U.S. DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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WEDNESDAY
NOVEMBER 30, 2022

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The Advisory Board met at the JW Marriott Las Vegas Resort & Spa, Cataluna Room, 221 N Rampart Blvd, Las Vegas, NV, at 9:00 a.m. PST, Steven Markowitz, Chair, presiding.

SCIENTIFIC COMMUNITY
AARON BOWMAN
MARK CATLIN*
GEORGE FRIEDMAN-JIMENEZ*
MIKE VAN DYKE

MEDICAL COMMUNITY
MARIANNE CLOEREN
STEVEN MARKOWITZ, Chair
MAREK MIKULSKI
KEVIN VLAHOVICH

CLAIMANT COMMUNITY
JIM H. KEY
GAIL SPLETT
DIANNE WHITTEN
LORNA ZABACK

DESIGNATED FEDERAL OFFICIAL
RYAN JANSEN

ALSO PRESENT
KEVIN BIRD, SIDEM
CHRIS GODFREY, DOL*
AMY LIEFER, DOL*
VANESSA MYERS, DOL*
JOE PLICK, DOL*
RACHEL POND, DOL
CARRIE RHOADS, DOL
JOHN VANCE, DOL

*Present via video teleconference

CONTENTS

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

9:01 a.m.

MR. JANSEN: All right. Let's get started. Good morning, everyone. My name is Ryan Jansen, and I'm the designated federal officer for the Department of Labor's Advisory Board on Toxic Substances and Worker Health.

I would like to welcome you to today's meeting of the Advisory Board here in Las Vegas, Nevada. Today is Wednesday, on November 30th, 2022, and we are scheduled to meet from 9:00 a.m. to 5:30 p.m. Pacific Time.

At the outset, I'd like to express my appreciation for the hard work of the board members in preparing for this public meeting and their forthcoming deliberations. I'd also like to thank Carrie Rhoads from the Department of Labor, and Kevin Bird, our logistics contractor who are both with me here today for their work organizing this meeting.

The Board's website which can be found at dol.gov/OWCP/energy/regs/compliance/

advisoryboard.htm has a page dedicated to this meeting. The page contains all materials submitted to us in advance of the meeting and will include any materials that are provided by our presenters throughout the next day and half. There you can also find today's agenda as well as instructions for participating remotely in both the meeting and the public comment period later today.

If any of the virtual participants have technical difficulties during the meeting, please e-mail us at energyadvisoryboard@dol.gov. Again, that's energyadvisoryboard@dol.gov.

If you are joining by a WebEx, please note that outside of the public comment period this afternoon, this session is for viewing only and microphones will be muted for non-Advisory Board members. So the public may listen in, but not participate in the board's discussion during the meeting.

If you are participating remotely and wish to provide a public comment, please e-mail,

again, energyadvisoryboard@dol.gov and request to make a comment. Be sure to include your name in the request. If you are participating remotely and need to provide your public comment via telephone, not WebEx, please include the telephone number that you will be dialing in from so that we can unmute your line when it is your turn to make a public comment.

The public comment period opens at 4:45 p.m. this afternoon. Please note that the public comment period isn't a question-and-answer session, but rather an opportunity for the public to provide comments about the topics being discussed and considered by the board. If, for any reason, the board members require clarification on an issue that requires participation from the public, the board may request such information through the chair or myself.

A transcript and Minutes will be prepared from today's meeting. As DFO, I see that the meeting -- that the minutes are prepared and ensure that they are certified by the chair. The

minutes of today's meeting will be available on the board's website no later than 90 calendar days from today. But if they're available sooner, they'll be posted sooner.

Although formal minutes will be prepared according to FACA regulations, we also prepare verbatim transcripts, and they should be available on the board's website within 30 days.

During the discussions today, please speak clearly enough for the transcriber to understand. When you begin speaking, especially, at the start of the meeting, make sure that you state your name so that it's clear who is saying what. Also, I would like to ask that our transcriber please let us know if you have trouble hearing anyone or any of the information that is being provided.

As always, I would like to remind Advisory Board members that there are some materials that have been provided to you in your capacity as special government employees and members of the board which are not suitable for

public disclosure and cannot be shared or discussed publicly, including during this meeting. Please be aware of this throughout the discussions today.

The materials can be discussed in a general way which does not include any personally identifiable information, or PII, such as names, addresses, specific facilities if we are discussing a case, or a doctor's name.

I'm looking forward to working with everyone at this meeting and hearing the discussions over the next two days. And with that, I convened this meeting of the Advisory Board on Toxic Substances and Worker Health, and I will now turn it over to Dr. Markowitz for introductions.

CHAIR MARKOWITZ: Can I use your -- oh, no, I have a -- okay. Good morning, everyone. I want to welcome everybody to today's meeting. The board members, including -- especially the new board members, but also the returning board members. I want to welcome members of the public who are participating, those who are here, and those who are participating remotely. Please, by

all means, speak up during the public comment session.

And actually, if I could ask, in the WebEx and what the remote viewers are looking at, if you could just put in the public comment e-mail or the phone number they need to call or contact in order -- I know that Ryan just gave that, but if you could put that up there so people could see it, make it easier to participate.

I want to thank -- we had a terrific tour yesterday of what I call the Nevada Test Site, but I think it's the national -- the Nevada National Nuclear Security Site, NNSS. And thank you, especially to Greg Lewis from the Department of Energy, and also Ryan Jansen and Carrie Rhoads for setting up that tour.

I think we have two board members who are participating remotely. Thank you very much for participating. I'm sorry that you missed the tour yesterday, but maybe we can fill you in a little bit on what we saw today or outside of the meeting.

We need to do introductions, and so we're going to actually do this -- first, I'll introduce myself. But we will do the remote board members first, and then around the table here.

So I'm Steven Markowitz. I'm an occupational medicine physician. I'm an epidemiologist from the City University of New York. I have run the Former Worker Program 14 DOE sites for the past 20 plus years and have had a lot of opportunity to understand -- try to understand what happens within -- and has happened from the Department of Energy complex.

Dr. Friedman-Jimenez, do you want to introduce yourself?

MEMBER FRIEDMAN-JIMENEZ: Hi. Good morning. Good afternoon. My name's George Friedman-Jimenez. I'm an occupational medicine physician. I run the Occupational Medicine Clinic at Bellevue Hospital, NYU School of Medicine in New York City. I've been on this board for -- this is my fourth cycle I believe, and I'm very interested in the issues of determination of work-related

causation and the setting up of presumptions.

So I'm very interested in hearing about the site visit, Steve. Offline you can tell me, fill me in. But I'm delighted to be a member of this board, and I look forward to a very interesting and impactful meeting. Thanks.

CHAIR MARKOWITZ: Thank you. Mr. Catlin.

MEMBER CATLIN: Thank you, Dr. Markowitz. This is -- I'm Mark Catlin, I'm an industrial hygienist, and currently working -- semi-retired working for a consulting firm. And have done work in the past at Los Alamos and at Hanford Reservation within the DOE complex.

And so I'm -- this is my second term on this board, and I think I mirror George's comments about looking forward to this work, and really sorry to have missed the tour yesterday. Thanks.

CHAIR MARKOWITZ: By the way, we can see you very well on the video here. Ms. Whitten.

MEMBER CATLIN: Okay.

MEMBER WHITTEN: Me?

CHAIR MARKOWITZ: Yeah.

MEMBER WHITTEN: Good morning. My name's Dianne Whitten. I am a member of the claimant community. I am a rad con tech, radiological control tech at Hanford for 34 years, NRRPT. And I'm currently the Hanford Atomic Metal Trades Council health advocate.

CHAIR MARKOWITZ: Dr. Van Dyke.

MEMBER VAN DYKE: Good morning, Dr. Markowitz. Glad to be here. Mike Van Dyke. I'm an industrial hygienist and associate professor at the University of Colorado. Have a lot of experience over the years at many DOE sites really looking at beryllium exposure and other exposures. Looking forward to this session and this is my second round on the board. Thank you.

CHAIR MARKOWITZ: Dr. Cloeren.

MEMBER CLOEREN: Hi. I'm Dr. Marianne Cloeren. I am an internal medicine doctor and occupational medicine physician. I'm an associate professor at the University of Maryland School of Medicine. I'm new to the board, but I've

been working with the Former Worker Program as a medical director for BTMed since 2017.

And also have past experience with another federal program, I know it's not the same as this one, but a lot of experience with FECA. So have some just kind of basic understanding of benefits programs, you know, federal benefits programs. So I'm really happy to be working with you all.

CHAIR MARKOWITZ: Dr. Bowman.

MEMBER BOWMAN: Yes. Thank you. My name is Aaron Bowman. I am a professor and head of the School of Health Sciences at Purdue University. I am a toxicologist and on the scientific -- a representative for the scientific community on this board. This is my second term on the board. Thank you.

CHAIR MARKOWITZ: Great. Mr. Key.

MEMBER KEY: Yes. Good morning. My name is Jim Key, I'm a labor representative in the claimant community. I'm a 48-year employee at the Paducah Gaseous Diffusion Facility, and also the

newly operational Depleted Uranium Facility.

I serve as president of United Steel Workers Atomic Energy Workers Council in Washington, D.C. The council represents United Steel Worker members at Hanford, Washington; Idaho Falls; Carlsbad, New Mexico; Oak Ridge, Tennessee; Paducah, Kentucky; Portsmouth, Ohio; Erwin, Tennessee, the Navy nuclear fuels facility; and Bettis Labs in Pittsburgh. And I'm serving as the second term on the board.

CHAIR MARKOWITZ: Thank you. Dr. Mikulski.

MEMBER MIKULSKI: Good morning, everyone. Marek Mikulski, occupational epidemiologist at University of Iowa, Occupational and Environmental Health. I direct the Former Worker Program for the workers from the state of Iowa, and this is my third term on the board.

CHAIR MARKOWITZ: Great. Ms. Splett.

MEMBER SPLETT: Good morning. My name's Gail Splett. This is my first term. I retired from the Hanford Site three years ago.

Prior to that, I worked 45 years at Hanford, 44 and a half years at the Department of Energy.

I had multiple titles, Freedom of Information officer, records officer, litigation manager. And in the last decade or so, the EEOICPA program manager, and the former worker's medical screening program manager for the Hanford site, worked extensively with Paragon in updating the Hanford SEM.

CHAIR MARKOWITZ: Great. Thank you. Dr. Vlahovich.

MEMBER VLAHOVICH: Good morning. My name's Kevin Vlahovich. I'm a physician at University of New Mexico, and I'm the director of employee occupational health at New Mexico. My specialties are preventive medicine, occupational medicine. And this is my first term on the board. Thank you.

CHAIR MARKOWITZ: Welcome. Ms. Zaback.

MEMBER ZABACK: Hi. My name is Lorna Zaback, and this is the first time for me on the

board. Excuse my cough, I'm the coughing one. I work at Hanford and have been working on the EEOICPA program since its inception and watched it transform tremendously over the last 20 years, and the Part D days moving into Part E.

And I am just fascinated by this board and look forward to hopefully be able to, you know, help with any records issues or questions about what, you know, what's really out there and what information we really have, and what -- make sure that everybody's getting what they need. So thank you, guys.

CHAIR MARKOWITZ: Thank you. So we'd like to do -- is there a mic that we can use for people who are sitting in back to introduce themselves? Ms. Pond from the Department of Labor.

MS. POND: Hello and welcome, everyone. My name is Rachel Pond. I'm the director of the energy program at the Department of Labor. Thank you.

CHAIR MARKOWITZ: Thanks for coming.

Mr. Vance.

MR. VANCE: Good afternoon from the back of the room. My name is John Vance. I'm the policy branch chief for the Energy Compensation Program.

CHAIR MARKOWITZ: And then we have some others.

MS. JERISON: Hi. I'm Deb Jerison with the Energy Employees Claimant Assistant Project.

MS. BLAZE: I'm D'Lanie Blaze with Core Advocacy for Nuclear and Aerospace Workers.

MR. DOMINA: I'm Kirk Domina. I'm a retired Hanford worker.

MS. DOMINA: I'm Tiffany Domina. I am the daughter and wife of former workers.

CHAIR MARKOWITZ: Okay. Thank you. Welcome, all. I think, Ryan, we're on to Mr. Godfrey.

MR. JANSEN: Yeah. And I think he's available.

MR. GODFREY: Yes. Good afternoon.

Good morning to those of you out west. My name is Chris Godfrey, I'm the director at the Office of Workers' Compensation Programs, otherwise known as OWCP. I was appointed by President Biden and sworn in on January 20th of 2021.

My background is in workers' compensation. I was an attorney for several years before I became the Iowa workers' commissioner in 2006. I served in that role until 2014 when I joined the Employees' Compensation Appeals Board known as ECAB in the Obama administration, and that's the appellate-level board for federal employee workers' compensation claims.

Secretary of Labor Tom Perez then appointed me to be chief judge and chairman of ECAB. I've represented both employers and employees in both state and federal court in not only workers' compensation claims, but I've also done civil rights and employment law as well.

In the OWCP front office since 2021, we've built out a much more robust team of individuals. When I arrived, the front office did

not have a large amount of structure, so one of the things that I wanted to do was build out that office and try to bring continuity to the office of director of OWCP.

So in addition to the roles of a deputy director and a chief of staff and policy advisor, I've also brought on a transformation officer and a DEIA officer. The transformation officer, Jean Maus, is leading our efforts to strengthen customer experience in service delivery for injured mill workers. And our DEIA officer, Paige Brown, she's leading our efforts to strengthen diversity, equity, inclusion, and accessibility within all of the OWCP programs. So I'm really excited about the work that we're doing there.

In addition, we are soon going to be bringing on an Ombudsperson. Now I know that there is already an Ombudsperson for energy claims, and that is statutory. But the success of that program I think has shown to us in the OWCP front office that other workers in our black lung program, longshore program, FECA programs, et cetera, they

also need the benefit of having an Ombudsperson that can take a look at claims, find systemic issues, and then bring them to the attention of the director and the front office at OWCP. So I'm excited about that addition as well.

There's four high-level priorities for the agency that we're focusing on in the year that align with the priorities of both Biden administration and the priorities of Secretary Marty Walsh at the Department of Labor.

The first is we are strengthening customer experience, improving service delivery, and advancing equity for all injured and ill workers. We're working to rebuild the trust in government to make sure our programs are accessible, efficient, and they work well for all of the people that so desperately need our programs.

Second, we're championing the rule of workers' compensation has a critical component of good jobs and the social safety net in America. All too often, people don't recognize the need for

workers' compensation programs until they or a family member are impacted by an injury or illness. And we want to make sure that as the Department of Labor works on a good jobs initiative, that workers' compensation is a very significant part of that goal.

We want to make sure that workers' compensation systems provide prompt, adequate, and equitable benefits because it really can be the economic security that people need so that they don't fall into poverty after becoming injured or ill at work.

The third goal is to build a strong, diverse federal workforce and have OWCP become a model workplace that attaches -- excuse me, attracts, attains the power that our employees need so that they can really serve all injured and ill workers.

We know that we need a diverse, well-trained, motivated workforce, and that's the only way that we can keep the best people available within OWCP to make sure that all of our programs

are running smoothly, and that we can provide the services and the customer experience that the workers that come to us for assistance deserve.

And fourth, we want to foster an organizational culture of collaboration and communication to strengthen the agency's administration. And basically, what that means is we need to better handle the business of government. All too often, we can be seen as a bureaucracy. We don't want to be seen as that.

We want to be seen as a program that's responsive and collaborative, and making sure that we are helping those people in the time of the need so that they get the benefits that they're entitled to. But also ensuring that we have program integrity so that we do have the level of security to the program that those who desperately need the benefits, get them, and making sure that we're being good stewards of the taxpayer's money.

In a moment, I'm going to ask the director of the Energy Workers Program, Rachel Pond, who just introduced herself a moment ago, to

provide a lot more detailed updates on all of the incredible work that their program is doing. I know that I see firsthand the outstanding work that she does and her team does. And I'll tell you, the Energy Program, in my opinion, is really a model for all of OWCP in terms of the work that they accomplish.

So in terms of the work of the Advisory Board, it was nice to hear the introductions of all of the members, especially the new members. I wish I could be there to meet you in person. But I just want to thank you all for the work that you do. The recommendations that you make are invaluable and are so very, very helpful to us as the administration as we look at policy formulation.

I also want to thank you for contributing your expertise and the diverse experiences that you all have to the board. Listening to all of you speak and introduce yourselves, it's clear that we've got a very -- a good cross section of individuals who have not only the experience, but also the passion to work within

this area and on this Advisory Board.

I want to thank you for volunteering your time and helping us better support the workers who are served by the EEOICPA program. It's very clear, you all have busy lives and professional careers, and have, you know, worked for many, many years in these industries, so for you to take the time out of your lives, that certainly means a lot to us in the program.

So, in conclusion, I just want to say thank you, and I really look forward to working together with all of you. And hopefully, we can continue with the collaboration that we've had in the past. And with that, I think I'm going to turn this over now to Rachel Pond. Is that correct?

CHAIR MARKOWITZ: Actually, I think -- this is Steve Markowitz. I think Rachel -- and by the way, when you speak, just introduce yourself. But I think Ms. Pond is going to speak later, right, later in the morning. So --

MR. GODFREY: Okay.

CHAIR MARKOWITZ: -- we're giving her

hopefully plenty of time towards the end of the morning.

So thank you, Mr. Godfrey, for those words of welcome for those of us who have been on the board for a while, and for the new members. We're here because -- we're here because we're on the Advisory Board to provide advice to the department, hopefully to find ways to help improve the program.

That said, this is a fascinating compensation program that is very complicated, very ambitious compared to state workers' compensation programs, compared, I think, to the other federal programs because within the DOE complex, there just is an enormous number of exposures and work activities that people have done over the years.

And the act under which this program governs covers really the encyclopedia of occupational diseases. So it's a very ambitious program which has done a lot of people a lot of good over the years. So we'll attempt to continue to

help to improve the program.

Let me review the agenda briefly. So next we're going to hear -- oh, I forgot to, by the way, to thank Kevin Bird and his group for supporting us so far, and through tomorrow. He's done an excellent job in the past, and we're looking forward to a smooth program.

I also want to encourage both the new members of the board, and those who are participating remotely to participate as much as possible. You may or may not know a tremendous amount about this particular program, but you're here to learn and to contribute, so we welcome your participation.

And that's true also for Mr. Catlin and Dr. Friedman-Jimenez, just jump in at times to give us your comments.

So next we're going to have a Federal Advisory Act review with Mr. Plick who's an attorney within Department of Labor. We're then going to have I guess a brief history of the statute under which the program governs, and a little bit

I guess of the history of the creation of this board by Ms. Liefer from the Solicitor's Office, Department of Labor. And then we will have a session on ethics rules from Ms. Myers, the ethics counsel. These are standard things. At the beginning of every board term we get these talks which are very useful.

And then we'll take a break, and then Ms. Pond will give us an overview and an update on the board and on the act, the actual -- the EEIOCP, the program itself. We'll have lunch. And then Mr. Vance will give us some updates from really a policy, procedures point of view within the program after lunch. And also, something we're looking forward to, a demonstration of the Site Exposure Matrices.

We will then enter a period, we'll have board discussion until the public comment period at 4:45, and end the day at 5:30.

The board discussion, we're going to talk about our prior recommendations and what's happened to them, the most recent ones, and, you

know, cases and a few of the recommendations going back in time.

As follow up, we're going to discuss what this new board term agenda might be over the next couple of years. Reviewing claims, we're going to discuss the preparation for receipt of a contractor support to do a sizable claim review beginning sometime within the next year, and begin, I think, to plan what we're going to do in that effort.

We are going to discuss public comments. We're going to discuss a little bit about -- oh, we're going to be able to look at some data from the department on the most common conditions for which people have submitted claims in 2019, 2020. And we've done that previously, and it's a really interesting review. And whatever else people want to discuss.

Speaking of that, do people have additional items they want to mention now? We can add them later, but if you have some items now, feel free to jump in. Okay. Any questions or comments

on the agenda? Okay. Ryan, I think we're up to Mr. Plick.

MR. JANSEN: Yeah.

MR. BIRD: So Mr. Plick has not yet joined us. We do have Amy on the line if we wanted to switch up the order.

CHAIR MARKOWITZ: So she's at -- I'm sorry. She's scheduled for a half hour, and Mr. Plick has 15 minutes. The question is whether -- we can start with her, and then if she can just cover 15 minutes, and when he comes on -- or if he's flexible, we can postpone him by 15 minutes. Whichever. Why don't we start with Ms. Liefer and --

MR. JANSEN: Yeah. Let's do that.

MS. LIEFER: Okay. Great. Good morning, everyone. And thank you for having me. My name is Amy Liefer, and I am a senior attorney in the Division of Federal Employees and Energy Workers' Compensation, and that acronym is pronounced FEEWC, which is a division within DOL's Office of the Solicitor.

And I'm here today to talk a bit about the work that FEEWC does, and also give you a high-level overview of EEOICPA's legal framework and background including a review of their provision of the statute that applies to the board.

So our division, FEEWC, is responsible for providing legal support for the administration of EEOICPA. And this legal support involves legal advice to our client, OWCP, which includes assisting with statutory interpretation questions, issuing formal and informal legal opinion, reviewing agency policy and procedure, regulatory work, and litigation associated with EEOICPA.

And I should note that SOL does not have independent litigation authority to represent OWCP in appeals to federal court of decisions issued by OWCP under EEOICPA. It is the Department of Justice who actually represents OWCP in these litigation matters. However, we provide them with significant support.

Now as far as the statute itself,

Congress passed EEOICPA in 2000 to provide medical benefits and compensation for those who worked in the nuclear weapons industry. And there are two parts under the act. There is Part B and Part E, and they have some significant differences for you to keep in mind about the benefits available, and the eligibility requirements for covered employees or their survivors.

Now Part B of the act provides uniform lump-sum payments and medical benefits to current and former employees, or their survivors, of the Department of Energy, that's DOE, its predecessor agencies, and certain of its vendors, contractors, and subcontractors who are diagnosed with a radiogenic cancer, chronic beryllium disease, beryllium sensitivity, or chronic silicosis as a result of their exposure to radiation, beryllium, or silica while employed at covered facilities.

Congress set out certain statutory eligibility criteria in Part B including criteria for establishing a diagnosis of these beryllium-related lung diseases and chronic

silicosis that must be meant in order for a claimant to be eligible for benefits under Part B. In addition, Congress included statutory presumptions in Part B for workers' exposure to silica, beryllium, and radiation.

Part B also provides smaller, uniform lump-sum payments and medical benefits to individuals, or their survivors, awarded compensation under Section 5 of the Radiation Exposure Compensation Act, or RECA, which is a separate program that was enacted in 1990 and is administered by DOJ.

Now switching to Part E of the act, Part E provides variable lump-sum payments based on a worker's permanent impairment and/or qualifying calendar years of established wage loss, and medical benefits for covered DOE contractor and subcontractor employees, and where applicable, their survivors.

Part E also provides the same payments and benefits to uranium miners, millers, and ore transporters covered by Section 5 of RECA, and

where applicable, to their survivors.

In contrast to Part B, Part E is quite extensive in the types of illnesses that are covered, and does not contain any congressional diagnostic criteria for establishing an illness covered under Part E.

Now one of the tools that OWCP uses in the adjudication of Part E claims is the Site Exposure Matrices, or SEM. And OWCP SEM provides site specific information regarding the toxic substances that may have been present at each of the facilities, the job titles used at such facilities, and the labor processes used at these different facilities. It also contains information regarding established links between work-related illnesses and exposure to toxic substances.

Now when EEOICPA was originally passed, the legislation included Part B which was modeled after the RECA statute, and former Part D, which permitted DOE to enter into agreements with states to assist DOE contractors in applying for state

workers' compensation benefits for illnesses and deaths related to exposures to toxic substances at DOE facilities.

Part D reflected a change in DOE's prior policy, and because this effort was not very successful, Congress abolished Part B -- Part D, I'm sorry -- and replaced it with Part E when EEOICPA was amended in 2004.

A primary responsibility for administering Part Bs and E -- or parts B and E lies with the Department of Labor, and primarily with OWCP. Other responsibilities under the act were assigned to the Department of Health and Human Services, or HHS, DOE, and DOJ by Executive Order 13179.

As a general matter, OWCP adjudicates claims and pays benefits under EEOICPA while the National Institute for Occupational Safety and Health, or NIOSH, within HHS estimates the amounts of radiation received by employees alleged to have sustained cancer as a result of such exposure, and also established the guidelines followed by OWCP

when it determines if such cancers are at least as likely is not related to employment.

Now in addition, both DOE and DOJ are responsible for notifying potential claimants about the program, and for submitting evidence necessary for OWCP's adjudication of claims under EEOICPA.

So that wraps up my general background of Parts B and E, and now I'll talk a bit about the creation of this Advisory Board so that new members can see how we got here.

In December of 2014 as part of -- as part of a fiscal year 2015 National Defense Authorization Act, or the NDAA, EEOICPA was again amended to add new section 7385(s)(16) and to create this board. This section was amended in the 2018 NDAA to extend the board's life an additional five years which would take it until 2024. And this section was further amended by the 2020 NDAA which expanded the board's duties and mandated certain actions by the secretary.

The responsibility to establish the

board and appoint the members was given to the president. By Executive Order 13699 dated June 26, 2015, the president established the Advisory Board in the Department of Labor, and delegated to the secretary Of Labor the authority to appoint the members of the board which is to consist of no more than 15 members as well as the responsibility for the administration of the board including funding, staff, administrative functions under FACA, which Joe Plick will talk about next, and a designation of a senior official of the department as the director of staff to the Advisory Board.

Section 7385(s)(16) specifically sets out duties of the board. First, the board is to advise the secretary of Labor, and that advice is limited to five specific areas which are: The site exposure matrices; medical guidance for claims examiners for claims under Part E with respect to the weighing of the medical evidence of claimants; evidentiary requirements for claims under Part B related to lung disease; the work of industrial hygienists and staff physicians and consulting

physicians of the department, and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; and the claims adjudication process generally including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits. It also allows for other matters as the secretary considers appropriate.

Second, the board is to coordinate exchanges of data and findings with the Advisory Board on radiation and worker health within HHS, and there is also a conflict-of-interest provision for board members regarding any financial interest related to provision of medical benefits under the act. And that was reviewed prior to your appointment.

In fiscal year 2020, NDAA mandated the secretary of Labor to provide the board with access to any information that the board considers relevant to carry out its responsibilities, and to make available to the board the programs medical director, toxicologist, industrial hygienist, and

the program support contractors. The 2020 NDAA also added a provision to require the secretary to publicly state whether he accepts or rejects the board's recommendations and provide either a timeline for when those recommendations will be implemented, or the reasons the secretary does not agree with the board's recommendations.

Now the EEOICPA statute involves complex development and adjudication, and it has the unique challenge of applying these provisions to work that started over 70 years ago, and the Department has worked hard to apply these provisions in a fair and equitable manner.

The program has gained experience in the over 20 years it has administered the program,and understands the difficulties and challenges that are faced by claimants. And the scope of the board's authority, though limited by the five areas I described above, assists OWCP in the administration of the program. And that completes my overview. Are there any questions?

CHAIR MARKOWITZ: This is Steve

Markowitz. Any questions from board members? I have a question actually. I think the charter for the board expires at the end of 2004 -- oh, 2024. Is that right? And if so, how is that charter extended? Is that something that's initiated by the Department of Labor or in Congress?

MS. LIEFER: I believe you're right that it is 2024, but I actually do not have an answer as to how that would be extended. But that is something that I can look into and get back to you before this meeting is over.

CHAIR MARKOWITZ: Okay. Thank you. I have another question. The board term is two years in length, which strikes me as a little short actually for reasons of continuity and the learnings involved with providing useful advice.

Was that part of the language of the board creation established by Congress? And if so, what would be needed to, in the future, to lengthen the board term. Not this board term, but future board terms to a somewhat longer period, say three or four years?

MS. LIEFER: I also don't have a good answer for you on that one. I'll have to look into that and get back to you.

CHAIR MARKOWITZ: Okay. Thank you.

MS. LIEFER: Yeah.

CHAIR MARKOWITZ: Any other comments or questions from board members? So do we have Mr. Plick available? Okay. Let's move on then. Thank you very much, Ms. Liefer.

MS. LIEFER: Thank you.

MR. PLICK: Hi. This is Joe Plick. Can everybody hear me?

CHAIR MARKOWITZ: Yes, we can.

MR. PLICK: Okay. Great. So I'm here to give a quick overview of the Federal Advisory Committee Act and how it relates to the board. And, Steven, with respect to your first question about rechartering, that's something the Department initiates. You'd work with Michelle Bluitt in exec sec on that process.

CHAIR MARKOWITZ: Thank you.

MR. PLICK: With respect to how long

the members serve, I don't know if it's statutory. Two or three years is generally how long we have members serve for committees. It kind of varies. A lot of committees will -- essentially are structured so that maybe like a third of the board will rotate off or have to be renominated every year so that there's some continuity, but also some turnover. So assuming there's no statutory restriction on how the board's appointed, that might be something you could look at?

CHAIR MARKOWITZ: Thank you very much.

MR. PLICK: Yeah. Okay. So moving on, I'm going to just briefly talk about the Federal Advisory Committee Act which is the statute that controls essentially how the committee is set up and runs.

Start by giving you just a little bit of background of the Federal Advisory Committee Act. The statute was actually passed by Congress and enacted into law in 1972, but the government's use of councils, or boards, or advisory committees basically goes back to the very beginning.

The very first committee was established by George Washington who wanted advice on some things during the Whiskey Rebellion in 1794. So the concept of government agencies using committees to inform their decision making goes way back.

But overtime, Congress became concerned that it was done sort of behind closed doors, and nobody knew exactly what was going on, and who was on the committees, and what kind of influence they had. So they passed the Federal Advisory Committee Act in 1972.

So on the one hand, it recognizes that agencies have the need to get balanced, outside advice and expertise. And on the other hand, it recognizes that there needs to be some accountability in how that advice is given, and sunshine and openness on how it's given.

So the Federal Advisory Committee Act governs the establishment to the operation and determination of committees that are established to give advice or recommendations to the executive

branch. Committees are supposed to provide -- obviously, this may be obvious -- relevant advice. And that, obviously, is in the context of the committee and what it's set up and what it's chartered to do.

It must be in accordance with the authorization. I heard Amy list the statutory requirements for this committee. So that's, you know, that's what I'm talking about here. You know, we wouldn't want you giving advice on how the Wage and Hour Division of the Department should operate the Fair Labor Standards Act. That's not your -- the area that you're brought together to give advice on for example.

The committees are supposed to act promptly, and the statute sets up accountability through cost controls and record keeping requirements. And like I said before, it assures Congress and the public are kept informed about the activities of advisory committees by making the process fairly transparent.

So the act -- the Committees are

established either by statute, like yours is, by presidential directive which would mean the president just deciding that it need -- he needs advice, and setting up a committee. In the case of this committee, it was established by statute and then the president issued an executive order to establish the committee within the Department.

Committees can be authorized by statute, which means statutes sometimes will just say the department may set up a committee for advice, or an agency head can make a determination that a committee needs to be set up to provide advice.

The committee has to be chartered, and the charter has to be approved by the General Services Administration which is given oversight over Federal Advisory Committee Act committees throughout the government.

The membership has to be balanced. The statute requires -- the statute, FACA, requires balance in terms of points of view and functions to be performed. And then statutory committees

like yours may have additional requirements where Congress goes a little bit further and actually sort of explains in its view what it believes the balance to be.

Meetings are generally public, and detailed minutes are kept. There has to be notice in the Federal Register 15 calendar days prior to the meeting so the public can attend.

Any member of the public can file a written statement with the committee before or within a reasonable time following the committee. And this is at the discretion of the chair whether or not the public actually can speak at committees. There's no statutory requirement that allows the public to be able to speak.

As I noted before, there have to be minutes kept and certified by the chair within 90 days. You may record or transcribe the meeting in addition, but that does not substitute for having formal minutes.

At one time GSA allowed a recording, an audio or video recording of a meeting to

substitute, but what they found, which makes sense, is the minutes are a good, easy way for somebody to quickly look and see what occurred at the meeting, and then if it was also recorded, they can then go to that part of the meeting.

Whereas, if you just rely on a recording or a transcription, you've got to wade through the entire thing to see where the thing that's of interest to you was discussed. So they changed that back and they said that, no, it has to actually be minutes.

In terms of the meeting and the requirements, because the meetings are public, there shouldn't be substantive discussions of matters that are before the committee outside of the committee in terms of like, you know, you're out in the hall on a break, you shouldn't be really cutting deals out there. All that should occur in the meeting.

And then as noted before, the charter has to be renewed every two years. Some committees, unless like this one where there's

statutory authorization for it to continue, they have to actually be completely renewed every two years. But regardless, the charter itself has to be renewed every two years, and GSA reviews those. Although in the case of a statutory committee, GSA does not question too much about what's going on.

The agency has certain responsibilities. It has to ensure that advice and recommendations of the committee will not be inappropriately influenced by the appointing authority or any special interest. Your advice and recommendations are supposed to reflect the independent judgment of the committee.

At the departmental level, there is a committee management officer who controls and supervises the establishment, and the procedures, and the accomplishments of all the committees.

And then for each committee, there's a designated federal official, and that person has certain authority, certain responsibilities to approve or call meetings, to approve the agenda, to attend.

There's the authority for the designated federal official to adjourn meetings when he or she determines that it's in the public interest. That would be a rare circumstance. There's been one or two committees where they have completely gone off on a tangent that had nothing to do with the business of the committee that it was charged with, and the DFO at that point could just end the meeting.

They're allowed to chair if directed by someone. I don't think we have any committees at the department where the designated federal official serves as the chair. In general, I think it's better to not have that happen.

But the DFO also maintains records on costs and membership, maintains the records for public availability, and just does everything to ensure efficient operations, and works with the committee management officer to make sure that reporting is done properly, and that records get forwarded to the Library of Congress that are required to go there.

There are annual reports required by the -- of the agencies by GSA. There's actually a FACA database on GSA's website where you can look at all the FACA committees, and it has information about their authority, and things that they're doing.

There are required to be reports on meetings that happened to be closed. I don't think you guys ever close a meeting, or the Department never closes a meeting. And I'll talk in a minute about why the meetings could get closed. Committee reports and background materials actually have to be filed with the Library of Congress.

The Agency also kind of sets overall objectives. Again, there's -- in this instance, there's statutory direction, and there should be a collaboration between the agency and the committee talking about maybe particular things that both sides want to see recommendations done on.

And that's not the same, it

doesn't -- that's not the same as the requirement for independent advice. That's working within that. We still want independent advice, but the priorities, depending on the committee, you might -- a committee might want to -- or the Agency might want to say, well, this, you know, this go around for this meeting, we want you to focus all these things because, you know, we have the ability right now to implement any recommendations you make.

Whereas, if you are working on something else, we just may not -- because of other priorities or congressional budget restrictions, or whatever be able to work on other things. So that's more just a collaboration that goes on.

Closing meetings, again, it doesn't happen rarely at the Department of Labor with the exception of a committee that deals with trade negotiation matters do we close meetings. Generally, they can be closed for reasons that would relate to things that are also exempt from public disclosure under the Freedom of Information

Act.

There has to be approval by the agency head and the solicitor of Labor, the chief legal officer. The notice of closure has to occur 30 days in advance. Examples would be if there's a discussion of national security matters and I alluded to another committee that does trade negotiation, that kind of falls in there. If there were to be discussion of proprietary information, like if you were to have companies come in and talk about things that would be proprietary.

And also personal information. You know, if you were to have claimants come in and they were going to be talking about medical conditions, that might be a circumstance where, you know, to protect their privacy, if you really wanted them to be candid, you might want to close a meeting, or the part of the meeting that would deal with that.

Next, subcommittees. The Federal Advisory Committee Act does allow subcommittees. I can't recall if you guys use them. I think you

do. Subcommittees are not subject to the FACA requirements so long as the work that they do goes to the parent committee, and the parent committee independently deliberates on it.

Some agencies will apply FACA requirements regarding meeting notice to subcommittees, but it's not required at this point. The Agency does approve the establishment of subcommittees.

And one other thing I would just note there, too, is we've had one or two instances where a committee had created subcommittees, but in practical effect, all members of the committee what kind of show up to every subcommittee meeting, and we discourage that.

I mean the whole purpose of a subcommittee on the one hand is to make sure that you're kind of, you know, assigning the responsibilities out and being more efficient. But the other problem is it looked like the meetings became meeting, you know, subcommittees of the whole, and there was concern that it'll be seen as

a violation of FACA because there wasn't public notice of those subcommittee meetings. And so we discouraged the committee from doing that and made them stop.

I would note here that there have been some amendments to the Federal Advisory Committee Act that have been floating around for a number of years that would change some of those things. They would require subcommittees to operate under the same requirements as the parent committee, which may not necessarily be a good idea.

I mean part of the reason -- you know, subcommittees, you're just out gathering information and fact finding. I mean touring facilities and things like that, I'm not sure how you make those things public. And there would also be some amendments to some of the ethics reporting requirements.

There are some activities that don't have to take place in open meetings. One is preparatory work. So this is sort of an addition two subcommittees or as an alternative to

subcommittees. You might have one or two of your members assign them to the go off together and prepare a draft of a recommendation, and the work that they're doing. Similar to if a subcommittee did it, it doesn't have to be done at the meeting so long as you bring that draft work back.

And administrative matters. So actually these briefings, my briefing, Amy's, and I think the one you're going to get on ethics, if you haven't already had that one, are things that wouldn't necessarily have to occur in an open meeting.

Turn quickly to public availability of records. As I've noted before, one of the key components of FACA is transparency and sunshine. So the Act generally says that any records, transcripts, minutes, appendices, working papers, drafts, studies, the agenda, and other documents that are made available to or prepared for or by the committee shall be available for public inspection.

There is some limitation. Materials

that the Department or a federal agency creates or provides to the committee can still be withheld if a FOIA exemption would apply to that. But that's limited to that information supplied by a federal agency.

And that's really basically everything I've got in terms of background. Are there any questions about FACA and how you'll be operating?

CHAIR MARKOWITZ: This is Steven Markowitz. Any questions from board members? Anyone on the phone who -- Dr. Friedman-Jimenez or Mr. Catlin?

I have a question actually. So the way this board has communicated with the Department of Labor is through two mechanisms. One is we've made recommendations. And secondly, we've submitted information or data requests. And we've worked that out with the department.

So one of the newer tasks of the board has been to review certain anticipated policy changes in the program, and we're usually given those proposed changes with relatively short

notice. And my question is whether it's strictly up to the Department or whether there's some aspect or part of FACA that regulates or determines what the communications between the Advisory Board and the Department should look like.

The particular problem we have, which we're going to raise with the Department, and so the really the question here is just whether FACA weighs is in on this or not, is how do we make this useful, or look at these proposed changes and make them useful to the Department.

And given the fact that we only meet twice a year, given the fact that we can meet more than twice a year, we can meet by telephone, but still we have to give weeks and weeks of notice for any public meeting making it very difficult for the board to act as a whole. My idea -- it's likely that we submit individual comments on these policy changes to the Department without discussing them as a board or voting on them as a board.

But my question -- sorry for the long question here, but does FACA weigh in on the

communications between the Advisory Board and the Department, or is this something that we simply work out with the Department?

MR. PLICK: Yeah. It's really the latter. It's something you work out. FACA doesn't really speak to -- like set deadlines on when an agency has to provide information to a committee that it wants a committee to comment on.

Obviously, I mean, it, you know, it makes some sense that there's sufficient time, and if the agency wants you to review on comment on things, as a committee, that it provides you with those. But in terms of the legal requirements and the regulatory requirements, there's really nothing there.

CHAIR MARKOWITZ: Okay.

MS. POND: Joe, can I ask a question, a follow up on that? Sorry. Joe, this is Rachel. I just want to clarify on that last statement.

Now if the board were to provide us with individual comments without voting on those comments as a board as a whole, I think that's what

he's suggesting they do, you're saying that that's an acceptable thing even though the board isn't giving us a recommendation. As a board, they're giving us individual board member recommendations. So that's okay? I'm just making sure.

MR. PLICK: Well, that's -- I mean that sounds like that actually spills over I think into more Administrative Procedure Act. If you're talking about things that may be implemented, Rachel, through rulemaking or things like that, that's a different activity.

The board operates -- the board is supposed to provide consensus advice. I don't think you can -- and I'm not sure if you're suggesting this, that you would give the board something, and then the individual members would give their individual comments. That's really not the purpose of FACA.

I mean, you know, the individual members of the board, certainly if you have a proposal out for comment, can as individuals, you know, provide comments through those rulemaking

procedures or whatever procedures you're using. But it's not like you give something to the board, and then the members of the board come back to you individually. That's not really how a FACA committee is supposed to operate.

MS. POND: Okay. Thank you. That's what I wanted you to clarify for us.

MR. PLICK: Okay. Yeah.

CHAIR MARKOWITZ: Yeah. This is Steven Markowitz. Yeah. I mean I'm not speaking on behalf of the board. We can discuss this later. But I think it's likely that the board will feel that it would be a richer advice if we could form a consensus around comments on a proposed policy. But the practical problem is really that -- I think you said there's a 15-day Federal Register notice requirement. Is that right, Mr. Plick?

MR. PLICK: Yeah. Right. The public -- that's so that the public knows and can attend your meetings.

CHAIR MARKOWITZ: Right. Okay. So we have to the schedule the meeting, it has to get

into the Federal Register. It has to be the 15-day notice. We have to get on people --on the board member's calendars.

So it all means that it can be achieved if those proposed changes come to us sooner, and we have more time to comment. So there is a solution to this, but, you know, we'll work that -- we hear you, and we're going to work that out with the Department. Thank you.

MR. PLICK: Yeah.

CHAIR MARKOWITZ: Question on the subcommittees. So in the past, this board has had subcommittees which have been announced in the Federal Register, have been open, planned well in advance. And then later we had working groups, which were more exploratory which were done with shorter notice, not noticed in the Federal Register, and not open to the public. So we've actually done it both ways.

And I understand your advice for your comment to mean that we can work that out with the Department. There's nothing specific that you

mentioned that would require us to choose one or the other as a mechanism.

MR. PLICK: No. Yeah. That's correct. You know, in some instances, having a more formal subcommittee and having it open to the public may be the best way to go. And others, you know doing a work group might be the best way to achieve, you know, the particular purpose that you're setting it up for.

But either one of those is appropriate, and there's no -- like I said, there's no requirement for notice for subcommittees, or work groups, or preparatory groups, whatever you choose to call them. And you can do whatever, you know, works, like I said, in the particular situation.

So having some subcommittee meetings open and other work, you know, working group meetings not open because of the nature of what they're doing. Like the example I gave. I mean if you're, you know, if a work group is formed because it's going to, you know, walk around a facility, it's kind of hard to open that up to the

public, you know, unless everybody's going to carry cell phone cameras around and beam it out to the world. But, you know, so it's kind of a, you know, what fits in the particular situation.

CHAIR MARKOWITZ: Okay. Thanks. I have one last question. One public comment we've gotten in the past is that there was insufficient notice of the public comment period. But aside from the 15-day Federal Register notice -- the requirement for the scheduling of a board meeting, there's no separate timeframe for notice of the public of particular parts of the meeting.

In other words, if the 15-day advanced notice requirement is complied with, and that notice includes -- well, actually a draft agenda, but also it includes notice that there will be a public comment period, that would suffice. Is that correct?

MR. PLICK: Yeah, that's correct.

CHAIR MARKOWITZ: Okay. Thank you. Any other board members have comments or questions? Okay. Thank you very much, Mr. Plick.

MR. PLICK: Okay. Sure.

CHAIR MARKOWITZ: Agenda, is Ms. Myers available? Yes. Okay. Mr. Jansen, do you need to introduce her, or --

MR. JANSEN: Yeah. I believe Vanessa's ready to go. Are you ready?

MS. MYERS: Yeah. I'm ready. Good morning or good afternoon depending on where you are. I'm Vanessa Myers. Bear with me a little bit, I have been sick, so my voice is not at 100 percent.

But I am a senior ethics attorney here at the Department of Labor, and I'm going to talk to you briefly about federal ethics for special government employees, which is what all of you qualify as, as FACA committee members.

I really want this to be more conversational. You all should have received from Ryan or Carrie a nine page -- or eight- or nine-page document that says Ethics for SGEs. That is your guidance document for the ethics rules. It's meant to give you a broad overview of the rules you

need to be aware of.

But if there's one thing that you could take away from my presentation is that the ethics team here at DOL is here for you if you have any questions that relate to your service on this committee and federal ethics rules.

So if you have a potential conflict of interest, if someone offers you a gift, if you have a Hatch Act question, I'm here to answer those questions. There is a team of six other people in my office who are available to you. We really just want you to know that we're every source if you need it.

I am going to cover the big rules in the ethics world as they relate to SGEs, financial conflicts of interest, personal conflicts of interest, outside activities as well as some restrictions on gifts.

But if you have any specific questions, I can take them at the end. Or if something comes to you, just let me know. It probably has been explained to you already. I can't quite see

everybody in the room. But, you know, you can feel free to let someone know do you have a question, or if not, I will take questions at the end.

So let's talk about the first ethics issue which is financial conflicts of interest, and I think that's what most people think of when they think of ethics in the government. They think of someone taking an action to benefit themselves financially instead of to take an action that's in the public's interest or for the good of the agency.

The ethics rules state that you cannot participate in a particular matter involving specific parties that will have a direct and predictable effect on your financial interests, or the financial interests of your spouse; minor children; someone with whom you're in a general partnership; someone with whom you're seeking employment; or are employed by; or someone who you serve as an officer, director, trustee, or employee of.

You want to make sure that if any of these parties are before this committee, you know,

something your -- maybe your outside employer. Maybe you have a client that somehow their particular matter is appearing before this committee, you cannot participate in those matters. Beyond those individuals I named, you also cannot participate in any particular manner in which you have a direct financial interest.

And I'll tell you that there are a number of exceptions, but generally, these financial interests are stock holdings that exceed $15,000 in value, sector fund holdings that exceed $50,000 in value as well as bonds over $15,000 in value, and other sort of financial interests.

So I want to talk about that briefly because I don't think it's very likely for most FACA committees that this type of financial conflicts of interest arise very frequently. However, let's say you hold stock in an energy company, and you hold $20,000 of stock in that energy company, you have a financial interest in that company, and therefore, you cannot participate at the Department in any particular matter involving

specific parties that could have a direct and predictable effect on the interests of that energy company.

Both, your DFO, the other employees in OWCP, they're very good at screening when there is a particular matter that you're being a part of, and this is why all of you fill out those, I'm sure, very pesky 450 confidential financial disclosure reports. That's to screen for the agency and for you where your potential financial interests fall, and where they could come in conflict to your work on the board -- on the committee.

So, again, this is the first part of the handout that was provided to you. There's some specific examples there. But what I want you to keep in mind is that if you or your spouse, or your minor children have a financial interest in something, whether it's outside employment, whether it's investment in stock or some other investment in the company, this is a criminal statute that carries criminal consequences, and you want to stay away from any particular matters

here at DOL that involve that entity.

Particular matter is a phrase that I keep using because we are not talking about broad policy matters. We are talking about discrete, identifiable matters that either involve a single party or a discrete and identifiable class of parties.

So if this committee is making recommendations that affect, you know, all energy workers across the country or all energy companies across the country, you're likely not in the particular matter zone. But when you're talking about an issue that maybe only affects six employers, maybe only affects one entity, that's where you want to be very tuned to do you have any financial interest in anyone who is involved in the matter, or who stands to be financially impacted by the matter.

Right. Similarly to financial conflicts of interest, we have personal conflicts of interest. The metric is the same in terms of if we're talking about you cannot participate in

particular matters if someone who is involved in the matter, a party to the matter, or a representative to the party to the matter has what we call a covered relationship with you.

A covered relationship is either a person or an entity with whom you have close ties. If they are a party to the matter you are working on, or represent a party to the matter you are working on, and a reasonable person with the knowledge of all the facts would believe that you could not be impartial in the case, then you cannot participate in the matter.

A covered relationship can cover a number of different relationships that you may have in your life. This is close relatives outside your immediate family, household members, persons with whom you have business or financial relationships. Not someone with whom you're a partnership, right, but maybe someone with whom you have, you know, you're seeking business before them, or you do business with them.

Employers and clients of your parents,

dependent children, or spouse. Your former nonfederal employers and clients for a year after you last worked for that entity, or organizations other than political parties in which you're an active participant. We call that like more than a mere member.

So I'll use myself as an example. I am a member of the American Bar Association, but I'm not an active member. I hold a membership, but I don't participate in any committees. I'm not a chair of any committees. So just the fact that I hold ABA membership does not disqualify me from matters at DOL that may impact the ABA. However, if I was the chair of the Labor Employment Committee, that would elevate me to a covered relationship with those entities.

And so in this case, you should be thinking about the work you're doing on this committee, would any of the recommendations or work of this committee impact your close friends, impact people with whom you do business. You know, again not exactly your client, but maybe someone with

whom you have routine business interactions.

As you can imagine, analyzing this under the ethics rules is extremely fact specific. So if you are worried about a particular relationship you may have and its intersection with the committee's work, please come seek my guidance, or you can go to Carrie Rhoads, and she'll connect you to us because it's a very fact-specific determination that the Ethics Office can assist in making.

Again, that reasonable person standard, would a reasonable person believe that you could not be impartial in the matter requires this office to look at a lot of factors and legal analysis that's been done in the past on whether or not something is a potential personal conflict of interest for you.

One last note on your former employers or former clients. I mentioned it's a one-year period. So a client or a former employer from five years ago is not a conflict of interest for you under this rule unless there are some other

extenuating facts to indicate that you have some sort of ongoing close, personal relationship with the entity.

So, again, I just want to flag that for you, you want to look back one year from last employment, and that's how long your recusal period should last.

So I want to move on to non-government activities. This is especially important for all of you as SGEs because you have a lot of non-government activities. You are not a fulltime government employee, so ethics rules, and we expect that you will have -- that you may have outside employment, that you may participate in outside activities, and you can participate in a wide range of employment or volunteer activities outside of your work on this committee as long as it does not conflict with your work on this committee such that you could no longer provide your services to DOL.

So you want to make sure that any outside activity you're taking on does not require you to recuse from so many matters of this committee

that you can no longer effectively serve on this committee. We haven't happened -- haven't had this happen too often, and at no time in the past five years that I can recall.

But you want to make sure if you are taking on -- maybe you're taking on a new client, you want to make sure that that client, by some chance, isn't the sole focus of the next committee meeting for some reason. That would require you to recuse from the entirety of your work on the committee, and would no longer be able to effectively provide government service.

In addition, you want to make sure that you are paying attention to the rules around outside activities as they relate to speaking, teaching, and writing. There is a specific rule for fulltime government employees like myself or like Carrie that we cannot receive compensation for outside speaking or writing that relates too closely to our official duties.

So no one could pay me to write a book on federal ethics. The government pays me to

advise on federal ethics. I cannot receive compensation from an outside source to do that.

However, for all of you as SGEs, you cannot receive compensation if the activity is performed as a part of your services to the government if the invitation was extended to you because of your government position, or if the invitation was extended by someone with interests in matters that may be affected by your service to this committee, or it is on any matter to which you were assigned or have been assigned during the previous one year period.

I think the most realistic, real-world example here is that if you we're asked to speak at a conference and you were asked to speak at that conference about your general professional background, your expertise in your particular area, and that organization wanted to provide you an honoraria, there would be generally no issue with you accepting that honoraria.

However, if they were inviting you to speak at a conference about the work of this

committee, and to speak about what this committee does, what type of recommendations it makes and what it's like to be a member of a FACA committee, you could not receive an honoraria for that appearance because you cannot be provided compensation by an outside source to speak about your work here at the Department.

All of you may accept compensation for outside teaching activities provided that the course requires multiple presentations and is offered as a part of the regularly established curriculum at various institutions of higher education, or as part of an educational or a training program sponsored or funded by federal, state, or local governments.

So very similarly, largely all teaching activities are going to be permissible as long as they're parts of, you know, a part of the curriculum of an institution of higher learning. If you do teach courses outside of your, you know, in your outside life as I call it, feel free to touch base with Carrie or myself and we can, you know, give

you good guidance. But largely that activity is permissible.

I also want to flag for you, there are two circumstances where you have to be very careful in interactions with the federal government, and that's serving as an expert witness or lobbying the federal government. In both cases, you cannot do -- you cannot serve as an expert witness in a case if you participated as a government employee in the matter that's subject of the proceedings.

And the same thing with lobbying. If you participated personally and substantially in the matter, and The United States is a party or has a substantial interest in the matter, you cannot lobby the federal government. And by that, I mean the federal Executive Branch government on the matter.

So what I want to flag for you all is that if by some chance, you are to serve as an expert witness in a case involving a case that is a subject that is subject to these FACA proceedings, or if you wanted to lobby the federal government, you

could not do so if you participated in the matter on this committee.

Again, it's a very rare scenario to occur. But it can happen. And so the rules for SGEs are very limited to those circumstances. If you participated in the matter as an SGE for this committee, you cannot serve as an expert witness in a case that involves the US government or lobby the federal executive branch on those matters.

All right. I'm going to move over then quickly to the Hatch Act to just briefly discuss the Hatch Act. As a reminder for all of you who may have not heard this pitch before, the Hatch Act is a federal regulation which restricts federal employees from participating in advocacy for or against partisan political candidates for office, partisan political parties, or partisan political groups by which I mean largely political action committees or groups closely associated with partisan political parties.

They cannot advocate for or against those entities while on duty in a federal workplace

or using federal resources. In addition, full-time federal employees cannot run for partisan political office, and cannot fundraise for partisan political candidates or parties.

You all are special government employees, and so the rules are special for you. The rules for the Hatch Act still apply, and that means you cannot engage in partisan political advocacy while you're providing services to this committee. So if you are in our headquarters in D.C. in the Frances Perkins building, you cannot simultaneously be on your cell phone advocating for the election of a partisan political candidate for office.

You are permitted to fundraise. You are permitted to run for a partisan political office. But you cannot do so -- you cannot fundraise on the days that you're providing service to this committee, and you cannot run for partisan political office actively while you are providing services to this committee, right?

So something I like to talk about in the

virtual environment is you should not have a big, political campaign sign behind you on WebEx or Zoom, or Teams while you're participating in these committees. That is partisan advocacy even if you don't intend it to be so.

Likewise, you should not, while you're engaged in this work of the committee, you should not be advocating for one candidate over another, or engaging in fundraising by maybe, you know, going on Twitter and reposting links while I'm giving my ethics training on who to donate to and why.

So that's the type of things you should avoid. If you have any questions on the Hatch Act, it's something we get a lot of questions about because it's sort of a unique regulation, and it has some unique implications, so please feel free to reach out to me on that at any time.

We just sort of finished an election season, and I feel like we just sort of started a next election season, so it almost is always election season. But especially as it gets closer

to particular days in which we vote, feel free to reach out if any issues come up.

The last thing I want to talk about then is gifts and the misuse of government resources. For gifts, you may not accept a gift from a person who has business before this committee unless an exception applies. You cannot accept gifts which are given to you because of your government position unless an exception applies.

Because the Department of Labor has such a broad regulatory and enforcement authority, gifts can be very tricky for Department of Labor employees. And I really would stress to you, if you receive a gift, it doesn't fall into any of the exceptions that are listed on Page 7 of the hand out you all received, and you're not really sure why, you know, this gift has been offered to you, please check with those first because we can either tell you that it's okay, or we can say please don't accept that gift or please return that gift, and you can use us as the fall person to say that the Department of Labor ethics official made me give

this gift back to you because they were not comfortable with it.

There are a number of exceptions. You can always accept gifts of $20 or less other than cash, and up to $50 per year from the same source, even if they are a source that would, you know, otherwise be prohibited because of their work, you know, before this committee or their work before OWCP.

You can always accept gifts based on a personal relationship, so gifts from your relatives or friends. Gifts from someone with whom you have a history of gift giving. You can accept gifts for the holidays from people who routinely give you gifts. Anything based on your personal relationships is exempt under the rules.

Anything that is provided to you from your own employer, from your spouse's employer, or anything from your outside businesses' relationships is exempted under the rules. So, you know, theoretically, there are things that clients could give you that are a gift, but because

it is part of your business relationship with that client, it's largely exempted under the rules.

You can also always accept discounts available to a broad range of persons, military discounts, AAA discounts, alumni discounts at certain institutions, those are always fine. Or anything that has little intrinsic value, cards, plaques, or trophies, there is no issue there.

Again, I'll just sort of flag for you that anything that's offered to you that comes from someone who has business before OWCP, or that you're not sure why you're receiving this gift, that's something that I would flag for you. And please come talk to us.

There is actually a provision within the gift rules that allows you to decline an otherwise permissible gift if you feel that the optics would not be, you know, favorable to accepting a gift of that nature.

So, for example, you know, if I was litigating a case for the Solicitor's Office and opposing counsel and I were in a deposition, and

we took a break and they said I'll buy you a coffee. I could probably accept that coffee. It's under $20 in value. But the optics of that situation would say decline, they're opposing counsel. It doesn't -- you don't want to look as if that party who has business before the Department is currying any particular favor with the Department official. So it is never inappropriate to decline a gift, but if you have any questions on that, please let us know.

Again, though, gifts are not cash. I'm not talking about cash. There are specific rules on salary supplementation that come into play if we're talking about cash being provided to you.

Like I highlighted earlier, you cannot receive compensation for your work on this committee, you know, whether it's speaking at an outside organization about your committee work, or if someone was trying to compensate you for serving on this committee, that is not, you know, permitted.

But you are otherwise completely sort

of exempt from that salary supplementation provision because you can hold outside employment, and you can have outside clients, and all of these different things. So be more careful with cash is I guess my takeaway from that.

And, lastly, you may never misuse government resources, government equipment, supplies, WebEx sessions. The time of government personnel can only be used for authorized government activities.

In addition, you may not use nonpublic data, economic analyses, private personnel information, national security information, or any other non-public information that you learn or receive as a part of your work on this committee for your own private activities, or someone else's benefit.

So you are all advisory committee members. You are always able to provide department-produced publicly available information to your outside employer, to potential customers. Anything that's publicly available by

the Department, you can share that.

But anything that was a non-public study, information that OWCP was providing to you just as committee members, you could not share that information with any outside party outside of, you know, your fellow committee members and individuals within OWCP.

And with that, we've reached the end of my presentation. I would love to take questions if anyone has any specific questions either about something I said, something you read in the handout, or something else that struck you.

CHAIR MARKOWITZ: This is Steven Markowitz. Thank you very much. That was very thorough, so I'm not sure how many questions there might be. But I open it up to board members.

And while they're thinking, I have a quick question. You mentioned lobbying, and you mentioned lobbying the federal Executive Branch. I usually associate lobbying with lobbying the federal Legislative Branch.

MS. MYERS: Yeah.

CHAIR MARKOWITZ: So I just wonder about that particular phrase that you used.

MS. MYERS: Yeah. So lobbying happens both at the Executive Branch and in the Legislative Branch. Although, I think you're right. I think more common we refer to congressional or a state legislature lobbying as lobbying. But I think there's a lot of Department officials who wish that lobbyists didn't lobby the Executive Branch agencies, but they do.

The specific criminal statute which I'm referencing in that session states that you cannot represent a third party back to the federal Executive Branch government agencies as a federal employee. And for SGEs, there's a provision written in there that says on matters in which they served as an SGE.

So there is no restriction on federal employees lobbying Congress, but there is a restriction on federal employees trying to influence other Executive Branch agencies. And the reason behind that is to ensure that federal

employees are not using their positions to benefit a third party with other federal agencies, if that makes sense.

CHAIR MARKOWITZ: No, that -- yes, that makes sense. Thank you. Any other --

MS. MYERS: Sure.

CHAIR MARKOWITZ: -- comments or questions? Okay. Well, if not, thank you very much, Ms. Myers.

MS. MYERS: Yeah. Thank you, all. and I hope you all have a wonderful afternoon.

CHAIR MARKOWITZ: Thank you. So I thought we'd take a couple minutes actually to -- since these issues are in our minds, to talk about the structure of board work over the next couple of years, and referring specifically to working groups or subcommittees.

So just to give you a little bit of history. For the first couple of years, we did have subcommittees that corresponded with the tasks of the board. And they were scheduled well in advance. They were -- the public -- they were

open, the public was invited. They were noticed in the Federal Register. Although, I don't think it was 15 days. I think it was something like six weeks which made it -- make a lot of planning necessary.

And then over the couple years after that, we evolved into working more as working groups, not as subcommittees which were more -- in general more exploratory, a little more brainstorming. Some fact finding. And those, we did not open up, not because we didn't want to be transparent because at every step the board wanted to err on the side of transparency, it was as much as just a practical matter which is that in order to get work done, we just didn't want to have to sit through six weeks of the Federal Register notice and the like.

So what I want to discuss is what do we want to do with this board term in terms of -- because we will, I think, have some working groups, thinking for instance, we're going to get some resources in the next year or so to look at

a large number of claims, that we need to do some work in preparation for that to plan what we're going to do. We'll discuss it today and tomorrow. But we want to do further planning which would involve a working group.

And so the question is -- and we heard from Mr. Plick that we're not -- we're free to choose actually on what mechanism we want to use. So I wanted to hear your thoughts about that. And then this isn't the last word, we can, you know, figure this out over the next day and a half, but -- yeah, Dr. Bowman.

MEMBER BOWMAN: Yeah. Thank you. I was involved in at least two working groups I believe on the last term of the board, and I found them to be very helpful in terms of gathering information, putting ideas together. We always brought all of that forward to a full board meeting which then was further helpful as we got a more complete discussion. And so I think it was a -- I think it helped us to be productive. So I would be in favor of the working group model that we had

last term.

CHAIR MARKOWITZ: Okay. Thank you. And let me just add that it was never the case that we had the full board show up for a working group meeting. We were never that lucky to have that level of interest. And also, there was no decisions made at the working group level. Whatever, as Dr. Bowman said, whatever was discussed was brought back to the full board for further discussion.

Any other -- Dr. Friedman-Jimenez, Mr. Catlin, any thoughts on this? Okay. So --

MEMBER FRIEDMAN-JIMENEZ: Yes, this is George Friedman-Jimenez.

CHAIR MARKOWITZ: Yeah.

MEMBER FRIEDMAN-JIMENEZ: Are there any downsides to the working groups, for example, that you can't bring back a specific recommendation or something that would then go to a vote by the whole board? Are there any downsides because it sounds like a much more flexible, workable model?

CHAIR MARKOWITZ: Well, the only

downside is not -- that I can think of in not having it open to the public is that it's not open to the public. And so that, you know, how we think and what we find out isn't fully transparent in terms of board interaction.

I would maintain that whatever thought process goes into the working groups actually is brought to the full board because we discussed these things.

So I don't -- the theoretical downside of not opening the working group meeting up to the public is the perception that were not fully transparent. But I think, in fact, I think we are because that discussion is brought to the full board which are, you know, with meetings of which are open. Is that -- does that address your question?

MEMBER FRIEDMAN-JIMENEZ: Sure. Yes. So in that case, I see no problem with it. And it looks like a much better, more workable model. So I would agree with what Mark said.

CHAIR MARKOWITZ: Yeah. I mean I

think if I --

MEMBER FRIEDMAN-JIMENEZ: Sorry, Aaron.

CHAIR MARKOWITZ: Yeah, this is Steve Markowitz. If we end up scheduling some meetings like we discussed, or we decide that it would be useful to open it up to the public, then we can affirmatively do that. There's no -- obviously, there's no provision. Just requires more planning. And so we always have that option, we should -- and we should keep it in mind, so.

Okay. So the sense of the group is that we'll go with the working group model not noticed in the Federal Register, not open to the public with the option of having an open, noticed meeting at some point if we think it's relevant. Okay. Thank you.

So it's quarter of 11:00 and I kind of think that we should take our break now. And then come back at 11:00, and then start with Ms. Pond then. So a 15-minute break. Thank you.

(Whereupon, the above-entitled matter

went off the record at 10:40 a.m. and resumed at 10:59 a.m.)

CHAIR MARKOWITZ: Okay. Let's get started. So Mr. Van Dyke had to step out for an hour for a work event, so he'll be back later. And I would like to welcome Ms. Pond.

MS. POND: Hello, everyone. Welcome. Welcome to the new board members, some of you I haven't met. So today I'm going to walk through just kind of an overview of the EEOICPA for those of you who are new, and then I'm going to talk a little bit about some of the things we've accomplished with the board over the last few years since the board was put in place back in 2015. And then I'll be willing to take questions.

John, when he gets up, he's going to talk in a little bit more detail about the changes that have been made to the procedure manual over the last year, any other updates that he may have with regards to policy. And we'll both be around, you know, the rest of the day for questions about whether what I talk about, what he talks about. But

he will be getting into a little bit more detail than I will when he gets up.

So, also, I know Amy kind of covered some of the real basics, so I try not to overlap too much with what she said. But there may be a little bit of that. You can go to the next slide.

Okay. So what is the EEOICPA? Our mission is basically to protect the interests of workers who were injured or became ill on the job, or their families, by making timely, appropriate, and accurate decisions on claims, and providing prompt payments of benefits to eligible claimants.

That's our mission statement, and what that basically means is we are trying our best, and what I have reiterated over and over in our program to our claims examiners is that we want to pay people whenever we can if they're eligible, and that means helping them throughout the process.

You know, the burden of the proof lies with the claimants, but we've done a lot of things over the last 20 years to try to help with that process since so many of them really weren't aware

of what they were exposed to, or that it was causing their conditions. We do provide lump-sum compensation to these individuals, I'll talk a little bit about that process, and to their survivors if they're qualified. Next slide.

So the benefits are slightly different under Part B as than they are under Part E. We provide $150,000 lump sum under Part B to employees or their survivors. And we provide $50,000 in supplemental compensation for those people who received compensation under the Radiation Exposure Compensation Act.

Under Part E, first there's a medical component, an individual will receive medical benefits, and then they apply for their compensation. So it's not -- under Part B it's automatically that they'll receive they are lump sum. Under Part E they have to apply for either impairment, which they get $2,500 per percentage of impairment. They can reapply for that every two years. Or they can get wage loss, which there's a statutory definition that you can get between

$10,000 and $15,000 per year depending on the amount of wage loss you incurred as a result of the condition.

There is a $125,000 lump sum for survivors of Part E employees who would be covered under the program. In total, the maximum compensation allowable is $400,000. And it does not include medical costs. Those are in addition. Next slide.

So program eligibility under Part B, which was enacted in 2000, then there's this Part E, which was enacted in 2004, and the three components that are necessary to establish in both parts are employment, medical, and survivor. But there are different criteria under each of those parts. Next slide.

The employee eligibility is one of the areas that they're different. Under Part B, an employee is covered for DOE contractors and subcontractors, DOE federal employees, AWE which is atomic weapons employers which is defined under the statute, and beryllium vendors and under the

RECA program. Under Part E, we only cover -- the statute only covers contractors and subcontractors, and RECA. Next slide.

So there's a number of avenues that the claims examiner will undertake to verify employment. First and foremost, DOE, Department of Energy, they are required under statute to provide us with what they can. They can't always provide us with records, so we have to go to other ways to determine whether an employee was working at a particular facility.

That would be the Oak Ridge, the ORAU, Oak Ridge Institute for Science and Education. They provide records sometimes. There are corporate verifiers who have been willing to work with DOE and with us to provide information about whether an employee worked somewhere. We do rely on Social Security Administration wage data.

We'll also go to other sources from the claimant if they can have -- if they have affidavits or any other recommend -- documents like pay stubs that they may have to help if we can't get any of

the records. And we're pretty successful in getting records for the most part, but it can be really challenging at some of these sites that are no longer in existence or, you know, the DOE just didn't keep the records. So that is one of our challenges.

DOE also provides DAR records which it's called a document acquisition report, and that is basically made-up of industrial hygiene records, more specific, more voluminous amounts of information about what they might have been exposed to, or at least industrial hygiene records or former worker program records and that sort of thing. Next slide.

So medical eligibility is very different under Part B versus Part E. A lot of what you guys will focus on would be Part E, but chronic beryllium disease under Part B can be a challenge as well.

So under Part B, the statute covers cancer, chronic beryllium disease, chronic silicosis, and the RECA. The chronic beryllium

disease is statutorily defined very specifically. They've got a definition for pre-1993 and post-1993 diagnoses.

That's been one of our challenges throughout the program to try to make sure that the tests that are in there we've defined properly, and we've had some discussions with the board about that definition. Chronic silicosis is also very specifically defined. You have to have certain employment criteria under Part B to receive those benefits for chronic silicosis.

Part E is a lot more open-ended. It's any condition that an employee could have contracted as a result of toxic substance exposures. And the fact that it's so open-ended is what makes it so challenging because, you know, there's not a lot of records. There's not a lot of doctors out there that know a lot about toxic substance exposure or how it was related to disease.

And so I'll talk a little bit more about that in detail. But that's where a lot of the work

of the board has been helpful for us just because we've created tools like the SEM and other ways to try to figure out, you know, what they could have been exposed to. But survivors never really knew, so it's a real challenge of the program.

Section five of the RECA covers uranium workers employed in the mining, milling, and ore transportation. And the US Department of Justice actually administers the RECA, we just provide that supplemental compensation for Part B, and in some cases Part E for medical coverage. Next slide.

All right. Under Part B for cancers, there's two ways that you can get an acceptance. There's only two ways that you can get an acceptance for cancer under Part B. There is one path which is the special exposure cohort. The Congress defined special exposure cohorts by, first, you have to have a worker group designation, and that if you are within this designation, there's a presumption of causation between the cancer and the radiation. And this is only radiation exposure.

There's an employment criteria. A

person had to work there for usually 250 days within a time period that is defined by the -- and within the cohort. And they have to have had one of 22 named cancers. These cancers are named in the law. Next slide.

So there were already four statutory SEC classes added, those were the gaseous diffusion plants and Amchitka Island. But the statute actually provided NIOSH with the responsibility for creating any new special exposure cohorts because NIOSH is National Institute for Occupational Safety and Health, they're responsible for conducting dose reconstructions which I'll talk about in a minute.

But they are also responsible, if they cannot conduct a dose reconstruction for creating these classes of -- a presumption of classes. And they've designated 129 of those since the beginning of the program. We administer the SEC classes, but NIOSH is responsible for making the designation. Next slide.

So before I talk about that, I will talk

in a minute about dose reconstruction. It's not really something that you guys will deal with much. But if a person with cancer under Part B does not qualify for an SEC, they do undergo what is called a dose reconstruction, and that is every cancer case under Part B will go to NIOSH.

They then do an evaluation. They'll talk to the claimants. They then do an analysis of the site where the individual worked, and then they write a report at the end of -- it usually takes about six months, sometimes longer for them to do this analysis, sometimes shorter periods of time. It used to take them years, so they've improved significantly over the last, you know, 20 years on that.

But then they provide us with a report, and with that report, we run a program to determine whether the individual -- the individual's exposure was 50 percent or greater related to the cancer. And if it's 50 percent or over, they get an acceptance. And that is statutory as well. So I didn't put that in the slides, but I thought I'd

make sure I mentioned it. So we can move on.

So under Part E, as I indicated before, causation and exposure are our biggest challenges. You have to first establish an exposure to a toxic substance, and then the law states that we must establish that the toxic -- it was at least as likely as that that the toxic substance was a significant factor in causing, contributing to, or aggravating the claimed illness.

We've had a lot of discussion with the board, and I know the board has had some discussions among themselves over the years about what is significant factor, how do you factor that in. And it's still a challenge to this day.

And when we've I think been able to kind of further refine what that means in training and through some of the language that we've put in the procedure manual, but it's still kind of a challenge because at the end of the day, we rely on the medical doctor to tell us what's, you know, whether or not there is a relationship, and then whether or not that relationship fits this legal

criteria.

So we've developed, as a result, you know, as I indicated, survivors, sometimes employees, claimants, they don't know what they were exposed to. They didn't have that information. So we created a site exposure matrix, which John is going to talk about in detail later. But it's basically a relational database that we did a lot of research to see what toxic substances might have been at these facilities and what buildings that these individuals and certain job categories might have been exposed to. And then there is another piece of that database that has some health effect information.

We also do a detailed occupational history questionnaire which is at the beginning of a party claim, our resource centers will have oftentimes like two-hour conversations with the employee or the survivor about where they worked, what processes they might have been involved in.

That's been another evolving -- the questionnaire itself is something that board has

looked at, provided us with some information to help us do that a little bit better than they used to. John's going to talk a little bit more about that later in terms of those improvements.

We also refer to the DAR records I mentioned earlier from Department of Energy. We will gather former worker medical screening program information because they do like an initial analysis when an employee or a claimant of ours comes in there, then we can provide -- they will provide us with that information, and any other sources of information we can obtain from the claimant. Next slide.

So I've talked a little bit about this already, I'm not going to go into much more detail about the site exposure matrices. But it is a tool that we use. I will emphasize that. It is not a decision database, or it's not a decision maker. But it is something since the claimants couldn't often come up with the information about the exposure, we did create this to -- the claims examiner will refer to it to say this is what we're

looking at to determine they might have been exposed to this toxic substance. Like if you have, you know, asbestosis, we can look in there to see if there was potential for exposure to asbestos.

That's kind of a more -- that example is pretty common. But there are other less common disease relationships and toxic substances that are in there. This is a publicly available database that the public can do research and look at it themselves and filter and try to help build the case. Oftentimes, authorized representatives will use this as well. Next slide.

Okay. Claims adjudication and timeframes. I'm going to walk a little bit through this slide, and then I have another slide that I'm going to cut you. It's not a slide, but it's a graphic. And we can -- it's a graphic that's on our website. It talks about the actual timeframes.

But the basic steps for filing a claim is -- and getting through the process is that the claimant will file a claim. That claim is usually

filed through the Resource Centers. We have 11 resource centers across the country.

And what our resource centers do is they're kind of like -- people can walk into the resource centers and talk to a person face to face. The resource center employees will help them with their claim, filing with their claim. These centers are located around DOE facilities where people may have worked as much as possible. They were statutorily required to create them. So that's the front line, and they help us with outreach and do a lot of that kind of face to face with the claimants.

So when an individual files a claim, they can file it there, or they now can file it through a digital portal. They can automatically upload it. That's something that a lot of our claimants who are elderly, they don't necessarily use those kinds of mechanisms. But the survivors do, or the authorized reps are able to use these portals.

Once a claim was filed, if it's a Part

E claim, the occupational history questionnaire will be the next step. Resource center will contact them, ask them, you know, to set a time up to go through this occupational history questionnaire which will be submitted to a claims examiner.

All claims will go to claims examiners in our district offices. We have four district offices throughout the country. They used to be -- they used to be located like regionally. They're still regionally located, but we now -- we used to do our assignments based on where the facilities, where the individual worked. We stopped doing that. Now we do a round robin around the country way of assigning cases.

Once the claim is accepted or comes into the district office, the district office will undertake employment verification immediately, go to the Department of Energy to obtain information, and then begin the process of obtaining information from the claimants.

We need to have a diagnosis. We need

to have some sort of medical documentation. First and foremost, when it comes in, we at least need to have a diagnosis. And then the employment records, if we need to gather information about survivorship, we'll do that during this stage.

Gather whatever information we cannot either Part B, Part E. You know, sometimes it will go to NIOSH for a Part B assessment, and we'll still adjudicate the Part E side as much as we can. If we can accept Part E without the Part B, we will do that.

And so what we'll do, after all the information is gathered, there's a recommended decision. So every district office claims examiner will issue an initial recommended decision whether to accept it or to deny the case.

That is not a final decision. It then moves to our final adjudication branch which is also under the Division of Energy Employees Occupational Injury Compensation, but it's separate from the district office. So we have hearing representatives there who will do an

independent analysis of the entire case file and the recommended decision that was issued by the district office.

At that stage, the claimant can either ask for -- if they want to object, they can ask for an oral hearing, or they can submit written objections. Or if it's acceptance, they can submit a waiver and say I want to -- I want you to go ahead with this decision. We won't have to wait, we can go ahead an issue and acceptance.

That final decision, once they've reviewed all the evidence, the final adjudication branch well issue a final decision. There are additional appeal rights after that, an individual can ask for reconsideration within 30 days. Or any time after a final decision is issued, an individual can ask for a reopening meaning, for example, it was denied because we didn't have any medical evidence. They came back two years later, they were able to get the information that they didn't have before, they can ask for a reopening, and we can reopen the case and accept it.

And that happens a lot just because, you know, initially they might not have the information that we needed, and they will always have that opportunity to go back. If we can cut to that graphic real quick. I can't see it. If you can make it bigger, that'd be great.

This is basically the same thing I just talked about, but it's got timeframes and it's kind of a visual. It's probably better to have as a handout, which we can make sure you guys get a handout of this. It's also on our website. That's better. I'm not sure I can -- can you get it a little bit bigger? There we go. Thank you.

So first, you file a claim through the resource centers. The district office will assign a claim number and -- from the -- and then it'll go to a claims examiner. And then the occupational history the questionnaire is undertaken. I have already stated that, but it kind of is the next step for a Part E claim. If you can Scroll down just a little bit.

All right. During the review process,

the CE may write to the claimant asking for information regarding the employee's work, medical documentation, or other information. They'll be given 30 days initially to provide that information.

We have asked, and we try to make sure that our claims examiners are cognizant of that 30-day period. If a claimant needs additional time, they'll provide them with that additional time wherever possible. It's, you know, it's flexible. We're flexible there.

After that period of time, the claimant will receive a recommended decision. The CE will issue the recommended decision to accept or deny they claim. The case then goes to the final adjudication branch.

In our evaluation of the work, we have very strict -- we have operational plan goals. So everybody, you know, we've set a certain timeframe we'd like to get decisions done within to make sure that we're doing it as quickly as possible for the claimants.

So we have operational plan goals on pretty much a lot -- almost every step in the process in terms of timely processing. We found that there's recommended decisions usually issued within about 145 days of receipt of the claim. Now that, you know, really will depend on whether it goes to NIOSH or if there are extenuating circumstances. But that's the average. You can Scroll down a little bit.

And then if the claimant disagrees, it's going to take a little bit more time. They'll submit that written statement. They have to submit that within 60 days of the recommended decision to determine whether or not, you know, they want to disagree with the case. After that period, there will -- A decision will be issued if there's no response from the claimant.

Final decisions are typically issued within 75 days of the recommended decision, or request of the review of the written record. They're issued within 150 days if a hearing is requested because that takes a little bit more

time.

If a claimant agrees, they also can't submit that waiver more quickly. Final decisions are typically issued within 30 days of receipt of the waiver. And then they receive the final decision. We can cut back. And again, we can probably give this as a separate handout. I think it is as a separate handout in the attachments, so you can always refer back to it.

I'm sorry. Anybody have any questions about the process before I move on? Go ahead.

MEMBER CLOEREN: Hi, I do. Marianne Cloeren. I have a question about the cancer claim process. It sounds like it's sort of -- the consideration ends at Part B. Is there some point where you will apply Part E --

MS. POND: Actually --

MEMBER CLOEREN: -- criteria to look for occupational, you know, toxic substance?

MS. POND: Oh, absolutely. You can file for cancer -- you can file for any condition under Part E. Under Part B, we have this criteria,

but we will go a separate track for Part E cancers. So if you file for cancer, we'll go and try to determine if there were other toxic substances besides radiation that an individual may have been exposed to that will have contributed to their illness.

And that is going through to a medical doctor, obtaining what other exposures an individual may have had, referring it to, you know, back to the treating or going to a contract medical consultant. Go ahead.

MEMBER CLOEREN: Just a follow-up question there. Does the claimant have to trigger the Part E review, or --

MS. POND: It really depends on the employment where they worked. As they kind of showed you at the beginning, if they're -- if they worked for an AWE, for example, or atomic weapons, they're not going to be eligible for Part E so we wouldn't pursue it. But if they're a subcontractor or a contractor, we'll automatically pursue both paths.

CHAIR MARKOWITZ: And that's true for all Part B conditions, cancer, chronic lung disease, and beryllium?

MS. POND: Yes. But the one thing is if it's accepted under Part B, it's automatically accepted under Part E. So we do not need to undertake further development for that. So if you get chronic beryllium disease under Part B, you get it under Part E as well.

CHAIR MARKOWITZ: And how about chronic lung disease?

MS. POND: Chronic beryllium disease?

CHAIR MARKOWITZ: I'm sorry, chronic silicosis.

MS. POND: Silicosis, yes. I believe that you also get -- yes, it's covered also under Part E. But if it's not covered under Part B, you can get it covered under Part E. So that's the difference. It doesn't go both ways.

So if I get -- if you get -- if we accept CBD under Part E and they don't meet the statutory criteria under Part B for that condition, then we

can't accept it in Part B, but we can accept it under Part E. It's kind of a weird way the law was written. Mr. Key.

MR. KEY: Yeah. Jim Key. You know, improving customer service of this program, I mean perhaps we need a sidebar on fast tracking cancer filings. Just had a case out of Paducah, one of three gaseous diffusions SEC that was established under legislation. The person found out and was diagnosed with cancer, went to the resource center. Followed the proper steps to file.

Unbeknown to them, the cancer had occurred and had already metastasized within the body. We assisted in directing the individual and helping them try to get through this process. Unfortunately, that individual passed away within a six-month period.

So I understand the time frames that the Department has put on different sections after you file a claim, the 145 days for a recommended decision. Then additional days for a final. But looking at this particular case I'm discussing, we

only had 180 days before this person passed away. And, unfortunately, the claim was filed and was going through the process, but the claimant did not receive any compensation prior to him deceased.

So I don't know how we address it internally of the program, but we need a fast track on filing of cancers for those claimants who meet the SEC condition under sub-Part B. Thank you.

MS. POND: Okay. Are we ready to go to the next slide?

MR. BIRD: Almost.

MS. POND: Okay. I will say just to that, we do have expedited processing for cases that are terminal. And we have recently kind of been reevaluating what that means because terminal can mean somebody's going to die this weekend and we need to do everything in our power to issue that decision and make that payment within the next couple of days. And then there are people who went to hospice who, you know, who have maybe six months or less, or three months.

And so we've recently been in

conversations with our claims staff to say that's still terminal also, but it's not the terminal where you jump through hoops to try to make everything happened within days. It is something you put at the top of your case files to make sure that if they're in hospice.

For example they'll do everything they can to, you know, expedite the process at NIOSH or, you know, obtain the evidence that we need more quickly, going in and making sure the resource centers are in touch with the claimants to get their payment forms and that sort of thing. So we do have some processes in place, and we are still refining those expedited processes. Yes, please. Thank you. Okay. So I want to talk a little bit about the experts that we use in the program. As I indicated several times now, the claimants can always provide the information that we need to adjudicate the claims.

So we do utilize -- we hired -- specifically for that reason, we hired contract -- we hired industrial hygienists

including an industrial hygienist contract. We hired doctors, contract medical consultants which is run by a contractor. And these experts we use, specifically the contract medical consultants, when we cannot get medical information from the claimant that's sufficient to accept the claim.

The medical science experts are industrial hygienists who can help us refine what the employee might have been exposed to. The legal criteria requires that we define that clearly.

And so we will refer a case, let's say we have gone to this site exposure matrices, we see that there may be some exposure to a particular toxic substance, or several toxic substances, silicon dioxide, or whatever the case may be, cadmium, we'll refer that case.

A claims examiner will say, okay, at this stage we need to refer this to an industrial hygienist who will review it to determine what the maybe extent of that toxic substance exposure might have been whether they were exposed significantly, and we've got various definitions of, you know,

significant. Daily, on a regular basis. Whether it's occasionally in passing only. These are the terms that the industrial hygienist will use.

What they do is they provide a professional opinion that a claims examiner can use to weigh the evidence. And then oftentimes refer that to the treating doctor to say, this is what we've characterized as their exposure, please provide us a medical opinion. They do not decide the outcome of claims. They just provide us with information to help the claims examiner further in evaluating the evidence.

The one thing that we've worked -- again, this is something we worked with the board a lot on in terms of how the industrial hygienist should be evaluating the evidence, how they should be explaining the evidence. We've changed some of the language they've used recently from the use of regulatory standards to other language. And John will talk about that a little bit more.

But I just want to give you a background

of what they're there for, and that's to help with this process of figuring out the types of exposure, the extent of exposure, and that is used then for the doctor to review it. Next slide.

We also have health physicists on staff. They evaluate the occupational radiation exposure and application of the dose reconstruction methodologies. So that basically -- well, NIOSH does the assessment, sometimes there are questions that come up from claims examiners or from some of the evidence that's placed into the case file about, you know, whether the dose reconstruction report, if there were any factual errors in it or other problems with it, the health physicist can kind of help guide that and maybe refer a case back to NIOSH if necessary. The industrial hygienist, as I indicated, evaluates the extent, and nature, and duration of the exposure.

The toxicologist we have on board, we have one toxicologist, and I think we have a backup -- a toxicologist in the contractor that

analyze data and literature relating to relationship between toxic substance exposure and disease. And what that means is they don't serve as a doctor.

But if we get, like a, a lot of science that says prostate cancer, you know, is related to this particular substance, that we could maybe make a presumption. We do make our own presumptions sometimes, and the board has helped us with that as well presuming, that there is exposure. Maybe it's because they've had this much time of employment, and they've had, you know, this latency period. Those are things that we'll be considering, and sometimes our toxicologist will help with that. The board has also helped us do that. We've been able to make some causation assumptions based on the expertise here.

We also have registered nurses. One of the very -- one of the biggest medical expenses that we have for our claimant population after we've accepted a case is home healthcare. And we, you know, it's become a very large industry, and

there's a lot of requests for sometimes 24/7 care, and we have medical benefits examiners who evaluate that and other ancillary medical benefits.

Registered nurses will sometimes help the claims examiner kind of formulate the questions they need to ask of the doctor if there's a question about whether the care should be evaluated, or whether the ancillary medical benefits should be received. They do not issue --they do not -- again, they're not decision makers. They just help it claims examiners in certain cases.

Our claim staff are not medical doctors. They're not lawyers. They're not scientists. So they gather the information from those experts to try to then issue a decision on the case. Next slide.

And so then the medical consultants I mentioned -- the medical science unit, we've got a whole unit. We've got two fulltime health physicist, one fulltime Ph.D., health scientist, the toxicologist, the contractor toxicologist, two fulltime certified industrial hygienists, a

contractor certified industrial hygienist, four fulltime nurses, and then we have our contract for contract medical consultants. The medical consultants -- next slide. I'm not sure I talk about it separately. Yes, I do.

All right. The medical consultants are contractors. So, again, we try to rely first and foremost on the treating physicians to provide us with the causation analysis. But a lot of doctors are family doctors, aren't familiar, or they cannot provide us with real medical rationale to support it.

But if we get some information that we can then kind of expand upon and get a more detailed opinion from another doctor, we'll go to a contract medical consultant, refer them -- we'll give them the entire case file to look at to help us help a claims examiner determined whether or not there is a causative link between the exposure and the disease.

The medical opinions from these CMCs are essential to helping with these claims. If we

didn't have them, oftentimes we'd just have to deny them. Now they will sometimes lead to a denial as well, but it is another extra opinion that we can obtain when we don't have enough medical evidence from the claimant.

They will help with clarifying a diagnoses sometimes. They help with impairments. And sometimes -- claimants have the option for an impairment claim to either go to a doctor that they know of that can do impairments, or to have us send the information to a contract medical consultant who can provide that information.

We'll then send it to people who have experience in the AMA guides for evaluation of permanent impairment, and they will provide us with opinions on those cases which can then -- will then be a percentage of impairment which leads to the lump sum compensation.

We'll also refer them in causation cases or also for wage loss determinations about -- where necessary to determine if wage loss was related to their claimed condition. Next

slide.

Impairment, I'll all talk very briefly about this. It is a big part of Part E. It's one of the main ways that an employee can receive compensation, monetary compensation. It's a percentage of whole-person impairment based on the American Medical Association guidelines to the evaluation of permanent impairment.

We currently use the fifth edition. We did not move to the sixth edition because upon analysis from various experts, we determined that the fifth edition was more claimant favorable for the people with the conditions that we have.

A lot of the AMA guides has to do with more falls and breaks and that sort of thing, and these illnesses are more -- they're a little bit different, and we just found that the fifth edition was a little bit more claimant friendly in that. And so we've maintained that as the guide that's being used. And again, it's $2,500 for each percentage of impairment. Next slide.

Wage loss is the decreased capacity to

work due to an accepted medical condition. The employee compensation is for any year that an employee receives less than 50 percent of their average annual wage, they get $15,000. And for any year that's between 50 percent and 75 percent, they get $10,000.

It's a rather complicated formula to determine their annual wage. We have to gather employment records over the last three years, come up with an average wage, and then do this comparison. But that's not something that you guys really get too involved with. Next slide.

Claim assistance. Like I said, we have 11 resource centers nationwide, four district offices. We have a lot of information on our website that includes our regulations, our procedure manual, general program information, the SEM website, claimant resources. We are constantly trying to improve the website just so that people can easily obtain the forms.

You know, we're becoming more and more digital. In the last year as I indicated, we've

been able to make it so that claimants can file their form EE-1, EE-2 planforms digitally. They're also now able to file their payment forms, their EN-20 digitally which saves a lot of time at the end of the process when they're trying to get their payments.

We do a lot of outreach. We weren't doing a lot of outreach during the pandemic because obvious --for obvious reasons. So instead we did webinars about every month about various topics that people could sign up for. We have thousands and thousands of people that signed up for our website notifications, our e mail blasts that we send out. And that's both from the policy aspect. We also have one for providers on the medical side of things.

And, you know, we're hoping to go back out again this year. We usually try to time an outreach meeting with the board meetings, but we couldn't do it during this time period this quickly this year because of the fiscal year.

But, you know, the outreach is also a

struggle because we want to get new claimants, but we don't really have mailing lists for people that might be eligible. So we work closely as possible, we have a joint outreach group with the Department of Energy and Former Worker Program, and the Department of Justice, NIOSH to try to reach as many people as we can, and we're constantly still trying to do that. I don't know if there -- oh, I think there are more slides. Yes.

So these are the accepted conditions that that Dr. Markowitz mentioned earlier, and you'll probably get into more detailed. But I think -- this is just for both Part Bs and E -- Part B and E, skin cancer, lung cancer, bladder cancer.

The cancers for Part B are those are the top five cancers. And then skin cancer, COPD, lung cancer, silicosis, and hearing loss are the top five under Part E. But there are more detailed list I think you're going to be referring to. Next slide.

These are our statistics. Basically we've spent $22 billion over the last 20 plus years.

That includes medical and monetary compensation. And that split is over $8 billion for medical, and $13 million in monetary compensation. This is all on our website, so it's publicly available and it's updated regularly. Next slide.

I'll talk a little bit about the accomplishments that we've been able to -- our accomplishments with the board over the last -- since 2015 since the board was established. We have done some site exposure matrices updates. We've added health effects data associated with toxic substance exposures like bladder cancer, breast cancer, leukemia, liver cancer, lymphoma, prostate cancer.

We've established some aliases for parkinsonism. We redesigned the occupational history questionnaire based on the input from the board. We improved that data collection on employee occupational activities and toxic substance exposure. Not only did we improve I believe the interview process itself, but the way in which it's recorded and how we guide the

claimants to provide us that information.

We developed more presumptive standards. One was related to COVID-19. Hearing loss, auto toxic substances, asbestos-related diseases. All of these recommendations and responses are laid out in great detail on your website, on our website in terms of what the specific changes were.

We've also had procedure language updates. We updated the asthma description. We actually specifically asked the board to talk about the six-minute walk test and its applicability in impairment ratings. And, again, as I indicated, we've changed the IH exposure characterizations of exposure to eliminate the regulatory language aspect of what they were -- how they characterize it.

One thing I will say about the procedure manual updates is the board can always recommend changes to it. I mean, you know, at any time, if there are changes that the board sees in a procedure manual and you have, we'll make that change, we'll

put it in the next update.

So I know you're going to talk later about, you know, the opportunity to comment on the changes we're making. We try to make two a year. We get a lot of changes that come from case, you know, evaluations that we try to get through the system. We try to make those changes as quickly as possible.

And so the process of getting that updated is it goes through a lot of layers of evaluation, and then it goes through various layers of approval. And then we have to have our union members look at it, and then we can publish it. So I think, you know, we could talk about that timeframe in and of itself, but also keep in mind that you guys can always look at the procedure manual, we can always change it which we do.

So even if there was something that you said, well, this change, you know, maybe could have been handled this way, you can always come back and say I think this is the language you should use, and we can always reevaluate it. So regardless of

how we end up with that, just keep that in mind that we can always make those changes.

I think those are the major accomplishments that we've made in terms of working together. I didn't go into a lot of detail, Dr. Markowitz, because I figure that's all on the website and I wasn't going to go through every recommendation unless you wanted me to do that. But I figured it probably wasn't what you needed me to do today.

Is there another slide? That's all I have. But I'm willing to -- I can take questions. I don't know what you -- yeah, we've got time.

CHAIR MARKOWITZ: So this is Steven Markowitz. So board members, comments, questions? Yes, go ahead, Ms. Zaback.

MEMBER ZABACK: Lorna Zaback. My question is on the -- when you had the list of the Part B and the Part E, and obviously, the Part B then begets the Part E, that skin cancer is the number one on the list, but it's not part of the 22 presumptive cancers. And is there any motion,

or are they reevaluating, or is there anything to relook at that because that seems pretty --

MS. POND: Yeah.

MEMBER ZABACK: I don't know.

MS. POND: The presumptive cancers are in the statute. So Congress made that list. They based it on the RECA 22. I believe they based it on the -- what was in the Radiation Exposure Compensation Act already, and they came up with it.

It would have to take an act of Congress to change it. We don't really have any authority over that at this point. Now have they talked about it, I'm sure they've had conversations. But it's a matter of getting something like that all the way through Congress and passed.

CHAIR MARKOWITZ: Other comments or questions? Yeah. Sure. Go ahead. Dianne, Ms. Whitten. Oh, yes.

MEMBER WHITTEN: Dianne Whitten.

CHAIR MARKOWITZ: The board, yes. Excuse me. What Ms. Whitten has done is to lift her name tag -- nameplate up vertically. That's

very helpful.

MEMBER WHITTEN: Hi, Rachel. My question is when the CE fills out the referral for the IH, why are they only able to list seven toxic substances on that?

MS. POND: Well, they tried to list the seven toxic -- there can be -- there can be 25 toxic substances that a person might have been exposed to. So they'll pick the ones that they were most likely exposed to, and they've got the most information, evidence about. John, I don't know if you wanted to add to that.

MR. VANCE: Yeah. Sure.

CHAIR MARKOWITZ: Always.

MR. VANCE: All right. So remember that this a worker compensation program, and we have -- John Vance by the way. This is a worker compensation program, so we are responsible for an administration of a process. All right?

So we received -- and I just checked, we received 226 claims last week, the last recording. So you have to keep in mind that our

responsibility is to process these claims in a timely fashion.

MEMBER WHITTEN: 226 for --

MR. VANCE: 226 claims filed in our resource centers. So remember that number, start multiplying that over a course of a year. We have to figure out how to balance the reasonableness of getting these through a process, and also understanding that there is going to be a lot of work that could be dedicated to trying to figure out every single aspect of one these cases.

But then if you do that, you're just not going to get these claims through the process. So there has to be an effort to sort of create efficiencies in how we go about evaluating these cases.

So when we go through our analysis of a case file to identify the toxins, we're trying to prioritize those that have the greatest effect in generating a positive outcome. So we've identified this 7 levels of exposure, whatever you want to call it. But we make it clear to the claims

examiner and our industrial hygienist that we're trying to prioritize to create this administrative efficiency to get these cases through a process.

However, if you do see cases where we do need to add more toxic substances to our profiling effort, we will do that. That generally will come up as a direct consequence of a claimant petition to say you didn't consider this properly, or you should have added this to the profiles. So we do do that quite frequently with regard to our advocates or our stakeholders that are involved with these cases.

So that's what you have to keep in mind is that we're talking about a process that involves thousands of cases. So if you're talking about 226 cases a week coming in, we've got to figure out a way to get these through a process, and it cannot entail turning each one of these cases into a major scientific research project. It's a matter of balancing that reasonableness of getting a decision outcome, and also basing them on the best possible outcome for the claimant. So that's

where you get that seven.

And it is flexible. We do see those often where we have to expand beyond that because of a claimant's request to consider certain things that we didn't identify in our preliminary evaluation. Does that answer your question, Ms. Whitten?

CHAIR MARKOWITZ: I have a follow-up question if I could. Steven Markowitz. So the claims examiner is not an occupational health expert, and that person is frequently the one who's winnowing the list of toxins down to the seven substances. So how does that -- how does the claims examiner actually make that decision?

MS. POND: Well, I mean we have to rely on the information that is provided to us either by the claimant themselves, which again, is hit or miss because they don't always know what they're exposed to. We rely on what's in the SEM, and, you know, it's going to be that the top list -- the top hits in the SEM, information that's in the case file.

Typically we're not going to see more than seven. But there might be more than seven. If there's a lot more than seven, if there's 20, they will whittle it down based on I guess the first -- the most information they have about that toxic substance in the case file.

MR. VANCE: Yeah. And what I would add too, is that, you know, a claims examiner is just that. They're examining evidence. Their job is not to necessarily be an expert in any of these fields in the medical hall of science. Their job is to look at evidence and do a comparative analysis based on what is in a case file about an employee and utilize the resources that are available to them as examiners to build that case, to build the profile for that individual.

And so when I do the SEM demonstration, I'm going to sort of show you that comparative analysis that comes from the use of that resource. But we're also utilizing other information in the case file to try to evaluate what the employee told us in their occupational history questionnaire,

what information is available in the DAR, what information is available in the site exposure matrices research that we do, and input that we received from other experts such as the claimant's own physician. And then we build that as a factual framework.

And that's what the claims examiner is doing, they're examining the evidence and are applying that data to create a structure that a physician can then utilize in making that causative determination under Part E.

So it is a methodology that the claims examiners utilized to do their work in evaluating what's relevant about that employee in building their toxic substance profile. And the SEM is a critical part of that build out of that process.

CHAIR MARKOWITZ: Right. Steve Markowitz again, just another follow-up question. It seems to me the industrial hygienist would be the expert who could better winnow down the number of toxins in terms of the likelihood of exposure that that job title or task would have rather than

the claims examiner.

So in the instance where the claims examiner looks at the SEM and sees a lot of different potential exposures, why not turn that over to the IH to decide what the most important exposures are?

MS. POND: Well, they're typically going to refer their cases to the IH where there's a likelihood in the SEM or in the medical evidence that we've already received that there's a connection between that toxic substance and the claim condition. So that's what they're first going to look at and say, okay, yeah, they might have been exposed to these, but these three or these six, or these five, there is some sort of connection in the SEM or from any other information that we already have that shows a connection.

So that's what we want to focus on first because we know that there's some sort of connection. And so, you know, the amount of -- that's what whittles it down first and foremost. Saying that we're going to -- we can't

have the industrial hygienist going into the SEM for every case to do the analysis because that's really the work of the claims examiners to whittle it down.

What we, you know, we use the SEM, and we utilize the information that we obtain in lieu of anything else from a claimant. So if a claimant has an expert or, you know, a doctor or a scientist that's coming in and saying we have all this information that we believe shows that this person was exposed, that's what we'll use first.

But we're doing this because the claimant can't provide us with anything, and we're going through and trying to determine what might help the claim at the most. And so if we see a connection in SEM, and we see a connection between the exposure and the condition, that's what we're going to refer to first.

And so there's got to be a balance between referring every single case to an industrial hygienist and asking them to do the work of a claims examiner which is to whittle things down

to a factual -- the most factual process we can, and looking at every possibility that -- because that isn't really the duties of the industrial hygienist.

They are supposed to take the factual basis that we can come up with based on the evidence that we have either from the claimants, from the doctors, from anything the claimants can provide us or in the SEM and do an analysis. And it just -- there's got to be a balance.

CHAIR MARKOWITZ: Dr. Cloeren.

MEMBER CLOEREN: Marianne Cloeren. I actually have two probably easy questions, and one comment that maybe is a question. I guess the easiest one, the occupational history questionnaire, is that available publicly?

MR. VANCE: Yeah. So our occupational history questionnaire in our procedure manual, which is our employee staff manual, it describes the functionality of the occupational history questionnaire, its purpose, its -- the whole structure of it is publicly available on our

website through that employee and procedure manual. So the answer is yes, it is something that is available for folks to review and understand how it's done. And I think we have a sample as an exhibit --

MS. POND: Exhibit 7.

MR. VANCE: -- in the procedure manual.

(Simultaneous speaking.)

MS. POND: And we might have even provided.

MR. VANCE: Yeah. And that was restructured based on conversations we had with the board two, three years ago. So, yes, that's in our procedure manual.

MEMBER CLOEREN: Okay. Thank you. That was the first one. The second is if somebody has a decline in their function overtime, and they have an accepted Part E claim, say their COPD worsens over ten years and they have an accepted claim for it, can they file for an adjustment?

MS. POND: So the adjustment that they would file for would probably be the impairment.

MEMBER CLOEREN: That's my next --

MS. POND: So -- yeah. So they get -- and they can get a new impairment every two years. They have to wait two years.

MEMBER CLOEREN: Okay.

MS. POND: But they can come back and ask for more impairment up to the cap of what we can pay out.

MEMBER CLOEREN: Okay. I didn't realize that. Thank you. And then the third thing is I have tried to look before for like the special exposure cohort information. I find it a little bit tricky to find -- I don't know if I'm just not looking the right way.

Is there any -- like the site exposure matrix I think it's very easy to navigate, and I'm sure like a lot of work has going into that. I don't know if you have anything similar for special exposure cohorts that I just haven't found.

MS. POND: I would go to the NIOSH website. They have a lot of information. It might be easier to look at it from there because

they spell out all of the petitions and the results, and then they have the list of SEC classes.

(Simultaneous speaking.)

MEMBER CLOEREN: I guess I meant something more like -- that a participant might be able to look up, I have this cancer, worked at this place, I worked for this contractor during these years. I think that -- I have seen that and I'm not sure that they'd be able to find the information.

MS. POND: Yeah. We don't have it like that to look it up.

MEMBER CLOEREN: Okay.

MS. POND: That would be a great idea if we had the resources to do it.

MR. VANCE: Yeah. We --

MS. POND: Or NIOSH did, or somebody did.

MEMBER CLOEREN: Thank you.

MR. VANCE: We do have a lot of information on the criteria that are utilized for evaluating inclusion in the SEC in the procedure

manual again, and it's up to the claims examiner to be evaluating claims for the SEC to the determine whether or not they're included or whether they're why they have to route that case through the dose reconstruction process that Rachel discussed before.

MEMBER CLOEREN: A follow-up question. So is it part of the adjudication process for a cancer claim to look first for SEC?

MS. POND: Absolutely.

MR. VANCE: Yes.

MEMBER CLOEREN: All right. Thank you.

CHAIR MARKOWITZ: Ms. Whitten.

MEMBER WHITTEN: Dianne Whitten again. How do you assure, since you send claims to any office, any of the four offices, how do you assure that somebody say in Jacksonville understands the processes that happened at the other sites?

MS. POND: So when we decided to make that shift from a regional-based assignment process to a round robin, we got experts in the

various facilities from the various offices like, for example, somebody in Jacksonville may have been an expert about, you know, what happens at the -- with the processes in Paducah, people out in Washington would be more experts in Hanford.

So first and foremost, we have experts that a claims examiner can go to for more detailed information, but we've also conducted training. As soon as we did the switchover, we -- and we had experts or people that had the subject matter experts from each office go around and provide training to other claims examiners from other offices to try to get them more familiar with it.

And, yeah, I will say that there was some bumps at the beginning because the, you know, some people didn't know to go ask about, you know, something that might be particular to a site out in California or Washington if they were from Jacksonville.

But I think we're getting better at that. And we're continually updating that training, and we're trying to make sure that if you

have -- if they have any questions at all, they go to the experts or the SMEAS that more about those processes and facilities.

We just found that what was happening, and the reason we did that, was some of the claims intakes in Cleveland and Denver, we were getting fewer and fewer cases. And, you know, the only reason we were getting fewer cases was because they were located where they were. And so in order to even out the caseload, we've changed it over.

CHAIR MARKOWITZ: Yes. Dr. Vlahovich.

MEMBER VLAHOVICH: Kevin Vlahovich. When a claims examiner is looking at a case, are they following like a standard algorithm, or a checklist? So we have -- let's say a piece of information, we go to the next step, or we're missing something, so we need to look for that?

MS. POND: Yeah. That's what the procedure manual is for basically. It's pretty step-by-step every single piece. So if you have a -- here's what you do for employment, here's what

you look for in medical, here's what you look for, you know, or have -- when you get to this stage of the process, it is pretty much step-by-step, laid out in our procedure manual. And that guide is for the -- or is for claims examiners, like 800 pages.

We also have training modules. So when we have a new class or a group of people that come in as claims examiners, they go through a couple months series of training to go and explain it. They can retake modules, we're constantly updating training module so that if it claims examiner has been there a long time, but we have a new process, we can then provide that training.

Sometimes we do it hands on. Sometimes, you know oftentimes like for our industrial hygienist, we'll have virtual trainings with people to kind of give them more specifics about what to look for, what do you send in, that sort of thing. But, yeah, there's a lot of training and guides for our CEs.

CHAIR MARKOWITZ: Other comments, questions?

MEMBER FRIEDMAN-JIMENEZ: Yeah. This is This is George Friedman-Jimenez. I have a comment and question about the skin cancer question. Skin cancer is one of the most common cancers, probably the most common cancer. Often the treatment is simple and not expensive. But many times, it is a very substantial medical treatment, and it sort of falls in between the two boards.

The typical cause of skin cancer in the great majority of cases is non-ionizing radiation, ultraviolet light from the sun, and this can be occupational in many cases. People that work outdoors are at increased risk, but yet, it's not a toxic substance, so our board doesn't have jurisdiction over it.

The radiation board, I don't think he has jurisdiction over it either. They deal with ionizing radiation. So my question is whether you see any pathway to covering this hole? I believe it's a hole in that there are a substantial number -- there have to be a substantial number of

occupational cases of skin cancer with significant medical costs, and sometimes, time lost from work, or even death in the case of Melanoma usually.

Is there a pathway to get that incorporated into the work of this compensation program. I know it would require a statutory change that somehow Congress would have to include it under the jurisdiction of one of the two boards, and we can talk about which one would be more appropriate. But, Rachel, thank you for this great overview, and I was wondering if you have an answer to that question.

MS. POND: I do not have an answer. There is a gap. I will agree with you that there is a gap when it comes to non-ionizing radiation. But these statute's pretty clear about it being occupational. And so that piece of it has not been, you know, we haven't been able to accept cases based on sun exposure thus far.

You know, how it's contributed to the other exposures, it's not a piece that's been real clear unless a doctor is telling us it was a

combination of their occupational exposure and the sun, or something like that. But right now we just rely on the physicians to provide us with those causation determinations based on the occupational aspect of it, and that's based on what the statute says.

MR. VANCE: Let me just add --

MEMBER FRIEDMAN-JIMENEZ: So, yeah. So I think that this points out a possible role for the board here because this is not the only disease. I think noise-induced hearing loss is similar. We can deal with cases that are substance-induced due to chemical toxicity, but not due to noise or the interaction of noise and the chemical.

So we've, you know, dealt with most of the major causes that are occupational, but there are a few that are not covered by the program. And I'm wondering if the board may somehow be able to put together a request to Congress to include these sort of orphaned conditions that frequently are occupational, that can because significant morbidity or even mortality, and that are not under

the jurisdiction of either of the boards.

MR. VANCE: And let me just clarify for everyone so that we're all working from the same page. All right? So there is a legal definition under the -- under our program with regard to what a toxic substance is, and basically any material that has the ability to cause harm based on its chemical, biological, or radiological properties. So within that meaning, the program has said that does not include ultraviolet waves or noise. So that's one point I wanted to clarify.

The next thing is, you know, this board is fully capable of interacting and discussing skin cancer with regard to its connection to chemical exposure. Now if you remember the one slide that Rachel showed, skin cancer is one of our top accepted conditions.

More than likely that is arising from chemical exposure, and I can tell you it's probably mineral oil and arsenic that are the main drivers of that.

We do not have a presumptive standard

for skin cancer. That's something that the board could certainly consider looking at. But it is well within, I think, the scope of the board, and I'm pretty sure Rachel can agree to have you guys looking at and considering skin cancer and the methodology that the program utilizes in evaluating those cases.

Now this question on the ultraviolet light, that's going to be your question on influencing Congress on how they want to change the definition of a toxic substance. So I just wanted to make that point clear.

CHAIR MARKOWITZ: Thanks. And we're going to actually look at -- we're going to look at data later on the most common claim conditions, and a preview is 20 to 25 percent of the skin cancer claims have been approved in the past couple of years. So a lot of claims, a fair amount of approval, so. But we'll look more closely at that later.

I have a couple questions. Roughly what percentage of claims these days, meaning, you

know, the last year or two, go to the IH, and what percentage of claims go to the CMC? Just roughly, 10 percent, 90 percent, 50 percent?

MR. VANCE: I would --

MS. POND: I would be hesitant to provide you that off the top of my head. I think more and more are going to an IH than they used to for sure. Of Part E claims, I mean you might be able to -- let's say, 50 percent are going -- you don't want to say it.

MR. VANCE: Yeah, I wouldn't --

MS. POND: We don't want to say it, so we don't know --

MR. VANCE: -- commit to --

(Simultaneous speaking.)

MS. POND: -- for sure.

CHAIR MARKOWITZ: Okay. No, that's fine. That's fine.

MS. POND: But I do know that there is more that go to an IH than there used to be. There might be less going to a CMC than there used to be because there are more and more physicians that are

becoming familiar, or more authorized reps who are, you know, familiar with doctors who can provide those sorts of causation opinions. At least that's kind of anecdotally what I see. I don't have specific percentages.

CHAIR MARKOWITZ: No, that's fine.

MS. POND: And wouldn't want to put them on the record.

CHAIR MARKOWITZ: That's fine. The board, a couple of years ago, used to look at the quarterly audits of the medical -- at that point, the medical director where the physician on staff used to look at claims over the past year and audit for various aspects of impairment, causation and the like. Do those still occur? I didn't check before the meeting, do those still occur or they've been suspended?

MS. POND: No. We restarted them, and we can provide you with those. They're being done by our policy staff to see if the referrals themselves are correct, and the responses are in line with our procedures, and the doctors are

following, you know, providing us with the rationale.

The reports are qualitative. They provide the history and that sort of thing. That's what we're looking at, and yes, we've restarted them, but recently so. We can probably get you 2022 information.

MR. VANCE: Yes. Which after -- what we used to do is have our medical officer with the program evaluating the sufficiency of the medical opinions. What's changed is that we are now evaluating it from a programmatic standpoint as far as a contract surveillance to make sure that the CMCs operating within the structure and the requirements of the contract.

And so that's being conducted by the policy branch, and we are evaluating those components of the contract to ensure that the contractor is fulfilling their expectations on the work that they are doing for the program.

CHAIR MARKOWITZ: Well, so we would request if any information about that is

available -- results are available because that relates to one of our tasks, so.

MS. POND: Absolutely.

CHAIR MARKOWITZ: Carrie, if you can just make note of that. Another question I have is, you know, one of the attorneys when they talked about our charter and the list of things we're supposed to do and our requirements, one of them was that we're supposed to coordinate with the Radiation Advisory Board. And I personally have never initiated that, I've been remiss about that. So I want to officially request that we coordinate with the radiation Advisory Board.

I don't know what that means because I think we really deal with separate issues. I don't really see much overlap, which is the reason why it hasn't occurred yet. But I want to officially request that we fulfill that requirement.

MS. POND: Well, I think it's an option. I don't know that it's a requirement. But, yeah, if you --

CHAIR MARKOWITZ: Well, if it's

required. If it's required.

MS. POND: Okay.

CHAIR MARKOWITZ: Yeah.

MS. RHOADS: It's as necessary.

CHAIR MARKOWITZ: As necessary. Okay.

MS. POND: So I don't think you --

CHAIR MARKOWITZ: Well, if --

MS. POND: -- absolutely have to --

CHAIR MARKOWITZ: If the Department believes it's necessary, then we're more than happy to do that. So one of the -- and the final question I have is one of the things you pointed out in the ways in which the board has been helpful in the past number of years is development of -- assisting in development of presumptions.

And presumptions are very useful because they're expedited ways for people to get their claims accepted, particularly when there is insufficient information, usually about exposure. So are there possible presumptions you're considering, you're wondering about, or you're

working on that we can be helpful with?

MS. POND: We can like look into it. I mean I would -- I could collect maybe some more information. I wouldn't want to, again, talk right off the top of our heads. But there, you know, we have gotten some referrals to our toxicologists that we could pursue a little bit further and we'll ask. We'll do some polling and see if there is some specific conditions and relationships that you guys could look into for us.

MR. VANCE: Yeah. And the program itself has actually, you know, we continue to do work on our end. And one of the more recent presumptions that we've actually initiated on our own was a new Part E silicosis presumption which we should really realize it should have been done a while ago because it already exists under Part B, but we looked at the Part E side of that so that we could have an independent presumption applied under Part E that wasn't really dependent on the presumption that exists under Part B.

And so what Dr. Markowitz is talking

about is very useful because, remember, this is an administrative process where we have hundreds of cases coming in. The presumptive triggers that we have in our procedure manual allows us to bypass a lot of the developments time needed to have physicians and industrial hygienists sometimes, and all this other kind of work occur.

If a person meets specific conditions of that presumption, we can approve the case. And it is a very good process for sort of short circuiting the need to do a lot of this is very laborious causation development. So it is a very advantageous thing to have more presumptions that are based on whatever epidemiological research is available on particular topics.

Now, of course, we all know that that can be very challenging in this kind of occupational illness environment. But it is a very useful and productive tool for us as an organization to have presumptions applied. it's been very helpful, especially with COVID-19, has really helped a lot because you will know that

individuals suffering from occupational illness are very susceptible to getting COVID-19.

And we've had a lot of cases where that has been an accepted condition that has actually proven to be very beneficial simply because COVID-19 can contribute to, you know, serious medical problems and that has been a very helpful presumption that the board recommended that we implement.

CHAIR MARKOWITZ: And this is Steve Markowitz. Just a comment. And with COVID-19 and these state workers comp systems, the states which have had a presumption about essential workers, the public-facing workers who get COVID, that that would be considered occupation as a presumption have awarded a lot more claims than other states in which there has not been a presumption in which the worker has to demonstrate that they did have exposure at work. For instance, in New York State we have that problem.

So just a add on point. For board members, when a person doesn't meet the criteria

for presumption of a claim, then they still have -- there is still the option that they go the normal route of claims that a claims examination takes so that they're not discard -- their claim isn't discarded. They then get the normal evaluation. At least we've been reassured about that. Ms. Whitten?

MEMBER WHITTEN: Dianne Whitten. Since we're on the presumptive topic, we had a situation where a claimant had mesothelioma. It's under the presumption. But I mean it's terminal. He had a limited amount of time left. But the claims examiner sent the case to be dose reconstructed to see if he qualified for lung cancer. Is that a normal process?

MS. POND: No. No.

MR. VANCE: No. Okay. So with regard to any case, we are never certain what's going on with that case until we actually know what's going on with that case. There could be any number of reasons that that occurred. It's very difficult to speak to that.

But the process would bear out hopefully that if there was a mistake that had been made at some point in the initial adjudication, that that is caught by -- that's why we have this two-stage adjudication process.

If the claims examiner, let's say they send a referral for lung cancer when they should be looking at mesothelioma, that's the role of the final adjudication branch to look at that and say, hey, wait a second, this does not seem to be in alignment with the case evidence or program procedure, and they return that back to the district office for correction.

Now that is not going to be very helpful for somebody that's in a terminal situation. But our objective here is to try to get an outcome that conforms with our policies and procedures.

MS. POND: And if you do see cases like that, I mean please bring it to somebody's attention. If you say, you know, I mean if a person has lung cancer and it's sent to NIOSH, that's great. But if they also have mesothelioma, then

they need to be adjudicating that case under Part E. And if they're not doing that, then we need to -- we need to know about that.

And, you know, if the claims examiner -- somebody needs to -- either the claims examiner, claim supervisor, resource center, make sure that somebody is aware that that is occurring so we can fix it.

MR. VANCE: Let me -- I'm going to add one real quick response going back to COVID-19 because I looked around the room and I saw a couple confused faces. Okay?

COVID-19 is being approved as a consequential illness to some work-related illness. So in other words, under our program if you say develop COPD and then you happen to develop COVID-19, the mechanism of approval here is that COVID-19 is being made worse as a consequence of your COPD.

So the program can cover newly diagnosed conditions that are in some way impacted by an approved work-related condition. So that

relationship that -- that consequential relationship is what triggers that, and it's a presumption of a consequential relationship. I saw you. I was like, oh, she doesn't know.

CHAIR MARKOWITZ: Yes. Mr. Key.

MEMBER KEY: Yeah. Jim Key. Rachel, you said in those cases where we have terminal individuals, to elevate that up for the fast track, who do these people go to?

MS. POND: Well, they should start with their claims examiner, and they could submit that information either, you know, they can call and be put through to their claims examiner by the resource centers. But, you know, if they talk to an employee and say terminal, resource center employee will make sure that it's flagged, and make sure that the right people will know. Or they can submit something through the portal that says this is terminal. But I would start with recalling and getting a resource center person involved.

CHAIR MARKOWITZ: Ms. Whitten.

MEMBER WHITTEN: Just one more

question. I could have looked it up. So what is the difference between chronic silicosis under B and silicosis under E?

MS. POND: There is specific -- I think you have to have a 250-day requirement in a certain job for under Part B in the tunnels, right, and mining or milling in Nevada Test Site. It's a specific site, it's a specific period of time. And under Part E it's just medical and an exposure, and that sort of thing.

MR. VANCE: Yeah. So for chronic silicosis, there are statutory requirements under Part B, like Rachel just said, for the diagnosis and the establishment of chronic silicosis. There's also an employment requirement that the employee have worked during the period that there was underground testing occurring at sites in Nevada and Alaska. So that what allows us to accept a case under Part B.

What we recognized is that what is hampering everybody that doesn't meet those conditions under Part B that we've got to go and

look at under Part E. So what we did was we said under Part E, absent those criteria that exist under Part B, what would be a presumption that we could apply for chronic silicosis for anyone that was exposed to silicosis regardless of the location that they worked.

And, in fact, under that we don't even have the diagnostic criteria that is required under B. It is simply a doctor using their own judgment of clinical and diagnostic evidence that said this person has chronic silicosis.

So if they meet that -- if they meet that diagnostic criteria under Part E of the doctor's diagnosis, and the conditions that are in the presumption in which I think are 180 days of exposure to silica, significant exposure to silica, there's a latency component that we're approving the case.

So the standard is in the procedure manual, all our presumptions for everybody on the board is in our procedure manual for our staff, it's Exhibit 15-4. And it lays out all of our causation

presumptions, our consequential presumption for COVID-19, and any exposure presumptions that apply. And we have a very large one for asbestos exposure.

CHAIR MARKOWITZ: So just to follow up then. Steve Markowitz. What has changed under Part E for chronic silicosis? What's new?

MR. VANCE: The only thing that's changed is the presumption now bypasses the need. If an individual meets these conditions under Part E and we have not been able to approve it under Part B, and it goes to Part E and you meet these conditions of the presumption under Part E, we approve the case. Otherwise the case is going to get routed through the normal evaluation for causation under the Part E process.

CHAIR MARKOWITZ: So the presumptive criteria in Part E for silicosis, that set of criteria are new in Part E?

MR. VANCE: Yes.

CHAIR MARKOWITZ: Okay. I'm sorry. Yeah. Go ahead, Ms. Zaback.

MEMBER ZABACK: Hi. Lorna Zaback. first, I wanted to have a comment regarding the terminal, and I, working directly with Department of Labor, there you have a great sense of urgency when it comes to terminal, and I believe all the sites who are responding have a great sense of urgency. And the community, as a whole, that deals with people in this case, they really go into overdrive.

That being said, it's sometimes difficult to get the communication. But I am working with Charles Elson on -- they're redoing the cert, and they're going to actually add a flag so that it'll directly go to somebody, and it won't just get lost because I know that is a problem.

But the question I have is about -- so the person -- you start them on the Part B and Part E track at the same time, but you wait until the outcome of the Part B before you go to the Part E. Is that true or not true?

MS. POND: So they're supposed to be developing them both at the same time. What

happens, and the only time they'll wait for Part B as if they're going to have to deny a Part E. So if they've done everything they can and they've got a cancer case, and they couldn't get any medical or any causative analysis that came to a positive outcome for Part E, then they'll say, well, we're not going to denied Part E until it comes back from NIOSH under Part B because that could be a positive, and then they get a positive under Part E. So the only time we're going to wait for that NIOSH is if we can't do anything else on the Part E and we would have to deny it otherwise.

If they can accept it under Part E, they will. And that's the instructions are supposed to go ahead with everything they can do, and if they can accept it, accept it. But if they can't, they have to wait.

CHAIR MARKOWITZ: Other comments or questions? Other comments or questions? Dr. Friedman-Jimenez, Mr. Catlin? So let me just remind the board. So I think Ms. Pond and Mr. Vance are going to be around the rest of today.

MS. POND: Yes.

CHAIR MARKOWITZ: They may not -- one or both may not be here tomorrow. So --

MS. POND: Yeah. I mean we can play that by ear. It just depends on, you know, far you get today, if you think you're going to have a lot of questions tomorrow. I mean we can talk about that, but.

CHAIR MARKOWITZ: Okay. I was just going to say that they may not be here tomorrow, so if you have questions for them, by all means direct them their way.

MS. POND: Absolutely.

CHAIR MARKOWITZ: But they may be here tomorrow too, so. Okay. So it's close to 12:30. We're going to take a break now for lunch. Will resume at 1:30. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:23 p.m. and resumed at 1:31 p.m.)

CHAIR MARKOWITZ: Let's get started. Welcome back. Next up is Mr. John Vance.

MR. VANCE: All right. Good afternoon. I'm the after lunch special, I guess. So my name is John Vance. I'm the policy branch chief. I oversee the work of our policy analyst group that does our publications for program procedures. We do a lot of case-support activities in compliance with program and procedures.

I also oversee the work of our Medical Health Science unit. These are the individuals that Rachel mentioned before, our industrial hygiene team, health physics, our nurse consultants, and our toxicologist. So I'm intermittently familiar with just about everything this board has been doing over the past few years.

I've also very heavily involved with preparing materials for the board, so I have a very intimate understanding of the data submissions and all of that as well as preparing a lot of the responses that we do for the work of the board or in response to board recommendations.

So my objective this afternoon is just

talk a little bit about the work of the Policy Branch, provide some background information on some of the things that the program has been doing with regard to program policies and procedures.

I will let you all know that I have two teenage sons, one who is 6'4", 220 pounds, so whatever you think you can do to me, have at it. So please ask questions. You know, we deal with a lot of folks that do engage with the program. This is a uniquely complicated process as you're probably gauging, especially for the new folks. For the folks who have been around for a while, I've been doing this forever and I'm still encountering things. And I'm like, I had no idea how to handle that.

So, you know, there is a lot of collaboration that is involved with case adjudication, claims examining and getting through this process. So please feel free to ask whatever questions, and don't think that you're going to hurt my feelings doing so no matter how foolish you may think the question is. Dumb questions need to

get answers too. So feel free to ask. Okay. So, Kevin, first slide.

So with regard to program policies and procedures, what you need to know is that the program operates with lots of background material about how we go about doing the day-to-day work of case adjudication. Were informed by the statute, by program regulations that provide further clarification of how the program is to operate with regard to administering the law, and then at a lower level, you have procedural guidance that is offered to employees with regard to how to do the day-to-day work of their job.

So think of it like the statute provides the overarching framework. Regulations provides further clarification on how to do things. And then the procedures and policies of the program are that granular kind of information that that staff needs to know about how to actually do the work on a day-to-day basis.

Our procedure manual and all of our policy publications are available on our website.

I would encourage you to take a look at that, especially for the new folks. My one recommendation is our procedure manual is probably the single best resource for what do claims examiners have to handle with regard to day-to-day work of case adjudication. What is the job of the claims examiner? How do they go about doing it?

So in the concept or the range of things that are going on to answer a very simple question, is this illness related an employee's work. Okay. That's where it starts with any worker compensation program. Our program, of course, deals with very complicated subject matter with regard to medical or employment causation, toxicology, epidemiology, all of these things which makes for a wonderful an entertaining process. So I encourage you to check out the procedure manual.

The procedure manual is updated generally twice a year. The genesis of most of the content changes originate from staff submitting questions, or issues, or things that we need to clarify.

We also source changes to the procedure manual based on conversations that we have before the board, either formal recommendations that are being made, or things that we hear in discussions with the board that were like, well, we should probably anticipate that this is an issue and we're going to go ahead and make changes to the language of the procedure manual, or issue a directive that explains to staff how to do certain things.

So it is a constantly evolving process to develop program procedures, and it really is dependent on what we encounter on a day-to-day basis. So if we are changing something in the procedure manual, it's generally a direct consequence of something that's happened that we needed to address in the day-to-day work of a claims examiner. So be aware that that's the genesis of a lot of the work that we do then the procedure manual.

Rachel alluded to this before, and I will amplify it because I deal with it all the time, making edits and language changes to the procedure

manual is a very complex set of steps and stages that we go through for this kind of clearance to make sure that whatever we're issuing meets certain legal and programmatic requirements.

So when people offer wording changes or what have you to the procedure manual, it has to go through a very serious vetting process. I'm not going to explain it all, but there are many steps of involvement that we go through to pass any publication for issuance.

We have internal feedback mechanisms. That means that we have to going through our initial drafting. We go back to the field to make sure that they're comfortable with the material to allow them input. That includes our case adjudication field operations folks, are final appeals board, and also our medical benefit adjudication branch.

We then also allow opportunities for different entities to evaluate and provide feedback. That would be our federal employees' unions get an opportunity to look at this. We do provide the opportunity for the Advisory Board to

be made aware of changes that are going to be made to the procedure manual before the publication.

So there's a lot of steps that go into clearing our publications for clearance. That includes both our procedure manual, our bulletins, and our circulars. And as you can see from the slide, our bulletins -- each one of these have slightly different functions.

Bulletins are generally going to be interim updates to something in the procedure manual that we want to do as a time critical kind of update. Is not getting into a formal publication of the procedure manual, but it is something that we are altering with regard to how procedures are going to apply, and we'll talk a little -- I'll mention all the recent bulletins in a moment.

Circulars are mostly just informational kind of things that we want staff to be made aware of. It's not necessarily a procedural thing, but it's just informational kind of guidance that staff need to be made aware of.

And sometimes that stuff will be captured in a procedure at a later date. But for the most part, it's just informational.

So these things are what are designed to communicate to our staff to how to do their job, but we make them publicly available for transparency. So, Kevin, next slide.

So with regard to the procedure manual, we've had two additions that have been issued in the past year. Version 6.0, I asked my staff just to put together some of the high-level stuff that I thought was kind of interesting. Feel free to ask any questions about any of these updates.

So we have a large claimant population with a need for a lot of support. So we have a process where we allow individuals to have attorneys represent them, or lay individuals that can serve as sort of like support for getting their claims through this process.

Now as you can imagine, sometimes that can get dicey with family members and other people trying to intervene into the decision-making

process, and so we just clarify the procedures with regard to, you know, the claims examiner has to figure out who is the designated authorize representative and enforce that policy throughout the life cycle of a case. So if there are disputes about who's the authorized representative, the CE is responsible for resolving that issue.

Defined roles and responsibilities for identifying and responding to potential conflicts of interest, this arose mostly from issues with regard to home and residential healthcare. You know, who is responsible for asking for or requesting home and residential healthcare? It can't actually be a provider that's in the home asking for the same services that they're being paid for. So we have some very clear guidance to our staff about how they are to treat potential conflicts of interest, and how you resolve that.

Conflict of interest for our program generally involves an authorized representative serving in some capacity that's receiving money as a consequence of benefit provisions by the program.

We don't want an authorized representative also being paid as like an in-home personal attendant. So we have to sever that, that relationship when it is identified.

Usually it's not a problem when people are made aware of the potential conflict. They resolve it through either ending their role as an authorized representative, or ending their role as a paid service provider in the home.

Validation of the site exposure matrices results prior to the issuance of a recommended decision, that was a wording change where we just wanted to clarify that it wasn't an automatic requirement to do that when SEM didn't play a role in the decision.

So there was some feedback that we had gotten from field staff saying why are we being made to do something that has no consequence based on the history of the case. So we eliminated that and just changed the language to clarify that language.

And we have some updates that occurred with regard to how we deal with impairment for

emotional disorders. There's a regulatory limitation that we have to ensure that any emotional disorder that is being evaluated for impairment originate from the central nervous system. So it cannot be a purely emotional disorder that is being rated it. It has to originate from a disorder of the central nervous system, and that is a regulatory requirement.

Compensation for consequential illnesses is subject to coordination. I'm not going to scare anybody too much by talking about coordination, but what that basically means is that if you've received money from a tort lawsuit or a state worker comp process that's affiliated with something that you've claimed in your case, the government requires an offset to occur.

So we basically stipulated that if you're being approved for a condition that's consequential in your claim before our program, that is subject to coordination if you've also received money through a state worker comp or tort suit outside of the program. Next slide, Kevin.

We had another release of the procedure manual. This is the most recent one, October 20th, 2022. An entertaining publication simply because we had the greatest and most exciting deliberation over formatting rules of our decision making.

It required a lot of deliberative engagement with our field to try to get everybody to agree to a certain set of uniform formatting rules. You would have thought that we would have figured that out a long time ago, but as Rachel mentioned, we used to have jurisdictional boundaries.

So all of our district offices had a little bit different way of doing things, so we decided we were going to actually try to get everybody to agree. Doing that was quite an entertaining process. So a lot of deliberation there, and that's our you uniform formatting standard down at the bottom.

I should have started with that because I think I lost a few years of my life arguing with people about formatting rules. That had to do with

fonts, text size, how things needed to be looked, letterhead, what to underline, what not to underline, different kinds of phrasing and that sort of thing. You wouldn't believe how entertaining that was.

So when we issue bulletins or updates, we incorporate those eventually into the procedure manual so that COVID-19 is a compensable consequential illness presumption. That was added into the procedure manual officially in this version of the procedure manual. We continue to elaborate on how claims examiners are going to handle individuals that are serving as attorney in fact or operating with a power of attorney. That's a little bit different than our authorized representative the process.

So an authorized representative can serve to, you know, to provide support for individuals working through our claim process. But you can also have individuals that are serving with a power of attorney. That allows them to sign documents on behalf of a claimant, but that may not

actually mean that they're serving as the authorized representative.

So we've had to make some definitional clarifications to our staff about how do you interact with authorized representatives versus power of attorneys. So we added a very lengthy procedure about how to go about identifying the power of attorneys and documenting their functionality because different power of attorneys have different kinds of authorities that are granted to them. They may have a very broad set of authority to sign on behalf of the claimant, or they may have limited sets an authority such as the ability to sign for medical decisions and that sort of thing. So we clarified that.

We had some clarifications of our silicosis standard. This is not the addition of the presumption. This was a clarification about how we needed to handle the relationship between Part B acceptances and Part E. There was confusion by some of our staff, so we had to clarify the procedure for that. I've already talked about the

formatting thing.

And recovery of a debt from a deceased individual's estate. If you guys know anything about trying to recover debts from estates, it's a very painful process. So we have decided to say it's a very painful process in our procedure, and that if you need help trying to figure out if it is even possible, you're going to have to work with the policy branch and our solicitor to determine whether or not it's even a viable option for us to try to recover overpayments that are -- or debts to the government that are now part of a lien as part of an estate. So I'll say that that's just and then pleasant procedure, and that there it is, so.

But we needed to clarify that functionality, so we didn't have people trying too hard to get money from an estate that doesn't exist because that's what we generally find is that we have estates that have been resolved or never formed in the first place, and those debts are generally never going to be recoverable. So next

slide, Kevin.

So our bulletins, again, this is just a different kind of policy notification to our staff. I just listed the ones that we've recently issued in the past year or so. We've extended a provision to allow for telemedicine for certain situations involving home and residential healthcare.

As Rachel mentioned earlier, home and residential healthcare is our biggest -- by far our largest medical benefits expenditure, and so we have a lot of people that are requesting it and are constantly having to undergo renewals of that process. That requires physician evaluation of the patient to determine medical need for whatever level of home and residential healthcare. So this facilitates those types of examinations.

We already talked about our new causation presumption for chronic silicosis, so I won't cover too much of that. That was actually issued as a bulletin. That will be incorporated into the procedure manual probably in the next

addition that'll be coming out in the early spring.

We did update based on our very laborious discussions about how we were going to change our evaluation of industrial hygiene reporting for exposure levels. I think this would be of particular interest to the board. This bulletin eliminated that reference to exposures within regulatory limits. There was a lot of deliberation about what would change with regard to how we would characterize that.

My best and simple way to explain it would be that, you know, categorizing exposure after the mid-1990s has been something that we have deliberated with regard to the board and the Department. And so what we have done is decided that when you're dealing with individuals that are in a situation where the industrial hygienists don't feel that there was a significant exposure, they're simply going to say that. That they don't see anything that would suggest that there was a significant exposure.

They'll acknowledge that an exposure

could have occurred. In other words, that we're not saying that someone who was working after the mid-1990s couldn't have had contact with a particular toxic substance. It's just that that exposure from the viewpoint of an industrial hygienist is not significant in the way that we define significant exposure. So I would encourage the board to definitely take a look at that.

We really had a challenge doing that, and I could go into a lot of the details about that. But it is a -- it was to eliminate that categorization of exposures within regulatory limits, which the board agreed was very vague and hard to define. So we have come up with alternative language about how the industrial hygienists are doing that, and we continue to try to refine that process now.

So we're working on improving the language, or at least making it more in alignment with the procedure that we have described in this bulletin. Yes, Steven.

CHAIR MARKOWITZ: Yes. Steve

Markowitz. Just a quick question. So this IH language in this bulletin, is that in 7.0 of the procedure manual?

MR. VANCE: No. So this is an interim update. This now updates guidance about how the industrial hygienists will do their work. So this is actually superseding to a certain extent what's in 7.0. So this guidance is now what is in force for industrial hygienists as they begin evaluating cases primarily for those individuals that are working after -- I would say the later years, 1990s up through the present.

It's a continual issue that I think the board has discussed with the Department, and we agreed to eliminate that within regulatory limits language that had been utilized. The question became what is the appropriate replacement language to utilize given the way at least our industrial hygiene team has looked at how you would evaluate exposures in the later years of the DOE complex, so.

And something I'm sure everyone's very

excited about, we did issue some billing authorization codes for home and residential healthcare. So that just is an update to some billing codes which I'm sure no one wants to take a look at with regard to that bulletin. But it's just one that we've issued. Kevin.

Circulars are basically informational blasts that go out just saying hey, here's something that you need to be aware of. There is a new debarment reporting functionality that we have. This is basically for individuals or providers that have been convicted of fraud or, you know, whatever, defrauding the United States government.

They're not allowed to receive payment under the law for any kind of worker compensation benefit. So we have instituted a process by which those providers or individuals that have been debarred or suspended from receiving compensation are, you know, put up on our website and just said these providers no longer may receive payment for services provided to the program.

We have an internal process to make sure that if someone is debarred because of that action, that we will identify any individuals that are seeking care from that provider, and that they're alerted that they're going to have to find someone else because we will not be able to reimburse that provider

We added a new special exposure cohort class, the Savannah River site. Each time we have a newly designated site, we will issue a corresponding policy circular that notifies our claims staff and the public of our process to make sure that they're aware that the claims are now going to fall under the auspices of a new class.

We will go back and revisit all the previously denied cases. But I think Savannah River, we've pretty much gotten through all of those cases. So each new SEC class gets its own circular.

Another exciting medical billing circular with regard to how we interact with carrier reimbursements. For anybody that's

interested, carrier reimbursements are basically when the government has to reimburse an insurance provider. So that could be someone that was paying for care and treatment under a private insurance plan.

When we assume control of the case and the medical responsibility for medical bill payment, we're liable to reimburse that insurance provider or prior government organizations that paid out benefits for the same thing that we're now covering as the principal payer.

And then telemedicine is permitted for routine care. That's a circular that was issued just to alert folks that given the reality that we see with regard to how well it's worked with COVID-19 and other types of engagements via telemedicine, the program made a practical decision that we would recognize that, where permitted by state law, we will allow telemedicine.

It really is up to the physician to decide whether that's an option he or she wants to pursue, and it has to be done within the scope of

whatever state or licensing requirements are required for that particular physician. Kevin, next slide.

Two Federal Register notices. For folks that don't know Federal Register, that's basically where the government puts a lot of notifications about different things that are relevant to the program or to the federal government. This is a just a registry of federal regulations and other things that the government wants everybody to be aware of.

And so we had a publication of all of the Department of Energy covered facilities, and it's just basically a listing of every known entity or facility that's associated with the production of atomic weapons.

This list gets periodically updated based on research that's being done by the program or the Department of Energy. It generally aligns with the information that's available on the Department of Energy's covered facility list, so we publish this periodically. And then we also

issued a notice, just recently in fact, about codes of conduct. I don't know whether codes of conduct is the right word. Basically expectations of interactions with the program.

As an organization, as a federal organization, we deal with a lot of stakeholders, a lot of lay representatives, and the history of our program has been that we've generally been very receptive to all kinds of feedback. But some of that feedback has gotten or has been obnoxious I would basically say.

And so it was the prerogative of the Department to basically stipulate that there are some rules of the road with regard to playing nice with the Department. Don't forget, we are employees of the federal government. We are expected to perform our job well, and expected to be on the receiving ends of complaints. But there needs to be some degree of professional engagement.

And so it's just basically a stipulation to play nice. It really doesn't mean that people are going to say, oh, there's something

in the Federal Register saying I should play nice, so I will. But I think it's an obvious optics of saying, hey, we do want people to be respectful of this process and the people that work for the program. And this was a prerogative of the director of OWCP just from his engagements with some of these very aggressive kinds of lay representatives.

So it's letting our staff know that, you know, hey, we do you expect this kind of behavior to not be accepted, and that we are going to make sure that we have something in place that says this is what's appropriate and what's not, so.

CHAIR MARKOWITZ: Quick question. Sorry to interrupt. Steve Markowitz. You said labor representatives. Do you mean authorized representatives or --

MR. VANCE: Lay representatives can be anybody --

CHAIR MARKOWITZ: Lay.

MR. VANCE: Yeah, that's right.

CHAIR MARKOWITZ: L-A-Y.

MR. VANCE: Lay representatives.

CHAIR MARKOWITZ: Okay. Thank you. I thought you said labor. Okay. Thanks.

MR. VANCE: No. Yeah, we did -- you know, authorized representatives do not need to be attorneys. They can be anyone that possesses any kind of experience or desire to be serving as a representative. And we have lots of different folks that work with the program. Many are very professional in their conduct, and some are a little bit more aggressive than others. So I think that would that was an important notification about what we expect regarding engagements, so. Kevin, next slide.

We've already touched on some of these things, but I wanted to put it out there so that just so you're aware of some of the capabilities that we have with regard to our technology infrastructure. We've really moved to try to promote electronic submission of documentation.

You know, mailing things around the country proves to be kind of a challenge these days.

So we really are trying to move to a digital environment. We now allow all of these things to occur electronically. You know, filing new claims with digital signatures, uploading documents directly into a case file. Status checking.

And also more recently, are allowance to allow digital signature on our payment process which has been fantastic because the faster we can get the payment processing documentation in place, the faster we can get the payment out the door.

So this is really helpful, and I think will be very helpful with regard to these expedited terminal situations that we do run into where we've got to turn around a lot of documentation very quickly to get a payment made. So this is a -- this is a relatively new update for the program.

Now again, as Rachel mentioned, you know, we do have a lot of individuals that are not going to be comfortable with this. We recognize that. But we have a lot of attorneys and representatives that know this process and can provide the support necessary to utilize these

resources very well.

So we're hoping that this will be something that will be of benefit to our claimant population. And, in fact, I've just been getting updates on our payments, and it does look like we've gotten a lot of people that have recognized the value of making that process work, and are submitting those on a weekly basis. So I'm very happy to see that that's being utilized.

Kevin, I'm not sure if I have another slide. I think that's it for my slides. So any questions about the work of the Policy Branch? Any questions about any of the slides? I could probably give you all kinds of horrible stories about formatting if you would like.

I kid you not. I was lying awake some nights worrying about grammar, and proofreading issues, and all that sort of stuff. So if anybody suggests any formatting changes for the procedure manual, you're going to make me very unhappy, so.

CHAIR MARKOWITZ: You would have made a good academic, John.

MR. VANCE: Well --

CHAIR MARKOWITZ: Questions, comments?

MR. VANCE: I will -- just final one comment on this. You know, the work of the board, I would say, is very important because a lot of the things that we do is not only in response to recommendations of the board. It's also just me, or Rachel, or others that are sitting around hearing the conversation that are going on.

It leads us to look at different things that we've got in our procedures, and recognize that, hey, this is causing confusion, or this is something that we probably need to focus on. So please be aware that, you know, we do listen to all of the conversations that go on, and it does have an impact.

And the other thing that I'll say is that the recommendations of the board do get a lot of deliberation. This is not something that we put off to the last minute with just some, you know, minor thought about how we're going to deal with

certain things.

I can tell you that I know Rachel, and myself, and other senior leadership at the program, deliberate quite a bit on some of these things. So it is not something that we take for granted. And we appreciate all the input that you give. And I know that we've seen a lot of great things between the Department of Labor and our program as Rachel mentioned in the last presentation.

So I hear it. I hear what people have to say. And actually some things are changed simply because of public comments by the way. So we also listen to the public comments, and we do hear what the public have to say, and try to accommodate those as best we can.

CHAIR MARKOWITZ: Any comments or questions? So BEFORE we go on to the SEM, let's revisit something we mentioned earlier today which is one of the new tasks for the board in the last couple of years has been to - I'm looking at the language here, it's task five. Quote, "Claims adjudication process generally including review of

procedure manual changes prior to incorporation into the manual." End of quote.

And we heard from Ms. Pond an invitation even when things are finalized and they're in the procedure manual at any point that we can raise these topics for the attention of the Department.

But it does say that we're supposed to -- this is a new -- relatively new task that were supposed to review these things prior to incorporation. And it sounds from both of you what we heard that it's a prolonged, deliberative process get in things -- with many steps getting things changed.

So the last two or three times that we've been sent something in the works, I'm pretty sure it came with a message that we intend on adopting this within a couple of weeks, short period of time, your comments are welcome. So we had no mechanism for doing that, and that's what I raised earlier with I think Mr. Plick because in that time frame, we can't agree on comments to submit.

So I'm looking for a solution here to this whether -- and we accept that the procedure manual's fair game for us at any moment anytime. But after changes are made, but -- and also, let me just be explicit. We don't make policy. We advise the department, right? Making policy is their job. We recognize that. Our job is to provide comment and suggestions, and the like, and advice that stems from that.

So the question that I have, I guess the most pointed question is can we be included earlier in the process in a way that would be helpful? And what that means for us is if we look at something in draft form, we would have to I guess schedule a meeting to discuss it. That's a minimum of 15 days, although usually longer than that, right, Carrie? Realistically what's the -- six weeks.

MS. RHOADS: We sometimes can shorten the Department review process.

CHAIR MARKOWITZ: Yeah.

MS. RHOADS: But it has to be published 15 days ahead of time.

CHAIR MARKOWITZ: Yeah. Okay. So notice in the Federal Register, telephonic board meeting, come to agreement on any recommendations regarding comments I guess that were adopted at that board meeting. And so it can take a couple of months. Yeah. Dr. Cloeren.

MEMBER CLOEREN: Is there -- there may be a reason that why it couldn't be, because of confidentiality. Is there any way that it could be at a secure document-sharing site where people could, you know, asynchronously go in and mark it up and respond to each other?

CHAIR MARKOWITZ: Yeah, this is Steve Markowitz. Yeah, it's an interesting point. Actually, if this is in draft form, the public wouldn't have access to it, right?

MR. VANCE: Correct.

CHAIR MARKOWITZ: So we're talking about a board meeting that would not be -- if the public's not involved, Carrie, does the Federal Register notice have to be published about an upcoming board meeting? It's a closed meeting.

We've never had one, but --

MS. RHOADS: Closed meetings would require more paperwork than open meetings.

CHAIR MARKOWITZ: Okay. Thank you. But --

MS. RHOADS: And time.

CHAIR MARKOWITZ: I clearly I asked the wrong person. Yeah. Dr. Bowman.

MEMBER BOWMAN: That's right. Aaron Bowman. Give that a lot of these documents are confidential so we can't discuss them open, and the complication of its even harder to schedule a closed meeting, could we up front preschedule close meetings so that it's not as hard so that when these things come up, we have them on the books already, and if it's not needed, we cancel it?

CHAIR MARKOWITZ: And this is Steve Markowitz, and to go along with what you're saying. Since the process is a slow process of making changes, perhaps the Department could predict roughly when it is that we might be able to take a look, publish it, publish notice of that closed

meeting. And then we could weigh in at the appropriate time? Would that work? Choreography.

MR. VANCE: I'm not making any commitments on this one. I think that the board would need to sort of make a proposal, and I think then we'd have to deliberate on how to make it a reality or not.

MS. POND: It has to be a recommendation --

MR. VANCE: Yeah.

MS. POND: -- figure out how it'd work. Sorry. We would need that to be probably a recommendation from you guys just because we're going to have to talk to people in the Department. We're going to have to figure out, you know, exactly what kind of -- how that would work in terms of, you know, we have a lot of people editing. We have claims examiners input. We get input from a lot of people.

So to say, well, you guys are going to go and -- the deliberation process would increase

exponentially if you're going to do it that way, if it's going to take months for us to even get it -- because see, we have it in draft form, and then we want to move it forward once we finally got it in a draft form, we want to be able to publish it within the, you know, a couple of weeks.

And so to say, well once we've got it in a draft form that's good enough for you guys to look at, and then we have to wait another couple of months, it's just going to make it so the procedure manual will not get updated as often as we would like to get it updated.

So I'm not saying we can't do it. but I think we need to figure out exactly logistically how it could work between the ten days that we give you, and the months that you're talking about it would take to get that sort of input before the draft could be finalized.

It's the before the draft can be finalized part that's challenging because of the fact that you all have to vote on it, you all have to deliberate on it. It's just adding another

procedural layer that's going to delay getting these procedures to our claims examiners who need to adjudicate the claims, and they need to have those changes sooner, rather than later.

So if we need to do a change, and then we're updating the procedure manual and that change is kind of -- we can put a bulletin out there, or a circular, but if we've got a number of them, it's better for us to be able to put it out there and get it out there, and have them start making the changes in the work that they do instead of waiting for all of these procedural layers that it can take a lot longer than they already do.

So, again, I'm not saying we can't do it. I'm just saying we need to figure out where that middle ground is, if we can find a middle ground, and what that would look like in terms of between the ten days and the months, that there are some middle ground in there.

CHAIR MARKOWITZ: Okay. We hear you. Dr. Bowman.

MEMBER BOWMAN: Just a -- sorry, Aaron

Bowman. This is though on the list of our expectations prior to -- is there a reason why it's on given -- it sounds like you're saying it may not be as helpful. It may be more of a hindrance than a help. So why is it on our list if it's a hindrance?

MS. POND: Is that in the statute?

CHAIR MARKOWITZ: Yes.

MS. POND: Then Congress did that.

CHAIR MARKOWITZ: Yes.

MEMBER BOWMAN: I see.

CHAIR MARKOWITZ: That was the legislative branch. Dr. Cloeren.

MEMBER CLOEREN: If I understood correctly, before you change something in the procedure manual, usually there's a bulletin.

MS. POND: Sometimes.

MEMBER CLOEREN: So could we weigh in on kind of the spirit of the bulletin as a way to have input into what's going to later be translated into policy? Would that be helpful or not?

MS. POND: So --

CHAIR MARKOWITZ: Just a friendly amendment to that question. You mean the spirit of the bulletin, or do you mean after the -- no, no, what I mean is after the bulletin comes out and before it makes it into the procedure manual, during that period of time --

MEMBER CLOEREN: Correct.

CHAIR MARKOWITZ: -- could we -- okay. Yeah.

MEMBER CLOEREN: And when I say spirit, I mean like the words are probably going to change in between the bulletin and the procedure manual.

CHAIR MARKOWITZ: Right.

MEMBER CLOEREN: But like the gist of it.

CHAIR MARKOWITZ: Right. Yeah.

MR. VANCE: Yeah. I mean the answer to that question is yes because the bulletin basically sets in motion something that we're updating before the next formal publication. So in other words like right now, we have our - the industrial hygiene language that's out there is actually part

of a bulletin. So now would be a good opportunity for the board to look at that.

And then, you know our anticipation would be the next publication, and I'm just giving you a very rough estimate, is generally in the springtime, we do one in the spring and then generally one in the fall. So between now and the next publication, that's the period that you'd have to work with with regard to the bulletin.

Now there are other updates to the procedure manual that are going to occur without any bulletin. It's just things that were changing with regard to wording and that sort of thing.

From my standpoint, it's much easier for me to get recommendations about what you're going to propose as wording changes, and then submit those. And then we deliberate on what we can do to facilitate those changes. And that's occurred already.

So you've given us language for defining work-related asthma. You've given us language on clarifying chronic respiratory

disease. There have been things that the board have given us. It's much easier for you to give me an affirmative kind of content change that we can deliberate.

What's much more challenging is where the board says we don't like something, but we don't know what to really tell you how to do it in the alternative. So that's where it gets to be a challenge.

MS. POND: And I think the other thing we can consider or talk about is, I mean the way we've been doing it is we give you the draft of the entire, you know, six-month update, and then say give us comments and you have ten days. And I realize that that's not realistic.

But at the same time, if we have -- and it's just -- I'm just thinking here. I'm not giving you any promises. But, you know, we do have things that come up. This is something that we're going to probably change in the PM. Maybe throughout the period of time that we're deliberating what to add, maybe then we could like

send that piece to you guys to review, or something like that.

But those are things that we could maybe think about in terms of instead of giving you a whole bulk document and saying go through all of this right now. Say, in pieces, these are the pieces we're thinking of changing. And maybe -- we'd have to figure out how to formalize that or whatever. But it's -- be more realistic I think to do it in pieces then to try to do it all at one time.

MEMBER BOWMAN: So just one point of clarification. Would those pieces be confidential pieces at that point? Or --

MS. POND: They would be because it's deliberative, so.

MEMBER BOWMAN: So we still have to solve the problem with the --

MS. POND: We still would have to solve that problem.

MEMBER BOWMAN: Okay.

CHAIR MARKOWITZ: But if it's earlier

in the process, then the time delay becomes less of a problem. Well, so I think the board needs to talk about this, and make a recommendation knowing that we're not fully aware of what's feasible in the process to achieve. That's, you know, up to the Department.

So I think we should continue with the SEM presentation, not to get off schedule. But we will revisit this before tomorrow at 11:30 a.m. and decide whether we're going to make a recommendation on this. Thank you very much.

MR. VANCE: All right. I get to change locations, so I'm going to go sit over where Kevin is because we're going to run through a very quick demo, and I'm going to try to keep us on schedule. That's why I decided to do this completely ad hoc.

So what we're going to be talking about is the site exposure matrices. It's one of our most important tools for evaluating health effects and exposure data for these claims that are being submitted. So I'm going to walk you through as soon as Kevin gets the internet up on there.

CHAIR MARKOWITZ: Yeah. So while Mr. Vance is walking, or -- this is Steve Markowitz, I want to recognize and thank Greg Lewis, Mr. Greg Lewis from the Department of Energy who arranged for that fabulous tour that we had yesterday which I thanked you this morning in your absence, Greg. But I thought I should resay it here.

MR. LEWIS: Well, thank you.

CHAIR MARKOWITZ: Although, we found out that Mr. Vance on his tour last year got to go into the UA1 tunnels and see what was happening. So we may --

MR. LEWIS: You make me feel bad.

MR. VANCE: All right. Can everybody hear me? Let's skip to the website, so give me a second here. Of course, hold on a second.

So just a quick review of our website. So anything you want to know about this program is available publicly on our website. Huge amount of resources. With regard specifically to the site exposure matrices, we have resources and various other things that we have available for anybody

that wants to learn about the program.

Program resources and guidance right here, all kinds of different things. But our information on the site exposure matrices is right here. You can do a Google search for our program website, or you can do a search for the site exposure matrices.

A nice thing that we have available is an education program, so it'll run you through. You're basically going to get that today through a personalized lesson by me. But the site exposure matrices, we just have a -- it's a huge database basically.

And it's a relational database that basically puts together the information that a contractor with the Department of Labor has constructed based on data collection efforts at all of the covered DOE facilities that are covered under Part E.

The function of the site exposure matrices is focused on those Part E cases where we're trying to identify chemical or biological

agents that are known to be associated with work that was done in conjunction with atomic weapons.

So it's a tremendous resource that our staff utilize daily in their work. It is being managed, not only the website, but the data collection and dissemination is done by Paragon which is our main -- or is our contractor that manages the site exposure matrices.

So they are administering it. They are also the ones that run the website. They collect information that are submitted by public submissions for exposure data, and we'll talk a little bit about that. But the site itself is pretty straightforward, and I'm going to -- I'll run through it here in a second.

So, again, you know, we do have a lot of little disclaimers. We can't be the federal government without lots of disclaimers and other types of really descriptive kind of information. But all the background information that you need to know about the site exposure matrices is here in small text.

We do encourage the public to submit information about exposures or toxic substances that were utilized at sites. We do have a lot of people that do submit information that has been very useful in adding value and information into these site exposure matrices. A lot of site input data that I'm surprised is in the possession of the public, but somehow it is, and it is submitted. Generally our contractor will evaluate and respond back to the submitters about the usefulness of the data.

The site exposure matrices is built off of hard paper documentation for the most part. This is material that was developed or produced during the industry of producing atomic weapons going back to 1942, and in some cases, earlier. The information that populates into the site exposure matrices is that information that relates to primarily the identification of specific toxic substances that are connected to either labor or work processes at a particular facility.

So we're always looking for

documentation that speaks to that. And, in fact, our claims staff is asked to constantly be submitting that information that they run across in case files that gives us inventories of toxic substances.

I did that recently myself for a case that I was reviewing for Los Alamos which just pages and pages of material that related to toxic substances at the site. And that was a later year kind of case, but, you know, so we are on the lookout for more data.

Site exposure matrices is an evolving resource, so it is not a static database. We are constantly inputting new data. Now that means that we are either improving the quality, or adding material to it, or we are refining it and changing it depending on how information is presented to us. So let's go ahead and enter into the site. Any questions at this point? Yes.

MEMBER CLOEREN: Marianne Cloeren. I just want a clarification. Somehow -- I've been using this for years, and I only just now heard you

say biological. What biologic --

MR. VANCE: There are biological -- there are biological things that are in here. Histoplasmosis.

MEMBER CLOEREN: I was wondering, like cryptococcal.

MR. VANCE: And bird --

MEMBER CLOEREN: And cryptorchidism --

(Simultaneous speaking.)

MR. VANCE: It is like bird dropping disease.

MEMBER CLOEREN: Yeah.

MR. VANCE: I figure -- there's all kinds of --

MEMBER CLOEREN: Coccidioido --

MR. VANCE: -- illnesses that can be borne out of biological exposures.

MEMBER CLOEREN: I didn't realize that was in there. Thank you.

MR. VANCE: Yeah. So toxicologically, you have -- or from a toxicology standpoint, remember what we said about a toxic

substance, anything that is -- has a radiological, chemical, or biological process for creating disease.

So we have accepted cases based on bird droppings. I know of one that we did. A power washer person who was washing vulture remnants off of radio towers, and he was out there without any kind of protective equipment using these big power washers and got I think it's histoplasmosis or some sort of infection from that.

So we've also done, you know, fungus, different kinds of fungus infections and that sort of thing. So, yeah, biological exposures, and they are listed in there, so.

So, again, this is a -- this is a very facility-specific kind of database. So you can see that we have information, I don't know you can see my cursor that well, but it will allow you to do searches based on different kinds of sites.

The principal one that our claims examiner utilize are this DOE sites. This is the principal resource for exposure data that our

claims examiners use. But we also have data on the uranium mines, mills, and ore-buying stations. But for the most part, most of our claims tend to involve the DOE sites.

And I should mention too, that our claims examiners utilize a slightly different version of the site exposure matrices. This is a publicly available version. Our employees utilize a more real-time updated version.

So this version that you're looking at right now is the public-facing version. This version captures or communicates information that has been captured and evaluated for clearance for public release. And that occurs on a six-month basis I think, right, Greg?

MR. LEWIS: Six months, yes.

MR. VANCE: So every six months our internal site exposure matrices is freeze framed, and it is sent for a review by the Department of Energy for an okay for us to release an updated version.

So what you're looking at is the data

that was available since the last -- or that was updated in the last freeze. And so then this will occur over and over again. So the claims examiner is using more up to date information just as real time updates are made by the contractor. Yes?

MEMBER BOWMAN: Is it meant to reflect chemicals that were ever present at the site, present over certain intervals?

MR. VANCE: Yeah. So the information, I want to -- when we start getting into it, there is not a lot of temporal data that is available in the site exposure matrices. There is some temporal data with regard to certain timeframes when, say, remediation was occurring.

But you're not going to get any specific temporal data about like when this particular toxin was at the site. All this is going to tell you is that at some point at Nevada Test Site, this chemical was found in some sort of inventory and documentation associated with a work process, a labor category, an incident, or something like that. So there's no temporal data that's

generally going to be reported in the site exposure matrices.

MEMBER BOWMAN: So then just to summarize, so it would be -- it would be a cumulative list. So --

MR. VANCE: Yeah.

MEMBER BOWMAN: -- the chemical would not be removed because it's no longer there. Is that correct?

MR. VANCE: Correct. Unless there is a reason why it would be removed because of updated information. So in other words, I know that in situations there have been inventory reports about like, yes, we shipped all this stuff too Los Alamos. But then we later find that they cancelled that order, so, therefore, that didn't actually go there. So, yeah, it's going to always be dependent on the documentation that we have.

But, yes, you can have certain things that are added and then taken out, or you can change things depending on how information is reported. So let's say there's a connection between a toxin

and a labor category, and a later document says, no, they changed that. This is the job that handled that material. So then they would change the profile.

And so let me get in here because I want to try to keep everybody on schedule. So I'm just going to do a quick demo, and we're going to, of course, go to the Nevada Test Site.

So each one of these facilities has a range of information that's available, the most important features. And I'm just going to stick with the DOE facilities, but you can understand how this works for any of the sites whether you're talking about a mill, or a mine, or what have you.

The first thing you would need to understand is that it does have different kinds of search criteria. All of these things are basically filtering criteria that can be utilized by a claims examiner. And the number one thing that you need to understand is that it's a responsibility of the claims examiner to utilize this based on information being presented to them

in a case file.

So in other words, if I'm an employee or a survivor who has filed a claim, what the claims examiner's role is to figure out, well, what are the priority toxins I need to worry about with regard to the claim being made by this individual?

So in other words, let's say I am an employee who worked at the Nevada Test Site, and I did a particular job and I'm describing those particular work activities that I did, the claims examiner is going to take that data and they're going to start doing connect the dots.

Okay? They're going to go and say, okay, what condition are we dealing with here. Is it COPD? Is it cancer? What is the condition that we're going to deal with? That would be a filter. What kind of work process was this person involved with? Were they a laborer? Were they a Carpenter? Were they a, you know, driller or somebody that did work underground? What was their labor category or what was their work process?

Each one of those variables is going to be put into the site exposure matrices, and what it will do is return those values, or those targeted toxins that the claims examiner is going to want to look at with regard to whether or not they're going to have an industrial hygienist profile those toxins.

So what you do need to understand is that we do have health effect data. That's epidemiological data that is maintained in the system that basically communicates information that the program recognizes as an illness that has some sort of known scientific connection to a toxic substance.

So I generally use chronic obstructive pulmonary disease simply because that's the biggest one that we generally see. It's a very common kind of problem. So here are -- for the Nevada Test Site, here are all the toxic substances that are in the site exposure matrices for COPD. So these are ones that the program recognizes has some sort of affiliation with the development of

COPD.

So you can sort of see that the list is already sort of created for the claims examiner. Here are some direct work processes. That means that if you did arc weld aluminum or any of these kinds of activities, we just know that that work activity had a connection to COPD. Okay. So that's a direct disease work -- linked work process. But here are all your toxins that have a viable connection to obstructive pulmonary disease.

So then, you know, we can do all kinds of different search features. So this is -- I can only give you -- I've only got like five more minutes. But I can only give you a very cursory look. But there's all kinds of functionalities that you can do to look for different kinds of things.

So if a claims examiner's looking for something on a claim for emphysema for example. Well, you can go in there and say what's the alias for chronic obstructive pulmonary disease, and you

can see them right here. These are all the things claims examiners would be looking for in a claim to know, hey, if I've got a claim for emphysema, I'm going to use the COPD health effect list to determine what toxins I need to focus on.

CHAIR MARKOWITZ: Question.

MR. VANCE: Yes.

CHAIR MARKOWITZ: This is Steve Markowitz. You linked the disease to the work process before right at the end of the page, but you still have to identify a toxic substance, right?

MR. VANCE: Right. Well, and that's what I'm just trying to show here is -- if I can get this to work -- I'm just showing you that the health effects that are listed in these site exposure matrices are those conditions which we epidemiologically accept as a program is having a connection to a particular type of toxic substance.

So let's go back out, I want to do a quick search using a labor category. So keep in mind that a claims examiner is going to be looking

at -- let's say I've got a claim for COPD, and I've got a person that said they were a -- I don't know, let's say they were labor, that's always a good one.

I did some sort of laboring activity, so here's my filtered -- my filtering list. So I'm a claims examiner, I've got an employee who on their EE-3 or on their occupational history questionnaire is identifying they work as a laborer. That's how they are characterizing their job. So a claims examiner we'll go in and put laborer.

Now I also know that this person has diagnosed chronic obstructive pulmonary disease, so therefore, I'm going to add that as a filter. So I select that. Okay? What's going to happen is the site exposure matrices is going to start whittling down your list of those toxins that a laborer at Nevada Test Site would have had raising to be in contact with, and there's your list right there. Ammonia, asbestos, cement, silicon dioxide, and diesel exhaust welding fumes, and wood dust.

Now here are additional filters that I could apply. So in other words, let's say I was a laborer at Nevada Test Site and I say that my job involved a lot of concrete mixing and cement work. Well, I could always select additional filters based on work process. So here's concrete mixing and pouring. You could also have someone that was doing demolition activities, that's a common one for laborers.

You know, so I could refine my search. And each one of these search refinements will identify toxins that are likely identified this being something you worked with. And that's where the claims examiner would utilize this to identify toxins with the highest probability of this employee having contact with.

But, again, as Dr. Bowman mentioned, we're not going to have any temporal data. All we know is that a laborer working at Nevada Test Site for the duration of time at whatever point in time could have been doing work with any of these toxins, or at least had the potential for that.

So then when we create our list based on this filtered search, then what happens is our industrial hygienists are provided this data and they're going to be asked to provide a more descriptive characterization of the exposure. So how often would an employee who was a laborer at Nevada Test Site Ben exposed to wood dust.

So then an industrial hygienist, without generally any monitoring data, is going to look at that and say, well, based on the fact that they were doing demolition work, and they were doing cement work, and there may have been some cutting of wood, then their level of exposure would be significant and then they would characterize it as low, moderate, or high, or what have you.

So that's the role of the industrial hygienist. They're taking what the claims examiner is able to do in a filtered search using the site exposure matrices, and then they're creating a more detailed and descriptive characterization of exposure that then can be utilized as an accurate formulation of the exposure

that a doctor can consider in determining that causal relationship.

Was the exposure that was encountered by this employee to wood dust, welding fumes, silicon dioxide, asbestos a significant factor in contributing to the disease that this is employee has claimed, COPD.

Doctor can look at it and say this person worked there for 20 years, they were moderately exposed to this material. We know that asbestos is something that is significantly damaging to the lung. In my opinion as the physician reviewing this data, there's a significant relationship that contributed to the development of COPD. The case is accepted.

Now you could have another doctor looking at this with a different set of circumstances. A doctor looking at it could say this laborer who only worked there intermittently for one year, you know, and has a long work history of dealing with this material in other work occupational circumstances, I'm looking at this

while there could have been some contributing factor there, I don't feel that the work that they did at Nevada Test Site, based on the information I'm looking at, was significant enough to be a contributing factor.

It's up to the doctor to determine the interpretation of what the evidence is telling him. Our job is to -- or her. Our job is to present the doctor with an accurate characterization of the exposure to the best extent that we can using the site exposure matrices, the information that's gleaned from the DAR, the occupational history questionnaire, any information the claimant submits with regard to affidavits, statements, colleague kinds of input. All of that information is what's critical for formulating out and framing out the exposure history. So I know that this has been a very cursory evaluation, but for those folks that play in here, you can quickly understand how it works.

But the critical thing for everyone to understand here is that the claims examiner's role

is this. This is what their job is, to identify the priority targets for toxic substance characterization by the industrial hygienist.

If they're not able to find any connections to the person's work at this site, then they're going to be dependent on looking at other information that might be available in the DAR. If that doesn't exist, then you might not have a case that can go much further because you don't have any contact with a toxin linked to a disease.

So I would highly encourage folks to get in here and take a look at it. You're familiar now with what's -- if you went out to the site visit, you kind of know what was going on out there. You kind of can see that, so you can think about like what kind of work would have been doing out there. Laborers would have been a major one at the Nevada Test Site as they were building and constructing these sites for the test, and you can just play around and add different criteria.

But the key thing is just making sure that you understand, it's a cross reference, it's

a comparative analysis the claims examiner is doing. What does the claimant or the employee tell us in the acclaimed documentation, and what can I build off of that in the site exposure matrices to identify the toxins that they potentially had contact with that's associated with their claim disease? Okay. Other questions really quickly because I do want to stay on the sched.

CHAIR MARKOWITZ: Sure. Thank you. Ms. Whitten.

MEMBER WHITTEN: This is Dianne Whitten. So there seems to have been a lot of changes in the SEM, at least on the Hanford Side over the years. So years ago I would look up where I worked, 105N for ten years as a rad con tech, and we have like thousands of chemicals listed.

And today I do a search for 105N and there's 12. So I mean what -- there's no history there for the CEs to go and look and determine if I had exposure or not. Why is that?

MR. VANCE: Well, I don't know the specifics of that particular scenario. But like

I said before, the information is constantly be refined. And this would be what is available to the claims -- the best information that we have would be at the time that the claims examiner is accessing the site exposure matrices in the work that they're doing.

So it could very well be that at some point they had a very broad list of toxins that they knew were at Hanford, but they didn't know where they might have been located. So when they got improved information, they refined that data to the specific site, facility, building, what have you, and that could alter the way that the data is presented.

It also depends on what filters that you're applying because the broader your filters, the more information you're going to get. So in other words, if I want to see every toxins at Hanford, all they have to do is put in show me all the toxic substances at Hanford, and you're going to get thousands of them.

That's not going to be very helpful for

a claim. You've got to start applying those filters. And as you apply those filters, it's going to be dependent on what data we have that helps supply the information for that filter.

So it could very well be that what information we had ten years ago wasn't as, you know, didn't have as much efficacy in telling us what was going on. Or maybe it was based on something global, now we have better data, and we can refine that information.

So, yeah, it could very well change where we have more at one point in the past, now it's been refined down. But it's more than likely that those exposures got broken up into different, more specific characterizations. In other words, yeah, we had 20 toxins in there based on this information, but then with time, we broke it up and put it into different kinds of filters or relational data points simply because we got better information.

CHAIR MARKOWITZ: Mr. Key.

MEMBER KEY: I'm Jim Key. John, I'm

just going through it cursory over here of the three gaseous diffusions. Both the portion of the Oak Ridge site has trichloroethylene under the labor category.

All three plants did the very same as that work but yet Paducah labor category does not have trichloroethylene. I brought this up before, what is needed by Paragon to include that?

Do I need to get 50 labor retirees and labors during the timeframes and right worker statements and sending them in to --

MR. VANCE: Jim, what they're generally going to be looking for is a document that was produced at the site that says this was the type of materials at the site being used by these individuals.

MEMBER KEY: You know as well as I do that documentation is not available, John.

MR. VANCE: I recognize that reality, as does Paragon, but that's why we have the ability of people to submit documentation. And I'm not going to sit here and say the site exposure matrices

is a complete inventory and that it is 100 percent accurate.

We're constantly looking to refine and improve the data that's available in the site exposure matrices.

So, my recommendation for the Board or for anyone in fact is that if you do find there is information that you feel is inaccurate or that you have access to data that you think would be useful in informing the site exposure matrices, it is submitted for consideration.

Jim, whatever information we can get our hands on that helps us provide an accurate portrayal of what was going on with this material at the sites is always going to be very helpful.

MEMBER KEY: There's no documentation again, apparently. I hired him as a laborer, I worked, I used trichloroethylene as a lycra. How do we get those individuals who have knowledge?

There wasn't any IH people at the site in the early 1970s, none. So, how do we make that change that's needed to include that?

MR. VANCE: All I'm going to say is that if you have information that you want to submit, whether that information is going to actually facilitate a change in the site exposure matrices, I can't tell you that but you certainly can submit any information.

And we have received information attesting to particular types of material that can be informed by other data that we have.

If you're going to submit anything, and like I've told everybody that I interact with with regards to site exposure matrices, if you've got to the information submitted, give us the best information that you can, provide as much specificity as you can so that that can hopefully inform the people that are evaluating it to determine whether or not there's sufficient information that would allow them to update the site exposure matrices.

The people on the other end of the site exposure matrices are people with experience at these sites, they are people that have industrial

hygiene background, they will consider that information and they'll do their best to make sure they have something they can use that the exposure matrices is updated.

But I can't tell you that whatever you submit is going to be automatically approved. So, what I would encourage everybody to do is if you've got to something that you think is of value, submit it, it will considered.

And if it warrants a change to the site exposure matrices, that will occur.

CHAIR MARKOWITZ: This is Steve Markowitz.

We've learned in the past that something doesn't make it into the SEM unless there's affirmative evidence that that exposure or toxic substance occurred at that site in relation to a given job title or whatever.

In other words, there has to be some evidence based in data that allows Paragon to put that in the SEM with some degree of specificity.

And we've heard this complaint before

about things before omitted from the SEM, particularly toxic substances for job titles or buildings or the like.

So, I understand in principle why updated information might lead you to change the SEM, I'm trying to picture though what kind of updated data actually you can get that would allow you to reverse the previously held data that showed there was exposure to these substances at this particular building or in relation to this particular job category.

I'm just trying to imagine what that evidence looks like. I understand in principle what you're saying, I just don't get what that evidence looks like.

And I don't know, maybe we can consider this, maybe we should at another meeting ask someone from Paragon to come with examples so that we can better understand this process of omission.

Dr. Vlahovich?

MEMBER VLAHOVICH: I'm Kevin Vlahovich.

I was wondering if some things included in site exposure matrices, does that take into account let's say we know something was being used but they're using proper protective equipment.

Would that exclude it from being included?

MR. VANCE: No, that would be something that could potentially be considered by the industrial hygienist when they're evaluating the extent of exposure.

Generally speaking, from my interactions with the IH team, they're going to look at individuals and say how rigorous would they have been made to utilize protective equipment. Now, the farther back in time, the less likely that's occurring.

More current, you're probably going to have more rigorous personal protective equipment, more rigorous monitoring. That's where we get into this whole discussion of within regulatory limits.

So, that's not something that would be

communicated in the site exposure matrices, that would be information gleaned from what the employee is telling us in the occupational history questionnaire, the DAR records.

The DAR records are basically employees' work records and then the industrial hygienist looking at it and providing some sort of feedback as to what their take on the use of personal protective equipment would be.

MEMBER SPLETT: This is Gail Splett. I just looked up the reference that Diane Whitten had referenced for 105N, which is end reactor. It now shows it's as a museum. It was an operating reactor for decades and we know there were multiple exposures.

So, the fact that they're taking a look at what it is today, they're ignoring all the exposures for decades and I think that's really troubling, I think it's something we should be talking about.

I just looked at that one example. It doesn't look like there's any timeframe

consideration of when the facilities were operational and when exposures potentially occurred.

CHAIR MARKOWITZ: Other comments or questions? This is Steve Markowitz, I have a question. How do you keep the SEM up to date in terms of the exposure to disease links?

Occasionally we make some progress in occupational health, it doesn't happen very rapidly but occasionally we demonstrate that toxic substances cause particular illnesses that we didn't know better.

So, how do you keep the SEM up to date with regards to that? Not which chemicals were used in which buildings but specifically, the exposure to disease links.

MR. VANCE: That's a good question, Steve, because one of the best resources we use to update the health data in the site exposure matrices is the Advisory Board.

So, in the past two years, the Advisory Board made recommendations as to the addition of

new health effect data in the site exposure matrices based on IR2A exposure listings, which are those probable relationships that exist in the humanistic studies of disease.

And they're looking at the potential for particular toxins to cause disease. There was a list that was put together by the international --

CHAIR MARKOWITZ: Interagency for Researchers?

MR. VANCE: Yes, and they basically have monographs they utilize with saying we definitely know this is a high probable disease-causing exposure.

Here are some probables and so what we ask the Board to do is to take a look at that and the Department of Labor asked for that to be done. And as a consequence of that, we've added multiple health effects based on that research.

And I know that off the top of my head, we added breast cancer health effects, we added the prostate cancer, there was a lymphocytic kind of disease process.

So, we're looking constantly for input from the Board or other sources to inform changes to the site exposure matrices and the important thing to understand is that once it's in the site exposure matrices, our claim staff understand that those health effects are established in medical health science.

So, we're not going to need to do any additional research on that because it's already right there in front of them. So, these are things that certainly the Board can provide input on and has and we have accepted and made updates to the site exposure matrices.

But it is something that we can also do on our own as the data becomes available. Updates have occurred as well based on I think updates to IARC and I can't think of an example but I do know they periodically will issue new publications that describe additional and updated research.

And then that would be absorbed into the site exposure matrices.

CHAIR MARKOWITZ: Steve Markowitz.

That's a good answer, but also, it's a question for the Board actually. It's not easy to update exposure disease links, to track the literature and keep a database that really wants to do that and apply it to help people.

It's not an easy task and maybe we should have some discussion about how that might be done. Dr. Cloeren?

MEMBER CLOEREN: Marianne Cloeren. I'm kind of a systems thinker and so I was thinking about what could a mechanism be when we notice just a gap that doesn't take a whole lot of work to propose a change.

An example is I was looking at a case of somebody that was a plumber at a site and looking at the site, the plumber was not listed among the jobs that were there but there was a plumbing shop.

So, that would be the kind of thing that I think if there was just an online forum, this may be just kind of an omission, for someone to look at.

Maybe there could be some sort of an

online forum if we notice in looking at things that there's a disease connection that's not showing up, there might be at least a way to collect the information in a way that we could look at later. Because I think sometimes we notice it while doing something, not at a meeting. So, that might be a way to gather the information.

CHAIR MARKOWITZ: Other comments or questions for Mr. Vance?

MEMBER ZABACK: Lorna Zaback. My observation of this, and what everybody is talking about, to me there's a disconnect between the people providing the information and Paragon.

How NIOSH does their discovery is constant, they have a whole staff that is constantly doing discovery for different reasons, for the special cohorts, and for other things and to figure out cohort modeling and things like that. But Paragon came, what, 2010 and then maybe 2015 and that was kind of it. So, I just feel like there's a pretty big gap of information that is there that we have, we just really don't have a

seamless way of actually providing it.

And what Jim had said, is it going into this black hole? How do you know your information has been vetted and that it's going to into the SEM? Who keeps track of all that? It just seems really disconnected.

So, I would think my recommendation was to have somebody really assigned to coordinating the activities with DOE and with DOL together so we know what we're providing is important.

And especially when the claims examiners, I've heard this many times, if it's not in the SEM, forget about it. And that's really the tough part.

CHAIR MARKOWITZ: Ms. Splett?

MEMBER SPLETT: I just looked up all the Hanford reactors and they're showing no exposures at any of our reactors. There's just a few but there's not much and that really surprises me.

CHAIR MARKOWITZ: Other comments or questions? Okay, thank you Mr. Vance.

MR. VANCE: Thank you, everybody.

CHAIR MARKOWITZ: We're going to talk about some things for the Board and if I could have the slides? I put some of these things on slides just so that we can see something at the same time that we're speaking.

First, we're just going to look at some of our recommendations that we've made and the response we've gotten from the Department on those recommendations.

I put up the list of assigned tasks for the Board or areas that we're asked to provide advice on. The slide should be coming up soon. We've referred to some of them, it's Slide 2 when you open it up.

We have domains that we're asked to look at and provide advice on and things that are outside those domains, it's not on the agenda of the Board. So, sometimes we might in our discussion refer to how this relates to our chartered mission.

Next slide. And so it's worth just looking at those for a moment. First, if you could

make that later, is the site exposure matrices. We've been talking about that and we'll continue to do so.

Secondly, medical guidance for the claims examiner and let me just interrupt myself, we're going to talk about reviewing some claims in the near future and then reviewing a larger number of claims in the medium future.

So, as we run through this, think about what kind of information we want to get when we look at these claims, what do we want to learn?

So, the weigh-in on the medical guidance for claims examiners for claims with respect to how they look at medical evidence.

And I'm not sure, actually, the Board has historical spent much time on this.

I'm not sure I quite understood what the task was but mind you, these are claims examiners that don't necessarily have any training in health background, who are gathering medical information and with some assistance from contract medical physicians or the like, but deciding the SOAF, the

statement of accepted facts, that moves forward to the IH or moves forward to the CMC, to the physician.

So, they're sifting through the medical information to see to the extent to which the diagnosis is justified and then what questions might derive from that.

Number three is the evidentiary requirements regarding Title B in relation to lung disease, so that's chronic beryllium disease and that's chronic silicosis.

And early on, 2016 through I think 2018, the Board spent a fair amount of time on that. I do think there is an interesting issue that I'd like to revisit today on a specific issue, revisit today or tomorrow morning on that task.

And then Task 4, this is the one I think more than any others that the Board has not really fulfilled our assignment on, which is to examine the work of the industrial hygienist, the physicians both I guess at the federal level but at the contract level also.

And the extent to which their reporting represents quality, represents objectivity, and represents consistency.

And when we look at claims, and for those of us who have looked at claims before, you'll see variation in some of these factors and the question was to find a solution to I think instances or perhaps the structures which don't reflect sufficient quality or objectivity or consistency.

And then fifth is what we've just discussed actually, this review of proposed changes in the procedure manual, and then finally 6, I love 6, such other matters as the Secretary considers appropriate.

And under that task I think we were asked by the Department to look at certain scientific issues.

For instance, we were asked to look at Parkinson's Disease, look at the IARC carcinogens, and to advise them on how them should be categorized in the SEM.

And in fact, I think the Board can

remain useful as a scientific and technical resource to the Department in the future. And even more so when we get some contract support.

Next slide.

Recent board recommendations, there were two that we recommended, I think both at the end of June, the last board, just before its expiration, which is summarized with the three Beryllium Lymphocyte Proliferation Tests, result challenge.

And basically, the Board had run into this problem early on, which is that the statute defines beryllium sensitivity as an abnormal beryllium lymphocyte proliferation test.

And the problem was that some of the beryllium testing programs, whether in the former work or programs or among the current workers, among Claimants or the like, would run into consecutive borderline results, which are not frankly abnormal, they're borderline.

And it represents a small percent but it's important to them in particular.

Some percent have multiple borderlines and never get and abnormal and yet through studies that have been demonstrated there are likely to develop abnormality in the future, and with some likelihood develop CBD, chronic beryllium disease in the future.

So, this topic, this issue is being weighed on by the entities that I list here including OSHA. This is from our discussions, this is from our recommendation to the Department.

So, OSHA, the Department of Energy, the Department of Energy agrees with considering three borderline BeLPT tests as equivalent to being abnormal, and then various professional organizations and the like.

And so we recommended, next slide, that understanding this was a statutory limitation, the Department communicate to Congress the need for technical amendment in the Act that recognizes that covered individuals who have three consecutive borderline BeLPT tests be recognized as having beryllium sensitivity.

Next slide.

The response from OWCP was basically that they agreed and that they had discussion with Staff Members from the Senate, Health Education, Labor, and Pension Committee help.

And in fact, the Health Committee had provided the OWCP with similar amendatory language that the Board had recommended and this department, the Department of Labor, communicated to Congress it wouldn't have a problem or difficulty implementing such an amendment if it were adopted.

And so what I understand, maybe someone has more up-to-date information that this is under consideration and Congress may be in the National Defense Authorization Act, which is supposedly to be voted on in December.

And so this may in fact happen. Ms. Splett?

MEMBER SPLETT: Senator Murray from Washington D.C. has introduced a Senate Bill for 928 called the Beryllium Testing Fairness Act

dealing with this very issue.

CHAIR MARKOWITZ: And it specifies three borderline --

MEMBER SPLETT: Correct.

CHAIR MARKOWITZ: Are there other elements of the act without going into details?

MEMBER SPLETT: It also extends this board for another five years, so that's your recommendation.

CHAIR MARKOWITZ: Thank you. Dr. Cloeren?

MEMBER CLOEREN: I have a question. This may be a question for colleagues in the back. Would they have the latitude to make this change for Part E?

MS. POND: We've always said that if we were going to establish beryllium sensitivity for Part B, we would try to be consistent with Part E. I think it would be really complicated for us to start doing that in terms of having an inconsistent --

The inconsistent definition under CPD

is more understandable but with beryllium sensitivity I think it would be a lot more challenging for us.

I'm not saying it couldn't be done, I just think it would be a lot easier of Congress just passed this and we could use that test across both of them.

I'm not saying it's out of the question, I'm just saying it would be a little bit complicated.

CHAIR MARKOWITZ: Thank you. Any other comments or questions on this topic? Remote Board Members, chime in whenever.

Next slide.

At our May board meeting we discussed what's been briefly mentioned today, which is that when we were revealing claims we saw some new language in the industrial hygiene reports that was highly repetitious and documented a certain approach to interpretation of exposures.

And I just summarized it here as the key phrase is there's no evidence that the claimant's

exposure exceeded regulatory standards. So, the board discussed this.

Next slide. In June, at the end of June, we made a recommendation on this language.

I don't think we need to discuss the history of the antecedent language that the industrial hygienists had used prior to this but there was a different version of that language which had essentially some of the same basic challenges.

But we recommended that actually such language should only be used if there is affirmative evidence supporting such a statement. And the fact is that most claims, there isn't much industrial hygiene data, that's just the fact of industrial life, the second half of the twentieth century.

So, there isn't affirmative evidence that allows you, really, to say with confidence where those exposures occurred vis-a-vis the regulatory level. Next slide.

I'm just trying to breeze through this

language a little bit.

We said that in the absence of specific industrial hygiene evidence, comparing Claimants' workplace exposures to regulatory standards, it lacks objective evidence and may in fact end up being prejudicial in terms of a claim.

Next slide.

OWCP, I think Mr. Vance covered this, maybe Ms. Pond also agreed with this, with our recommendation essentially, and it's worth looking at their language: DOL agrees to modify the IH toxic substance exposure to eliminate reference to exposures that occurred within regulatory standards.

And for all cases that for referred to the DOL IH, they will assign, and we're going to discuss this so this is worth looking at, a characterization of exposure that must align to the levels that currently exist within program procedure.

Toxic substance characterization will continue to be informed by the professional

judgment of the IH, including consideration of available employee-specific employment data.

So, they agreed with our recommendation and affirmatively state that they will use the language from their procedure manual and that this involves professional judgment.

And my own feeling is of course it involves professional judgment because that's the way we make these determinations. We assemble the facts but we have to bring professional judgment to that decision and ultimately, interpretation about what exposure means.

So, exposure can be significant or not significant. If it's significant, low, medium high, that involves some facts as you can assemble them, but also professional judgment.

And I want to talk about that a little further because I think when we look at claims, we're going to face this issue and actually, I think even when we looked at this language before around regulatory standards, there was concern and discussion about what does significant mean here?

So, let's begin that discussion. So, the next one is the Board reviewed, at the request of the Department, some quality assurance documents. This was done out of public view because those quality assurance documents were in draft form.

We sent in our comments to the Department, they're not public documents so we're not going to discuss them, as we've not discussed before.

But I want to point out that the second part of this, which is whether the CMC issues opinions that represent, actually, a faithful and accurate application of current medical literature to the particular facts of the case.

That was not part of this QA upgrade by the Department.

In other words, how often the CMC is correct in their judgment in their decision about causation is not something that they're looking at, at least as far as we can tell from the QA document.

And that is something I think is part

of our own task, to figure out are the CMCs -- how often are they wrong in their decision? Because it happens. Is it rare or is it less than rare?

That's something we need to address. I now want to go back to a couple earlier recommendations, if you could go to the next slide? Here we go.

A couple times, actually, the Board took on this issue that there's certain job categories at DOE sites that represent -- not a large number of categories -- workers who likely work throughout the sites where they worked.

Think about a firefighter, they're going to overtime at multiple places, security guards and the like. And they would have had potential exposure and we tried to develop a way to address this issue within the context of the SEM.

Actually, Mr. Key, did you want to chime in here? Because I know you've raised this issue before.

MEMBER KEY: Yes, I have. Jim Key, Paducah Gaseous Diffusion Plant.

During the operating program where all process equipment was changed out, 24-7 around the clock you had probably 120 people up on the cell floor lifting converters.

They didn't shoot the converters and clear out the uranium prior to cutting them apart. A crane would lift to take it down to the bay area and just fire up the whole building because there was a reaction with the moisture created in the plume.

Firefighters and security guards at that facility had first a written checklist that they had to check security doors, check fire extinguishers that were brought up there for each sale or change-out that was repeatedly, day after day after day.

They're breathing the same things and been exposed to all this welding cutting that's going on.

They're having to make their rounds, they're walking the same floor space as the maintenance mechanics and electricians and ash

pump people up there doing this work.

And clearly, they had more than just minimal exposure, they had as much routine exposure as any worker up on that cell floor.

And yet they're not included in the SEM, they're not given exposure limits whatsoever, and those are four huge process buildings that that change-out went through completely in a seven-year period.

They had a job responsibility to be up there just like any of the labor craft did.

CHAIR MARKOWITZ: This is Steven Markowitz. And actually, we've heard this problem from public commenters in the past. Here's the history of this a little bit, because there's a puzzle here that we should be able to solve.

What a couple of us did at one point is look at the SEM for I can't remember whether it was firefighters or security guards, it was one or the other and we looked at different DOE sites for how many toxic substances were associated with those sites using the SEM.

And Hanford, whichever job title this was, it was literally over 1000 toxic substances. And that's in the SEM as being related to this job title.

And we looked at three gaseous diffusion plants and we did that because they would be similar and we wanted this comparison with Hanford but we also wanted this comparison within the three GPTs.

I think it's coming through. Thank you for the fancy setup. When we looked at the three GDPs for this job title, the range was somewhere between 12 and about 40 toxic substances in the SEM for the same job title.

So, there was this clear difference between Hanford and the GDPs, which was most likely disproportionate to the actual exposures. GDP has had plenty of exposures, not as much as Hanford probably.

And then within the GDPs, there was very similar things. There was some variation between 12 and 40, 3 or 4-fold variation. And so we said,

well, that means the SEM is probably not very complete and why should this job title suffer because the SEM isn't complete?

And we suggested essentially that you expand your use of the SEM, just state these very few job titles had broad exposures to many of the toxins at the sites.

And the answer to that from the Department of Labor made sense to me, which is that when we case study the SEM, we rely on data and when we have the data to say something, to connect exposures with job titles, buildings, and the like, we do it.

And when we don't have the data, we don't do it. And we came back and we said, well, the data are incomplete and everybody knows that because that was the nature of industry.

And I think the Department's view of that was that's true but we rely on evidence and as long as we rely on evidence -- when we no longer rely on evidence --

I don't want to read into it because

they didn't say that, they didn't say the hypothetical, when we no longer rely on evidence. We rely on evidence and if it's there and if it's not, it's not.

We don't make it up.

I wonder whether the solution to this is not to change the SEM but to identify a few site-wide job titles and instruct the claims examiner through the procedure manual and say you can do a SEM search but on these job titles you should send them every time to the IH with the understanding, I'm not sure how you describe this, that there might be a broad set of exposures that this job title has.

Or at a minimum, that the IH is going to give a report for each of those job titles and the IHs will have a better understanding that these selected job titles have a much broader set of exposures that are going to be reflected in the SEM.

That leaves the SEM undisturbed.

No one is suggesting you make up evidence or you use something other than evidence

in the SEM but it facilitates a more appropriate look at those job titles in relation to their likely set of exposures.

The floor is open, Dr. Bowman?

MEMBER BOWMAN: Steven, thank you. Aaron Bowman. A couple comments on that one.

I think what you're saying there is rather than sensible, to have the IHs consider that for particular job categories the actual exposures may be much broader than what the SEM would suggest.

And it's difficult to make those corrections in the SEM because, as my colleague Jim had mentioned, there might be firefighters.

There are lots of places that get exposure to certain things that other people do, but if we list everything in those rooms, maybe there's some things they wouldn't be exposed to and then suddenly we're creating all these red herrings of chemicals they weren't, which would just make the whole process more difficult.

So, I like this approach that you're mentioning for that reason but is there a process

issue where the IHs only get the list of seven or so exposures and they're only looking at those?

What we're talking about here is adding exposures that aren't coming out from the SEM. So, how does that happen in this context?

CHAIR MARKOWITZ: The details of how you do claims evaluations we're going to need to leave to the Department.

But I think in the statement of accepted facts they could say, look, this is what we found in the SEM and they could also say, but given this job title, we ask the IH to look at a broader set of toxic substance exposures relevant to that site.

Or some language that either appears in the procedure manual or in the statement of accepted facts, somewhere, that provides that instruction or asks for that consideration.

Again, that leaves the SEM undisturbed. Mr. Key?

MEMBER KEY: Jim Key again. I agree with my colleague, Dr. Bowman.

When you look at the three gaseous

diffusion plants on our SEM database, which again, they clearly did the very same work, the only difference is the percent of assay that they were enriching the uranium to.

When you have Oak Ridge, Tennessee, that under the SEM, these are arbitrary figures but when we get in there and look, it has 197 chemicals listed for the firefighters at Oak Ridge, and a portion of the firefighters have 93 chemicals.

And the firefighters at Paducah have 12 chemicals. Clearly, clearly something is amiss, is not complete. A claims agent cannot evaluate a Claimant from Paducah the same they do at Oak Ridge in the same job category.

So, something has to occur here.

CHAIR MARKOWITZ: Other comments? Dr. Van Dyke?

MEMBER VAN DYKE: Mike Van Dyke here. Dr. Markowitz, I agree with your assessment. My only question is firefighters' security, I hear it, but is it even broader than that?

We talk about trades workers, craft

workers that are all over the plant, I don't think it's a unique situation to just security and fire. And as Jim pointed out, even laborers might be a category as well.

It's hard, I don't know the right solution, but it is an issue for sure.

CHAIR MARKOWITZ: Steve Markowitz.

I thought of that, I do think that the construction trees that the maintenance crew that makes their way around the site, many different buildings, numerous different work processes, or are likely in the SEM to have a much broader set of exposures that are characterized as what they did.

But it still may be incomplete. And I think that is a challenge, well, what job titles should be included here? And with this I hadn't recommended a solution to that problem because it's uneasy.

But I don't think it's insuperable, I think you can make distinctions whereby you could still gain the benefit of that approach.

MEMBER ZABACK: Lorna Zaback.

It makes me think about that person, that claims examiner that's sitting there and they have a firefighter and janitor and we've had a bunch of them that Gail put a list together to give to DOL, these are travelers on the site.

But what is the direction in the manual when they look at the SEM and there's nothing for the janitor? Do they just say, okay, we're going to recommend a denial? Is it an automatic we don't have information?

That would be the thing I would like to know. Are they just going to say I can't make this decision, one tool I have to use doesn't work for my experience, I have to send this on, or do they say it's not in there so it goes back to?

So, that would be what I would want to know.

CHAIR MARKOWITZ: Mr. Vance, could you answer that?

MR. VANCE: This is your classic energy compensation conundrum. You have no information

but you do have something.

So, the way we've dealt with this is the way I've talked about it is that it's really going to be dependent on the type of information we do have.

So, yes, you're a claims examiner and you're sitting there looking at the documentation that you have and you have someone that's saying they travel all over the plant and was exposed to everything.

What does the claims examiner have to go on to help refine that down to identify specific toxins? They've got the site exposure matrices and they may have whatever records are in the employees' records.

If there's nothing in there describing any kind of contact with a toxic substance and SEM has nothing, there's very little this claims examiner can do with that.

Generally, what I recommend is that, and this is what's so nice about the occupational history questionnaire now, we get a lot more

freeform information.

If we have data from an employee saying, hey, I was a fireman or fireperson working at Hanford and let me describe in detail some of these things that we did that identifies specific work processes that brought them into contact with something, you're building out that comparative analysis connection that you can use to get to an exposure in the site exposure matrices.

Now, it's going to be dependent on the specificity of the information, the details that are provided, the type of connections that you can make between that employee's work and another work process.

This is what makes it really challenging for the energy program because you're not dealing with definitive information, you're dealing with hearsay, you're dealing with very broad types of information.

So, what we are always going to be looking for is describe exactly what it was what you were doing, where you were going in the GDP,

what it was, and we can consider that.

But again, the claims examiner is looking at the information in front of them.

If the employee isn't really clear what they were doing and not defining or describing a toxic material that they're concerned about and there's nothing in the case file, it could very well be there's not much the claims examiner can do with that.

If the claims examiner could try to utilize, sure, they can work with an industrial hygienist to say this Claimant is saying this and they're offering a lot of details about this.

Is there something you can recommend as far as a particular toxic substance I should be worrying about? But even an industrial hygienist might not be able to provide that information.

All they would be able to do is say from their experience or understanding, there could have been something here of concern that we should probably profile from an industrial hygiene standpoint.

But if the Claimant is not providing any kind of real detail that would allow the industrial hygienist to say, oh, geez, that brought them into contact with asbestos or that would have been something that would have brought them into contact with cadmium more or mineral oil or whatever, then there's not going to be much to do.

This is the classic problem, the absence of information. So, yes, they're going to use whatever resources they have but if there's nowhere for them to go, there's nowhere for them to go and that's the biggest problem right now.

If you're dealing with a claim negative outcome and we have to make a recommendation to deny a case based on that profile, then hopefully the Claimant will object and provide additional information that helps amplify what they think would have been something that brought them into contact during an oral hearing or submission note of an appeal on the written record or something like that.

This is the biggest challenge we've

gotten and we look for help in figuring these types of situations out.

It's something that we do encounter but hopefully with some of the improvements we've mitigated that through the collection of better information through the occupational history questionnaire, hopefully through training our staff to make sure they're very careful with going through the employees' records.

Because sometimes there's very critical information in the DAR that they should not overlook.

So, in other words, for firefighters and security guards, often times medical records oddly enough will have a lot of information about work activities that brought them into contact with particular things.

Discharging firearms, that's going to have a certain type of exposure.

When firemen get injured fighting a fire, and they're like, oh, we were in this building and we were dealing with this toxic material as it

was burning up, that should trigger a claims examiner to say, wait a second, I've got something I've got to look at here.

So, it's really dependent on the specificity of the information. It's a very tough problem.

CHAIR MARKOWITZ: Thank you.

For firefighters, security guards, the like, it's not the same as absent of exposures because they do have a limited number but it's not reflected of the broader site-wide exposures that they have.

So, somewhat different circumstances.

MEMBER ZABACK: The one comment that I always -- when you're looking at all those papers and all this information that we have on a Claimant and then the absence of all of that information on a Claimant kind of always makes me go back, well, that was kind of the reason for the law.

And that's what makes me think about with Mr. Key is he's saying we don't have this information but these people have these illnesses.

So, I just always try to focus back on that, that you don't get beryllium from working at Walmart and those kinds of things, where sometimes I think it's like we need this, this, and this, and forget about the other part. Thank you.

CHAIR MARKOWITZ: Ms. Whitten?

MEMBER WHITTEN: Diane Whitten. I agree with Jim that if we know these activities occurred and who did them at certain facilities, I think that needs to be captured somewhere for historical purposes.

Because a lot of these claims are going to be survivor claims and their wives and kids, they're not going to know anything about what their dad did, where he worked, and what he was exposed to.

So, if there's some way that we could capture that, either in the manual or the SEM or somehow, I think we should try to do that.

CHAIR MARKOWITZ: Before I call Mr. Key, so there is a mechanism to submit to the SEM, to submit new information that might be useful by

the site, is that what you're talking about?

MEMBER WHITTEN: Some sort of written process for certain activities and certain facilities that specific people, firefighters, security, and whoever else were involved in that's not captured somewhere else.

CHAIR MARKOWITZ: Thank you. Mr. Key?

MEMBER KEY: Jim Key again. I just thought about something. On September 23, 1999 I testified in front of Congress on the revelations of the exposure at Paducah, which was ground zero for this whole program.

It started the legislative process for EEOICPA. I remember during my testimony one of the Congressman on the House Oversight Investigations Committee, I had filed like 32 FOIA requests with DOE.

Once the ball had started rolling on August 12th the revelation was in the front page of the Sunday edition of the Washington Post that workers at Paducah had unknowingly and unwittingly been exposed to plutonium, americium and

neptunium.

So, one of the Congressmen asked me, he said, Mr. Key, we understand that you have requested FOIA information on use of beryllium at Paducah. I said that is correct. He said it's also our understanding that the Department has not provided you with that request of information.

I said that's correct and if you could get it I'd appreciate it if you'd share it with me. So, I remember after that I went back home and the next week I got a call from an Oak Ridge DOE operation manager.

And he said we are going to allow you to come down to the federal building, go into the vault, and review any of the documents on Paducah. So, I did, I went down there.

I went in the vault every day with a guard, I couldn't take a pencil, piece of paper, not even a pager. And I started going through the file cabinets that was in the vault just on Paducah, I saw some things I wish I hadn't seen.

Some of those documents were, and

possibly still are to this day, top secret, secret, and confidential.

So, I sit here and I think maybe I need or we as a board need to request under a FOIA to the Department of Energy any documents, especially under the Oak Ridge operational office at that time that are in the federal building, and request some of those documents be declassified where we give us more --

There were documents there on beryllium that had been in the vault and shipped to Paducah. So, maybe that's pathway also to get more information to help on rebuilding the SEM and help with Claimants.

And I'm sure there's several buildings at each of these locations, I'm sure Hampton's got one, all the facilities do, and make that request just nation-wide to DOE.

CHAIR MARKOWITZ: Let me just make a comment on that.

Actually, Department of Labor offered us documents, I don't know if Mr. Vance or Ms. Pond,

you remember this but he raised this issue of the site-wide job titles and the level of documentation at the various sites.

And they offered us the documents I think the Paragon has that they used to create that information on the SEM or those sites. It was voluminous, there were a lot of documents. We refused them because we didn't really have the capacity to look at all those documents.

And that was already on, frankly, a very specific issue, a couple of job titles in very few sites. So, I understand your point but I doubt have the resources to look at original documents, particularly multiple sites, multiple exposures.

Did you want to respond to that before other people?

MEMBER KEY: Yes, real quick. I do remember when the federal investigator DOE team was sent into Paducah, there was a key they put out to the contractor not to destroy any documents.

So, that in and of itself does not lend to our documentation to improve the SEM because

documents were being destroyed before the federal team got in there and documents had already been stuffed in 55 of the other rooms.

CHAIR MARKOWITZ: Dr. Cloeren?

MEMBER CLOEREN: Just because the information isn't in the SEM doesn't mean the person didn't do the job and that the exposures weren't there and I don't know whether it's part of the procedure for the Department of Labor to use other resources that are available, like perhaps O*NET.

I think O*NET might be a decent resource for the claims examiners to study information just to learn a little bit about what particular jobs do is there's not information.

CHAIR MARKOWITZ: I think you should probably describe what O*NET is.

MEMBER CLOEREN: O*NET is an online database basically of jobs and it was built I think for job hunting, to describe jobs, but there is within it description of dangerous activities, usual work tasks, et cetera.

So, it would provide claims examiners some basic information about what particular jobs do. It's present, it may not accurately reflect what people did 30 years ago and there's a lot of variety in jobs, but it might be a nice starting point.

Like what the heck is a pipe-fitter? They could look up what a pipe-fitter is.

CHAIR MARKOWITZ: Other comments? Dr. Van Dyke? I'm sorry Ms. Zaback.

MEMBER ZABACK: I just wanted to go back to the conversation when I brought up the fact about NIOSH and how they do this and how they manage and they capture the data and they manage constantly, constantly, constantly what their looking at and evaluating.

When they're doing their dose reconstruction it's the same thing, it's just a different animal. I don't understand why that type of effort doesn't really exist.

You've got the SEM people but there's no real concentration on managing the information,

communicating with the sites, getting more information.

Because it's not even that, oh, we give you all you have, you don't know what you have. Millions and millions of documents. So, maybe somebody else has something else, we're constantly finding things.

So, I just feel like that's a big misstep in the SEM.

CHAIR MARKOWITZ: Ms. Pond, do you want to comment on that?

MS. POND: Just briefly. I just want to clarify that the SEM team is constantly doing research. They do research and we get monthly reports, they're looking at various sites, they're going to DOE every month getting more information.

But the amount of people that are working on it isn't as large. We don't have that many people that can do it like NIOSH does but it is something that is constantly being updated.

That's why we say it's a living document. And so the work that they are doing is

that, it's going back and getting more information. We add toxic substances all the time because of the research that's being conducted.

So, from that aspect, on that piece of it, they are constantly working, they just don't have as many people and they don't have as many resources to do that.

So, I just wanted to make sure that was understood.

CHAIR MARKOWITZ: Other comments or questions? Dr. Van Dyke?

MEMBER VAN DYKE: I was just sitting here pondering, if I'm the industrial hygienist that gets that report that says this person is a security guard or a firefighter at a particular site, if there's no information to go on, I think it's tough to put in writing that you're going to hang your hat on some particular exposure when you don't know otherwise.

You'd say something like incidental exposure to lots of stuff because you don't know otherwise.

So, I do think that level of detail that Mr. Vance was talking about in terms of other questions, you really need some more detail to get to what an exposure was.

CHAIR MARKOWITZ: I would say a couple things.

One is there's the occupational health questionnaire which the IH would look at hopefully in any event, which is from the Claimant, in which some of that is detail is sought and documented.

Secondly, the industrial hygienists, they have pretty good knowledge of these sites, I think many of them worked at these sites. And my guess is they've probably been doing this for the contractor for quite some time and seen many, many claims.

So, there's a bank of knowledge, really, that they can fall back on. Thirdly, they have the option of actually doing a telephone interview with the Claimant.

That option was begun a few years ago, the Board actually recommended that, I don't think

it's used much and the claims examiner has to be involved, but that's not a problem.

So, it's not a vacuum of knowledge to look at that particular claim, there are other tools that complement the SEM, but I guess the solution is to make sure this gets to the IH.

Because frankly, if the CE doesn't see much in the SEM for that particular job title anything that connects with that particular disease, the claim may end right there and not move onto the IH.

If there are no other comments or questions, we need to take a break. It's 25 of, we're going on break for 15 minutes so we'll be back at 10:04.

(Whereupon, the above-entitled matter went off the record at 3:32 p.m. and resumed at 3:47 p.m.)

CHAIR MARKOWITZ: And Dr. Cloeren has come back, we can start now, you're right on time, thank you. Just to close out this topic because we need to move on, I suggest we rediscuss this

tomorrow morning, see if we can come up with a recommendation that makes sense to us or whether we want to put this off to a Work Group so we can look at it more thoroughly.

But let's do that tomorrow so we can move on to some other topics and sleep on it.

Next slide. Another recommendation from the past had to do with asbestos and this was an interesting ongoing discussion and the Department accepted numerous aspects of our recommendation regarding asbestos presumptions.

But there was one particular issue that we've gone back and forth on, including a discussion not in June but in our May meeting earlier this year. So as not to lose this entirely, I thought we should revisit it.

So, if you go to the next slide, this is an excerpt from the procedure manual.

This is 7.0 Procedure Manual Version, Exhibit 15-4, and these are a list of job titles that the claims examiners are to consider as having had significant exposure to asbestos on their job

desks prior to the end of 1995.

So, these are the people for whom a good presumption on asbestos exposure exists and I think there was a list, I think we helped expand the list by adding some job titles, and I won't walk through them but they're familiar job titles.

And if you go to the next slide, it's the remainder of the list and a lot of maintenance workers, construction workers, but others as well.

And so the question is, if you go to the next slide, whether certain job titles, mechanical engineer, chemical engineer, and industrial safety engineer, should be added to this list.

And I'll give you briefly the history here.

A couple of board terms ago, Dr. Friedman-Jimenez, Dr. Mikulski, correct me if I'm wrong on this, but a couple of us decided to look around and look for data that could be used to broadly characterize who had asbestos exposure in the letter half of the twentieth century, significant exposure.

And obviously, the job titles we just looked at, they had exposure and so John Dement and I, who was a Board Member, looked at what's called the national occupational mortality survey or system or something, NOMS, that's kept by the National Institute.

And we looked at specifically malignant mesothelioma because that's predominantly caused by asbestos so we thought that's a marker for asbestos exposure.

If we can identify job titles that reliably had excess risk of mesothelioma, then we'd know those job titles had asbestos exposure.

And the NOMS data was from the first two decades of the twentieth century so it really reflected exposure going back 30, 40, 50 years into the time period that we're concerned about in DOE.

And when we looked through the job titles, and many of them were actually the job titles that appear on the DOL list, but there were some job titles that weren't on the DOL list including mechanical engineers, chemical

engineers, and industrial safety engineers.

And there were others, there were layout planners and some other odd job titles that also showed excess risk of mesothelioma and we recommended that the DOL endorse and accept this list for use in the Exhibit 15-4.

And DOL came back to us, it was really I think Paragon, and said some of these job titles really don't make sense for DOE layout planners and there's some other job titles.

We don't have much in the complex so we shouldn't add them. Plus, some of them, their excess risk of mesothelioma wasn't that great or there were small numbers of cases because the job titles weren't that common.

And so we said fine, we accept that logic but there are some job titles in which there's a clear excess risk and there were a significant number of cases, and I think we used a threshold of 30 mesotheliomas in that time period with a relative risk that was substantial, whatever it was I don't remember.

And that included these mechanical, chemical, and industrial safety engineers. So, they had appreciable numbers of mesothelioma.

What that meant was that this is the national data on mesothelioma, it meant that asbestos was widespread enough for those job titles across the country that you could expect that they would have significant asbestos exposure.

And so we cited that to DOL and Paragon and Paragon came back, this has been an ongoing discussion that's gone on for a while, and they said we're not confident that the spectrum of activities or tasks that chemical, mechanical, and industrial safety engineers did across the country is well reflected in what they did at DOE.

We're not confident that the DOE chemical engineers actually did the same kinds of things that the overall U.S. chemical engineers did, and therefore, we don't think they should be included.

So, we've discussed this before, the previous board, and Paragon might be right about

this but the question is, is there some evidence that we could look at that would allow us to actually decide whether this made sense or not.

And I just jotted down a couple of the ideas that came up when we discussed this I think in our spring meeting, which was actually look at EOICP claims for mesothelioma or asbestosis claims, those are also specific for asbestos, and see if we find these engineers.

Are there cases of chemical engineers that appear, or mechanical engineers or the like? It wouldn't give us a definitive answer and I don't know how easy it would be to do that, to sort by condition and then within condition to sort by job title because most cases, most mesotheliomas, most asbestosis cases will not be engineers.

And the alternative approach, actually if it was possible, again I don't know you can sort cases or claims this way, is to look at claims of chemical engineers and see how many times asbestos comes up, whether asbestosis, mesotheliomas, even lung cancer or whatever.

Same for mechanical engineers.

So, those were ideas that we threw out there in the spring and I just wanted to continue this discussion for a bit, whether we should consider if it's feasible pursuing this or whether we should just say, look, there's evidence we really can't gather that would advance this conversation any further, we'll just let it be as it is.

I open the floor for discussion. Dr. Cloeren?

MEMBER CLOEREN: I guess the first question is, is the database set up in such a way to allow for this to be done in an automated fashion, in which case it would make a lot more sense than trying to do it manually.

CHAIR MARKOWITZ: I guess this might be a question for Mr. Vance. Is it even possible to identify, say, claims from chemical engineers or mechanical engineers? They are separated out at some DOE sites in the SEM.

MR. VANCE: The answer is no.

Our case management system where we collect information about the adjudication of a case going through a process collects lots of data-points but what it does not collect is the claimed labor categories for that individual employee.

That would be maintained merely in the documentation of the case file.

As the claims examiner begins developing out the case, they would create the statement of accepted facts that lists out the labor categorization.

But that's not going to be recorded in some way that we can quickly do any kind of analytical extraction from that case management system to identify those cases.

CHAIR MARKOWITZ: The second related question is can you identify cases of mesothelioma?

MR. VANCE: Yes, that we could do and I think we've done similar kinds of -- when you look at the information that you're going to be looking at with regards to the collection of the most

accepted conditions, we do capture the ICD10 and the ICD9 code for the conditions that are being claimed and adjudicated.

So, we've provided that kind of information in the past. My only word of caution is just mesothelioma is a very high acceptance rate condition, we accept most of those cases.

So, you also want to think about the efficacy of looking at something we have a lot of acceptances already on versus other conditions where maybe there's something we need to look at with regards to other conditions that are not as favorable as far as outcomes are concerned.

That's just my side comment on that but, yes, change identify any kind of conditions that are claimed in our energy composition system, which is are case adjudication system, but we don't capture labor category.

CHAIR MARKOWITZ: And on claimed conditions, asbestosis affects the lung tissue itself and requires generally a higher level of exposure to asbestos than, say, scarring of the

lining of the lung, the pleura.

I should know this but I don't remember. Do you separate out cases of lung asbestos from cases of pleural scarring caused by asbestos?

MR. VANCE: Yes, it's going to be dependent on what is diagnosed and identified by a physician. So, in other words, if a physician is saying pleural thickening, pleural plaques, that's what the diagnosis is, that's what the case will evaluate.

And then if it's a full blown diagnosis of asbestosis, that's what we would look at and we have a presumption for asbestosis in the presence of exposure to asbestos.

I think we do for pleural plaques maybe too.

So, it really does depend on how the doctor is characterizing the diagnosis and that's what drives our case adjudication process, would be what does the doctor identify as the diagnosis through his or her clinical and diagnostic evaluation?

MEMBER CATLIN: This is Mark Catlin. Just regarding the lack of job titles as a troubled category, could that be something that we consider recommending be added in?

That seems to me like a really important way to use the data from this huge data set that's being gathered by the Department of Energy.

It reminds me of what we've gone through with COVID-19 and the CDC was not routinely gathering job titles for people getting COVID-19, and that became a huge problem.

So, just something for us to consider maybe recommending.

CHAIR MARKOWITZ: Just to play this out, we could request mesothelioma cases but the question is what would we learn?

They're probably not large numbers because it's a rare disease, but if we find that a few chemical engineers who are recognized as having mesothelioma, asbestos-related, then for them they didn't need a presumption because they made it, their claim was accepted.

The system recognized their exposure, they were a success.

We could look at mesothelioma denials, we've learned that there probably aren't that many and if there aren't that many denials and if we find a couple of engineers there, how are we going to interpret that?

Because frankly, not all engineers, mechanical, chemical, et cetera, are exposed to asbestos so maybe that claim position was correct. Dr. Cloeren?

MEMBER CLOEREN: How about pleural plaque denials?

CHAIR MARKOWITZ: You're recommending that because it's a more common outcome?

MEMBER CLOEREN: Pretty common.

CHAIR MARKOWITZ: Still asbestos-specific.

Dr. Friedman-Jimenez, you care a lot about causation, I don't know if you're listening at the moment. Is it possible to search for a given time period and tell us how many asbestos pleural

disease denials were accepted for a certain time period?

MR. VANCE: Dr. Markowitz, you know based on your interactions that data requests are very complicated. I think the answer would probably be yes, we could get that based on whatever parameters you're looking at as far as decisions are concerned.

So, in other words, we manage temporal data about decision-making so it would be based on the timeframe for a decision that had been made, how many denials.

So, in other words, if you had from the inception date of the program to the present how many final decisions relate to the denial for pleural plaques.

And then we have to do a lot of statistical analysis because don't forget, over the lifetime of a case, you could have multiple final decisions that are denying something and then turning it into an approval.

So, there's a lot of effort that goes

into data analysis for this program.

So, the answer is probably but we'd have to look at the details and make sure we clearly understand what the requirements are for data extraction, and then making sure that we can fulfill that request.

So, we're generally pretty adept at saying what we can and can't do, depending on what you ask for.

So, I think the answer to that question is probably but we'd need to understand specifically what the timeframe is and temporal requirements for that.

CHAIR MARKOWITZ: We need to move on, we can put this into a Work Group. Ultimately, for all the effort questions, we can actually learn what we need to learn here, that's the question. I'm a little skeptical I think.

If there are any closing comments or questions on this topic? Otherwise, I'd like to move on. I think it's late so let's do something fun and look at the Excel spreadsheets on the most

common conditions.

Doesn't everybody think that's fun? Kevin, if you could bring up that? The Board looked at 2016 through 2019 the same data and what we're going to look at is 2019 to 2020.

We don't really have to refer back to the older data, which I looked at. It was distributed to Board Members, it's very similar to the more recent time period.

Some of that is due to overlap in time periods but some of that is due to the fact that the program hasn't changed all that much. The question is whether people can see this?

If anybody who has a laptop wants to look at it, at whatever size they want. But let me walk us through here.

First of all, the second column with the ICD10 description, it's the first column actually, don't take that too literally because actually, there's a range of ICD codes of diseases that's covered by this on each row.

The text description, whoever put this

together just picked one of the codes within the range. So, the leading claim-getter, which is basal cell carcinoma of the lip, that's not just of the lip.

It is basal cell carcinoma of the skin but it's not just of the lip. So, look for the key words in the ICD code list and you'll learn more than if you look at everything specifically.

We're looking at the top 20 claims, party claims, I assume these are mixed consequently and original claims. That's important because it explains some of the entities.

The first thing I think to look at is the total number of claims that when you go from 1, which is over 3000, to 20 which is 225, it's a big range in the number of claims.

And I don't know what percentage of all claims this represents. Mr. Vance, some of the numbers you presented this morning, it sounded like there was somewhere between 8000 and 10,000 claims per year.

MR. VANCE: All I can tell you is when

I looked this morning it was 226 claims last week. That sounds about right. The number I was reporting this morning for the 226 was for the last reporting period from the Resource Center.

So, 226 is your average over the number of weeks per year is going to get you the number of new claims. It's a pretty good rate.

CHAIR MARKOWITZ: 8000 to 10,000. So, we're looking at numbers over a two-year period but it probably exceeds 50 percent of all the claims submitted is my hunch. And by far and away we have skin cancer actually as number one, and second is COPD.

COPD may appear elsewhere because sometimes there's a separate listing for emphysema. I don't see that here but I wouldn't rule it out.

And then we have other alveolar and parialveolar conditions, which we should probably translate as interstitial lung disease, is probably the most likely what that is.

And then number four, we're back to

basal cell carcinoma of the skin, which is for some reason just categorized differently by ICD code. It may be that it's a carcinoma site too but for our purposes it's not important.

And then we get into prostate, insomnia presumably is the secondary condition of a consequently condition. A person has an accepted claim for something else and insomnia is either due to treatment of that other condition or the condition itself.

And then asbestosis, pneumoconiosis due to asbestos, that may include the pleural variety, not quite clear. It may be the next line and if I looked up the ICD codes, that would give us the answer.

Anyway, you can run down the list, there's asthma, there's chronic kidney disease. I find chronic kidney disease really interesting because I wouldn't have expected to see it much here. Maybe in a significant number of claims but I wouldn't expect all those claims to be accepted.

But it may be that's a consequently

condition because of another claim accepted condition or a treatment of that condition, Parkinson's Disease.

Diabetes, I don't know any agents that cause diabetes but if you're on steroids for another condition you can get diabetes. So, that may be a consequently condition.

So, that's in the number of claims and then if you look at the number approved, we get to whatever column it is, which is the Column I, percent approved.

And if you just eyeball all 20, the majority of them are above 50 percent, some of them as high as 80 percent, pneumoconiosis, 80 percent. Vasomotor rhinitis, 80 percent, 81 percent, many around the 50 or 60 percent.

That could be looked at two ways, those are high approval rates but then it raises the question of who's not getting approved for those conditions and what's the difference between those two populations?

Skin cancer we discussed earlier today.

In the first row it's 20 percent, in the fourth row it's 26 percent. So, clearly people are getting compensated for skin cancers, not for UV radiation in relation to skin cancer.

And COPD, which is something the Board has discussed a lot in the past, 55 percent are being compensated for COPD, which I find personally surprisingly high because the DOL uses a narrow view of what causes COPD.

They limit it to specific agents such as cement, such as welding, not all that many that cause COPD, rather than a more I think modern view of gases, vapors, dust, and fumes, which exacerbate or cause COPD but not permitted under the EOICP statute, which requires specification of a specific substance.

And heart disease, 64 percent, there aren't that many toxic substances that cause heart disease, chronic heart disease, and yet we get 65 percent and that may be the issue of consequently conditions.

I'm not sure what the scenarios are.

If we look at this again at some point we might want to try to separate consequently versus other conditions. Now, the other thing to look at and I'm really just talking us through this a bit is the reasons for the denial.

And you can see for most denials they're for negative causation. Actually, Kevin, if you could just move it over to the right so people could see the full reasons for denial?

The choices are medical information is insufficient, negative causation, survivor not eligible, sometimes employee not covered and the like. But by far and away for almost all of them, negative causation.

So, causation is really the issue. A little surprising medical information insufficient doesn't occur more often. This means the claims examiner is in fact successfully documenting the disease that the person is claiming.

The medical information may be hard to get but the proper medical information is obtained

and sufficiently so that they're confident about the diagnosis.

But negative causation really stands out as the dominant reason. Dr. Cloeren?

MEMBER CLOEREN: I have a question about the medical information insufficient. Does this represent the eventual disposition, so at the end of some development?

So, it may be that medical information was insufficient but they worked on it and got it and --

CHAIR MARKOWITZ: These were claims that were denied. If I understand this correctly, the reasons for denial, the final decision, the recommended and final FAB decision was denial.

MEMBER CLOEREN: So, we don't know whether it represents somebody sending back more stuff and it was still insufficient? It doesn't really give you an idea of the development angle of it.

It could have been the Claimant just never responded to the request for additional

information or it could be the additional information still wasn't sufficient, we can't really tell from this.

CHAIR MARKOWITZ: It wasn't in hand. Comments?

MEMBER ZABACK: I just have one question. You said that this represents individual Claimants, not events, not a consequential or a second diagnoses. Is it individuals or events?

CHAIR MARKOWITZ: No, these are claims.

MEMBER ZABACK: Claimants?

CHAIR MARKOWITZ: No, these are claims so there could be an individual with multiple claims, I assume DOL will correct me if I misrepresent this. They're claims during that time period.

MEMBER FRIEDMAN-JIMENEZ: This is George Friedman, Can you hear me?

CHAIR MARKOWITZ: Yes.

MEMBER FRIEDMAN-JIMENEZ: I'm just

wondering why pneumoconiosis are only being approved at about 50 percent? There aren't too many other causes of pneumoconiosis that are not work-related.

It requires a high exposure to asbestos, silica, or coal dust. And I'm just wondering what was causing the denials there? Unspecified pneumoconiosis denied for medical information and negative causation are fairly small numbers.

I can't see what else is to the right there but the other pneumoconiosis, again -- oh, employee not covered. All right, I guess that's an administrative denial. That just seemed a little strange to me.

CHAIR MARKOWITZ: I see there's a column called Claims Pending and the question is whether the percentage approved includes claims pending in the denominator. But to your point, Dr. Friedman-Jimenez, there are actually two rows on pneumoconiosis.

One is the unspecified.

MEMBER FRIEDMAN-JIMENEZ: Yes, I see them both.

CHAIR MARKOWITZ: And the other is four rows down due to silica. And both are at about a 50 percent approval rate. That same question actually applies to both.

MEMBER FRIEDMAN-JIMENEZ: Yes, I was asking related to both, I just couldn't see it all together on one screen.

The second one especially seems to be administrative denials because they weren't covered, their employer wasn't covered at that time or something, I don't know.

All right, that makes sense.

CHAIR MARKOWITZ: Ms. Whitten?

MEMBER WHITTEN: Is there ever a situation where somebody is denied one of these loan conditions because they were part of, say, a lawsuit settlement or something like that?

MS. POND: This is Rachel Pond.

Your question is would we have denied because of a lawsuit? We would offset due to

lawsuits. So, people may not claim because they don't want it to be offset, they might claim a different condition instead.

But if they claim the condition and it's been accepted as a result the lawsuit or a tort or state worker's compensation, we would be coordinating those benefits for them, we wouldn't deny as a result of that.

CHAIR MARKOWITZ: Other comments? Let's look at the other tab, cancer, top 10. I don't know if you can blow this up at all and again, most denials for negative causation, so very few prostate cancers that's expected.

And it makes you wonder, actually, who is getting compensated for prostate cancer? And a third of lung cancers. Let's look at respiratory top 10.

The least percent approved is about 50 percent and here we see actually the last row is pleural plaque with asbestos so it is a separate 183 claims but there were 673 claims for Row 3 in pneumoconiosis due to asbestos.

Normally, you have more asbestos pleural cases than you have asbestosis cases. There's something a little peculiar about that but it may be the way they're being classified.

I don't quite understand vasimotor rhinitis but that's okay. And let's look at neurologic.

MEMBER FRIEDMAN-JIMENEZ: Before we go to neurologic, COPD concerns me because of a discussion we've had at previous Board Meetings.

The main exposures that have been reported to cause COPD are VGDF, vapors, dusts, gases, and fumes, which by the statute don't qualify as toxic substances because they're multiple substances and not single identifiable substances.

The fact that negative causation is the predominant reason for denial concerns me and Rafael de la Hoz just wrote a very nice book chapter on occupational COPD in a new text on occupational medicine edited by Ki Moon Bang from NIOSH.

But they couldn't really find many

studies that studied more specific exposures than VGDF. That's the most commonly reported exposure that's been epidemiologically associated and probably causally associated with COPD.

So, I'm wondering if we can get past this impasse of vapors, fumes, gases, and dusts being a reason for exclusion because it's not specific enough when actually quite substantial is the OPD literature now really mainly is associating COPD with that non-specific combination or group of exposures.

Not necessarily mixed exposures, just not specifically identified because of the nature of the exposures themselves that the dust is sort of sometimes not identifiable.

Can you think of any way we can move past that and maybe get that reconsidered? I don't remember the exact language in the statute but the objection from the Department of Labor was that VGDF is not a specific toxin so it can't be considered a toxic cause of COPD.

MS: Dr. Cloeren?

MEMBER CLOEREN: I was just reacting that sometimes you can't characterize it but the literature does support the synergistic effect of combinations and that's not really reflected in the way the claims are adjudicated.

CHAIR MARKOWITZ: What's so interesting is that the statutory standard includes aggravation, contribution, at least as likely as not. They're very lenient and Claimant-generous standards.

Any dust, vapor, gas, or fume can exacerbate COPD if it's originally caused by smoking.

So, that part of it, that statutory language, is very favorable, the problem is, as the Board learned earlier on when we raised this in a big way, was that the statute also says toxic substance and in many instances the particular toxic substance wasn't identified.

So, personally I think given the stalemate we arrived at before, this might fall into the takes an active Congress kind of category

and normally, we'll see how we do with the three borderline BeLPTS because that should be an easy thing.

It affects very few people relatively speaking, important to those people but relatively few. Whereas COPD and vapors, gas, dust fumes, VGDF affects a lot of people.

So, as hard as it is, frankly, if the statute is off base and has clearly broad intentions of covering all kinds of occupational illnesses and all kinds of exposures, maybe there is some language that could at least be fashioned that would address the issue, whether it could go anywhere is something else but at least we could fashion some language that might be useful.

And by the way, the percentage approved, that's erroneous, it's including the pending claims. If you look at the first row of COPD, there were 900 approved and there were 400 denied.

So, if you exclude the pending claims, 900 and 400, that means that over two-thirds of them

were accepted and approved and we're looking at only a 54 percent approval rate.

So, these approval rates are underestimated because they're including the pending in the denominator and we don't know, some may be approved, some may not.

In any case, do people want to look through a few other of these tables here? Dr. Cloeren?

MEMBER CLOEREN: You were interested in the kidney disease?

CHAIR MARKOWITZ: Sure, let's go to renal here.

MR. VANCE: And Dr. Markowitz, really quick on the prostate cancer because this one has been a fascinating category, the reason you're seeing prostate cancer approvals is based on the provision that allows a physician of the Claimant's choosing to provide an opinion of causality based on that aggravation and contribution criteria.

So, we're seeing a lot of cases right now coming in where you have a Claimant physician

looking at exposures to asbestos and cadmium.

Now, those have been looked at and I don't think there's any definitive health effect that's established from a pure causative standpoint, but these physicians are saying they have epidemiological evidence in their mind suggesting that asbestos or cadmium could be contributing to the onset of prostate cancer.

So, that's where you're getting your approvals on prostate cancer, and some of these conditions, like the rhinitis, are probably natural additions to pulmonary disease as a consequence.

So, in other words, if I've got COPD or some other type of respiratory disorder, it's very common for most people to come in with a complement of problems like chronic rhinitis or other types of sinus kind of problems.

CHAIR MARKOWITZ: That's interesting. Kidney disease we're looking at. Yes, the negative causation is almost always the reason for denial. Dr. Cloeren?

MEMBER CLOEREN: I know there are limitations with the database. Would it be possible in this kind of report to designate which ones are consequential or secondary versus the primary condition?

MS. POND: I'm not sure we can separate those out.

The way our decisions are categorized in the database just says denied or accepted sometimes. But there might be an indicator for consequential so we'll have to look into it but it might be possible.

CHAIR MARKOWITZ: And we can look at CBD. I'm sorry, CBD is Part B I think. We're still on kidney disease. If you go down to the bottom, CBD, this is Part D claims.

And so that percent approved of ones for which there's a decision should be 80 percent, 80 percent are approved. And most of the ones that are denied are because the medical information is insufficient, it's not a causation issue.

If we go to beryllium sensitivity, very

high rate of approval and then chronic silicosis, pneumoconiosis due to silica, CS, is that what you have up there? That's sensitivity.

This is Part B. And actually, it should be an 85 percent approval rate if you exclude the claims pending for Part B. So, this is Divada and then Chitqa. These are Part B claims for silicosis.

Finally, let's just go back and look at neurologic just so we can look at everything. Dr. Mikulski did a lot of work on Parkinson's Disease earlier on. The number one cause of neurologic disease is insomnia.

A very high rate of Parkinson's approvals actually, it's over three-quarters, over 80 percent. Dr. Bowman?

MEMBER BOWMAN: Just to comment on the Parkinson approval, there's a lot of metal exposures broadly speaking and metals have been linked to Parkinson's Disease. So, I think it pretty easily reaches the standard of as likely as not.

CHAIR MARKOWITZ: When we looked at the SEM, I'm trying to remember, Merick, you may remember, aside from manganese and acute carbon monoxide poisoning and then whatever was made from manganese, so it would include steel and some others, there weren't that many toxic substances in the SEM.

I think we helped add a couple to the SEM but there wasn't a broad recognition of metals actually.

I'm not talking about reality, I'm talking about what the SEM looked like actually. So, this is higher than I would have expected actually given what the SEM looked like for Parkinson's.

Question then, it's a fair amount of work for the Department to come up with this kind of data for us, thank you very much because it's the end of the day to see what the presenters of people who have approved claims and what they're being approved for and what the problems are and where presumptions might help.

It's very helpful to look at these kind of data. Was there a next step on any of this that people thought would be worth pursuing aside from correcting the percentages approved?

Dr. Cloeren?

MEMBER CLOEREN:: I think to make the most sense of it, we'd need things that the database can't do currently.

So, I'm curious how hard an ask it would be to add occupation fields and the exposures that were accepted as connected to the claims for future, I don't mean next week, but as it builds.

MS. POND: The database is really used so that claims examiners can manage their case load. So, adding those sorts of items, it might be something we could do but that's more for research and that sort of thing.

Right now it's kind of established and we couldn't go back in time, it would be really hard to go back and fill in all of those. And often times, especially when it comes to job categories, they're not real clear-cut.

They could be really a drop-down or there's numerous pseudonyms and it especially when it gets to the exposure themselves, it can get really complicated or there could be numerous ones of them.

So, we are always looking to -- we might be modifying our system in the next year or so, we're going to be combining it or maybe changing it, looking at how it relates to other systems within OWCP.

So, it's never out of the question. It would be a very large ask though probably.

MEMBER BOWMAN: Just a related question, you had mentioned and were just describing the challenge for linking it to job category. What about just to site?

Is that already in there?

MS. POND: The sites are captured, whether we can run reports on them, that's where it gets more challenging because people work at multiple sites and some were verified, some aren't verified.

So, we put in that they claimed they worked there, and then we have to put in whether they verify they worked there, and that's where those kinds of nuances get a little tricky to run a report based on.

It is captured in there and we can run reports in general.

Obviously, we have statistics on where persons filed a claim and that sort of thing but how detailed those reports become is where it may be a little bit challenging.

MEMBER BOWMAN: Just to continue on from that, it seems like in terms of, Steven, you were asking about next steps from this data, it seems an important next step to take is by looking at the data to assess whether or not there's any of these, particularly the high-frequency, health conditions that seem to be either under or potentially over in terms of expectations in terms of identifying claims for which it would be helpful to the Department to get information from the Board about how to make those more accurate.

But to do that, we have to put expectations on what these health conditions we might expect to be elevated in this population and for which we have very little -- we have some information, we know sort of what some of the sites are doing and sort of what might be expected health conditions that could come up because of the nature of the work.

So, I think a next step is to look at this data and see if anything jumps out at least in a blatant way that is really low or really high. And maybe that's something we could look at it but I think that would take that sort of analysis.

CHAIR MARKOWITZ: I'm not sure what you need to point out which percentage of acceptance claims are really high except out of curiosity, but the ones that might be unexpectedly low, Dr. Friedman-Jimenez, for instance, mentioned the pneumoconiosis at 50 percent.

So, yes, that might be something we can think about.

MEMBER BOWMAN: And in that, you had

talked about potential future for additional examinations of cases, we might based upon the Board's looking over this data prioritize certain health conditions.

CHAIR MARKOWITZ: It's 4:40 p.m., we have a public comment period in five minutes so we're going to take a five-minute break and then we're going to resume at 4:45 p.m.

Carrie, how many public commenters do we have? Okay, thanks.

(Whereupon, the above-entitled matter went off the record at 4:38 p.m. and resumed at 4:45 p.m.)

CHAIR MARKOWITZ: Okay, we'll resume now. We have our public comment period for 45 minutes.

We have six presenters, it may be in the middle of the public comment period it's possible additional people will come forward so I want to save a couple minutes for them.

But if the people who are on the list could hold themselves to roughly five or six

minutes, that would be great. I apologize in advance but sometimes I may have to interrupt you in order to stick to that schedule.

We'll start first with Sandra Thornton.

MS. THORNTON: Hi, sir, thank you for letting me speak today to the Board. My name is Sandra Thornton, I'm the POA.

I thank everybody for their hard work but mostly I think Dr. Markowitz and the WIPP program because without him in that program, my brother-in-law would still sit with everything denied.

He's had two lung disorders be approved already and so altogether, there have been 25 claims, 2 approved, 21 sat unprocessed, wrongly, because instead of our claim forms they used the Paducah Resource Center's unsigned never-submitted form, and then 2 additional items after that.

His wage loss sits deferred at this point, his impairment hasn't been released yet even though it's just been decided.

So, what I found in dealing with this program since June of 2020 was as hard as you guys work and as hard as things have changed and improved over the last 20 years, you're still sitting with big problems.

Records aren't being read, personnel records, medical records, surgeries. The Paducah Phase 2 SEM isn't being used, the IH and the CMC reports that have been found in error have never been corrected.

So, his 23 other claims that will go through that, we're going to have to fight the 2019 and 2021 wrong IH and CMC conclusions, because I've been waiting on that office to correct them.

What boggles my mind with this program is the fact that this is a nuclear worker, Walmart worker and these case managers are not taking nuclear toxins which is proven that he worked in there picking things like they evaporate really quickly or things like cement, which have no long-term for his particular job.

And so plutonium, PCBs, uranium,

depleted uranium, none of those items are picked, that he was working in every day without a respirator for over two years.

And so the IH and CMCs, they never get the clear picture because they don't have the personnel records, they don't have the testing, and then of course they're going to come out with the wrong conclusions.

So, the high beta and gamma radiation again was never told to these people that are clearly in his records. So, it's kind of confusing.

The SEM Phase II at Paducah, you have these things that he was working in but when you jump over to what medical problems were caused by depleted uranium, you don't give any. Plutonium, you don't give any.

So, the case workers, event managers, even though they're trying really hard, how could they pick these items anyway when there's no medical consequences.

And to be in research studies, military

research studies have shown there are consequences to these things. So, again, I'd like to know when the IH and the CMC have people that are going to correct his reports?

I'd like to know when the EEOIC is going to start doing what Congress mandated this program to do in 1989 and 1990 timeframe to say you have to flex with these because it's Cold War veterans because records were destroyed, not kept, et cetera, and so forth.

For instance, right now in 823 Fiscal Lane, he had all his teeth removed at age 20, we have lycoma that was surgically removed too. You have the WIPP program found this hard.

So, I have the personnel records, I have the medical records, I have his sick paid leave there and I have the research studies that will back all these things up yet the EEOIC program expects me to pull a rabbit out of our hat 41 to 49 years after the fact to say by the way, he had all his teeth removed and it was documented he was 20 years old at Paducah.

You have to come up with a doctor that isn't dead already because we're not going to accept his lifelong doctor that knew his care, knew his medical problems, knew his job, knew Paducah, provided the research.

We're not going to accept that 120-page packet letter in September of 2020. You come up with new doctors on every single one of these. So, what I'm suggesting is strictly to do what Congress said.

You've got the personnel records, you've got to the medical records, you've got the test, you've got the sick leaves, you've got the research, you've got actually everything other than a brand-new doctor's letter on top of everything on one of those diagnoses in 2022 where you can flex award these, just like however it directed the program to do.

So, again, I've got to be quick because I'm time-limited. I'd like to know where the DOL DOE study is in the depository for all these kids with their ages, their diagnoses, their jobs, the

dates from Paducah.

You collected them, I found the Freedom of Information Act on these things.

I'd like to know when ORAU is going to unblock all the Paducah studies that they're not releasing that's online that you won't give them the researchers, you'll only give them the medical doctors, you don't give them to the employees that actually work there that these studies are about the red findings.

So, still today those are blocked. I've always told you from day one of jump in into this program June of 2020 to help my brother-in-law that I'm trying to help every single one of you no matter where you work to make this program better.

But there's holes and when you give constructive feedback, the system doesn't correct itself. And so finally, I started calling myself a whistleblower, and unfortunately, by doing that and meeting with Congressional leaders, my brother-in-law's claims got on a wait of 13 months because now I'm a problem child.

Well, that's not the case, I've said it from day one. I'm trying to connect all the dots. But right now you have Cold War veterans running around all across the United States, five different states I had to locate all these records.

And the evidence is there, over 3000 pages have been where there's a good feeling. There's absolutely nothing that nobody would ever claim that wasn't valid. I wouldn't allow it and neither would my brother-in-law.

But these people are dying and at some point, and I'm sorry about my voice, I've got a lung problem from Iraq and Afghanistan so it's breaking up.

But at some point, for these Cold War veterans who have already lived with this, suffered with this, never had the prevention, early intervention, knowledge, and they're sick and they're ill and they're old.

And we're jumping through hoops and I get that you have a process and there's a checklist you've got to check them off but it's not working.

You processed claims last year on an unsigned form that I had to go to a hearing for, had to say that all again and come out with an outcome when I'm saying all along you're doing the wrong thing.

So, three years five months has been wasted on a lot of this stuff and we're tired. I did the VA system and the DoD system and up on Capitol Hill for all those different government things but let me tell you, some parts of this program is much worse than both of them combined.

They shouldn't be that way and I think you guys have good intentions but there's got to be a correction and a listening.

I'm sorry, I hate complaining, I hate bothering you all but there's got to be that common-sense piece for these Cold War veterans but it's not there. Again, I'm sorry.

CHAIR MARKOWITZ: No problem, thank you very much. Our next presenter is Donna Hand.

MS. HAND: Can you hear me?

CHAIR MARKOWITZ: We hear you.

MS. HAND: Yes, thank you very much.

A little bit about me, I've been involved in this program since 2002, I have been representing other Claimants since 2007 and I've been representing people from Rocky Flats, Hanford, the Cleveland District Office, Ohio, Savannah River, Oak Ridge, Pinellas Plant of course and everything.

So, I've been across the whole program in Paducah. I have sent two different emails to the Advisory Board, the first one in regard to beryllium LPT.

The actual statute in the regulation only requires an abnormal beryllium LPT, which is just one.

Because at the time that this program was done, DOE had already established beryllium registry.

They had required two abnormal and in 2010 we went to the beryllium conference, that was brought up, that this program only requires one abnormal where the DOE registry requires two.

But they never defined what was abnormal. So, out of the six cells that you get on a beryllium LPT report, we only require one of those six cells to be abnormal.

Then, as you know, OSHA became a new regulation and DOE also put out a new handbook regarding the labs to do a different type of report on the beryllium LPT, and that's where you start getting the borderline.

So, therefore, you can put in the borderline without really changing the statute since the statute never discussed what an abnormal beryllium LPT was.

So, I gave you a copy right out of the statute, right out of the regulation as well as the public comment by National Jewish which says the test is very specific, meaning that if your blood reacts to beryllium, nothing other than beryllium could have caused this reaction.

So, again if there's a reaction in any of the cell, then you're reacting to beryllium and it doesn't say it has to be a severe reaction, it

just has to be a reaction, just like a pulmonary function test.

It doesn't have to be as severe. It has to be an abnormal pulmonary function test.

And I also have an issue whenever a Claimant has sarcoidosis diagnosed before 1993 by the plant physician and so we claim a pre-1993 chronic beryllium disease.

But in his reg care he also has pleural infusion and the contract medical consultant says, oh, we're going to give him pleural infusion and exposure to asbestos and completely ignore the sarcoidosis.

So, why is pleural infusion also a characteristic of chronic beryllium disease?

And if you look at the SEM, they have nothing for beryllium and there's no symptoms for beryllium and cough and shortness of breath is also a symptom of beryllium.

Also, in the policy procedure manual, they say you cannot use an upper respiratory infection to accommodate the pre-1993 criteria

even though it's tested for, treated for, or diagnosed with a chronic respiratory disorder.

Well, an upper respiratory disorder can be an exposure, an acute exposure, to beryllium because even all the medical reports show that an acute exposure to beryllium is a two-immunization allergic reaction.

So, knowing that they're working at that type of facility and having exposure to beryllium, it could be viral or it could be exposure to beryllium or any other respiratory process.

So, these are some issues that I have some questions at the end of those reports as well as represents to the DOE handbook that just came out in 2019, everything, and as you well know, the new OSHA regulation.

The other issue regards the significant factor. There is nowhere in the statute that says you must have a significant level or a specific toxin, it only requires significant factor.

And in 2006 OWCP defined that significant factor as the statute mandate in Part

E to interpret the significant factor as including any factor. And I even quoted the volume and it was December 29, 2006.

So, I don't understand why you keep on using level and specific toxins when that is not required in the statute. Policy is not binding, policy cannot be binding, and so the statute is binding and it does require that.

So, you have case examiners sending the files to the IHs for the significant level when the acts don't requires these levels.

Why is the proof of exposure established in the regulation as saying the employee come in contact with it?

And that's not just labor category, it's also performing his work duties. So, while he was performing the work process, while he was working in that particular building, did he come in contact with that toxic substance?

Because you just cannot go by labor category and a lot of these sites, they would exchange work duties.

If their job duty was going slow, they would go over and help train work on another project at a different job.

And in that same building, they may only have four air handles so they would recircle the same air and I know for a fact in Pinellas it was a continuous-flow production line and they didn't go all the way to the facility.

It was like a big warehouse. So, a lot of these buildings, it wasn't a confined air space type building.

And then you go to the site exposure matrices, these were site profiles that were supposed to be exposure assessments of the facility that identified the toxic substances or processes.

And that was in the statute itself. The definition of a toxic substance, as John Vance said, is any material that has the potential.

So, it doesn't have to definitively cause or contribute or aggravate, does it have the potential to do that?

So, you have a significant factor which

means any factor and does that toxic substance have the potential?

That's the standard that the CMCs, the IHs, the case examiners, and the final adjudication branch is supposed to rely on. Again, the additional site exposure matrices can be used by the tiger team report or the environmental reports.

I know for a fact that the Pinellas Plant 1997 environmental close-out report lists over 5000 toxic substances, list their areas, lists their processes of what was done there.

The site exposure matrices refuses to add in radiation or cancer because they said that's NIOSH. However, we know the cancer is a combination of radiation and chemicals.

Uranium can be soluble and insoluble and each one has a different health effect and the specified cancers, the definition of the specified cancer on Number 6 of that is specified diseases, that's in Paragraph D2, 3, and 4 of this Section B.

The physiological condition or

conditions that are recognized by the National Cancer Institute under those names or nomenclature or under any previously accepted or commonly used names or nomenclature.

Rachel Pond issued a full attendance, these are not going to those, to the National Cancer Institute.

However, by law, we can still do that and like CLL, it's a physiological nomenclature of a leukemia, so therefore, they should be designated as a special exposure cohort cancer.

CHAIR MARKOWITZ: If you could wrap up that would be great.

MS. HAND: I sent this earlier on and it is all sent to you along with questions. So, thank you very much for your time.

CHAIR MARKOWITZ: Thank you. Ms. D'Lanie Blaze?

MS. BLAZE:: Thank you. I'm D'Lanie Blaze with CORE Advocacy.

I provide authorized representation to Claimants who are affiliated with Santa Susanna

Field Laboratory and its associated work sites, Canoga and De Soto.

I want to talk a little bit about the idea of expediency in the claims process and how that relates to the value of institutional knowledge that solicitor Amy Leefer briefly touched on earlier today.

Institutional knowledge is vital to the claim adjudication process and to the ability to effectively use the site exposure matrix or the SEM.

Now, up to 2018, institutional knowledge that had been acquired by regional district offices was pretty impressive and up to that point, the District offices had maintained jurisdictional purview of claims associated with specific work sites.

So, for example, until 2018, the Seattle District Office had maintained jurisdictional exclusivity for claims associated with sites in the Western United States like Hanford, Santa Susanna, Nevada test site, et

cetera.

So, the Seattle claims examiners had become quite familiar with unique challenges that face Claimants at these particular sites, almost like a mosaic effect.

The claims examiners had been assigned cases associated with a limited number of specific sites and they could apply what they had learned from past claims with respect to understanding work site history, the interpretation of employment evidence, and recognizing the significance of certain records.

They knew what to look for and they had gotten to know their respective work sites pretty well.

The importance of this cannot be understated because across the nuclear complex and throughout its history, private contractors were not held to standardized record-keeping practices or even job classification schemes.

Moreover, the DOE programs routinely changed and so did the numbering schemes for

various buildings located at the sites along with corporate successorship and contracts. And so this is a labyrinth.

Still using Seattle as the example, a claims examiner would typically approach a claim with usually some awareness of these important details that are relevant to how a site operated, inclusive of issues resulting in worker rotation between various areas of a work site or even between work sites that are related and that function jointly under the same contracts with the Department of Energy, and job titles or labor categories that could overlap to create specific exposure risk scenarios.

This knowledge enabled claims examiners to quickly assess the DAR and to recognize significant information. It provided them with a basis of understanding that was sufficient to conduct a comprehensive and thorough search of the SEM.

With this institutional knowledge, they knew what search criteria to plug in, they knew

the questions to ask and how to cross-reference information in the SEM in order to get the most out of it.

But in 2018 the round-robin approach was implemented. Work claims are now sent to any District office around the country, this is effectively compromised valuable institutional knowledge and it's increased the likelihood of errors in the claims adjudication process.

Now a claims examiner is likely to be assigned a claim for a site they've never even heard of, they've never reviewed a DAR from that site, they don't know what unique challenges the workers may face at that site, what procedural guidance has been issued or what's applicable.

They don't know what filters to apply to the SEM because they're unfamiliar with the labor category aliases for that particular site, the shifts in the building nomenclature and function that have occurred over various eras of operation.

This is creating problems that result

in inappropriate recommended decisions and once those are issued, it initiates a whole new administrative process, the need for a final adjudication branch hearing to object to a recommended decision can add a year or more to the claims process.

John Vance touched earlier on a need for more specific information from the Claimant but let's remember that Claimants often can't provide that kind of detail because sometimes they're survivors, they're not employees.

And historically, survivors know very little, they're relying on claims examiners who understand the site and the DAR and can effectively navigate the SEM.

So, adding to this issue is the fact that the SEM is now apparently being streamlined and refined.

But we're seeing specific information vanish where job titles and labor categories with well documented exposure risks now appear to be rather safe jobs as related toxins and locations

where these jobs were performed appear to have been removed.

In the interest of time, I'll follow up with the Board with some examples of SEM search results that are really concerning, and when they're combined with this lack of institutional knowledge resulting from this round-robin claim disbursement to District offices, there's some consideration for the Board.

Perhaps the Board can consider making a recommendation to reinstate the jurisdictional or regional purview of the District offices to their original condition.

At this point, I'm not really sure what the answer is but we should keep in mind that in order for information to be added to the SEM, extensive documentation is required.

Therefore, in order to justify the removal of that information, there should be an equal or greater amount of documentation that contradicts the previous information that was used to add it.

I find the decline in specificity in the SEM to be quite troubling and I'll follow up with the Board on this issue with written comments. I appreciate your time, thank you.

CHAIR MARKOWITZ: Our next speaker is Stephanie Carroll. Ms. Carroll? Next is Mr. Robert Rothe? Is Mr. Rothe or Ms. Carroll there?

MS. CARROLL: Hello, this is Stephanie Carroll. I was actually told to hit star-six to unmute myself but I tried pound-six and that worked.

Anyway, I'm Stephanie Carroll, I'm the authorized rep specializing in claims for chronic beryllium disease. The bulk of our success has been in the approval of chronic beryllium disease under RP with negative and borderline test results.

I am offering another perspective that you may want to consider regarding this borderline issue.

I have concerns about supporting a change in the language of the act that could lead to unforeseen circumstances.

I propose that a borderline test result is abnormal and meets the clear language of the act. The act reads, quote, beryllium sensitivity is established by an abnormal beryllium lymphocyte proliferation test performed by either lung or cells, end quote.

Third, the act beryllium blood test findings by Dr. Lee Newman described one high simulating index on the results as abnormal. He found this as abnormal before our program was enacted.

This was qualify under the act. It was not borderline. Borderline was not used before this act was created. Later, the abnormal findings would be referenced findings would be referenced as borderline abnormal.

Now an abnormal stimulating index is referred borderline and no longer abnormal. This has resulted in the denial of countless claims.

If a physician determines that one high stimulating index is abnormal, it would meet the criteria for beryllium sensitivity under the clear

language of the act.

I believe this designation, the borderline designation, is the problem and fear and changes in the act because if anyone from the program has any input on the act, you never know what can happen once the language gets changed.

It could make it harder to get approved under this program. So, I'm very concerned about that change. And regarding the site exposure matrices, this study consists of a repository of Department of Energy documents supporting exposure on the site.

The EEOIC refers to their data in support of the sentence without reference to its origin, meaning that what supports the SEM are all of these documents that were turned over by the Department of Energy by mandate under this program.

The Department of Energy provided contemporaneous documents in support of toxic exposure on the site. It is confusing when toxins are removed from the SEM after they had made the cut and then used to approve claims over the years.

It makes it unfair because if you apply for compensation years ago when a certain toxin was in the SEM, you may have been approved but years later, after whittling down the SEM, you may not get approved.

So, your entire approval is dependent on when you apply for the program and this is unfair, it's not consistent with. I respectfully suggest the document needs to remove toxins from the site exposure matrix be reviewed by the Board.

Prior to this site exposure matrices being made public, it included references to the Department of Energy documents in the Department of Labor Library that supported data included in the SEM.

The NIH when they did their review of the site exposure matrix, they were never told about all of this documentation, we never even knew the SEM completed those records.

Any questions you may have concerning source data in support of the SEM should include those documents.

Example, I'm going to give you an example, I've received record files that are sometimes 1000 pages long and they include site exposure matrices searches that were performed many years ago.

So, I can receive some results that are from 2006. So, an example of one of those results is chemical operator at Rocky Flats.

I'm reading this from 2006 and there are references named in this document and under the references it includes the names of the documents and an example would be Rocky Flats Process Descriptions, and it would include a DOL library number and the number just for that one document is DOL-060067.

These references were removed arbitrarily from the sentence when the SEM became public, so no one in the public would know that there are all these documents that support each of the pieces of data that are found in the SEM.

Perhaps the Board can request an index of the library documents for the Hanford site.

Considering there are so many Hanford experts on the Board, they may be interested in seeing what those documents consist of.

It would be of interest to see what new documents have been received by the Department of Labor that refute the inclusion of toxic exposure data used for years to approve claims.

You can compare what documents are they using now to refuse the documents that have supported certain toxic exposures in the specific buildings, et cetera. What are they using to refute that?

What is the scientific validity of this new data that they're saying they've got to whittle down?

I believe the SEM library and its index can be invaluable for any review of the SEM and I respectfully just suggest that would be an area you could look to to determine if the removal of certain substances from the SEM is valid.

And that library I'm sure was transferred over to Paragon when they took over,

but they are DOL documents and they have been cleared by the Department of Energy, because you can't let claims examiners without clearance review documents that could help security issues.

So, there shouldn't be a security issue with library and at least you should be able to get the index of all the documents in a library because the SEM references them in a very orderly manner.

It shows the DOL library number, it has the number and the name of the document that supports each part of the SEM. So, that's all I wanted to comment on today and I so appreciate the work you do.

Thank you very much.

CHAIR MARKOWITZ: Thank you. Do we have Mr. Rothe? No.

Okay, unless there is anybody else who wants to speak, I think we'll close the public comment session. It's 5:25 p.m. so the Board will adjourn for today and we will resume tomorrow at 8:30 a.m.

We're going to start off hearing from

Mr. Greg Lewis, Department of Energy, about how the Department of Energy provides documents, information, exposure information, employment verification and the like as part of the claims evaluation process.

And also I think a little bit probably about the former worker program. We'll start on time and we'll finish towards the end of the morning. Any questions? Have a good evening.

(Whereupon, the above-entitled matter went off the record at 5:22 p.m.)