

METHODOLOGY FOR THE **DEVELOPMENT** AND SUCCESSFUL **IMPLEMENTATION** OF QUALITY VETERINARY LEGISLATION

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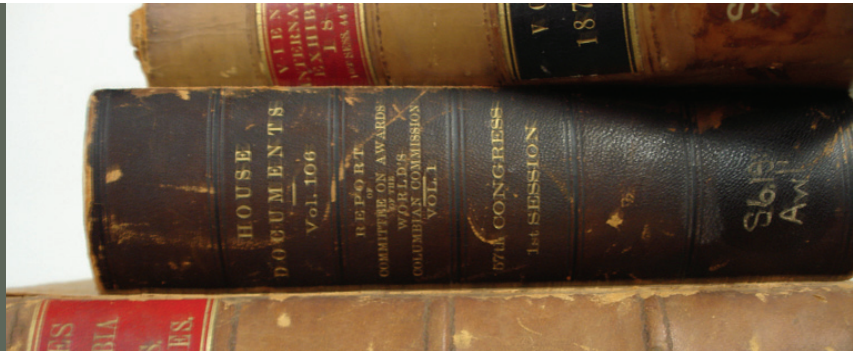


WORLD ORGANISATION FOR ANIMAL HEALTH
Protecting animals, preserving our future

Content



1 Understanding legislation



2 Drafting roadmap

3 Achieving quality



UNDERSTANDING LEGISLATION

What is it and why do we need it?

What is 'law'?



✓ International law

✓ Constitution

✓ Primary legislation (Law)

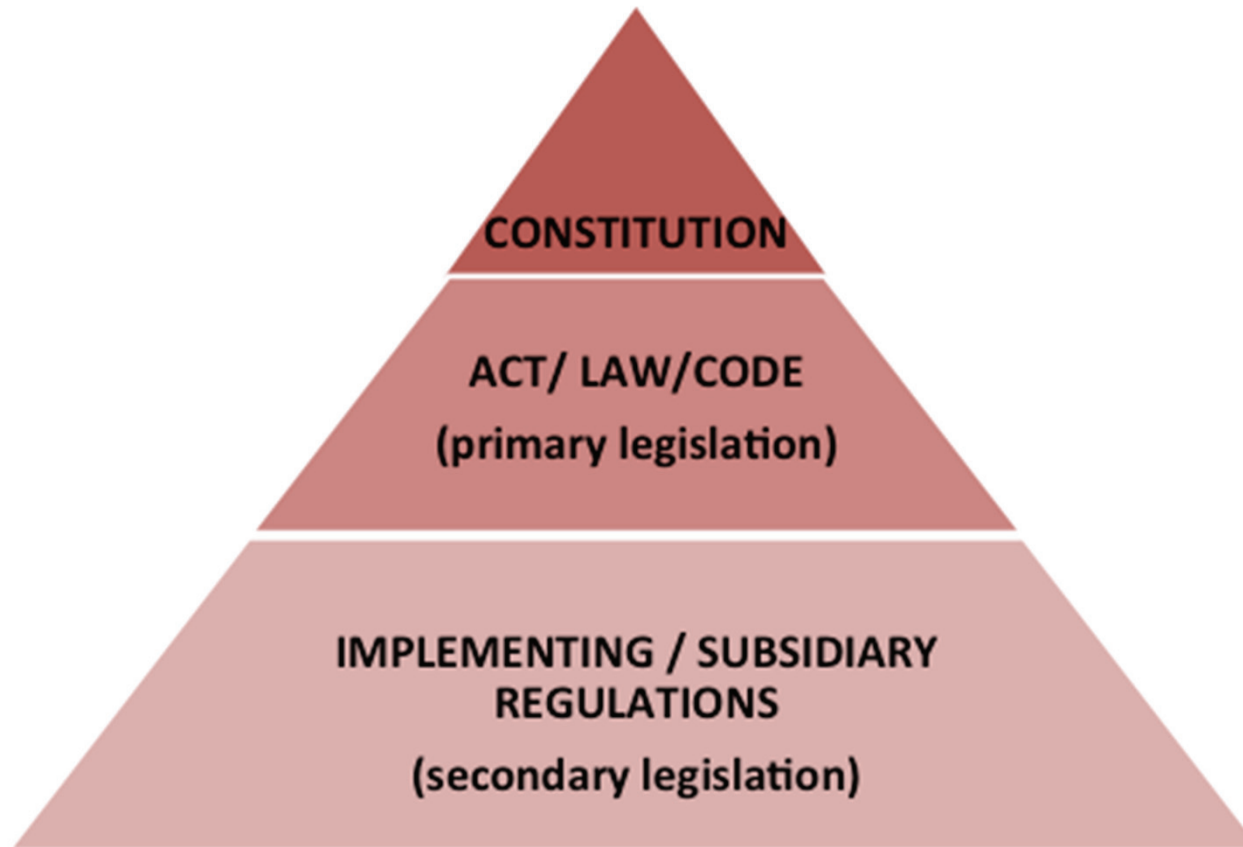
✓ Secondary legislation (Regulations)

? Guidelines & standards

? Others

✗ Policy

Hierarchy of legislation

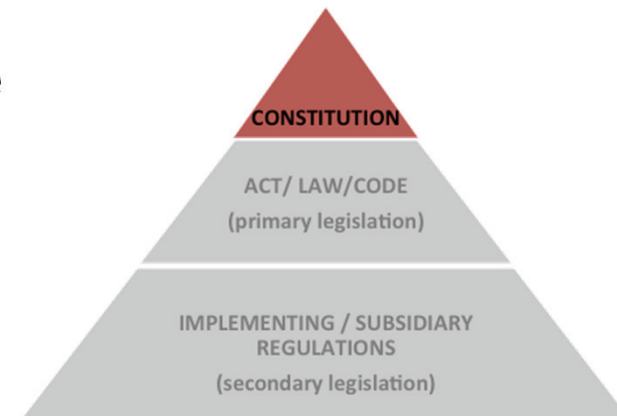


Constitution



Functions

- ✓ Supreme legal instrument
- ✓ Establishes governmental structure
- ✓ Delineates government power
- ✓ Sets out fundamental freedoms and rights
- ✓ Establish country's identity



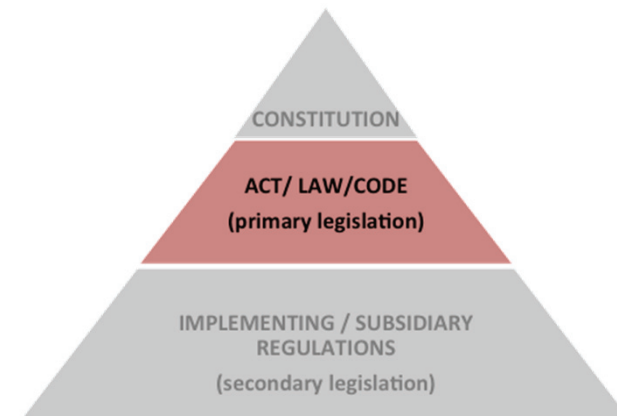
Primary legislation



Enacted by **Legislative Branch**

Functions

- ✓ Develop institutional frameworks
- ✓ Create powers of public authorities
- ✓ Impose prohibitions/obligations
- ✓ Establish infringements and sanctions
- ✓ Establish fees/taxes



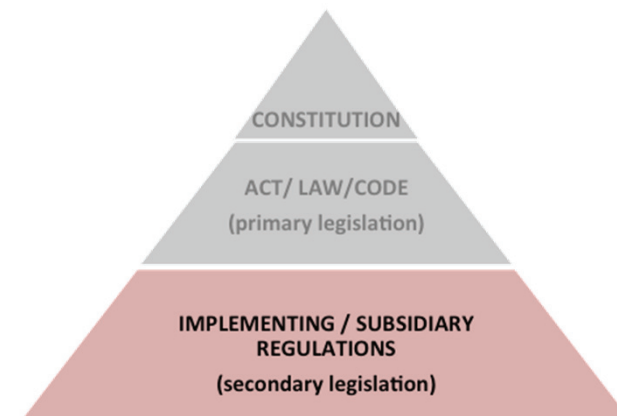
Secondary legislation



Enacted by **Executive Branch** via legal anchor

Functions

- ✓ Prescribe procedural and technical detail
- ✓ Regulate new fields not covered under *primary* legislation
- ✗ Prescribe powers and responsibilities



Why is legislation important?



“Good governance is a recognised global public good and is of critical importance (...) Legislation is a **key element** in achieving good governance”.

(OIE Terrestrial Animal Health Standards Commission)



LEGISLATIVE DRAFTING ROADMAP

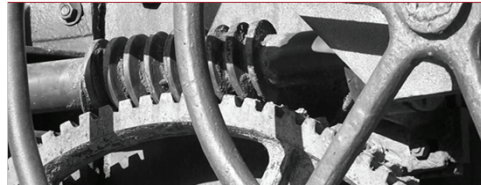
Prerequisites, key steps and considerations

Prerequisites



Good policy

- ✓ Understanding the problem
- ✓ Clarity on proposed solution



Good process

- ✓ Comprehensive preliminary assessment
- ✓ Robust drafting process



Good politics

- ✓ Acceptable to those in power
- ✓ Able to pass the legislature easily

Without all of the above, a law is not implementable

1. Good policy



- What is the problem that needs to be addressed?
- What is the desired policy objective?
- What is the best strategy to achieve this objective?

Align with COMESA Regional Livestock Policy

2. Good process

Preliminary assessment



- International legal framework
- Domestic legal framework
- Administrative structure
- Institutional structure

2. Good process

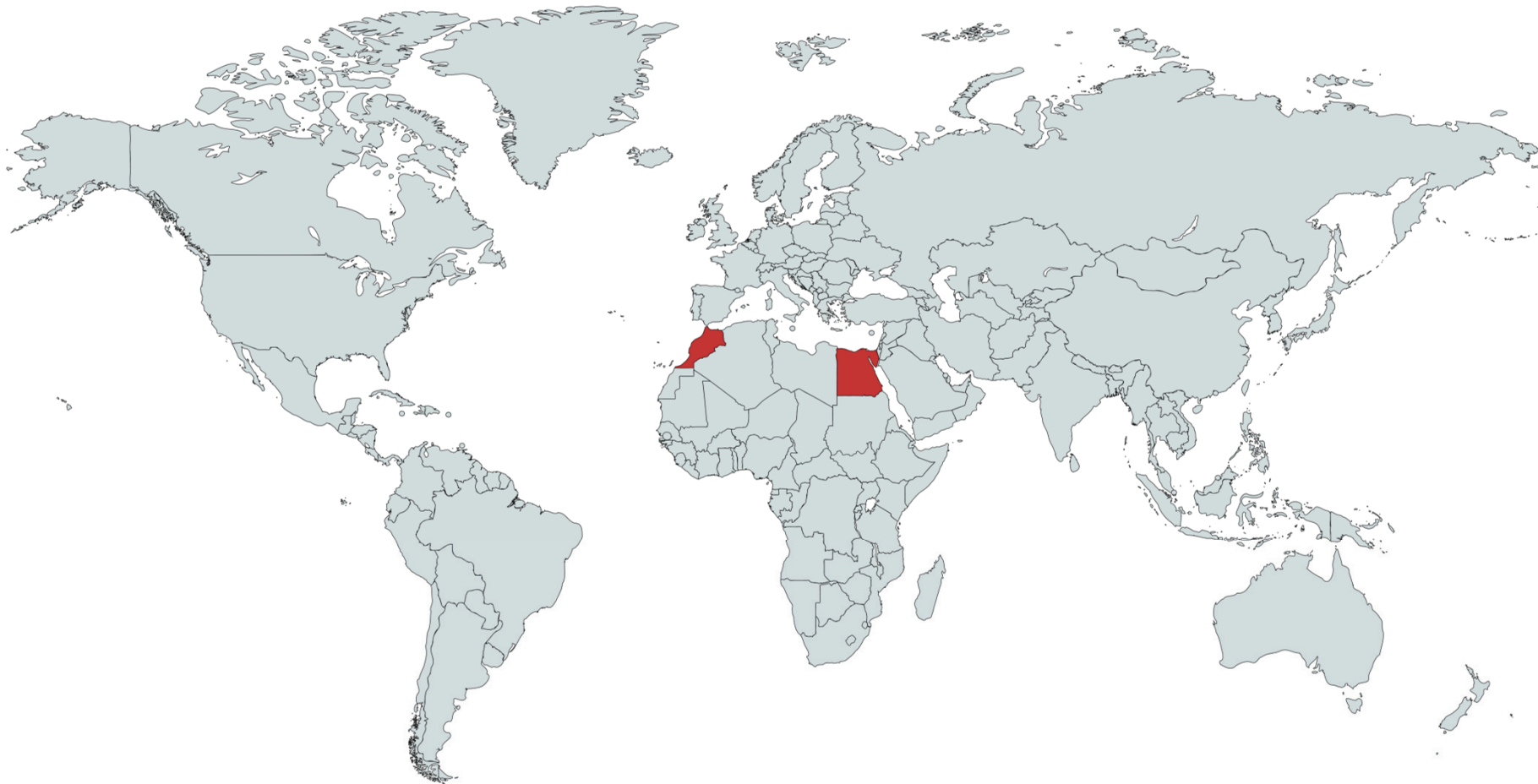
Prelim. assessment – International law



International

Regional

Bilateral



2. Good process

Prelim. assessment – International law



WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

Article 2: Basic Rights and Obligations

“2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health...”

Article 3: Harmonization

“2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this agreement.”

Annex A: Definitions

“International standards, guidelines and recommendations...for animal health and zoonoses, the standards, guidelines and recommendations developed under the Auspices of the International Office of Epizootics (OIE).”

2. Good process

Prelim. assessment – International law



“...harmonization of trade laws and commercial practices is an important ingredient of regional integration, without which meaningful economic integration cannot be achieved.”

Source: Muna Ndulo, “The Need for the Harmonisation of Trade Laws in the Southern African Development Community” (1996) *Cornell Law Faculty Publications*, Paper 60

Possible techniques:

1. Multilateral agreement
2. Model legislation

Example: COMESA harmonization of seed legislation

2. Good process

Prelim. assessment – International law



Areas for regional harmonisation include:



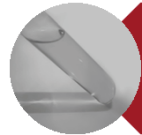
Transportation requirements



Import/export requirements



Sanitary measures



Reference laboratories

Do not transplant legislation from one jurisdiction into another

2. Good process

Prelim. assessment – Domestic law



Conduct a legislative analysis to research and compile existing legislation **in all related areas** (not solely areas under review)

Areas to consider include

- Biosafety
- Wildlife and environment
- Food safety
- Trade of food products
- Slaughterhouse control

Issues to identify

- Gaps
- Overlaps
- Inconsistencies
- Weaknesses
- Potential areas of conflict with proposed legislation

Hint: When conducting a gap-analysis, the [OIE Terrestrial Animal Health Code](#) may be used as a checklist or benchmark

2. Good process

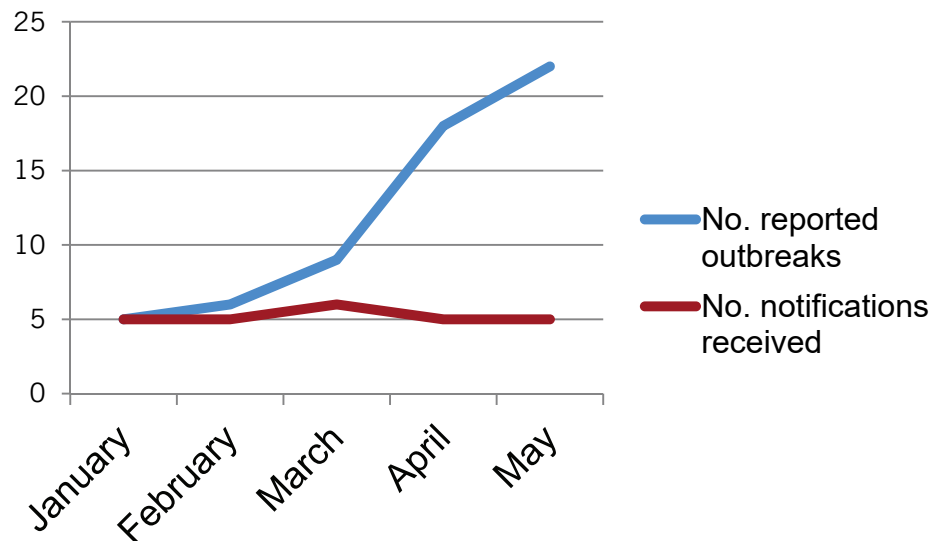
Prelim. assessment – Domestic law



Assess *practical* impact of legislation

Ineffectiveness may be due to:

- Lack of **capacity** to conform
- Poor **awareness or understanding** of legislation
- Insufficient **enforcement** capacity



2. Good process

Prelim. assessment – Administrative structure



Pay special attention in **decentralized** or **federal** states. E.g.:

Central/federal government	Regional/state government
Human health	Animal health
Food safety	Animal production

Required:

- **Strong coordination and cooperation**
- **Clearly defined roles and responsibilities**

Proposed:

- Central government prescribes minimum requirements.
- States may choose to enact stronger systems.

2. Good process

Prelim. assessment – Institutional structure



- Identify key actors and institutions.
- Map out institutional mandates to search for areas of **overlap** or **gaps**.
 - **Gaps** can render mechanisms ineffective.
 - **Overlaps** increase cost, bureaucracy, and cause confusion.

Ministry of Health

Food safety

Drugs (including VMPs)

Ministry of Agriculture

Animal production (and slaughter)

Animal health

2. Good process

Key regulatory decisions



General considerations

- “Patch” existing law, or start again?
- Pursue **tiered approach** by implementing new regulatory framework (e.g. 10 years), while *simultaneously* pursuing quicker parallel strategies to address issues in intervening period.

Specific considerations

- Select the type of legal instrument(s)
- The scope of the legislation
- Define regulatory objectives
- Consider mechanisms for ensuring appropriate implementation
- Identify competent authority
- Outline Actors’ Responsibilities
- Identify funding mechanisms

2. Good process

Robust drafting process



Ensure a **transparent** and **iterative** drafting process: this means nothing more than **consultations**

Consultations must:

- ✓ occur **early** in the policy development stage and **throughout** the legislative process
- ✓ include all concerned stakeholders (e.g. within ministry, between government entities, with public at large, and with legal drafters)
- ✓ be done using appropriate methods of communication

3. Good politics



Alignment with
government
agenda and
political climate



Good
relationships
between
veterinarians and
lawyers (including
legal drafters)

ACHIEVING QUALITY LEGISLATION

The pursuit of “quality”

What is “quality”?



Key resource



K.L. Rosenbaum

Legislative Drafting Guide: A Practitioner's View

FAO Legal Papers Online #64

Three types of quality:

1. **Form** – Format of the law
2. **Fit** – Harmony with legal system
3. **Style** – Careful use of language

The image shows the front cover of the book 'Legislative Drafting Guide: A Practitioner's View'. The cover is white with a vertical grey bar on the left side. The title is printed in a bold, black, sans-serif font. Below the title, there is a subtitle in a smaller font. The author's name is at the bottom. The background of the cover is a light, textured grey.

LEGISLATIVE
DRAFTING GUIDE:
A PRACTITIONER'S VIEW

A RESOURCE FOR
PEOPLE WORKING ON
INTERNATIONAL TECHNICAL
ASSISTANCE PROJECTS

BY KENNETH L. ROSENBAUM

FAO
LEGAL PAPERS
ONLINE #64
February 2007

1. Good form



Look for:

- 1) National **form manual**
- 2) Style trends in **existing legislation**

Key considerations

Styles for numbering (“Article”, “Section”)

Formats for dates (10 June, June 10th)

How to write sums of money

Titles for legislation (long, short, numeric)

While these may seem trivial, they promote **consistency** and **clarity**

2. Good fit



Look for:

1) Requirements in **Constitution**

- Legislation must not address more than one subject
- The purpose of an Act must be expressly stated

2) National **statutory interpretation law**

- *Repeals*: does repeal of primary law also repeal regulations?
- *Pronouns*: do male pronouns apply to both males and females?
- *Plurals*: do single pronouns also apply to groups?

If updating beware of **cross-references**

2. Good fit



Definitions:

- Ensure consistency with definitions in related legislation
- Crucial to understanding the legislation and aid in its construction
- Do not define terms unnecessarily
- Do not define a word or phrase in a manner that is far-removed from normal use
- In a single convenient location alphabetically or, if exclusive to a specific article, “For the purpose of this article, X means”

3. Good style



Precise

Must be sufficiently detailed to avoid ambiguity or confusion

Accurate

Information must be correct

Clear

Language must be as simple and concise as possible

Poorly drafted legislation may have two or less of these.

Well drafted legislation **must have all three.**

3. Good style



Use simple language

Do not use unnecessary words

Make arrangements for = arrange
Give payments to = pay
Null and void = void
Establish and ordain = establish

Avoid legal jargon

”hereinafter”, “aforesaid”, etc.

3. Good style



Use short sentences

Only convey one idea per sentence

BAD

“The producer shall submit a claim for compensation, and the competent authority shall quantify the compensation due within three weeks.”

BETTER

- a) The producer shall submit a claim for compensation.
- b) The competent authority shall quantify compensation due within three weeks.

3. Good style



Avoid passive language

Specify *who* is the subject of an obligation

BAD

“*Notification* of livestock movement must be submitted to the competent authority”.

BETTER

“*Livestock keepers must submit* notification of livestock movements to the competent authority”.

3. Good style



Use words and phrases consistently

The registrar shall keep a register of semen collectors, embryo collectors, (...)

Upon payment of the prescribed fee, the inventory shall be available for inspection.

In the above example, are the “register” and “inventory” the same document?

3. Good style



Draft in the present tense

- “Shall” ought to be preserved to denote an obligation.
- If past or future tense is necessary, use “will” instead of “shall”.
- Past tense creates uncertainty and risks retroactivity.

BAD

A person who shall keep twenty or more animals shall apply for a permit.

BAD

A person who has kept twenty or more animals shall apply for a permit.

BETTER

A person who keeps twenty or more animals shall apply for a permit.

3. Good style



State exceptions clearly

Introduce exceptions to avoid oversight

BAD

- 1) All farmers must wear overalls in the field;
- 2) Subsection 1 does not apply to rice farmers.

BETTER

- 1) Subject to subsection (2), all farmers must wear overalls in the field;
- 2) Subsection 1 does not apply to rice farmers.

3. Good style



Be careful with numbers

Avoid ambiguity at all costs

BAD

Fees must be paid by 1st June.

BETTER

Fees must be paid before 1st June.

OR

Fees must be paid after 1st June.

3. Good style



Be careful with numbers

Use vague or imprecise timeframes with caution

BAD

“Any person who has reason to suspect that an animal may be suffering from a notifiable disease shall give notice to the competent authority immediately.”

BETTER

“Any person who has reason to suspect that an animal may be suffering from a notifiable disease shall give notice to the competent authority as soon as possible, and not later than 24 hours.”

3. Good style



Be careful with numbers

Beware of numeric ranges

BAD

- 1) Keepers of less than twenty animals are exempt from permit requirements.
- 2) Keepers of more than twenty animals require a permit.

BETTER

- 1) Keepers of less than twenty animals are exempt from permit requirements.
- 2) Keepers of twenty or more animals require a permit.

3. Good style



Avoid ambiguity in sentence construction

- Use conjunctive and disjunctive words (“*and*,” “*or*”) carefully
- Use correct grammar and punctuation

Sweeping the floor are the president’s wife who is wearing a red dress and her friend.

OR

Sweeping the floor are the president’s wife, who is wearing a red dress, and her friend.

3. Good style



Avoid ambiguity in sentence construction

Improper use of adjectives and modifiers
can lead to ambiguity

BAD

A manufacturer may label a feed as organic if the feed does not contain rice or corn treated with chemicals.

BETTER

A manufacturer may label a feed as organic if the feed does not contain any of the following:

- a) Rice that has been treated with chemicals;
- b) Corn that has been treated with chemicals.

Thank you for your attention!



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