

Writing regulations for readers

How to use plain language to improve compliance and save money

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Plain Language Action and Information Network

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One perspective on Federal writing

Slowly we begin to understand. [Government writing] is not supposed to be read at all. It simply prints things so that someday, somewhere, some government official can say, “Yes, but it says in the Federal Register...” All this government stuff, in other words, is not reading matter, but prefabricated parts of quarrels.

Rudolph Flesch, *The Art of Plain Talk*, 1946

Acceptance by the bank of payments in arrears shall not constitute a waiver of or otherwise affect any acceleration payment hereunder or other right or remedy exercisable hereunder. No failure or delay on the part of the bank in exercising, and no failure to file or otherwise perfect or enforce the Bank's security in or with respect to any collateral, shall operate as a waiver of any right or remedy hereunder or release any of the undersigned, and the obligations of the undersigned may be extended or waived by the bank, or any contract or other agreement evidencing or relating to any obligation or collateral may be amended and any collateral exchanged, surrendered, or otherwise dealt with in accordance with any agreement relevant thereto, all without affecting the liability of any of the undersigned.

Irregular Payments

You can accept late payments or partial payments, even though marked “payment in full,” without losing any of your rights under this note.

What is plain language?

Communication that your readers can understand the *first time* they read it.

*In a plain language document,
readers can...*

- Find what they need
- Understand what they find
- Use what they find to meet their needs

What are the main elements of plain language?

- Logical organization
- “You” and other pronouns
- The active voice
- Common, everyday words
- Short sentences
- Lists and tables

But first...

- Plain language – what it is not
- Costs of not using plain language
- Requirements to use plain language
- Will judges accept plain language?

Plain language is not –

- Writing less precisely
- “Dumbing down”
- Writing to a certain grade level
- Attempting to be folksy or too informal
- Leaving out necessary technical terms

What are the costs of not using plain language ?

You may have to –

- Answer phone calls
- Write explanatory letters
- Make an explanatory document
- Litigate

Case of Reno v. Walters

The court –

- Found that INS forms were so difficult to read that they did not "simply and plainly communicate" legal consequences to the plaintiffs.
- Ordered INS to redo the forms to communicate better.
- Ordered INS not to deport any alien whose case had been processed using the deficient forms.

Maria Walters and others v. United States Immigration and Naturalization Service. No. 96-36304.
United States Court of Appeals for the Ninth Circuit. 1998 U.S. App. LEXIS 9846, May 18, 1998.

Plain language mandates for regulations

- ***E.O. 13563*** requires that regulations be “accessible, consistent, written in plain language, and easy to understand.” (Sec. 1, Par. (a))
- ***E.O. 12866*** requires that regulations be “simple and easy to understand, with the goal of minimizing uncertainty and litigation...” (Sec. 1, Par. (b)(12))
- ***E.O. 12988*** requires that each regulation specify its effect “in clear language” (Sec. 3 Par. (b)(2))

Will judges accept plain language?

(Joe Kimble's Test)

- Sent out samples of legal documents in old and new styles
- Samples were not labeled
- Sent to judges and lawyers in Louisiana, Texas, Michigan, and Florida
- 80 - 86 % of respondents preferred plain language version

Write for your audience

- Think of why the user needs to read your document
- Keep in mind the average user's level of knowledge
- Write to everyone who is interested, not just to experts
- Even an expert will prefer a clearly written document

How do I write for my audience?

Not...

What do **I** want to say?

How can **I** protect **my** interests?

What can I do to **impress my readers**?

But...

What does **my audience** need to know?

How can I serve **my readers'** interests?

How can I **communicate** what my readers need to know?

How do I organize to serve my readers?

- Anticipate questions readers are likely to ask
- Organize your document to answer questions in the order that readers will ask them

Preparation and Content

- 334.1 Purpose
- 334.2 Preamble
- 334.3 Text
- 335.4 Memorandum for Reviewers
- 336.5 Press Release
- 337.6 Copy Requirements
- 338.7 Billing Codes

Clearance Procedures

- 339.1 Purpose
- 339.2 Procedures
- 339.3 Signature
- 339.4 OMB Review
- 339.5 SBA Review
- 339.6 Approval to Publish

Certification and Publication

- 340.1 Purpose
- 340.2 Certification
- 340.3 Transmittal Letter
- 340.4 Addresses
- 340.5 Publication

Determination of Effects

- 341.1 Purpose
- 341.2 Background
- 341.3 Timing
- 341.4 Format and Content
- 341.5 Approval
- 341.6 Distribution
- 341.7 Departmental Review
- 341.8 Guidance

1. How to Publish a Rule

1.1 What is a rule?

1.2 How do I publish a rule?

1.3 What is the difference between a proposed rule and a final rule?

1.4 Can I ever skip the proposed rule stage?

1.5 Where can I get additional guidance on the rulemaking process?

2. Regulatory Planning

2.1 What does this chapter do?

2.2 What terms do I need to know?

2.3 What planning must I do if I want to publish a rule?

2.4 What is the purpose of the alert form?

2.5 When do I complete the alert form?

2.6 What will we do with the alert form?

2.7 What will happen if we convene a meeting on the rule?

2.8 How is the semiannual agenda prepared?

2.9 How is the Regulatory Plan prepared?

First tool for good organization:

Use informative headings

- Vague, one- or two-word headings force your reader to work harder
- Question headings are best, but informative statements also work well
- Question headings tell the reader that this is a different kind of document
- Many existing rules and other documents use Q&A (insurance policies, stock prospectuses)

Be careful with question headings

Don't say --

Am I eligible for benefits if I am the widow of a veteran, have never remarried, and have no children?

Do say --

When am I eligible for benefits?

*Second tool for good organization:
Put important material up front*

First...

then...

general

specific

summary

process

conclusions

analysis

requests

justifications

What are the main elements of plain language?

- ✓ Logical organization
 - “You” and other pronouns
 - The active voice
 - Common, everyday words
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Use "you" and other pronouns to speak directly to readers

- Familiar words increase readability
- Why not address the reader directly?
- Pronouns eliminate lots of words

Use "you" and other pronouns to speak directly to readers

How to do it --

- Use “we” to refer to your agency
- To refer to the reader, use “you” in the text, use “I” in question headings
- Define “we” and “you” in the definitions section or in the text

Pronouns decrease words and increase readability

Without pronouns

The applicant will be the primary source of information regarding his eligibility. If the Secretary needs to secure information from other sources, the Secretary will ask the applicant to authorize the release of information.

With pronouns

You will be the primary source of information regarding your eligibility. If we need to secure information from other sources, we will ask you to authorize the release of information.

When pronouns won't work

- If you're addressing more than one audience in the same document
- If you refer readers to more than one office within your organization

Be careful not to accuse

Don't say...

You were not very clear

*You did not send a
payment*

Do say...

*We did not understand your
message*

*We did not receive your
payment*

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How do I write in the active voice?

Tell your reader who does what – in that order.

Examples:

- You must submit your registration fee by November 10.
- The Regional Director will decide on your eligibility within 30 days of receiving your application.
- We will not consider any comments that we receive after the deadline.

What's the difference between active voice and passive voice?

- In the active voice, the subject does the acting
 - Warren lit the fire.
 - Linda built the wall.
- In the passive voice, the subject is acted upon.
 - The fire was lit by Warren.
 - The wall was built by Linda.

Two ways to identify passive voice

- The person doing the action usually follows the verb

Example: Arlene ***was promoted*** by her boss.

- The verb has two parts: The verb “to be” plus the past participle of another verb

Example: The house ***was leased*** by Fred.

- *Passive voice*

Can disguise who does
what:

*The memo was written
yesterday.*

- *Active voice*

Makes it clear who does
what:

*The Director wrote the
memo yesterday.*

- *Passive Voice*

Is awkward:

Consultation from respondents was obtained to determine the estimated burden.

- *Active Voice*

Is natural:

We consulted with respondents to determine the estimated burden.

- *Passive Voice*

Is wordy:

The application must be completed by the buyer.

- *Active Voice*

Is concise:

The buyer must complete the application .

- *Passive Voice*

Makes your writing
drag:

*The pace of your writing is
slowed by passive voice.*

- *Active Voice*

Makes your writing
move:

*Passive voice slows the pace
of your writing.*

Sometimes (but not often) passive is OK

Your car has been stolen.

Doer unknown

Presidents are elected every four years.

Doer obvious

Her outfit was covered with glitter.

Doer doesn't matter

All annual leave has been canceled.

Doer better left
unnamed

The report should have been done by
now.

Avoids direct attack

Avoid passive by moving the doer in front of the verb

Don't say...

The class will be taught by Susan.

Qualified applicants are sought.

Do say...

Susan will teach the class.

We're seeking qualified applicants.

Avoid passive by dropping part of the verb

Don't say...

Exercises are found at the back of the book.

That procedure is considered outdated.

Do say...

Exercises are at the back of the book.

That procedure is outdated.

Avoid passive by changing the verb

Don't say...

The new procedures are contained in the appendix.

Your letter was not received.

Do say...

The appendix includes the new procedures.

Your letter didn't arrive.

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Eliminate the “S” words

- Shall
- Said
- Such
- Same

Don't use "shall" -- The worst "S" word

"Shall" can have several meanings, and using it can create legal problems.

- Use "must" for an obligation
- Use "must not" for a prohibition
- Use "may" for a discretionary action
- Use "should" for a recommendation

Bryan A. Garner on “Shall”

In just about every jurisdiction, courts have held that “shall” can mean not just “must” and “may,” but also “will” and “is.” The [U.S. Supreme] Court has [in various decisions]:

- Held that a legislative amendment from “shall” to “may” had no substantive effect
- Held that “shall” means “must” for existing rights, but that it need not be construed as mandatory when a new right is created
- Acknowledged that, “legal writers sometimes misuse ‘shall’ to mean ‘should,’ ‘will,’ or even ‘may.’ ”

Avoid verbs disguised as nouns

Don't say...

Do say...

Conduct an analysis

Analyze

Present a report

Report

Conduct an assessment

Assess

Provide assistance

Assist

Perform an evaluation

Evaluate

Avoid confusing words and constructions

- Minimize abbreviations and acronyms; be sure to define them. (LOL, TMI)
- Don't use two different terms for same thing (don't use car, vehicle, auto, and conveyance - - choose one)
- Don't give a word an obscure meaning (don't define "car" to include trucks.)

*Prevent AAFS**

This rule partially approves Framework Adjustment (FW) 45 to the NE Multispecies Fishery Management Plan (FMP).... FW 45 was developed to ...foster achieving optimum yield (OY)... in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)... it revises the biological reference points... updates annual catch limits (ACLs)... for fishing years (FYs) 2011-2012, adjusts the rebuilding program for Georges Bank (GB) yellowtail flounder... and establishes a Gulf of Maine (GOM) Cod Spawning Protection.... This action approves the... total allowable catch (TAC), acceptable biological catch (ABC), and ACL for GB yellowtail flounder... based on the International Fisheries Agreement Clarification Act (IFACA)....

* Abbreviation and acronym fatigue syndrome

Avoid confusing words and constructions

- Avoid legal or technical jargon (obscure, pretentious language; circumlocutions; long words)
- Don't string nouns together (surface water quality protection procedures)
- Avoid the word "of" (and you'll get rid of many other words: the creation of, the investigation of, the development of, the containment of, etc.)

Shorter ways of saying...

- At the present time
- Due to the fact that
- Effect modifications
- In a timely manner
- In the event that
- Set forth in
- Until such time as.
- Now
- Due to; since
- Change; make changes
- On time; promptly
- If
- In
- Until

What are they saying?

- As with the progenitor of the scion, in such similar manner it may occur with the scion.
- Pulchritude does not penetrate below the dermal plane.
- Lithodial fragments ought not to be forcibly projected by inhabitants of vitreous abodes.
- A perissodactyl ungulate may be propelled toward a body of aqueous fluid, but such ungulate cannot be compelled or forcibly induced to imbibe such fluid.

Place words carefully

- Put subjects and objects close to their verbs
- Put conditionals such as "only" or "always" next to words they modify
- Put all other modifiers next to the words they modify
- Put exceptions and long conditions after the main idea, not before or in the middle

Was the IRS misrouting its mail?

Notice to Levy

Don't start with a long exception or condition

Except to the extent that directives of the United States Coast Guard have expressly or implicitly preempted inconsistent state laws and regulations or as otherwise provided by subsection (a), vessels and their operation on all waters subject to NPS jurisdiction are governed by non-conflicting boating safety laws and regulations of the State within whose interior boundaries a park area or portion thereof is located.

Does word placement make a difference?

- Yesterday a mad dog bit five men and women in the south end.
- We will publish a list of properties that qualify for relief under this subpart each October.
- This rule proposes the Spring/Summer subsistence harvest regulations in Alaska for migratory birds that expire on August 31, 2003.

Where is the main idea?

Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document, make advance deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to §163.25, into accounts designated by such Indian tribe.

Main words of the main idea

Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document, make advance deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to §163.25, into accounts designated by such Indian tribe.

This section applies to forest products harvested under a timber sale contract, permit, or other harvest sale document. At your request, we will require the purchaser of your forest products to:

(a) Deposit payment into an account that you designate;

(b) Make advance deposits as well as direct payments into the account; and

(c) Withhold from the deposit any forest management deductions under §163.25.

What are the main elements of plain language?

- ✓ Logical organization
- ✓ “You” and other pronouns
- ✓ The active voice
- ✓ Common, everyday words
 - Short sentences
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Keep it short

Use short paragraphs

- Limit a paragraph to one subject or step
- Aim for no more than 7 lines

Use short sentences

- Aim for an average length of 20 words per sentence
- No sentence should be over 40 words long
- Use your computer to count words (click “tools,” then click “word count”)

Is this a summary?

SUMMARY: This final rule partially approves Framework Adjustment (FW) 45 to the NE Multispecies Fishery Management Plan (FMP) and implements the approved measures. FW 45 was developed by the New England Fishery Management Council (Council) to make adjustments necessary to ensure that conservation and management objectives of the FMP, including preventing overfishing, rebuilding overfished stocks, achieving optimum yield (OY), and minimizing the economic impact of management measures on affected vessels, are being met in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Specifically, this action revises the biological reference points and stock status for pollock, updates annual catch limits (ACLs) for several stocks for fishing years (FYs) 2011-2012, adjusts the rebuilding program for Georges Bank (GB) yellowtail flounder, increases scallop vessel access to the Great South Channel Exemption Area, approves five new sectors, modifies the existing dockside and at-sea monitoring requirements,

Is this a summary? (cont'd.)

revises several sector administrative provisions, establishes a Gulf of Maine (GOM) Cod Spawning Protection Area, and refines measures affecting the operations of NE multispecies vessels fishing with handgear. This action approves the Council's proposed FY 2011 U.S./Canada Management Area total allowable catch (TAC), acceptable biological catch (ABC), and ACL for GB yellowtail flounder, but replaces them with new catch limits for this stock through a parallel emergency action, included as part of this final rule, based on the International Fisheries Agreement Clarification Act (IFACA) that provides new flexibility in setting catch limits for this stock. In addition, this action disapproves a measure to delay fishing industry responsibility for paying for at-sea monitoring coverage costs in FY 2012. This action is necessary to ensure that the fishery is managed on the basis of the best available science, to comply with the ABC control rules adopted in Amendment 16 to the FMP, and to enhance the viability of the fishery.

This is a summary

SUMMARY: This rule implements parts of framework adjustment 45 to the Northeast Multispecies Fishery Management Plan. It changes provisions that cover catch limits, monitoring requirements, equipment use, and access to fishing areas. These measures will ensure scientific management and continued productivity for the New England fisheries.

Don't subdivide too much

Too many levels:

- Confuse the reader
- Result in lengthy citations

Example: 36 CFR 13.65 (b)(3)(v)(A)(1)

- Make it easy to lose sight of the main point

What are the main elements of plain language?

- ✓ Logical organization
- ✓ “You” and other pronouns
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- ✓ Common, everyday words
- ✓ Short sentences
- Lists and tables

Why use lists?

Lists make it easy for the reader to identify all items or steps in a process, add blank space for easy reading, and help your reader to see the structure of your document.

Why use lists?

Lists –

- Make it easy for the reader to identify all items or steps in a process
- Add blank space for easy reading
- Help your reader to see the structure of your document

Find the list in this sentence

You must submit a tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies that you have adopted the tribal revenue allocation plan according to your governing documents or, absent such documents, according to your usual customs.

Find the list in this sentence

You must submit a tribal resolution or other document, including the **date and place of adoption** and the **result of any vote taken**, that **certifies that you have adopted** the tribal revenue allocation plan according to your governing documents or, absent such documents, according to your usual customs.

You must submit a tribal resolution or other document that includes:

- The date and place of adoption;
- The result of any vote taken; and
- A certification that you have adopted the tribal revenue allocation plan according to your governing documents or your usual customs.

The items in your list must match the introductory language

Each compact must contain:

- (1) Provisions required by the Tribal Self-Governance Act of 1994;
- (2) Are in compliance with other applicable Federal laws; and
- (3) Are consistent with this part.

The items in your list must match the introductory language

Each compact must contain provisions required by the Tribal Self-Governance Act of 1994;

Each compact must contain are in compliance with other applicable Federal laws; and

Each compact must contain are consistent with this part.

The items in your list must match the introductory language

Each compact must ~~contain~~:

- (1) **Contain** provisions required by the Tribal Self-Governance Act of 1994;
- (2) **Comply** ~~[are in compliance]~~ with other applicable Federal laws; and
- (3) **Be** ~~[are]~~ consistent with this part.

Don't make a list like this...

§ 2.8 What information must I include in my Freedom of Information Act request?

(a) Description of records.

- (1) You must describe the requested records in enough detail to enable an employee familiar with the subject area of the request to locate the record(s) with a reasonable amount of effort. Be as specific as possible in describing the records you are seeking. For example, whenever possible:
 - (i) Identify the date, title or name, author, recipient, and the subject of the record; the office that created it, the present custodian of the record and the geographical location (*e.g.*, headquarters or a regional/field office); the timeframe for which you are seeking records; and any other information that will assist the bureau in locating the material.
 - (ii) If the request involves a matter in litigation, state the case name and docket number as well as the court in which the case was filed.
- (2) The bureau will not begin processing your request until any issues regarding the scope or nature of your request are resolved. When a request is overly broad, unclear, involves an extremely voluminous amount of records, or a burdensome search, the bureau will contact you to identify and clarify the records you are seeking. It will work with you to define the subject matter, clarify terms that are used, or narrow the scope of your request.

Make a list like this...

§ 50.30 What must I include in my Freedom of Information Act request?

Your initial FOIA request for information must be in writing and must include all of the following:

- (a) A description of the records you seek, as required by 50.31;
- (b) Information on whether and how you will pay any processing fees, as required by 50.32;
- (c) Your complete mailing address, as required by 50.33; and
- (d) Additional information to assist us in processing your request, as required by § 50.34.

Why use tables?

Tables –

- Make it easy to take in complex material at a glance
- Make it easy to locate specific provisions
- Diagram your idea and make its logic and structure clear
- Save words

How can I spot a potential table?

Look for –

- A series of conditions and results (“ifs” and “thens”)
- Short or repetitive sentences about a single subject
- A very involved list that includes qualifications or conditions

Remember our list?

§ 50.30 What must I include in my FOIA request?

Your initial FOIA request for information must be in writing and must include all of the following:

- (a) A description of the records you seek, as required by 50.31;
- (b) Information on whether and how you will pay any processing fees, as required by 50.32;
- (c) Your complete mailing address, as required by 50.33; and
- (d) Additional information to assist us in processing your request, as required by § 50.34.

We can make it into a table

§ 50.30 What must I include in my FOIA request?

Your initial FOIA request for information must be in writing and must include all of the following:

Your request must include...	as required by...
(a) A description of the records you seek	50.31
(b) Information on whether and how you will pay any processing fees	50.32
(c) Your complete mailing address	50.33
(d) Additional information to assist us in processing your request	50.34

Find the table in this sentence

We must receive your completed application form on or before the 15th day of the second month following the month you are reporting if you do not submit your application electronically or the 25th day of the second month following the month you are reporting if you submit your application electronically.

Find the table in this sentence

We must receive your completed application form on or before the 15th day of the second month following the month you are reporting **if you do not submit your application electronically** or the 25th day of the second month following the month you are reporting **if you submit your application electronically**.

We must receive your completed application form on or before the following dates:

If you submit your form...

We must receive it by...

electronically

the 25th day of the second month following the month you are reporting.

other than electronically

the 15th day of the second month following the month you are reporting.

Credit Card Facts

Here is a summary of the terms of this credit card account

Interest Rates

Purchases	First year: 0% fixed rate After first year: Prime rate (can vary monthly) + 7.74%
Balance Transfers	First year: 0% fixed rate After first year: Prime rate (can vary monthly) + 7.74%
Cash Advances	Prime rate (can vary monthly) + 20.74%
Late Payments	After one late payment 0% fixed rate is revoked, and may rise to 29.99% based on credit and payment history
Minimum Interest	\$.50

Fees

Foreign Currency Purchases	2% of dollar amount per purchase
Balance Transfers	3% of total balance transferred, per transfer
Cash Advances	3% of total cash advanced, per advance
Late Payments	\$19 on balances up to \$250 \$39 on balances over \$250
Exceeding Credit Limit	\$15 on over-limit transactions up to \$500 \$39 on over-limit transactions over \$500

Payment Options

In Full by Due Date	No interest due if paid within the 25 day grace period
Minimum Balance by Due Date	Includes principal and interest based on above Interest Rates for purchases, balance transfers and cash advances

Warnings

Late Payments	May affect your credit score May increase your interest rates
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See below for other important credit card terms and conditions

Our main tools – Use as many as you can

- ✓ Logical organization
- ✓ “You” and other pronouns
- ✓ The active voice
- ✓ Common, everyday words
- ✓ Short sentences
- ✓ Lists and tables

What to do next

- Handbook - Federal plain language guidelines available at [plainlanguage .gov](http://plainlanguage.gov)
- Join PLAIN – Meetings every first Wednesday
- Join another group --
 - Centerforplainlanguage.org - (annual awards)
 - Clarity-international.net - (biennial conference)
 - Plainlanguagenetwork.org - (biennial conference)

What to do next (cont'd.)

- Get more training
- Get a book
 - *Oxford Plain English Guide* by Martin Cutts
 - *Plain English for Lawyers* by Richard C. Wydick
 - *Legal Writing in Plain English* by Bryan Garner

Eschew obfuscation

(be clear)