



[www.centerforplainlanguage.org](http://www.centerforplainlanguage.org)

Overall this is a terrific report, very thorough and informative. These comments from the Center for Plain Language do not diminish our overall appreciation for this huge effort. Hopefully the Conference's report will help advance the cause of plain language in the federal government.

The paragraphs we'd like to discuss most creates what we believe to be an overly discouraging view of plain language in regulatory text, and we ask that the Conference reconsider this wording. The section starts on page 15 and continues on page 16, and reads as follows:

One official believed that "it is quite difficult to have plain language in the regulation itself. . . . One of the problems is that regulation isn't prose. It's not in regular English. Part of plain language is using simple grammatical structures. In a regulation you have clauses, connect one paragraph to others, etc. So it . . . operates according to its own rules. I don't think of regulation as being plain language at all."<sup>98</sup>

This is undoubtedly true if the agency thinks about plainness in terms of language that an ordinary member of the public can understand. In many fields, ordinary people will have great difficulty reading the Code of Federal Regulations and quickly determining their obligations without professional legal advice. But "plainness" in the context of judicial review should not primarily mean simplification for the average citizen-reader and avoidance of legal terms of art. For example, plain language guides often suggest using "you" instead of using specific terms like "applicant" or "employer."<sup>99</sup> But this approach can be confusing where a regulation has multiple addressees and audiences. Given these sorts of problems, "precision" in the regulatory text is usually of greater importance than the general accessibility of the language.<sup>100</sup> Nevertheless, legal precision and technical precision are not the same thing. Agencies must explain the complex subject-matter they deal with in a way that a judge familiar with general principles of administrative law, rather than a scientific field, will be able to understand and evaluate.

We'd like to make several points about this discussion, which we believe takes an unnecessarily discouraging view of plain language in regulatory text.

**First**, there is now a definition of plain language, developed jointly by the US-based Center for Plain Language; Plain Language Association International (PLAIN), an international group of plain language professionals; and Clarity, an international organization of attorneys dedicated to plain legal and administrative language. That definition is as follows:

*A communication is in plain language if its wording, structure, and design are so clear that the intended readers can easily find what they need, understand what they find, and use that information.*

The definition was developed subsequent to the passage of the Plain Writing Act. Note that it cites the importance of the intended readers. We do not believe that plainness means simplification for the general reader – unless the general reader is the intended audience. Your report acknowledges periodically that plain language does not necessarily mean that something can be understood by the general public, but we would go further, and assert that indeed it generally does not mean that – unless the general public is the intended reader. Given that clarity is supposed to be clarity to the intended audience, the challenge of an agency to write a plain language document should not be so difficult – even if the document is a regulation.

Regarding the intended audience for regulations, we believe that the intended audience for a regulation should not be considered to be lawyers and judges, but rather the regulated community. This is the primary intended audience, which regulation writers and legal staffs often overlook or discount. In my experience implementing regulations in 4 different federal agencies, members of the regulated community frequently dealt directly with regulations, often because they could not afford to hire attorneys or technical experts to help them interpret regulatory language. This is particularly true of small businesses, who are subject to regulations from many different agencies and which they often must interpret for themselves.

**Second**, this paragraph expresses a false dichotomy between “plainness” and “precision” in its assertion that “precision in the regulatory text is usually of greater importance than the general accessibility of the language.” The plain language community is often assailed by this claim, but we believe it has been more than adequately refuted. We now have a pile of evidence, much of it cited in Joe Kimble’s book *Writing for Dollars, Writing to Please*, that plain language is more precise than traditional legal style.

Professor Kimble’s book explores 10 myths about plain language. Myth 9 is that plain language is subverted by the need to use technical terms. Myth 10 is that plain language is imprecise. Rather than trying to summarize his arguments here, I am providing you with a copy of his book. You can find his discussion of these 2 myths starting on page 35.

For an example that involves using “you” in a regulation go to

<https://www.michbar.org/file/barjournal/article/documents/pdf4article2233.pdf>

**Third**, do not confuse the **techniques** of plain language – such as using pronouns, including “you”--with the **definition** of plain language. This is a critical distinction which you have not made in your report. Considering the definition cited above, you will note that it does not mention any specific techniques, but rather is outcome-oriented. Whatever techniques you need to use to achieve your goal of a document that your intended reader can readily read,

understand, and act upon are appropriate techniques, and they vary from document to document and audience to audience.

**Fourth**, we'd like to take on the issue of "you" – since we believe that it's one of the most powerful words you can use in a regulation – when appropriate. It pulls the reader into the text and makes it clear that the provision applies to him. In short, it makes the regulation more effective.

The author singles out the recommendation that the pronoun "you" be used address the reader directly:

[P]lain language guides often suggest using "you" instead of using specific terms like "applicant" or "employer."<sup>99</sup> But this approach can be confusing where a regulation has multiple addressees and audiences.

The author acknowledges that the guidelines address this problem but suggests that the remedy in the guidelines is ineffective:

The Plain Language Guidelines attempts to address this problem by recommending that agencies define "you" in each context. ... But this may increase rather than decrease confusion, if the reader must find the relevant definition of "you" for each provision.

The guidelines, however offer several other solutions to this problem, none of which require the reader to go searching for a definition. Here's an example:

Lessees and operators are responsible for restoring the site. If you are the lessee, you must monitor the operator to ensure that. If you are the operator, you must conduct all operations in a way that....

Moreover, where a set of regulations (or a part or subpart) clearly applies to only one person or entity, "you" is not confusing and does address the reader directly. An example would be a part that begins with, "This part applies to loan applicants...." Then a requirement that begins with, "If you are applying for a home equity loan you must..."(instead of "Applicants for home equity loans") is not confusing.

**Finally**, your own document cites a handful of rules—some of them quite complex—which use plain language. Here's a list of our favorite plain language regulations:

14 CFR Part 11 — General Rulemaking Procedures

25 CFR Part 171 — Irrigation Operation and Maintenance

30 CFR Part 250 Subpart A — General Provisions for Oil and Gas and Sulphur Leasing in the Outer Continental Shelf

30 CFR Part 253 — Oil Spill Financial Responsibility for Offshore Facilities

41 CFR Part 102-33 — Management of Government Aircraft

43 CFR Part 3500 — Leasing Minerals

43 CFR Parts 3830 to 3838 — Locating, recording, and maintaining mining claims or sites

## 49 CFR Part 106 — Rulemaking Procedures

There are others, but these are perhaps the best. Given that there are many plain language regulations covering some quite technical topics, we do not understand why you would in any way discourage agencies to strive for plain language in all their regulations—remembering, as always, the definition of plain language cited above.

We'd like to address one other aspect of plain language in agencies. While we recognize there is often no alternative, we are uncomfortable with the idea that the "plainness" of regulatory and related documents will be evaluated by agency technical and legal experts. The only people who can tell you if your document is clear is the intended audience. I was a federal employee for 25 years, and in two separate jobs I managed an office that developed the agency's regulations (Office of Surface Mining and Bureau of Land Management). There were very few employees from those offices, and from the associated legal staffs, who could evaluate the clarity of a document. While the requirements of the regulatory process make it difficult to test actual text with the intended audience, they do not make it impossible. Testing with the intended audience should be a part of any agency's regulatory development process, and I urge the Conference to consider adding this to your report. The Center would be happy to discuss this further.

## About the compilers:

Don Byrne, formerly Executive Director of the Center for Plain Language, wrote and reviewed safety regulations and other technical documents for over thirty years as an attorney with the Federal Aviation Administration. During his last 15 years with the FAA, he was Assistant Chief Counsel for Regulations. Over his career Don has taught numerous technicians and lawyers to write clearly and effectively. Along with Dr. Cheek, he is the author of 14 CFR Part 11 — General Rulemaking Procedures, one of the plain language regulations you discuss in your report.

Don received Vice President Al Gore's "No Gobbledygook" award for turning bureaucratize into plain language. Don has conducted plain language training through the Plain Language Action and Information Network.

Dr. Cheek worked for the federal government for 25 years. Two of her positions, at the Office of Surface Mining and later at the Bureau of Land Management, were managing offices dedicated to writing the agency's regulations. While at OSM, she became aware of the movement to introduce plain language into the regulatory process, and quickly became an advocate for the movement. She was one of the founders of the federal advocacy group, Plain Language Action and Information Network. She was the author of the initial version of that organization's Federal Plain Language Guidelines. In 1995 she went to Vice President Gore's National Performance Review, where she served as the Clinton/Gore administration's point person for plain language. She was the principal author of Clinton's presidential memorandum on plain language and the accompanying guidance. She managed Vice President Gore's No Gobbledygook Awards program.

Dr. Cheek was one of the founders of the Center for Plain Language, and was its Chair for 11 years. She was a principal advocate working with Congress to secure the passage of the 2010 Plain Writing Act. She is currently Chair of the Center's Government Affairs Committee.

## About the Center for Plain Language

The Center was created in 2003 by a small group of plain language advocates. It is a 501(c)(3) nonprofit organization. The Center's goal is help government agencies and businesses write so clearly that their intended audiences understand and can use their material the first time they read or hear it.

Its mission is to champion clear communication so people and organizations can thrive.

Its vision is to create a culture of Clarity for Every audience-- Every format--Every time

Two of the Center's annual programs have been influential in spreading plain language in the government:

the ClearMark awards (<http://centerforplainlanguage.org/awards/clearmark/>)

and

the Federal Agency Plain Language Report Card

(<http://centerforplainlanguage.org/reports/federal-report-card/>) The report card initially reported agencies' progress in implementing the Plain Writing Act. Since most agencies are not in administrative compliance with the Act, for the last couple years the Center has focused on particular federal document types.