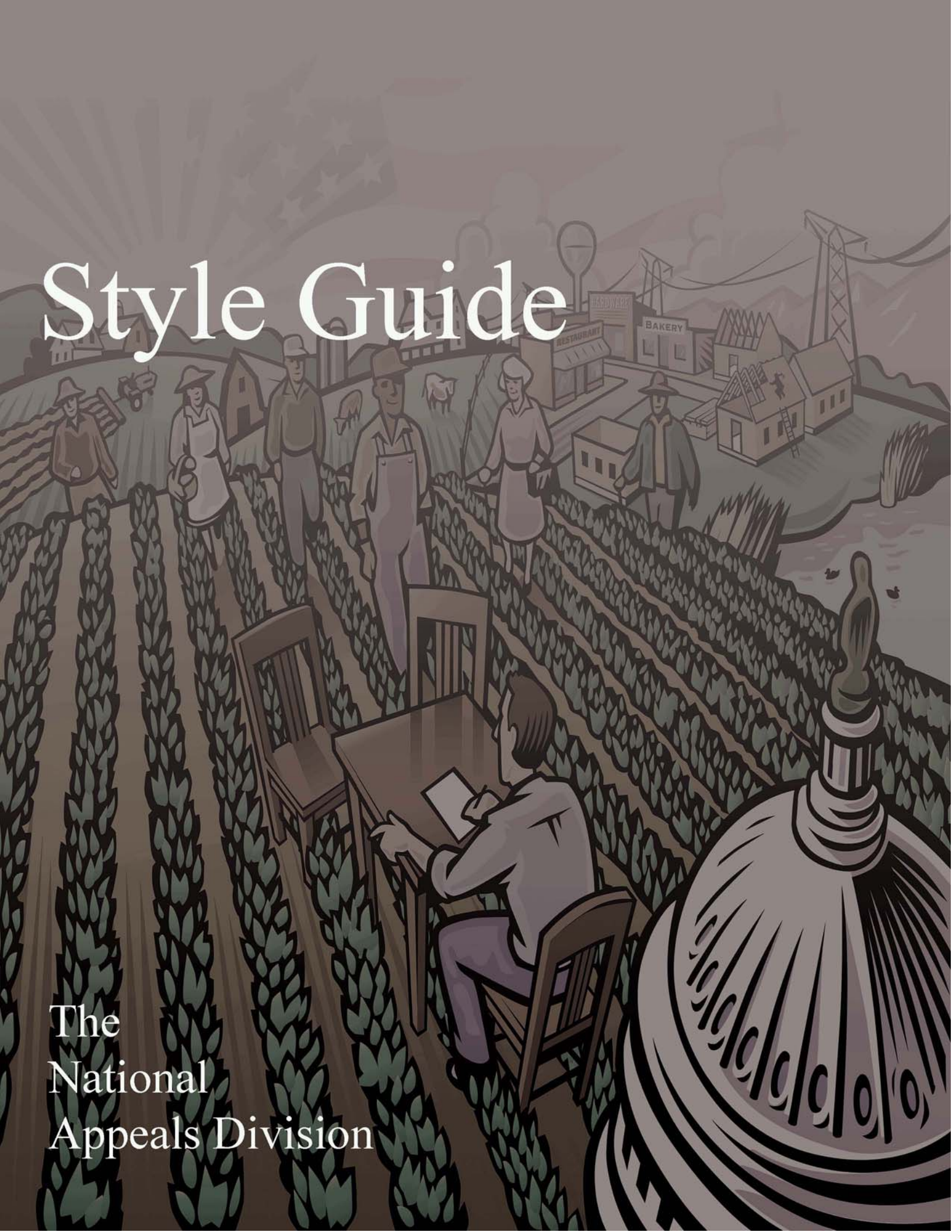


# Style Guide

The  
National  
Appeals Division



## **Director's Introduction**

In NAD, we care about our writing. Poor writing may signal to producers that the USDA appeal system is unfair, or that producers exist and interact in an environment intentionally designed to be ambiguously unfair. Poor writing hampers, therefore, a producer's ability to produce. Clear and logical writing sends a message that all producers can feel secure about receiving a fair and open opportunity to tell their story, and receive a fair appeal determination should a USDA agency provide an adverse decision. And that's what we are about.

The goal of NAD hearing and review officers is to render the right decision for the right reason. We convey that 'rightness' through clear, thoughtful, well-organized sentences and paragraphs. Although almost all of the material in this guide borrows from other grammar and style manuals—both in form and content—some of the examples within derive from real world writing challenges we face in our specific decisions. All NAD writers, who wish to apply their writing craft with rigor, should consult the style manuals and grammar books referenced at the end of this guide.

Roger Klurfeld  
Director

June 2005

## TEN PRINCIPLES OF GOOD STYLE IN DECISION WRITING

### 1. Use the agency acronym (e.g. 'FSA') and the term 'Appellant'—without a definite article—when referring to participants in a case.

*FSA denied Appellant's application for a loan.*

When writing a decision, the first reference to participants should fully identify names and define subsequent terms and acronyms that you will use for those participants.

*John Doe (Appellant) requested a hearing because the Farm Service Agency (FSA) denied his request for a moratorium. FSA contends Appellant is three months late in his payments.*

Sometimes the agency acronym and *Appellant* are adjectives in a sentence, which may at first seem to violate the rule for not using a definite article ('the').

*The FSA adverse decision, dated January 23, 2002, stated that Appellant was three months late in his payments.*

In the sentence above, however, *the* serves as a definite article for *decision*—not *FSA*. So the rule still applies. Rewriting the sentence in the possessive shows this point more clearly:

*FSA's adverse decision, dated January 23, 2002, stated that Appellant was three months late in his payments.*

Often an indefinite article ('a' or 'an') signals that the term for a participant is the adjective in a sentence.

*Appellant appealed an FSA decision, dated January 23, 2003.*

Once again, a simple rewrite in the possessive form would show that this decision is *FSA's decision*. The appellant can appeal *to FSA*, or appeal *FSA's decision*, but he cannot appeal to *the FSA*.

### 2. Place a comma before *and* or *but* introducing an independent clause.

*Appellant argues he was only two months late in his payments, and he claims he has now caught up on all his debts.*

A writer might find it helpful to apply this rule early in a decision, when summarizing the points of view of the parties. As some summaries often require a list of explanations or arguments, a repetition of periodic sentences may appear too uniform and tedious to the reader.

*Appellant stated that her employer fired her for tardiness. Appellant stated that she only missed work if she had something to do for herself or her children. Appellant stated that she is a single parent, so she had to miss some days from work.*

A rewrite of the above, which contains a two-part sentence, provides occasional relief for the reader:

*Appellant stated that her employer fired her for tardiness. Appellant stated that she had to miss work because she is a single parent, and she argued that she only missed work when she had a parental obligation.*

It is important to keep two-part sentences in the context of the ideas expressed in a paragraph. Generally, the word *and* is a weak connector. In the above sentence, for example, *and* does not precisely define the relationship between the two clauses. Since the relation is cause and effect (i.e. single parenthood causes obligation, which causes missed work), the sentence above might easily have been rewritten:

*Appellant stated her employer fired her for tardiness. As she is a single parent, Appellant argues that she only missed work when she had a parental obligation.*

### **3. Do not use commas before *however* and *therefore* to join two independent clauses.**

When a writer uses *however* or *therefore* to join two independent clauses, the result is a comma splice:

*FSA contends Appellant filed his application late, however, Appellant provided substantial evidence to show that he filed the application on time.*

As shown above, a comma splice incorrectly joins two independent clauses by a comma. If *however* and *therefore* were simple conjunctions, like *but* or *and*, there would be no problem (See rule #2). But *however* and *therefore* are conjunctive adverbs, not conjunctions, and require a period or a semi-colon to separate independent clauses.

*Appellant provided substantial evidence to show that he filed the application on time; therefore, FSA's decision is erroneous.*

*FSA contends Appellant filed his application late; however, Appellant provided substantial evidence to show that he filed the application on time.*

*I think; therefore I am.*

Conjunctive adverbs provide transitional links in thoughts from one idea to the next. One way to remember to use *therefore* and *however* as conjunctive adverbs is to look at some of the other conjunctive adverbs we use regularly in sentences:

*Accordingly   consequently   moreover   indeed   meanwhile  
on the other hand*

Many writers are less inclined to use the above conjunctive adverbs in independent clauses with anything but periods to separate independent clauses.

*Appellant contends that he meets two of the three criteria for eligibility. On the other hand, FSA argues that the regulation requires applicants to meet all three criteria.*

Although it is permissible to begin a sentence with *however* or *therefore*, it is often not preferable. When properly positioned within a sentence, *however* and *therefore* place contrasting or confirming emphasis on the idea that precedes it.

*Appellant has presented several documents showing that he now has good credit. Appellant successfully refutes, therefore, FSA's argument that he is not creditworthy.*

*However* and *therefore* are important cues for logical affirmations in a decision, and precise usage increases the power of a deduction. A writer may use *however* and *therefore* at the beginning of a sentence—preceded by a semi-colon—to refute or confirm the main idea expressed in the previous sentence.

*I think; therefore, I am.*

When preceded by a period, *however* and *therefore* imply that the contrasting or confirming idea may be linked to several logically related ideas stated previously in the paragraph.

*And I think. Therefore, for this and other reasons stated previously, I am.*

*And I think. For this and other reasons, therefore, I am.*

In the sentences above, *therefore* affirms all the ideas issued previously, although its location is different in the two sentences.

When conjunctive adverbs are not clearly transitional, omit commas to preserve the flow of the sentence.

*I therefore find that Appellant's account was past due. I therefore adopt the Hearing Officer's findings of fact as my own.*

In the sentences above, *therefore* affirms the main verbs and ideas (find / adopt) of the sentences at hand, rather than an idea expressed previously, as in other examples cited

before. It would be just as correct, although perhaps not as graceful, to place *therefore* after the verb with appropriate commas:

*I adopt, therefore, the Hearing Officer's findings of fact as my own.*

#### **4. Express parallel ideas in the same grammatical form.**

There are three sentence elements that commonly require parallel treatment: coordinated ideas, compared and contrasted ideas, and correlative constructions. A sentence reads awkwardly when the writer has not taken the trouble to put parallel ideas in the same form.

*In declaring his assets, Appellant stated he preferred to buy a tractor rather than renting one. (Uses different forms of the verb.)*

*FSA contends that Appellant did not provide accurate information on the application, offered security that he does not own, and has not completed a clean up of the property. (Uses different verb clause forms in series. Also, two clauses are negative and one positive.)*

*In assigning production, the county committee considered three factors: weather, financial, and farming practices. (Uses two nouns; one adjective.)*

Sometimes the pursuit of clarity may compel the writer to repeat the same forms of words in a sentence or to add repetitive words in a series to ensure similar grammatical form.

*In declaring his assets, Appellant stated he preferred to buy a tractor rather than to rent one.*

Or even better:

*In declaring his assets, Appellant stated he preferred buying a tractor rather than renting one.*

*FSA contends that Appellant failed to provide accurate information on the application, failed to offer adequate security, and failed to clean up the property.*

Or better still:

*FSA contends that Appellant provided inaccurate information on the application, offered insufficient security, and cleaned up the property inadequately.*

*In assigning production, the county committee considered three factors: weather, cost of grass seed, and farming practices.*

A correlative construction (e.g. *both...and*, *either...or*, *neither...nor*, *not only...but*) may fine-tune the meaning of a parallel sentence construction.

*Appellant argues that both the late timing of the inspection and the biased content of the report invalidate FSA's contention about grazing on his land.*

*Section 777 (a) prescribes not only the obligation of FSA to assess a penalty but also how to calculate the penalty.*

## **5. Use the active voice to establish responsibility of actors in a sentence.**

Clear sentences about regulations, logic, and the various points of view of parties depend upon the precise identity of actors associated with a thought. In the passive voice, the subject of the sentence, rather than the object of the sentence, receives the action signified by the verb. The form of the verb **be** and the past participle of the principal verb construct the passive voice. (i.e. 'Mistakes were made.' 'The soldiers are being led.')

This construction may needlessly conceal the actor's identity and weaken a conclusion.

*It was shown, therefore, that Appellant's loss of work was not temporary.*

Many unanswered questions emerge from the conclusion above. Who or what showed the loss of work was not temporary? Was it the appellant himself, or was it a specific piece of evidence the appellant or the agency submitted? Or, is the above statement the hearing officer's final conclusion, based upon the sum total of evidence submitted, or does the statement refer to a previous point made in the logic trail?

Depending upon the possible answers to these questions, a couple of active rewrites strengthen the author's main conclusion:

*The letter of termination from Appellant's employer shows that his loss of work was not temporary.*

*I conclude, based upon the evidence FSA submitted, that Appellant's loss of work was temporary.*

There are times, of course, when the passive voice may be somewhat harmless. But all writers would be better off to limit those instances to a minimum.

## **6. Phrase issues in the form of questions that you must resolve in a case.**

*Was Appellant's loan at least three payments overdue when RHS accelerated Appellant's loan?*

Or

*Does Appellant's credit history make her ineligible for an FSA farm-operating loan?*

Good issue statements in NAD are questions about important matters of dispute between the agency and a producer. The matter in dispute usually involves a disputed fact in a case or how the factual pattern of a case applies to specific criteria in the regulation.

A writer should work to keep questions from becoming too general.

*Did FSA correctly apply its regulations in this case?*

The issue stated above does not provide sufficient focus for future analysis—all FSA cases have this issue. Often, good issue statements introduce specific issue questions with a general issue:

*I had to determine whether FSA correctly applied its regulations when it denied Appellant \$50,000 worth of benefits in the Prevented Planting Program. To make this determination, I had to resolve the following questions.*

- 1 *Did the drought affect other producers?*
- 2 *Did Appellant intend to plant peanuts?*
- 3 *Did Appellant have sufficient resources to plant, grow, and harvest the crop?*

(Note that in previous examples, issue questions only need numbers if there are two or more.)

The introduction of a general issue is especially useful for cases with multiple regulatory criteria. Further, the subsequent set of specific questions form a natural tie-in to the organization of discussion paragraphs and logical reasoning in the analytical part of the decision.

In NAD decisions, we encourage that at least one issue statement reflect the appellant's point of view. It may be difficult to work a relevant appellant argument into a legitimate issue question, especially if it does not have any regulatory bearing; but the artful effort reflects a balanced consideration of the appellant's point of view.

*Does Appellant's contention that RHS was rude when it processed his application cause the RHS decision to be in error?*

When the appellant's issue is stated upfront, the writer assumes the burden of addressing the appellant's argument later in the analysis; and the appellant, as a reader, can be assured that the decision will directly address the argument.

### **7. When analyzing an issue, use deductive logic to derive a valid and sound conclusion.**

This rule supports the goal of clear paragraph writing as well as valid logic. The categorical (or deductive) syllogism lies at the heart of all NAD decisions. In the typical three-part legal syllogism, the writer sets forth two propositions that are true—the major and minor premises—in order to come to a valid and true conclusion.



For NAD decisions, the information contained in the CFR's and agency handbooks make up the major premise. For example, in citing the following regulation, a hearing officer may want to resolve whether FSA complied with its regulations in assigning production to an appellant's CDP application:

*Seven C.F.R. Part 1480.9 (d) requires the county committee to assign production when an acceptable appraisal or record of harvested production does not exist.*

The proposition above serves as a sound major premise because the content of the premise is true—if faithful to the regulation—and it applies in the general sense to all participants who do not have an acceptable appraisal or harvest record. (You may accept it as a universal affirmation that all NAD decisions must have regulatory authority cited as major premises for arguments. Otherwise, a decision will probably contain red herrings and other fallacies that contribute to illogical conclusions.)

The minor premises of NAD legal syllogisms come from the factual pattern of a specific case. Since the facts of a case may be disputed or undisputed, the hearing officer makes findings to state true propositions that will be used for the minor premise. For example, in continuing with the issue above, the hearing officer might make the following finding:

*The appellant does not have an acceptable appraisal or a record of harvested production.*

The conclusion is, therefore, that FSA complied with its regulations in assigning production. Deductive logic requires the conclusion to be true if the propositions are true and the conclusion is derived validly from the propositions.

Most of the analytical and argumentative writing in a paragraph will be about the minor premise—the disputed facts of a case. In the case above, for example, Appellant may be claiming that he does have an appraisal, but that FSA has rejected it for some reason. In writing the paragraph, the hearing officer should analyze and discuss why the appraisal is acceptable or not acceptable. This may take several sentences in a paragraph to justify the minor premise and may also reveal other “nested” premises or syllogisms. For example, there may be other parts of the regulations that bear upon what makes an appraisal “acceptable,” and how Appellant's appraisal meets or fails to meet those criteria.

In structuring a paragraph with a legal syllogism, many legal writing programs encourage writers to follow the **I-R-A-C** format: **I**ssue, **R**ule, **A**nalysis (or **A**pplication), and **C**onclusion:

**I:** *Did FSA comply with its regulations in assigning production?*

**R:** *Seven C.F.R. Part 1480.9 (d) requires the county committee to assign production when an acceptable appraisal or record of harvested production does not exist. The unharvested acreage must be appraised by FSA or a company reinsured by FSA. (Major Premise)*

*A: Appellant claims that a consultant came out to inspect his crop damage. But there is no record that the consultant submitted a formal inspection report, or that the consultant was a member of a company reinsured by FCIC to make appraisals. Further, Appellant does not dispute that he has no record of his harvested production. (Minor Premise)*

*C: FSA therefore complied with its regulations in assigning production.*

In the **I-R-A-C** example above, it is perfectly acceptable to place the conclusion as the topic sentence of the paragraph, since it answers the issue question and introduces the reasoning and details that will follow.

### **8. When possible, paraphrase information in regulations to show commanding knowledge of the pertinent criteria.**

*Section 3550.201 provides that borrowers who have difficulty keeping their accounts current may be eligible for one or more available servicing options, including payment subsistence, delinquency workout agreements, protective advances, payment moratorium, and re-amortizing the loan.*

The paraphrase technique provides the reader with the most seamless integration of regulations into the body of a paragraph. The regulation cited is the subject of the sentence (i.e. *Section provides*), and this active construction enhances the appearance of command and authority in applying the regulation in the writer's analysis or conclusion. This technique also enables the writer to include only those parts of a regulation that are relevant to the issues at hand.

### **9. Introduce paragraphs with topic sentences.**

Clear writing embraces the paragraph as the fundamental unit of composition. Main ideas bind paragraphs together, and when the main idea is expressed first, the paragraph is deductive. Readers prefer deductive paragraphs in decisions because the conclusion or analytical point is up front. The reader knows that the logical demonstration will follow. The deductive arrangement eliminates suspense or guesswork with which a reader might struggle, while wading through the various specifics before the end of the paragraph. Fragmented passages, like the one that follows, delay stating the main idea and are weak and confusing:

*Seven CFR §12.5 (b) (4) specifies that a person shall remain eligible for USDA program benefits if the wetland is restored through a mitigation plan approved by NRCS.*

*Appellants planted native grasses in the wetland area as required by the Plan. Later, Appellants planted corn over the native grass seeding. Restoration of the converted wetland was contingent upon the successful establishment of native grasses. NRCS advised FSA that corn growing in the native grass buffer areas violated the Wetland Restoration Plan. The Wetland Restoration Plan makes no allowance for the planting of corn as part of the wetland restoration nor did Appellants consult NRCS about planting corn. Appellants did not follow the Wetland Restoration Plan by planting corn over seeded native grasses.*

As stated at the end of the passage, the main point of the writer is that the appellant violated his restoration plan by planting corn. But the writer risks confusion in choosing to convey a chronology of the events that occurred. The first sentence in the passage (the regulation) and the first sentence of the next paragraph lead the reader to believe the appellant was following the requirements of the plan—at least initially. The rest of the paragraph provides information refuting this statement. The following rewrite advances the idea up front, and thereby provides improved logical cohesion:

*Appellants did not follow the Wetland Restoration Plan by planting corn over seeded native grasses. Seven CFR §12.5 (b) (4) specifies that a person shall remain eligible for USDA program benefits if the wetland is restored through a mitigation plan approved by NRCS. Appellant's plan approved the planting of seeded native grasses but not corn. NRCS advised FSA that corn growing in the native grass buffer areas violated the Wetland Restoration Plan. Appellant did not seek or receive NRCS approval to plant corn, and therefore does not remain eligible for program benefits.*

**10. Keep to the present tense for the current case under consideration. For prior cases, adjust the tenses of summaries, arguments, and conclusions accordingly.**

*Upon review, Appellant argues that the Hearing Officer's decision was wrong.*

*I conclude that FSA incorrectly calculated the FAV violation penalty.*

The sentences above are in the present tense (*argues / conclude*), even though the writer is summarizing an action in the past (*was wrong / calculated*). Some summaries may require a writer to reach back further into the past to clarify the time relationships between decisions and parties' activities:

*Appellant claims FSA should reimburse him for the additional fencing. Appellant contends FSA provided him a verbal assurance for reimbursement after NRCS had informed FSA authorities previously that NRCS would include additional fencing in the plan.*

In the passage above, there are three time conditions: 1) Appellant makes a claim for the current decision (Present); 2) FSA provided Appellant assurance (Past); and 3) NRCS had informed FSA previously (Past Perfect).

## **MECHANICAL ERRORS –THE SEVEN DEADLY SINS**

The table below identifies seven types of mechanical errors that demand vigilance in all peer reviews. The grammar check function on Microsoft Word highlights these errors in the document, so there is no reason for their existence in a decision. (To review grammar check settings, go to: Tools / Options, then click on the spelling/grammar tab.) These errors are so fundamental, they should not require explanation in peer review comments;

a peer reviewer may simply insert the correct abbreviation—by hand or electronically—within the document.

<i>Name (abbreviation) / Description</i>	<i>Examples</i>
<b>1. Spelling (sp)</b> Spell correctly, correct forms of words.	Incorrect: Appellants appealed <u>there</u> adverse decision. Correct: Appellants appealed their adverse decision.
<b>2. Sentence Fragment (frag)</b> A complete sentence requires a subject and verb and expresses a complete thought.	Incorrect: He had a reason for not being able to sleep. <u>Filing an appeal.</u> Incorrect: He has not been able to sleep lately. <u>Since he is filing an appeal.</u>  Correct: Filing an appeal has caused him trouble sleeping.
<b>3. Comma Splice (cs)</b> Independent clauses require a period or semi-colon—not a comma—to separate them.	Incorrect: FSA argues Appellant’s loss of work was <u>permanent, he</u> was fired. Incorrect: Appellant agrees he was <u>fired, however, he</u> got another job. Correct: FSA argues Appellant’s loss of work was permanent. He was fired.  Incorrect: FSA approved the wetland conservation plan, NRCS later recommended a modification to the plan. Correct: FSA approved the wetland conservation plan, and NRCS later recommended a modification to the plan.
<b>4. Subject – Verb Agreement (agr)</b> Subjects and verbs must agree in number and person.	Incorrect: Appellant argues that the supplies <u>costs</u> too much. Correct: Appellant argues that the supplies cost too much.  Incorrect: Appellants <u>argues</u> that the supplies cost too much. Correct: Appellants argue that the supplies cost too much.  Incorrect: Appellant argues that one error in his column of figures <u>throw</u> his calculations off by \$10,000. Correct: Appellant argues that one error in his column of figures throws his calculation off by \$10,000.  Incorrect: Bad credit or a late application <u>are</u> signs of ineligibility. Correct: Bad credit or a late application is a sign of ineligibility.
<b>5. Pronoun (pro)</b> Pronouns should agree with their antecedents.	Incorrect: John and Jane Doe (Appellants) filed an appeal. <u>It</u> argues that FSA’s decision was in error. Correct: John and Jane Doe (Appellants) filed an appeal. They argue that FSA’s decision was in error. Correct: John and Jane Doe (Appellants) filed an appeal. It argues that FSA’s decision was in error. (In this case the pronoun ‘it’ refers to the appeal. Watch use of ‘it.’

Incorrect: The John and Jane Doe Corporation (Appellant) filed an appeal. They argue that FSA's decision was in error.

Correct: The John and Jane Doe Corporation (Appellant) filed an appeal. It argues that FSA's decision was in error.

#### **6. Erroneous Verb Tense Shift (vt)**

Shifts in tense must accompany change in time sequence.

Incorrect: FSA should have found Appellant to have been eligible. Correct: FSA should have found Appellant eligible.

Incorrect: FSA would have approved the additional fencing if NRCS would have approved the modification. Correct: FSA would have approved the additional fencing had NRCS approved the modification.

#### **7. Passive Voice (pv)**

Use active verbs in sentences.

Incorrect: The additional fencing was disapproved.

Correct: FSA disapproved the additional fencing.

Incorrect: It was demonstrated that Appellant had good credit.

Correct: The new credit report shows that he has good credit.

### **CITATIONS AND INTEGRATING TEXT**

***C.F.R.—Period or no Period; that is the question.***

To maintain consistency, *C.F.R.* (with periods) will be the standard.

The *Federal Register* will be in italics.

***How to cite our own cases:***

*Conmac Investments*, Case No. 2001S001001 (Dir. Rev. February 26, 2002).

*Conmac Investments*, Case No. 2001S001001 (Appeal Det. November 23, 2001)

***Section signs:***

Use § with one section; use §§ with multiple sections.

Spell out the word *Section* when it starts a sentence.

***Integrating Text into Documents***

**Paraphrase (Preferred)** *In case of fire, 7 C.F.R. § 456.6 (d) requires that insurance coverage will be provided for unavoidable damage to macadamia trees, unless the weeds and other forms of undergrowth have not been controlled.*

**Quotation (Intro within sentence)** Seven C.F.R. § 456.6 (d) identifies exceptions to providing insurance coverage for unavoidable damage to macadamia trees: “(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove.”

Note 1: The number at beginning of a sentence is spelled out. Note 2: An analytical introduction precedes the text.

**Block** Seven CFR § 456.6 (d) specifies terms and conditions for macadamia tree loss due to fire:

Note 1: An analytical introduction precedes the quotation.

Note 2: Analysis after the block quotation is necessary to focus the reader’s attention on the part of the citation that applies.

- a. The insurance coverage provided is against unavoidable damage to macadamia trees resulting from the following causes occurring within the insurance period:
  - (1) Fire;
  - (2) Volcanic Eruption
  - (3) Wind Unless those causes are excepted, excluded, or limited by this policy or the actuarial table.
- b. We will not insure against any loss due to
  - (1) Fire, where weeds and other forms of undergrowth have not been controlled , or tree pruning debris has not been removed from the grove.

As Appellant’s loss was due to fire, he meets the term a (1) cited above.

**Splice** Seven C.F.R.§ 456.6 (d) confirms that insurance will be provided for fire to macadamia trees if the damage is unavoidable. “Unavoidable damage” excludes trees where “weeds and other forms of undergrowth have not been controlled.”

*Use of Numbers and Numerals*

A figure is used for a single number of 10 or more with the exception of the first word of the sentence:

- 50 ballots* 10
- guns* 24 horses
- nearly 13 buckets
- about 40 men
- 10 times as large

When 2 or more numbers appear in a sentence and 1 of them is 10 or larger, figures are used for each number.

- Each of 15 major commodities (9 metal and 6 nonmetal) was in supply. Each of nine major commodities (five metal and four nonmetal) was in supply.*
- Petroleum came from 16 fields, of which 8 were discovered in 1956.*

Spell out numerals at the beginning of a sentence or heading.

- Seven C.F.R § 333 (a) identifies three criteria for eligibility.*

You may rephrase a sentence or head to avoid beginning with figures.

- The rule found at 7 C.F.R. § 333 (a) identifies three criteria for eligibility.*

**WORD CHOICES**

Word selection is an important aspect of style. Generally, writers should choose words that enhance reading ease and convey complex ideas with relative grace and apparent simplicity.

*Complex.....to.....Simple                      Complex.....to.....Simple*

Prepositions Phrases

As a means of to As regards about, As to on, for, concerning about, or Under the provisions of under By reason of because of With the exception of except For a period of for In reference to on, for In addition to besides In the event that if, when In terms of in, for, Comply with follow about On the basis of by, from, because of

Due to the fact that because, At this point in time now, since currently Because of the fact that given, that In proximity to close to, near Despite the fact that although, Is able to can even though The question as to whether whether, During such time as while the question whether During the course of during Sufficient number enough For the purpose of for, to Adequate number enough Under the provisions of under No later than before At present now, currently

### *Use of 'that'*

*That* is the defining, or restrictive, pronoun. *Which* is the nondefining or nonrestrictive pronoun:

*The cow that grazed on Appellant's land caused him to become ineligible.* (Tells which cow.)

*The cow, which has a spot on her back, was one of many escorted off Appellant's land.* (Adds a fact about the cow.)

*That* is also an important word in indirect speech, indirect quotations, or in making a demand or request. Often, *that* may not seem necessary to make an indirect quotation clear.

*Patrick Henry said (that we are) to give him liberty or give him death.*

*Appellant stated (that) he was fired from his job.*

But in affirming an argument, claim, or a point that comes late in the sentence, *that* performs a critical function in making a sentence clear.

*NRCS told Appellant on Friday it would approve the modified plan.*

(Did NRCS provide the information to Appellant on Friday? Or did NRCS say on Friday it would approve the plan?)

Re-writes: *NRCS told Appellant that on Friday it would approve the plan.*

*NRCS told Appellant on Friday that it would approve the plan.*

In restating arguments and points of view—when there are often two or more verbs in a sentence—*that* clarifies who's claiming what.

*Appellant argues the NRCS inspection report shows bias and the county commission does too.*



(What exactly does Appellant think? It could mean that the Appellant thinks the NRCS report shows bias, and the county commission report thinks so too. Or it could mean that Appellant thinks the NRCS and the county commission report show bias. Adding *that* and a well-placed comma clarify the meaning.

*Appellant argues that the NRCS inspection report shows bias, and (that) the county commission does too.*

Or

*Appellant argues that the NRCS and county commission reports show bias.*

### ***Writing for Redaction***

Since NAD decisions are now published on the Internet, here are some writing devices to prevent redaction from rendering a decision difficult to understand:

For example, take the case in which several people own a corporation, and the writer is talking about those various people. Redaction of all those names causes a sentence to appear confusing to the public:

*XXXXX Corporation is owned 40 percent by XXXXX, 30 percent by XXXXX, and 30 percent by XXXXX. XXXXX acts as President of the Corporation. XXXXX testified at the hearing that the Corporation filed for bankruptcy in December. ”*

In the example above, the reader does not know which XXXXX is the President of the Corporation. Future sentences and descriptions in the document would compound the confusion.

To clear up this confusion, we identify proper names and link them with descriptive names that will be used repeatedly in the document (e.g. Third Party I or Third Party II). The descriptive names **won't be redacted** in the decision, in the same way that in our decisions we usually define each named Appellant in the first sentence as "Appellant." Thus, when the redaction takes place, the reader will still know who did what. In addition, it makes it easier for those doing the redactions, because it eliminates the number of times a person's name appears.

Thus, in a decision, if the shareholders are Third Parties, one could say in the original:

Mighty Corporation is owned 40 percent by Third Party Joe Mighty (Shareholder I), 30 percent by Third Party Moe Mighty (Shareholder II), and 30 percent by Third Party Curly Mighty (Shareholder III). Shareholder I acts as President of

the Corporation. Shareholder III testified at the hearing that the Corporation filed for bankruptcy in December. ”

When redacted, the reader will be able to understand that there are 3 third parties who are shareholders and which one of them is President or performed other important acts in the case:

*XXXXX is owned 40 percent by Third Party XXXXX (Shareholder I), 30 percent by Third Party XXXXX (Shareholder II), and 30 percent by Third Party XXXXX (Shareholder III). Shareholder I acts as President of the Corporation. Shareholder III testified at the hearing that the Corporation filed for bankruptcy in December. ”*

Other acceptable descriptions might be *Third Part I, or TP!, or SHI*. The important thing is for the description to fit the role the individual plays in the case, as in this other example:

*Appellants Jack Sprat and Hilda Lean (Husband and Wife; Appellants 1 and 2) received an RHS loan. Husband testified that his Wife could eat no lean.*

In the passage above the descriptors are *Husband* and *Wife*, fitting their roles in the case.

We have also been taking care to avoid using the proper names of agency officials, unless it is absolutely necessary. Instead, we refer to them by title or just as an agency employee.

## **HOLISTIC ASSESSMENT OF WRITING AND DECISION-WRITING**

### ***Introduction***

- Based on the theory that a whole piece of writing is greater than the sum of its parts.
- Evaluation of writing is based on the overall impression it creates, rather than on the individual aspects of the content, writing style, or mechanics.
- Assigns a single score (1-6) to a piece of writing. Specific criteria guide the evaluation, not by establishing a catalogue of precise individual errors that might appear, but rather by deciding what impact the errors have on the overall tone, structure, and comprehensibility of the writing sample.

- Performance-based; has the advantage of speed and taking into account the impression of many audience members; enhances statistical validity and reliability.

### Guidelines for Holistic Scoring


#### How to read and score the decision

First, read the decision thoroughly; decide whether the quality of the decision impresses you initially as a top-half or bottom-half decision. (Remember, the scoring scale is 1-6.) If you want, you can mark the decision while reading, but make sure your first read is complete and uninterrupted.

Next, using the criteria below, determine the final score of the decision. For example, if you feel the decision is a top-half decision, use the guidelines to determine whether the final score will be a four, five, or six; for a bottom-half decision: three, two, or one. You may re-read all or part of the decision to make your final evaluation. In evaluating how the decision compares to the guidelines, it is permissible to reverse your initial impression—say, for example, change the decision from a top-half to a bottom-half evaluation—as long as you have a good reason.

Use the guidelines below in determining the final score. These guidelines are also delineated in the NAD Draft Style Guide:

#### *NAD Scoring Scale*

<i>Score</i>	<i>Description</i>	
6	Superior	<p><b>Errors That distract</b></p>  <p><b>Errors that obscure</b></p>
5	Strong	
4	Competent	
3	Marginal	
2	Weak	
1	Incompetent	

**NAD Scoring Criteria:** Good decisions contain the following-

***Topic / Issue***

- Well-defined and clear.
- Correctly identified.
- Clearly stated up-front and explored with focus throughout the decision

***Organization***

- Coherent narrative structure.
- The statement of case, issues, facts, analysis, and conclusions follow a logical flow.
- Contains a beginning, middle, and end. “Tells the story” of the case.

***Analysis / Logic***

- Explores the issue thoughtfully, with focus and depth.
- Sound and valid reasoning derived from well-chosen findings of fact support conclusions.
- Apt and specific application and integration of regulations.

***Style***

- A customer can read and understand the decision without further legal consultation.
- Displays variety of syntax and sentence structure. Sentences are active, clear, and concise.
- Displays the customer’s point of view of the case; the customer’s side of the story.

***Mechanics***

- Generally free from errors in mechanics, usage, and sentence structure.
- Free from errors that would usually be detected by spell check and grammar check in Microsoft word.

**NAD Scoring Standards**

**Score of 6: Superior.**

A (six) 6-document displays superior decision writing. The document may contain some minor flaws, but they do not detract from the overall excellence of the writing. A document in this category—

- **Issue**: Identifies clearly all the disputed facts and applicable regulatory criteria that require resolution in the case.
- **Organization**: Presents a coherent narrative structure that tells the story of the case.
- **Analysis/Logic**: Addresses all aspects of the issues with thoughtfulness and depth. Valid reasoning, with well-chosen findings of fact, support conclusions and the resolution of issue questions. Explores and analyzes all sides of the issue question. Answers all issue questions.
- **Style**: Presents a readable style that is clear and concise for the customer. Responds to a faithful representation of the customer's point of view. Strong topic sentences introduce clear paragraphs.
- **Mechanics**: Is generally free from errors in mechanics, usage, and sentence structure; free from errors that would be highlighted in Microsoft Word.

**Score of 5: Strong.** A (five) 5-document demonstrates clear proficiency in writing. The document may have some errors in one or more criteria, but they are not serious enough to distract or confuse the reader. A document in this category—

- **Issue**: Correctly identifies disputed facts and regulatory criteria in a case, but may be more specific and clear for one issue than another.
- **Organization**: Displays a well-organized narrative structure.
- **Analysis/Logic**: Contains sound conclusions supported by valid reasoning and well-chosen findings of fact. May address some aspect of one issue better than another, or may not explore as thoroughly all sides of an issue. Answers all issue questions.
- **Style**: Responds to the concerns of the customer and displays a reader-friendly style. Paragraphs may have main ideas, but topic sentences do not introduce paragraphs.
- **Mechanics**: May have a few errors in mechanics, usage, and sentence structure; but should still be generally free of errors that would be highlighted in Microsoft Word.

**Score of 4: Competence.** A (four) 4 document demonstrates adequate writing. The document may have some errors in one or more criteria, which may distract the reader. But the errors do not obscure the meaning, issue, or basis for a conclusion. A document in this category—

- **Issue**: Generally identifies the topic or issue, but may be vague or imprecise in identifying the disputed facts or regulatory criteria in issue statements.

- **Organization**: May display an organizational break in the story, but is adequately coherent so as not to confuse the reader. Unnecessarily, may repeat statement of case, issues, facts, or conclusions in some part of the document. The story of the case is difficult to follow.
- **Analysis/Logic**: May demonstrate some repetition in analysis, but shows appropriate conclusions supported by generally valid reasoning and findings of fact. Although conclusion may be sound, may not explore sufficiently all sides of the issue. May answer one issue question better than another.
- **Style**: Shows attention to the customer, but may not address customer concerns specifically. Shows control of paragraph structure; but main ideas may be implicit—topic sentences are not always evident.
- **Mechanics**: May have some errors, but generally shows control in mechanics, usage, and sentence structure.

**Score of 3: Marginal.** A (three) 3-document demonstrates developing writing. The document is flawed in some significant way (usually according to one criteria) that may greatly distract the reader or obscure the meaning, issue, or basis for a conclusion. A document in this category --

- **Issue**: Issue may be general or vague, which may hinder future analysis. Distorts or neglects some aspect of the topic or issue. May neglect to specify some disputed facts or regulator criteria.
- **Organization**: May be poorly organized. The narrative structure loses the reader. The story loses the reader at times.
- **Analysis/Logic**: Displays analysis that may be repetitive. Conclusions may be sound, but lack of focus or adequate detail supports valid reasoning. Neglects to analyze fully all sides of an issue or answer an issue question.
- **Style**: May neglect to include the customer's point of view, or states it without clarity. May demonstrate writing that is difficult for a customer to understand. Shows lack of control in sentence and paragraph structure; paragraphs may be devoid of main ideas.
- **Mechanics**: May have an accumulation of errors in mechanics, usage, and sentence structure.

**Score of 2: Weak.** A (two) 2 document demonstrates flawed writing. The document is flawed in some significant way (more than one criteria) that distracts the reader or obscures the meaning, issue, or basis for a conclusion. A document in this category --

- **Issue**: Indicates confusion about some the topic or issue. Issue may be incorrect, vague, or not connected to a disputed fact or regulatory criteria.
- **Organization**: Lacks focus and organization. The story is lost.

- Analysis/Logic: Provides simplistic generalizations and lapses in valid logical reasoning. Conclusions are invalid or not pertinent to issue questions. Logic is confusing. Neglects to answer an issue question.
- Style: May neglect to include the customer's point of view, or states it without clarity. May demonstrate writing that is difficult for a customer to understand. Paragraph and sentence structure are out of control.
- Mechanics: May be marred by errors in mechanics, usage, and sentence structure.

**Score of 1: Incompetent.** A (one) 1-document demonstrates a fundamental deficiency in writing skill. The document is flawed in some significant way (more than one criteria) that distracts the reader or obscures the meaning, issue, or basis for a conclusion. A document in this category—

- Issue: Indicates inability to comprehend the issue or topic.
- Organization: Displays disorganized narrative structure.
- Logic/Analysis: Provides no support and reasons for conclusions.
- Style: Neglects to include the customer's point of view. May demonstrate writing that is difficult for a customer to understand. There is no apparent story.
- Mechanics: Contains serious and persistent errors in mechanics, usage, and sentence structure.

## **PEER REVIEW**

Peer reviews should be in the form of a letter. Peer review comments should be organized according to the holistic criteria and should emphasize the following aspects:

### ***Topic / Issue***

- Does the introduction summarize why we are here and what is at issue?
- Are both points of view delineated?
- Does the hearing officer identify specific questions to be resolved in the case? Are they the right questions and clearly follow from the summary?

### ***Organization***

- Does the "story" of the case follow a logical flow—statement of case, issues, findings of facts, discussion, and conclusions?
- Is there unnecessary repetition?

### ***Style***

- Are there clearly organized deductive paragraphs in the discussion? Do topic sentences introduce the main idea of the paragraph?
- Do sentences and paragraphs exhibit aspects of readable writing? --Shorter sentences -- Avoid complex words --Strong nouns as subjects; active verbs --High reading ease standards

### ***Logic***

- Are the findings of facts correct and true?
- Does the arithmetic for numbers and dollars add up?
- Are the correct regulations cited and aptly applied?
- Is the reasoning logical? Is there evidence of deductive legal reasoning? --Law of non-contradiction --Avoiding logical fallacies --Valid deductions and conclusions
- Are all the questions identified at the beginning of decision resolved?

### ***Mechanical Errors***

- Does the writing exhibit any of the seven deadly sins?
- Are there errors a grammar check on the computer would find?

## **HELPFUL REFERENCES**

### Grammar and Style Books:

William Strunk Jr. and E.B. White, *The Elements of Style*, Needham Heights, Massachusetts: Allyn and Bacon, 2000.

Patricia T. O'Connor, *Woe Is I*, New York: The Berkley Publishing Group, 1996.

Richard Marius and Harvey S. Wiener, *The McGraw-Hill College Handbook*, 3<sup>rd</sup> Edition, New York: McGraw-Hill Inc., 1991.

Texas Law Review Association, *Manual on Usage, Style & Editing*, 9<sup>th</sup> Edition, Austin, Texas: Texas Law Review Association, 2002.

Harvard Law Review Association, *The Bluebook: A Uniform System of Citation*, 17<sup>th</sup> Edition, Boston: Harvard Law Review Association, 2002.



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How to order the Blue Book:

<http://www.legalbluebook.com/>

Basic Legal Citation

<http://www.law.cornell.edu/citation/>

Government Printing Office Style Manual

<http://www.access.gpo.gov/styleman/2000/browse-sm-00.html>

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<http://www.calstatela.edu/library/styleman.htm>

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<http://dictionary.reference.com/>