

(b) The ALJ may affirm, deny, increase, or reduce the penalties or assessments proposed by the Inspector General.

(c) The ALJ will issue the initial decision to all parties within 60 days after the time for submission of post-hearing briefs or reply briefs, if permitted, has expired. The decision will be accompanied by a statement describing the right of any party to file a notice of appeal with the DAB and instructions for how to file such appeal. If the ALJ cannot issue an initial decision within the 60 days, the ALJ will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless an appeal or request for extension pursuant to § 498.221(a) is filed with the DAB, the initial decision of the ALJ becomes final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

#### **§ 498.221 Appeal to DAB.**

(a) Any party may appeal the decision of the ALJ to the DAB by filing a notice of appeal with the DAB within 30 days of the date of service of the initial decision. The DAB may extend the initial 30-day period for a period of time not to exceed 30 days if a party files with the DAB a request for an extension within the initial 30-day period and shows good cause.

(b) If a party files a timely notice of appeal with the DAB, the ALJ will forward the record of the proceeding to the DAB.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions, and identifying which finding of fact and conclusions of law the party is taking exception to. Any party may file a brief in opposition to exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and accompanying brief. The DAB may permit the parties to file reply briefs.

(d) There is no right to appear personally before the DAB, or to appeal to the DAB any interlocutory ruling by the ALJ.

(e) No party or person (except employees of the DAB) will communicate in any way with members of the DAB on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions

concerning administrative functions or procedures.

(f) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been, but was not, raised before the ALJ.

(g) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(h) The DAB may remand a case to an ALJ for further proceedings, or may issue a recommended decision to decline review or affirm, increase, reduce, or reverse any penalty or assessment determined by the ALJ.

(i) When the DAB reviews a case, it will limit its review to whether the ALJ's initial decision is supported by substantial evidence on the whole record or contained error of law.

(j) Within 60 days after the time for submission of briefs or, if permitted, reply briefs has expired, the DAB will issue to each party to the appeal and to the Commissioner a copy of the DAB's recommended decision and a statement describing the right of any respondent who is found liable to seek judicial review upon a final determination.

#### **§ 498.222 Final decision of the Commissioner.**

(a) Except with respect to any penalty or assessment remanded to the ALJ, the DAB's recommended decision, including a recommended decision to decline review of the initial decision, shall become the final decision of the Commissioner 60 days after the date on which the DAB serves the parties to the appeal and the Commissioner with a copy of the recommended decision, unless the Commissioner reverses or modifies the DAB's recommended decision within that 60-day period. If the Commissioner reverses or modifies the DAB's recommended decision, the Commissioner's decision is final and binding on the parties. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

(b) There shall be no right to personally appear before or submit additional evidence, pleadings or briefs to the Commissioner.

(c)(1) Any petition for judicial review must be filed within 60 days after the parties are served with a copy of the final decision. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the Commissioner will be sent by certified mail, return receipt requested, to the SSA General Counsel. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the SSA General Counsel receives two or more petitions within 10 days after the DAB issues its decision, the General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

#### **§ 498.223 Stay of initial decision.**

(a) The filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b)(1) After issuance of the final decision, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

#### **§ 498.224 Harmless error.**

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB to be inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

[FR Doc. 96-19425 Filed 7-30-96; 8:45 am]

BILLING CODE 4190-29-P

**DEPARTMENT OF STATE****Office of Freedom of Information,  
Privacy and Classification Review****22 CFR Part 171**

[Public Notice 2405]

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

**AGENCY:** Office of Freedom of Information, Privacy and Classification Review, Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of State proposes to amend 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.

**DATES:** Comments must be submitted on or before September 30, 1996.

**ADDRESSES:** Written comments may be mailed or delivered to Margaret P. Grafeld, Chief, Privacy, Plans and Appeals Divisions, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520-1239.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding mandatory declassification review or other aspects of Executive Order 12958 may be addressed to Margaret P. Grafeld, Chief, Privacy, Plans and Appeals Division, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520-1239. Telephone: 202/627-6620; FAX: 202/647-5159.

**SUPPLEMENTARY INFORMATION:** Executive Order 12958 of April 17, 1995, prescribes a uniform system for classifying, safeguarding, and declassifying national security information. 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 has revised 22 CFR, Parts 171.20 through 171.26 (Subpart C) 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 E.O. 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.

**PART 171—AVAILABILITY OF  
INFORMATION AND RECORDS TO  
THE PUBLIC**

For the reasons set forth in the preamble, 22 CFR Part 171 is amended as follows.

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

Authority: 5 U.S.C. 551 *et seq.*, 552, 552a, and App. 201; Executive Order 12958, 3 CFR, 1995 Comp., p. 333; and Executive Order 12600, 3 CFR, 1987 Comp., p. 235.

2. Subpart C is revised to read as follow:

**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.**

(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.

Patrick F. Kennedy,

*Assistant Secretary for the Bureau of Administration.*

[FR Doc. 96-15513 Filed 7-30-96; 8:45 am]

BILLING CODE 4710-24-M

## **DEPARTMENT OF THE TREASURY**

### **Bureau of Alcohol, Tobacco and Firearms**

#### **27 CFR Parts 19 and 21**

[Notice No. 832; 95R-029P]

RIN 1512-AB60

### **Formulas for Denatured Alcohol and Rum**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing in this document to update the information provided for in parts 19 and 21 relating to the formulation of completely denatured alcohol (CDA), specially denatured alcohol (SDA), and specially denatured rum (SDR); the denaturants authorized for use in the manufacturing of these formulations; and the specifications for these denaturants. The updates being proposed include replacing the previously named "Scientific Services Division" and "Chemical Branch" with their new names, removing the only proprietary name listed with the denaturant denatonium benzoate, incorporating an ATF ruling that approves the use of two substitute denaturants, and making other amendments to provide clarity. ATF believes that the proposed updates will ensure that the information provided in this part is current.

As part of the President's regulatory reform initiative that calls for a complete review and revision of all Federal government regulations, ATF is proposing in this document to eliminate regulatory requirements that may pose an undue burden on industry members.

**DATES:** Written comments must be received on or before September 30, 1996.

**ADDRESSES:** Submit written comments to: Chief, Wine, Beer, and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; PO Box 50221; Washington, DC 20091-0221. Attn: Notice No. 832.

**FOR FURTHER INFORMATION CONTACT:** Mary A. Wood, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927-8210.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

27 CFR part 21 contains listings of information relating to the formulation