



# Joint Administrative Rules Review Committee

## Administrative Procedures Act Overview

*Prepared by Committee Staff, November 2013*



# Administrative Procedures Act (APA)

## Chapter 34.05 RCW

### General Purposes of the APA:

- ▶ To provide uniform standards for conducting formal rule-making by state agencies;
- ▶ To require state agencies to keep the public informed of their organization, procedures, and rules;
- ▶ To allow for public participation in the rule-making process.



# Policymaking Under the APA

Agency policy may be created in the following ways:

- ▶ Rule-making

- The Washington APA encourages rule-making.
- The Washington APA establishes rule-making procedures that agencies must substantially comply with.

- ▶ Case-by-case Adjudication

- The Washington APA acknowledges that agencies need flexibility to develop or adjust policy to meet particular, unforeseen circumstances.
- Agencies may hone their policies through application in specific cases.



# What Is a “Rule”?

Any agency order, directive, or regulation of general applicability that

- ▶ Subjects a person to a penalty;
- ▶ Effects procedures in agency hearings;
- ▶ Relates to the public benefits or privileges conferred by law;
- ▶ Relates to the issuance or suspension of commercial or professional licenses; or
- ▶ Relates to any mandatory standards for any product or material that must be met before distribution or sale.



# Types of Rules

- ▶ **Procedural Rule**
  - Governs an agency's methods for conducting its duties, including issuing permits, dealing with complaints, and holding hearings.
  - APA rule-making is usually required.
- ▶ **Interpretative Rule**
  - Interprets the statutes that the agency administers
  - Intended to guide the general public, which needs to know how an agency is applying its law
- ▶ **Legislative Rule**
  - Adopted pursuant to delegated legislative authority
  - Creates substantive law requirements with which others must comply
  - Violations result in binding sanctions.



# APA's Rule-making Procedures

If an order or directive of general applicability meets one of the five statutory criteria, the agency must formally adopt it as a rule, which includes public notice and comment.

- ▶ Step One: Prenotice Inquiry (CR 101)
- ▶ Step Two: Notice of Proposed Rule (CR 102)
- ▶ Step Three: Rule-making Order (CR 103)



# Substantial Compliance with the APA

- ▶ An agency's failure to substantially comply with the APA in adopting any substantive or procedural rules will invalidate any agency action taken in reliance on the rule.
- ▶ Agencies can run into trouble if they intend a policy, not adopted through adjudication or through APA rule-making procedures, to be binding.



# Agency Actions That Generally Do Not Require Rule-making

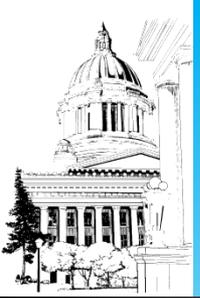
The APA specifically recognizes that agencies may articulate policy and interpret laws outside of the formal rule-making process.

- ▶ Statements of internal agency policy
- ▶ Interpretative and policy statements
- ▶ Traffic restrictions
- ▶ Certain rules of higher education institutions
- ▶ Emergency Rules (at least initially)



# Interpretative or Policy Statements

- ▶ Interpretative Statements
  - A written expression of the agency's opinion as to the meaning of a statute, court decision, or agency order.
- ▶ Policy Statements
  - A written description of the agency's current approach to implementing a statute, court decision, or agency order.
- ▶ These statements are advisory only. They are not binding on the public.
  - A person cannot violate an interpretative or policy statement and cannot be sanctioned for contrary conduct.
  - The agency, however, is expected to act consistently with its interpretative and policy statements, unless reasons exist for taking different action.



# Questions?

- ▶ Please call or email either committee staff with additional questions:
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