DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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MEETING

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MONDAY
MAY 10, 2022

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The Advisory Board met via Videoconference at 1:00 p.m. EST, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

AARON BOWMAN
MARK CATLIN
MIKE VAN DYKE

MEDICAL COMMUNITY

GEORGE FRIEDMAN-JIMENEZ
ROSE GOLDMAN
STEVEN MARKOWITZ
MAREK MIKULSKI

CLAIMANT COMMUNITY

JIM H. KEY
DURONDA M. POPE
CALIN TEBAY
DIANNE WHITTEN

DESIGNATED FEDERAL OFFICIAL

MICHAEL CHANCE

ALSO PRESENT

KEVIN BIRD, SIDEM
RACHEL POND, DOL
CARRIE RHOADS, DOL
JOHN VANCE, DOL

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

1:05 p.m.

MR. CHANCE: Good afternoon, everyone. I'm going to read through my prepared statement, and then we can get underway. I think we're about five minutes late getting started, but that's not too bad for starting using a new format.

My name is Michael Chance, and I'd like to welcome you to today's teleconference meeting of the Department of Labor's Advisory Board on Toxic Substances and Worker Health. I'm the Board's Designated Federal Officer, or DFO.

Today's the date is May 10, 2022, and this is day one of two days of meetings.

As always, I appreciate the time and diligent hard work of our Board members in preparing for this meeting and for their forthcoming deliberations.

We are scheduled to meet today from 1:00 up to 5:00 p.m. Eastern Time today, and we will resume again at one o'clock Eastern Time

tomorrow. Today's meeting will be the first virtual video meeting we have conducted.

So, today, I have with me, as always, Carrie Rhoads from the Department of Labor and Mr. Kevin Bird from SIDEM. He's our logistics contractor.

Since we are starting using a new format, please be patient with any technical issues or extra time that we might take resolving those issues or showing documents on the system. So, we'll try to run the meeting as efficiently as possible while keeping everybody safe and socially distant. Because we're conducting all these meetings, as you all know, in a socially distant environment, and maybe one day we might be able to do in-person meetings, but, for now, the video is the most groundbreaking version of what we have been able to do thus far.

So, regarding meeting operations today, we have a few breaks indicated on the agenda. Please do not disconnect from the call for the breaks. For Board members, please just

put your phone on mute to break and unmute when we resume. This will make it easier on Kevin. We all want to make Kevin's life easier and to make sure that everyone can participate in the discussion.

Copies of all the meeting materials or any written public comments are, or will be, available on the Board's website under the heading "Meetings" and the listing there for this meeting. The documents will also be on up the Webex screen, so everybody can follow along with the discussion. The Board's website for all matters can be found at:

dol.gov/owcp/energy/regs/compliance/advisoryboard.htm

If you haven't already visited the Board's website, I encourage you to do so. After clicking on today's date, you'll see a variety of information, a page dedicated entirely to today's meeting. The web page contains publicly available materials submitted to us in advance. We'll publish any materials that are provided to the Board. You'll also find today's agenda, as

well as instructions for participating remotely.

Again, if you experience any difficulties during this call or video, please email us at energyadvisoryboard@dol.gov.

If you're joining by Webex, please note that the session is for viewing only and will not be interactive until later on, and that's mostly for members of the public outside of the Board that have the ability to present.

Please also note that phones will be muted for non-Advisory Board members until the public comment session, which is today only. The call-in information has been posted on the Advisory Board's website. So, the public may listen in, but not participate in the Board's discussion during the meeting.

The public may offer comments during the public comment session, which starts today at 4:15 p.m. Eastern Time. Depending on how many people want to make a comment -- I believe we have seven thus far -- the Chair will allocate time for everyone. We will unmute your phone

when it is your turn to make your comment.

If you would like to make a comment during the public comment session, please email us at energyadvisoryboard@dol.gov. Let us know, and we'll reserve the time for you.

A little bit about transcripts. A transcript and minutes will be prepared from today's meeting.

During important discussions today, as we are on a teleconference line and a video line, please speak clearly enough for the transcriber to understand. When you begin speaking, especially at the start of the meeting, make sure that you state your name, so that it's clear who is saying what.

Also, I would to ask that our transcriber -- and I don't know if it's electronic or a person at this time -- to please let us know if you have trouble with hearing anyone or any of the information that is being provided.

As DFO, I see that the minutes are

prepared and ensure they're certified by the Chair. The minutes of today's meeting will be available on the Board's website no later than 90 calendar days from today, per FACA regulations. They will, of course, be published earlier than that 90-day date if available.

Also, we'll be publishing verbatim transcripts which are, obviously, more detailed in nature. Those transcripts should be available on the Board's website within 30 days.

As always, I would like to remind Advisory Board members that there are some materials that have been provided to you in your capacity as special government employees and members of the Board which are not suitable for public disclosure and cannot be shared or discussed publicly, including during this meeting. Please be aware of this as we continue the meeting today.

Your materials can be discussed in a general way which does not include using any personal identification information, or PII, such

as names; addresses; specific facilities, if we are discussing a case, or a doctor's name.

Finally, please be mindful we are currently seeking nominees for the Board's next round. So, I encourage current Board members and others interested in serving to submit their nomination. We are also interested in promoting a diverse pool of applicants. So, please do what you can to assist us in this endeavor. Information can be found on our website at the Advisory Board landing page or in The Federal Register. I believe that the deadline for submitting a request to be nominated is May 21st, and if I'm wrong on that, Carrie can correct me.

So, just a little for today for ground rules. If you would like, I think as I mentioned, if you're not speaking, you should mute your phone or video. And you can, also, I think, keep your video, if you'd like, during the meeting until you are up for presenting. I think that is up to you.

So, with that, I convene this meeting

of the Advisory Board on Toxic Substances and Worker Health, and I will now turn it over into the capable hands of Dr. Markowitz for introductions.

CHAIR MARKOWITZ: Okay. Hello, everybody. Good morning. Good afternoon. Thank you, Mr. Chance.

And I want to welcome Board members back and also welcome members of the public, welcome the public members back, if you've been here before, and especially welcome new people who are listening in.

We're going to do introductions in a moment. I just one to make one comment quickly at the beginning of the meeting, which is that we're going to do a fair amount of work over the next couple of afternoons. And this Board's term ends in a little over two months. If we find that we have some outstanding work that we want to get to before the end of the term, we might consider at the end of tomorrow discussing an additional short Board meeting to address those

issues.

In particular, Mr. Chance mentioned a couple of items, a couple of materials that have been given to us by the Department, which we can't really address in a public setting. And so, either perhaps the full Board or a subset of the Board might meet sometime in the next two months to discuss those. So, I just want to mention that at the outset of the meeting in terms of, as we go through the next two days, in terms of our planning for the future.

Let's do introductions. I think it's easiest if I just call people's names.

And I'm Steven Markowitz. I'm the Chair of this Board. I am a professor at the City University of New York. I'm an occupational medicine physician and epidemiologist. And actually, of most relevance, I've run the largest of the former worker medical screening programs for DOE workers for the past 20-plus years.

Ms. Pope?

MEMBER POPE: Good afternoon. Duronda

Pope, United Steelworkers. I retired from being a Rocky Flats worker. Worked there for 25 years. And currently, Director of the Emergency Response Team responding to fatalities and critical injuries.

CHAIR MARKOWITZ: Thank you. By the way, I forgot to mention, my video is not working. So, I apologize for that.

Ms. Whitten?

MEMBER WHITTEN: Good morning. My name is Dianne Whitten. I am the Health Advocate for the Hanford Atomic Metal Trades Council at Hanford. I've been in that context for years. I am a member of the IBEW (audio interference).

CHAIR MARKOWITZ: Yes, okay. By the way, your audio is not coming through that clearly, but we heard most of it.

So, Mr. Tebay?

MEMBER TEBAY: Yes, my name is Calin Tebay. I am the Beryllium Health Advocate on the site here at Hanford. I'm also one of the three representatives at the Hanford Workforce

Engagement Center. I was a sheet metal worker prior to these positions. I've been on the Hanford site on and off since, oh, mid-nineties. So, quite a while.

CHAIR MARKOWITZ: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Hi. I'm George Friedman-Jimenez. I'm an occupational medicine physician and an epidemiologist and serving on this Board since the beginning. And I look forward to the discussion the next couple of days.

CHAIR MARKOWITZ: Great. Mr. Catlin?

MEMBER CATLIN: Good afternoon. My name is Mark Catlin. I'm an industrial hygienist, semi-retired in 2018 from the Health and Safety Directorateship of the Service Employees International Union. And my interest in these issues of this Board began in the early 1990s when I did exposure acceptance for workers at the University of Washington.

Thank you.

CHAIR MARKOWITZ: Dr. Van Dyke?

MEMBER VAN DYKE: Good afternoon, everyone. Mike Van Dyke. I'm an industrial hygienist and associate professor at the Colorado School of Public Health. I've been doing work at DOE sites for many years, particularly around beryllium disease.

CHAIR MARKOWITZ: Dr. Bowman?

MEMBER BOWMAN: Yes, I'm Dr. Aaron Bowman. I am professor and head of the School of Health Sciences. My expertise is in the area of toxicology. There's been a particular emphasis on metal toxicology in my work.

I'm happy to be here today.

CHAIR MARKOWITZ: Great. Dr. Goldman?

MEMBER GOLDMAN: I am Rose Goldman. I'm an occupational and environmental medicine physician, associate professor of medicine, and also environmental health, at Harvard Medical School and Harvard School of Public Health. And I've been doing clinical occupational and environmental medicine for some decades, and with

some special interest in clinical metal toxicology. And I'm on my second tour on this Committee.

I'm happy to be here.

CHAIR MARKOWITZ: Great. Dr. Mikulski?

MEMBER MIKULSKI: Good afternoon. This is Marek Mikulski. I'm an occupational epidemiologist with the University of Iowa, and I direct the Former Workers' Program for the DOE workers who worked in the State of Iowa.

CHAIR MARKOWITZ: Mr. Key?

MEMBER KEY: Good afternoon. Jim Key. I'm President of the United Steelworkers International Union's Atomic Energy Workers Council in Washington, D.C. The Council represents the United Steelworker employees at the DOE EM sites across the nation. I'm a 48-year employee of the Paducah Gaseous Diffusion Site reservation in Paducah. I've been involved with the workers' health since its inception in the late-nineties/early 2000 passage of the

EEOICPA.

CHAIR MARKOWITZ: Okay. Thank you. And Dr. Silver will join us tomorrow.

So, let's spend a couple of minutes just reviewing the agenda. And if there are additional items that we need to add, please mention them.

We're going to start off, as we usually do, with updates on the program from Ms. Pond and Mr. Vance; any information items that I think were crafted to some extent since the past meeting. Although at two o'clock, we're going to discuss, specifically, the follow-up on items that we submitted in written form to the Department. And then we're going to take a short break.

And we're going to review claims. We have 24 claims that were provided to us by the Department, and we're going to discuss these claims and our understanding of how the claims evaluation process proceeds; areas of strength and areas that we have questions about or

possible problems that we see.

And we're going to end the day with a public comment period at 4:15. So far, we have seven public commenters. We may have more, whatever; we're great. We can, actually, if need be, we can go slightly beyond 5:00. Webex won't cut us off.

And then, tomorrow, we'll briefly discuss our standing requests for resources; specifically, for a contractor to do a couple of functions that we have in mind. And then we're going to continue a review of claims.

So, on the agenda, we have two and a half hours between the two days for a review of claims. So, we left a lot of time for claims review. If we find we don't need all that time, fine; we'll just accelerate. But we'll see as it goes along.

And then, tomorrow at two o'clock, we have, from the program, one of the Senior Industrial Hygiene people, Jeff Kotsch. And we're going to discuss questions that we

addressed to the Department a couple of weeks ago about the industrial hygiene reports, and these questions I think will come up in our claims review as well.

So, they have, as of today -- actually, we submitted questions two weeks ago -- as of today, they sent us responses to those questions. So, I advise, if you have a few moments, for Board members to review those before 2:00 p.m. tomorrow, so that we can ask Mr. Kotsch additional questions or get elaboration on the responses that they've already provided. So, very important issues.

After break tomorrow, we'll continue review of claims, as needed. We're going to discuss the compensation program's approach to beryllium sensitivity.

And then we're going to spend, towards the end of the meeting, really just reiterate the announcement of the nominations for the next Board term. But I think what we need to do is to set out, as the Board did in the previous term,

set out issues that are not fully resolved by this Board's term that the next Board might take up when they resume activities.

So, are there any additions or questions about the agenda?

(No response.)

CHAIR MARKOWITZ: Okay. Good. So, let's move on. We're going to now get an update from the program from Ms. Pond and Mr. Vance.

MS. POND: Good afternoon, everyone. This is Rachel Ponds. I am the Director of the Program at the Department of Labor. And I just want to share with you some highlights of what we've been up to since we last spoke. And then, after I talk about those things, John is going to take a little bit of time to talk about the policy issues.

But I just wanted to, first, mention in our last meeting we talked a little bit about our more rigorous Quality Review Program, the fact that our supervisory claims examiners are reviewing more and more cases every month for

each claims examiner, and we have a Quality Review Unit in our national office that is made up of analysts to review cases on a regular ongoing basis -- meaning they review them in real time, which is different from how we used to do it, which was an annual accountability review that was done by District Office staff around the country.

So, these ongoing reviews inform us on how we can move forward in improving our processes, improving our quality of written decisions. And we have been able to create training as a result of these, in addition to just making sure that, if there are any trends, we can address them.

Even despite that, we've been, in quarters one and two of fiscal year 2022, the Energy Program's timeliness and quality results have been outstanding overall, exceeding in almost every category.

One of the other projects that we've been working on this year is, first, we've

provided access to employee claimants to their case files electronically, so that they don't have to ask for a copy of their case file. They can go through a multifactor identification process, and then they can access their cases online. Right now, that process is limited to claimants who are living employees who do not have survivors because we need to still work out some of the Privacy Act issues related to expanding that.

In addition, we will be able getting it to Authorized Representatives of claimants-only employees. And then, you know, in the future, we're hoping to expand it to multiple survivors. Then, they can look at their own case file.

Right now, we are also working to develop a mechanism for digital signatures on EE-1 and EE-2 forms. Basically, that means that we would not require a wet signature. People could complete and submit their applications for benefits online. We're hoping that that will

ease the burden for claimants in obtaining benefits, as far as submitting those through the mail or having to go to a Resource Center. This way, they can be signed and they can send it online. We expect that project to be completed by the end of fiscal year 2022.

We've also developed a pretty robust customer experience program in the last year. We've hired some staff that are experts in the area of stakeholder engagement, customer experience. And they've been really helping us within our national office to develop surveys.

And so, we've sent up surveys at various stages in the claims adjudication process, whether it be after a particular development letter or after a recommended or final decision has gone out, which, actually, we've done three within the last year. And these surveys go to claimants who, as I said, they've received some sort of development action, and we ask them questions about their experience with the Department, with the actual interaction

they've had with the claims examiner. And we're trying to use those as another mechanism for finding better ways to do business, better customer service for our claimants.

Also, we were doing some research in conjunction with those customer experience surveys to make sure that we reach out to underprivileged and underserved communities to provide them information about benefits available to them. We are going to be launching more outreach as a result of that research in 2022, 2023.

Speaking of outreach, we're returning to in-person outreach beginning in June. We're going to be in Aiken, South Carolina, and then in New Mexico and Arizona near the Navajo Region at the end of June. The beginning of June we'll be at the Savannah River Site.

We're also planning at those meetings to have a larger group co-led by not only us, but with other parts of the government. When we go out to the New Mexico-Arizona regions, to reach

out to the tribal governments, the tribal groups out there, to make sure that we are -- there are a lot of other parts of the government -- that could be the VA, the Department of Energy, the Department of Justice -- who have information to share with those groups. So, we're going to be partnershipping with other parts of the government to do those sorts of outreach.

We are also continuing our virtual outreach events. So, in fact, we have one in May that's going to be covering the services of Authorized Representatives and the Resource Centers. And those types of outreach are going to continue at our in-person-led events, but those that are in person are going to be focused a little bit more on the overall generalities of the program itself, just so that we can reach people who may not be aware of the program.

We're also looking to translate more of our brochures and items that are on our web into Spanish, just to be as inclusive as we can on our website and through our communications.

We have also been working on ongoing training, still, for our claims examiners, as I said, partly as a result of the quality reviews that we've been doing ongoing.

As part of the interaction with our employees, we've created an Employee Engagement Team. As some of you may know, we've gone 100 percent remote after the pandemic. And so, all of our employees are spread all over the country. Most of them are not going into an office. So, we are working on new ways to interact with each other to make sure that our communication lines are open. We use a lot of Microsoft Teams. We have a lot of virtual meetings. And so, we've got a group of employees that have gotten together and created a work group to help enhance those communications and inform management in ways that we can continue to assist our employees in their work environment.

I covered a lot, I think, in the last meeting about where we are, what we're doing overall. But our biggest focus right now has

been customer experience/outreach and making sure we're being as successful as possible; learning from any lessons that we get from these customer experience surveys. That will continue. And making sure that we're engaging our employees and training them as best we can.

We have, also, begun conducting reviews of the C&C reports again. That's being conducted in the Policy Branch, and we will be wrapping up those reports for the first set of those reports, I believe, soon and within the next couple of months.

I believe that's all I have. I didn't take that much time, but I think we started a little early. I'm going to turn it over to John, as I know he has a lot of policy issues that he's going to discuss as well.

And I'm, obviously, willing to take questions. I don't know if you want to ask those now or you want to wait until John's done. But I'm fine, either way.

MR. VANCE: All right. Well, good

afternoon, everyone.

My name is John Vance. I'm assuming everybody can hear me.

So, I am going to just go through a quick review of some policy updates for everyone. I'm going to start off by just simply reminding folks that all of our program policies and procedures are available for public review on our website. We maintain an inventory of all our active staff procedures and policies and a section on our main web page dedicated to that subject. So, I encourage folks that are interested in learning about the program or want to check in on things that they hear about to go to that resource available on our website.

We also maintain an archive of expired and superseded policy documents for folks to do some comparative analysis, if they so choose. And we have a tremendous amount of resources available in our public reading room. So, just look for that link on our main page, and you can go and do some policy exploration on your own.

And I'll just remind folks, all of our procedures are designed primarily for providing staff guidance in how employees are to do their day-to-day job in administering established legal and regulatory guidance. And so, always remember that this is, when we're talking about procedural guidance, it's really directed to our staff and how they're to do their job, but it is something that the public has an opportunity to review, to gain a better understanding of what our employees are asked to go through in adjudicating cases.

I also just speak to the fact that a lot of our procedures are updated based primarily on staff experiences and operational updates. And so, when I go through the list of things that we've done, most of that is originating from experiences that we have with either organizational changes or case-specific situations that are driving policy change or a need for procedural updates to help claims examiners and hearing representatives and medical benefit examiners do their job on a day-to-day

basis.

We also have procedures and other things that are influenced by stakeholder entities, such as the Advisory Board and individuals that are petitioning the program to clarify procedures. So, we do have a lot of input from lots of different sources, but primarily from our claims experience in adjudicating cases is where most of our procedures originate from.

So, I'm just going to take, actually, just a few minutes here to talk a little bit about our most recent updates from some procedural highlights.

So, we have published several updates to allowances for telemedicine, and we've released bulletins and circulars that speak to allowances for telemedicine, when permitted by state law. That applies to not only routine care under Circular 22-01, but we continue to extend guidance relating to telemedicine opportunities for home and residential health care. That was

covered in Bulletin 22-01. So, we're trying to maintain that flexibility in allowing physicians, where appropriate and legally permitted, to engage in telemedicine. And that covers both routine and home and residential health care.

One of our big updates for this past six months since the last Board meeting was we did release a major update to our Procedure Manual. We did a release on April 4th, 2022. This was Version 6.0 of our Procedure Manual. And again, this is, I always characterize it as a staff handbook on how to do the day-to-day job of being a claims examiner, hearing rep, or medical benefit adjudicator or examiner.

This is, again, available on our website. When we do these publications for our Procedure Manual, not only will you see the updated Procedure Manual, you will also see a document called a Transmittal. A Transmittal communicates all of the edits and changes that have occurred as a result of the new edition. So, if you want to have a sense of the details

and some of the specifics of the Procedure Manual updates, go to that Transmittal. Those changes will be reflected in the document itself, in the actual Procedure Manual for that version. And we're currently on Version 6.0.

So, some of the changes that we did, speaking to some of the operational things, because we've now moved to pretty much a virtual reality within the program, we removed a lot of historical language relating to the function of handling paper files. We now deal with a completely imaged case file system. So, we do not have really paper case files moving about the program. So, we removed all the guidance relating to that. That was an operational change that we updated in the Procedure Manual.

We've also made some updates with regards to some organizational structural issues, primarily centered around the new functionality of our Medical Benefit Adjudication Unit and their role in administering medical benefits. We clarified staff guidance with regard to handling

and assessing Authorized Representative appointments, just clarifying the role of the claims examiner in overseeing that process and making sure that we are documenting properly any kind of changes to individuals that are designed by a claimant as their AR.

We also updated and instituted a new operational instruction with regard to our conflict-of-interest policy. The underlying policy didn't change, but our process for administering that was clarified, and we added a little bit more detail to our process, just to make sure claims examiners understood their particular role in assessing and communicating with Authorized Representatives and claimants with regard to conflict of interest. And that was within Chapter 12.

We had some input that I think may have played -- the change actually may have resulted a little bit from a conversation that the Advisory Board had, but it also is something that came out of some reviews from our quality

assurance team. And it had to do with the site exposure matrices. We had a policy that required the site exposure matrices to be searched in virtually all claims scenarios, but that is actually not always applicable. So, we have now changed the language in Chapter 15 to make sure that some searches are only really necessary to be documented in the case file in situations where there's actually relevance to have that information contained in the case file, rather than mandating that it be done in every claims scenario.

For Chapter 21 relating to impairment ratings, we just had a very interesting conundrum with regard to how we would handle claim withdrawals involving impairment claims. And we had some experience where we had individuals that were withdrawing impairment claims when they got wind of the fact that they were not going to receive an increase in impairment. So, we had to sort of figure out the temporal sequencing of how to re-engage and resume development in those

cases after that individual returned to seek out a new claim for impairment. So, we had to map out a new organizational process for handling those scenarios.

We had to clarify -- and this was something that originates from staff having some questions about how to best handle impairment ratings involving medical disorders of the central peripheral nervous system. The program has a procedural exclusion that says that we cannot pay impairments -- it's actually a regulatory provision that stipulates that we cannot pay for pure psychiatric or mental impairment disorders, but we can when the mental disorder is a component of or a result of a covered central or peripheral nervous system disorder. So, we just had to provide clarification to our staff as to how to assess that information and how to really inquire, you know, make an inquiry of the training position to make sure that we had that nexus between a mental disorder and a disorder of the central nervous

system.

Within Chapter 23, we had an update relating to -- it actually was driven by issues relating to the coordination on state worker comp situations where we had to really clarify the fact that, even if you have a primary illness that is under, basically, a reduction of benefits because that individual has received state worker comp coordination, that that coordination is required, even if you have a consequential illness that is later accepted by the program as a result of that primary illness.

Coordination is always a very complicated subject. So, if anybody wants to take the time to read through that, it's in Chapter 32 and just speaks to coordinating benefits on impairment awards.

For Chapter 33, we've added some new, additional guidance with regard to validating payments. We have a new resource that ensures that we are paying individuals that are eligible to receive benefits. We have to check payees

against a "do not pay" portal. It's something run by the Department of Treasury to ensure that we are paying individuals that are living and there's no indication that they're prohibited from receiving payment. So, we have this new validation process.

And we've also updated Chapter 33, removing some old language that related to paper checks and processing paper checks. We've gone to a completely dedicated electronic funds transfer process. So, we only allow paper checks in very, very, very limited circumstances.

And then, the last thing that I have here, it does not speak specifically to procedural update, but it's just something that I wanted to highlight because I have gotten some inquiries about it.

So, the current addition of our program's forms expired on March 31st, 2022. And folks have been asking, "Well, are these forms still applicable to the program and where are the new forms?" The answer to that question is, when

you release new public forms, they go through a very intensive clearance process. And the OMB is responsible for actually doing those approvals, and there's some department issues that we have to go through. And if they're unable to release new forms in time, what they do is they continue to extend the prior forms indefinitely on a monthly basis.

So, what's happening right now is that the forms that are currently listed with a March 31st, 2022 expiration date are actually being extended on a monthly basis until we have our new information collection cleared by OMB and the Department. So, for anyone who's concerned about that, as soon as we get our new information collection approved, we will replace the ones that are identified with a March 31st, 2022 expiration date. But, until that time, those March 31st, 2022 expired forms continue to get temporary extensions for use.

And that is all the relevant updates I've got for everyone. So, thank you, everyone.

And I'm turning it back over to you, Dr. Markowitz or Michael Chance.

CHAIR MARKOWITZ: Thank you. Thank you. It's Steven. So, Board Members, any questions for Ms. Pond or Mr. Vance?

(No response.)

CHAIR MARKOWITZ: Okay. I'm not sure whether everybody's mic is on or whether you need to indicate on the screen whether you have a question or not.

MR. CHANCE: Dr. Markowitz, Board members can unmute themselves.

CHAIR MARKOWITZ: Okay. Great. Thank you.

I have a couple of questions, actually.

So, on the Board's website, under the "Briefing Book Materials for Today," there is an item called the "N" -- oh, excuse me -- the "DEEOIC Quality Summary Report 2021."

And, Kevin, if you could go on our website and go to today's meeting date, and

you'll see -- it's at the bottom -- there's the Briefing Book Materials, so that you can show this.

And my question really is pretty simple, which is, what are we looking at here?

Let me say. Let me know when you have -- I'm looking at it online, but, Kevin, if you could let me know when you're showing it. Yes. Oh, I see. Okay.

MS. POND: Yes, Dr. Markowitz, this is Rachel. I can explain what this is.

I mentioned in my brief discussion that we're doing these ongoing sampling, a review of quality. So, the group that's doing that in the national office, they do these, what they call, "episodes." And I think that's why there might be a reference to that. But they do them every two weeks.

And this report summarizes not only the reports that the QA team does every couple of weeks, but also the sampling that's conducted by the District Office. It's a way that we could

tell over the course of a year the results of those quality reviews, both in the quality reviews done by our national office team on an ongoing basis, but also the sampling that's conducted by our District Offices.

So, you'll see here these are the categories that our District Office -- it says, "Supervisory Testing" in the third column over. "Customer Service," "Data Integrity," and Pre- and Post-Adjudication," "Quality Development." So, they do that for recommended decisions in the national office and -- oh, I'm sorry -- no initial processing, which just means the time it takes to get through the portion of the case either before a recommended decision or before it goes to NIOSH.

The "remands," "reopening requests," "Director's orders" -- so, these are the various different categories that not only our Quality Review Team looks at, but also that our supervisors look at when they look at individual cases when they're evaluating their claims

examiners.

So, you'll see "written quality, development, and decision accuracy in the AQ review developments" in that second column. That is, basically, what our -- it's encompassing what our review team does on a regular basis.

Does that answer your question?

CHAIR MARKOWITZ: Yes. But, by way of example, for instance, the "recommended decision," we see the elements that are looked at, the written quality, the development, et cetera.

MS. POND: Right.

CHAIR MARKOWITZ: And then we see the review element. So, how does customer service relate to written quality? I just don't see how they're -- I don't understand how they're connected; that's all.

MS. POND: Well, when they look at customer service, they're going to be looking at -- so, if they're looking at recommended decisions, they'll look through that to see if

there was -- so, the various categories are going to relate to different types of cases. So, if you're looking at a recommended decision, you're looking at the development of the case throughout and you're looking at the quality development, data integrity, and customer service.

They're going to be looking at the phone calls to make sure that people are answering them right, answering them timely, but also answering them in a proper manner. Because our case file contains written notes about the phone call, the interaction, and that sort of thing.

So, these various categories will apply to each of the different portions of the case that the supervisor is evaluating. And these come from, a lot of these come from our operational plan. So, they took our operational plan, which talks about timeliness, and they're evaluating each portion of that.

So, the recommended could have -- and some of these won't be applicable. But if

there's a piece in there that shows that there was an issue with the way that their customer service was throughout the processing of the claim up to the recommended decision, it will be covered there. But it might be covered in, you know, looking at the remand and the recommended decision, just because we're also looking at the way that they're addressing the claimants, and that sort of thing.

We have more details about those, I believe, but I would have to give those to you after.

CHAIR MARKOWITZ: Okay. Thanks.

Last question about this: The score, so is that out of 100? Is that the scoring system?

MS. POND: Yes.

CHAIR MARKOWITZ: Got it. Okay. Thanks.

I have a different kind of question that relates to -- I think it's for Mr. Vance -- it relates to the Procedure Manual.

And so, this came up with a couple of us in reviewing some claims. So, I think we'll see it when we get to one or more of the claims. But we have done Parkinson's disorders and the Board's previous recommendation. And you may or may not recall the detail about this, but we had recommended that trichloroethylene be accepted as causally related to Parkinson's disorders. And the Department agreed; it was added to the SEM. So, there's a link between Parkinson's and trichloroethylene, TCE, exposure.

But it wasn't made into sort of presumption, and unlike some other exposures -- manganese, I think carbon monoxide, acute carbon monoxide poisoning -- that there is a presumption for Parkinson's.

And my question is whether you recall whether there was discussion about making TCE into a presumption for Parkinson's disorders, or whether that really wasn't even subject to discussion. And if you don't remember --

MR. VANCE: Yes, I think Marek

Mikulski had given us a very detailed and descriptive analysis of that. And I think that the context of what we were looking at at that time was making sure that the site exposure matrices was properly identifying toxins with Parkinsonism, Parkinson's disease, and I believe that there was another alias that was added as well.

But I think the focus of that was to site exposure matrices. I don't know whether we had made an attempt or had really delved into modifying the presumptive standard that exists in that one exhibit in Chapter 15. I think it's Exhibit 15-4.

So, that would be certainly something that the Board could take a look at, as far as making recommendations for changing that particular presumption. Because we do have a presumption for Parkinsonism, Parkinson's disease, and I can't remember the third alias that was added. But I believe that the focus of our last discussions related more to how the

information was presented on the site exposure matrices.

CHAIR MARKOWITZ: Okay. Okay. Yes. So, yes, this will come up again when we talk about the claims. So, great. Thank you.

Any other Board members have any questions?

(No response.)

CHAIR MARKOWITZ: Okay. So, we're going to move on now. The next item is a discussion of the written follow-up to our last meeting. And I think the most efficient way of doing this would be for me to, essentially, read the item; summarize the Department's response, and then Mr. Vance can elaborate, or Board members can jump in with additional questions. I think that's what makes most sense. Because I was the one who wrote up the questions, so I can probably summarize them pretty quickly.

These were submitted in writing to the Department a while ago and we've had responses. And by the way, for members of the public, these

responses are on our website under the Briefing Book Materials. So, feel free to take a look at them.

I don't know. Actually, that makes me think that maybe, Kevin, if you want to put them up on the Webex? They're on the same location as the previous things we discussed.

MR. BIRD: Yes, I think I've got the correct document, but can you confirm?

CHAIR MARKOWITZ: Yes, that's it.

MR. VANCE: Yes, Kevin, that looks correct.

MR. BIRD: Okay, good.

CHAIR MARKOWITZ: Okay. So, in the first question, we asked whether, since claimants can access electronic files now, which actually was something that one of the -- I think the first term of the Board it was recommended. And it took time because these things are complicated. But, as Ms. Pond announced, it's now available for many claimants.

Our question was whether the program

gets any feedback, you know, to the extent to which they're used, issues in terms of improving their use, and the like, because, for us, it seemed like a great thing to do. And I guess the response from the Department is that they really haven't had much feedback.

I don't know. I don't know, Mr. Vance, do you think there's a mechanism that might be useful, a way of improving that file access for people?

MR. VANCE: Yes, I know that there are continuing efforts -- and I might let Rachel speak to this, too -- to expand that functionality. But I think, with regard to feedback, I think we have to figure out a mechanism for determining its utility and any suggestions from our claimant population as to how to improve it or what additional capabilities they would be looking for.

So, Rachel, I don't know if you have more to add.

MS. POND: Yes, we've been doing some

research to try to determine how many people have actually used this to access their case files, and I think there was over about 600. And this is more recent, since we did this write-up for you. So, that's why I have a little bit more information.

But I've been trying to figure out exactly, you know, the number of people that have been accessing it, using it. And as I said, it's about 600 right now. But I think, once we have this available to Authorized Reps, we're probably going to have more, because probably a lot of them are used to using electronic methods for gathering information.

We are also having to look right now at some issues related to the information we're getting from the Department of Energy. I'll just mention that because there has been a slight pause in obtaining this access because they've, the Department of Energy has identified some cases where other people's, other employees' information may have gotten into the case file,

like lists that we get, when we get employment verification.

So, we're in the process of double-checking that right now, but our plan is to, after we've ensured that all that is safe, making it accessible to the Authorized Representatives.

And I think, also, when we go and do outreach in person, we can ask those questions, especially since we're going to be having our customer experience team's meeting with groups of individuals throughout the day at these outreach sessions to kind of ask questions and get feedback. So, I'm hoping maybe those outreach events will help us out.

CHAIR MARKOWITZ: Okay. Thank you.

Any comments or questions from the Board?

MEMBER POPE: I have. I had one.

CHAIR MARKOWITZ: Go ahead.

MEMBER POPE: This is Duronda Pope.

Rachel, when are those customer experience meetings happening? You said this

year, right?

MS. POND: Yes, we're going to be having -- we're having an outreach meeting in Savannah River at the beginning of June, and then we're going to be out in the West or New Mexico and Arizona at the end of June.

Those outreach events will be posted on our website. So, if you check there, we'll have the specific details about that in the coming weeks.

MEMBER POPE: Okay. And how they're interactive and that type of thing?

MS. POND: Yes. Well, basically, what we're going to have, we're going to have the presentations, the general presentation about the program, and then the various agencies. The JOTG I think will be at these events as well. They'll be talking about their aspects of the program -- meaning the Department of Energy. I may say a few words, the Resource Centers. And then we'll have the group sessions with our customer experience individuals throughout -- like right

after those meetings. And they'll be doing smaller groups, and people can sign up for them, I believe, is how it's going to work.

MEMBER POPE: Okay. Thank you.

CHAIR MARKOWITZ: Other comments/questions from Board members? And you should just jump in because everybody's mic is open.

(No response.)

CHAIR MARKOWITZ: Okay. So, the next item relates to the IARC Group 2A carcinogens. And the Board had previously recommended a limited list of carcinogens for which there was some evidence of human epidemiologic causation, or at least association with exposure. These are demonstrated animal carcinogens, but they are not definitive human carcinogens. But the evidence doesn't exist for that. But, in common language, we would call them probable human carcinogens. And the Department accepted our recommendation of that, including them.

And we were asked for clarification on

a couple of items. One was there are a couple of pesticides, aldrin and dieldrin, that are related to each other. And there's evidence that one of them causes human breast cancer. And the question to us was, should the link in the SEM include breast cancer in both males and females for both aldrin and dieldrin? And our recommendation was yes, and the Department accepted that recommendation.

A second issue that was clarified -- and actually, if you'd go down, Kevin, we're on item -- we're below this on the screen. But, yes.

So, the second item had to do with styrene, and styrene is an organic agent that there's evidence that it causes lymphoma. And the question to us was, you know, which lymphomas to add or, in general, blood cancers to add to the SEM and linking it to styrene. And our recommendation was to include all of the lymphomas. There are now 70 subtypes of lymphoma, as the science gets more sophisticated.

And so, the Department added all lymphomas to the list. And the category, I think, is lymphoma or lymphoma hematopoietic malignancies. And so, it's a very broad category of lymphomas and related blood cancers that are now listed in the SEM as related to styrene exposure.

And we can look at that SEM, actually. Kevin, you'd just go up a little bit, I think it shows us, very small font, the linkage of styrene to a bunch of different lymphomas.

Okay. So, moving on, unless there are questions -- any questions or comments about these changes?

MEMBER GOLDMAN: Steven, this is Rose Goldman.

CHAIR MARKOWITZ: Sure. Go ahead.

MEMBER GOLDMAN: I'm sorry to interrupt.

Great that it's in the SEM. One of the things that came up -- so kudos for that -- with our group, though, is when you get to your

Procedural Manual, for some of the other carcinogens that were Group 1 and other categories, there were specifications for how many years you had to be exposed or months, and how many years ago. And our job was not to put forth those kinds of specifications that were found for other types of carcinogens.

So, what I was wondering now is, now that it's in the SEM, what happens in terms of the Procedural Manual, in terms of the examiner now seeing somebody who may have had some styrene exposure? Is there some guidance about that next step in terms of seeing if it was an adequate exposure, or put in some criteria that we did not put forth?

CHAIR MARKOWITZ: Mr. Vance?

MR. VANCE: Yes. So, let me create the context here. So, what this change to the site exposure matrices is doing is providing claims examiners with information that can be assessed as they're going through their adjudication steps.

So, what you're looking at here is the health effect data. So, a claims examiner, when they get a claim -- and let's say they have established covered employment and they have established that this individual has been diagnosed with one of these cancer types or one of these lymphoma types. What they're going to do is they're going to begin doing a toxicological or an industry hygiene profiling effort.

They're going to go say, okay, what type of work did this person do? What work processes were they engaged in? What job did they do? And they're going to try to identify work that brought them into contact with one of the identified toxic substances.

If they confirmatively do that, based on that comparative analysis, the next stage would be having an industrial hygienist provide some sort of more detailed profile or characterization of that exposure.

That information is then provided to

either the claimant's physician, if they so choose, or a contracted medical specialist. It is now up to that medical expert to look at and weigh-in on whether or not, from their understanding of the medical health science data, whether the exposure has been characterized for that employee, and was, you know, at least as likely as not, a significant factor in causing, contributing, or aggravating an illness.

So, that question that's being asked is speaking to our normal adjudication process. Now we have an alternative process that speaks to presumptive standards, wherein we don't have to go through that entire process if we have recognized that an exposure -- that means whatever conditions that exist in medical health science, such as latency or the extent of exposure, if those criteria are satisfied, then the case can simply be accepted, once those conditions are met, and the employee has covered employment and the diagnosed condition.

So, essentially, for these two, what

we're, basically, saying is that, if you can show that you have the disease, if you can show that the evidence is that you had contact with this material, and a physician, considering the characterization of that exposure and the existence of that disease, do they have the wherewithal to be able to look at that and render an opinion that there is some sort of work-related connection between the exposure and the disease? So, they would be the one considering any kind of latency or any type of extent of exposure that would be required in order to render a positive opinion.

But that is a different process than our presumptive standard. The presumptive standard just allows us to say we are accepting the case that these conditions are satisfied.

MEMBER GOLDMAN: Well, that's very helpful. Really appreciate that. And I think one of the things that will come out, when we do the review of the cases, is I found that similar situations were judged differently by the

different examiners. So, I guess I don't know if that's something we can deal with or that's just part of the reality. So, we'll get to that.

CHAIR MARKOWITZ: It's Steven Markowitz. Good point, and that consistency is the work of the industrial hygienist and the medical consultants. It's actually one of the chartered tasks for evaluation by the Board.

I mean, I think that it would be very difficult to make, given what we know about the human evidence for these carcinogens, it would be very difficult to defend establishing presumptions for that, because we don't really have much information on the circumstances under which people get cancers from these exposures.

So, the fallback is, you know, connecting them in the SEM, so that at least it's in the universe, and then it's turned over to the industrial hygienist, the contract physician, to make the determination.

And quite frankly, the medical consultant isn't going to have a lot to go on,

right, because the epidemiology has driven it. So, we got to first base on this issue, and we'll have to see how it plays out in terms of the reality.

Any other further comments on this topic? Otherwise, we'll move on.

(No response.)

CHAIR MARKOWITZ: So, the next question that we raised was, what was the current status of the SEM contractor called PTS on three categories of job titles that we thought might be added to the presumptive list for asbestos exposure? And those were chemical engineers, mechanical engineers, and industrial health and safety engineers.

And so, the SEM contractor, Paragon, had sent us a response. And I don't want to bring it up on the screen because it's a couple of pages. But it is embedded in this document, in these responses. So, the public and Board members can go to the link and look at it. But let me just summarize it.

So, the question that we had for the Department was, what's the status of the notion of adding these three job titles to the asbestos presumption list? And Paragon's answer to this was that they had recommended to the Board earlier that death certificates from the National Occupational Mortality Survey, which is what we were using to link job titles to asbestos exposure, that if a small research project were undertaken to look at the death certificates of the job titles that we thought that should be added, and to look at the industry and occupation on those death certificates, that might tell us something about the relevance for the Department of Energy.

And the Board's response to that was it was unnecessary, really, to look at death certificates; that on certain job titles, we agreed with Paragon that there were too few deaths in the system to include them in the list. And those, for instance -- I'm looking at Paragon's response -- so, for instance, several

job titles like layout workers or molding and casting machine operators, in which there were 10 or less deaths in the National Occupational Mortality System as causally related to mesothelioma as an indicator of asbestos exposure, that, frankly, looking at a handful of death certificates for a given job title, it's not enough to tell you anything, basically.

So, we agreed with Paragon that those job titles, that there wasn't enough evidence in the National Occupational Mortality data to pursue them further. So, in a sense, we conceded that those job titles should be set aside.

But that didn't apply to the chemical engineers, the mechanical engineers, and the industrial safety engineers because there were 30 or more deaths in those groups, and they had a relative risk of over two-and-a-half-fold of the general non-asbestos exposed workers in relation to mesothelioma.

And then, finally, we said, well, perhaps these engineer titles aren't being

included appropriately because they had bystander exposure rather than direct exposure, which may or may not be true, because chemical engineers could easily have asbestos exposure if they're involved with pilot projects that involve heat. This is true for the other engineers as well, more so, I think, chemical than mechanical or industrial healthy and safety engineers.

But, in any case, we made the point that -- well, we actually raised the question whether bystander exposure was actually recognized by the compensation system. And the response from Paragon was that SEM does -- I'm sorry. For a moment, I'm just look to see if I can get -- yes, there response was, and I'm quoting here, "SEM does recognize bystander exposure when documentation such as industrial hygiene sampling demonstrates that potential asbestos exposure exists." End of quote.

Which is interesting because it makes you wonder how much area sampling there is or bystander exposure there is for asbestos, even

asbestos going back in time, that would provide support for including a link in the SEM. But I think that discussion is something that needs to be carried forward, the issue of bystander exposure.

But, to get to the end of this, our particular question or point was we thought that there was sufficient evidence that chemical engineers, mechanical engineers, and industrial health and safety engineers, enough evidence that they had asbestos exposure as a presumption, that they should be included in Exhibit 15-4, the Asbestos Presumption List in the Procedure Manual.

And quite frankly, we don't yet have a clear answer to that. And so, I think we need to re-ask that question, or at least ask the Department to complete the process and to give a clear-cut answer on those issues. Because, even in the protracted Paragon response to our question, they note considerations, but there's no conclusion specifically on the question that

we're raising.

So, I don't know, Mr. Vance, how you want us to turn that back to you. I don't think it needs a recommendation per se, but please tell us what you see --

MR. VANCE: Well, when you emailed me about it today, I did talk to our Paragon Contract Manager. And he and I had a conversation about it.

You know, this is not a determination that Paragon is going to make. This is Paragon is being asked to look at information and provide some sort of rationale and justification for adding those to the program's procedural specifications for the presumption.

And I think from my conversation, and reviewing what Paragon had provided us in the past, that, you know, I don't think that we had a clear, "Yes, add them." I think that the concern that I think exists is that the Department of Labor would probably be looking for a more robust understanding as to the rationale for suggesting

that these labor categories were such that you could generalize that anyone working in that specific labor categorization would have had asbestos exposure across the entire weapons complex.

And so, I think what we were looking for is maybe some input, some further input, as to the rationalization or justification for suggesting that that would be the case for these labor categories.

And then we could certainly take another look at answering the question, "Does the Department of Labor feel that that justification is sufficient or not?" And then even being given any kind of suggestions as to what other informational sources might exist that would allow us to say, "Yes, it makes perfect sense to add those as presumptive labor categories for asbestos exposure."

The other point that I want to make is that, even without the presumption, you know, in the situation where you have one of these

individuals working in one of those labor categories, there is still going to be the effort to try to profile their exposure to asbestos that's relevant to their case, and that might bear out in the industrial hygiene records or the profile and characterization that's done by the Department normally.

So, anyway, I wanted to make that point. So, that would be my suggestion, is that perhaps the Board take a look at Paragon's response and maybe provide a little bit more input as to what the generalization should be, and on what rationale the Board's suggesting that that applies.

CHAIR MARKOWITZ: Okay. Well, we can discuss that.

But Paragon I think developed and maintains the SEM, if I'm not mistaken. Does that mean that their expertise really focuses on exposure, industrial hygiene, and the linkage between job titles and toxins? Or does their expertise also extend towards epidemiology and

the health side of the program?

MR. VANCE: Paragon's primary functionality is the inventorying of chemicals and materials that were utilized in the production of atomic weapons at all these sites, and then creating the relational connections between those toxins and the individuals that worked at those sites.

Now they also have capacities and specialists there that assist with the industrial hygiene aspect and, also, the epidemiological aspect of health effect research. So, I mean, they do have a robust capability of assisting in all of these areas, but their primary functionality is, of course, the inventorying of toxins that were worked on at these sites, so that we can connect employees to exposures to those materials.

CHAIR MARKOWITZ: Okay. Thank you.

Any comments from Board members on this issue?

(No response.)

CHAIR MARKOWITZ: Okay. So, we'll get back to you. Let's move on. Item No. 6, yes, Item No. 6 -- I'm just making sure I don't skip something here. Okay.

This had to do with Quality Assurance Plan and information, which this contents was used, and otherwise, the material contained in one of the documents provided to us that we can't discuss in public. So, we're going to punt on that issue until we can discuss it in probably a working group.

Item 7, we requested the program's written guidelines, instructions, or how it is that claims examiners or industrial hygienists can request and perform telephone interviews on the occupational health of claimants.

And to remind the Board, this is something, this was a recommendation that the Board made early on several years ago, which was adopted by the program, although we understand there are actually very few interviews that are conducted. And by "interviews," I don't mean the

occupational health interview that's routinely conducted as part of the claims development process. We were referring to, actually, industrial hygienists getting more detailed information about exposure from individual claimants, so that they could make decisions about frequency, intensity, and nature of the claimants' exposures.

So, what was provided to us is -- I think we're looking at it here -- is an excerpt from the Procedure Manual. And I'm not going to read this. I'm going to summarize it to say that the industrial hygienist works for the contractor who can request that an interview be done. That request goes to the program office, and the federal industrial hygienist weighs that request.

And then it's decided -- if the federal IH decides that an interview would be helpful, they coordinate it with the claims examiner. And it's the claims examiner who actually, I think together with the federal IH, who conducts this interview. The claims examiner

summarizes it in writing and sends it off to the contract industrial hygienist, who, then, uses it in their evaluation.

I think I got that right, Mr. Vance, but correct me now if I got that wrong.

MR. VANCE: No, you got it. And just to add, I did -- I periodically ask the industrial hygiene team about this particular issue and its utility. And I think that we may have talked about this, Dr. Markowitz, on the last call.

I also want to remind folks we collect much more robust industrial hygiene information now, as a result of the updated occupational history questionnaire process that the Board recommended. So, a lot of our industrial hygienists and claims examiners in the Resource Centers feel that the amount of detailed information we get upfront is really mitigating the need to have these kind of interviews. But, nonetheless, these interviews still exist as an option when we feel it's necessary to talk to a

claimant about their exposure.

CHAIR MARKOWITZ: So, we're going to be looking at claims over the last couple of years. So, what would be helpful is knowing, roughly, what is the date that the new occupational health questionnaire was initiated? Do you remember what month, what year? Because we want to, if we're looking at a claim where the old questionnaire was administered, that's different from looking at a claim where the new version was administered.

MR. VANCE: Oh, good question. I know that it's been done within the last two years. So, this would have been -- because when I was looking at the cases that were submitted, I think the timeframe was right in that 2019-2020 timeframe, where we made that change.

So, some of the cases that you had received that the Board has been reviewing had the prior OHQ type versus the new one. I want to say 2020, but I can check and I'll let Carrie know the exact date when that went into effect.

It's probably in one of our prior written responses. So, I'll just have to find that for you.

CHAIR MARKOWITZ: Okay. Yes, that would be helpful just in terms of our review process. But I have a question about this procedure, but I want to open it to the Board members for comments or questions first.

(No response.)

CHAIR MARKOWITZ: So, here's my comment or question: it's the contractor's industrial hygienist who's preparing the report. That person in this procedure will not interview the claimant directly, but that interview is conducted by the federal IH, and the written product of that interview is made by the claims examiner, which makes the information quite indirect.

And the question is: why can't the contractor IH, the one who's going to actually be writing up the report and making probably the most important decision about this, about the

significance of the exposure, why can't the contractor IH actually do the interview, you know, with or without the claims examiner?

MS. POND: This is Rachel.

It's contracting rules that we have that are in place. I believe that's the reason that we have the federal employee, the federal IH do the interview.

CHAIR MARKOWITZ: But, if the contract were modified or if the next time the contract comes around it were changed to enable this, then it could be done?

MS. POND: I would have to look into it. We can definitely -- we can talk about it, but I have to find out. I don't want to misspeak because I'm not a contract expert.

CHAIR MARKOWITZ: Yes, yes, understood. But you get the point?

MS. POND: I understand what you're saying. And we do, I mean, from what I understand, you know, the federal industrial hygienist is in constant communication with the

contractor's. And whatever they would want to relay or make sure they get the information from, they will, but I understand what your point is. And we can talk about it.

CHAIR MARKOWITZ: Yes. Okay. Again, any comments or questions from Board members?

(No response.)

CHAIR MARKOWITZ: Okay. Let's move on to the next item, towards the bottom of the page, Kevin, 8, which is we asked for clarification about the role of the Medical Director in the program. And the Procedure Manual mostly refers to the Medical Director in relation to weighing in on experimental medication issues or on transplants, and not on the issue of impairments.

And then there's some language, Kevin, if you scroll down, there's some language that is included that describes this.

So, thank you for that clarification. That's very helpful. Okay. Again, questions or comments from the Board? Just jump in here.

(No response.)

CHAIR MARKOWITZ: Item No. 9 is describe the public comments. This is interesting because the public makes comments that are highly relevant to the Board's activities and tasks.

And so, we had a committee actually review the public comments going back over the past two or three years to see if there were issues that we should address.

In some instances, we didn't fully understand the public comment. And so, we thought, well, if we don't understand, can we communicate with the public commenter, so that we can improve that understanding?

And so, this is Mr. Chance consulted with the FACA rules or the relevant people who administer FACA rules. And the outcome is, essentially, that during the public comment period we wouldn't get into frank discussions back and forth with public commenters.

But if a public commenter makes a point that we really don't get, at the moment we

can ask for clarification of that point, so that we better understand on the spot what the public comments are saying.

So, I think that's helpful. That's better than what we've done in the past.

Any comments or questions about that?

(No response.)

CHAIR MARKOWITZ: Okay. So, then, we asked a particular question about a public comment that's come in about something called a, quote, SEM Library Index, end of quote.

But, in that instance, the Department didn't understand what the public commenter was talking about. So, we don't know what that means. But if the public commenter is listening and wants to write in or speak to it later, that would be helpful.

The last couple of issues that we had raised from the November meeting, one was about making links in the program's public reading room; a more direct, specific DOE cite, just to make it easier for the public who are looking at

the reading room to find their own particular cite.

And you may have to help me here, Mr. Vance, what the response was.

It sounds like the response was this information is already available on the public reading room and we just didn't work hard enough to find it. Is that right?

MR. VANCE: Well, I do know that we maintain information about our statistics, information about the facility coverage. We also have a separate link that will take individuals to the Department of Labor or the Department of Energy's covered facility website that lists a database research tool that will enable them to look for information relevant to their claim.

So, if they're looking for information specific to the statistics about coverage or benefits that have been paid out to a facility-specific location, we maintain that on our website. And we also have the link to the covered facility descriptions that the Department

of Energy maintains on its website.

So, yes, that information is already available.

CHAIR MARKOWITZ: Okay.

MS. POND: Yes. This is Rachel.

We are constantly trying to improve our website to make it as claimant-friendly as possible.

But I think where you would look for a statistic, there's a specific site for that, and then it was a little hard for us to figure out where else to put it, I think.

CHAIR MARKOWITZ: Yes, well, we can take another look, as outsiders, to see does it make sense to us. So, we'll do that.

The last issue is kind of historic, actually, relates to the history of the program. It was at one point where the National Cancer Institute assisted the program in interpreting certain cancer types, and the extent to which they were included in certain either ICD codes or in certain generic categories of cancer.

And subsequently, that was reversed, I think, by the program. I think that's the right word. So, the NCI assistance wasn't maintained.

And I think this may have developed, actually, from a public comment. And so, the question was -- I think it's nothing that seems to be in -- no change envisioned, but I take it that the final sort of permanent resolution is that the Department, the program, really doesn't at all or cannot rely on the NCI's interpretation of cancer types. Is that right?

MR. VANCE: Yes. So, what happened -- you know, folks can certainly go back and look at our prior response. But, you know, there was a legal issue that came up about our reliance on NCI to determine sort of definition of particular anatomical locations as being specified cancer for the Special Exposure Class application.

And what, ultimately, it came down to was that those types of questions are actually more suited to a case-by-case analysis by a qualified medical specialist. So, in other

words, a physician looking at a pathology report is now asked, based on the pathology, do you feel that this cancer qualifies as one of the 22 specified cancers?

So now, we rely more heavily on physician interpretation of the anatomical designation of cancers to determine whether or not a cancer located in a particular organ system qualifies for the SEC. So, it's now much more of a case-specific kind of question.

CHAIR MARKOWITZ: Okay. Thank you.

Any comments or questions about that from Board members?

(No response.)

CHAIR MARKOWITZ: Okay. It's 2:30. We're going to take our break now for 15 minutes, until 2:45, and then we're going to start discussion claims.

So, to Board Members, I've done a lot of talking. So, I'm going to start off with other people talking about specific claims. We're not going to show anything about the

claims. We're not going to ask Kevin because of PII, personal information.

But if you, on your own computer, want to bring up a claim or need to bring up a claim you are going to discuss, that can take a couple of minutes. So, feel free to do that during the break. Thank you.

(Whereupon, the above-entitled matter went off the record at 2:33 p.m. and resumed at 2:48 p.m.)

CHAIR MARKOWITZ: Well, we can get started. We'll start with a case that Mr. Key is not on. By the way, any volunteers? Anybody have a case that they want to start with?

MEMBER KEY: Present.

CHAIR MARKOWITZ: Okay. Great. Mr. Key is here. Okay. So, we can just go down the list that I sent around.

The two reviewers on this case -- it's a cancer case -- are Dr. Bowman and Ms. Pope. And last four digits are 6199. It's a leukemia case. If one of you wants to start talking about

that case?

(No response.)

CHAIR MARKOWITZ: Are you all there?

MEMBER BOWMAN: This is Aaron Bowman.

MEMBER POPE: I'm here, too.

CHAIR MARKOWITZ: Okay. Okay. Yes, yes, yes. Do you want to talk about that case, 6199?

MEMBER POPE: Are you talking to me, Dr. Markowitz?

CHAIR MARKOWITZ: I'm sorry. Either one of you, if you want to just start it off?

MEMBER POPE: Dr. Bowman, do you want to go?

MEMBER BOWMAN: Yes, I can go. This was a case of cancer, specifically, leukemia, that was denied. It was denied both under a Part B as well as Part E. The basis of the denial was, in part, based on an inability to verify employment.

But I focused mostly on the Part E elements. So, some parts of employment were not

able to be verified, but some were, and these were for jobs of truck driver and pipefitter. There was discussion of insufficient IH evidence for exposure to benzene, which I think was the basis of the case.

So, for the jobs that were verified, the SEM search did not give a link to any exposures relevant to any of the jobs there, including those that weren't able to be verified, which was apprentice electrician and pipefitter.

My general review of the case is it seemed to me that the case was done adequately. I thought the evidence of the case, which had both a C&C referral as well as IH referral, and utilized the SEM -- when employment was not able to be verified, they went ahead and did Social Security records of employment. And from there, they were not able to make certain matches that were part of the claim.

And so, based on the totality of evidence, I thought the final decision was justified.

CHAIR MARKOWITZ: Ms. Pope, do you have any comments?

MEMBER POPE: Yes, I do. After reviewing this case, I think that they were able to identify some years of employment. DOE was able to identify some years of employment.

But, in my opinion, in some of these cases, claimants were not adequately represented. I believe this claimant needed an advocate or an attorney to help him navigate that. And we all know that it takes energy to be able to -- you have to defend your claim and your case. And I just felt that he needed some help in helping to build his claim.

He had claimed that he had worked in a reactor who supplied air and his dosimeter was pegged out. And I can remember working on a site where that was so true. A lot of times, we got information that no data available.

So, I just felt that he just needed -- and also, in 2015, his memory was affected by a stroke. So, just trying to recant and recount

all the places that you've worked and the activities that you did, I think he just had some problems in helping trying to defend his claim and figure out what exactly exposure he was exposed to.

CHAIR MARKOWITZ: Actually -- this is Steven Markowitz -- I took a look at this claim. A very interesting claim. And what I didn't understand about it was he reported multiple job titles at Savannah River -- I think mostly Savannah River -- and partly as a construction worker. So, he had truck driver. He was a pipefitter and he was an electrician.

The claims examiner asked for the industrial hygienist's opinion and filled out an exposure worksheet. And in that worksheet -- I think the claims examiner fills out the exposure worksheet -- it does cite the pipefitter and the electrician work, but, then, only asked the industrial hygienist about a truck driver. And a truck driver is unlikely to have significant benzene exposure, just on the face of it. So,

that's true for, say, an electrician or maybe a pipefitter.

But, in any event, as I think Dr. Bowman said, what was pursued was the truck driver exposure, and that's what the claims examiner asked the IH to look for, look at, and the IH didn't find much exposure to anything that caused leukemia. And that was transmitted to the CMC, who said, obviously, no causation because no exposure.

Yet, on the occupational health questionnaire, the claimant writes that he worked as an electrician and a pipefitter, in addition to a truck driver. And the EE-3, which is the employment history form submitted by the claimant, also cites these multiple different job titles. And it was quite a few years, actually, as a pipefitter.

So, what I didn't understand, and maybe, Dr. Bowman, what you noticed that I didn't notice, which was if the employment wasn't verified, if only the truck driver employment was

verified, then that's the only thing they could pursue.

But I thought, frankly, seeing it, seeing the claimant report this exposure -- or excuse me -- these job titles multiple times and having it acknowledged in the exposure worksheet, but, nonetheless, not pursued, seems unfortunate.

Essentially, to say that construction workers usually work for outside contractors, and verifying their employment can be challenging. I know that the program has a special system to do that, but they weren't employed in the same way as many DOE contractors, you know, the major contractors, who had kept, I think, probably better track of who was on the payroll and what they did, and what the time period was.

Any other comments on this case?

MEMBER GOLDMAN: I don't have a comment on this case, but at some point I want to just discuss something that I noticed about this approach to carcinogens and causation using the, quote, POC, or probability of causation. So, I

don't know if you want to do it on this, but it came up in two situations I was looking at that I think were problematic, or just to clarify. So, I don't know if you want me to bring it up here or in this specific situation, but it relates to cancer.

CHAIR MARKOWITZ: Well, so let me just say that the issue of Part B, radiation exposure and carcinogenesis is not a topic that this Board addresses. There's a different advisory board, the President's Radiation Advisory Board, which addresses those issues. So, we don't really deal with them.

That said, feel free to comment.

MEMBER GOLDMAN: It does because we're commenting on causation. And so, there was a different opinion, a totally different approach to it if it was irradiation-related cancer versus one that was chemical, and how that played out. So, I just wanted to contrast that for how we're dealing with cancer.

But I don't know if this is the

appropriate time, and I'll see if I can recreate what I understood happened. I actually spent a lot of time trying to sort this through, but I don't know if you want me to do it here or another place.

MR. VANCE: Okay. Dr. Markowitz, would you mind if I step in here and just clarify really quickly, and maybe it will provide some context?

CHAIR MARKOWITZ: Sure. Go ahead.

MR. VANCE: Okay. so, what I'm hearing is there's some questions about maybe how the probability of causation for radiological exposure flows from the Part B side into a Part E claim, right?

So, what you have to remember is there are specific rules that are in place for how we evaluate radiation under Part B. Those rules specify that the probability of causation for non-Special Exposure Cohort class cases must be 50 percent or greater.

The probability of causation is really

looking at radiological exposure. Okay? So, keep that in mind. When you switch over to Part E, what you're looking at is the effect, the toxicological effect, of toxic substances. And under the definition under Part E, that's any material with radiological, chemical, or biological components that can cause disease.

So, when we look at a Part E case, we're going to look at all three of those components. We're going to say, all right, what is the effect of radiation on the development of a cancer or other types of illnesses? If it's a cancer, we're going to use that probability of causation model and say, if it's 50 percent or greater, we know that there is a work relationship that exists. Okay?

If it is not established to be radiologically independently-induced cancer or condition, then we'll switch over and look at the chemical and biological aspect of it.

So, you always have to remember we're looking at three different types of exposure

under Part E. We're looking at radiation, chemical, and biological.

So, if the probability of causation is less than 50 percent on the B side, that means on E, we're saying that the radiation is not contributing or causing or aggravating that illness, at which point we would then look at chemical, the chemical component of that disease. Is there some chemical that could influence the development of that disease? Or biological exposure. So, you just have to understand the interaction between those three.

MEMBER GOLDMAN: Right, but what I'm having an issue with, then -- George Friedman-Jimenez made comments on this -- is, actually, the phrasing of probability of causation. Let me try to frame this.

When we talk about something probable, more probable than not or greater than 50 percent, if you're looking at it like the case I did with TCE, it's the medical examiner or some of us just saying it seems like it's more

probable than not that this exposure had some significant contribution to the development or exacerbation of the cancer. So, it's a sort of general sense from looking at the literature on it.

Now, when I went -- and I'm just going to go in detail here -- into the radiation one, which was denied, by the way, where somebody had radiation exposure, but the issue was -- and I guess I can't bring this up. It's hard for me.

What happened here is that there was a calculation -- I guess I can't bring this up -- there was a calculation done of this POC, looking at the radiation badge, and then doing a calculation due to a logarithmic or logistical, or some kind of statistical calculation that said that there was only a .62 percent probability of causation due to the radiation way of looking at it, based directly on the amount of exposure that was calculated doing this radiation POC process.

So, that person had their claim denied because the probability of an exposure, which was

not the probability of an exposure, but of a -- it was .62 percent. Even though the person had radiation exposure, that was denied.

And another person who had trichloroethylene exposure, where it wasn't specifically measured -- it was just said the person had it for a year or something like that, and it's on the SEM.

And so, looking at it as an examiner, and looking at the general gestalt of it, could you say it's more likely than not that this exposure, where we don't have some specific logical statistical way of doing this, it's more likely than not, because this person had a year of exposure with some latency, it's more likely than not that this has contributed to the person getting cancer?

And so, that's this judgment call that many of us in occupational health are very familiar with. You look at the data and that's your opinion that you come to.

And so, I looked at these two cases

where somebody had definite radiation exposure, but that was denied because it went through this statistical process to come up with too small an exposure to render it probability of causation. And yet, for trichloroethylene, we didn't do such a thing, and it was more of a judgment call because the person had a year of exposure, or whatever.

So, I'm just trying to draw the contrast here. Because, in the end, the claim, whatever part you're on, comes down to: is it more likely than not that this exposure, whether it's radiation or chemical, was a significant contributing or exacerbating factor to the development of the cancer?

So, I'll just stop there. That was what I thought was very confusing.

MR. CHANCE: Yes, if I may, Dr. Goldman, going kind of on what John was saying, it is that the POC that you're talking about, that's the radiological part that's developed by NIOSH. To question that, that's not within the

purview of the Board.

So, if you're talking about the toxic part, which is Part E, that's what we're more concerned about. If someone was denied because of their POC under Part B, we don't have a dog in that fight.

MS. POND: But I will say, just to add to that, you know, the law is the way it's written. And that's why there's such a difference. Because, under Part B, every case for cancer, unless it's an SEC, has to go to NIOSH, and they're the ones that make that determination under the law.

MR. CHANCE: Right.

MS. POND: They write a report. We review it. We follow the rules for whether -- you know, they'll come back and give us that assessment.

For, under Part E, there's such a huge difference because the standard is a lot different. It's at least as likely as not a significant factor and causing, contributing to,

or aggravating. So, the standard is a lot more -- it is more subjective and it is more related to what the doctor is going to tell us about it, because that's where the aggravation/contribution comes in. That's where it's not going to be as, like you said, like a very specific percentage because that's not the way the law was written.

And that's the big difference in why a lot of people can be confused by it because the law is written in such a manner.

MR. VANCE: Yes, so you're always going to get math -- you're going to get a mathematical calculation for the radiological aspect of it for a cancer, and that will be applied to the B or E case. If that mathematical outcome is less than the 50 percent threshold for probability of causation, you, then, convert over to look at the chemical aspect, which has no math. What that has is discretion of scientific experts and physicians looking at the totality of the evidence and saying, in their view or in their interpretation of the evidence, this is my

answer; I think it's a work-related problem or not.

So, you have to understand that dichotomy of radiation and probability of causation for the radiological side, and then, for chemical and biological, it opens up to a much more subjective analysis by subject matter experts.

MEMBER FRIEDMAN-JIMENEZ: This is George Friedman-Jimenez. I'd like make a few comments on this.

A decision to separate the radiation causation and the chemical causation actually is based on an assumption, which may or may not be true. And I don't think we have the science yet to know this. The assumption is that there's no interaction between the radiation effect and the chemical effect. In other words, they're purely additive. If they're not purely additive, then we're losing something by considering them individually and not considering them together.

So, the fact that we have two boards,

and we're mandated to consider them individually, will work if there's no interaction between the radiation carcinogenesis and the chemical carcinogenesis.

So, we don't have a lot of good science on this. It hasn't been well-studied. For example, benzene and radiation causing leukemia, benzene and trichloroethylene. So, it's really a gray area in the science.

But I have to say, I have done some radiation epidemiology and I've looked at the probability of causation, and it's been very controversial. In fact, it's been, actually, decided that it should be considered, rather than probability of causation, the assigned share, because there was so much controversy about whether you really can calculate a probability of causation from epidemiologic data. And it seems that you can't.

But they fudged it, and instead of using the calculated probability of causation, which is based on the attributable risk in a

epidemiologic study, they used an upper 99 percent confidence interval. In other words, it's a much more inclusive definition.

And the case I reviewed was something like 3 percent probability of causation was the point estimate. And the upper 99 percent confidence interval was 21.4 percent. So, this includes a lot more cases, and it's sort of a fudge factor that they use. But, in reality, the science is really not well enough developed to say that you're actually calculating a probability of causation.

So, there is some judgment involved in the radiation calculation, as well as in the chemical calculation. And it's difficult for us, because we know the radiation calculation did not include any consideration of benzene exposure or trichloroethylene, or other chemical exposure. And we're not including any accounting of the radiation exposure.

And we don't know whether there's an interaction or not; in other words, more than an

additive interaction. So, we're in a bit of a gray area here.

But I think 0.6 percent probability of causation, which, generally, when they say probability of causation, they're reporting the upper 99 percent confidence interval; that's low enough that it's really far away from 50 percent. And I don't think it's an issue. If it was 30, 40, 50 percent, 49 percent, then there would be some grounds for questioning it.

But it's really not a well-developed science underlying it. I just wanted to make that comment.

CHAIR MARKOWITZ: Okay. Thank you. Thank you.

MEMBER GOLDMAN: So, the same case, and just to mention something else, where this person also had TCE exposure; so, in addition to the radiation. That got dismissed.

But the TCE exposure that I -- by the way, I want to say I thought that the claims reports I read, overall, were really well put

together and referred to IH and organized. So, I just wanted to make that positive feedback on that.

But this person was referred to the IH, who said he had mild TCE exposure for one and a half years. And then the CME, basically, threw that out because he read an old article from 2007 that said -- one article -- you had to have long-term exposure, more years than that. And said he didn't have enough years of exposure.

And this gets back to those criteria or however much you need. And another case I had had less exposure. But, anyway, so this person had one and a half years of exposure and, quote, a mild level, but it's a carcinogen; there is no safe level. And actually, the examiner didn't review any of the more recent studies that I looked up in IARC. And you know, I can't spend too much time on this.

But the basic thing is, because of his opinion, despite the IH coming forth and saying there was mild exposure over one and a half

years, this was thrown out. So, I felt a little badly about that because, I mean, the examiner gave his justification, but it wasn't really a thorough look at the literature to throw it out because the patient only had one and a half years.

And for some of the other carcinogens, I looked at the presumptions. It didn't necessarily mean -- for some of the presumptions, I just looked up some other carcinogens, and it was one year of exposure. So, it seems like there wasn't consistency. Like if for other carcinogens there were presumptions that one year of exposure with a sufficient latency was enough, here's a situation where the person had one and a half years, and still, it just got thrown out.

So, I don't know if this is demonstrating a need for some kind of either presumption or consistency about how much time that you need for an exposure to have it, for a carcinogen, to consider it significant.

CHAIR MARKOWITZ: No, that's -- this

is Steven. Yes, that's a tough question. But whatever it is, consistency would contribute to fair treatment.

It's a really interesting discussion. I think we should move on, if it's all right, to more claims.

And let me just cite the next two claims that we'll go over, just to facilitate things.

I'm, actually, sort of going down the list. The next one I have here for Catlin and Whitten as the reviewers. It's a chronic lung disease case. The last four digits are 0106. It was a COPD or asthma case.

And then, after that, we'll go back to cancer, Friedman-Jimenez and Tebay, looking at 0219.

MEMBER FRIEDMAN-JIMENEZ: Question, Steven. Will we have access to our reports that we sent in? Because I didn't screenshot it, and I don't really remember every single thing I wrote.

CHAIR MARKOWITZ: Yes. Sure, sure.

Dianne, if you could send George the spreadsheet? Although the spreadsheet that you sent to me doesn't have any reviews by George. So, I'm a little confused about that. But if you could send it to him --

MEMBER FRIEDMAN-JIMENEZ: I just posted them today.

CHAIR MARKOWITZ: Oh, okay.

MEMBER FRIEDMAN-JIMENEZ: But can we get access to what we've posted?

MEMBER WHITTEN: Yes, let me take a look and I'll send you -- let me look.

CHAIR MARKOWITZ: So maybe while Ms. Whitten is doing that, Mr. Catlin, do you have 0106, chronic lung disease?

MEMBER CATLIN: I do.

CHAIR MARKOWITZ: Yes, you want to --

(Simultaneous speaking.)

MEMBER CATLIN: Sure. Sure. So, this is a claim filed by a worker who was listed as a laborer working for a contractor at both Hanford

for about a year plus -- and also at the Pacific Northwest National Lab for a shorter period of time. So this is in a -- this is sort of a decade-long exposure. The claim was for -- was denied, but the claim was initially for COPD, asthma, and bronchitis as a diagnosed illnesses.

And I guess working through it there -- the employment history was -- what was provided by the claimant wasn't very detailed and in some cases simply that they didn't remember. And the Department put together some of the employment history, but I was surprised that -- and maybe I shouldn't be surprised by the lack of records from the contractor. This was only from the last probably 15 years, so this wasn't something that happened decades ago.

But the Department put together records in some part by using radiation badge records that they had. So I thought it was interesting how they were able to piece that together. But it seemed like the claimant probably could have found better information with

some assistance to document their history.

The claimant also didn't provide -- didn't seem to provide very strong medical records and medical evidence. And I'm not going to go into that in great detail since I'm not a physician. I did have a question. There was no diagnosis listed for asthma, but it wasn't clear to me that the physicians actually did a proper analysis. I'll leave that up to the medical community.

But I was interested in the -- in sort of the SEM and the exposure history, which that we think it worked pretty well once they determined her time -- the claimant's time in their work. And their history as a laborer was primarily -- I think you'd probably imagine it was silica exposure, potential welding fumes, asbestos, wood dust and things like that. Her history seemed to focus in on being around a lot of work around -- silica dust work for almost a year and without use of respirators of any sort, it seems.

And then she mentioned -- the claimant mentioned some -- that a lot of their time was in the rat lab and there was a concern about exposure to rat feces and other rat contaminants. That sort of disappeared from the rest of the record after her history and didn't seem to be pursued.

There was a referral to industrial hygiene to review after the claims examiner got to review the work from the SEM, but -- and this sort of goes to what Steven has mentioned earlier. I mean, the language in the industrial -- there's no evidence the hygienist talked to the claimant, or that a hygienist talked to them. And the -- what was repeated constantly was that there's no available evidence of personal area industrial hygiene monitoring data to support that in any position at these facilities and the dates claimed that any of these exposures to any of the agents would have exceeded the existing regulatory standards.

And if I think of -- if I just focus

on silica, because that's where I think I would have focused on the silica dust exposure based on her evidence, this was at a point when the silica dust standard for OSHA was under lots of review and it eventually did change. And so there's -- so depending on what they mean by existing regulatory standards, whether that means OSHA PELs or something else, it's just not clear.

And there's no other information provided by the industrial hygiene report as to what this is based on. It's just simply a review that says there's no air sampling data and therefore the exposure must not have really occurred, which didn't -- which in my experience seems -- I'd like to have seen some better justification that just kind of a sentence that was repeated throughout their industrial hygiene report multiple times.

So that's my sense of this. I'm not sure the case is all that strong and I might not have decided it any differently based on the exposure, but there seemed to be -- I'd rather

see more clarity and transparency about the industrial hygiene interpretation.

CHAIR MARKOWITZ: Okay. Thanks.

Ms. Whitten?

(Pause.)

MEMBER WHITTEN: Sorry. I was trying to send those files. I think I came to the conclusion that claimant was unresponsive when they were requesting more information about their exposure and their job classification duties. So I had to agree with what she said. I didn't really have anything else to add.

CHAIR MARKOWITZ: Okay. This is Steven. I actually also looked at this case and this was a person that worked for a laborer for a short -- relatively short period of time, a little over a year, 2009-2011. And the conclusion for the industrial hygienist was, as reported, that didn't exceed regulatory standards.

I thought what was interesting was actually this person had two CMC evaluations: one

for asthma and the CMC concluded that person didn't have any evidence of asthma. And then a second CMC evaluation some time later for -- I think for COPD, which was diagnosed by the personal physician, but frankly there wasn't much evidence of it in any case. So there was a negative causation conclusion, which I agreed with.

Okay. So let's carry on here. I was hoping to go to a cancer case, Dr. Friedman-Jimenez, 0219. Also Mr. Tebay.

But, George, did you get your report back from Diane?

MEMBER FRIEDMAN-JIMENEZ: No, I didn't, but I do have enough notes that I think I can make the points that I want to make.

CHAIR MARKOWITZ: Okay. So, whichever of you wants to start. I don't know. It's up to you guys.

MEMBER FRIEDMAN-JIMENEZ: Okay. I can start. Let me see. Get my video going here.

This is a man who worked as a field

engineer and project field engineer according to the IH who developed myelocytic leukemia. And the exposures of interest, of concern were benzene and 1,3-butadiene, both of which have been pretty definitely implicated in leukemia carcinogenesis.

There were a number of problems in this case that I looked at. First of all, the job titles that were listed initially: field engineer and project field engineer, were only some of the jobs that he did. And in different parts of the record, although not in the IH report, it mentioned general manager or executive having jurisdiction of electrical, EHJ, surveillance maintenance utility manager, SMU, project or program manager and technical operations manager. And then he worked in deactivation and decommissioning, which involves a variety of different exposures. And in the SEM the deactivation and decommissioning actually does list both benzene and 1,3-butadiene as potential exposures in the Hanford site where he

was working.

In his letter -- he wrote a letter to the program. He described that he spent much of his career doing deactivation and decommissioning. About half his time was in the field. Although he was listed as an engineer he did a lot of field work doing remedial actions and working near or in the environmental management/waste management facility where there were a broad range of toxic waste materials being disposed.

So the question that the claims examiner posed to the IH actually did mention most of the above employment information, but the IH report said that there is, quote, no evidence of significant exposure to benzene, formaldehyde, or 1,3-butadiene. However, they didn't seem to have considered four out of the six job titles and ignored the four that would seem to me to have more potential for hands-on exposure to those -- at least two of those three toxic substances and which the SEM actually identified

as having exposure to benzene and 1,3-butadiene.

So other than the summary statement that the IH gave I didn't find any discussion of why the SEM mention of 1,3-butadiene and benzene would not be relevant to the claimant. It just seemed to be unrecognized by the IH. I didn't see any discussion of estimates of likely air levels of those substances, both of which are very volatile, that would be encountered in deactivation and decommissioning work, or overseeing deactivation and decommissioning work. I didn't see any mention of the environmental management/waste management facility.

So given these considerations I would have expected that the IH would have systematically looked at the potential for exposure to at least benzene and 1,3-butadiene. Formaldehyde was not mentioned in the SEM for those -- for the D&D work.

He mentioned that -- the IH mentioned that there were odors associated with benzene and butadiene, but it didn't account for -- often

there's masking of odors when you have a highly complex mixture of vapors and you can't pick out any specific odor. So to me these oversights in the IH report really reduced the credibility of the exposure assessment very substantially.

So given that I think the IH report was incomplete and under-discussed, I mean I don't know how much exposure there was. I just -- it was puzzling why the IH didn't discuss it. Saying that there's no evidence of significant exposure, that's a very vague phrase. I mean, what do you mean by no evidence and what do you mean by significant?

We recognize that the existing evidence is incomplete. Sometimes it's self-contradictory. He said in one place that he had had urine measurement for radiation and in another place that he had not had urine measurement for radiation. He did contradict -- there were contradictory points there. But that evidence is not strongly against exposure. And given that the SEM mentioned both benzene and

1,3-butadiene it seems to me that the IH report is obligated to show evidence that there was not significant exposure. Why should we ignore the SEM mentions rather than just dismissing that there's no evidence?

So I think that use of that term, there is no evidence of significant exposure, is really problematic.

It's often an over-simplification. And it may be true. I don't know. I haven't really -- I don't have the level of knowledge that the IH on site has, but it was really an inadequate discussion.

And even if the SEM hadn't mentioned these two substances, I think that the exposure assessment should assess the existing evidence for exposure to the two main substances that can cause leukemia. Did the person have them or not in the jobs that they had? Presumably the IH has firsthand knowledge of the exposure situations in these facilities.

Significant also is a problematic

word. It's too vague. I mean here's a guy that worked 26 years in situations that may have had exposure, low-level exposure, or even maybe higher-level to benzene and 1,3-butadiene. But what does significant mean? The OSHA PELs are not necessarily protective for carcinogens in particular, so does significant mean higher than exceeding the OSHA PEL or other regulatory standards? That wouldn't be an adequate exposure assessment especially given that there were so many years of exposure. And lack of violation of the regulatory standards does not imply that there's not enough exposure to cause disease, to cause cancer. So I think the IH report was a real weak link in this process.

And then the CMC report is based largely on the IH exposure assessment. And so in my view the CMC was not critical of the IH report and was -- could have been misled by the dismissal of exposure. So that's why I think that this case is worth reviewing and I think that these pat phrases -- we need to look at them

and define some of the terminology a little bit more clearly.

So there are three reasons why I think the report should be reviewed. The inadequacy of the IH report, which I've seen similar inadequacy other cases.

The strong impact of the IH report on the CMC report. If the CMC is not going to be critically evaluating the quality of the IH report, then we have to really be careful that someone evaluates the quality of the IH report.

And the inefficiency and I think error-proneness of this kind of review of medical records. I think there were 2,077 pages here and it took me quite a while going through them. Steve Markowitz sent me an index of all the important documents. That helped a lot. Even so, I probably spent over an hour just going back and forth and looking for all the different pieces here.

And I think you should reconsider having clerical staff organize these medical

records in a way and index them so that the physicians, the IH, the CMC, and the claims examiners can all find things much more quickly. And it would save a lot of people a lot of time if that were done, I think.

So that's what I had to say about this case and I'd be interested to hear what other people think.

CHAIR MARKOWITZ: Okay. Thanks.

Mr. Tebay?

MEMBER TEBAY: That's a hard act to follow right there.

(Laughter.)

MEMBER FRIEDMAN-JIMENEZ: Sorry about that.

MEMBER TEBAY: I was hoping at some point (audio interference) because I think you said everything I wanted to say. But I will say that one thing that I noticed is in the DAR obviously there was no IH records located. That kind of set the pace for this whole claim adjudication. He does have multiple job

categories or roles and responsibilities that were not applied in the SEM. I think the look in the SEM based on job category only is obviously going to provide not much feedback on his -- in his favor. I think that crippled the claim a little bit.

I looked at the CMC report, and the CMC report was actually done in March I believe. Let me look here. Somehow I'm screwed up here on my --

CHAIR MARKOWITZ: It was March. Yes, you're right. It was March.

MEMBER TEBAY: I think it was done in March, but if I remember right the -- and that was in 2018, I believe.

CHAIR MARKOWITZ: 2019.

MEMBER TEBAY: Okay. So the IH report was done in December of '18. And if you read the IH report, to kind of follow up with what Mr. Friedman-Jimenez said, they used the term that any exposure would have been incidental in nature occurring only in passing and not significant.

Again, the word significant. Yet this whole IH report doesn't have much basis besides him just -- or the IH themselves basing it on this table that he created on job classification of electric field engineer -- electrical field engineer, area field manager, supervisor/manager, manager, right? But there's really -- I don't think it was as detailed or done as well as it could have.

But then immediately -- if you go to the next document in that claim, it goes to the CMC report. It literally looks like the CMC has cut and pasted the IH report in Word and provided it to the claims examiner. And I pulled it up right now so I can look, but once again here's what the CMC documents that the IH report -- his exposures were incidental in nature occurring in passing and not significant. Therefore, it's as least likely as not that the criteria is not met in my opinion.

But I don't see where the CMC really applied or tried to focus on the medical and the

exposures that were present. I don't think they did a good job of digging into those potential exposures or those exposures that the SEM did identify and really focusing on were those or could those have been a causal link, right? I don't think they did a good job. I think that they -- personally I think they just used the IH's report, cut and pasted it, and that was it.

I definitely think that this -- now I also have to say on the front end as a claimant when you document that you were in all the buildings, or most of the buildings, or a lot of the buildings, that's not easy for the CE to also search the SEM, but I do think there was enough information on the claimant's part that the CE could have done a better job in the SEM search.

I think the IH could have did a better job of maybe summarizing that or providing more of an accurate description of the exposures. And I also think that the CMC could have done a better job of focusing on the medical rather than just cutting and pasting the IH report into a

summary for himself and providing it. So I think this claim also has some justification for a re-look at this point.

CHAIR MARKOWITZ: Okay. Thank you.

This is Steven. Also just very quickly, I looked at this case and I agree with what's been said. Just to add, the claimant sent in a letter and actually sent in waste sampling results that he had had. Uncommon for people to have that, but he had them, which they did -- and which -- in which they were measuring, but then -- so that's additional information. They didn't show very high levels, but you have to more about the sampling technique to understand the significance.

In any case, yes, I agree that the CMC got off the hook. Once CIH said no significant exposure, then it's a pretty easy CMC report to write. I don't have access to the (audio interference) at the moment. I don't know whether the questions for the CMC specifically state the industrial hygienist failed X, Y, and

Z; so tell us about causation, or whether the CMC is directed or provided with the exposure data in order to make their own independent assessment. We should look at that with these claims. But I agree. Basically it was a little mystifying to me why a D&D -- D&D work wasn't specifically addressed in the industrial hygiene report.

And one last point: The industrial hygiene reports use -- list a standard set of references generally: textbooks, the SEM, and the like, for many of the reports. And I don't have access to a number of those references, so I don't know what they say, but they're very general. I would like -- personally I think the industrial hygienists should state what they looked at from the claimant so there can be reassurance that they looked at all the relevant items that they should look at.

Now I know that on the request, the IH referral form the claims examiner does list what they provide to the IH. And I just think as a matter of process the IH should include that

report so there can be reassurance that they actually looked at everything that was available.

Anyway, that's all the comments I have.

Let's go to another case.

MEMBER TEBAY: Can I say one more thing?

CHAIR MARKOWITZ: Yes, sure.

MEMBER TEBAY: The CMC report does refer -- it does refer to the IH report. In fact the CMC report, first paragraph refers to that the IH report dated 12/20 of '18 is provided -- summarizes potential exposure. It also documents the exact same table that was built as far as the years of employment and exposure. I mean it's super -- I mean, it's very similar. All the information in the CMC is very similar to the IH report.

CHAIR MARKOWITZ: Okay.

MEMBER TEBAY: I just feel like that there was a lack of focus on the medical and the exposures that were identified rather than -- it

seems like the CMC based his decision on a lack of exposure -- or the CMC report, rather than the exposures that were identified.

MEMBER FRIEDMAN-JIMENEZ: I'd like to comment on that, too. In medicine as a physician we're always trying to validate the input data that we have on each patient. For example, you get a pulmonary function test report and you generally will look at the PFT tracing and the numbers in addition to the language of the report from the lab. And so I think the CMCs really take the IH reports for granted without questioning them.

And I think sometimes you just have to think critically about could this be? If someone is doing decommissioning and disassembly and there are lots of chemicals around, is it really -- does it really make sense to say that there's no evidence that they have exposure to benzene or 1,3-butadiene? I think the CMCs need to be more questioning and more seeking validity of the information that they get, and the IH report in

particular.

So I'm not saying it's 100 percent due to the IH. I think the CMC has some responsibility there, too, to see is that really a valid report?

MEMBER TEBAY: There's one sentence in the CMC report that I want somebody to explain to me at some point, but it talks about thank you for referring the case. All records that have provided have been reviewed and considered in developing a medical opinion. But it says no medical treatment, care, or diagnosis has been provided as a result of this chart review. Does that mean that the CMC himself did not receive that from the DOL, or does that mean he's not including that information in the report he's providing to the DOL?

MEMBER FRIEDMAN-JIMENEZ: No, what that means is he's not actively performing any work that should be interpreted as diagnostic treatment or the like. It's a malpractice thing.

MEMBER TEBAY: Okay. Perfect.

MEMBER FRIEDMAN-JIMENEZ: In other words, he's not being the doctor here; he's just expressing an opinion regarding causation.

MEMBER TEBAY: Okay. Perfect.

CHAIR MARKOWITZ: Let's move on then. We go with Dr. Mikulski and Dr. Van Dyke. There's a case, there's an impairment case, 4418, that we should look at. And then after 4418 let's move onto Ms. Whitten and Dr. Goldman, 7255, which is a cancer case.

So 4418, when you find your notes. And we got Dr. Van Dyke with Dr. Mikulski.

MEMBER MIKULSKI: I can start on that.

CHAIR MARKOWITZ: Oh, okay.

MEMBER MIKULSKI: Hello?

CHAIR MARKOWITZ: Yes, we're here. Go ahead.

MEMBER MIKULSKI: So this is a three-part case with a primary claim for emphysema and subsequent impairment rating and a claim for home health care, all three of course accepted. This is a -- this was a 77-year-old former worker from

Los Alamos who worked as a mechanical technician for almost five-and-a-half years with exposures concern in asbestos, cement, diesel exhaust, silicon dioxide, crystalline, welding fumes, wood dust, and endotoxin.

So the primary claim was accepted in March of 2020 based on the treating physician's opinion who opined that it was at least as likely as not that the exposures to asbestos during this claimant's employment had contributed to their emphysema.

The impairment rating was done a few months later and it seems that this is a well-based impairment with proper application of AMA guides for impairment rating and the final impairment rating was Class 3 of 45 percent, whole person impairment. As far as I can say based on the knowledge of the tables for respiratory impairment this is a proper application of the criteria.

I don't really have any issues other than this claimant will be eligible for another

impairment reevaluation. And based on their PSE results, which were submitted together with the home health care claim, looks like this may be another impairment for the benefit of the worker.

CHAIR MARKOWITZ: Okay. Thank you.

Dr. Van Dyke?

MEMBER VAN DYKE: I think this was a really long claim, like 800 pages long, but I'll say that I think this is a good example of where the SEM worked. The SEM listed the substances that he was exposed to and really said that he was exposed up to moderate levels. So it wasn't one of those where it said low to very low and therefore no claim. I think this one is a good -- and I think this might be a good example of more of a trades type worker or somebody exposed more industrial as compared to more administrative exposures. And seems to work well in that situation.

So the other thing that -- as compared to the other claims I've looked at, sorting out what claim was what in this was tough, but I

think that claiming that the -- your condition was caused or aggravated -- and the or aggravated part I think makes it easier to -- for the CMC to really make that claim. So I think those were the two take-homes for me in terms of SEM working and the aggravation part.

CHAIR MARKOWITZ: Okay. Nice. Thank you.

Okay. So let's move on. The next case was 7255, Ms. Whitten and Dr. Goldman. It's a cancer case.

MEMBER GOLDMAN: I'm happy to go. This is related to the one I mentioned, but if Ms. Whitten wants to go first?

MEMBER WHITTEN: I don't care. I really found this case very interesting (audio interference). You can go ahead and start.

MEMBER GOLDMAN: Okay. So this is a person who basically had kidney cancer, and this was the person I mentioned before who had radiation, but also exposures to trichloroethylene, TCE. And so this was the one

that I mentioned that there was an IH report that says it was, quote, mild exposure for a year-and-a-half. And the CME, or CMC basically looked at one-year-and-a-half and the rating from the IH as mild. I don't -- forget why it was mild. Maybe Ms. Whitten knows that. But basically the CMC just referred back to one German article that said you had to have many, many years of exposure at high dose. And because of that just dismissed it.

And yet a recent -- I looked up the recent IARC update on TCE, which brought in mechanistic and other factors. And again looking at could this have aggravated or been a significant contributing factor. It just seems to me that if one looked at the IARC; and it is a carcinogen, that the -- he just looked at this case from 20 years ago. And it is a Group 1 known carcinogen. And so if you're saying is this a significant increase risk or exacerbation of the cancer, you don't have the specific reconstruction process, so it becomes a judgment

call.

And so the person had a year-and-a-half exposure at what was considered, quote, mild by the IH. And maybe Ms. Whitten can speak to that. But still why wouldn't that be considered more likely than not that in some way it contributed to a kidney cancer? The person didn't have any other risk factors that we knew about, although the CMC didn't really explore that as well. So that's what I thought about that one.

MEMBER WHITTEN: I agree with you. The IH I remember stated that he had low potential to exposure. And I think if they would have looked in the file a little deeper or if the CE would have sent more information, they would have seen that this company used over 2,000 gallons of this trichloroethylene every year in their processes. And they used no PPE.

Also in the file that I saw this claimant had filed several safety concerns; and this was back in 1985, about them not following

the MSCSs when they were working and other safety concerns about different chemicals as well.

So I just think they should have looked a little deeper into this claim. Kind of disappointing to me to see that they didn't approve it as well. If they would have reached out to the claimant I believe and asked questions about his exposure, I think maybe they would have (audio interference) the other direction.

MEMBER GOLDMAN: Well, this -- again just to repeat what I had raised earlier, the person had a year-and-a-half exposure at a mild or moderate level with sufficient latency. Why is this just not considered at least a potential exacerbating factor? So I don't know how much one leaves to the CMC. I mean if there's some guidance like I found for other carcinogens, it was pretty -- it's laid out. If you had more than one year exposure or whatever, those -- that was counting. And here because it wasn't sort of laid out, it sounds like this didn't get counted for this person just because there wasn't some

specific presumption laid out for TCE, although one year of exposure had been mentioned as a presumption for others.

CHAIR MARKOWITZ: This is Steven. Let me just point out that there is a presumption in the procedure manual for kidney cancer and TCE, but you need five or more consecutive years of exposure prior to 1990 at one of -- a large number of listed DOE sites. So this person didn't qualify for a presumption because they didn't have five years of exposure.

And then in the procedure manual it says if a person has TCE exposure but doesn't qualify, then you go the regular route of claims abeyance. So this is one of the unusual cancers in which we have presumption, but the person doesn't qualify for that.

MEMBER GOLDMAN: Well, thank you for that correction. I guess I didn't see that in the procedural manual. So he didn't qualify because he didn't have the five years.

CHAIR MARKOWITZ: Yes, but that's not

a correction really. I mean the things you were pointing out are still valid: one to two years contribution. How do you decide that? But not by the presumption in the procedure manual. That's all.

MEMBER CATLIN: This is Mark Catlin. I have a question about the exposure assessment. Do you recall if they looked at exposures for both airborne and skin contact out of exposure, or was it just kind of lumped together?

MEMBER GOLDMAN: I don't recall.

MEMBER CATLIN: Yes, I didn't see any of these in the claims I've looked at, but I often see the hygiene reports and exposure assessments focus in on the air sampling and sort of ignore that -- they assume that there's no skin exposure and there's -- and that's not a route of entry. And I think that's often a hidden exposure.

MEMBER GOLDMAN: I guess that's a good point, but I guess now I wonder how this really works. If there is a presumption of five or more

years of exposure and the person doesn't have the five or more years of exposure, I mean we could debate that and that may go back to these earlier -- this earlier German study that the CMC referred to.

Steven said it doesn't exclude it, but it would seem to me that if I was the reviewer and I saw that in the procedural manual I would say he didn't have enough years.

CHAIR MARKOWITZ: This is Steven. I'm not sure I get your point, Dr. Goldman.

MEMBER GOLDMAN: Well, if the person didn't have five years of exposure, they only had one-and-a-half, wouldn't that -- it's almost -- so if you don't reach the presumption, let's say, that you've got it, how could somebody then come forth and say well, he only had one-a-half years, but I think it's still a contributor? I mean can that happen if the procedural manual really says it to be five years?

CHAIR MARKOWITZ: No, no. What -- no, the -- well, maybe I didn't read it right, but if

the person meets the criteria for the presumption, it doesn't go to the IH, it doesn't go to the CMC. The claims examiner can just approve it, right? But if they don't -- like someone like this, they don't meet the five consecutive years prior to 1990, then the instruction in the procedure manual is develop the claim in the regular way, seek out the opinion of the IH and the CMC if it's relevant.

MEMBER GOLDMAN: I see. So you still have a chance, in other words?

CHAIR MARKOWITZ: Yes.

MEMBER GOLDMAN: Well, I have a sense that probably this just went through with the concept that the person didn't have enough exposure and they just weren't giving enough credence to a year-and-a-half.

CHAIR MARKOWITZ: Right. Right. Okay.

MEMBER FRIEDMAN-JIMENEZ: This is George Friedman-Jimenez. Can we discuss for a minute how the understanding of presumptions is

among the CMCs and the claims examiners, because my understanding is that the presumption is just a streamlining to remove the case from the time-consuming detailed evaluation pathway and just approve it immediately. Whereas if it doesn't make the presumption, it automatically is considered by the claims examiner to be sent to the CMC and the IH for detailed evaluation of exposure and causation. Is that generally the understanding of everyone in this process or since Rose misunderstood it, is there a chance for misunderstanding it among the CMCs and the claims examiners?

CHAIR MARKOWITZ: But the thing is if it meets the presumption, then it doesn't get to the CMC. So if it goes to the CMC, the CMC doesn't need to know about the presumption because the person hasn't qualified under the presumptive clause.

MR. VANCE: Yes, and, Dr. Friedman-Jimenez, remember that the claims examiners are trained to follow a process. The process in

Chapter 15 of our procedure manual directs how the sequence of causation development occurs.

Now you can talk about quality control and quality assurance. That's something separate. But the process would be I'm a claims examiner. I'm sitting down. I'm looking at this case. Oh, I see that this condition is asbestosis. I should compare that to what's in the presumptive standard in the procedure manual.

If the conditions of the presumption are satisfied, I'm done because what that presumption is basically saying is that the program has made a determination that if these criteria are met, you have a condition that is a -- that an exposure to asbestos was a significant factor in causing, contributing, or aggravating this disease. You've met that legal standard for compensability.

And if that standard or that presumption is not satisfied for whatever reason, yes, we now have to go an alternative route. We now need to have a physician look at the unique

characteristics of that case and render an opinion as to whether or not the doctor feels that for whatever analysis that they're applying in their judgment that is that enough in their mind to say that that exposure was a significant factor in causing, contributing, or aggravating the disease. So it is a very discretionary process whereas the presumptive standard sort of negates the need to do all of that.

So, yes, that's a standard practice of claims adjudication. The claims examiners would understand that. I don't know how familiar the CMCs would understand that. But the other thing I want to highlight here is do not forget that the process is actually not simply the claims examiner making that determination. Whatever decision that would be, the outcome of this process would be something that the claimant could review and contest.

We would then have a secondary -- essentially a secondary review by the Final Adjudication Branch. They too have been trained

to understand what the procedures are for adjudicating these cases. And if they would see a defect in how that adjudication at the district office level had occurred, they can then remand it. So in other words, if a hearing representative would look at it and say oh, in an oral hearing the claimant raised the objection that this should be covered under the presumption, and I agree with that, they would remand it back saying you've got to adjudicate this case under the presumption and approve the case versus maybe a denial based on a doctor's opinion. So don't forget there are -- the claims adjudication process is set up to have basically a two-tier review process in place as well to ensure compliance with our procedural guidance.

And if you look at that, there was a document that came up earlier where we doing these quality assurance reviews. That's also something our Quality Assurance Team is looking at. Decision accuracy. Is the outcome of that case appropriate for program procedure? Did they

apply those presumptions correctly? So we have all these mechanisms to make sure that the process is working correctly.

Now we can always argue about the application of the medical health science or the physician's opinion, but the process is designed to make sure that we're working within the confines of that procedure.

MEMBER FRIEDMAN-JIMENEZ: Great. Thank you, John, for clarifying that. It would be very interesting to know what percent of approved cases are approved by presumption and what percent are approved after the detailed process. That would give us some idea of how helpful the presumptions are and how commonly they're met and how uncommon -- how commonly it is that they're not met, but it's still an approved case. Is there a chance we could get data on that? Do you have data?

MR. VANCE: There's a chance for everything. We have to look at the requirements for me to get a data pull. Off the top of my

head I don't think that we record that kind of information in a way that could make it easy for data analytics people to just pull that out because we don't record necessarily a presumption versus a non-presumptive standard for acceptances. We can look at it.

And I always say let's take a look at it out and figure out what we could do, but I don't think off the top of my head there's an easy way to make it happen.

MS. POND: Yes, I mean I think for those cases we record whether it's gone to an IH, we record whether it's gone to a CMC. We have that information, but it would probably take a lot for us to really know that the reason it got accepted, even if it didn't go to one of those places, was because of the presumption.

Again, I agree with John, we can look into it, but I wouldn't have high hopes that we're going to get it to that granular of a detail.

MEMBER FRIEDMAN-JIMENEZ: Well, it

would be good to just know what percent have been approved without IH and without CMC and what percent required IH and CMC. That would be helpful.

MS. POND: Yes, we might be able to get something like that.

MEMBER FRIEDMAN-JIMENEZ: That would be easier to get.

MR. VANCE: I would also say I think most CEs and HRs are very motivated to apply presumptions because then it avoids having to do all of this extra development. So there's also an incentive for them to make sure that they are fitting folks into the presumption wherever possible. And that's why we always have focused our efforts with the Board in trying to expand available presumptions because it does really make for a much more efficient and claimant-favorable kind of outcome.

MEMBER GOLDMAN: So maybe it's another point. It's interesting that for this cancer it's five years of exposure, how we come up with

that, and for others it may be something else. I mean for another time to discuss how those come up.

Another interesting thing is whether or not an examiner who's done these before might be influenced by the presumption. Well, even though that makes it really quick to go through it, would somebody be influenced by that to say well, you really need -- to be really certain about it you really need five years. So we don't know that, how much the examiner might be influenced if they knew that's what the presumption was.

CHAIR MARKOWITZ: Okay. This is Steven. Thank you. Interesting conversations.

And historically, just to reiterate what Mr. Vance said, the Board has tried to assist in developing presumptions wherever possible. And that's why we want to add the chemical engineers, the mechanical engineers, and the industrial safety engineers to the asbestos presumption.

Okay. It's 4:10. Public comment. I was going to bring in Mr. Key on the next case from Paducah, a cancer case, but I don't think we'll finish it by 4:15. So let's just see.

Ms. Rhoads, I have a list of seven people, public commenters. Is that still true?

MR. CHANCE: Steven, I think it's more now.

MS. RHOADS: I just sent you a list in your email. It is now 15 people.

MR. CHANCE: Yes, why don't we go ahead to that now, Steven, and then we can save the cases for tomorrow. Okay?

CHAIR MARKOWITZ: Okay. So we're going to go a little past 5:15, I guess -- 5:00, I guess, but that's a good thing.

Yes, how do you -- you want to just call them off on the list? I don't know how they join the call. I think we (audio interference).

MS. RHOADS: Kevin (audio interference), so Kevin will assist. When we call the name, he'll match it with the call-in

number.

CHAIR MARKOWITZ: Okay. And I guess we're going to ask people to speak for no more than five minutes, which will run our public comment period much longer than expected, but it's good to have public participation. And I'll try to keep track of time. And I'm afraid I'm going to -- may have to interrupt some people, but there's always the opportunity to follow up with additional written comments. So let's start.

MS. RHOADS: Okay. Do you have the list or do you want me just go down the list?

CHAIR MARKOWITZ: No, no. I want you to deal with the list. I don't have the full list.

MS. RHOADS: Okay. So is Bob Rothe, or Rothe -- I'm not sure how to say that, if you're on the line?

Kevin, do you have that number?

MR. BIRD: He is with us.

DR. ROTHE: Am I on?

MR. BIRD: Yes, we can hear you.

MS. RHOADS: Yes. Yes.

DR. ROTHE: And can you see me?

MR. BIRD: No, but we will just do audio for public comments today.

DR. ROTHE: You're just hearing me, right?

MR. BIRD: That's correct.

DR. ROTHE: First of all, thank you very much for this opportunity. I'm a little nervous, so I've written my notes out of what I wanted to say. I request permission to simply read these notes and file them in.

Actually in anticipation of this I sent my public comments to Steven Markowitz and to John Vance.

CHAIR MARKOWITZ: Let me just say -- Mr. Rothe, this is Steven Markowitz. I read those comments. They were excellent. They were very clear. Just so you know.

DR. ROTHE: Okay. Steven, let me also say to you that since then I have embellished

them with further strengthening articles. So I'd like to just go ahead and read this and I'll try and be prompt. How much time do I have? Eight, ten minutes?

CHAIR MARKOWITZ: Five minutes, I'm afraid.

DR. ROTHE: Oh, well, I don't know how far I can get. There are actually three bullet points to what I want to talk about. The one -- the most important one is my personal objection to your endless denials of my hearing loss claim. (audio interference) hearing loss is being bilateral sensorineural hearing loss.

If my exposure to ototoxic chemicals during my 30 years working at the non-nuclear industry either caused or contributed to my hearing loss, as two doctors have said; it said it is likely as not to be the case, then the provisions of the EEOICPA ought to provide me compensation, that law applies -- provides. I assume DOL, DEEOIC, and the Advisory Board would agree with that conditional comment. Please say

yes.

(Laughter.)

DR. ROTHE: All I'm saying -- all I said was if it turns out that I did get the disease or the illness from my working in the nuclear industry, I should be covered.

CHAIR MARKOWITZ: Yes, subject to provisions of the law, absolutely.

DR. ROTHE: Okay. I have been denied because of my job title that I held at retirement, associate research scientist. DDO, Denver District Office, recommended denial. DOL in Washington denied my claim. And DFAB went along with the same thing, denying my claim in all cases because my job title did not fit DOL's list of acceptable job titles. And I believe that DOL constructed this list themselves. I am claiming that that list is incomplete. I possess denial letters from all organizations: EDO, Washington, D.C., DFAB and all the FAB recourses, that contain exactly those words of denial because of my job title.

Now one important point is -- and deals with my letter I received dated April 18th denying my request for a reopening signed by Rodney Sanchez, but I think really it's Rachel Pond, Ms. Pond. But anyhow, that job title that was used for denial is not the job title I had when I did the work exposing to ototoxicity. This is obviously true because of the FBI raid or Rocky Flats which terminated all operations fissile material from the time of that raid in 1989 until the closure of the plant several years later. Still DOL denied me using the wrong job title.

Now I pointed that out when I requested the reopening of the case, but nonetheless it says very clearly in that April 18th letter from DOL that the Washington District Director -- Washington Director merely sent it to the Denver District Office person who in turn just simply rubber stamped the denial. And I think that's wrong. In other words, I'm being judged for the wrong job title.

I did hold job titles during my years that I was being exposed to ototoxicity. I don't recall those job titles exactly, but I think DOL has them from my work history. I did the work -- I'm going to skip over here. I did all the work of a chemical operator, a laboratory technician, and a welder, and a -- oh, a laboratory analyst. So chem operator, lab analyst, laboratory technician, and welder. Those are four of the jobs that are on DOL's list of acceptable job titles.

Now I didn't hold those job titles, but I did the work. In other words, I really object to -- an industrial hygienist said, Dr. Rothe, you did not do the work you did. I know that sounds silly, and it really is, but that's the way it comes across. I have proved to DOL at the FAB level and every other level that I did in fact use trichlorethylene and methyl ethyl ketone. The methyl ethyl ketone was for welding, not in the sense that you think of welding with sparks and electricity and stuff. It's chemical

welding. But nonetheless it is welding, not just gluing.

Okay.

CHAIR MARKOWITZ: I'm sorry. I'm sorry. I'm sorry to interrupt you, but actually your time is a little bit over. So you've sent in some comments. If you could -- which were very clear. If you have additional materials to send to the Board, that would be wonderful, but I'm afraid we're going to need to move on.

DR. ROTHE: Steven, could you please review what you just said?

CHAIR MARKOWITZ: Oh, I'm just concerned -- we have to move on to the next public commenter, but --

DR. ROTHE: Yes, I understand. Shall I send this to you?

CHAIR MARKOWITZ: Yes, okay. Yes, I mean if you sent anything to me, it will be -- go into the public comments on our website, but you already have six pages of public comments on our website actually which --

(Simultaneous speaking.)

CHAIR MARKOWITZ: So we welcome additional material.

DR. ROTHE: Yes. Well, I will send that to you in the next day or two.

CHAIR MARKOWITZ: Okay. Thank you very much.

DR. ROTHE: I'll include (audio interference) to John Vance. My ultimate goal is to have the Advisory Board reverse DOL's denials. Thank you for your time, gentlemen --

CHAIR MARKOWITZ: Okay.

DR. ROTHE: -- and ladies.

CHAIR MARKOWITZ: Thank you. Carrie?

MS. RHOADS: The next person is Terrie Barrie.

Kevin, you have a number for Terrie Barrie?

MR. BIRD: I do not see Terrie here.

MS. RHOADS: Okay.

MR. BIRD: Terrie, if you are called in, could you please send an email with the phone

number you're called in, otherwise we will get back to you.

MS. RHOADS: Okay. And we can move onto Sandra Thornton then.

MR. BIRD: Just find that real quick.

MS. THORNTON: Hello?

MR. BIRD: All right. Sandra is there.

MS. THORNTON: Yes, thank you very much. So my name is Sandra Thornton, I'm the POA for Case 50024054.

And just before I start really quick, thank you for everything that you do. I am pointing out some problems, and I was like a media assistant.

My brother-in-law's case, I am the person that's responsible. I have three solid doctor's letters, 3400 pages' worth of evidence. Twenty-five claims have been filed. All have either been denied or never processed. Some have sat there for 23 months, for seven months. One is currently in reconsideration.

So my points are the DEEOIC is not following giving a higher precedent to doctors who are familiar with employee, have all the medical records, have the scientific data, have the rationale and the worker evidence, the toxic evidence, radiation, etc.

Anyway, my brother-in-law has over 120 toxins exposures, over 16-plus linked to his occupational illnesses, exposures at Paducah Gaseous Diffusion Plant. The Cascade Upgrade Program Phase 1, Phase 2.

So my point is this: coworkers have verified it in hearings and have provided documentation, it's still denied. He's had two near-death hospitalizations. So his case managers, three of them, have processed unsigned, not submitted by us, claim forms versus using our 21 new claim items and signed documents. So just processed wrong diagnoses and documents we never submitted.

Failed to inform the IH and the CMC of zero respiratory protection for over two years at

Paducah. Failed to inform that he was in a special program which was not used throughout the entire U.S. And unfortunately, with his occupation, DEEOIC keeps treating him like any other janitor, lube man, or maintenance man, and that's not the case at Paducah.

Failed to use a prior-1995 standard. Failed to process countless claims, and I'll give you all the documents. It's not using the -- SEM properly. The case managers and the hearing reps are actually using abbreviated versions.

They are not allowing the links of COPD, bronchitis, and emphysema. Matter of fact, the case managers said, There's no such illnesses linked to bronchitis. Well, there is, and it's under pulmonary disease, chronic obstructive. And that's where COPD, bronchitis, and emphysema is linked all together.

Case managers and hearing reps are not informed and not informing the IH and the CMCs of the Paducah DUP (phonetic) Phase 2 modification program with plutonium, etc., and so forth.

The DARS are being denied to the IH and the CMCs. They're called irrelevant on their documents, and they're not providing the positive radiation, high radiation of gamma, beta radiation and alpha. The positive toxic hazardous test.

They are not providing the medical documents from Paducah to IH and the CMCs, such as tumors removed, all the teeth removed after being purposefully hired in at age 18 and by 22 all their teeth was removed. A tumor grew on his head for three weeks and had to be surgically removed, too.

His x-rays by age 22 and 24, which had been perfect at 18, now showed clear inhalation exposure. So, anyway, they're not -- I don't know whether case managers are not educated on inhalation exposure and what to look for in records but again.

So high beta-gamma radiation is being ignored by the Department of Energy and DOL because DOE put that stuff under other and mixed

radiation exposure with plutonium and TCE and depleted uranium. So a high radiation level is being totally dropped on these claims.

Failure to acknowledge DOE with findings in 2000 showing that he had obstructed lung dysfunction, moderate lung defect at that point, etc., and so forth. Hearing loss, respiratory problems, etc.

Failing to correct any of his records that I have repeatedly corrected. Buildings, jobs, to add to them with the exposures, looking at -- one that did more than they did a lifelong thing on him, dates of diagnosis that they're not correcting.

Failure to acknowledge all the studies that we paid for since, you know, 1973 really through present. You have no system to update the individual employee records to show by the way, we found this data. It was when the worked there, that job, etc., and now their radiation and substance exposure is different, which would really help DOE and DOL in the long run.

Instead, the resource there has a former employee that was never told what substances they were exposed to or the radiation levels or things of that nature. The resource center has them fill out documents. So they're guessing to fill in and mark off substances.

But DOE has known all along, because DOE has been providing research studies the exact internal and external radiation, all the inhaled exposures, etc. since as early as 2000 on these former Paducah DUP Phase 2 veterans, etc.

So I'd like to know why the death certificates were being collected by DOE and DOL for a site and we don't find out, you know, the substance of, hey, by the way, 8,000 had the respiratory diagnosis, because I got them in FOIA releases, the --

CHAIR MARKOWTIZ: Ms. Thornton, Ms. Thornton? This is Steve Markowitz. I'm sorry -- I'm sorry to interrupt you.

MS. THORNTON: Sorry, I'm probably --

CHAIR MARKOWTIZ: You're okay, but

we're just -- we're out of time. But you're certainly welcome to submit brief additional written comments. We have transcripts of what you said, but if you have additional writing, please send it in.

MS. THORNTON: I will, thank you very much.

CHAIR MARKOWTIZ: Thank you.

MS. THORNTON: Good day.

MS. RHOADS: Okay, and I think we have a number for Terrie Barrie now. So if she is on, go ahead.

Kevin, I just sent you the number.

MR. BIRD: Okay, give me a second to find it. So are you with us?

MS. BARRIE: Thank you, yes.

MR. BIRD: Great.

MS. BARRIE: This is Terrie Barrie. Good evening, everyone, Dr. Markowitz, and members of the Board. I'm a founding member of the Alliance of Nuclear Worker Advocacy Groups, and I appreciate this time to address the Board.

A couple of months ago, like March, I was made aware by an authorized representative that new language has been added to industrial hygienist reports. I'll read just a portion of it.

Quote, DOE historically has not adhered to the OSHA permissible exposure levels, but rather followed the more restrictive American Conference of Governmental Industrial Hygienists TLV-TWA levels, the time-weighted average level concentration for a conventional -- conventional -- eight-hour work day and a 40-hour work week, to which it is believed that nearly all workers may be repeatedly exposed day after day for a working lifetime without any health, adverse health effects, end quote.

It says nearly all workers. That obviously means that some workers will be -- will experience adverse health effects. You'll hear more about this possible from a couple of other commenters on the call today, but I do want to raise some serious concerns that I have about

this.

The statement is extremely misleading and inaccurate. And I do know that you just published the responses to your questions about this, but I haven't had chance to review them. And if I make a mistake, I apologize in advance.

So, I researched DOE's acceptance of ACGIH's threshold limits. I found two references to DOE's acceptance of the limits. The first is a survey from -- that DOE provided to the Savannah River Site. It is dated April 2015.

Question one of the survey states, quote, DOE currently defers to the Occupational Safety and Health Administration for establishing permissible exposure levels and uses an action level as the administrative level to assure that controls are implemented to prevent exposures from exceeding the permissible exposure limits.

The second DOE document I found was published in 2019, about 2019 I believe. And in it says, Amendments to 10 CFR 851 in January -- were published in January of 2018. This

amendment uses the 2016 consensus standards, including the ACGIH standards for crystalline, silica, and cristobalite.

Compliance was not expected to be achieved until January 17, 2019, a mere three and a half years ago. Yet DEEOIC wants this language applied to all IH reports for workers employed after the mid-1990s.

I also filed a Freedom of Information Act request with the Department of Labor for any documents related to this new language. And they did have a meeting on November 30, 2021 a few weeks after your last board meeting. And the title of that meeting was Discussion on Adding Within Regulatory Standards Language to IH Reports.

So it appears that, to me at least anyway, it appears that the DEEOIC has adopted a policy that it's easier to ask forgiveness later than to ask permission first. It's the Board's charter to provide advice, but how can they provide advice to DEEOIC if DEEOIC doesn't tell

them what they're up to?

It is so different that how the Radiation Board works. In fact, the first recommendation the Board offered to DEEOIC was to rescind Final Circular 1506, which said exposures would be within regulatory limits after 1995. And DEEOIC accepted that recommendation.

But now it appears that they're doing an end-around around the Board's responsibility. I'll skip that part.

And I'm -- I'm really concerned about the lack of notice for this meeting. I follow the Federal Register a lot, and I want to notify people. But this wasn't published in the Register until 16 days before today's meeting and seven days before the end of the signup period.

So thank you, Dr. Markowitz and the Board and Carrie and Mike, for allowing other people to sign up.

And I'm glad that the Board became aware of this issue, and I'm looking forward to tomorrow's discussion. And if ANWAG has

additional comments or responses to the latest answers that DEEOIC gave you, I will submit them in writing, along with this written summary. Thank you.

CHAIR MARKOWTIZ: Okay, thank you.

MS. RHOADS: Next, Jason Jones.

MR. JONES: Hello, yes, I am here, thank you.

So I do appreciate the time to provide a few comments. I did provide a written comment to the Board purview. Just a quick background. I am an attorney and I do represent a number of clients under the DEEOIC program.

And my concern I wanted to address was actually the same as that Ms. Barrie just addressed. And I apologize, I was not aware that this has already been addressed by the Board or that there were questions and answers.

I do want to just get on record my concerns with the new wording. Ms. Barrie did accurately read the wording into the record already, but this wording, which is found in, as

far as I can tell, all the new industrial hygienists for the last couple months anyway, for clients which were -- are having covered work periods evaluated after the mid-1990s.

That includes this definition of existing regulatory standards, which includes a definition that by definition this is without adverse health effects. My concern is twofold with this wording.

First, that this wording, it steps outside the bounds of what the DEEOIC policy manual directs industrial hygienists to actually provide in their opinion. Their opinion is to -- or their rule is to actually provide an opinion, and I'm quoting the policy manual at 15.11, Section A.

It simply say, IH review functions of the IH and exposure analysis, part one. The IH's role is to provide expert opinion regarding an employee's exposure as relates to nature, frequency, and duration, based on assessment of the evidence presented.

Now, this statement that's included in all of the new industrial hygienist reports for anything post the mid-1990s that claims that whatever the exposure level was, it was existing regulatory standards.

And then it cites an ACGIH definition from a 2021 publication that these threshold limits are at such a level that they would be endured by work -- for the working lifetime of a worker without adverse effects.

It certainly steps over the bounds of what an IH industrial hygienist report should provide, and that it should not be providing a medical opinion on causation, which it certainly appears to.

And then secondly, it doesn't provide any of the information that an industrial hygienist is supposed to provide to physicians. It doesn't provide an estimate of duration, frequency, or the nature of exposure. And this information is needed in order for a physician to provide an accurate causation opinion.

The second part of this, as Ms. Barrie has already addressed, the second take on this wording, it is either, one, a causation opinion, a medical opinion, being offered by an industrial hygienist. Or, two, my concern is that this industrial hygienist wording is requiring a physician to accept that, one, ACGIH standards were in place at the facility in question for that claimant, and two, that these standards were inherently safe.

And I, in doing research on this, I did provide more in-depth examples and research in the written comment that I submitted. But I do want to point to some specific example why this would be inaccurate.

And in the comments, I point more details, but in the case of silica exposure, this would be an exposure that the permissible exposure limits have changed since 2000, anyway, with I believe the final implementation of current permissible exposure levels taking full effect in 2016.

So for silica levels that are deemed safe has been changed by OSHA over the years, and they provide details why they changed it and such. And if we were to look at the second part of this, I've interviewed dozens of my clients to try and found out what was actually in place at their facility at the timeframes they worked in in their department.

The clients that I've interviewed, none of them have been able to relate that ACGIH standards were in place or that they were adhered to. I wasn't able to find but a handful of clients that even knew what ACGIH was.

And alternatively, all of the clients, and the ones I'm referencing are specifically blue-collar workers, electricians, plumbers, pipefitters, carpenters, they were all trained on OSHA standards, which would relate to personal protective equipment, to -- in regards to inhaled particulates, fumes, gasses, things of that nature.

They all related they were placards,

there were training courses. They relate going through OSHA 10- and OSHA 30-hour certification. It seems that it's inaccurate to state that the ACGIH standards were in place at least the large facilities. The ones I pulled safety reviews on and the audits include Nevada Test Site, INL, Pantex, and Savannah River Site.

And Ms. Barrie also referenced that at least a partial report from Savannah River Site.

So that this -- go ahead.

CHAIR MARKOWTIZ: No, no, I'm sorry. You just need to wrap up, that's all.

MR. JONES: Okay, all right. That -- those were my concerns with it. One, it's either being offered as a causation opinion, which is the place of a physician. Or two, that this is relaying to a physician that they should then be looking at the ACGIH standards and the permissible exposure TLBs, rather than relying on OSHA standards, which tended to actually been in place.

My suggestion would be if ACGIH is

referenced, they should take out the wording that says it's inherently safe and that there's no adverse health effects. That they should provide in this industrial hygienist report some evidence that these ACGIH standards were actually in place at the time.

And a statement of what the actual TLB/TWA values are, because they are -- they are certainly harder to look up and reference than OSHA standards since they -- they don't seem that they were actually enforced.

So anyway, I do appreciate your time on matter, and I'll end with that.

CHAIR MARKOWTIZ: Thank you. Thank you very much.

MS. RHOADS: Okay, next is Tyler Bailey.

MR. BAILEY: Thank you. Can everyone hear me?

CHAIR MARKOWTIZ: Yes.

MR. BAILEY: So my name's Tyler Bailey, I'm an authorized representative. And

I'd like to first off thank everyone for inviting us to publicly comment and thank the DEEOIC program.

I think you guys do a very good job in general, and there's a few things that I think we were seeing in the last few comments that we can improve, and I'd like to offer another, maybe two if I can get to it in time.

The first thing I would like to speak specifically on, this is a major factor that I've seen. When it does rear its ugly head, it creates significant problems in the -- in adjudication of a case, and that is the misuse of CMC contract medical consultants from a claims examiner.

So initially when a -- when a primary illness is adjudicated by the program, the policy and procedure manual states that CEs should view the treating physician as a primary source of medical evidence before consideration of a CMC referral.

And that the CE should typically give

the treating physician the first opportunity to review medical evidence from the file for the purposes of responding via claims and questions.

The procedure manual additionally states the claim -- the claims examiner, I'll refer to them as the CE, should not view a medical referral to a CMC as an automatic requirement for each claim, and states the CMC is not to validate probative input by a claimant's chose treating physician.

And it says that they are to be used in obvious defects in the case that must exist before they can be used. They're available in situations where no other reasonable opinion or option exists.

I represent quite a few clients, and what we see from time to time is that sometimes a claims examiner, and I think that it's the exception, thank goodness, that claims examiners will sometimes use a CE or a CMC. And when there's -- and when they're actually -- I'm going to read. I started to talk a little freelance

there, but I'm just going to read from my comments that I'll submit later to the Board.

We've seen cases where CMC is inappropriately used by a claims examiner without justification according to the policy and procedure manual. These aren't met. This occurs quite regularly with my clients, and once it does, the case is corrupted as a whole.

Some claims examiners supervisors and district offices even, they exhibit a pattern of sending claims to a contract medical consultant in direct violation of the policy and procedure manual. Once the CMC's opinion issued, it is viewed to be of equal or more probative value than the original treating physician, regardless of content or rationale.

Written objections to these denials from an inappropriate CMC referrals will generally result in the case being sent to what's called a referee specialist. However, the referee opinions are simply another CMC contracted by the Department of Labor, and as

such they simply side with original CMC.

So I understand why these CMCs are sometimes used. And sometimes these CMCs are reviewed because -- or used because the treating physician may not respond or they may not get anything from a treating physician.

But I have numerous examples that I could provide to the Board if requested. One of my cases is involving a client of mine who submitted medical records with their treating physician's initial assessment of the claimed illness.

The physician specifically requested a copy of the industrial hygiene report when it came in, and the claims examiner responded by saying they're sending it to an industrial hygiene report and they'll send that report to a CMC, which is automatically off-base.

It means the authorized rep uses CVs, and I replied please don't send it to a CMC, at least give the treating physician the original -- the original -- they can reply. Go ahead.

CHAIR MARKOWTIZ: So I'm sorry, Mr. Bailey, but you need to wrap up.

MS. BARRIE: Okay, sure. In this case, the claims examiner will -- he sent this to a CMC after he got the original treating physician, and it corrupts the case as a whole. Because once they sent it to a CMC, there's two medical opinions. Then they have to send it to a referee CMC, and it corrupts those cases as a whole.

My solution for this is basically we should verbiage to the PPM, the policy procedure manual, that treats information garnered by a claims examiner as basically fruit of the poisonous tree is what it would be referred to in a criminal -- a criminal case. In that if it comes in and it was not supposed to come in, then that evidence gets thrown out rather than passed from physician to physician and physician to referee physician.

It's my request that the Board follow the recommendation of submitting CMC reports

obtained in violation of the directives contained in this policy manual shall be excluded from the record. And I think that if we just added that simple line to the procedure manual, it would -- it would negate a lot of these problems.

I do appreciate your time. I can hear you wrapping me up

CHAIR MARKOWTIZ: Okay, thank you.

MS. BARRIE: And I'll send some additional -- additional by mail.

CHAIR MARKOWTIZ: That'd be great, thank you.

MS. RHOADS: Okay, next up Faye Vlieger.

MS. VLIEGER: I'm going to need my computer.

MR. CHANCE: Faye, we can hear you.

MS. VLIEGER: Okay. Good afternoon, ladies and gentlemen, I am so happy to be presenting to you. I will submit my written comments to the portal after the end of my presentation.

I appreciate the opportunity to present my comments today. First of all, I want to thank the Chairman and all of the Board members for their diligence and continued service to the current and former nuclear weapons workers.

As a former Board member, I am well aware of the time and effort these positions require. If you have submitted a request to continue a position, I salute your dedication.

I realize that my comments are probably going to be too lengthy and I'll be cut off. So if I will get the one-minute warning, then I could wrap it up with my most important points today.

CHAIR MARKOWTIZ: Sure thing.

MS. VLIEGER: Thank you.

Since the issuance of DEEOIC circular 1506, there's been a fallacy of safety and an absence of toxic exposures that pervaded the DEEOIC leadership and their guidance in processing claims. While DOL did rescind the

circular, the language of the circular proceeded into the procedure manual. And now it's been edited, as presented by Terrie Barrie.

My problems with this whole issues is that it's never been based in facts. While John Vance did provide a memorandum for the circular dated a few months after the circular, those supporting documents for that memorandum and the basis for the circular were never provided. And then the circular was rescinded February 2 of 2017.

So the most recent revision of the exposure language that's being presented into the claims and to the IH and CMCs was read aloud by Terrie Barrie. And I second Attorney Jones's comments about the manner in which it's used.

The issues that I have is that DOE did post an order for 40.1 for workers protection September 3, 1995. That doesn't mean it was enforced.

DOE did not release an implementation guide for that order until March 30 of 1998.

Therefore, there was no implementation that was regulated, observed, or actually inspected.

The insistence by EEOICPA that workers produce exposure evidence such as monitoring records when they disagree with the SEM, the IH, and the CMC opinions of insufficient tox records, it's not -- it's a nonstarter. If any individual worker monitoring was done, the records are not available to the workers as stated in the EEOICPA's response to the Board.

Until recently, and I mean within the last few years, those records never appeared in personnel records or records that were collected in a DAR, a document acquisition request. So the issue with saying that those records are available to the worker is a fallacy because they're hidden within contract documents and documents provided to DOE for filing under obscure contract numbers.

Unless you have access to that whole line of information, you're never going to find it. And to just go looking for it under the

current FOIA system as an individual, the cost would be prohibitive.

The use by the EEOICPA of time weighted averages, now known as TLVs, is false. I can tell you as a worker hired in 2001 and my training through 2003, we were trained to OSHA standards. It was to my dismay in 2003, after my accident in 2002, that I was told, well, we don't have to abide by OSHA standards. I was told this by the US Department of Energy.

In the forward for the history of ACGIH, they talk about how many chemicals they actually have in their library of known toxic agents that cause ill effect. Their -- in their current publication, there's only 700 chemicals. So I don't know how that could be considered protective when there are more than 3000 chemicals at every DOE site.

There's no evidence to support that TLVs provide adequate exposure levels for thousands of unstudied chemicals, and there is scant evidence that prolonged or constant low

level exposure to any chemical is safe. So the language that the Department of Labor is currently using is not factual.

CHAIR MARKOWTIZ: I'm sorry, one more minute.

MS. VLIEGER: One more minute, okay. In the FOIA document that Ms. Barrie discussed and I've included in my comments, EEOCPIA needs to be clear that monitoring exposure criteria changed over time. Historically, if there was no danger perceived in a chemical, it was not monitored.

So, say that we're going to use lower levels and that proves -- lower levels as our standard, and that proves that they weren't exposed if there's no documents is erroneous. It's factually incorrect.

EEOICPA requires claimants to provide evidence. EEOICPA has not provided evidence for why they choose this wording. If there is evidence produced, then let's discuss it openly.

As I -- as I've explained, there needs

to be things done for protective measures to workers on the DOE side. DOL needs to recognize they were not done. There are places to get your documents for what exposures may have happened, but to my knowledge and -- has never been cited in any document in a claim.

They -- have they gone to the Department of Energy for their accident incident reporting? Have they gone to the states and asked about accident and injury reporting on DOE side?

On the Advisory Board, you have a member, Duronda Pope, who has, in her position with the union has access to accident and injury reporting, and she can tell you, if those records are released, what's going on at this DOE site that has to be investigated.

My recommendation to the Board is that in lieu of this data collection, because it will be almost insurmountable, that they state records of adequate toxic exposure monitoring are unavailable for EEOICPA workers.

I thank you for this time.

CHAIR MARKOWTIZ: Thank you.

MS. VLIEGER: And I again thank the Board for their service.

CHAIR MARKOWTIZ: Thank you very much.

MS. RHOADS: Okay, next is Elizabeth Brooks.

MS. BROOKS: Can you hear me okay?

MR. CHANCE: Yes.

MS. BROOKS: Hello, everyone, thank you for this opportunity to speak. My name is Elizabeth Brooks, I'm an authorized representative for many former and current Department of Energy employees throughout the country, but primarily the Nevada Test Site and other DOE facilities in Nevada.

What I'm addressing today is the subject of chronic silicosis claims under Part B of the EEOICPA and the need for revision of the procedure manual.

Chronic silicosis is an occupational lung disease caused by inhalation of silica dust. Many of my Nevada clients have been diagnosed

with chronic silicosis, due to the prevalence of silicon dioxide crystalline at DOE facilities located in the state of Nevada.

Previously, all claimants employed at DOE facilities in Nevada where underground mining took place were given consideration for chronic silicosis under Part B of the Act due to the congressional law 42 US Code 7384(r), separate treatment of chronic silicosis under Part B, which states, A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests of experiments related to an atomic weapon.

It has been assumed by some that active mining at the Nevada Test Site stopped at that time. However, active continues, or did

continue let's say, through approximately 2008 at the Yucca Mountain Characterization Site Project located within the Nevada Test Site.

And more importantly, underground mining in support tests and experiments related to atomic weaponry at the U1A Complex also located within the Nevada Test Site.

Our nation's atomic testing continued through what is known as subcritical nuclear experiments.

On May 6, 2019, the federal EEOICPA procedure manual version 3.1 was issued, and the employment criteria for chronic silicosis under Part B was changed to require that a claimant must have been -- this part that I'm reading now is the same as it was -- present for an aggregate of 250 working days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests or experiments related to an atomic weapon, Part B claims only.

And then it was added, This tunnel work occurred through October of 1992, at which

time the unilateral moratorium on nuclear weapons testing went into effect.

Since this change was made in the procedure manual, all claimants with employment histories that occurred at Nevada Test Site after October of 1992, regardless of their aggregate work days, have been denied their claims for chronic silicosis under Part B.

Enclosed with my public comments are three printouts that were procured in January of 2020 from the website of the Nevada National Security Site, formerly known as the Nevada Test Site. And I'm not going to have time to get into those, but these three articles talk about the U1A complex, which is there presently. You know, the subcritical experiments that are being done there.

Another article speaks about the mining of the tunnels. There are photos of them lowering the 115,000 pounds of mining equipment into the U1A complex.

It is a fact that the mining of

tunnels in support of atomic tests or experiments has persisted at the Nevada Test Site and Yucca Mountain, and specifically in the U1A complex well after October of 1992.

It is my request that the Advisory Board undertake discussions to review this information and recommend to the DEEOIC that the procedure manual be reverted back to what it was prior to the Version 3.1 so that claims for chronic silicosis under Part B may be adjudicated in a manner consistent with the criteria originally established by congressional law under the EEOICPA.

Many claimants with post-October 1992 employment at DOE facilities in Nevada were approved for chronic silicosis under Part B prior to the changes made in the procedure manual on May 6, 2019.

It stands to reason in light of the information published by NMSS supporting the continued occurrence of mining activities and atomic testing that current claims for chronic

silicosis under Part B should be treated equal to those approved under Part B prior to May 6, 2019, when the procedure manual was aligned with the original legislation passed by Congress and the EEOICPA.

Thank you all so much for your time.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Okay, next we have Josh Artzer.

CHAIR MARKOWTIZ: Josh, are you with us? He can't unmute himself.

MR. CHANCE: There we go, Josh, are you with us?

CHAIR MARKOWTIZ: He's still not unmuted.

MR. ARTZER: There we go, can you hear me?

CHAIR MARKOWTIZ: Yes.

MR. ARTZER: Good evening. I'm Josh Artzer, and I'm currently an NCO of 23 years at the Hanford Site. During my time out here, I've also served as the chair and co-chair of our

site-wide CBDPP program. And I'm formerly the chairman of the Beryllium Awareness Group.

I'd like to start off by saying thank you to the Board participation and efforts to provide continued improvement to the EEOICPA program. The Board's work is necessary and valued by the claimants. Thank you.

I'd like to talk about evolving diagnosis criteria for beryllium-related diseases and conditions. The BeLPT for years was based on an abnormal or negative test result. And for quite some time now, the term borderline is being used to diagnose beryllium sensitization.

The EEOICPA procedure manual does not include the term borderline and it seems CEs will not accept pre-borderline as an acceptable diagnosis for beryllium sensitization. Tomorrow's discussion on beryllium diagnosis, there will be several documents provided to the Board documenting the use of borderline BeLPT for diagnosis.

Currently, DOE, OSHA, National Jewish

Hospital, and LNI all recognize the borderline BeLPT in diagnosing beryllium sensitization. To this day, most if not all EEOICPA claims we are familiar with at Hanford involving borderline BeLPT are denied.

This issue has been primed for resolution. I hope the Board will consider and provide the DOL with a recommended -- or excuse me, with a recommendation to modify the current diagnosis criteria to accept borderline BeLPT. We have many workers at Hanford stuck in this grey area. Not (audio interference) a claim for a condition or disease that has been diagnosed by a credible clinic, top of their field experts, state programs, and federal safety programs.

These individuals will not receive the medical surveillance options they deserve until this issue has been resolved.

I appreciate the opportunity to speak to you all today and thank you for your time.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Melissa Herron.

MS. HERRON: Can you hear me?

MR. CHANCE: Yes, we can.

MS. HERRON: Okay. My name is Melissa Herron. I am currently an employee at the Hanford site. I'm an electrician. I've been on site now for over 22 years on maintenance and ten years prior to construction.

I'm one of those grey areas employees. I've had actually five borderline tests. I have been diagnosed as sensitized by both the Cleveland Clinic and the multiple medical providers. I'm being treated just like my coworkers who have had their positive BeLPT. I no longer can work in a beryllium area. I am kept out of potential overtime based on my BeLPT borderline test.

So I am just asking for you to recognize and make a recommendation to DOL that you can assess the borderline criteria as put forth with the documentation that you will be looking at tomorrow.

That's all I have to say, thank you

for your time.

CHAIR MARKOWTIZ: Thank you very much.

MS. RHOADS: Next is, I'm sorry, Marieca Sharp.

MR. BIRD: Marieca, are you with us?

MS. RHOADS: Okay. If we don't have Marieca Sharp, we can go to Dale Fish.

MR. BIRD: Carrie, again, I believe these people are calling in together. Is that correct?

MS. RHOADS: They should have been on the same -- the same line.

MR. BIRD: Yeah, there must be a -- there must be a connection issue or something. Hold on a second.

MS. SHARP: Can you hear?

MS. RHOADS: Okay, how about -- yeah, we can.

MR. BIRD: Yes.

MS. SHARP: Okay, hello, this is Marieca Sharp.

CHAIR MARKOWTIZ: Hi, we're getting

background. Could you please turn your speakers off in the background?

MS. SHARP: Okay, is that good?

CHAIR MARKOWTIZ: Yes.

MS. SHARP: Okay, I'm a 38-year employee at Hanford. Currently the co-chair for the BAG team or group, which is a Beryllium Awareness Group. And I had been diagnosed as sensitized. And I, you know, see a lot of people in our group that have these borderlines. And they are having all the same issues that everyone else has.

And I just wanted to say that, you know, it's -- I think it has to do a lot with the person's immunity and how their -- their body is going to react to a lot of these substances. You know, I've always had strong immunities and I think my -- I worked two years in a facility that had beryllium.

I was put in a beryllium zone every day and in that two years, my tests went from zero off the chart to like the hockey stick. And

you know, I just think that's due to my person immune system. And other people that have a lower response, they just -- they get these borderlines, but that doesn't mean they have exposures.

And I just, in listening today, I see you guys talk about, you're focusing a lot on people's job titles and their exposure, I think. We just changed our questionnaire to, for history, to focus more on a person's job tasks and not so much on what their specific job title was. And I think you miss a lot in focusing on that.

And then just in listening to your meeting today, I noticed you had talk about chemicals and radiation exposures and not relating those. And as a, you know, worker, I mean, I've worked all my life with radiation at Hanford that only came with another chemical. It wasn't there by itself. So I don't know how you're not relating the two as an exposure.

And then in terms of monitoring, you

say, you know, there's no evidence of exposures, you know, we've monitored. Well, I've only seen monitoring really become really acute in the last few years. And you know, back in the 80s, late 80s, I didn't see hardly any monitoring of a lot of things other than radiation.

And you know, when you look at exposures, you need to ask, you know, if a person like they only got work in a job for a year, well, what was their exposure level? Was it an acute exposure, or you know, was it a chronic low dose over a long time? The same as you look at radiation you should look at the chemical exposures.

And I think that's -- I think that's all I have to say. I just wanted to point out a few -- a few items that I noticed. And I just to -- include -- include the borderlines in your -- your criteria. Thank you. I'll pass it to the next person.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Okay, next is Dale Fish.

MR. FISH: My name's Dale Fish, I'm a teamster out at the site. I've been out since 2009. And I'm growing sensitized. And I'll tell you what, I'm sure that everybody knows there's no beryllium out at Hanford, but we still get cases every, every month.

So this is a real problem out here, and I wish you'd take care of the people that have the pre-borderlines. That's all I have to say.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Next is Aaron Burt.

MR. BURT: Yeah, my name is Aaron and I've been a Hanford workers for 13 years. I just want to be another voice for those that want to see a change in the diagnosis criteria. Because there's a lot people falling through the cracks, and I'm one of them.

I had two borderlines, and I was diagnosed with chronic beryllium disease by the leading hospital in the nation for respiratory. And I had to fight for two years with DOL to get

a claim, and they still denied my claim, even though.

So the medical doctor says yeah, you have it, but then there's a outdated piece of paper that says I don't. So I'd like to see some change there.

CHAIR MARKOWTIZ: Thank you.

MR. BURT: Yup.

MS. RHOADS: Roger Torrie.

MR. TORRIE: Hi, my name is Roger Torrie. I've been a heavy equipment mechanic out here in Hanford for 16 years. The only thing -- I'll make it short and sweet. I just wish you'd take the three borderlines and give it a -- give it a positive so that we can create an accurate program for the workers out here.

Thanks for your time.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Steve Halternman.

MEMBER POPE: Steve Halterman was unable to make it. Aaron Keck is going to step into his place.

MS. RHOADS: Okay, go ahead.

MR. KECK: Thank you for your time this afternoon. My name is Aaron Keck. I am a Hanford worker of about ten years, and affected beryllium workers diagnosed off of three borderlines. Recognized by both Washington State, Department of Energy, and the top medical facilities, you know, leading in the world.

It only seems reasonable that it would also be -- for the diagnosis to change to follow along with the others. Thank you for your time.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Okay, Toni Winborg.

MS. WINBORG: Hi, this is Toni Winborg. I appreciate your time.

I worked on the DOE Superfund site at Hanford for 38 years as a lab technician, most of the time without an industrial hygiene program in place. I had documented exposure to beryllium in 2007 and have worked in many buildings and areas that are now or were prior to demo listed as beryllium facilities.

2012 I received three borderline BeLPT results. In addition, after that I received multiple borderlines. I went to National Jewish in 2015 and was officially diagnosed as being beryllium sensitized, even though was pre-borderline, even though DOL does not acknowledge that and EEOICPA claims.

2021, I was retiring and took my last physical and received my abnormal at that time. I had not thrown an abnormal prior to that. If I had not thrown that abnormal prior to that physical, I would have continued to be in limbo medically because the Department of Labor does not acknowledge the three borderline results as being beryllium sensitized.

National, international, and medical groups including in 2008 Energy Facility Contractors Group, 2014 American Thoracic Society, 2015 Washington State Department of Labor and Industry, and 2017 OHSA all defined to include three borderline BeLPT results as a, quote, Confirmed positive.

DOE diagnosed criteria for beryllium and sensitization needs to be updated to include the following: two abnormal BeLPT results, a abnormal or a borderline result, or three borderline BeLPT results. It's leaving a lot of people without any kind of medical -- well, not just compensation but monitoring.

So I would really appreciate that that be looked at and possibly changed. I really appreciate your time. Thank you, and have a great day.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: And Stephanie Carroll.

MR. BIRD: Ms. Carroll, are you with us?

MS. CARROLL: Yes, I'm here, can you hear me?

MR. BIRD: Yes, we can.

MS. CARROLL: Okay, thank you. My name's Stephanie Carroll and I'm an authorized rep specializing in chronic beryllium disease. Ninety percent of my claims are approved with

negative beryllium tests for chronic beryllium disease under B.

I wasn't going to talk about beryllium disease until I heard all of the workers discussing their issues. Beryllium sensitivity has been defined in (audio interference). It's established as an abnormal beryllium lymphocyte proliferation test performed on either blood or (audio interference).

Borderlines are evidence of a lymphocytic response to beryllium. When a BeLPT is billed to the Department of Labor, it's actually billed not as one test but as six tests. So each -- each result letter the workers get is really the result of six tests that were done on those different days.

So in my book, you are with one borderline even after a lymphocytic response. Two berylliums and it's proving your exposure. Pennsylvania University has already noted that these BeLPTs have a virtually impossible chance of showing positive unless you've been exposed to

beryllium. So even a borderline is showing exposure.

Anyway, that's my beryllium talk.

The other thing was Dr. Markowitz spoke about there being a commenter on the DOL SEM library, and I believe that was me. So I have documentation of the DOL library that supports all of the SEM. So an example would be, and I'll send one of these in with my comments, is I have one right here. It's the Rocky Flats Building 776, 777.

And it is supported by the DOL Document No. 0500045, and the title is EG&G industrial hygiene work. So before this became public, the CEs and everybody at the DOL what documentation was supporting everything in SEM. And there is a DOL library, unless they turned it over to Paragon so that if (audio interference).

Even when it's in that library, it exists. And all of that documentation is unclassified. Because on the SEM website health guide, it states that the SEM uses unclassified

information made available by the Department of Energy. And now it belongs to the DOL. All of that was mandated by the program.

Okay, so that's the issue with the SEM library. I would like you all to get at least a index of that library, which would at least (audio interference).

My other issue (audio interference) is relying on impermissible factors when adjudicating claims using the presumption. Hearing loss is an example of the Agency not following the clear language of the Act.

To be approved under Part E, you have to prove that it's at least as likely as not that exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing the illness.

And the second criteria, that it is at least as likely as not that the exposure to such toxic substance was related to employment at the DOE facility. That is a lot less stringent than these presumptions have been alluding to.

So with all these attorneys on the line, it would be great if someone would take this to District Court, all of these presumptions that are so stringent, especially the hearing loss.

Also in the Act, the time of injury has been defined as the last day of employment. So in other words, the Act and Congress believe that your last day of injury was going to be the last day that you were employed at that site. Not that you were exposed to a specific toxin, as the DOL keeps insinuating.

Let's see, for the hearing loss, challenges to that standard are not communicated in development to the claimant, even though it says that as part of development, it should be told that they can challenge presumption.

It also says in the procedure manual, The claims filed for hearing loss that do not satisfy the standard outlined in the section cannot be accepted because it represents the only scientific basis for establishing work-related

hearing loss due to exposure to a toxic substance.

This just simply is untrue, and I'm sure the Board would agree, that exposure to heavy metals a central nervous system effect and can affect your hearing also.

I have a claimant right now who was a hazardous waste worker. He was an NDT, non-destructive testing technician -- technician, an RCT, and a filter tech. All of his job descriptions describe exposure solvents. He has probative exposure in his medical evidence showing he was exposed to trike (phonetic) at different levels. And a hazardous waste workers has been defined by the Department of Energy in his records as a worker that is known to be exposed at above safety standards for more than 30 days a year. That's a hazardous waste worker, that's been defined. It's in the Rocky Flats records.

So the presumption have -- I feel like the Department of Labor is using these

presumptions to slowly eat away at the Act. The Act was very clear on the presumption of exposures to toxins on site and long latencies. And the causation of those exposures and how it affects the workers.

But presumptions were also done by Econometrica in 2005. And Econometrica did a report, they were contracted by the DEEOIC in 2005 to support the Part E program. And they viewed the former worker program needs assessments to determine what presumptions should be evaluated.

So they had a list of the most -- the most -- sorry, I'm getting so much feedback that it's hard for me. Anyway, the Econometrica was based on former worker program needs assessments, which I can't even find those online anymore.

But those needs assessments established the toxins that were common and the connection to the diseases that workers were suffering from, which also was the basis for all the testing.

Anyway, so that's what I have to say about my issues today. But the beryllium issue is just outrageous, because I even have documentation of Dr. Lee Newman (phonetic) saying a borderline is abnormal, which matches the language of the Act, which is an abnormal finding of beryllium.

So I will put all of these comments online, and then if anybody needs to reach me, I think my contact information will be there.

CHAIR MARKOWTIZ: Thank you very much.

MS. CARROLL: Thank you for listening. All right, bye-bye.

CHAIR MARKOWTIZ: Thank you.

MS. RHOADS: Okay, that was our last public commenter, I think. So Dr. Markowitz, unless you have something else that you want to talk about today, we can go ahead adjourn the meeting.

CHAIR MARKOWTIZ: Okay, well, just a moment. Tomorrow we're going to resume various issues, you'll see them on the agenda.

I recommend to the Board members that you take a look at the responses with regard to the industrial hygiene language from the DOL. And also take a look at the procedure manual regarding beryllium, because we're going to discuss this issue of beryllium sensitivity at four o'clock.

Mr. Tebay provided us with some documents. And Carrie, have they been sent to the Board members?

MS. RHOADS: I'll make sure that they're sent to the Board members. But they're also posted on the website now.

CHAIR MARKOWTIZ: Okay, good. Yeah, that's what -- that was going to be my next question. So we have a -- well, we'll have a lot to do tomorrow, but that's good. We'll get it done.

Thank you very much, everybody. Thank you to the Board members, to DOL, to the public commenters for a productive afternoon. And we'll continue tomorrow afternoon.

Anything -- if there's anything else, Mr. Chance?

MS. RHOADS: We don't have anything else. The meeting is adjourned until tomorrow at one o'clock. Thanks, everybody.

(Whereupon, the above-entitled matter went off the record at 5:27 p.m.)