information and material furnished the Commission by complainants or obtained by the Commission in investigations and internal memorandums relating thereto, and records relating to its internal operations and management.

The concern of the Federal Trade Commission is whether the above classes of material would be excepted from the disclosure provisions of the proposed legislation. The Commission interprets subsection (c) as permitting the withholding of such categories of information. For example, it is our understanding that information and material supplied the Commission by complainants, including the name of the complainant, would be excepted from disclosure as "commercial * * * information obtained from the public and privileged or confidential" (c) (4); or by exception (7) as part of the "investigatory files compiled for law enforcement purposes." The Commission wishes to emphasize to the committee the necessity for the confidentiality of this type of information since its disclosure could result in substantial harm to those upon whom the Commission must depend to furnish the leads needed to perform its statutory functions in enforcing laws intended to maintain and promote the competitive system.

We do not understand Congress to intend that purely internal, traditionally privileged memorandums of members and employees of an agency, memorandums analyzing investigatory files, or making recommendations on matters of law and policy, or relating solely to the internal operations and management of the agency, etc., would be required under the subject bills to be made public. However, while we are confident no such result is intended (see 110 Congressional Record 17078-80 (daily edition, July 31, 1964)), and that the bills would not be interpreted to compel such a result, it might be desirable, in order to avoid all ambiguity, that the present language of subsection (c) (5), which excludes "inter-agency or intra-agency memorandums or letters dealing solely with matters of law or policy," be somewhat broadened. Such wording as "interagency or intra-agency memorandums or letters and other internal governmental communications and work papers normally considered privileged" might more clearly demarcate the intended scope of these bills than the present language of subsection (c) (5).

With this understanding, the Federal Trade Commission is of the opinion that its present policies are in substantial compliance with the proposed legislation and the Commission accordingly has no objection to the enactment of the subject bills.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on May 10, 1965, and on May 11, 1965, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the administration's program.

JOSEPH W. SHEA,
Secretary.

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