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.
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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