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# HOUSE LEGISLATIVE COUNSEL'S MANUAL ON DRAFTING STYLE

NOVEMBER 1995

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PREPARED BY

THE OFFICE OF THE LEGISLATIVE COUNSEL

U.S. HOUSE OF REPRESENTATIVES

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Originally Prepared by
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February 28, 1989

1995 Edition Prepared by
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# GENERAL INTRODUCTION

The Office of the Legislative Counsel of the House of Representatives is the legislative drafting service of the House. Formally established by statute in 1919, the Office has for more than 75 years provided nonpartisan, confidential, and timely legislative drafting and related assistance to the Members, committees, and staff of the House.

In February 1989, the Office published its first drafting style manual, entitled "Style Manual; Drafting Suggestions for the Trained Drafter". The manual was the product of several years of work and discussion within the Office, as well as consultation with the Office of the Legislative Counsel of the Senate, the Office of the Law Revision Counsel, and other drafters of Federal legislation. The entire project was the inspiration of Ward M. Hussey, then House Legislative Counsel, and the final manual reflected his belief in the need for a uniform style of drafting Federal laws.

Since the date of its initial publication, the manual has indeed had a broad impact on Federal legislation, as any comparison of laws enacted before and after that date will indicate. The manual has also been translated into additional languages and adopted as a style manual for the drafting offices of several other nations' legislatures.

It is with the purpose of continuing the wide distribution of the manual that this new edition is being published. Other than the addition of this general introduction, only the most minor of technical revisions have been made to the text of the manual, principally to conform certain provisions as required by the passage of time. Where it has been thought necessary to make further substantive comments, this has been done solely through the addition of footnotes (none of which were included in the original edition).

As noted in the foreword to the original edition, the manual is not intended to be a treatise on legislative drafting, but rather a guidebook for individuals who are undergoing, or have undergone, on-the-job drafting training. Many important issues are not addressed, while numerous others are mentioned only in a summary manner. However, several useful resources are available for those who wish to explore legislative drafting issues in greater detail. Among these are the following excellent works:

(1) Lawrence E. Filson, THE LEGISLATIVE DRAFTER'S DESK REFERENCE, 1992 (Congressional Quarterly Inc.). A comprehensive guide to Federal legislative drafting, written by the former Deputy Legislative Counsel of the House Office of the Legislative Counsel.

(2) Donald Hirsch, DRAFTING FEDERAL LAW, 2d edition, 1989 (U.S. Government Printing Office). A self-teaching manual written by the former chief legislative drafter for the Department of Health and Human Services and published by the House Office of the Legislative Counsel.

(3) Reed Dickerson, THE FUNDAMENTALS OF LEGAL DRAFTING, 1965 (Little, Brown and Company). A classic guide to drafting, written by the then Professor of Law at the Indiana University School of Law and published by the American Bar Association.

It is hoped that the House Legislative Counsel's Manual on Drafting Style will assist the Members, committees, and staff of the House in carrying out their duties, while at the same time furthering public knowledge about the crafting of legislation. Comments and suggestions for improvements in future editions are encouraged, and may be addressed to the Office of the Legislative Counsel, U.S. House of Representatives, 136 Cannon House Office Building, Washington, DC 20515.

# FOREWORD

## (Original Edition of February 28, 1989)

This manual has been prepared by attorneys in the Office of the Legislative Counsel of the United States House of Representatives primarily—

(1) to assist in the training of new attorneys in that Office; and

(2) to promote greater stylistic uniformity in the work product of that Office.

However, it is hoped that it may also serve as the basis for discussions with other persons interested in legislative drafting with the goal of achieving greater stylistic uniformity in our Federal laws.

This manual is in no sense a treatise on how to draft a law. Instead it is intended for those who are undergoing, or have undergone, on-the-job drafting training under the supervision of expert drafters.

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# TITLE I—DRAFTING PRINCIPLES UNDERLYING THE HOUSE LEGISLATIVE COUNSEL'S OFFICE STYLE

**SEC. 101. START.**

This manual assumes that the attorney assigned to draft legislation already has (or is in the process of learning) the 4 basic drafting skills:

(1) Find out what the client *really* wants to do.

(2) Analyze the legal and other problems in doing that.

(3) Help the client come up with solutions to these problems that will—

(A) be administrable and enforceable; and

(B) keep hassles and litigation to a minimum.

(4) Convince the client that the drafter is the best to come down the pike since Solomon.

**SEC. 102. MAIN MESSAGE.**

(a) ORGANIZATION.—

(1) EVERY DRAFT SHOULD BE ORGANIZED.—Every draft should be organized.

(2) ORGANIZATION SHOULD FIT THE MESSAGE.—The organization should be appropriate for the message the client wants to get across.

(3) START WITH MOST IMPORTANT THOUGHTS.—Usually most important thoughts should come first, and the thoughts should dwindle in importance from there down.

(b) USE SHORT SIMPLE SENTENCES.—

(1) IN GENERAL.—Use short simple sentences.

(2) ELABORATION.—A listener survey was conducted recently. The median listener tunes out after the 12th word.

(3) BREAK UP COMPLEX AND COMPOUND SENTENCES.—Most complex and compound sentences should be broken into 2 or more sentences. Often the offending sentence contains—

(A) an unresolved policy issue; or

(B) both a general rule and 1 or more exceptions and special rules.

(c) STAY IN THE PRESENT.—Whenever possible, use the present tense (rather than the past or future). Your draft should be a movable feast—that is, it speaks as of whatever time it is being read (rather than as of when drafted, enacted, or put into effect).

(d) CHOOSE WORDS CAREFULLY.—

(1) IN GENERAL.—Choose each word as if it were an integral part of the Taj Mahal you are building. There is 1 best word to get across each thought. To find that word, use the dictionary and bounce words and drafts off any member of the office who will listen. What a word means to you may not be what it means to the next person.

(2) USE ENGLISH RATHER THAN LATIN.—If you have a choice, use the English word rather than the Latin. Those few people who have had Latin in school can't agree on pronunciation.

(3) USE PUNCHY WORDS.—Seek out words that suggest action. For this, verbs are usually better than nouns and adjectives.

(4) USE SAME WORD OVER AND OVER.—If you have found the right word, don't be afraid to use it again and again. In other words, don't show your pedantry by an ostentatious parade of synonyms. Your English teacher may be disappointed, but the courts and others who are straining to find your meaning will bless you.

(5) AVOID UTRAQUISTIC SUBTERFUGES.—Do not use the same word in 2 different ways in the same draft (unless you give the reader clear warning).

(6) CAST OUT IDLE WORDS.—If any word is idle, cast it out.

(e) DEFINE YOUR TERMS.—

(1) IN GENERAL.—Check to see if the use of 1 or more defined terms will improve the draft. Often a skillful use of definitions will promote clarity, brevity, and consistency.

(2) FEAR NOT INVENTING WORDS.—If there is no right word, or if the available words carry with them too much baggage, invent a word or term and define it.

(f) PART OF YOUR JOB IS TO GET THE MESSAGE ACROSS.—

(1) IN GENERAL.—Your client comes to you because of wanting to send a message to 1 or more of the following:

(A) The world.

(B) The American people.

(C) Fellow legislators.

(D) Legislative staff.

(E) Administrators.

(F) Courts.

(G) Constituents.

(H) The media.

(I) Others.

(2) IDENTIFY THE AUDIENCE.—Decide who is supposed to get the message.

(3) DRAFT SHOULD BE READABLE AND UNDERSTANDABLE.—In almost all cases, the message has a better chance of accomplishing your client's goal if it is readable and understandable. It should be written in English for real people.

(4) USE READABILITY AIDS.—Use the following with enthusiasm whenever they will increase readability and understandability:

(A) Headings.

(B) Cut-ins.

(C) Numbered lists of items.

(D) Tables.

(E) Mathematical formulas.

(F) Diagrams.

(5) DOWN-PLAY THE LESS IMPORTANT.—

(A) SUBORDINATING.—Often the draft can be improved by subordinating the less important.

(B) SUBORDINATING TECHNIQUES TO BE CONSIDERED.—Among the techniques for subordinating to be considered are the following:

(i) Consolidate or eliminate the less important.

(ii) Place lesser rules in a special rule section or subsection.

(iii) Weave the lesser rules into the main body by a series of inserts set off by parentheses.

(iv) Merely state that the rules that apply to "X" also apply to "Y".

# TITLE II—THE HOUSE LEGISLATIVE COUNSEL'S OFFICE STYLE

## SEC. 201. WHY SOME UNIFORM DRAFTING STYLE IS NEEDED.

(a) RELATIVE IMPORTANCE OF STYLE.—The Office of the Legislative Counsel of the House of Representatives is a service organization. Its purpose is to provide legal service that best furthers the interests of its clients. This is carried out in the midst of constantly changing circumstances and demands, indeed often in the midst of chaos. In order to provide good legal service in the midst of changing and often chaotic circumstances, at least 2 things are needed: good judgment and good tools. Good judgment is obviously more important, but good tools are essential in implementing good judgment. Style is one of those tools. To be a good tool, style should be defined clearly. It should be one of the steady, predictable elements that attorneys use to reduce chaos to order, and not one of the fluctuating factors that contribute to the chaos. A good uniform style is one that gives clearly defined, steady, and predictable guidance for the structure and expression of legislation.

(b) BENEFITS OF ANY GOOD STYLE UNIFORMLY APPLIED.—

(1) IN GENERAL.—Adoption of any good drafting style as a uniform style for legislation can benefit—

(A) those of us who draft;

(B) those who have to work with or who are subject to the legislation; and

(C) the House Legislative Counsel's office, the House, and the Congress, as institutions.

(2) A UNIFORM STYLE CAN BE HELPFUL IN DRAFTING.—

(A) STABLE FRAMEWORK.—Through the application of uniform principles regarding structure, a stable framework is provided for analyzing the legal and other problems of a legislative proposal and for organizing and expressing the proposal in an orderly, consistent manner.

(B) CONSISTENCY.—Through the application of standard rules of usage, consistency in expression can be obtained.

(C) TIME.—The application of any uniform style provides for the best use of time—

(i) whenever 2 or more attorneys, from the same office or from the House and the Senate, are working on the same job and would prefer to spend their time on substantive matters rather than on conforming style;

(ii) whenever 1 attorney is substituting for another attorney or is drafting from the work product of another attorney; or

(iii) whenever a senior attorney is introducing a new attorney to the style used in the House Legislative Counsel's office.

(3) A UNIFORM STYLE CAN BE HELPFUL TO THE READER (WHETHER THE CLIENT, AN AFFECTED PERSON, AN ADMINISTRATOR, OR A COURT).—

(A) COMMUNICATION.—A uniform style can help communicate the message by enabling the reader to concentrate on the important part of the message without being distracted by mere stylistic differences. This is particularly important when the stylistic difference could be erroneously thought to have legal significance

under the doctrine that variations within a law are designed to convey meaning.

(B) ORDERLINESS AND CONSISTENCY.—In addition, most people, but particularly readers of law, have a need for (or at least an expectation of) orderliness and consistency in the expression of ideas that can be satisfied by use of a uniform style.

(4) A UNIFORM STYLE PROMOTES THE INSTITUTIONAL INTERESTS OF THE HOUSE LEGISLATIVE COUNSEL'S OFFICE, THE HOUSE, AND THE CONGRESS.—Besides those needs and expectations, it is apparent (fortunately or unfortunately) that people seem to be impressed with orderliness and consistency in documents. Elimination of unwarranted variations in the style of legislation can enhance respect for the work product of the House Legislative Counsel's office, for the efforts of the office's client, and for the House and the Congress as institutions. When unwarranted variations do occur in the style of legislative language, the interests of neither the House nor the Congress are promoted, and aid is given to those who are looking for grounds to misinterpret the language or to criticize the process or product involved.

**SEC. 202. WHY THE OFFICE STYLE WAS CHOSEN.**

A variety of drafting styles exist today, each with its own attributes. Assuming that a uniform style in legislative language is a worthwhile goal, why did the House Legislative Counsel's office adopt the particular style that is set forth in this manual? The office style, while not the style most prevalently used in the past, has the following major advantages:

(1) WIDE ARC.—It embraces the widest range and variety of drafting tools and conventions. On the one hand, it can be used full-bore to promote the clear expression of complex policies. On the other hand, it can be applied in a limited way in the expression of less complex policies.

(2) PROVIDES OPTIONS.—Because of the structural principles it embodies and its variety of drafting conventions, it provides the drafter the maximum options and flexibility within a uniform style.

(3) PROMOTES STANDARD.—In addition, because of its formatting and other features, it provides a good basis for developing, through the collective efforts of the House Legislative Counsel's office, the Senate Legislative Counsel's office, and other drafters, a standard Federal style for legislation.

**SEC. 203. THE OFFICE STYLE DESCRIBED.**

(a) IN GENERAL.—

(1) DERIVATION.—The office style is derived from revenue style. The headings in a bill above the section level, and the section and subsection headings, are to be in revenue style.

(2) WHAT IT CONSISTS OF.—The office style is based on the drafting principles set forth in title I and consists of the style outlined in subsection (c) and the elements of structure and style set forth in title III.

(b) FLEXIBLE USE OF OFFICE STYLE DEVICES BELOW SUBSECTIONS.—

(1) ATTORNEY TO MAINTAIN STYLISTIC TOOL BOX.—Each attorney should develop and maintain proficiency in the use of the breakdowns, headings, indentations, and other format devices of the office style.

(2) ATTORNEY TO HAVE FLEXIBILITY IN THEIR USE.—The attorney should use such devices to the extent their use is appropriate to the complexity of the statute concerned and helps in expressing the client's message and in carrying out the client's policy.

(c) EXAMPLES OF OFFICE STYLE.—

(1) ORGANIZATION ABOVE A SECTION.—

# TITLE I—EXCISE TAXES

(18 point, bold, all caps, centered)

## Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

(18 point, bold, initial caps, centered)

### CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

(14 point, bold, all caps, centered)

### Subchapter A—Gallonage and Occupational Taxes

(14 point, bold, initial caps, centered)

#### PART I—DISTILLED WINES

(12 point, bold, all caps, centered)

#### Subpart A—Distilled Spirits

(12 point, bold, initial caps, centered)

*Note:* The use of 18-point type for title and subtitle headings, and the use of chapters and subchapters in breaking down subtitles in a bill that is relatively short and not overly complex, should be considered optional with the attorney involved.

(2) SECTIONS AND SUBSECTIONS.—

**SEC. 5. IMPOSITION, RATE, AND ATTACHMENT OF TAX.**

(section head—10 point, bold, all caps, flush and hang indent)

(a) RATE OF TAX.—

(subsection caption—initial caps and small caps, full measure)

(d) EXAMPLES OF OFFICE STYLE BELOW SUBSECTIONS.—

(1) IN GENERAL.—

(paragraph caption—1st word initial cap and rest small caps, indented 2 ems)

(A) SPECIAL RULES.—

(subparagraph caption—1st word initial cap and rest small caps, indented 4 ems)

(i) EXCEPTIONS.—

(clause caption—1st word initial cap and rest small caps, indented 6 ems)

(I) EFFECTIVE DATE.—

(subclause caption—1st word initial cap and rest small caps, indented 8 ems)

**SEC. 204. EXAMPLES OF SECTION DRAFTED IN AN OLD STYLE AND REDRAFTED USING OFFICE STYLE.**

The following shows a section drafted in a style widely used in the past and the same legislative proposal drafted in the newer office style:

*Example 1 (Old style):*

REIMPOSITION OF PRICE CONTROLS

SEC. 103. (a) Section 122(b)(1) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3332(b)(1)) is amended by striking out "may not take effect earlier than July 1, 1985," and inserting in lieu thereof "may not take effect before the twenty-fourth month that begins after the effective date of the Natural Gas Market Policy Act".

(b)(1) Section 507 of such Act (15 U.S.C. 3417) is amended by striking out "concurrent resolution" each place it appears and inserting in lieu thereof "joint resolution".

(2) Section 507(d) of such Act (15 U.S.C. 3417(d)) is amended by adding at the end thereof the following:

"(7) If one House receives from the other House a resolution, then—

"(A) if, at the time of such receipt, a committee of the House has reported, or has been discharged from further consideration of a resolution, then the resolution received from the other House shall not be referred to any committee, and on any vote on final passage of the reported or discharged resolution, a motion shall be in order to substitute the resolution received from the other House; or

"(B) if, at the time of such receipt, any committee of the House has not reported, or has been

discharged from further consideration of a resolution, then the resolution received from the other House shall be referred in accordance with otherwise applicable rules, and, if a committee to which a resolution is referred under this subparagraph does not report such resolution before the end of the period of fifteen legislative days after such referral, it shall be in order to move to discharge such committee from further consideration of such resolution and paragraph (3) shall apply to any such motion to discharge.".

*Example 2 (Office style):*

**SEC. 103. REIMPOSITION OF PRICE CONTROLS.**

(a) CONTROL PERIOD POSTPONED UNTIL 24 MONTHS AFTER EFFECTIVE DATE.—Section 122(b)(1) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3332(b)(1)), relating to limitations on reimposition, is amended by striking "may not take effect earlier than July 1, 1985," and inserting "may not take effect before the 24th month that begins after the effective date of the Natural Gas Market Policy Act".

(b) TECHNICAL AMENDMENTS.—

(1) APPROVAL BY JOINT RATHER THAN CONCURRENT RESOLUTION.—Section 507 of such Act (15 U.S.C. 3417) is amended by striking "concur-

rent resolution" each place it appears and inserting "joint resolution".

(2) PROCEDURES.—Section 507(d) of such Act (15 U.S.C. 3417(d)) is amended by adding at the end the following:

"(7) COORDINATION OF HOUSE AND SENATE ACTIONS.—

"(A) IN GENERAL.—If one House receives from the other House a resolution, then the procedure established in this paragraph shall apply.

"(B) IF HOUSE HAS ACTED.—

"(i) NONREFERRAL.—If, at the time of such receipt, a committee of the House has reported, or has been discharged from further consideration of a resolution, then the resolution received from the other House shall not be referred to any committee.

"(ii) SUBSTITUTION.—On any vote on final passage of the reported or discharged resolution, a motion shall be in order to substitute the resolution received from the other House.

"(C) IF HOUSE HAS NOT ACTED.—

"(i) REFERRAL.—If, at the time of such receipt, any committee of the House has not reported, or has been discharged from further consideration of a resolution, then the resolution received from the other House shall be referred in accordance with otherwise applicable rules.

"(ii) DISCHARGE.—If a committee to which a resolution is referred under clause (i) does not report such resolution before the end of the period of 15 legislative days after the date of such referral—

"(I) it shall be in order to move to discharge such committee from further consideration of such resolution; and

"(II) paragraph (3) shall apply to any such motion to discharge.".

*Note:* Examples of the office style in this document reflect all of the specific drafting conventions that are set forth in title III, whether or not (in any particular case) the conventions involved are related to the point being made by the example.

**SEC. 205. IMPLEMENTING THE OFFICE STYLE.**

(a) IN GENERAL.—Each attorney having committee responsibilities should come up with a practicable, orderly method or methods for attaining as extensive a use of the office style as can be reasonably achieved under the circumstances of the attorney's relationship with the committee.

(b) APPLICATION TO FREESTANDING PROVISIONS.—Except in unique cases and subject to subsection (a), it is anticipated that the office style would apply to the entire range of freestanding legislation dealt with by the office.

(c) APPLICATION TO AMENDMENTS TO EXISTING LAW.—

(1) GENERALLY.—It is a goal that, in time, all Federal law will be in the office style. It is also a goal that uniformity of style be maintained within a statute, at least as required for consistency of interpretation. In amending existing law, attorneys should pursue both goals. That is, the attorney should look for appropriate opportunities to apply the office style in ways that do not cause the goals to conflict.

(2) CERTAIN CONSIDERATIONS.—In exercising the attorney's judgment in applying office style in

amendatory bills, it is assumed that the attorney might appropriately consider questions such as:

(A) What are the benefits of using the office style, and how much does it vary from the style of the amended law? Would the benefits justify variation? Would conforming and technical amendments to the existing provisions also be justified?

(B) How separate will the new matter be from the existing matter? That is, will it be structurally separate, such as a new title or subpart; and will it be functionally separate, so that its audience will not be flipping back and forth between the existing and the new?

(C) What impacts will using the office style create during the legislative process?

# TITLE III—DRAFTING SUGGESTIONS FOR THE TRAINED DRAFTER

## Subtitle A—Introduction

### SEC. 301. INTRODUCTION.

There are some general principles of legislative drafting and specific elements of structure and style that the House Legislative Counsel's office follows. An individual drafting legislation should thoroughly understand such principles and elements before engaging in the creativity essential to drafting. Because creativity is required for proper legislative drafting, legislative drafting cannot be reduced to a cookbook type of process in which items from lists of accepted "ingredients" are combined by the drafter to create a legislative product. A belief otherwise can only create a false sense of security. In addition, the diversity of individuals drafting makes a consensus on a precise guide respecting structure and style an impossibility. Nevertheless, a general agreement on as many drafting conventions as is possible will simplify the drafting process and improve the legislative product.

As stated elsewhere in this document (section 205(c)), it is the goal of the House Legislative Counsel's office that all Federal law will eventually be written in the office style. To this end, each attorney is to use the

office style in any drafting project *as extensively as is possible under the circumstances surrounding that project* (see discussion on implementing office style, section 205). The preceding sentence applies to the drafting conventions that are specified in this title just as it does to the general organization and format of the bill being drafted.

Thus, the attorney should use the specified drafting conventions as extensively as possible, but need not do so if circumstances indicate that insistence on the use of a particular convention would interfere with the drafting process or lead to an undesirably inconsistent legislative product. For example, using the office style in amending existing law to substitute one provision for another, you would normally say "strike 'X' and insert 'Y' " instead of "strike *out* 'X' and insert *in lieu thereof* 'Y' " (see section 332(c)(1)). However, you may well conclude that you should revert to the old style (using "out" and "in lieu thereof") if other contributors to the same project use that style and as a practical matter you cannot control the overall style of the final product either by convincing them without a hassle that they should use the office style or by editing the draft at the last minute.

The suggestions in this title are merely a collection of the items the House Legislative Counsel's office thought worthy of inclusion at the time this manual was

written. It is not intended to be a complete compendium of drafting rules and conventions.

# Subtitle B—Organization and Structure

### SEC. 311. ORGANIZATION.

Before choosing an organization for a draft, determine to what extent it could appropriately fit into the following arrangement:

(1) GENERAL RULE.—State the main message.

(2) EXCEPTIONS.—Describe the persons or things to which the main message does not apply.

(3) SPECIAL RULES.—Describe the persons or things—

(A) to which the main message applies in a different way; or

(B) for which there is a different message.

(4) TRANSITIONAL RULES.—Describe the rules that are transitional and either are especially important or will have effect for a relatively long period of time.

(5) OTHER PROVISIONS.

(6) DEFINITIONS.—See section 326.

(7) EFFECTIVE DATE.—See section 329.

### SEC. 312. STRUCTURE.

(a) SECTION BREAKDOWN AND FORMAT.—

(1) IN GENERAL.—To the maximum extent practicable, a section should be broken into—

(A) subsections (starting with (a));

(B) paragraphs (starting with (1));

(C) subparagraphs (starting with (A));

(D) clauses (starting with (i)); and

(E) subclauses (starting with (I)).

(2) SECTION HEADINGS.—If section headings are used, then all sections in the bill should have them, including section 1.

(b) MULTIPLE SUBDIVISIONS.—If there is a subdivision of the text of a unit, there should not be a different kind of subdivision of that unit unless the latter is part of the 1st subdivision. Thus, the following is incorrect:

"(a) One often finds the need for subdivisions. Subdivisions may take the form of—

"(1) paragraphs; or

"(2) other divisions.

In complex legislation there often is the need for multiple subdivisions. Such subdivisions are often found in—

"(A) the Social Security Act . . . ".

The example should be restated as follows:

"(a)(1) One often finds the need for subdivisions. Subdivisions may take the form of—

"(A) paragraphs; or

"(B) other divisions.

"(2) In complex legislation there often is the need for multiple subdivisions. Such subdivisions are often found in—

"(A) the Social Security Act . . . ".

# Subtitle C—Particular Legislative Provisions

**SEC. 321. LONG TITLE.**

(a) IN GENERAL.—A title should accurately and briefly describe what a bill does.

(b) AMENDATORY BILLS.— For bills amending primarily 1 law, use the form "To amend [citation of law] to . . . ".

(c) CONSTITUTIONAL AMENDMENTS.—For constitutional amendments, use the form "Proposing an amendment to the Constitution of the United States concerning . . . ".

(d) AND FOR OTHER PURPOSES.—If the bill covers multiple items, ", and for other purposes" may be used at the end of the title instead of describing each item.

(e) PRIVATE RELIEF.—For private relief, use the form "For the relief of . . . ".

**SEC. 322. FIRST SECTION.**

For internal consistency and ease of citation and reference, designate the 1st section as section 1 if the bill is longer than 1 section.[1]

**SEC. 323. SHORT TITLE.**

(a) FORM.—This Act may be cited as the "____ Act".

(b) USAGE.—

(1) IN GENERAL.—A short title is appropriate—

(A) for major legislation; and

(B) to facilitate cross references.

(2) MULTIPLE SHORT TITLES IN SAME ACT.—

(A) IN GENERAL.—The practice of providing a short title for each title, subtitle, or chapter generally should be avoided. For cross reference purposes, "title II of the XYZ Act" will usually work as well as a special short title of its own.

(B) EXCEPTIONS.—Short titles for components of an Act are appropriate in the following cases:

(i) SHORT TITLE OF ACT MISLEADING.—In cases in which the component is

[1] It is the general practice of the House Legislative Counsel's office to designate the 1st section of a bill as section 1 (with an appropriate section heading), even if the bill has only a single section. This practice promotes stylistic consistency among all bills drafted by the office. Furthermore, this practice facilitates subsequent preparation of the bill as a new section to be added to other legislation, as well as the inclusion of additional sections in the bill during committee or House floor consideration.

added to an Act that has a short title that misrepresents the new component and that cannot easily be changed.

(ii) AGGREGATE LEGISLATION.—In cases of omnibus bills (such as budget reconciliation Acts) that consist of proposals that had been (or would otherwise be) separate legislation.

(3) AMENDATORY ACT.—If the Act is primarily amendments to another law, it is appropriate for the short title to include ". . . Amendments of [year]".[2]

(4) LENGTH.—Keep it *short*.

**SEC. 324. TABLE OF CONTENTS.**

(a) CRITERIA.—Use a table of contents to show sections and headings if it would be helpful (because of the length of the bill or otherwise).

(b) LOCATION.—Place the table of contents in section 1 after the short title if there is one.

(c) USE IN AMENDATORY BILLS.—If the bill contains a section adding a number of new sections to an existing law (such as a new title or chapter), it may be useful to show those sections in the table of contents. The following is an example of how that is done:

[2] It is the common practice within the House Legislative Counsel's office in this situation to use a short title in the following form: ". . . Amendments Act of [year]". Inclusion of the word "Act" in the short title is useful in avoiding possible ambiguities that may arise from any internal references to "this Act" and from any references in subsequent amendatory legislation to "such Act".

Sec. 2. Revision of title IV of the Public Health Service Act.

"TITLE IV—NATIONAL RESEARCH INSTITUTES

"PART A—NATIONAL INSTITUTES OF HEALTH

"Sec. 401. Organization of the National Institutes of Health.
"Sec. 402. Appointment and authority of Director of NIH.
"Sec. 403. Report of Director of NIH.

**SEC. 325. FINDINGS AND PURPOSES.**

(a) IN GENERAL.—Discourage clients from including findings and purposes. Both are matters that are more appropriately and safely dealt with in the committee report than in the bill. [3]

(b) DRAFTING.—If the client insists on findings or purposes, or both, request the client to submit a draft. The client's draft may be edited.

**SEC. 326. DEFINITIONS.**

(a) IN GENERAL.—Check to see if the use of 1 or more defined terms will improve the draft. Often a skillful use of definitions will promote clarity, brevity, and consistency.

(b) FEAR NOT INVENTING WORDS.—If there is no right word, or if the available words carry with them too much baggage, invent a word or term and define it.

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[3] The House Legislative Counsel's manual on PRACTICE AND PROCEDURE IN COMMITTEES, PROCEEDINGS, AND CONFERENCES OF THE HOUSE OF REPRESENTATIVES, at 201 (March 1992), provides that "[a] purpose provision that recites the specific matters covered by a bill is a redundancy and is not needed. However, a purpose provision that states the objective of the specific provisions can be useful. Quite often the Supreme Court will look at such a purpose provision to ascertain the intent of legislation. Thus, if the legislation you are drafting is particularly complex, it may be useful to have such a purpose provision."

In addition, there are certain circumstances in which congressional findings may be imperative to establish the constitutional basis for congressional action. This is particularly the case in legislation in which congressional action is based on the effect of an activity in interstate commerce. As the Supreme Court recently reaffirmed in its opinion in the case of *United States v. Lopez*, 63 U.S.L.W. 4343, 4347 (U.S. Apr. 26, 1995), "as part of our independent evaluation of constitutionality under the Commerce Clause we of course consider legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce . . . . We agree with the Government that Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce. . . . But to the extent that congressional findings would enable us to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye, they are lacking here."

(c) LOCATION.—Definitions should not come before the main message unless there are strong organizational or tactical reasons for doing so. If you think your readers will expect to find the definitions up front, use the device described in subsection (j).

(d) LEAD-IN.—Three variations are in general usage:

(1) "For purposes of this [provision]".

(2) "In this [provision]".

(3) "As used in this [provision]".

(e) "UNLESS" PHRASE.—Avoid using "unless the context requires otherwise". It is preferable to provide a specific cross reference if a term is given a different meaning for a limited purpose elsewhere in the bill and there is a need to warn the reader of the different usage. Of course, the number of times that the different meaning appears may require the use of the phrase "unless the context requires otherwise".

(f) FORM.—

(1) PUNCTUATION AND CAPITALIZATION.—See the discussion regarding lists in section 351(d).

(2) USE OF THE TERM "TERM".—Begin each of the definitions with the modifying phrase "the term". This—

(A) avoids the potential confusion over initial capitalization; and

(B) permits the use of the construction ", except that *such term* does not include . . . ".

(g) SEQUENCE.—

(1) GENERAL RULE.—Except as noted in paragraph (2), the defined terms should be in a single section. [4]

(2) BREAK-OUT OPTION.—At times, the defined terms consist of 1 or 2 relatively important terms and many less important ones. In those cases, it is appropriate to define the important ones with a separate section for each (headed "**X DEFINED**") and the remainder grouped in another section (headed "**OTHER DEFINITIONS**").

(h) COMPOUND TERMS.—If a defined term consists of 2 or more terms that are themselves defined and are only used for the compound term, they should be subsets of the paragraph defining the compound term.

(i) PARENTHETICAL DEFINITIONS.—If the bill does not otherwise contain a definitions section, [5] it is acceptable to insert after the 1st place the longer reference oc-

[4] The common methods of ordering the definitions within a single section are (1) by alphabetical order; (2) by order of importance; and (3) by order of appearance within the text of the bill.

[5] It is the general practice of the House Legislative Counsel's office to avoid overly extensive reliance on parenthetical definitions, which will usually not be used as a replacement for a definitions section if definitions are required for 3 or more terms.

curs the following: "(in this [provision] referred to as the 'Secretary')" .[6]

(j) CROSS REFERENCE TO DEFINITION.—

(1) It may be desirable to include in section 1 a statement that terms are defined. Example:

(____) DEFINITIONS.—For definitions of terms [or "the principal terms"] used in this Act, see . . . .

(2) If a defined term is used before the definitions and it is important in the context to warn the reader that the term has a specially prescribed meaning, a specific parenthetical warning can be given immediately after the defined term is first used, which states "(as defined in section ____)".

**SEC. 327. APPROPRIATIONS AUTHORIZATION.**

(a) IN GENERAL.—Authorizations of appropriations are not required in legislation (see subsection (c)) unless there is a need to indicate the cost of the legislation or to limit the amount that may be appropriated under the legislation or the years for which appropriations are authorized.

(b) SPECIFIC AUTHORIZATIONS.—Authorizations of appropriations frequently contain the purpose of the appropriation, the agency to receive the appropriation, the amount, the fiscal year involved, and restrictions. All else being equal, the items should be stated in that order. Ex-

[6] By the example presented in the text, this manual rejects the use of "hereafter" and "hereinafter" in parenthetical definitions.

ample: "For grants under section ____ there is authorized to be appropriated to the Secretary $1,000,000 for fiscal year 1986. Of the amount appropriated under this ____ the Secretary shall obligate . . . .".

(c) SUCH SUMS AS MAY BE NECESSARY.—A provision authorizing "such sums as may be necessary" is unnecessary since the enactment of legislation establishing an agency, authorizing an existing agency to undertake new functions, or authorizing or directing any other matter that requires funds is in and of itself an authorization of appropriations for the agency, function, or matter. *See* Deschler and Brown, PROCEDURE IN THE U.S. HOUSE OF REPRESENTATIVES, 97th Congress, ch. 25 § 7.14.[7]

**SEC. 328. SEVERABILITY CLAUSES.**

The Supreme Court has made it quite clear that invalid portions of statutes are to be severed "unless it is evident that the Legislature would not have enacted those provisions which are within its powers, independently of that which is not". *INS v. Chadha*, 462 U.S. 919, 931

[7] It is important to recognize that the issue here is generally one of internal House procedures. In most cases, while an unauthorized appropriation is subject to a point of order in the House, it is entirely valid if enacted into law notwithstanding the absence of an authorization. However, in certain instances, a law may attempt to prohibit the obligation of appropriated funds unless an authorization has been enacted. *See, e.g.,* section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Pub. L. 103–236; 108 Stat. 444) (providing that "any funds appropriated for the purposes of broadcasting subject to the direction and supervision of the Board shall not be available for obligation or expenditure . . . unless such funds are appropriated pursuant to an authorization of appropriations").

In addition, under House precedents, an organic statute will not be considered to be an authorization of appropriations if a provision of law explicitly requires an annual (or other periodic) authorization of appropriations. *See* HOUSE RULES AND MANUAL, § 836. *See, e.g.,* section 660 of the Department of Energy Reorganization Act (42 U.S.C. 7270) (providing that "[a]ppropriations to carry out the provisions of this Act shall be subject to annual authorization"). Similarly, an organic statute will not be considered to be an authorization of appropriations if the program involved has subsequently been the subject of periodic authorizations. *See* HOUSE RULES AND MANUAL, § 835.

Finally, it is also appropriate to include a such sums authorization provision in a bill for introduction, if the sponsor intends to have definite amounts or fiscal years specified at a later point during consideration. In this form, the provision can serve as a useful place holder.

(1983); *Buckley v. Valeo* 424 U.S. 1, 108 (1976).[8] Consequently a severability clause is unnecessary unless it provides in detail which related provisions are to fall, and which are not to fall, if a specified key provision is held invalid.[9]

**SEC. 329. EFFECTIVE DATES.**

(a) IN GENERAL.—Unless otherwise provided, legislation takes effect on the date of its enactment. If the policy is to have legislation take effect on the date of its enactment and if there are no other provisions relating to its application that are required, then no effective date provision is needed.

(b) WHEN REQUIRED.—An effective date provision is only required—

(1) if legislation is to take effect on a date other than its date of enactment; or

(2) if the legislation is to take effect with respect to particular things or events (receipts, offenses, months, etc.).

(c) IN LEGISLATION MAKING AMENDMENTS.—If an effective date is required in legislation that makes amendments to existing law, the effective date should be

[8] The Supreme Court has reaffirmed this approach in more recent cases. *See New York v. United States*, 505 U.S. 144 (1992); *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678 (1987)

[9] The House Legislative Counsel's manual on PRACTICE AND PROCEDURE IN COMMITTEES, PROCEEDINGS, AND CONFERENCES OF THE HOUSE OF REPRESENTATIVES, at 201 (March 1992), provides that "[i]t is the practice of this Office not to include a severability provision because the Supreme Court will arrive at the result prescribed by such a provision. However, it should be noted that the Supreme Court would like such a provision to be included because it does not require the court to state the argument for the result prescribed by such a provision."

Indeed, the Court in *Chada*, after setting forth its basic rule regarding severability, went on to state as follows: "Here, however, we need not embark on that elusive inquiry since Congress itself has provided the answer to the question of severability in § 406 of the Immigration and Nationality Act . . . . This language is unambiguous and gives rise to a presumption that Congress did not intend the validity of the Act as a whole, or any part, to depend upon whether the veto clause of § 244(c)(2) was invalid." *INS v. Chada*, 462 U.S. 919, 932 (1983).

stated as applying to the amendments and not to the legislation. Thus, do not use "this Act shall take effect" rather use "the amendments made by sections ____ shall take effect".

(d) LOCATION.—

(1) IN GENERAL.—Except as noted in paragraph (2), the effective date is in a single section.

(2) SEPARATELY STATE FOR EACH PROVISION.—If there are not 1 or 2 rules on effectiveness that apply generally, it may be preferable to incorporate the rules within each substantive provision. They can either be broken out in a separate subdivision or folded into the substantive provision "Effective beginning ____,".

# Subtitle D—Amendments and Repeals

**SEC. 331. TYPES OF AMENDMENTS.**

(a) IN GENERAL.—A distinction exists between the drafting of bills that amend statutes and the drafting of amendments to bills (or other amendments) for committee or House floor consideration.

(b) AMENDMENTS TO STATUTES ARE SELF-EXECUTING.—Amendatory bills are drafted on the assumption that the amendments are self-executing, without intervening action by others, and are stated in the indic-

ative mood. Example: "Section 12 of the ABC Act is amended by striking 'XX' and inserting 'YY'.".

(c) COMMITTEE OR FLOOR AMENDMENTS ARE DIRECTIVE.—Amendments to bills (or to other amendments) are drafted on the assumption that they are instructions to the committee or the House (or to their clerks), and are stated in the imperative mood. Example: "Page 2, beginning on line 13, strike 'XX' and insert 'YY'.". This assumption condones wider use of general amendments, such as " . . . and redesignate the following sections (and cross references thereto) accordingly".

**SEC. 332. AMENDMENTS TO STATUTES.**

(a) FORMAT OPTIONS.—

(1) IN GENERAL.—Normally, amendments can be achieved—

(A) by amendment by restatement; or

(B) by cut-and-bite amendments.

The circumstances control which should be used.[10]

(2) RESTATEMENT.—

(A) IN GENERAL.—By this method, the Act, section, or other provision is "amended to read as follows:" with the changes incorporated

[10] A 3rd option, not currently used in Federal legislative drafting, is the Ramseyer-like approach used by many State legislatures. This approach combines elements of the 2 approaches mentioned in the text, by amending existing law by restatement, while also showing (through different typefaces or other devices) the changes made to existing law by the amendments. The primary advantage of this approach is readability, without the need for reference to separate codifications or compilations of the law being amended. The primary disadvantage of this approach is the much greater length required in any legislation amending more than a few provisions of existing law.

into the text without specific identification of what they are.

(B) FEATURES.—This method has 3 features:

(i) It aids understanding of the effect of the provision as amended.

(ii) It, however, requires a side-by-side comparison with the existing law to locate the specific changes made.

(iii) It also results in the unchanged portions involved appearing in the bill, which is often tactically unacceptable, invites further amendment, and has the legal effect of reenacting the unchanged provisions included in the restatement.

(3) CUT-AND-BITE.—

(A) IN GENERAL.—

(i) TECHNIQUE.—By this method, the amendment is achieved by specific language striking text, inserting text, or both. It is done, for example, by stating that X is "amended by striking 'Y' and inserting 'Z' ".

(ii) EFFECT.—This approach is the opposite of an amendment by restatement because it—

(I) highlights the particular changes made (unless the number of changes are so great as to obscure each change); and

(II) avoids the risks caused by including the unchanged language.

However, cut-and-bite amendments require a side-by-side comparison of the amendments and the existing law in order to understand the effect of the amendments.

(B) ADDITION OF CLARIFYING LANGUAGE.—Frequently a cut-and-bite amendment can be made more understandable by striking (and then reinserting) more material than is technically necessary in cases in which the additional material can provide "context".

(b) SEQUENCE OF AMENDMENTS IN BILLS THAT AMEND STATUTES.—

(1) ORDER OF IMPORTANCE.—Except as noted in paragraphs (2) and (3), amendments to statutes should be set forth in their relative order of impor-

tance or at least in some rational arrangement of subject matter.

(2) GROUPING WITH TECHNICAL AND CONFORMING AMENDMENTS.—Frequently it is advisable to group the technical and conforming amendments with the related principal amendment to improve the organization and facilitate committee or House floor amendments. As an alternative, the technical and conforming amendments may be located in a general technical and conforming section and be grouped and identified, by use of a heading, as relating to the principal amendment.

(3) STRUCTURE OF AMENDED ACT.—If the number of amendments is large, and they are approximately equal in importance, it may be beneficial for the reader to show them according to the numerical sequence of the sections of the Act amended.

(c) AMENDMENT TERMINOLOGY.—

(1) REFERENCE TO MATTER TO BE STRICKEN.—

(A) OMIT DESCRIPTIVE CHARACTERIZATIONS.—Any descriptive characterization of material to be removed (such as "the word . . . ", "the number . . . ", or "the adverbial phrase . . . ") is surplusage if the ma-

terial itself is set forth. Example: "Section 5 of the ABC Act is amended by striking ~~the phrase~~ 'by the Secretary'.".

(B) "METES AND BOUNDS" REFERENCE FOR LONG MATERIAL.—

(i) IDENTIFY BEGINNING AND END.—When faced with removing large portions of language and showing all of it does not aid the reader in understanding the legislation, one should strike the language by identifying its beginning and ending. (The ending or beginning can be implicit if it coincides with the ending or beginning of the unit being amended.)

(ii) EXAMPLES.—

(I) Section 5 of the ABC Act is amended by striking "as determined by the Secretary" and all that follows through "opportunity for public comment".

(II) Section 5 of the ABC Act is amended by striking "as determined by the Secretary" and all that follows.

(III) The 1st sentence of section 5 of the ABC Act is amended by

striking so much of the sentence as precedes paragraph (1) and inserting the following: "The Secretary shall—".

(C) "DOWN".—In referring to a block of material, the "down", as in the following, is surplusage: "The ABC Act is amended by striking 'as determined by the Secretary' and all that follows ~~down~~ through 'opportunity for public comment'.".

(D) "OUT".—The "out" in "strike out" is surplusage.

(E) "IN LIEU THEREOF".—The "in lieu thereof" in "insert in lieu thereof" is surplusage if the insertion is intended to be made where the striking takes place.

(2) INSERTING OR ADDING.—One "inserts" material within the text of a provision and "adds" it if it is placed at the end of the provision involved.

(3) ADDING MATERIAL AFTER CUT-IN PARAGRAPHS.—It may be necessary when amending a section with cut-in paragraphs to make sure that an addition to the end of the section will not be included in the last paragraph but will appear after it. Use the phrase "is amended by adding after and

below [paragraph (1)] the following:" (and be sure to indent it properly).

(4) "IMMEDIATELY".—Avoid using "immediately" to identify where new language is to be placed, since the meaning it intends to provide should already be given by the amendment. Example: "Section 5 of the ABC Act is amended by inserting ~~immediately~~ after 'good faith' the following: ', as determined by the Secretary,'.".

(5) "FOLLOWING".—The term "following" should be as close to the colon as possible. Consequently, the preferable style is "adding at the end the following:", not "adding the following at the end:".

(6) "THEREOF".—The use of "thereof" as part of a description of the matter amended is redundant. Example: "Section 5 is amended by adding at the end ~~thereof~~ the following:".

(7) EACH PLACE RATHER THAN EACH TIME.—In the case of changing a term that appears more than once in a provision, "place" rather than "time" is the more accurate way to refer to the locations of the term. Example: "Section 5 is amended by striking 'X' each ~~time~~ *place* it appears and inserting 'Y'.".

(d) CUMULATIVE AMENDMENTS.—If a series of sections or subdivisions are added sequentially to a provision after the 1st amendment is made, the amendatory language for successive amendments should use 1 of the following formulations:

(1) EXAMPLE 1.—"Title XX is amended by adding after section 123 (as added by section 802 of this Act) the following new section:".

(2) EXAMPLE 2.—"Title XX (as amended by sections 802 and 803 of this Act) is further amended by adding at the end the following:".

(3) EXAMPLE 3.—If there are numerous amendments, "Title XX (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:".

The assumption is that the earlier (preceding) amendments have been executed.

(e) SERIAL AMENDMENTS.—

(1) IN GENERAL.—In lists of amendments of more or less equal importance that are made to the same provision, start with "[Subdivision (x)] is amended—" followed by a cut-in list of items each beginning with "by".

(2) ABUSE OF FORMAT.—The format described in paragraph (1) can be beneficial when its use is

limited to a few items. However, as with any drafting device, it creates befuddlement when it is applied in the extreme. One executive agency produced proposed legislation that began "The United States Code is amended—". This approach would cause substantial Ramseyer problems.[11]

(f) AMENDMENTS TO TABLE OF SECTIONS (AND OTHER TABLES).—The elements of a table of contents, or any other table, are generally referred to as "items" for purposes of amendments or cross references.

(g) MARGIN AND ALIGNMENT AMENDMENTS.—

(1) BY AMENDING TO READ AS FOLLOWS.—A traditional approach for—

(A) converting an unsubdivided subsection (or other provision) into a paragraph solely for purposes of being able to add an additional paragraph;

(B) correcting the margin of a provision; or

(C) moving a provision from 1 location to another;

is to strike the material and reinsert it with the proper margins or indentations and designations. Since this results in the language appearing (even

[11] A "Ramseyer" is a comparative print required by House Rule XIII, cl. 3 (commonly referred to as the "Ramseyer Rule"), to be included in a committee report accompanying legislation that proposes to repeal or amend an existing statute. The comparative print shows the existing statute, with the deletions and insertions proposed by the legislation shown in different typefaces. The common name for this print derives from the original proponent of the comparative print requirement in 1929, Representative C. William Ramseyer of Iowa.

though unchanged), it can create problems during the consideration of the legislation as well as result in the reenactment of the language involved (see subsection (a)(2)).

(2) WITHOUT REPEATING THE LANGUAGE.—It is possible to draft an amendment so that it directly addresses the problem set forth in paragraph (1) without repeating the language. For example, section 2661(m) of Public Law 98–369 provides:

> (m) Subparagraph (B) of section 223(c)(1) of such Act is amended by moving clause (iii) two ems to the left, and by moving the preceding provisions of such subparagraph two ems to the right, so that the left margin of such subparagraph and its clauses is indented four ems and is aligned with the margin of subparagraph (A) of such section.

For another example, see section 2663(a)(2)(A)(ii)(V) of Public Law 98–369. No standard approach has been devised.

**SEC. 333. COMMITTEE AND FLOOR AMENDMENTS.**

(a) GENERALLY FOLLOW RULES FOR AMENDMENTS TO STATUTES.—Except as noted in this section, the conventions and usages described in section 332 also apply in the case of any committee or House floor amendment. [12]

[12] An additional difference relates to the conventions discussed in section 332(c)(2). In committee and House floor amendments, it is the general practice of the House Legislative Counsel's office to use "by adding" only

(b) SEQUENCE.—The sequence in which multiple amendments are made to a bill or amendment is generally controlled by parliamentary rules (such as the 5-minute rule of the House, under which sections are open for amendment only at the time they are read). *See* HOUSE RULES AND MANUAL, § 872.

(c) PAGE AND LINE NUMBERS.—

(1) GENERAL RULE.—Use page and line numbers whenever possible in making amendments to bills or other amendments (rather than attempting to identify by citation, word reference, or other means).[13]

(2) METHOD OF REFERENCE.—

(A) SIMPLE AMENDMENT.—Use the form "Page 12, [after/before] line 5, [strike/insert/add]". Do not use "On [page ____]"; it is surplusage.

(B) REMOVAL OF BLOCK OF MATERIAL.—If a block of material is removed, use the form "Page 12, line 16, strike ['YY'] and all that follows through page 15, line 11".

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when adding material at the actual end of a bill (such as when adding a new section or title at the end), and to use "by inserting" in all other cases in which material is being inserted in a bill (even at the end of a section or title, if not the last section or title in the bill).

[13] Obvious exceptions are the drafting of amendments to a bill or other matter if page or line numbers (1) are not used in the matter being amended, such as in the preamble of a resolution; (2) are not available, such as when drafting a 2nd-degree amendment to another amendment printed in the Congressional Record or in a report submitted by the Committee on Rules; (3) are likely to change before consideration of the matter in committee or on the House floor, such as when drafting an amendment to a bill that is needed before the final print of the bill is available; or (4) are unlikely to be meaningful, such as when drafting a 2nd-degree amendment to another amendment for which a copy with page and line numbers is not expected to be generally available to Members.

(d) TITLE AMENDMENTS.—For title amendments, use the form "Amend the title so as to read: 'A bill to . . . ' ". Do not cut-and-bite title amendments.

**SEC. 334. REPEALS.**

Although a repeal and a strike carry the same legal significance, a repeal (the nullification of effectiveness of an otherwise operative provision of law) should generally be reserved for sections or larger units.

**SEC. 335. REDESIGNATIONS.**

(a) IN GENERAL.—It is desirable when adding or repealing provisions of existing law that the existing law appears (and functions) as it would have if the amendments had been incorporated into the law when originally enacted. In other words, the provisions should be where they belong pursuant to the logic of the Act, the designation scheme of the Act should be rational and consistent, and there should not be gaps between sections or other provisions. However, there may be factors that weigh against redesignation. One is the volume of redesignation required and the other is described in subsection (b).

(b) EXCEPTION.—In certain cases the section number itself becomes inextricably linked to its substance. Section 162 of the Internal Revenue Code of 1986 (relating to trade and business deductions) is a frequently cited example of a provision that should not be redesig-

nated. The extent of public awareness of its name (section number) and cross references to it in nonstatutory literature would result in more confusion than the benefits redesignation would create.

(c) LOCATION IN BILL.—If both amendments and redesignations are made, it may promote understanding by making the amendments to the existing law before making the redesignations. This avoids the need for the awkward "(as so redesignated)" and makes it easier for the readers to execute amendments to the law they have in front of them.

# Subtitle E—References

### SEC. 341. REFERENCES TO STATUTORY PROVISIONS OF LAW.

(a) PURPOSES OF CITATIONS.—The purposes of any citation are to identify briefly a law in an unambiguous manner and to provide finding aids for the reader. In addition, in most cases any description or indication of the subject matter or content of the referenced provision can assist a reader in understanding the workings of the provision at hand and its relationship to the cited law. The following suggested citation methods are both consistent with those purposes and generally consistent with current and historical practice.

(b) BASIC REFERENCES.—

(1) POSITIVE LAW TITLES OF U.S. CODE.—If the provision you are dealing with has been enacted into positive law as part of the United States Code, cite as "section 1234 of title 34, United States Code, . . . ". An exception exists if the provision making the citation is itself within a positive title and it is citing across to another positive law title. In that case ", United States Code," is omitted.

(2) SHORT TITLE.—If the provision has not been enacted into positive law as part of the United States Code, refer to it by its short title if it has one.

(3) LAWS WITHOUT SHORT TITLES.—If the provision does not have a short title and is not within a positive law title of the United States Code:

(A) PUBLIC LAW NUMBER.—The current Public Law designation system has been in effect since January 1, 1957. In the case of a law enacted after that date, it can be cited by its Public Law number. Example: "Notwithstanding section 153 of Public Law 98–356, . . . .".

(B) LONG TITLE.—If the long title is relatively short and its content would be helpful to the reader, refer to it as "the Act entitled 'An

Act [to . . . ]', approved [date]". If the reference is to a concurrent resolution or simple resolution the term "adopted" may be used instead of "approved".

(C) BY ITS ENACTMENT DATE.—If a law was enacted before January 1, 1957, it can be referred to as "the Act of [January 5, 1945,] (33 Stat. 3434)". Note, however, that in a few instances there are 2 Acts having the same Statutes at Large cite. In such a case, the parenthetical can be enlarged to include the chapter cite: ". . . (Chapter 883; 33 Stat. 3434)".

(4) AS AMENDED.—The name of an Act with a short title usually remains the same throughout its life. The phrase ", as amended," is unnecessary and should be avoided.

(c) U.S. CODE CITATIONS.—

(1) GENERAL RULE.—Remember that it is more than likely that the person who reads a provision that you have drafted does not have readily available to compilations, Public Laws, or the Statutes at Large. Consequently, if dealing with a provision that is not within a positive law title of the United States Code, indicate the Code citation after the reference prescribed by subsection (b).

(2) SOURCE.— Public Laws beginning with the 94th Congress note the United States Code citation for the provisions in the laws.

(3) EXCEPTION.— The provisions of law that do not appear in the United States Code, because they are—

(A) temporary;

(B) private relief or otherwise narrow in scope; or

(C) considered obsolete or executed;

should be cited by their public or private law number or their Statutes at Large citation.

(4) APPENDIXES TO U.S. CODE.—In parenthetical U.S.C. cites to appendixes to titles of the United States Code, use the style "(50 U.S.C. App. 660)".

(5) RECENT ENACTMENTS.—One problem frequently encountered is how to cite a recent law that has been given United States Code section numbers in the slip law, but is not yet in a main Code volume or a supplement. If the bill provisions will be effective before the recent law appears in either a supplement or a main volume, it is appropriate to use the Code citation but advisable to also include the Public Law cite: " . . . the XYZ Act of 1985 (Public Law 99–356; 50 U.S.C. 1010)".

(d) POPULAR NAMES.—In the case of a non-positive law Act without a short title but with a generally-known popular name, the popular name may be included in the parenthetical reference if it would aid the reader. Example: "section 343 of Public Law 91–353 (9 U.S.C. 343; commonly known as the Chappell-Bell Act)".

(e) REFERENCES WITHIN AN ACT OR SECTION.—Omit "of this Act", "of this section", or similar references unless another Act or provision is also made reference to, and clarity would be increased by including the phrase.

(f) REFERENCES TO COMPONENTS OF A SECTION.—

(1) REFERENCE BASED ON A PROVISION'S ALPHABETICAL OR NUMERICAL DESIGNATION.—For uniformity, refer to any separately indented provision on the basis of its class designation. For example, indented items within the class designated "(1), (2), (3) . . . " should be consistently referred to as paragraphs; and indented items within the class designated "(A), (B), (C) . . . " should be consistently referred to as subparagraphs. However, if "(1)" or "(A)" is not indented, then it is always referred to as a clause or subclause. But note that some old laws have different designations and it may be confusing not to follow those designations. For example,

the Federal Food, Drug, and Cosmetic Act consistently refers to units beginning "(a)", etc. as paragraphs.

(2) REFERENCE TO MORE THAN 1 UNIT.—If the reference is to more than 1 unit, the reference is to the senior unit. Thus, refer to section 5(a)(1) and not paragraph 5(a)(1).

(3) MULTIPLE BREAKDOWNS.—

(A) IN GENERAL.—For clarity and brevity's sake, "section 503(b)(2)(A)(i) of the XYZ Act" is preferred to "clause (i) of subparagraph (A) of paragraph (2) of subsection (b) of section 503 of the XYZ Act".

(B) EXCEPTIONS.—

(i) IN AMENDMENTS.—When amending section 503(b)(2)(A)(i), the amendment should be stated as an amendment to clause (i) of section 503(b)(2)(A).

(ii) LATER REFERENCE.—It may also be beneficial to cite to "clause (i) of section 503(B)(2)(A) of the XYZ Act" if a later reference is to be made back to "such clause".

(iii) JOINT REFERENCES.—Similarly, it is easier to understand a citation to 2 or

more provisions if cited "clauses (i) and (ii) of section 503(b)(2)(A) of the XYZ Act" rather than "section 503(b)(2)(A)(i) and (ii) of the XYZ Act".

(g) CONSOLIDATED CITES.—In a lengthy bill (or title) consisting entirely or mostly of amendments to 1 law, the following reference convention is often a desirable alternative to repeating the full citation:

(____) AMENDMENTS TO XYZ ACT.—[Except as otherwise specifically provided,] whenever in this [provision] a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the XYZ Act.

(h) ABBREVIATED CITE.—Once a reference is made to 1 provision, that same provision can be referred to again later in the same section (if not too far removed) by "such" rather than repeating the reference.

**SEC. 342. REFERENCES TO OTHER LAW.**

(a) TREATIES AND OTHER INTERNATIONAL AGREEMENTS.—

(1) GENERALLY.—Both are cited by the name of the agreement (including the names of the countries in the case of bilateral agreements), together with—

(A) either a reference to the location and time of signing or a reference to when it became applicable to the United States (whichever is more appropriate for the agreement and context); and

(B) a finding aid consisting of either a cite to the "United States Treaties and Other International Agreements" (UST cite), which is comparable to a Statutes at Large cite, or to the "Treaties and Other International Acts Series" (TIAS cite), which is comparable to a public law cite.

(2) EXAMPLES.—

(A) The Convention on the Territorial Sea and the Contiguous Zone, signed at Geneva on April 29, 1958, (TIAS 5639).

(B) The Seabed Arms Control Treaty (entered into force with respect to the United States on May 18, 1972; 23 UST 701).

(3) IF PRINTED IN U.S. CODE.—A few important treaties that affect Federal statutes are printed in the United States Code. In such cases, it is helpful to include a U.S.C. cite: "the Universal Copyright Convention (as revised at Paris on July 24, 1971; 25 UST 1341; 17 U.S.C. 104 note)".

(b) EXECUTIVE ORDERS.—

(1) APPEARING IN U.S. CODE.—If making reference to a specific Executive order of the President, cite as "Executive Order 10577 (5 U.S.C. 3301 note; relating to civil service rules)".

(2) NOT IN U.S. CODE.—If the order does not appear as a notation within the United States Code, cite to the Federal Register: "(19 Fed. Reg. 7521; relating to . . . )". Note that, if, by reason of amendment, the provisions involved appear in more than 1 place, cite to each: "(19 Fed. Reg. 7521; 20 Fed. Reg. 8137)".

(c) REGULATIONS.—

(1) GENERALLY.—In most cases, regulations should be cited as follows: "section 73.658(j)(i) of title 47, Code of Federal Regulations (commonly known as the 'Network Syndication Rule')".

(2) EXCEPTION.—In certain cases, the regulation carries its own method of identification that has greater currency than the C.F.R. section number. Example: "Federal motor vehicle safety standard numbered 208 (49 CFR 571.208; relating to occupant crash protection)".

(d) HOUSE RULES.—The House Rules have the following breakdown and designations:

(1) Rule (starting with I).

(2) Clause (starting with 1).

(3) Paragraph (starting with (a)).

(4) Subparagraph (starting with (1)).

(5) Subdivision (starting with (A)).

# Subtitle F—Other Special Rules

**SEC. 351. SPECIAL RULES.**

(a) INTRODUCTION.—It is expected that the traditional rules of grammar and usage will apply in the drafting of legislation.[14] However, deviations from those rules may be justified because of the style or content of a draft. What follows is a discussion of how certain rules are to be applied.

(b) REFERENCES TO NUMBERS.—

(1) IN GENERAL.—Use figures rather than words to express a cardinal number (1, 2, 3, 180, instead of one, two, three, and one hundred eighty, respectively) or an ordinal number (1st, 2nd, 3rd, 180th, instead of first, second, third, and one-hundred-eightieth, respectively). However, if the drafter feels that the use of figures at the beginning of a sentence, or for numbers below 10, would be confusing, the numbers may be expressed by words rather than figures.

[14] In addition to the 3 books on legislative drafting that are listed in the general introduction to this manual, reference works on grammar and usage that are often relied upon within the House Legislative Counsel's office include Follett's MODERN AMERICAN USAGE; Fowler's MODERN ENGLISH USAGE; Strunk's and White's THE ELEMENTS OF STYLE; and the United States Government Printing Office's STYLE MANUAL.

(2) SHUN DOUBLE EXPRESSIONS.—Some legal writers express numbers both by words and Arabic numerals, such as "sixty-five (65)". Once is enough.

(3) FRACTIONS.—The rules under paragraphs (1) and (2) regarding the use of figures also apply to fractions.

(c) REFERENCES TO TIME AND TIME PERIODS.—

(1) TIME PERIODS.—When referring to an activity required or permitted during a period after some stated event, the reference can be, for example "Within 30 days after [X event]" or "Not later than 30 days after [X event]". Do not use the formulation "Within 30 days of [X event]". The "within" creates uncertainty about whether the activity is to precede or follow X event, or both.

(2) FISCAL YEAR.—Refer to the "fiscal year 1987" rather than the "fiscal year ending September 30, 1987,".[15]

(d) PUNCTUATION.—

(1) LISTS.—

(A) FOLLOWING A DASH.—If the list is preceded by a dash—

(i) the item is paragraphed and its margin is indented;

[15] *See* 31 U.S.C. 1102 ("The fiscal year of the Treasury begins on October 1 of each year and ends on September 30 of the following year."); Pub. L. 93–344, §504 (88 Stat. 322) ("Any law providing for an authorization of appropriations for the fiscal year 1977 or any fiscal year thereafter shall be construed as referring to that fiscal year ending on September 30 of the calendar year having the same calendar year number as the fiscal year number.").

(ii) the 1st word in each item in the list is lowercase (unless a proper noun);

(iii) each item (other than the last item) ends with a comma or semicolon; and

(iv) the conjunction "and" or "or" appears at the end of the next-to-last item only.

(B) FOLLOWING A COLON.—If the list is preceded by a colon, each of the following guidelines applies:

(i) The item is paragraphed and its margin is indented.

(ii) The 1st word in each item in the list is capitalized.

(iii) Each item ends with a period.

(iv) The collective or separate nature of the items is expressed in the lead-in material.

(2) COLONS.—When stating "as follows" or any variation of it, use a colon.

(3) FINAL SERIES COMMA.—The last 2 elements of a series should be separated by a comma before the conjunction. This prevents any misreading that the last item is part of the preceding one.

(4) PERIODS AND QUOTATION MARKS.—

(A) IN GENERAL.—When inserting quoted material, any punctuation that is to be included at the end of (and as a part of) the quoted material should appear within the quotes. Any punctuation after the quoted material that is a part of the amending sentence (and not a part of the quoted material itself) should appear after the closing quotation marks.

(B) OPTIONAL EXCEPTION.—If the quoted material ends with a period (and the amending sentence goes no further), it is correct either to place another period after the closing quotation marks as the final punctuation mark of the amending sentence or to let the period within the quotes serve as the final period of the amending sentence as well.

(e) VERBS.—

(1) PROHIBITION.—If a prohibition is intended, put the prohibition in the verb (rather than in the subject). Example: "A person may not submit an application after" is preferable, in logic and grammar, to "No person may submit an application after".

(2) ACTIVE OR PASSIVE.—Use the active instead of passive voice unless the actor cannot be

identified or the statement is intended to be universal. The use of the passive in "Proceeds derived from such sale shall be deposited into the Treasury" obscures whose proceeds are covered and who bears responsibility for making the deposits.

(f) TENSE.—

(1) GENERAL RULE.—Whenever possible, use the present tense and avoid the future and past tense.

(2) EXCEPTION.—When expressing time relationships, there may be cases in which it may be appropriate to use the present tense for facts contemporary with the law's operation and then the past (or future) tense for facts that must precede (or follow) its operation. However, even in such cases, it is preferable to remain in the present tense throughout and express the temporal relationships explicitly rather than by means of the verb tense.

(g) NUMBER.—

(1) THE SINGULAR IS NOT LIMITING.—Avoid plurals. A statute speaks to each who is subject to it. If any doubt exists that it could be read to not apply to all, use "each", or "every" instead of "a" or "any".

(2) SINGULAR NOUNS REDUCE AMBIGUITY.—The clearest expression, even of complex policies, uses singular rather than plural nouns, if for no other reason than it cuts out one unnecessary layer of possible relationships. "Any employee who . . . " works the same as "Employees who . . . " yet it avoids any misreading that (1) an implicit precondition exists that 2 employees must be involved before either gets covered, or (2) the statement only applies to a group of employees, as such.

(h) GENDER.—Use gender neutral language wherever possible. The preferred method is to repeat the noun (or find a gender neutral synonym) rather than using a personal pronoun (or a combination of personal pronouns).

(i) WORD CHOICE.—

(1) STATUTORILY DEFINED WORDS.—A drafter should be aware of the rules contained in section 1 of title 1, United States Code, regarding terminology. Especially useful is the definition of the term "person". The rule on gender is no longer followed.

(2) MAY AND SHALL.—

(A) USE IN THE POSITIVE.—For granting a right, privilege, or power, use "may" (rather than "authorized" or "empowered"). For di-

recting that action be taken, use "shall" (rather than "authorized and directed" or "must"). To distinguish the case in which authority granted elsewhere is required to be exercised by the provision at hand, the provision can state "shall, under section XYZ, do X".

(B) USE IN THE NEGATIVE.—For denying a right, privilege, or power, use "may not". For directing that an action not be taken, use "shall not". A distinction may be made that "shall not" speaks to the person subject to the prohibition and is silent as to whether an act done by a person in violation of the prohibition is nevertheless valid (particularly as to an innocent 3rd party). If that is of legal or political concern, then the question of the validity of such action should be explicitly addressed.

(3) ANY, EACH, AND EVERY.—Use only when necessary for special emphasis. Preferred style is "a" or "an". Use "any" with "may", and "each" with "shall".

(4) SUCH.—Use in a demonstrative sense to refer to an antecedent, but use with restraint. Avoid "such" if "the" or "it" works equally well.

(5) PROVISOS.—"Provided" and its associates, "Provided, however" and "Provided, further", are archaic. The use of the term "provided" indicates that a condition is being stated. However, provisos are not limited to conditions. They are also used to state exceptions or unrelated provisions. In addition, provisos make sentences very long. The Law Revision Counsel will not use them in the United States Code. As appropriate, use "except that" or "but" instead, or start a new sentence.

(6) MEANS AND INCLUDES.—

(A) IN GENERAL.—In definitions, "means" should be used for establishing complete meanings and "includes" when the purpose is to make clear that a term includes a specific matter.

(B) BUT NOT LIMITED TO.—Since "includes" and its derivatives are not exhaustive, following it with ", but is not limited to," is redundant and invites misinterpretations elsewhere unless used consistently within a bill.[16]

(7) BY, UNDER, AND PURSUANT TO.—The general rule respecting the use of these words is that if the result is achieved by the provision itself, use

[16] This approach follows from the normal dictionary meaning of the term "includes", rather than any generally applicable definition of the term established in title 1, United States Code. However, some laws have included a statutory definition for purposes of the use of the term within those laws. *See, e.g.,* Internal Revenue Code of 1986, § 7701(c) (26 U.S.C. 7701(c)); 10 U.S.C. 101(e)(4); Social Security Act, § 1101(b) (42 U.S.C. 1301(b)).

"by"; if the result occurs through action required or permitted by the provision, use "under"; and if the result is more remotely derived from the authority of the provision, use "pursuant to".

(8) HEREBY.—The term "hereby" is usually redundant. Use it only when the reader might otherwise think that the language involved simply declares the existing situation without *doing* anything itself.

(9) IF, WHEN, AND WHERE.—The term "if" has the most universal application. However, there are contexts in which "when" and "where" are appropriate. "When" implies a condition as to time and "where" a condition as to place.

(10) DEEM, TREAT, AND CONSIDER.—Use "considers" rather than "deems" to indicate an exercise of judgment. Use "shall treat" or "is deemed" for legal fictions.

General Introduction

Foreword (Original Edition)

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