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**MINNESOTA
REVISOR'S MANUAL
WITH
STYLES AND FORMS**

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1982

1982 SUPPLEMENT

MINNESOTA
REVISOR'S MANUAL
with
Styles and Forms

1982 SUPPLEMENT

CONTENTS

This supplement to the Minnesota Revisor's Manual With Styles and Forms (1981) corrects certain minor errors in the original volume and extends it by providing additional forms not contained in the original volume. It also contains an extended section on style that goes into depth on the proper use of English in bill drafts. The supplement discusses ten areas that, for the most part, do not directly change the existing manual. For that reason, the supplement is organized as a new document without showing where the new material will be inserted when the next edition of the Revisor's Manual is published.

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1. Correction of Errors. The following corrections to the Minnesota Revisor's Manual (1981) are necessary:

(a) Page 40, after the last word on the last line, insert "court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon that language;...";

(b) Page 102, between the fifth and sixth paragraphs, insert:

Appropriations are ordinarily made to the commissioner of a named department not to the department itself. This is necessary in order to fix the responsibility for the expenditure of the funds. If an appropriation is made either to a department or some official subordinate to the commissioner, then the possibility of confusion or conflict within a department is created.

(c) Page 135, after the center form, insert the following note regarding the center form:

This form is used even if the amendment has subsequently been published in Minnesota Statutes 1981 Supplement. It would be improper to use "as amended by Minnesota Statutes 1981 Supplement" since it is Laws not the Supplement which amended Minnesota Statutes. The Supplement only published the amendment.

(d) Page 139, following form No. 1, insert the following new form for breaking biennial appropriations into yearly amounts:

1a. Regular Biennial (odd-numbered year session)

Sec. 10. [APPROPRIATION.]

For the purpose of administering sections 1 to 9, there is appropriated from the general fund to the commissioner of administration the sum of \$20,000 for the fiscal year ending June 30, 1982, and \$30,000 for the fiscal year ending June 30, 1983.

This form is preferred over that in paragraph 1 because the state's accounting system is on a fiscal year basis not

biennium basis.

(e) Page 143, the typeset text after form No. 2 should read "Sections 6, 7, and 8 are effective on August 1 (or July 1 if any appropriation is in the bill) since no effective date is stated for those sections."

(f) Page 143, in form No. 3, the words "This act is" should be changed to "Sections 1 to 9 are";

(g) Page 143, in form No. 4, the words "This act is" should be changed to "Sections 1 to 9 are";

(h) Page 144, on line 5, delete "and subsequent editions of the statutes";

(i) Page 178, in the title on line 2 after "adjournment" the words should be inserted "of the Senate and House of Representatives"; on line 6, "its adjournment" should be "their adjournments on"; and on line 8, the comma should be deleted;

(j) Page 197, the last full paragraph, delete "All punctuation which the drafter wishes to delete" and insert "Punctuation marks not accompanied by words to be deleted" and delete the word "figures" and insert "as marks";

(k) Page 199, the first full paragraph, change "words, figures, or punctuation marks" to "words or figures" and at the end of the paragraph insert "If an amending operation affects punctuation marks unaccompanied by words, the marks should be expressed as words."

(l) Page 268, the citation for the Comprehensive Health Association, Board of Directors, should be "62E.10" not "63E.10";

(m) Page 272, the citation for the Legislative Commission on Waste Management should be "115A.14";

(n) Page 274, line 9 from the first entry in the table, should be corrected to insert "Pharmacy Board" before "Continuing Education";

(o) Page 301 in the notes after the form, at the end of the second paragraph, the year should be "1981" not "1977";

(p) Page 302 in the notes after the form, at the end of the first paragraph, the following sentence should be added: "To avoid any implication that the rider is permanent law."; on line

5 of the form, before 'The' should be inserted 'For the fiscal biennium ending June 30, 1983,'.

(q) Page 318, delete the typewritten forms under paragraph (1) and insert:

Sec. ... [APPLICABILITY.]

On its effective date, section ... applies to those

cities [towns, counties, school districts] among the cities

[towns, counties, school districts] of[insert

names] which approve it.

Sec. ... [LOCAL APPROVAL.]

Section ... [section number of local law] is effective

in any of the cities [towns, counties, school districts]

named in section ... [section number of prior applicability

section] upon the approval by a city council [town board,

county board, school board] of a city [town, county, school

district] named in section ... [section number of prior

applicability section] but only for each city [town,

county, school district] whose city council [town board,

county board, school board] approves it.

The prior form is used if it is desired to permit the law to apply in any of the named units which approve it. If it is desired to have the law become effective only if a certain minimum number of units approve it, the following form should be used:

Sec. ... [LOCAL APPROVAL.]

Provided that at least two [three, four, etc.] of the

cities [towns, counties, school districts] named in section

.... [section number of prior applicability section]

approve section ... [section number of local law] on its

effective date, section ... [section number of local law]

applies to those cities [towns, counties, school districts]

among the cities [towns, counties, school districts] named

in section ... [section number of prior applicability

section] which approve it.

2. Forms to Amend Unchaptered Acts. When proposing in a bill to amend an unchaptered act, the following introduction must be used: "Sec. XX. Senate File No. 1043, Section 14, as enacted by the 1981 Regular Session, is amended to read." Several serious problems are created when amending unchaptered acts.

First, it is necessary to ensure that the effective date of the amendment is coordinated with the effective date of the original act. If not done, there could be a gap when the original, unamended act is in effect.

Second, it may be necessary to ensure that if the original act does not become law (the legislature could fail to complete action on it or it could be vetoed) that the amendment is also not effective.

Third, if the drafter intends to overcome a repealer in a earlier unchaptered act and reinstate the prior law, it is necessary to overcome the statutory rule of construction that repealing a repealer does not revive the original law.

Fourth, it is necessary to consider the possibility that another act may amend the same act in a conflicting manner. Because of that it is necessary to insure that the statutory principle of statute construction that the last enactment prevails.

Two standard sections to deal with these problems are as follows:

Sec. 68. [EFFECT OF AMENDMENTS ON REPEALS BY THIS ACT.]

Regardless of the order of final enactment of sections 1 to 67 and the acts those sections amend or repeal, the amendments or repeals in sections 1 to 67 shall be given effect. Notwithstanding Minnesota Statutes, Section 645.34, or other law, a repeal in sections 1 to 67 of an amendatory law revives the original law as it existed before or without the amendment. Notwithstanding Minnesota Statutes, Sections 645.26, Subdivision 3, 645.33, or other law, an amendment in sections 1 to 67 shall prevail over

any other act amending the same provisions of law in an

irreconcilable manner.

Sec. 69. [EFFECTIVE DATE.]

Unless otherwise provided within a section, on the day

following final enactment of sections 1 to 67 those

sections are effective on the same effective date as the

section amended. The amendments are effective whether or

not the effective date of sections 1 to 67 will then be

prospective or retroactive.

3. Forms to Bring Rules Under the APA or Exclude It. Laws

creating a new agency or changing an existing agency frequently
provide that an agency can adopt rules and whether or not the
rules are subject to the provisions of the administrative
procedure act.

Sec. 12. [XXX.14] [AUTHORITY TO ADOPT RULES.]

The commissioner shall adopt rules to implement

sections 1 to 13. The rules are subject to the provisions

in the administrative procedure act of section 15.041 to

15.052.

If it is desired to exclude rules from the administrative
procedure act, the following form should be used.

Sec. 12. [XXX.14] [AUTHORITY TO ADOPT RULES.]

The commissioner shall adopt rules to implement

sections 1 to 13. The rules are not subject to the

provisions of the administrative procedure act in section

15.041 to 15.052. However, rules may be filed pursuant to

section 15.0413, subdivision 3.

Note that the proper inclusive reference is to section 15.041
not section 15.0411. Many existing references erroneously state
the latter section which is not the first section in the
administrative procedure act. References just to "the
administrative procedure act" or "chapter 15" are also
undesirable. Drafters should also note that the proper name is
"the administrative procedure act" (singular) not "the
administrative procedures act" (plural).

4. Form to "Sunset" Amendment of Law. On many occasions, amendments to existing laws are "sunsetting" at some specific point in the future. This poses unique problems from the situation where the entire law, not just amendments to it, are sunsetted. Principal among them is that merely repealing the amendments will not revive the law as it existed prior to amendment. See: Minnesota Statutes 1980, Section 645.34. It is also undesirable to repeal the amendments while providing that notwithstanding Minnesota Statutes, Section 645.34, the law as it existed prior to amendment is revived. It is undesirable because repealers are not ordinarily published in Minnesota Statutes. A user of the Statutes would be required to go beyond that publication to find a crucial part of the statutory law. Also, stating that the prior law is revived is easier said than done. The chief problem is trying to reconcile another amendment enacted between the original amendment and the revival. Does the revival also repeal the third amendment? If not, can the language of the third amendment be reconciled with the revived text? The questions often cannot be answered and an ambiguity is created.

A suggested form to avoid these problems and sunset an amendment to existing statutes is as follows:

Sec. XX. Minnesota Statutes 1980, Section XXX.XX, is amended to read:

XXX.XX [HEADNOTE.]

Subdivision 1. (text)

Subd. 2. (text)

Subd. 3. Notwithstanding the provisions of subdivisions 1 and 2, from January 1, 1984, to June 30, 1985, the applicants shall also be required to furnish evidence of

This form is preferred because it ensures that all relevant law will be published in Minnesota Statutes and avoids the whole problem of revival of a law as it existed prior to amendment.

5. Instructions to Revisor; Renumbering Statutes. A form for an instruction to the Revisor is provided on page 144 of the Revisor's Manual. That form is intended only for use when a global name or term change is desired. Another type of direction to the Revisor requires the renumbering of statutory sections. This type of direction has occurred in bills with increasing frequency. It usually occurs as parts of bills which substantially revise larger portions of Statutes. This kind of section should not be necessary. The Revisor has statutory power to renumber Statutes. If renumbering is believed necessary, a letter can be sent to the Revisor requesting the renumbering. The Revisor will agree to reasonable requests of this type. A request will be acknowledged so that it will be known for sure that the change will be accomplished.

If it is, nevertheless, desired to mandate a renumbering, the following form can be used:

Sec. XX. [INSTRUCTION TO REVISOR.]

The revisor of statutes shall renumber each section of Minnesota Statutes specified in Column A with the number set forth in Column B. The revisor shall also make necessary cross-reference changes consistent with the renumbering.

| Column A | Column B |
|---|----------------------|
| 15.041 | 14.01 |
| 15.0411, Subd. 2 (third and fourth sentences) | 14.02 |
| 15.0411, Subd. 2 (except the third and fourth sentences) | 14.03 |
| 15.0412, Subds. 1, 1a, 2, 2a, 3, 4a, 4b | 14.04, Subds. 1 to 7 |
| 15.0412, Subds. 4, 4c, 4d, 4e, 4f, 4g | 14.05, Subds. 1 to 6 |
| 15.0412, Subd. 4h | 14.06 |
| 15.0412, Subd. 5 | 14.07 |

| | |
|---------------------------|-------|
| 15.0412, Subd. 6 | 14.08 |
| ----- | ----- |
| 15.0412, Subd. 7 | 14.09 |
| ----- | ----- |
| 15.0412, Subd. 8 | 14.10 |
| ----- | ----- |
| 15.0412, Subd. 9 | 14.11 |
| ----- | ----- |
| 15.0412, Subd. 10 | 14.12 |
| ----- | ----- |
| 15.0413, Subds. 1, 2 | 14.13 |
| ----- | ----- |
| 15.0413, Subds. 3, 3a, 3b | 14.14 |
| ----- | ----- |
| 15.0415 | 14.15 |
| ----- | ----- |
| 15.0416 | 14.16 |
| ----- | ----- |
| 15.0417 | 14.17 |
| ----- | ----- |
| 15.0418 | 14.18 |
| ----- | ----- |
| 15.0419 | 14.19 |
| ----- | ----- |
| 15.0421 | 14.20 |
| ----- | ----- |
| 15.0422 | 14.21 |
| ----- | ----- |
| 15.0424 | 14.22 |
| ----- | ----- |
| 15.0425 | 14.23 |
| ----- | ----- |
| 15.0426 | 14.24 |
| ----- | ----- |
| 15.052 | 14.25 |
| ----- | ----- |

Language directing the Revisor to renumber anything in "the next and subsequent edition" of Statutes must not be used. This language purports to restrict the general recodification power of the Revisor. It is contrary to the accepted state policy that the Revisor must do continuous revision of the Statutes and no part of Statutes is exempt.

6. Instructions to Revisor; Cross-Reference Changes. In many cases when extensive rewriting of sections of the Statutes are drafted, it is often necessary to make extensive changes in the numerous cross-references to Statutes not otherwise changed. Of course, it is possible to set out each of the sections containing a cross-reference and amend it in the usual fashion. However, many sections of the Statutes have a large amount of cross-references to them. As a result, the bulk of a bill may be unduly extended for what are, basically, technical changes. A method of accomplishing these changes is to use an Instruction to the Revisor. A suggested form follows. It is not suggested that an Instruction to the Revisor be in the form of an instruction "to change internal cross-references in Minnesota Statutes as required by this act." This kind of instruction can be impossible to implement because of difficulty in determining the proper new cross-reference.

Sec. ... [REVISOR'S INSTRUCTION.]

In each section of Minnesota Statutes referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C. The references in column C may be changed by the revisor to the section of Minnesota Statutes in which the bill sections are compiled.

| Column A | Column B | Column C |
|------------------|-----------------|---------------------|
| 3.855, Subd. 3 | 43.064 | Section 18, Subd. 4 |
| 3.855, Subd. 3 | 43.113 | Section 18, Subd. 2 |
| 12.24, Subd. 2 | 43.327 | Section 18 |
| 15.06, Subd. 8 | 43.09, Subd. 2a | Section 8, Subd. 2 |
| 15.61, Subd. 2 | 43.30 | Section 11 |
| 15A.13 | 43.127, Subd. 6 | Section 18, Subd. 3 |
| 6A.752, Subd. 1 | 43.18 | Section 13 |
| 21.51, Subd. 6 | 43.01 | Section 1 |
| 79.095 | 43.067 | Section 17, Subd. 1 |
| 121.21, Subd. 11 | 43.45 | Section 23 |
| 136.25 | 43.45 | Section 23 |
| 136.62, Subd. 6 | 43.45 | Section 23 |

| | | |
|------------------|-----------------|---------------------|
| 179.66, Subd. 1 | 43.127 | Section 18, Subd. 3 |
| ----- | ----- | ----- |
| 179.74, Subd. 1 | 43.01, Subd. 11 | Section 2, Subd. 5 |
| ----- | ----- | ----- |
| 179.74, Subd. 4 | 43.126 | Section 17, Subd. 4 |
| ----- | ----- | ----- |
| 179.74, Subd. 4 | 43.326 | Section 18, Subd. 3 |
| ----- | ----- | ----- |
| 179.741, Subd. 2 | 43.064 | Section 18, Subd. 4 |
| ----- | ----- | ----- |

7. "Partial Delete" Amendments. In the Revisor's Manual, Section 6.3, it is indicated that there are two kinds of amending techniques. These are the "delete everything" amendment and the "page and line" amendment. While this is presented as alternatives, there is a third technique. That technique is the "partial delete" amendment.

A "delete everything" amendment is used whenever an entire bill is rewritten so substantially that the identity of the original bill is entirely lost. A "page and line" amendment is used when there is a series of item by item changes to be made in a bill. A "partial delete" amendment represents a middle ground between the two forms. It is used when a portion of the bill is substantially rewritten but the basic bill still remains. It avoids either the necessity of long and complex "page and line" amendments when only a portion of a bill is changed, or using a "delete everything" amendment when "everything" is not changed.

An example of a "partial delete" amendment would be the deletion of pages 8 and 9 of a 20 page bill and substituting revised text. If a "page and line" amendment is used, its effect may be incomprehensible without the benefit of an engrossment. If a "delete everything" amendment is used, it may give the impression that the whole bill is changed. In addition, "delete everything" amendments waste money in the printing of amendments, engrossed bills, and journals.

The form of a "partial delete" amendment is that of a "page and line" amendment except that nothing smaller than a bill section or bill page is amended. It combines both the "delete" and "insert" operations as otherwise permitted by a "page and line" amendment. Unlike the "delete everything" and "page and line" amendments, the text of existing law may be affected. However, on the insertion side of the "partial delete" amendment, all of the existing law must be accounted for that is shown in the original text.

The only proper occasions to use a "partial delete" amendment are as follows:

(a) delete a page and insert a new page (Example: "Delete page 9 and insert");

(b) delete multiple pages in increasing numerical order and insert new pages (Example: "Delete pages 9 to 14 and insert");

(c) delete a section and insert a new section (Example: "Delete section 4 and insert");

(d) delete multiple sections in increasing numerical order and insert new sections (Example: "Delete sections 4 to 9 and insert"); and

(e) delete a page or more of text between designated page and line numbers and insert new text (Example: "Delete page 4, line 9, to page 7, line 34, and insert").

When using inclusive references, the deletion includes both the page and line or section which starts the reference and the page or section and line which ends the reference. When using a "partial delete" amendment affecting multiple sections, it is best to use page and line references rather than section references. If section references are used, whether the beginning and ending references are included can be misunderstood by persons not familiar with these rules. Little chance of confusion exists when the page and line numbers are used.

8. References to Publications. The standard procedure for

references to publications in bill drafts is as follows.

Minnesota Statutes. When a bill amends existing Minnesota

Statutes, the introduction for each amendatory section of the

bill includes the title and date of the most recent edition of
Statutes. For example: "Minnesota Statutes 1980, Section

14.41, is amended to read." Joint Rule 2.01 requires this
form. If the amended text is included in the Supplement, the

form is "Minnesota Statutes 1981 Supplement, Section 14.41, is
amended to read."

A reference in the text of a bill to an existing section of
Statutes should be made by referring only to the statutory

section without including "Minnesota Statutes" if:

(a) the drafter does not intend to tie the reference
permanently to any specific edition of Statutes; and,

(b) the reference is in a section of the bill which either
amends an existing statutory section or proposes new law to be
included in Statutes.

An example of the proper form for a reference to an
existing statutory section under these circumstances is: "...

as provided by section 14.31"

The proper form for a reference to a section of a bill
which is proposing a new section to be added to Minnesota

Statutes is different. A reference to a new section of law

cannot be made by referring to proposed coding. The reference
must be a cross-reference to the bill's section number. For
example: "... as provided by section 14"

When a reference is made only to a statutory section number
without the title and date of the edition, the reference
includes any future amendments to the statutory section.
Minnesota Statutes 1980, section 645.31, subdivision 1, provides

that adoption of another law by reference also adopts any
subsequent amendments to the law unless it is specifically
provided to the contrary.

A reference in the text of a bill to an existing section of
the Statutes must include "Minnesota Statutes" and the date of

the edition if:

(a) the drafter does intend to tie the reference permanently to either the current or specific prior edition of Statutes; and,

(b) the reference is in a section of the bill which either amends an existing statutory section or proposes new law to be included in Statutes.

An example of the proper form for a reference under these circumstances is: "... as provided by Minnesota Statutes 1941, section 14.41" This method of referencing invokes the exception to the general rule provided by Minnesota Statutes 1980, Section 645.31, Subdivision 1. Unlike the reference above which refers simply to a section number without referring to a particular compilation of Minnesota Statutes, the form of reference in this paragraph will not be interpreted to include any future amendments to a referenced section.

A reference in the text of a bill to an existing section of Statutes includes Minnesota Statutes but not the date of the edition if:

(a) the reference is in a section of a bill which is not intended to be included in Statutes;

(b) the section containing the reference amends a session law section; or,

(c) the section containing the reference amends a bill section of another bill not yet filed with the Secretary of State and not intended to be included in Statutes.

An example of the proper form of reference under these circumstances is: "... as provided by Minnesota Statutes, section 14.31" The date of the edition is used if the drafter intends to tie the reference permanently to the section as it appears in the edition of that date. Naming Statutes is required because the language will only appear in Laws and it is best that the publication be named when referring to a publication outside Laws.

Laws of Minnesota. The introductory phrase used for a section of a bill which proposes an amendment of Laws should

refer to Laws in a shortened fashion. For example: "Laws 1967, Chapter 406, Section 1, is amended to read." Joint Rule 2.01 requires use of this introductory phrase. However, the long form is used in the text of the bill. For example: "... as provided by Laws of Minnesota 1967, chapter 406, section 1, ..."

Federal Laws and Regulations. Adoption of federal laws and regulations is problematic. References to this "foreign" law may only be to the law as it exists at the time the Minnesota law is enacted (see Revisor's Manual, Section 2.7(h)). A drafter should never draft language attempting to adopt federal laws or regulations as they may be amended in the future. This would possibly be an unconstitutional delegation of power to the federal government.

When adoption of federal law or regulation by reference is necessary, it should follow a consistent form. If federal law has been compiled in the United States Code, the reference should always be to it and not to Statutes at Large. If not compiled in United States Code, the reference may be to Statutes at Large. If not yet published in Statutes at Large, its slip law number may be used.

The correct forms of reference are "... as provided by United States Code, title 14, section 1401, as amended through December 31, 19XX ..."; or, "... as provided by Statutes at Large, volume 38, page 730, section XXX ..."; or, "... as provided by Public Law Number 89-110 ...". For the United States Code, reference may be made to a chapter within a title rather than a section. For Statutes at Large, reference may be made to inclusive page references rather than to a section on a page. In choosing a form, use the most precise reference possible. Abbreviations for the titles ("U.S.C.," "Stat.," "Pub. L.," or "P.L.") should not be used. The date for the United States Code is necessary to tie the reference to the law in existence at the time the law is enacted. The other references are, by nature, tied to a specific enactment. Reference to federal law should never be made to it by its

popular name (for example: "The Furgeson-Jones Act) or its short title (for example: "The Inland Waterways Improvement Act of 1947). These types of references should not be used because of the difficulty in locating the compilation of the law. It is also unclear whether the reference is intended to be to the laws as originally enacted or to the law with amendments enacted prior to enactment of the bill referring to the law. The one exception to the rule that reference may not be made to a short title is the Internal Revenue Code which may be referred to directly. The correct form is "... as provided by the Internal Revenue Code of 1954, as amended through December 31, 1980 ..."

All references must be to the official compilation United States Code not to the unofficial United States Code Annotated or United States Code Service.

When referring to the Code of Federal Regulations, an example of the proper form of reference is "... as provided by Code of Federal Regulations, title 22, section 41.30 (1981)" The abbreviation "C.F.R." or "CFR" should not be used.

Only when a rule is not yet published in the Code of Federal Regulations should reference be made to the Federal Register. An example of the correct form is "... as provided by Federal Register, volume 46, page 23405 (1981)" References to the Federal Register are to its volume and page number, not to any section or paragraph numbers within a document published in it.

If a reference must be made to Statutes at Large, a slip law number, or the Federal Register, an Instruction to the Revisor should be added to the bill authorizing the Revisor to change the reference to United States Code or Code of Federal Regulations when the referenced text is compiled.

Other Publications. Numerous references occur in Statutes to various building and safety codes. They can be adopted by reference, but the same problems exist when adopting them by reference as when foreign law is adopted by reference. The drafter should use language which adopts a code as it exists on

a specific date prior to enactment. References should not attempt to adopt future amendments. The proper form of reference is " ... as provided by standard 501B of the National Fire Safety Code as in effect on December 31, 1980" This form has three elements. The exact wording of the reference may vary slightly as long as all three elements are included and in the same order as listed here. First, number of the standard. Second, identification of the source of the standard by its title or publisher. Third, the date must be prior to the effective date of the bill in which the reference occurs. Ideally, the date should be one with its publication date shown on the publication in which the standard is contained.

The laws of other states, the United States Code Congressional and Administrative News, and the Congressional Record may provide useful information for duplication in the Laws of Minnesota, but they should not be incorporated by reference. Instead, the language from those sources should be duplicated.

9. Preferred Spelling and Hyphenation. An examination of Minnesota Statutes shows that certain words are spelled or hyphenated inconsistently. The preferred methods of spelling or hyphenation are indicated below.

Spelling. Words that have been inconsistently spelled in statutes are listed below. The preferred spelling appears first.

If you have doubts about the correct spelling of a word not listed here, use the spelling of the main entry in Webster's Third New International Dictionary (the BIG dictionary). If you have a smaller Merriam-Webster dictionary at your desk, you may also use it. Don't use the small blue "Webster's Dictionary"; it isn't really a Webster's.

| USE --- | NOT --- |
|----------------|---------------|
| archaeological | archeological |
| abettor | abetter |
| achievable | achieveable |
| actuarially | actuarily |
| adviser | advisor |
| calving | calfing |
| cancelable | cancellable |
| cancelation | cancellation |
| canceled | cancelled |
| canceling | cancelling |
| descendant | descendent |
| drought | drouth |
| enrollment | enrolment |
| includable | includible |
| inhibitor | inhibiter |
| initialed | initialled |
| input | imput |
| installation | instalation |
| installment | instalment |
| inure | enure |
| jailer | jailor |
| judgment | judgement |
| labeled | labelled |

| | |
|-------------------------|----------------|
| liter | litre |
| marshal (unless a name) | marshall |
| milliliter | millilitre |
| mislabeled | mislabeled |
| movable | moveable |
| noncancelable | noncancellable |
| payer | payor |
| pharmacopoeia | pharmacopeia |
| requester | requestor |
| reusable | reuseable |
| theater | theatre |
| traveling | travelling |
| transferable | transferrable |
| transferee | transferree |
| transferor | transferror |

Solid, hyphenated or open? To answer hyphenation

 questions, first consult the big Webster's. If that doesn't
 help, check the Gregg Reference Manual. A list of the preferred

 treatments for words that have been treated inconsistently in
 statutes follows. The words are shown in the preferred form.

| | | |
|-------------|---------------------|-------------------|
| airborne | copartner | home state |
| areawide | copayment | ill fame |
| audiovisual | corepresentative | ill-famed |
| aboveground | cotrustee | ill will |
| aftercare | counterclaim | in camera |
| backfire | countersigned | industrywide |
| backup | courthouse | inpatient |
| barbershop | cutout | in-service |
| bathhouse | data communications | interconnection |
| bearbaiting | deicing | intercounty |
| biweekly | equidistant | interrelationship |
| boldface | even-numbered | intracity |
| bold-faced | ex officio | intracompany |
| bypass | extracurricular | intraoffice |
| byproduct | extraterritorial | iron sulphides |
| carryall | feeble-minded | job-related |

| | | |
|----------------|---------------------------|-------------|
| checkoff | firefighting | job-sharing |
| checkout | full-time, (if adjective) | joint-stock |
| coconservators | fundraising | loose-leaf |
| cofiduciary | high-water | mailbox |
| comaker | home ownership | |

multi - Don't hyphenate after multi - unless the next word is capitalized or more than one word.

muzzle-loading

non-American - and other capitalized words

non-Bessemer - and other capitalized words

non compos - and other Latin phrases

non-ex officio - and other two-or-more-word phrases

odd-numbered

on-the-job training

onion sets

outgoing

outlot

part-time, (if adjective)

persons in charge

pierhead

pigeonhole

post - Don't hyphenate after post unless the next word is capitalized or more than one word.

post office

pre - Don't hyphenate after pre unless the next word is capitalized or more than one word.

profit sharing

pro rata

self-propelled

self-sealing

shatterproof

startup

statewise

stepparent

stillbirth

stockpile

stony

sub - Don't hyphenate unless next word is capitalized
or more than one word.

surveyor in training

systemwide

takeoff

tenant in common

test bottles

timetable

topsoil

trademark

treasurer-elect

tree planting

truth-in-lending act

twofold

10. Style Guidelines.

X.1 FOREWORD

The revisor's office is issuing this style guide to help drafters of bills and rules to write well. The guide will help drafters in the revisor's office to edit the work of other drafters carefully and consistently, and it will help typists, data entry operators, proofreaders, and editors to make and suggest corrections.

The guide establishes office policy on good writing by requiring some practices and forbidding others. Most drafters will need to change some of their writing habits to conform to the requirements set out here. Because changes in language habits come slowly and require effort, we suggest that drafters use these techniques to learn the guide's rules:

1. With the help of people who read your work often, identify any habits you have that conflict with this guide's requirements. Are you addicted to the passive voice? Do you depend on legalisms? You can change these habits only if you know that you have them.
2. Post the guide's lists of forbidden words and phrases, along with a list of your own writing problems. The lists will help jog your memory.
3. Take some old samples of your own work and practice editing them for the listed problems.
4. At first, draft as usual and edit in a separate step. Gradually, you will start to edit sentences as you write them.
5. Make a habit of putting your work aside for a day, returning to it later to edit and revise. Because some problems are evident only to new eyes, always have someone else read your work.

Once learned, the methods in this guide will help drafters produce clearly written bills and rules. But no method can be effective unless drafters care enough to apply it. Whether you have been drafting for a short time or for many years, take this opportunity to review your own style and to learn how you might do better at getting through to your readers.

X.2 "PLAIN ENGLISH," "PLAIN LANGUAGE," AND "CLEAR WRITING"

Bills and rules are different from most other written English. Of the twelve available tenses they use two or three. They never question or exclaim; they never address the reader or refer to the writer. Their sentences are blocked by verbal traffic jams--references, conditions, and exceptions. They are hard to write.

This does not mean that they should be hard to read. They don't have to sound stuffy, old-fashioned, or bureaucratic. The revisor's office believes that clear style--the style explained in this guide--gives bills and rules the dignity that the law deserves.

Achieving clear style means using the principles embodied in "plain English" or "readability" laws, but it also means going beyond these principles. A brief review of Minnesota's readability laws (Minnesota Statutes, chapter 72C; section 325G.31; and section 648.50) will show why none of these laws alone is a test of clear writing.

Of the three, chapter 72C contains the most complicated measures of readability. It provides that insurance policies must be written in "language easily readable and understandable by a person of average intelligence and education," (section 72C.06, subdivision 1). To show whether it is written simply enough, every policy must be scored on the Flesch test and must earn a score of 40 or higher on a scale of zero to 100. (For a detailed description of the Flesch test, see the section on evaluating readability, p. 83-86.)

In Rudolf Flesch's own writings, a "reading ease" score of 40 is called "difficult" and is said to be aimed at people with some college education; so earning a Flesch score of 40 will not ensure that your work is easy to read. In fact, no score or formula will. The Flesch test, like the Fog Index, the WRITE formula, and other readability formulas, is primarily based on the average number of words per sentence and the average number of syllables per word in a given passage. Many variables that

affect the clarity of writing don't affect a Flesch score at all; clear headings and tables of contents, good organization, and well placed modifiers are just a few examples. A readability formula can alert writers in a general way to the formality and wordiness in their writing because nominal style (see p. 40), passive voice (see p. 48), and legalese (see p. 33) will produce a low Flesch score. But a score alone won't tell drafters what or where their problems are.

Perhaps for this reason, chapter 72C tells evaluators of insurance policies to look for short sentences, common words, definitions incorporated into text, and minimal use of internal references and legal terms. These are some of the real bases of clear writing.

Section 325G.31 goes further. Called the "Plain Language Contract Act," it requires consumer contracts to be written "in a clear and coherent manner using words with common and everyday meanings and...appropriately divided and captioned by [their] various sections." This wording is based on New York's pioneering "plain English law." Again, the law stresses common words, but it adds important points: organization and headings. It requires that a whole law hang together and that its parts be captioned so that readers can find what they need at a glance. On the other hand, it says nothing about clarity of sentence structure.

Section 648.50, subdivision 6, merely requires the revisor of statutes to "use plain language" and "avoid technical language" in compiling state agency rules.

Using the concepts laid out in these laws, this guide explains what the revisor's office will require of the writing in bills and rules. But the guide also requires practices that go beyond the law. All the requirements state the same general principle: Communicate with your reader.

X.3 BEFORE YOU DRAFT

(a) Identify your audience.

Bills and rules are not all aimed at the same readers.

Many drafters believe that because courts and lawyers will test a law's language, courts and lawyers are the law's audience. This is not the whole truth. Bills and rules should be addressed to the people who will have to obey them and who will have to understand what they mean in order to know whether they want them enacted. Government should not have to hire armies of editors to make bills and rules clear to ordinary people. Certainly courts and lawyers will have to interpret the law, but they are a secondary audience, not a primary one.

Who is the primary audience? It varies with the bill or rule. If your bill regulates migrant labor and orders recruiters and employers to put workers' terms in writing, then employers, recruiters, and workers are your audience, an audience with limited education. On the other hand, if you are drafting a rule regulating securities sales, then brokers and bankers are your audience, and your rule will have to use the technical vocabulary of their trade. A law addressed to people in general--for example, a law prohibiting dumping in state parks--ought to comply with the insurance readability laws and aim at people of "average intelligence and average education."

Writing for a less knowledgeable audience means that you must work hard at keeping sentences short and eliminating or defining difficult words. But writing for a knowledgeable audience does not give you an excuse to write long, unwieldy sentences. For sophisticated readers you may be able to be briefer; you can pack information into specialized words. For other readers your material must be less dense.

(b) Put your material in order.

It does not matter what order you follow in drafting the provisions of your bill or rule. You can develop an overall outline after you have done your research, or you can draft the key provisions first and fill in the details later. As long as

you stay in touch with the requester or agency and are willing to change your draft as the requester's ideas develop, any method will work. What matters is the way the bill or rule looks on the page. The key question is: Can readers find what they need to know?

They will be able to find what they need if your headnotes show a pattern of organization. You will have to put definitions first and basic provisions before special cases, but for everything else you're free to use one of several patterns.

First, try chronological order. This works especially well in rules that describe procedures, but it also works in bills. For example, a section regulating employers' treatment of migrant workers might tell what employers must do at several stages of the work season:

- when they recruit and hire;
- when they write contracts guaranteeing hours and pay;
- when they meet special situations when a worker is fired, quits, becomes ill, or refuses to work;
- when they pay wages; and
- when they settle at the end of the season.

Using chronological order may mean preferring one audience to another. For example, rules governing prisons affect not only prisoners but prison workers who must comply with the rules and agency workers who have to check compliance. There is no particular order to obeying these rules. It might be best to decide on a convenient order for inspection and to order rules that way. If food service, health equipment, and sanitation will be checked together, rules governing them should be next to one another.

Not all chronological order is this obvious. It may take some discussion within a staff to decide what the order of sections or parts should be.

If the law affects several audiences, you can write a separate section for each audience. This saves readers from having to plow through long paragraphs to find the parts that apply to them. Here are some headnotes from a federal

regulation; they show how the regulation is divided for its audiences:

Part 126--Health Education

Assistance Loan Program

Subpart A - General Program Description

Sec. 126.1 What is the HEAL Program?

Subpart B - The Borrower

Sec. 126.5 Who is an eligible student borrower? .

126.6 Who is an eligible non-student borrower?

Subpart C - The Loan

Sec. 126.10 How much can be borrowed?

Subpart D - The Lender

Sec. 126.30 Which organizations are eligible to apply to be HEAL lenders?

Subpart E - The School

Sec. 126.50 Which schools are eligible to be HEAL schools?

Use alphabetical order for your subdivisions or subparts if ----- there is no other logical format that will show up in headnotes. Here is part of the recompiled order of the Board of Teaching rules describing the courses secondary teachers must take to be licensed in certain subject areas:

- 2.02 Agriculture
- 2.03 American Indian Language and American Indian History or Culture
- 2.04 Art Education
- 2.07 Business and Office Education
- 2.08 Driver Education
- 2.10 English-Language Arts

Teachers who move to Minnesota will have no trouble checking this list to learn whether their major coursework qualifies them for licensure.

Keep in mind what the headnotes and tables of contents will look like. See the specific section on HEADNOTES, p. 65, for more suggestions. Remember that your pattern of organization, whatever it is, should be clear from your headnotes.

X.4 WHILE YOU DRAFT

(a) Words

(1) Don't vary your terms.

Throughout your draft, use one term consistently to mean one thing. This rule seems easy to follow, but this definition shows how thoroughly it can be broken:

...Unless the context clearly indicates a different meaning, "Warehouse" may be used interchangeably with "elevator," "storage house," or "facility."

The same problem appears here:

Community water supplies which serve a population of 10,000 or more individuals...shall analyze for total trihalomethanes in accordance with this section,....Systems serving 75,000 or more individuals shall begin sampling and analysis not later than January 1, 1982.

Drafters make variations like these unconsciously.

Variations often show up near the beginnings of sentences, which usually don't deliver new information and so get less of drafters' attention. To keep from varying your terms, choose one of the terms available, try to use it consistently, and check your draft or have someone else check it for variations, especially near sentence beginnings.

(2) Don't use obsolete or vague words and phrases.

Do not use the words on the list below: they are often unclear and nearly always unnecessary. Even an audience of lawyers will find it easier to read bills or rules without these words.

DON'T USE

all, any, each, every, some
such, said, same

USE

a, an, the
a, an, the, it, that,
them (or some other
noun or pronoun,
or nothing)

above, aforesaid, aforementioned,
beforementioned, hereby, herein,
hereinafter, hereinbefore,
herewith, therefor, therein,
thereinafter, thereinbefore,
thereof
thereupon, whereupon
to wit

Name a specific
section or part.

when, at that time
namely

(3) Limit your use of "shall".

Most speakers of English stopped using shall to mean "is
ordered to" in the seventeenth century. Dictionaries show that
we generally use shall as a strong form of will; so to most
readers the lawyer's shall is an obsolete legalism.

Dr. Janice Redish, in "How to write administrative
rules...in clear English," tells us not to use shall at all and
to substitute must, but for most drafters this is far too
radical a change. So the rules given here, backed by the
authority of drafting experts, keep shall but minimize its use:

Use shall when you are imposing a duty on a person or body:

"The licensee shall give the debtor a copy of the signed
contract," or "An association that issues shares by series
shall keep a record of every certificate that it issues."

Use must, not shall, to talk about a thing rather than a
person:

"A copy of the signed contract must be given to the
debtor," or "A record must be kept whenever a certificate
is issued."

Provide for a penalty if you want to be certain that your
must will be interpreted as mandatory.

Use must to express requirements (as opposed to duties):

"Public members of the board must broadly represent the
public interest and must not be members of health
professions licensed by the state of Minnesota..."

In conditions, don't use shall at all. Use present perfect
tense, not future perfect. Don't write, "If it shall have been
-----"

established..." Write, "If it has been established..." Don't write, "When the officers shall have completed their investigation..." Write, "When the officers have completed their investigation..."

Use need not or is not required to, to say that a thing is not required:

"If fewer than seven people object to the rule, a hearing need not be held," or "no hearing is required."

Use should to mean "ought to" (as opposed to "must," or "have to"). Reserve this for provisions that are directory and not mandatory.

Use may to mean "is permitted to" or "is authorized to" or "is entitled to" or "has power to:"

"The commissioner may call a special meeting of the board when necessary."

Use may not or must not to mean "is forbidden to" or "is prohibited from." Don't use shall not. Say "no person may," not "no person shall."

In definitions, write means, not shall mean. Write "have the meanings given them," not "shall have the meaning given them."

Don't use shall to say what the law is, to make a law that accomplishes itself. For example, say that money is appropriated, not that it shall be appropriated. Say that a person who commits a certain crime is guilty of a misdemeanor, not shall be guilty. Write "Grammatical errors do not invalidate a law," not "Grammatical errors shall not invalidate a law."

(4) Write in the third person.

This rule is a compromise between the needs of statutory drafting and the requirements of plain English. Most plain English contract laws call for the use of the second and first person--addressing the consumer as "you" and calling the company "we." Dr. Redish recommends this approach for agency rules as well. The revisor's office has a reason for not adopting this

suggestion: we want bills and rules to be written in the same style. Using 'we' and 'you' is probably impractical in bills which have to deal with several different sets of people and their duties at once.

(5) Use "speaking vocabulary," not writing vocabulary,

as much as you can without being slangy. The list below mentions some words to avoid and suggests some plainer words to replace them with, but there are many other words that should be avoided.

Use the list, but remember the principle: prefer the most familiar words. It is not the length of the word that matters, but the number of readers who understand it.

| DON'T USE | USE |
|--------------------|------------------------------|
| accorded | give |
| afforded | given |
| approximately | about |
| as to | about, concerning |
| attempt | try |
| cease | stop |
| commence | begin, start |
| deem | consider, judge |
| effect (as a verb) | make |
| effectuate | carry out, do |
| employ | use |
| endeavor (verb) | try |
| evince | show |
| expedite | hasten, speed up |
| expend | spend |
| expiration | end |
| formulate | make |
| forthwith | immediately |
| furnish | give |
| impact on | influence |
| indicate | show (or more specific verb) |
| inform | tell |

| | |
|--|------------------------|
| initiate | begin (depends on use) |
| inquire | ask |
| institute | begin, start, set up |
| interrogate | question |
| modify | change |
| necessitate | require |
| negotiate (in the sense of "enter into a contract with") | make |
| obtain | get |
| occasion | cause |
| portion | part |
| possess | have |
| preserve | keep |
| procure | get, obtain |
| prior to | before |
| promulgate | publish, make, adopt |
| proceed | go, go ahead |
| purchase | buy |
| pursuant to | under |
| remainder | rest |
| render ("cause to be") | make |
| render ("give") | give |
| request | ask for |
| require | need |
| retain | keep |
| specified ("listed, expressly mentioned") | named |
| subsequent to | after |
| suffer ("permit") | permit, allow |
| summon (verb) | send for, call |
| terminate | end |
| (be) unable to | cannot |
| utilize | use |

(6) Replace the following wordy expressions with their

shorter substitutes:

| <u>DON'T USE</u> | <u>USE</u> |
|------------------------------------|-----------------------|
| absolutely null and void and | |
| of no effect | void |
| adequate number of | enough |
| all of the | the |
| attains the age of | becomes...years old. |
| at the time, at such time as, | |
| at the time as | when |
| at that (this) point in time | then (now) |
| by means of | by |
| corporation organized and existing | |
| under Minnesota laws | Minnesota corporation |
| does not operate to | does not |
| due to the fact that | because |
| during such time as | while |
| during the course of | during |
| excessive number of | too many |
| for the duration of | during |
| for the purpose of holding (or | |
| other gerund) | to hold OR in |
| | holding (or other |
| | infinitive or gerund) |
| for the reason that | because |
| from and after | after |
| from July 1 | after June 30 |
| full force and effect | force, effect |
| in case | if |
| in order to | to |
| including but not limited to | including |
| in the event that | if |
| in the interest of | for |
| is able to | can |
| is applicable | applies |
| is binding upon | binds |

is entitled (in the sense of "has
the name")
is unable to
means and includes
not later than June 30, 1981
not less than
not to exceed

null and void
of a technical nature
on and after July 1, 1981
on or before June 30, 1981
or, in the alternative
party (person, individual)

per annum, per day, per foot
per centum
period of time
pursuant to
remainder
sole and exclusive
sufficient number of
the manner in which
to the effect that
true and correct
under the provisions of
unless and until
until such time as
whatssoever
whensoever
whenever
wheresoever
whosoever
with the object of changing (or
other gerund)

is called
cannot
means
before July 1, 1981
at least
not more than OR
that may not exceed
void
technical
after June 30, 1981
before July 1, 1981
or
person (but keep in mind
the statutory definition
of person)
a year, a day, a foot
percent
period, time
under, according to
rest
sole
enough
how
that
true, correct
under
unless, until
until
whatever
when, it
when, if
wherever
whoever
to change (or

other infinitive)

(7) Avoid nominal style.

Many verbs have related nouns: decide is related to decision; complain, to complaint; speak, to speech. Often an idea can be expressed with a verb or with a related noun.

For example, you can complain or make a complaint.

Writing that uses verbs (verbal style) is usually brief and clear. Writing that uses nouns (nominal style) can be too formal and wordy. Most drafters overuse nominal style and need to be trained to prefer verbal style.

| DON'T USE | USE |
|--|----------------------------|
| to implement pupil behavior management techniques... | to manage pupils' behavior |
| established a contractual relationship with... | contracted with |
| has knowledge or suspicion that... | knows or suspects that... |
| make application for | apply for |
| make payment for | pay for |
| make provision for | provide for |
| upon X's request to Y | if X asks Y |
| upon a determination by X that | if X determines that |

There are many other possibilities. The suffixes -ance, -ancy, -ant, -ence, -ency, -ent, -ion, and -ment often mark nouns derived from verbs, so check for nominal style whenever you see these suffixes. Not all nominals, however, show how they are related to specific verbs. For example, "to have an adverse impact on the environment" could mean "to harm the environment" or "to disturb the environment" or any of a number of verbs. Nominals of this kind are harder to spot and correct, so learn to concentrate meaning in your verbs in the very first draft.

(8) Avoid creating jargony, unclear names.

Jargon has neutral and negative meanings. It refers to the

useful technical vocabulary of a trade or profession, but it is also used for unclear expressions that have a technical ring. Real technical language can save time and space; if your audience understands it and expects it, then use it.

Jargon-like terms created to dignify your subject are simply hard to read. Learn to recognize them and weed them out.

i. If you must create a general term, don't make it more general than necessary.

Government writing is said to be full of "buzzwords," phrases that sound imposing but mean little. It's not hard to see why we write them. In rules especially, drafters have to create names that cover broad classes. For example, the phrase "health care facility" in a rule might cover hospitals, clinics, and nursing homes.

To avoid creating buzzwords when you write broad terms, don't depend on abstract words like facility, entity, organization, and structure. Phrases like "regional channel entity," "entity operational structure," or "parallel policy options" are meaningless unless the reader looks back at the definitions. Be as specific as possible. Don't call something a "programming entity" if you can call it a programming company. If certain boards grant licenses, don't call them "credentialling organizations;" call them licensing boards.

This advice is part of a larger rule: use concrete words. Watch out for fuzzy words like area, aspect, facet, degree, and matter.

ii. Avoid strings of nouns and adjectives. These strings are hard to read because they mask relationships between words. You may need more words in order to make their relationships clear, as these examples show:

| DON'T USE | USE |
|---|--|
| electronic financial terminal authorization application | application for the right to use an electronic financial terminal. |
| Flesch scale analysis | Flesch test score, or read- |

readability score

ability score on the Flesch
scale.

early childhood program

case loads for early

alternative case loads

childhood programs

iii. Avoid strings of initials. Initials are hard to read because they force a lay reader to go back to the definition section and to make repeated mental substitutions. If you don't want to write the phrase "large electric power generating plant" over and over, don't call it an LEFGP. Instead, define a short substitute like "large power plant" or just "plant."

Some drafters argue in favor of noun strings and initials; they note that people coin expressions like these constantly in speech and may be using them regularly by the time they draft a bill or rule. While this is true, the audience for bills or rules may not be using the same expression that legislators or agencies are using. Use whatever is most familiar to your readers. If you must create an expression, remember that what you create is likely to be perpetuated in future bills and rules.

What if the jargon already exists in the law? Drafters are conservative by nature; they often repeat any language that works legally in order to avoid lawsuits. For example, the phrase "Flesch scale analysis readability score," which would horrify Dr. Flesch by its unreadability, was copied into Minnesota law from another state's draft, probably before any court had offered an opinion of the phrase. It is certainly not the clearest or briefest way to refer to the Flesch test. Let your guide be communication with your readers, and don't preserve bad wording unless you have a compelling legal reason. Consistency is valuable, but so is clarity.

A final warning: be on guard against euphemisms. When rules are very controversial, drafters are tempted to coin words that tone down the controversy. An example is the phrase "pregnancy termination facility" to refer to a clinic where legal induced abortions are performed. The usual words

"abortion clinic" stir up so much argument that the drafter has tried to avoid the argument by avoiding the words.

When you feel the need to make up a new, neutral term, remember a few truths about people, language, and the reputation of government writing. An obvious euphemism will offend just as many people as an emotionally charged word. When it becomes familiar it will be just as offensive as the phrase it replaced. The euphemism you write will add to the abundant evidence that government writing tries to hide the truth; it will lessen public respect for rules. It may not even get through to your readers if it differs from the terms they understand.

(b) Sentences.

(1) Write paragraphs, not outlines. Use outline style sparingly.

Some authorities on drafting maintain that long sentences are clearer if they are set out in outline form. This example is from Richard Wydick's Plain English for Lawyers:

One who is liable to another for interference with a contract of prospective advantageous economic relation is liable for damages for:

- (a) the pecuniary loss of the benefits of the contract of the prospective relation;
- (b) other pecuniary loss for which the interference is a legal cause; and
- (c) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.

For this example, the advice is true; outline style helps. Outlining can, however, be taken too far. Most long, tabulated sentences do not need to be as long as they are. Here is a case in which outlining has created a monster:

(a) "Firefighter" includes an employee whose primary duties, as set forth in the official position description, require the performance of work directly connected with the

control and extinguishment of fires, or the maintenance and use of firefighting apparatus and equipment.

(b) "Firefighter" also includes an employee who is transferred to a position the primary duties of which are not the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, or from such a position to another such position, if -

(1) Service in the position transferred to follows

service in a firefighter position without -

- (i) a break in service of more than three days; or
- (ii) intervening employment that was not as a firefighter;

(2) The duties of the position transferred to are in the firefighting line of work in an organization with firefighting responsibilities; and

(3) The position transferred to is -

- (i) Supervisory - one which requires a duty of supervising subordinate employees who are directly engaged in firefighting and/or in the maintenance and use of firefighting apparatus and equipment; or
- (ii) Administrative - one which includes an executive or managerial position and may include a clerical, technical, semiprofessional, or professional position of a type also found in organizations with not firefighting responsibilities; provided, that experience as a firefighter is a basic qualification for the administrative position.

True, outline style makes it possible to read this otherwise unreadable sentence, but it does not make the sentence easy to read. Every numbered or lettered part is a sentence fragment, meaningless unless the reader works backward in the sentence to see how the part relates to the other parts. By the time readers get to (2), they have to survey the letters and numbers to be sure that (2) is one of the conditions governed by if.

The drafter could have made the same points more clearly in sentences like these:

"Firefighter" includes employees whose primary duties, as shown in their official job descriptions, are controlling and putting out fires or maintaining and using firefighting equipment.

"Firefighter" also includes employees transferred from firefighting jobs to other jobs. To be considered firefighters, transferred employees must be supervisors of firefighters or must hold jobs that require previous firefighting experience. They must work for organizations with firefighting responsibilities and their duties must be in the firefighting line of work. Between the firefighting jobs and the supervisory or other jobs, they must not have spent more than three days out of work or worked at any job other than firefighting.

These rewritten sentences use brevity and clarity rather than white space to get their meaning across. They omit needless words and turn subordinate clauses and noun phrases into sentences. There may be times when you must use an outline or even a table, but choose these as last resorts when you can't break up sentences any further. To learn more about the dangers of outlines, see the section on LISTS, p. 67.

(2) Don't try to squeeze everything into one sentence.

Many of Minnesota's statutes are written in an archaic single-sentence form:

In the prosecution of any offense committed upon, or in relation to, or in any way affecting real estate, or any offense committed in stealing, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it shall be proved on trial that, at the time when such offense was committed, either the actual or constructive possession, of the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. This sentence is frightfully hard to read because the most important parts are buried in separate phrases near the end. Don't use sentences like these as models of legal writing. Many of the recommendations below suggest ways to break up long

sentences so that you can keep your average sentence length under 25 words.

If your subject forces you to use terms of art or other difficult words, make your sentences proportionately shorter.

(3) Don't make the reader wait too long to see the subject of the sentence.

The first difficulty readers meet in the example above is in finding the main thought of the sentence. The main clause starts with "it shall be sufficient..." There are thirty-nine words in front of it; they describe circumstances but force us to wait a long time to find out what the circumstances relate to. When we finally find the main clause, we have to wade through even more information.

To avoid losing your audience, limit your introductory phrases or clauses to 20 words. See p. 51 for hints on cutting these clauses or phrases down. If the information will not fit into 20 words, put it in a separate sentence:

At a trial, ownership of real estate or personal property is sufficiently proved if the person or community named in the indictment or other accusation as owner of the real estate or personal property is proved to have had actual or constructive possession of the general or special property, in whole or in part, when the offense was committed. Proof of this type is not a variance. This section applies to any prosecution of an offense affecting real estate or committed in stealing, destroying, injuring, or fraudulently receiving or concealing any personal property.

(4) Don't use, "which + noun".

The following sentences contain obsolete types of relative clauses:

The executive secretary shall give as much notice as possible to all board members prior to any special meeting, which notice shall state the time, place, and subject matter of the meeting.

All parties have the right to a hearing before the hearing examiner at which hearing the parties may cross-examine witnesses....

Changing the relative clauses to separate sentences produces more modern English and shorter sentences:

Before any special meeting, the executive secretary shall give all board members as much notice as possible. The notice must state the time, place, and subject matter of the meeting.

All parties have the right to a hearing before the hearing examiner. At this hearing, the parties may cross-examine witnesses....

(5) Don't put more than one word between the parts of a verb.

Most sentences in rules and bills have verbs with more than one part: shall + (verb), may + (verb), must + (verb), and so on. Sometimes a word is placed between these parts, as in "The commissioner shall immediately order an investigation of a reported epidemic."

One-word adverbs in this position do no harm; sometimes they are necessary. But longer divisions are difficult to read, as in this sentence:

Within ten days after service of the notice of appeal, the appealing party shall in writing, with a copy to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record, order from the Bureau of Mediation Services a transcript any parts of the proceedings it deems necessary..."

The interrupting words make no sense without the verb order, but the reader must struggle through 20 words to reach it. The interrupting words would serve better as a separate sentence:

...the appealing party shall order from the Bureau of Mediation Services a transcript of any parts of the proceedings it considers necessary. The transcript order must be in writing. The appealing party shall give a copy of the transcript order to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record.

Avoid interrupting any group of words that must be understood together. In this sentence, the interrupted phrase is underlined:

The judge or magistrate must commit the accused to the county jail for such a time, not exceeding 30 days specified in the warrant, as will enable the arrest of the accused to be made.

Again, the interrupting words should be a separate sentence.

(6) Never use the passive when you can use the active.

This advice is quoted from George Orwell's Politics and the English Language, an essay that first appeared in 1945. The advice has been repeated for 36 years, but it never seems to take hold. Maybe it needs to be better explained.

i. What is passive voice?

A sentence is in the active voice when the subject "does" the verb: "Agencies publish rules in the State Register," is in the active voice. "Rules are published in the State Register by agencies," is in the passive voice because the subject rules is not the doer of the verb are published. The doer shows up in the words by agencies. "Rules are published in the State Register" is still in the passive voice, although the doer of the action does not show up at all.

Another way to recognize passive voice is to look for the verbs be, is, are, was, were, has been, have been, and had been followed by words that end in -ed, -t, or -en. Here are some examples:

is taken

shall be arithmetically averaged
are taught
have been reduced

Clauses or sentences that contain verbs like these are in the passive voice.

ii. What's wrong with passive voice?

In laws and rules, passive sentences without phrases containing "by" are dangerous because they do not say what duties are assigned to whom. Wydick's Plain English for Lawyers demonstrates the problem with this sentence from a patent license:

All improvements of the patented invention which are made hereafter shall promptly be disclosed, and failure to do so shall be deemed a material breach of this license agreement.

Nothing in the sentence tells us who must disclose improvements to whom. If rules and laws exist to explain people's responsibilities, then drafters must avoid sentences that don't assign responsibilities clearly.

iii. When is it safe to use passive voice?

Passive voice lets you put old or repeated information at the beginning of the sentence where it demands less attention and new information at the end of the sentence where it stands out.

The indictment, information, or affidavit must charge the person with having committed a crime. The indictment, information, or affidavit must be authenticated by the executive authority making the demand.

Passive voice can also let you put a long string of nouns at the end of a sentence so that your reader will not have to work through the series before coming to the verb:

The application may be made by the prosecuting attorney of the county in which the offense was committed, the parole board, or the chief executive officer of the facility or sheriff of the county from which the person escaped.

Sometimes passive voice will help you to avoid using he or she. See the section on avoiding gender-specific language, pp. 73-74.

When you use passive voice for any of these reasons, be certain that the duty or permission is assigned clearly, either

in the passive sentence or in one of the sentences nearby.

iv. When is the passive voice unnecessary?

When the passive voice does not solve these specific problems, it is probably needless. When a sentence contains a phrase beginning with by ("by the commissioner") and that phrase is not at the end of the sentence, you can safely change the sentence to active voice.

Passive: The required monitoring frequency may be

reduced by the commissioner to a minimum of one
sample analyzed for total trihalomethanes per
quarter.

Active: The commissioner may reduce the required

monitoring frequency to a minimum of one sample
analyzed for total trihalomethanes per quarter.

Passive: When a demand shall be made upon the

governor of this state by the executive authority
of another state for the surrender of a person
charged with crime...

Active: When the executive authority of another

state demands that the governor of this state
surrender a person charged with crime...

Drafters use the passive voice needlessly when they concentrate on things and requirements rather than on people and duties. For example, the passive sentences above concentrate on "the required monitoring frequency" and "a demand." Remember that it's better to impose a duty or grant a permission in the active voice than to state a requirement in the passive.

(7) Watch out for long words; they signal passive voice and

nominal style.

If you have used several three-syllable or four-syllable words, you probably need to revise the whole sentence. Here is

an example:

"Customer" means any person who has established a contractual relationship with a financial institution whereby that person is authorized to initiate any of those functions permitted to be performed under the Act at a terminal."

All the words are familiar, but their order makes them difficult. Here are revisions that get rid of the nominal, abstract, and passive constructions:

has established a contractual relationship

has contracted OR has a contract

relationship...whereby that person is authorized

contract...that gives the person the right

initiate...functions at a terminal

use a terminal

functions permitted to be performed under the act

in ways the act allows

The phrase "financial institution" might have to be kept if the drafter needs a very general term.

The whole first revision reads this way:

"Customer" means a person who has a contract with a financial institution that gives the person the right to use a terminal in any of the ways allowed by the act.

The underlined phrases are still slightly unclear; the clause looks misplaced. A second revision for clarity reads this way:

"Customer" means a person who has contracted with a financial institution for the right to use a terminal in any of the ways allowed by the act.

If you follow the recommendations on clarity, you will sometimes produce shorter sentences. Removing passive voice, nominal style and complicated modifiers will shorten sentences as much as removing the listed wordy constructions.

There are five other ways to cut out words:

1. Avoid starting a sentence or clause with There is or There are or There shall be or There may be. Often these words are needless, as in this example:

There shall be excluded in computing the percent of voting power or value any stock owned directly by the other corporations.

The sentence is shorter if turned around:

Any stock owned directly by the other corporations is excluded in computing the percent of voting power or value.

If you want to put different information at the end of the sentence, you can write:

In computing the percent of voting power or value, any stock owned directly by the other corporations is excluded.

If you know who is to do the computing and the excluding, you can put the verb in the active voice and make the sentence shorter still.

ii. Cut clauses down to phrases. Clauses that contain who, which, or that plus have been, has been, or had been will sometimes work as well if those words are stricken:

"applicants who have been declared ineligible"

can become

"applicants declared ineligible."

But cut words carefully. Research shows that cuts of this kind can make sentences harder to understand.

iii. Remove redundant words.

Don't repeat words or elements of meaning. Most drafters don't see their own repetitions, so have another reader check for these errors. Here is an example:

The purpose of vision screening is to screen each applicant to guarantee that those individuals with substandard vision are required to take the necessary steps required to achieve the best vision possible.

iv. Avoid all wordy expressions, not only the ones peculiar to the law. Here are some examples:

| DON'T USE | USE |
|---------------------------------------|-----------------------|
| round in shape | round |
| red in color | red |
| sweet in taste | sweet |
| the condition of despair | despair |
| the fact that the defendant was young | the defendant's youth |
| despite the fact that | although |

because of the fact that

because

in many cases

often

in some cases

sometimes

v. Don't overdraft.

Usually this guide tells you to be as specific as possible. This advice does not mean that you should name every single thing you are forbidding or requiring.

This National Park Service rule has been called the classic example of trying to cover all the possibilities:

S 50.10 Trees, shrubs, plants, grass and other vegetation.

(a) General injury. No person shall prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower, or part thereof, nor shall any person permit any chemical, whether solid, fluid, or gaseous, to seep, drip, drain or be emptied, sprayed, dusted or injected upon, about or into any tree, shrub, plant, grass, flower, or part thereof, except when specifically authorized by competent authority; nor shall any person build fires, or station, or use any tar kettle, heater, road roller or other engine within an area covered by this part in such a manner that the vapor, fumes, or heat therefrom may injure any tree or other vegetation.

Dr. Redish points out that using general terms--like "No one may harm the plants,"--will probably give more legal protection than trying to list specific things.

(8) Put modifiers near the things they modify.

A modifier is a word or group of words that tells more about another word's meaning. In these examples, the modifiers are underlined:

the escaped prisoner

the executive officer of the county

an order that has been signed by the governor

an order signed by the governor

a document stating the accused's name

Modifiers should appear right next to the words they modify. When they don't, sentences at best look silly and at worst look confusing, as in this rule:

"The public school district or intermediary service

area shall inform the nonpublic school of the type, level, and location of health services that are to be made available to the nonpublic school students by August 15. --

Are the services to be made available by August 15, or is the district to inform the school by August 15? The drafter probably meant "...shall inform the nonpublic school by August 15..." and should have said it.

Here are some misplaced modifiers that are unintentionally funny:

"Card issuer means a financial institution... providing use of a terminal to a customer to be activated by a card."

"The goals of food service in each facility shall be to provide food and beverages to clients that are nutritionally adequate."

The law has enough problems without customers activated by cards or nutritionally adequate clients.

An especially infamous kind of misplaced modifier is the dangling participle. Participles are verb forms that end in -ed, -t, -en, or -ing. Here are two sentences that use participles correctly:

If asked to so do, the drafter should add an effective

date clause.

When completed, the draft should be sent to the

requester.

The participle goes with the nearest noun. The drafter is the one who is asked; the draft is the thing that is completed. Sometimes, though, a participle appears near a noun that it does not modify:

If asked to do so, an effective date clause

should be added by the drafter.

When completed, the requester should pick up

the draft.

These participles are called "dangling" because they are not

attached to the right words. In context, these sentences are probably clear, but to many readers they look absurd. Avoid them; put every modifier next to what it modifies.

(9) Keep parallel ideas in parallel form.

Drafters often pair or group similar ideas, but are not always careful to keep similar ideas in similar, or "parallel," form. Bad parallels show up often in lists, as they do here:

No applicant may be hired who has any of the following conditions:

- (1) blood pressure over 160/60;
- (2) any communicable disease as listed in Minnesota Health Department rules; or
- (3) applicant not of good general health.

The key word is "conditions." "Applicant not of good general health" is not the name of a condition in the way that "blood pressure" and "disease" are. Part (3) should be rewritten as "poor general health." Here is another example:

A person shall not drain, throw, or deposit upon the lands and waters within a state park any substance that would mar the appearance, create a stench, or destroy the cleanliness or safety of the park.

"Appearance," "cleanliness," and "safety" all go with "of the park," but "stench" doesn't. The sentence needs to be rearranged this way:

...anything that would mar the park's appearance, destroy its cleanliness or safety, or create a stench.

When you write a series or list, make sure that every item in it does the same job in the sentence. See the section on LISTS for more discussion.

(c) Specific Parts of Bills and Rules

(1) AMENDMENTS

Substantive changes

When you add material to a text, be careful where you put it. Don't add a long phrase or clause that interrupts the progress of a sentence. Instead, whenever you can, put the new material in a sentence by itself.

Example:

Don't write: "Such sampling shall begin before June 24, 1979. If the commissioner determines, on the basis of a sanitary survey which includes a determination of compliance with 7 MCAR SS 1.210-1.225, that it is more appropriate for the supplier to sample on a frequency other than quarterly, the commissioner shall impose a special sampling rate."

Write: "Such The sampling shall must begin before June 24, 1979. To learn whether the supplier must continue quarterly sampling, the commissioner may order a sanitary survey that shows whether the supplier has complied with 7 MCAR SS 1.210-1.225. If the commissioner determines sanitary survey shows that it is more appropriate for the supply to sample on a frequency other than quarterly, the commissioner shall impose a special sampling rate."

Don't add a sentence to any item in a list of sentence parts. For an example of this mistake, see LISTS, p. 84. You can add the material in a new paragraph right after the list and refer to the relevant part of the list. Better still, you can amend the whole list to make each item a whole sentence rather than a sentence part. See LISTS for examples of these changes.

If you add whole subdivisions, be careful to preserve logical order. Minnesota Statutes, section 303.13, subdivision 5 is an example of an added subdivision that was simply pasted on to the end of the section. The drafter would have done better to put the material with the other duties of the secretary of state.

Housekeeping changes

How much of a bill's or rule's old language should you change when you amend? Deciding this can be difficult; there will be times when you want to keep your housekeeping changes at a minimum in order to show your substantive changes as clearly as possible. Sweeping changes of style and vocabulary should

probably be made as revisor's bills so that they will be made consistently throughout a section. Here are the changes you should make routinely:

Add subdivision headnotes if there are none.

Get rid of obsolete or vague words and phrases (p. 33).

Get rid of shall when it is used incorrectly in self-effecting provisions (p. 35).

Get rid of wordy lawyerisms (p. 38).

Get rid of provided that (p. 69).

Split up long sentences (pp. 44-46).

Keep the capitalization and punctuation style of your added material consistent with the style in the rest of the law or rule or change the old language. If you want to make spelling changes, adopt the spelling of the word's main entry in Webster's Third New International Dictionary. You can use a smaller Merriam-Webster dictionary if you need a desk-size book.

If you want to change gender-specific language, try not to introduce passive voice or nominal style. See pp. 72-74.

(2) CITATIONS OR SHORT TITLES

Popular names and short titles are considered unnecessary. Try to dissuade requesters from using them.

If you must assign a citation, popular name, or short title to a bill or rule, capitalize all the important words in the title: nouns, adjectives, the word act or rule. Put the title in quotation marks. The title will usually be at the end of the sentence; if it is, put the terminal period inside the quotation marks.

Example: Sections 144.411 to 144.417 may be cited as the "Minnesota Clean Indoor Air Act."

(3) COMPUTATIONS

Computations probably cause more headaches than any other feature of bills or rules. In the standard phrasing for

computations, the sentences are often long: they include long multiple conditions; they include references that block sentence flow and delay the arrival of the next sentence elements; they have long subordinate clauses that separate modifiers from the things they modify. On top of all this, computations are usually in the passive voice and they almost always misuse shall. Here is a relatively simple example:

If only a portion of the rent constituting property taxes is paid by these programs, the resident shall be a claimant for purposes of this chapter, but the refund calculated pursuant to section 290A.04 shall be multiplied by a fraction, the numerator of which is income as defined in subdivision 3 reduced by the total amount of income from the above sources other than vendor payments under the medical assistance program or the general assistance medical care program and the denominator of which is income as defined in subdivision 3 plus vendor payments under the medical assistance program or the general assistance medical care program, to determine the allowable refund pursuant to this chapter.

We desperately need a more readable way to describe computations. Reed Dickerson recommends the "cookbook" approach, that is, describing the steps, one by one, that produce the right figure. Here is Dickerson's own example:

The seller shall compute the price of any item that is packed in a new container type or size as follows:

(1) He shall first determine the most similar container type for which he has established a price for that product. From that container type he shall select the nearest size that is 50 percent or less larger than the new size, or if he has no such size, the nearest size that is 50 percent or less smaller. This is the base container.

(2) The seller shall take as his base price his price for the product when packed in the base container. If this price is a price delivered to any point other than the shipping point, he shall convert it to a price f.o.b. shipping point by deducting the transportation charges that are reflected in it.

(3) From the price f.o.b. shipping point, the seller shall subtract the direct cost of the container.

(4) If the new container differs in size from the base container, the seller shall adjust the figure obtained by this deduction by dividing it by the number of units in the base container and multiplying the result by the number of the same units in the new container.

(5) The seller shall add to the figure so adjusted the direct cost of the container in the new type and size. The resulting figure is the seller's price f.o.b. shipping point for the product in the new container.

(6) If the seller's base price for the product in the base container is a delivered price, he shall compute transportation charges as follows: He shall take the transportation charges that he deducted from his base price and adjust them in

proportion to the difference in shipping weight. If the product in the new container will move under a different freight tariff classification, the seller shall figure his transportation charges (by the same means of transportation and to the same destination) on the basis of the new shipping weight. He shall then add these transportation charges to his f.o.b. shipping point price for the product in the new container. The resulting figure is his delivered price for the product in the new container.

The advantages of this method are short sentences, information delivered in small amounts, and active voice. Applying Dickerson's principle to the original bad example, we get a test like this:

"If only a portion...the resident is a claimant for purposes of this chapter but the refund calculated according to section 290A.04 must be changed according to the following directions:

1. Compute income as defined in subdivision 3. This is figure 1.
2. Compute the total amount of income from the above sources other than vendor payments under the medical assistance program or the general assistance medical care program. This is figure 2.
3. Subtract figure 2 from figure 1. This is figure 3.
4. Compute the amount of vendor payments under the medical assistance program or the general medical program. This is figure 4.
5. Add figure 1 to figure 4. This sum is figure 5.
6. Create a fraction whose numerator is figure 3 and whose denominator is figure 5.
7. Multiply this fraction by the refund calculated under section 290A.04 to determine the refund allowable under this chapter.

Calling things "figure 1" and so on is potentially confusing; a drafter would do better to give a name to each result as Dickerson's example does. Using "cookbook" style and direct address--that is, saying "compute," "add," and "subtract"--is the only way to use active voice when the computation is not being assigned as a duty to a particular person or body.

(4) CONDITIONS

The usual way to express a condition is to begin the sentence with an if clause: "If the person under arrest refuses to permit chemical testing, none may be given."

Sometimes more than one condition introduces a sentence. When this happens, keep the main clause as short as possible:

If the basic member and the surviving dependent spouse are killed in a common disaster, and if the total of all survivor's benefits paid under this subdivision is less than the accumulated deductions plus interest payable, the surviving children shall receive the -----

difference in a lump sum payment.

If you can't keep the main clause short, put the conditions after the main clause. Here is a sentence with conditions that need to be reorganized and separated:

If at any time during which the reduced monitoring frequency prescribed under b and c applies, the results from an analysis exceed 0.10 milligrams per liter of total trihalomethanes and are confirmed by at least one check sample taken promptly after such results are received or if the supplier makes any significant change to its source of water or water treatment program, the supplier shall immediately begin monitoring in accordance with the requirements of b and shall continue that monitoring for at least one year before the frequency may be reduced again.

Here is the rewritten version:

A supplier using the reduced monitoring frequency prescribed under b and c must go back to using the monitoring requirements of b if:

(1) the results from an analysis exceed 0.10 milligrams per liter of total trihalomethanes and are confirmed by at least one check sample taken promptly after the results are received; or

(2) the supplier significantly changes its source of water or water treatment program.

In either case, the supplier must continue monitoring according to the requirements of b for at least one year before the frequency may be reduced again.

If the conditions are complex, divide them into separate sentences. A condition that takes more than two lines of type signals that you should be using several sentences. Here is a set of conditions that needs to be divided:

Corporations are members of a parent-subsidary

controlled group if:

1. more than fifty percent of the total combined voting power or more than fifty percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation, is owned by one or more of the corporations; and
2. the common parent corporation owns stock with more than fifty percent of the total combined voting power of at least one of the other corporations. There shall be excluded in computing the percent of voting power or value any stock owned directly by such other corporations.

Here is the clearer version in several sentences with passive voice changed to active. It takes more words to say but requires less mental processing.

Corporations are members of a parent-subsidary controlled group if they must satisfy these conditions:

1. One or more of the corporations must own more than fifty percent of the total combined voting power or more than fifty percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation.
2. The common parent corporation must own stock with more than fifty percent of the total combined voting power of at least one of the other corporations. Stock owned directly by these other corporations is excluded in computing the percent of voting power or value.

If there are more than two conditions, put them after the main clause:

The city is eligible for a proportional share of the subsidy provided for the counties if:

- a. the city has a population of 40,000 persons or more;
- b. the city has a board of health organized under section 145.913; and
- c. the city must provide local matching funds to support the community health services as provided in section 145.921.

If you have a long list of conditions, make it a list of sentences:

The city is eligible for a proportional share of the subsidy provided for the counties if it satisfies these conditions:

1. It must have a population of 40,000 persons or more.
2. It must have a board of health organized under Section 145.913.
3. It must provide local matching funds to support the community health services as provided in section 145.921.

The words "these conditions" and the colon end the first sentence. The phrases "under these conditions," "under the following conditions," or "unless X satisfies these requirements" are good introductory expressions for sentences like these. The sentences that state the conditions all use the verb must have or must be, not shall have or shall be, and not has or is.

(5) CROSS-REFERENCES, INTERNAL REFERENCES.

Use cross-references sparingly: they can make a provision difficult to read and understand. Unless a cross-reference is vital to the meaning of a provision or makes an exception to the provision, leave it out. Repeat words and short phrases instead of referring to another section that contains them. For example, if subdivision 1, clause b discusses "vehicles used to transport employees from their principal residences to their place of employment," you can repeat this phrase later instead of saying "vehicles as specified in subdivision 1, clause b."

The proper forms for external and internal references in bills are given in the revisor's manual. The forms for references in rules appear in the rule manual.

(6) DEFINITIONS.

Write your definitions after you have written the body of the bill or rule. As you review your draft to see which terms need defining, make sure you have not varied your terms or created needless jargon, buzzwords, noun strings, or initials. If you find these things, revise. A clearly written draft will need few definitions.

1. Introduce definitions with a standard sentence: "The terms used in sections (parts) to have the meanings given them in this section (part)." Use have, not shall have.

2. In bills, make each term a separate subdivision; in rules, make each a separate subpart. Start with the subdivision or subpart number; write the term you're defining as a

headnote. Start the sentence with the term you're defining, in quotation marks:

Subd. 4. [ENGINEER.] "Engineer" means...

The next word will usually be means, includes, or refers to, depending on what follows. These words are singular, even when you're defining a plural term. Make them plural only if you're defining two words at once. Use only one term. Don't say "means and includes."

3. The form of the definition should be the same part of speech as the word being defined. The definition of a verb should be in the same verb form: the definition of an adjective should be an adjective or a participle. For example, don't write: "'Reasonable access' means no more than twelve miles distant from the transportation system." Instead, write:

"'Reasonable access' (noun) means a distance (noun) of not more than twelve miles from the transportation system." Or write: "'To have reasonable access' means to be no more than twelve miles from the transportation system."

When it isn't possible to use a grammatical equivalent in a definition, use refers to instead of means. Example: "'Settle' and 'settlement' refer to the consideration, adjustment, determination, and disposition of a claim..."

Sometimes you can use something other than means, includes, or refers to. For example, you can write: "'Should' is used in a directory sense."

4. Prefer that to which. Many definitions contain the word which used in a defining way, as in this example: "'Master antenna television system' means any system which serves the residents of only one apartment dwelling..."

Conservative writers use that, not which, in these restrictive clauses: "...any system that serves the residents of only one apartment..." To some readers, that feels less stuffy than which; that feeling is a bonus to writers who are trying to uncomplicate their work.

5. Don't do violence to the ordinary meaning of words. Don't write "'Hospitals' includes day care centers." The reader

is not likely to look up the word "hospitals" and so may never learn that it includes other things. Use the included terms in the body of the bill or rule.

6. Don't define terms needlessly. English words used in their ordinary senses don't need definitions. "Temporary sign" does not need the explanation that it is a sign intended to be displayed for a short time.

7. Watch your sense of categories as well as your grammar. For example, don't write: "'Senility' means an individual with a physical disability and mental weakness brought on by old age." Senility is a condition, not a person. Write "Senility means a physical disability and mental weakness brought on by old age."

8. Try not to define words in terms of other words also being defined. This rule is sometimes impossible to keep; it may call for too much repetition. But remember that most readers will not read your work from beginning to end and won't want to be forced to look up a second definition in order to understand the first.

9. Don't write substantive requirements into your definitions. Here is an example of a definition that is too substantive: "'Lockup facility' means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners not more than ninety days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards." This definition should end at "ninety days."

10. Alphabetize your definitions word by word. Treat strings of initials as single words. Example: Efficiency, EIS, EPA. Of course, it's better not to use the initials, but if you must use them, make their meanings easy to find: alphabetize under the abbreviation, not the expanded form. A reader who is trying to learn what LPG is should not have to look through all the L's to find "Liquefied petroleum gas."

(7) EFFECTIVE DATE

See the revisor's manuals for rules and bills for the right way to word effective date provisions.

(8) EXCEPTIONS.

Be careful that your exceptions are clear at first reading and that they do not interrupt the thought of the sentence. The exception in this sentence is both unclear and awkwardly placed:

The governor may not recognize a demand for the extradition of a person charged with a crime in another state unless the demand alleges in writing, except in cases under section 629.06, that the accused was present in the demanding state when the alleged crime was committed.

Does the demand not have to be in writing in the exceptional cases, or does it not have to say that the accused was present in the demanding state? To express either meaning, use a separate sentence:

...when the alleged crime was committed. In cases under section 629.06, the demand need not be in writing.

...when the alleged crime was committed. In cases under section 629.06, the accused need not have been present in the demanding state.

(9) HEADNOTES AND TABLES OF CONTENTS

Laws and rules are generally used as reference documents, not read from beginning to end. Quick reference in bills and rules depends not only on the index but on headnotes and on the tables of contents compiled from them. When you write section or part headnotes, ask yourself first how they will look as a table of contents and whether or not they will show the reader your method of organization. Pay special attention to subdivision and subpart headnotes; they are the reader's only guides within a section or part. You may decide to change the order of your parts on the basis of the looks of your headnotes.

The revisor's office does change headnotes that don't describe contents well, but we can't catch every inaccuracy. It is your job to make sure your headnotes guide readers, and to do that, you need to avoid some common headnote faults:

Use semicolons sparingly. Use them to separate really

distinct subjects, as in "Suspending Licenses; Hearing; Relicensing." Don't use semicolons to replace prepositions. Instead of writing "Officers, Teachers; Neglect of Duty; Penalty," write "Penalty for Officers' or Teachers' Neglect of Duty."

Prefer -ing to -ion. Instead of writing "Tax-forfeited Lands; Acquisition," write "Acquiring Tax-forfeited Lands."

Don't depend too much on the context to complete a headnote's meaning. In subdivision headnotes you can control context somewhat, but you have no idea what other headnotes will be near your section headnote, so be very specific. Don't write "Who May Use," or "Must Be Displayed." Instead, write, "Who may use county law libraries," or "Displaying Licenses."

Never write a headnote that interrupts a sentence. For example, don't write:

A district shall assign:

1. Consultation and indirect services. To teachers who provide consultation and indirect services, more than 50 pupils who are speech and language handicapped.

Document design experts say that the "signposts" on a document should present the questions an audience is likely to ask, as in this hypothetical revision of some Labor and Industry rules:

Boiler Inspection Division

Chapter One: Engineers Licenses

Who must have a license

Boiler operators

Railroad locomotive operators

Insurance company inspectors

How to get a license

Applying for examination

Proving experience

Paying fees

Examination requirements

Displaying a license

Replacing a lost license

Renewing an expired license

How a license can be revoked

Duties a license requires

Complaint procedure

Suspension and revocation

These headnotes show the reader that the parts are arranged chronologically. Whatever your organization, make sure your headnotes display it. Try to keep headnotes short, but make clarity your first priority.

(10) INTERPRETATION CLAUSES

Clauses ordering that sections be liberally interpreted are unnecessary because the statutes provide principles for interpreting law. Write your draft so that its intent is clear without an interpretation clause.

(11) LISTS

The style manual for Minnesota Rules shows the correct way to punctuate series of words, of sentence parts, and of whole sentences. Lists of single words and lists of sentences rarely cause problems. Lists of sentence parts cause serious problems (see pp. 54-55). Avoid lists of sentence parts if you can, and if you can't, at least observe these rules:

Keep all the items in parallel form. See p. 55.

Don't interrupt the sentence with headnotes. For example, don't write, "A district may not assign:

1. Consultation and indirect services. To teachers who provide consultation and indirect services, more than 14 pupils."

Don't insert whole sentences into your listed sentence parts. For example, don't write: "Excluded stock" for a brother-sister controlled group means:

a. stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees;

b. stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A

bona fide reciprocal stock repurchase arrangement will not be

considered one that restricts or limits the employee's right to

dispose of stock;

c. stock in a member corporation that is held by a
nonprofitable educational or charitable organization.

If only one item has an inserted sentence, you can move that item to the end of the list. That will solve the problem temporarily, but an amendment may add a new item and make the sentence an interrupter again. You can also move the sentence to a paragraph after the list and refer to the item that the sentence applies to: "In item b, a bona fide reciprocal stock repurchase arrangement will not be considered one that restricts or limits the employee's right to dispose of stock." That will add an internal reference, and internal references should be avoided if possible. The best solution is to turn your list of sentence parts into a list of sentences, so that the inserted sentence can be left next to the item it explains:

'Excluded stock' for a brother-sister controlled group has the following meanings:

a. It means stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees.

b. It means stock in a member corporation owned by an employee of the corporation but only if substantial limits are or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock.

c. It means stock in a member corporation that is held by a nonprofitable educational or charitable organization.

Don't write lists within lists. There is one exception to this rule: in a list of sentences, the sentences may contain simple series of words without enumeration or tabulation.

Be careful with and and or. Normally and means that the
--- --
items are to be taken together, and or means that one is to be
--
chosen from the list. But these examples adopted from Reed
Dickerson's Legislative Drafting show how a choice of and or or

can depend on the wording of your items:

The security roll includes:

1. each person who is 70 years of age or older;

2. each person who is permanently, physically disabled; and

3. each person who has been declared mentally incompetent.

The security roll includes each person who:

1. is 70 years of age or older;
2. is permanently physically disabled; or
--
3. has been declared mentally incompetent.

(12) PROVISOS

Don't use the words provided that. You can accomplish the same thing with if or with a new sentence or clause.
--

Examples:

(an unnecessary provided that)

Failure to enter a program is grounds for revocation of supervised release; provided, however, that if no community program is available at the time of supervised release, the board may order that the supervised releasee enter the first available community program.

(a clearer version, without such, nominal style, or provided that)

The board may revoke supervised release if the supervised releasee fails to enter a program. If no community program is available at the time of supervised release, the board may order the supervised releasee to enter the first available community program.

(13) REPEALS

Never write a general repeal clause ("All laws [or rules] and parts of laws [or parts of rules] in conflict with sections ___ to ___ are repealed.") Always repeal specific sections or parts. Write "Minnesota Statutes, sections ___; ___; and ___ are repealed," or Minnesota Rules, parts ___; ___; and ___ are repealed." If you list more than five section or part numbers, write: "The following laws and parts of laws (or rules and parts of rules) are repealed: Minnesota Statutes, sections

_____ (or Minnesota Rules, parts _____)..." and then list the section or part numbers.

(14) SAVING AND NONSAVING CLAUSES

Don't write saving clauses. Minnesota Statutes 1980 contains many provisions to protect rights, remedies, or privileges that a bill might destroy.

You may need a clause that prevents the general saving provisions from acting, a "nonsaving" clause. If you do, cite the relevant section of the statutory saving clauses, and use the words: "Minnesota Statutes (date), section _____ does not apply to section _____."

(15) SEVERABILITY CLAUSES

Minnesota Statutes, section 645.20, makes the provisions of all laws severable, and section 645.001 extends this provision to rules. These laws make severability clauses unnecessary. If you don't want the provisions of your bill or rule to be severable, specify that they are not.

(16) STATEMENTS OF POLICY AND PURPOSE

If a bill or rule is written clearly, its purpose will not need to be explained and a policy statement will only add verbiage.

If a requester insists on a policy statement, write one, but don't use a single long sentence. Minnesota Statutes, section 32A.02 is an example of the single long sentence form that you should avoid. Section 168B.01 is much better, though still wordy.

(17) STATUTORY AUTHORITY SECTIONS

Don't write a part explaining the statutory authority for your rules. Minnesota Rules will state the statutory authority ----- for every rule.

(18) SUPERSEDING PHRASES

Drafters are often tempted to write that a bill or rule "supersedes all laws (or rules) in conflict with this section." Instead of this sweeping statement, try to track down the conflicting laws or rules and state specifically what your bill or rule supersedes.

(19) TABLES OF CONTENTS

Tables of Contents are compiled from headnotes for sections and parts. Keep the appearance of these tables in mind when you write headnotes. See HEADNOTES.

(d) Usage and grammar

All of us want to believe that we understand English usage perfectly. The truth is that no one person knows the rules perfectly because the rules change and interact in complex ways. A very conservative usage looks incorrect to younger speakers who have never heard of it. For example, the negative comparison, "He is not so old as she is," is the form preferred by conservative grammar textbooks, but it sounds odd to people who expect "He is not as old as she is."

How can you be sure that you are not jarring your readers? You can try to avoid controversial constructions, and in order to avoid them you must know what they are. You can use the American Heritage Dictionary to get a detailed view of usage

questions. You can have other people read your drafts. Reconsider anything that disturbs more than one reader, even if it is not strictly wrong.

This section discusses the most common errors and questions of usage in bills and rules.

(1) Use consistent spelling rules.

Use Webster's Third New International Dictionary as the

authority on spelling. The sections on Spelling and Plurals at the front of the book explain its principles for choosing a spelling when a word can be spelled in two ways. The main entries always show the preferred spelling, so use the main

entry, not the variant. For example, if you find labeling, and the note says "also labelling," use the form with the single l.

(2) Avoid gender-specific language without sacrificing clarity.

There are many ways to avoid gender-specific nouns like workman or man hours. A list of substitutes follows:

| Don't Use | Use |
|--------------------------|--|
| Brother, sister | Sibling |
| Businessman | Business person, executive, member of the business community, business manager |
| Crewman | Crew member |
| Daughter, son | Child, children |
| Draftsman | Drafter |
| Enlisted man | Enlisted personnel, enlisted member, enlistee |
| Father, mother | Parent, parents |
| Female, male | Person, individual |
| Fireman | Firefighter |
| Foreman | Supervisor |
| Grandfather, grandmother | Grandparents |
| Husband and wife | Married couple |
| Mailman | Mail carrier |
| Man | Person, human, human being |
| Manhours | Person hours, hours worked, worker hours |
| Mankind | Humanity, human beings, humankind |
| Manmade | Artificial, of human origin, synthetic, manufactured |

| | |
|-------------------------------------|--|
| Manpower | Personnel, workforce, worker, human resources |
| Midshipmen | Cadet |
| Per man | Per person |
| Policeman | Police officer |
| Seaman | Sailor, crew member |
| Serviceman, servicemen | Service member service members |
| Six-man commission | Six-member commission |
| She, her (reference to a ship) | It, its |
| To man a vessel | To staff |
| Trained manpower | Trained workforce, staff, personnel |
| Widower, widow | Surviving spouse |
| Wife, wives, husbands, husband's | Spouse, spouses, spouse's |
| Workman's compensation | Worker's compensation |

Avoiding pronouns like he or she is much harder. Normal English word order begs for a pronoun in the main clause of a sentence like this: "If the commissioner finds that the sampling frequency may be safely reduced, he may order it reduced to the rate specified in B." Not every method for avoiding pronouns works in every sentence. Consider the methods in this order of preference:

i. Use the plural: "If commissioners find... they may order..." In this instance, the plural doesn't work; it doesn't assign the duty clearly to one official.

ii. Repeat the noun: "If the commissioner finds...the commissioner may order..." This is legally clear but awkward because the two nouns are so close together.

iii. Use he or she. This works only in isolated sentences. If you must use he or she in several clauses or sentences in a row, look for a different solution.

iv. Rearrange the sentences: "To learn whether the sampling frequency may be safely reduced, the commissioner may order a sanitary survey. If it would be safe to reduce the sampling frequency, the commissioner..."

v. Use a relative clause: "A commissioner who finds that the sampling frequency may be safely reduced may order..." Here this solution is not really appropriate to the meaning.

vi. Use the passive voice: "If it is found that the sampling frequency may be safely reduced, the commissioner may order..." But remember the dangers of passive voice. Those dangers make this a less-than-perfect solution to the gender problem.

vii. Use a modifier without an expressed subject: "On finding that the sampling frequency may be safely reduced..." or "Having found that the sampling frequency may be safely reduced, the commissioner..." In this instance, the modifier doesn't show that a condition is being expressed. This is the last choice because it is a feature of very formal style.

Do not use nominal style: "Upon a finding that the sampling frequency may be safely reduced, the commissioner..." The nominal style doesn't assign the duty clearly and is too formal.

If you must choose between gender-specific pronouns and awkward construction in order to be legally clear, choose the gender-specific pronouns, but never choose them without having tried the other possibilities.

(3) Be careful with commas.

The style manual for Minnesota Rules explains where most readers expect commas. Help your readers; observe the manual's rules.

The one rule that needs special emphasis concerns restrictive and nonrestrictive clauses. A restrictive clause is essential to the sentence's meaning; a nonrestrictive clause is not. Here are examples of both:

Restrictive: The attorney who reviewed the rules

was responsible for the error.

Nonrestrictive: The attorney, who reviewed the rules,

was responsible for the error.

The first sentence implies that more than one attorney worked on the rules, but only the attorney who reviewed them was responsible for the error. The second sentence implies that only one attorney was involved; the fact that the attorney reviewed the rules is extra information. The commas show that a part of the sentence could be left out without changing the meaning.

One unnecessary comma can turn a restrictive clause into a nonrestrictive one:

"Trihalomethane" means an organic compound derived from methane, in which halogen atoms replace three of the four hydrogen atoms in the molecular structure of methane.

With the comma, the sentence says that every compound derived from methane is a trihalomethane and has three halogen atoms. Here is another example:

"All incidents of a special or serious nature which endanger the lives of staff or prisoners or physical plant, shall be reported in writing within ten days."

Did the drafter intend to use two commas or no commas?

Check commas wherever you see these words: who, whom, whose, which, wherein, whereby, whereof, and whence.

(4) Pay attention to very small words; be sure you have the

right preposition.

The most numerous grammatical errors in bills and rules--and the hardest ones to classify--involve the use of the wrong preposition for the phrase.

Here are some examples:

for a period of not exceeding one year

to dispose sewage sludge

may require deviations to the rules

The correct phrasing, of course, is:

for not more than one year; or
for a period not exceeding one year
to dispose of sewage sludge
may require deviations from the rules

What verbs take what prepositions? What are the rules concerning deviate from, dispose of, close down, catch up, consist of, and so on? What kind of expressions can follow prepositions? There is no rule; it's a matter of idiom. If you make errors of this kind, the best you can do is be aware that you make errors and have someone check your drafts.

(5) Watch your pronouns.

1. Be sure to make pronouns agree in person, gender, and number with the nouns they refer to. Each, either, everyone, neither, no one, or a person take singular pronouns:

The staff shall ensure that every prisoner receives his or her daily allotment.

Problems with pronouns are usually caused by trying to avoid the gender-specific pronouns he, she, his, her, and him. DO NOT try to avoid "his or her" by writing their. If his or her or he or she would have to be repeated in your sentences, avoid pronouns as far as possible.

For example, write: The staff shall ensure that every prisoner receives the daily allotment.

2. Use either a singular or a plural pronoun with a collective noun, depending on whether the group is considered as a unit or as a number of individuals.

For example, write: When the staff concludes its investigation, it will submit a report.

but

When the staff have discussed their opinions, they will vote.

or

When the staff members have discussed their opinions....

Problems involving collective nouns are usually style problems rather than grammatical errors. The problems occur when drafters nervously avoid using pronouns altogether.

Instead of writing "If a district wishes to receive aid for the program, it must apply for state aid," some drafters will write, "If a district wishes to receive aid for the program, an application for state aid must be made." This is an unnecessary use of the passive, and it probably results from hesitating over what pronoun to use.

(6) Be sure your subjects and verbs agree in number.

i. Learn to tell the difference between the real subject and its modifiers. Here is a typical error: "When literal adherence to the provisions fail to provide adequate safety to people's lives, property, or the environment, the department may require deviations from the rules." The correct form is: "When literal adherence to the provisions fails . . .," because adherence is singular.

Problems like this one usually show up in parts of sentences that begin with if, when, where, because, although, since, while--anything that can start an adverbial clause. Phrases like "to the provisions," "before the committee," "above the walls," are often the cause of the confusion. Be especially careful wherever you see these phrases.

ii. Use a singular verb if you have two or more singular subjects connected by or, nor, or but: "The commissioner or a designee has the power to issue licenses."

iii. A singular subject followed immediately by "as well as," "in addition to," "including," "not less than," "with," "together with," or a similar prepositional construction requires a singular verb.

Examples: The commissioner together with the aides is responsible for administering the committee's affairs.

Usually it is best to avoid the problem by writing: "The commissioner and the aides are responsible for administering the committee's affairs."

iv. Use a singular verb after indefinite pronouns such as anyone, each, either, everyone, neither, no one.

Example: Anyone who deposits material in a state park that

(7) Watch out for problems related to particular words.

affect/effect. Often misused. Check the dictionary.

apt. Often confused with liable, likely, and prone.

Check the dictionary.

amount of/number of. Use amount of for mass nouns (things that cannot be divided into units and counted). Use number of for count nouns (things that can be counted). Write "a small amount of pepper" but "a large number of applications."

as follows. If you use as in this expression, the verb is always follows, with an s. If you omit as, keep or drop the s according to the verb's subject. Write "A discription follows," but "the steps of the procedure follow." "The following" takes singular or plural: "The following is an example" but "the following are examples."

as to whether. As to can usually be replaced with about.

As to whether is always wrong; just write whether.

as though/as if. Prefer as though in rules and bills.

as well as. Constructions with as well as invite ambiguity.

between/among. Usually between is for two things and among is for more than two. However, between can be used with several things considered individually rather than as a group as in "an agreement between the three commissioners."

compare to/compare with. Compare to means "point out similarities between." Compare with means "look at similarities and differences between" or "assess the relative values of."

Compare with is usually what you want in bills and rules. "The official who evaluates the applications shall compare them with one another and with the checklist."

consider/consider as. When used to mean "judge," consider does not take as: "If the official considers the application incomplete..." The verb regard does take as: "If the official regards the application as incomplete..."

continual/continuous. Often confused. Check the dictionary.

data is/data are. American speakers are divided equally over which form to use. Data are is the conservative usage, but many readers will be bothered no matter which you use. Try to replace data with information, results, or findings.

different from/different than. The preferred usage is different from, although different than is gaining acceptance. You can avoid jarring any reader by writing "X differs from Y" instead of "X is different from Y" or "X is different than Y."

due to. Traditionally, due to is an adjective, used after is, are or some other form of be: "If the delay is due to negligence, the homeowner is guilty of a misdemeanor." Some readers object when due to is used to mean because of, as in the sentence "Due to the owner's negligence, no system has been installed." Avoid the questionable usage.

each other/one another. Use each other for two people or things; use one another for more than two: "The plaintiff and his lawyer may confer with each other," but "The jurors may confer with one another."

either. Use either to designate one of two things; use any or any one when more than two things are involved: "The commissioner may choose either of the two sampling methods," or "...any one of the three sampling methods."

either...or. The same kind of word that follows either must also follow or. Don't write "The revisor shall either publish a supplement or a new compilation." Write "The revisor shall publish either a supplement or a new compilation."

farther/further. Few speakers still observe this distinction, but some insist that farther indicates distance while further indicates degree of accomplishment: "If you travel at state expense, you may not travel farther than the state's boundaries." "Without better information, we can proceed no further on the project."

fewer/less. Fewer is used with nouns expressing a collection of individual things or people; less is used with abstract nouns and with mass nouns expressing bulk: "fewer errors," "less excitement," "less salt."

former, latter/first, last. Use former and latter to refer to members of a pair; use first and last to refer to items on a list of more than two things.

imply/infer. Often confused. Check the dictionary.

including/excluding. These words are modifiers; so be careful of their position. Excluding is badly placed in this example: "A unit of words ending with a period, semicolon, or colon but excluding headings, captions, and lists, shall be counted as a sentence." Does each unit of words have to exclude headings, captions and lists, or does the definition exclude them? We can't tell. The best policy is to use a separate sentence or clause to say what a term includes or does not include. A better version of the example is: "A unit of words ending with a period, semicolon, or colon shall be counted as a sentence unless the unit is a heading, caption, or list."

liable, likely/apt, prone. Often confused. Check the dictionary.

media is/media are. Media are (or any other plural verb) is the preferred form. Media is the plural of medium, meaning method or material. Eventually, this word may go the way of data, but it hasn't yet. Write "All broadcast media are subject to these rules."

mutual/common. Often confused. Check the dictionary.

practical/practicable. Often confused. Check the dictionary.

presently. To some readers, this word means "soon" and should not be used to mean "now, at present". Use now instead.

principle/principal. Often confused. Check the dictionary.

proved/proven. Some readers object to proven, but both forms are now accepted by most dictionaries. Proven is most acceptable as an adjective, as in "a proven point."

providing for/relating to. These common legal phrases cause problems because they require nominal style, as in "The commissioner shall publish rules providing for the issuance of permits to distributors of food." Try to avoid the nominal by being more specific if you can: "The commissioner shall publish

rules requiring that permits be issued to distributors of food."

which/that. Use which for nonrestrictive clauses; use that

for restrictive clauses.

(8) Don't be afraid of split infinitives, prepositions at

the end of sentences, and "whose" used to mean "of which".

Is there anything wrong with these sentences?

The committee must be able to quickly evaluate the applications and make a decision.

The committee has about a hundred applications to go over.

I have joined a religion whose dietary laws forbid the eating of broccoli.

There are still readers who object to phrases like "to quickly evaluate," "to go over," and "a religion whose dietary laws," even though they help to make the sentences clear and straightforward. The alternatives are repetitive or awkward:

The committee must be able to evaluate the applications quickly and make a decision quickly.

The committee has about a hundred applications over which to go.

I have joined a religion the dietary laws of which forbid the eating of broccoli.

Use split infinitives, prepositions at the end of sentences, or whose wherever they help you write the briefest, plainest English. There are just two warnings: Don't split an infinitive with more than one word. Don't end a sentence with more than one preposition. For example, don't write:

The committee must be able to, although it has not yet done so, evaluate the applications.

or

The committee must describe all its funding during the period funds are asked for in.

(9) Follow the suggestions of your readers.

In the drafts that come through the revisor's office, few usage problems are standard errors of the kind discussed by composition texts. Most are quirks that "sound funny" to some readers but not to others. Here are some examples:

...items relevant to the period funds are requested...
...approval is conditional on the commissioner's

acceptance... ..should be taxed consistent with the tax systems of other municipalities...

Of course these constructions don't look wrong to the people who wrote them. The only practical way to correct problems like these is to have several people read and comment on your drafts and to change anything that distracts more than one person. If you really want to weed out errors, keep a list of the constructions your readers object to. These practices take time; they also call for humility.

X.3 AFTER YOU DRAFT

There are two ways to evaluate the clarity of your finished draft. One is to apply to your writing a standard readability formula like the Flesch test. The test will tell you if you have failed to keep your words and sentences short, but it will not tell you precisely where your problems are.

Here is the Flesch test, as described in Rudolf Flesch's The Art of Readable Writing:

"Unless you want to test a whole piece of writing, take samples. Take enough to make a fair test, (say, three to five of an article and 25 to 30 of a book). Don't try to pick a "good" or "typical" sample. Go by a strictly numerical scheme. For instance, take every third paragraph or every other page. (Ordinarily, the introductory paragraphs of a piece of writing are not typical of its style.) Each sample should start at the beginning of a paragraph.

"If you are using samples, take each sample and count the number of words up to 100. Count contractions and hyphenated words as one word. Count numbers and letters as words, too, if separated by spaces. For example, count each of the following as one word: 1948, \$19,892, e.g., C.O.D., wouldn't, week-end.

"Figure the average sentence length for your piece of writing. If you are using samples, do this for all your samples combined. In a 100-word sample, find the sentence nearest to the 100-word mark--that might be at the 94th word or the 109th

word. Count the sentences up to that point and divide the number of words in those sentences in all your samples by the number of sentences in all your samples. In counting sentences, follow the units of thought rather than the punctuation: usually sentences are marked off by periods; but sometimes they are marked off by colons or semicolons--like these. (There are three sentences here between two periods.) But don't break up sentences that are merely joined by conjunctions like and or but.

"Count the syllables in your 100-word samples and divide the total number of syllables by the number of samples. If you are testing a whole piece of writing, divide the total number of syllables by the total number of words and multiply by 100. This will give you the number of syllables per 100 words. Count the syllables the way you pronounce the word; e.g., asked has one syllable, determined three, and pronunciation five. Count the number of syllables in symbols and figures according to the way they are normally read aloud, e.g. two for \$ ("dollars") and four for 1916 ("nineteen sixteen"). However, if a passage contains several or lengthy figures, your estimate will be more accurate if you don't include these figures in your syllable count; in a 100-word sample, be sure to add instead a corresponding number of words after the 100-word mark. If in doubt about syllabication rules, use any good dictionary. (To save time, count all syllables except the first to all words of more than one syllable; then add the total to the number of words tested. It is also helpful to "read silently aloud" while counting.)...

"...Find your reading ease score. Using the average sentence length in words and number of syllables per 100 words, find your reading ease score...[by using] this formula:

| | |
|---|--|
| Multiply the average sentence length by 1.015 | |
| Multiply the number of syllables per 100 | |
| words by .846 | |
| Add | |
| Substract this sum from 206.835 | |

Your reading ease score is:

Here is what your test score means:

| | | |
|-----------|------------------|----------------------|
| 90 to 100 | very easy | 5th grade |
| 80 to 90 | easy | 6th grade |
| 70 to 80 | fairly easy | 7th grade |
| 60 to 70 | standard | 8th & 9th grade |
| 50 to 60 | fairly difficult | 10th thru 12th grade |
| 40 to 50 | difficult | college |
| 0 to 30 | very difficult | college graduate |

Flesch devised the test and the explanations in 1948.

There is some evidence that "average" reading ability has gone down since then. So the score of 40 required by Minnesota Statutes, Chapter 72C is at least college level reading; it can hardly be described as "understandable by a person of average intelligence and education." A score of 60 or 70 is much closer to "average" and a much better indicator of your ability to weed out passive voice, nominal style, and inflated vocabulary. If you earn a score below 60, divide your sentences further, remove wordy constructions, and substitute short, simple words.

The second way to evaluate, and the real test of readability, is to use a real reader who is asked specific questions about what the bill or rule says. Have the bill or rule read by some of the people it affects. Better still, do a formal evaluation like the evaluation of FCC rules for marine radios described by Dr. Janice Redish in "How to write regulations (and other legal documents) in clear English," Drafting Documents in Plain Language 1981 (New York: Practising Law Insitute 1981):

"After preparing a recodified plain English version of the marine radio rules for recreational boaters, the FCC decided to find out how easily people could understand and use both the new rules and the old ones. They arranged for a test with two sets of subjects. A group of experienced users who belong to a local power squadron agreed to participate. These people had had to work with the old rules. A second group of volunteer subjects

was recruited from new employees (GS 1-5) at one of the agency's field offices. These people were inexperienced users who had not seen the old rules. In all, 106 subjects took part in the evaluation.

"With help from...AIR's Document Design Center, the FCC lawyers developed a comprehension test with thirteen questions about parts of the rule that are important for boaters to know. For example:

8. You are on a trip with several other boats from your yacht club and wish to remain in contact with one another. Since everyone's radio is equipped with channel 6, you agree to use this channel.

Is this permitted? Yes or No (circle one)

How about channel 68? Yes or No (circle one)

"Everyone got the same set of questions. Half of the people in each group (the experienced boaters, the new employees) used the old regulation; half in each group used the new regulation.

"Each question required the readers to find the information in the rule, write down a short answer (or circle yes or no, or choose one of 3 or 4 possibilities), tell which section they found the information in, and record the time (by using a clock on the wall). At the end of the test the readers were asked to rate how easy or hard the rule had been to use and understand on a scale of one to five. [The new regulation won handily.]

"...A formal evaluation like the one the FCC conducted is the best way to find out if your regulations work for the people who have to understand them. If people can't find some of the information you ask for, you know you need to reorganize or write better headings. If people can't answer a specific question correctly, you know you have to rewrite that section. If people do well on a test of the rule, you have strong evidence that you have communicated effectively and have successfully used the document design process to produce a plain English regulation."

X.4 APPLYING THE GUIDE'S RULES: A REWRITTEN LAW

Minnesota Statutes, section 303.13 was amended in 1980. Its language was modernized in simple ways: ~~such~~ was eliminated and most of the incorrect ~~shall~~ 's were changed. The amended text, however, still earns a score of 7.2 on the Flesch test and has a sentence that is 122 words long. The score is artificially low because this law cannot avoid using four-syllable words like ~~corporation~~ and ~~secretary~~, but the sentence length is a genuine problem.

The rewritten version below shows that much more can be done, and should be done, to make laws easier to read. Long sentences have been divided into shorter ones. Some tabulation has been used when sentences could not be divided without a lot of repetition. Nominal expressions have been changed to verbal ones. The order of information has been changed; long, complex conditions now come after main clauses rather than before them. Unnecessary words have been removed. The headnote has been made more specific.

The new version still scores only 54 on the Flesch test, probably because it needs four-syllable words and passive voice. The new version still contains very specialized legal vocabulary, but the short sentences make the words easier to process mentally.

303.13 [SERVICE OF PROCESS.]

Subdivision 1. [~~FOREIGN CORPORATION SERVING PROCESS ON A FOREIGN CORPORATION.~~] A foreign corporation ~~shall~~ be is subject to service of process, as follows:

(1) By ~~service thereof~~ Process may be served on its registered agent.

(2) ~~When any~~ Process may be served on the secretary of state. This may be done ~~When any~~ when a foreign corporation authorized to ~~transact~~ do business in this state ~~Minnesota fails to appoint~~ or maintain in this state a has no registered agent ~~upon~~ on whom service of process may be had, or ~~whenever any~~ served. It may also be done when a registered agent cannot be found at ~~its~~ the

corporation's registered office in this state, as shown by

Minnesota. The return of the sheriff of the county in which the

registered office is situated, or whenever any must show that no

agent was found. It may also be done when a corporation

withdraws from the state, or whenever when the certificate of

authority of any a foreign corporation is revoked or canceled, or
service may be made by delivering to and leaving. Three copies

and a fee of \$10 must be delivered to and left with the

secretary of state, or with any deputy or clerk in the

corporation department of his office, three copies thereof and a
fee of \$10, provided, that. After a foreign corporation

withdraws from the state, pursuant to under section 303.16,

service upon the corporation may be made pursuant to the

provisions of this section process may be served on the

corporation through the secretary of state only under these

conditions: when the action must be based upon on a liability

or obligation of the corporation incurred within this state in

Minnesota; or arising the action must arise out of any business

done in this state Minnesota by the corporation prior to the

issuance of before a certificate of withdrawal was issued.

(3) Process may be served on the secretary of state when a

foreign corporation is not authorized to do business in

Minnesota but is considered to be doing business in Minnesota.

A foreign corporation is considered to be doing business in

Minnesota:

(a) if a foreign corporation it makes a contract with a

resident of Minnesota to be performed in whole or in part by

either party in Minnesota, or

(b) if a foreign corporation it commits a tort in whole or

in part in Minnesota against a resident of Minnesota, such acts

shall be deemed to be doing business in Minnesota by the foreign

corporation and shall be deemed equivalent to the appointment by

the foreign corporation of. In either case the foreign

corporation is considered to have appointed the secretary of the

state of Minnesota and his successors to be as its true and

lawful attorney upon whom may be served all lawful process. In

any actions or proceedings action against the foreign
corporation arising from or growing out of the contract or tort,
process may be served on the secretary of state. Process shall
be served in duplicate upon the Two copies and a fee of \$10 must
be delivered to the secretary of state, together with a fee of
\$10 and. The secretary of state shall mail one copy thereof to
the corporation at its last known address, and the corporation
shall have answer within 20 days within which to answer from the
date of the mailing, notwithstanding any other provision of the
law. By making of the contract or the committing of the
tort shall be deemed to be the agreement of, the foreign
corporation agrees that any process against it which that is se
served upon on the secretary of state shall be of has the same
legal force and effect as if served personally on it the
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