

(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.

(2) *Secret*. Information and material originally classified Secret becomes automatically downgraded to Confidential at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(3) *Confidential*. Information and material originally classified Confidential becomes automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

(c) To the fullest extent applicable, there shall be indicated on each such FERC originated classified document whether it can be downgraded or declassified at a date earlier than under the above schedule, or after a specified event, or upon the removal of classified attachments or enclosures. Classified information in the possession of the Federal Power Commission, but not bearing a marking for automatic downgrading or declassification, will be marked or designated by the Chairman or the Security Officer designated by §3a.51 hereof for automatic downgrading or declassification in accordance with the rules and regulations of the department or agency which originally classified the information or material.

(d) When the FERC official having classification authority downgrades or cancels the classification of a document before its classification status changes automatically, each addressee to whom the document was transmitted shall be notified of the change unless the addressee has previously advised that the document was destroyed. Addressees must be notified similarly when it has been determined that a document must be upgraded.

(e) When classified information from more than one source is incorporated into a new document or other material, the document or other material shall be classified, downgraded, or declassified in accordance with the provisions of E.O. 11652 and NSC directives thereunder applicable to the information requiring the greatest protection.

(f) All information or material classified prior to June 1, 1972, other than that described in paragraph (b) of this

section, is excluded from the General Classification Schedule. However, at any time after the expiration of 10 years from the date of origin it shall be subject to classification review and disposition by FERC provided:

(1) A department or agency or member of the public requests review;

(2) The request describes the record with sufficient particularity to enable FERC to identify it; and

(3) The record can be obtained with a reasonable amount of effort.

(g) All classified information or material which is 30 years old or more will be declassified under the following conditions:

(1) All information and material classified after June 1, 1972, will, whether or not declassification has been requested, become automatically declassified at the end of 30 full calendar years after the date of its original classification except for such specifically identified information or material which the Chairman personally determines in writing to require continued protection because such continued protection is essential to the national security, or disclosure would place a person in immediate jeopardy. In such case, the Chairman also will specify the period of continued classification.

(2) All information and material classified before June 1, 1972 and more than 30 years old will be systematically reviewed for declassification by the Archivist of the United States by the end of the 30th full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such information or material as is specifically identified by the Chairman in accordance with paragraph (g) (1) of this section. In such case, the Chairman also will specify the period of continued classification.

(3) The Executive Director, acting for the Chairman, is assigned to assist the Archivist of the United States in the exercise of his responsibilities indicated in paragraph (g)(2) of this section. He will:

(i) Provide guidance and assistance to archival employees in identifying and separating those materials originated in FERC which are deemed to require continued classification; and

(ii) Develop a list for submission to the Chairman which identifies the materials so separated, with recommendations concerning continued classification. The Chairman will then make the determination required under paragraphs (g) (1) and (2) of this section and cause a list to be created which identifies the documents included in the determination, indicates the reason for continued classification, and specifies the date on which such material shall be declassified.

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

**§ 3a.23 Review of classified material for declassification purposes.**

(a) All information and material classified after June 1, 1972, and determined in accordance with Chapter 21, title 44, United States Code, to be of sufficient historical or other value to warrant preservation shall be systematically reviewed on a timely basis for the purpose of making such information and material publicly available according to the declassification determination at the time of classification. During each calendar year the FPC shall segregate to the maximum extent possible all such information and material warranting preservation and becoming declassified at or prior to the end of such year. Promptly after the end of such year the FERC, or the Archives of the United States if transferred thereto, shall make the declassified information and material available to the public to the extent permitted by law.

(b) Departments and agencies and members of the public may direct requests for review for declassification, as described in § 3a.22(f), to:

Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

The Office of the Secretary will assign the request to the appropriate Bureau or Office for action and will acknowledge in writing the receipt of the request. If the request requires the rendering of services for which fair and equitable fees should be charged pursuant to Title 5 of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 483a,

the requester shall be so notified. The Bureau or Office which is assigned action will make a determination within 30 days of receipt or explain why further time is necessary. If at the end of 60 days from receipt of the request for review no determination has been made, the requester may apply to the FERC Review Committee (paragraph (g) of this section) for a determination. Should the Bureau or Office assigned the action on a request for review determine that under the criteria set forth in section 5(B) of E.O. 11652 continued classification is required, the requester will be notified promptly and, whenever possible, provided with a brief statement as to why the requested information or material cannot be declassified. The requester may appeal any such determination to the FERC Review Committee and the notice of determination will advise him of this right.

(c) The FERC Review Committee will establish procedures to review and act within 30 days upon all applications and appeals regarding requests for declassification. The chairman, acting through the committee, is authorized to overrule previous determinations in whole or in part when, in its judgment, continued protection is no longer required. If the committee determines that continued classification is required under the criteria of section 5(B) of E.O. 11652, it will promptly so notify the requester and advise him that he may appeal the denial to the Interagency Classification Review Committee.

(d) A request by a department or agency or a member of the public to review for declassification documents more than 30 years old shall be referred directly to the Archivist of the United States, and he shall have the requested documents reviewed for declassification. If the information or material requested has been transferred to the General Services Administration for accession into the Archives, the Archivist shall, together with the chairman, have the requested documents reviewed for declassification. Classification shall be continued in either case only when the chairman makes the personal determination indicated in § 3a.22(g)(1).

### § 3a.31

### 18 CFR Ch. I (4-1-25 Edition)

The Archivist shall notify the requester promptly of such determination and of his right to appeal the denial to the Interagency Classification Review Committee.

(e) For purposes of administrative determinations under paragraph (b), (c), or (d) of this section, the burden is on the FERC to show that continued classification is warranted. Upon a determination that the classified material no longer warrants classification, it will be declassified and made available to the requester if not otherwise exempt from disclosure under section 552(b) of Title 5, U.S.C. (Freedom of Information Act) or other provisions of law.

(f) A request for classification review must describe the document with sufficient particularity to enable the FERC to identify it and obtain it with a reasonable amount of effort. Whenever a request is deficient in its description of the record sought, the requester will be asked to provide additional identifying information whenever possible. Before denying a request on the ground that it is unduly burdensome, the requester will be asked to limit his request to records that are reasonably obtainable. If the requester then does not describe the records sought with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why no action will be taken and of his right to appeal such decision.

(g) The FERC Review Committee will consist of the Executive Director, as Committee Chairman, the Secretary, and the Director, Office of Public Information, as members. In addition to the activities described in this paragraph, the Review Committee has authority to act on all suggestions and complaints with respect to administration of E.O. 11652 and this part 3a.

(h) The FERC Review Committee is also responsible for recommending to the chairman appropriate administrative action to correct abuse or violation of any provision of E.O. 11652 or NSC directives thereunder, including notifications by warning letter, formal reprimand, and to the extent permitted by law, suspension without pay and removal.

(i) The Chairman of the Review Committee will submit through the chairman, FERC, a report quarterly to the Interagency Classification Review Committee, NSC, of actions on classification review requests, classification abuses, and unauthorized disclosures.

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

#### CLASSIFICATION MARKINGS AND SPECIAL NOTATIONS

### § 3a.31 Classification markings and special notations.

(a) After the chairman, the vice chairman, or the executive director determines that classified information is contained in an original document or other item, the appropriate marking, i.e., Secret or Confidential, will be applied as indicated herein. In addition, each classified document will reflect its date of origin and the Bureau, Office, or Regional Office responsible for its preparation and issuance, and the identity of the highest authority authorizing the classification. Where the individual who signs or otherwise authenticates the document or other item has also authorized the classification, no further annotation as to his identity is required. Each classified document will also show on its face whether it is subject to or exempt from the General Declassification Schedule described in § 3a.22(b).

(1) For marking documents which are subject to the General Declassification Schedule, the following stamp will be used:

(Top Secret, Secret, or Confidential) Classified by \_\_\_\_\_. Subject to General Declassification Schedule of E.O. 11652, automatically downgraded at 2-year intervals and declassified on December 31, \_\_\_\_\_ (insert year).

(2) For marking documents which are to be automatically declassified on a given event or date earlier than the General Declassification Schedule the following stamp will be used:

(Top Secret, Secret, or Confidential) Classified by \_\_\_\_\_. Automatically declassified on \_\_\_\_\_ (effective date or event).