

J.D. - Orders

TREASURY DEPARTMENT

Washington 25

Office of the Administrative
Assistant to the Secretary

September 9, 1946

To Heads of Bureaus,
Offices and Divisions,
Treasury Department.

Attached is a copy of a memorandum from the General Counsel to his principal assistants on the subject of compliance with the Administrative Procedure Act.

You are requested to provide every facility and assistance needed to insure that the Department meets fully the requirements of this Act. The importance of this cannot be overemphasized, as no person is required to resort to organization or procedure not published as required by the Administrative Procedure Act. Failure to publish the necessary organization, delegations of authority, and formal or informal procedures may cause persons to contend that they are not bound by them. This might result in protracted litigation and could seriously disrupt operations of the Department.

It is requested that you bring this memorandum, and the attached memorandum of the General Counsel, to the attention of all members of your staff who will be concerned.

WILLIAM W. PARSONS
Administrative Assistant
to the Secretary

Original filed: Directives - Unnumbered Circulars
"Administrative Procedure Act."

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT

Sept. 9, 1946

TO : Mr. Wenchel, Mr. Lynch, Mr. Tietjens,
Mr. Oliphant, Mr. Friedman, Mr. Spingarn, and Mr. Surrey

FROM : Mr. O'Connell

SUBJECT: Administrative Procedure Act Compliance

Although initial compliance with section 3 of the Administrative Procedure Act has been effected there is, among other problems under the Act, the continuing problem of insuring that the requirements of section 3 and 4 are satisfied. The responsibility for insuring compliance in the various bureaus, divisions, and offices of the Treasury Department must continue to rest largely with the Legal Division. To assist you in meeting this responsibility, the Administrative Assistant to the Secretary is issuing a memorandum requesting the heads of Treasury bureaus, divisions and offices to provide all facilities and assistance needed to enable you to review proposed agency action from the standpoint of the requirements of the Administrative Procedure Act. You probably will find it necessary, in collaboration with appropriate administrative officers, to inaugurate in the respective bureaus, divisions, or offices whose legal activities you handle systems of central review of all proposed agency action which may relate to the various categories of public information set forth in section 3 of the Administrative Procedure Act.

Until compliance with the Act has become routine it will be necessary to give careful attention to a number of its requirements, including both matters already touched upon in our original submission under the Act to the Federal Register and also matters which must be published after September 11. In the first class are proposed changes of organization, delegations of authority, and new or amended procedures, including the use of forms, reports, and other papers. As you know, certain rules (those not within the scope of section 3(a) of the Act) and final opinions and orders in the adjudication of cases do not need to be published in the Federal Register if they are made available to public inspection pursuant to published rule. For the following reasons, however, there should be no relaxation of vigilance with respect to orders, opinions, and rules deemed to fall outside the scope of section 3(a):

1. Some may be of such interest and use to the public that they should be published in the Federal Register.
2. They may, by repeated following or citation, become precedents which should be published as statements of general policy or interpretations adopted for the guidance of the public.

3. Constant scrutiny will be necessary to determine which proposed rules are substantive and must be treated in accordance with the requirements of section 3(a) (3) and section 4 of the Administrative Procedure Act.

4. It may be necessary from time to time to publish new rules regarding the availability to public inspection of final opinions and orders in the adjudication of cases.

After September 11, 1946, it will be necessary to publish in the Federal Register all substantive rules adopted as authorized by law and all statements of general policy or interpretations formulated and adopted for the guidance of the public. As indicated above, there may be difficulty in ascertaining whether a proposed rule is of a substantive character. It is suggested, therefore, that all rules should be published in the Federal Register unless they clearly contain no substantive material, or are not formulated and adopted for the guidance of the public. With respect to these substantive rules, of course, it will be necessary to follow the rule making procedures set forth in section 4 of the Administrative Procedure Act.

My office will continue to make such interpretations of the provisions of the Administrative Procedure Act as are necessary to secure uniformity with respect to Treasury Department compliance. Inquiries relative to application of the Act should be addressed to Mr. Spingarn or Mr. Linville.

For the present, until we gain more experience, all material to be published in accordance with the requirements of section 3 and 4 of the Administrative Procedure Act should be transmitted to the Secretary of the Treasury through normal channels, attention Mr. Spingarn, by a covering memorandum explaining the document. The Division of the Federal Register requires that documents be submitted at least two full working days prior to publication date. Ample additional time must be allowed for review and processing after documents are transmitted to Mr. Spingarn.

Revised Federal Register Regulations are printed in the Federal Register of September 7, 1946. Your attention is directed particularly to sections 2.22-2.24.

The original copy of any document to be published under section 3(a) (1), 3(a) (2), and 3(c) of the Administrative Procedure Act shall be signed by the head of the bureau, division, or office of the Treasury Department and approved by the Secretary of the Treasury. The original copy of any other Federal Register document, including notices of proposed rule making, should be signed only by the officer who is authorized by law to issue the rule, except that the document shall also be signed by any other officer whose approval of the rule is required by law. Final opinions and orders in the

adjudication of cases for publication in the Federal Register should be signed by the official who issued or approves the final opinion or order.

Letters of transmittal to the Director of the Division of the Federal Register are necessary for documents subject to codification. Letters of transmittal for documents containing material relating to section 3(a)(1) and 3(a)(2) of the Administrative Procedure Act will be prepared for the signature of the Secretary of the Treasury. Other letters transmitting documents subject to codification should be signed by the official authorized by law to issue or approve the rule or final opinion or order.

Joseph J. O'Connell Jr.

Information Copies To:

Mr. Linville	Mr. Tennyson
Mr. Vize	Mr. Cunningham
Mr. Magill	Mr. John F. Anderson
Mr. Alk -	Mr. Reeves
Mr. Helfrich	Mr. Rupert
Mr. Harrison	Mr. McNeill
Mr. Chambers	