

Substances	Limitations
<p>5,7-Bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with <i>o</i>-xylene (CAS Reg. No. 181314-48-7).</p>	<p>For use only:</p> <p>2. At levels not to exceed 0.02 percent by weight of:</p> <p>(a) Propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymer may only be used in contact with food of types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; or</p> <p>(b) Ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; provided that the finished food-contact articles have a volume of at least 18.9 liters (5 gallons).</p>

Dated: May 3, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99-11899 Filed 5-11-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 3053]

Access to Information—Executive Order 12958, “Classified National Security Information,” Provisions

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations on classified national security information. The rule describes how members of the public, government employees or agencies may obtain access to information in Department of State classified records and how such requests are processed. The rule also explains the appeals process available to requestors in the event a request for the declassification of information in Department of State classified records is denied.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Questions regarding mandatory declassification review or other aspects of Executive Order 12958 may be addressed to Margaret P. Grafeld, Director, Office of IRM Programs and Services, Room 1239, Department of

State, 2201 C Street, NW, Washington, DC 20520-1239. Telephone: 292/647-6620; FAX: 202/647-5159.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in 61 FR 148 July 31, 1996 p. 39927 inviting interested persons to submit comment concerning the proposed regulations implementing Executive Order 12958 of April 17, 1995.

Executive Order 12958 prescribes a uniform system for classifying, safeguarding, and declassifying national security information. No comments were received. Section 5.6 (C) (2) of Executive Order 12958 requires agencies that originate or handle classified information to publish in the **Federal Register** implementing regulations that affect members of the public.

Accordingly, the Department of State is revising 22 CFR, part 171 subpart C, §§ 171.20 through 171.26 to bring these rules into conformity with Executive Order 12958. Covered under this revision are definitions, access to records, processing requests and appeals. The rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, the rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. The rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Appeals procedures, Classified information, Conflict of interests, Confidential business information, Freedom of Information, Privacy.

In consideration of the foregoing, amend 22 CFR part 171 as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for Part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*; the Ethics in Government Act, 5 U.S.C. App.201; Executive Order 12958, 60 FR 19825; and Executive Order 12600, 52 FR 23781.

2. Subpart C, §§ 171.20 through 171.26, is revised to read as follows:

Subpart C—Executive Order 12958 Provisions

- 171.20 Definitions.
- 171.21 Access to records.
- 171.22 Determination in disputed cases.
- 171.23 Challenges to classification.
- 171.24 Access by historical researchers and former Presidential appointees.
- 171.25 Exemptions.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *National security* means the national defense or foreign relations of the United States.

(b) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) *Control* means the authority of the agency that originated the information, or its successor in function, to regulate access to the information.

(d) *Classified national security information* (hereafter classified information) means information that has been determined pursuant to this Executive Order 12958 or any predecessor Order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as "foreign government information" under the terms of a predecessor Order.

(f) *Classification* means the act or process by which information is determined to be classified information.

(g) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(h) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(i) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

(j) *Agency* means any "executive agency" as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(k) *Senior agency official* means the official designated by the agency head under section 5.6(C) of this Executive Order 12958 to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(l) *Confidential source* means any individual or organization that has provided, or that may reasonably be expected to provide information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(m) *Damage to the national security* means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value and utility of that information.

(n) *Presidential appointees* includes former officials of the Department of State or other U.S. Government agencies who held policy positions and were appointed by the President, by and with the advice and consent of the Senate, at the level of Ambassador, Assistant Secretary of State or above. It does not include Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

§ 171.21 Access to records.

(a) Request for mandatory classification review. For a request for classified records to be processed under section 3.6 of E.O. 12958, it must describe the record(s) with sufficient specificity to enable the agency to locate the record(s) with a reasonable amount of effort. Whenever a request does not reasonably describe the record(s), the Department shall notify the requester that no further action will be taken unless additional information is provided, or the scope of the request is narrowed.

(b) Mandatory review. A request for declassification under the Executive Order 12958 is termed a mandatory review; it is separate from and different than a request made under the Freedom of Information Act (FOIA). When a requester submits a request under both mandatory review and FOIA, the Department shall require the requester to elect one or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the materials requested are subject only to mandatory review.

(c) Scope. All information classified under this or predecessor orders shall be subject to declassification review upon

request by a member of the public, a government employee or agency, with the following exceptions:

(1) Information exempted from search and review under the Central Intelligence Information Act;

(2) Information which is the subject of pending litigation;

(3) Information which has been reviewed and withheld within the past two years;

(4) Information originated by the incumbent President; the incumbent President's White House staff; committees, commissions or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President. If the information requested is the subject of pending litigation, or has been reviewed for declassification and withheld within the past two years, the Department will inform the requester of these facts and of the requester's appeal rights. The Archivist of the United States shall establish procedures for the declassification of Presidential or White House materials accessioned into the National Archives or maintained in the Presidential libraries.

(d) The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified.

(e) Processing. In responding to mandatory review requests, the Department shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. The Department shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, the Department will make reasonable efforts to release those declassified portions of the requested information that constitute a coherent segment.

(f) Other agency records. When the Department receives a request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency unless that agency has agreed that the Department may review the records in accordance with declassification guides or guidelines provided by the originating agency. The originating agency shall communicate its declassification determination to the Department.

(g) Foreign government information. When foreign government information is being considered for declassification, the declassifying agency is the agency

that originally received or classified the information. The declassifying agency shall:

- (1) Determine whether the information is subject to a treaty or international agreement that would prevent its declassification;
- (2) Determine whether the information is subject to section 1.6(d) (5), (6) or (8) of the Executive Order 12958;
- (3) Consult with any other concerned agencies;
- (4) Consult with the Department and/or the foreign government, as appropriate.

(h) Cryptologic and intelligence information. Mandatory declassification review requests for cryptologic information and information concerning intelligence activities or intelligence sources or methods shall be processed solely in accordance with special procedures established by the Secretary of Defense and the Director of Central Intelligence, respectively.

(i) Appeals. Upon denial of an initial request in whole or in part, the Department shall notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The Department shall normally make a determination within 60 days following receipt of an appeal. If additional time is needed to make a determination, the Department shall notify the requester of the additional time needed and provide the requester with a reason for extension. The Department shall notify the requester in writing of the final determination and of the reasons for any denial.

(j) Appeals to the Interagency Security Classification Appeals Panel. The Interagency Security Classification Appeals Panel shall publish in the **Federal Register** the rules and procedures for bringing mandatory declassification appeals before it.

§ 171.22 Determination in disputed cases.

(a) It is presumed that information that continues to meet the classification requirements under this Executive Order 12958 requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the Secretary of State or the Department's senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that

might reasonably be expected from disclosure.

(b) This provision does not:

- (1) Amplify or modify the substantive criteria or procedures for classification; or
- (2) Create any substantive or procedural rights subject to judicial review.

§ 171.23 Challenges to classification.

(a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information. An authorized holder is any individual, including an individual external to the Department, who has been granted access to specific classified information in accordance with section 4.2(g) of the Executive Order 12958.

(b) Challenges shall be presented to an original classification authority with jurisdiction over the information. A formal challenge under section 1.9 of the Executive Order 12958 must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level. The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries are encouraged in order to limit the number of formal challenges.

(c) Whenever the Department receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, it is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(d) Challenges, responses and appeals shall, if possible, be unclassified. However, classified information contained in a challenge, a response from the department or an appeal shall be handled and protected in accordance with this Executive Order 12958 and its implementing directives.

(e) Information being challenged for classification shall remain classified unless and until a decision is made to declassify it.

(f) The Secretary of State or the senior agency official of the Department shall establish procedures under which authorized holders of classified information may make such challenges. These procedures shall assure that:

- (1) No retribution is taken against an authorized holder bringing a challenge in good faith;

(2) An opportunity is provided for review by an impartial official or panel; and

(3) Classification challenges shall be considered separately from FOIA or other access requests.

(g) Processing an initial written response to a challenge shall be provided within 60 days. If the Department is unable to respond to the challenge within 60 days, it must acknowledge the challenge in writing and provide a date by which it will respond. The Department's acknowledgement must state that if no response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel. The challenger may also forward the challenge to the Interagency Security Classification Appeals Panel if the Department has not responded to an internal appeal within 90 days after receiving the appeal. Responses to challenges denied by the Department shall also include the challenger's appeal rights to the Interagency Security Classification Appeals Panel.

§ 171.24 Access by historical researchers and former Presidential appointees.

(a) Section 4.2(a)(3) of this Executive Order 12958 restricts access to classified information to individuals who have a need-to-know the information. This may be waived for persons who are engaged in historical research projects or previously occupied policy-making positions to which they were appointed by the President. Access requests made under this provision must be submitted in writing and must include a general description of the records and the time period covered by the request.

(b) Access may be granted only if the Secretary of State or the senior agency official of the Department:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise; and

(3) Ensures that the information is safeguarded in a manner consistent with the Executive Order 12958.

(c) Access granted to former Presidential appointees shall be limited to items the individual originated, reviewed, signed or received while serving as a Presidential appointee.

§ 171.25 Exemptions.

The Freedom of Information and Privacy Acts exemptions and any other exemptions under applicable law may be invoked by the Department to deny

material on grounds other than classification.

Date: May 5, 1999.

Patrick F. Kennedy,
Assistant Secretary, Bureau of
Administration.

[FR Doc. 99-12029 Filed 5-11-99; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose,

cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General

(Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS BARRY (DDG 52) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS BARRY	DDG 52	X	X	X	19.8

Dated: February 3, 1999.

R.R. Pixa,
Capt, JAGC, U.S. Navy, Deputy Assistant
Judge Advocate, General (Admiralty).
[FR Doc. 99-12022 Filed 5-11-99; 8:45 am]
BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy

Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, Telephone number: (202) 685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead