

Division of Compensation Analysis and Support (DCAS)	Document No. DCAS-IG-005 Effective Date: 01/07/2011 Revision No. 0
USE OF CLASSIFIED INFORMATION	Page 1 of 10
Approval: <u>Signature on file</u> _____ Date: <u>01/07/2011</u> <i>J. W. Neton, Assoc. Dir. for Science</i> Concurrence: <u>Signature on file</u> _____ Date: <u>01/07/2011</u> <i>Stuart L. Hinnefeld, Interim Director</i>	Supersedes: None

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page</u>
1.0	Introduction	3
2.0	Criteria for the Use of Classified Information	4
2.1	When Use of Classified Information is Necessary and Appropriate.....	4
2.2	Data Capture.....	6
2.3	Dose Reconstruction.....	6
	2.3.1 Hierarchy of Data Sources.....	7
	2.3.2 The Advisory Board’s Dose Reconstruction Review Process.....	7
2.4	SEC Petition Evaluation.....	7
	2.4.1 Qualifying a Petition.....	7
	2.4.2 Evaluating the Petition.....	8
	2.4.3 Disseminating Unclassified Information to the Advisory Board and the Public.....	9
3.0	Submitting the NIOSH SEC Petition Evaluation Report	9
4.0	Submitting Proposed Decision on a SEC Petition to the Secretary of the Department of Health and Human Services	10

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 2 of 10
-------------------------------	-------------------	----------------------------------	--------------

Record of Issue/Revisions

Issue Authorization Date	Effective Date	Revision No.	Description
01/07/2011	01/07/2011	0	Guidelines for the use of classified information relevant to EEOICPA

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 3 of 10
-------------------------------	-------------------	----------------------------------	--------------

1.0 INTRODUCTION

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) expressly addresses the need for certain employees of the Department of Health and Human Services (HHS) and members of the Advisory Board on Radiation and Worker Health (the Advisory Board) to have access to relevant classified information¹ from the Department of Energy (DOE) in order to fulfill their duties under the program.² Specifically, Congress anticipated the need for classified information in the estimation of occupational radiation exposures and required the Secretary of Energy to provide the Secretary of HHS and the members of the Advisory Board access to classified information that is relevant to worker exposures.³ Furthermore, EEOICPA mandates that DOE ensure that the members and staff of the Advisory Board and its supporting contractors are afforded the opportunity to apply for security clearances.⁴ Consequently, HHS (specifically, the National Institute for Occupational Safety and Health (NIOSH), Division of Compensation Analysis and Support (DCAS)) should review available, relevant classified information in carrying out their responsibilities under EEOICPA.

DCAS may acquire classified information relevant to the compensation program through its data capture efforts or interviews with energy workers. Classified information obtained by DCAS can be useful and beneficial to EEOICPA claimants and Special Exposure Cohort (SEC) petitioners because classified information may enable DCAS to accurately depict the radiation environment at a facility and describe the occupational exposures received by the workers involved.

Nevertheless, DCAS is committed to maintaining transparency in administering Part B of EEOICPA and ensuring the free flow of information between DCAS and stakeholders. As such, DCAS will make every effort to use as much unclassified information as possible in carrying out its duties under the program. For example, DCAS has previously worked with DOE to use or develop unclassified information and language that may be shared with the public in describing the radiation environment at a DOE site that involved classified information. However, such attempts to use unclassified information or language may be circumscribed or entirely prohibited due to the sensitive nature of the classified information involved.⁵ In the event that classified information is used, DCAS

¹ As used in this Implementation Guideline, the term “classified information” applies to information that is currently and properly classified at one of the following three levels as delineated in Executive Order 12,958: (1) “Top Secret,” (2) “Secret,” and (3) “Confidential.”

² 42 U.S.C. § 7384o(f) and § 7384q(d); Exec. Order No. 13,179, sec. 2(c)(i) (Dec. 7, 2000).

³ This access includes access to restricted data as defined in the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2014(y)).

⁴ 42 U.S.C. § 7384o(e).

⁵ DOE retains ownership of classified information used in this compensation program and makes all decisions about what information is classified and what can be released to the public. Therefore decisions concerning how the classified information is handled, the unclassified descriptions of the classified information, and any public references to the existence of certain classified information must be approved by the DOE Authorized Derivative Classification (ADC) Officer reviewing DCAS’s work products.

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 4 of 10
-------------------------------	-------------------	----------------------------------	--------------

will conduct a case-by-case evaluation of the specific use of the classified information to ensure that it is necessary and appropriate.

To that end, DCAS has created this Implementation Guideline (IG-005) to provide direction on its evaluation and use of classified information and to ensure that such information is only used when necessary and appropriate. Specifically, DCAS will apply IG-005 when it (1) develops methods for arriving at reasonable estimates of the radiation doses received by EEOICPA claimants; and (2) evaluates petitions to add classes of energy employees to the SEC.⁶

2.0 CRITERIA FOR THE USE OF CLASSIFIED INFORMATION

The purpose of this section is to establish criteria to guide the use of classified information in dose reconstructions and SEC petition evaluations. Additionally, the specific criteria for evaluating the use of classified information in the dose reconstruction and SEC petition evaluation processes are outlined in sections 2.3 and 2.4, respectively.

2.1 When Use of Classified Information is Necessary and Appropriate

Generally, there are two types of classified information that may be used by DCAS to carry out its duties. The first type of classified information involves sensitive radiological materials; and the second type of classified information involves sensitive exposure scenarios.

Throughout the DOE and Atomic Weapons Employers (AWE) complex, information on the development and use of certain radiological materials and exposure scenarios are protected due to national security concerns. Although radiological monitoring data are often not classified, discussions surrounding the materials' form, composition, use, amount, radiation characteristics, and locations and time periods, as well as personnel involved and engineering controls, may be potentially injurious to national security. This is also the case for discussions surrounding certain exposure scenarios (i.e., amount, personnel involved, radiation characteristics, etc). In order for DCAS to evaluate exposure potential or develop models for dose reconstructions, the use of classified information may be necessary and appropriate.

NIOSH will follow its internal policy and procedural documents, OCAS-PR-011, "DOE Classification Review of Documents," and OCAS-PLCY-0001, "Handling Controlled Unclassified Information." DCAS will also follow the guidelines outlined in the NIOSH/DCAS and DOE/HHS Security Plans that describe and establish processes for requesting data, obtaining clearance, accessing the site, and resolving security issues as they arise.

⁶ The scope of IG-005 is limited to classified information used by DCAS to carry out the specific tasks delegated to HHS under Executive Order 13,179, such as (1) estimating the radiation dose received by energy employees; and (2) defining a class of energy workers for inclusion in the SEC. IG-005 does not apply to, among other things, DOL's verification of employment or health-related information, claimants' eligibility for compensation pursuant to an SEC class designation, or adjudication by the DOL Final Adjudication Branch. IG-005 also does not apply to the working processes of the Advisory Board.

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 5 of 10
-------------------------------	-------------------	----------------------------------	--------------

DCAS will continue to follow guidelines set forth in IG-001 (External Dose Reconstruction Implementation Guideline), IG-002 (Internal Dose Reconstruction Implementation Guideline), and IG-004 (The Use of Data from Other Facilities in the Completion of Dose Reconstructions under EEOICPA), to evaluate classified and unclassified information alike. However, when classified information is involved, the application of IG-005 provides an additional step in the data evaluation process to ensure that the use of classified information is necessary and appropriate.

In addition to following the guidance and processes outlined in IG-001, IG-002, and IG-004, DCAS should, upon DOE approval, affirmatively state in a publicly-releasable manner why using classified information is necessary and appropriate in a specific instance. For example, using classified information may be necessary and appropriate in the following circumstances:

- The absence of information—there are no other unclassified sources that would provide the information; and/or
- Information from unclassified sources is incomplete, unsubstantiated, implausible, inadequate, lacks data integrity, or is plainly erroneous.

When DCAS decides to use classified information, such information will be evaluated as rigorously as in the case of unclassified information to ensure that the classified information is both scientifically sound and possesses an adequate degree of data integrity. In other words, DCAS will evaluate monitoring data that are relevant to the exposure in question, regardless of the classification status of the data, for the following: “(1) the validity of the measurement method for the workplace exposure condition being evaluated; (2) the detection limit of the measurement method; and (3) the representativeness of the data to the segment of the workforce to which they would be applied.”⁷

When the Advisory Board undertakes the review of a DCAS document that uses classified information, DCAS will inform the Advisory Board, upon DOE approval, of the specific use and reasons for such use.⁸ This advance notification provides an opportunity for the Advisory Board to prepare for any logistical concerns associated with its review of DCAS’ evaluations or dose reconstructions that use classified information. DCAS is also committed to producing technical documents that explain the agency’s findings and use of classified information in a publicly-releasable manner, without disclosing classified information. These documents will be reviewed by DOE to ensure

⁷ OCAS-IG-004 Rev. 0, “The Use of Data from Other Facilities in the Completion of Dose Reconstructions Under the Energy Employees Occupational Illness Compensation Program Act,” p. 3 (Aug. 21, 2008).

⁸ DOE may restrict DCAS’ disclosure of a specific use of classified information to those members of the Advisory Board who do not have the appropriate security clearance. Prior to the disclosure, DOE will review the description, as well as the public notification, of the classified information used.

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 6 of 10
-------------------------------	-------------------	----------------------------------	--------------

that the assembly of one document from several source documents does not result in disclosure of classified information.⁹

2.2 Data Capture

DCAS will continue to follow its data-capture guidelines in OCAS-PR-010 to capture both classified and unclassified information. OCAS-PR-010 requires that DCAS be consistent and diligent in its data-capture efforts regardless of the data's classification status. The intent of IG-005 is to require DCAS to use, to the extent possible, unclassified information in administering the compensation program; therefore, the capture of unclassified information should not automatically cease when DCAS acquires access to sufficient classified information enabling it to complete a dose reconstruction or SEC petition evaluations.

2.3 Dose Reconstruction

In the dose reconstruction process, personnel monitoring data that are specific to individual claimants are given the most weight. Since personnel monitoring data are largely unclassified, individual dose reconstructions that rely on personnel monitoring data, such as individual dosimetry and bioassay data, tend not to involve the use of classified information.

However, when personnel monitoring data are unavailable or have been shown to be incomplete, unsubstantiated, implausible, inadequate, lacking data integrity, or are plainly erroneous, workplace measurements such as air samples or area measurements of external doses may be used. Lacking the above, information about radiological materials and exposure scenarios may be used to construct a model to estimate worker exposures.¹⁰ In such cases, DCAS may use classified information concerning radiological materials or exposure scenarios to describe the exposure environment and to develop the exposure model. Both the underlying information used to develop the exposure model and the exposure model may be subject to DOE classification review.

DCAS will attempt to summarize any classified information used to develop an exposure model in an unclassified manner for inclusion in technical basis (or site profile) documents. However, if the product resulting from such an attempt is determined to be classified by DOE, DCAS will summarize the classified information in a classified appendix. The classified appendix shall be reviewed and approved by the Director of DCAS or his designee. Subsequently, DCAS dose reconstructors would use the exposure model to reconstruct doses with sufficient accuracy.

⁹ See OCAS-PLCY-0001, "Handling Controlled Unclassified Information," and OCAS-PR-011, "Department of Energy Classified Review of Documents."

¹⁰ OCAS-IG-004 Rev 0, "The Use of Data from Facilities in the Completion of Dose Reconstructions Under the Energy Employees Occupational Illness Compensation Program Act," p. 3 (Aug. 21, 2008).

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 7 of 10
-------------------------------	-------------------	----------------------------------	--------------

It is possible that a reference or description of the existence or non-existence of certain classified information is in itself classified information. Therefore, any references or descriptions of information contained in the classified appendix intended for public release will undergo DOE classification review. DCAS may be prohibited from referencing or describing information in the classified appendix in a publicly-releasable manner.

2.3.1 Hierarchy of Data Sources

DCAS will follow the data hierarchy stipulated in 42 C.F.R. § 82.14. In cases where unclassified information is unavailable or where unclassified information is incomplete, unsubstantiated, implausible, inadequate, lacks data integrity, or is plainly erroneous, DCAS may use classified information to supplement or substitute for unclassified information. Consequently, if DCAS demonstrates that certain classified information provides a more adequate and reliable characterization of the radiation environment, DCAS may use such classified information in accordance with the hierarchy of data set forth in 42 C.F.R. § 82.14.

2.3.2 The Advisory Board’s Dose Reconstruction Review Process

The Advisory Board advises the Secretary of HHS on the scientific validity and quality of dose reconstruction efforts performed by DCAS. To carry out this duty, the Advisory Board, through the Subcommittee on Dose Reconstruction Reviews, selects and reviews a subset of EEO/PCA Part B claims with completed dose reconstructions. If the Advisory Board selects a claim for which the dose reconstruction used classified information, DCAS will notify the Advisory Board (or the Subcommittee on Dose Reconstruction Reviews) of the selection and, upon the Advisory Board’s request, distribute the relevant, classified information to those Advisory Board members who have the requisite security clearance to conduct the review.¹¹

2.4 SEC Petition Evaluation

The SEC petition evaluation process includes the following: (1) qualifying the petition; (2) evaluating the petition; (3) reporting DCAS’s findings to the Advisory Board and petitioners; and (4) disseminating the evaluation report to the public. DCAS will evaluate SEC petitions in accordance with HHS regulation 42 C.F.R. pt. 83, “Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000,” and the DCAS procedure OCAS-PR-004, “Internal Procedures for the Evaluation of Special Exposure Cohort Petitions.”

2.4.1 Qualifying a Petition

¹¹ As used in IG-005, limited distribution means that the classified appendix may be shared with those NIOSH staff and contractors, and members and staff of the Advisory Board, as well as its supporting contractors, who have the appropriate security clearance to review classified information.

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 8 of 10
-------------------------------	-------------------	----------------------------------	--------------

Per 42 C.F.R. pt. 83, in order for an SEC petition to qualify, a petitioner is required to provide a basis supporting the petition’s contention that doses for an occupational, radiological exposure cannot be reconstructed with sufficient accuracy. If the basis stated in the petition includes “lack of monitoring information” or the assertion that the information concerning the exposure is classified, then DCAS may use classified information to determine whether or not to qualify the petition for evaluation. For example:

- An SEC petitioner submits an affidavit alleging that s/he suffered an unmonitored exposure to a sensitive radiological material. If during the petition qualification process, DCAS is able to determine (using classified information) that the exposure likely occurred, DCAS could qualify the petition for evaluation in order to further investigate the exposure.
- An SEC petitioner submits an affidavit alleging an unmonitored exposure to a sensitive radiological material. If during the petition qualification process, DCAS has access to classified information that directly impacts the analysis of the claimed exposure (e.g., that the exposure could not have occurred at the claimed location; the exposure could not have occurred during the claimed time period; or DCAS has monitoring data for the claimed exposure), then DCAS could use classified data to not qualify the petition for evaluation.

The general approach in the SEC qualification process is to err on the side of the petitioner when information is lacking. There are instances, however, where DCAS has access to dosimetry or classified information that can explain the exposure claimed by the petitioners during the qualification process and could result in the petition not qualifying for evaluation.

2.4.2 Evaluating the Petition

If during the petition evaluation process, an exposure is identified and the information about which is classified, DCAS investigators with the appropriate security clearance will continue the data search and evaluation process in order to ascertain the exposure potential, exposure source(s), and circumstances surrounding the exposure. DCAS may use the classified information discovered through the investigation to determine whether (1) it is feasible for DCAS to reconstruct dose with sufficient accuracy; and (2) there is a reasonable likelihood that such dose may have endangered the health of members of the evaluated class.

Notwithstanding the outcome of the SEC petition evaluation, DCAS should attempt to summarize any classified information used in the evaluation process in a publicly-releasable manner for inclusion in the petition evaluation report. For example, if the circumstances surrounding the exposure are classified and DCAS has developed a method for reconstructing doses from a similar, unclassified exposure, the petition evaluation report may discuss the similar, unclassified exposure without divulging the

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 9 of 10
-------------------------------	-------------------	----------------------------------	--------------

classified nature of the exposure. However, if the attempt to characterize the exposure environment or to depict a bounding scenario in a publicly-releasable manner is not approved by DOE for public release, DCAS should produce a classified appendix to the petition evaluation report that outlines the classified information used to arrive at the determination. The classified appendix should be reviewed and approved by the Director of DCAS or his designee.

It is possible that a reference or description of the existence or non-existence of certain classified information is in itself classified information. Therefore, any references or descriptions of information contained in the classified appendix intended for public release will undergo DOE classification review. DCAS may be prohibited from referencing or describing information in the classified appendix in a publicly-releasable manner.

2.4.3 Disseminating Unclassified Information to the Advisory Board and the Public

When a petition evaluation report contains unclassified information that explains the classified information used in the SEC petition evaluation process, DCAS will transmit the petition evaluation report to the petitioner(s) and the Advisory Board after the petition evaluation report has been approved by the Director of DCAS or his designee, and reviewed by DOE. Furthermore, when a petition evaluation report has a classified appendix, per DOE, the unclassified petition evaluation report for public dissemination may or may not reference or describe the information contained in the classified appendix.

3.0 SUBMITTING THE NIOSH SEC PETITION EVALUATION REPORT

In an SEC petition evaluation report, when permitted by DOE, DCAS will use unclassified information to explain the classified information used in the SEC petition evaluation process. However, if this approach is not approved by DOE for the DOE/AWE facility in question, or no available unclassified information could adequately explain the classified information, DCAS will prepare a classified appendix to the petition evaluation report that contains the classified information used in the petition evaluation. The classified appendix should be approved by the Director of DCAS or his designee, and provided to those members of the Advisory Board who have the appropriate security clearance.

It is possible that a reference or description of the existence or non-existence of certain classified information is in itself classified information. Therefore, any references or descriptions of information contained in the classified appendix intended for public release will undergo DOE classification review. DCAS may be prohibited from referencing or describing information in the classified appendix in a publicly-releasable manner.

Effective Date: 01/07/2011	Revision No. 0	DCAS Document No. DCAS-IG-005	Page 10 of 10
-------------------------------	-------------------	----------------------------------	---------------

4.0 SUBMITTING NIOSH DIRECTOR'S PROPOSED DECISION ON A SEC PETITION TO THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Following the process stipulated in 42 C.F.R. § 83.16 and OCAS-PR-004, the Director of NIOSH will provide a proposed decision to the Secretary of HHS, accompanied by other deliberative materials, which may include a classified appendix that contains the classified information pertinent to the SEC evaluation.