UNITED STATES DEPARTMENT OF LABOR

+ + + + +

ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

+ + + + +

WORKING GROUP ON PRESUMPTIONS

+ + + + +

MEETING

+ + + + +

TUESDAY, MARCH 14, 2017

+ + + + +

The Working Group met telephonically at 1:00 p.m. Eastern Time, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:
JOHN M. DEMENT
KENNETH Z. SILVER
LESLIE I. BODEN

MEDICAL COMMUNITY:
STEVEN MARKOWITZ, Chair
LAURA S. WELCH

CLAIMANT COMMUNITY:
GARRY M. WHITLEY
FAYE VLIEGER

DESIGNATED FEDERAL OFFICER:
CARRIE RHOADS

CONTENTS

Welcome 3

Roll Call 3

Introductory Comments 4

Chair Comments 8

Discussion Regarding Presumptions, Part B, and EEOICPA 22

Asbestos Related Issues 23

Asthma Related Issues 61

COPD Related Issues 68

Other Issues 110

Adjourn 111

1 P-R-O-C-E-E-D-I-N-G-S

2 1:07 p.m.

3 MS. RHOADS: Thank you. Hello,
4 everybody. My name is Carrie Rhoads and I'd
5 like to welcome you to today's teleconference
6 meeting of the Department of Labor's Advisory
7 Board on Toxic Substances and Worker Health,
8 the Presumptions Working Group. I am the
9 Board's Designated Federal Officer, or DFO, for
10 today's meeting.

11 First, we do appreciate that the
12 Board members spend in preparing and
13 deliberating at the meeting. I'll introduce
14 the Board members and take a quick roll call.
15 Dr. Steven Markowitz is the chair of this group
16 and chair of the Advisory Board on general.

17 CHAIR MARKOWITZ: I am here.

18 MS. RHOADS: And the members are Dr.
19 Victoria Cassano and I think she's not called
20 in yet. Ms. Faye Vlieger.

21 MEMBER VLIEGER: Faye here.

22 MS. RHOADS: Dr. Leslie Boden.

1 MEMBER BODEN: Here.
2 MS. RHOADS: Mr. Garry Whitley.
3 MEMBER WHITLEY: Here.
4 MS. RHOADS: Dr. Laura Welch.
5 MEMBER WELCH: Here.
6 MS. RHOADS: Dr. John Dement.
7 MEMBER DEMENT: Here.
8 MS. RHOADS: And Dr. Ken Silver.
9 MEMBER SILVER: Here.
10 MS. RHOADS: We're scheduled to meet
11 from 1:00 to 3:30 p.m. Eastern Time today. In
12 the room with me is Melissa Schroeder from
13 SIDEM, our contractor.
14 Today, we may take a break at 2:30
15 or so and it's up to Dr. Markowitz at the time
16 if that's a good time to break or if we want to
17 skip it that's fine, too.
18 Copies of all meeting materials and
19 any written public comments are or will be
20 available on the Board's website under the
21 heading Meetings and the listing there for this
22 subcommittee meeting.

1 The documents will also be up on the
2 WebEx screen so everyone can follow along with
3 the discussion.
4 The Board's website can be found at
5 dol.gov/owcp/energy/regs/compliance/advisoryboa
6 rd.htm. If you haven't already visited the
7 Board's website I do encourage you to do that.
8 If you click on today's meeting date
9 you'll see a page dedicated entirely to today's
10 meeting. The webpage contains publicly
11 available material submitted to us in advance
12 of the meeting and we will publish any
13 materials that are provided to the
14 subcommittee.
15 There you should also find today's
16 agenda as well as instructions for
17 participating remotely. If you are
18 participating remotely and you're having a
19 problem please email us at
20 energyadvisoryboard@dol.gov.
21 If you're joining by WebEx please
22 note the discussion is for viewing only and

1 will not be interactive. The phones will also
2 be muted for non-Advisory Board members.
3 Please note that we do not have a
4 scheduled public comment session today. The
5 call-in information has been posted on the
6 Advisory Board website so the public may listen
7 in but not participate in the subcommittee's
8 discussions.
9 The Advisory Board voted at its
10 April 2016 meeting that subcommittee meetings
11 should be open to the public. A transcript and
12 minutes will be prepared from today's meeting.
13 During the Board discussions today,
14 as we are on a teleconference line, please
15 speak clearly enough for the transcriber to
16 understand and when you being speaking,
17 especially at the start of the meeting, please
18 state your name so we can get an accurate
19 record of the discussion.
20 Also, I'd like the transcriber to
21 please let us know if you're having trouble
22 hearing or with the recording.

1 As the DFO, I see that the minutes
2 are prepared and ensure they are certified by
3 the chair. The minutes of today's meeting will
4 be available on the Board's website no later
5 than 90 calendar days from today per FACA
6 regulations. But if they are available sooner
7 we will publish them sooner.
8 Although formal minutes will be
9 prepared we will also be publishing verbatim
10 transcripts which are obviously more detailed.
11 Those transcripts should be available on the
12 Board's website within 30 days.
13 I would like to remind the Advisory
14 Board members that there are some materials
15 that have been provided to you in your capacity
16 as special government employees and members of
17 the Board which are not for public disclosure
18 and cannot be shared or discussed publicly
19 including in this meeting.
20 Please be aware of this as we
21 continue with the meeting today. These
22 materials can be discussed in a general way

1 which does not include using any personally
2 identifiable information such as names,
3 addresses, specific facilities of the cases
4 being discussed or doctor names.
5 And with that, I convene this
6 meeting of the Advisory Board on Toxic
7 Substances and Worker Health, the Presumptions
8 Working Group, and I am turning it over to Dr.
9 Markowitz, who's the chair.
10 CHAIR MARKOWITZ: Thank you, Carrie,
11 and thank you for all the preparatory work that
12 you do and have done in relation to this
13 meeting and the other subcommittee meeting --
14 Board meetings.
15 I'd like to welcome fellow and
16 sister board members to this call and also
17 members of the public who may be on the phone
18 or may be on the WebEx as well. I see a few on
19 the WebEx.
20 We very much value your input,
21 especially since some of you have either worked
22 at DOE sites for long periods of time or have

1 been involved with DOE workers in the
2 compensation program or other related DOE
3 worker programs and thereby can provide very
4 useful advice to us so thank you for
5 participating.
6 Today we are going to review my
7 discussion about presumptions and I have
8 prepared some proposed remedies or
9 alternatives, modifications to some of the
10 current policies of DOL in their use of
11 presumptions.
12 And just as we go through them keep
13 in mind I put those up in part to reflect the
14 conversation that we had in our last meeting
15 and other discussions we have had but also as
16 starting points for discussion.
17 So please don't interpret them as,
18 you know, proposed solutions per se but just as
19 specific ideas as a way of stimulating and
20 really jump starting sort of concrete solutions
21 to these -- what I regard as problems.
22 What I would hope to do by the end

1 of this call is get ideas -- more ideas about
2 modifications out on the table with the hope
3 that we can firm them up and bring -- hopefully
4 bring some specific recommendations to our next
5 meeting next month, actually.
6 Any comments or questions at this
7 point? Okay. So let's start. If you could
8 advance the slide on the WebEx. Okay.
9 So I showed this slide last time and
10 I just -- I'll just do it briefly this time as
11 well. These are other federal programs --
12 compensation programs. Maybe not the greatest
13 colored slide but it shows you for the
14 different programs what the targeted exposures
15 are and also what some of the eligibility
16 criteria are and you can see that for most of
17 the programs actually the eligibility criteria
18 are quite broad, in particular with reference
19 to the kind of exposure information that is
20 used in those programs to determine
21 compensability that the causal criteria are not
22 all that specific.

1 In particular, given a relative void
2 in exposure information, say, for Agent Orange
3 for vets or some of the other exposures, World
4 Trade Center included, that they use time
5 parameters -- time and location parameters,
6 basically, to develop the presumptions.
7 So that's the overall context of the
8 special dedicated occupational compensation
9 programs run by the federal government over the
10 last really 30 years or so.
11 Next slide. Going back to the 2000
12 Act, there were exposure presumptions in the
13 Act established for two types of exposures --
14 radiation and for silica -- and it's, I think,
15 helpful to remind ourselves just for a moment
16 about these presumptions. It is legislated so
17 DOL follows them without modification.
18 And in the original Act if a person
19 worked essentially the equivalent of one year
20 at any of the three diffusion plants before
21 1992 in a job which was monitored or a
22 comparable job in which radiation was

1 monitored, then they automatically entered the
2 special exposure cohort and became eligible for
3 compensation for -- if they developed one of 22
4 cancers or so.
5 And, of course, there have been an
6 additional 110 or so special exposure cohorts
7 defined in the last 16 years across the
8 complex.
9 So looking at that just for the
10 moment it gives you a duration, it gives you
11 the calendar time and it gives you something
12 about the job that is needed to develop or
13 deserve compensation.
14 For silica, again, a minimum
15 duration, the -- I looked specifically again
16 for any information about jobs or exposure and
17 in the Act it simply says was present during
18 mining of the town and this was at one of two
19 fields, specifically in Nevada or Alaska.
20 So those are presumptions that were
21 promulgated by Congress at the beginning of the
22 program and relatively, I think, stripped set

1 of parameters.

2 By the way, as I am going through

3 this I may not stop every -- after every slide

4 and ask for comments or so -- or questions. So

5 just jump in.

6 Next slide. So the elements of

7 presumption, at least on the exposure side that

8 were used in the original Act or have been used

9 since by DOL in its policies but are also used

10 in the other federal compensation programs I

11 list the elements there.

12 Job title really is a proxy for the

13 likelihood of and frequency of exposure. Since

14 we rarely have direct information about

15 intensity of exposure by way of airborne

16 measurements or other measurements we use a

17 proxy for intensity.

18 And then we also look at job title

19 particularly in the absence of other

20 information about the frequency of -- a

21 possible frequency or a likely frequency of

22 exposure.

1 Calendar years can be important
2 because exposures were in general worse many
3 years back. But that is a tricky element as we
4 saw in the 1995 circular on policy that DOL
5 had, which it had just rescinded in making a
6 decision based on the likelihood of exposure
7 after 1995.
8 And then latency, which is included
9 at least once in DOL presumptions, but we will
10 get to that, and then we are not going to deal
11 with today diagnostic criteria, which is more
12 technical and it is being dealt with in the
13 subcommittee on Part B, lung disease CBD and to
14 a lesser extent keratosis. We are not going to
15 deal with it here in these diseases that we
16 talk about.
17 Any comments? Okay. Next slide.
18 So what I did then was to take the
19 original Act's presumptions on radiation-
20 related cancer in silica and put it in this
21 table so that we can look at duration job
22 title, calendar years and the issue of latency,

1 although it wasn't included for those two sets
2 of presumptions.
3 And I went over this when I went
4 over the previous slide but I am going to be
5 showing this kind of slide, this kind of table
6 with reference to some of the other outcomes
7 and so I just wanted to introduce this with the
8 original conditions identified in the year
9 2000.
10 Next. So asbestos is important
11 because it was at all the sites. It's
12 important because it's caused more death and
13 disease than any other single occupational
14 toxin, broadly, in industry.
15 And it's also important because it
16 appears in several different locations in the
17 procedures manual and in a bulletin and
18 circular and I am not even sure -- I've looked
19 multiple times -- I am not even sure whether I
20 attached at all the places where it's
21 mentioned. And if anybody on this call knows
22 of additional written guidance for the claims

1 process that addresses asbestos please let us
2 know or if you know right now just please
3 mention it because I'd like to add it. These
4 different statements appear to have been
5 elaborated at different times and not all of
6 them are dated.
7 So in particular I am a little
8 uncertain about when things are moved to the
9 procedure manual. The transmittals, bulletins
10 and circulars.
11 But in any case, it's probably not
12 all that critical. Next.
13 So these are the asbestos-related
14 diseases identified by DOL. This was in a
15 circular in 2015 and that's the universal
16 behaviors that they deal with more or less.
17 In pink I've indicated the diseases
18 that are specific for asbestos exposure. Most
19 people on the call know this but there may be
20 some who don't and that may have some impact on
21 how we think about exposure presumption.
22 And the other conditions in yellow

1 are not specific to asbestos and have other
2 causes including some that have, for the most
3 part, cancer of the ovary were the cause of
4 most instances commonly known.
5 We have -- I have to say that I
6 don't have a good sense on the claims process
7 of how frequently these entities appear in the
8 claims. COPD, we know, is relatively common.
9 But for the other conditions, has anybody seen
10 any data on -- from DOL directly on numbers of
11 cases or rates over time?
12 So it's -- we will just move on.
13 Next slide.
14 So in the procedures manual the
15 first kind of look at asbestos that DOL seems
16 to have taken I provided the direct quote and
17 if you'd just look in that paragraph it says
18 that the detection of exposure would be based
19 on whole different factors such as period that
20 the person worked, type of work performed and
21 location of employment. That was the original
22 outline of what was to be considered. So this

1 is still in the procedure manual. Next.
2 And so this -- the next piece that I
3 could find actually dealt specifically with
4 ovarian cancer. I think this was in response
5 to the change in the Haz-Map where ovarian
6 cancer was added as an outcome following the
7 IARC review of asbestos in 2012 where they
8 added ovarian cancer as an outcome related to
9 asbestos and here for the first time you see
10 actually the exposure presumptions in relation
11 to an asbestos condition which factor in some
12 of the time factors that we are interested in.
13 So we do require a year of exposure
14 in a job title and a restricted list of job
15 titles, which I'll show in a moment and that
16 this year of exposure had occurred before 1986
17 so calendar -- there is some calendar time
18 specification and then for the first time they
19 say it's got to be a 20-year latency period
20 between first exposure to asbestos at DOE and
21 the subsequent -- and really the diagnosis of
22 ovarian cancer.

1 Next slide. And this is the list of
2 19 -- our list A. Mostly construction and
3 maintenance job titles. Very few others, and
4 these are -- this is the list that DOL
5 identifies as very high likelihood of asbestos
6 exposure, at least going back in time.
7 Next slide. Now, I found exposure
8 presumptions for asbestosis and I am not quite
9 sure when this was added. It appears to be
10 after the Circular 15-05. So it appears to be
11 relatively recent and as with ovarian cancer
12 requires a year of exposure although it doesn't
13 specify any calendar time to give the 10-year
14 latency.
15 Next. We have to keep reminding
16 ourselves that DOL does address claims that
17 don't meet the presumption criteria. They do
18 set out a description for the claims examiners
19 to do.
20 And so, for instance, if a woman who
21 has ovarian cancer reports asbestos exposure or
22 somehow in the process the claims examiner

1 learns about asbestos exposure.
2 If they don't meet that year -- if
3 it was post-1986, it didn't meet the 20-year
4 latency or any of that the claims examiner
5 would refer to the industrial hygienist for
6 review. I have no idea how many cases or what
7 the outcome of these reviews are. And next.
8 So I took the cancer of the ovary
9 and asbestosis and I put it in the same kind of
10 table that I set out before for duration, job
11 title, calendar year, the latency, and you can
12 see just comparing ovaries with -- ovarian
13 cancer with asbestosis is some difference in
14 the -- in the DOL approach.
15 Now, some of that may well be
16 justified, by the way. Asbestosis requires a
17 fair amount of asbestos exposure and cancer of
18 the ovary perhaps less or any other conditions
19 perhaps less. We will get into that. But in
20 any case, I wanted to just understand -- look
21 at how they approach this and standardize it.
22 And I would add COPD here, although we will be

1 talking a little bit about -- more about that
2 later.
3 But for COPD the duration is not one
4 year but 20 years of exposure to asbestos.
5 They use List A and now they've set that
6 exposure and, again, this policy appears to be
7 in the last year or two they said that exposure
8 to having had occurred prior to 1980.
9 So comments? Questions? Let's go
10 to the next slide.
11 MEMBER VLIEGER: Sorry, Dr.
12 Markowitz. This is Faye. Is there any
13 documentation for why there is this wide range
14 of exposure dates and levels and times?
15 CHAIR MARKOWITZ: If you could go to
16 the previous slide.
17 MEMBER VLIEGER: What guidance was
18 given for these?
19 CHAIR MARKOWITZ: Right. So, you
20 know, what I've accessed is the circulars or
21 bulletins, whatever statements appear. I don't
22 see -- I don't see rationale. I mean, I don't

1 see a scientific summary that forms the basis
2 for these decisions.
3 COURT REPORTER: Dr. Markowitz, this
4 is the transcriber. Could you speak up please?
5 CHAIR MARKOWITZ: Sure, sorry. Is
6 this better?
7 COURT REPORTER: That sounds better.
8 CHAIR MARKOWITZ: Okay, good. I
9 don't know -- yes, I am not aware of any. Has
10 anybody else ever seen any?
11 MEMBER WELCH: This is Laura. I've
12 looked for it and actually we requested some
13 explanations from DOL at one point in the past
14 but never got anything that made sense to me,
15 just that somebody had reviewed the literature
16 and it was reported in the information.
17 I could probably -- I can find --
18 I'll dig up that response because it did make
19 some specific references. But as we know, you
20 wouldn't and none of us would pick that 20
21 years but I don't think that the references
22 really defend that position. But I'll find out

1 and circulate it.
2 CHAIR MARKOWITZ: Great. I mean,
3 there was a document, Faye, actually that you
4 referred us to dating back to 2006. The
5 contractor had performed an analysis and it
6 appears in -- I think it's called the matrix in
7 -- attached to -- I think it's the procedure
8 manual. We are going to look at an excerpt
9 from that later.
10 But it doesn't really provide
11 references or lay out the rationale, certainly
12 not for cancer of the ovaries. It may -- there
13 is no real rationale there. There is a little
14 bit more detail but no real rationale.
15 MEMBER VLIEGER: Okay. Thank you.
16 CHAIR MARKOWITZ: Okay. So next
17 slide. So this is Circular 15-05 and we can go
18 to the next slide. This is important because
19 here they actually tried to address the whole
20 set of asbestos diseases.
21 Next slide. And we reviewed this in
22 the past but this is something -- this contains

1 elements that require some modification. So we
2 need to look at it again and try to figure out
3 what we think -- how we think it should be
4 fixed.
5 So this is for claimants who claim
6 asbestos-related diseases. So for some of us,
7 you know, when we think of asbestosis or we
8 think of asbestos-related plural, you know, we
9 think of mesothelioma. We are certain that
10 there was asbestos exposure previously. For
11 some of the other conditions like lung cancer
12 or cancer of the ovary there may or may not
13 have been asbestos exposure.
14 The -- this guidance directs the
15 claims examiner to assume -- and after 1986,
16 that asbestos occurred but at levels below the
17 accepted standards, in general.
18 However, the exception to that is
19 for our List A who are believed -- who the
20 claims examiners told had a greater potential
21 for asbestos exposure, at least for this one
22 decade, 1986 to 1995, and then it is accepted

1 that they were potentially exposed but likely
2 at low levels.
3 So, presumably, we don't know what
4 low levels -- how that relates to accepted
5 standards or not but, again, the assumption is
6 that they were -- that even this group which
7 has previously been identified as being very
8 likely to have asbestos exposure between '86
9 and '95 it's asserted that their levels were
10 likely to be low.
11 Now, this gets us into this problem
12 of date setting, of assigning specific years to
13 events happening, protections being put in
14 place, practices changing, which we are
15 uncertain about and which we felt uncomfortable
16 about in relation to the post-'95 circular
17 that's just been rescinded. And this raises
18 that same problem of -- let's continue this
19 slide.
20 And here's List A again for those of
21 you who haven't memorized it. Next. So now
22 what the claims examiner has to do, even for

1 this date, is find definitive and compelling
2 evidence to show that the post-'86 really
3 worked on consistent unprotected contact with
4 asbestos or ACM.
5 So this is now -- this is not an
6 industrial hygiene task. This is for the CE to
7 gather that information and to make a judgment
8 about that and then the circular sets out what
9 time the information should be used.
10 Next slide. And so the CE, having
11 collected relevant information, examining it,
12 than make a decision that if the exposure is
13 above the guidelines then the IH is involved to
14 make a further decision. Next slide.
15 However, this -- there is a sentence
16 which is the paragraph that I -- we looked at
17 last time that appears to contradict everything
18 or much of what was just said, which is that
19 any finding of exposure including infrequent
20 incidental exposure requires the physician to
21 take a look at it, to opine on the possibility
22 of causation, including even minimal exposure.

1 So it's not clear whether the CE can
2 just find minimal exposure, not enough to send
3 it to the IH but then has to send it to the CMC
4 for a medical opinion in which case, frankly,
5 the doctor is a little hamstrung because they
6 don't -- they don't have the IH input
7 otherwise. It's just unclear here what this
8 apparent contradiction means. Next slide.
9 So to summarize it, they don't say
10 anything really about pre-'86 exposure. So
11 they are not explicit about that. They don't
12 list its presumptions about that.
13 And then for after '86 you assume it
14 was below the accepted standard, presumably the
15 OSHA standard in '86 except for List A workers.
16 Next slide.
17 List A workers we can assume it was
18 perhaps above the standard but it was likely
19 low and then to show that it was greater than
20 low the standard is definitive and compelling
21 evidence that's consistent on protected
22 contact. Next.

1 And then refer to an IH if you find
2 that evidence. But, frankly, number six, any
3 exposure requires physician input. Next slide.
4 So one issue here is what about pre-
5 '86 presumptions. It's largely silent on that,
6 although -- well, and then the problem in the
7 '86 to '95 exposure is that that assertion is
8 not really based on any evidence. No evidence
9 has been provided and, frankly, it's doubtful
10 that such evidence exists. And then the way in
11 which -- number three is the way in which the
12 language is crafted, designation of this decade
13 of List A work has no exposure. Doesn't really
14 facilitate decision making because the CE still
15 has to gather information of the health
16 exposure to asbestos. Whatever real
17 information might exist would allow a real
18 decision. Next slide.
19 Now, the problem is that
20 occupational physicians would have sometimes a
21 difficult time citing what constitutes
22 consistent unprotected contact with asbestos or

1 ACM and the CE is put in the position of having
2 to make that difficult judgment.
3 And then finally the layout of how
4 the CE makes the decision on low levels then
5 contradicted by the statement about the
6 physician review. Next.
7 So there are some remedies that we
8 could propose for some of these problems. One
9 is we could expand List A, and actually could
10 you move to the next slide for a minute because
11 I want to see where we are at and then we can
12 move back. The next one. One more. Okay. Go
13 back two now. Okay. Go back one more, please.
14 No, no. I am sorry. Go back one more. That's
15 it.
16 So List A contains some maintenance
17 and construction job titles and very few other
18 job titles at the plant. So one remedy would
19 be to propose on a rationalized basis a broader
20 set of titles that likely had asbestos exposure
21 in the past.
22 That may be seen a little

1 differently for if the claimant has asbestosis
2 or mesothelioma or you know they had asbestos
3 exposure somewhere than for the less specific
4 asbestos diseases.
5 The -- secondly, is to rescind the
6 presumption of that low exposure post-1986.
7 The real information that exists about exposure
8 has to be looked at. So there would be no need
9 for a presumption. Certainly if a person is --
10 has a claim for asbestosis or asbestos-related
11 diseases like mesothelioma then you wouldn't
12 guess about exposure. You would look
13 everywhere you could for exposure. But I would
14 argue even for the less specific asbestos
15 diseases if the claim is asbestos exposure make
16 no assumption about what happened post-'86 but
17 look at what's actually available for the CE
18 for decision making.
19 Third possible remedy is to pick a
20 calendar year as the cutoff that has a safety
21 margin. So that's extremely vague and I
22 apologize. But I can understand why DOL picked

1 single years for decision making. It's clear
2 it has some rationale in reality. 1986, 1990,
3 1995, we know the conditions likely did improve
4 over time in many places in the complex.
5 The problem is that -- on that it's
6 a little implausible to believe in a given year
7 the problem was solved or that conditions
8 changed so much that you want to remove a
9 presumption.
10 And so one consideration we might
11 look at is whether we would look at a year or a
12 timeframe and then simply add 10 years to that
13 to figure that yes, asbestos use drastically
14 declined in the 1980s and in general there was
15 greater knowledge in the workplace in the 1980s
16 but that that -- that may have taken 10 years
17 to really settle in. And instead of taking a
18 single year -- '86, '90, '96 or the year 2000,
19 in other words, an additional 10 years and say
20 it took that much longer to disseminate. That
21 is to say if we want to propose year timeframes
22 to just say they can be useful. So that's one

1 idea.
2 And so number four is simply to beat
3 the system, which is come up with minimum
4 exposure durations and latencies to the extent
5 that they are credible for all the asbestos-
6 related diseases.
7 So, you know, let me stop here and I
8 have some other -- this list is a little bit
9 longer and then I come up with some specific
10 ideas on what these criteria should look like.
11 So why don't we -- if people have
12 comments on these -- what I've just shown that
13 would be -- that would be good.
14 MEMBER BODEN: Steven, this is Les
15 Boden.
16 CHAIR MARKOWITZ: Sure.
17 MEMBER BODEN: I'm assuming you can
18 hear me.
19 CHAIR MARKOWITZ: I can hear you.
20 Sure.
21 MEMBER BODEN: Okay. Good. So I
22 have a comment and a question. The comment is

1 in terms of exposure, would those diseases that
2 are asbestos specific, we know that the person
3 had some asbestos exposure where they didn't
4 develop the disease.
5 So one might think about a
6 presumption that said some evidence of asbestos
7 exposure from other -- let me try that again.
8 Absent work in other asbestos-exposed
9 occupations that one would presume exposure at
10 DOE for somebody who had asbestosis,
11 mesothelioma, asbestos-related plural disease
12 and the second is a question. In terms of the
13 dates, presumably one route of exposure is by
14 exposure to existing asbestos that was placed
15 there historically and I am wondering,
16 especially given recent evidence about the
17 prevalence -- the incidence of mesothelioma,
18 how easy it is going to be to establish a
19 specific date. So those are -- that's my
20 comment and my question.
21 MEMBER WELCH: And this is Laurie.
22 I've got a couple of comments unless you want

1 to specifically respond to Les' comment first,
2 Steven.
3 CHAIR MARKOWITZ: No, no. Well, I'd
4 rather have a round table discussion than a
5 question and answer so go ahead.
6 MEMBER WELCH: Okay. One little
7 thing is that the -- I think there actually is
8 a presumption built into the documents you
9 showed us when it said that 250 days was
10 sufficient. So I think it's without
11 necessarily saying 250 days before 1986's
12 decision I think the way -- I would read it
13 that way. And then they are just saying after
14 '86 you can't assume exposure and that it's
15 vague -- don't know how you deal with it after
16 that point.
17 But the other thing is I actually
18 don't agree that if someone has a diagnosis of
19 asbestosis you could presume asbestos exposure
20 because you need to know that they had asbestos
21 exposure to make a diagnosis of asbestosis.
22 You know, having scarring on the chest x-ray

1 isn't necessarily asbestosis with non-exposure
2 history. And probably most people who file a
3 claim are not coming in with a medical
4 diagnosis of asbestosis. They are coming in
5 with an abnormal x-ray and a history of
6 asbestos exposure. So they are -- because
7 people don't have to have a medical diagnosis
8 or report from a physician before they file a
9 claim.
10 So I think what you have is you have
11 people who are -- if asbestos exposure is
12 demonstrated then they can be presumed to have
13 asbestos because they have characteristic
14 findings.
15 But I think it would help to clarify
16 that question too, you know, could have, like,
17 your chart talks about the exposure but then
18 not talking about the diagnostic criteria for
19 the disease and I think for asbestosis we'd
20 probably want to go back and incorporate what
21 the APS recommended through diagnostic criteria
22 which is basically asbestos exposure and

1 characteristic findings. Those are my two
2 points.
3 The third point is there is -- given
4 the fact that there were many different
5 restrictions on asbestos use starting in 1973
6 through the 1970s in terms of bin and pipe
7 covering and spray-on of asbestos-containing
8 materials there was -- I think there really was
9 a quantitative change in the nature of
10 exposures that people had.
11 I don't know that you can say that
12 it -- I mean, 1986 is 13 years after spray-on
13 asbestos exposure was banned and it's kind of a
14 weird number because it's not 10 years after
15 use of pipe covering -- asbestos-containing
16 pipe covering was banned. There are still
17 other materials but in terms of the kind of the
18 general exposure people are getting in
19 industrial facilities the use of pipe covering
20 is really a major exposure.
21 So I don't think -- it's not without
22 reasons whether it's the right way to do it.

1 It's pretty clear from what we put up there it
2 doesn't -- even if you wanted to say someone
3 should be considering the kind of exposures
4 workers would have had in the 1990s you can't
5 get the claims examiner to do it. It would
6 really probably have to be an industrial
7 hygienist.
8 So if you're going to send these
9 cases to industrial hygiene you don't need to
10 put these kind of things in there. The
11 industrial hygienist would do one assessment of
12 each individual case.
13 And the other thing related to that
14 is, you know, this circular was written before
15 DOL was decided -- the industrial hygienist
16 would have a contract with industrial hygiene
17 so that they can do individual assessments.
18 So it's probably -- probably would
19 be perfectly acceptable, given how they are
20 handling the cases now to get rid of dates
21 altogether, as you're recommending.
22 But if you want to put it in as a

1 presumption then it wouldn't have to go to
2 industrial hygiene.
3 MEMBER DEMENT: John Dement. As an
4 industrial hygienist, it's still very difficult
5 to obtain a real quantitative assessment of
6 exposure given the broad range of dates and a
7 lot of unknowns with regard to task.
8 One of the other possibilities -- I
9 think if we will -- we will probably all agree
10 as from the '70s through the '90s, certainly as
11 control for asbestos standards were changed,
12 exposure levels generally decreased over time.
13 So we have a -- so there is 250 days written
14 into the statute.
15 I would say from, you know, from the
16 '70s through the '90s there is probably a
17 downward trend. One alternative is to require
18 a little bit longer duration of work during
19 this time period as opposed to 250 days prior
20 as a presumption that exposures still would
21 have occurred with that at a lower level and
22 acknowledging that or requiring a longer

1 duration.
2 MEMBER VLIEGER: This is Faye. I
3 think one of the things that's being discussed
4 here is whether or not new applications were
5 done that you have to consider that these --
6 none of these facilities is new and many have
7 been going through different remodeling cycles
8 and the workers are there for that as well as
9 D&D that's going on at all those facilities.
10 So it's not necessarily the new
11 application but that they are also in
12 shuttering old installations of asbestos and
13 that they are still working the areas that have
14 old applications of asbestos. So I just wanted
15 to have you keep that in mind.
16 MEMBER WELCH: Yes. No, that's
17 true. I still think that there are differences
18 in the kind of exposures people had once the
19 spray-on application was stopped. So yes, then
20 I think we are familiar with that.
21 CHAIR MARKOWITZ: Yes, and think
22 about the -- this is Steven -- the -- dealing

1 with the asbestos in place is that it's
2 probably a smaller set of workers who have
3 significant exposures to those compared to
4 earlier when asbestos was newly used and
5 removed.
6 And then secondly, the protections
7 for the -- against asbestos exposure in the
8 later years, into the '90s, the protections
9 were probably better.
10 But this is not to say that we would
11 support the blanket no exposure occurred after
12 date X. It's a question of when you go when
13 you move from presumptions to looking at
14 individual cases -- circumstances of individual
15 cases.
16 So to get back to Les' point about -
17 - the first comment, I think, about factoring
18 in non-DOE exposures, my understanding is
19 that's just completely off the table -- that
20 DOL is not allowed to in the claims examination
21 process consider occupational exposures other
22 than those at DOE.

1 MEMBER WELCH: I think that's true,
2 yes. I believe it's true.
3 MEMBER BODEN: This is Les, and
4 perhaps that wouldn't work, but let me just
5 clarify the idea. And I think that Laura's
6 comment sort of made this anyhow.
7 My idea was if you didn't need and
8 if -- if there wasn't any evidence of DOE
9 exposure but there was also no evidence of non-
10 DOE exposure that that might work in the
11 person's favor. But I am convinced now that
12 that was a wrong idea.
13 CHAIR MARKOWITZ: Well, the other --
14 I mean, asbestosis is a very specific issue
15 because you don't come in with a diagnosis of
16 asbestosis unless the doctor has identified
17 asbestos exposure in the past, and combine that
18 with x-ray of other findings, it leads them to
19 believe the person has asbestosis.
20 So they may be wrongly diagnosed but
21 probably specifically diagnosed. So that also
22 changes it for that particular condition.

1 MEMBER WELCH: But I was making the
2 point they don't have to have a diagnosis to
3 file a claim.
4 CHAIR MARKOWITZ: Right. Yes. But
5 how do they file a claim for asbestosis if --
6 MEMBER WELCH: They file a claim but
7 they don't -- and they would submit whatever
8 they think supports the claim. I guess, you
9 know, Faye could talk about that but they could
10 file a claim saying that it's asbestosis.
11 CHAIR MARKOWITZ: Okay. Some
12 medical. Yes.
13 MEMBER VLIEGER: Department of Labor
14 hasn't necessarily accepted behavior reports
15 even though they come from the Former Workers
16 Screening Program. This is Faye. Sorry, I
17 didn't introduce myself.
18 Sometimes the workers actually go
19 take the Former Workers Screening stuff that
20 says we believe you need to have this reviewed
21 and then the pulmonologist, some of the
22 pulmonologists in this area, will actually make

1 a diagnosis of asbestos disease.
2 In other cases where the
3 pulmonologist, a long-time family pulmonologist
4 refuses to make a diagnosis we provide all the
5 evidence and it goes to a CMC. So it's a kind
6 of a mixed bag of how it's accepted or
7 diagnosed.
8 CHAIR MARKOWITZ: Other thoughts or
9 comments?
10 MEMBER SILVER: Yes. This is Ken.
11 Should we also be thinking about splitting
12 mesothelioma off of the special case of
13 asbestos-specific disease? I'm particularly
14 uncomfortable with the requirement for
15 consistent exposure. I know others keep up on
16 the literature, but because it's been
17 associated with trivial exposures over the
18 years I'd be much more comfortable if the
19 criterion were simply unprotected exposure.
20 MEMBER WELCH: Or just any exposure.
21 Because if there was protection that was
22 sufficient then there would be no exposure.

1 You know what I mean? There's no point to give
2 anybody a reason to kind of give wiggle room in
3 their interpretation.
4 CHAIR MARKOWITZ: This is Steven.
5 Does that mean, then, for mesothelioma that if
6 the CE finds any evidence of asbestos exposure
7 that the CE then can make the determination,
8 with mesothelioma, make the determination of
9 causation and bypass the IH and the physician?
10 Is that what -- by the way, this is
11 the way I think occupational hazard is treated,
12 and we will talk about that in a minute. So
13 it's not unheard of for this stuff.
14 MEMBER WELCH: Yes. No. Yes,
15 absolutely. I think that's right, that if
16 somebody has a diagnosis of mesothelioma, and
17 that if there is any exposure to asbestos, then
18 we can presume it's an asbestos-related disease
19 and an accept the claim.
20 CHAIR MARKOWITZ: What about do you
21 want to factor in latency at all?
22 MEMBER WELCH: Yes, I think that

1 would be reasonable.
2 CHAIR MARKOWITZ: Yes. So we will
3 pick up, like, 15 years prior or something like
4 that.
5 MEMBER WELCH: Oh, you could go
6 longer. I mean, 15 is fine. Twenty is fine.
7 You know, the average latency for mesothelioma
8 diagnosis now is over 40 years. Yes.
9 CHAIR MARKOWITZ: Okay.
10 MEMBER BODEN: Can I back up to the
11 one word in there that at least makes me
12 uncomfortable? And that is the unprotected.
13 It's my limited understanding, at least, of
14 protections in the workplace is that it's
15 sometimes hard to tell if the position is
16 protected or not.
17 MEMBER DEMENT: This is John Dement.
18 I agree with Les. I think that that words need
19 to come out. Exposure is exposure and leaving
20 it in I think just makes confusion and also
21 presumes that some of the PPE actually works
22 and works well, and sometimes it actually

1 doesn't.

2 CHAIR MARKOWITZ: So, this is
3 Steven. So to carry it further, should the CE
4 play any role in triaging asbestos claims based
5 on exposure? Or should it be that the CE's
6 role when faced with any asbestos-related
7 disease is to gather whatever exposure evidence
8 exists and then refer all cases over to an IH
9 or a CMC? Then they're not in the position of
10 deciding what consistent means, deciding what
11 unprotected means.

12 MEMBER WELCH: I don't think you
13 need to do that for mesothelioma. I think that
14 the claims examiner should be able to accept
15 the claim.

16 CHAIR MARKOWITZ: How about for the
17 other conditions?

18 MEMBER DEMENT: This is John. I
19 agree. I think the role of the CE is to gather
20 information and get as much as possible with
21 regard to the frequency, duration, intensity,
22 all these things that are important.

1 I think we need to write the
2 presumptions to have presumptions that allow a
3 vast majority of them to go forward without a
4 lot of additional work. But I think the rest
5 you could go through your IH assessment. And
6 IH assessment is just really still a tough
7 issue here. You know, it's subject to the
8 information available, of course. It's also
9 subject to the skill and experience of the IH
10 taking a look at the data.
11 MEMBER BODEN: So this is Les again.
12 One other clarification. If it seems that we
13 are discussing both things that are directly
14 presumption-related and things that aren't that
15 we might want to bring back to the full
16 committee.
17 So, for example, under what
18 circumstances the claims examiner should send
19 cases on is not exactly a presumptions issue.
20 An important issue.
21 MEMBER WELCH: But, Les, wouldn't it
22 be one -- if you have a presumption then isn't

1 it the case that the ones that don't meet the
2 presumption get sent on so they sort of are,
3 you know, bookends to each other or --
4 MEMBER BODEN: Well, I think that's
5 somewhat of an open question. That is, it
6 could be, if you don't meet the presumption,
7 then what do you do next? And maybe for some
8 cases the CE doesn't send them on and for some
9 cases they do. I'm just agnostic about that.
10 I agree with what -- I mean, logically
11 speaking, that's the case, although I agree
12 with what John just said a couple of minutes
13 ago.
14 It may be, you know, even for cases
15 that don't have presumptions, that the whole
16 committee will want to look at that, decisions
17 involving whether a case gets sent on or not
18 and what information is sent on to the IH or
19 the medical.
20 CHAIR MARKOWITZ: Right. So this is
21 Steven. So, you know, we can recommend
22 criteria for presumptions, and if they don't

1 meet the presumptions then the CE can -- it
2 could be the CE could make a decision on the
3 case or the CE could be obligated to send the
4 case on for expert review.
5 MEMBER BODEN: And when they send
6 the case on they could be obligated to provide
7 certain information which they might not --
8 MEMBER WHITLEY: Gary here. In Oak
9 Ridge the majority of the people who file for
10 any lung-related stuff, as asbestosis or COPD
11 or whatever, they have a pulmonary doctor's
12 diagnosis that they take with them that says,
13 basically, I've got asbestosis. They already
14 are diagnosed by a pulmonary doctor.
15 CHAIR MARKOWITZ: Right. So that's
16 helpful. So let's just continue on the slides.
17 So there's just two more on this issue, I
18 think. A couple more. Anyway, if you go to the
19 next slide, let's see. Next slide. Yes, we've
20 already covered this one. And then we go to
21 the next slide. Slide 28.
22 So here what I did was to try to

1 fill out the cells, dividing up asbestos-
2 specific and non-specific conditions, looking
3 at different elements that constitute exposure
4 and then proposing some timeframes. And I
5 think these could be useful to discuss this
6 point.
7 For instance, obviously, 250 days
8 doesn't apply to mesothelioma, so that needs to
9 be refined. But I want to discuss the job
10 titles for a moment because the list seems
11 overly restrictive. It consists almost
12 entirely of maintenance and construction
13 titles. I don't know whether it includes all
14 relevant maintenance and construction titles.
15 Does anybody have a sense of that?
16 MEMBER VLIEGER: This is Faye. It
17 doesn't. It doesn't. For instance, there's a
18 lot of people in and around the job site that
19 are not protected. For example, as a
20 production planner I had full access to walk in
21 anywhere and it didn't matter that active work
22 was going on. I was not required to wear any

1 respiratory protection and I had to be out in
2 the field to assess how well a job was going or
3 not going and to plan for future jobs.
4 And so planners, production
5 planners, that sort of thing, are not
6 considered. There's also people like
7 expediters that are constantly in and out of
8 the field and we're not classified as
9 production or maintenance. We're classified as
10 exempt employees. And so there's a lot of, you
11 know, ants out in the field that aren't
12 necessarily accounted for in this list.
13 CHAIR MARKOWITZ: Did you say ants?
14 MEMBER VLIEGER: I did. We kind of
15 scurry around like ants when we're doing a job.
16 MEMBER WELCH: Steven, can I add
17 something?
18 CHAIR MARKOWITZ: Yes.
19 MEMBER WELCH: This is Laurie. Can
20 I add something? I think that one of the
21 issues with job titles that we have seen with
22 the application of the hearing loss presumption

1 when there's a list of job titles, because
2 there's so many job titles within the DOE
3 complex sometimes people are doing the job
4 equivalent to that job title but it's not that
5 job title and people's claims have been denied
6 because they were in the wrong job title.
7 So, I mean, I think we might want to
8 be looking at something that's not saying "job
9 title," but we could say type of work or
10 something like that, which then does require
11 more judgment on somebody's part.
12 You know, at one point they figured
13 out how many production job titles. There were
14 25,000 different job titles in production. A
15 crazy number, and one person stays in the same
16 job and then they have over their career a
17 number of different job titles. Just something
18 to keep in mind when we start -- I mean, I
19 think what you have in your slide there makes a
20 lot of sense. But how we get from that, which
21 are kind of work areas, to something that a
22 claims examiner can use may take some thinking.

1 CHAIR MARKOWITZ: This is Steven.
2 So, in our formal work program, which I think
3 it's 14 sites, we have thousands of job titles,
4 and it's frankly been the bane of our program.
5 And in maintenance and production, in
6 engineering, our approach was to, best as we
7 could, divide them into six groups,
8 occupational categories, we called them,
9 occupational groups.
10 And the four that are under job
11 titles here are four of those groups. The
12 other two are administrative positions and
13 service workers. Now, some administrative,
14 some service workers may have exposure to
15 asbestos. But it would be less routine, less
16 predicted, predictable than, say, production or
17 engineering, by way of comparison.
18 So one approach is to say to the
19 claims examiner, if their job titles fall into
20 one of these four occupational categories, we
21 can presume asbestos exposure in some
22 timeframe.

1 MEMBER WELCH: Yes, I'm good with
2 them.
3 CHAIR MARKOWITZ: I mean, there's
4 the practical problem of -- yes, the claim is
5 not going to come in, in one of these
6 occupational categories, come in in specific
7 job titles and so there's a translation
8 challenge to go from the specific to this more
9 general. But for the sake of presumption it
10 could be done.
11 My question is, do we have enough
12 evidence to support production and engineering?
13 Because I think we have enough evidence on
14 maintenance and construction. And it's an open
15 question.
16 MEMBER WELCH: The answer is in your
17 answer. I mean, you can learn them from many
18 of those people.
19 CHAIR MARKOWITZ: Exactly. Exactly.
20 And we can discuss that later. But anyway,
21 this is an approach that's certainly broader
22 than List A and solves certain problems. The

1 question is whether there is sufficient
2 rationale for it.
3 John, what do you think?
4 MEMBER DEMENT: Well, I think it all
5 gets down to what specifically were they doing?
6 And as Laura says, there is so many jobs that
7 have different titles that are actually doing
8 similar work.
9 So then it gets down to the task,
10 and I think there are -- we could probably
11 expand this list of presumed or known exposed
12 jobs a bit. And some of the things that Faye
13 has talked about I think are important. I
14 don't think we are ever going to feel very
15 comfortable that we've captured all of that.
16 You know, perhaps just the statement that those
17 we know are exposed. There can be others based
18 on the exposure tasks that are involved that
19 could be similar.
20 And I don't know, the SEM committee
21 has been working on trying to get a little more
22 specific with regard to tasks that certainly

1 production types of workers might do. And I
2 guess we're hopeful that that might help with
3 this issue that we are sort of dealing with
4 right here. But I think we can expand this
5 list of presumed exposures, but it's never
6 going to be all that complete.
7 MEMBER BODEN: This is Les. I'm
8 wondering if there is a way, without being too
9 vague, of talking about job titles that are
10 similar or equivalent to ones on the list, so
11 that if somebody is, I don't know, a painter on
12 one list and a master painter on the other
13 list, that they don't, the master painter
14 doesn't get left out.
15 MEMBER DEMENT: I agree. The SEM
16 does some of that. I mean, it does map some of
17 these things in together, and it does have at
18 least a brief description of the task. So if a
19 worker did a similar task in a similar
20 timeframe then they should allow that to be a
21 presumed exposure as well.
22 CHAIR MARKOWITZ: So do you think

1 it's reasonable to set any calendar year to
2 provide a limit for the asbestos-related
3 diseases?
4 MEMBER DEMENT: Yes, this is John.
5 I don't think any hard date is going to be
6 useful or sensible, but I do think, you know,
7 as Laurie's talked about, after banning some of
8 the applications when we moved forward in time
9 the different OSHA regulations were put in
10 place, and different regulations for removal of
11 asbestos were put in place, I think it was
12 being presumed that exposures likely decreased.
13 Now, whether or not they decreased
14 to the "lower than" guidelines on a routine
15 basis is quite questionable.
16 MEMBER WELCH: And if we are
17 thinking about a presumption, this isn't -- we
18 don't have to say, you know, any exposure after
19 some period of time is nonexistent. It would
20 be if you're exposed before a certain period of
21 time you can presume to have been exposed. And
22 then after that the burden of proof is harder,

1 maybe. I mean, it would go to industrial
2 hygiene with you and me. One of the goals of
3 presumptions would be to help people reduce the
4 burden of the claims, both on DOL and on the
5 workers, by saying, okay, if you meet these
6 criteria we have all the information we need.
7 So I think we can take years for that. I mean,
8 Steven has proposed some in the slide that you
9 have up.
10 MEMBER DEMENT: I think, as I look
11 at it, an exposure presumption as it sort of
12 gets to the IH issue, to me a presumption
13 should have some surrogates of exposure that
14 allow you to come, if you apply it, that you
15 come to the conclusion that if you had sent
16 that to an industrial hygienist and they did
17 their exposure assessment, then it would be
18 more likely than not that the IH would have
19 given a positive exposure determination for the
20 case.
21 So, you know, what we are doing is,
22 in my view, we are trying to cull off that

1 first 50 percent that we can say, if I go to
2 the industrial hygienist it is highly likely
3 that they are going to give a positive exposure
4 assessment. To me, you know, going back and
5 sort of dealing with this threshold that we
6 were given in the Act, those 250 days, is a
7 good starting place. As, you know, sort of
8 looking at that going forward, again, we might
9 just consider some dates and not making a fixed
10 criteria but requiring a little more duration
11 for some of these asbestos-related diseases,
12 certainly exposure for mesothelioma.
13 CHAIR MARKOWITZ: This is Steven.
14 One amendment, friendly amendment, to what you
15 just said, John, is that we use presumptions
16 when we don't know and we don't have detailed
17 information.
18 So it wouldn't be just the case
19 that, had this been sent to the IH, the IH
20 likely would have concurred. It's also the
21 case that, had we sent this to the IH, the IH
22 might have said, "well, who knows because I

1 don't really have -- the information is not
2 available about that exposure to be able to
3 make a determination."
4 I mean, that, to me, was what the
5 whole -- in the original Act in 2000 when they
6 made the SEC with the radiation exposure was an
7 admission that they didn't have enough data and
8 they were going then simply convert it to a
9 presumption. And I think, you know --
10 MEMBER DEMENT: Steve, I agree with
11 you, and that's the situation still here with
12 the IH. I mean, they are still dealing with
13 very limited information.
14 The SEM committee is making some
15 recommendations on, you know, when the IH gets
16 involved in some of these cases. And they
17 could make a more informed determination,
18 certainly, than a non-trained individual, but
19 they are still very limited in trying to make
20 an even semi-quantitative exposure
21 determination in these cases.
22 CHAIR MARKOWITZ: Right, which is an

1 argument for the presumption.
2 MEMBER DEMENT: It is, absolutely,
3 an argument for presumption.
4 CHAIR MARKOWITZ: Yes. Well, okay.
5 So, we need to move on. So any further final
6 comments?
7 MEMBER WHITLEY: Garry here. I
8 think we go back to these job titles. Your
9 idea of the groups, like the maintenance,
10 construction, production, folks, like, in six
11 groups, it would be easier for a claimant to
12 convince the CE that they fall into that group
13 if the job category is not one listed in that
14 group than it would be for them. Because the
15 CE is going to come back say you're not an
16 electrician so you don't fall into this group.
17 So I think that, with job titles, if
18 we could go to the large groups, kind of like
19 you've got on your chart, then it might be
20 easier for the claimant to fall into the right
21 category.
22 MEMBER BODEN: So "construction,"

1 for example, rather than all the specific
2 construction occupations.
3 MEMBER WHITLEY: Yes. Or like Faye
4 said, a planner or a supervisor is out there
5 with the people working right beside them but
6 they don't fall into one of these groups
7 necessarily, or especially when I go back to
8 the group on the A List a while ago. But they
9 are part of maintenance. But it would be
10 easier to convince -- because to tell you the
11 truth, the coworker letters and all that don't
12 matter. It's whatever the CE looks at. If
13 they've got a list and you're not in that list,
14 you're done.
15 CHAIR MARKOWITZ: Yes. And, you
16 know, the job titles -- the specific -- this is
17 Steven -- the job titles that DOL must get on
18 these claims, there must be just enormous
19 variations. This job category approach would
20 simplify things. But we should move on. Do we
21 have the next slide?
22 The next slide, we already discussed

1 this point, which is that if the claims don't
2 come through the presumption process that they
3 don't see the IH or CMC. And we've already
4 answered this question, I think, of should
5 there be a minimum threshold of exposure before
6 the CE refers? Which is, our inclination is,
7 on asbestos-related diseases, that those that
8 don't meet whatever set of presumptions are
9 developed get referred to IH or MD.
10 Okay. Next. We have 10 minutes
11 before we're going to break. So let's push
12 forward because we have some important issues
13 here.
14 Asthma, next slide. So here I just
15 want to review what the bulletin says. It was
16 developed in the last year and a half, really,
17 and it's different from all the other
18 approaches that DOL uses, which is that if
19 evidence comes as part of the claim that
20 there's occupational asthma, that the CE is
21 instructed not to look at -- look further in
22 terms of exposures or go to the SEM. I think

1 actually the policy says that asthma's been
2 removed from the Site Exposure Matrices.
3 And the challenge comes for former
4 workers, really. Item number two, OA, is
5 occupational asthma. So what's a CE to do if a
6 person files a claim if they stopped working
7 for DOE 10 years ago and they file a claim for
8 occupational asthma? Perhaps even this was
9 developed or diagnosed years after they ended
10 their work at DOE. And DOL recognizes that
11 situation and sets out some prescriptions of
12 what it wants from the treating physician and
13 it goes to the CMC. That seems like a
14 reasonable approach, actually.
15 One topic that -- oh, we can go to
16 the next slide and then I want to raise an
17 issue. And for asthma claims that they don't
18 have work-related rationale, meaning a
19 physician didn't develop that, that the DOL's
20 consultant gets involved. And then finally,
21 when they change this policy, we just need to
22 remind ourselves sometimes that what DOL then

1 does is go back and look and see if these
2 claims were denied and then right the situation
3 so that everybody's treated the same.
4 The question I have that arises, and
5 I want to thank one of the advocates for
6 raising this, is that it doesn't really address
7 work-related asthma that represents the agents
8 or exposures that might exacerbate already
9 existing asthma that a physician might not
10 recognize as occupational asthma. And there's
11 not a whole lot of language around that
12 situation.
13 And I don't know whether anybody has
14 any experience with this in the claims process
15 or has any suggestions about this. This would
16 be, I suppose, an asthma claim in which the
17 treating physician is silent or says it's
18 "asthma exacerbated by," but doesn't call it
19 occupational asthma. In that instance if the
20 claims examiner is even recognizing it as
21 falling into the DOL definition.
22 But in any case, does anybody have

1 any experience with this?
2 MEMBER VLIEGER: I've seen this
3 happen. The acceptance of occupational asthma
4 to this point has been varied. Even if the
5 doctor says it's occupational asthma, the CE,
6 if they don't find that the person could have
7 been exposed to anything in their research, it
8 gets sent to the contract medical consultant
9 with limited information in the statement of
10 accepted facts, which is called a SOAF, and
11 then the claimant is denied.
12 We have a lot of administrative
13 types who worked next to or in the same shops
14 as welders, sheet metal people, pipe fitters,
15 chemical things, and they come down with
16 occupational asthma. And the majority of them
17 are turned down because their job title is
18 excluding them from this consideration.
19 So, yes, I've seen it happen. You
20 know, the case of the email that was sent to us
21 in regards to this as it being exacerbated, on
22 the flip side of that I've got a claimant right

1 now that was sent to a CMC with a statement of
2 accepted facts that did not include asbestos,
3 and they accepted occupational asthma. But
4 then the Department of Labor said, oh, wait,
5 any dust can cause asthma, we're going to
6 include asbestos as a dust and send it back.
7 And now they are saying that the occupational
8 asthma is asbestos-related. So, I mean,
9 I've seen some really hoop-jumping things on
10 different claims. It doesn't seem to be
11 consistent.
12 CHAIR MARKOWITZ: Well, I'm sure a
13 little bit of asbestos exposure will be
14 accompanied by other dust also. So they need
15 to pin it on the asbestos initially.
16 MEMBER VLIEGER: I would agree with
17 you on that. But the Department evidently has
18 some guidance that dust means asbestos dust
19 too. So --
20 MEMBER WELCH: Steven, can you talk
21 up a little more again?
22 CHAIR MARKOWITZ: Yes, I can. Sorry

1 about that. Is this better?
2 MEMBER WELCH: Yes.
3 CHAIR MARKOWITZ: Can you hear me
4 any better?
5 MEMBER WELCH: Yes.
6 CHAIR MARKOWITZ: Okay. Well, I
7 think we should look at some language that
8 addresses the exacerbation issue. That
9 bulletin one, which is relatively recent, which
10 addresses this occupational asthma question,
11 that it can give some specific guidance to CEs
12 around exacerbation of asthma in relation to
13 the exposures at DOE.
14 So I will take a look at that and
15 develop something. Any other comments on
16 asthma before we take our break?
17 MEMBER WHITLEY: Hi, Steve. Garry.
18 Recently I've seen the CE will send it back to
19 the treating physician if they diagnose it as
20 asthma or occupational asthma. They will send
21 back to the treating physician to be more
22 specific why he came up with that. I don't

1 know what they end up getting most times. You
2 know, he's already diagnosed it. But the CEs
3 are sending it back to the treating physician a
4 lot now.
5 CHAIR MARKOWITZ: Well, you know --
6 this is Steven -- that raises the question
7 whether they are actually applying the policy,
8 if that's happening. And it also raises the
9 question of whether we should look at some
10 asthma claims.
11 Does anybody recall if the Board
12 looked at any asthma claims at all? I can't
13 remember.
14 MEMBER WELCH: I don't think so. We
15 haven't, with the SEM committee we haven't.
16 CHAIR MARKOWITZ: Yes. And we'd
17 want to do those claims in this coming -- since
18 this bulletin's been in effect to see how it's
19 applied. Okay. Let me make a note of that.
20 MEMBER SILVER: This is Ken. I
21 think this whole area may be beyond the
22 Presumptions Working Group. It's an area where

1 they really need some continuing education.
2 I've been involved in a couple of claims where
3 the distinctions among job-induced asthma
4 versus work-aggravated asthma versus rad versus
5 multiple chemical sensitivity was all a big
6 blur.
7 And I can't imagine that if the
8 policy directives handed down are going to sort
9 that out to the claims examiner. So if there
10 were an opportunity for a continuing education
11 program I would emphasize this area.
12 CHAIR MARKOWITZ: Plus, you know --
13 this is Steven -- we should look at when DOL
14 does put into place a new policy, the extent to
15 which the policy is adopted. And DOL may have
16 done that and we can ask them for that,
17 actually.
18 Okay. So let's take a break for
19 five minutes. It's 2:30. Be back at 2:35, all
20 right?
21 (Whereupon, the above-entitled
22 matter went off the record at 2:29 p.m. and

1 resumed at 2:39 p.m.)

2 CHAIR MARKOWITZ: Okay. So, as

3 Laurie just pointed out, the SEM committee,

4 which meets next week, is dealing with this

5 issue of COPD and presumptions. So we needn't

6 dwell on this too long, but I did want to raise

7 some issues that they may or may not have fully

8 discussed. But in any event, let's proceed.

9 We can go to the next slide.

10 So, there's very little that I could

11 find, in the procedure manual or otherwise,

12 about COPD. One was a general piece, which is

13 shown on this slide and the second related to

14 asbestos.

15 And Laurie, were you able to find

16 anything else?

17 MEMBER WELCH: No. This actually

18 was part of a matrix that had it in the table.

19 So these statements are like, if this is

20 present the claims examiner can award the claim

21 without a CMC. And then on the next -- on the

22 other side of the matrix it tells them when

1 they have to refer to the CMC, which is the
2 alternate here.
3 CHAIR MARKOWITZ: Right.
4 MEMBER WELCH: But there wasn't a
5 whole lot of explanation with that exhibit.
6 CHAIR MARKOWITZ: This is what the
7 matrix says. And I don't know whether this is
8 actually what the claims examiners follow or
9 not. But this is what's in black and white,
10 outside of a later, a more recent bulletin, a
11 very recent bulletin regarding asbestos and
12 COPD.
13 MEMBER WELCH: Right.
14 CHAIR MARKOWITZ: The claims
15 examiner had to have a physician diagnosis of
16 COPD and there has to be some supportive
17 abnormal medical tests. And then they list the
18 tests, which we needn't go into.
19 Secondly, it says that the employee
20 has a history of being a never smoker. And I'm
21 not sure how to interpret that, exactly,
22 whether it just means the claims are restricted

1 to never smokers, but this is what it says.
2 And then there needs to be the absence of other
3 diseases that can explain the findings. Next
4 slide.
5 MEMBER WELCH: I would say I think
6 that this wasn't kind of written as a
7 presumption. It was written as if the claims
8 examiner sees a case like this it's kind of
9 such a slam dunk that you don't need any other
10 assistance.
11 So it was sort of a presumption but
12 it wasn't saying -- I think it's not -- this
13 seems to imply that DOL thinks that COPD due to
14 dust or due to work can't occur if somebody
15 smokes. But that's not the case. They are
16 just saying if the person smokes they want a
17 CMC to look at it to look at the relative
18 contribution.
19 CHAIR MARKOWITZ: Well, is that what
20 you saw in writing, Laurie, or is that your
21 general understanding of what goes on?
22 MEMBER WELCH: Yes, I think that the

1 -- when you look at that exhibit in the actual
2 matrix, in the other column it says you need a
3 CMC opinion to look at the contribution for
4 smoking.
5 CHAIR MARKOWITZ: Right. Okay. So
6 I just want to point out -- which slide are you
7 looking at? We are looking at the ones with
8 the --
9 (Simultaneous speaking.)
10 CHAIR MARKOWITZ: Right. Right. So
11 how this language is applied, there are
12 problems with it. I don't see how CE can
13 routinely look at the abnormal spirometry or CT
14 scan or any of the two other things listed and
15 make the determination on a routine basis
16 that's supportive of COPD. Obviously, smokers
17 who are exposed to occupational exposures get
18 COPD. And then ruling out other lung diseases
19 that can explain the findings can be a very
20 complicated task, sometimes even for
21 physicians. So it's clearly not something
22 within the province of the claims examiner.

1 MEMBER WELCH: Yes.
2 CHAIR MARKOWITZ: Next slide. So
3 this is both in 15-02 relating to COPD and
4 asbestos exposure. Here we see, you know,
5 plenty of minimum exposure prior to 1980 on
6 List A and -- excuse me, or absence as the IH
7 weighs in and finds support for significant
8 asbestos exposure. So, a very narrow kind of
9 set of hoops to jump through for a person to
10 have COPD related to asbestos. Next.
11 And here's the list. Next. So
12 these are some of the issues. And stay tuned.
13 The SEM committee is going to develop some
14 solutions to these. But using the same
15 framework we've used previously, what are the
16 things that need to be decided around
17 presumptions?
18 List A just relates to asbestos.
19 And as the SEM committee has dealt with and
20 demonstrated or will demonstrate, that actually
21 it's pretty well established that exposures to
22 vapors, gas, dust, and fumes -- as call VGDF --

1 over time can cause COPD, certainly aggravate
2 or contribute to COPD. And that represents an
3 enormous universe of workers within the DOE
4 complex. Of course, you have to identify those
5 workers who had those exposures and the SEM
6 committee has a solution to that.
7 Second is how long the exposures
8 need to be: two years, five years? Are
9 calendar years relevant, you know, if exposures
10 improved over time? And here we're not talking
11 about, you know, asbestos-specific regulations
12 or standards. We're talking about VGDF. So
13 it's a very broad set of exposures. But I'm
14 sure, Garry, you'd tell us how these exposures
15 in 2010 were probably lower than they were back
16 in 1995.
17 Now, these are latency. And that
18 is, does there have to be any time period
19 between the onset of exposures at DOE and the
20 appearance of COPD? And this is interesting
21 because this is where actually I think
22 aggravation and contribution really kick in

1 here.

2 If a person, let's say, given a

3 scenario, let's say a person develops COPD that

4 didn't have exposure at DOE, develops COPD

5 related to cigarette smoke or what have you.

6 And then gets a job at DOE or the job changes

7 such that they now have exposures to dust,

8 vapors, et cetera, and develops an exacerbation

9 of COPD. And so we would recognize that that's

10 aggravation. That latency would be zero.

11 There would be no gap in time between the

12 exposure and the onset of disease.

13 And then, finally, an interesting

14 issue that we grapple with in our Former Worker

15 Program is a person, DOE worker stops work in

16 the year 2000, the COPD is diagnosed in 2010,

17 and can we attribute that in part to exposures

18 that occurred at DOE prior to 2000? Or how

19 much time period can be allowed to elapse

20 before we can say yes or no, there was DOE

21 contribution.

22 So let me stop there and just open

1 it up for --
2 MEMBER BODEN: This is Les. I have
3 one question actually about the last -- about
4 the time since cessation of exposure, which is
5 it's -- that time has to be that -- not the
6 time to when the COPD initially, you know,
7 started. It has to be in the time to
8 diagnosis.
9 So it really depends on somebody's
10 going to a doctor and the doctor diagnosing it,
11 which makes it hard to understand how you could
12 have a specific time period. What would be the
13 empirical basis of that?
14 MEMBER DEMENT: We know -- this is
15 John -- we know that COPD is largely under
16 diagnosed.
17 MEMBER BODEN: Yes.
18 MEMBER DEMENT: Actually, based on a
19 model review of some of these claims I see
20 these totally opposite criteria applied. I see
21 the -- I see where a worker many years after
22 their DOE employment in fact develop or is

1 diagnosed -- developed probably earlier but
2 diagnosed with COPD specifically and the
3 physician reviewing the case said that it
4 wasn't related because it didn't occur more
5 approximately through their employment with
6 DOE. I've actually seen it used in the -- in
7 the opposite direction.
8 MEMBER BODEN: Yes. No, I think
9 potentially what this says -- what you just
10 described is what this says. It says you need
11 to have it diagnosed within five years.
12 MEMBER DEMENT: I don't know if I
13 agree with that at all.
14 MEMBER BODEN: No, I am --
15 MEMBER DEMENT: I have seen workers,
16 at least based on our analyses, that seemed to
17 develop COPD long after that then they are -- I
18 mean, diagnosed with that. They probably had
19 the disease all along and the physician never
20 told them they had it. So I think five years
21 is probably not quite required.
22 MEMBER WELCH: Yes, I would actually

1 -- I wouldn't have a, you know, time after the
2 end of employment because people's lung
3 function deteriorates over time and we know
4 that people who have COPD deteriorate a little
5 bit faster. So someone could have left
6 employment with mild COPD and it progresses
7 over time but still were contributed.
8 So I don't -- you know, I think it's
9 where having a five-year exposure requirement -
10 - I mean, you'd be -- I'd be pretty confident
11 that any COPD that developed over time in that
12 worker that that dust contributed and you'd not
13 have to worry about what time it appeared. I
14 was talking to Rosie about this yesterday
15 actually because we were reminding ourselves
16 how many times in residency training you see
17 somebody who's physically perfectly well until
18 they got this chest cold and then they have
19 terrible COPD. There is no way they were
20 perfectly well. They just had gotten kind of
21 used to their limitations and thought it was
22 due to aging or something. So people can have

1 -- you know, as John said, it's often under
2 diagnosed.
3 MEMBER DEMENT: Yes, the clinical
4 diagnosis occurs.
5 MEMBER WELCH: Yes.
6 MEMBER WHITLEY: Garry here. I
7 agree because a lot of these people, until they
8 get the flu or something else, you know, they
9 have a chronic problem, they don't go to a
10 pulmonologist and don't get diagnosed until
11 later in life because they hadn't had any
12 problem. Then they go.
13 But my other question is you go to
14 your treating doctor, the specialist, the
15 pulmonologist, and he diagnoses COPD and they -
16 - they turn that in as a claim, what does the
17 CE do with that?
18 Do they -- do they send it on to the
19 -- to the medical doctor or do they -- what do
20 they do with it?
21 MEMBER VLIEGER: Garry, that matrix
22 that they are talking about on one of the

1 slides is actually from the econometrics study
2 where they put together those causation tables
3 that's in the procedure manual now and that
4 whole econometrics study was funded by the
5 Department of Labor.
6 So that's the place that the CE
7 starts is with that table -- COPD table.
8 CHAIR MARKOWITZ: What about the
9 issue -- this is Steven -- what about the issue
10 of calendar years? If we pursue a presumption
11 set of criteria here would we leave out
12 calendar years entirely, simply say claimants
13 for COPD -- they were exposed -- you know,
14 through developmental exposure information --
15 they were exposed to VGDF for five, seven, 10
16 years -- you know, year 2005 to 2015 and
17 developed COPD? What we think is probably
18 those exposures were less than they were had
19 they occurred in '75 to '85. But is there any
20 need at all to put in calendar years or is
21 there any basis on which to include or exclude
22 them?

1 MEMBER WELCH: I would not put in
2 calendar years because I think that some of the
3 big -- among construction workers some of the
4 big contributors are welding in silica and
5 there is no OSHA standard that requires
6 controlling those STDs. So we'd be saying
7 well, we'd be relying on DOE to tell -- the
8 contractors to control those and we have seen
9 development of the silica standards.
10 There was so much testimony that
11 current exposures, you know, as in 2013 are
12 very, very high for some tasks and activities.
13 So I don't think we can presume that they are
14 controlled because it would be a good idea and
15 there is a lot of knowledge found in OSHA
16 standards people aren't really controlling
17 exposures. My two cents.
18 CHAIR MARKOWITZ: And does smoking
19 play any role in the consideration by the CE or
20 should smoking play any role? It's a
21 rhetorical question but --
22 MEMBER WHITLEY: Garry. I believe -

1 - smoking, as you all know, doesn't play a
2 role but still the VG, you know, that still
3 aggravates that condition.
4 CHAIR MARKOWITZ: Right. Yes.
5 MEMBER VLIEGER: This is Faye.
6 There is something that's not being considered
7 in the discussion that's guidance to the CEs
8 right now is the policy memos that we are not
9 seeing on this issue and also it's on all of
10 the issues that the claims examiners review.
11 And then there are monthly calls
12 that are done between the district offices and
13 CEs with the national office to discuss
14 adjudicating claims that don't necessarily fall
15 into the procedure manual and there is an
16 entire library of those monthly calls and
17 policy memos that we are not privy to that are
18 being used to influence this and future
19 procedure manual changes.
20 So when we -- when we look for, you
21 know, reasons why they are making decisions
22 some of it's not apparent to the public.

1 CHAIR MARKOWITZ: Well, we will
2 request them because there is no sense in us
3 developing recommendations without
4 understanding, at least in writing, what they
5 use to make their decisions. So I --
6 MEMBER VLIEGER: I agree. I agree,
7 and the only time we know that they exist is if
8 they accidentally mention them in a decision
9 and then we can request the specific one.
10 But they are not -- they are not on
11 the Web.
12 CHAIR MARKOWITZ: Okay. Yes. Okay.
13 So I'll submit a request for those. Other
14 comments? Because this will be further
15 discussed on the SEM call.
16 MEMBER SILVER: This is Ken in
17 relation to your smoking question. Right now
18 they have a rather extreme formulation. Is
19 there data to support something a little more
20 claimant friendly along the lines of quit
21 smoking more than X years ago? I seem to
22 recall some work I did in Boston years ago that

1 lung function decrements among smokers returned
2 to baseline about 10 years after they quit
3 smoking, or was it 20 years?
4 MEMBER WELCH: I don't think smoking
5 is relevant here, Ken. I mean, people can get
6 both smoking and dust that contributes to their
7 COPD and that's -- so it doesn't matter if they
8 are a smoker or not. And if you -- if you had
9 COPD and you quit smoking your lung function
10 doesn't go back to normal. You just -- you've
11 got it. I mean, it won't get -- it might not
12 get worse quite as fast as if you were smoking.
13 MEMBER BODEN: Well, your position,
14 Laura, is more worker friendly than Ken's is, I
15 think.
16 MEMBER WELCH: Yes.
17 MEMBER BODEN: Because you don't
18 look at the smoking.
19 MEMBER WELCH: Yes, I don't think --
20 I really don't think you can make a case to
21 discount for smoking because let's say somebody
22 has a -- a lot of it depends on the relative

1 contribution but the way the law is written it
2 doesn't really matter. It's not a -- it's not
3 a -- you don't parse them out and say oh, it's
4 20 percent dust and 80 percent smoking. So
5 it's 20 percent dust or 10 percent dust it's
6 still compensable under this law.
7 So as long as dust is known to be a
8 cause or VGDF is known to be a cause then it's
9 a cause. Doesn't matter if someone smoked. So
10 yes, I don't -- I don't think they should take
11 smoking into account.
12 And one reason to have a presumption
13 for this is that most of the people who are
14 CMCs can't wrap their head around that. They
15 think somebody who smokes you should deny their
16 claim. So and if that's not what the evidence
17 supports so I think it'll help the workers
18 quite a bit to have that presumption of any
19 kind.
20 CHAIR MARKOWITZ: You know -- this
21 is Steven -- and it may be that it's because
22 they are looking at that matrix and seeing that

1 it favors, you know, the nonsmoking person.
2 MEMBER WELCH: I don't -- I can't
3 even find that anymore. I mean, I was just
4 going with the latest version. I have the
5 procedure manual. I can't find it. But, you
6 know, looking through the --
7 CHAIR MARKOWITZ: It's in Chapter --
8 it's in the procedures manual Chapter 2. I
9 can't remember which section but I can send it
10 to you.
11 MEMBER WELCH: Okay. I should have
12 it. It's just I have so many procedure manuals
13 on my disc and, you know, they've been revised
14 and if it's still in the current one --
15 CHAIR MARKOWITZ: Actually, it's 2-
16 1000 in the slides -- on the COPD slides I
17 actually have it -- I have it in I don't know
18 which slide. It's -- but in any case, I'll
19 send it to you but it's on the slide.
20 MEMBER WELCH: Mm-hmm.
21 CHAIR MARKOWITZ: Okay. Any other
22 comments on the COPD because these are going to

1 be treated in greater depth next week.
2 Okay. So settlements and hearing
3 loss -- if -- let me see. On the WebEx we are
4 looking at a -- the current criteria slide,
5 right? No, that's not -- the next slide. Next
6 slide. Next slide. Okay. There we go.
7 All right. So just to review to
8 present, worker has to have 10 years of
9 consecutive exposure -- consecutive years.
10 MEMBER WELCH: Continuous.
11 Continuous.
12 CHAIR MARKOWITZ: Continuous, yes.
13 Continuous.
14 MEMBER WELCH: Yes. So if somebody
15 just, you know, I mean, the way it's been
16 interpreted that they would -- they switched
17 jobs and were out of the site for six months
18 then you have to start over.
19 CHAIR MARKOWITZ: Right. And next
20 is it has to occur before 1990. There are
21 seven main solvents which are fairly common
22 solvents. Twenty job titles and as opposed to

1 List A or -- these are -- many of these are
2 much broader than or much more common -- let me
3 put it that way -- operators. Very common are
4 maintenance mechanics, instrument mechanics.
5 Let me see -- I don't know whether -- here on
6 the next line, see if we have a list here.
7 Yes, there they are. These are -- it's
8 different from the list.
9 It does include some of the
10 maintenance or construction trades but it has
11 other titles like machinist, like janitor, like
12 lavatory workers, guards, chemical operators,
13 other operators, which is a very inclusive
14 term. So it is -- it is a broad set of, like -
15 - well, there again there are a lot of people,
16 obviously that don't fit into this.
17 Previous slide. And it's silent on
18 the issue of latency and then it'll address the
19 issue of time since cessation of exposure so we
20 can pretty much forget about that.
21 Can you skip forward two slides?
22 Okay. So the recent memo from the

1 toxicologist, Dr. Stokes, internal to the
2 national office, was shared with us and just to
3 summarize it, the DOE started using some
4 textbooks on this issue of hearing loss and
5 solvent exposure and cited studies that show
6 that less than eight years of exposure to
7 solvents does not -- is not associated with
8 hearing loss in those three studies that were
9 cited and then there was a study cited that
10 showed that on average -- average of 12 years
11 of solvent exposure is related to hearing loss.
12 And then that memo states that it assumes that
13 the mechanism of hearing loss is the same for
14 all of the seven solvents. Next slide.
15 So here's the same framework and
16 raising some questions. All you see in column
17 two is the current criteria and then some
18 possible new criteria.
19 And so there are a bunch of
20 questions here. The easiest one to me is 10
21 continuous years. I have no insight. I am
22 wondering if anybody has any clue how it was

1 determined that continuous exposure was
2 necessary because I've never heard of that in
3 any occupational studies of chronic disease.
4 MEMBER WELCH: Yes, I'd agree with
5 you. If you look at the epidemiology, they
6 don't -- the people have had, you know, 20
7 years of work in this industry, for example,
8 but there is no -- how that was assessed and
9 whether the people had continuous exposure that
10 process is not known. You know, it was based
11 on their employment history.
12 CHAIR MARKOWITZ: Right. I mean,
13 the --
14 MEMBER WELCH: And --
15 CHAIR MARKOWITZ: No, go ahead. You
16 have anything else?
17 MEMBER WELCH: Yes. The other thing
18 is that you can -- you can tell from that slide
19 that the studies they were relying on were from
20 2007 and prior. There is been quite a bit of
21 published since then that could probably help
22 us with the number of years that you could --

1 you know, if you want the presumption to be
2 well, if somebody has this number of years
3 you're, you know, 90 percent sure contributory
4 or 50 percent sure it's contributory and a
5 smaller number of years would go to an
6 industrial hygienist.
7 But I think we could probably find
8 that -- I thought that Rosie's committee was
9 trying to put together something on hearing
10 loss -- a presumption. But at one point I did
11 pull those papers. I have them someplace.
12 CHAIR MARKOWITZ: Right, and --
13 MEMBER WELCH: I don't remember it
14 but --
15 CHAIR MARKOWITZ: And there was a
16 Power -- we saw a PowerPoint, actually. I
17 think, Laura, you presented a PowerPoint at one
18 of the meetings. I don't know if it was --
19 MEMBER WELCH: Yes, I did. But it
20 didn't have a recommendation for specific
21 levels. But like I said, I did -- I did look
22 through the papers and I -- I don't know. I'd

1 have to go refresh my memory but I think we are
2 --
3 CHAIR MARKOWITZ: Yes, but -- okay.
4 MEMBER WELCH: -- we could come up
5 with something that would be -- you'd have to
6 have fewer years and a -- I don't know if you
7 want to use job title or you want to use
8 workers report of tasks because when we review
9 the occupational history we are going to
10 recommend that people collect much more
11 information on task and it's part of that
12 duration and intensity. You don't -- you don't
13 have to rely on job title if you're willing to
14 rely on the worker's occupational history.
15 CHAIR MARKOWITZ: Well, and then
16 there is -- then there is -- this is Steven --
17 the question is what goes into a presumption
18 versus what goes into the individual
19 evaluation.
20 But I want to get back to this
21 continuous exposure for a moment. Garry or
22 Faye, do you have any sense of whether claims

1 are denied where people have 10 years of
2 exposure prior to 1990 but it wasn't
3 continuous? Is this a -- is this an issue at
4 all?
5 MEMBER VLIEGER: Yes.
6 MEMBER WHITLEY: Garry here. Yes,
7 let me tell you a couple of things. I've seen
8 hundreds of these cases. If you've got, first
9 of all, nine years and 10 months you would get
10 a letter back that says you don't have 10
11 years.
12 Plus, if you've got -- let's say you
13 were a janitor two years and then you were a
14 chemical operator for 10 more years or nine and
15 a half years they won't tie those two together
16 a lot of times. You have to fight them to say
17 both categories are in that group. But they
18 want 10 years as an electrician or 10 years as
19 a chemical operator, not two as a janitor and
20 eight as a chemical operator, which both of
21 them are listed.
22 The other thing is on those 22 job

1 titles if you're not exactly -- if you're an
2 instrument mechanic, an instrument mechanic is
3 not listed but a maintenance mechanic is and
4 electrical mechanic is, which is the same
5 title, they say maintenance mechanic is not
6 listed so you don't get the claim. Of course,
7 those seven solvents did not go away in 1990.
8 So that's what's really happening. They are
9 taking it to the letter of the law and you got
10 to say exactly the job title and have the exact
11 10 years or you won't get there.
12 CHAIR MARKOWITZ: Well, yes. This
13 is Steven. Well, the good news it's actually
14 not in the law so it can be changed. Faye, did
15 you want to add something?
16 MEMBER VLIEGER: Yes. I am seeing
17 the same thing as Garry, that if they had a
18 break in that 10 years and right now it's, you
19 know, the date they have, kind of the 10 years
20 prior to that, if they have a break in those 10
21 years or it doesn't meet exactly 10 years then
22 the claim is denied.

1 I had to go in on one claim and
2 prove through earnings statements that the
3 worker was actually performing a 60-hour week
4 and not a 40-hour week and thereby had the
5 required exposure because of the number of
6 Saturdays and overtime that he had.
7 So, I mean, they are holding it to
8 the letter of the law to an eight-hour exposure
9 day.
10 MEMBER BODEN: Hi, this is Les. So
11 this discussion also suggests that if we do
12 recommend specific presumptions that in the
13 presumption we make it clear that this is a
14 floor and not a ceiling in some way or another
15 and I think it would involve some more
16 discussion to decide exactly how to do that to
17 make it effective.
18 CHAIR MARKOWITZ: What -- it's
19 Steven -- so if there were a clause, Les, that
20 is part of the language in the presumption -- a
21 clause that for individuals who do not need
22 this presumption this is a procedure that needs

1 to be followed with some specificity. Is that
2 what you're talking about? Or are you saying
3 that we can have that language there but if
4 it's not applied then that's -- it doesn't
5 work.
6 MEMBER BODEN: Right. Yes, I like
7 that idea, you know, with saying something like
8 if a person doesn't meet the presumption this
9 does not imply that they are not entitled to
10 benefits.
11 It means that you have to do A, B
12 and C, whatever it means. I think that's
13 exactly the right way to frame it.
14 MEMBER WELCH: Yes, and for this --
15 for this particular set of requirements it was
16 -- it was -- it wasn't just a presumption. It
17 was said if you don't meet these requirements
18 it's not compensable.
19 So I mean, it is a presumption but
20 it was an exclusive presumption, I guess, which
21 is not true with all the other ones that they
22 have put forward. So I think it's worth

1 explicitly saying that it's not exclusive or
2 prohibitive.
3 CHAIR MARKOWITZ: What about there
4 are seven specified solvents and they are very
5 common ones. I am not sure that there is
6 literature on each individual solvents in that
7 class.
8 Does it make sense to look at
9 broadening it to include other solvents that
10 have the same chemical class as the seven
11 specified solvents, admitting that there is
12 probably no medical literature on those or
13 haven't been looked at. But they are similar
14 enough chemically that you would expect a
15 similar outcome.
16 MEMBER BODEN: I think that's an
17 interesting idea. This is Les. But I think
18 then what we would have to do, since I don't
19 think the claims examiner is that, say, that
20 the claims examiner should refer this to an I -
21 - this specific question to an IH is this
22 solvent in a class of the ones listed and if it

1 is then I am sure it would hold.
2 CHAIR MARKOWITZ: This is Steven.
3 But what if, for instance, the SEM included a
4 universe of 30 solvents and they were looked at
5 and it was determined that 20 of them were
6 close cousins of the seven specified solvents?
7 And then have a list of the specified solvents
8 that was expanded now so it could be used in
9 the presumption -- the presumption rather than
10 have it moved to the IH.
11 MEMBER WELCH: I think that makes
12 sense. This is Laurie. I think that makes a
13 lot of sense because it would be -- it could be
14 the next level of common solvents. I remember
15 when I looked at the literature was that the --
16 those are ones for which there were animal
17 studies that allowed you to pick -- if you
18 wanted to pick a specific solvent the worker
19 exposure studies -- epi studies or solvents in
20 general. But there are specific animal studies
21 on those seven. So it's a very -- it's more
22 clear that you can say they are causative

1 because you have that mechanism of action. But
2 I do think it's worthwhile expanding to ones
3 that are in the same class.
4 MEMBER BODEN: I think if we can
5 list them that would be great and avoid the IH
6 coming into it.
7 MEMBER WELCH: Yes.
8 CHAIR MARKOWITZ: And so -- so this
9 is Steven -- so what do we do about the job
10 titles? Now, there is -- with the modified
11 occupational health questionnaire there may be
12 some more useful information in there. But my
13 question is are those -- would those details
14 plug into a presumption or does that -- is that
15 simply more detail that the IH can have in
16 order to make a decision? But is there any --
17 is there any way of looking at those --
18 expanding those job titles to include similar
19 job titles, similar enough that -- or to
20 identifying the broader universe of solvent-
21 exposed workers?
22 I can tell you from our Former

1 Worker program that's hard to do actually.
2 MEMBER WELCH: For some reason this
3 set of criteria -- these presumptions for
4 hearing loss are so restrictive it's -- each
5 criterion is restrictive. You know, the
6 continuous exposure, having to have 10 years
7 and be in a job title that are chosen because
8 they had very high exposures.
9 So if you have 10 years why not have
10 it -- people doing a range of tasks and then,
11 you know, somebody has to ask -- assess out so
12 that the tasks that are on the occupational
13 history you could add them specifically or be -
14 - or they are recommending that the hygienist
15 be able to call the worker to explore
16 information that's not available in the
17 statement.
18 We could get -- instead of having to
19 rely on job title go back and say if people
20 were cleaning metal parts or, you know, it's
21 just a range of tasks that entail solvent
22 exposure and that might get you included.

1 MEMBER DEMENT: This is John. I
2 think if we -- if the recommendations that I
3 think the SEM committee is likely to make go
4 into place, it will, first of all, they expand
5 the tasks that are there that are likely to
6 have solvent exposures.
7 The other thing it will do, and
8 maybe this will help with the production
9 workers whose tasks are much less defining and
10 quite broad and many, we are suggesting a --
11 that a description be provided -- that the
12 worker themself provide a description of the
13 task -- excuse me -- that exposed them to an
14 agent like a solvent.
15 But that will require probably an IH
16 review of that and I think that's okay. At
17 least it allows for the opening and we are not
18 shutting the door. People who are not in one
19 of those jobs, that classification, they have a
20 way to get into the compensation process
21 reasonably.
22 CHAIR MARKOWITZ: So but that sort

1 of takes it a little bit outside of
2 presumption.
3 MEMBER DEMENT: I'm not sure it
4 does. If we write a presumption in a way that
5 I think we are talking, we make sure that it's
6 not an exclusionary presumption. It's
7 inclusive and hopefully the wording will open
8 the door to this more thoughtful process of
9 looking at what the worker defines as their
10 task.
11 CHAIR MARKOWITZ: Okay. Got it.
12 MEMBER WELCH: But John, are you
13 thinking there would be -- there'd be a list of
14 job titles still where those necessitate high
15 exposure tasks and then if someone wasn't in
16 these job titles but they reported exposures to
17 solvents and described the task would any of
18 those allow the claims examiner to award the
19 worker, you know, accept a claim or would -- if
20 it -- would they always have to go to the
21 industrial hygienist track?
22 MEMBER DEMENT: No, I think that --

1 MEMBER WELCH: Like if somebody --
2 MEMBER DEMENT: No, I think that's a
3 subject for discussion. Certainly, some of the
4 tasks that you mentioned, Laurie, the solid
5 decreasing, you know, a lot of useful solvents
6 for cleaning, you know, you could presume that.
7 You know, those are very high exposure tasks.
8 There may be some others but --
9 MEMBER WELCH: Yes.
10 MEMBER DEMENT: -- might go -- you
11 know, might have to go through the hygienist.
12 MEMBER WELCH: So we could work on
13 that, a list of tasks that would be -- you'd
14 presume exposure and then the process, then
15 saying beyond this industrial hygienist would
16 review them with the information from their
17 occupational history questionnaire?
18 MEMBER DEMENT: Sounds like a
19 reasonable price.
20 MEMBER WHITLEY: If you even added -
21 - on the job title if you even added an
22 asterisk that said or equivalent to job titles

1 or something that would at least, if not in
2 those 22, the CEs just think you don't get it
3 and send it back and it never gets to an IH.
4 Excuse me.
5 If you even had an option for them
6 to say, well, it's not these 22 but it is in
7 the same category then send it on to an IH
8 maybe. But there is got to be some loop there
9 that lets the CE have an option to not -- not
10 just deny it.
11 MEMBER DEMENT: I think Garry makes
12 a good point.
13 MEMBER WELCH: Right.
14 MEMBER DEMENT: We have a lot of --
15 even in the SEM there is lots of alias for job
16 titles statement or perform similar tasks
17 listed to include at least --
18 CHAIR MARKOWITZ: And lastly, is
19 there any -- what's the sense about calendar
20 years?
21 MEMBER VLIEGER: This is Faye. I
22 work with a few of the painters from the

1 Hanford site and their materials may have
2 changed but they still contain the agents to
3 come extent and no one ever measures how much
4 of that is aerosolized and your mounts don't
5 always sit properly when they are working in
6 hot weather from that. There is not reach. So
7 I don't think that the user applicable
8 particularly to the construction workers that
9 are using these things in all variance in all
10 type of spaces and different applications. I
11 just don't see it. One painter comes to mind.
12 We were fighting his hearing loss. Went into
13 the place at work, took a photograph of a
14 material that had calulene in it and when we
15 presented that to DOL they were confused.
16 MEMBER WHITLEY: Garry here. The
17 reason I don't think the 1990 is equivalent is
18 that we all agree that in the later years they
19 got better controls.
20 But let me tell you what they did
21 with those controls. They went from it being
22 sitting out in the open where you used to get

1 up and use it anyway you wanted to until they
2 were in a controlled cabinet. You went over
3 and signed it out and still used the same
4 material for years that you always used. It
5 just was controlled and they knew that somebody
6 used it.
7 But it -- they didn't change those
8 materials until after 2000 or something,
9 really.
10 CHAIR MARKOWITZ: Final comments on
11 this? Because we have got just a couple more
12 minutes left and not much more to discuss until
13 I wrap it up.
14 MEMBER SILVER: Sort of an inverse
15 example that occurs to me, looking at the list,
16 is that the roofing industry switched to
17 single-ply roofing systems in the late '80s,
18 early '90s.
19 Roofers aren't even on the list and
20 they got multiple various solvent exposures
21 beginning around 1990 and those continue to
22 this day. So all kinds of problems.

1 MEMBER WELCH: Yes, that's a good
2 point because there is this -- the industry
3 changes and exposures change, except for, you
4 know, compounds that were completely eliminated
5 from use. You could look at a year but I think
6 the -- setting the time like 1990 is kind of
7 like their 1995 presumption. Just oh, well,
8 things got better so exposures are less but
9 it's not based on an analysis of the specifics
10 at hand.
11 MEMBER SILVER: Toxicity flooring
12 would be another example.
13 MEMBER WELCH: Yes.
14 MEMBER SILVER: Masons would.
15 MEMBER WHITLEY: Welders are not on
16 the list, Steven. You know they clean them
17 after they weld it.
18 CHAIR MARKOWITZ: Okay. So let's
19 wrap -- we will wrap this up. I've got to
20 figure out where exactly this sits in terms of
21 making further progress, I mean, because there
22 is interest by -- expressed by various groups.

1 So I'll figure that out.
2 So do you have the next slide? So
3 having solved all those problems, the question
4 is are there other reasonably common conditions
5 that might be right for beginning to think
6 about the presumptions?
7 MEMBER WELCH: I think my -- my
8 recommendation being slightly cynical is let's
9 push forward with a couple of these, like maybe
10 hearing and COPD, and see if DOL is willing to
11 do what they said and change the presumptions
12 before we spend a lot of time developing more.
13 Sorry, I am outside -- if it's really noisy.
14 Sorry.
15 CHAIR MARKOWITZ: No, that's okay.
16 MEMBER WELCH: Because who could get
17 the -- who could get hearing loss and COPD
18 ready to present at the Board meeting in April
19 and make recommendations to the department and
20 see how they respond.
21 Asbestos, too, if you want to work
22 on that. But I think the hearing loss and COPD

1 could be -- this could definitely be ready.
2 CHAIR MARKOWITZ: Any other comments
3 on that?
4 MEMBER BODEN: It sounds like a
5 reasonable approach. I mean, we won't do more
6 as time but got to start some place.
7 MEMBER WELCH: Yes. I am going to
8 jump off because I am walking down the street
9 and my hands are cold.
10 MEMBER BODEN: Not only big issues
11 and if we tackle those then we have made
12 progress --
13 MEMBER WELCH: Yes.
14 MEMBER BODEN: -- I think we move
15 forward.
16 CHAIR MARKOWITZ: Okay. So the next
17 slide, last slide, is the time table then for
18 making progress on these. The -- it would be
19 ideal if we could -- if we are far enough along
20 to present draft language at the April meeting
21 on some set of presumptions and then discuss
22 those and if we come to agreement agree on the

1 elements with the final writing to occur after
2 the meeting but, you know, shortly after that
3 meeting and the question is what can we get
4 that done for. You know, we could probably get
5 that done for COPD, probably for solvents and
6 probably for asbestos.
7 Whether we are actually -- there was
8 a fair amount of variation, I think, and
9 opinion on this call and I am not sure that we
10 can come -- I am not sure we are going to be
11 able to come to complete agreement on these
12 things in the April meeting. But there is no
13 harm in aiming for that. There is nothing else
14 that'll move the process along. Any comments?
15 MEMBER WHITLEY: This is Garry. I
16 agree that we ought to try April/May to get two
17 or three, or the ones you just named, and
18 sequence them, get them out and let's see what
19 -- how they fly.
20 MEMBER VLIEGER: This is Faye. I
21 agree. Guys, I am going to sign off so I'll --
22 CHAIR MARKOWITZ: Yes. Okay.

1 MEMBER VLIEGER: -- if anything else
2 happens in the next couple minutes I'll hear it
3 from Steven.
4 CHAIR MARKOWITZ: Okay, great.
5 Thanks. Okay. So we are at the end of call.
6 Any final comments?
7 MEMBER SILVER: Yes. This is Ken.
8 Both lists omit industrial hygiene technician
9 and if we recommend collapsing the asbestos
10 list into maintenance, construction, production
11 and engineering I think we should put monitors,
12 particularly for asbestos.
13 There were people trained as
14 radiation control techs who were Johnny on the
15 spot for spec lists and other off-normal events
16 and similarly for solvents where there were
17 working complaints. They were often on the
18 scene to take measurements and it's not easy to
19 say the industrial hygiene techs are afraid to
20 go into portions of certain plants. But that
21 was not the case 20, 30 years ago and I think
22 it's inarguable that there are high exposure

1 risks for both asbestos and solvent.
2 CHAIR MARKOWITZ: Good point. So
3 Carrie, remind me -- can we circulate within
4 this working group draft documents? If it
5 doesn't go to look at before the April meeting
6 so that we can better prepare? Is there any --
7 MS. RHOADS: No, you can do that.
8 CHAIR MARKOWITZ: -- does that
9 violate any rules?
10 MS. RHOADS: No, you can do that.
11 That's just the work of the subcommittee. But
12 just make sure to copy the regular DOL inbox.
13 CHAIR MARKOWITZ: Well, usually we
14 address it to the DOL inbox and copy everybody
15 else.
16 MS. RHOADS: Yes.
17 CHAIR MARKOWITZ: But I guess we
18 could do that.
19 MS. RHOADS: Right.
20 CHAIR MARKOWITZ: Okay. We will aim
21 for that. Okay. So if -- Carrie, I don't know
22 if you have anything you need to say but let me

1 just thank people on the call, both the Board
2 members and the members of the public that were
3 out there.
4 I think it was a productive call,
5 actually, getting some opinions and
6 observations out on the table and hopefully
7 it'll lead to some firmed up drafts of some
8 presumption criteria in which we can help DOL
9 improve the program.
10 Any other closing comments?
11 MEMBER VLIEGER: Not from me.
12 MEMBER BODEN: Thank you, Steven.
13 CHAIR MARKOWITZ: Okay. Take care.
14 MS. RHOADS: Thanks, everybody.
15 (Whereupon, the above-entitled
16 matter went off the record at 3:29 p.m.)
17
18
19
20
21
22

1
2
3
4
5
6
7
8
9
10
11
12
13