

ADMINISTRATIVE PROCEDURE ACT

REPORT

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ON

S. 7

A BILL TO IMPROVE THE ADMINISTRATION
OF JUSTICE BY PRESCRIBING FAIR
ADMINISTRATIVE PROCEDURE



MAY 3, 1946.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies to state their organization and procedures in the form of rules is essential for the information of the public. The publication must be kept up to date. The enumerated classes of informational rules must also be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. Under (1) only final delegations of authority to dispose of cases or matters must be published; the delegation of other functions would be shown in (2) in stating the general course and method by which each of an agency's functions are channeled and determined. Also, under (2), an agency is required to state all the stages, steps, courses, and alternatives for each of the types of functions it is authorized to perform. The section forbids secrecy of rules binding upon or applicable to the public, or of delegations of authority. Mimeographed releases of many kinds now common should no longer be necessary since, if they contain really informative matter, they must be published as rules, policies, or interpretations. Substantive rules include the statement of standards. As a matter of good practice rules of any kind should not unnecessarily repeat statutes, but may quote and should identify the statutory authority which they invoke or provisions they properly amplify. Where it is not desirable to publish complicated forms at length and in full-spread fashion in the Federal Register, under this provision an agency may publish in the Federal Register a simple statement of the contents of the form and, if blanks are available, state where they may be obtained. The requirement that no one shall "in any manner" be required to resort to unpublished organization or procedure protects the public from being required to pursue remedies that are not published as required by the section.

SECTION 3 (B). OPINIONS, ORDERS, AND RULES TO BE AVAILABLE TO PUBLIC INSPECTION

Agencies are required to publish or, pursuant to rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those held confidential for good cause and not cited as precedents) and all rules.

General rule making results in published material in the Federal Register as set forth in section 3 (a), but in the case of adjudication and some rules of particular applicability there is no standard medium of publication. Some agencies publish sets of some of their decisions, particularized rules, or orders; but otherwise the public is not informed as to how and where they may consult them. Requiring each agency to formulate and publish a rule respecting access to these materials of administrative law will afford the general public notice as to how such information may be consulted or secured. While the subsection does not mention "rulings"—which are neither rules nor orders but are general interpretations, such as the opinions of agency counsel—if authoritative they would be covered by the third category in section 3 (a). All rules must be subject at least to freely accorded public inspection under this section. The parenthetical exception respecting confidential opinions and orders would not supersede or repeal future or existing legal requirements of publication or public accessibility.