

Style and Procedures Manual

(A Guide to Drafting Regulations in Plain Language)

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Prepared by the
Registry of Regulations
Nova Scotia Department of Justice
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Introduction to Manual

Bruce Davidson, Q.C. , the principal author and architect of the first edition of this work, said in his introduction, “Standards and procedures will not remain static in light of the ‘plain language’ movements and developments in technology”. Bruce was right. The exceptional work that he and his colleague Neil Ferguson did in writing and assembling materials for the first 3 editions has again needed modification and revision to meet the exigencies of the 21st century. This edition of the *Style and Procedures Manual* builds on the foundations they laid.

The first editions of the Manual gave pride of place to the preparation and submission of reports and recommendations. Although reports and recommendations are an important part of the process, this edition places the focus squarely on drafting, style and language. The Registry of Regulations has gradually adopted plain language principles. The current opportunity to consolidate and revise the regulations under the *Regulations Act* means that those principles can be applied to all of the regulations of Nova Scotia and will be applied on an ongoing basis as new regulations are made.

This edition relies heavily on the earlier works, but adds substantial new material and has been completely reorganized. Rachel Jones and Marie Christ undertook the drafting and revision process with the same enthusiasm and dedication they bring to their daily work, despite an increasingly heavy work load of new regulations. The volume of regulations, the most prolific form of subordinate legislation, continues to expand, yet only a few know the process by which they are drafted and brought into force. The Registry of Regulations holds an important place in that process and provides essential quality control. We prepared this Manual as a tool kit, part guide, part instructions, to assist those who work in that process. Please use it.

Jonathan Davies, Q.C.
Registrar of Regulations

Acknowledgements

The *Style and Procedures Manual* was first published in 1994 and was largely the work of Bruce Davidson, Q.C. and Neil Ferguson, then solicitors with the Department of Justice. Input for the Manual was gathered from a variety of sources, including the Office of the Legislative Counsel, the Office of the Clerk of the Executive Council and the Office of the Registrar of Regulations (Registry of Regulations).

Ten years later, the Registry of Regulations has become more involved in the review of regulations and the standards for their drafting and publication. This version of the Manual was prepared by the Registry based on the Registry's accumulated experience in reviewing regulations and the areas identified as needing clarification.

While the structure and phrasing may have changed, the Registry would like to acknowledge the solid and invaluable foundation laid by the previous authors of the Manual, whose words and wisdom still echo throughout the text.

Purpose of Manual

This Manual is designed to help lawyers and non-legal government personnel draft Nova Scotia regulations. The goal is to ensure a uniform standard of style and format and to promote clarity and the use of plain language. The Manual is not intended to be comprehensive, but is intended to guide regulation drafters in their choice of wording, style, format and organization, with an emphasis on plain language alternatives and solutions.

This Manual also outlines the procedural steps involved in making regulations, the order and timeline of the steps and the importance of following all the steps. It focuses particularly on the procedure for submission and review of draft regulations by the Registry of Regulations.

We have reorganized and updated the look of the Manual and hope that users will find the Manual to be a useful quick reference tool in addition to being a more complete set of guidelines.

Key Points and Signposts

The right-hand margin of the Manual contains summaries of key points in the text as well as quick 'signpost' cross-references to other related parts of the Manual.

Availability of Manual

This Manual is available online at <www.gov.ns.ca/just/regulations/styleman/>, in Adobe PDF format or HTML and is also available in PDF from the Registry of Regulations. For some Department of Justice users, the Manual is also available in Folio[®] on the server at Terminal Road.

Revisions and Updates

The Registry welcomes any comments and suggestions for improving the Manual, either in content or to enhance ease of use. We want the Manual to clearly and accurately reflect the process and to respond to the needs of its users.

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Part 1 - Introduction to Regulations

What are regulations?

Regulations are laws. They outline rights and create duties, obligations and responsibilities for the persons that are affected by them. Regulations have the same binding legal effect as Acts made by the Legislature, but are not made by the Legislature. The Legislature passes an Act in which it hands over its law-making power to another person or body, such as the Governor in Council (the Lieutenant Governor acting on the advice of the Executive Council (cabinet)), a Minister, or an administrative body or agency. These people then exercise that law-making power by making regulations. This is why regulations are also called 'delegated' or 'subordinate' legislation.

Regulations are laws ('delegated' or 'subordinate' legislation)

Power to make regulations handed over in enabling Act

This authority to make regulations must be specifically handed over in an Act, which is then called the enabling Act. An enabling Act has a provision or provisions that empower a specified person or body to make regulations. Usually, these provisions give specific reasons or subject matters for making regulations. These provisions are called enabling provisions.

Regulations are a way to spell out the details of the framework contained in the Act. The details fill in all the regulatory requirements necessary to ensure that the Act's objectives are met and that the Act can be administered effectively.

Regulations are not always called regulations by the enabling provision. Sometimes an Act authorizes the making of documents that have the same legislative effect as regulations, but are called by another name. Conversely, sometimes documents are referred to as regulations but are not considered laws.

There are many criteria for determining whether a document is a regulation. Foremost is the definition of 'regulation' in the *Regulations Act*.

Determining whether a document is a regulation

Clause 2(g) of the *Regulations Act*, R.S.N.S. 1989, c. 393, defines a regulation as follows:

Definition of
regulation in
Regulations Act

- (g) “regulation” means a rule, order, proclamation, regulation, bylaw, form, resolution or tariff of costs or fees made in the exercise of a legislative power conferred by or under an Act of the Legislature
- (i) by the Governor in Council,
 - (ii) by the minister presiding over any department of the public service of the Province or by any official of such department, whether or not such regulation is subject to the approval of the Governor in Council,
 - (iii) by any board, commission, agency or body listed in the Schedule to this Act or added thereto by the Governor in Council in accordance with this Act, whether or not such regulation is subject to the approval of the Governor in Council, or
 - (iv) the exercise of which power is declared by the Act conferring it to be a regulation within the meaning of this Act,
- but does not include a rule, order, proclamation, regulation, bylaw, form, resolution or tariff of costs or fees made by
- (v) a local authority, or
 - (vi) a corporation incorporated by private or public Act of the Legislature or by the board of directors or the board of management of such corporation unless it is a board, commission, agency or body listed in the Schedule or added thereto by the Governor in Council in accordance with this Act;

Today, Acts are usually drafted to specifically identify regulations that fit this definition by stating that they are “regulations within the meaning of the *Regulations Act*” (see subclause (iv) above). Many older Acts may not be so clear.

Other criteria for whether a document is a regulation include:

Other criteria for
regulations

- there is a penalty (legal, not just administrative) for contravening its provisions

- it affects or has the potential to affect the rights and responsibilities of the public
- it authorizes entering into an agreement or contract under the Act that is essentially a substitute for enacting regulations
- it is required to be published in the *Royal Gazette*
- it is made in the exercise of a legislative power (it must have legislative form, content and effect)

Deciding which documents are made under a legislative power is not easy. The Supreme Court of Canada was faced with this issue in a case in 1992. The court decided that “a legislative power is the power to make rules of conduct having the force of law for an undetermined number of persons”. The Court broke this down further as follows:

Legislative power - see Reference re Manitoba Language Rights, [1992] 1 S.C.R. 212

rule of conduct: a rule which sets norms or standards of conduct, which determine the manner in which rights are exercised and responsibilities are fulfilled

force of law: the rule must be unilateral and have binding legal effect

an undetermined number of people: the rule must be of general application rather than directed at specific individuals or situations

(Note: Just because only a few individuals are *actually* affected does not mean that the rule is not of general application.)

A legislative power is different from an administrative power, which is the power to create rules that apply only to the internal management of a select group or situation, and an executive power, which is the power to carry out, execute, or put into effect.

Under Section 12 of the *Regulations Act*, the Deputy Attorney General is responsible for determining whether a document meets the criteria for being a regulation.

Section 12 of the *Regulations Act* - determination of whether document is a regulation.

How are regulations made?

Enabling Act

When the power to make regulations is handed over to a person or body in a provision of an enabling Act, it can be a direct hand-over or it can be subject to the approval of one or more persons or bodies—usually the Governor in Council. The actual *making* of the regulations by the authority empowered by the enabling Act to do so is critical to their validity. A regulation that is not properly made by the authority empowered to do so may not be valid.

Regulations must be made by the correct authority and, if necessary, approved by the correct authority and must not conflict with, restrict or extend the scope of the enabling provisions or the purpose and intent of the Act.

A regulation-making authority makes a regulation by signing a document to that effect, called an executive order. For a regulation made by the Governor in Council, for example, the Lieutenant Governor signs an order in council. An executive order may be in the form of an order in council, a ministerial order, a written resolution or certificate of a resolution or some other document made by the person or body making the regulations that states what regulation is being made by the body and under what enabling provisions. The executive order is attached to the regulation so that the order accompanies the regulation when it is filed with the Registry of Regulations (Registry).

If the enabling Act states that the approval of a regulation by another person or body is necessary, the person or body that approves the regulation is not *making* the regulations, but rather exercising an executive power in *approving* regulations that have been made by another authority. Regulations that are subject to approval are not effective until they have been approved. Regulations that need to be approved by the Governor in Council require a report and recommendation (R&R) to request the approval from the Governor in Council. Other regulations that need to be approved require an executive order approving the regulations from the person or body

(See Regulation-making Flowchart in Appendix B)

Regulations must be made correctly to be valid

Note: Do not confuse the executive order with the certificate of filing. A certificate of filing is only required when filing non-Governor-in-Council regulations, to ensure that all the necessary information about the regulations is recorded at the Registry.

(See subsection 3(1) of the *Regulations Act*.)

Making = legislative

Approving = executive

whose approval is required. (This is called a “certificate of approval” in the *Regulations Act*.)

An executive order must be signed and dated by the person making or approving the regulations, or by someone authorized to sign on behalf of the body that is making or approving the regulations.

An R&R is a document that sets out the reasons behind a requested regulatory change, the authority for the regulations and a requested form of order to be made by the Governor in Council. (See [Appendix C](#) for more information about drafting R&Rs.)

[What is an R&R?](#)

Regulations made or approved by the Governor in Council

An enabling Act can empower the Governor in Council to make regulations directly or require the Governor in Council to approve regulations made by another person or body. The steps for preparing regulations to be made or approved by the Governor in Council are:

1 Need identified: A need for regulations is identified, either from within government or by interested groups or individuals.

2A Drafting of regulations made by the Governor in Council:

Either

- the department or agency drafts its proposed regulations and gives them to the solicitor assigned to that department by the Department of Justice (DOJ solicitor)

OR

- instructions for drafting the proposed regulations are prepared by department staff, who then usually work in conjunction with the DOJ solicitor to draft the proposed regulations

The G in C can approve regulations made by others. See also:

2B Drafting of regulations approved by the Governor in Council:

The regulations are made or drafted by the regulation-making authority and then sent to the DOJ solicitor.

(Be aware that once a document is made and signed by the regulation-making authority, any changes to it will have to be reviewed by that person or body.)

- **Regulations made or approved by a minister**
- **Regulations made or approved by an agency, board or commission**

For this reason, ministerial orders that need Governor in Council approval are signed by the Minister *after* the DOJ solicitor and Registry review and approval (steps 3 and 4), at the same time the minister signs off on the R&R (step 5.)

- 3 DOJ solicitor review and approval:** The DOJ solicitor approves the regulations on behalf of the Attorney General for form and legal authority in accordance with Section 11 of the *Regulations Act*, and signs the R&R. The R&R may be prepared by the DOJ solicitor or by department staff. (If the DOJ solicitor drafts the regulations from instructions, the review for authority is done at the time of drafting.)
- 4 Registry review and approval:** The R&R and the attached regulations are sent to the Registry for approval as to form and style. The Registry edits the regulations to ensure compliance with this Manual, making sure that the regulations fit with any already existing regulations, ensuring consistency of form and language and commenting on any matters that may require the department's or the solicitor's attention. The Registrar or a Deputy Registrar signs the R&R.
- 5 Signature of minister:** The R&R is signed by the minister of the department that is recommending the regulations.
- 6 Treasury and Policy Board:** The original signed copy of the R&R and attached regulations are sent to Executive Council via the Treasury and Policy Board (TPB) together with the forms and documentation required by the *TPB Management Guide* in Chapter 3: Submissions to the Executive Council (available on the TPB website at <www.gov.ns.ca/tpb/manuals/100ManagementGuide.htm>).
- 7 Executive Council:** Executive Council reviews and, usually, approves the recommended regulations.
- 8 Order in Council made and signed:** The Executive Council creates an Order in Council making or approving the regulations which is then signed by the Lieutenant Governor. (Executive Council (cabinet) + Lieutenant Governor = Governor in Council.)

See Part 2 - Review Process for Proposed Regulations for more details about the review process.

- 9 **Order in Council filed with Registry:** The Order in Council and the regulations are filed with the Registry and published in the *Royal Gazette Part II* within 30 days of the date they are filed.

See “How are regulations filed with the Registry?” for more details about filing.

Regulations made or approved by a minister (no Governor in Council approval)

As with Governor in Council regulations, an enabling provision can either empower a minister to make regulations or to approve regulations made by another person or body. When the regulations are made or have been drafted in a form satisfactory to the department and the DOJ solicitor, they are forwarded to the minister in the form of an order for the minister’s review and signature.

The following are then sent to the Registry for filing:

- the ministerial order making or approving the regulations
- the executive order of the regulation-making-authority (if the regulations are approved by the minister)
- the regulations
- a certificate of filing

The regulations are published in the *Royal Gazette Part II* within 30 days of the date they are filed.

These regulations do not have to be reviewed by the Registry before they are made, but some departments ask the Registry to review them to ensure that they meet the standards set in this Manual.

Regulations made by an agency, a board, a commission or another body (no Governor in Council or ministerial approval)

An agency, board, commission or other body may work together with the department’s staff and the DOJ solicitor to draft the regulations, or they can prepare the regulations themselves. Once finalized, the executive order of the body (usually a certificate or letter confirming the resolution of the body) is signed by an authorized person.

The following are then sent to the Registry for filing:

- the executive order of the regulation-making-authority
- the regulations
- a certificate of filing.

The regulations are published in the *Royal Gazette Part II* within 30 days of the date they are filed.

These regulations do not have to be reviewed by the Registry before they are made, but some bodies ask the Registry to review them to ensure that they meet the standards set in this Manual.

Timeline for making regulations

How long it takes to make regulations will depend on

- the length and complexity of the regulations (amendments are usually shorter and less complex)
- the level of controversy of the issues involved
- the scope of its potential impact
- the number of language, formatting and organizational changes necessary

In a *best-case* scenario, making Governor in Council regulations once the regulations are drafted takes about a total of approximately *9 to 11 weeks*:

- 3 to 5 weeks to get the regulations reviewed by the DOJ solicitor and the Registry (longer if extensive consultation with client is required)
- another week for Deputy Minister and Minister signatures
- up to 4 weeks for Treasury and Policy Board analysis and Executive Council approval (assuming cabinet are meeting regularly)
- another week for Lieutenant Governor approval

See Appendix G - The 4 C's of Preparing Regulations

(The farther a document is from being 'finished', the longer the review time.)

See Appendix B - Regulation-Making Process Flowchart

Drafters should be aware of this timeline when planning regulatory changes.

Regulations are filed by the Registry within 24 hours of the day that they are received. The regulations are published in the *Royal Gazette Part II* within 30 days of the date they are filed, and consolidated and made available on the Registry's website about 2 weeks after the date of publication.

How are regulations filed with the Registry of Regulations?

A person or body who makes a regulation must file the following with the Registry:

- 2 originals or certified copies of the regulation and the executive order(s) making the regulation and approving the regulation (if approval required)
- a certificate of filing (if the regulation is not made or approved by the Governor in Council)

Once the Registry is satisfied that the document is complete and is a regulation within the meaning of the *Regulations Act*, it is assigned the next consecutive N.S. Reg. number and published in the *Royal Gazette Part II*.

When are regulations published?

Section 4 of the *Regulations Act* specifies that all regulations must be published within 30 days of the date they are filed with the Registry, unless the Governor in Council extends the publication deadline or dispenses with publication.

In practice, the deadline for publication in an issue of the *Royal Gazette Part II* is 2 weeks before the issue date. As the *Royal Gazette Part II* is published bi-weekly, most regulations are published 2 to 3 weeks after they are filed.

Documents checked and filed

Assignment of N.S. Reg. #

Regulations published within 30 days of filing

What is the Royal Gazette Part II?

**Royal Gazette Part II
is official publication
for regulations**

The *Royal Gazette Part II* is the official publication for regulations made under Nova Scotia's statutes. Subsection 9(1) of the *Regulations Act* states:

- 9 (1)** Publication of a regulation is,
- (a) *prima facie* proof of its text and of its making, its approval where required, and its filing; and
 - (b) deemed to be notice of its contents to every person subject to it or affected by it.

The text of the regulations is inserted into the current issue of the Gazette, either from an electronic copy supplied with the filed regulation or from the approved electronic version in the Registry's locked directory. The Gazette is then proofread for errors or discrepancies.

If the hard copy of a regulation filed with the Registry differs from the approved version of the text, the Registry will bring the discrepancy to the attention of the DOJ solicitor who signed the regulations as to authority. Any discrepancies are noted in the Registry's Annual Report. Discrepancies should not occur if the procedures in this Manual are followed.

What happens if regulations are not filed/published?

Currently, a regulation that is not filed with the Registry or published in the *Royal Gazette Part II* is still valid law if it was made in accordance with the enabling Act.

However, Section 6 of the *Regulations Act* says that if a regulation is not published, no one can be adversely affected by or convicted of a contravention of the regulation. This supports the fundamental principle behind the *Royal Gazette Part II*, that the law should be made known.

**If regulations not
published - no one
can be adversely
affected**

Subsections 3(6) and 3(7) of the *Regulations Act* regarding the effective date of regulations and the consequences of failing to file are proclaimed in force as of March 4, 2005 (see O.I.C. 2005-45). These subsections are as follows:

If regulations not filed
- of no force and
effect (*proclaimed
effective March 4,
2005*)

Effective date of regulation

- (6) A regulation comes into force on the day on which it is filed with the Registrar unless
- (a) the regulation expressly states that it comes into force on a day earlier than the day on which it is filed and it is filed
 - (i) within seven days after it is made, in which case it comes into force on the day on which it is made or such later day as is stated in the regulation, or
 - (ii) where the regulation is subject to approval, within seven days after it is approved, in which case it comes into force on the day on which it is approved or such later day as is stated in the regulation; or
 - (b) the regulation expressly states that it comes into force on a day that is later than the day on which it is filed, in which case it comes into force on that day; or
 - (c) the Act under which it is made expressly authorizes the making of the regulation with retroactive effect and the regulation is filed within seven days after it is made or, where it is subject to approval, approved, in which case it comes into force as provided by that Act.

Failure to file

- (7) Notwithstanding any other statute or law, a regulation that has not been filed is of no effect.

Effective date of subsections (6) and (7)

- (8) Subsections (6) and (7) come into force on and not before such day as the Governor in Council orders and declares by proclamation.

As of March 4, 2005, a regulation that has not been filed will be invalid and unenforceable.

When are regulations in force?

Regulations are in force as of their effective date. Since subsection 3(6) of the *Regulations Act* is not yet in force at the time of publication of this Manual, the effective date is currently either

- the date specified in the order making the regulation, or
- if the order does not specify an effective date, the date the order is made or approved (if approval is required)

A regulation is considered ‘made’ only when all approvals required by the enabling Act for the regulation have been obtained. This is why the date of approval is the effective date for a regulation that requires approval.

Regulations should not come into force before the date they are made unless the enabling Act specifically allows this because retroactive effective dates conflict with the principle that a person has the right to know the laws that govern them. A law cannot be known until it is made. Therefore a law must not affect anyone until after it is made. This principle is echoed in clause 3(6)(c) of the *Regulations Act*— which requires express authorization in the enabling Act. Acts that specifically allow for retroactive regulations usually do so to provide a benefit, rather than create obligations or duties; therefore regulations that purport to have a retroactive effect must provide a benefit or have a neutral effect on those who are regulated.

As of March 4, 2005, the date the regulations are in force is

- the date that the regulation is filed with the Registry (this is the default if no effective date is specified in the order making the regulation)
- the date specified in the order making (or approving, if approval is required) the regulation if that date is *later* than the date that the regulation is filed with the Registry

Regulations in force as of their effective date

Note: Rules about effective dates change as of March 4, 2005 - when subsection 3(6) of the *Regulations Act* is in force.

Retroactive dates must be authorized

In force dates As of March 4, 2005, when subsection 3(6) of the *Regulations Act* is in force

Or, if the regulation is filed with the Registry *within 7 days* after being made or approved, if approval is required, the in force date is

- the date that the regulation is filed with the Registry (this is the default if no effective date is specified in the order making or approving the regulation)
- the date that the regulation is made or approved, if approval is required, if the date is specified in the order making or approving the regulation
- a date that is *later* than the date that the regulation was made or approved, if approval is required, if the date is specified in the order making or approving the regulation
- a date specified in the order making or approving the regulation that is earlier than the date the regulation is made or approved, if approval is required, if a retroactive date is authorized by the enabling Act

Keep in mind that as of March 4, 2005, when subsection 3(7) of the *Regulations Act* is in force, none of these dates apply if the regulations are not filed with the Registry, because a regulation that is not filed is of no force and effect.

Occasionally, the effective date is set out as a provision in the regulations, although this practice is discouraged because the provision can be awkward to work around in later amendments to the regulations, and confusion often arises when the regulations are amended—because amendments have different effective dates. Since the effective date is in the order that is published with the regulations in the *Royal Gazette Part II*, the public is deemed to have notice of the effective date even though it is not included as a provision in the regulations. Effective dates are also included in consolidations prepared by the Registry.

See “Effective date of regulations” for how to draft

How are regulations cited?

Section 19 of the *Regulations Act* states: “A regulation when filed may be cited as ‘Nova Scotia Regulations’ or ‘N.S. Reg.’ followed by the

Citation of NS Regs:

- use italicized title and N.S. Reg. number

number thereof, an oblique stroke and the 4 figures of the calendar year in which the regulation was filed.”

If a title is given in the regulations, cite the regulations with the title of the regulations, in italics, followed by a comma and the N.S. Reg. number, as follows:

example: *Zoril Protection Regulations*, N.S. Reg. 10/2000
 (title of regulations in italics) (assigned #/year)

If no title is given in the regulations, the regulations may be cited as the “regulations respecting XYZ”.

Do not capitalize ‘regulation’ unless it is part of a citation. For example “these regulations” but “the *Zoril Protection Regulations*”.

Where can you get regulations?

Everyone has a right to inspect or obtain a copy of a regulation filed with the Registry. (See subsection 10(1) of the *Regulations Act*.) Issues of the *Royal Gazette Part II* and original copies of the regulations, as well as consolidated regulations, are available for viewing free of charge at the Registry between 8:30 a.m. and 4:30 p.m. on any business day.

Regulations are published in the *Royal Gazette Part II*—the official bi-weekly publication for Nova Scotia’s regulations. The *Royal Gazette Part II* is available in the following forms:

- hard copy - from the Registry or at any public library in the Province; also available by subscription from the Registry
- electronically - online in Adobe PDF on the Registry’s website for 2003 and later (unofficial version)

Consolidated regulations that incorporate all amendments into the original text are available for all current regulations

- in hard copy - from the Registry

Regulations found:

- [Registry of Regulations](#)
- [Registry website](#)
- [libraries](#)

[Royal Gazette Part II availability](#)

[Consolidated regulations availability](#)

- electronically - free of charge on the Registry's website, or on CD-ROM in a searchable Folio[®] database. (Many public libraries also receive copies of the Registry's CD-ROM.)

Archived versions of consolidations dating back to 1992 that have since been amended are also available from the Registry.

Copies of the *Royal Gazette Part II*, original regulations or consolidations may be ordered from the Registry for a small fee by phone, fax, e-mail, or in person.

Registry of Regulations

4th Floor, 5151 Terminal Road,

Halifax NS B3J 2L6

Canada

Tel: (902) 424-6723

Fax: (902) 424-7120

E-mail: regofregs@gov.ns.ca

Website: www.gov.ns.ca/just/regulations/

Part 2 - Review Process for Proposed Regulations

What is the DOJ review process?

Section 11 of the *Regulations Act* sets out the framework for the Department of Justice's review process. All regulations that are either made by or approved by the Governor in Council must be sent to the Deputy Attorney General to be reviewed for legal authority and for form and style. This process is divided between a review as to authority and form by a Department of Justice (DOJ) solicitor and a secondary review for form and style by the Registry of Regulations (Registry). A proposed regulation will not be processed by TPB unless it is signed by a DOJ solicitor on behalf of the Attorney General and by the Registrar of Regulations or one of the Deputy Registrars of Regulations.

All regulations that are either made by or approved by the Governor in Council must be reviewed:

- DOJ solicitor, for authority and form
- Registry of Regulations, for form and style

DOJ solicitor - review for authority and form

You need an R&R for regulations that are made or approved by the Governor in Council. A DOJ solicitor reviews the proposed regulations and signs the R&R to signify their approval as to authority and form before they send the regulations to the Registry for review. DOJ solicitors are responsible for ensuring that statutory authority exists for *each* aspect of the regulations. The DOJ solicitor should be involved early on in the regulation-making process to ensure that time is not wasted on drafting unauthorized provisions.

A review of the authority for a regulation should include considering whether the regulation

- is authorized by the enabling Act
- is constitutionally valid
- constitutes an unusual or unexpected use of the authority under which it is being made
- contains an improper subdelegation (see [Appendix E](#))

What is considered during review?

- combines regulations that should be made by different regulation-making authorities
- purports to have a retroactive effect (especially if would have negative impact)
- attempts to exclude the ordinary jurisdiction of the courts
- attempts to impose a fine, imprisonment or other penalty
- imposes a punishment for an offence that is inappropriate to the seriousness of the offence, or substantially dissimilar punishments for similar offences
- shifts the onus of proof of innocence to a person accused of an offence
- imposes a tax (charges for other than cost of service)
- attempts to allocate or otherwise spend government funds without specific authority
- attempts to establish a judicial or administrative tribunal by reliance on general powers in the enabling Act
- interferes with property rights
- restricts rights to privacy and access to government information (*Freedom of Information and Protection of Privacy Act*)
- circumvents procedures for creation, examination, registration and publication of regulations
- promotes disrespect for the law or the legal system
- includes policy statements that have no meaning in law (i.e. purpose provisions or statements such as “the Minister should” do something)

Other fundamental legal principles that should be considered when reviewing a regulation’s authority are

- the rules of natural justice and procedural fairness, which require that a person whose rights or interests are affected by an administrative decision be given reasonable notice of the

Fundamental legal principles

proposed decision and an opportunity to be heard by an unbiased decision maker

- respect for the ordinary jurisdiction of the courts
- limitations on the retroactive interference with rights
- the principle that Nova Scotia Acts and regulations have effect throughout Nova Scotia, but not outside Nova Scotia
- respect for and compliance with treaty obligations and other obligations under international law
- the principle that property should not be expropriated without compensation
- the requirement that one must have a guilty mind in order to be guilty of an offence
- the need to be very clear when providing that a person is to be penalized for contravening an Act or regulation since the courts give them the benefit of the doubt when penal provisions are ambiguous

The DOJ solicitor is responsible for deciding any legal questions that come up during a review and for determining that there is clear authority under an Act or otherwise to make the regulations. The DOJ solicitor must sign the R&R as to authority and form in the space provided—indicating that they have finished their review and are satisfied that the regulations are complete and in final form—before sending them to the Registry for review for form and style.

R&R signed by DOJ solicitor before sent to Registry

Registry of Regulations - review for form and style

The Registry reviews regulations for form and style. This review was created as a second part to the DOJ review procedure under Section 11 of the *Regulations Act*, and is therefore only required for regulations that are either made or approved by the Governor in Council.

The Registry offers suggestions to improve clarity and substantive accuracy based on the principles and requirements set out in this Manual. Depending on the length and complexity of the regulations and the amount of work already done to a draft to meet the standards

See Appendix G - The 4 C's of Preparing Regulations for a breakdown of editing steps

in this Manual, a regulation may only need minimal changes and proofreading, or it may require more substantial editing and revising. The revision checklist set out in [Appendix F](#) shows the types of changes typically made by the Registry.

The Registry will also draw legal and drafting problems to the DOJ solicitor's attention and suggest solutions. The Registry may even rewrite some provisions of the regulations. To ensure that these revisions result in regulations that are enforceable, the DOJ solicitor must look over the revised regulations for authority. To ensure that these revisions still reflect the intentions of the drafter, the drafter or the person responsible for the content of the regulations must be consulted on any revisions that the DOJ solicitor believes are substantive.

Registry's revisions
to be reviewed by
solicitor/drafter

If the Registry has any questions about the authority of regulations during their review, they will bring the issue to the attention of the DOJ solicitor for consideration and possible revision, but the Registry is not responsible for identifying questions about authority – any questions about authority are merely incidental to the review for form and style.

A regulation that requires Governor in Council approval but that is made by an outside, non-governmental entity, such as a professional association, will be reviewed differently. This type of regulation will only be checked for grammatical, spelling, formatting, typographical and punctuation errors and obvious omissions or inconsistencies unless a more substantial review is asked for, because

Less stringent review
of regulations for
non-governmental
entities

- the DOJ solicitor does not represent the non-governmental entity and an in-depth revision of these regulations could be construed as giving legal advice
- these regulations are usually already made by the entity by the time they are sent to the Department of Justice and making substantive changes is problematic
- these regulations generally govern internal operations and have little or no public impact

What should you send to the Registry for review?

What you need to send for a review depends on how the regulations are made. This table outlines what must be included:

See also submission check list (Appendix A)

	Regulations made by the Governor in Council	Regulations approved by the Governor in Council	Non-Governor in Council Regulations
R&R	yes	yes	no
Executive order	no	yes	yes
Schedule of regulations	yes	yes	yes
Electronic copies of all documents	yes	yes	yes
Submission checklist	yes	yes	no
Is review required?	yes	yes	no

An R&R must be signed by a DOJ solicitor before being sent to the Registry for review. An R&R must not be signed by a Deputy Minister or Minister until it is approved by both a DOJ solicitor and the Registry, because once an R&R is signed, it cannot be changed at all without the permission (re-signing) of all signers.

Attach a submission checklist to your submission. The Registry has access to copies of all bills and new statutes, so it is not necessary to include copies of new or proposed legislation; however, to help the Registry quickly identify any legislation affecting the regulations that is not yet consolidated in the Revised Statutes, 1989, include the citation for it on the submission checklist.

Attach submission checklist (Appendix A)

Include an electronic version of your submission in WordPerfect, and be sure to include separate files of any graphics that form part of the regulations (preferably in JPG format).

Electronic copy of submission must be sent

Include a table of contents for ease of reference if the regulations are longer than 15 pages. A table of contents does not form part of the

regulations and is not included in the final approved version. Tables of contents are created later for consolidated regulations.

You don't need to include briefing notes or other explanatory notes required by TPB with your submission to the Registry.

How are submissions assigned priority?

Each regulation sent to the Registry for approval is given a number and placed in a queue to be reviewed chronologically (unless the regulation has rush priority). The Registry keeps an electronic database for all information on reviewed regulations, including

- the title of the regulations
- the enabling Act and enabling provisions
- the name of the person who prepared the regulations
- the name of the solicitor who approved the regulations
- the department responsible for the regulations
- the dates when submissions are received and when they are returned
- how many times the regulations are reviewed and how long the review takes
- whether the submission was previously reviewed in rough format
- whether the submission was previously approved
- the types of corrections suggested by the Registry
- whether final corrections are made at the Registry
- notes on anything unusual about the submission
- whether the submission has rush priority

Regulations resubmitted to the Registry after revision are logged in to the tracking database under the same number and, once again, placed in the queue according to the date and time they are received.

Priority assigned
chronologically as
received

Information tracked in
database

When the regulations are approved by the Registry, all information about the regulations, including all resubmissions, is printed on a Regulations Summary Sheet.

Statistics on how many regulations are reviewed, how many times submissions are returned and how often rush priority is requested are included in the Registry's Annual Report.

What is rush priority and how do you get it?

Regulations may be given rush priority if the deputy head of the client department asks for rush priority from the Deputy Minister of Justice in writing (so that a record can be kept of the request—e-mail is acceptable). A request must explain the reason for the emergency, the urgency of the matter, the deadline for making the regulations and the consequences of delay. If the Deputy Minister is satisfied that the regulations should be given rush priority, the Deputy Minister will forward the request to the Registry with instructions to give the submission rush priority.

Rush priority granted by Deputy Minister of Justice

Once a regulation is given rush priority, every time the submission is reviewed by the Registry it is given priority over other non-rush submissions and, in so far as is possible, over the Registry's other duties.

Rush priority applies to every review of submission

If review and approval of regulations is needed either the same day or the next day, get rush priority from the Deputy Minister of Justice to ensure that the regulations are given immediate priority.

It is a good idea to ask for rush priority *before* sending the regulations to the Registry, as the Registry cannot review regulations on a rush basis without some indication from the Deputy Minister of Justice that an approved request will be forthcoming. Notifying the Registry that the Deputy Minister of Justice has been asked for priority is not enough to move a submission ahead of other regulations already logged for review.

Proper planning for the making of regulations should eliminate the need for rush priority requests. The number of rush priorities

See "Timeline for making regulations"

requested by each department is logged by the Registry and noted in the Registry's Annual Report.

What is the Registry of Regulations' procedure?

Each submission is reviewed by 2 editors, unless review by a single editor is more efficient (because the other editors are busy or unavailable) or is sufficient (because the submission requires little editing).

Submissions
reviewed by 2 editors

The steps followed when a submission is received at the Registry are as follows:

1 Login:

The submission is

- checked to ensure that it is complete and that all necessary documentation is included
- logged into the Registry's electronic tracking database
- assigned the next consecutive number
- placed in the queue for editing (rush priority places a submission ahead of non-rush submissions)

For "necessary documentation" - see "What should you send to the Registry for review?" and Appendix A - Submission Checklist

The electronic copy is

- renamed
- moved to the locked directory on the computer network (Note: only the Registry staff have access to the locked directory and the tracking database.)

2 Review:

The submission is reviewed by the editors to ensure that it meets the requirements set out in this Manual for form, style, organization, consistency and plain language.

The hard copy of the submission is marked up with the Registry's comments, suggestions and questions. If extensive redrafting is recommended, and if the workload of the Registry permits, the Registry may prepare a suggested revision of all or part of a

submission so that both the Registry and the drafter are better able to see the end result of the Registry's recommended redrafting.

3 Return to submitter:

The submission is returned to the submitter either approved or with suggested revisions. The submission is logged out of the Registry's electronic tracking database.

Steps 1-3 are repeated each time a document is resubmitted for review, except that the submission keeps the same number throughout the entire review.

What if corrections are recommended?

If the Registry recommends corrections to regulations, these corrections and any questions or requests for further clarification are marked on the hard copy of the regulations. If alternate wordings or reorganizations are suggested, these might be attached in an accompanying document. The marked-up submission and accompanying documents are returned to the submitter, along with electronic copies on disk.

Corrections marked on submission and returned

The revised regulations must be reviewed again for authority and to ensure that the drafter agrees with the changes recommended by the Registry before they are re-submitted to the Registry. If you date your signature on a submission, make sure a resubmitted document has a revised date to indicate that you have reviewed it.

Revisions must be reviewed for any changes to authority and intent

The Registry reviews resubmitted documents following the same procedure as the original submission, but the review mostly focuses on ensuring that corrections have been made and that all questions have been satisfactorily answered. For this reason, clearly indicate any substantially altered or new provisions contained in a resubmission, preferably in an accompanying memo, so that these provisions can be reviewed more thoroughly.

Indicate any new provisions in a resubmission

If the required corrections are minor, the Registry will usually make the corrections, approve the regulations and return the approved

submission to the drafter accompanied by the marked-up pages showing the changes that were made. Any changes made by the Registry must be reviewed to ensure that they do not affect the authority or alter the intention of the regulations.

If documents are sent to the Registry a 3rd time without all necessary changes being made or without all questions being completely answered, the Registry is required to turn the submission over to the responsible Department of Justice Director for review.

What happens when regulations are approved by the Registry?

When regulations are approved by the Registry,

- the R&R is signed by the Registrar or a Deputy Registrar, if the regulations are made or approved by the Governor in Council

or

- the Regulations Summary Sheet (generated from the Registry's electronic tracking database) is initialled by the Registrar or a Deputy Registrar, if the regulations are non-Governor in Council

and

- the submission is returned to the submitter together with
 - the disk on which the electronic copy was sent (blank),
 - marked-up copies of any pages containing changes made at the Registry, and
 - the Regulations Summary Sheet.

Photocopies of the approved version and all previous marked-up submissions, the Regulations Summary Sheet, all accompanying documentation and any relevant correspondence is filed with the DOJ Central Registry.

Registrar or Deputy Registrar signs off on submission to indicate approval

Once an R&R is signed by a DOJ solicitor and the Registrar or a Deputy Registrar, no changes may be made to any page in the R&R or the attached schedule(s) without the permission of all signers. The *original* copy that is signed by the DOJ solicitor and the Registrar or Deputy Registrar must be forwarded to Executive Council.

No changes after approval

What if you need to change regulations after they are approved by the Registry?

If you need to change a regulation that has already been approved by the Registry, ask the Registry for a WordPerfect electronic copy of the approved regulations from the locked directory. Any revisions must be made to the version retrieved from the locked directory, as that version is the only version of the approved regulations that is guaranteed to match the hard copy. This speeds up the next review, because the Registry only has to focus on the changes made since approval. It also prevents already corrected errors from reappearing in the text.

Get approved regulations from locked directory before making changes

As with all other revisions, you must send a revision to a previously approved regulation to the Registry for another review. Only in exceptional circumstances is this review omitted:

- the revision is very minor (e.g., changing the effective date of an R&R or deleting an entire provision from the text), or
- there are extenuating circumstances (e.g., immediate changes are requested by Executive Council)

Even without resubmission for review, any changes must be made to the version in the Registry's locked directory (if expedient, the Registry may even make the changes for you), and the DOJ solicitor and the Registry must be notified of the substance of the changes.

What if you want an electronic copy of regulations after they are approved by the Registry?

If you want to keep an electronic copy of your regulations after they have been approved by the Registry, the Registry will send you an

Electronic copies of regulations after Registry approval - in Adobe PDF

Adobe PDF version. PDF ensures that the formatting of the document remains the same across different computer platforms. Security will be set on PDF versions to prevent the text from being altered, but you can still copy and paste from the text into a new document (a briefing note, for example).

Part 3 - Form and Style of Regulations

What legislation should you consider?

Regulations Act

The *Regulations Act* sets out

- the definition of regulations
- the rules for the effective date of regulations
- the requirement for review by the Department of Justice
- the requirements for filing and publication of regulations
- the requirements for revising and consolidating regulations

Most of these issues are covered in Parts 1 and 2 of this Manual.

Interpretation Act

The *Interpretation Act* sets out various presumptions, definitions and rules of statutory interpretation and construction that apply to all Nova Scotia Acts and regulations, unless a contrary intention is indicated (see subsection 6(1) of the Act).

The definition of ‘regulation’ in the *Interpretation Act* is broader than the definition in the *Regulations Act*, which can lead to some confusion as to whether an Act actually intends for the *Regulations Act* to apply. Subsection 7(3) of the *Interpretation Act* states:

- (3) In this Act and every enactment made at the time, or before, or after this subsection comes into force, “regulations” includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, by-law, resolution or order made in the execution of a power given by an enactment except where the definition of “regulation” as defined in the *Regulations Act* applies or where a contrary intention appears from the enactment.

Legislation to consider:

- *Regulations Act*
- *Interpretation Act*
- *enabling Act*
- *Summary Proceedings Act*
- *mirrored provisions*

So, although an Act may enable the making of ‘regulations’, it does not always mean that the *Regulations Act* applies. It is important to determine whether ‘regulations’ fall under the *Regulations Act*, because all regulations that fall under the *Regulations Act* must be filed with the Registry.

Some other provisions of the *Interpretation Act* that are important to keep in mind when drafting regulations are:

Summary of some relevant provisions of *Interpretation Act*

- Section 7 - contains definitions applicable to all enactments (including ‘enactment’)
- Section 8 - provides that if an Act is not in force immediately when it is passed and it contains the power to make regulations, regulations may be made for the purpose of making the Act effective when it comes into force. But a regulation that is made before the Act is in force has no effect until the Act is in force, except in so far as is necessary to make the Act effective. (Usually used to put administrative processes in place to prepare for when the Act is in force.)
- Clause 19(e) - eliminates the need to state “from time to time” when giving someone a power or imposing a duty on someone
- Clause 19(j) - provides that a definition applies to the other parts of speech and tenses of a defined word
- Section 20 - eliminates the need to add “as amended” after the short title of a law from Nova Scotia, another province or the federal government. (Subsection 20(2) of the *Regulations Act* provides the same for regulations.)
- Subsection 21(1) - eliminates the need to use “inclusive” when referring to 2 or more numbered provisions, forms or schedules, etc.
- Subsection 21(2) - eliminates the need to add “of these regulations” after an internal cross-reference in regulations
- Subsection 21(3) - eliminates the need to state “of this _____” (Section, subsection, clause, subclause etc.) in an internal

cross-reference to a larger provision; for example, instead of “clause (b) of this subsection”, write “clause (b)”

- Sections 22 to 25 - deal with the effect of the repeal or amendment of an enactment, and clause 24(1)(a) specifically states the effect on regulations:

24 (1) Where an enactment is repealed and other provisions are substituted by way of amendment, revision or consolidation,

(a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others made in their stead; and

Do not repeat principles from the *Interpretation Act* in regulations. For example: the power to repeal or amend regulations that is included in the power to make them (clause 19(f)), or the survival of rights that vested under an earlier Act or regulations (Section 23).

Enabling Act

The form, style, language and structure of regulations should conform to the enabling Act as much as possible. However, do not be afraid to use a plainer alternative to the language in the Act if it means that the regulations will be more clear, so long as the meaning is not changed. The Act and regulations are intended to work together as a single legislative scheme, but in practice the regulations are very often used alone without the Act.

See also “What are regulations?” and “How are regulations made?”

When drafting regulations, pay particular attention to the following:

- the overall application, intention and framework of the Act and the regulatory scheme provided for
- all Sections that refer to or authorize the making or approval of regulations
- who or what body is authorized to make or approve regulations

- the nature and extent of the regulation-making authority contained in the Act, including the type of general catch-all clause that often appears at the end of an enabling provision. (Can you hang your hat on these types of provisions? The law is unclear on whether a general provision may be used to expand the scope of an enabling provision or whether it can be the sole authority for making regulations.)

Summary Proceedings Act

Will summary offence tickets be issued for contravening new or amended regulations? If so, the *Summary Offence Tickets Regulations* must be amended before tickets can be issued.

Are there already provisions in the *Summary Offence Tickets Regulations* that may be affected by the regulations? For example, are you renumbering provisions that are already designated in the *Summary Offence Tickets Regulations*?

(See also - [Offence Provisions](#))

Mirrored Acts/regulations

If regulations are required to mirror federal or another province's legislation and regulations, the Registry can usually only make limited changes to them. Often it is a good idea to send drafts of the regulations to the Registry before all the text is agreed upon by the coordinating parties to ensure that the final product meets as many requirements of this Manual as possible.

Limited changes to mirrored provisions

What are the standard forms for orders? (examples)

New regulations are made in the *form* attached, amendments are made in the *manner* attached.

For convenience, all effective dates in these examples have been stated as the date of the order, but different (usually later) dates may also be specified (see "[When are regulations in force?](#)").

Standard forms for orders - examples

- Governor in Council
- Minister or other official
- Board, commission or agency

Recommended orders of the Governor in Council

This section of the Manual provides some templates to use when drafting the recommended order portion of an R&R. For convenience, all the examples of orders approving regulations refer to regulations made by a minister, but any other person or body may be substituted for “the Minister of *”. The examples also assume that the effective date is the same for all recommended actions.

Regulations are usually attached as a schedule to an R&R, but a short amendment to regulations may be incorporated directly into the recommended order.

An R&R that requests approval of regulations made by another person or body must have the executive order of that person or body attached with the regulations as a schedule to the R&R.

New regulations

Made by the Governor in Council:

The Governor in Council on the report and recommendation of the Minister of * dated _____, 20____, and pursuant to Section * of Chapter * of the Acts of *, the * *Act*, is pleased to make regulations respecting (*subject matter - as in title of regulations*) in the form set forth in Schedule “A” attached to and forming part of the report and recommendation, effective on and after (date of Order in Council).

Approved by the Governor in Council:

The Governor in Council on the report and recommendation of the Minister of * dated _____, 20____, and pursuant to Section * of Chapter * of the Revised Statutes of Nova Scotia, 1989, the * *Act*, is pleased to approve of regulations respecting (*subject matter - as in title of regulations*) made by the Minister of * in the form set forth in Schedule “A” attached to and forming part of the report and recommendation, effective on and after (date of Order in Council).

Replacing regulations

Made by Governor in Council:

The Governor in Council on the report and recommendation of the Minister of * dated _____, 20____, and pursuant to Section * of Chapter * of the Acts of *, the * Act, is pleased, effective on and after (date of Order in Council), to

- (a) repeal the * *Regulations*, N.S. Reg. *, made by the Governor in Council by Order in Council * dated *; and
- (b) make new regulations respecting (*subject matter - as in title of regulations*) in the form set forth in Schedule “A” attached to and forming part of the report and recommendation.

Approved by the Governor in Council:

The Governor in Council on the report and recommendation of the Minister of * dated _____, 20____, and pursuant to Section * of Chapter * of the Revised Statutes of Nova Scotia, 1989, the * Act, is pleased, effective on and after (date of Order in Council), to approve of

- (a) the repeal by the Minister of * of the * *Regulations*, N.S. Reg. *, made by the Minister of * and approved by the Governor in Council by Order in Council * dated *; and
- (b) new regulations respecting (*subject matter - as in title of regulations*) made by the Minister of * in the form set forth in Schedule “A” attached to and forming part of the report and recommendation.

Amendments to regulations

Made by the Governor in Council without an attached Schedule “A” (for shorter amendments):

The Governor in Council on the report and recommendation of the Minister of * dated _____, 20____, and pursuant to Section * of Chapter * of the Revised Statutes of Nova Scotia, 1989, the * Act, is pleased to amend the * *Regulations*, N.S. Reg. *, made by the Governor

in Council by Order in Council * dated *, by striking out “*” in subsection * and substituting “*”, effective on and after (date of Order in Council).

Approved by the Governor in Council:

The Governor in Council on the report and recommendation of the Minister of * dated , 20 , and pursuant to Section * of Chapter * of the Revised Statutes of Nova Scotia, 1989, the * Act, is pleased to approve of amendments made by the Minister of * to the * Regulations, N.S. Reg. *, made by the Minister of * and approved by the Governor in Council by Order in Council * dated *, to *(provide brief description of what amendment accomplishes)*, in the manner set forth in Schedule “A” attached to and forming part of the report and recommendation, effective on and after (date of Order in Council).

New regulations and amendment to regulations

Approved and made by the Governor in Council:

The Governor in Council on the report and recommendation of the Minister of * dated , 20 , and pursuant to Section * of Chapter * of the Revised Statutes of Nova Scotia, 1989, the * Act, is pleased, effective on and after (date of Order in Council), to

- (a) approve of new regulations respecting *(subject matter - as in title of regulations)* made by the Minister of * in the form set forth in Schedule “A” attached to and forming part of the report and recommendation; and
- (b) amend the * Regulations, N.S. Reg. *, made by the Governor in Council by Order in Council * dated *, to *(provide brief description of what amendment accomplishes)*, in the manner set forth in Schedule “B” attached to and forming part of the report and recommendation.

Order of minister or other official

Sometimes a minister or other official (for example, the Provincial Traffic Authority) is given the power to make regulations by themselves. Sometimes they can only make the regulations with the

Must be an executive order making the regulations

approval of the Governor in Council. *Either way*, the minister or other official must make an executive order making the regulations. If the regulations require Governor in Council approval, the order must be attached as part of Schedule “A” to the R&R. Set out below are examples of these types of executive orders.

New regulations

<p>[Schedule “A”]</p> <p>In the matter of Section* of Chapter * of the Acts of *, the * Act</p> <p>- and -</p> <p>In the matter of regulations respecting [subject matter]</p> <p>I, (<i>name</i>), Minister of * for the Province of Nova Scotia, pursuant to Section * of Chapter * of the Acts of *, the* Act, hereby make regulations respecting (<i>subject matter - as in title of regulations</i>) in the form set forth in the attached [<i>or if on same page: “in the form set forth below”</i>], effective on and after (<i>specify date</i>) [<i>or “the date they are approved by the Governor in Council”, if approval required</i>].</p> <p>Dated and made at Halifax Regional Municipality, Province of Nova Scotia, _____, 20__.</p> <p style="text-align: right;">_____ Honourable (<i>name</i>) Minister of *</p>
--

Amendment

<p>[Schedule “A”]</p> <p>In the matter of Section* of Chapter * of the Revised Statutes of Nova Scotia, 1989, the * Act</p> <p>- and -</p> <p>In the matter of an amendment to the * Regulations</p> <p>I, (<i>name</i>), Minister of * for the Province of Nova Scotia, pursuant to Section * of Chapter * of the Revised Statutes of Nova Scotia, 1989, the* Act, hereby amend the * Regulations, N.S. Reg. * made by Order of</p>
--

the Minister of * dated *(date)*, to *(provide brief description of what amendment accomplishes)* in the manner set forth in the attached *[or if on same page: “in the manner set forth below”]*, effective on and after *(specify date)* *[or “the date they are approved by the Governor in Council”, if approval required]*.

Dated and made at Halifax Regional Municipality, Province of Nova Scotia, _____, 20____.

Honourable *(name)*
Minister of *

Order of agency, board or commission

If an agency, board or commission or other body makes regulations, they usually do so by resolution rather than by order. If this is the case, a certificate of someone authorized to sign on behalf of the body confirming the resolution of the body must be attached to the regulations as the executive order. If the regulations require approval by the Governor in Council, the certificate must be attached as part of Schedule “A” to the R&R.

Certificate confirming resolution may be used as executive order

New regulations

[Schedule “A”]

I certify that the *(name of body)*, at its meeting on *(date)*, carried a motion to make regulations respecting *(subject matter - as in title of regulations)* in the form attached *[or if on same page: “in the form set forth below”]*.

The regulations are effective on and after *(specify date)* *[or “the date they are approved by *”, if approval required]*.

Signed at *(city)*, in *(county)*, Nova Scotia, on _____, 20____.

(name of body)

per: _____

(name of authorized signer)

(title of authorized signer)

Amendment

<p>[Schedule “A”]</p> <p>I certify that the <i>(name of body)</i>, at its meeting on <i>(date)</i>, carried a motion to amend the * <i>Regulations</i>, N.S. Reg. *, made by the <i>(name of body)</i> on <i>(date)</i> [“and approved by the Governor in Council by Order in Council * dated <i>(date)</i>” <i>(if necessary)</i>], to <i>(provide brief description of what amendment accomplishes)</i>, in the manner set forth in the attached <i>(or if on same page: “in the manner set forth below”)</i>.</p> <p>The amendments are effective on and after <i>(specify date)</i> [or “<i>the date they are approved by *</i>”, <i>if approval required</i>].</p> <p>Signed at <i>(city)</i>, in <i>(county)</i>, Nova Scotia, on _____ 20__.</p> <p style="text-align: right;"><i>(name of body)</i> per: _____ <i>(name of authorized signer)</i> <i>(title of authorized signer)</i></p>
--

What is the standard form for regulations?

Arrangement of provisions

Arrange provisions in the order that is best for understanding the text as a whole, so that a reader will follow a logical progression and never have to refer to what is farther on in the text.

Section 1 must state the title of the regulations. Regulations are much more identifiable if everyone uses the same name.

Put definitions and other provisions of general application, such as interpretation or application provisions, at the beginning of the regulations.

Divide the regulations into parts only if the subject matter of each part is sufficiently distinct. In principle, a part should consist of a group of

Standard form for regulations

- arrangement of provisions
- numbering and structure
- forms attached to regulations
- cross-references
- italicized references
- measurements
- offence/prohibition provisions
- effective dates

provisions that, in itself, could constitute a separate set of regulations. Use arabic numbers (1, 2, 3) for parts, not roman numerals. Centred headings are a useful alternative to parts.

Put transitional provisions at the end of the regulations. Provisions that repeal other regulations or that give an effective date for the regulations are placed in the executive order, not in the regulations, as they can cause confusion if the regulations are later amended.

More tips on organization, use of headings and block formatting can be found in [Part 4 - Plain Language Drafting](#).

Transitional provisions at end

Numbering and structure of provisions

Regulations must be set out in block format as shown in the following example:

Sections °

Title

1 These regulations are the *Block Format Example Regulations*.

Headings for each Section

2 Each Section must have a heading.

How to number Sections

3 Number Sections consecutively with arabic numbers.

No periods after numbers

4 Do not place periods after Section numbers.

One sentence per Section

5 A Section must be composed of only 1 sentence.

Subsections °

How to format subsections

6 (1) A Section may be composed of 2 or more subsections closely related in subject matter.

(2) A subsection must be composed of only 1 sentence.

(3) Do not use more than 5 or 6 subsections in a Section.

How to number subsections

- 7 (1) Only Section and subsection numbers are in bold font.
- (2) Number subsections consecutively with arabic numbers in parentheses.
- (3) A subsection preceded by a Section number is the *only* instance where 2 numbers or letters for provisions come together side by side (separated by an indent), as demonstrated by subsection (1).

How to format clauses, subclauses, paragraphs, subparagraphs and 'tails' of text

8 Subsections or Sections, like this one, may include

Clauses °

- (a) 2 or more clauses alone, lettered consecutively in parentheses and separated by semi-colons; or
- (b) 2 or more clauses, followed by

Subclauses °

- (i) 2 or more subclauses alone, numbered consecutively with lower-case roman numerals in parentheses and separated by commas, or
- (ii) 2 or more subclauses, followed by

Paragraphs °

- (A) 2 or more paragraphs alone, numbered consecutively with upper-case letters in parentheses, separated by commas, or
- (B) 2 or more paragraphs, followed by

Subparagraphs °
(rarely used)

(I) 2 or more subparagraphs, numbered consecutively with roman numerals in parentheses and separated by commas, but which are very rarely used, or

(II) more paragraphs, subclauses or clauses, as necessary,

'Tails' °
(should be avoided)

any or all of which can be followed by 'tails' of text (like this one) not preceded by a number or letter, which line up with, complete the thought started by, and end with punctuation appropriate to, the block of text that began the thought.

Numbering within Parts

9 Do not renumber Sections from 1 when starting a new Part.

If a Section has more than 26 clauses, begin lettering with (a) to (z), then use (aa) to (az), then (ba) to (bz), etc. Be careful not to make lists of clauses or subclauses, etc. too long. Readers should be able to remember where they started!

Forms attached to regulations

Forms attached to regulations are part of the regulations. Enabling provisions stating that regulations may be made "respecting forms" have been interpreted to mean that the forms themselves do not need to be in the regulations. Enabling provisions stating that regulations may be made "prescribing forms" have been interpreted to mean that the regulations must prescribe the form and contain the form.

If possible, do not include forms in regulations. It is easier and more cost-effective to amend or replace forms if they are not made part of the regulations. Regulations can prescribe the information that is to be collected on a form, but may not need to prescribe the form itself. You may be able to prescribe the content of the form and still satisfy the

Forms are part of regulations

No additional substantive content in forms

requirement of “prescribing forms”; however this interpretation is not standard.

Whether forms are part of the regulations or not, forms *must not add* any substantive requirements that are not set out in the main text of the regulations. Make sure that they are consistent with and do not contradict the provisions in the main text of the regulations. Provide cross-references to provisions that are repeated or paraphrased in a form.

Make sure titles and headings in forms are consistent in content, appearance and placement. They must be clear, easy to locate, and stand out from the rest of the text. Headings help the user understand the structure of a form and enable them to move easily through a form from beginning to end. Make sure a form flows consistently (either horizontally or vertically). It should be easy for a reader to see where to go to next on a form. Do not force readers to stop and figure out where to go next by mixing up the direction of flow on a form.

Make sure layout of forms is clear and easy to follow

The title ‘Application Form’ is not very specific or helpful. As with other titles and headings, the title for a form should capture the form’s purpose.

Clearly identify instructions on forms and make sure they are consistent in content, appearance and placement. Incorporate instructions into the text of the form—separate instruction sections often go unread.

Make sure that there is plenty of white space between major line items and sections. White answer fields on shaded backgrounds can point readers to parts of a form that have to be filled in.

Don’t just revise forms with printing, legal and inventory issues in mind. Review forms on a regular basis to identify any problems that users are experiencing when filling out the form as well as. Are the forms being filled in completely and correctly? Forms that are not effective waste time and money.

All forms must be sent to the Registry in WordPerfect on letter size paper. If your forms have to be converted from another format into WordPerfect for submission to the Registry, you must print the forms from WordPerfect and submit that print-out as your hard copy. This ensures that the electronic version matches the hard copy in substance and form and that any problems with either can be readily identified.

Forms must be in WordPerfect for publication

The form used in practice may be different in format from the form in the regulations, *so long as there are no substantive differences*. (See *Interpretation Act*, clause 19(g).)

Form actually used may differ in format

Cross-references

Try to arrange provisions to minimize the need for cross-references, especially ones that jump many pages. Keeping Sections short and avoiding too many subdivisions makes cross-referencing a lot easier to follow.

Minimize number of cross-references

Reference a provision by its unit name, followed by numbers and letters for each unit that is different from the provision in which the reference occurs, starting with the biggest (Section), like so:

How to cross-reference provisions

	<i>example:</i> subsection 4(3)	subclause (2)(d)(iii)
	(unit name, section #, subsection #)	(unit name, subsection #, clause letter, subclause #)

Include only the numbers and letters that are different from the provision that contains the reference. In the example on the left, the reference provision and the provision that contains the reference are in different Sections. In the example on the right, the reference provision and the provision that contains the reference are in the same Section, so the Section number is not included.

There is no need to add “of these regulations” at the end of an internal cross-reference.

When referencing more than one provision, use the plural if the reference applies to all the provisions together, and the singular if it applies to each one in a list.

example: all apply: “...as described in clauses 17(1)(a), (b) **and** (c).”
 “Except as provided in subsections 5 to 8...”
 each applies: “...a registration under subsection 4(2) **or** (3).”

Be careful when making references to provisions in the Act and references to provisions in the regulations in the same sentence. Make sure that it is clear which provisions are in the Act and which are in the regulations by grouping them, with the Act references first, and writing “of the Act” after the Act references.

example: write: “...in accordance with Section 15 of the Act and Section 8”
 “...under Sections 25 and 26 and subsection 42(2) of the Act and subsection 4(3) and Section 12”
 don’t write: “...in accordance with Section 8 and Section 15 of the Act”
 “...under subsection 4(3) and Section 12 and Sections 25, 26 and subsection 42(2) of the Act”

Other rules respecting references to other provisions are set out in Section 21 of the *Interpretation Act*.

See “[Interpretation Act](#)”.

Italicized references

[What to italicize](#)

Italicize the following:

- **Titles** of
 - publications (e.g., the *Canada Gazette*)
 - statutes (e.g., the *Divorce Act*)
 - regulations (e.g., the *Meat Inspection Regulations*)

(Do not italicize ‘(Canada)’ at the end of a federal Act or regulation title, unless it is part of the title.)

- **Latin** expressions and abbreviations, if they are unavoidable, (e.g., *res ipsa loquitur*)
- **Latin** scientific names of drugs, plants, fish and animals
- **Foreign** words and phrases not considered to be part of the English language. (For example, italicize ‘conseil’, but not ‘contretemps’.)

Measurements

Use the International System of Units (SI), which is the modern form of the metric system, to express measurements. If Imperial units have to be given because it is the standard for the main audience of regulations (for example, the construction industry), put the SI equivalent in parentheses after the Imperial measurement.

SI do's:

- use arabic numbers followed by the SI symbol for the unit
- spell out a unit of measure that is not associated with a numerical amount
- spell out the unit throughout the regulations if the symbol is not commonly known
- write SI symbols in lower-case units, unless the name of the unit is derived from a proper name (The exception is ‘L’ for litre, which is less easily confused for a number than a lower-case ‘l’. The script letter ‘ℓ’ is not an approved symbol for the litre.)
- use an upper-case letter for the first letter of a unit derived from a proper name—for example kPa for kilopascals
- use a space (preferably a hard space—“ctrl” + space) between a number and a symbol (except that when expressing plane angles or latitude and longitude, there is no space—for example: S 89° 35' 40" E)

Some do's and don'ts
when working with
measurements

SI don'ts:

- do not add an 's' to an SI symbol; they are the same for both singular and plural
- do not use periods after SI symbols
- do not use a symbol to begin a sentence
- do not mix and match your units—if you begin with metres, do not switch to kilometres or centimetres.

Common accepted SI Units and symbols:**Table of units and symbols**

Base quantity	Unit	Symbol
Length	metre(s) kilometre(s) centimetre(s) millimetre(s)	m km cm mm
Area	square metre(s) square kilometre(s) square centimetre(s) square millimetre(s) hectare(s)	m ² km ² cm ² mm ² ha
Volume	cubic metre(s) cubic decimetre(s) cubic centimetre(s) cubic millimetre(s) litre(s) millilitre(s)	m ³ dm ³ cm ³ mm ³ l or L (preferred) ml
Mass	kilogram(s) gram(s) milligram(s) tonne(s)	kg g mg t
Plane angle	degree(s) minutes(s) second(s)	E ' "

Base quantity	Unit	Symbol
Velocity	metre(s) per second kilometre(s) per hour centimetre(s) per second millimetre(s) per second	m/s km/h cm/s mm/s
Pressure	Pascal(s)	Pa
Temperature	degree(s) Celsius Kelvin(s)	EC K
Force	Newton(s)	N

Offence and prohibition provisions

Be aware of when you create an offence provision and ensure that it is both authorized and worded in such a way as to make it enforceable. The usual phrasing for an offence is “Every person who (does or fails to do “X”) is guilty of an offence and (set out penalty)”. An offence usually involves a penalty of a fine, imprisonment or both.

Offence: “every person who... is guilty of an offence”

Prohibition: “a person must not”

Even if the enabling Act does not authorize creating offences in the regulations, you can still create prohibitions. Doing something that is prohibited usually results in an administrative penalty, not a fine or imprisonment. Prohibitions should be worded “a person must not”.

However, it is not necessary to create specific prohibitions in regulations, because anything forbidden or required by regulation can form the basis of a summary offence under Section 4 of the *Summary Proceedings Act*. Section 4 of the *Summary Proceedings Act* establishes a penalty for wilfully contravening an enactment that applies when no other penalty is set out in the enactment or elsewhere.

Penalty in *Summary Proceedings Act*

Incorporation by reference

Documents that are incorporated into regulations by reference are secondary documents that are referred to in regulations and form an integral part of the regulations, as if they were reproduced in the regulations. The reasons for not reproducing incorporated documents

Incorporated documents like part of regulations

in regulations are that subsequent revisions by the author would not be included and because many incorporated documents are copyrighted.

Whether a document that is referenced in regulations forms part of the regulations has been the subject of much legal debate. To increase the enforceability of an incorporated document you can

- make sure that it is clearly identified so that the reader can easily locate a copy of the document (include proper title and who produces the document)
- if the document is not set out in mandatory terms (uses ‘should’ rather than ‘must’), include a provision in the regulations that states that
 - the referenced document is enforceable as if part of the regulations
 - the referenced document is to be read as if its recommendations were mandatory.

There is also some debate about whether there must be specific authority in the Act to allow for incorporating documents into regulations.

Effective date of regulations

Put the effective date in the executive order making the regulation. The effective date should be written as “effective on and after _____, 20__.”

See also “[When are regulations in force?](#)” and subsection 3(6) of the *Regulations Act*.

If an effective date is not specified there may be some confusion as to what the effective date is.

Avoid confusion and specify an effective date.

Do not put the effective date of a regulation in the main text of the regulation, as this can cause confusion when the regulation is amended—because each amendment will probably have a different effective date. It is also awkward if the effective date is included as the last provision of the regulation and thus needs to be constantly renumbered as new provisions are added. Similarly, do not include an effective date as an item in an amendment to regulations.

You can put an effective date that applies to a limited part of the regulations in a provision to draw attention to the beginning or ending of a particular rule, particularly if there are several phases to the rule.

example: Effective October 1, 1990, benefits paid to workers are increased by 1.2 %.

Effective December 1, 1990, benefits paid to workers are increased by 1.25%.

(Be aware that the more incremental provisions that you string together in this way, the more difficult it becomes for a reader to calculate the amount that applies to them.)

Do not use retroactive effective dates unless the enabling Act specifically authorizes this.

Retroactive effective dates must be authorized

example: Subsection 43(3) of the *Revenue Act*:

- (3) A regulation made pursuant to subsection (2) may, if it so provides, be retroactive in its operation to a date not earlier than May 6, 1989.

Section 184A of the *Workers' Compensation Act*:

184A Notwithstanding the *Regulations Act* or anything contained in this Part, a regulation made pursuant to this Part may be made retroactive to any date where the regulation benefits a worker.

Regulations can also be made effective on the proclamation of the enabling Act, or a relevant amendment to the Act, so that they are brought into force at the same time.

Regulations made before enabling provisions proclaimed in force

example: proclamation date known: (fill in date)

proclamation date not known, but can be filled in by Executive Council: "effective on and after (date that Chapter * of the Acts of *, the * Act comes into force)"

example: proclamation date known: (fill in date)

proclamation date not known and can't be filled in by Executive Council: "effective on and after the date that Chapter * of the Acts of *, the * Act comes into force"

Regulations can also be made before the enabling Act or provisions are in force, in accordance with Section 8 of the *Interpretation Act*, but they are effective only so far as is necessary to make the Act effective when it is proclaimed—usually to put administrative processes in place.

Should you amend or replace?

Replace a provision or set of regulations, if

- it has already been amended many times
- you are making many amendments
- you are making a significant substantial change to the law
- you are amending a portion of a provision that is not easily identified, for example an un-numbered paragraph in a schedule or form
- you want to take the opportunity to re-organize or renumber it
- it is awkward to amend and simpler to replace

Criteria for whether to amend or replace regulations

Be aware of any language that has been judicially considered when replacing or amending regulations. If wording has been judicially considered, it may signify a problem with the clarity of the wording. (See also subsection 25(2) of the *Interpretation Act* that specifies that an amendment is not an adoption of any judicial interpretation.)

How do you amend regulations?

Unless the authority in the enabling Act has changed, amendments to regulations are made the same way as the original order making the regulations. (See “[What are the standard forms for orders?](#)” for examples.)

Amend regulations that have become inconsistent with a new Act or regulations as soon as possible, instead of relying on the readers or the courts to work out the inconsistencies.

Repeal vs. strike-out

If an entire provision (Section, subsection, clause, subclause, etc.) is removed or replaced, that provision is repealed, not struck out.

example: “The regulations are further amended by repealing subsection 4(3) and substituting the following subsection:”

Strike out pieces of text that are not a complete unit with a direct reference. Do not use “the words” or “the words and figures” to preface the references.

example: “... of the regulations is amended by striking out ‘Thursday’ and substituting ‘Friday’.”

Line references

Avoid line references if at all possible when replacing or adding text. Typesetting differs from one version of a document to another—even between electronic versions on different computers—and words may not appear in the same place. If some words appear more than once in a provision, try quoting a larger piece of text to specify which occurrence rather than resorting to a line reference or “where it appears for the second time”.

Amending regulations

- **repeal vs strike-out**
- **line references**
- **blanket changes**
- **replacements and additions**
- **renumbering or relettering**
- **effective date of amendment**

Do not use line references

Blanket changes

If a word appears in a number of places in a set of regulations or in a particular provision, strike out the word “wherever it appears”. Be careful that this type of blanket change does not affect a word when it is used in a different context. For example, striking out “truck” and substituting “vehicle” in a provision that contains the phrase “every truck bearing truck plates” would result in “every vehicle bearing vehicle plates” and a perhaps unintended change to “truck plates”.

Replacements and additions

Replacement text or provisions are “substituted”.

New text or provisions are “added”.

When adding new provisions between existing provisions, number or letter the new provisions as follows:

- new Sections - 1A, 1B, 1C...
- new subsections - (1A), (1B), (1C)...
- new clauses - (aa), (ab), (ac)...
- new subclause - (ia), (ib), (ic)...
- new paragraph - (AA), (AB), (AC)...

When adding a new subparagraph ((I), (II), (III)), fit the new provision in by renumbering all of the existing subparagraphs.

In a long list of items (usually clauses or subclauses), always check to ensure that the numbering or lettering of a new provision does not conflict with an already existing provision.

Renumbering or relettering

Renumbering and relettering causes confusion between old and new provisions. For example, when you refer to Section 2, are you referring to the original Section 2 that was later renumbered or the new Section

Renumbering and relettering can cause confusion

2 that was added? Which Section 2 is correct depends on a point in time reference. Also, renumbering or relettering may affect the *Summary Offence Tickets Regulations*.

Effective date of amendments

See also “Effective date of regulations”

Always put the effective date of an amendment in the executive order amending the regulations rather than with the amending items.

Effective dates for amendments follow the same rules as for original regulations.

Part 4 - Plain Language Drafting

What is plain language?

“The price of clarity, of course, is that the clearer the document the more obvious its substantive deficiencies. For the lazy or dull, this price may be too high.” – Reed Dickerson, Professor of Law, Indiana University.

“If language is not correct, then what is said is not what is meant, if what is said is not what is meant, then what ought to be done remains undone.” – Confucius.

Law must not only be accessible, but be understandable. No one should have to work hard to discover the meaning of the law. Plain language is all about effective communication. Is the message being understood by all audiences, not just lawyers and the people who administer the regulations, but by all citizens who are affected? A person cannot act on or comply with a document that they cannot understand.

The amount of time spent handling questions, correcting mistakes and dealing with complaints in the administration of regulations is greatly reduced if what is required of a person is clearly communicated. Plain language therefore improves the relationship between government and citizen.

The law should communicate clearly so that

- civil servants can administer regulations efficiently without complex manuals and interpretive guides
- the public can fill out forms and understand what is required of them without information brochures to interpret the regulations

Plain language means clarity and effective communication

Plain language increases efficiency and improves relationships

Define your subject matter

Clearly define your subject matter and ensure that all points are covered. Do not mix subject matters. Examine the subject matter of the regulations and decide if the regulations would be more clear as a single set of comprehensive regulations, or if they should be broken down into smaller, more specific sets of regulations.

Considering the audience or audiences of the regulations may also help you determine when and how to divide regulations. You should consider separating subject matters if it would help readers to more easily find the information that applies to them.

Do not mix authorities. Regulations made by one regulation-making authority should not be combined with regulations made by another regulation-making authority unless the 2 authorities are jointly making regulations that cannot be made by either one separately—for example, the *Summary Offence Tickets Regulations*. If authorities are mixed in regulations, who made what and under what authority can become very muddled and it is easier to miss errors of authority.

Have a clear subject matter

Do not mix subject matters

Do not mix authorities

Write for your audience

Put yourself in your audience's shoes and then write for your audience. Regulations typically have at least 4 main audiences, with varying levels of understanding of the subject matter:

- general public
- specific interest groups (land surveyors, nurses, employers and employees)
- administrators (the government employees who have duties under the regulations)
- lawyers

Try to make your regulations intelligible to the widest possible audience. What questions will the reader have? What have been areas of miscommunication in the past? What does the government need to

Write for each audience that will use the regulations

communicate to get the desired outcome for the government? For the reader?

Identifying your audience ensures that you focus on your readers' needs—an important tool for organizing regulations.

Plain language involves wording, organization and layout. All of these factors contribute to the readability of a document. But the true test of success is not just that a document *reads* well, but that it *communicates* to your audiences.

Write for an individual

Whatever part of your audience you are focusing on, if you write for an individual, you have to

- carefully analyse what you want the individual to do
- clearly assign responsibilities and requirements
- provide all the information the individual requires

Writing for an individual also makes writing in the active voice more natural.

What do you want an individual to do?

Use the active voice

Writing in the active voice ensures that you clearly identify who is responsible for what actions. It answers the questions 'who?' and 'by whom?' What makes a sentence active or passive is the relationship between the verb and the subject of a sentence. The subject performs the action in a sentence written in the active voice. In the passive voice, the subject is acted upon. Sentences that use the active voice are stronger, shorter, easier to read and more effective in communicating the message.

Use the active voice:

- **subject performs the action**
- **'doer' identified for each action**
- **answers 'who?' and 'by whom?'**

<i>example:</i>	active:	An applicant must send a completed application to the Department.
	passive:	An application must be completed and submitted to the Department.

The passive voice may be useful

- if the ‘doer’ of the action is not known, or is obvious
- if the action is performed as a result of another force (e.g. by law, by time)
- if there is more than one ‘doer’ of the action, listed at the end of the provision
- if you want to focus attention on the receiver (person or object) of the action

Only use the passive voice if you are consciously doing so for one of these reasons.

Avoid the passive voice

Tip: watch for “be [verb]ed” constructions

Use the present tense

The law is always speaking (see subsection 9(1) of the *Interpretation Act*). Using the present tense avoids the clutter of compound verbs and clearly conveys the current standard practice.

If you need to express a time relationship in regulations

- use the past tense for an event that has occurred or will occur before the effective date of the regulations or for an event that will necessarily have occurred before another event described
- use the future tense for an event that is conditional on a prior one or that will occur after another event

The present tense is the least complicated

Use natural word order

There is a natural word order and flow to speech. The natural word order is:

Subject ! verb ! direct object ! indirect object

Try to follow this natural word order when writing. For example, you would not say “she gave to him the book” (indirect object and direct object are reversed), so do not write that way.

**Natural word order:
(subject-verb-object)**

example: write: “A person must file an application with the Registrar.” (subject, verb, direct object, adverbial phrase)

don’t write: “A person must file with the Registrar an application.”

example: write: “An applicant may ask the Minister to waive the 10-day waiting period.”

OR

“An applicant may request that the Minister waive the 10-day waiting period.”

don’t write: “An applicant may request the Minister to waive the 10-day waiting period.”

Put modifiers near the word that they modify. A modifier is a word or group of words that tells more about another word’s meaning.

**Modifiers belong with
words they modify**

example: write: “a trailer or semi-trailer that has one axle and is equipped with electric or hydraulic brakes”

don’t write: “a trailer or semi-trailer equipped with electric or hydraulic brakes having one axle”

If you have too many phrases interrupting the subject-verb-object order, you should break the sentence up.

Organize in a logical order

The more complex the information being conveyed, the more important it is to have clear organization.

Find the best way to organize ideas so that they make sense to your audiences. Focus on what requirements, obligations and procedures each reader needs to know and break the regulations down, deciding which parts apply to each of your audiences. Group the provisions of the regulations as they apply to each audience. Don't mix rules for one audience with rules for another.

Organize regulations to describe events as they occur: you fill out a form, you send in the form, someone reviews the form, someone decides what to do with your form with the resulting consequences. Chronological order works especially well to describe procedures.

Within provisions dedicated to an audience, ensure that the subject matters are all separated logically and flow from one to the next. Try to anticipate the questions a reader will have about what to do next.

Here are some general suggestions about organization:

- group together provisions that affect each of your audiences
- group like provisions together
- place general provisions before specific provisions
- place more important provisions before less important provisions
- place more frequently used provisions before less frequently used provisions
- place temporary provisions at the end (so they can be removed without renumbering)
- place administrative provisions and penalty provisions at the end (The general public is more interested in the rules of conduct

Clear and logical organization improves communication - especially of complex subjects

Group provisions according to their audience

Organize provisions chronologically

Tips for organizing

imposed on their activities than the administrative means for enforcing the rules.)

Use meaningful headings

Headings help a reader find important information and quickly navigate their way through regulations. Headings also enable a reader to get an overview of the regulations with a quick scan and to see which provisions apply to them.

Use specific, relevant headings to guide reader through provisions

Ensure that headings are specific enough to have meaning to a reader and differentiate one Section, Part or form, etc. from another. Make sure a heading accurately captures the subject matter of a Section, Part or form, etc. Do not use headings like ‘general’ or ‘miscellaneous’ — they only highlight poor organization. If you have difficulty coming up with a succinct heading for a Section, perhaps you need to break up the Section into several Sections. If a provision describes an action or procedure, try using a verb in the heading.

Use headings only down to the Section level of your regulations.

Before you begin drafting, develop an outline—create headings and organize them into groupings that can be identified by more general centred headings. This is usually easier than going back at the end of the process and having to force a structure onto what is already drafted and recheck and renumber cross-references. Developing an outline like this will make organization much easier and provide you with a visible check on whether you have:

Develop outline before drafting

- included key topics
- broken the provisions down into short, single-issue Sections
- grouped related subject matter
- followed a logical order
- avoided gaps, overlaps and contradictions
- used headings specific enough to identify the subject matter

Do not rely on headings to clarify a provision. A reader must be able to make sense of a provision without the heading. Remember that headings are not intended to form part of the substance of regulations, but are intended as guides only. (See Section 12 of the *Interpretation Act*.)

Use consistent formatting

Block formatting

White space makes any document less intimidating and easier to read. (See “[Numbering and structure of provisions](#)” for an example of block formatting.)

Block formatting is intended to make regulations more visibly appealing—using white space and structure to organize the flow of sentences. Block formatting means using an indent between a provision’s number or letter and the text of the provision. Do not put a space between a provision’s number or letter and the indent. Never use spaces to align text.

The left margin throughout the document must be 38 mm (1.5 in.) to allow for hole punches on the left edges of pages. The first page of Schedule “A” to an R&R must have a 51 mm (2 in.) at the top margin to provide space for Executive Council’s stamp.

Font and text alignment

The Registry uses Times New Roman typeface and left text alignment (ragged right margin) for publication of the *Royal Gazette Part II*.

Full justification of text stretches and constricts the spacing between letters and words to make all the lines flush with the right margin. This is especially noticeable in text that is not professionally typeset. The gaps created by this stretching and constricting interrupt the flow of words across a page, making reading more difficult. This paragraph is formatted using full justification.

Left text alignment ensures that the spacing between words and letters stays consistent. The eye also uses the variation in line endings at the right margin to track down the page.

Formatting:

- **block formatting (use indents)**
- **margins**
- **font and justification**
- **no automatic numbering**
- **no unnecessary capitalization**
- **tables**

Use standard margins

Registry standard is Times New Roman typeface and left text alignment

Using the Registry's standards when drafting regulations is helpful for the same reasons and avoids making it necessary for the Registry to reformat everything for publication.

Automatic numbering

Do not use automatic numbering, because errors in numbering can result from changes made to a different part of the regulations or from reprinting the regulations on a different computer. Automatic numbering must be removed from regulations before publication in the *Royal Gazette Part II*, requiring additional work renumbering and re-checking numbering.

Tip: Remove automatic numbering in WordPerfect by unchecking the 'QuickBullets' option on the 'Format-as-you-go' tab of QuickCorrect - found on the Tools drop-down menu.

Avoid unnecessary capitalization

Computers are used for word processing now, so there is no need to rely on outdated methods of adding emphasis. Variation in typeface and font size is a much more visually appealing way to make words stand out. The trend is therefore towards an increasing use of lower-case letters.

Use variation in typeface and size instead of capitalization

Only capitalize

- proper nouns
- first letter of each word in a centred heading
- first word of a Section heading

When to capitalize

Capitalizing a word does not change its meaning or make it more important. 'Licence' is no more important and official than 'licence'. They both have the same meaning. Overuse of capitalization can be intimidating to a reader.

Use lower case for general references, upper case for specific references (proper nouns):

<i>example:</i>	general:	office of vice-president
	specific:	the Vice-President of the ABC Board

example: general: the regulations made by the Minister
 specific: the *Transportation of the Dead Regulations*
 (Note the italics for the proper name of the regulations.)

Put words in **bold font** to make them stand out, rather than varying the case of letters. Underlining is also very difficult to read. **Don't** overuse **emphasis**, or it **loses its effectiveness**. Emphasis is generally not necessary for the main text of regulations, but is useful in forms and executive orders.

Use bold for emphasis - but sparingly

Lowercase words have recognizable shapes, characterized by what are called ascenders and descenders, which make the words distinctive.

Even Initial Capitals Cause Unnecessary Bumps and Should Be Used Sparingly.

PUTTING EVERYTHING IN CAPITAL LETTERS MAY DRAW A READER'S ATTENTION. BUT HAS NO SHAPE AND MAKES THE TEXT MORE DIFFICULT TO READ. IN E-MAIL USAGE IT DENOTES SHOUTING.

Tables

Tables (and flowcharts) are a good way to display information. If properly constructed, tables are more visually appealing than long lists of information and can draw the reader's attention quickly to the information they need to know. Tables help a reader see relationships in a way that dense text never can. Tables almost always use fewer words than a straight textual explanation. Tables are therefore a powerful tool for simplifying complicated material. Tables are also a perfect way to set out a list of fees.

Tables easier to read than textual explanation of relationships

Use vertical lists

Vertical lists highlight a series of parallel requirements or other information in a visually clear way. The opening statement for a list should indicate whether the following listed provisions are to be read conjunctively or disjunctively, such as: 'all of the following', 'one of

Vertical lists:

- indicate how to be read
- use parallel structure

the following', 'one or more of the following' or 'any or all of the following'. This eliminates the need to add the operators 'and' or 'or' immediately before the last provision in the list.

- | | | |
|-----------------|------------|---|
| <i>example:</i> | list: | The final well report must contain all of the following:
(a) a summary of the complete operations;
(b) a plot showing the location of the well-bore;
(c) a diagram of equipment installed on the well;
(d) the results of formation flow tests. |
| | list-like: | The final well report must contain
(a) a summary of the complete operations;
(b) a plot showing the location of the well-bore;
(c) a diagram of equipment installed on the well; <u>and</u>
(d) the results of formation flow tests. |

Note: Using 'as follows' is not as specific, since it does not indicate how the provisions that follow operate together.

List-like provisions can be used in some circumstances to vertically structure a sentence that is made up of one or more parallel clauses, but the list format is preferred wherever possible.

Vertical lists and list-like provisions can

- help the reader understand the order in which things happen
- make it easier for a reader to identify all necessary steps in a process
- add white space for easy reading
- clarify intended syntax or word order

Benefits of vertical lists

Make sure you use a parallel structure when creating a list—list each item so that it makes a complete thought when read with the introductory text and any following text. Parallelism means ensuring

Lists must be parallel grammatically and logically

that the list is presented using parallel parts of speech, such as nouns or verbs, so that each item in the list is connected in the same way grammatically as every other item in the list to the parts of the sentence before and after the list.

example: write: The department must collect fees for the following:

- (a) renewing a license;
- (b) amending a license;
- (c) inspecting a license holder's premises.

(parallel because all use 'ing' form of verb)

don't write: The department must collect fees for

- (a) renewing a license;
- (b) amending a license; and
- (c) an inspection of a license holder's premises.

(not parallel—(c) is a nominalization, or noun phrase)

Parallelism also means that the items in the list are all connected by some overall subject matter. For example, a list of construction requirements for a bathroom should not contain items that need to be supplied in the room such as soap and paper towels.

Each item in a list must complete the introductory sentence and be able to stand alone without the other items.

Be careful not to use lists to justify unnecessarily long or structurally complex sentences. Watch out for lists that begin with only 1 or 2 preceding words as this usually indicates that the list is really not a list at all, but a set of similar requirements that would be better set out in individual subsections.

When and how to use definitions

Putting definitions in regulations ensures that every reader places the same meaning on those words. Definitions can also serve as signposts to further information about a defined word or concept.

Use definitions to avoid repeating long phrases or qualifiers or to create a shorthand for a complex concept:

example: “application” means an application for a licence issued by the Minister to buy or sell fish, fish products, fish bits and oils from fish

“benefit” means an amount paid to an employee under Section 45

Defining “application” means the rest of the qualifying words need not be repeated every time the regulations refer to the application. Defining “benefit” means that the concept of the benefit does not need to be explained every time the word is used in the regulations, but a reader knows where to find the explanation. Be sure to use a descriptor to indicate when a definition is being given a more restrictive meaning than usual. For example, defining “licence application” rather than “application” or “loss of income benefit” rather than “benefit” means a reader will be better able to remember and understand the defined term in context without referring back to the definition.

Define words if you want them to mean something other than their dictionary meaning or to specify which of several meanings a word or expression has in the regulations. Be wary of defining a common word that may also be used in its everyday sense elsewhere in the regulations, even in a different word form, because a definition includes all forms of the word unless restricted (see clause 19(j) of the *Interpretation Act*).

Create the definitions after you draft the regulations. You won’t know how many times a word or phrase will be used in a set of regulations

Definitions:

- ensure same meaning understood
- as signposts to further details
- as shorthand for long phrases or complex concepts

Create definitions after drafting

before you start writing. If you create definitions before you draft the regulations, you may define a word that is not used. A shorthand phrase developed before you start writing may not be as appropriate as one developed during drafting.

A definition should correspond to the same part of speech as the word being defined. A reader must be able to substitute the word with the definition, exactly as written, when reading the text.

Definition and word interchangeable

When extending the meaning of a definition, either one defined in the Act or the dictionary meaning, use “and includes”. Use “does not include” to limit meaning.

Do not create an artificial or unnatural definition:

Definition “don’ts”

||| *example:* “apple” includes “orange”;

Do not use a defined word in its own definition because you will probably end up with a circular reference.

Do not do any of the following unless the enabling Act specifically authorizes it:

Authorization in enabling Act may be required

- redefine words that are defined in the Act
- define words for the purpose of the Act
- extend or limit the scope of a definition used in the Act

Do not include a substantive rule, requirement or prohibition in a definition. A definition must not contain a rule of law or conduct. Substantive content belongs in the main text of the regulations. A reader may miss a substantive rule tucked away in a list of definitions. If a definition is too complex to include within the definitions Section, include a cross-reference in the definition to the relevant provision in the main text of the regulations that provides the details.

Do not include substantive rules:

- may be missed
- enforceability of non-compliance?

- example:* “travel allowance” means an amount that is
- (i) paid in advance to an employee by the agency to cover expenses and costs incurred while the employee is travelling on work-related business, and
 - (ii) calculated in accordance with subsection 15(3);

If a substantive requirement is placed in a definition, non-compliance with the requirement may simply mean that something falls outside the definition, rather than meaning that a regulatory requirement has been contravened.

- example:* write: “manager” means a person employed by the owner to manage the facility;
(requirements for training or ensuring training of manager belong in the body of regulations)
- don’t write: “manager” means a person who has completed 200 hours of supervisory training and is employed by the owner;

In the ‘don’t write’ version, if a manager doesn’t have the required hours of supervisory training, then they are not a manager. This may have unintended legal consequences and open up questions, such as: Who has the onus to ensure that the manager has those hours? Do provisions that place duties and requirements on a manager still apply to this person? Is there a penalty for allowing a non-manager to perform those duties?

Do not repeat definitions from the enabling Act in the regulations (Section 13 of the *Interpretation Act*). The wording in the Act may change or the regulations may be amended without realizing that the definition is from the Act. There is also the principle that the legislature has already spoken on this and therefore the person or body making the regulations has no authority to speak to the same matter. Expressions used in the Act but not defined there also have the same meaning in the regulations made under the Act.

Do not repeat definitions

- legislature has already spoken
- definition may be changed in one place and not the other

However, definitions may be repeated in the regulations if it is considered more convenient, either for the public or the administrators, for the regulations to be circulated and read separate

and apart from the enabling Act. The drafter must weigh the pros and cons of this approach.

Avoid repeating statutory provisions

The same reasons for not repeating definitions in the regulations apply to repeating other provisions from the Act. Use cross-references, if necessary, to related provisions of the Act. Try to make these cross-references as informative as possible. This avoids making it necessary for the reader to look up the provision. Consider rephrasing the Act reference to incorporate the gist of the referenced provision.

example: write: “an application for a beekeeper required by subsection 87(1) of the Act must be in Form A”

don’t write: “for the purpose of subsection 87(1) of the Act, an application must be in Form A”

If “for the purpose of” is the simplest way to refer to a complicated provision, it is still best to include some information about the subject matter of the provision in the reference—for example “for the purpose of a beekeeper application required by subsection 87(1) of the Act”. Or consider rewriting it as “To apply to be a beekeeper under subsection 87(1) of the Act...”.

Avoid copying out-dated provisions

Don’t preserve bad writing unless you have a really, *really* good reason. This includes not copying poorly written provisions from other provinces’ statutes and regulations. Arguments such as “that’s the way it’s always been” or “everyone knows what this means” do not justify unplain language. If ‘everyone’ knows what it means, then the drafter should be able to explain it plainly.

Rewriting bad writing usually involves clarifying what it means. If you don’t know what it means, doesn’t that indicate that it needs

Use descriptive cross-references instead of repeating provisions of Act

Out with the old out-dated provisions

Take the opportunity to clear things up

rewriting? If you don't understand the regulations you draft, how can anyone else be expected to?

Keep it short

Je n'ai fait celle-ci plus longue que parce que je n'ai pas eu le loisir de la faire plus courte. (I have made this longer than usual, only because I have not had the time to make it shorter.) - Pascal

Getting rid of unnecessary words lends precision to your ideas—because you cannot cut out words unless you know which words are necessary. You cannot keep it short unless you have first thought hard about what needs to be said. Long, complicated sentences often mean that you aren't clear about what you want to say.

A sentence should consist of about 20 words, excluding sentences that contain lists. Don't try to squeeze everything into one sentence. Break a sentence down into its basic ideas or elements. Put only one idea in each sentence. Use only one sentence in each Section or subsection. Put only one issue in each Section. Use only as many words as necessary.

Shorter sentences break up information into smaller, bite-size pieces. Short Sections and subsections create more white space and thus look less intimidating and easier to read. Short sentences are easier to remember.

Try saying the Section out loud. If it doesn't sound 'natural', it's probably too wordy. People don't tend to speak in long, complex sentences.

If you can't think of a simple heading for a Section, it usually means that you have too many ideas mixed together in the provision and you should separate them out.

If a change in punctuation could change the meaning of a provision, re-write the provision or break it into more than one provision.

Keep it short:

- one idea per sentence
- one issue per Section

About 20 words per sentence

Say it out loud

Don't rely on punctuation for meaning

Avoid inserting extra phrases in parentheses. Parentheses are used in writing to add extra details that are not integral to the sentence. If details are not integral in law they should be omitted.

You may be saving words by using ‘respectively’, but your reader has to use more time and go back and read your words twice to understand what you’ve written.

example: write: The Registrar must send Form A to the committee and Form B to the board.

don’t write: The Registrar must send Form A and Form B to the committee and the board respectively.

Keep it simple

“If you can’t explain something simply, you don’t understand it well.” - Albert Einstein

Use familiar words

Keeping it simple means choosing easy, familiar words—words that you learned early in life, everyday words and expressions.

Explain technical terms or concepts that you cannot avoid (see [“When and how to use definitions”](#)). Remember that the public is always one of your audiences. A specialized interest group may understand the terms they use, but the terms may be meaningless to anyone outside that group unless they are explained. Do not use complex or technical terms without explaining them. Avoid jargon-like terms or buzzwords created to make a subject sound fancier or more important—these are not legitimate technical terms.



Be particularly careful about using terms that are different from the terms and language used in the enabling Act.

Avoid archaic Latin terms and legalese—you may think they add a more formal tone or ‘legal feel’, but they add nothing to the substance. Similarly, use English endings for anglicized foreign words such as

Keep it simple:

- use familiar words
- avoid noun clusters
- avoid turning verbs into nouns
- replace phrases with a word
- use ‘their’ as singular possessive pronoun

‘formulas’, ‘appendixes’ or ‘forums’ if the endings have become commonplace.

Use this... 	Not this 	Table for replacing Latin terms
with the necessary changes in detail	<i>mutatis mutandis</i>	
in good faith	<i>bona fide</i>	
per day	<i>per diem</i>	
per year	<i>per annum</i>	
by virtue of their office	<i>ex officio</i>	
in private	<i>in camera</i>	
on its face	<i>prima facie</i> (unless used in an evidentiary context)	

Use ‘deemed’ only to create a legal fiction; otherwise use ‘considers’:

<i>example:</i>	write:	“notice is <i>deemed</i> to be received 5 days after the date it was sent”
	write:	“the committee may take whatever remedial action they <i>consider</i> necessary”

Avoid noun clusters

Avoid shoving too many nouns together without prepositions and articles to clarify the relationships among the words.

<i>example:</i>	write:	“developing procedures to protect the safety of workers in underground mines”
	don’t write:	“underground mine worker safety protection procedures development”

The ‘don’t write’ example above is especially typical of policy writing and, although the administrators seem to usually know what these terms mean, most others are bewildered. Don’t define the term. Write it in plain language.



Avoid turning verbs into nouns (nominalization)

Many verbs have related nouns—you can decide or make a decision, complain or make a complaint, know or have knowledge of. Writing that uses verbs is briefer, clearer and more direct.

Watch for nouns ending in:

-ance, -ancy, -ant, -ence, -ent, -ion, and -ment

These are often nouns derived from verbs.

Use this... 	Not this 
by introducing	by the introduction of
for allocating	for the allocation of
of providing	of the provision of
apply for	submit an application for
evaluate	carry out an evaluation of
except	with the exception of
explain	provide an explanation of
indicates	gives an indication of
inspect	carry out an inspection of
investigate	implement an investigation of
notify	send notification of
review	conduct a review of
select	make a selection
survey	conducts a survey of
assess	perform an assessment of
renew	effect a renewal of

Replace phrases with a word

If a simple or familiar word has the same meaning as a phrase, use the word.



Use this... 	Not this 
possessive form using apostrophe (eg. “the committee’s report”)	‘of’ possessive phrase (eg. “report of the committee”)
apply	make application, submit an application
so or so that	in such a way that

Table for replacing phrases with word

Use this...

if
 during
 to

 in
 conclude
 depends on
 considerably affects
 uses
 exceeding, exceeds
 consider

 comply
 later
 limit
 pay
 recognize
 such as
 inform
 for, about, over

 without
 with

Not this

in the event that/provided that
 over the duration of
 for the purpose of [verb or nominalisation], in order to
 for the purpose of [provision]
 reach a conclusion
 is dependent on
 has a considerable impact on
 makes use of
 in excess of
 take into consideration **or**
 give consideration to
 in compliance with
 at a later date
 place a limit on
 make payment
 give recognition to
 including but not limited to
 provide information
 with respect to, in respect of,
 respecting
 in the absence of
 in conjunction with

Words and phrases to avoid**Use this...**

to it
 of it, of them
 a, an, the
pronoun or noun
 a, an

Not this

thereto
 thereof
 such, said (as adjectives)
 same (as pronoun)
 any, every

Table for replacing words and phrases to avoid

Use this...

on, when
 money
 whether
 despite
 under
 before
 consists of, composed of
 because of, caused by
 minor (for person under 18)
 a person must not
 next to
 begin
 fill out
 part
 make up
 send
 show, prove
 choice
 send, give
 end
 have
 enough
 later, next
 witnesses (verb)
 answer, reply
 defer

~

~

Not this

upon
 moneys
 whether or not
 notwithstanding
 pursuant to
 prior to
 comprises (rarely used correctly)
 due to
 infant
 no person shall
 adjacent to
 commence
 complete (verb)
 component, portion
 constitute
 forward
 demonstrate
 option
 provide, submit
 terminate
 possess
 sufficient
 subsequently or subsequent
 witnesseth
 respond
 delay
 the provisions of
 aforesaid, same, whatever,
 beforementioned, whatsoever,
 whomsoever, herein, hereby,
 hereafter, thereby, thereof

Use singular nouns and pronouns

Writing in the singular prevents confusion as to whether the provision applies to readers acting individually or in groups.

Use the singular - because writing for the individual

example: “charitable and educational institutions”
 means: a charitable and educational institution (*one institution*)
 OR
 a charitable institution or an educational institution (*2 types of institutions*)

example: write: “A person must not operate a truck with more than 2 axles on a Class C road.”
(clear that 1 truck, 2 axles)
 don’t write: “Persons may not operate trucks with more than 2 axles on Class C roads.”

Use ‘they’ as a singular pronoun and ‘their’ as the possessive form. This is a widely accepted, gender neutral alternative. Be sure that the noun being referred to is clear from the context. Be especially careful of mixing the singular and the plural when using ‘they’. Do not use the plural to avoid using a pronoun. If the sentence is rephrased to get rid of a superfluous ‘if’ phrase, you can eliminate the pronoun altogether.

‘They’ as singular pronoun

example: write: a person who does ‘X’ must
 don’t write: if a person does ‘X’, *he* must

Use the singular ‘a’ or ‘an’ as articles, not ‘any’. Do not use ‘every’, unless you need to create emphasis. ‘Every’ loses its emphasis if overused. Do not use ‘the’, unless you are specifically referring to ‘the one’ mentioned earlier, or if there is only one (e.g. ‘the manager’).

Tip: if you can replace ‘the’ with ‘every’ or ‘any’, it should be ‘a’ or ‘an’.

example: write: “An installation of *a* device under subsection (1) must be done in accordance with...”

don't write: "The installation of a device under subsection (1) must be done in accordance with..."

or

"An installation of *the* device under subsection (1) must be done in accordance with..."

'Upon'

'Upon' is not necessary unless time is important to the provision. Avoid using 'upon', if possible, because it means you have to use nominalizations and the passive voice.

Use 'upon' if time sensitive only

example: write: "An applicant must send a completed application to..."

don't write: "Upon completion of an application for a licence, the application must be forwarded to..."

If time is important to the provision, state the time required:

example: write: "The director must respond to a notice *no later than 7 days* after the date it is received." (or 'without unreasonable delay', 'as soon as practicable')

don't write: "Upon receipt of a notice, the director must respond to the notice."

'If', 'when' and 'where'

'If' should be used to introduce a condition. 'When' should be used to introduce an event that is a certainty, and the law assumes very few events to be certain. 'Where' should not be used in either of these circumstances, because it can mean both and is therefore ambiguous. The phrases 'in circumstances where' or 'in cases where' are the same as 'where'. Watch out for 'where' or 'if' phrases that describe a person

- 'if' for condition
- 'when' for certain event
- 'where' for place

or thing and are used as conditions, as these may not be true conditions and can usually be eliminated by rephrasing:

False 'if' phrases

- example:* write: "A current permit holder who applies for a licence must..."
- don't write: "Where a person who applies for a licence is a current permit holder, the person shall..."
- write: "A person who receives a rebate under subsection (1) may..."
- don't write: "If a person receives a rebate under subsection (1), the person may..."
- write: "A judge who imposes a fine must..."
- don't write: "Where a judge imposes a fine, the judge must..."

Use 'if', 'but' and 'except' for qualifications

Use the following to avoid expressions such as 'provided however', 'provided always' and 'provided that':

- 'if' - to introduce a condition to the rule (most common)
- 'but' - to introduce a limitation or qualification to the rule
- 'except' - to introduce an exception to the rule

Qualifications:

- 'if' for condition
- 'but' for limitation
- 'except' for exception

Do not mix conditions and exceptions.

- example:* write: "if A, then B or C"
- don't write: "if A then B, unless C"

'Unless' means "except on the condition that" and therefore combines both a condition and an exception and should be avoided as a conjunction.

If the clause is a separate complete thought rather than a qualification, start a new Section or subsection.

If the qualifications are long or complicated, place them at the end of the provision.

example: write: A recipient may continue to receive benefits if

- (a) the recipient's child is taken into the care of the agency; and
- (b) the agency advises a caseworker that
 - (i) the recipient is taking part in a designated program, or
 - (ii) there is a valid reason why the recipient cannot take part in a designated program.

don't write: If

- (a) a child of a recipient is taken into the care of the agency; and
- (b) the agency advises a caseworker that
 - (i) the recipient is taking part in a designated program, or
 - (ii) there is a valid reason why the recipient cannot take part in a designated program,

the recipient may continue to receive benefits.

‘Despite’ and ‘subject to’

‘Despite’ is used to refer a reader back to a general rule stated earlier when writing an exception to a rule. Exceptions may also be written as “except as provided in (cross-reference to later provision)”. This is preferable, since a reader is immediately aware of exceptions upon reading the general rule.

‘Subject to’ is not used for exceptions. ‘Subject to’ means that the provision doesn’t work without reference to another provision that restricts, expands or places a condition on this one.

Avoid ‘despite’ and ‘subject to’ if at all possible because they require a reader to jump around in the text, much like other cross-references. If necessary, include a descriptor to minimize the need to jump back and forth in the text.

example: write: “Despite the requirement for a licence in subsection 10(2),”
 don’t write: “Despite subsection 10(2),”

Despite - in exception, refers back to rule

Except as provided in - in rule, refers to exception

Subject to - in rule, refers to condition on rule

‘And’ and ‘or’

Be careful about using ‘and’ and ‘or’ between 2 or more units in a provision. Using ‘and’ normally means that both units apply. Using ‘or’ generally means that only one unit applies, but has been interpreted to mean that both units can apply. This is because each unit applies individually in a disjunctive sense and it is not necessary that only one may apply. Try to format the provision in a list to avoid having to use ‘and’ or ‘or’.

Do not use ‘and/or’, or ‘A or B or both’.

Do not mix ‘and’ and ‘or’ between units because it is unclear to the reader whether the units are intended to be read as ‘(A and B) or C’ or as ‘A and (B or C)’.

See “Use vertical lists”

Avoid ambiguity and uncertainty

Ambiguity can cause uncertainty, provide unintended humour and create doubts as to a drafter's competency.

Ambiguity caused by word order or word meaning

If your writing can be interpreted to have two or more different meanings, then your message is not clear. Using short sentences will often make this problem disappear. Ambiguity has at least 2 common sources: word order and word meaning.

Word order

Be careful of the placement of words in a sentence. Here are a couple of tips for reducing ambiguity:

See also "Use natural word order"

- keep subjects and objects close to their verbs
- avoid ellipses
- put conditionals and other modifiers next to the words they modify

example: "tall men and women" or "women and men who are tall"
(Does the modifier 'tall' apply to both men and women?)

Vagueness (like the subjective modifier 'tall') is sometimes acceptable as it spares the drafter from having to be too specific. Ambiguity is never acceptable.

Avoid elliptical expression that omit words. Readers may not all supply the same missing words. It is important to keep sentences as short as possible, but be careful of leaving out important qualifying information. Below is the wording of a sign in the London Underground:

Elliptical expressions - do not omit words

example: *Dogs must be carried at all times*

Does this mean that all users of the underground must carry dogs? Surely only those people who have dogs should carry them, but this qualification has been omitted.

Pronouns and verbs that are frequently omitted in ordinary speech or writing must be written into legislation.

example: write: “a person who is eligible” (complete)
 don’t write: “a person eligible” (elliptical)

Word meaning

The phrase “over 18 years of age” is ambiguous because when is a person ‘over 18’? On the person’s 18th birthday, on the following day, or on the person’s 19th birthday? Rewriting this as “at least 18 years of age” avoids the ambiguity.

Make sure meaning of words and phrases cannot be interpreted other than as intended

‘Other’ can be ambiguous because it is sometimes synonymous with ‘additional’, but can also be used to signify an alternative to what has been previously expressed, or to introduce a difference in quality compared to that which has gone before. ‘Additional’ means ‘another’, never an alternative. Thus ‘and any other...’ should be written as ‘and any additional’ if the ‘additional’ is intended to be of the same character as the previously listed items.

‘As applicable’ or ‘if applicable’ leaves it up to the reader to determine for themselves what or whether something applies. It assumes that they will know this. It is better to spell out what applies to whom and in what circumstances.

Avoid beginning a provision with “for greater certainty”: it only draws attention to the fact that you are not sure if you have already covered the issue in other provisions.

If the meaning is unclear to you, ask for clarification or clearer drafting instructions.

Use consistent terms

Use one term to mean one thing. Only use one term to refer to a thing. Once you use a term to refer to something or to a group or particular type of individual, use this term consistently throughout the regulations. Do not substitute another term because a reader may then (correctly) wonder if you are referring to something different. For example, if you choose the term ‘physician’, do not use ‘doctor’ or ‘general practitioner’ later unless they are *intended* to have different meanings *and* the difference is made clear.

Use 1 term to mean 1 thing consistently throughout regulations

Defining and non-defining clauses (that/which)

Use ‘which’ to introduce a *non-defining clause* containing added detail that is not necessary to the sentence. A non-defining clause is set off by commas to distinguish it from a defining clause. If you take the part between the commas away, the statement made in the main clause remains unaffected.

Defining and non-defining clauses

- which (non-defining)
- that (defining)

example: The reports and recommendations, which have been revised, can now be approved.
(added detail – they have all been revised)

Use ‘that’ to introduce a *defining clause*. A defining clause is necessary to understanding the noun or noun phrase that it is defining. It cannot be removed without changing the meaning of the sentence.

example: The reports and recommendations that have been revised can now be approved.
(defining the subset that is to be approved—only those that have been revised)

Most clauses in regulations are defining because unnecessary details are not included.

If in doubt about whether a clause is defining or non-defining, try separating the ideas into 2 separate sentences. If you can separate them, then it is a non-defining clause.

May, must and shall

'May' is permissive.

'Must' is imperative.

'Shall' is ambiguous, because it can mean 'may', 'must', 'will', 'is entitled to' or 'is'.

Use 'must' for imperative and 'may' for permissive

In *Lovick v. Brough*, the Supreme Court of British Columbia ruled that a change in wording from 'shall' to 'must' strengthened the imposition of a duty to take action. 'Must' was rejected as being the same as 'shall' because "must entails a *more mandatory obligation* admitting of less discretion" (emphasis added). 'Must' leaves no doubt that a strong obligation is created. There is no alternate interpretation to 'must'.

'May' indicates a discretion to act. 'May' can also be expressed as "is permitted to".

Do not use 'may' to show that a person is free to do one thing or its alternative because they may interpret it to mean they are free to do neither. Write "a person must do this or that", which makes it clear that the person has to choose one course or the other.

Very often a condition is placed on an action. If a person determines that the condition is met (discretionary) they must act (mandatory). To make the second action discretionary as well makes the entire decision-making process arbitrary and the condition virtually irrelevant.

If condition met = mandatory action

example: write: "If the director is of the opinion that good cause is shown, the director *must* extend the 30-day period."

don't write: "If the director is of the opinion that good cause is shown, the director *may* extend the 30-day period."

Avoid writing "as the person may consider necessary". The discretion is already built into 'consider', so the permissive 'may' is redundant. Write "as the person considers necessary".

'Might' suggests something that is not certain, but is possible. 'May' is also used in this sense to suggest a slightly greater degree of probability. Be careful that when using 'may' in this sense it is not confused with giving permission.

Use 'must' or a form of the verb 'to be' to create mandatory provisions. Use 'may' or 'is permitted to' to create permissive provision.

Only use 'only' in the right place

Placement of 'only' changes meaning

Be careful where you place 'only' in a sentence, as its placement can change the meaning of a provision:

- if you **only** draft regulations - you don't do anything else
- if you draft **only** regulations - regulations are the only things you draft (*but you may do other things*)
- if **only** you draft regulations - no one else does

example: write: "producer" means a person who sells wool grown **only** on their own farm;
(the wool sold is from their own farm)

don't write: "producer" means a person who **only** sells wool grown on his own farm;
(the person does *nothing* else besides sell wool from their own farm)

'Lesser/greater', 'fewer/more', 'earlier/later' comparisons

'Lesser' is used for volume, amount or duration. Lesser means not as much. The opposite of 'lesser' is 'greater'.

'Fewer' is used for numbers. Fewer means not as many. The opposite of 'fewer' is 'more'.

'Earlier' is used for time. The opposite of 'earlier' is 'later'.

Use this...**Not this**

at least

not less than, no fewer than,
not fewer than

not greater than

no greater than

no more than

not more than

no later than

not later than

Use 'and' between comparisons of 2 or more alternative amounts, volumes or times.

example: write: "the greater of X **and** Y"
"the greatest of X, Y **and** Z"
don't write: "the lesser of X **or** Y"

A comparison may be rephrased to use 'or', but requires adding a 'tail' to the end of a provision and the first way is preferred:

example: no 'tail': "The fee payable is the greater of
(a) ... ; **and**
(b)"
using 'tail': "The fee payable is
(a) ... ; **or**
(b) ... ,
whichever is greater."

Expressing dates and time

When expressing a deadline make sure the date is precise and identifiable.

Dates must be identifiable

example: write: "The report must be filed no later than the 20th day after the date the order is made."
don't write: "The report must be filed within 20 days of (or 'from') the making of the order."

(The 'write' version does not rely on a reader knowing any rules of interpretation about whether the first day is included in the count.)

Always use the date of an event, not the event itself.

example: write: “effective on and after *the date* that the Act comes into force”
 don’t write: “effective on and after the coming into force of the Act”

Describe a period in a way that makes the first and last days clear.

example: write: “after March 31 and before June 1”
 don’t write: “between April 1 and May 31”

Do not use the long form of dates.

example: write: “June 15, 2002”
 don’t write: “the 15th day of June, 2002”

Expressing numbers

Use arabic numbers (1, 2, 3...) unless the number must be spelled out.

Spell out a number if

- it begins the text of a provision
- it is the first number of two adjacent numbers (six 4-litre cans)

‘One’ should also be spelled out when it is used in a sense other than as a numerical quantity, as in “A licensee must report to the Director when the licensee moves from one jurisdiction to another.”

Use a space, not a comma, in numbers of 10 000 and up (“\$5 000 000” not “\$5,000,000”). Do not use a space or a comma for numbers under 10 000 (\$7500).

For amounts less than 1

- use decimals, not fractions (“6.5%” not “6 and ½ percent”), unless expressing a representative number of persons (“2/3 of the members”)
- place a zero before the decimal

You must also use decimal amounts with metric units.

For amounts less than a dollar, use a dollar sign followed by a zero and a decimal and then the cents (\$0.50). Don’t use “.00” after round dollar amounts, except in an list of fees in which not all amounts are rounded to the dollar.

Use ‘first’ but ‘2nd’, ‘3rd’, ‘4th’...

Use ‘third’ in the expression ‘third party’, because the sense is not primarily numerical.

Use algebraic formulas to describe mathematical processes and define the variables used in a legend. Use meaningful labels for variables that reflect the thing that they are substituted for and use meaningful letters as abbreviations of those labels, as above. If you simply use A, B and C or X, Y and Z, the formula is less apparent on its face. A reader must flip back and forth between the formula and the legend to understand the formula.

Don’t use fractions in formulas, as these can be affected by typesetting.

example: write: $t = PR / (SE - 0.6P)$ or $t = PR \div (SE - 0.6P)$

in which

t = minimum thickness of shell plates

P = pressure

R = inside radius of weakest course of shell

S = maximum allowable working stress

E = efficiency of joints between openings



don't write: $X = \frac{AB}{CD - 0.6A}$

where

A = pressure...

Appendixes

Appendix A - Submission Checklist

Attached is a report and recommendation/order (circle one) for the following regulations:

(title of regulations)

The following amendments to Acts that are not consolidated in the 1989 Revised Statutes are relevant to this submission (please list):

Title of Act	Year	Chapter

I have:

- (a) reviewed the submission for form and authority (and signed, if an R&R)
- (b) ensured that all required executive orders and approvals are included (may be unsigned)
- (c) enclosed a disk containing an electronic copy of the entire submission in WordPerfect together with any required graphics
- (d) used references only to regulations as printed in the original order, not consolidations or versions published in the *Royal Gazette Part II*
- (e) checked all citations and cross-references
- (f) ensured that the regulations are in block format and in accordance with the *Style and Procedures Manual*

Complete all that apply:

This submission **is rush priority** (attach request and approval of Deputy Minister of Justice)
 has a concrete deadline of _____
 is a routine approval

This submission was previously approved by the Registry on _____ (date), and I used an electronic copy of the previously approved submission obtained from the Registry to make the changes for this submission.

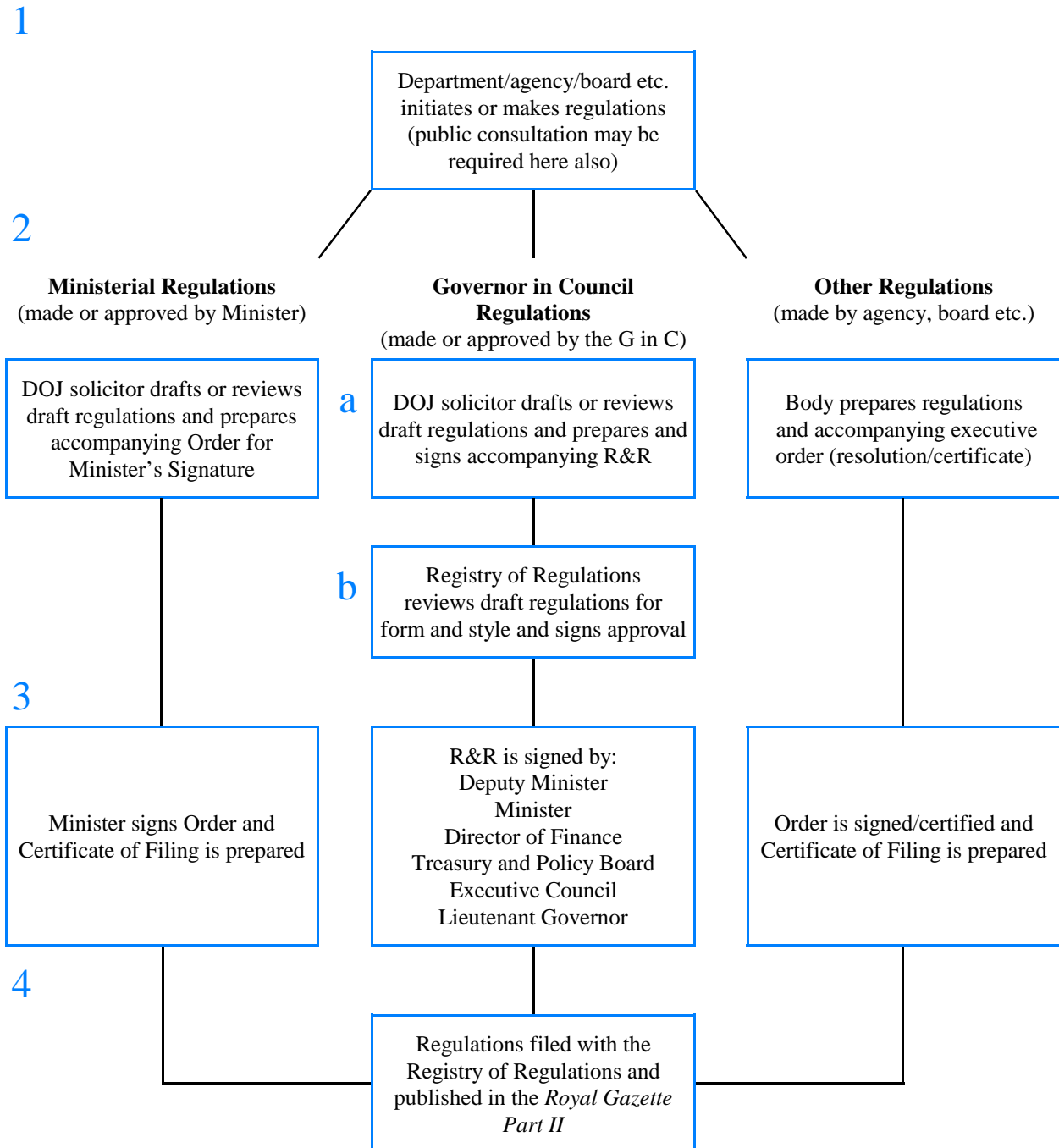
This submission does **not** require an amendment to the *Summary Offence Tickets Regulations*.

Sent in by: _____ Date: _____

 (Signature of Dept. of Justice Solicitor/representative of regulation-making authority)

Note: Please fill out this form and attach it to a new or post-approval submission only.

Appendix B - Regulation-Making Process Flowchart



Appendix C - Preparation of Reports and Recommendations

(Taken from the 3rd Edition of this Manual)

The content of a Report and Recommendation should be prepared by client department officials who are familiar with the subject matter and understand the legislation being relied upon for authority for the action recommended.

The standard form to be used for Reports and Recommendations may be obtained from the Treasury and Policy Board's website:

<http://www.gov.ns.ca/tpb/manuals/forms.htm>.

Completing the Report and Recommendation Form

'Subject' should include only a terse statement of the item being raised or the action proposed.

'Submitted by' should state the portfolio of the Minister concerned.

'Prepared by' should contain the name of the actual person who prepared the Report and Recommendation, so that they can be consulted if further information is required.

'Deputy Minister' is for the signature of the Deputy Head of the department that prepared the document. This is to ensure that the Deputy Head knows of and understands all submissions. In the absence of the signature of the Deputy Head, the Clerk will confirm the submission of the Report and Recommendation with the appropriate official or Minister.

The column on the left, headed 'Approvals' is provided to record progress of, and decisions relating to the Report and Recommendation.

The 'Summary' should be a brief and concise statement of the subject and proposed action.

After the Summary, there should be three main parts of the Report and Recommendation: the statutory authority, the reason for the request and the action requested, and the recommended order.

In a Report and Recommendation or an Order in Council, references to the Revised Statutes use the long form of citation: “Revised Statutes of Nova Scotia, 1989”. If other words follow the citation, they are preceded by a comma placed immediately after the year 1989. If the sentence ends after the citation, then a period is used. Note the comma placed between the words ‘Nova Scotia’ and the year ‘1989’. This comma does not appear in the abbreviated citation ‘R.S.N.S. 1989’ but is correct legal form in the long form citation. The use of the long form citation is one of the standards for preparation of submissions to Executive Council and clause 7(1)(aa) of the *Interpretation Act*, which provides for the use of the term ‘Revised Statutes’ in an enactment, does not apply.

The correct reference to a statute passed since the 1989 revision and consolidation is ‘Chapter ___ of the Acts of [year]’.

First Part

The first main part must make reference to the legal authority for the proposed action. It may be worded

“The undersigned has the honour to refer to Section ... of Chapter ... of the Revised Statutes of Nova Scotia, 1989, the ... Act, which provides as follows:”

(Then put in the actual Sections, making sure they are accurate.)

or, instead, if the Section is very long, reference can be made to the substance of the Section, for example:

“ ..., which Section provides that the Governor in Council may authorize execution of ...”

(Paraphrase the Section.)

Second Part

The second main part in a Report and Recommendation should be prefaced with the phrase “The undersigned has the honour to report that ...”, and must state briefly

- (a) pertinent facts and circumstances that make the Report and Recommendation necessary;
- (b) the action that is requested;
- (c) the likely result of the action of the Governor in Council, (what corrective action would result, what beneficial objective would be attained, what deficiency would be corrected),

and any other information that may be requested by Executive Council or the Treasury and Policy Board.

Third Part

The third main part of a Report and Recommendation must contain the recommendation for action by the Governor in Council.

The recommendation should be expressed as follows:

The undersigned has the honour to recommend that the Governor in Council be pleased to make an Order in the following form or to like effect:

The Governor in Council on the report and recommendation of the Minister of ... dated ... 20 ... , and pursuant to Section ... of Chapter ... of the Revised Statutes of Nova Scotia, 1989, the ... *Act*, is pleased to (then put in the precise words of the action required, such as “make regulations...” or “appoint...”)
...

See “What are the standard forms for orders?” for wording for R&Rs that request regulations.

This format of recommendation is preferred because (as long as it is properly drafted) the resulting Order can be precisely the same. It is important to use the correct language to describe what is being done in the attached Schedule. New regulations are made in the **form** set forth

in the Schedule. Amendments are made in the **manner** set forth in the Schedule.

Before submitting the R&R to the Executive Council, it must be signed by the Minister who is making the report and recommendation and the document must show the date of the Minister's signature.

All effective dates must be stated for appointments, regulations or agreements. A report and recommendation should not be submitted to Executive Council without provision for an effective date. This avoids extra communications, needless delays and questions regarding the effective date. If the effective date is to be the date of the Order in Council, this should be noted e.g., “ ... effective on and after (date of Order in Council)”.

See “Effective date of regulations”

Complete addresses, where appropriate, should be noted in the body of the Report and Recommendation. This applies particularly where people are recommended for appointments to boards, commissions or agencies.

Schedules and Other Attachments to Reports and Recommendations

Schedules referred to in the Report and Recommendation should be clearly identified and marked (for instance, as Schedule “A”, or Schedule “B”).

Schedules should have wording clearly identifying the subject. For instance, a schedule containing regulations should have a centred heading; for example:

**Regulations Respecting (Hunting of Furbearers)
made by (the Governor in Council) (the Minister of ...) pursuant to Section ... of
Chapter ... of the Revised Statutes of Nova Scotia, 1989,
the ... Act**

This heading should not include a restatement of the recommendation portion of the Report and Recommendation. It is preferable that the heading be in bold font.

When a Report and Recommendation respecting amendments to regulations is submitted to the Clerk of the Executive Council, it

should be accompanied by an explanatory note, attached after any schedules. This explanatory note should be in the form of a table, with three columns showing:

- | | | |
|---|---|--|
| 1) a precis of the existing regulation that is being amended; | 2) a precis of the proposed new regulation; | 3) an explanatory note of the effect of the change proposed in the particular regulation or regulations. |
|---|---|--|

The significance of the desired effective date should be stated in the Report and Recommendation or in the explanatory note.

Schedules that have been specifically approved by Orders in Council are public documents. Therefore, information in a schedule will no longer be private or confidential after the schedule has been approved by an Order in Council.

Schedules, other than those dealing with regulations and by-laws, should be dealt with by the Deputy Ministers concerned. Requests for schedules received by the Office of the Clerk of the Executive Council will be referred to Deputy Ministers.

Land descriptions and maps should be attached as schedules to Reports and Recommendations, where appropriate, and both should correspond precisely. Maps should show clearly the geographic area and county.

Where an agency, board or commission has made regulations subject to approval by the Governor in Council, a certificate of the chair, secretary or clerk of the regulation-making body must be attached as a Schedule to the Report and Recommendation confirming the resolution of that body.

All Reports and Recommendations recommending appointments to agencies, boards or commissions that must be referred to the Standing Committee of the House on Human Resources must be accompanied by a completed 'Form A' (Recommended Appointment to Agency)

signed by the responsible Minister for each individual recommended for appointment.

General Guidance Respecting Reports and Recommendations

Reports and Recommendations relating to subjects such as agreements, regulations or land transactions should only be presented to a Minister for approval and signature after they have been stamped and signed “approved as to form and authority” by the Department of Justice. This is not a mere formality; it means the solicitor concerned must have had sufficient opportunity to consider relevant facts and relevant laws, and that the solicitor is satisfied that the recommendation is based on proper authority, and is in satisfactory form. If the issue at hand is anything but a routine matter, deputy heads will be well advised to consult their assigned solicitor at the earliest stage. This will save a lot of time and trouble, and enable the solicitor to advise properly. Last minute consultation and requests for approval as to form and authority by a solicitor should be avoided. Where a Report and Recommendation pertains to regulations it must also have been approved as to form by the Registry of Regulations.

Sample Text, Report and Recommendation

The undersigned has the honour to refer to Section 3 of Chapter 511 of the Revised Statutes of Nova Scotia, 1989, the *Zoril Possession Act*, which provides as follows:

- 3** The Governor in Council may make regulations
 - (a) prescribing conditions under which a person may possess a zoril;
 - (b) prescribing conditions for the issuance of a licence to possess a zoril;
 - (c) prescribing minimum standards for the care and feeding of zorils;
 - (d) prescribing the duties of the Chief Zoril Inspector;
 - (e) restricting the display or exhibition of zorils;
 - (f) prescribing the terms and conditions upon which zorils may be bought, traded, bred or sold;
 - (g) prescribing the conditions under which zorils may be kept.

The undersigned has the honour to report that a large number of zorils have been imported into the Province. The Chief Zoril Inspector and staff of the office of the Chief Zoril Inspector have determined that many owners do not appreciate the danger of keeping zorils in a residential setting, with the result that a number have escaped, and have eaten a variety of household pets. It has become apparent that minimum standards need to be established for the housing of zorils and proper cage construction.

The undersigned has the honour to recommend that the Governor in Council be pleased to make an Order in the following form or to like effect:

The Governor in Council on the report and recommendation of the Minister of Agriculture and Marketing dated September 15, 2004, and pursuant to Section 3 of Chapter 511 of the Revised Statutes of Nova Scotia, 1989, the *Zoril Possession Act*, is pleased to make regulations respecting the housing of zorils in the form set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after (date of Order in Council).

Respectfully submitted,

Honourable Sandy Fields
Minister of Agriculture and Marketing

Halifax, Nova Scotia
, 2004

Schedule "A"

**Regulations Respecting Housing and Captivity of Zorils
made by the Governor in Council under Section 3 of Chapter 511 of the
Revised Statutes of Nova Scotia, 1989,
the *Zoril Possession Act***

<Text of regulations.>

Appendix D - How to Give Drafting Instructions

1. Planning the Regulations

Many of the steps in preparing drafting instructions are the same as in preparing draft regulations for examination. The process cannot begin until you have developed a clear detailed policy. From this policy, you will develop either your draft regulations or a set of drafting instructions that will make it possible for the work to begin.

Here are some guidelines:

- start with a clear detailed policy;
- set out the main themes (rules) of the policy;
- set out the ideas logically - which sometimes means in chronological order or according to the sequence of events;
- begin with the general, then move to the particular;
- state the most important first, the least important last;
- set out the general rule clearly before moving on to the exceptions;
- ensure that, for each element of the policy, you have answered the following questions: WHO? WHEN? WHERE? HOW?; and
- note that WHY? belongs in the Communications Plan, not in the regulations.

KEEP IT SHORT - USE SHORT, UNCOMPLICATED PHRASES

2. Determining Which Type of Submission Is Appropriate

When to consider submitting instructions for drafting:

Instructions for drafting should be considered when:

- (1) the development of the policy to be implemented is reasonably advanced and will not be subject to substantial changes;
- (2) all the officials of the regulatory department or agency who will eventually have to sign off on the regulations have been involved in the policy development;
- (3) the regulations or amendments to be made are legally complex;
- (4) the regulations or amendments to be made require complex drafting;
- (5) the department or agency has a limited time frame within which to implement the policy; or
- (6) the department or agency requires that priority be given to its regulations or amendment.

Note that drafting from instructions promotes team building and empowers all those involved in the development of the regulations, as each person is able to concentrate on his or her area of expertise.

When to consider submitting draft regulations:

Draft regulations should be considered when:

- (1) the above criteria for submitting drafting instructions cannot be met;
- (2) the subject matter of the regulations or amendment is technical in nature - for example, list of geographic locations; or
- (3) the department or agency has expertise in the drafting of regulations or can follow a model.

3. Obtaining sign-off

Whether you decide to submit drafting instructions or draft regulations, you should ensure that the instructions or the draft is signed off by the senior official responsible for determining regulatory policy in the subject matter of the regulations. This ensures that there is departmental or agency support for the initiative.

4. Giving instructions for drafting

Workable instructions:

Instructions may be given as:

- (1) a point-by-point explanation of the policy;
- (2) drafted provisions;
- (3) requests to include or exclude certain words or concepts from already drafted provisions (either in current regulations or in discussion drafts);
- (4) requests to mirror certain existing provisions in the drafting of additional requirements;
- (5) explanations of the aim of the provision, not accompanied by a proposed draft but including suggestions of where the provision might be placed or how the desired result might be achieved; or
- (6) elements required in a particular regulatory provision.

Instructions should not be given as:

- (1) discourses on policy options;
- (2) a jumble of comments received by the department or agency from its regional officials or from stakeholders. The comments should be carefully sifted and proposals to be adopted as part of the revised policy should be clearly indicated. It is preferable to

submit a digest of what is accepted and where resulting changes must be made.

Cut-off date for policy changes:

It is important to realize that frequent changes to drafting instructions work against efficiency. Before requesting the drafting of regulations from instructions, the department or agency should have finalized the major aspects of its policy. The instructions will then be based on a fixed policy. **After requesting the drafting of regulations from instructions, the department or agency should not initiate any major policy changes.**

Presentation of instructions:

1. All instructions should be clearly identified and should always be dated.
2. Each element of the instructions should be carefully identified (for example, by a number).
3. If the policy is long and complex, it may be appropriate to set out its elements not just point by point, but under headings that will identify the categories of regulatory provisions affected by the proposed change.
4. The use of red lining will draw attention to proposed changes or to wording that is particularly important.

5. Other useful information to accompany instructions or drafts

Useful information includes the following:

- (1) numerical references to the relevant statutory authorities;
- (2) a clear indication of where terms already defined in the Act or regulations are used, if applicable;
- (3) incorporated documents and sources material, such as international conventions and technical standards:

- (a) a copy of the whole document,
- (b) a photocopy of pages from technical dictionaries containing the terminology used in the trade being regulated,
- (c) guidelines, policy directives, interpretation notes and manuals that may provide explanations of policy and appropriate terminology.
- (4) explanations of reasons for requesting specific wording or rejecting certain wording, for example:

“The present wording has caused problems in the enforcement of the regulations because...”

“The present wording must be changed as a result of the interpretation placed on it by the XYZ Court in ABC v. EFG”. (If this is the case, give the citation of the decision, and, if the case is not available in one of the major law reports, please attach a copy of the decision.)

“We need to ensure that the situation... is clearly covered.”

Appendix E - Subdelegation and Discretionary Power

The rule against subdelegation is this: a person who has a delegated power may not redelegate it to someone else, unless authorized to do so by law.

This means that a given authority (Governor in Council, commission, board, corporation, Minister, etc.) that is empowered to make regulations under an Act must make the regulations itself and must not try to authorize another person or body to make them in its stead unless there is explicit authority to hand over their power.

Regulation-making power cannot be transformed into administrative discretion. A regulation must not confer on some official, including a minister, the authority to substitute their discretion, assessment or directives for standards that are required to be established by regulation.

See *R. v. Ontario Milk Marketing Board et al.*, [1969] 1 O.R. 309 (H.C.J.) affirmed [1969] 2 O.R. 121 (C.A.) and *Brant Dairy Co. Ltd. et al. v. Milk Commission of Ontario et al.*, [1973] S.C.R. 131; (1972)

A regulation must both

- (a) establish standards; and
- (b) ensure that the standards are complete in themselves so that they may be complied with, without any further decision, assessment or exercise of discretion by another official in addition to the standards or in substitution for them.

A person should be able to recognize their rights and obligations on reading a particular set of regulations.

Unless subdelegation is specifically authorized in the enabling Act, avoid the following or other similar expressions:

- (a) “with the authorization of [a given official]”;
- (b) “as ordered by [a given official]”;
- (c) “as directed by [a given official]”;

- (d) “in the opinion of [a given official]”;
- (e) “to the satisfaction of [a given official]”;
- (f) “where [a given official] deems appropriate”.

The rule against subdelegation ensures that regulations of general application are made by a politically accountable institution.

(Note: There seems to be a general presumption that departmental officials may exercise administrative powers conferred by law on the minister presiding over that department, on behalf of the minister. This presumption should not be stated in regulations, as it may have the unintended consequence of implying that the presumption does not always apply.)

Appendix F - Revision Checklist

Subsection 22(2) of the *Regulations Act*—powers of Regulations Revisor:

- (2) In preparing a consolidation and revision of the regulations of the Province, Regulations Revisor may
 - (a) omit therefrom all regulations and parts thereof that have expired, been repealed or suspended;
 - (b) alter the numbering and arrangement of the regulations in force on the completion of the work, and of the different Sections and other provisions thereof;
 - (c) alter the language of the regulations as may be required in order to preserve a uniform mode of expression;
 - (d) make such minor amendments to the regulations as are necessary in order to state more clearly what the person deems to have been intended thereby;
 - (da) combine two or more regulations or parts thereof or subdivide any regulation into two or more regulations;
 - (db) add, change or omit any title of any regulation;
 - (e) make such amendments as are required to reconcile seemingly inconsistent regulations or to correct clerical, typographical or printing errors.

The revision checklist is based on the drafting principles set out in this Manual. The Registry compiled the checklist over a period of several months, and it is the result of developing solutions to various drafting questions in our regulations approval work. This checklist is being used by the Registry in our project to produce an official *Revised and Consolidated Regulations of Nova Scotia*, and is included in this Manual because it also contains some useful drafting information.

Organization and formatting

- separate designations from regulations – e.g. protected water areas, parks, beaches etc.

- remove quotation marks from references to schedules and forms – e.g. “Schedule A”
- ensure all regulations use the standard numbering system
- remove history notes
- remove numbering related to repealed provisions and reorganize and consecutively renumber the remaining provisions as necessary
- renumber regulations to eliminate inserted-provision numbers – e.g. (5A), (1A), (ca) etc.
- split provisions that contain more than one sentence and renumber provisions
- split large regulations into smaller ones by subject matter, or add Parts
- split regulations made by more than 1 authority
- combine short regulations on similar subject matters (but not if made by different authorities)
- move the cover page and table of contents, if used, to the beginning of the document
- if possible, change the format of orders to the standard regulations format (also consolidate any similar orders)

Corrections

- add citation Sections (short titles) to all regulations
- amend short titles to remove “Act” or tie to subject matter
- remove provisions repealing former regulations
- remove effective date provisions, if the date has already passed
- remove effective date conditions on a provision (or the entire provision if there is a provision dealing with the same subject matter that has a later date), if the date has already passed
- italicize regulation titles and Act titles throughout

- remove chapter and year references from Act titles, except in a definition of a former Act or similar, or in the text of an order
- remove “as amended” or “as amended from time to time” when used for enactments or if it adds nothing (but do not remove it if it appears in a reference to a document incorporated by reference) (Section 20 of the *Interpretation Act*)
- remove “from time to time” when used in provision granting power to be exercised or requiring duty to be performed (clause 19(e) of the *Interpretation Act*)
- check and update references to other enactments (including federal)
- check and update references to names of organizations, departments and officials (including federal)
- ensure that organizations and departments (including federal) are referred to by their legal names, not their applied names (e.g. “Department of Health”, not “Health Canada”)
- ensure all cross-references are in standard short form
- remove “of these regulations” in an internal cross-reference (e.g. “as required by Section 5 of these regulations”)
- fix square-bracketed errors
- change “Regulation” to “Section” or other standard provision reference
- eliminate unnecessary capitalization
- hyphenate double adjectives – e.g. “fine-grained”
- replace written-out numbers with numerals, and remove brackets around duplicate numbers – e.g. “twenty (20)” = “20”
- abbreviate measurements (cm, km, kg, L, etc.)
- express dollar amounts consistently

- update all year references on forms to “20__”
- ensure cross-reference style is consistent, e.g. “required **by** Section 2”; “referred to **in** Section 2”
- SOTS: revise Section references in tables to reflect renumbering in regulations
- SOTS: in offence descriptions with more than 1 penalty amount, strike out “, for” before list of “first offence...” etc.
- SOTS: ensure articles (“a”, “an”, “the”) are eliminated from offence descriptions

Revisions

- ensure regulations are gender-neutral
- add marginal headings for each Section and ensure they are consistent with text (do not use articles – “a”, “an”, “the” – in headings)
- add centred headings as necessary to group like provisions
- correct provisions that mix singular and plural and use singular whenever possible
- ensure that any conditional phrase is at the beginning of the sentence (e.g. change “The Minister, subject to..., may grant...” to “Subject to..., the Minister may grant...”)
- change “notwithstanding” to “despite”
- replace “which” with “that” to introduce a defining (dependent) clause
- eliminate “said”, “same”, “such” – use “the”, if possible, or spell out subject noun
- in comparisons, use “lesser” and “greater” for volume amount or duration, “fewer” and “more” for numbers, and “earlier” and “later” for time, except that “no fewer than” and “not less than” should be replaced with “at least” (also, replace “not more than” with “no more than”)
- change “prior to” to “before”
- change “pursuant to” to “under”

- remove “a period of” in references of time, if possible
- change “where”, “in cases where”, “in the event that” or “in the event of” to “if” (or “if there is”)
- change “provided that”, “provided however”, “provided always”, “as long as”* to:
 - “if” – to introduce a condition precedent to the rule
 - “but” – to introduce a qualification or limitation to the rule
 - “except that” or “unless” – to introduce an exception to the rule(*restrict “as long as” to references to periods of time only, e.g. “a person is insured for as long as they remain employed”)
- change “deems” to “considers” if there is no intention to create a legal fiction
- change “shall be deemed to be” to “is deemed to be”
- change “shall” to
 - “must” to express an imperative (“an applicant must submit the required forms”)
 - “is” (or other present tense form of “to be”) in establishing a rule that always speaks (e.g. “the fee for an application is \$20”)
 - “will” for provisions that express a future event (“satisfied that the conditions will be met when”)
- change “will” or “will be” to “is” or other present tense form of “to be” (“the distance over which a meat product is transported”) or delete “will” and correct the tense of the verb used in the sentence (“to a standard that will qualify” becomes “to a standard that qualifies”) in establishing a rule that always speaks
- change “in these regulations, the expressions” (or other similar wording) to “in these regulations”
- remove “the provisions of”
- change “request X to” to “request that X”, if simpler and it does not alter the meaning

- change lists to preferred ‘list format’ to avoid need for conjunction between last 2 items
- if not using list format – add conjunction (“and” or “or”) before last item in a series of clauses or subclauses when there is a “tail” after the series that covers any additional items not included in clauses/subclauses – to clarify that “tail” is not on same level as clause/subclause but refers to all previous clauses/subclauses
- if appropriate, change “other” to “additional” at end of series of clauses or subclauses (“other” implies that unspecified things completely unrelated to list can be included, and “additional” ties in to list)
- remove redundant “may”, as in “such additional documents as the committee may require” (change to “such additional documents as the committee requires”)
- if consecutive subsections within a Section all refer to the same term for something, ensure that the term is either defined (for the regulations generally or for that particular Section) or qualified in each subsection (e.g. if “application” is not defined and (1) refers to an “application for registration”, (2) must not refer to “application” only)
- use of articles: ensure that “a” is used for most instances, unless referring to thing already mentioned within same sentence
- definitions: ensure that definitions are worded so that they can be substituted in place of defined term
- definitions: remove “and [alternate form of word] has a corresponding meaning” (19(j) of *Interpretation Act* provides that definition applies to other parts of speech and tenses of word)

Appendix G - The 4 C's of Preparing Regulations

Complete	Writing and revising (make sure the document is <i>complete</i>)	Content: <ul style="list-style-type: none"> • all necessary information included • all relevant legislation considered • audience is clearly defined • regulations are organized logically for each audience • purpose(s) of regulations clear and focused • logical sequence of ideas between provisions • outline developed and followed • basic definitions created 	Formatting: <ul style="list-style-type: none"> • centred and marginal headings • correct numbering • table of contents prepared for longer regulations
Concise and Clear	Editing (make sure document is <i>concise and clear</i>)	Content: <ul style="list-style-type: none"> • ideas and arguments sequential • natural word order • active voice • present tense • singular, not plural subjects • one idea per Section • simple, familiar words • legalese and jargon eliminated • ambiguity eliminated • definition of technical terms • consistent terminology • meaningful headings 	Formatting: <ul style="list-style-type: none"> • block format and layout • cross-references are descriptive and used where needed • one sentence per Section or subsection • tables inserted where needed • lists used wherever possible
Correct	Proofreading (make sure document is <i>correct</i>)	Content: <ul style="list-style-type: none"> • conforms to Style Manual • consistent layout and headings • incorporated documents properly referenced • all required executive orders prepared and attached • authority for all aspects of the regulations (solicitor) 	Formatting: <ul style="list-style-type: none"> • capitalization • abbreviations • numbers • apostrophes • quotations • punctuation • spelling/typos • word and line spacing • numbering • cross-references checked • citations

(Note: the further a document is from this standard when submitted, the longer the review process.)

Appendix H - Linking to Regulations Online

Do's and Don'ts:

Don't link directly to a regulation on the Registry of Regulations website. Regulations may have been amended and a reader will be unaware of amendments not yet included in the consolidation if you link directly to regulations. The Registry's current practice is to provide notice of amendments on the Regulations by Act pages, so this is where you should point readers.

Link to the name of the Act on the applicable Regulations by Act page by locating the anchor tag ('a name=') for the Act name on one of the following pages:

- for Acts beginning with A-L -
<www.gov.ns.ca/just/regulations/rxaa-l.htm>
- for Acts beginning with M-Z -
<www.gov.ns.ca/just/regulations/rxam-z.htm>

Don't provide links to "statutes and regulations" and just link to the statutes. This is misleading. (Also, don't purport to give a list of statutes and regulations and then just list the statutes.)

Don't duplicate the information provided on the Registry of Regulations website. This can result in 2 different messages to public unless you maintain it current with the changes made to the Registry's website.

The Registry maintains the website as up-to-date as is possible. Notice of new regulations or amendments is posted on the Registry's website within 24 hours of filing with the Registry. The full text of the new or amended regulation is posted later, usually no more than 2 weeks after publication in the *Royal Gazette Part II*.

Appendix I - References

Some sources that were invaluable in creating this edition of the Manual:

Department of Justice Style and Procedures Manual (Drafting Regulations and Reports and Recommendations in Nova Scotia) - Bruce E. Davidson, Q.C. and Neil Ferguson, September 1994-2000

What are Regulations and Why does Government Regulate? - Government of Canada Privy Council Office
<<http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=aboutregs>>

Guide to Making Federal Acts and Regulations, 2nd Edition - Government of Canada Privy Council Office
<http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=legislation/lmgtoc_e.htm>

Plain Words (Part 1) - Joseph Kimble, Michigan Bar Journal, August 2001, <<http://plainlanguagenetwork.org/kimble/plainwords1.pdf>>

Web Style Guide: Basic Design Principles for Creating Web Sites, Second Edition - Patrick Lynch and Sarah Horton, Yale University
<<http://www.webstyleguide.com>>

Successful Communication Tool Kit – Literacy and You - Communications Canada, May 2003, Chapter 2.2 Plain Language
<http://www.communication.gc.ca/services/alpha_lit/2003/scr2003_05_e.html>

Triangle Triage Technique: Polishing the Document - M. Louise Lantzy, Syracuse University College of Law, from paper presented at the Plain Language Association International Fourth Biennial Conference, 2002,
<<http://plainlanguagenetwork.org/conferences/2002/triangle/1.htm>>

Australian Office of the Parliamentary Counsel - Plain English Manual
<http://www.opc.gov.au/about/html_docs/pem/contents.htm>

Lucid Law, 2nd Edition (2000) - Martin Cutts
<<http://www.plain-language-commission.com/PDFS/LUCIDLAW2000A-T.pdf>>

Plain Language in the Ontario Government - Final Report of the Interministerial Committee on Plain Language, May 15, 1992

A Plain Language Handbook for Legal Writers - Christine Mowat, Carswell, 1998

Tips and Techniques For Drafting Complex Law - Canadian Institute for the Administration of Justice, 2004 National Conference - Janet Erasmus and David C. Elliott

Introduction to Plain Language - Cheryl Stephens
<<http://plainlanguagenetwork.org/stephens/intro.html>>