

CHAPTER 9. PREPARATION OF DOCUMENTS SUBJECT TO CODIFICATION

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Cross References

This chapter cited in 1 Pa. Code § 7.6 (relating to format of regulations); and 1 Pa. Code § 11.23 (relating to codification of proposed rulemaking documents).

GENERAL

§ 9.1. General provisions.

Documents subject to codification shall be drafted as amendments to the *Code* and prepared under this chapter and of Chapter 13 (relating to preparation and transmittal of documents generally) before submission to the Bureau. A document shall contain a promulgation statement precisely describing the relationship of the new provisions to existing provisions of the *Code*.

§ 9.2. Orderly development.

For the purpose of assuring orderly development along practical lines, the Bureau, with the approval of the Joint Committee is authorized to establish new titles in the *Code* and to rearrange existing titles and subordinate assignments. Before taking an action, the Bureau shall consult with the agency directly affected by a proposed change.

CODE STRUCTURE**§ 9.11. Titles.**

The major divisions of the *Code* are titles, which bring together broadly related governmental functions.

§ 9.12. Parts.

The normal divisions of titles are parts, which are assigned to the various agencies within titles descriptive of the subject matter covered by the agencies' rules and regulations.

§ 9.13. Subparts, articles, divisions and subdivisions.

Subparts may be used to distinguish between material emanating from an overall office or agency and the material issued by its various components. Subparts, articles, divisions and subdivisions, in that order, may also be used to otherwise group chapters within a title.

§ 9.14. Chapters.

The normal divisions of parts are chapters. A chapter should consist of a unified body of rules or regulations applying to a specific function of the issuing agency or devoted to specific subject matter under control of the issuing agency.

Source

The provisions of this § 9.14 amended by JCD Order No. 5, dated December 2, 1969.

Cross References

This section cited in 1 Pa. Code § 9.37 (relating to reservation of numbers).

§ 9.15. Subchapters.

Subchapters may be used to group related parts within a chapter.

Cross References

This section cited in 1 Pa. Code § 9.37 (relating to reservation of numbers).

§ 9.16. Undesignated center heads.

Undesignated center heads may be used to group related sections as required.

Cross References

This section cited in 1 Pa. Code § 9.37 (relating to reservation of numbers).

§ 9.17. Sections.

The normal divisions of chapters are sections. The section is the basic unit of the *Code*. It should consist of a short, simple presentation of one principal proposition.

NORMAL NUMBERING

§ 9.31. Titles.

Titles are numbered sequentially in Arabic throughout the *Code*.

§ 9.32. Parts.

Parts are numbered sequentially in Roman throughout a title.

§ 9.33. Chapters.

Chapters are numbered sequentially in Arabic throughout a title.

§ 9.34. Other principal divisions.

Whenever other divisions are necessary, parts shall be divided into subparts, subparts into articles, articles into divisions, divisions into subdivisions, subdivisions into chapters and chapters into subchapters, designated and numbered as follows:

<i>Terminology</i>	<i>Illustrative Symbol</i>	<i>Numbered Within</i>
Part	I	Title
Subpart	A	Part
Article	I	Subpart
Division	1	Article
Subdivision	A	Division
Chapter	1	Title
Subchapter	A	Chapter

§ 9.35. Sections.

Sections are numbered sequentially in Arabic throughout a title.

§ 9.36. Internal divisions of sections.

Whenever internal divisions are necessary, sections shall be subdivided into subsections, subsections into paragraphs, paragraphs into subparagraphs, subparagraphs into clauses and clauses into subclauses, designated as follows:

<i>Terminology</i>	<i>Illustrative Symbol</i>
Subsection	(a)
Paragraph	(1)
Subparagraph	(i)

<i>Terminology</i>	<i>Illustrative Symbol</i>
Clause	(A)
Subclause	(I)

§ 9.37. Reservation of numbers.

Chapter numbers shall be spaced to allow for expansion and a minimum of one number shall be omitted between chapters of a new or revised part, subpart, article, division or subdivision. Where related sections are grouped under a heading within a chapter as provided for in §§ 9.14—9.16 (relating to chapters, subchapters and undesignated center heads), numbers shall be reserved at the end of a group to allow for expansion.

SPECIAL NUMBERING PROBLEMS

§ 9.51. Addition of new units between existing units.

(a) If it becomes necessary to introduce a new chapter or section between existing chapters or sections the new chapter or section shall be designated by the addition of a letter suffix to the preceding chapter or section number. Thus, a chapter introduced between Chapters 31 and 32 would be numbered Chapter 31a, and a section introduced between § 3.11 and § 3.12 would be numbered § 3.11a. When a number of the chapter or section numbers have been introduced, the entire portion of the title or chapter shall be revised and renumbered.

(b) If it becomes necessary to introduce a subsection between existing subsections, and revision of the entire section is not desirable, the new subsection shall be designated by the addition of a hyphen and Arabic numeral to the letter designating the preceding subsection. Thus, a subsection introduced between subsections (a) and (b) would be numbered as subsection (a-1).

(c) If it becomes necessary to introduce a unit smaller than a subsection between existing units, the entire subsection shall be revised.

§ 9.52. Vacated numbers.

Whenever a number is vacated by a revocation, the remaining elements in the overall unit shall retain their old numbers until the overall unit is completely revised. Prior to revision, the vacated number may be marked: “(Reserved)”.

§ 9.53. Keying to agency numbering systems.

The keying of section numbers to make them correspond to particular numbering systems in use by the agency will be permitted only when, in the opinion of

the Joint Committee, the keying will be of benefit both to the agency and to the public. In cases prior approval for the use of keying systems shall be obtained from the Joint Committee.

§ 9.54. Statements of general policy.

Whenever a statement of policy adopted after July 1, 1969 applies to an entire chapter, it shall be included in, or appended to, that chapter. Similarly, whenever a statement of policy adopted after July 1, 1969 applies to a specific section, it shall be appended to that section. Statements of policy of broader scope adopted after July 1, 1969 shall be assigned to a chapter or group of chapters within the part affected. Sections, chapters or other subparts of a title which consist of statements of policy shall be clearly designated within the *Code*.

Authority

The provisions of this § 9.54 amended 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.

Source

The provisions of this § 9.54 amended through November 28, 1986, effective November 29, 1986, 16 Pa.B. 4648. Immediately preceding text appears at serial page (28159).

HEADINGS

§ 9.61. Required *Code* headings.

(a) The title, part and chapter heading, in that order, shall be set forth in full on separate lines at the beginning of a document. Subpart, subchapter or other principal divisions, if applicable, shall also be set forth in the order specified in § 1.3 (relating to arrangement of *Code*).

(b) A section shall be given a brief descriptive heading. The section heading shall precede the text on a separate line.

Cross References

This section cited in 1 Pa. Code § 9.62 (relating to additional captions).

§ 9.62. Additional captions.

(a) For the purpose of publication in the *Bulletin*, a brief caption more specifically describing the scope of a document constituting a partial amendment of the material within a chapter shall be provided immediately below the chapter heading.

(b) Agencies using docket numbers or other identifying symbols shall place them in brackets centered immediately following the headings required by § 9.61 (relating to required *Code* headings).

§ 9.63. Tables of contents.

Tables of contents shall be used when a new chapter is introduced or an existing chapter is completely revised and when a group of sections is revised or added and set forth as a subchapter or otherwise separately grouped under a centerhead. These tables shall precede the text of the rules or regulations and shall list the headings for the sections to which they are applicable.

§ 9.64. Composition of chapter headings.

A chapter heading shall indicate briefly the general subject matter of the material appearing in the chapter. The use of phrases, such as “Regulations under the act of July 26, 1955” or other expressions which are not descriptive of the subject matter should be avoided. Introductory expressions such as “Regulations governing” or “Rules applicable to” may not be used.

AMENDMENTS**§ 9.71. General requirements.**

(a) When necessary for clarity, an amendatory document shall include a brief statement of the nature and extent of the changes made.

(b) The number and heading of a section amended shall be set forth in full on a separate line.

(c) The text of a typographical unit amended shall be set forth in full as amended. Material deleted by an amendment shall be omitted and new material shall be set forth without italics or underscoring.

(d) Asterisks shall be used to indicate ellipsis of text retained without change. A separate line of five asterisks shall be used to indicate the ellipsis of one or more complete typographical units. A run-in line of three asterisks shall be used to indicate ellipsis of anything less than a complete typographical unit.

REFERENCES**§ 9.81. General requirements.**

References to the *Code* shall be in terms of the specific titles, chapters, sections and subsections involved. Ambiguous references such as “herein,” “above,” “below,” and the like may not be used. Documents which contain reference to material published in the *Code* shall include the *Code* citation as part of the reference.

§ 9.82. References to *Bulletin*.

The contents of the *Bulletin* shall be referred to by volume and page number. Thus material beginning on page 801 of volume 1 should be cited: 1 Pa.B. 801.

Cross References

This section cited in 101 Pa. Code § 15.165 (relating to *Pennsylvania Code* and *Bulletin*); and 101 Pa. Code § 23.58 (relating to citation of *Pennsylvania Bulletin*).

§ 9.83. References between or within titles of the Code.

Unless the meaning is otherwise precisely expressed and undue or awkward repetition would result, references shall be as follows:

(1) *Between titles.* When reference is made to material codified under a title other than that in which the reference occurs, the short form of citation should be used. A cross reference description based on the section heading or headings of the material cited shall be inserted immediately following the first occurrence of the citation in a section and following a reoccurrence of the citation which is preceded by a citation to a different provision. Thus a reference made within Title 41 to § 3.28 of Title 1 shall be in the following form: 1 Pa. Code § 3.28 (relating to home rule charter documents).

(2) *Within titles.* When reference is made to material codified in the same title, the following forms shall be used:

Part I (relating to general provisions).

Chapter 9 (relating to preparation of documents subject to codification).

§ 9.83 (relating to references between or within titles of the *Code*).

(3) *Within sections.* Reference to other units within the same section shall be cited as “subsection (a)” or “paragraph (1).”

Cross References

This section cited in 1 Pa. Code § 13.38 (relating to special rules of administrative practice and procedure).

§ 9.84. Parallel citation of *Bulletin* and *Code*.

When appropriate, the *Code* and the *Bulletin* may be cited for parallel reference in the following forms:

41 Pa. Code § 15.71 (relating to maximum interest rates) (1 Pa.B. 801).

§ 15.71 (relating to maximum interest rates) (1 Pa.B. 801).

EFFECTIVE-DATE STATEMENTS**§ 9.91. Effective dates.**

A document subject to codification shall include a clear statement as to its effective date.

Subchapter B. CITATIONS OF AUTHORITY**GENERAL**

- Sec.
9.201. General requirements.
9.202. Agency responsibility; amendments.
9.203. Provision for flexibility.

PLACEMENT

- 9.211. Coverage of single section.
9.212. Blanket coverage.
9.213. Combined blanket and separate coverage.
9.214. Combined blanket coverage.
9.215. Documents involving various amendments.
9.216. Nonstatutory elements.

FORM

- 9.221. General.
9.222. Statutory materials.
9.223. Nonstatutory Federal materials.

Authority

The provisions of this Chapter 9 issued under sections 206 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1206); and 45 Pa.C.S. §§ 503, 701 and 723, unless otherwise noted.

Source

The provisions of this Chapter 9 adopted by JCD Order No. 4, dated July 8, 1969, unless otherwise noted.

§ 9.201. General requirements.

Section 206 of the act (45 P. S. § 1206) requires that an administrative regulation or change indicate the statutory or other authority under which it is promulgated. Accordingly, a section in a document subject to codification shall include, or shall be covered by, a complete citation of the rulemaking authority under which the provisions of the section are issued, including the following:

- (1) General rulemaking authority delegated by The Administrative Code or other similar general statute.
- (2) Specific rulemaking authority, if any, delegated by statute.
- (3) Executive delegations, if any, necessary to link the statutory authority to the issuing agency.

Notes of Decisions

If an agency cites the correct statutory authority in its notice of proposed rulemaking but cites an incorrect statutory authority in adopting those rules, the correct statutory authority is not carried over to the adoption, and the rules are invalid and of no force or effect. *Commonwealth v. Bodamer*, 397 A.2d 871, 872 (Pa. Cmwlth. 1979).

Where the statute authorizing the promulgation of a regulation is repealed, the regulation is not binding, as regulations may not exceed the scope of their authorizing statute. *Reese v. Pennsylvanians for Union Reform*, 173 A.3d 11143, 1156 (Pa. 2017); *Smith v. Firemens Insurance Company of Newark, New Jersey*, 404 Pa. Superior Ct. 93, 96-97, 590 A.2d 24, 26 (1991).

A regulation is interpretive, rather than legislative, if the agency is without statutory authority or fails to follow the required procedure. *Slippery Rock Area v. Unemployment Comp.*, 983 A.2d 1231, 1237 (Pa. 2009).

Without an amendment to statutory authority, an agency cannot re-enact a legislative regulation to override an appellate court decision. *Lerch v. Unemployment Compensation Board of Review*, 180 A.3d 545 (Pa. Cmwlth. 2018).

An agency cannot confer authority upon itself by regulation. Any power exercised by an agency must be conferred by the General Assembly in express terms. *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894 (Pa. Cmwlth. 2016).

§ 9.202. Agency responsibility; amendments.

The accuracy and integrity of citations of authority are the responsibility of the issuing agency. The citations shall be formally amended by the issuing agency to reflect changes in authority.

§ 9.203. Provision for flexibility.

The Bureau is authorized to make exceptions to requirements respecting the placement and form of citations of authority whenever strict application of the requirements would impair the practical usefulness of the citations.

PLACEMENT

§ 9.211. Coverage of single section.

Authority covering a single section shall be cited following the word “Authority” and placed as a text note immediately following the text of the section as follows:

Authority

The provisions of this section issued under section 206 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1206).

Source

The provisions of this § 9.211 amended by JCD Order No. 12, dated January 3, 1972, 2 Pa.B. 56. Immediately preceding text appears at serial page (0245).

§ 9.212. Blanket coverage.

Authority covering a group of two or more consecutive sections shall be cited following the word “Authority” and placed as a text note immediately preceding the first section in the group, as follows:

Authority

The provisions of this Chapter 9 issued under section 206 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1206).

Source

The provisions of this § 9.212 amended by JCD Order No. 12, dated January 3, 1972, 2 Pa.B. 56. Immediately preceding text appears at serial page (0245).

§ 9.213. Combined blanket and separate coverage.

When individual sections within a group covered by a blanket citation reflect additional authority, a combined form shall be used, as follows:

Authority

The provisions of this § 9.213 issued under section 603 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1603).

Source

The provisions of this § 9.213 amended by JCD Order No. 12, dated January 3, 1972, 2 Pa.B. 56. Immediately preceding text appears at serial page (0246).

§ 9.214. Combined blanket coverage.

When a group of two or more consecutive sections within a broader group covered by a blanket citation reflect the same additional authority, combined blanket citations shall be used. Note also that The Administrative Code is cited only by a short title, as follows:

Authority

The provisions of this § 9.214 issued under section 603 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1603); section 501 of The Administrative Code of 1929 (71 P. S. § 181).

Source

The provisions of this § 9.214 amended by JCD Order No. 12, dated January 3, 1972, 2 Pa.B. 56. Immediately preceding text appears at serial page (0246).

§ 9.215. Documents involving various amendments.

(a) When a document prescribes various amendments, issued under common authority, the citation to the authority shall be placed in parentheses on a separate line following the last amendment.

(b) When a document prescribes various amendments issued under varying authorities, an amendatory proposition shall be followed by the appropriate citation in parentheses on a separate line.

§ 9.216. Nonstatutory elements.

Documents required to be cited as authority shall be placed after a required statutory elements, as follows:

Authority

The provisions of this § 9.216 issued under section 603 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P. S. § 1603); Ex. Dr. No. 29 (October 3, 1963), 1 Pa.B. 413, 3 Pa. Code 1959-63 Comp.

Source

The provisions of this § 9.216 amended by JCD Order No. 12, dated January 3, 1972, 2 Pa.B. 56. Immediately preceding text appears at serial page (0246).

FORM**§ 9.221. General.**

The shortest form of citation compatible with positive identification and ready reference shall be used in formal citations of authority. The Bureau is prepared to assist agencies in developing model citations under this criterion.

§ 9.222. Statutory Materials.

(a) *Pennsylvania Consolidated Statutes*. In citing a statutory provision contained in the *Pennsylvania Consolidated Statutes* the form of citation used shall be the same as if the citing document were a statutory provision codified under a title of the *Pennsylvania Consolidated Statutes* other than that in which the reference occurs.

(b) *Acts of Assembly*. In citing a statute enacted by the General Assembly, reference shall be made to date of enactment, act number, special session number and section. The parallel *Purdon's Statutes* citation shall be given whenever possible. In multiple citations, references to the statutes shall be arranged chronologically and grouped separately, preceding the group of parallel *Purdon's Statutes* citations.

(c) *Statutes at Large and United States Code*. In citing the *United States Statutes at Large*, reference shall be made to section, volume and page. The page number shall refer to the page on which the section cited begins. The parallel *United States Code* citation shall be given whenever possible. In multiple citations, references to the *United States Statutes at Large* shall be arranged chronologically and grouped separately, preceding the group of parallel *United States Code* citations.

Source

The provisions of § 9.222 amended by JCD Order No. 12, dated January 3, 1972, 2 Pa.B. 56. Immediately preceding text appears at serial page (2253).

§ 9.223. Nonstatutory Federal materials.

Documents shall be cited by *Federal Register* volume and page, followed, if possible, by the parallel citation to the *Code of Federal Regulations*, as follows:

T.D. 6721, 29 Fed. Reg. 4997. Special Civil Air Reg. SR-422A, 28 Fed. Reg. 6703, 14 CFR Part 4b. E.O. 11130, 28 Fed. Reg. 12789, 3 CFR 1959-1963 Comp.

Subchapter C. CODIFICATION OF STATEMENTS OF POLICY

- Sec.
9.301. Unpublished statements of policy adopted prior to January 1, 1985.
9.302. Statements of policy adopted after January 1, 1985.
9.303. Format of statements of policy.

Authority

The provisions of this Subchapter C 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 Subchapter C adopted November 28, 1986, effective November 29, 1986, 16 Pa.B. 4648, unless otherwise noted.

§ 9.301. Unpublished statements of policy adopted prior to January 1, 1985.

(a) If the Joint Committee determines that it is in the public interest to codify statements of policy of an agency adopted by the agency prior to January 1, 1985, but not previously published, it may, upon the request of the agency, include the statements of policy within the next periodic supplement of the *Code* published under § 3.3 (relating to periodic supplementation of the *Code*; index), without publication of the statement of policy within the *Bulletin* under § 3.13 (relating to contents of *Bulletin*). Direct codification will occur only if an official synopsis of the document, prepared by the agency and approved by the Bureau, is published in the *Bulletin* as provided by § 3.31 (relating to publication of official synopsis in lieu of full text) following the deposit of the statements of policy with the Bureau under § 13.11 (relating to deposit of original and one copy required).

(b) Prior to the submission of a statement of policy to the Bureau for codification under this section, the agency shall adopt by regulation a general plan for the dissemination of public information. The agency plan shall indicate the classes or categories of agency documents to be promulgated as administrative regulations, statements of policy, management directives and other methods of publication or distribution.

(c) A statement of policy codified under this section shall be deposited with and filed by the Bureau on or prior to December 31, 1987.

§ 9.302. Statements of policy adopted after January 1, 1985.

Statements of policy which are submitted by an agency to the Bureau and which are adopted by an agency after January 1, 1985, are subject to procedures for filing and publication in the *Bulletin* and *Code* as provided by Chapter 13 (relating to preparation and transmittal of documents generally).

§ 9.303. Format of statements of policy.

Statements of policy which are permanent and general in nature and are submitted to the Bureau for codification shall be in a form and format, as approved by the Bureau, which conforms to the requirements of this chapter for the codification of documents.

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