

TITLE 1

GENERAL PROVISIONS

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Cross References

This title cited in 101 Pa. Code § 21.14 (relating to *Purdon's Statutes* classification).

PART I. JOINT COMMITTEE ON DOCUMENTS

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CHAPTER 1. PRELIMINARY PROVISIONS

- Sec.
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1.7. Statutory Construction Act of 1972 applicable.

Authority

The provisions of this Chapter 1 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186); section 206 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1206); and 45 Pa.C.S. §§ 503, 506, 507 and 701, unless otherwise noted.

Source

The provisions of this Chapter 1 adopted by JCD Order No. 4, dated July 8, 1969, unless otherwise noted.

§ 1.1. Title of official legal codification.

The official legal codification published under 45 Pa.C.S. § 701 (relating to official codification created) shall be known as the Pennsylvania Code.

§ 1.2. Citation of Code.

Under 45 Pa.C.S. § 507 (relating to form of citation) without prejudice to another mode of citation the Code may be cited by title and section number. The approved short form of citation to the Code is "Pa. Code". Thus "1 Pa. Code § 1.2" refers to section 1.2 of Title 1 of the Code.

Cross References

This section cited in 101 Pa. Code § 15.165 (relating to Pennsylvania Code and Bulletin); and 101 Pa. Code § 23.57 (relating to citation of Pennsylvania Code).

§ 1.3. Arrangement of Code.

- (a) The Code is divided into titles which are subdivided as follows:
(1) Parts, identified by Roman numerals, beginning with a title.

- (2) Subparts, identified by letters, beginning with a part.
 - (3) Articles, identified by Roman numerals, beginning with a subpart.
 - (4) Divisions, identified by Arabic numerals, beginning with an article.
 - (5) Subdivisions, identified by letters, beginning with a division.
 - (6) Chapters, identified by Arabic numerals, beginning with a title.
 - (7) Subchapters, identified by letters, beginning with a chapter.
 - (8) Sections, identified by Arabic numerals, beginning with a title.
- (b) The sections of the *Code* are subdivided into the following parts:
- (1) Subsections, identified by lower case letters.
 - (2) Paragraphs, identified by Arabic numerals.
 - (3) Subparagraphs, identified by lower case Roman numerals.
 - (4) Clauses, identified by capital letters.
 - (5) Subclauses, identified by capital Roman numerals.

Cross References

This section cited in 1 Pa. Code § 9.61 (relating to required *Code* headings); and 1 Pa. Code § 13.31 (relating to punctuation, capitalization and orthography).

§ 1.4. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act—The act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102, 1201—1208 and 1602); and 45 Pa.C.S. Chapters 5, 7 and 9, known as the Commonwealth Documents Law.

Adjudication—An order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a party to the proceeding in which the adjudication is made.

Administrative Code or *AC*—The Administrative Code of 1929 (71 P. S. §§ 51—732).

Administrative regulation—A regulation except a proclamation, executive order, executive directive or other similar document promulgated by the Governor, and including a regulation which may be promulgated by an agency only with the approval of the Governor.

Agency—The Governor or a department, departmental administrative board or commission, officer, independent board or commission, authority or other agency of this Commonwealth now in existence or hereafter created, but not including the Senate or House of Representatives of this Commonwealth or a court, political subdivision, municipal or other local authority, or an officer or agency of a court, political subdivision or local authority.

Agency text—The text of a document as issued, prescribed or promulgated by the issuing, prescribing or promulgating agency.

Bulletin or *Pa.B.*—The *Pennsylvania Bulletin* established by the act.

Bureau—The Legislative Reference Bureau.

Code or *Pa. Code*—The *Pennsylvania Code* established by the Commonwealth Documents Law.

Department—The Department of General Services.

Document—A proclamation, executive order, executive directive or similar instrument promulgated by the Governor, and an order, regulation, rule, statement of policy, adjudication, certificate, license, permit, notice or similar instrument issued, prescribed or promulgated by or under the authority of the Commonwealth. The term also includes a home rule charter heretofore or hereafter adopted by electors of this Commonwealth.

Gubernatorial regulation—A regulation which is not an administrative regulation.

Guideline—A document, other than an adjudication, interpretation or regulation, which announces the policy an agency intends to implement in future rulemakings, adjudications or which will otherwise guide the agency in the exercise of administrative discretion. The document may not amend, repeal or suspend a published regulation or otherwise effectively circumscribe administrative choice, but shall establish a framework within which an agency exercises administrative discretion. If authorized by statute, the documents may be incorporated into or published as regulations. The term includes, but is not limited to:

- (i) Plans for agency operation and administration which establish important policies to be utilized in the future exercise of administrative discretion.
- (ii) General policies and plans for the award and administration of discretionary grants of public monies.
- (iii) Announcements of principles and standards to be applied in future adjudications.

Interpretation—A statement of policy, other than a guideline, which is issued by an agency without reliance upon express or implied rulemaking authority, or which is issued by an agency which does not have express or implied rulemaking authority with regard to the matters covered by the document. The document may not amend, repeal or suspend a published regulation. If it is unclear whether an agency intended to rely upon rulemaking authority in adopting a document, a document with substantial impact upon the public shall be classified as a regulation, rather than an interpretation. The term includes, but is not limited to:

- (i) Explanations or interpretations of agency regulations.
- (ii) Procedures governing applications, awards and administration of discretionary grants of public monies.
- (iii) Generalized rulings announcing an interpretation of law or regulation to be applied in future adjudications or other administrative actions.

(iv) Explanations or interpretations of statutes or regulations over which the agency does not possess rulemaking authority.

Issue—To prescribe or promulgate.

Joint Committee or JCD—The Joint Committee on Documents created by the act.

Official text—The text of a document issued, prescribed or promulgated by an agency as published by authority of the act which has become in the manner provided by the act the only valid and enforceable text of the document.

Regulation—A rule or regulation or order in the nature of a rule or regulation, promulgated by an agency under statutory authority in the administration of a statute administered by or relating to the agency, or prescribing the practice or procedure before the agency.

Statement of policy—A document, except an adjudication or a regulation, promulgated by an agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or a part thereof. The term includes a document interpreting or implementing a statute enforced or administered by an agency. The term includes, but is not limited to, guidelines and interpretations.

Source

The provisions of this § 1.4 amended through November 28, 1986, effective November 29, 1986, 16 Pa.B. 4648. Immediately preceding text appears at serial pages (31348) and (31349).

Notes of Decisions

Construction

Unlike regulations, statements of policy do not have the force of law. *Dechert LLP v. Commonwealth*, 922 A.2d 87, N.6 (Pa. Cmwlth. 2007).

A determination as to whether a particular statement of policy is an unpromulgated regulation is a question of law. *Eastwood Nursing v. Department of Public Welfare*, 910 A.2d 134, 141 (Pa. Cmwlth. 2006).

It is well settled law that an agency's substantive regulations, when properly enacted under the Commonwealth Documents Law, have the force and effect of law and enjoy a general presumption of reasonableness. *Eastwood Nursing v. Department of Public Welfare*, 910 A.2d 134, 141 (Pa. Cmwlth. 2006).

An agency's characterization of its own rule as a statement of policy is not dispositive on the issue of whether an agency pronouncement is a statement of policy or a regulation. *Eastwood Nursing v. Department of Public Welfare*, 910 A.2d 134, 146 (Pa. Cmwlth. 2006).

A "statement of policy" is an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. *Eastwood Nursing v. Department of Public Welfare*, 910 A.2d 134, 141 (Pa. Cmwlth. 2006).

A "statement of policy" is defined as a governmental agency's statutory interpretation which a court may accept or reject depending upon how accurately the agency's interpretation reflects the meaning of the statute. *Eastwood Nursing v. Department of Public Welfare*, 910 A.2d 134, 147 (Pa. Cmwlth. 2006).

When the court reviews an administrative agency's interpretation of its own regulations, it must follow a two step analysis: first, the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation, and second, the regulations must be consistent with the statute under which they were promulgated. *Popovsky v. Pennsylvania Public Utility Commission*, 910 A.2d 38, 52 (Pa. 2006).

Legislative rulemaking is an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body, and is valid and is as binding upon a court as a

statute if it is within the granted power, issued under proper procedure, and reasonable. *Popowsky v. Pennsylvania Public Utility Commission*, 910 A.2d 38, 53 (Pa. 2006).

In determining whether a power has been delegated by the legislature, the Supreme Court is not limited to the letter of the law, but must look to the purpose of the statute and its reasonable effect. *Eagle Environmental II, L. P. v. Department of Environmental Protection*, 884 A.2d 867, 877 (Pa. 2005).

There is a strong presumption that acts of the General Assembly are constitutional, and Supreme Court will not declare such acts unconstitutional unless they clearly, palpably and plainly violate the constitution. *Eagle Environmental II, L. P. v. Department of Environmental Protection*, 884 A.2d 867, 880 (Pa. 2005).

In promulgating a regulation to implement a statutory provision, an agency is not bound by a prior court decision interpreting that statutory provision. A regulation must be followed even if prior case law supports a narrower interpretation. *Popowsky v. Pennsylvania Public Utility Commission*, 853 A.2d 1097, 1106 (Pa. Cmwlth. 2004); appeal granted 868 A.2d 454 (Pa. 2005); affirmed 910 A.2d 38 (Pa. 2006).

Since the Secretary's budget instructions did not impose standards upon school districts but simply reflected the Secretary's interpretation of a statute, they are not regulations. *Central Dauphin School District v. Department of Education*, 608 A.2d 576 (Pa. Cmwlth. 1992).

A statement of policy is not a regulation if it allows adjustment for individual circumstances through adjudication on a case-by-case basis and discretion in application of the statement of policy is allowed. *Prudential Property and Casualty Insurance Company v. Insurance Department*, 595 A.2d 649 (Pa. Cmwlth. 1991).

Because the Department of Environmental Resources' standard conditions met the "binding norm test," the conditions were regulations and not statements of policy which may only be applied after they have been promulgated after notice and comment. The Department was, therefore, without authority to impose such conditions on the issuance and reissuance of mining permits. *Department of Environmental Resources v. Rushton*, 591 A.2d 1168 (Pa. Cmwlth. 1991); appeal denied 600 A.2d 541 (Pa. 1991).

An interpretation established through interpretive letter may be changed by a new interpretive letter. *Cash America Net of Nevada, LLC v. Com.*, 978 A.2d 1028, 1033 (Pa. Cmwlth. 2009).

Statement of Policy

Directive that establishes procedures to be used when responding to requests for information from the Department of Corrections (DOC) is a statement of policy, not a regulation that is subject to the requirements of the Commonwealth Documents Law; statement was not promulgated by DOC under statutory authority in the administration of any statute and does not establish a standard of conduct that has the force of law. *Richardson v. Beard*, 942 A.2d 911, 914 (Pa. Cmwlth. 2008).

A general statement of policy is neither a rule nor a precedent but is merely an announcement to the public of the policy that an agency intends to implement in future rulemakings or adjudications, citing *Pennsylvania Human Relations Commission v. Nomstown Area School District*, 374 A.2d 671, 679 (1977), *Cash America Net of Nevada, LLC v. Com.*, 978 A.2d 1028, 1033 (Pa. Cmwlth. 2009).

Cross References

This section cited in 4 Pa. Code § 1.61 (relating to force and effect); and 51 Pa. Code § 51.1 (relating to general provisions).

§ 1.5. Headings, etc., not to be used in construing.

Title, part, subpart, article, division, subdivision, chapter, subchapter and section headings contained in the *Code* may not be deemed to govern, limit, modify or affect the scope, meaning or intent of the *Code*. In prescribing regulations governing headings and other matters relating to the form and format of documents, the Joint Committee does not intend that the regulations shall affect the validity or interpretation of a document which is, in fact, filed and published under statute.

§ 1.6. Tenses, gender and number.

Except as otherwise stated in a title, part, subpart, article, division, subdivision, chapter, subchapter or section of the *Code*, the present tense includes the past and future tenses, and the future the present; the masculine gender includes the feminine and neuter, the feminine includes the masculine and neuter, and the neuter includes the masculine and feminine; and the singular includes the plural, and the plural, the singular.

§ 1.7. Statutory Construction Act of 1972 applicable.

Section 1502(a)(2) of 1 Pa.C.S. (relating to application of part) provides that, except as otherwise provided by statute or the agency adopting the document, 1 Pa.C.S. Part V (relating to Statutory Construction Act of 1972) applies to a document codified in the *Code* except legislative, judicial and home rule charter documents, that is, except documents codified in 101 Pa. Code—365 Pa. Code.

Source

The provision of this § 1.7 amended through June 14, 1974, 4 Pa.B. 1209. Immediately preceding text appears at serial page (0756).

Notes of Decisions*Constitutionality*

A statute may be found unconstitutionally vague if it lacks definiteness or adequacy of statutory expression. *Commonwealth v. Morgan*, 913 A.2d 906, 911 (Pa. Super. 2006).

Party challenging statute's constitutionality bears a very heavy burden to prove that it is unconstitutional, and all doubts on the question are resolved in favor of a finding of constitutionality. *Commonwealth v. Bullock*, 913 A.2d 207, 212 (Pa. 2007).

Construction

If two readings of a statute are reasonable, greater deference must be given to the interpretation of the administrative agency responsible for its enforcement. *Seneca Landfill v. Dep't. of Env'tl. Protection*, 984 A.2d 916, 925 (Pa. Cmwlth. 2008), quoting *Bethenergy Mines Inc. v. Dep't. of Env'tl. Protection*, 676 A.2d 711 (Pa. Cmwlth.) *petition for allowance of appeal denied*, 685 A.2d 547 (1996).

Words and phrases in a statute must be construed according to rules of grammar and their common and approved usage; this rule applies as well in interpreting undefined terms in administrative regulations, citing to *Martin Media v. Dept. of Transportation*, 641 A.2d 630 (1994); *Velazquez v. East Stroudsburg*, 949 A.2d 354, 358-359 (Pa. Cmwlth. 2008).

The Court must defer to an agency's interpretation of its rules and regulations unless the interpretation is unreasonable or the interpretation frustrates the legislative purpose. *Goslin v. State Board of Medicine*, 937 A.2d 531, 535 (Pa. Cmwlth. 2007).

Preambles may be used to resolve an ambiguity in a regulation; however, preambles may not be used to create ambiguity where none exists, and in any case where a preamble is used as a tool to resolve an ambiguous law, the preamble is not controlling. The language in the preamble was not controlling because the regulatory language was clear. *UMCO v. Department of Environmental Protection*, 938 A.2d 530, 537 (Pa. Cmwlth. 2007).

In interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount. *Schappel v. Motorists Mutual Insurance Company*, 934 A.2d 1184, 1187 (Pa. 2007).

It is well settled that an administrative agency's interpretation of a statute is given controlling weight unless it is clearly erroneous. *Riverwalk Casino v. Pennsylvania Gaming Control Board*, 926 A.2d 926, 940 (Pa. 2007).

Purpose of statutory construction is to ascertain and effectuate the intent of the general assembly. *Commonwealth v. Walls*, 926 A.2d 957, 962 (Pa. 2007).

Where a term is continued to be used in an amendment to a regulation or statute, the presumption is that the term carries the same meaning as before. *St. Ignatius v. Department of Public Welfare*, 918 A.2d 838, 846 (Pa. Cmwlth. 2007).

In ascertaining the common and approved usage of a word the court may resort to a dictionary. *St. Ignatius Department of Public Welfare*, 918 A.2d 838, 845 (Pa. Cmwlth. 2007).

Generally, courts defer to an administering agency's interpretations of its own regulations. *Pinto v. State Civil Service Commission*, 912 A.2d 787, 794 (Pa. 2006).

Administrative interpretations of a statute are entitled to some deference, particularly where a statute is technical or complex, but such deference will exist only where the reviewing court is satisfied that the regulation tracks the meaning of the statute and does not violate the intent of the legislation. *Commonwealth v. Gilmour Mfg. Co.*, 822 A.2d 676, 679 (Pa. Cmwlth. 2003), order aff'd, 384 A.2d 1103 (Pa. 2003).

For purposes of constitutional challenges based on vagueness, regulations are treated as statutes. *Tri-County Industries, Inc. v. Commonwealth*, 818 A.2d. 574 (Pa.Cmwlth. 2003); appeal granted 835 A.2d 706 (Pa. 2003); decision affirmed Eagle Erwin II, L.P.V. Com. 884 A.2d 867 (Pa. 2005). The degree of vagueness that is constitutionally tolerable depends in part on the nature of the enactment. *Id.* at 583.

The provision at 1 Pa.C.S. § 1926, providing that no statute may be construed to be retroactive unless clearly and manifestly so intended by the General Assembly, is equally applicable to Horse Racing Commission's regulations. *Bush v. Horse Racing Commission*, 466 A.2d 254 (Pa. Cmwlth. 1983).

Statutory construction rules apply equally to the interpretation of administrative regulations, citing *Bayada Nurses, Inc. v. Dept. of Labor and Indus.*, 958 A.2d 1050 (Pa. Cmwlth. 2008), *Wheeling-Pittsburgh Steel Corp. v. DEP*, 979 A.2d 931, 937 (Pa. Cmwlth. 2009).

Doctrine of Preemption

Under the doctrine of preemption, a municipality may not exercise power or authority in violation of the preemption doctrine, which provides that when the legislature has preempted a field the State has retained all regulatory and legislative power for itself and therefore prohibits local legislation in that area. *Michell's Bar & Restaurant v. Allegheny County*, 924 A.2d 730, 736-737 (Pa. Cmwlth. 2007).

General

The principles of statutory construction apply to regulatory provisions as well as statutory provisions. *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Benny Enterprises, Inc.*, 669 A.2d 1018, 1021 (Pa. Cmwlth. 1996), appeal denied 681 A.2d 1344 (Pa. 1996).

The rules of statutory construction apply to regulations as well as statutes. *Fraternal Order of Police Lodge No. 5 v. City of Philadelphia*, 590 A.2d 384, 397 (1991).

Statutory Construction

The rules of statutory construction apply to regulations. *Bayada Nurses v. Commonwealth Dep't of Labor*, 958 A.2d 1050, 1055 (Pa. Cmwlth. 2008).

When an agency adopts a regulation under its delegated legislative power, it is valid and as binding as a statute so long as it is adopted within the agency's granted power, issued pursuant to proper procedure and is reasonable, citing *Tire Jockey Serv., Inc. v. Department of Environmental Protection*, 915 A.2d 1165 (2007). *Bayada Nurses v. Commonwealth Dep't of Labor* 958 A.2d 1050, 1055 (Pa. Cmwlth. 2008).

Agencies' adoption of substantive regulations result from legislative power granted by the legislature and establish new law, rights or duties that enjoy a general presumption of reasonableness; interpretative regulations construe a statute and do not expand upon its terms, and courts defer to agency interpretations so long as they are reasonable and genuinely tract the meaning of the underlying statute, citing *Rohrbaugh v. Pennsylvania Public Utility Commission*, 727 A.2d 1088 (1999). *Bayada Nurses v. Commonwealth Dep't of Labor*, 958 A.2d 1050, 1057 (Pa. Cmwlth. 2008).

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