Chapter II

ADMINISTRATIVE INFORMATION

An important and far-reaching defect in the field of administrative law has been a simple lack of adequate public information concerning its substance and procedure. The staff of the Committee has had to labor industriously for a year or more in order to describe the procedures of a selected group of agencies, without attempting to analyze the substantive principles upon which the agencies act. There are comparatively few works on "administrative law," and even fewer which deal with administrative procedure as such. The publications of the agencies themselves are in a number of instances found to be out of date or of too generalized a character. To all but a few specialists, such a situation leads to a feeling of frustration. Laymen and lawyers alike, accustomed to the traditional processes of legislation and adjudication, are baffled by a lack of published information to which they can turn when confronted with an administrative problem.

Such a state of affairs will at least partially explain a number of types of criticisms of the administrative process. Where necessary information must be secured through oral discussion or inquiry, it is natural that parties should complain of "a government of men." Where public regulation is not adequately expressed in rules, complaints regarding "unrestrained delegation of legislative authority" are aggravated. Where the process of decision is not clearly outlined, charges of "star-chamber proceedings" may be anticipated. Where the basic outlines of a fair hearing are not affirmatively set forth in procedural rules, parties are less likely to feel assured that opportunity for such a hearing is afforded. Much has been done in recent years to alleviate these difficulties. But much more can readily be done by the agencies themselves.

A. RULES, REGULATIONS, AND STATEMENTS

After thorough studies had been undertaken in 1933 at the direction of the President, provision was made, for the first time in the history of the United States, for the publication of administrative regulations in the manner of other laws.[1] As a result the Federal Register now provides for the daily publication of new "rules, regulations, and orders" having "general applicability and legal effect."[2] The Code of Federal Regulations is a codification of the same documents. While this important step made it possible for the citizens to discover what rules, if any, had been made, it did not provide affirmatively for the making of needed types of rules or for the

[1] See Code of Federal Regulations, v. 1, pp. iv ff.
[2] 1 Fed. Reg. 2269 *et seq.*

issuance of other forms of information. Rules and regulations are not the only materials of administrative law. There are, in addition, the statutes, which are often general in their substantive provisions and sketchy in their procedural directions; the decisions of each agency, only some of which are accompanied by reasoned opinions and only some of which are published; the agencies' reports to Congress, which contain a variety of useful information but which are not always readily available to the public at large; the interpretative rulings made by the agencies or their general counsel, which frequently are not published; press releases, notices, speeches, and other statements of policy which are easily lost and obviously cannot be distributed to or kept by all who might some day have use for them; and the decisions of the courts upon review, enforcement, or restraint of administrative action, which are few in number and deal for the most part either with purely formal matters or with the details of a particular case. All these types of information should be made available, in orderly and readily accessible form, to the public. To bring such scattered materials together, to know which are superseded, and to fill in missing chapters is a task that only the agency involved can perform.

A primary legislative need, therefore, is a definite recognition, first, of the various kinds or forms of information which ought to be available and, second, of the authority and duty of agencies to issue such information.[3] Rules and regulations are of many kinds, each of which should be recognized in any attempt to deal with the problem. Moreover, instead of diverse methods of issuing information, as far as practicable all standard information regarding a given agency should be brought together. Without attempting to exhaust the subject, it is possible to list at least seven forms of vital administrative information:

1. *Agency organization.*—Few Federal agencies issue comprehensive or usable statements of their own internal organization—their principal offices, officers, and agents, their divisions and subdivisions; or their duties, functions, authority, and places of business. The United States Government Manual is not sufficiently detailed to fill this gap. Yet without such information, simply compiled and readily at hand, the individual is met at the threshold by the troublesome problem of discovering whom to see or where to go—a problem sometimes difficult to solve without irksome correspondence or unproductive personal consultations.

2. *Statements of general policy*—Most agencies develop approaches to particular types of problems, which, as they become established, are generally determinative of decisions. Even when their reflection in the actual determinations of an agency has lifted them to the stature of "principles of decision," they are rarely published as rules or regulations, though sometimes they are noted in annual reports or speeches or press releases, as well as in the opinions disposing of particular

[3] It may not be wholly amiss to add here the thought that no agency can know in advance the identity of every affected interest or every attorney who may at some time be involved in its proceedings. Hence, those who may be interested must themselves bear the major responsibility for securing the information an agency may make available. It is no doubt true even today that accessible documentary material is often not consulted because of failure to seek it from one or another of the agencies. Many law libraries, both those of professional organizations and those connected with educational or public institutions, neglect to index or to maintain current files of administrative materials which may be obtained from the agencies at little or no cost.

controversies. As soon as the "policies" of an agency become sufficiently articulated to serve as real guides to agency officials in their treatment of concrete problems, that fact may advantageously be brought to public attention by publication in a precise and regularized form.[4]

3. *Interpretations.*—Most agencies find it useful from time to time to issue interpretations of the statutes under which they operate. These interpretations are ordinarily of an advisory character, indicating merely the agency's present belief concerning the meaning of applicable statutory language. They are not binding upon those affected, for, if there is disagreement with the agency's view, the question may be presented for determination by a court. But the agency's interpretations are in any event of considerable importance; customarily they are accepted as determinative by the public at large, and even if they are challenged in judicial proceedings, the courts will be influenced though not concluded by the administrative opinion. An agency's interpretations may take the form of "interpretative rules." More often they are made as a consequence of individual requests for rulings upon particular questions; but as "rulings" they are often scattered and not easily accessible.

4. *Substantive regulations.*—Many statutes contain provisions which become fully operative only after exercise of an agency's rule-making function. Sometimes the enjoyment of a privilege is made conditional upon regulations, as, for example, where Congress permits the importation of an article "upon such rules and regulations as the Secretary of the Treasury may prescribe," or allows utilization of public forests in accord with regulations to be laid down by administrative officers. Sometimes the extent of an affirmative duty is to be fixed by regulations, as, for example, where employers are commanded to pay wages not less than those prescribed in administrative regulations. Sometimes a prohibition is made precise by regulations, as, for example, where the sale of dangerous drugs is forbidden and the determination of what drugs are dangerous is left to administrative rules. In such instances the striking characteristic of the legislation is that it attaches sanctions to compel observance of the regulations, by imposing penalties upon or withholding benefits from those who disregard their terms. Thus these substantive regulations have many of the attributes of statutes themselves and are well described as subordinate legislation.

5. *Practice and procedure.*—Most agencies issue in some form directions as to practice and procedure, but generally these are severely limited to forms of application and the bare requirements of practice. They rarely outline the whole processs or indicate alternative procedures. They tend to touch upon the high spots of formality without disclosing the essential patterns of the procedures utilized by a given agency in a given type of case.

6. *Forms.*—A most useful type of information is found in forms for complaints, applications, reports, and the like. Most agencies issue these in connection with their rules of practice. They are helpful to the individual because they simplify his task and make it

[4] It remains true, however, as was observed in *Chicago, Burlington and Quincy Ry. Co.* v. *Babcock*, 204 U. S. 585, 598 (1907), that many administrative judgments "express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth."

unnecessary for him to speculate concerning the desired contents of various official papers.

7. *Instructions.*—Some agencies operate wholly, or for the most part, through examinations, statements, or reports. In such agencies, instructions for such examinations, statements, or reports are the important form of administrative information and are, to all intents and purposes, an essential type of rule-making.

These various sources of administrative information should be recognized. As far as practicable, agencies should be authorized and directed to make and issue, from time to time, such of them as are appropriate to the agency's functions. In compiling information of this sort, the private individual would be materially helped if each agency would take care that its information is constantly improved in form and completeness; kept current as far as possible; promptly published in the Federal Register as well as in pamphlet form; separated as to (a) agency organization, (b) procedure, and (c) substance, interpretation, or policy; and distinguished from statutory provisions with which it may be published.

Omissions in the publication of regulations having statutory effect are no longer worthy of note. Some agencies, such as the Post Office Department, however, have formulated no rules of practice, while the rules of others, by reason of obsolescence or thoughtless adoption of the rules of older agencies, are badly in need of revision to make them conform to actual practice. Where such revision is needed, it should of course be undertaken without delay. The commingling of procedural and substantive regulations is occasionally found, to the detriment of clarity and ease of use. Treasury Regulations under a particular income or estate tax law, for example, typically contain, without separation or demarcation, rules of procedure, substantive provisions supplementing specific sections, and advisory interpretations construing doubtful sections of the Act.[5] Regulations of the Bureau of Marine Inspection and Navigation on a specific subject include provisions dealing variously with procedure and substance. For example, the proposed ocean and coastwise regulations now awaiting promulgation range from specifications of the ingredients of rivet steel to the requirment that license blanks be filled out by the inspectors in pen and black ink. Other agencies, such as the Veterans' Administration, make the distinction between procedure and substance with only partial success. Improvements in this respect should be made.

Interpretations and policy instructions to the staffs of administrative agencies are now available to the public to a limited extent, especially where interpretative regulations are formally adopted and promulgated. In addition, some agencies have expressed their instructions to their agents in available printed form.[6] To some ex-

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[5] It must be recognized that some of the existing commingling of procedural, interpretative, and legislative regulations may result from the form of the pertinent statute. The Internal Revenue Code, for example, combines procedure and substance without discrimination, and a set of regulations which proceeds paragraph by paragraph through the Code will necessarily confuse substance and procedure in like manner. But even if the procedural and administrative provisions of the Code are not separately stated, it would seem nonetheless feasible and desirable to draw a set of procedural rules that would be separately stated and separately published.

[6] Regulations of the Home Owners' Loan Corporation, for example, read as follows under the caption "General policy": "The necessity of treating each case of delinquency as an individual problem is recognized, as is the Corporation's duty to collect indebtedness from borrower, and where clearly established that the default is wilful, steps are to be taken

tent, however, the officers of some of the agencies are controlled in their dealings with outsiders by instructions or memoranda which they are not at liberty to disclose. Rarely, if at all, is there justification for such a practice. Not only does it seem unfair to the individual to compel him to meet unseen regulations, but it is inefficient to encourage representations to an agency which might be stilled if the adoption of a definite policy were known. The Committee is strongly of the opinion that, with possible rare exceptions, whenever a policy has crystallized within an agency sufficiently to be embodied in a memorandum or instruction to the staff, the interests of fairness, clarity, and efficiency suggest that it be put into the form of a definite opinion or instruction and published as such. The extent to which the publication should be separate from that of statutory regulations will vary from agency to agency, but in general it would be wise to distinguish the two. In any event, the publication of the settled policies of each agency which affect outsiders should be complete.[7]

B. OPINIONS AND PRECEDENTS

In the preceding section of this chapter the Committee has recommended the fuller, better organized, and more frequent publication of the guiding principles of administrative behavior. It is recognized, however, that administrative agencies, like the courts, must often develop their jurisprudence in a piecemeal manner, through case-by-case consideration of particularized controversies. This is so partly because the full variety of circumstance can infrequently be perceived in advance. Partly, too, it is necessitated by the circumstances of the agencies' creation. Often an agency has been entrusted with responsible duties in an area in which experience is yet to be won, and where premature rigidifying of policies may prove to be harmful in the extreme. Sometimes, moreover, it is the very justification of an administrative agency's existence that it may exercise discretion in dealing with individual problems which are difficult to fit within the two inflexible boundaries of rules.

Even in these instances, however, there may be no impediment to the agency's stating what it has in fact done in the particular case before it, even though it may be unprepared to state its judgment in a generalized form. As a broad proposition the Committee believes that written opinions are highly desirable attributes of administrative decisions in individual cases; and in fact many of the agencies do now prepare and publish opinions in much the manner of trial and appel-

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immediately to protect the Corporation's interest." 24 C. F. R. 402.00a. It is also stated that "It is the policy of the Corporation to endeavor to have its mortgagors regularly remit their payments by mail to the Regional Offices * * *" (24 C. F. R. 402.08); "It is the fixed policy of the Corporation to discourage the personal collection of mortgagors' payments by its own representatives * * *" (24 C. F. R. 402.09).

[7] A word should be added in commendation of the excellent monthly bulletins or journals which are published by a number of the Federal agencies. Outstanding are the Federal Reserve Bulletin and the Civil Aeronautics Journal. Somewhat narrower in their scope but still extremely useful are the Internal Revenue Bulletin and the monthly supplements to the biennial Postal Guide. Those first mentioned are valuable contributions to the knowledge and development of the subjects with which the Board of Governors of the Federal Reserve System and the Civil Aeronautics Administration deal. In addition, they and the others mentioned furnish a means of imparting new regulations and other information regarding the work of the agency to those affected. Since all of these publications are specialized and relatively inexpensive, they are superior for this purpose to the Federal Register. The establishment of similar publications by other agencies might prove to be feasible if thought were given to their development.

late courts.[8] The Committee does not recommend imposing upon the agencies the duty of formulating elaborate opinions in every case. The necessity of preparing such opinions in a multitude of simple or petty cases might well be an undue drain on the resources of an agency, leaving insufficient time for more complex and important matters. But insofar as feasible, the Committee recommends that opinion accompany decisions.

For, in the first place, the requirement of an opinion provides considerable assurance that the case will be thought through by the deciding authority. There is a salutary discipline in formulating reasons for a result, a discipline wholly absent where there is freedom to announce a naked conclusion. Error and carelessness may be squeezed out in the opinion-shaping process. Second, the exposure of reasoning to public scrutiny and criticism is healthy. An agency will benefit from having its decisions run a professional and academic gauntlet. Third, the parties to a proceeding will be better satisfied if they are enabled to know the bases of the decision affecting them. Often they may assign the most improbable reasons if told none. Finally, opinions enable the private interests concerned, and the bar that advises them, to obtain additional guidance for their future conduct. Even where strict adherence to precedent is not observed, some light—perhaps as much as the agency itself possesses—will be shed on future action.

C. DECLARATORY RULINGS

In yet another respect there is room for developing predictability in the administrative process, without in the least weakening its ability to adapt itself to new needs or further experience.

In recent years, in the Federal and state courts, the device of the declaratory judgment has been provided to furnish guidance and certainty in many private relationships where previously parties proceeded at their own risk. When real conflicts of interest arise and there is an actual dispute concerning legal rights and duties, it is possible in declaratory judgment proceedings to obtain binding judicial determinations which dispose of legal controversies without the necessity of any party's acting at his peril upon his own view. But the declaratory judgment obtainable through the courts is not the answer to uncertainties which are present in the realm of administrative law.[9] The time is ripe for introducing into administration itself an instrument similarly devised, to achieve similar results in the administrative field. The perils of unanticipated sanctions and liabilities may be as great in the one area as in the other. They should be reduced or eliminated. A major step in that direction

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[8] The extent to which opinions are written by administrative agencies and the degree to which they have developed authoritative bodies of principles by following their own precedents are set forth in Appendix L, "Form and Content of Intermediate Reports and Final Administrative Decisions," *infra*, pp. 436–465, and Appendix M, "Reliance Upon Precedents by Administrative Agencies," *infra*, pp. 466–474.

[9] The utility of the judicial declaratory judgment itself in the public law field is limited first of all by the doctrine that administrative remedies must be exhausted and statutory methods of appeal pursued, before resort may be had to the courts by other means for the purpose of testing intended or possible administrative action. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41 (1938). As to tax controversies, where the need for advance determination of liabilities has been particularly acute, the possibility of using declaratory judgments has been specifically negatived by Congress. Act of August 30, 1935, 49 Stat. 1027.

would be the establishment of procedures by which an individual who proposed to pursue a course which might involve him in dispute with an administrative agency, might obtain from that agency, in the latter's discretion, a binding declaration concerning the consequences of his proposed action.[10]

At the present time, advisory rulings or opinions are given by a number of agencies, including the Bureau of Customs, the Packers and Stockyards Division of the Department of Agriculture, the Post Office Department, and the Securities and Exchange Commission. Advisory rulings are not an entirely satisfactory device, however, because they invariably carry an explicit or implicit warning that the agency is not bound by the opinion it has rendered. Ordinarily the recipient of the ruling may safely rely upon the agency to adhere to its opinion; but it is not beyond the realm of possibility that a different view will be taken of the question involved when the transaction has been consummated.[11] Consequently advisory rulings do not entirely eliminate, though they materially reduce, the element of uncertainty. Greater certainty can be achieved only by attaching to the ruling the same binding effect upon the agency that is attributed to other adjudications.

But without statutory authority an administrative agency is powerless to render a binding declaratory ruling. This disability has been removed in some instances, although the orders which the agencies have been authorized to issue bear different names. Persons desirous of knowing whether the Federal Power Commission deems the construction of a water-power project to be subject to the provisions of the Federal Power Act, for instance, may obtain a formal finding of the Commission upon this issue by filing a declaration of intention to construct a water-power project. If the Commission determines that no permit is needed because the Act does not apply, the declarants may thereafter proceed safely.[12] Failure to seek an advance administrative decision that they are exempt from the statute's requirements would not in itself subject these persons to any sanction. They merely have an option of securing a

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[10] On the desirability of administrative declaratory rulings, see E. M. Borchard, *Declaratory Judgments* (1934), at 595; H. Oliphant, *Declaratory Rulings* (1938), 24 A. B. A. J. 7; R. J. Traynor, *Declaratory Rulings* (1928), 16 Tax Mag. 195; Report of a Subcommittee of the House Committee on Ways and Means, *A Proposed Revision of the Revenue Laws*, 75th Cong., 3d Sess. (U. S. G. P. O., 1938), 55; statement of Senator King in support of the amendment to H. R. 8099, 75th Cong., 3d Sess., which contemplated the use of declaratory rulings in customs cases, 83 Cong. Rec. 4626–28 (1938). See, also, this Committee's Monographs No. 5, "Federal Alcohol Administration," Sen. Doc. No. 186 (76th Cong., 3d Sess.), Part 5, at 11–12; No. 13, "Post Office Department," *id.*, Part 12, at 38–40; Monograph No. 27, "Administration of the Customs Laws," pp. 165–167.

[11] See this Committee's Monograph No. 13, "Post Office Department," Sen. Doc. No. 186 (76th Cong., 3d Sess.), Part 12, at 39; Monograph No. 27, "Administration of the Customs Laws," p. 166; statement of Senator King in 83 Cong. Rec. 4627 (1938).

One of the major considerations leading to the refusal of the Bureau of Internal Revenue to issue advance rulings on prospective transactions [see Mimeo. 4589, XVI–1 Cum. Bull. 536 (1937)] was the decision of the Board of Tax Appeals in *Matter of Couzens* 311 B. T. A. 1040 (1928)] that such rulings were not binding upon the Commissioner who made them or his successors. See S. S. Surrey, *Some Suggested Topics in the Field of Tax Administration* (1940), 25 Wash. U. L. Q. 399, 434. Compare J. M. Maguire and P. Zimet, *Hobson's Choice and Similar Practices in Federal Taxation* (1935), 48 Harv. L. Rev. 1281, 1293–1309. It is interesting to note that since the development of the prospective closing agreement (*infra*, p. 32), the Bureau has liberalized its policy on advance rulings and now issues such rulings with some frequency. See this Committee's Monograph No. 22, "Administration of Internal Revenue Laws," pp. 74–75, ftn. 126; R. J. Traynor and S. S. Surrey, *New Roads Toward the Settlement of Federal Income, Estate, and Gift Tax Controversies* (1940), 7 Law & Contempt. Prob. 336, 354.

[12] See this Committee's Monograph No. 25, "Federal Power Commission," pp. 13–19. Similar exemption procedures are provided in Section 3 of the Public Utility Holding Company Act, 49 Stat. 838, and in numerous other statutes.

declaration of their status or, in the alternative, of proceeding upon their own view of the law—and at their own risk.[13]

Another example of the administrative declaratory ruling is encountered in the binding prospective closing agreements (that is, agreements with respect to future tax liability) which, since the passage of the Revenue Act of 1938, the Bureau of Internal Revenue has been authorized to negotiate with taxpayers.[14] Until this mechanism was devised, uncertainty concerning the possible tax liabilities created by contemplated business transactions frequently resulted in their being deferred or abandoned.[15] Moreover, if a person did act under a mistaken apprehension of the legal consequences which would flow from this action, the desire to avoid the impact of unanticipated tax claims often impelled him to litigate. These unfortunate results of uncertainty need no longer obtain in the Federal tax field if the prospective closing agreement is used.[16]

But the declaratory ruling is not feasible in every circumstance in which doubts may be present. A necessary condition of its ready use is that it be employed only in situations where the critical facts can be explicitly stated, without possibility that subsequent events will alter them. This is necessary to avoid later litigation concerning the applicability of a declaratory ruling which an agency may seek to disregard because, in its opinion, the facts to which it related have changed. The intrusion of variables may distort or destroy the plans concerning which the ruling was intended to give guidance. Hence it is that declaratory rulings may have no place in a complex, shifting problem like that of labor relations, while they may be extremely useful in relation, for example, to advertising practices. Whether a series of advertisements concerning distilled spirits violates a statutory or administrative prohibition can be ascertained by examining the proposed copy for the series. If a declaratory ruling be made that the proposed copy is unobjectionable, later dispute concerning applicability of the ruling is impossible. One can instantly compare the copy submitted for ruling with the copy which was actually published. If their contents are the same, the ruling is applicable; if they are different, it follows that the ruling does not extend to the published advertisement and that the advertiser is therefore unprotected against punitive proceedings if an impropriety is detected. Since this is so, it appears entirely desirable that the Post Office Department, the Federal Trade Com-

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[13] It is this optional character of the declaratory ruling which serves to distinguish it from other advance determinations, such as those made by an agency when a person is required by law to seek permission before taking affirmative action. Here, too, there is a determination of rights and duties in advance of a change in position; but the purpose of a determination in such a case is to further the regulatory purposes of the basic legislation rather than to give opportunity for prior administrative absolution to those who are reluctant to move without it. Under the Public Utility Holding Company Act, for example, it is unlawful for a holding company to proceed with certain types of proposed financial transactions unless the approval of the Securities and Exchange Commission has first been obtained. See this Committee's Monograph No. 26, "Securities and Exchange Commission, pp. 6–11. Indiscriminate extension of this type of mandatory advance decision procedure would impose burdens both upon the persons affected and upon the administrative agencies which might easily outweigh the advantages of certainty.

[14] See this Committee's Monograph No. 22, "Administration of Internal Revenue Laws," pp. 74–80. The prospective closing agreement procedure does not insure the taxpayer against changes in the statutes, nor is provision made for the judicial review of unfavorable rulings. The latter aspect of the procedure is discussed *infra*, p. 33.

[15] See Report of House Subcommittee, *loc. cit. supra*, note 10.

[16] But, contrary to expectations, there has not thus far been a very considerable volume of applications by taxpayers for a binding pronouncement by the Bureau. In few cases has the Bureau refused, after request, to issue a ruling upon which a closing agreement could be predicated.

mission, and the Alcohol Tax Unit of the Bureau of Internal Revenue—all of which exercise authority over advertising matter—be empowered to issue declaratory rulings upon proper application.[17] Similar conclusions may be reached in respect of certain personal status determinations on which much may hinge—as, for example, that an alien desiring to leave this country is entitled to re-enter it within a stated period of time; or that a person is an empolyee (or employer, as the case may be) within the meaning of the Social Security Act or the Railroad Retirement Act; or that one is not engaged in business subject to the provisions of the Fair Labor Standards Act. In situations of this sort, it is possible to ascertain the facts with the same degree of precision as would be possible if determinations were to be made at a later, and less convenient, time.

There is a possibility, though not a major one, that the opportunity to obtain a declaratory ruling might be exploited by interested persons. Innumerable requests for rulings on slightly altered facts might be made in an effort to reach the outermost edge of legal conduct without stepping over the boundary into actual illegality. If every application for a ruling were to require issuance of a binding declaration, the energies of the administrative agency might be unduly taxed. It should therefore be open to an agency to decline to give its ruling unless an applicant has demonstrated a sound necessity for administrative guidance and has supplied all essential facts.[18] The agency should also be free to decline a ruling when, in the judgment of the agency, the question at issue is of a sort which could most wisely be determined by the presentation and decision of a series of cases.

A final phase of declaratory ruling procedure remains to be considered. It may be anticipated that in most cases in which a ruling has been issued, the applicant will be content to govern himself accordingly. In some situations, however, the applicant might have an honest belief that the administrative ruling was erroneous and would be faced with the uncomfortable choice of either abandoning his plans or proceeding in disregard of the ruling with knowledge that he would be confronted with the imposition of a sanction. Since it is highly unlikely that he would choose the latter course, particularly where the sanction was a severe one such as the revocation of a license, provision should be made for immediate court review of declaratory rulings. The availability of judicial review would make possible the testing of a ruling by an applicant who would otherwise be compelled to desist from action believed by him to be proper.[19]

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[17] See Title IV of the Committee's proposed bill, which is appended to this report as Exhibit 1.

[18] See Traynor and Surrey, *op. cit. supra*, note 11, at 355; this Committee's Monograph No. 27, "Administration of the Customs Laws," pp. 122. 167. Compare this Committee's Monographs No. 13, "Post Office Department," Sen. Doc. No. 186 (76th Cong., 3d sess.), Part 12 at 39–40; No. 11, "Administration of the Packers and Stockyards Act," *id.*, pt. 11 at 9–10.

[19] As has been noted above, p. 32, the Bureau of Internal Revenue utilizes closing agreements in the tax field. These agreements are not strictly declaratory rulings and the absence of judicial review in respect of closing agreements has not produced unsatisfactory results. Because of their special nature which distinguishes them from declaratory rulings, the Committee's recommendation concerning judicial review of the latter does not extend to closing agreements. See this Committee's Monograph No. 22, "Administration of Internal Revenue Laws," pp. 80–82.