

PART 5: Developing Regulations

**2. PREPARE THE REGULATORY APPROACH**

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**(B) Consult with Public Sector Administrators**

It is equally important to identify and consult with public sector administrators when shaping the final policy position. Consultation between regulators and administrators at different levels and in different sectors of government is vital. Some public sector administrators are:

- Treasury Board, if the regulation has financial implications;
- departments or central agencies that will have a role to play in the regulatory scheme (such as a scheme that contemplates a cooperative regime between two departments); and
- departments that have relevant expertise in an area affected by the regulation (such as the Department of Justice for human rights issues, Department of the Environment for environmental impact, or Department of Industry for market competition issues).

You should ensure that all potential conflicts that could hamper the regulatory initiative are resolved at this stage. While initial consultations will have covered much ground, you may need to consult further as the regulation is refined. Consultation produces a well-thought-out policy document that forms the basis of sound legal drafting instructions or draft regulations. With a consultation-tested policy document in hand, you can tackle the legal drafting process with confidence.

***2.2 Prepare a Detailed Plan of the Regulation***

To prepare a draft regulation you will need a detailed plan. A regulation should always be organized in logical order. The text should unfold progressively so the reader can understand the document without having to skip ahead to refer to later sections. Some degree of flexibility in the organization of regulations is acceptable, but logic and ease of use are the paramount considerations.

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Definitions should appear at the beginning, followed by the general rules and, finally, the particular rules, penalties and exceptions. Although it is not always possible to follow this structure, a coherent and logical plan of some sort is critical. More guidance on the organizing of regulations is given in Section 4 of the Guide. This exercise will help ensure that the text is complete and that every aspect of the problem has been covered. You will be in a better position to identify missing elements and conceptual flaws. Resolve problems as soon as they are detected. Problems may be the result of an oversight, or they may be symptomatic of a fundamental error in policy conception. Either way, the issue should be addressed and resolved before drafting begins. To draft before the policy is finalized is usually counter-productive. Any perceived time savings made by doing so will eventually be lost. To a certain degree, it is inevitable that the drafting process will test the soundness of the policy and fuel new policy developments. These developments will in turn raise legal issues which will need to be assessed and which may lead to refinement of the regulatory scheme. However you should try to avoid the inefficiency of constantly drafting and revising while the fundamental policy continues to evolve. Usability tests should not reveal policy questions that remain undecided.

***2.3 Select What to Put in the Regulation***

When developing a regulation, you should remember that, once it is made, every change to it must follow the regulatory process. The regulatory process takes time and, given the number of people involved, is costly. In order to minimize future amendments to a regulation, it is important to separate what is essential to include in the regulation from what can be dealt with elsewhere. The regulations themselves should set out the general rules or standards of behaviour and provide criteria for applying those standards. Administrative documents such as policy guidelines and directives can provide the detail on how the criteria are to be applied on a case-by-case basis, but these documents will not have the force of regulations.

Ideally, each section of a regulation should be assessed in terms of the frequency of possible future amendments. It is also important to figure out how much detail you really need in a regulation. Usually, the more detailed regulations are, the more difficult it is to read them and the more likely they are to be amended. Therefore, details that are not necessary to achieving the objectives of the regulations should be communicated through policy documents instead.

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***2.4 Prepare the Regulatory Impact Analysis Statement (RIAS)***

This section of the Guide will help you prepare your Regulatory Impact Analysis Statement (RIAS). A RIAS is required under the Government of Canada's regulatory policy, and is used to demonstrate to the public that all of the policy requirements were addressed when the regulation was being developed. The RIAS has six sections:

- Description: outlines how the regulation will work and why it is needed.
- Alternatives: demonstrates that alternatives were considered, and describes them.
- Benefits and costs: quantifies the regulation's effects.
- Consultation: shows the nature of discussions held with users and stakeholders.
- Compliance and enforcement: discusses the expected means of ensuring compliance.
- Contact person: identifies the person best able to answer questions.

Applying the following checklist will ensure that your work complies with the government's regulatory policy:

Writing Style:

- Are the conclusions that you want your audience to arrive at clear in your own mind?
- Have you addressed the concerns of your audience?
- Do your arguments lead logically to your conclusions?
- Have you put what is most important first?
- Are your sentences short and is your wording clear?
- Have you kept technical language to a minimum?

Description:

- Have you defined the situation succinctly?
- Can your readers quickly establish if and how the regulation will affect them?
- Have you shown why regulatory action is necessary?
- Have you described the solution that the regulation or amendment is intended to provide?
- Have you set out the context of the regulation succinctly?

Alternatives:

- Have you clearly described the alternatives to regulation and any alternative types or forms of regulation that were considered?

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- Did you explain why the alternatives were not selected?

Benefits and Costs:

- Have you shown that the costs and benefits you predict are realistically proportionate to the impact of the regulation?
- Have you provided a cost-benefit analysis?
- Have you assessed which groups or interests will bear the costs of the regulation, and which will receive the benefits?
- Have you incorporated quantitative analyses of repercussions, operating costs and direct benefits of the regulation, as well as any repercussions on inflation and employment?
- Have you included costs to industry, the public and the government, including enforcement costs?
- Have you made a qualitative assessment of those effects that do not lend themselves to a detailed quantitative analysis?
- Have you identified any possible environmental effects?

Consultation:

- Has notice of the regulation been given in the Federal Regulatory Plan and has the regulation been published in the *Canada Gazette*, Part I (if the regulation is not exempt from being pre-published)?
- Who was consulted?
- What consultation mechanisms were used?
- What were the results of the consultation, and how was the regulation changed as a result?
- Have you identified any groups still opposed to the regulation (and named them in a Supplementary Note to ministers)?
- If the text of the regulation has been revised so that it reflects and responds to comments received after its pre-publication, have necessary changes been made to the RIAS?

Compliance and Enforcement:

- For a new regulation, have you explained the enforcement mechanisms and described the penalties for noncompliance?
- Have you described the means which will be used to detect noncompliance?
- For amendments to a regulation, have you described how the need for enforcement has changed as a result of the amendment?

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Contact Person:

- Have you included an address that is complete enough to enable people unfamiliar with the government to get through easily, and a fax and phone number and an e-mail address?

### REFERENCE DOCUMENTS

For more information on preparing a RIAS, refer to the following Treasury Board Secretariat publications:

*RIAS Writer's Guide* (1992).

*Assessing Regulatory Alternatives* (May 1994) Benefit-Cost Analysis Guide for Regulatory Programs, Summary (1995).

*Regulatory Policy* (Nov. 1994).

## 3. DRAFT THE REGULATION

### 3.1 Two Main Ways to Proceed

At present there are two main ways of drafting a regulation, both of which can be modified to accommodate specific circumstances: either drafters from the Regulations Section draft the regulation on the basis of instructions from the client department, or the department prepares a draft regulation which is then examined by the Regulations Section. In either case, you must respect the bilingual nature of the drafting process by giving instructions or draft regulations in both languages.

If you proceed by instructions, they must contain enough detail to be useful as the basis for preparing a draft regulation. Not only do the drafters need to have detailed directions on what is required, but your departmental policy officers and management must understand exactly what is contemplated. To prepare instructions, answer the basic question, "Who is responsible for doing what, and how and when?" In some cases, it may be possible to take other regulations as a model and point out what has to be changed.

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The project team leader ultimately decides which way to proceed, based on considerations of efficiency in the particular circumstances and taking into account all relevant factors, including the resources available, the time available and the complexity of the subject area. The team approach should underlie whatever choice you make, so that the work of drafting and reviewing is based on ongoing communication among those involved.

When instructions or a draft regulation are sent to the Regulations Section from the department, they should be accompanied by a letter of transmittal from the departmental manager responsible for the project. This requirement ensures that time is not spent developing a regulation that does not have the explicit support of the sponsoring department. The drafters can help you determine when this formal letter of transmittal should be sent.

### **REFERENCE DOCUMENT**

For more information on the different ways to proceed and the roles of the respective parties in each case, refer to the Department of Justice publication: *Users' Guide*, Regulations Section, Department of Justice, 1997.

### ***3.2 Drafting Style and Presentation***

The wording of a regulation must be clear, precise and concise. Drafting a regulation calls for discipline in selecting vocabulary and structuring sentences. Graphic presentation is another key component of producing a text that is accessible and easy to read.

Long-established drafting rules serve to ensure a degree of uniformity in regulations. However, you may be interested in tailoring the language and presentation used in the regulation to your user group. It is possible to write concisely and simply, using a minimum of legalese, cross-references and other elements that make a text difficult to understand, without sacrificing the clarity or accuracy of the regulation. You will have to be consistent, though, with the technical and legal language used in the authorizing statute, or the unamended part of the relevant existing regulations, and this may be a limiting factor in your particular regulations or amendments.

Section 4 of this Guide describes some plain language drafting features that you may find useful. The reference documents listed below describe drafting rules in more detail.

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*Plain Language Clear and Simple*, a publication prepared by Human Resources Development, National Literacy Secretariat, in partnership with 14 other departments, describes basic “plain language” writing and graphic techniques that make documents easier to read and understand. Most of these techniques can be used in drafting regulations; for example, it is easier for any user to find material in regulations if marginal notes are used. Another simple aid to comprehension is to avoid dense, uninterrupted blocks of text.

Any suggestion you may have for making the regulation easier to read and understand should be given to the Regulations Section drafters on the team. They will analyze it in light of possible legal or practical obstacles and, whenever possible, will help you apply it.

To simplify drafting on the computer, the Regulations Section has developed format styles, which must be used, because they save the expense of an intermediate reformatting step. Training on how to use the “Styles” is available from the Regulations Section.

**TOOLS AVAILABLE**

Department of Justice, Regulations Section’s automated “Styles” to format documents.

**REFERENCE DOCUMENTS**

For more information on drafting techniques, including “plain language” techniques, refer to the following publications:

*Federal Regulations Manual/Manuel de réglementation fédérale*, Regulations Section, Department of Justice (1998).

*Plain Language Clear and Simple/Pour un style clair et simple, Trainer’s Guide*, Human Resources Development, National Literacy Secretariat, Multiculturalism and Citizenship Canada (1994).

Justice position paper on incorporation by reference, Administrative Law Sector, Department of Justice (Sept. 1995).

*Directives on Submissions to the Governor in Council and Statutory Instruments/Directives sur les présentations soumises au gouverneur en conseil et les textes réglementaires*, Privy Council Office, (1985).

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#### 4.1 Introduction

The basic approach to writing documents in plain language is set out in *Plain Language Clear and Simple* prepared by the Human Resources Development, National Literacy Secretariat.

Another very helpful reference for writing and editing is *The Canadian Style*, which contains a chapter on plain language. Although these publications deal mainly with non-legal documents, they contain many principles for writing clearly that can also be applied when writing regulations. Traditionally, regulations have been written in legal, technical language that many readers find difficult to understand. “Plain language” writing focuses on the users (usually non-lawyers) of the regulations.

Writing regulations in plain language does not make them unenforceable in court. In fact, it’s a good way to avoid ambiguities and interpretational problems. Also, court enforcement of regulations is only one way to achieve compliance. Research has shown that most people in a regulated group will voluntarily comply if they understand what is being asked of them. Relying on this concept, some regulators are shifting away from using the threat of prosecution towards trying to encourage voluntary compliance. Since a major cause of non-compliance is simply a failure to understand what to do and how to do it, writing regulations in plain language should improve compliance.

In addition to improving compliance, readily understandable regulations reduce costs by reducing:

- the need for secondary explanatory material, such as pamphlets and brochures;
- the number of inquiries from the people who use the regulation; and
- the need for interpretative deskbooks or training programs for those who enforce the regulation.

In short, a regulatory regime will work more efficiently if the starting point is a regulation that can be easily understood by the intended audience.

This section outlines various plain language techniques that you can use to make regulations easier to understand. It concludes with an example of traditional drafting, taken from the *Explosives Regulations*, and an example of how it can be redrafted in plain language. The techniques outlined in this section are optional. (See 4.3 below for the factors that may influence your choice of techniques.)



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For more information on using plain language when drafting regulations, refer to Janice C. Redish's *How to Write Regulations (And Other Legal Documents) in Clear English*, Document Design Center, American Institutes for Research, Washington D.C., 1981, and Susan Krongold's article "Writing Laws: Making Them Easier to Understand," *Ottawa Law Review*, Vol. 12, No. 2, 1992. You can also consult drafters in the Regulations Section of the Department of Justice as well as that Section's *Federal Regulations Manual* and the Legislative Drafting Conventions of the Legislative Services Branch of the Department of Justice.

#### ***4.2 Key Rules for Plain Language Regulations***

The key rules in writing regulations in plain language are:

*1st* Know who your readers are.

*2nd* Know what you want to communicate.

*3rd* Organize the regulation in a way that your readers will understand.

*4th* Use language that your readers can understand.

*5th* Use formatting features to help your readers.

*6th* Test to see if you have achieved your purpose.

#### **1st Know Who your Readers Are**

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To be able to communicate well, you must know whom you are communicating with and what information they need. Your audience may be one or several groups of people who are subject to the regulations, or it may be the general public. (This is discussed in 2.1 (A) above at p. 10.) To understand the needs of the reader, you will have to consult various sources, starting with the policy and operational officials in the sponsoring department. Consider including drafters from the Regulations Section in these and other consultations. This will allow them to see the underlying policy questions more directly and give them a better understanding of the background of the regulation. However, it is not the drafters' role to check on whether the consultations have been sufficient.

You should also consult the intended readers. This serves two main purposes. It educates the drafters about the audience and the issues, resulting in more informed drafting. It also involves the regulated group in making the regulations, which in turn should strengthen that group's commitment to them and improve the level of compliance.

The nature of the intended audience affects the style and terminology used in the regulations. For this reason, identifying the readers and understanding their needs is an indispensable first step.

## **2nd Know What You Want to Communicate**

Determine the policy before you start to draft the regulations. Include only what your audience needs. Determine what sorts of things have to be in the regulations themselves, and what can be left to administrative documents.

For example, consider whether you really need to put all the details of the regulatory scheme in a law. Any administrative details that do not have to be legally enforced can be dealt within departmental policy documents.

Remember, the success of the regulatory scheme depends on having a clear idea of what you want to communicate. It is important to take the time to work through both the principles underlying the regulations and the practical effects of applying them. Ask yourself, "Who is responsible for doing what, and how and when?" Often, provisions that are generally worded and that lack clarity or specificity are a sign that a difficult issue has not been confronted. In such cases, using a vaguely worded provision just sidesteps the problem, which will have to be addressed eventually.

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### **3rd Organize the Regulation in a Way that your Readers can Understand**

Most people only read regulations because they need information or they need the answer to a specific question. Regulations should be organized and written with this in mind. They should make it easy for the reader to find information on any particular point that they cover. So, place yourself in the reader's shoes and organize the text according to what the reader needs.

If there are several different groups of readers who have different perspectives, you may have to choose which one to use. For example, if there are different prohibitions, those who are required to comply with the regulations will likely prefer to have the prohibitions stated throughout the regulations with the other provisions that relate to them. This would allow them to see the prohibitions integrated with the other provisions. However, enforcement officials may prefer to have all the prohibitions grouped together in one place. This would make it easier for them to find the provisions that are most important to their enforcement functions.

In some cases, it may be possible to avoid choosing one perspective over another. If you are writing different rules for several different groups of readers, you could organize the regulation into separate sections for each group or write separate regulations for each group. Thus, each group would have to go through only those parts of the regulations that apply to them.

A table of contents is an effective tool to use when deciding how to organize regulations. It provides an overview and can help the drafter identify elements that have something in common and should be arranged together.

Generally speaking, it is best to progress from the general to the specific. As well, if the regulations include requirements relating to a procedure, such as making an application, you should set out all the steps in chronological order.

Definitions are usually put at the beginning of a regulation in alphabetical order within a single section or subsection. The English version follows the order of the English words while the French version follows the order of the French words. This convention makes it easy for readers to find definitions because they are all in one place. However, if a defined term is used only in single section, you may place the definition in that section.

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#### **4th Use Language that your Readers can Understand**

Once you know who your readers are, choose the most effective way of communicating with them. Effective communication depends on a suitable level of language and suitable complexity of writing style. For example, the readers of a regulation that deals with a technical area might be expected to have a comparable level of expertise and be able to understand regulations written in technical language. Obviously, this approach would not succeed with other audiences. If possible, you should adjust the terminology in any given set of regulations to ensure that its particular readers will understand.

There are limits on the use of this approach. One is that you cannot replace technical terms that are used in the authorizing statute with other terms in the regulations. This rule avoids the confusion caused by having two different terms that mean the same thing, since the courts tend to assume that different terms are intended to have different meanings. It also ensures that, by using the same terms as the authorizing statute, the resulting regulation does not exceed its authority.

Some specific features that you can consider using to create a plain language regulation are described below. Additional guidance is included in the *Federal Regulations Manual*, which is available through the Regulations Section of the Department of Justice.

##### **(A) Use Words that your Readers can Understand**

One of the most important ways to improve clarity and accessibility is to use words that readers will understand. For some audiences, the largest obstacle to comprehension is language that is archaic or unnecessarily legalistic or complex. Although you must use the technical or legal terms used to express concepts in the authorizing statute, you are usually free to choose terms for other concepts. In many cases, a more familiar word or phrase can safely be substituted for an archaic or unnecessarily legalistic or complex one. Some examples are set out below:

##### **INSTEAD OF AUTOMATICALLY USING: TRY USING:**

accomplish, perform	do
aforementioned, aforesaid mentioned	above
assist	help
by reason of	because
commence	begin
disseminate	send out, distribute

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endeavour, attempt	try
exceeds	is more than
expiration	end
fix (a date)	set
furnish	give
hereby	by this
herein	in this regulation
in the event that, in the case of	if
on the part of	by
optimum	best, greatest, most
notwithstanding	despite, even though
preceding, prior to	before
provisions of these Regulations	these Regulations
pursuant to	under, in accordance with
said ("the said Regulations")	the, that, these
strategize	plan
submit	send, give
subsequent	after, following
such ("in such case")	that or the
therefor	for it
therein	in that place/document
thereof	of it
until such time as	until
utilize	use
where	if
whereby	by which
with a view to	to
with regard to/with respect to	about
without restricting the generality of the foregoing	but not limited to

This list is based, in part, on a list contained in *Plain Language Clear and Simple*. Refer to that document for more examples of simpler terms that you may be able to substitute, depending on the terminology of the relevant Act.

**(B) Be Careful Using Definitions**

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Defined terms are more difficult for readers to understand because they cannot be accepted at face value. They oblige the reader to return to definitions at the beginning of the regulation for their meaning. In addition, the reader has to remember which words are defined because their usual meanings no longer apply. This can be a simple task if the regulations are short. However, in regulations of 300 sections, it is quite probable that the reader may forget that certain words are defined, especially if there are many definitions. For this reason, you should only define terms if their ordinary meaning is unclear or overly broad, or if some technical meaning is intended.

Despite these drawbacks, defined terms can have some advantages. They can be used to avoid the repetition of information each time a complex idea is mentioned. The details of the idea can be put into a definition so that the defined term will express them each time it is used. This may also simplify the drafting of the provisions that use the term, rather than loading them down with details. For example, “licence” may be defined to avoid the repetition of “a licence to fish on a recreational basis issued under section 3”. When this sort of definition is introduced, be careful to choose a defined term that is appropriate to convey the contents of its definition.

When new regulations are being made, or an entire definition (sub)section is replaced, the opening words of the new definition (sub)section are “The definitions in this (sub)section apply in these Regulations”. Each of the definitions that follows is made up of one or more complete sentences that end with a period. For example:

**2. The definitions in this section apply in these Regulations.**

**“contravention” means an offence that is created by an enactment and is designated as a contravention by regulation of the Governor in Council.**

**“heritage language” means a language that contributes to the linguistic heritage of Canada. It does not include an official language.**

**“licence” means, in respect of an undertaking, a licence issued under section 10. It does not include a certificate or a licence issued under subsection 25 (3).**

**“program” means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain. It does not include G33 visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.**

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**(C) Use Gender-neutral Language**

Avoid gender-specific references unless the reference is to persons of only one gender. Almost all regulations apply to both women and men, and they should be drafted in a way that reflects this. You should be particularly aware of gender-specific references in two types of situations.

The first involves terms that refer to officeholders or occupations, such as “chairman” and “fireman”. Gender-neutral equivalents such as “chairperson” and “firefighter” should be used.

The second type of situation involves pronouns and possessives (he/she, him/her, his/her). A number of techniques are available here, including using a double term (“she or he”, “him or her”, “her or his”) or using “they”, “them” and “their” in the singular sense. Another option is to repeat the noun instead of using the pronoun or possessive.

**(D) Use Verb Forms that are Clear and Easy to Understand**

**Alternatives to “Shall”**

You can use “must” instead of “shall” in commands. Not only is “must” more commonly used, it is also unambiguous and avoids the possibility of “shall” being interpreted in a permissive sense. “Must” also works for prohibitions, as in “a form must not include...” In the context of limiting a power, you can say “A person may not ...” or “No person may ...”. Always be consistent within the regulations, whichever word you choose, and make sure when amending the regulations that the consistency carries over into unamended parts.

**Be Careful about Using the Passive Voice**

Sometimes regulations require or permit things to be done without making it clear who is to do them. The regulations concentrate on what is to be done instead of the person who may or must do it. This problem most often results from using the passive voice. For example,

**Service of a warrant or other document may be made on a person by showing the person a certified copy of the document.**

**Studies and reports of the Board made under this Part may be made public with the approval of the Minister.**

Contrast this fuzzy, bureaucratic effect with the clarity of these sentences when redrafted using the active voice:

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**The applicant may serve a warrant or other document on a person by showing the person a certified copy of the document.**

**The Board may make public any of its studies and reports made under this Part with the approval of the Minister.**

Passive sentences may also be legally unenforceable. Consider the following example:

**A dog must be kept on a leash when it is in the park.**

This rule does not indicate who is responsible for keeping the dog on a leash. It could be the dog's owner or a person who is out walking the dog or a park official. If it is not clear who is responsible, the rule cannot be enforced.

Although the passive voice often creates problems, there are some situations where it is preferable. In a series of regulations, the first one may make it clear who is responsible for following the regulations. The subsequent regulations may be better drafted using the passive voice.

**For example,**

- 1. A person who brings a dog into a park must control the dog in accordance with these rules.**
- 2. The dog must be restrained by a leash that is no longer than 5 m.**
- 3. The dog must not be allowed to bark excessively.**
- 4. Faeces deposited by the dog must be collected in a plastic bag and placed in a garbage can without delay.**

In this example, the passive voice is preferable to repeating the phrase “a person who brings a dog into a park”. Once it is clear who is responsible for compliance with the regulations, the focus should be on the dog.

**Avoid turning verbs into nouns**



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Use a more concrete style of writing by using active verbs instead of nouns that are made out of verbs. For example, you should avoid the abstract style of “*noncompliance* with the regulations is subject to a penalty of ...”, since it often makes it harder to identify who is subject to the sentence. It is easier to understand a more concrete statement, such as “a person who *does not comply* with the regulations is liable to a penalty of ...”.

Verbs are often turned into nouns in situations where a simpler verb form of the same word will work. For example, “after consultation with” can be rendered more simply as “after consulting” and “after the issuance of the licence” is more straightforward when expressed as “after the licence is issued”.

**(E) Avoid Double Negatives**

Try not to use double negatives, since it is much easier to understand positive statements.

*For example:*

*Instead of writing:*

**A person who is not a designated person must not enter the regulated zone.**

*Write:*

**Only designated persons may enter the regulated zone.**

Double negatives can also be avoided by using the phrase “at least” instead of “not less than” or by using the preposition “unless” or “without”, instead of “if ... not”. For example,

*Instead of writing:*

**A person who is not less than 18 years old must not ...**

*Write:*

**A person who is at least 18 years old must not ...**

**A person must not enter the regulated zone if the person does not show their identity card.**

**A person must not enter the regulated zone without showing their identity card.**

**(F) Pay Attention to Word Order in Sentences**

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The way words are put together in sentences has an important effect on how easily they can be understood. Traditional legal drafting often distorts the usual word order to achieve greater precision. This most often occurs when a complex series of ideas is compressed into a single sentence. Certain components of the sentence may have lengthy modifiers. The modifiers are placed next to the components they modify in order to avoid ambiguity about what they modify. For example, a verb modifier may be placed between the auxiliary and the main verb:

**The Minister may, with the approval of at least five members of the Council and after consultation with interested persons, issue a licence ...**

This sentence leaves the reader looking for the main verb while having to read subordinate material that makes no sense until the verb is completed. This split between the main verb and its auxiliary can be avoided by rewriting the sentence:

**The Minister may issue a licence if at least five members of the Council approve and the Minister is of the opinion that all interested persons have been notified and adequately consulted.**

Another common problem is putting lengthy conditional clauses at the beginning of a sentence. This makes it difficult for the reader to find the main clause and understand what the sentence is about. In these cases, the reader has to read twice: once to find the main clause and a second time to understand the conditional clause and fit it together with the main clause.

**For example,**

**If the Minister is of the opinion that all interested persons have been notified of the licence application and have been adequately consulted and at least five members of the Council approve, the Minister may issue a licence ...**

This problem can be easily avoided by redrafting the sentence as shown above. Finally, as noted above in the discussion about organizing regulations, exceptions to a general rule should follow the rule, not come before it. Long exceptions should be put in a separate sentence.

**(G) Use Short Sentences**

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Few people can plough through a long, convoluted sentence and remember how it began. Usually, people have to read a long sentence over and over before they understand its meaning. This is particularly true of legislative sentences. Long, dense blocks of text are intimidating to most readers and make it very difficult for them to pick out the information they need. Try to break up the information into components that the reader can recognize and understand. A long, convoluted sentence can be simplified by using paragraphs (discussed below under **Formatting Features** at p.26) or by dividing it into more than one sentence. Shorter sentences are easier to read and understand. They also often lead to a clearer description of the regulatory requirements, in contrast to long sentences with numerous modifying phrases. However, success is a matter of balance. Too many short sentences can make a text disconnected and threaten the relationship between the ideas that are being conveyed.

The following example shows how a long sentence can be broken up and made easier to read:

**Original Version**

**2. Where any person who intends to oppose or intervene in any application fails to file his reply or submission with the Secretary or to send a copy thereof to the applicant within the time specified in the notice of application for filing a reply or submission with the Secretary, the application may be heard and determined without further notice to that person, except that nothing in these Rules shall be construed as authorizing the Board to suspend or cancel any certificate or licence without a public hearing and without notice thereof having been given to the holder of the certificate or licence and an opportunity having been afforded to such holder of being heard, or, in the case of an application for a certificate, to dispense with considering the objections of any interested person within the meaning of section 45 of the Act.**

**Revised Version**

**2. (1) An application may be heard and decided without further notice to a person who intends to oppose the application or intervene if the person fails to file a reply or submission with the Secretary or to send a copy of it to the applicant within the time specified in the notice of application.**  
**(2) Despite subsection (1), these Rules do not authorize the Board**  
**(a) to suspend or cancel a certificate or licence without a public hearing and without giving the holder of the certificate or licence notice and an opportunity to be heard; or**  
**(b) in the case of an application for a certificate, to dispense with considering the objections of any interested person within the meaning of section 45 of the Act.**

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**(H) Consider Using More than One Sentence in a Section or Subsection**

A section or subsection should normally consist of a single sentence. However, more than one sentence may be used if

- the additional sentence is subordinate to the first or otherwise deals with the same idea;
- making it into a separate subsection would put undue emphasis on it; and
- the section or subsection does not become too long as a result.

For example,

**A person directly affected by the decision is entitled to bring an appeal to the Minister. The person must give notice of the appeal to other directly affected persons.**

**(I) Avoid Excessive Cross-references**

Cross-references are used to link ideas contained in different provisions of a set of regulations. The way cross-references are made has been simplified by sections 40 and 41 of the *Interpretation Act*. For example, you can refer to a subparagraph by writing “subparagraph 2(1)(a)(i)” rather than “subparagraph (i) of paragraph (a) of subsection (1) of section 2”. In addition, it is unnecessary to add the phrase “as amended” in order to incorporate subsequent amendments to a referenced provision.

Traditional English drafting uses cross-references whenever a reference is made to something in another provision (section, subsection, paragraph, etc.). However, you can often rely on context when a provision (section, subsection, paragraph, etc.) refers to something in a neighbouring provision. Readers may be expected to read the provisions together. Having read the first one, they can carry forward its ideas into subsequent provisions, as long as there are no intervening provisions to disrupt the flow of ideas or introduce ambiguity.

The assumption that a series of provisions will be read together is particularly strong with subsections of a single section. By numbering them as subsections, the drafter indicates that they are closely linked and should be read as a group.

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This assumption also applies when a heading is used to group a series of sections together. The heading indicates that the sections have a common theme and should be read together.

The following examples show how cross-references can be avoided by relying on context:

**4.**

- (a) A person who is at least 18 years of age may apply to the Minister for a licence to fish on a recreational basis.**
- (b) The application must be in the prescribed form and be accompanied by the prescribed fee.**
- (c) On receiving the application, the Minister may issue a licence to the person in the prescribed form and may specify terms and conditions in the licence.**
- (d) The licence authorizes the person to fish on a recreational basis, subject to any terms and conditions specified in the licence.**
- (e) A disposal permit may specify or impose requirements about**
- (f) the quantity or concentration of any substance that may be released into environment either alone or in combination with any other substance from any source or type of source;**
- (g) the places or areas where the substance may be released;**
- (h) the commercial, manufacturing or processing activity in the course of which the substance may be released; and**
- (i) the manner in which and conditions under which the substance may be released into the environment, either alone or in combination with any other substance.**

## **5th Use Formatting Features to Help your Readers**

In addition to writing in language your readers can understand, you can also help them by using formatting features, such as titles, headings, marginal notes and tables of contents. These features will help readers find the information they need. Another helpful feature is the division of lengthy or complex sentences into indented paragraphs to make them easier to understand.

### **(A) One Title**

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Traditionally, there has been a long title and a short title for every set of regulations, other than amending regulations. The long title appeared in the order in council or other executive order used to make the regulations. The short title was set out in section 1 of the regulations. Once the regulations were made, the long title fell into disuse, and the regulations were referred to by their short title only (as they are in, for example, the *Consolidated Index of Statutory Instruments*).

The use of both long and short titles has created confusion for readers, and long titles are no longer used for regulations. The short title should be as informative as possible about the subject matter of the regulations. However, as its name indicates, it should also be short and to the point.

**(B) Headings**

Headings can be placed before groups of sections to indicate that they have a common theme or subject matter. Different levels of headings can also be used, depending on how the regulation is organized. For example, divide a regulation into parts with headings to indicate what they deal with. In turn, parts can be subdivided into groups of sections under a series of headings to indicate their subject matter with greater particularity.

**(C) Marginal Notes**

Marginal notes are short notes printed in the margin beside sections or subsections to tell the reader what the provision is about. They also help the reader to find particular provisions. If you include marginal notes, you must do so consistently throughout the new regulations.

The key to success with this feature is to keep the note short. The marginal note should not be a summary of the section; it should merely state its subject matter. To see examples of the proper use of marginal notes, you can refer to federal statutes, where they have long been used, or to the example of plain language redrafting of the *Explosives Regulations* at the end of this section.

Marginal notes do not form part of the regulation itself. They are inserted for convenience of reference only (see section 14 of the *Interpretation Act*).

**(D) Tables of Contents or Provisions**

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Tables of contents or provisions give readers an overview of the structure and content of the regulations. This overview helps them find the information they need when they begin reading the regulations. The longer the regulations, the more important it is to have this overview. There are two standard formats for these tables. One is based on headings and, because of its generality, it is called a table of contents. The other is based on both headings and marginal notes. Because it is more detailed, specifying something about the contents of each provision, it is called a table of provisions. In very lengthy regulations, you should consider having both types of tables: a table of contents for the entire set of regulations and tables of provisions for each part or schedule. Developing these tables will influence the choice and use of headings so that the table strikes a balance between detail and generality.

#### **(E) Paragraphing**

Paragraphing is a formatting technique that divides a sentence into blocks of text and allows the reader to quickly grasp the grammatical structure of a complex sentence. It also avoids ambiguity and can be used when a sentence contains two or more parallel elements.

For example,

**The Minister may issue a licence if the Minister is of the opinion that all interested persons have been notified of the licence application and have been adequately consulted, a majority of members of the Council approve of the issuance of the licence and the applicant for the licence meets the requirements of these regulations.**

This provision can be divided into three paragraphs.

**The Minister may issue a licence if**

- (a) the Minister is of the opinion that all interested persons have been notified of the licence application and have been adequately consulted;**
- (b) a majority of the members of the Council approve of the issuance of the licence; and**
- (c) the applicant for the licence meets the requirements of these regulations.**

Paragraphing this sentence highlights the main idea (the power of the Minister to issue a licence) and immediately indicates that the power depends on three conditions being met.

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### **6th Test to see if you have Achieved your Purpose**

See section 5 entitled “Test the Draft Regulation”.

### ***4.3 Choosing the Elements To Use***

As stated at the beginning of this section, the techniques outlined in this section are optional. Your choice of which ones to use will depend on the nature of the regulations, their intended readers, and the time and resources available to you. Although some of these techniques are always effective, others may not work in all cases, particularly when you are preparing amendments to existing regulations. Consistency of language and format is an important principle when writing regulations. Inconsistency in wording can lead to interpretational problems because it suggests that different meanings are intended. Similarly, the addition of new formatting features, such as marginal notes, in some places but not others may create a confusing patchwork. Finally, usability testing may not be possible because of the limited time and resources available to conduct it. It will be a question of judgment whether usability testing is worthwhile, depending on the extent and impact of the amendments.

### ***4.4 Example of Plain Language Redrafting***

The following example shows the differences between the traditional way of writing rules and the “plain language” approach. The first text which attempts to address the requirements for the storage and handling of all types of fireworks pyrotechnics and ammunitions, is from the existing *Explosives Regulations*, C.R.C., c . 599. The second text is from a set of draft regulations that focuses solely on consumer fireworks.

In the second version, not only has the presentation been improved, but the ideas have been reorganized and set out in a more coherent, understandable way. The overall result is a regulation that is easier to read and understand.



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## Current Regulation

**125.** (1) Subject to subsection (2), the quantity of explosives of Division 2 of Class 7 (manufactured fireworks) and of Division 1 of Class 6 (ammunition) that a person may have in his possession if kept in any store or warehouse shall not exceed,

(a) in a separate store or warehouse,

(i) 125 kilograms gross weight of Subdivisions 2 and 5 of Division 2 of Class 7,

(ii) 1 000 kilograms gross weight of Subdivisions 1, 3 and 4 of Division 2 of Class 7, or

(iii) 225 kilograms of explosives contained in ammunition of Division 1 of Class 6; or

(b) in a container

(i) 25 kilograms gross weight of Subdivisions 2 and 5 of Division 2 of Class 7,

(ii) 100 kilograms gross weight of Subdivisions 1, 3 and 4 of Division 2 of Class 7, or

(iii) 222 kilograms of explosives contained in ammunition of Division 1 of Class 6.

(2) When Subdivisions 1, 3 and 4 of Division 2 of Class 7 are being displayed for sale they shall be displayed

(a) in lots that do not exceed 25 kilograms each gross weight;

(b) in a package, glass case or other suitable receptacle away from inflammable goods; and

(c) in a place where they are not exposed to the rays of the sun or to excess heat....

**127.** In this Part, “separate store or warehouse” means a store or warehouse that is

(a) detached from any dwelling house and situated at a safe distance from any highway, street, public

**125.** (1) Sous réserve du paragraphe (2), la quantité d’explosifs en pièces pyrotechniques de la division 2 de la classe 7, (pièces pyrotechniques fabriquées) et d’explosifs de la division 1 de la classe 6 (munitions) qu’une personne peut avoir en sa possession dans un magasin ou un entrepôt ne doit pas dépasser

a) dans un magasin ou entrepôt isolé,

(i) un poids brut de 125 kilogrammes, dans les subdivisions 2 et 5 de la division 2 de la classe 7,

ii) un poids brut de 1 000 kilogrammes, dans les subdivisions 1, 3 et 4 de la division 2 de la classe 7, ou

(iii) 225 kilogrammes d’explosifs contenus dans les munitions de la division 1 de la classe 6; ou

b) dans un récipient

(i) un poids brut de 25 kilogrammes, dans les subdivisions 2 et 5 de la division 2 de la classe 7,

(ii) un poids brut de 100 kilogrammes, dans les subdivisions 1, 3 et 4 de la division 2 de la classe 7, ou

(iii) 225 kilogrammes d’explosifs contenus dans les munitions de division 1 de la classe 6.

(2) Lorsque les subdivisions 1, 3 et 4 de la division 2 de la classe 7 sont exposées à des fins de vente elles doivent être exposées

a) en lot dont le poids brut respectif ne dépasse pas 25 kilogrammes;

b) dans un emballage, une vitrine ou un autre récipient approprié à l’écart des marchandises inflammables; et

c) à un endroit où elles sont à l’abri des rayons du soleil ou d’une température trop élevée....

**127.** Dans la présente partie, «magasin ou entrepôt isolé» signifie un magasin ou entrepôt qui est

a) isolé de toute maison d’habitation et assez éloigné de tout chemin, rue, passage ou endroit public,

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thoroughfare or public place;	pour ne pas constituer un danger;
(b) made and closed so as to prevent unauthorized persons having access thereto, and to secure it from danger from without;	b) aménagé et fermé de façon à le mettre à l'abri de tout danger de l'extérieur;
(c) exclusively used for the keeping of manufactured fireworks and ammunition belonging to Division 1 of Class 6; and	c) affecté exclusivement à la garde de pièces pyrotechniques fabriquées et de munitions appartenant à la division 1 de la classe 6; et
(d) well and substantially constructed of suitable material.	d) bien et solidement construit en matériaux appropriés.

## Re-drafted Regulation

<i>Location of a Detached Storage Unit</i>		<i>Emplacement d'une unité de stockage isolée</i>	
Safe Distance	21. A detached storage unit must be located at a safe distance from any site where the presence of explosives could pose a danger to persons or property.	21. L'unité de stockage isolée doit être située à une distance sûre de tout lieu où la présence d'explosifs pourrait présenter un danger pour les personnes ou les biens.	Distance sûre
<i>DIVISION 3: DISPLAY</i>		<i>SECTION 3 : EXPOSITION</i>	
<i>Maximum Quantity on Display</i>		<i>Quantité maximale de pièces exposées</i>	
1000 kg	22. It is prohibited to display more than 1,000 kg of consumer fireworks in a display area.	22. Il est interdit d'exposer plus de 1 000 kg de pièces pyrotechniques-consommateurs dans un lieu d'exposition.	1000 kg
	75 kg Maximum if Not Sealed Packaging	Emballages non scellés - limite de 75 kg	
In public area	23. It is prohibited to display, in the part of a display area to which the public has access, more than 75 kg of consumer fireworks that are not in sealed packaging.	23. Il est interdit d'exposer dans la partie du lieu d'exposition à laquelle le public a accès plus de 75 kg de pièces pyrotechniques-consommateurs qui ne sont pas dans des emballages scellés.	Endroit public
<i>Requirements for a Display Area</i>		<i>Exigences visant les lieux d'exposition</i>	
Requirements	24. A consumer fireworks display area must meet all of the following requirements:	24. Les lieux d'exposition des pièces pyrotechniques-consommateurs doivent satisfaire aux exigences suivantes :	Exigences
		a) si les lieux d'exposition sont attenants à un local	

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If attached	(a) if the display area is attached to a dwelling, storage unit or place that contains a storage unit, it must be separated from the dwelling or storage unit by a wall that <ul style="list-style-type: none"> <li>(i) meets the standards in applicable building codes, and</li> <li>(ii) resists fire enough to allow all occupants to safely evacuate in the event of a fire;</li> </ul>	d'habitation, à une unité de stockage ou à un local contenant une unité de stockage, ils en sont séparés par un mur : <ul style="list-style-type: none"> <li>(i) conforme aux normes des codes applicables en matière de construction,</li> <li>(ii) ayant une résistance au feu suffisante pour permettre l'évacuation des occupants en toute sécurité en cas d'incendie;</li> </ul>	Si attenant
Exits	(b) the display area must have at least two unobstructed exits that permit quick exit in an emergency; and	b) chaque lieu compte au moins deux issues non obstruées permettant l'évacuation rapide en cas d'urgence;	Issues
Secure	(c) the display area must be kept secure from unauthorized access when it is not open for business.	c) chaque lieu est protégé de façon à interdire l'accès non autorisé pendant les heures de fermeture.	Protection

## 5. TEST THE DRAFT REGULATION

### 5.1 Why Test?

An important step in the plain language drafting process is testing. Testing means asking a sample of the people who are likely to be working with the regulation, the regulation's "users", to provide you with feedback on it. However, if you are making only minor amendments to a regulation, it may not be worthwhile to test.

The feedback you get from testing can help you to correct problems with structure, wording and policy which you might not otherwise detect. Testing recognizes that policy experts, legal specialists and drafters are not the ultimate users of a regulation. In fact, their detailed knowledge of the issues and policies involved can prevent them from adequately assessing how clearly the regulation states its purpose and how easily users can work with it.

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Testing is neither a technical review of the regulation nor a popularity contest on its policy objectives. The purpose of testing is to identify problems users may have in finding information in and understanding the message of the regulation, so that these problems can be corrected *before* the regulation is brought into force.

### ***5.2 The Benefits of Testing***

Usability testing has become an essential part of computer hardware and software development during the last several years. Companies in this highly competitive market recognize the value of finding out how well a user can work with a piece of equipment or software package before they put it on the market. They realize that the programmers and engineers who create the products are not the users and cannot tell them what they need to know about the product's usability. By testing beforehand, they avoid consumer complaints, product failure and a poor product image. Similarly, testing a regulation with users and then making appropriate changes to correct the problems that they identify before the regulation comes into force can have many positive results. It can:

- reduce the time spent by government employees answering phone calls and questions from people who cannot understand the regulation's requirements;
- increase compliance with the regulation, because people are more likely to obey the law when they understand it;
- decrease the need to amend a regulation because of unintended consequences or overlooked problems; and
- improve the overall quality of the regulation.

### ***5.3 When to Test***

Testing should take place when the draft regulation is close to its final form. The project team should be confident that they have completed the policy development and initial writing stages and made all the technical corrections that they can make. They should review the sequence of section numbers, and check for such things as the consistent use of defined words and the logical flow of ideas.

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However, there is no point in testing a draft regulation if there is no time or intention to make changes to it. Testing provides valuable insights into how users read and work with the draft, but it is unfair to the test participants, and to the project team, to gather test results when the timetable or administrative realities do not allow these insights to be used.

#### ***5.4 Who Should Take Part in a Test***

In section 2.1, we discussed the need to consult with users at a preliminary stage, before drafting begins. By reviewing the categories of users identified at that early stage, you can select a representative sample of users who, until the test, have not been involved in any way in the consultation or preparations leading up to the draft regulation. You may also want to show copies of the draft to people who were involved in earlier discussions; while that might be very helpful as a continuation of the consultation process, it would not constitute testing.

Users of regulations are likely to include people with and without legal training. Your test participants should be from both groups.

#### ***5.5 What to Test***

Testing provides the opportunity to check with users on a variety of matters. Since you cannot test for everything, you need to decide what information is most important to gather. You can test, for instance, whether users can understand certain key sections of the regulation. Or, you may wish to select areas with the greatest impact on health and safety. You can test the users' ability to read the regulation and then to do what it requires. You can test whether they are able to use the table of contents efficiently to find the information that they need. You can also use the testing environment to find out which of two wording options or structures best meets the users' needs.

#### ***5.6 How to Test***

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The type of test you choose will depend on a variety of factors, including: (1) the information you hope to gain from testing; (2) the time available for testing; (3) the resources available; (4) the nature of the regulation; (5) the length of the regulation; and (6) the characteristics of the users.

If your goal is to find out how well users understand the regulation, you could set up a **read-aloud** or **think-aloud** test. In a read-aloud test, a participant reads a sentence of the regulation aloud and then explains its meaning in his or her own words. Problems with comprehension become evident, especially when the same problems recur among participants. In a think-aloud test, a participant is asked to read through the regulation aloud and to voice his or her thoughts about it along the way. The participant's comments, for example, "didn't I just read something about that?", "I wonder what that means?", provide insights into difficulties users have understanding the regulation.

Read-aloud and think-aloud tests are useful for identifying problems with wording and structure. **Usability tests** clarify how efficiently and effectively users can find information and correctly interpret it. For a usability test, participants are usually asked to answer scenario questions which are based on the types of situations that they are likely to encounter. Testers watch participants work with the regulation during the test and keep track of, for instance, how many times the participants re-read a section, how often they refer to the table of contents, and how frustrated they appear to get. In some test situations, testers may sit down with participants one by one and ask them to talk about what they are thinking and doing as they try to answer the questions. In other situations, participants may be asked to note when they began working on a question and when they finished it and to write down their comments.

Usability tests provide information on how well participants are able to find the relevant sections in the regulations and how well they understand the provisions. For example, when participants find the right section but give the wrong answer to a scenario question, it suggests a problem with the regulation's wording. When they cannot find the right section, it can suggest a problem with the structure, the table of contents, the headings or the marginal notes.

During all these tests, testers make an audio and sometimes a video recording. The tapes are played back later to review participant comments and ensure that valuable information is not lost. For instance, a problem which may have seemed insignificant with the first participant may afterwards appear as part of a pattern.

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Participants may also be asked to complete a questionnaire on the regulation as part of the test. They might be asked if they thought the regulation was easy to understand, if the table of contents was easy to use, if it was easy to find necessary information and so forth.

All the information collected during testing is analyzed to identify ways in which the regulation could be written more clearly and be better organized for users' needs.

### ***5.7 The Cost of Testing***

Testing does not have to involve hundreds of participants or fancy lab equipment: testing with five to eight participants is often sufficient to provide significant information about one language version of a draft regulation. Experienced testers can assist in designing the test protocols and conducting the test. Even the simplest test process can provide invaluable results, at a low cost. The key is to think about what you want to find out and then to listen carefully and with an open mind to what the test participants say.

### **REFERENCE DOCUMENTS**

For more information on testing draft regulations for usability, readability and comprehension, refer to the following:

*A Practical Guide to Usability Testing*, Dumas, J.S. and Redish, J.C., Ablex, Norwood, N.J., 1993. This 412-page basic text explains the principles behind usability testing, describes how to plan and prepare a test and explains how to conduct a test and evaluate the results. Its authors are pioneers in the testing field who have experience testing a variety of "products", including government documents.

*Technical Report: Consumer Fireworks Regulations Usability Testing*, Schmolka, Vicki, Department of Justice, Ottawa, 1995. This paper documents the federal government's first usability test of a draft regulation and includes the test results and a complete collection of the materials used in the usability testing.

*Consumer Fireworks Regulations: Final Report*, Trevethan, Shelley; Gordon, Wendy; and Roy, Marie- Andrée, Department of Justice, Ottawa, 1995. This paper summarizes the steps that were taken to prepare a plain language version of a regulation, including usability testing. It offers an assessment of the process and a copy of the draft regulation that was prepared incorporating the test results.

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*Practical Approaches to Usability Testing for Technical Documentation*. Velotta, C., ed., Society for Technical Communication, Virginia, 1995. This 100-page booklet covers usability testing basics, with sample checklists and questionnaires. It has a comprehensive, 14-page bibliography of usability testing literature that is an excellent guide to available research materials.

## **6. REVISE THE DRAFT REGULATION**

Usability testing will identify changes you wish to make to the wording, policy concepts, organization or presentation style. Revisions can take time, depending on the test results received. Sometimes there are policy or legal reasons that prevent you from changing the regulations to respond to certain comments.

When all of the team members are satisfied with the final draft regulation, the drafters from the Regulations Section will “blue-stamp” the document and give it to the counsel from your Department Legal Services Unit. The blue stamp indicates that the document has been reviewed in accordance with the *Statutory Instruments Act* and that it is ready for the other steps in the regulatory process. Any necessary changes should also be made to the RIAS to be sure it reflects the final version of the regulation.

## **7. THE REGULATORY PROCESS**

The steps to follow so that the regulation is approved and in force will depend on who must make or approve the regulation. The three possibilities are:

- (a) the Governor in Council makes the regulation,
- (b) another entity (such as a minister, agency or tribunal) makes the regulation, or
- (c) another entity makes the regulation with the approval of the Governor in Council.

Here is a list of the basic steps of the regulatory process, all of which are described in more detail below (see Diagram 2):

- (a) pre-publication in the *Canada Gazette*, Part I
- (b) ministerial recommendation (in all cases)
- (c) Treasury Board recommendation (when required)
- (d) regulation-making entity makes the regulation
- (e) approval by Governor in Council (when required)



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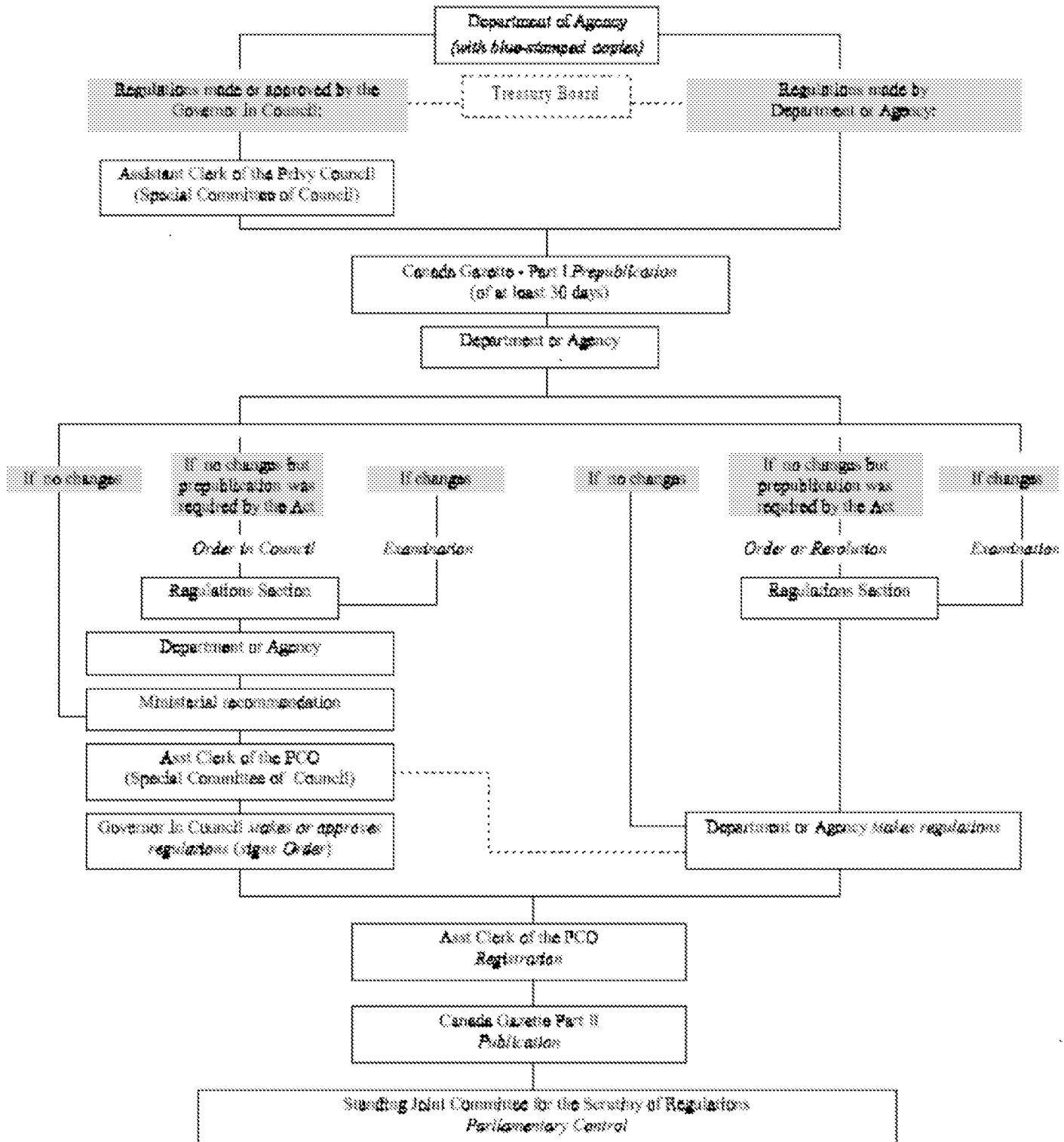
**7. THE REGULATORY PROCESS**

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- (f) registration, Clerk of the Privy Council
- (g) publication in the *Canada Gazette*, Part II

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DIAGRAM 2  
THE REGULATORY PROCESS



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**7. THE REGULATORY PROCESS**

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***7.1 Pre-publication in the Canada Gazette, Part I***

There may be either a statutory requirement for pre-publication or a Treasury Board policy that requires it. The drafters on the team can identify the category into which a regulation falls. You may request an exemption from the Special Committee of Council if there is no statutory requirement to pre-publish. Exemptions may be given for a number of reasons, including where sufficient exposure has been achieved through other means (e.g. newsletter or Internet) and the costs of publication in the *Canada Gazette* outweigh its benefits.

If the Governor in Council is to make the regulation, it must be forwarded via the Assistant Clerk of the Privy Council to the Special Committee for approval for prepublication. If another entity is to make the regulation, alone or with the approval of the Governor in Council, the regulation can go directly to the *Canada Gazette* for pre-publication.

***7.2 Ministerial Recommendation***

All orders of the Governor in Council must be recommended by the “sponsoring minister”. In other words, the minister whose department is responsible for proposing the regulation writes to the Governor in Council, recommending that the regulation be officially “made” or approved, as the case may be. If the minister is not available, the acting minister can usually fulfil this role.

Once the ministerial recommendation is made, the regulation is sent to the Special Committee and then to the Governor in Council, via the Assistant Clerk of the Privy Council.

A ministerial recommendation is not sought if the Governor in Council has no role in the making of the regulation.

**REFERENCE DOCUMENTS**

The ministerial recommendation should be drafted in accordance with the instructions and examples contained in the following:

*Directives on Submissions to the Governor in Council and Statutory Instruments/Directives sur les présentations soumises au gouverneur en conseil et les textes réglementaires*, Privy Council Office (1985).

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### ***7.3 Treasury Board Recommendation***

Whenever a regulation has financial implications, such as fees for the use of services or facilities or for the enjoyment of rights or privileges, a recommendation of the Treasury Board is required.

#### **REFERENCE DOCUMENTS**

*The Federal Regulatory Process, An Interim Procedures Manual for Departments and Agencies*, Regulatory Affairs Directorate (1991). In particular, see Section C of Chapter 2, Regulations Requiring the Recommendation of Treasury Board.

*Treasury Board Circular 1987-15: Orders in Council Requiring the Recommendation of Treasury Board. Treasury Board Submissions Guide*, Submission and Cabinet Document Centre, Treasury Board (Sept. 1994).

*Treasury Board 1996 Regulatory Process Guide*, Treasury Board (July 96).

### ***7.4 Regulation-making Entity Makes the Regulation***

The actual making or signing of a regulation by the regulation-making authority is essential to its validity. A regulation that has not been made by the proper regulation-making entity has no legal effect.

For this reason, there must be an official document certifying that the regulation has been made. The name of this document varies according to whether the authority making the regulation is the Governor in Council, a minister, an agency or another entity. For example, when the Governor in Council or a minister makes a regulation, the official document is called an order. When the regulation-making authority is some other entity, the form of the making document may depend on the practice of the entity or may be described in the Act that created the entity. In all cases, you can contact the legislative drafters on the team for assistance in drafting this document.

#### **REFERENCE DOCUMENTS**

Where the regulation-making document is an order of the Governor in Council, which is called an "Order in Council", refer to the following for more information on drafting instructions and examples:

*Directives on Submissions to the Governor in Council and Statutory Instruments/Directives sur les présentations soumises au gouverneur en conseil et les textes réglementaires*, Privy Council Office (1985).

PART 5: Developing Regulations

**8. EXAMINATION BY STANDING JOINT COMMITTEE FOR THE SCRUTINY OF REGULATIONS**

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***7.5 Registration, Clerk of the Privy Council***

A regulation must be registered within the seven days after its making. To register a regulation, send it to the Clerk of the Privy Council, who will record the name of the regulation, the name of the regulation-making entity, the authority under which it was made, the date on which it was made and the date of registration. The regulation will be assigned an “SOR number” at that time, the acronym “SOR” (for Statutory Orders and Regulations) followed by a number which distinguishes that regulation from others.

Registration is crucial because the date of registration is often the date on which a regulation comes into force.

Some (a very few) regulations are exempt from registration. The drafters on the team can tell you whether your regulation falls into an exempt category.

**REFERENCE DOCUMENTS**

For more information on the registration of regulations, refer to the following:

*Statutory Instruments Regulations*, C.R.C., c.1509, sections 4 to 9. *Interpretation Act*, R.S., c. I-21, section 6.

***7.6 Publication in the Canada Gazette, Part II***

A regulation must be published in the *Canada Gazette*, Part II, within 23 days after the date of its registration. The Assistant Clerk of the Privy Council will coordinate the publication after it has been registered.

Some regulations are exempt from publication. The drafters on the team can tell you whether your regulation is exempt. A regulation cannot be ruled invalid just because it has not been published in the *Canada Gazette*, Part II. Conversely, it is not likely to be enforced, because someone cannot be convicted of contravening a regulation that had not been published by the time of the alleged offence unless reasonable steps were taken to inform potentially affected persons of the substance of the regulation.

PART 5: Developing Regulations

**8. EXAMINATION BY STANDING JOINT COMMITTEE FOR THE SCRUTINY OF REGULATIONS**

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**REFERENCE DOCUMENTS**

*Statutory Instruments Act*, R.S., c. S-22, sections 10 to 12.

*Statutory Instruments Regulations*, C.R.C., c. 1509, sections 9 to 15.

**8. EXAMINATION BY STANDING JOINT COMMITTEE FOR THE SCRUTINY OF  
REGULATIONS**

The Standing Joint Committee for the Scrutiny of Regulations is responsible for monitoring the use of regulatory powers on behalf of Parliament. The Committee reviews regulations after they have been made, checking to ensure that they meet 13 criteria. These criteria include ensuring the regulations are authorized by the enabling statute, do not conflict with the *Charter*, are not retroactive unless express authority exists, and are not deficient in terms of drafting. When the Committee finds a problem with a particular regulation, it usually recommends a solution to the regulation-making entity. If the regulation-making entity does not agree with or act on the recommendations of the Committee, the Committee can present a report to the House of Commons that, if adopted, will lead to the repeal of the regulation.

**REFERENCE DOCUMENTS**

For information on the regulatory process, including the role of the Standing Joint Committee and the legal framework of regulatory powers, refer to the following documents:

*Statutory Instruments Act*, R.S., c. S-22, section 19.

*Standing Orders of the House of Commons*, February 1990, section 123.

*How Regulators Regulate*, Treasury Board Secretariat (1992).

*Regulations and Competitiveness*, Seventeenth Report of the Standing Committee on Finance; First Report of the Sub-Committee on Regulations and Competitiveness, January 1993.

*A Strategic Approach to Developing Compliance Policies*, Regulatory Affairs (1992).

**9. CONCLUSION**

PART 5: Developing Regulations  
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This Guide tries to give regulators and drafters the basic tools and references they will need to proceed through the steps of addressing a problem by way of regulations. The idea for this Guide came out of the recognition that there is a sometimes bewildering wealth of information on some aspects of government regulatory response and very little information on the newer parts of the process that involve plain language. Preparing regulations is a complex matter that can consume a significant amount of time and resources. Going from point A, problem identification, to point B, problem resolution, can be a long journey, with many challenges along the way. It usually involves making many decisions and taking into account the interests and input of many people and divergent interests. The formal aspects of the regulatory process itself can be daunting. For these reasons, it is important to be well-prepared heading into the process and to do all you can to ensure a successful outcome. The overview of the process provided in this Guide should help participants plan their approach on an informed basis. Legislative drafting is a very traditional area of law. Out of tradition comes consistency, which is an extremely important factor in interpreting and applying the law. For this reason, the changes recommended in this document have been considered carefully, in light of their potential impact on the larger body of Canadian law, as any other proposed changes must be. The federal government is only in the initial stages of using plain language techniques, but has already recognized how beneficial they can be. The emphasis on consultation with the users and stakeholders is not new, but it underlines the importance of communicating in a way that the users can understand. Consultation provides information on the current use and understanding of the regulations. Testing the regulations before they are finalized, to find out if the users and stakeholders can actually read, understand and use the regulations, is a very valuable tool. In addition to getting these groups' reactions from the outset, the consultations and usability testing make the user group more aware of the regulations that they should be following and, in so doing, perform a "marketing" role. They may also increase commitment to the regulations, since the users will have been involved in the entire process.

Although the short-term cost of developing plain language regulations may be greater than the cost of developing other regulations (because of consultations and usability testing), there are many long-term benefits and savings:

- There is less need to develop secondary documents to explain the regulations.
- Since the regulations are of better quality, they will not need to be revised as frequently.
- Less time will be spent answering readers' questions.
- The consultations allow the drafters to understand the context of the regulations better, allowing for more informed drafting.
- Since the user group is involved in the development of the document, the regulations are of better quality and elicit a higher degree of commitment.

## PART 5: Developing Regulations

### 9. CONCLUSION

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- Usability testing ensures that individuals understand the document they must comply with.

Teamwork is the cornerstone of the whole process. The expertise and enthusiasm of the team members is critical to creating a regulatory tool that is efficient, realistic and well adapted to the context in which it will be applied.



PART 5: Developing Regulations

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# Manuel de la réglementation fédérale

# Federal Regulations Manual

# Manuel de la réglementation fédérale

Groupe des services  
rédactionnels et consultati

*Also available in English under Federal Regulations Manual*

© Ministre des Travaux publics et Services gouvernementaux Canada 1998  
Imprimé au Canada

**Données de catalogage avant publication (Canada)**

Canada. Ministère de la Justice. Direction des services législatifs. Section de la réglementation  
Manuel de la réglementation fédérale

Publié aussi en anglais sous le titre : Federal Regulations Manual.

Comprend des références bibliographiques.

ISBN 0-662-82522-5

No de cat. BT22-57/1998F

Version révisée (partie 2 en 2003, appendice B de la partie 2 en 2011 et partie 4 en 2008, 2010, 2011 et 2012)

1. Droit — Canada — Législation.      2. Règlements (Droit administratif) — Rédaction —  
Canada.      3. Règlements (Droit administratif) — Canada      4. Rédaction juridique.  
I. Titre.

KE1589.C3214 1998      808'.066342      C98-900053-2

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## INTRODUCTION

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# INTRODUCTION

Le présent manuel est destiné à tous ceux qui participent, de près ou de loin, à l'élaboration des textes réglementaires dans le cadre de la législation fédérale, que ce soit à l'étape de l'élaboration de la politique, de la rédaction du texte, de l'examen de celui-ci par les avocats de l'organisme de réglementation — ministère ou autre — ou de la révision finale du texte. Il traite de tous les aspects liés au processus global de l'élaboration du règlement à l'échelon fédéral.

Ce manuel a été préparé par la Section de la réglementation, Direction des services législatifs, ministère de la Justice. Nous tenons à souligner tout particulièrement l'apport des réviseurs rédactionnels et des réviseurs jurilinguistes de la Section qui ont mis à profit leur expertise sur le plan linguistique et sur le plan de la technique rédactionnelle appliquée à la réglementation.

Le manuel est divisé en cinq parties :

**PARTIE 1** : Le point sur la réglementation fédérale et la Section de la réglementation

**PARTIE 2** : Le processus réglementaire

**PARTIE 3** : Comment donner des instructions de rédaction

**PARTIE 4** : Règles de rédaction et de présentation

**PARTIE 5** : L'élaboration des règlements : les principales étapes et la lisibilité

La première partie brosse un tableau de la situation de la réglementation fédérale dans le cadre de la législation fédérale. Elle situe le rôle de la Section de la réglementation sur l'échiquier législatif fédéral et donne une liste des services offerts par la Section aux organismes de réglementation.

La deuxième partie traite du processus réglementaire établi par la *Loi sur les textes réglementaires*. Cette loi, qui est entrée en vigueur en 1972, est la loi cadre qui rend obligatoires l'examen, l'enregistrement et la publication des règlements. Cette partie passe en revue les différentes étapes du processus en donnant des exemples pratiques et en clarifiant les cas d'exception.

La troisième partie s'adresse aux organismes de réglementation qui désirent, au lieu de rédiger eux-mêmes le texte du règlement, formuler à l'intention des rédacteurs de la Section de la réglementation des instructions de rédaction pour permettre à ceux-ci de rédiger un texte qui produira les effets escomptés.

Pour ceux qui rédigent le texte du règlement ou qui le révisent à toute étape du processus, la quatrième partie constitue un outil pratique qui traite des différentes conventions de rédaction applicables au niveau fédéral. Les rubriques figurent selon l'ordre alphabétique, ce qui facilite la consultation, et contiennent plusieurs exemples pratiques. Cette partie est un complément du *Guide canadien de rédaction législative française*, établi par la Section de la législation, dont certains passages sont d'ailleurs tirés.

## INTRODUCTION

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Enfin, la cinquième et dernière partie est un texte qui a été établi en collaboration avec la Direction des affaires réglementaires du Conseil du Trésor dans le cadre d'un projet-pilote sur la lisibilité. Ce texte trace les grandes lignes de chacune des étapes d'élaboration du règlement, de la conception à la prise du règlement, en passant par les tests d'utilisation et les nouvelles tendances en matière de lisibilité, tout en renvoyant le lecteur, le cas échéant, aux textes plus spécialisés en la matière.

Nous espérons que cet outil de travail vous sera d'une grande utilité et nous vous invitons à nous faire parvenir vos commentaires et suggestions à l'adresse suivante :

Premier conseiller législatif  
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## **PARTIE 1**

# **LE POINT SUR LA RÉGLEMENTATION FÉDÉRALE ET LA SECTION DE LA RÉGLEMENTATION**

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