PART 3 [RESERVED]

PART 3a—NATIONAL SECURITY INFORMATION

GENERAL

AUTHORITY: 15 U.S.C. 717o; 16 U.S.C. 825h.

SOURCE: Order 470, 38 FR 5161, Feb. 26, 1973, unless otherwise noted.

GENERAL

§ 3a.1 Purpose.

This part 3a describes the Federal Energy Regulatory Commission program to govern the classification, downgrading, declassification, and safeguarding of national security information. The provisions and requirements cited herein are applicable to the entire agency except that material pertaining to personnel security shall be safeguarded by the Personnel Security Officer and shall not be considered classified material for the purpose of this part.

[Order 470, 38 FR 5161, Feb. 26, 1973, as amended by Order 756, 77 FR 4893, Feb. 1, 2012]

§ 3a.2 Authority.

Official information or material referred to as classified in this part is expressly exempted from public disclosure by 5 U.S.C. 552(b)(1). Wrongful disclosure thereof is recognized in the Federal Criminal Code as providing a basis for prosecution. E.O. 11652, March 8, 1972 (37 FR 5209, March 10, 1972), identifies the information to be protected, prescribes classification, downgrading, declassification, and safeguarding procedures to be followed and establishes a monitoring system to insure its effectiveness. National Security Council Directive Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information, May 17, 1972 (37 FR 10053, May 19, 1972), implements E.O. 11652.

CLASSIFICATION

§ 3a.11 Classification of official information.

(a) *Security Classification Categories.* Information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed *national security*) is classified Top Secret, Secret or Confidential, depending upon the degree of its significance to national security. No other categories are to be used to identify official information or material requiring protection in the interest of national security, except as otherwise expressly provided by statute. These classification categories are defined as follows:

(1) *Top Secret.* Top Secret refers to national security information or material which requires the highest degree of protection. The test for assigning Top Secret classification is whether its unauthorized disclosure could reasonably be expected to cause exceptionally

grave damage to the national security. Examples of *exceptionally grave damage* include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification is to be used with the utmost restraint.

(2) *Secret.* Secret refers to national security information or material which requires a substantial degree of protection. The test for assigning Secret classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of *serious damage* include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification Secret shall be sparingly used.

(3) *Confidential.* Confidential refers to national security information or material which requires protection, but not to the degree described in paragraphs (a) (1) and (2) of this section. The test for assigning Confidential classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

(b) Classified information will be assigned the lowest classification consistent with its proper protection. Documents will be classified according to their own content and not necessarily according to their relationship to other documents.

(c) The overall classification of a file or group of physically connected documents will be at least as high as that of the most highly classified document therein. When put together as a unit or complete file, the classification of the highest classified document contained therein will be marked on a cover sheet, file folder (front and back), or other similar covering, and on any transmittal letters, comments, or endorsements.

(d) *Administrative Control Designations.* These designations are not security classification designations, but are used to indicate a requirement to protect material from unauthorized disclosure. Material identified under the provisions of this subparagraph will be handled and protected in the same manner as material classified Confidential except that it will not be subject to the central control system described in §3a.71. Administrative Control designations are:

(1) *For Official Use Only.* This designation is used to identify information which does not require protection in the interest of national security, but requires protection in accordance with statutory requirements or in the public interest and which is exempt from public disclosure under 5 U.S.C. 552(b) and §388.105(n) of this chapter.

(2) *Limited Official Use.* This administrative control designation is used by the Department of State to identify nondefense information requiring protection from unauthorized access. Material identified with this notation must be limited to persons having a definite need to know in order to fulfill their official responsibilities.

(e) A letter or other correspondence which transmits classified material will be classified at a level at least as high as that of the highest classified attachment or enclosure. This is necessary to indicate immediately to persons who receive or handle a group of documents the highest classification involved. If the transmittal document does not contain classified information, or if the information in it is classified lower than in an enclosure, the originator will include a notation to that effect. (See §3a.31(e).)

[Order 470, 38 FR 5161, Feb. 26, 1973, as amended by Order 225, 47 FR 19055, May 3, 1982]

§3a.12 Authority to classify official information.

(a) The authority to classify information or material originally under E.O.

11652 is restricted to those offices within the executive branch which are concerned with matters of national security, and is limited to the minimum number absolutely required for efficient administration.

(b) The authority to classify information or material originally as Top Secret is to be exercised only by such officials as the President may designate in writing and by the heads of the following departments and agencies and such of their principal staff officials as the heads of these departments and agencies may designate in writing;

Such offices in the Executive Office of the President as the President may designate in writing.
Central Intelligence Agency.
Atomic Energy Commission.
Department of State.
Department of the Treasury.
Department of Defense.
Department of the Army.
Department of the Navy.
Department of the Air Force.
U.S. Arms Control and Disarmament Agency
Department of Justice.
National Aeronautics and Space Administration.
Agency for International Development.

(c) The authority to classify information or material originally as Secret is exercised only by:

(1) Officials who have Top Secret classification authority under §3a.11(b); and

(2) The heads of the following departments and agencies and such principal staff officials as they may designate in writing:

Department of Transportation.
Federal Communications Commission.
Export-Import Bank of the United States.
Department of Commerce.
U.S. Civil Service Commission.
U.S. Information Agency.
General Services Administration.
Department of Health, Education, and Welfare.
Civil Aeronautics Board.
Federal Maritime Commission.
Federal Energy Regulatory Commission.
National Science Foundation.
Overseas Private Investment Corporation.

(d) The authority to classify information or material originally as Confidential is exercised by officials who have Top Secret or Secret classification authority.

(e) Pursuant to E.O. 11652, the authority to classify information or material originally as Secret or Confidential in the FERC shall be exercised only by the Chairman, the Vice Chairman, and the Executive Director. When an incumbent change occurs in these positions, the name of the new incumbent will be reported to the Interagency Classification Review Committee NSC.

[Order 470, 38 FR 5161, Feb. 26, 1973, as amended by Order 756, 77 FR 4893, Feb. 1, 2012]

§ 3a.13 Classification responsibility and procedure.

(a) Each FERC official who has classifying authority (§3a.12) shall be held accountable for the propriety of the classifications attributed to him. Unnecessary classification and overclassification shall be avoided. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to the FERC or any of its officials or employees, or to prevent for any other reason the release of information which does not require protection in the interest of national security.

(b) Each classified document shall show on its face its classification and whether it is subject to or exempt from the General Declassification Schedule (§3a.22(b)). It also shall show the office of origin, the date of preparation and classification and, to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use. Material which merely contains references to classified materials, which references do not reveal classified information, shall not be classified.

(c) Material classified under this part shall indicate on its face the identity of the highest authority authorizing the classification. Where the individual who signs or otherwise authenticates a document or item has also authorized the classification, no further annotation as to his identity is required.

(d) Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned a U.S. classification. In either case, the classification shall assure a degree of protection equivalent to that required by the government or international organization which furnished the information or material.

(e) Whenever information or material classified by an authorized official is incorporated in another document or other material by any person other than the classifier, the previously assigned security classification category shall be reflected thereon together with the identity of the classifier.

(f) As a holder of classified information or material, the FERC shall observe and respect the classification assigned by the originator. If it is believed that there is unnecessary classification; that the assigned classification is improper, or that the document is subject to declassification under E.O. 11652, the FERC will so inform the originator who is then required by the Executive order to reexamine the classification.

[Order 470, 38 FR 5161, Feb. 26, 1973, as amended by Order 756, 77 FR 4893, Feb. 1, 2012]

DECLASSIFICATION AND DOWNGRADING

§ 3a.21 Authority to downgrade and declassify.

(a) The authority to downgrade and declassify information or material shall be exercised as follows:

(1) Information or material may be downgraded or declassified by the official authorizing the original classification, by a successor or by a supervisory official of either.

(2) Downgrading and declassification authority may also be exercised by an official specifically authorized under regulations issued by the head of the Department listed in sections 2 A and B of E.O. 11652, March 10, 1972.

(3) In the case of classified information or material transferred pursuant to statute or Executive order in conjunction with a transfer of function and not merely for storage purposes, the receiving department or agency shall be deemed to be the originating department or agency for all purposes under E.O. 11652, including downgrading and declassification.

(4) In the case of classified information or material not officially transferred under paragraph (a)(3) of this section, but originated in a department or agency which has since ceased to exist, each department or agency in possession shall be deemed to be the originating department or agency for all purposes. Such information or material may be downgraded and declassified after consulting with any other departments or agencies having an interest in the subject matter.

(5) Classified information or material transferred to the General Services Administration for accession to the Archives of the United States shall be downgraded and declassified by the Archivist of the United States in accordance with E.O. 11652, directives of the President issued through the National Security Council, and pertinent regulations of the departments and agencies.

§ 3a.22 Declassification and downgrading.

(a) When classified information of material no longer requires the level of protection assigned to it, it shall be downgraded or declassified in order to preserve the effectiveness and integrity of the classification system. The Chairman, Vice Chairman, and Executive Director exercise downgrading and declassification authority in the FERC.

(b) Information and material classified prior to June 1, 1972, and assigned to Group 4 under E.O. 10501, as amended by E.O. 10964, unless declassified earlier by the original classifying authority, shall be declassified and downgraded in accordance with the following General Declassification Schedule.

(1) *Top Secret*. Information or material originally classified TOP SECRET becomes automatically downgraded to Secret at the end of the second full calendar year following the year in which it was originated, downgraded to Confidential at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the 10th full calendar year following the year in which it was originated.