

# 2 FAM 1120

## PUBLICATION IN THE FEDERAL REGISTER

(TL:GEN-295; 09-14-1999)

### 2 FAM 1121 FEDERAL REGISTER SYSTEM AND AUTHORITIES

(TL:GEN-295; 09-14-1999)

*(State Only)*

a. The Federal Register system is a central publication system by which the Government informs the public of regulations affecting them. It was established by the Federal Register Act of July 26, 1935 (44 U.S.C. Chapter 15) and further expanded by the Administrative Procedure Act of June 11, 1946 (5 U.S.C. 551 et seq.). Rule documents are also subject to the provisions of Executive Orders 12291 and 12778, the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Regulatory Flexibility Act (5 U.S.C. 605), and OMB Circular 85-6. The system is composed of two major publications, the daily *Federal Register* and the annually revised *Code of Federal Regulations* (CFR).

b. *The Contract with America Advancement Act of March 29, 1996, included a number of regulatory reform provisions. These provisions, entitled the Small Business Regulatory Enforcement Fairness Act, require, among other things, that final rules and major rules and a covering report be sent to Congress and the General Accounting Office (GAO), prior to their submission to the Federal Register for publication. This law covers rules to be published in the Federal Register, not internal Department (Foreign Affairs Manual-FAM) regulations.*

**NOTE:** *A “major” rule is basically a rule likely to have an annual effect on the U.S. economy of \$100,000,000 or more. While a very few Department of State rules may qualify under this definition, most do not. Therefore, this subchapter will not discuss major rules.*

c. *For all final rules, each agency must submit a report to each House of Congress and the GAO before the rule can take effect. The report must contain:*

- (1) *A copy of each final rule;*

(2) A “concise general statement” of the rule (including identifying if it is a “major” rule); and

(3) The rule’s effective date.

Once this obligation is satisfied, all non-major rules may take effect on the date the agency provided.

## **2 FAM 1122 CODE OF FEDERAL REGULATIONS (CFR)**

(TL:GEN-295; 09-14-1999)

(State Only)

The CFR is the basic component of the Federal Register publication system and is a codification of the regulations of the various Federal agencies. The CFR is divided into 50 titles according to subject matter. The primary title for the Department of State is 22 CFR - Foreign Relations. Titles are divided into chapters, chapters divided into parts, and parts divided into sections. See 2 FAM 1127.1-4 for a discussion of using these units in a submission.

## **2 FAM 1123 FEDERAL REGISTER**

(TL:GEN-254; 3-31-88)

(State Only)

The *Federal Register* is a daily publication that provides a uniform system for publishing Presidential and Federal agency documents. It is published on all official U.S. Government workdays. The *Federal Register* contains certain Presidential documents, documents of general applicability and legal effect, and documents required to be published by statute or regulation. The *Federal Register* is the means by which rule documents are codified into the CFR.

### **2 FAM 1123.1 Categories of Documents**

(TL:GEN-254; 3-31-88)

(State Only)

Documents are published in the *Federal Register* under the category headings that follow.

## **2 FAM 1123.1-1 Presidential Documents**

(TL:GEN-254; 3-31-88)  
(State Only)

This category contains documents the President submits for publication or orders to be published and it includes Proclamations, Executive Orders, Memorandums, Orders, Presidential Determinations, and Reorganization Plans. (See 2 FAM 1130.)

## **2 FAM 1123.1-2 Proposed Rules**

(TL:GEN-295; 09-14-1999)  
(State Only)

a. Proposed rules are notices of proposed rulemaking which are published in the *Federal Register* and are subject to public comment. They suggest changes to agency regulations in the CFR and request public comment within a specified period of time. Publication of a proposed rule in the *Federal Register* is the first step in the regulatory process. Once comments have been received and action has been taken to address the comments, the rule is submitted for publication in the *Federal Register* as a final rule, at which time it is codified into the CFR. Proposed rules are subject to review by the Office of Management and Budget (OMB). (See section 2 FAM 1129.) 2 FAM 1123 Exhibit 1123.1-2 illustrates a proposed rule as prepared for submission (see also 2 FAM 1127).

b. *ARPS/DIR can provide a copy of a regulatory alert form for offices to use when drafting rules.*

## **2 FAM 1123.1-3 Rules and Regulations (Final Rules)**

(TL:GEN-295; 09-14-19)  
(State Only)

This category contains documents having general applicability and legal effect. The terms "rules" and "regulations" have the same meaning within the *Federal Register* system and both are referred to as "rules." Final rules and interim final rules are in this category. These documents amend the CFR by adding new text or by revising or removing existing text. Final rules are codified into the CFR upon publication in the *Federal Register*. Final rules and interim final rules are subject to OMB review (see section 2 FAM 1129). 2 FAM 1123 Exhibit 1123.1-3 illustrates a final rule as prepared for submission (see also 2 FAM 1127).

## **2 FAM 1123.1-4 Notices**

(TL:GEN-295; 09-14-1999)  
(State Only)

Notice documents are any documents published in the *Federal Register* that are not Presidential documents or *that* do not relate to a rulemaking proceeding. They concern matters applicable to the public and are published for public information. They are not codified into the CFR. 2 FAM 1123 Exhibit 1123.1-4 illustrates a notice document as prepared for submission (see also section 2 FAM 1126).

## **2 FAM 1124 LIAISON, CLEARANCE, AND CONGRESSIONAL NOTIFICATION**

(TL:GEN-295; 09-14-1999)  
(State Only)

Direct requests for information or assistance in preparation of documents to the Federal Register Liaison Officer, Directives Management *Staff* (A/RPS/DIR).

### **2 FAM 1124.1 Liaison**

(TL:GEN-295; 09-14-1999)  
(State Only)

a. The Directives Management *Staff* (A/RPS/DIR) has sole liaison responsibility with the Office of the *Federal Register* on all matters concerning Department of State publication in the *Federal Register*. Directives is also liaison with the Office of Management and Budget (OMB) on matters pertaining to the OMB review process for rule documents *and information collections*.

b. Originating offices should refrain from direct contact with the Office of the Federal Register or the Office of Management and Budget on matters relating to publishing in the *Federal Register* or regarding *information collections* (see also 2 FAM 1160).

## 2 FAM 1124.2 Clearance

(TL:GEN-295; 09-14-1999)  
(State Only)

a. Clear all rule documents through the Office of the Legal Adviser (L) for accuracy of legal citations, compliance with laws and regulations, and certification under Executive Order 12778. Originating bureaus/offices are responsible for obtaining clearance and certification from the Assistant Legal Adviser who provides other legal services to them. Notify the Assistant Legal Adviser for Legislation and General Management (L/LM) of all CFR rules, regardless of their stage of development, for inclusion in the Department's semiannual regulatory agenda.

b. Originating offices are responsible for obtaining clearances from Department offices affected by the publication of the document and any other clearances, as appropriate.

c. *A/RPS/DIR may specify and/or require that program offices obtain specific clearances before submitting materials for OMB clearance or to the Federal Register.*

## 2 FAM 1124.3 When Congressional Notification is Required

(TL:GEN-295; 09-14-1999)  
(State Only)

a. *As a result of the passage of the Congressional Review Act that took effect on March 29, 1996, Congressional notification is required for all **final** rules and **major** rules (those likely to have an annual effect on the economy of \$100,000,000 or more).*

b. *The originating offices are responsible for sending all final rules with covering reports to each House of Congress and the General Accounting Office (GAO) **BEFORE** the reports can be sent to the Federal Register for publication. Letters must be sent to:*

- (1) *The President of the Senate;*
- (2) *The Speaker of the House of Representatives; and*
- (3) *The General Counsel, General Accounting Office, Room 7175, 441 G Street, N.W., Washington, DC 20548.*

**NOTE:** The Bureau of Legislative Affairs (H) is responsible for preparing for signature the reports to the House and Senate in the standard format for Congressional correspondence. The Bureau of Finance and Management Policy (FMP) is responsible for preparing for signature the report to GAO.

c. The Federal Register Liaison Officer **MUST** receive confirmation from the originating office through the DIR OMB Liaison Officer that the letters have been submitted to the Hill before she or he will send the rule to the Federal Register.

## **2 FAM 1125 FEDERAL REGISTER DOCUMENT REQUIREMENTS**

(TL:GEN-295; 09-14-1999)  
(State Only)

a. Detailed requirements on format, content, and submission requirements for *Federal Register* documents are contained in the *Federal Register Document Drafting Handbook* available at <http://www.nara.gov/fedreg>. See 2 FAM 1125 Exhibit 1125 for general format requirements on *Federal Register* documents.

b. The *Federal Register* is available on the world wide web at <http://www.access.gpo.gov/nara>.

### **2 FAM 1125.1 Paper**

(TL:GEN-254; 3-31-88)  
(State Only)

Type all *Federal Register* documents on plain 8 1/2 x 11-inch bond paper (the form previously used is obsolete; discard it).

### **2 FAM 1125.2 Electronic Submissions**

(TL:GEN-295; 09-14-19)  
(State Only)

Originating officers must submit a diskette of the document in addition to the original document and accompanying copies. Submissions must be in either Microsoft Word (all versions up to 8.0) or WordPerfect (versions 5.x and 6.x) format. The diskette label must contain:

- (1) The name of the submitting bureau;

(2) An identifier that ties the diskette and document together (i.e., title or Public notice Number, if already assigned); and

(3) The file name.

## **2 FAM 1125.3 Spacing**

(TL:GEN-295; 09-14-19)  
(State Only)

*Double-space* the entire document. Quoted material, footnotes, notes to tables, and the signature block, may be single-spaced.

## **2 FAM 1125.4 Margins**

(TL:GEN-295; 09-14-19)  
(State Only)

The left margin is to be set at 1 1/2 inches, all other margins at 1 inch.

## **2 FAM 1125.5 GPO Billing Code**

(TL:GEN-295; 09-14-1999)  
(State Only)

The GPO will bill the originating office directly for documents published in the *Federal Register*. The office to be billed is determined by the GPO billing code that appears at the top of the first page of the document. Offices can enter this code if it is known. If an office does not know its GPO billing code for *Federal Register* publication, *leave blank* the space for the number and A/RPS/DIR will enter the number when the document is processed.

## **2 FAM 1125.6 Heading**

(TL:GEN-295; 09-14-19)  
(State Only)

Every *Federal Register* document must begin with a heading section that identifies the issuing agency and subject matter of the document. Heading components follow below.

## **2 FAM 1125.6-1 Agency**

(TL:GEN-295; 09-14-19)  
(State Only)

Type the agency name in upper case.

## **2 FAM 1125.6-2 Bureau or Office**

(TL:GEN-295; 09-14-19)  
(State Only)

Enter the name of the bureau or office of the person signing the document in upper and lower case.

## **2 FAM 1125.6-3 CFR Reference (Rule Documents Only)**

(TL:GEN-295; 09-14-19)  
(State Only)

The CFR reference line only applies to proposed rules, final rules, and interim final rules. It is not applicable to notice documents. When citing the CFR on rule documents, use the standard form of citation (example: 22 CFR Part 51).

## **2 FAM 1125.6-4 Agency Number**

(TL:GEN-295; 09-14-19)  
(State Only)

The Directives Management Staff (A/RPS/DIR) assigns a *public notice number* to each document published in the *Federal Register*, except for *Presidential documents*. To accommodate this number, enter opening and closing brackets separated by approximately 15 blank spaces.

## **2 FAM 1125.6-5 Subject**

(TL:GEN-295; 09-14-19)  
(State Only)

The subject line consists of a concise statement describing the document. On a rule document state the exact title of the CFR part involved.

## **2 FAM 1125.7 Preamble**

*(TL:GEN-295; 09-14-19)*  
*(State Only)*

The preamble section contains explanatory material necessary for the reader to understand the basis and purpose of the information being presented. All preamble captions are required to be completed on rule documents. The preamble is optional on notice documents. Preamble components follow below.

### **2 FAM 1125.7-1 Agency**

*(TL:GEN-277; 07-21-1992)*  
*(State Only)*

This caption usually repeats the name of the agency carried in the heading and is typed in upper and lower case. The bureau or office may also be used followed by the word "State":

AGENCY: Department of State

AGENCY: Bureau of Consular Affairs, State

### **2 FAM 1125.7-2 Action**

*(TL:GEN-295; 09-14-19)*  
*(State Only)*

The action caption identifies the type of document being presented. This caption is not to be used to describe or summarize the document:

ACTION: Final Rule

ACTION: Interim Final Rule

ACTION: Proposed Rule

ACTION: Notice of Proposed Rulemaking

ACTION: Notice

## 2 FAM 1125.7-3 Summary

(TL:GEN-295; 09-14-19)  
(State Only)

The summary explains the "why" and "what" of the document. It is a brief description of the document written in language that a non-expert will understand. The summary must answer three questions:

- (1) What action is being taken?
- (2) Why is the action necessary? and
- (3) What is the intended effect of the action?

Extended discussion, supporting information, details, and historical background are not to be included in the summary but belong in the SUPPLEMENTARY INFORMATION section of the preamble.

## 2 FAM 1125.7-4 Dates

(TL:GEN-295; 09-14-19)  
(State Only)

a. The dates caption is the "when" of the document. It includes dates that are essential on rulemaking documents. Do not include any information other than dates under this caption. Enter any other pertinent information in the SUPPLEMENTARY INFORMATION section. If a specific date must be tied to *Federal Register* publication, the Office of the Federal Register can compute and insert the correct date. When this is necessary present the dates as follows:

EFFECTIVE DATE: (Insert date of publication in the *FEDERAL REGISTER*.)

EFFECTIVE DATE: (Insert date \_\_\_\_\_ days after date of publication in the *FEDERAL REGISTER*.)

DATES: Comments must be submitted on or before (Insert days after date of publication in the *FEDERAL REGISTER*.)

b. The Office of the Federal Register will replace the statement in parenthesis with the appropriate date.

**NOTE:** The caption EFFECTIVE DATE only applies to final rules.

## **2 FAM 1125.7-5 Addresses**

*(TL:GEN-295; 09-14-19)*  
*(State Only)*

This caption contains the "where" of the document. It includes any address that a participant in a rulemaking proceeding needs to know. Appropriate for this caption is the address for the mailing or hand delivering of public comments on proposed rules. Do not include any information other than addresses in this section; additional information should be entered in the SUPPLEMENTARY INFORMATION section. Use office name and/or symbol and mailing address only. Do not include individual names or phone numbers as this information is to be entered in the FOR FURTHER INFORMATION CONTACT field (see 2 FAM 1125.7-6). The "Addresses" caption is optional on final rule documents.

## **2 FAM 1125.7-6 For Further Information Contact**

*(TL:GEN-295; 09-14-19)*  
*(State Only)*

Include in this section the name, location, and telephone number of the person(s) within the Department who can answer questions about the document. Two or more persons may be named for different aspects of the document, if appropriate.

## **2 FAM 1125.7-7 Supplementary Information**

*(TL:GEN-295; 09-14-19)*  
*(State Only)*

This section contains the regulatory history of rulemaking documents. Present in this section background information and specific detail necessary to explain the basis and purpose of the rule or to give adequate notice of the issues to be commented on in a proposed rule. Present the information in language that is easily understood by the reader. Include in this section any additional information that is not appropriate for the summary or other sections of the preamble but is needed to further explain or define the subject matter of the document. Also include a statement in the SUPPLEMENTARY INFORMATION section regarding the compliance of the rule to any statute or regulation that may affect it. All rule documents must indicate compliance with Executive Orders 12291 and 12778 and the Paperwork Reduction Act.

## **2 FAM 1125.7-8 List of Subjects**

(TL:GEN-295; 09-14-1999)  
(State Only)

Each rule or proposed rule must contain a list of index terms (List of Subjects) for each CFR part cited in the document's heading. These terms are found in the *Federal Register Thesaurus of Indexing Terms* which is available through the Office of the Federal Register. See <http://www.nara.gov/fedreg> on the world wide web for a list of the indexing terms.

## **2 FAM 1125.8 Signature**

(TL:GEN-295; 09-14-19)  
(State Only)

a. The original signature of the authorizing officer is placed approximately 1 inch below the last line of text followed by the official's typed name, title, and date of signing. The signature block is not to appear on a page by itself. It must be on a page containing some text to ensure integrity of the document. The signature block can be single-spaced. *One of your copies submitted for Federal Register publication must contain an original signature (DIR will certify the other copies).* The four copies submitted for OMB review do not require original signatures.

b. *The original signature must match the signer's typed name and title, even if acting. Signing or initialing "on behalf of" is not acceptable. The Federal Register will reject any such document.*

## **2 FAM 1125.9 Pagination**

(TL:GEN-295; 09-14-19)  
(State Only)

All pages of multiple-page *Federal Register* documents must be consecutively numbered. Page numbers should appear in the bottom margin, centered on the page.

## **2 FAM 1125.10 Copy Requirements**

*(TL:GEN-295; 09-14-19)*  
*(State Only)*

a. Submit all *Federal Register* documents in four copies (see 2 FAM 1128.1), *one of which must have an original signature*. Rule documents requiring OMB review require an additional four copies (see 2 FAM 1129.2).

b. *Include a diskette containing the submitted material. The Office of the Federal Register requires that an electronic version be part of the submission package.*

## **2 FAM 1126 FEDERAL REGISTER NOTICE DOCUMENTS**

### **2 FAM 1126.1 Notices**

*(TL:GEN-277; 07-21-1992)*  
*(State Only)*

Notices are agency documents published in the Federal Register that do not contain regulatory text, impose requirements with general applicability and legal effect, or affect a rulemaking proceeding. The information in a notice document is not codified into the CFR. Although some notices are required to be published by law, many are published to provide general information of public interest. The Department of State uses the term "Public Notice" for its notice documents. (See 2 FAM 1123 Exhibit 1123.1-4.)

### **2 FAM 1126.2 Federal Register Notice Requirements**

*(TL:GEN-254; 3-31-88)*  
*(State Only)*

Notice documents must meet certain requirements set by the Office of the Federal Register. These requirements include proper headings, citation of authority, and signature.

## **2 FAM 1126.3 Preamble on Notice Documents**

(TL:GEN-254; 3-31-88)  
(State Only)

A preamble is not required on notice documents. The Office of the Federal Register recommends its use, however. If a preamble is used, offices may omit those captions that are not applicable, but remaining captions should be presented in the proper sequence. An office must not create new captions in the preamble. Material not identified by existing captions should be placed in the SUPPLEMENTARY INFORMATION field.

## **2 FAM 1127 FEDERAL REGISTER RULE DOCUMENTS**

(TL:GEN-295; 09-14-1999)  
(State Only)

a. For examples of *Federal Register* rule documents, see 2 FAM 1123 Exhibits 1123.1-2 and 2 FAM 1123 Exhibit 1123.1-3.

b. Documents published in the *Federal Register* as rules are those categories of documents that:

(1) Amend the CFR by adding new text or by revising or removing existing text;

(2) Are interim or temporary rule documents that are effective immediately for a short or definable period of time; and

(3) Affect other documents previously published in the rules and regulations section of the daily *Federal Register*.

## **2 FAM 1127.1 Rule Document Requirements**

### **2 FAM 1127.1-1 Headings and Preambles**

(TL:GEN-277; 07-21-1992)  
(State Only)

All rule documents must have a heading and preamble section as described in sections 2 FAM 1125.6 and 2 FAM 1125.7, and in the *Federal Register Document Drafting Handbook*.

## **2 FAM 1127.1-2 Words of Issuance**

*(TL:GEN-277; 07-21-1992)*  
*(State Only)*

The words of issuance in a rulemaking document follow the LIST OF SUBJECTS in the preamble. It is the language that describes the relationship of the new provision to the CFR. Examples of words of issuance for rules follow below.

### **(A) Example of Final Rule:**

For the reason set out in the preamble, Title 18, Chapter I, Subchapter A of the Code of Federal Regulations, is amended as set forth below.

### **(B) Example of Proposed Rule:**

For reasons set forth in the preamble, Title 10, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

## **2 FAM 1127.1-3 Authority Citation**

*(TL:GEN-254; 3-31-88)*  
*(State Only)*

a. Each document classified as a rule or proposed rule must contain a citation of legal authority under which the Department issues the document. The citation should include:

- (1) Any statutory general rulemaking authority;
- (2) Any specific rulemaking authority delegated by statute; and
- (3) Any Executive delegations that link the statutory authority to the Department.

### b. Examples of authority citations:

(1) The authority citation for Part 4 is revised to read as follows: Authority: Sec. 10, 56 Stat. 257, Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 620, 2658; or

(2) The authority citation for Part 4 continues to read as follows: Authority: Sec. 10, 56 Stat. 257, Sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 620, 2658.

## **2 FAM 1127.1-4 Regulatory Text**

*(TL:GEN-277; 07-21-1992)*

*(State Only)*

This is the text that ultimately will be codified into the Code of Federal Regulations. The text must be presented as amendments to the CFR. It must be drafted exactly as it is to appear in the CFR and must conform to the structure and nomenclature of the CFR.

### **(A) CFR Structure**

a. As stated in section 2 FAM 1122, the CFR has four basic structural units, with the last (section) being sub-dividable. The units are:

- (1) Title: Broad area subject to Federal regulation.
- (2) Chapter: Regulations of a single issuing agency.
- (3) Part: Unified body of regulations concerning a single function or subject.
- (4) Section: Short presentation of one regulatory proposition.

b. Example of basic CFR numbering:

Title 23 - Highways.

Chapter I—Federal Highway Administration,  
Department of Transportation.

Part 140—Reimbursement.

Sec. 140.908 Materials and supplies.

- (a) Procurement \* \* \*
- (b) Costs \* \* \*
- (c) Materials Recovered \* \* \*

### **(B) Amendatory Language**

The amendatory language identifies each specific change made in the CFR text. If a document contains more than one change, each change must be consecutively numbered, for example:

1. Part 105 is revised to read as follows: -----

2. Part 200 is amended by adding sections 200.4 and 200.6 to read as follows: -----

3. Section 300.12 is removed.

4. Part 1812 is added to read as follows: -----

**(C) Unchanged Text**

a. Type only amended paragraphs. If entire sections are unchanged, indicate the unchanged material by asterisks. The asterisks represent codified material within a section that is not altered by the amendment. Use five asterisks in a row to indicate one or more paragraphs not being amended (\* \* \* \* \*). Use three asterisks in a row to indicate text within a paragraph not being amended (\* \* \*).

b. Example of unchanged section of paragraph:

(3) The original and two copies of the application  
for general permit must be submitted to the Assistant  
Administrator. \* \* \* \* \*

This indicates that the text of paragraph (3) after the word "Administrator" remains unchanged.

c. Example of unchanged paragraphs:

61.1 Adherence  
\* \* \* \* \*

(b) Implementing the principles by taking good faith  
measures with respect to each principle; \* \* \* \* \*

This revises only paragraph (b), leaving other paragraphs in section 61.1 unchanged.

**2 FAM 1127.2 Notice and Comment Requirements for Rule Documents**

*(TL:GEN-295; 09-14-1999)*  
*(State Only)*

a. All rules that contain substantive changes to CFR regulatory text are subject to the notice and comment provisions of the Administrative Procedure Act (APA) of 1947. These rules are first published as proposed rules and are subject to public comment. After a specified period of time, comments received are addressed, and the rule is submitted to be published as a final

rule, and ultimately codified into the CFR. The Office of the *Federal Register* classifies the following types of documents for publication in this category:

(1) Documents that suggest changes to agency regulations in the CFR and request public comments on those suggested changes;

(2) Documents that affect other documents previously published in the proposed rule section of the daily Federal Register; and

(3) Documents beginning a rulemaking proceeding. All rules that make substantive changes to the CFR, or involve interests outside the Department of State, must first be published as a proposed rule and undergo the public comment procedure.

b. In some instances a rule document can be published directly as a final rule without going through the proposed rule notice and comment procedure. Examples include, but are not limited to, cases when the rule:

(1) Is only an administrative or personnel regulation which does not effect individuals outside of the Department of State;

(2) Only makes non-substantive changes in CFR text (such as corrections for spelling, grammar, etc.);

(3) Only revises the numbering of CFR sections; or

(4) Has been directed by official authority or statute to be published directly as a final rule.

In all instances where a rule document is to by-pass the proposed rule procedure, consult *A/RPS/DIR* for advice and guidance.

## **2 FAM 1128 SUBMITTING DOCUMENTS TO FEDERAL REGISTER**

### **2 FAM 1128.1 Submission Requirements**

*(TL:GEN-295; 09-14-1999)*

*(State Only)*

a. *Prepare Federal Register documents in four (4) copies. At least one copy must carry the authorizing officer's original signature, in ink (preferably blue) (see also 2 FAM 1125.8 regarding signature). The Federal Register Liaison Officer will certify the unsigned copies and forward them to the Federal Register with the copy containing the original signature. The fourth copy is an information copy that A/RPS/DIR will retain.*

**NOTE:** The four copies required for *Federal Register* processing are not used for the OMB review. If an OMB review is required, submit an additional 4 copies (see section 2 FAM 1129).

b. Include a diskette containing the submitted material. The Office of Federal Register requires that an electronic version be part of the submission package.

## **2 FAM 1128.2 Transmittal to Office of Federal Register**

(TL:GEN-295; 09-14-1999)

(State Only)

a. Submit all *Federal Register* documents to A/RPS/DIR for review and processing. A/RPS/DIR will forward the document to the Office of the *Federal Register* by courier.

b. Documents that are reviewed by OMB are not submitted to the Federal Register until OMB completes their review. OMB is required to complete their review within 10 days unless they notify the Department of an extension of the review period.

## **2 FAM 1128.3 Scheduling Publication**

(TL:GEN-277; 07-21-1992)

(State Only)

Documents are normally published in the daily *Federal Register* three days after receipt by that office. If a document is required to be published in less time, submit a request with the document stating the reason for the accelerated scheduling.

## **2 FAM 1128.4 Special Publication Requests**

(TL:GEN-295; 09-14-1999)

(State Only)

a. In certain circumstances, *Federal Register* documents may require special printing or distribution. Because of special need, a document may be published as a separate part of the *Federal Register*. A specific office may request quantity overruns (extra copies). This request must be submitted **before** the document goes to the *Federal Register* for normal publication. Submit the request directly to GPO through A/RPS/MMS/PRD using Standard Form 1 (SF-1).

b. Tabulated text of *Federal Register* documents can be printed in a format other than the normal three-column format used in the *Federal Register*.

c. Bring all requests for special printing to the attention of the Federal Register Liaison Officer in *A/RPS/DIR*.

## **2 FAM 1129 OMB REVIEW**

### **2 FAM 1129.1 Authority**

(TL:GEN-295; 09-14-19)

(State Only)

a. All rule documents are subject to review by the Office of Management and Budget (OMB) under Executive Order 12291, Federal Regulations and Approval of Collection of Information Under the Paperwork Reduction Act of 1980, and 5 CFR 1320. Certain subjects (such as administrative subjects or documents that do not affect interests outside the Department of State) may be exempt from OMB review. Contact the *Department's Information Collection Coordinator* in *A/RPS/DIR* on any questions regarding the OMB review process.

b. The OMB review is undertaken prior to, and separate from, the submission of the rule to the *Federal Register* for publication therein. The OMB review is to be completed within ten days unless OMB requests an extension. Upon clearance from OMB the rule is submitted to the *Federal Register* for publication.

### **2 FAM 1129.2 OMB Submission Requirements**

(TL:GEN-295; 09-14-1999)

(State Only)

All requests for OMB review must be accompanied by *either Form OMB 83-R or 83-I as appropriate*, and with appropriate certification by the L attorney who reviews the regulation (the 83-R), or the *Assistant Secretary for Administration in the case of information collections (the 83-I)*.

#### **2 FAM 1129.2-1 OMB Form 83-R**

(TL:GEN-295; 09-14-1999)

(State Only)

a. Complete and submit *Form OMB 83-R, Request for OMB Review*. *Follow the form's instructions for completing it.*

b. *Submit the package to the OMB Liaison Officer in A/RPS/DIR.*

## **2 FAM 1129.2-2 Certification**

*(TL:GEN-277; 07-21-1992)*

*(State Only)*

The certification is required by E.O. 12778 (10-23-91), which generally requires that agency regulations be clear, specific, and written to minimize needless litigation. The most relevant parts of E.O. 12778 are included in 2 FAM 1129 Exhibit 1129.2-2. There are two formats for certification:

(1) For the first, submit a written certification in the following format:

Department/Agency and Bureau/Office:

Title of Rulemaking:

CERTIFICATION: I have reviewed this draft regulation in light of Section 2 of E.O. 12778 and certify for my agency that this regulation meets the applicable standards provided in Sections 2(a) and 2(b)(2) of that Order. Where applicable, the recommendations and analyses required under Section 2(d) of that Order are attached to this certification.

Name:

Date:

Telephone Number:

(2) For an alternative certification, the attorney concerned submits a written certification as follows:

Department/Agency and Bureau/Office:

Title of Rulemaking:

CERTIFICATION: I have reviewed this draft regulation in light of Section 2 of E.O. 12778 and certify for my agency that this regulation meets the applicable standards provided in Sections 2(a) and 2(b)(2) of that Order, except that it is unreasonable to require this particular regulation to meet one or more of the standards, as identified and explained below. Where applicable, the recommendations and analyses required under Section 2(d) of that Order are attached to this certification.

Name:

Date:

Telephone Number:

IDENTIFY STANDARDS NOT MET:

EXPLANATION FOR NOT DOING SO:

**2 FAM 1129.2-3 Submission Under E.O. 12291**

(TL:GEN-295; 09-14-1999)

(State Only)

Submit rules to OMB through the Federal Register Liaison Officer in A/RPS/DIR. Prepare the document in 4 copies. Each copy must be accompanied by completed Parts I and II of SF-83 and copies of supporting material which give background or authority to issue the ruling. *Be sure to include an electronic version of the rule material.*

**2 FAM 1129.2-4 Submission Under Paperwork Reduction Act of 1980 and 5 CFR 1320**

(TL:GEN-295; 09-14-1999)

(State Only)

a. In addition to the OMB review under E.O. 12291, rules that involve information collection, affect agency reporting requirements or create additional paperwork burdens on the *public* or agency activities, require review and approval by OMB under the Paperwork Reduction Act.

b. *Submit* documents to OMB through *A/RPS/DIR* in 4 copies accompanied by a completed Part III of Form SF-83. This submission is separate from the E.O. 12291 review request and is not to be included on the same Form SF-83. *This includes an electronic version of the material.*

c. *Follow the policies and procedures given in 2 FAM 1160.*

# 2 FAM 1123 Exhibit 1123.1-2 PROPOSED RULE EXAMPLE

(TL:GEN-295; 09-14-19)

[Billing Code 00000] ← Directives (DIR) will supply code

DEPARTMENT OF STATE

Board of Appellate Review

22 CFR Part 7

[Public Notice 00000] ← Directives (DIR) will supply/insert

South Africa Fair Labor Standards

AGENCY: Department of State

ACTION: Proposed Rule

SUMMARY: The Board of Appellate Review proposes to revise its regulations to reflect jurisdiction acquired pursuant to 22 CFR 64.1(b), which entitle any U.S. national operating in South Africa, who, under 22 CFR 64.1(a), has been determined by the Department of State to have failed to comply with the Fair Labor Standards set forth in 22 CFR 61.2, to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review.

DATE: Comments must be submitted before April 7, 2001.

ADDRESS: For mailing public comments: Board of Appellate Review, Department of State (L/BAR), SA-1, Room W-115, Washington, DC 20520. For hand delivery of public comments Board of Appellate Review, Columbia Plaza, 2401 E Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alan A. Dale (Chairman), Board of Appellate Review. (202) 663-1364.

SUPPLEMENTARY INFORMATION: 22 CFR Parts 60 through 65 implement the Fair Labor provisions of Executive Order 12532 of September 9, 1985 (50 FR 36861), which provide that no department or agency of the United States may intercede after December 31, 1985 with any foreign government regarding the export marketing activities of certain U.S. firms operating in South Africa unless they adhere to the Fair Labor Standards set forth in the Executive Order.

22 CFR 64.1(b), provides that any U.S. national who has been determined by the Department of State to have failed to adhere to the principles specified in 22 CFR 61.2 shall be entitled to appeal the determination to the Board of Appellate Review within 30 days of receipt of notification of the decision.

The Board of Appellate Review proposes to revise regulations to reflect this newly acquired jurisdiction.

Use plain bond paper

Indent text Paragraphs

Double space text

Heading See 2 FAM 1125.6

Preamble See 2 FAM 1125.7

Preamble See 2 FAM 1125.7

## Continuation-2 FAM 1123 Exhibit 1123.1-2

List of Subjects See 2 FAM 1127.1-2	}	List of Subjects in 22 CFR Part 7
	}	Administrative practice and procedures. Citizenship and naturalization,
	}	Organization and functions (Government agencies, Passports and visas, South Africa.
	}	In consideration of the foregoing, the Board of Appellate Review proposes that in
Words of Issuance. See 2 FAM 1127.1-2	}	Chapter I of Title 22, Code of Federal Regulations, Part 7 be amended as follows:
	}	<b>Part 7 - BOARD OF APPELLATE REVIEW</b>
	}	1. The authority citation for 22 CFR Part 7 is revised to read as follows:
Authority Citation See 2 FAM 1127.1-2	}	Authority: Sec. 1, 44 Stat. 887. sec. 4, 63 Stat. 111, as amended, 22 U.S.C.
	}	211a, 2658; secs. 104, 360, 66 Stat. 174, 273, 8 U.S.C. 1104, 1503; E.O. 11295, 36
	}	FR 10603; 3 CFR 1966-1970 Comp., page 507; 22 CFR 60-65; E.O. 12532, 50 FR
	}	36861,
Amendatory Language See 2 FAM 1127.1-2	}	2. In § 73, paragraph (d) is redesignated as (e) and a new (d) is added as follows:
	}	§ 7.3 Jurisdiction.
Unchanged Text See 2 FAM 1127.1-4	}	* * * * *
Amendatory Language See 2 FAM 1127.1-2	}	(d) Appeals from administrative determinations under 64.1(a) of this Chapter,
	}	denying U.S. Government assistance to U.S. nationals who do not comply with the
	}	Fair Labor Standards in 61.2 of this Chapter.
Unchanged Text See 2 FAM 1127.1-4	}	* * * * *
	}	3. In § 7.5 paragraph (b)(3) is redesignated as (b)(4) and a new (b)(3) is added as
Amendatory Language	}	follows:
	}	§ 7.5 Procedures
Unchanged Text	}	* * * * *
	}	(b) Time limit on appeal. * * *
New Text	}	(3) A national who has been the subject of an adverse decision under 61.1(a) of
	}	this Chapter shall be entitled to appeal the decision to the Board within 30 days after
	}	receipt of notice of such decision.
Unchanged Text	}	* * * * *
Amendatory Language	}	4. §§ 7.8 through 7.1 are redesignated as §§ 7.9 through 7.12 and a new § 7.8 is
	}	added as follows:

## Continuation-2 FAM 1123 Exhibit 1123.1-2

New Text { § 7.8 South African Fair Labor Standards Cases

(a) Scope of Review-With respect to appeals taken from the Assistant Secretary for African Affairs denying assistance to U.S. nationals operating in South Africa which do not comply with the Fair Labor Standards outlined in 61.2 of the Chapter, the Board review except as provided in paragraph b of this section shall be limited to the record on which the Assistant Secretary's decision was based.

(b) Admissibility of Evidence-The Board shall not receive or consider evidence or testimony not presented pursuant to §§ 63.3(a) or 63.3(b) of this chapter unless it is satisfied that such evidence was not discovered by the exerciser of reasonable diligence prior to entry of the decision of the Assistant Secretary for African Affairs.

Original Signature See 2 FAM 1125.8 { **Signature** ←

Typed Name and Title { **Typed Name**  
**Typed Title** ←

Typed Date { **February 28, 2001**

The original signature and the official's typed name and title must match. Do not sign "on behalf of".

# 2 FAM 1123 Exhibit 1123.1-3 FINAL RULE EXAMPLE

(TL:GEN-295; 09-14-19)

Heading See  
2 FAM 1125.6

[Billing Code 00000]

Directives  
(DIR) will  
supply code

Use plain  
bond paper

DEPARTMENT OF STATE

Board of Appellate Review

22 CFR Part 7

Directives  
(DIR) will  
supply/insert

Indent text  
Paragraphs

[Public Notice 00000]

South Africa Fair Labor Standards

Double  
space text

AGENCY: Department of State

ACTION: Final Rule

SUMMARY: The Board of Appellate Review is revising its regulations to reflect jurisdiction acquired pursuant to 22 CFR 64.1(b), which entitles any U.S. national operating in South Africa, who, under 22 CFR 64.1(a), has been determined by the Department of State to have failed to comply with the Fair Labor Standards set forth in 22 CFR 61. 2, to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review.

EFFECTIVE DATE: June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Alan A. Dale (Chairman), Board of Appellate Review. (202) 663-1364.

Preamble See  
2 FAM 1125.7

SUPPLEMENTARY INFORMATION: 22 CFR Parts 60 through 65 implement the Fair Labor provisions of Executive Order 12532 of September 9, 1985 (50 FR 36861), which provide that no department or agency of the United States may intercede after December 31, 1985 with any foreign government regarding the export marketing activities of certain U.S. firms operating in South Africa unless they adhere to the Fair Labor Standards set forth in the Executive Order.

22 CFR 64.1(b), provides that any U.S. national who has been determined by the Department of State to have failed to adhere to the principles specified in 22 CFR 61.2 shall be entitled to appeal the determination to the Board of Appellate Review within 30 days of receipt of notification of the decision.

## Continuation-2 FAM 1123 Exhibit 1123.1-3

Preamble See 2 FAM 1125.7	}	The Board of Appellate Review proposes to revive regulations to reflect this newly acquired jurisdiction.
List of Subjects See 2 FAM 1125.7-8	}	List of Subjects in 22 CFR Part 7  Administrative practice and procedures. Citizenship and naturalization, Organization and functions (Government agencies, Passports and visas, South Africa.
Words of Issuance. See 2 FAM 1127.1-2	}	In consideration of the foregoing, the Board of Appellate Review proposes that in Chapter I of Title 22, Code of Federal Regulations, Part 7 be amended as follows:
Part 7 - BOARD OF APPELLATE REVIEW		
Authority Citation See 2 FAM 1127.1-3	}	1. The authority citation for 22 CFR Part 7 is revised to read as follows:  Authority: Sec. 1, 44 Stat. 887. sec. 4, 63 Stat. 111, as 22 U.S.C. 211a, 2658, sees. 104, 360, 360 Stat. 174, 273, 8 U.S.C. 1104, 1503; E.O. 11295, 36 FR 10603; 3 CFR 1966-1970 Comp., page 507; 22 CFR 60-65; E.O. 12532, 50 FR 36861,
Amendatory Language See	}	2. In § 73, paragraph (d) is redesignated as (e) and a new (d) is added as follows:
Unchanged Text See 2 FAM 1127.1-4	}	§ 7.3 Jurisdiction.  * * * * *
Amendatory Language See	}	(d) Appeals from administrative determinations under 64.1(a) of this Chapter, denying U.S. Government assistance to U.S. nationals who do not comply with the Fair Labor Standards in 61.2 of this Chapter.
Unchanged Text See 2 FAM 1127.1-4	}	* * * * *
Amendatory Language	}	3. In § 7.5 paragraph (b)(3) is redesignated as (b)(4) and a new (b)(3) is added as follows:  § 7.5 Procedures
Unchanged Text	}	* * * * *
New Text	}	(b) Time limit on appeal. * * *  (3) A national who has been the subject of an adverse decision under 61.1(a) of this Chapter shall be entitled to appeal the decision to the Board within 30 days after receipt of notice of such decision.
Unchanged Text	}	* * * * *
Amendatory Language	}	4. §§ 7.8 through 7.1 are redesignated as §§ 7.9 through 7.12 and a new § 7.8 is added as follows:

## Continuation-2 FAM 1123 Exhibit 1123.1-3

### § 7.8 South African Fair Labor Standards Cases

New Text

(a) Scope of Review-With respect to appeals taken from the Assistant Secretary for African Affairs denying assistance to U.S. nationals operating in South Africa which do not comply with the Fair Labor Standards outlined in 61.2 of the Chapter, the Board review except as provided in paragraph b of this section shall be limited to the record on which the Assistant Secretary's decision was based.

(b) Admissibility of Evidence-The Board shall not receive or consider evidence or testimony not presented pursuant to SS 63.3(a) or 63.3(b) of this chapter unless it is satisfied that such evidence was not discovered by the exerciser of reasonable diligence prior to entry of the decision of the Assistant Secretary for African Affairs.

Original  
Signature See 2  
FAM 1125.8

**Signature**

Typed Name  
and Title

**Typed Name**  
**Typed Title**

Typed Date

**June 16, 2001**

The original  
signature and the  
official's typed name  
and title must match.  
Do not sign "on  
behalf of".

# 2 FAM 1123 Exhibit 1123.1-4 NOTICE DOCUMENT EXAMPLE

(TL:GEN-295; 09-14-19)

Heading See  
2 FAM 1125.6

[Billing Code 00000]

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 7

[Public Notice 00000]

Termination of Stateside Criteria Program (SCP)

Directives  
(DIR) will  
sunply code

Directives  
(DIR) will  
sunply/insert

Use plain  
bond paper

Indent text  
Paragraphs

Double  
space text

Preamble  
Optional on  
Notice  
documents See  
2 FAM 1125.7

AGENCY: Department of State

ACTION: Notice

SUMMARY: On May 22, 2000, the Department published Public Notice 1011 announcing that it proposed to terminate the Stateside Criteria Program (SCP) as of July 1, 2000, and inviting public comment on the proposal prior to June 12, 2000. This notice extends the comment period to July 15, 2000, and rescinds the announced July 1, 1987 termination date for the Stateside Criteria Program (SCP).

DATE: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before July 15, 2000. In addition, comments received prior to the date of this Notice but after June 12 will be considered as having been timely submitted.

FOR FURTHER INFORMATION CONTACT: Cornelieus D. Earr, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, D.C. 20520. (202) 663-1184.

SUPPLEMENTARY INFORMATION: As stated in its Public Notice of May 22, 2000, the Department considers that the SCP program is not a regulatory one, but a program which is based solely on administrative decisions. Nevertheless, since *Federal Register* announcements normally allow for a 30-day comment period, the Department has decided to allow for an additional two-week period for public comment.

## Continuation-2 FAM 1123 Exhibit 1123.1-4

Notice  
text

The announced July 1, 2000 termination date is rescinded. It is now the Department's intention to make a final determination concerning the possible termination of the SCP program not later than September 1, 2000.

Accordingly, the date of submission of comments in Public Notice 1011, 52 FR 19442, May 22, 2000, is extended to read July 15, 2000 and the July 1 termination date is rescinded.

Original  
Signature

**Signature**

Typed Name  
and Title

**Typed Name**  
**Typed Title**

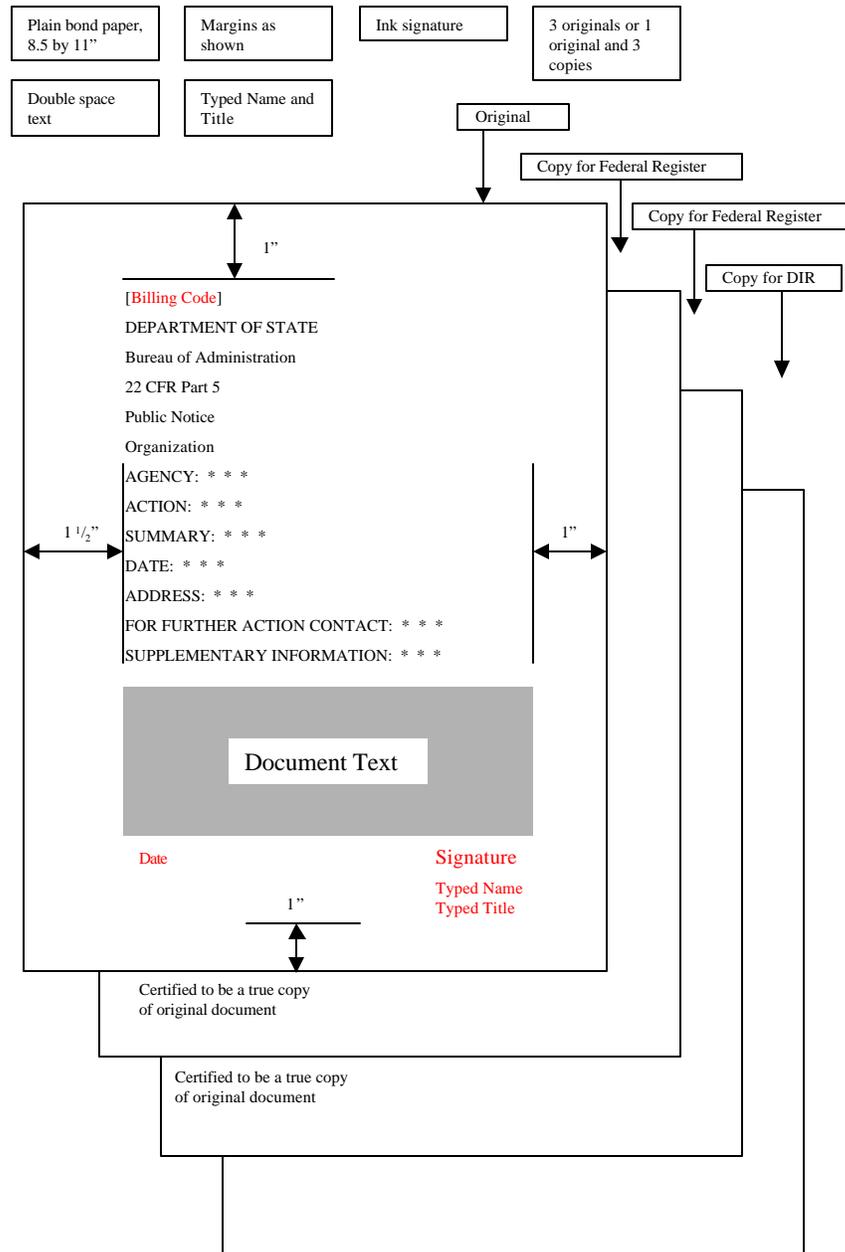
Typed Date

**June 16, 2000**

The original signature and the official's typed name and title must match. Do not sign "on behalf of".

# 2 FAM 1125 Exhibit 1125 THE FEDERAL REGISTER DOCUMENT

(TL:GEN-295; 09-14-1999)



## **2 FAM 1129 Exhibit 1129.2-2 EXECUTIVE ORDER 12778 (EXCERPTS)**

*(TL:GEN-000; 00-00-00)*

Section 2. Principals to Enact Legislation and Promote Regulations Which Do Not Unduly Burden the Federal Court System.

(a) General Duty to Review Legislation and Regulations. Within current budgetary constraints and existing executive branch coordination mechanisms and procedures established in OMB Circular A-19 (legislation) and Executive Order No. 12291 (regulation), each agency that is promulgating new regulations, reviewing existing regulations, developing legislative proposals concerning regulations, and developing new legislation shall adhere to the following requirements:

(1) The agency's proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and needless ambiguity.

(2) The agency's proposed legislation and regulations shall be written to minimize needless litigation.

(3) The agency's proposed legislation and regulations shall provide a clear and certain legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

(b) Specific Issues for Review. In conducting the reviews required by subsection (a), each agency formulating proposed legislation and regulations shall make every reasonable effort to ensure:

(1) that the legislation-

(A) Specifies whether all causes of action arising under the law are subject to statutes of limitations;

(B) Specifies in clear language the preemptive effect, if any, to be given to the law;

(C) Specifies in clear language the effect on existing Federal law, if any, including all provisions repealed or modified;

(D) Provides a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(E) Specifies whether private arbitration and other forms of private dispute resolution are appropriate under enforcement and relief provisions subject to constitutional requirements;

## **Continuation-2 FAM 1129 Exhibit 1129.2-2**

(F) Specifies whether the provisions of the law are constitutionally severable, if appropriate;

(G) Specifies in clear language the retroactive effect, if any to be given to the law;

(H) Specifies in clear language the applicable burdens of proof;

(I) Specifies in clear language whether it grants private parties a right to sue and, if so, the relief available and the conditions and terms for any authorized award of attorney's fees, if any;

(J) Specifies whether State courts have jurisdiction under the law and, if so whether and under what conditions an action would be removable to Federal court;

(K) Specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(L) Sets forth the standards governing the assertion of personal jurisdiction, if any;

(M) Defines key statutory terms, either explicitly or by reference to other statutes that explicitly define those terms;

(N) Specifies whether the legislation applies to the Federal Government or its agencies;

(O) Specifies whether the legislation applies to States, territories, the District of Columbia, and the Commonwealths of Puerto Rico and of the Northern Mariana Islands; and,

(P) Addresses other important issues affecting clarity and general draftsmanship of legislation set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(2) that the regulation--

(A) Specifies in clear language the preemptive effect, if any, to be given to the regulation;

(B) Specifies in clear language the effect on existing Federal law or regulation, if any, including all provisions repealed or modified;

## **Continuation-2 FAM 1129 Exhibit 1129.2-2**

(C) Provides a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(D) Specifies in clear language the retroactive effect, if any, to be given to the regulation;

(E) Specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(F) Defines key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items;

(G) Addresses other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(c) Certification of Compliance for Agency Legislation or Regulations. When transmitting such draft legislation or regulation to the Office of Management and Budget ("OMB"), the agency must certify that (i) it has reviewed such draft legislation or regulation in light of this section, and (ii) either the draft legislation or regulation meets the applicable standards provided in subsections (a) and (b) of this section, or it is unreasonable to require the particular piece of draft legislation or regulation to meet one or more of those standards. Where the standards are not met, the agency certification must include an explanation of the reasons for the departure from the standards. Recommendations and costs-benefit analyses under subsection (d) of this section shall be included in the agency certification required by this subsection.

(d) One-Way Fee Provisions. Each agency shall review, and shall perform a cost-benefit analysis on, all provisions of any legislation or regulation that the agency proposes which provide for an award for attorney's fees in favor of only one class of parties, including those statutes which require the Government to pay a prevailing private party's attorney's fees. The agency shall recommend against enactment of the fee shifting provisions of such legislation if the costs significantly outweigh the benefits, or if the legislation does not define the fees and costs covered by the statute or detail when an award of fees and costs would be appropriate. Such agency recommendations shall be presented to OMB through the Circular A-19 legislative coordination and clearance process and included in the agency certification required under subsection (c) of this section.

