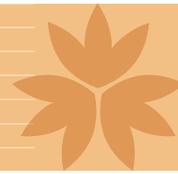


TYPES OF LEGAL DIRECTIVES



There are four main types of legal directives: rules and standards, and principles and policies.

Rules & Standards - Generally

A **rule** is a legal direction which requires for its application nothing more than a determination of fact.

Rules are precise.

Examples: A car may not drive faster than 55 mph on M-72.

A lawsuit to recover damages for a nuisance must be filed within 3 years of the nuisance occurring.

A **standard** is a legal direction that involves not only a determination of fact, but also a qualitative assessment of that determination with reference to other instances that are similar in a relevant way.

Standards are general.

Examples: The driver was negligent.

The decision was reasonable.

The buyer conducted his or her due diligence.

Hart and Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*.

Rules & Standards - Environmental Statutes

In most environmental statutes, the legislative body sets standards and delegates to an agency the task of writing rules to refine, apply and implement the standards.

Example: National Ambient Air Quality Standards (Clean Air Act).

Standard EPA shall set national primary ambient air quality standards, the attainment and maintenance of which ... allowing an adequate margin of safety, are requisite to protect the public health. 42 USC § 7409.

Rule For Particulate Matter less than 2.5 μg in size (PM_{2.5}), the NAAQS shall be 15.0 $\mu\text{g}/\text{m}^3$ as an annual mean, and 35 $\mu\text{g}/\text{m}^3$ in a 24-hour period.



Do not confuse “rules” in the Legal Process sense with administrative rules. Most administrative rules do create rules from legislative standards, but some administrative rules are themselves really standards in the Legal Process sense.



Principles & Policies - Generally

A **policy** is a statement of objective.

Examples: Economic growth.

Protection of the environment.

A **principle** is a statement of objective that asserts, implicitly or explicitly, that it ought to be achieved and the reasons why.

Examples: No one should profit from their own wrongdoing.

Like cases should be decided alike.

Principles are fundamental to a legal system. Policies can change with changing political priorities.

Hart and Sacks, *The Legal Process*, cited above.

Policies - Environmental Statutes

Policies are explicitly stated in environmental statutes in the form of legislative findings.

Environmental statutes can include primary policies and secondary policies.

Primary policies are the goals to be attained.

Secondary policies are general statements about the desired means to attain them.

Examples: Clean Water Act (33 USC § 1251).

Primary. The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

Secondary. It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution.

Principles - Environmental Statutes

Principles in environmental statutes are the directives that underlie the environmental regulatory system.

Principles in environmental statutes take two forms: organizing principles and limiting principles.

Organizing principles help to structure the environmental regulatory system. They come from the common law, the constitution, and the Administrative Procedures Act.

Examples of organizing principles:

Tragedy of the Commons

Garrett Hardin, "*The Tragedy of the Commons*", *Science*, Vol. 162, No. 3859 (December 13, 1968), pp. 1243-1248

Common law nuisance

State *parens patriae* and police powers

State property power

Administrative Procedures Act

Some transparency of decision-making

Some deference to agency factual determinations

Some deference to agency legal interpretations

Limited judicial review

Limiting principles put boundaries on what the environmental regulatory system can and cannot do. They are usually constitutional.

Examples of limiting principles:

Commerce clause

Dormant commerce clause

Non-delegation doctrine

Takings clause

Substantive due process

Procedural due process

Takings clause

Preemption

Standing

