

U.S. DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

+ + + + +

WEDNESDAY
JUNE 29, 2022

+ + + + +

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

SCIENTIFIC COMMUNITYAARON BOWMAN
MARK CATLIN
KENNETH SILVER
MIKE VAN DYKEMEDICAL COMMUNITYGEORGE FRIEDMAN-JIMENEZ
STEVEN MARKOWITZ, Chair
MAREK MIKULSKICLAIMANT COMMUNITYJIM KEY
DURONDA POPE
CALIN TEBAYDESIGNATED FEDERAL OFFICIAL

RYAN JANSEN

ALSO PRESENTKEVIN BIRD, SIDEM
CARRIE RHOADS, DOL
JOHN VANCE, DOL**NEAL R. GROSS**COURT REPORTERS AND TRANSCRIBERS
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C-O-N-T-E-N-T-S

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

2 1:04 p.m.

3 MR. JANSEN: Good afternoon, everyone.

4 My name is Ryan Jansen, and I would like to
5 welcome you to today's virtual meeting of the
6 Department of Labor's Advisory Board on Toxic
7 Substances and Worker Health. I'm the Board's
8 new Designated Federal Officer, or DFO, and I'm
9 excited to begin my work with the Board at this
10 meeting. Today is Wednesday, June 29th, 2022,
11 and we are scheduled to meet from 1:00 p.m. to
12 4:00 p.m. Eastern this afternoon.

13 Today's meeting will be a virtual
14 video meeting. I have with me Carrie Rhoads from
15 the Department of Labor, and Kevin Bird from
16 SIDEM, he's our logistics contractor. Since we
17 are using a virtual format today, please be
18 patient with any technical issues, or extra time
19 that we might take resolving those issues, or
20 showing documents on the system.

21 Regarding meeting operations today, we
22 will have just one break at about 2:30 p.m.

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1 Please do not disconnect from the call for the
2 break, but Board members please just put your
3 phone on mute for the break, and unmute when we
4 resume. This will make it easier on Kevin.

5 Copies of all the meeting materials
6 will be available on the Board's website under
7 the heading Meetings. The documents will also be
8 up on the Webex screen so everybody can follow
9 along with the discussion. The Board's website
10 for all matters can be found at
11 dol.gov/owcp/energy/regs/compliance/advisory
12 [board.htm](http://dol.gov/owcp/energy/regs/compliance/advisory). If you have not already visited the
13 Board's website, I encourage you to do so. After
14 clicking on today's date, you will see a variety
15 of information, including a page dedicated
16 entirely to today's meeting.

17 The webpage contains any publicly
18 available materials submitted to us in advance.
19 In addition, we will publish any materials that
20 are provided to the Board. You will also find
21 today's agenda and instructions for participating
22 remotely. If you experience any difficulties

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1 during this meeting, please email us at
2 energyadvisoryboard@dol.gov.

3 If you are joining by Webex, please
4 note that this session is for viewing only, and
5 microphones will be muted for non-Advisory Board
6 members. The call in information has been posted
7 on the Advisory Board's website. So, the public
8 may listen in, but not participate in the Board's
9 discussion during the meeting.

10 Today there will be no public comment
11 session, but written comments may be submitted to
12 energyadvisoryboard@dol.gov. A transcript, and
13 minutes will be prepared from today's meeting.
14 During the discussions today, please speak
15 clearly enough for the transcriber to understand.

16 When you begin speaking, especially at the start
17 of the meeting, make sure that you state your
18 name, so that it's clear who is saying what.

19 Also, I would like to ask that our
20 transcriber, please let us know if you have
21 trouble hearing anyone, or any of the information
22 that is being provided. As DFO, I see that the

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1 minutes are prepared, and ensure that they are
2 certified by the chair. The minutes of today's
3 meeting will be available on the Board's website
4 no later than 90 calendar days from today, per
5 FACA regulations.

6 They will of course be published
7 earlier than the 90 day date if available. Also
8 we will be publishing verbatim transcripts, which
9 are obviously more detailed in nature. Those
10 transcripts should be available on the Board's
11 website within 30 days. As always, I would like
12 to remind Advisory Board members that there are
13 some materials that have been provided to you in
14 your capacity as special government employees,
15 and members of the Board which are not suitable
16 for public disclosure.

17 And cannot be shared, or discussed
18 publicly, including during this meeting. Please
19 be aware of this as we continue the meeting
20 today. The materials can be discussed in a
21 general way, which does not include using any
22 personally identification information, or PII,

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

3 And with that, I convene this meeting
4 of the Advisory Board on Toxic Substances and
5 Worker Health, and I will now turn it over to Dr.
6 Markowitz for introductions.

7 CHAIR MARKOWITZ: Thank you. Welcome,
8 everybody. Welcome to the Board members, and
9 welcome to the public who are listening in,
10 watching in. We're going to try to post what
11 we're going to be talking about, so that in
12 particular the public can see what we're talking
13 about. But I'll try, for those of you who might
14 be just on the phone, to read, or summarize what
15 we're looking at so you can stay in the
16 conversation.

17 We'll review the agenda in a moment,
18 but let's start off with introductions. I think
19 it's easiest if I just call out your name, and
20 just briefly introduce yourself.

21 I'm Steven Markowitz. I'm an
22 occupational physician and epidemiologist at the

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1 City University of New York, and direct the
2 largest former worker medical screening program
3 in the Department of Energy complex. Dr. Bowman?

4 MEMBER BOWMAN: Yes, thank you. My
5 name is Aaron Bowman. I'm a professor and head
6 of the School of Health Sciences at Purdue
7 University. I'm also a toxicologist.

8 CHAIR MARKOWITZ: Mr. Catlin, are you
9 on the phone? I'm just going down the list here.
10 Okay, not yet. Dr. Silver?

11 MEMBER SILVER: Ken Silver. Through
12 August, Associate Professor of Environmental
13 Health in the College of Public Health at East
14 Tennessee State University. I have over two
15 decades experience working on policy, and
16 historical missions, and exposures at Department
17 of Energy facilities.

18 CHAIR MARKOWITZ: Dr. Van Dyke?

19 MEMBER VAN DYKE: Good afternoon.
20 Mike Van Dyke. I'm an industrial hygienist, and
21 associate professor at the Colorado School of
22 Public Health.

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1 CHAIR MARKOWITZ: Dr. Friedman-
2 Jimenez?

3 MEMBER FRIEDMAN-JIMENEZ: Hi, I'm
4 George Friedman-Jimenez. I'm an occupational
5 medicine physician and epidemiologist at Bellevue
6 NYU Occupational Medicine Clinic in New York
7 City. We take care of workers who use the public
8 hospital system in New York City for medical
9 care, and who have work related toxic exposures,
10 and diseases.

11 CHAIR MARKOWITZ: Dr. Mikulski?

12 MEMBER MIKULSKI: Good afternoon.
13 Marek Mikulski, occupational epidemiologist with
14 the University of Iowa. I run the former worker
15 program for the former DOE workers from the state
16 of Iowa.

17 CHAIR MARKOWITZ: Ms. Pope?

18 MEMBER POPE: Good afternoon. My name
19 is Duronda Pope. I'm a retired Rocky Flats
20 worker, worked there for 25 years. I am
21 currently working for the United Steel Workers
22 Union with the emergency response team program.

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1 CHAIR MARKOWITZ: Mr. Tebay?

2 MEMBER TEBAY: Good afternoon. Calin
3 Tebay, sheet metal worker for 25 years. I am
4 currently the beryllium health advocate for the
5 site at Hanford, and I'm also the Hanford
6 Workforce Engagement Center representative.

7 CHAIR MARKOWITZ: All right, and I
8 have Mr. Key and Ms. Whitten listed, but unless
9 they join, we're going to skip them for the
10 moment. Okay, very briefly, just to review the
11 agenda, because I want to get on to business
12 today, we're going to mention that the Board has
13 issued some comments and questions to the program
14 about the quality assurance documents that have
15 been provided to us.

16 We're then going to discuss a couple
17 of recommendations, one on borderline beryllium
18 lymphocyte proliferation test, and then we're
19 going to move at 2:00 o'clock to the industrial
20 hygiene report language, and discuss that after
21 the borderline BeLPT issue, and whether we want
22 to formulate, or issue a recommendation on the

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1 industrial hygiene report language.

2 Then we'll get back to asbestos
3 presumptions, take a break, or we'll see where
4 the break fits depending on how long things take.

5 We're going to help in general, try to remember
6 our comments about our claims review from before
7 our May meeting. We're going to briefly review
8 public comments, in particular those that are in
9 writing on our website. And then finally kind of
10 formulate a list of items that we think the next
11 Board should address.

12 So, any questions, or additions to the
13 agenda? Okay, so we're going to discuss, there
14 were two documents that were provided by the
15 program. One was called -- one related to the
16 contract medical physician performance, and the
17 other related to the quality assurance within the
18 overall program.

19 And the working group of the Board
20 met, four, or five of us, and reviewed these
21 documents, and came up with a list of questions,
22 comments for the program, and maybe even some

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1 suggestions, I'm not quite sure. But then that
2 was sent around to the entire Board for review
3 several weeks ago, and any additional comments
4 were integrated.

5 So, we can't show these, but the Board
6 members have these comments. What we need to do
7 in order to transmit them to the Department, we
8 have to take a vote on whether we agree with
9 these comments, and questions of these quality
10 assurance documents. So, we can't discuss the
11 content of those documents here, or the content
12 of our comments.

13 But if there are any questions about
14 the procedure we're going through, now is the
15 time to raise it. Okay, so fine, so I think we
16 should just take a roll. All members of the
17 Board, do you know the set of comments that I'm
18 referring to? I sent them around earlier today
19 so that you would have them in front of you, you
20 should have gotten them by email.

21 In any case, Carrie, you want to do a
22 roll call vote on this?

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1 MS. RHOADS: Sure. And this is just
2 to indicate that you agree with sending the
3 comments onto the program as a Board. We're
4 doing this because the working group cannot talk
5 directly to the program, they have to go through
6 the full Board. So, I'll call the roll, and just
7 indicate if you agree with sending the comments
8 on. Dr. Bowman?

9 MEMBER BOWMAN: Yes, I agree.

10 MS. RHOADS: Okay, Dr. Silver? I see
11 Dr. Silver with his --

12 MEMBER SILVER: Yes.

13 MS. RHOADS: Okay. Dr. Van Dyke?

14 MEMBER VAN DYKE: Yes, I agree.

15 MS. RHOADS: Dr. Friedman-Jimenez?

16 MEMBER FRIEDMAN-JIMENEZ: Yes, I
17 agree.

18 MS. RHOADS: Dr. Markowitz?

19 CHAIR MARKOWITZ: Yes.

20 MS. RHOADS: Dr. Mikulski?

21 MEMBER MIKULSKI: Yes, I agree.

22 MS. RHOADS: Ms. Pope?

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1 MEMBER POPE: Yes, I agree.

2 MS. RHOADS: Mr. Tebay?

3 MEMBER TEBAY: I agree.

4 MS. RHOADS: Okay, Mr. Catlin, have
5 you joined us? Okay, that is eight votes for,
6 and then there are four people missing.

7 CHAIR MARKOWITZ: Okay, yeah, so that
8 passes. I'll remind the Board: there are 12
9 members of the Board, to pass any recommendation
10 we need a majority, meaning seven votes. Not the
11 majority of people present, but a majority of the
12 total Board. So, there are eight people present.

13 You can't vote by proxy, so in order to pass any
14 recommendation, we would need at least seven
15 people to agree with that recommendation.

16 So, let's move on to the issue of the
17 borderline BeLPT. Actually, Kevin, if you could
18 bring up that file. While he's doing that, we're
19 going to be looking at some language, again, the
20 Board has seen this draft language, we did not --
21 it's in draft form, so we did not post it on our
22 website, so the public hasn't had access to this

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1 draft recommendation.

2 But we thoroughly discussed the issue
3 last time, and we are going to discuss to the
4 extent needed. If you could just make that
5 larger, in particular the first paragraph, so we
6 can read the recommendation. Okay, so thank you.
7 I want to read it briefly, and in particular for
8 members of the public who might be calling in, or
9 for that matter, Board members who might be
10 calling in.

11 The Board recommends that the
12 Department of Labor communicate to Congress the
13 need for a technical amendment in the Energy
14 Employees Occupational Illness Compensation
15 Program Act that will recognize that covered
16 individuals as defined in the act, and do have
17 three borderline beryllium lymphocyte
18 proliferation test results have beryllium
19 sensitivity.

20 So, and then we go into the rationale,
21 which we reviewed before. So, I don't think
22 there is necessarily a need to do that. But if

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1 you could scroll down Kevin, I don't know if I
2 have control over scrolling, to the next page. I
3 just want to show there is some -- okay, yeah,
4 just bring it up a little bit. Proposed act
5 modification -- no, I'm sorry, the other way, so
6 that we can see proposed act modification.

7 And then just make it a little bit
8 larger if you could. So, in the rationale
9 actually, we actually just propose some language,
10 very simple language that redefines beryllium
11 sensitivity as established, as present as an
12 abnormal BeLPT test performed on blood, or lung
13 lavage cells, or three borderline BeLPT tests
14 performed on blood cells.

15 So, that's an example of language that
16 could be added in, in order to allow the
17 Department to recognize three borderline BeLPTs
18 as the equivalent, or as beryllium sensitivity.
19 Okay, thanks Kevin, I see I can move this around
20 myself. So, I don't really think I need to go
21 into the rationale. We provided references here,
22 essentially a study that was done that looked at

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1 borderlines.

2 Indicated that multiple borderlines,
3 three borderline proliferation tests were
4 essentially equivalent to an abnormal beryllium
5 BeLPT. And also pointed out that in fact, it's
6 only important to the people who are effected by
7 beryllium in this way, but in terms of overall
8 numbers, it's a relatively small percentage of
9 people who have these repeated borderline tests
10 without ever having a frankly abnormal BeLPT.

11 So, let me open the floor to comments,
12 questions, Board members? We can also revise the
13 draft language of the recommendation as needed.
14 We don't have to change -- comments on the draft
15 suggested changes, and the rationale, we don't
16 have to do it on the spot. I can make those
17 changes over the next couple days, before we send
18 in the recommendation.

19 But the language of the recommendation
20 itself, we need to agree upon.

21 MEMBER BOWMAN: This is Aaron Bowman.
22 I read through the recommendation in full, also

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1 I remember our conversation about this at the
2 last Board meeting. I am in full agreement with
3 this recommendation.

4 CHAIR MARKOWITZ: Okay, and just to
5 remind maybe members of the public, actually this
6 Board raised this issue, I think in 2017
7 recommended essentially the same thing. That
8 time we recommended the Department redefine
9 abnormal beryllium, or beryllium sensitization as
10 multiple borderline tests. That was rejected by
11 the Department, referring to the language of the
12 statute.

13 Which is very specific in defining
14 beryllium sensitization as at least one abnormal
15 BeLPT test. Any other comments, questions?

16 MEMBER FRIEDMAN-JIMENEZ: Yeah, this
17 is George Friedman-Jimenez, you decided not to
18 include the up to date reference that reference,
19 which is an up to date textbook of medicine
20 essentially, really goes a long way toward
21 defining the standard of care nationally, and
22 internationally, and it does recommend that two

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1 borderline tests be interpreted as a positive
2 test.

3 It's written by Lee Newman, and Lisa
4 Maier, but I think it's a reference worth
5 including. It's your choice, but I suggested it
6 before, and it's not included.

7 CHAIR MARKOWITZ: Yeah, I'll add it,
8 George, to the oversight, but I'll add it. Thank
9 you.

10 MEMBER FRIEDMAN-JIMENEZ: Okay, great.

11 CHAIR MARKOWITZ: Okay, if there are
12 no further comments, I don't see that we need to
13 reread this recommendation, maybe we should just
14 go to a vote in the interest of time, because I
15 know at least one Board member is going to be
16 leaving by 2:00 o'clock Eastern Standard Time.
17 So, Carrie, you want to do a roll call?

18 MS. RHOADS: Sure. So, this is to
19 approve the language that was on the screen for a
20 recommendation on the beryllium lymphocyte
21 proliferation test. Dr. Bowman?

22 CHAIR MARKOWITZ: Yes, I approve.

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1 MS. RHOADS: You approve, okay. Dr.
2 Silver?

3 MEMBER SILVER: Yes.

4 MS. RHOADS: Dr. Van Dyke?

5 MEMBER VAN DYKE: Yes.

6 MS. RHOADS: Dr. Friedman-Jimenez?

7 MEMBER FRIEDMAN-JIMENEZ: Yes.

8 MS. RHOADS: Dr. Markowitz?

9 CHAIR MARKOWITZ: Yes.

10 MS. RHOADS: Dr. Mikulski?

11 MEMBER MIKULSKI: Yes, I approve.

12 MS. RHOADS: Ms. Pope?

13 MEMBER POPE: Yes, I approve.

14 MS. RHOADS: Mr. Tebay?

15 MEMBER TEBAY: I approve.

16 MS. RHOADS: Okay, and Mr. Catlin, Mr.
17 Key, or Ms. Whitten if you've joined us, please
18 let us know. Otherwise that's eight for, and
19 four people missing, so eight to zero.

20 CHAIR MARKOWITZ: Okay, thanks. You
21 want to bring up the file that I sent you just
22 before the meeting? So, the next topic of

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1 discussion is going to be the industrial hygiene
2 report language regarding regulatory standards.
3 So, we discussed this at the last meeting. We
4 had noticed in reviewing claims, that there is
5 some stereotypic language in many of the
6 industrial hygiene reports that relates to
7 regulatory standards.

8 Kevin, if you could just make that
9 larger? I don't know that I can do that. Okay,
10 and then bring it down a little bit. Okay, so we
11 saw this ourselves in reviewing claims. Numerous
12 public commenters also raised this issue, and it
13 relates in part to some earlier language the
14 Department had used, and then rescinded,
15 centering sort of conclusions about likely levels
16 of exposure around 1995.

17 Which was the date of issuance of a
18 beryllium worker safety rule. The Department
19 actually rescinded that language going back to
20 2017, I think framing the interpretation of
21 exposure levels around the post 1995 date, and
22 period. But language similar to what we're

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1 looking at here, which actually includes -- this
2 one happens to include 1995, but many of the
3 other claims we looked at no longer refer to '95.

4 But have the key phrase that exposure
5 to the agents -- this is just an excerpt from
6 somebody's claim in 2021, but it occurs in other
7 claims, and the agents that they refer to is the
8 industrial hygiene report that lists what the
9 person's exposures were, the frequency, the level
10 of exposure, the significance, and then this
11 conclusory sentence, or paragraph about exposure
12 to these agents.

13 There's no evidence that it would have
14 exceeded existing regulatory standards. Now, we
15 had a very nice -- the last Board meeting, May
16 10th, 11th, we had a very nice discussion with
17 Mr. Jeffrey Kotsch, and Mr. John Vance about this
18 issue, how it's seen etcetera, which I found very
19 useful. And we actually entertained a
20 recommendation at that meeting, but really didn't
21 have enough time to formulate our thoughts, and
22 perhaps agree on this issue.

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1 So, that's the language that we're
2 looking at from reports. So, if you could bring
3 up now Kevin, a draft recommendation on the
4 industrial hygiene report language. And we're
5 going to just use this as a starting point, I'm
6 going to read it for anybody that's not looking
7 at a screen, but this is language that I drafted,
8 that I detected was sort of the sense of many
9 members of the Board, subject to change.

10 That's what we're doing here, but it's
11 certainly a starting point. Let me read it, the
12 Board recommends that the Energy Employees
13 Occupational Illness Compensation Program advises
14 its staff, and industrial hygiene contractor that
15 claim related industrial hygiene reports, and
16 opinions restrict comparisons of claimant's
17 exposures to toxins at Department of Energy
18 Facilities to regulatory work place exposure
19 standards only to cases where sufficient
20 industrial hygiene data that are relevant to the
21 claim exist to support such comparisons.

22 A better sense of claimant's workplace

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1 exposure to regulatory standards, in the absence
2 of specific industrial hygiene evidence lack
3 support, and maybe prejudicial to the appropriate
4 resolution of the claim. So, that's a bit of a
5 mouthful. But it says that -- it's suggesting
6 that both the industrial hygiene evaluation, and
7 whatever else opinion is brought to this in terms
8 of the exposure.

9 But only make those comparisons to
10 regulatory standards where actual data exists to
11 be able to make a reasonable statement about
12 whether those exposures exceed the regulatory
13 standard. In the absence of data, industrial
14 hygiene data, you don't know whether it's
15 exceeded the standard, under the standard, meets
16 the standard, or what. You're just kind of in
17 the dark on that issue.

18 And so then this is suggesting that
19 only when there are actually industrial hygiene
20 data should those comparisons, specifically with
21 the regulatory standards, be used. That only
22 then is it actually fact based, and informative

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1 to resolution of the claim. So, let me open the
2 floor to people's opinions about this.

3 MEMBER VAN DYKE: So, this is Mike Van
4 Dyke. I like the recommendation, I'm trying to
5 read it from the perspective of somebody doing an
6 industrial hygiene report, and trying to come up
7 with a way to make it better, I don't know if I
8 can. But I mean it feels like there needs to be
9 examples of language that's unacceptable.

10 And I think what we're trying to get
11 at is that these blanket statements that no
12 evidence that exposures exceeded regulatory
13 levels is never qualified to say well there's no
14 evidence that they didn't exceed regulatory
15 levels either. So, I get what we're saying, and
16 I'm not sure I can make this better. I support
17 this as is if we can't get better, but maybe some
18 examples would be helpful.

19 CHAIR MARKOWITZ: Yeah, let me suggest
20 that we kind of discuss, instead of wordsmithing
21 the language, which I know that you weren't
22 doing, but let's discuss the concept, and whether

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1 there's any modifications in the concept, or how
2 people agree, or don't agree with the concept of
3 this, and then we can get into youthful ways of
4 saying it.

5 MEMBER VAN DYKE: I support the
6 concept for sure.

7 MEMBER SILVER: Ken Silver here. I've
8 never been comfortable with this idea of
9 comparison to past regulatory standards. The IH,
10 and the CMC work together to render causation
11 determinations, and we all know that the trend in
12 exposure limits, mandatory, or recommended has
13 been to lower, and lower levels over time.

14 The only comparison that makes sense
15 to me for the purposes of the IH, and the CMC
16 rendering a causation determination is to the
17 latest ACGIH TLVs, which are heavily informed by
18 the most recent epidemiology, and risk
19 assessments. This is a no fault program, and
20 when comparisons are made to past regulatory
21 standards with, or without data, it's implicitly
22 suggesting that Uncle Sam will pay out only if

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1 the DOE, and the AEC, and ERDA were negligent in
2 exceeding those standards.

3 So, yeah, you shouldn't do things
4 without data, but this is one of those things, I
5 don't think you should do it with, or without
6 data unless you're comparing it to the latest
7 ACGIH TLVs.

8 CHAIR MARKOWITZ: Well, Mr. Kotsch did
9 say that they used the most recent TLVs, because
10 those would be the lowest, and therefore most
11 generous to the claimants. So, on that point, I
12 think the Department did address that. I think
13 your larger point still stands, but yeah.

14 MEMBER SILVER: Well, maybe we need to
15 figure out a way to get that into the rationale,
16 or the language, because out there in the
17 hinterlands where the claims examiners have
18 gotten accustomed to old habits, it may take them
19 awhile to get the memo that we're not talking
20 about old regulatory standards. We're talking
21 about one set of standards that evolve every
22 year, ACGIH. Thank you.

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1 CHAIR MARKOWITZ: Yeah. Other
2 comments? While you're thinking, I had one
3 additional thought, which is the ACGIH doesn't
4 claim that its criteria, its thresholds, its
5 standards are absolutely protective, right? It
6 says that most workers would be protected well.
7 So, that raises the issue of the DOE complex,
8 where there were at a minimum half a million
9 people who work there.

10 If those standards are mostly
11 protective, that would mean that it would still
12 leave room broadly for many people, perhaps
13 thousands, to have been exposed under the
14 standards, but still be harmed by the exposures.
15 Because as ACGIH says, acknowledges that the
16 standards aren't perfect, that there are some
17 people who will, at lower levels, still be
18 affected.

19 And if you make the population large
20 enough, that's going to mean a significant
21 minority of people are going to be affected.
22 What do you think about that reasoning?

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1 MEMBER SILVER: Yeah, human
2 susceptibility is characterized by sometimes log
3 normal distributions, not to get all fancy, but
4 just means there's a very wide distribution, and
5 I think you're exactly right Dr. Markowitz, in a
6 large enough population, there will still be some
7 people who have the effect, even at the most
8 current recommended limits.

9 Is this comparison for sort of
10 internal DOL efficiency purposes, where if at
11 first blush, the claimant might have been exposed
12 above the latest ACGIH standards, they can
13 expedite the next few steps? Yet, if they
14 weren't, still take a look at the claim in a more
15 methodical, more eyes on the file manner?

16 CHAIR MARKOWITZ: I don't know the
17 answer to that. If this language is not used, if
18 you remember in our review of claims, what would
19 the industrial hygiene report consist of? Well,
20 aside from the review of the data. At the end of
21 every IH report, it says whether the exposures
22 were significant, meaning not incidental, and it

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1 provides information on calendar years, the
2 toxins of interest, job titles, and then high,
3 medium, low levels, and frequency of exposure.

4 So, the report absent the regulatory
5 standards language would contain all those other
6 items. Those factual issues, which would then go
7 to the -- in most cases, many cases to the CMC
8 for use in determination of causation. So,
9 there's plenty left in the IH report that can be
10 used in claims evaluation.

11 MEMBER SILVER: One thing I can say in
12 favor of these sort of benchmarks to ACGIH TLVs,
13 those kinds of statements, it's that on appeal,
14 it would give the claimant, or authorized
15 representative a target, a presumption that was
16 in the determination to now refute on appeal,
17 something to grab onto, and find evidence
18 wherever, that they were over exposed compared to
19 ACGIH TLVs.

20 Whereas the other words regarding
21 frequency, duration, intensity, and the bugaboos
22 significant are kind of hard to grab onto. But

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1 at least there are numbers related to ACGIH TLVs
2 being exceeded.

3 CHAIR MARKOWITZ: Other comments? Go
4 ahead.

5 MEMBER VAN DYKE: I was just going to
6 say I think a lot of times these statements are
7 given, and I mean an industrial hygienist
8 interprets their statement as no evidence that
9 regulatory limits were exceeded as we have no
10 industrial hygiene measurements. And I think the
11 problem with that is that you send this to an
12 occupational medicine expert, and they interpret
13 it as this was a judgment call that there was no
14 -- that exposures were below the regulatory
15 limit.

16 Maybe it's something simpler in terms
17 of something like comparison of exposures to
18 regulatory standards must specify the amount of
19 industrial hygiene data available, and the
20 specific regulatory limit referenced. That might
21 make it just a little clearer to me.

22 CHAIR MARKOWITZ: Okay, so Mike, hold

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1 that thought, and we'll start to do some surgery
2 on what we're looking at here in a moment. Other
3 thoughts, other general thoughts on what we're
4 looking at? Again, the question, which is one of
5 the things we heard from Mr. Kotsch is when they
6 are available from DOE, or the contractor, it's
7 generally incidents, particular releases, or
8 other circumstances which are momentary, acute,
9 in which the exposure is maybe high, but it's of
10 short duration.

11 And those can be very important
12 exposures obviously, but much of the part of
13 occupational disease that is the subject of many
14 of the claims would not stem from acute very high
15 level exposures, but from more chronic exposure.
16 And does that need to be -- does that aspect of
17 the industrial hygiene data, does that need to be
18 included in this recommendation?

19 I can put it in the rationale, that's
20 easy, but does it need to be specified here?

21 MEMBER VAN DYKE: I think that goes
22 down the rabbit hole that we went down on our

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1 email chain, in terms of a lot more information
2 about exposure. So, and I think if we want to
3 stay focused on avoiding this prejudicial blanket
4 statement, I don't think we want to go too far
5 down that road.

6 MEMBER FRIEDMAN-JIMENEZ: This is
7 George Friedman-Jimenez. The language that there
8 is no evidence that exposures exceeded regulatory
9 standards as Dr. Van Dyke said, could also be
10 stated as there is no evidence that exposures did
11 not exceed the standard. So, I think in many
12 cases there is just no evidence, there are no
13 data on the measurements haven't been done in a
14 particular facility.

15 Where the person worked at the time
16 based on latency period, when it would have been
17 necessary for them to be exposed in order to
18 cause the disease that they have. So, I think
19 that statement should then be revised to there is
20 no evidence available whether the exposures
21 exceeded, or did not exceed the regulatory
22 standard.

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1 And that way it will be clear, whether
2 there is evidence or not. If there's evidence
3 that there are two measurements done over 20
4 years that showed results below the standard,
5 then that could be stated. But in general, I
6 think it's more common most likely, and I don't
7 know how often measurements are actually done in
8 these work places. But I think that the
9 statement is just too pat and too cavalier.

10 And should either expose the lack of
11 knowledge, that there's no evidence that it did,
12 or did not exceed the standard, or say that there
13 is evidence that it did not exceed the standard.
14 Because otherwise, I think it is prejudicial.

15 CHAIR MARKOWITZ: Yeah. So, yes, and
16 I think we can change this recommendation
17 actually to reflect what you just said. But
18 let's start with Dr. Van Dyke's suggestions,
19 because I see where this piece can go that you're
20 mentioning just now. So, let's go back, Dr. Van
21 Dyke, if you can direct Kevin to specific lines
22 and words.

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1 MEMBER VAN DYKE: I mean, my
2 suggestion was -- hold on, I typed it up just to
3 remember it. And I don't know where it goes in
4 here, but the language was comparison of
5 exposures to regulatory standards must specify
6 the amount of available industrial hygiene data
7 available, and the specific regulatory limit
8 referenced.

9 CHAIR MARKOWITZ: Okay, so that can be
10 in the next --

11 MR. BIRD: Dr. Van Dyke, is it easier
12 if I give you control and you can type it in?

13 CHAIR MARKOWITZ: You can add that as
14 the next-to-last sentence right before -- on the
15 third line from the bottom, right before
16 comparisons. You can just put that whole
17 sentence in there.

18 MEMBER VAN DYKE: Do you need me to
19 say it again?

20 CHAIR MARKOWITZ: Well, so Kevin's
21 asking is it easier for him to type it up or you?

22 MEMBER VAN DYKE: I can do it. I can

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1 paste it in there.

2 CHAIR MARKOWITZ: You can just cut and
3 paste, or whatever.

4 MEMBER VAN DYKE: Yeah, maybe. All
5 right, there you go.

6 CHAIR MARKOWITZ: So, I think Dr.
7 Friedman-Jimenez is -- if we go to the fifth line
8 down, where it says that are relevant to the
9 claim exist to support such comparisons, I think
10 if we say exist to support -- you can keep the
11 relevant to the claim, exist to support that the
12 exposures were in excess of the regulatory
13 standards. And we need to take out such
14 comparisons. It's very wordy, but let's just see
15 if we -- so, what do we have now?

16 So, the Board recommends that the
17 program advice IH as to claim related IH reports,
18 and opinions restrict comparisons of claimants
19 exposures to toxins at DOE facilities to
20 regulatory workplace exposure standards only to
21 cases where sufficient IH data that are relevant
22 to the claim exist to support that the exposures

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1 were in excess of the regulatory standards.

2 So, comparisons of exposures to
3 regulatory standards must specify the amount of
4 available industrial hygiene data available, and
5 the specific regulatory limit referenced.
6 Comparisons of claimant's workplace exposures to
7 regulatory -- so, in the absence of specific IH
8 evidence lacks support, and may be prejudicial to
9 the appropriate resolution of the claim.

10 Probably not the best piece of writing
11 any of us have ever done, but the question is
12 does it get the point across?

13 MEMBER BOWMAN: This is Aaron Bowman.

14 I think it does. I also concur with the
15 comments from Dr. Friedman-Jimenez, and I think
16 this covers what he was saying. I was trying to
17 think of just something to make this more clear,
18 I thought the last sentence was a little bit hard
19 to read. This is very minor, but I suggest if
20 adding two commas could help that particular
21 sentence.

22 Maybe comparisons of claimants'

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1 workplace exposure to regulatory standards,
2 comma, in the absence of specific industrial
3 hygiene evidence, comma, lacks support and may be
4 prejudicial to appropriate resolution of the
5 claim. That might make it a little bit more
6 clear.

7 CHAIR MARKOWITZ: Yeah. Friendly
8 amendment accepted.

9 MEMBER FRIEDMAN-JIMENEZ: This is
10 George Friedman-Jimenez. I like this language.
11 I think it does communicate the points that we
12 want to make. If we wanted to get more
13 scientific about it, we do acknowledge that this
14 will create more work for the industrial
15 hygienist to track down the actual data, and the
16 specific regulatory limits. But if we wanted to
17 get more scientific about it, we would want to
18 audit what industrial hygiene data do exist, and
19 how thick or thin that is.

20 Is there enough data? I mean, could
21 we put confidence intervals on levels of exposure
22 in specific work places? Are there enough repeat

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1 measurements over years to do that? I would
2 suspect there are not, but that would be a much
3 larger yet amount of work. So, I think it will
4 generate more work for the industrial hygienist,
5 but if we were to really do it right, it would be
6 even much more work.

7 So, I want to point out that this is
8 actually a fairly efficient way of doing it. And
9 also I think it's scientifically balanced, and
10 fair.

11 CHAIR MARKOWITZ: I would just comment
12 that there's supposed to be access in the IH data
13 if they exist, in the overview of a claim anyway.

14 So, the second to last line, I would, between
15 lack support, I would add the word objective,
16 lack of objective support. Support alone is too
17 weak a word. Other comments, improvements,
18 suggestions?

19 MEMBER SILVER: We probably want the
20 word available used only once in the next to last
21 sentence, minor point. Because there are so few
22 industrial hygiene data available, it's

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1 interesting --

2 CHAIR MARKOWITZ: Good, take it out, I
3 agree. Sorry Ken, go ahead.

4 MEMBER SILVER: My second point is
5 that because there are so few industrial hygiene
6 data available, I would say prior to the mid-
7 1990s, our provision only to cases where
8 sufficient industrial hygiene data that are
9 relevant to the claim exist means comparison to
10 regulatory standards won't happen in a lot of
11 these older claims, and that's good.

12 One anecdote: I toured Los Alamos
13 records facilities, where I developed expertise
14 over the previous ten years with then Congressman
15 Tom Udall, and a representative of the laboratory
16 had a small cardboard box on the table, and said
17 this is all our industrial hygiene data right
18 here. It's changed since then, but very little
19 for claims prior to the late 1990s.

20 CHAIR MARKOWITZ: Looking at that same
21 sentence, since you directed our attention there,
22 do we want them to specify the amount of IH data,

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1 or do we actually want them to specify, cite the
2 data that exists? Dr. Van Dyke, what did you
3 have in mind?

4 MEMBER VAN DYKE: I mean honestly I
5 was going down the same line of thinking that Ken
6 was. That if you force them to do this, it's not
7 -- I mean they can't say anything if they don't
8 have any data. So, it wasn't that important to
9 me, but citing the data I think is critical in
10 this. And if I was going to run it to report, I
11 would say we have five measurements.

12 And this is what these five
13 measurements say, so we could add a little bit
14 more detail.

15 MEMBER BOWMAN: I would concur as
16 well, it's not amount the amount of data, it's
17 about sort of the nature of that data, and in
18 fact, maybe that word can be substituted, the
19 nature of the available hygiene data.

20 MEMBER VAN DYKE: How about must
21 describe?

22 MEMBER BOWMAN: Describe, that's good

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1 too.

2 MEMBER VAN DYKE: The available
3 industrial hygiene data.

4 MEMBER BOWMAN: Great. Even if you --

5 MEMBER VAN DYKE: I was thinking about
6 this sentence, and going back to what Ken said,
7 the specific regulatory limit, is that clear that
8 I want the TLV from 1993 referenced? I want
9 people to say when that -- is this a 1993 TLV, or
10 is this a 2022 TLV? So, does that need to be
11 change?

12 CHAIR MARKOWITZ: Well, when you say
13 the specific regulatory limit referenced, that's
14 what you mean, right?

15 MEMBER VAN DYKE: Is that enough
16 description to get that across?

17 CHAIR MARKOWITZ: I think so. It's
18 whatever chemical, toxin, whatever source,
19 whatever year. Okay, I'm cognizant of time,
20 because I think one of the members of the Board
21 may need to leave imminently. So, I don't want
22 to rush the process, but are there other

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1 suggestions on the language of the
2 recommendation?

3 MEMBER SILVER: Well, I think I'm
4 still an outlier when it comes to looking at old
5 standards. The example of 1993 versus 2020 was
6 just given. I feel pretty strongly there's no
7 reason to go back in time. If this were a tort
8 case, where we were trying to show the government
9 was negligent, sure. But since it's a no fault
10 program, and all we're concerned about is
11 causation, and dose response, they should always
12 be using the latest TLVs. So, that's my --

13 CHAIR MARKOWITZ: But the program told
14 us that's what they do.

15 MEMBER SILVER: Well, do we really
16 believe it if we're still questioning '93, 2020?
17 Could we be a little clearer?

18 MEMBER BOWMAN: On that sentence where
19 we're currently at, that starts with comparisons,
20 you could just add a comma at the end, the
21 specific regulatory limit referenced, comma, with
22 preference for the most current, or something

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1 like that.

2 CHAIR MARKOWITZ: Okay.

3 MEMBER FRIEDMAN-JIMENEZ: I think we
4 need to be a little careful here, because we're
5 really interested in the exposure that the person
6 had early on when they were working there. Say
7 they started working in 1990, they could have had
8 high exposures to asbestos before 1993, and then
9 if we compared to current standards, we don't
10 know when those measurements were made.

11 So, I think we need to specify when
12 the industrial hygiene data were gathered,
13 because it has to be relevant. The word relevant
14 implicitly incorporates at the time that the
15 person was exposed. But maybe we should be a
16 little more explicit about that, that the
17 industrial hygiene data needs to be from the time
18 when the person would need to have been exposed
19 in order to get the disease from that exposure.

20 CHAIR MARKOWITZ: I understand the
21 point, but I don't really think it's necessary.
22 Because they look at a claim, if they know the

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1 years that they worked, at what facility, what
2 their job title was, they're looking at where
3 their data exists. They don't find much, but
4 they're going to use whatever they find, and
5 that's going to be from whatever year the person
6 worked.

7 And by what they do now, and what
8 we're including in the recommendation, is that
9 the comparison is going to be with the most
10 recent standard, but the data are from whenever
11 the person worked. So, I think that's already
12 built in to the evaluation. I'm not sure if we
13 need to spell that out.

14 MEMBER FRIEDMAN-JIMENEZ: I don't
15 think the data are necessarily from when the
16 person worked, they're from when the measurement
17 was made. If they worked from 1990 to 2001, and
18 the measurement was made in 1998, it might not be
19 representative of the actual levels in 1991, or
20 '92. So, I think we do want to specify when the
21 industrial hygiene measurements were made, I
22 think that's important part of the industrial

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1 hygiene data.

2 CHAIR MARKOWITZ: That may be an
3 important point, I do think it's a separate
4 point, and it gets into the other issues with the
5 IH evaluation significance level, exposure, and
6 all that. This is intended to -- the only direct
7 it specifically to this comparison of the
8 reference standard. So, I'm not sure including
9 that point is necessary here, if that makes sense
10 George.

11 MEMBER BOWMAN: It seems like it's
12 embedded in the must describe the available data.
13 In the description of the data, you would say
14 when that data was collected.

15 MEMBER VAN DYKE: That's exactly what
16 I was going to say Aaron, is that --

17 MEMBER FRIEDMAN-JIMENEZ: Okay, so you
18 think that's enough. I just think that by
19 specifying the most current standard, that that
20 may be used incorrectly to specify recent
21 industrial hygiene data, which is not really
22 relevant to the initial exposures of the person.

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1 Okay, I understand your point, I think you're
2 probably right that describe implicitly includes
3 the date of the industrial hygiene data.

4 CHAIR MARKOWITZ: So, line four of
5 five, it says, quote, sufficient industrial
6 hygiene data that are relevant to the claim, end
7 of quote.

8 MEMBER BOWMAN: There is a part with
9 that thing I had with coverage for the most
10 current, there could potentially be some
11 confusion of someone who wasn't obviously a part
12 of this conversation. We are specifically
13 referring to the preference for the most current
14 standards, right? You could add that, make that
15 more clear. The most current data, the most
16 current standards.

17 CHAIR MARKOWITZ: Okay, additional
18 surgery? This is the closest, for the occup med
19 docs on the Board, this is the closest we get to
20 surgery. Okay, so I guess we should -- let me
21 read this aloud unless someone else wants to read
22 it before we take a vote, so we're all looking at

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1 the same thing.

2 The Board recommends that the Energy
3 Employees Occupational Illness Compensation
4 Program advise its staff, and industrial hygiene
5 contractors that claim related industrial hygiene
6 reports, and opinions restrict comparisons of
7 claimants exposures to toxins in Department of
8 Energy facilities to regulatory workplace
9 exposure standards only to cases where sufficient
10 industrial hygiene data that are relevant to the
11 claim exist to support that the exposures were in
12 excess of the regulatory standards.

13 Comparison of exposures to regulatory
14 standards must describe the available industrial
15 hygiene data, and the specific regulatory limit
16 referenced with preference for the most current
17 standards. Comparisons of claimant's work place
18 exposures to regulatory standards in the absence
19 of specific industrial hygiene evidence lack
20 objective support, and may be prejudicial to the
21 appropriate resolution of the claim.

22 Okay, final comments? Then I think

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1 Carrie, can we do a roll call?

2 MEMBER BOWMAN: Wait, one last thing,
3 sorry, one last incision. So, that first
4 statement, toxins at Department of Energy
5 facilities to regulatory workplace standards only
6 to cases where sufficient industrial hygiene data
7 exist. So, maybe that are relevant to support
8 the comparison. We don't want to restrict them -
9 - I mean if there were data to say that there
10 were exposures below regulatory standards, then
11 that's okay.

12 But the way this reads is the only
13 time you should be doing this is when it's in
14 excess of the regulatory standards, does that
15 make sense?

16 CHAIR MARKOWITZ: Yeah, sure.

17 MR. BIRD: Sorry, what needs to go
18 here? All of it?

19 MEMBER VAN DYKE: Yes.

20 MEMBER BOWMAN: Sorry about that.
21 That are relevant to the claim, right?

22 CHAIR MARKOWITZ: Yeah, relevant to

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1 the claim, and that support the comparisons. Is
2 that good?

3 MEMBER VAN DYKE: I think that's good.

4 MEMBER BOWMAN: It's a partially
5 incomplete sentence here, wait. Yeah, it's an
6 incomplete sentence currently.

7 CHAIR MARKOWITZ: Is that right? The
8 Board recommends that the program advice for the
9 IH contractor restrict comparisons for claimant's
10 exposures to toxins --

11 MEMBER FRIEDMAN-JIMENEZ: After
12 hygiene data, put in the word exists, and I think
13 that would make it a complete sentence.

14 CHAIR MARKOWITZ: And actually the
15 third line, instead of toxins, it needs to say
16 toxic substances. That's the language of the
17 act. Okay, are we good now? Okay, so Carrie,
18 are we ready to do a roll call?

19 MS. RHOADS: Sure. Okay, so we're
20 voting on draft for recommendation on industrial
21 hygiene report language, that's on the screen.
22 I'll start with Dr. Bowman.

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1 MEMBER BOWMAN: Yes.

2 MS. RHOADS: Dr. Silver?

3 MEMBER SILVER: Yes.

4 MS. RHOADS: Dr. Van Dyke?

5 MEMBER VAN DYKE: Yes.

6 MS. RHOADS: Dr. Friedman-Jimenez?

7 MEMBER FRIEDMAN-JIMENEZ: Yes.

8 MS. RHOADS: Dr. Markowitz?

9 CHAIR MARKOWITZ: Yes.

10 MS. RHOADS: Dr. Mikulski?

11 MEMBER MIKULSKI: Yes.

12 MS. RHOADS: Ms. Pope?

13 MEMBER POPE: Yes.

14 MS. RHOADS: Mr. Tebay? I think Mr.
15 Tebay had to leave. So, there's --

16 MR. BIRD: Carrie I also believe we
17 have Mr. Key with us.

18 MS. RHOADS: Okay, hi Mr. Key, are you
19 on? Okay, Kevin, how long has he been on for, do
20 you know?

21 MR. BIRD: I'm not totally sure, just
22 noticed him.

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1 MS. RHOADS: Just noticed him, okay,
2 he may have missed the discussion. Anyway,
3 that's seven votes for, and five missing,
4 assuming Mr. Tebay had to drop off, and I'm not
5 sure when Mr. Key joined.

6 CHAIR MARKOWITZ: Okay, well if Mr.
7 Key comes back on, and wants to vote, then we'll
8 ==

9 MS. RHOADS: Okay.

10 CHAIR MARKOWITZ: The recommendation
11 passes regardless, but if he wants to come back
12 on, and vote, then I think he should be able to.

13 MS. RHOADS: Sure.

14 CHAIR MARKOWITZ: Okay, I'll write up
15 the rationale, I'll send it around. Time is
16 short now because our term expires July 15, I
17 think, and I'm going to be on an eight-day
18 vacation pretty soon before that. So I'm going
19 to be unusually timely in sending you the
20 rationale. So, it will require a timely
21 response. Thank you.

22 Okay, next item on the agenda. 208,

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1 we've got an item on asbestos, and then we'll
2 take a break. You can bring down this language,
3 you can take it down now Kevin. We don't have a
4 visual for this next agenda. So, let me refresh
5 your memory about this asbestos presumption
6 issue. There is a string of recommendations, and
7 back, and forth around asbestos presumptions
8 dating back a few years.

9 The program has accepted many of our
10 suggestions, and a few of them, they have not
11 accepted. But the issue at hand now is whether
12 the list of job titles in the Procedure Manual
13 that are presumed to have significant exposure to
14 asbestos, I think before -- there's a certain
15 date, I think it's 1990, I don't recall quite the
16 details, but the question is should that list be
17 expanded to include certain types of engineers?

18 And the Board did some research on
19 this issue to try to look at what we know about
20 the regularity, or predictability of asbestos
21 exposure in previous era for engineers, in terms
22 of asbestos. And we did that indirectly by

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1 looking at mesothelioma risk. As you know,
2 mesothelioma is almost always caused by asbestos.
3 So, if you see mesothelioma in excess numbers, or
4 frankly in any appreciable numbers at all.

5 It means that there has been asbestos
6 exposure for those individuals, and if you do it
7 by job title, and you have sufficient numbers,
8 you can presume that asbestos exposure was
9 reasonably widespread in that job title. And
10 John Dement and I looked at the National
11 Occupational Mortality Survey to look at which
12 job titles showed excess mesothelioma, because
13 it's an indicator of asbestos risk.

14 And we're talking about that NOMS has
15 data from 1999 to 2014, so mesothelioma has a
16 long latency, so really tracking that exposure
17 going back to the 60s, 70s, perhaps into the 80s
18 for job categories. And there are a sizeable
19 number of job titles, ones we absolutely expect
20 from construction maintenance trades, from ship
21 building, ship repair, et cetera found in the
22 NOMS database.

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1 And those are included in the
2 Procedure Manual, Exhibit No. 15-14. But
3 included in those are certain types of engineers.
4 So, included in the NOMS list of excess
5 mesothelioma, and by excess, we mean a minimum
6 two, and a half fold increase in risk, and also
7 minimum of 30 mesotheliomas in the database. So,
8 it was a stable statistical estimate,
9 statistically significant, and appreciable
10 number.

11 And we've gone back and forth with the
12 Department's contractor on this issue. So, the
13 Board members have received the PTS report on
14 asbestos presumptions, and they make a couple of
15 points. One is that the SEM includes information
16 about bystander exposure. So, if engineers, or
17 any job title had bystander exposure, the SEM
18 recognizes that.

19 And the reason why bystander exposure
20 becomes relevant, is because for engineers who
21 don't -- they may not work directly with
22 asbestos, they would certainly be in the vicinity

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1 of asbestos use going back in time, and would
2 constitute bystanders. But in any case, so one
3 point that PTS is making that the SEM includes
4 bystander exposure.

5 I have an opinion about that, but I
6 want to just summarize what the PTS response is.

7 They also -- their basic point is that what
8 chemical engineers, mechanical engineers, and
9 industrial safety engineers did in a DOE complex
10 is not sufficiently similar to what the broader
11 national set of these very same types of
12 engineers as reflected in the NOMS to enable us
13 to presume that the DOE engineers had asbestos
14 exposure.

15 In other words that the disease
16 experience of engineers across the country,
17 again, chemical, mechanical, industrial safety
18 engineers, just those type of engineers, that
19 their experience nationwide, which reflects
20 increased risk of mesothelioma, and therefore
21 asbestos exposure. Not for everyone, but fairly
22 broadly.

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1 It's not sufficiently similar to the
2 DOE engineers to allow us to make that leap of
3 faith about DOE engineers. And then they go on
4 about something that I frankly don't quite
5 understand, that labor categories in the SEM
6 reflect functional aspects of the work in art,
7 and these aren't the same as job titles from the
8 NOMS.

9 And if anybody's read that and
10 understands that point better than me, I'd like
11 to understand it better. And therefore they
12 don't agree that chemical, mechanical, industrial
13 engineers should be added to the presumed
14 asbestos list.

15 Comments, questions, corrections?
16 While you're thinking, take a look at the SEM for
17 engineers. I looked at some of the bigger sites,
18 I looked at Hanford, I looked at chemical
19 engineers, industrial safety engineers, and I
20 think mechanical engineers for Hanford. At least
21 two out of three in the SEM. And asbestos, as
22 well as many other exposures are listed in the

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1 SEM. And then I looked at Y-12, Savannah River,
2 and Portsmouth, and in none of them did I find
3 asbestos in the SEM for a chemical engineer, or
4 an industrial safety engineer.

5 In one of the sites there wasn't a
6 mechanical engineer, but in any case, as we've
7 seen before, Hanford, they're an extensive
8 documentation of potential exposures in the SEM
9 far greater than many of the other major sites.
10 So, just at the level of our chemical engineers,
11 or industrial safety engineers recognized in the
12 SEM as having potential exposure to asbestos, the
13 SEM is quite variable in that respect.

14 And in some big sites, I couldn't find
15 it. What that means in a way is that for those
16 engineers, it's not only that there's no
17 presumption of exposure, but if the claims
18 examiner goes to the SEM, and looks for a
19 chemical engineer with mesothelioma, they look in
20 the SEM, and they don't find asbestos, then
21 they're not going to think that this person had
22 asbestos exposure, at least from the SEM.

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1 Maybe look at it somewhere else, maybe
2 the IH will jump in, but at least it's not from
3 the SEM. Anyway, other people's comments,
4 thoughts on this?

5 MEMBER BOWMAN: This is Aaron. I read
6 over the response as well, and with you, Dr.
7 Markowitz, I don't fully understand the
8 rationale. And I think the reason the rationale
9 is hard to understand about they're saying that
10 the occupational group from NOMS is not the same
11 as the job categories, is they have one paragraph
12 describing what they perceive as the differences
13 in tasks.

14 But they don't relate that to how that
15 reflects potential exposure to asbestos, and why
16 that difference that they're pointing out is in
17 any way related to asbestos. So, I think -- at
18 least that's why I don't understand the
19 relationship of the argument to the request.
20 Maybe that's also partially why you're saying you
21 don't fully understand it either.

22 And I think that's the issue, I agree

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1 with you, I do not fully understand -- I don't
2 think this fully explains to us their position.

3 CHAIR MARKOWITZ: Okay. So, I don't
4 think we're going to get to the heart of this at
5 this meeting, because I think this is a
6 protracted dialogue, in which significant time
7 periods pass between communications making it
8 awkward at a minimum. But I think unless we're
9 able to do something by July 15th, which is
10 unlikely, I think we should turn this over to the
11 next Board.

12 And put it on their list of things to
13 look at, and clarify. I think that's what makes
14 most sense.

15 MEMBER VAN DYKE: So, Steven, maybe we
16 need to -- I mean, to understand this better,
17 maybe it's looking at denied mesothelioma claims
18 to see is this really affecting claim
19 adjudication?

20 CHAIR MARKOWITZ: Yeah, or for that
21 matter, I don't know that the system can do this,
22 but frankly look at the experience of these kinds

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1 of engineers in their claims, in particular
2 mesothelioma claims, or any asbestos disease
3 claims actually. But I don't think they can sort
4 claims by job title, job category. But they can
5 sort by claim, by disease type. So, that might
6 answer the question, yeah.

7 MEMBER SILVER: When the Board does
8 get around to doing that, every time I've heard
9 about industrial safety engineers, my mind has
10 gone to the technicians who work under them. I
11 don't know what Duronda's experience was at Rocky
12 Flats, but I know at Los Alamos, if there was a
13 messy situation to check out, the white collar
14 guy with a college degree would send his
15 community college, or trade school graduate, the
16 technician to deal with it initially.

17 And often that involved sampling, so
18 would have an industrial safety technician been
19 captured under the job title industrial safety
20 engineer?

21 CHAIR MARKOWITZ: No.

22 MEMBER SILVER: No, well that's --

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1 CHAIR MARKOWITZ: No, if you look at
2 the SEM there, it varies by DOE site, but there
3 are various job titles, and numerous safety
4 technician slots.

5 MEMBER SILVER: So, I guess if the
6 Board prevails, and gets these engineering job
7 titles recognized, a reality check would be to
8 make sure that the technicians whose descriptive
9 chemical engineering technician, mechanical
10 technician are also included.

11 CHAIR MARKOWITZ: Yeah, good idea.
12 Other comments? Okay, so I guess we're agreeing
13 to add this to the list for the next Board to
14 continue this conversation. And after the break,
15 when we get to items we think the next Board
16 should deal with, when I write it up, I'll add a
17 little bit of detail to this one so they
18 understand the gist of this conversation today.

19 Okay, so 2:23, let's take a ten minute
20 break, and reassemble at 3:30. And I think the
21 desire to leave your phones, and computers on,
22 don't disconnect, and then we'll just be back in

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1 ten minutes. Putting it on mute, that would
2 help.

3 (Whereupon, the above-entitled matter
4 went off the record at 2:33 p.m. and resumed at
5 2:43 p.m.)

6 CHAIR MARKOWITZ: Okay, so jumping
7 back onto this, our thoughts about the claims
8 review that we did, and we're not leaning to make
9 any conclusions, or recommendations, it's really
10 just to pass along to the next Board some of our
11 thoughts on claims review. Areas that we think
12 should be looked at more closely.

13 And particularly thinking about the
14 time when the Board would have a contractor look
15 at a large -- systematically, a large number of
16 claims. What questions do we have, what issues
17 do we think should be examined? I think it would
18 be most helpful to think about, since we've been
19 talking about industrial hygiene, to talk a
20 little bit about the industrial hygiene reports,
21 and what questions we might have.

22 Reminder, our charter is that we are

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1 supposed to look at with reference to the
2 industrial hygiene, and staff positions within
3 the program at the consistency, quality, and
4 accuracy of the industrial hygiene, and the
5 medical reports. So, consistency, objectivity,
6 and quality, or accuracy, and quality of those
7 reports.

8 So, with that in mind, that's our
9 task, what questions would we ask of the
10 industrial hygiene reports that we've looked at?
11 For instance I would like to know how consistent
12 their assessment is of the level of exposure by
13 job title. If they have any number of claims
14 from given more of a kind job titles, and they're
15 ranking it as low exposure, very low, high
16 exposure, how consistent is that from one claim
17 to the next for the same job title?

18 Probably not for the same DOE site,
19 that's probably too much to ask. But some
20 measure of the consistency across industrial
21 hygienist. I'm sure there's some method where
22 they sort of try to come to agreement about the

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1 work that they do. But the question is how
2 successful is it, how consistent are their
3 interpretations of what various claimants do in
4 terms of dose, in terms of level, and exposure?
5 Other thoughts?

6 MEMBER VAN DYKE: I mean given the
7 limitations on really sorting claims by job
8 title, or particular exposure, I think that'd be
9 hard. I agree with what you're saying, I just
10 don't know if it's possible. I think for me it's
11 more -- I mean as we talked at our last meeting,
12 more consistency, and more maybe improving
13 guidance on frequency, intensity, and duration of
14 exposure, and how that's described in the
15 industrial hygiene reports.

16 CHAIR MARKOWITZ: Could you repeat
17 your last thought there? I missed a key word.

18 MEMBER VAN DYKE: I think more
19 guidance, maybe coming to some guidance in terms
20 of frequency, intensity, and duration of exposure
21 in the IH evaluations.

22 CHAIR MARKOWITZ: Guidance to the

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1 industrial hygienists?

2 MEMBER VAN DYKE: Yes, I think that a
3 lot of those terms aren't defined, and I think in
4 the evaluations that we've done already, we've
5 identified that we don't even quite understand
6 what high, and low means. So, having some
7 boundaries around those terms might improve
8 consistency.

9 CHAIR MARKOWITZ: Yeah. Others,
10 comments? I'd like to know how accurate, how
11 correct they are about their judgments. When
12 they say someone is low to very low, though
13 depending on expert opinion, that's understood,
14 that's in the Procedure Manual, that they're
15 permitted to do that. And in fact, in the
16 absence of data, that's acceptable. But what I
17 want to know is are they right? Or how
18 frequently are they wrong?

19 MEMBER VAN DYKE: That's a really hard
20 question.

21 MEMBER SILVER: Well, I have some low-
22 hanging fruit. In the absence of hard industrial

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1 hygiene monitoring data, I think the claimants,
2 and maybe even the IHs are really handicapped
3 when other kinds of information that is contained
4 in some of these voluminous claim files is not
5 pulled out, and incorporated into the SEM.

6 The Parkinson's case that I think
7 George and I had for the previous meeting
8 included a hazard inventory developed in the mid-
9 1980s, in anticipation of Lawrence Berkeley
10 having to comply with the community right-to-know
11 law that was about to pass in Congress. And it
12 goes on for several pages, and building by
13 building lists qualitatively the major chemical
14 hazards that are present.

15 And this claimant incurred a slight
16 disadvantage because those reviewing his file,
17 claims examiner, and the IH missed a couple of
18 his exposures that they could have ascertained
19 there. But the bigger picture is I checked the
20 SEM for some of the room locations on that hazard
21 inventory, and the SEM did not reflect the
22 substances that the management of the laboratory,

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1 in their 1985 inventory said were there.

2 So, we heard previously, I think from
3 John Vance, that sometimes they mine the claim
4 files, and pull out information that then results
5 in changes to the SEM. But this was a
6 particularly grievous case where that did not
7 happen. And then some other ancillary
8 information, supposedly he didn't have exposure
9 to manganese, but they acknowledged on the SEM
10 that he worked with Monel Stainless Steel.

11 But check of a reference book shows
12 that it contains up to two percent manganese.
13 So, that reference book was not on the list of
14 the standard six sources that the industrial
15 hygienist always sites, but even if it had been,
16 would he have nailed that fact, that there was
17 potential manganese exposure?

18 CHAIR MARKOWITZ: Actually, Monel is
19 cited in the Procedure Manual with the
20 Parkinson's disease section.

21 MEMBER SILVER: Yeah, so a lot slipped
22 through on that claim. I think the more

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1 systematic evaluations that you were previously
2 discussing would be more powerful. But I think a
3 lot of information contained in the files that
4 would benefit other claimants, and improve the
5 SEM is going to waste.

6 CHAIR MARKOWITZ: I think it would be
7 interesting to know how often the industrial
8 hygienists use the occupational questionnaire
9 information, and any other affidavits, and the
10 like. And it's entirely possible that they use
11 them all the time, and it may be part of a
12 protocol. But at least in the claims we looked
13 at, you can't tell what the impact of the non-SEM
14 exposure sources are, how influential they are.

15 So, I think that would be an
16 interesting question to look at. Let's move on
17 to the physicians, the contract medical
18 consultants. I'm looking at the claims we looked
19 at, what more would you -- what would you want to
20 look at more deeply, or on a broader number of
21 claims? I'm personally interested in how
22 frequently they're wrong.

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1 I don't think it's the large
2 percentage of the claims, but I have seen them,
3 and it's not entirely just a normal variation,
4 and opinion, because doctors do disagree, but
5 there is some level of right, and wrong, and I'd
6 be interested in knowing how frequently they're
7 actually wrong in their opinions. Other thoughts?

8 I realize we're going back a couple
9 months to our time when we were looking at the
10 claims, and it may not be so easy to remember the
11 questions that we had from that.

12 MEMBER SILVER: Well, I don't like
13 stepping on the toes of medical decision makers,
14 but --

15 CHAIR MARKOWITZ: Feel free.

16 MEMBER SILVER: Advocating for
17 claimants, I've done a little in my time. To
18 what extent doctors rely on rubrics, and round
19 numbers, and things that are generally considered
20 to be true do they get it wrong? So, the
21 Parkinson's case I was discussing a moment ago,
22 the industrial hygienist did an underwhelming job

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1 on exposures, and then it reaches the CMC.

2 And the CMC says well we don't usually
3 see Parkinson's more than 20 years past the last
4 exposure, and this one was 22 years. Seems to
5 me, a rule of thumb, 20 years, should not have
6 become a bright line in adjudicating a claim. I
7 can't recall any other instances where I've seen
8 a rule of thumb like that being used to
9 disadvantage a claimant.

10 The asbestos presumptions go in the
11 other direction, that place the claimant's
12 advantages. But might keep an eye out for
13 whether doctors are abusing their round numbers,
14 their rules of thumb.

15 CHAIR MARKOWITZ: Other thoughts?
16 Okay, so the other, I think part of it we
17 wondered about a little bit when we looked at
18 claims was the decision making of the claims
19 examiner. They're the ones who are gathering the
20 data, including SME. They're the ones that write
21 out the statement of accepted facts, and they
22 formulate the questions that go to the industrial

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1 hygienist, and the physicians.

2 So, are there comments, or thoughts
3 about their role that we wondered about, that we
4 thought we should take a closer look? I'm
5 personally interested in how often they fail to
6 include certain either important information on
7 exposure, or disease, or don't include the right
8 information. So, that they're not necessarily
9 forming the right questions to the consultants.
10 I don't have a sense on how often that happens.

11 But I'm sure it happens sometimes, and
12 I think that a closer look at claims should look
13 at that question.

14 MEMBER SILVER: I have some more low
15 hanging fruit if you will.

16 CHAIR MARKOWITZ: Yeah.

17 MEMBER SILVER: One of the doctors,
18 this is your last shot at me, explain to me how
19 it's possible for a recognized case of
20 pneumoconiosis sent over by the Justice
21 Department would not qualify under Part E for
22 medical benefits, and impairment rating relative

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1 to pulmonary fibrosis? Can you have
2 pneumoconiosis without having pulmonary fibrosis?

3 CHAIR MARKOWITZ: Maybe Dr. Mikulski,
4 or Dr. Friedman-Jimenez wants to have a first? I
5 think George you tried to unmute yourself, but
6 we're not hearing you if you're speaking.

7 MEMBER FRIEDMAN-JIMENEZ: Yeah, I
8 generally consider a pneumoconiosis to be one
9 form of pulmonary fibrosis. There are other
10 causes of pulmonary fibrosis also that are not
11 pneumoconiosis, but I can't offhand think of a
12 pneumoconiosis where there is no pulmonary
13 fibrosis. And I think we dealt with this, the
14 lack of synonymy of pulmonary fibrosis, and
15 pneumoconiosis in the SEM. Is this still a
16 current problem?

17 MEMBER SILVER: Well, my understanding
18 has always been what you stated, that
19 pneumoconiosis is a particular type of pulmonary
20 fibrosis. So, if the Justice Department
21 recognizes that a person has pneumoconiosis, how
22 could the Labor Department say yeah, but you

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1 don't have pulmonary fibrosis?

2 MEMBER FRIEDMAN-JIMENEZ: When was
3 this case from? We had a comment on this, didn't
4 we, Steve?

5 MEMBER SILVER: Yeah, we discussed it
6 in terms of the powder coating technician where
7 maybe there was hard metals disease. But I
8 wasn't assigned that case, I was assigned 7716,
9 which was a mechanic at a uranium mill. The
10 Justice Department paid his pneumoconiosis claim,
11 and as the law provides, it was then sent over to
12 DOL for medical benefits, and impairment.

13 And we're talking about claims
14 examiners, the claims examiner just denied the
15 pulmonary fibrosis because a doctor had not
16 penned that magic phrase.

17 CHAIR MARKOWITZ: Yeah, well in any
18 one claim it's real hard to comment, plus we
19 don't know the criteria under RECA versus EEOICPA
20 for other diagnosis, or compensation, so we'd
21 have to look at the details.

22 MEMBER SILVER: Well, my one last

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1 comment would be if it strains medical credulity,
2 that you could have pneumoconiosis, but not of
3 pulmonary fibrosis, maybe they need to create a
4 presumption for the Procedure Manual where no one
5 has to sweat over whether they also have
6 pulmonary fibrosis.

7 MEMBER FRIEDMAN-JIMENEZ: Yeah, I
8 think that should be clear in the Procedure
9 Manual. I'm just looking for the Procedure
10 Manual now to see what the current language is.
11 I thought we had fixed this problem, because I
12 know Carrie worked a lot on this, and we came up
13 with language, but I don't remember the details.

14 CHAIR MARKOWITZ: Yeah, I don't
15 remember either.

16 MEMBER SILVER: Yeah, so this denial
17 took place in June of -- rather December 2020.

18 CHAIR MARKOWITZ: This is one of the
19 cases we looked at?

20 MEMBER SILVER: 7716. On page 72
21 you'll see the final decision. If Mr. Vance is
22 still on the phone, I'm not sure, but I have a

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1 question.

2 MR. VANCE: Hey director, so what was
3 it, it was 7166?

4 MEMBER SILVER: No, 7716.

5 MR. VANCE: All right.

6 MEMBER SILVER: Page 72 is the final
7 decision.

8 CHAIR MARKOWITZ: I have a different
9 kind of question Mr. Vance. At some point I
10 think we learned that when a claims examiner is
11 looking through the exposures that they try to
12 limit the number of toxic substances to no more
13 than six, roughly that they target. And I
14 couldn't remember why they do that.

15 Because for some job titles you see a
16 lot of different exposures, a lot of relevant
17 exposures. And the reason I raise this is
18 because it is one of the things that we could
19 look at, if we look at a larger number of claims,
20 is the impact of this policy of limiting the
21 number of toxic substances to six. So, what's
22 the history, or what's the policy?

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1 MR. VANCE: Yeah, it's actually seven,
2 and remember, what you're talking about is
3 basically an administrative process that we go
4 through to sort of prioritize those toxins that
5 are going to probably have the greatest impact on
6 producing a positive outcome in the case. So,
7 when you're doing a SEM search, when you're going
8 through a DAR record, what would be an
9 appropriate number of toxins for a physician to
10 consider?

11 So, the Department of Labor said seven
12 seems to be a reasonable number. If there is a
13 basis for a claim argument being presented that
14 allows us to go beyond seven, we will do that.
15 The question becomes well how many is an
16 appropriate number of toxins to identify, and
17 profile for a physician to consider in answering
18 a causation.

19 So it's really an administrative
20 process to try to prioritize and refine the
21 toxins that are going to be the focus of
22 evaluation as we administer thousands of these

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1 claims.

2 CHAIR MARKOWITZ: Okay, thank you.

3 MEMBER FRIEDMAN-JIMENEZ: Okay, I
4 found it in the Procedure Manual, can I read the
5 language here? On page 199 of the current
6 Procedure Manual, it says under number two,
7 synonymous fibrotic lung conditions. DEEOIC has
8 determined that respiratory illnesses such as
9 restrictive interstitial lung disease, pulmonary
10 fibrosis, and, or pneumoconiosis generally refer
11 to the same disease process.

12 And so, they're just saying that
13 they're synonymous for the purpose of the
14 Procedure Manual, and as I remember that's what
15 we had recommended. I don't remember what date
16 this went into effect, but I would imagine that
17 that case that you saw Ken, predated this change
18 in the Procedure Manual. But I think we all
19 agree that pneumoconiosis is a form of pulmonary
20 fibrosis, and this has been clarified in the
21 Procedure Manual.

22 It's on page 199 out of 701, although

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1 the page number is listed as 185, but if you look
2 at the numbering on the top in the Acrobat
3 Reader, it's 199.

4 CHAIR MARKOWITZ: Okay, thanks. Other
5 comments? Okay, so let's move on on the agenda,
6 review of public comments. So, this may be more
7 in the line of advice for the next Board, but a
8 number of the written comments after last meeting
9 were very interesting, and presently quite
10 relevant to the charter of the Board. And I
11 don't think that we need to go through them here.

12 I don't see the utility of going
13 through them here, because I don't see that this
14 Board with two weeks left was going to take any
15 actions. But I went further down the list of
16 agenda items for the next Board, and the question
17 really is how should a Board structurally deal
18 with public comments? We have not developed a
19 systematic way of following up on comments that
20 are relevant to our mission, and that touch on
21 important issues.

22 And how should we do that? Because

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1 the public comments are coming either from
2 individuals who have their own experiences in the
3 system, problems which may be illustrative of
4 others problems, and they also seem to come from
5 authorized representatives who have a lot of
6 experience with claims. So, the question is what
7 should we do?

8 Should we have a standing working
9 group that between meetings reviews public
10 comments, and then brings them to the Board
11 meetings as issues for exploration? I'm looking
12 for ideas.

13 MEMBER FRIEDMAN-JIMENEZ: This is
14 George. I have a quick question related to that.

15 Has anyone expressed any satisfaction, or
16 dissatisfaction with the way that we're doing it
17 now? The people that make the public comments,
18 are they satisfied that the Board is hearing them
19 adequately, and that the Department of Labor is
20 dealing with them appropriately?

21 CHAIR MARKOWITZ: We don't get any
22 feedback, so I don't know. I don't know whether

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1 the program gets any feedback, or the ombudsman
2 office gets any feedback about our attention, or
3 lack of attention to the public comments. I
4 don't know.

5 MEMBER FRIEDMAN-JIMENEZ: Because I
6 think we've listened pretty carefully to the
7 comments, and I think we've responded
8 appropriately to them. And many of them we get
9 the changes that we request, and some we don't.
10 But I'm just wondering if there's a problem here.

11 CHAIR MARKOWITZ: Actually I notice
12 that Ms. Fallon from the ombudsman office is
13 actually on the call, but if she wants to -- if
14 that office has gotten any comments. But the
15 problem I think is that the question in my mind
16 is are there opportunities for things that we
17 could fruitfully look at that arise in the public
18 comments that we're not really following up on?

19 And I mean again, the interaction with
20 public comments, it's not really a discussion,
21 but they are weighing in on problems, on their
22 perceptions, and for us it can be a very valuable

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1 source. And I know that we've looked at them
2 some, and we talk about some of them. But I'm
3 not convinced that we do it thoroughly enough, or
4 systematically enough.

5 So, I think actually having a working
6 group to review public comments, a lot of the
7 written comments come in after the meeting. So,
8 there's always a time delay, and we can't review
9 them at the meeting, but we can review them at
10 the next meeting. I think that it could go on
11 the list of things for a future Board to do. You
12 think that would work?

13 MEMBER SILVER: If the Board is able
14 to get back out on the road, and visit sites,
15 it's not mutually exclusive with having a working
16 group, but one strategy might be to tee up a
17 couple of agenda items based on comments that
18 been received at that particular site, or nearby
19 sites. I think we were last planning to go to
20 the Nevada test site.

21 And jelling in my mind was the idea
22 for the Board to take up in a serious way, the

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1 many comments that we've gotten from D'Lanie
2 Blaze out in Southern California, it's a one day
3 drive from Las Vegas. So, I was going to propose
4 to our chair and Board that we carve out a little
5 time to discuss that with Ms. Blaze, and some of
6 the effected workers there in the room.

7 So, it all depends on being able to
8 get back out on the road, but that might be a way
9 to re-energize some of the comments we've
10 received, or get additional refined input from
11 the public.

12 CHAIR MARKOWITZ: Yeah, okay.

13 MEMBER POPE: This is Duronda Pope. I
14 agree with Ken. Those public comments, and
15 having those public comments reviewed is key, and
16 important for a lot of reasons that are -- the
17 folks that are making the comments are being
18 heard, and the comments are being addressed.

19 CHAIR MARKOWITZ: Yeah. Other
20 thoughts? Okay, so the last agenda item is
21 really just making a list of --

22 MEMBER FRIEDMAN-JIMENEZ: Before we go

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1 on, I do have one thought, one additional thing,
2 a question that I think the next Board should
3 take up. The question is how effectively are
4 claimants who have some reasonable evidence for
5 causation, but who don't make the Procedure
6 Manual criteria for presumed exposure, or
7 presumed causation, how effectively are they
8 referred to the CMC, or the IH, and others to do
9 at an individual level, analysis of exposure, and
10 causation?

11 Are many people falling through the
12 cracks there, or just a few, or none? How
13 smooth, and seamless is that process? Because
14 the entire setup for having presumptions is
15 assuming that we're just -- we're making the
16 presumptions strong enough, and setting the bar
17 high enough that we won't have false positives.
18 In other words we won't call people work related
19 when they're not.

20 But the cost of that is having more
21 false negatives, missing people, and I'm just
22 concerned that the part of the system that is in

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1 place be effective, that catches people who don't
2 make the presumed criteria, and do the individual
3 level analysis, and look at their exposures on a
4 case by case basis. Assuming that they have some
5 reasonable evidence

6 CHAIR MARKOWITZ: I'm going to turn it
7 over to Mr. Vance in a moment for a comment, but
8 I think most people don't meet the presumptions.
9 And so most claims are handled on an individual
10 basis. But Mr. Vance, you want to weigh in here?

11 MR. VANCE: Well, I mean, the process
12 is designed so that a claims examiner viewing it
13 ideally wants to try to get folks to fit into a
14 presumption, because that just makes it
15 administratively easier to process a claim
16 through the process. In the absence of either an
17 exposure presumption, or causation presumption,
18 that's going to get routed through the normal
19 process.

20 Whereby we advise the claimant that
21 they're going to need certain aspects of evidence
22 from a physician of their choosing. Or, we're

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1 going to go to a CNC to try to establish that
2 causal relationship. So, that's just the process
3 as it's designed. Now, the outcome of that is
4 going to be dependent on the physician reviewing
5 the available exposure data and rendering a
6 judgment as to whether or not he or she thinks
7 it's a significant factor of this resulting
8 whatever the claimed illness is.

9 MEMBER FRIEDMAN-JIMENEZ: So, in your
10 view, it's working pretty well, then?

11 MR. VANCE: Well, I mean, the process,
12 I think, works very well. And I think that our
13 quality control standards, and our reviews of the
14 cases show that. Again, but we're not looking at
15 what is the outcome; it's does the process and
16 procedure work? And I think that we're pretty
17 confident in that process.

18 MEMBER FRIEDMAN-JIMENEZ: All right,
19 good.

20 CHAIR MARKOWITZ: So, lastly I just
21 want to run down a list of items that we think
22 the next Board should deal with. And I had a

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1 list actually, I think I made up for our last
2 meeting. Let me start to run down this, and then
3 we can add to them. One is a follow-up on
4 outstanding recommendations.

5 So, if we're going to make a couple of
6 recommendations from this meeting, that the next
7 Board should learn about what the outcome is.
8 Secondly is to track progress on previous
9 accepted Board recommendations. Some of them we
10 don't really need any follow up, but others need
11 some touching base about what's happened as a
12 result of those recommendations.

13 Third is to complete the contracting
14 process, for the Board to have a contractor to
15 evaluate claims and evaluate scientific and
16 technical issues to improve the program.

17 Fourth is to identify some, either
18 from the Procedure Manual, from public comments,
19 from the program itself to identify some
20 scientific, and technical issues, whereby the
21 Board can contribute to improvement of the
22 program.

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1 I'm thinking the person we were asked
2 about Parkinson's, about the group 2A
3 carcinogens, the question of the non-radioactive
4 health effects of certain radiologic materials
5 which we never got to. And then, once the
6 contract is in place actually, to design and
7 conduct an evaluation of a sizeable number of
8 claims, so that we can look at, in particular,
9 the issues around IH for the medical consultants,
10 the claims examiners with regard to objectivity,
11 consistency, and quality of the work. We can
12 recommend that they follow up on public comments,
13 and find a structural way of making sure that
14 they review public comments.

15 Another item on the list is, and I
16 wonder whether actually we should do this now,
17 which is, a couple of Board terms ago, the
18 Department gave us data on the top ten conditions
19 by overall, and then by either disease type, or
20 organ site. So, we had the top ten cancer types,
21 top ten meaning most numbers of claims.
22 Respiratory, renal, neurologic, and it was eye

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1 opening I think, to members of the Board in
2 multiple ways.

3 And I think that was done through 2018
4 if I remember correctly. And one thing I think
5 that would be useful to the Board, is actually to
6 update that. To take the last whatever, the end
7 date of the last analysis was through a
8 reasonable current date, a recent date. Okay, in
9 the last two, or three years, what are the
10 overall top ten pulmonary conditions, et cetera,
11 by organ system, that the program sees what's the
12 resolution, how many accepted, how many denied.

13 What's the most common cause for a
14 denial, update that so we can get a sense of
15 where the program is on issues of substance. And
16 I wonder whether -- this is a question for the
17 Board members, should we go ahead, and request
18 that now? And submit a data request, so that --
19 because the next Board presumably won't meet
20 until the fall.

21 That data request can begin, the
22 Department can work on it, so that might be

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1 available for the next Board term? That's
2 question to the current Board members.

3 MEMBER POPE: This is Duronda Pope. I
4 think we should. It's going to take some time to
5 get that together, so I think we make sure that
6 that's in place for the next Board, so they'll
7 have a leg up so to speak.

8 MEMBER FRIEDMAN-JIMENEZ: This is
9 George. I think that's a great idea, I think
10 it's a concrete set of information that all the
11 new Board members can look at that will give them
12 some real information on what the program is.
13 And it'll help them get up to speed, so I think
14 it's a great idea to revisit that analysis, and
15 update it.

16 CHAIR MARKOWITZ: Well, if we're going
17 it now, I think the procedure is that we don't
18 have to formulate any specific language. Frankly
19 we have it from the last time we requested it. I
20 do have to complete a form with what the request
21 is, and the rationale for it, where it fits into
22 our mission, etcetera. But again, we had it from

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1 last time.

2 And so, I think that's pretty easy to
3 do, but I do think we'd have to vote on it as
4 information requested if I understand the
5 procedure correctly. Ryan, Carrie, is that
6 right? Okay, well it's right. I'm sure they'd
7 say It's right.

8 MS. RHOADS: Yeah, I don't think you
9 need to vote on your information request if you
10 can fill out one of those forms, and submit it to
11 the program. You don't need to vote on exactly
12 what's on it, you can just fill it out, and do
13 your panel on the form.

14 CHAIR MARKOWITZ: Thank you. For the
15 record though, for the transcript, and for the
16 minutes, I want to ask the Board members who are
17 present, of which I think there are, if I'm
18 counting them correctly, seven, or eight.
19 Anybody who objects to an information request to
20 the Department for an update on the top ten
21 tables?

22 Okay, so I hear no objection to that,

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1 and let me welcome Mr. Key by the way, to the
2 meeting. You may have been here for a while, Mr.
3 Key. I've been looking at other parts of the
4 screen, but welcome.

5 Okay, go ahead -- so I'm just running
6 down a list. I was just reading you a list of
7 items for the next Board to deal with. What did
8 I miss? What else do you want to add? What topic
9 have we raised before, or should we raise that
10 you think the next Board should work on?

11 All right. Thank you, Kevin, maybe
12 that's what we needed. Okay, so I'll write this
13 up. What I'll do is I'll send it around, it's
14 going to be pretty simple, it's just basically a
15 list of items for the next Board.

16 And if anybody has any additional
17 thoughts, they can send that back, and we'll
18 submit it before July 15th. So, short turn
19 around. I think that's all I have on the agenda.
20 Any other topics, anything we need to come back
21 to? I don't think anybody's opposed to ending
22 early. I don't know whether Ms. Fallon wants to

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1 comment at all on whether the ombudsman's gotten
2 any feedback about the public's interaction with
3 the Board that she wants to share.

4 Not meaning to put you on the spot,
5 but I know you're here, and if you have some
6 useful information, we're happy to hear it.
7 Okay. I think we're done then.

8 MS. FALLON: I'm sorry, Dr. Markowitz,
9 can you hear me?

10 CHAIR MARKOWITZ: Sure, go ahead.

11 MS. FALLON: My apologies, I was
12 having some technical difficulties. Our office
13 has received some comments by individuals, or
14 requests for assistance I should say that
15 overlap. We had some of the comments, and
16 questions that have been provided to the Board.
17 I would not characterize it as frequent, but it
18 certainly has happened on a number of occasions.

19 CHAIR MARKOWITZ: Okay.

20 MS. FALLON: We've done our best to
21 assist those individuals to the extent that we
22 can, understanding that we don't speak for the

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1 Board, or DEEOIC, but where we have the resources
2 to conduct some research, or to point those
3 individuals to relevant resources, we have done
4 that.

5 CHAIR MARKOWITZ: Okay, thank you.
6 Yeah, I mean we don't help individuals, that's
7 not the Board's task, so we occasionally get
8 requests for help. That would go to the
9 Department, or it would go to the ombudsman's
10 office, and it's not something that we're really
11 charged to do. Thank you. Okay, so a couple
12 things I just want to say, and then I think Ryan,
13 you get the last word, is that right?

14 MR. JANSEN: I think so.

15 CHAIR MARKOWITZ: Okay. I just want
16 to thank the Board members, thank the Department
17 of Labor staff, and members of the public, and
18 other members of the government who have been
19 part of the Board's work in the last couple of
20 years. The Board members, of course we all have
21 jobs, and other things we attend to, and it's not
22 easy to understand, and assist a very complicated

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1 system, a system that evolves, improves.

2 And with frankly, very few resources
3 for the Board. But setting that aside, it is a
4 complicated system, and we try our best to
5 understand it, and to provide advice to improve
6 it. So, I want to thank the Board members. Of
7 course the new Board has not been appointed, so
8 we have no idea if there's any carry over. We do
9 know that Ken silver is not returning.

10 So, I want to thank you Ken, for
11 serving on the Board since 2016 for all of your
12 input, and insights, so thank you very much Ken,
13 and good luck with -- all the time that's freed
14 up by not serving on the Board. And I want to
15 thank Kevin, of course for his support for this
16 meeting, and Carrie, and Ryan for assisting us in
17 our work with the Department.

18 And Mr. Vance for always being willing
19 to set us straight, and to provide information
20 about the program, and how the program works. If
21 we don't get it right all the time, it's because
22 it's a complicated program that you've fashioned,

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1 so thank you. And I think that's -- if any other
2 Board member wants to make a closing comment
3 before we hand it over to Ryan, you're welcome to
4 do so now.

5 MEMBER POPE: This is Duronda Pope. I
6 also wanted to thank Dr. Silver. Thank you for
7 being on the Board, I appreciate your comments,
8 your experience with our sisters, and brothers
9 that are sick, and the families that have had to
10 struggle, and try to get compensation. I
11 appreciate your insight, and your expertise, and
12 good luck with your other assignments.

13 MR. VANCE: And let me just add for
14 Ken, as a parting thank you, I went, and found
15 that reference you mentioned earlier for the
16 Lawrence Berkeley Lab, the IH data, I extracted
17 that, and have just sent it to Paragon, so that
18 is your parting accomplishment. So, thank you
19 very much for bringing that to our attention.

20 CHAIR MARKOWITZ: And Ken, there is
21 the public comment route if you want to weigh in
22 in the future, you can send in written comments,

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1 or appear at meetings, and make oral comments,
2 that'd be great.

3 MEMBER SILVER: Well, if you get up on
4 the road to some nice places, particularly out
5 west, I'll take you up on it.

6 CHAIR MARKOWITZ: Okay, well I have no
7 idea when that might happen, but so it goes.
8 Okay, any other comments from the Board? Okay,
9 fine, then let me turn it over to Ryan.

10 MR. JANSEN: Thanks Dr. Markowitz. I
11 would just like to echo your comments, and thank
12 you, and the Board for all of your hard work, and
13 participating in a robust discussion today. I'd
14 also really like to thank Carrie, and Kevin for
15 facilitating this meeting, and making sure
16 everything goes smoothly, and also John for
17 supporting the discussion, and the work of the
18 Board.

19 So, without anything else, I believe
20 that is it, and the meeting is adjourned.

21 (Whereupon, the above-entitled matter
22 went off the record at 3:25 p.m.)

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