UNITED STATES DEPARTMENT OF LABOR

+ + + + +

ADVISORY BOARD ON TOXIC SUBSTANCES

AND WORKER HEALTH

+ + + + +

MEETING

+ + + + +

THURSDAY

APRIL 28, 2016

+ + + + +

The Advisory Board met at the Department of Labor, 200 Constitution Ave, N.W., Washington, D.C., at 8:30 a.m., Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT
MARK GRIFFON
KENNETH Z. SILVER
GEORGE FRIEDMAN-JIMENEZ
LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair
LAURA S. WELCH
ROSEMARY K. SOKAS
CARRIE A. REDLICH
VICTORIA A. CASSANO

CLAIMANT COMMUNITY:

DURONDA M. POPE
KIRK D. DOMINA
GARRY M. WHITLEY
JAMES H. TURNER
FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

ANTONIO RIOS

PRESENTERS

JEFF KOTSCH, Senior Health Physicist and Unit Chief, Medical and Health Science

RACHEL LEITON, Director, DEEOIC

TABLE OF CONTENTS

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

8:44 a.m.

CHAIR MARKOWITZ: So, let's get started. Ms. Gibson, in the back? Ms. Gibson, can you hear me? Okay, thank you. I was just checking the mic.

Welcome. This is the third day of the Advisory Board on Toxic Substances and Worker Health. Sorry for the delay. We had a little problem with the WebEx.

For those of you who are participating remotely, you can still reach us on -- through the phone. If you want to see the PowerPoint presentations, or otherwise participate, you will need to send us an email, and then we will give you instructions on how to connect with us. Is that right, Tony?

MR. RIOS: Yes.

CHAIR MARKOWITZ: Thank you. Today is Worker's Memorial Day. So, we recognize the many thousands of workers who -- actually, each year over 4,000 workers who die from traumatic

fatalities, and some multiple of that who die from chronic occupational illnesses.

We will do that by 10:30, between 10:30, which is our scheduled break, it will -- we'll prolong it until 11:00. There is a ceremony and some speakers downstairs. Ms. Duronda Pope is going to speak, our Board Member.

So, we will break at 10:30, and those of you who wish to attend that, where it -- do you know where it is exactly?

MR. RIOS: The Great Hall.

CHAIR MARKOWITZ: The Great Hall, wherever that is, okay, but we'll -- must -- we'll find it.

So, let's quickly do introductions, and then we'll proceed from there. Dr. Laura Welch.

MEMBER WELCH: Laurie Welch. I'm the medical director of the Building Trades Medical Screening Program, which is one of the DOE funded former worker programs, and I'm an Occupational Medicine Physician.

MEMBER TURNER: James Turner from the Rocky Flats Nuclear Weapons Plant, near Denver, Colorado, diagnosed with chronic beryllium disease in 1990.

MEMBER POPE: Duronda Pope, United Steel Workers, also a former 25 years Rocky Flats former worker.

MEMBER WHITLEY: Garry Whitley, a former worker from Y-12 National Security Complex.

MEMBER DOMINA: I'm Kirk Domina. I'm the employee advocate for the Hanford Atomic Metal Trades Council in Richland, Washington.

MEMBER VLIEGER: Faye Vlieger, former Hanford worker, injured worker claimant.

MEMBER SOKAS: Rosemary Sokas. Occupational Physician, Professor and Chair of Human Science at Georgetown University School of Nursing and Health Studies.

CHAIR MARKOWITZ: Steven Markowitz, Professor at City University of New York, Occupational Medicine, Physician and

Epidemiologist.

MEMBER SILVER: Ken Silver, Associate Professor of Environmental Health in the College of Public Health at East Tennessee State University.

MEMBER CASSANO: Victoria Cassano, Occupational Physician, former Naval Under Sea Medical Officer, Radiation Health Officer and former VA head of radiation physical exposures and environmental health service.

MEMBER BODEN: Les Boden. I'm a Professor in the Department of Environmental Health at Boston University School of Public Health.

MEMBER DEMENT: John Dement, Professor at Division of Occupational and Environmental Medicine, Duke University Medical Center.

MEMBER GRIFFON: Mark Griffon, Occupational Safety and Health Consultant.

MEMBER REDLICH: Carrie Redlich. I'm an Occupational Medicine and Pulmonary Physician and Professor of Medicine and Director of the

Yale Occupational Environmental Medicine Program.

MEMBER FRIEDMAN-JIMENEZ: George Friedman-Jimenez. I'm an Occupational Medicine Physician and an Epidemiologist at Bellevue/NYU Occupational Environmental Medicine Clinic.

MR. RIOS: And I'm Tony Rios. I am the Designated Federal Officer for the Advisory Board.

Also for those folks that are on the phone that did want to join us through WebEx, the Chair asked that you email us. I just wanted to give you our email address.

That's energyadvisoryboard@dol.gov. That's located on our website, but I just wanted to make sure everyone had it.

CHAIR MARKOWITZ: So, next we're going to discuss the fourth area that Department of Labor has asked us to provide recommendations on, as a Board, and I'd just like to read from our charter what the assignment is before we begin the session.

"The Board shall advise the Secretary

of Labor, with respect to 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."

So, with that, I'd like to invite Mr. Jeff Kotsch, who is a Senior Health Physicist and Unit Chief of the Medical and Health Science to come and present. Welcome.

I'd also like to welcome back Ms. Leiton.

MR. KOTSCH: Up front, I'll apologize. I'm suffering through allergy season. I don't know if anybody else has that affliction, but anyway. So, if you see me sniffling up here, that's what it is.

I think we are -- is it audible now or -- okay.

I think they've all started, all our previous presenters have started with an introduction of their background. Unfortunately, I haven't been with DOL as long as most of these

people. I only started a little bit after the program started. You know, I started in August of 2001.

Out of graduate school, I went to work with the Nuclear Regulatory Commission. That was back in '78, and ended up in a group, a licensing group that actually did uranium milling licensing, which was interesting and actually, has come back in the loop because one of the things that we cover is uranium milling, milling, mining and ore transporting, as part of Section 5 of the RECA.

When TMI came around, I got drafted because there weren't that many -- interestingly enough, there weren't that many health physicists in the NRC as you would have expected.

So, I got drafted into the emergency response center and then continued from there, working on reactor related things, until '81, when I left, and joined a commercial nuclear power plant in Southern New Jersey and headed up the Central Radiological Protection Support Group

for that, through the 80's, essentially.

In the early 90's, I joined a small consulting firm in the D.C. area. We did a lot of DOL and some NRC work, I mean, sorry, DOE, and I was fortunate to probably visit all of the -- major DOE facilities, as well as a number of the minor ones, doing nuclear safety assessments for what was then the defense programs and also later, the environment safety and health group.

So, I got to go to Rocky -- one of the first things I did was, I went to Rocky Flats and participated in the review for the startup of the 707 Building where they did plutonium pit production.

Unfortunately, that facility was never allowed to go into operation. It did similar things for K reactor at Savannah River, the replacement tritium facility done there, and a bunch of other -- they call them vulnerability assessments throughout the DOE complex for uranium and plutonium, and that gets me to the point of where I joined DOL in August of 2001.

Since then, initially, obviously I came in as a health physicist for the Part B program, when they took over Part E, or when Part E implemented, they added staff. We added -- well, the members of our staff include a toxicologist, actually with a PhD, but she also likes to say that she's an occupational epidemiologist, because she has an MPH in that.

We had, sadly passed away, our medical director last -- early last year, and so, we rely now on a -- the OWCP medical director, as we hire a new medical director, and I think the intention is to have that core group sit in OWCP, but to be available to us, and certainly the OWCP medical director is, and has always been, very accessible to us for, you know, questions that we have.

The latter half of the presentation will get into, you know, the CMC contract, but the first part will be the IH, and the industrial hygiene portion, and we have -- and don't let me -- let me just start with the presentation.

I think you have it -- or the talking

points. Actually, I was tempted, since we've actually discussed, I think, most of the things I'm going to discuss through Rachel's and John's and Rhonda's presentations. I was almost tempted to just say let's go straight to questions, but I'm sure I'm not going to get away with that.

So, anyway, we'll just step through this. We can probably step through it a little more quickly. I have a couple things that you may not have seen, and go on from there.

But anyway, as it says in the overview, basically, we're to establish -- the overview provides the basis of what -- you know, the activities for the industrial hygiene, and actual -- actually, the medical reviews encompasses.

To show evidence of potential or plausible exposure of toxic substances, evidence of covered DOE along with evidence of covered DOE contractor, subcontractor or employment under the RECA Act, which is what we've talked about before.

The regulatory requirements there, the first one comes from 20 CFR Part 30.23 -- or 231(d), and it talks about establishing employment-related exposure to a toxic substance.

So, proof of exposure to the toxic substance, that -- that is present, and then it talks about the site exposure matrix -- matrices being used as a basis for determining the presence of the toxins, and the second portion of that is the same citation except that the -- the second -- I'm sorry, 20 CFR 20.231(d)(2) and it talks about essentially, what goes into a review for toxic substance, the nature, frequency and duration of the exposure, evidence of the carcinogenic or pathogenic properties, the opinion as a qualified physician, and other demo -- other evidence that demonstrates the relationship to a particular toxic substance and the claimed illness.

The industrial hygiene process. Currently, we have three industrial -- a certified industrial hygienist. Two are Feds --

are Federal employees, one is a contractor employee, and the CIH's review and evaluate the historical occupational safety and health data, which may or may not include, and often doesn't, specific -- employee specific industrial hygiene monitoring data, along with the application of the specialized knowledge that they bring to -- to the review, relating to the field of industrial hygiene.

The process, and I think we've done this before, the process starts with the claims examiner in the field, obviously, identifying that an exposure issue is present.

The CE basically formulates the question as far as the potential for the exposure, using the site exposure -- exposure matrix, or matrices, the SEM and the case file that frames -- and the information in the case file to frame the question, and there are sub-bullets there including obviously, the things that they -- they need to address, the facility exposure records, the DAR request from DOE, which

may or may not contain a number of things, which we may get into later, and some of the things that show up here.

Obviously, one of the things they're looking for is employment information, but sometimes they will find, not related to the E side, but to the B side, obviously records for dosimetry, which NIOSH also gets, because they do similar requests on their side, for the B side.

Sometimes we're lucky and, especially at Savannah River site and the Rocky Flats Plant, where we get actual documents that reference the employee by name and discuss their -- their -- yes, their employment activities as a maintenance mechanic or a laborer, or whatever it is, or if there are multiple positions, it discusses those, their acts -- their work activities, the types of things they're exposed to, heavy metals or whatever solvents or whatever it is.

That is actually useful, especially since it's specific to the individual.

The occupational health questionnaire,

which it comes from the resource center interviews, again which are conducted either in-person or via the phone.

Those are useful because if you're talking obviously to the worker, because you -- because you're getting their input. Yes, obviously if it's a survivor situation, whether it's the spouse or the children, that information is generally of less value, simply because they were not aware of all the things that their father or mother did at the facility and because of the security restrictions, a lot of those things, you know, they may never have talked about those things at home anyway.

Obviously, the employee records, the verified affidavits of coworkers and other people, the former -- DOE former worker program screening records, if they're available, the NIOSH site profiles, which generally, they don't get into, but do provide some information, since they're created for the B side, occasionally has some information.

Any evidence that the employee submits. Sometimes they do indeed submit supplemental information, you know, to describe their work, or they may submit it after they've had the interview, if they've thought of something else or if the CE perhaps asks for additional information, to expand on something they said in their OHQ, and any other information that they might submit, as it -- concerning toxic exposures at the site.

All this gets rolled into what they call the Statement of Accepted Facts, so, which we'll go through. I'll hand out one in a few minutes and we can just run through that quick, and you'll see what information that contains.

So, that comes in. It's reviewed by -- and we -- we have quite a few of those. It's reviewed by our lead industrial hygienist, to make sure the quality of it is what we need to perform the review that we -- we don't need the -- that the question is properly posed and things like that.

Initially, when the review is performed, the -- they'll -- whoever is doing -- whichever the industrial hygienist that's doing the review, assuming that the question is -- appears to be appropriate for the medical condition and things like that, they'll re-run the SEM, check, you know, to make sure that that's properly done. Often, that is done fairly early, even before it's transmitted to the other IH's to review, and to ensure that we've got the proper toxins that are identified for the medical condition.

MS. LEITON: The SOAF is an area that we constantly are reviewing because that's -- as we've talked about earlier in the week, that's an -- that's something that is reviewed by the IH. It's reviewed by the CMC.

So, we've tailored it. In some ways, we'll tailor it to a referral to an IH versus a referral to a CMC, and it's something that we're currently still looking at and working with our district offices to see if there is like -- if

there is maybe a formulaic process for referring cases to our IH. That would -- because it's still kind of a struggle I think for -- since we have so many different claims examiners, to ensure consistency with this.

So, we're trying more and more every year to make it as consistent as possible, with regard to what we include in the information that goes to the IH, what information that the claims examiners claim, but also, what is attached to it.

So, just wanted to let you know, that's something that's ongoing. I mean, it's been a constant and it's -- but it's -- we do evaluate it regularly to make sure that it's still consistent with what we need to be using it for.

MR. KOTSCH: And even format-wise, I mean you'll see, actually one format, but it's not even the common format that we use when I hand out the example, but we are, I think in a current effort to actually overhaul the OHQ, so

any input you could provide -- yes, would be useful.

I'm sorry, that was the OHQ, but even the SOAF's, you know, we're always looking at those things too.

The SOAF is used obviously, to transmit information for -- it could be for a medical review. Obviously, it's a different one than you'll see today, which is an IH one, they're also used to transmit requests for toxicology reviews or even health physics reviews on the B side.

So, that -- it's a common mechanism that is used for basically all the inputs to the specialists in our group.

So, anyway, basically now that they've redone -- they've done a SEM run again, to check that and talk with the CE if they need to. We have no direct interaction with the claimants. If there were any, that would go through the CE. We tap in sometimes occasionally to the folks that support the SEM contract, some of their

health -- industrial hygienists, if we need some specific information that might have been in SEM, or we think that is in SEM, or should be in SEM.

Obviously, sometimes there are deficiencies in SEM that we can find, that we'll identify and transmit over to them, and sometimes they'll see things that we've missed.

So, anyway, the IH renders an expert opinion in the form of a memorandum, which we'll see a copy of, that addresses the issues as specifically as possible. It addresses the specific question which is posed by the CE, just as for a medical one, you address the specific question -- the CMC addresses the specific question, and employs their specialized training to make findings, based on the evidence in the file, and there you see the things.

You know, you address obviously, the toxic substance -- I'm sorry, toxic substance, employee history, the medical condition and then apply that in a -- hopefully, and communicate -- or I'm sorry, communicate that in a clearly

understandable, written narrative.

So, at this point, I want to do two things. We can hand out the -- Carrie is not here, okay.

We can hand out the copies of the -- it's in that brown folder, just for the examples, and the other thing we can do is have -- do you want to talk now? And to have Doug Pennington talk about our new IH contract.

MR. PENNINGTON: Good morning, everyone. Again, my name is Douglas Pennington. I am the Deputy Director of the Energy Program. I've spoken to you briefly before, and I appreciate the opportunity to do it again.

I am going to give you a very brief, unlike everyone else, I've been with the Energy Program and OWCP since July of 2015. So, I am exceptionally new.

I came here though with 20 years of experience in the insurance industry, as a state insurance regulator, and working for CMS for the last five years, and so, I bring a variety of

experience.

I am here to basically tell you that we're very excited to announce that effective 3:00 p.m. yesterday, we executed a contract with Banda International Group to perform certified industrial hygienist work on our behalf. They will be supporting the three industrial hygienists that Jeff was mentioning previously, our two staff and one contractor.

Their primary role will be supporting all of these referrals that our claims examiners have been making, and so, as previously mentioned in the week, we do currently have a back-log that they will be working towards eliminating as quickly as possible, while also taking on new industrial hygiene referrals.

So, since this contract was literally executed yesterday afternoon, we will be in the process of implementing and training and getting all of that up to date over the next couple of weeks. But we wanted to let you know that this was something we were very excited about.

Banda, just so that you know, brings years of experience in industrial hygiene activities, working for the National Nuclear Security Administration, the Department of Energy, various subcontractors of the Department of Energy, and various private nuclear facilities.

So, these -- this organization is and provides a great deal of industrial hygiene expertise in the nuclear facility world, which is obviously something that excites us greatly. So, it should hopefully reduce the training curve that they're going to have to suffer through.

So, thank you very much, and have a good day.

MR. KOTSCH: Thank you.

MS. LEITON: So, I think the timing of this is really good, in terms of, we're establishing the board and the guidance that you provide, we can also relay to them. I think it's a good starting point. So, I'm going to turn it back over to Jeff.

MR. KOTSCH: Okay, so, what I've handed out has three parts to it. The first two parts are, in essence, I tried to hopefully redact it completely, and maybe over-redacted in some cases, but just to protect the innocent or whatever.

The first two parts that are stapled together are basically what we get -- or in this example, what we received from the CE.

Now, this can -- this is a little bit more than we normally receive, but sometimes a little bit less.

Like I mentioned, when we have Savannah River site cases or Rocky Flats cases, we often get those additional documents about employment -- you know, work activity descriptions, employment descriptions for, you know, if it's a maintenance mechanic or a welder or laborer, or whatever it is, you know, which again, we find useful.

Unfortunately, I was trying to look at this particular file and see if I could find the

medical -- the SOAF that went to the CMC, but I couldn't find it. I don't think I actually -- because of the dates on this thing it was developed yet, but I was trying to -- I was hoping I could get, you know, the complete flow-through, the question that they pose and the SOAF to the CMC, but I failed on that one, but I think ultimately, we can -- yes, we can get copies of those kinds of things.

So, anyway, the first one, which is the two pages is basically the -- it's called the IH referral, but it really, in essence, is what we also call the SOAF. This one has a little different format than many of the other ones you see, which are primarily in the more of a textual format, but it gives you the essence of what -- you know, what's contained in what we call an IH referral or a SOAF or an IH review.

It starts with the demographic information on the employee, medical information, employment information, including, you know, obviously dates of employment, position, work

position.

The number four is the -- the list of toxins, and you'll notice in this one, initially they came up with a long list, a longer list than the three questions -- or the three toxins that they ultimately requested to be reviewed, and in the next package, you'll see that -- but we'll get to that in a second.

I just included the email that they sent to one of our industrial hygienists, on how they whittled that down.

So, they present the three toxins and then basically present the question, and then on the following pages is just the -- it's basically a summary of the employment again, and the right-most column, the potential toxic exposures comes from their assessment in SEM. They put the -- the facility and the labor category and the medical condition, and then they start coming up with conditions.

So, anyway, in the second package, the first thing is just what they submitted, was

actually a couple of emails on how the -- how the longer list of 13 was basically reduced down to, I guess is it three or four? So, I think it's three. So. Sure.

MEMBER WELCH: So, you know, I was saying, well, is this a claims examiner or is this a supervisor or is this a --

MR. KOTSCH: No.

MEMBER WELCH: -- because it's sort of like -- I'd recommend that your IH referral ask for exposure evaluation.

So, just to -- it helps me understand the process.

MR. KOTSCH: This email?

MEMBER WELCH: Yes.

MR. KOTSCH: I'm sorry, yes. This -- the top one is from our industrial hygienist. Actually, our contractor industrial hygienist, back to the -- to the CE.

Yes, the -- well, it has CE -- well, I'm sorry. You know how emails go? They go back to front kind of thing.

So, the --

MEMBER WELCH: Oh, okay.

MR. KOTSCH: -- I guess my redacting --

MEMBER WELCH: Okay.

MR. KOTSCH: -- the top of the second page was essentially the email from the CE to the industrial hygienist, you know, the one with --

MEMBER WELCH: Asking him to narrow down --

MR. KOTSCH: -- asking him to narrow down the 13, the 13 toxins, and then the top one, I guess by over-redacting it, it loses something, and then top one is then the recommendation back from the industrial hygienist, back to the claims examiner.

MEMBER REDLICH: So, somebody is asking -- so someone is -- thinks that it will be helpful to know which of these is the major exposure or what is the --

MR. KOTSCH: Yes.

MEMBER REDLICH: -- question?

MR. KOTSCH: Yes, we have a -- one of the -- just because we get so many of these in, until we had the contractors yesterday, we get so many referrals, we've kind of said, try to limit it to no more than seven for each particular job category.

So, when they come up with 10 or 15 toxins or something, it may be a result of the fact that they didn't properly do the SEM surge, or it may just be a fact that there is potentially, you know, 10 or 15 toxins in there.

So, then we ask them to talk to our industrial hygienists and see if they can whittle it down to some lesser number.

Now, if that's not possible, we will -- it -- we will, you know, run all of those toxins. But if we can reasonably limit it down to the more -- you know, essentially the more important ones, that's the goal.

MEMBER REDLICH: So, as an occupational pulmonary specialist who does mainly diagnosing things, like work-related COPD, having

five specific toxins versus more general information, the type of work processes, we don't diagnosis occupational COPD based on like measurements of phosgene.

The literature is -- that supports the association is for exposures to fumes, dust, vapors, and it's not one specific substance.

So, I'm not sure what that effort accomplishes by making it a shorter list.

MS. LEITON: So, when we refer the -- we used to have -- if you look in the SEM, you'll see this broad list of possible things people could be exposed to, and when we refer it to an IH, what we do is, we explain to the IH, what we believe that the person's potential exposure may have been and ask them to tell us the root and nature of exposure, so that we can then go to the physician with that information in mind.

So, that's the way that when we refer it to an IH, we're asking them to opine on that particular -- this person was in this job. We narrow it down because we're not going to give

them 25 different toxic substances, especially if they've talked to an IH, talked about the job categories, talked about the length of employment, the IH is really -- these other ones are not going to be as relevant.

So, these are the four that you would want to have us focus on. That's the way our referral process works.

CHAIR MARKOWITZ: Dr. Dement?

MEMBER DEMENT: I guess what's missing for me on this process is what the worker actually gave you on their occupational history.

MR. KOTSCH: I'm sorry, this is coming up then.

MEMBER DEMENT: Okay. So, none of these things are in what was said to the -- IH, well, we'll come to that.

MR. KOTSCH: Yes, it's attached. It's just coming up in the -- behind a document. I just happen to put this -- this email in there first.

So, anyway, so, after the email, which

was the first three pages, comes the SEM run, and this is for an electrician, which he -- and that's just a printout of it. That's what the CE submitted in support of the -- and then they submitted another one for a welder. This particular individual, I think welded for like four months of the -- of his employment.

Then where it says -- where it says -- I'm sorry, and then there is one page where it says EEOICPA party DAR requisition. That is -- a lot of times, that -- the first page of the -- whatever the document dump that comes in, and that basically is a report back from DOE as to what they found or couldn't find, and not all those records may be attached to what comes into the IH.

MS. LEITON: If there is anything substandard in the records, it would be included.

MR. KOTSCH: Yes, so, at this point, if there were -- if it was a more recent employment and there was -- and they were able to find monitoring data, say in the 90's or 2000's,

that would be submitted too.

That is a rare event that we don't often see any kind of monitoring data. It comes in with the SOAF.

So, then the page after that --

CHAIR MARKOWITZ: I'm sorry, which page are we on?

MR. KOTSCH: Okay, now, we're at -- I'm sorry, I should have probably numbered these guys. This page? I'm sorry, I should have numbered these pages.

So, we're probably about what? Eight or nine pages in. It's titled 'Energy Employees Occupational Illness Compensation Program, Occupational History Interview', or often called the Occupational Questionnaire.

So, anyway, this is the first page of what's often called the OHQ or the OHI, the occupational history interview, or the questionnaire.

This is -- I know there is an effort in the policy branch, to review this -- to either

review and revise this document too.

This is the information that's basically taken in at the resource center, again, either in person or over the phone.

So, it starts off with basically the name of the employee and whoever the interviewee was. It could be this -- it could be the actual worker or it could be, you know, one of the survivors.

It goes through Section 2, which is a health history, tobacco and alcohol use, non-DOE work history. This is the second page of that.

Section 5 is now the third page, beginning to talk about DOE work employment, and listing out the facility -- I mean, the contractors or subcontractors and the years of employment.

The B section of that, which starts at the bottom is basically the -- if they participated in a former worker screening program.

The next page is Section 5C, the labor

category. There is an extensive list that runs on for -- well, at least two pages, that talks about, you know, the different categories and the labor years of employment.

So, those, as appropriate, are checked, if not, you know, something else is added at the end, if the particular title doesn't show up.

The next page is Section 5D, again, just giving the union affiliation. Section 6, which is the work areas, which is important for us as -- or important for the industrial hygienists.

You'll note at the top it talks about the frequency box and assigns numbers from one to five, five being the most -- basically, daily employment, one being -- essentially doing an activity or presence in that building for a month or less.

Then the box in the lower -- you know, basically lists the facilities, PUREX and PFP and East and West K areas and things like that, the

different buildings, and we'll go on tank farms and can be amended if it's even longer than that.

If there is any additional information that the interviewee wants to add, they add that at the bottom of that section. Section 7 is the PPE, protection -- personal protective equipment. That's used or supplied and those things are checked off accordingly, and then they can describe other things there, or add additional comments, if they want.

Section 8 is the exposure information, and then now they start to get into possible lists of toxins, and you see the ones that are checked -- checked off there, at least as suspected of being potentially exposed.

There is a section on high explosives, which we usually don't see much of, unless we're down at the Pantech or something.

The next section is radiological. Now, we flip the page again, and this section talks about any major accidents or incidents that there might have been in -- and these things are

actually more B related, Part B related, you know, whether they were monitored for radiation exposure or had to do bioassay or something like that.

The middle section discusses plastics and adhesive resins, dusts and fibers are at the bottom, and in the last page of -- is the other toxic substances.

MS. LEITON: So, this was developed, I think I might have mentioned, back when we first got Part D, and we based it off of some of the questionnaires that were used by Department of Energy at the time, when they were doing the Part D assessments.

So, that's why currently, we're looking at it, and you know, rather than asking them, going through a list of toxins, which usually is not a very productive exercise, we're trying to look for ways to modify this form, so that it will actually be more useful and solicit -- elicit the information that we need the most from the claimants, when we're obtaining this

information.

So, again, any input from the Board on that area would probably be helpful.

MR. KOTSCH: So, that -- well, again, that second portion and the first portion, which is the SOAF is, in this case, what was provided by the CE to the industrial hygienist for review.

Then the last three pages, or this last three page stapled document is the -- in essence, the industrial hygiene review.

Again, it states the question, in the middle of the first page, that the CE posed, as far as the potential exposures, cites the -- just summarizes the background, as far as -- I'm sorry, we're on this one?

So, cites the background and summarizes the employment, and then gets into the discussion, essentially toxin by toxin. So, there is three of them there, cement, diesel engine exhaust and then welding fume.

It assigns -- this person was employed primarily as an electrician from '77 through

2015, but I think -- yes, they're intermittent.

So, anyway, the way they do their assessments, obviously Part E side is much more qualitative than the Part B side, where we have at least dosimetry and monitoring data and things like that. So, it's a little more quantitative than the Part E side, where due to the lack of a lot of environmental -- or not environmental, industrial hygiene monitoring, either individual or area, it has, by nature, had to be a little more qualitative.

So, essentially, they assigned at levels of either low, medium or high, very qualitative or essentially, incidental exposure, which I don't think we have on this one, and then at some points and more frequent time, they might say at levels not exceeding regulatory standards, which doesn't mean that there wasn't some exposure, but that that exposure was considered to be controlled by whatever regulations were in place below the PELs and things like that.

The other thing it provides for each

toxin is some estimate or some of what -- what we think the exposure is, or what the industrial hygienist thinks the exposure frequency was, whether it was daily or weekly or monthly, and tries, usually to assign it to some -- some activity that we can glean from the SOAF or the SEM or some other provided information that the -- you know, for work at that site, and then the -- conclusion is just a summary of those things, and then the references are there attached.

Are there any questions on -- this is basically, like I said, the submittal of a - - of a referral to the industrial -- hygienist, and then the review.

CHAIR MARKOWITZ: Mr. Domina?

MEMBER DOMINA: I just got a couple of questions, because I -- I know the guy marked beryllium in the back, and he is an electrician, and it doesn't list as beryllium being in the SEM, because everybody knows that electricians are exposed to beryllium because it's used for non-sparking stuff.

You probably have beryllium on that elevator panel out there, where you push the buttons. We found it all over the place like that, and then the other part, this guy spent time in 222S which all of our high level samples, and there is nasty chemicals and everything in there, and I think -- because I have a lot of energy on this IH stuff, because unless you are at the site or know stuff, what goes on there individually, you have no idea what these people are exposed to, and it's just an injustice, in my opinion, that -- because I've spent 33 years at Hanford, that when you have, it looks like that this SEM was updated November 5th of 2015, and you don't even have beryllium listed for an electrician.

Then like I said, working at 222S, there is a toxic soup of chemicals there each and every day that the chem techs, to me, they should have listed the chem tech category, because those guys crawl all over that building, you know, whether they're fixing hoods, re-running new

equipment.

I mean, it's just -- to me, it's a terrible injustice.

MS. LEITON: So, this is as -- as we tried to talk about the SEM earlier this week, it's not complete. We haven't been able to go to every site and talk to people at all of the 300+ facilities that we have there.

But we're always looking to get ideas for how we might be able to get more site specific information that could be added to the SEM.

CHAIR MARKOWITZ: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: To put it in more scientific terminology, what Mr. Domina said, my question is, have these questions in the questionnaire ever been validated?

In other words, if someone says, "I was exposed to plutonium," what's the probability that they were exposed to plutonium, or more importantly maybe, if they say they were not

exposed to plutonium, what's the probability that they were not exposed to plutonium?

Has that ever been measured in any validation study? Do we know what the -- how well these questions actually reflect the reality of exposure?

MR. KOTSCH: Well, if it were plutonium, it would be a little more straightforward, because there would be bioassay data cited, you know, in that particular example.

But or there would at least be a lot more monitoring data, beyond -- obviously, you would get the other kinds of chemical toxins.

MEMBER FRIEDMAN-JIMENEZ: So, it could be validated against that as opposed to just --

MR. KOTSCH: Right, and you know, again, we don't have a lot of IH sampling data, so it's hard to validate some of those things. Obviously, these things are present. There have been reviews at the sites and things like that, as far as the -- we know the -- may not know -- we know what things are present at the sites, or

least that's what SEM tells us, and it's incorporated into that.

But I don't know, that's a --

MEMBER FRIEDMAN-JIMENEZ: That's not really my question, it's has there ever been any validation done? Do we know how well or how poorly these questions perform, in terms of the actual exposure, either using bioassay data or IH data, or some other measurement as a gold standard?

MR. KOTSCH: Yes, I think the answer to that would be no. Yes, right.

CHAIR MARKOWITZ: Dr. Cassano?

MEMBER CASSANO: I am still a little bit confused on how things get whittled down from the CE to what you see.

I presume that you see all of this. So, let's take COPD off the table for a second, because that's got its own little special problems and I'm not a pulmonologist.

But let's go to something that may be a little bit more straightforward, like lung

cancer, okay.

So, you get this thing from the CE that says asbestos and cement dust or whatever the things are.

Do you actually look through all of this and go, "Gee, SEM has cadmium in here, and the CE didn't ask me to evaluate cadmium."

Do you then -- do you look at that and then say, "I really need to evaluate cadmium," or not?

MR. KOTSCH: Yes, in that case, like I said, we do do the SEM run again, and we will -- if they've missed something that we think that should or not be, but the industrial hygienists look at something and say, "Gee, this is missing," or they're -- like in your case, cadmium or something else is missing, then they usually talk back -- check back with the CE and say, "You know, we think we ought to add this to it," and we'll just either add it to it, or ask them to just add it to the question and resubmit it.

MEMBER CASSANO: Okay.

MR. KOTSCH: But we will address it.

MEMBER CASSANO: So, you do look through all of the evidence?

MR. KOTSCH: Yes.

MEMBER CASSANO: Okay. Thank you.

CHAIR MARKOWITZ: Dr. Dement?

MEMBER DEMENT: Well, I am an industrial hygienist, and frankly, I think a lot of this is pure fantasy.

There are -- these workers faced a very complex situation, and frankly, this probably would be better off to have been triaged to saying this was an electrician there 25 years, has COPD, just don't bother going to the industrial hygienist because this assessment, you know, he's done the best he can, but he basically has very little data to deal with.

So, this sensitivity specificity of this process is just not there.

MS. LEITON: So, the reason we had the industrial hygienists review them is because we

have so very little specificity. We don't have records that are submitted, that are monitoring for these types of toxic substances.

So, our solution was well, since there is -- rather than just say, "Claimant, please provide us with whatever exposure you have and we'll send it to a doctor," and they say, "I don't know what I was exposed to."

We send it to a doctor where they're treating and they don't know. Nobody knows.

So, you know, it would be -- there would be a lot more denials if we didn't have something.

So, we developed this process so we would have something to give to a doctor. Most doctors, as we've talked about earlier this week, aren't willing to just say, "Yes, I believe it's related to their," well, they'll say, "I believe it could be possibly related to their work," but we have very little specificity, and the doctor doesn't know where the rationale is coming from, because there is nothing that we gave the doctor

to actually evaluate with regard to that.

Now, you know, if what you're saying is, if we just tell them that he worked as a welder for, you know, during these periods of times, and we've talked about doing that, and saying, "We're just going to go to the doctor without that," and we've actually consulted with physicians and saying, "If we were to just go to you and say this person worked at Hanford as a welder during this period of time, can you tell us if it was at least as likely as not he was exposed to toxic substances," and related that these exposures to toxic substances, whatever they may be, is related to their job -- related to their condition.

So, that's where the doctors are like, "Well, if you tell me -- you asked me if his job might have been related, sure, maybe," but then we have -- you know, that's where the catch 22 comes in, because you're right, we don't have specifics, and yes, the IH has to base it on what the IH can discover without records, and if we do

have specific records specific to Hanford or K-25 or any of the other facilities, that's great and we can use that, we can send that to the doctor.

But if we don't, then the question is, what do we do? Do we just send it to a doctor without any assessment, and have the doctor hopefully figure it out, especially since you're saying at Hanford, there was specific, you know, very detailed exposures they may have had.

We don't have that information because we don't have, you know, expertise in every single facility, providing us this information.

So, in lieu of that, this is what we've come up with. If we can get a better process or we can get -- you know, we don't have the resources to have experts in every facilities providing us with the type of detail as Mr. Domina talked about over here.

So, that's where the struggle is, and this has been the best -- as you said, the best we can do without that level of specificity.

CHAIR MARKOWITZ: Ms. Vlieger?

MEMBER VLIEGER: I think one of the most telling things on this particular OHQ is under the reported PPE, the worker said that he did not wear respiratory protection. It's not checked, not even any of the qualifiers are checked.

Yet the reported exposures that he gave during the OHQ were not included in the referral to the IH, and that ends up being a problem a number of ways.

So, the veracity of the employer is questioned in their OHQ and it's not even provided to the IH.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: I have a comment on what you were asking, if you allow me to talk about my experience.

I mean, one thing to remember is that Mark, how many special exposure cohorts are there now? Hundred and something?

CHAIR MARKOWITZ: Hundred.

MEMBER WELCH: One hundred fifteen,

and those are circumstances where the Radiation Advisory Board has decided that the radiation data is insufficient to do dose reconstruction.

Radiation data is -- there is probably much more radiation data than there is toxic exposure data. So, I think that gets you like, a real snapshot the kind of information these guys are dealing with.

So, then my question -- I have a question, which is that -- I may be the only one who noticed, the statement of accepted facts has an end date of 1995 in the IH, but you didn't put in the -- what went from the claims examiner to the IH.

I mean, I understand that memo, which is in our book. Then the IH didn't actually use that time frame because he talked about his whole exposure, which is fine with me.

I understand that, but I was interested in -- then that's what made me realize that the actual like transmission memos we have in here, from the claims examiner to the IH,

don't mention that, but he puts it in the statement of accepted facts.

So, there must be some -- one other piece of paper he or she -- piece of paper that we -- that we didn't see.

MR. KOTSCH: Yes, there is a circular that --

MEMBER WELCH: So, they -- so, he knows it automatically?

MR. KOTSCH: Yes.

MEMBER WELCH: Without the --

MR. KOTSCH: Yes.

MEMBER WELCH: -- claims examiner having to say --

MR. KOTSCH: Yes.

MEMBER WELCH: -- limit it to this period of time, okay. Okay, that helps me.

Then my last question was, when you were doing your intro, before you got into our handout, it looked as if in every claim, you're going to need a physician opinion, even if it's -- you know, it could be the treating physician's

opinion, it could be something that comes from the claimant, and if not, does every claim go to a CMC for a written opinion?

MS. LEITON: Not every claim will go to a CMC. It depends on the information we have.

I mean, as I -- I believe -- you know, some cases will be denied, based on what we have, if we don't have enough information.

But if there is any indication, most -- a lot of cases will go to a CMC, if we have an opinion, but it's an opinion that's not very strong or it's clear the doctor just didn't really have the expertise, then we would refer it to a CMC to get more of a clarification or a better opinion or opinion, based on the experience from that doctor.

MEMBER WELCH: And I guess the question -- I had asked this before, but within the system as it currently sits, a claims examiner could make an award without having to send it to the --

MS. LEITON: Yes, absolutely, and we

encourage that when we can. The struggle is, as we discussed earlier in the week, having the appropriate -- you know, the doctor providing us with a report that fits -- that actually is well rationalized when we get them, and we use them whenever we can.

Again, with the circulars that we're trying to use presumptions which would avoid the need to go back to a doctor, because we would be able to say they were here, they have these exposures, we're assuming that their COPD was related, or whatever it may be.

MEMBER WELCH: Okay, thanks.

CHAIR MARKOWITZ: Dr. Silver?

MEMBER SILVER: I've been trying to a draw a line through this that would make it well rationalized, right to the bottom line, where it concludes that his exposures for four months in '77 would have been frequent and ranged from low to moderate levels.

The occupational health questionnaire says he had -- it was in the job classification

of welder for -- from '77 to '79, so, I don't know where the four months comes from.

Then low to moderate, I could make, you know, a work sociology argument that a 19 year old right out of his apprentice program --

MR. KOTSCH: The SOAF -- in between there, we have to assume that the CE communicated, because we don't have that information, you know, communicated with the employer, to somehow refine that to provide the information in the SOAF, which is basically their summary of what --

MEMBER SILVER: But low to moderate, where does that come from?

MR. KOTSCH: That's just based on the judgment of the industrial hygienist.

MEMBER SILVER: Well, show us something. I mean, you demand a whole lot more detail when a physician is putting something in writing, and here it falls far short of the standard that others are held to when they're outside the DOL.

CHAIR MARKOWITZ: Doctor, is there a particular follow up to this, and I would say, in terms of discussing this individual case, to the extent that it reflects larger issues, let's discuss it, otherwise, let's not get it -- it's not a criticism, Dr. Silver, but let's not get into the particulars of this case, only to the extent that it reflects more general issues.

I would note that we've got 50 minutes left and you still have the medical section to go through.

So, I -- we will continue --

MR. KOTSCH: If you'd like, we can take any more questions or I can move onto the medical.

CHAIR MARKOWITZ: Well, how long -- roughly, how long will the medical presentation --

MR. KOTSCH: Shouldn't take very long.

CHAIR MARKOWITZ: Okay, so, let's --

MR. KOTSCH: We've gone through most of this, and you know, it's really -- what I was

going to present was just a summary of, I think what you've already heard over the past two days.

CHAIR MARKOWITZ: Okay.

MR. KOTSCH: So, we could actually --

CHAIR MARKOWITZ: So, this back and forth is extremely valuable to us, so, we'll continue this, but we want to be cognizant of the time.

So, I'm not sure --

MR. KOTSCH: I mean, what I provided in this packet --

CHAIR MARKOWITZ: Okay.

MR. KOTSCH: -- I just provided it more as an example.

Now, obviously, we know have issues with, you know --

CHAIR MARKOWITZ: Okay, Dr. Sokas?

MEMBER SOKAS: So, I have two questions. One is -- and this has to do with the idea of synergy and different exposures.

This person -- well, so, this person checked off that he had, in fact, had urine tests

done for radiologic exposures, and I don't see any -- I don't know whether or not that was pursued and there was some actual data that was collected. I don't know if it would be through DAR or through some other mechanism.

Similarly, the fact that he worked in certain areas where there were concerns about large levels of exposures, were there any -- was there monitoring done? Did DOE have any records of exposures in those areas that would have supported some of this other?

So, the one -- that's one question, and then I have one quick one afterwards.

MR. KOTSCH: Well, as far as the bioassay, we don't normally get those measurements, especially if they're on the radiological side, and they would have been -- they would have been through radionuclides anyway, as far as that goes. Is that what your question was?

MEMBER SOKAS: So, additional data, both radio nuclides and --

MR. KOTSCH: Yes, I'm sorry, yes.

MEMBER SOKAS: -- and so, there isn't a look at whether any of his current exposures could have interacted with potential radiation exposures. So, that is not happening.

MR. KOTSCH: No, I mean, that's a question we would pose to see if you --

MEMBER SOKAS: Okay.

MR. KOTSCH: -- guys could enlighten us more. I know there's not a whole lot of literature on that, other than --

MEMBER SOKAS: Okay.

MR. KOTSCH: -- the obvious one, which is like the radon and smoke and things like that.

MEMBER SOKAS: And then the DAR did not include actual exposure assessment for any of the places that it was --

MR. KOTSCH: No, it was -- no, like I said, we -- we normally do not receive much in the way of industrial hygiene monitoring data.

MEMBER SOKAS: Okay.

MR. KOTSCH: And certainly not in this

case.

MEMBER SOKAS: So, my final question is that conclusion, who has to interpret that conclusion and how would a claimant -- would it be a claims examiner? Would it be a physician, the treating physician gets that conclusion, because it's kind of un-interpretable right now.

MR. KOTSCH: Well, the review goes back to the CE, but then it goes on to the physician.

MEMBER SOKAS: Okay, okay.

MR. KOTSCH: And we've found that the physicians -- you know, sometimes when they don't get an industrial hygiene review, someone will ask, you know, and they'll send it back and say, "Can we please get their input?"

Other people, even if they don't have an industrial hygiene review, think they know about a particular facility and exposure, that they'll go ahead and make their decision based on that.

But for the most part, you know, it's

our policy to try to send them something, at least some estimate of what we --

MEMBER SOKAS: So, can you tell us in this case, how what was interpreted and what happened?

MR. KOTSCH: The final outcome?

MEMBER SOKAS: Yes.

MR. KOTSCH: I don't know that.

MEMBER SOKAS: Okay.

MR. KOTSCH: Because this is fairly recent. Actually, I grabbed a fairly recent one. Like I said, I was looking for -- yes, I was looking for the --

MEMBER SOKAS: Okay.

MR. KOTSCH: -- the SOAF that actually referred it to the medical -- to the physician, so I could show you, you know, that next step of it too, but that hasn't, as far as I could tell, at least from the system --

MS. LEITON: I don't mean to.

MR. KOTSCH: I wasn't done yet.

MS. LEITON: I was just thinking, I

mean, you know, when you break into sub-groups, there is probably more information we can give you, like for examples, the whole package, and then not only -- but just jumping over to the SEM side, we could also give you a demonstration or a -- have a conversation with the contractor who puts together the SEM documents, who can tell you what goes behind it. He can give you a lot more detail than we can.

So, when you break into sub-groups, please let us know if you want that sort of information.

CHAIR MARKOWITZ: Mr. Whitley?

MEMBER WHITLEY: Garry Whitley. A couple of things.

Whoever wrote this article, it says that -- the circular, that says that after 1995, it's not likely that they were -- would be exposed to the chemicals, obviously has never been to the sites, since 1995.

Second of all, what you really told me in this case is that as good as the CM is, it's

almost like the Bible that you all use. You do use a little bit of other data, but it's -- I know it's the best you've got, but it is very incomplete, and obviously about five times in here, you talked about the SEM and what you've got off the SEM.

I mean, we know it's all you've got, but it's not very good.

CHAIR MARKOWITZ: We appreciate going over an average case, rather than a perfect or ideal case. So, others? Dr. Redlich?

MEMBER REDLICH: If the claimant is still alive, is there an opportunity to get on the telephone and for the industrial hygienist to interview and talk to the person?

MS. LEITON: The issue is that we have a lot -- we've got thousands and thousands of claimants.

So, we don't have a CATI like they do at NIOSH, where they have individual interviews with the -- even those aren't with the scientists.

So, it would require a scientist, the two and a half industrial hygienists we have, calling all of these claimants. We just -- we don't have the resources for that at this point.

MEMBER REDLICH: But how much time is spent producing --

MS. LEITON: That's about two hours for the occupational history questionnaire, for the research. There's two to four hours, depending on the complexity --

MEMBER REDLICH: The industrial hygienist spends two to four hours --

MS. LEITON: Okay, so, when you're talking about the questionnaire, when you're talking to the claimant, that takes about two hours for those people to do that.

So, the industrial hygienist doesn't have the time to call every claimant and ask them questions. At this point, our researchers don't allow for it.

MEMBER REDLICH: No, no, but on the ones that took time for the industrial hygienist

to do this analysis and write this report.

MS. LEITON: It varies. I don't know exactly how much time it takes him per case.

MR. KOTSCH: It obviously varies by the -- you know, the number of -- well, if you want to talk about the complexity of SEM run or the facility or the number of toxins, but it could range anywhere from two to four to six hours.

It depends. You know, everything total, you know, the review of the --

MEMBER REDLICH: Well, two to four to six hours, you know, maybe 20 minutes on the telephone might actually be more illuminating.

MR. KOTSCH: I agree. I think that would be the ideal.

MEMBER REDLICH: Yes, it would be.

CHAIR MARKOWITZ: Dr. Boden?

MEMBER REDLICH: And it might save time on the four to six hours spent on the report.

But and then the questionnaire, do

they fill this out on their own or is there help filling it out?

MR. KOTSCH: The resource centers fill it out, and in fact, the --

MEMBER REDLICH: So, this is actually filled out by --

MR. KOTSCH: Essentially there is someone --

CHAIR MARKOWITZ: It's administered -- it's an administered questionnaire.

MEMBER REDLICH: It's administered?

MR. KOTSCH: That doesn't interview.

MEMBER REDLICH: Okay, because there are lots of areas where there is either inconsistency or things are checked like 'yes' exposure to things, but then not filled in like approximate number of years.

CHAIR MARKOWITZ: Sure, and I --

MEMBER REDLICH: So --

CHAIR MARKOWITZ: -- heard an invitation for us to provide input to improve it.

MEMBER REDLICH: Okay, so, I didn't

realize. So, this is a -- okay, so, there's opportunity, since it's self -- not self-administered, okay, thank you. That was -- you answered --

CHAIR MARKOWITZ: Dr. Dement?

MEMBER DEMENT: My questions were reflective of that and --

CHAIR MARKOWITZ: Okay, all right, Dr. Boden?

MEMBER BODEN: So, first of all even though I think we're generally concerned about the quality of the data that you have to work with, I think that we also appreciate that you need to do something more, since the burden is on the claimants to prove their cases, and I think -- I hope that over the next period of time, we can help you make that more effective.

I have a question, actually, either for you or for other people who are still currently on the former worker projects.

Back in 15 or 20 years ago, I was involved in the Nevada Test Site former worker

project, and we did make attempts to use the -- the collective intelligence of the people who we interviewed to draw a picture of what exposures looked like at the various sites that they worked, and that seemed to me, to be a really good idea and something that would be useful for you, and I just don't know if there is a connection there, whether other former worker surveillance projects also did things that were sort of like job exposure --

CHAIR MARKOWITZ: So, I can answer that --

MEMBER BODEN: -- or matrices --

CHAIR MARKOWITZ: Steve Markowitz.

MEMBER BODEN: Yes.

CHAIR MARKOWITZ: All the programs, all the former worker programs at each site did a site profile, and those were published. I mean, they're not published in the literature, but available online, and I'm sure the Department of Labor has been -- you can confirm this, but I believe that you've integrated that into your

work, those site profiles.

MR. KOTSCH: Yes, we'll need to double-check.

CHAIR MARKOWITZ: Okay, okay. Well, anyway, they are readily available from the Department of Energy. Dr. Cassano?

MEMBER CASSANO: Well, I wanted to first -- first of all, congratulations on your new contract, but I was sort of interested in learning what kind of training these contracted industrial hygienists are going to get on the various sites and the different exposures that may have been there.

MR. PENNINGTON: This is Doug Pennington again.

So, most of the contractors actually already have experience with the sites. It's one of the things that was very exciting for us, is that they have experience with virtually all -- according to the contractor, virtually all of the DOE sites.

So, what we're going to predominantly

be working on is our process and training them, as to how -- what we're looking for, how we're looking for it, the mode and modality by which we're getting the information.

But as far as the actual information about the site, obviously, they'll be using the SEM like the rest of us, but we're also hoping that they'll be providing their own information and background and knowledge, to help augment our existing database, as well.

So, does that answer your question?

MEMBER CASSANO: Yes. Thank you.

CHAIR MARKOWITZ: We have time to take a couple last questions, and then we'll move on. Dr. Redlich?

MEMBER REDLICH: I appreciate how challenging this is. Just to follow up on what Leslie Boden said, as far as sort of the collective knowledge.

We have an industrial hygienist who sees patients, when we see them, and the information she provides is qualitative in

nature, but extremely helpful, because she has the knowledge, you know, and if she doesn't, she'll ask someone else with the types of industries and processes, the workers.

So, frequently, her sort of succinct qualitative assessment of the level of exposures and the -- is extremely helpful, and it's based on her -- when you mentioned, your sort of collective knowledge of the industries in the area over time, or what she's able to get.

It seems that that would be a very helpful --

MS. LEITON: Is this -- so, the physician is doing this?

MEMBER REDLICH: There is a --

MS. LEITON: You said an industrial hygienist.

MEMBER REDLICH: -- trained industrial hygienist who also, when we take a history, also takes an occupational history, and you know, is able to better interpret what five years of welding at, you know, this particular site means,

or under what -- or an electrician, you know, the typical electrician at 'x' site did in that time frame, that is extremely helpful.

MR. KOTSCH: I think all our industrial hygienists would love to be able to have the time and the opportunity to do that.

I didn't include an example in here, but sometimes we do actually get, you know, written pages from a particular worker, that will say, in detail, you know, "This is what I did," nitty-gritty-wise, and they will be putting in there, all kinds of toxins and chemicals and work activities that they did, which gives the industrial hygienist a really clear picture of what -- you know, what that actual interview -- interviewee, or you know, the worker was doing, which is unfortunately, a rarer event than the norm, kind of thing.

But it would be akin to that, being able to actually physically speak with them.

CHAIR MARKOWITZ: So, one last question or comment from Dr. Dement, and then

we'll move on, and Board Members, if you could put your name card in a horizontal position, if you don't have a question, that would help.

MEMBER DEMENT: Just one comment --

CHAIR MARKOWITZ: There's just too many questions.

MEMBER DEMENT: -- and it has to do back to this, and I think it's an excellent point.

From an industrial hygiene perspective, the real driver of the exposure is not the job title, it's not necessarily the building that they're doing it in, or that some complex chemicals can be there, or other exposures for the workers.

It's the task that's being done, and so, the more you can have this questionnaire that's being developed, really get down to task and the narrative part is useful, but you can -- you can drive that by having specific tasks that we -- we already know are important for many different trades, and have those as part of it.

But the more you can get to tasks, we found over and over again, that that's a driver of exposure. We get often, based on frequency of doing tasks, generate a qualitative assessment of their -- of the magnitude of life time exposure, that's useful for predicting health effects.

MR. KOTSCH: I think our folks would agree. I mean, one of things with SEM is that it will list the building, it may list the toxins, but there could be a huge building, it could be all kinds of toxins in there, whether the actual worker, in his work activity, encountered those things, you know, is a question and --

MS. LEITON: The revisions to OHQ hopefully can capture that better, and more succinctly and asking the right questions is a huge piece of it, I'm sure.

CHAIR MARKOWITZ: Dr. Friedman-Jimenez has a very short question. Very quickly.

MEMBER FRIEDMAN-JIMENEZ: Just adding onto what Dr. Redlich said.

We also have an industrial hygienist

in our clinic, and I would say that maybe 10 or 20 percent of our patients, where there is a real question about exposure, she will talk to the patient and get more details. It saves a lot of time for the physician, and it really improves diagnosis.

I would say that you probably won't need to do this in the great majority of people, but those for which there is a question, I think it's extremely helpful.

MS. LEITON: Yes, I think it would be fantastic. Maybe we can just get all the physicians to hire industrial hygienists, and we can refer all our cases there. I think that would really help our process.

CHAIR MARKOWITZ: Now, Mr. Kotsch, if you could continue.

MS. LEITON: So, I'd just -- about the CMC process and the medical referral.

Most, if I'm looking at the bullets that we have, I think pretty much, we've covered it, and I just don't want to -- in the interest

of time, I thought I'd just let you know that we talk about the CMC, what they look at. We've talked about this before.

Diagnosis, causation, impairment, sometimes the date of diagnosis, consequential injuries, treatment and clarification.

Those are the main reasons we refer cases, and I think we kind of covered that earlier this week, and you know, sometimes they're essential. We use them when we can't get enough information from the treating. Again, I think we've pretty much covered that.

So, rather than belabor this, I guess we'd rather use the time to take questions about anything regarding our medical reviews, unless you'd rather -- if something particular you'd like us to go over.

CHAIR MARKOWITZ: Well, if you could go over where you -- where, on the screen there, national office reviews and accountability reviews, just describe a little bit of that, how that works.

MR. KOTSCH: Okay. So, then the page after that, which talks about the national office's reviews, there was a review in February of 2015. The CMC and second opinion and medical specialist audit, basically as indicated there, reviewed the quality of the district office inputs to the physicians, and then the quality of the medical review and the opinion.

Again, this was performed by the -- couple of members of the policy -- the larger policy group, and overall, they found that in the essence of things, they found that the results were satisfactory, as far as both the input and the return from the physician.

I know one of the issues that they had with the referrals essentially was, sometimes they were not rigorous, always rigorously approached, you know, where they could have maybe resolved the issue, the CE could have resolved that issue before they sent it to the physician.

So, maybe some of those were -- you know, were sent without complete, but this often

happened, you know, you completely work through the system, and generally, the referrals that come back from the -- not the referrals, the reports that come back from the physicians are in compliance, essentially, with the elements of the contract, as well as when we had our physician here, they were all usually well-written and not a problem.

When they are identified as a problem, they will recycle back through the contractor, to correct the problem.

But a lot of times, or not a lot of times, but sometimes, if there was an issue, it might have been -- maybe a reference wasn't cited -- or references weren't cited, the physician just made the opinion without citing anything, you know, as far as a reference, which we prefer and is required by the contract, at least they try to provide some references, as to why -- you know, why they made the particular decision.

The account -- the annual accountability reviews do like as mentioned in

there, do contain a component, but that just touches on the CM report -- CMC reports and does the case record demonstrate appropriate use of the opinion of the treating physician, CMC or the specialist, meaning the industrial hygienist or the toxicologist.

Again, that was considered to be a satisfactory finding, and I think that's it for that section, right?

MS. LEITON: Questions?

MR. KOTSCH: I'm sorry, I meant, then there is just the -- the performance, essentially, contract performance types reviews that are conducted.

CHAIR MARKOWITZ: So, can I request that we receive a copy of the QTC contract? Not -- again, not interested so much is the administrative or financial aspects, but in the scope of work and the requirements of the people who work under that contract.

MS. LEITON: Yes, I've written that down.

CHAIR MARKOWITZ: And also a copy of the 2015 audit?

MS. LEITON: Yes, I've got that --

CHAIR MARKOWITZ: And that process.

MS. LEITON: -- written down, as well.

CHAIR MARKOWITZ: Okay.

MS. LEITON: We'll get back to you.

PARTICIPANT: And the annual accountability review.

CHAIR MARKOWITZ: And the annual accountability reviews. In essence --

PARTICIPANT: Is that the same thing?

MS. LEITON: No.

CHAIR MARKOWITZ: And any other relevant material that the Board might deem necessary.

MS. LEITON: Sure.

CHAIR MARKOWITZ: And I don't think you can argue with that language. Comments or questions? Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: In your audit, how often did you find that the CMC or the

SECOP got a case established that would have otherwise been denied, because the treating physician wrote a weak letter or said that this may be related, or the probability of causation was judged low?

In what percent of the cases would those denials be overturned and made into established cases by the secondary -- second opinion or CMC?

MS. LEITON: So, we don't have that percentage. We would have -- I don't know if we can even run a report on that. I can see if we can run a report on it.

But I -- you know, we do review these for that, to make sure they're not all denials or all acceptances, you know, like one doctor does a particular thing.

We do find that -- often, we find that the CMC will find in the favor of the claimant, and we'll be able to accept that case.

Again, in terms of percentage, I don't have one, but I would say it's pretty balanced.

In some of the analysis we've done, I don't think it's really high, one way or the other.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: I actually -- I think that audit is available on your website or somehow I've -- the 2015 audit, because I think I saw the -- I had a link to it from somewhere, no?

MS. LEITON: I don't know.

MEMBER WELCH: Maybe it's a prior one then. There is -- I think --

MS. LEITON: There might be something up there.

MEMBER WELCH: So, it's a prior --

MS. LEITON: I'll find out.

MEMBER WELCH: I think I read a prior audit that looked at, you know, did the CMC's form -- do they get the right questions and are they actually answering the questions of the claims examiner?

MS. LEITON: We'll look for it. Thank you.

MEMBER WELCH: But we'll see them

where we see one, and in terms of your question, isn't it the case, Rachel, you're not -- the claims examiners aren't saying, "Well, we're going to deny this, but we'll send it to the CMC." They're saying, "We don't have enough information, so we're sending it to the CMC."

So, that -- so, you can't really answer that question of how many would have been a denial in the absence of the CMC, because they don't complete the case, if they don't have that information.

MS. LEITON: Right. The question we could answer possibly would be after we go to the CMC, how many are accepted.

The problem with that is, it could be other factors. The reason for acceptance could have been, we got more information or something else.

So, it's really hard -- it would be difficult to actually be able to pin it to the actual report that came from a CMC. You know, the other way would be to look at all the CMC

reports and see how many times they said 'yes'.

That would be a pretty daunting task. I'm not sure we could do it, but we'll look at it.

CHAIR MARKOWITZ: So, can I suggest to the Board Members that they look at page six and seven of the handout --

MS. LEITON: Yes, I was just going to --

CHAIR MARKOWITZ: -- because these are --

MS. LEITON: -- go through those if you want to.

CHAIR MARKOWITZ: These are on the -- beginning on the screen, there is a lengthy list of areas in which the Department is requesting our assistance or our input.

I don't think we should necessarily go through all of them. Some of them are quite obvious or self-explaining. This is in the handout.

PARTICIPANT: This is in Tab --

CHAIR MARKOWITZ: I'm sorry.

MS. LEITON: Last two pages of the handout.

CHAIR MARKOWITZ: Section 9.

MS. LEITON: It says advice and assistance.

PARTICIPANT: It should be the last page in the briefing book.

MS. LEITON: Well, the last two pages.

CHAIR MARKOWITZ: So, let me start this off. The issue of presumptions, you have come to agreement on some presumptions, and those aren't right -- statutory -- I mean, those aren't statutory or for that matter, regulatory. Those are the level of policy, okay, and that is an acceptable route in the future, as we think about presumptions.

MS. LEITON: Correct.

CHAIR MARKOWITZ: Okay, the -- one of the items you have here is the matrix of consequential illnesses. That seems like a small task, but it's probably quite large.

Do you have any such matrix at present that you use?

MS. LEITON: We have something in the procedure manual that they refer to, when they're looking at -- is this the -- this is for consequentials?

CHAIR MARKOWITZ: Right, right.

MS. LEITON: Oh, no. I'll show you what we have. I'll point it out.

We have some things, like related to CBD and certain things you can assume if they have CBD, that you would probably be paying for, things like that.

So, I'll provide you with the link to that, to those specific assumptions we've got in there, or at least guidance that we have in there.

CHAIR MARKOWITZ: And have you encountered repeatedly with other common diagnoses?

MS. LEITON: Yes. There are -- yes, we've found that there are other -- the answer is

yes.

CHAIR MARKOWITZ: Okay, thank you.

MS. LEITON: I would like to point out on this advice and assistance, I forgot, we were going to -- we should have -- we were going to walk through it, but I know that we're running short on time, and most of it is self-explanatory.

I think the last one is the big one, and we may have discussed this earlier in the week.

But the circulars, they've been a question or a source of consternation for a while since we've published them, and so, I'd really like the opinion of the Board on the relevance of these circulars.

You know, we do have a program memorandum that explains one of them, I believe it explains the Circular 1506. So, we'll make sure that's available. It's on our website, but I think it's our only program memoranda that talks about why we came up with this, how we came

up with this.

It's my understanding from many conversations we've had, that while it may be true, what we're saying, that there may be circumstances within the DOE complex, where it shouldn't apply or wouldn't apply.

So, you know, we're open to suggestions on both of these circulars, whether -- you know, what we should do with them, whether we should have them there at all, whether they should be revised or whatever.

So, you know, I know it's a big issue and it's something that's important to us, and we're willing to take whatever comments and thoughts you have on it. I know Mr. Whitley mentioned them earlier.

MR. RIOS: Just FYI, I'd be -- the Circular 1506 and program memoranda are in Section 8 of your briefing book.

MS. LEITON: Thank you, and if you -- as you go through these and once you have your committee, if you have questions about what we

meant by this, or if you have follow up, obviously let us know.

CHAIR MARKOWITZ: I'm not sure that actually, the post 1995 circular issues belong, necessarily in this committee, which is looking at the IH medical expertise. It may belong elsewhere, but we'll figure that out.

I have a question actually about the item just above that.

The generalization of prior IH and CMC findings, depending adjudication actions. Are you talking about using your own data, your own decisions, as you go along in the program, in order to be able to feed back into your future decision making? Is that what that refers to?

MR. KOTSCH: Yes, and in fact, that one ties to the bulleted item that's two above it. They're kind of linked, to try to come to some, you know, presumptive type analyses in these kinds of things, if there are cases where we can better group these, you know, by activities.

MS. LEITON: So, we did start looking at trying to look where we've had the most -- you know, either acceptances or looking at -- can we look at this particular type of welder or we can look at this particular type of job category or process or something, and where can we actually make some leaps, and based on the experience in the program, because we have been doing these for 10 years, I don't know -- you know, but evaluating that sort of trend is what this is about.

CHAIR MARKOWITZ: Dr. Welch? Okay.

MR. KOTSCH: Yes, I mean, the bulk of our -- obviously, the bulk of our medical conditions are -- the largest piece are lung-related to COPD's and things like that. The next big chuck are the skin cancers, things like that, and then we get into some of the renal diseases and then it starts to tail off there, as far as which one would come next.

So, things that we can, you know, presumptively associate with those things would

be helpful.

MS. LEITON: This actually goes to one of the questions that was raised earlier this week, about finding the biggest -- the cases that we have the most of, like you were indicating lung diseases.

If we look at lung diseases, how many -- you know, what processes and job categories could go with that? That would be -- we could maybe make assumptions on.

Taking the largest chuck and going down, because that's where the biggest impact would be.

CHAIR MARKOWITZ: Dr. Cassano?

MEMBER CASSANO: Just a comment on presumption, since I have a little bit of experience dealing with them.

Presumptions are always a two-step process. There is a presumption of exposure, based on whether you -- what you did and/or where you worked, and then there is a presumption that if you are exposed to something, it is presumed

that your disease, if you have the proper disease, was caused or aggravated or whatever, by that exposure.

One -- failing one -- failing the first part of that, i.e., there is no presumption of exposure, if you can prove exposure, then the second part of the presumption should still stand, and what I see a lot of is that well, they don't -- they fail the presumption of exposure, so therefore, we cannot treat this as a presumptive disease.

But you need to be able to accept exposure evidence that proves exposure outside of the presumption, to get to the second point. That's the only comment.

CHAIR MARKOWITZ: Dr. Welch? Dr. Welch?

MEMBER WELCH: I'm thinking about the four tasks that we have and in some ways it's -- this is a -- this decision about what's work-related under the law is a process that's not easily divided into this, this, this and this.

So, we have one that's exposure assessment, one that's claims process, one that is the use of the consultants.

I just want to make sure that maybe every group is addressing the question of the causal relationship, because it comes in, in some ways it -- those are -- it's like the -- it's the mission, the goals and the objectives, and we're kind of at the -- the tasks are sort of designed at the objectives level, but I think we have to keep thinking that the goal is to help Department of Labor determine work-relatedness, which requires a diagnosis, exposure, exposure relationship.

Because when I was looking at your -- at these -- some of these tasks that you have here, they don't fall easily into any one particular group.

So, I think rather than each group think -- that's just my suggestion, each group thinking somebody else is dealing with that, I think if there is something that seems to

overlap, everybody should be talking about it, because in the end, we're going to come together and talk about it as a Board, but that's something -- you take that --

CHAIR MARKOWITZ: All right, I agree. I agree and let me just say that when people here discuss causation, what they really mean is aggravation, contribution and causation. That's shorthand.

But the exposure disease connection is -- actually, informs each of the tasks. So, yes, each committee needs to keep that in mind, in terms of addressing that. Dr. Dement?

MEMBER DEMENT: One quick question, and it has to do with -- my question has to do with the last case that we just reviewed.

Just opining about exposure, refer to some specific task that these individuals would have done. For example, electrician, they drill concrete and they test diesel engines.

But those are not on the history form. Did he just know that? Is there someplace -- is

there someplace -- it is in the SEM? Where would you find this?

MR. KOTSCH: Well, some of that I think is just based on the fact that we've been doing these things for 10 years and --

MEMBER DEMENT: Yes, his personal experience.

MR. KOTSCH: Yes, experience as well as, you know, maybe there was information from a -- in the reference that are attached to the -- the review, but also, from -- maybe from some other case, where you had an electrician doing things and they figured it was probably -- you know, they would be doing similar tasks, kind of things.

MEMBER DEMENT: These are legitimate tasks.

MR. KOTSCH: Yes.

MEMBER DEMENT: It's just that there are many, many others.

MR. KOTSCH: Certainly, there is always -- you know, you could -- you know, you

can't always list 10 or 15. It's just a couple. I mean, it would be an attempt to just to try to associate it with some kind of -- you know, something within a -- with a task.

CHAIR MARKOWITZ: So, what -- my question to the Board is, we do need to save a few minutes to form a committee, and the question is, do we need this further discussion or is it better to spend the time asking questions? Do we need further discussion before we form a committee? Just think about it for the moment, while Mr. Turner asks his question.

MEMBER TURNER: I'm an electrician also. I was looking and I didn't see anything on there about PCB's, that he would have come into contact with PCB's quite frequently.

CHAIR MARKOWITZ: Okay.

MS. LEITON: Yes, as I said, I mean, we will look in the SEM for the exposures and any other information we have a particular case file, when we're adjudicating these.

CHAIR MARKOWITZ: So, Mr. Domina, yes.

MEMBER DOMINA: I just have a couple of comments for the Board and for them on that Circular 1505 and 1506, because you look at the time frame that this is -- this was done, and I know money was short at that time, and so, we're in the middle of a contract. The major contractor was Westinghouse.

So, any time you're going to put in a program and say arbitrarily, everything is going to get safer, they're going to ask for a request for equitable adjustment from the Department of Energy, for more money.

So, there should be flow down for that, because maybe they did it on some DOE sites, but I'll guarantee you, they didn't do it at Hanford, and that's just my comment.

CHAIR MARKOWITZ: Okay, okay. So, are there further comments, actually about this particular area, this task or about the committee work here?

So, do we have any volunteers for the committee? Is this -- yes, this is Committee 4D.

Okay, let me just get this down. Let's see. Kirk, Garry, I'm sorry, Mark, okay.

So, aside from here I have George and Mark. Anybody else from this side of the table? Okay, and I've got -- and any volunteers to chair? Okay, okay, great, okay, Rosemary.

Okay, so, we have Rosemary Sokas, Faye Vlieger, Kirk Domina, Garry Whitley, Mark Griffon and George Friedman-Jimenez. Okay, good.

So, we can -- were there any additional points you wanted to make? We have a few minutes, actually. Any additional points in this request for assistance that you wanted to emphasize?

MS. LEITON: No, just that we are -- you know, as you -- we do recognize that this is complicated and there are holes. So, that's why our list is so long, and I do also recognize that this list can cross over your various sections.

But it -- this is the -- our biggest struggle, and it always has been, in terms of how best to make these determinations and so, the

biggest thing I would say is just, I think that the discussions we've had are on point and I think that there are areas that we can really use whatever guidance you can provide us, and we would like to make sure that if you -- as you go along, if you -- you know, we're going to look at this big list of tasks already, but we are willing to have like our SEM administrator, the person who actually looks at the -- does the work of inputting the SEM, come and do -- like a call with you, or something like that, because I think that might be really valuable.

So, if there are resources like that, that we can provide or even maybe discussions with our IH, those are things that we're willing to offer.

So, thank you all very much. I think this week has been really valuable and I think that you've got a long task ahead of you, but we're here to help, and we appreciate again, any guidance that you provide to us, will benefit the program, will help everybody help the claimants

and I think it would be a really good next few years. Thank you.

CHAIR MARKOWITZ: Dr. Sokas?

MEMBER SOKAS: Thank you, and I just wanted to kind of repeat what Dr. Markowitz said, about anything we might possibly want, please give it to us, but specifically, some redacted evaluations by physicians from different areas, in addition to the actual reviews that have been done, would be very helpful, as well as, if you're in the process of revising any of the materials, like the health questionnaire, that any thoughts you have or drafts or things that you would like us to consider, the more explicit you can be with us, the better we can provide thoughts and comments back.

CHAIR MARKOWITZ: So, thank you very much, Mr. Kotsch and Ms. Leiton for this session.

So, we're going to -- we don't have a break for another 12 minutes. So, we're going to turn to the proposed rule changes, particularly since we're going to take an extra long break and

lose 15 minutes to that process.

So, yesterday, just to refresh your memory, we were discussing a particular item number six, we're going to come back to the -- we're going to go through the rest of the proposed changes, discuss them and then we'll come back to the ones that we did yesterday and vote on them.

So, if we could look at number six and this -- we were beginning to discuss this. This is on page 55 of the proposed rule changes.

So, for anybody on the phone, I just want to let you know that the proposed rule changes are available on the website of the -- of this Board, in case you're not able to connect through WebEx. You could also -- you could find it on our website.

So, we're at page 55 and we're looking at Section 30.405, which deals with the issue of the claimant's request to change physicians.

So, let me re-read the draft recommendation, which is the Board notes that the

added language does not clarify what the claimants need to produce, and finds it implausible that claimants can provide medical or factual evidence in support of a request to change physicians.

The Board recommends that claimants be permitted to change physicians without requesting permission from OWCP.

So, I would just -- I guess we're open for comments about this. I have just a -- start off by saying a couple of things.

First of all, we really didn't understand what was behind this proposed change, what problem is being addressed by it, by changing the criteria or the -- or requiring additional clarification for the request for changing physicians.

There is probably a specific problem that this is addressing, and we thought that this was very broad language to solve a specific problem, and that solving that problem, that specific problem would probably be better done by

addressing the specific issues of that problem, rather than creating broad language that would affect all claimants, really.

Secondly, there are many reasons people change physicians and some of them may seem not so important. They don't -- they're not a question of medicine. They're not a question of factual evidence. They're questions of preference. They're questions of being unable to communicate with the doctor or reach the doctor's office or the like, or any number of issues that probably arise fairly frequently in the healthcare system.

So, then to go through a process where you need to request a change of physician seems quite burdensome actually.

So, the draft recommendation says that basically that claimants should be permitted to change without requesting change from OWCP. Other comments? Dr. Boden?

MEMBER BODEN: So, since the pre-change rule actually required requests as well,

and since our recommendation may not be fully accepted, I think that we should also add something to the effect that the change requires evidence that is inappropriate or that's too narrow for changes to be -- for claimants to be required to provide. That's not the right language, but I -- in other words, I think we should add something that says not only that we think that the old rule was not too good, but that the change makes it worse.

CHAIR MARKOWITZ: So, you're essentially saying that if the -- a program retains, as it does, it going to enable -- retains the process of requesting permission to change physicians, then that process should not be made more burdensome?

MEMBER BODEN: Correct.

CHAIR MARKOWITZ: Okay.

MEMBER BODEN: Thank you.

CHAIR MARKOWITZ: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: I would be

in favor of just keeping it simple and saying personal preference is a legitimate reason for changing physicians. The Board recommends that the claimants be permitted to change without requesting permission.

Just say that it's legitimate, right out.

MEMBER CASSANO: So, the language then would be to keep sufficient and then to add a statement that says that personal preference should be considered a sufficient reason for changing treatment physician?

CHAIR MARKOWITZ: So, here we need to -- we need to see the --

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: -- go back to the proposed rule, page 55.

MEMBER REDLICH: In the current era, practices are -- physician's practices are being brought up and moved around and they're group practices and you know, the idea that you're staying with one physician, even if you wanted

to, and so, there is just so much changing of doctors, and it's really hard from when you're outside, to even know if it's a new doctor or a different doctor or just that doctor's partner, who is covering, and I just think you're -- and even -- it isn't even clear.

Like as a referring doctor, I'm trying to find out who referred me the patient, and I can't even figure it out, and so, I mean, there's just a lot more of switching doctors that is out of people's control.

CHAIR MARKOWITZ: Yes, go ahead, Mr. Whitley.

MEMBER WHITLEY: I think it's just like she said about the CE's. They change CE's all the time, not because DOL changes them. They leave, they come, they go, they change.

I think you should be able to change doctors and you should have to notify them you changed it, and that's the end of it.

PARTICIPANT: See, that's what I was thinking.

PARTICIPANT: Right.

CHAIR MARKOWITZ: Right, right, right. So, go ahead, Dr. Welch.

MEMBER WELCH: Well, we were kind of sticking with the concept that we either had to edit the changes or go back to the old language.

So, I think the suggestion, and I can't remember if Tori made it or not, that we eliminate all the changes and then under B, say OWCP will approve the requests if it determines the reasons submitted are sufficient, and personal preference is a sufficient reason.

So, we're kind of editing that spot, that had new language added, which seems like something we can do.

PARTICIPANT: Yes, we're substituting language for --

MEMBER WELCH: For our current language, and then we just reject all the other changes.

CHAIR MARKOWITZ: Can we move that?

MEMBER WELCH: Yes, that -- I think

that may be the best we can do, given the requirement and comment on the current proposed changes.

CHAIR MARKOWITZ: Okay, go ahead, Dr. Boden.

MEMBER BODEN: I think we should probably go down.

I think it's worth our making the statement of principle, that workers should be allowed to change physicians without needing approval, which can also be a long and daunting process.

But then we should say that our recommendation is to reject the change.

CHAIR MARKOWITZ: Dr. Cassano?

MEMBER CASSANO: The only other comment I have is, I'm still a little bit concerned about the use of referrals to multiple specialists or sub-specialists, because there is nothing in here that seems to -- it sounds like you can only have one treating physician, and I'm trying to figure out if we need language that

says, referrals are specifically exclude -- okay, specifically -- or referrals from the treating physician to other -- any other specialists are, you know, allowed, ad libitum almost under the statute. I don't know if we need that.

MEMBER FRIEDMAN-JIMENEZ: Are we supposed to be there at 10:30?

CHAIR MARKOWITZ: Yes, it's 10:27.

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: Yes, in one minute, we'll close. Go ahead.

MEMBER VLIEGER: As a claimant, I can tell you that I have my general practitioner, kind of the umbrella doctor, and then I have the specialists, and to date, I haven't had problems changing when doctors have moved.

But they have required me to justify, you know, that you're changing doctors and why.

So, as a claimant, I can tell you that I have more than one treating physician, depending on the body part involved.

CHAIR MARKOWITZ: We're going to take

a break now. We'll reconvene at 11:00. Thank you.

(Whereupon, the above-entitled matter went off the record at 10:30 a.m. and resumed at 11:00 a.m.)

CHAIR MARKOWITZ: We are going to start again. Greg, can you hear me in the back? Good, thank you. I don't mean to interrupt, much.

Okay, we're reconvening the Board meeting. We're missing a couple of members, but we need to proceed. So, let's continue.

The WebEx, Mr. Rios has an announcement about the status of the WebEx.

MR. RIOS: So, this morning, we had -- we were notified that the link on our website was broken for the WebEx. That has since been repaired, and we also asked this morning that if you're still having trouble, although several people have logged on and confirmed that it's working, but if you're still having trouble, please send us an email to

energyadvisorboard@dol.gov. Thank you.

CHAIR MARKOWITZ: So, if we could bring up the draft recommendation, we were discussing changing the physicians, and I changed the language at the break, I think to reflect the -- so, let's take a look at this. Let me read it.

"Board notes that the added language does not clarify what the claimants need to produce and finds it implausible that claimants can provide medical or factual evidence in support of a request to change physicians."

"The Board recommends that the proposed changes be eliminated and be replaced by the following."

"The claimant may cite personal preference as a valid reason to change physicians."

"The language of 30.405(c) should be changed in accordance with this recommendation."

So, if you look at the -- look at the book on the proposed changes, you'll see that

there's a B and there's a C, and they both have parallel changes that are proposed.

So, additional comments, discussion about this?

Okay, is there -- let me ask -- let me raise a question.

We say that the Board finds it implausible that claimants can provide medical or factual evidence. Sometimes they can, but can routinely provide? Should we add some qualifier like that?

MEMBER CASSANO: We could say that it places an undue burden.

CHAIR MARKOWITZ: No, well, that's different -- that's different thought, actually. Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Maybe someone with more diplomatic skills than I can suggest alternative language, but I would say it's inappropriate to ask for medical and factual evidence to support a request to change physicians, but that obviously, isn't polite to

put in the document.

MEMBER FRIEDMAN-JIMENEZ: Well, whether it's polite or not, there are instances at which it's plausibly appropriate. So, I wouldn't endorse that language. Yes, Dr. Boden?

MEMBER BODEN: So, this does not include something that says that claimants -- that the Board believes that claimants should generally be allowed to change physicians without requesting permission from -- without requesting permission.

CHAIR MARKOWITZ: So, the current regulation requires --

MEMBER BODEN: Yes.

CHAIR MARKOWITZ: -- requesting permission. All right, so that sentiment then is -- doesn't address the change. It addresses the current regulation --

MEMBER BODEN: Yes.

CHAIR MARKOWITZ: -- and I see your point. So, at the end of the first sentence, we could follow that with, this is our rationale

part, so to speak. We could add another sentence, which would say what?

MEMBER BODEN: The Board believes that claimants should be able --

CHAIR MARKOWITZ: I'm sorry, I'm sorry. Can we just go up to the previous paragraph, and where it says -- you know, right there, right, and --

MEMBER BODEN: The Board believes that claimants should be able to change physicians without approval or -- period? Without approval of OWCP or whatever. Just --

CHAIR MARKOWITZ: Okay, so other comments? So, we have a motion?

MEMBER BODEN: Yes, could I suggest that that be the first sentence because the second sentence is the one that the recommended change follows from.

CHAIR MARKOWITZ: Sure. Sure, if we could move that up.

MEMBER FRIEDMAN-JIMENEZ: I move that we accept this language.

CHAIR MARKOWITZ: Second? Okay, so, discussion. Dr. Silver?

MEMBER SILVER: We may not get exactly what we want, and I remember in our conference call, one of the doctors had an impassioned argument about changing oncologists on a timely basis. Was that Dr. Cassano or Dr. Sokas, and I am just wondering if a sentence underlying the urgency of that specific issue would satisfy that participant's concern, but if she's not here --

CHAIR MARKOWITZ: Well, let me say that if they really accepted our recommendation that the personal preference was -- then it should be a very expedited procedure.

MEMBER SILVER: Right.

CHAIR MARKOWITZ: And there shouldn't be delays because there is very little to look, once that request is recorded.

MEMBER SILVER: I agree, but like I said, we may not get exactly what we want, and then there is this exigent case that someone felt impassioned about.

CHAIR MARKOWITZ: Okay, so you want to propose a friendly amendment, in terms of particular language addressing this point?

MEMBER CASSANO: There was some language that was in our group, about the fact that if it were not approved within two weeks, that it would be automatic -- that it's automatically approved.

MEMBER SILVER: And that is -- I'll drop it, if the person who was the motive force isn't here. So.

MEMBER BODEN: Yes, I think we should keep it in.

CHAIR MARKOWITZ: Further discussion? Yes?

MEMBER VLIEGER: You all may not be aware of the time limits that DOL allows themselves to answer letters in. Thirty days is considered a timely response. That's pretty much a standard under the program, 30 days is considered a timely response.

CHAIR MARKOWITZ: Other comments? So,

we're going to take a vote. Do we need to read this again for -- prior to taking a vote?

Okay, so, all those in favor of this motion? Okay, all those opposed? Any abstentions?

Okay, so, all members present voted in favor. There were 13 members present. Okay, we could move to the next proposed change.

Okay, so, here we're referring to, I think it's page 30. It's Section 30.206(a). It's page 31 at the top, and Dr. Cassano, if you could just read.

MEMBER CASSANO: This is how a claimant -- how a claimant proves that the employee was a covered employee exposed to beryllium dust particles or vapors in their performance of duties?

Sub-paragraph A, proof of employment, strike out 'at' or physical presence at a DOE facility, or a -- and strike -- they struck out 'facility owned, operated or occupied by beryllium vendor'.

So, it now reads, "Proof of employment or physical presence at a DOE facility or a beryllium vendor facility, as defined in 30.5(j), and we should probably go back to that.

CHAIR MARKOWITZ: So, the 30 -- I just -- I have it in front of me.

So, on page 14, 30.5(j) recommends that new language that says, "Beryllium vendor facility means a facility owned and operated by a beryllium vendor."

Okay, so, let's turn to the subcommittees for their committee comments on this proposed change. Mark?

MEMBER GRIFFON: Yes, our subcommittee basically said that we proposed the broader definition of owned, operated or occupied by, as the beryllium vendor.

CHAIR MARKOWITZ: Laurie?

MEMBER WELCH: We didn't really understand the impact of the change, although I think we did hear in the course of the meeting today, that it would eliminate a lot of

facilities. So, I would defer to Mark's group, who had more information.

CHAIR MARKOWITZ: Dr. Silver?

MEMBER SILVER: Ditto what Dr. Welch just said. That was our sentiment.

CHAIR MARKOWITZ: So, any comments from the Board members?

So, the draft recommendation reads, "The Board is uncertain about the reason for the apparent narrowing of beryllium-using sites and is concerned that the change might unnecessarily limit benefits to beryllium exposed workers who should be eligible for the program." Comments?

So, I would take no we're not -- unlike some of our other recommendations we're talking about, we're not proposing language, and we're not really -- we don't really make regulations.

But in this case, we're expressing concern and pointing -- making a particular point, rather than suggesting particular language, but that seems appropriate to me.

So, are there any other comments? So, I need a motion. Dr. Boden? Okay, second? Dr. Cassano.

So, any other discussion? Okay, so, the motion I just read it, so I don't think I need to re-read it, but all those in favor, if you could raise your hand, and all those opposed? Any abstentions?

So, the 13 present members of the Board vote in favor of this recommendation.

We're going to move to the next proposed change, which is on page 64. I'm sorry, 65, and this is Section 30.509(c) and --

MEMBER CASSANO: Sorry. This is about what addition of the AMA guidance was used.

OWCP only makes determinations based on rationalized medical evidence in the case file that is sufficiently detailed and meets the various requirements for the many different types of determinations possible under, strike out 'AMA guides' and replace that with 'fifth edition of the American Medical Association's guides to the

evaluation of permanent impairment (AMA's guides)'.

Therefore, the -- well, I don't need to read this. Therefore, the OWCP will only make a determination for a deceased covered Part E employee to the medical evidence or records, to satisfy the pertinent requirements of the AMA guides in Sub-Part J and its parts.

CHAIR MARKOWITZ: Excellent. Thank you. So, essentially, it's specifying the fifth edition of the guides, and the committee comments, subcommittee comments? Dr. Silver?

MEMBER SILVER: Reflecting Les Boden's amendment after the conference call, codifying the fifth edition in the regulation may reflect -- may reduce OWCP's flexibility in using future editions of the AMA guides.

The citation to the specific edition of the guides belongs in the procedures manual, and that will obviate the need for future Federal Register notices for updates.

CHAIR MARKOWITZ: Mr. Griffon?

MEMBER GRIFFON: Yes, our group did not comment on this section. We left it to others.

CHAIR MARKOWITZ: Okay, and Dr. Welch.

MEMBER WELCH: I think the sixth edition is so detrimental to workers, that I'd rather they be stuck with the fifth forever, than have someone argue in court they should be using the sixth. So, I like this language.

CHAIR MARKOWITZ: All right.

MEMBER WELCH: The fifth edition, as you might know, Les, pretty much cuts impairment in half for the same worker presenting evaluated under the fifth and sixth.

So, maybe eventually there will be a seventh but -- so, that was -- the comment from our group was, we like this change.

CHAIR MARKOWITZ: Dr. Cassano?

MEMBER CASSANO: The only -- and I recognize the whole issue with the sixth edition and how draconian it sort of is.

The only reason I made that recommendation was that if you really want to

move to the seventh or the eighth or the ninth edition, it's going to take you about four years to get there because it requires the regulatory change and all of that stuff.

So, if they can set some precedent in procedure that says -- stipulates fifth edition, but that the regulation says the -- the current issued approved by DOL, the current edition of AMA guides approved DOL, that will allow them to move to a future edition without having to go through the rigmarole of a Federal Register regulatory change.

That was the only point that I was making.

CHAIR MARKOWITZ: Dr. Redlich? No? Okay, any other comments?

So, the draft recommendation is the Board notes that codifying fifth edition in a regulation may reduce OWCP's flexibility in using future editions of AMA guides, citation to a specific edition of the AMA guides in the DEEOIC procedures manual will obviate the need for new

regulations to adopt updated guides.

So, comments? Revisions?

MEMBER BODEN: Just to clarify. I think we have two different positions here, right?

So, we -- one position says we shouldn't change --

CHAIR MARKOWITZ: Right.

MEMBER BODEN: -- and the other position says that we should.

So, we need to -- my comment is, I think that we need to figure it out, and just Laura, for you -- my comment that made a change, the original one said something about -- that sounded like we approved of the AMA guides, and all of this. I don't --

CHAIR MARKOWITZ: All right.

MEMBER WELCH: Well, I mean, I think it's not a medical question. It's a strategic question, and I think this statement is fine, and then the agency can decide whether they want it in the regulation or the procedure.

So, I mean, I'm fine with this, even though it's not exactly what I would have said, because I think it's a -- it's pointing out that there is a decision to be made. It doesn't say they shouldn't do it. It says may reduce their flexibility. That's fine with me.

So, I'd move to accept this language.

CHAIR MARKOWITZ: By the way, this is just draft language. This can be changed by -- very easily. Other comments? Ms. Vlieger?

MEMBER VLIEGER: My only concern would be in a less favorable client, if we leave it open to interpretation with the procedure, a procedure is more easily changed than a regulation.

So, I would rather have the stop-gap of having an approval process, than allowing a procedural change to readily change something less favorable work environment.

MEMBER CASSANO: And I'm not married to my position, so, I can -- I will not be hurt if we just decide to trash it.

CHAIR MARKOWITZ: Ms. Vlieger, are you saying that you would prefer to see it fixed in regulation, the use of the fifth guide?

MEMBER VLIEGER: That's correct. I would prefer to see it fixed and then that -- that's a back-stop for the workers, I think.

CHAIR MARKOWITZ: So, what should we do in terms of the language? Dr. Boden?

MEMBER BODEN: Fifth? So, I would propose that we reject the -- the suggested change.

So, in other words, that we not offer -- reject the one that's on the board, which says that they shouldn't specify the fifth edition, and let the -- and leave it as is, right.

CHAIR MARKOWITZ: So, just to clarify, leave as is the proposed changes?

PARTICIPANT: Yes.

CHAIR MARKOWITZ: In other words to essentially --

MEMBER BODEN: To not make --

CHAIR MARKOWITZ: To make the --

MEMBER BODEN: The Board make --

CHAIR MARKOWITZ: Make no recommendation about these --

MEMBER BODEN: Correct, yes.

CHAIR MARKOWITZ: -- changes. Comments? So, is there a -- so, we don't need to -- I guess we would just strike this as a recommendation. So, there is no new language for us to look at.

So, if someone wants to make a motion to that effect. Okay, Dr. Cassano makes the motion and Dr. Boden seconds it.

So, discussion, and what's in play here now is for us essentially, not to comment on this proposed change.

No discussion? Let's take a vote. All those in favor of --

PARTICIPANT: No comment.

CHAIR MARKOWITZ: Actually, there is no -- there is no vote, because we're choosing not to make a recommendation, not make a statement, so there is no vote needed.

But I would -- the sense of the group seems to be in favor of this lack of recommendation.

Okay, let's move to the next one, okay. This is regarding wage loss benefits, and I neglected to have done what Mr. Rios asked me, which is to cite where in the Board's charter, our address of these proposed changes falls within our scope, and the wage loss benefit really -- we're going to address, has to do with really -- for the most part, the Cartier around causation, and assembling the evidence and making the link between exposure and disease, which falls within -- certainly, within A and B of our scope.

So, let's move to -- it's 30.806. Okay, it's page 96.

The question is whether this is -- it's a lot of new language here, it's a whole -- it's a page really of new language, and the question is whether we actually need to read this out loud, in order to proceed. What's that, Mr.

Griffon?

MEMBER GRIFFON: Aren't we just talking about the 806 at the bottom of the page?

CHAIR MARKOWITZ: Right here, right?

MEMBER GRIFFON: Eight-zero-five is the one.

CHAIR MARKOWITZ: Okay, so, let's read 806, and we'll just confirm.

MEMBER CASSANO: Okay, 806. What kind of medical evidence must the claimant submit to prove that he or she lost wages due to covered illness?

OWCP requires -- and this is all new language, that is replacing it.

OWCP requires the submission of rationalized medical evidence, of submission of probative value -- of sufficient probative value to convince the fact finder that the covered Part E employee experienced a loss of -- in wages, in his or her trigger month, due to a covered illness.

It asks medical evidence based on a

physician's fully explained and reasoned decision, see Section 30.805(a)(3).

A loss in wages in the trigger month due solely to non-covered illness matters, such as a reduction in force or voluntary retirement is not proof of compensable wage loss under Part E.

CHAIR MARKOWITZ: So, if you could also read 30.805(a)(3).

MEMBER CASSANO: "What are the criteria for eligibility for wage loss benefits under Part E?"

A Sub-3 says, "The wage loss in the trigger month was caused by the covered Part E employee's covered -- was covered -- Part E employee's covered illness, i.e., that he or she would have continued to earn wages in the trigger month from that employment but for the covered illness."

CHAIR MARKOWITZ: Okay, thank you. So, comments from the committees? Mr. Griffon?

MEMBER GRIFFON: Yes, I said that our

committee was okay with that language. But I think it also -- I said that our committee was okay with the changed language, but also, prior to this, we had commented on these questions of probative evidence, in our previous comments. So, I don't think we repeated those concerns.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: Our committee thought it was important that the concept that the covered illness could contribute to retirement, as well as cause the retirement. There could be multiple factors, and there needs to be some assessment of the role of the covered illness, and I actually think our comments are well covered in what you've proposed there.

CHAIR MARKOWITZ: Dr. Silver?

MEMBER SILVER: We too ran out of juice, but in written comments, subcommittee members questioned what rationalized means, suggested a simplification that OWCP require submission of medical evidence based on a physician's fully explained and reasoned

decision, etcetera, etcetera, and also that the work 'convince' is a bad word. It implies the fact finder a priori does not believe that there is a sufficient disability to incur wage loss.

CHAIR MARKOWITZ: So, comments from Board members? Dr. Cassano?

MEMBER CASSANO: Yes, I think the idea about convince was basically to say instead of convince, but of sufficient probative value for the fact finder to determine that, rather than the term 'convince'.

CHAIR MARKOWITZ: Okay, other comments? So, hold that language for the moment, while we read the draft recommendation.

"The Board recommends that wage loss should be compensated if the covered illness contributed to retirement."

For example, a worker was told work was no longer available, due to his covered illness and that the worker took early retirement.

The Board recommends that the phrases,

"Was caused," and "But for," in Sections 30.805(a)(3) be replaced by the spirit of the standard of "aggravated, contributed to or caused", that appears in the EEOIC Act.

That is, if the covered illness aggravated, contributed to or caused the health problems associated with wage loss in the trigger month, then the wage loss should qualify for benefits.

The Board recommends that the phrase that contains the term "rationalized" in line three of 30.806 be simplified to, "OWCP requires submissions of medical evidence based on a physician's fully explained and reasoned decision."

I'm not sure that's simplification, but it's a brief re-statement. So, are there comments? Dr. Cassano?

MEMBER CASSANO: I would just add -- well, I don't know -- I'm okay with that, but I would make an amendment to that, to actually recommend changing the language of 'convince' to

what I said before.

CHAIR MARKOWITZ: I'm sorry? So, can you then provide us some language --

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: -- that we can use and --

MEMBER CASSANO: So, the language would be, OWCP requires the submission of rationale or reasoned medical evidence, however you want to say that, of sufficient probative for the fact finder to determine that the covered Part E employee's experience and loss in wages with his or her true -- trigger month due to the covered illness.

So, replace 'convince', 'to convince', to 'convince the fact finder to probative value for the fact finder to determine 'whether'.

CHAIR MARKOWITZ: Okay, so, Kevin if --

MEMBER CASSANO: No.

CHAIR MARKOWITZ: No, yes, you needed to specify to Kevin, exactly what the language

is.

MEMBER CASSANO: Okay.

CHAIR MARKOWITZ: So?

MEMBER CASSANO: Okay, so, OWCP requires submission of reasonable and medical evidence based -- no, it's above that.

PARTICIPANT: Why don't you make it a fourth paragraph?

MEMBER CASSANO: No, it's the first part of that paragraph.

OWCP requires the submission of reasoned medical evidence of sufficient probative value --

PARTICIPANT: Direct him on the page, where you want him to put the cursor.

MEMBER CASSANO: Okay, the cursor goes under -- to be simplified -- see, it doesn't work with this new simplified language.

CHAIR MARKOWITZ: So, do you want to just replace the word 'convinced' with 'determined', essentially?

MEMBER CASSANO: Value to -- value for

the fact finder to determine, is what I want, to have -- in that first line.

But then it conflicts with what that change is on the top.

CHAIR MARKOWITZ: Well, if the significance of the proposed change is really just to address the word 'convinced', convince --

MEMBER CASSANO: Right.

CHAIR MARKOWITZ: -- and change it to determined -- soften it to 'determined' then --

MEMBER CASSANO: But then it's in the wrong spot.

CHAIR MARKOWITZ: Well, then we don't have to probably worry about it, if it -- if it being in the wrong spot doesn't affect the meaning, then we don't have to worry about that. We can just say -- because we're not rewriting the regulation -- proposed changes, right? So, we're just making proposals.

MEMBER CASSANO: Okay.

CHAIR MARKOWITZ: So, we can simply say that the Board recommends that the word

'convince' be --

MEMBER CASSANO: Changed.

CHAIR MARKOWITZ: -- replaced by the word 'determine' or whatever word you're -- so, if we could just add that right there, that the Board recommends. Yes, that's correct.

So, the word 'convince'. The word 'determine'.

PARTICIPANT: These are past tense.

CHAIR MARKOWITZ: Right, right.

PARTICIPANT: Convinced and determined.

MEMBER CASSANO: Or allow the fact finder to determine. So, replace 'convince' with 'allow the fact finder to determine', that's fine.

CHAIR MARKOWITZ: Yes. Okay, so, before 'determine', just move it back -- just say 'allow' --

MEMBER CASSANO: Allow the fact finder to determine.

CHAIR MARKOWITZ: Right. Right, in

the quotes, right, allow.

MEMBER CASSANO: I'm getting lost. Allow the fact finder to determine.

MEMBER BODEN: So, you've got this -- so, once you're done with that, if you go back to where it says 'convince'.

MEMBER CASSANO: It says 'convince the fact finder'.

MEMBER BODEN: You want to say 'convince the fact finder'.

MEMBER CASSANO: Convince the fact finder. Thank you.

MEMBER CASSANO: So, if we -- if we go two paragraphs up to where the -- it says 'the spirit of the standard', the spirit is not the right word. Well, we could say intent. That's better than spirit, but it's --

MEMBER CASSANO: The language --

CHAIR MARKOWITZ: -- the aggravated, contributed cause is not the intent. That's the --

MEMBER CASSANO: That's the language.

CHAIR MARKOWITZ: That's the language. Right? Right. So, we could say by the language of the --

PARTICIPANT: Yes.

CHAIR MARKOWITZ: Now --

PARTICIPANT: This one right here?

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: That's correct. Okay, then the one line up, if you can just go one line up, go to the left and remove DOL. Comments?

I think -- someone want to read this one last time, as the proposal then on this? Is there a motion?

MEMBER SILVER: I'll make it, but after one minor editing change.

The very last line, replace with the phrase.

CHAIR MARKOWITZ: Yes, yes, okay.

MEMBER SILVER: I make a motion that we accept this -- okay.

CHAIR MARKOWITZ: Okay.

MEMBER SILVER: Ready? Make a motion that we put forward this language in our comments.

CHAIR MARKOWITZ: Second? So, can someone read this, so that we hear it once again?

MEMBER CASSANO: Designated reader here. "The Board recommends that wage loss should be compensated if covered illness contributed to the retirement, e.g., a worker was told work was no longer available due to his covered illness and that the worker took early retirement."

"The Board recommends that the phrases 'was caused' and 'but for' in Section 3.805(a)(3) be replaced by the language of the standard of aggravated, contributed to or caused, that appears in the EEOIC Act."

"That is if the covered illness aggravated, contributed or caused the health problems associated with wage loss in the trigger month, then the wage loss should qualify for benefits."

"The Board recommends that the phrase contains the term 'rationalized' in line three of 30.806, be simplified to OWCP requires submission of medical evidence based on the physician's fully explained and reasoned decision of sufficient probative value, to convince the -- to -- of sufficient probative value to allow the fact finder to determine," and what that eliminates in there is that parenthetical statement that says, "Due to a covered illness, i.e., medical," blah, blah, blah, blah.

MEMBER BODEN: So, the word 'simplified' should be just changed?

MEMBER CASSANO: Right.

MEMBER BODEN: It's not simplified?

MEMBER CASSANO: Well, yes, it is simplified because you -- you're repeating it and then you have a parenthetical phrase, which comes out.

CHAIR MARKOWITZ: Okay, so, you read --

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: -- the proposal, the motion, right? Okay, comments? Dr. Silver?

MEMBER SILVER: The second paragraph, sorry to be the English teacher, aggravated, contributed to or caused.

MEMBER CASSANO: Okay.

CHAIR MARKOWITZ: I'm sorry, it says --

PARTICIPANT: It should say 'contributed to' because the act actually says 'contributed to'.

MEMBER CASSANO: It is -- says 'contributed to'.

CHAIR MARKOWITZ: I see, it's in the second line.

PARTICIPANT: Below that, below it.

CHAIR MARKOWITZ: All right.

MEMBER CASSANO: Okay, okay. I think the read the 'to', which was the problem.

CHAIR MARKOWITZ: Okay, so, is there a proposal to change the word, in the third paragraph, change the word 'simplified' to

'changed'?

PARTICIPANT: I think it's just clearer that way.

CHAIR MARKOWITZ: I think it is an improvement.

MEMBER CASSANO: To change it.

CHAIR MARKOWITZ: Yes, so, if you can just change it. Okay, other comments or discussion?

MEMBER BODEN: I move that we accept this.

CHAIR MARKOWITZ: Okay, so, we're going to vote now. All those in favor of this recommendation, raise your hand. All those opposed?

Okay, the 14 -- there are 14 members present and all voted in favor of the recommendation.

Next we go to page 17. We are making good progress, and this relates to Section 30.5(e)(e) under definitions, and the relevance of our attention to this proposed change, in

relation to our scope is that this defines -- this proposed change relates to who a physician is, what physicians would be included in the Act, and this -- in relation, that are providing medical guidance, which is Task B, and Task D, input into the use of medical experts, makes this relevant to our discussion.

So, do you want to read, Dr. Cassano, the proposed change?

MEMBER CASSANO: The proposed charge basically says changes -- includes, "Physicians," 'includes' was struck and 'means' was added.

"Surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practices defined by state law."

Then 'the' and then the term 'physician includes', and then it -- so, it says, "The services of chiropractors, only to the extent that their reimbursable services," that was all struck, "May be reimbursed to limit --

limited treatment consisting of manual manipulation of the spine to correct the subluxation as demonstrated by x-ray to exist."

Yes, I mean, it's hard to try to read something --

CHAIR MARKOWITZ: That's very nice. Very nice.

MEMBER CASSANO: Thank you.

CHAIR MARKOWITZ: Reports from the committees? Dr. Welch?

MEMBER WELCH: We thought this definition of physician was way too narrow and needs to be expanded. It excludes most of the physicians that would be used as consulting medical providers or treating physicians for these patients.

CHAIR MARKOWITZ: Mr. Griffon?

MEMBER GRIFFON: We agree with exactly with those comments. We said it's -- should be more inclusive of the -- those that treat patients.

CHAIR MARKOWITZ: Dr. Silver?

MEMBER SILVER: We thought it should be restored, so the definition reads, "Physician includes surgeons." Medical doctors are understood to be physicians. Later, someone else raised the issue of psychiatrist, but that change would satisfy the concern.

Then defining this non-MD provider scope of practice under state law could mean that each examiner will have to look of the scope of practice in each state, in which the claimant is being treated, said one of our doctors.

CHAIR MARKOWITZ: Comments from Board members? Okay, so, let me read the draft recommendation.

"The Board recommends that 'includes' should be restored to the definition," and read, "Physicians -- physician includes surgeons, etcetera," in order to be more inclusive of physicians who typically treat patients with work related illnesses (for example family practice physicians, internists, etcetera).

So, actually what this means is that

we are proposing that they not use the new language, and -- right, okay.

MEMBER CASSANO: In the first part.

CHAIR MARKOWITZ: In the first part, yes. The second part wasn't address by the draft recommendation. I don't know whether there is any desire to address that, but any comments? Dr. Welch?

MEMBER WELCH: You know, it's not necessarily our call, but the English in that sentence is -- it needs some editing.

I mean, I know what the intent is, intent is to limit the payment to chiropractors to a specific service, but I'm just sort of pointing that out for the record, and I'm sure DOL can fix that, when they do the final.

CHAIR MARKOWITZ: Thank you. Other comments? Okay, so, let's take a vote on this. I don't think there's any need to re-read this.

All those in favor of this -- of our recommendation, raise your hand. All those opposed? Any abstentions?

So, there are 14 members of the Board present, all of whom vote in favor of this recommendation.

So, let's move to the next one, which is Item Number 11, which is on page 16, and 16 is part of -- of the definitions 30.5(x)(2)(3). This is the -- where a definition of who a DOE contractor employee is.

MEMBER CASSANO: Read? "A civilian employee of a state or federal government agency, if the agency employing that individual is found to have entered into a contract with DOE for the provision of one or more services it was not statutorily obligated to perform, and DOE compensated the agency for those services."

"The delivery or removal of goods from the premises of a DOE facility does not constitute a service for the purpose of determining a worker's coverage under this paragraph."

CHAIR MARKOWITZ: Okay. So, comments from the various subcommittees? Mr. Griffon?

MEMBER GRIFFON: Yes, we basically were concerned about this being too restrictive, that some -- I think the intent was probably to restrict vendors delivering Coke, I've heard that used before.

But this is overly restrictive of many other delivery of goods or services -- you know, goods to the sites, including construction and maintenance type work, and the areas where they might be delivering to.

We did say, in our subcommittee, we said that the delivery or removal of goods from the premises of the DOE facility does not constitute a service, should be augmented with the following phrase, "Unless a worker can provide factual evidence of exposure to hazardous substances while on the site."

I'm not sure -- reflecting on that, I'm not sure I agree with our subcommittee language, but that's what we said in the subcommittee. So.

CHAIR MARKOWITZ: All right, that's

good.

MEMBER GRIFFON: I think that puts the pressure on the worker to -- you know, to prove that they were delivering to an area with hazardous substances, and I think that wasn't necessarily our intent.

CHAIR MARKOWITZ: Okay.

MEMBER GRIFFON: But that's what we said.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: Yes, I think our committee came up with something similar, which was if the -- if delivery of services or removing the service entails exposure to a hazardous substance, then they should be covered.

MEMBER GRIFFON: Right.

MEMBER WELCH: But I don't --

MEMBER GRIFFON: But it shouldn't mean the worker --

MEMBER WELCH: But and so, that could be dealt with by eliminating that sentence because everybody has to demonstrate that

exposure to hazardous substance and this is a presumption that delivery doesn't include that, and we don't agree with that.

So, I think the recommendation would be -- well, we'll see what Steve had proposed, but we might just recommend deleting that sentence.

CHAIR MARKOWITZ: Okay, Dr. Fischer -- Silver?

MEMBER SILVER: We concur and underline, as someone pointed out, removal tasks are often among the most dangerous, removing hazardous materials.

CHAIR MARKOWITZ: Okay, so, comments from the Board members? Yes, Dr. Boden?

MEMBER BODEN: Does the Board want to recommend that this change be struck or and so, this is -- looks like a preamble to a suggested change.

So, the Board believes that workers who were exposed to hazardous materials, blah, blah, blah, should be included and therefore, the

sentence, "The delivery or removal of goods," blah, blah, blah should be struck from the changes, right?

Therefore, the Board recommends that that sentence be struck from the changes.

CHAIR MARKOWITZ: Comments?

MEMBER CASSANO: Yes, I think we might add to our justification then that those -- that delivery and removal of goods should be evaluated, to determine whether there was hazardous materials involved or exposure to hazardous materials, and that is why we don't want them to regulate -- on a regulatory basis, remove all delivery and removal of goods, if you follow what I'm saying.

CHAIR MARKOWITZ: Sure. I mean, the draft recommendation says, "The Board recommends that workers who were exposed to hazardous materials in the course of delivery or removal of goods or materials from a DOE facility should be included in coverage under EEOICP."

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: So, it does try to help define a class of workers, who deserve to be included, but not all workers involved with delivery or removal.

MEMBER CASSANO: But I think what -- they still need to evaluate anyone that delivers and removes, to determine whether it is a -- hazardous materials were included, yes?

MEMBER DOMINA: My comment to that would be no, for the simple reason is, if you're inside like the fence at DOE, you're under one standard, and then a lot of times, the standard outside the fence is a lot different, which is a lot less, and I don't believe it needs -- you need to leave it alone.

I think the whole paragraph needs to be stricken.

PARTICIPANT: The whole paragraph or the whole sentence?

MEMBER REDLICH: I mean, I agree, I don't think we need the second sentence, because workers should be considered.

I agree that we don't need the second sentence, because we should not be excluding those workers, but if someone could explain to me, the first sentence, because I just don't understand it, but I assume it's there for a reason.

So, I don't want to approve something that I don't understand.

MEMBER CASSANO: I can take a stab at it. I think what it's saying is, even if there was -- if there was a contract, even if the particular task was not included in that statutory language, but the contract -- the employee was paid to provide that service, then they're going to compensate him, even if it doesn't say, this is your particular -- this is the job that this contract was meant to do. You guys may have a better idea.

MEMBER VLIEGER: So, other departmental employees are covered under this program, if they are -- they were subcontracted by DOE to perform a DOE function on the site.

An example would be if they belonged to the Army Corp of Engineers, but they were removing artillery sites from Hanford, for say, they would not be covered because that's an Army Corp of Engineer project, yet they were inside the fence of Hanford and they were a federal employee.

There are some strange lines here and they have to look at contracts, to see if they're actually covered as a Federal employee.

So, the first part of this covers other departmental employees and whether or not they would be considered DOE and covered under the program.

So, some of that language is there for that reason, to define how they would and would not be covered.

MEMBER REDLICH: So, it's being more inclusive of who is covered or is it being less inclusive?

MEMBER VLIEGER: This changes slightly, the previous language to be more

inclusive, but it's very much the same as the old language, than that first line, and the second line I have to object to.

There are only so many IH's on a site. There are only so many HPT's on a site. None of them follow truck drivers around. There is not going to be any monitoring data for these people. We're going to be lucky if they have a dosimeter.

So, excluding them based on them trying to provide evidence under the statute, or saying, "Well, because you were just a delivery driver," I think is unfair.

CHAIR MARKOWITZ: So, it seems to me there are two sentences to this Item Number three. The first sentence, actually stands on its own, and doesn't relate -- doesn't relate to our scope, in terms of what we've been asked to look at, whereas, number two, second sentence is within our scope.

So, let's just focus then on the second sentence, which is the delivery and removal of goods. Other comments?

So, one way we could address this is, and what we're looking at on the board -- the screen now, the Board recommends, replace 'recommends' with 'recognizes' or --

PARTICIPANT: Yes.

CHAIR MARKOWITZ: -- and then follow that with a sentence, at the end, which says that, "The Board recommends that the sentence beginning with 'the delivery or removal of goods'", right, be eliminated.

PARTICIPANT: Good.

CHAIR MARKOWITZ: And actually, our real sentiment on this is that this should be -- that workers who deliver or remove goods, who have hazard exposures should be included, and those who don't, should not be included, all right, okay.

Okay, welcome back, Ms. Pope. So, just to orient you, we're on page 16. We're discussing delivery and removal of goods from -- and we're about to take a vote. So.

So, let me read this out -- the whole

thing out loud, in part, to try to bring Ms. Pope up to -- okay.

So, yes, on page -- are you on page 16? Okay, yes, so on page 16, you'll see it in the blue paragraph, the last three lines. I'm just waiting a moment until she -- that's okay.

Okay, so, we're looking at on page 16, towards the top, Item Number 3, the last sentence, which starts with 'the delivery or removal of goods', and the motion is that -- is the following.

The Board recognizes that workers who were exposed to hazardous substances -- materials in the course of delivery or removal of goods, or materials from a DOE facility should be included in coverage by EEOICP.

The Board recommends that the sentence beginning with the delivery or removal of goods be eliminated.

So, I've lost track a little bit. Do we have a motion to accept this?

PARTICIPANT: So moved.

CHAIR MARKOWITZ: Okay, so, any further comment on this issue?

So, all those in favor of this, raise your hand please. Okay, and all those opposed? Any abstentions?

So, there are 15 members present and all voted in favor.

We're -- in a minute, we're going to take a break for lunch. I would just say that the Board recognizes that we are, in some instances, recommending specific language for the proposed changes, and that DOL needs to reconcile any language that they might consider adopting from what we've proposed, with language that they already have in other parts of the regulations, that some of which are pre-defined and so, we recognize the need for some reconciliation of that language.

We also recognize that there -- our grammar may not be perfect in some of our recommendations, so please forgive that.

Finally, that there are other parts of

the regulations that may pertain or replicate or mirror the sections that we're looking at, and that we may not have caught every section of the proposed regulations that replicate what we have looked at, and we would hope that our recommendations would also apply to those other sections of the proposed regulations.

So, with this, we'll break for lunch and we'll reconvene -- yes, Mark?

MEMBER GRIFFON: Just the process, we're going to get back to those couple that we left from last night, right?

CHAIR MARKOWITZ: That's right.

MEMBER GRIFFON: Okay.

CHAIR MARKOWITZ: So, this is -- this is how the rest of the --

MEMBER GRIFFON: After lunch?

CHAIR MARKOWITZ: This is the rest of -- how the rest of the day will look.

We'll take a break. We'll have lunch, and let's return at -- let's return at 12:45 p.m., actually, and we'll begin the work on that.

At 1:00 p.m., we have a public comment period for 45 minutes, and then we have some additional time, we're going to work on the proposed changes, and we are within our time. We're in good shape, I think. Thank you very much.

(Whereupon, the above-entitled matter went off the record at 12:00 p.m. and resumed at 12:50 p.m.)

CHAIR MARKOWITZ: So, the public comment period will begin shortly, and I just have a message for the people on the phone online.

To access the public comment period, you will need to hang up and dial the following number, 1-800-369-3381.

That number is 1-800-369-3381, and then you'll need to enter the code 2470553.

Again, just to repeat that code, 2470553. Thank you.

Okay, apparently, we can't -- we're not going to start for five more minutes, the

public comment period, because it has to be at 1:00 p.m., but we're almost there.

So, we're not going to discuss anything substantive at the moment, but I would like to begin to raise an issue that we're going to have to deal with later today.

After the public comment period for 45 minutes, we're going to return to our -- providing our recommendations of input into the DOL proposed regulations. We've made excellent progress, but we still have a little bit more to go. So, we will do that immediate following the public comment period.

Then we will begin to discuss logistics around additional meetings in the future.

The next meetings will be by the subcommittee, and they will be in the next few months. They will be scheduled by the chairs of the subcommittees, and you need -- you should then communicate with the members of the subcommittee, and just make sure you copy those

and myself, so we know what's going on.

But once you decide on a time and a date for the subcommittee meeting, DOL needs approximately seven weeks, in order to do what's needed to get it into the Federal Register, etcetera.

So, tomorrow, when you go home and begin to schedule these meetings, just think about that seven week gap. The window begins seven weeks from the dates that you're -- or the window begins in relation to seven weeks from the dates that you're looking at. So, just be aware of that when you begin to schedule.

You can't -- you couldn't for instance, schedule a meeting right now for May 30th, because that is not enough time, right, but you could for probably June 15th.

MEMBER SOKAS: Just a question, and we're talking about telephone meetings, right? I mean, that's what we're talking about here.

CHAIR MARKOWITZ: That's correct.

MEMBER SOKAS: Okay.

CHAIR MARKOWITZ: For the subcommittees, yes. Yes, Dr. Welch?

MEMBER WELCH: Previously, I understand the plan was the communications to other members of the Board should be directed through the advisory website.

Now, that we've decided -- our decision, I think, was to make the subcommittees public, so does that mean we need to do it that way?

MR. RIOS: When you say make the subcommittees public, we will post who is in which subcommittee, but are you talking about internal communications between the committee members?

MEMBER WELCH: Well, I guess it would help for me to understand how the Chair should manage internal communications among the subcommittee members and manage the meetings, vis-a-vis public access.

MR. RIOS: The members of the subcommittees, the chair of the subcommittee can

communicate with the other members, with their direct email address, as long as I'm copied on every communication, as well as the Advisory Board email.

MEMBER WELCH: Okay.

MR. RIOS: It just makes it easier, especially if you're reaching out to your subcommittee and trying to schedule the date.

MEMBER SOKAS: Do we have everybody's email?

MEMBER WELCH: What's that?

CHAIR MARKOWITZ: I'm sorry, what's the question?

MEMBER SOKAS: Do we have everybody's email? Do we?

MR. RIOS: So, I'll provide the subcommittee chairs with the email addresses for the folks and their subcommittees.

MEMBER SOKAS: Okay, thank you.

CHAIR MARKOWITZ: But I would encourage you to schedule those subcommittee meetings as soon as possible, given the seven

week gap in time and given the fact that after seven-plus weeks, we start to head into summer and people have different schedules during the summer.

So, it would be best if you could meet, say in the second half of June, or aim to meet there. Explore those dates. Any other questions about that?

Later, we'll discuss the -- our next meeting in person. We won't pick a date here, but we will circulate dates very soon. But I would like to have a discussion a little bit later about where we might like to meet, when we meet in the Fall.

The aim is to have another meeting in the Fall, hopefully not too late into the Fall, so we can do our work. Any comments or questions?

So, now, I'd like to begin the public comment period. We have four people who have requested time. Three are in person and one is on the phone. We'll have the people in person

come first, and I would like to welcome Congressman Ed Perlmutter, Seventh District in Colorado. Thank you.

CONGRESSMAN PERLMUTTER: Good afternoon, everybody. It's great to see this Board convened.

My name is Ed Perlmutter. I'll be brief in my remarks, because I know that you've already had a long week, and you still have a lot of business to conduct.

I'm here today because I wanted to come and thank you personally for taking the time to deal with some very serious matters, that over time, have not been addressed in the way I would like to see them addressed, and I want to thank you all for bringing your experience, your knowledge, your expertise to this Board. It's pretty much an all-star Board, and we're very fortunate to have you considering these matters.

As some of you know, I represent the northern and western suburbs of Denver. So, everything between Denver and Boulder, Colorado,

which includes the Rocky Flats Plant, and now is a wildlife refuge.

Beginning in 1952, the Rocky Flats Plant built the plutonium triggers, or PITS, for our nuclear arsenal. The plant used thousands of chemicals and other materials, including uranium and beryllium, and thousands of workers answered the call from the United States of America, to work at the plant in its decades of operation.

I don't need to tell any of you, the wide range of illnesses these and other workers across the country have faced as a result of their service to the country.

Congress passed the Energy Employees Occupational Illness and Compensation Act as a way to provide the healthcare and compensation these workers earned and deserved. But it's an understatement to say that the claims process has not gone smoothly.

This Advisory Board was a result of recommendations from the Government Accountability Office and the Institutes of

Medicine.

I worked with Senators Mark Udall and Lamar Alexander, as well as representatives Ed Whitfield and Jared Polis to authorize this Advisory Board to improve transparency and provide more certainty for claimants.

This, I'm afraid to say, in this Congress, is a very rare Bipartisan effort, but it's because of the service that the men and women at our nuclear plants provided, that both parties came together on this particular Advisory Board.

I can't tell you how proud I am that this Board is meeting and considering these difficult matters, and I'm looking forward to your efforts to improve administration of this very important program for our nuclear workers.

Last time I was in this building, Hilda Solis was the Secretary of Labor, and now it is Tom Perez, and I'm happy to see this progress being made with this Advisory Committee. You have some difficult matters to consider. I

thank you for taking the time and providing your expertise and your experiences to make this something that I think will be worthwhile for so many people.

I want to introduce Jeff O'Neil from my office, and I want to offer up our office as a resource to you, if and when you feel that it's necessary.

But thank you for participating in this. Thank you for being here, and I'm glad to see you're convened, and you said you're almost done. So, I'm glad that this kind of talent has been brought to bear on this subject, because it needs it.

So, unless you have any questions for me, I just want to say thanks.

CHAIR MARKOWITZ: Thank you.

MEMBER GRIFFON: Okay, good afternoon and good luck.

CHAIR MARKOWITZ: Our next speaker is Donna Hand, who has requested time to speak today.

MS. HAND: Long days. I would like to briefly, you know, go through what we went through today.

OWCP will consider, okay, this doesn't mean it's mandated and everything, the nature, frequency and duration, evidence of carcinogenic or pathologic properties and an opinion of a qualified physician with expertise and any other evidence that demonstrates the relationship between a particular disease and a toxic substance.

You can consider it, but you don't have to have all of it. If one, two or three of it is enough to get that case through, then that should be it.

In the original gears in 2005, 2006, 2007, 2008 and 2009, the SEM would list all the toxic substance at the site, and then it also lists, let's just say pulmonary disease. I lists -- I think in the very beginning it had 32 toxic substances that had a known causal relationship to COPD.

I called up Paragon, Mr. Stainaker, and I said, "Okay, if it's in SEM and there is a toxic substance and it's linked to a pulmonary disease, does it need to go any further?" He said, "No. We have found the causal link." That's it.

We do not do aggravation. We do not do contributing to. That's it, and in the beginning, the only time it went to a DMC at that time was if you did not have a diagnosis. You know, you couldn't read the medical reports. That's the only time it went there. The case examiners were making the decisions, and they -- you know, so they were able to do it.

Now, there seems to be a micro-management type thing coming down, and the Site Exposure Matrix now has gone into the advanced Site Exposure Matrix, and you can go to a labor category and it shows the toxic substance for that and it shows also a building that that labor category worked in.

You go to that building where that

labor category worked in, there's more toxic substances. You go to that process that that labor category worked in, there's more toxic substances, that wasn't exposed underneath the labor category.

Remember, the statute said 'arose out of and due to work-related'. It doesn't go to just, you know, labor categories, and the labor categories in this industries, which is the nuclear weapons industry, is very, very unique.

They have expediters. What's an expediter? He'll follow the product around, making sure how much time do we have to do. They had to write their own manuals, okay, how much time can you spend a year? You know, now, can we -- you know, quality assurance. Quality assurance followed the whole product through the whole thing, and even today, there's still classified products and classified processes, that cannot be told.

So, how can you have an IH say, "Okay, yes, they were exposed to this," when you don't

even know what it was? You know, and you can't -- even if they say, "Okay, we can tell you that uranium was involved in this classified process, but we can't tell you the quantity."

We can tell you that plutonium is involved in this process, but we can't tell you the quantity. If you don't know the quantity, how do you know how much exposure?

As far as claimants are not notified when their file is sent to an IH or a CMC, so, therefore, they're not notified to add in additional information. The only thing they get is the development saying, "This information is not sufficient. We need more information."

I sent you my work records. I sent you my medical. You know, so what more information you need?

I had a case that was sent to an IH that was from the Pinellas Plant, which closed in 1997.

Okay, and so, this worker was there, two years at an IH because of that 1995 memo. I

had a fight to get it out of that IH. You don't -- and you -- they admitted today, there is no IH records. DOE admits, we don't have IH records, and some of these facilities, similar to the Kansas City Plant, they're tile floor wasn't tile floor. It was wood. It was -- and they had to creosote it every so often. It was all open.

Then now, you've got GSA workers, specifically the maintenance workers, would come in because the furnace was all on the DOE side and they'd have to share fixing things.

So, you've got air filters, conditioners, everything that's being crossed over through, and plants, environmental plants, especially close out tiger team report, environmental reports, and then I would also go to the Atomic Museum in Las Vegas look up records there, at my own expense, and obtain employment exposures, because this is what they had to do for the neutron generator. This is what they had to do for the neutron tube.

They had to blow their own glass.

They had steel beds for the milli-tritides. They metalized. You can look at pictures of a worker, the soldering. They're the Kansas City Plant, in a little cubicle. Everything else was open.

So, if this information is there, and it's researched and an advocate usually has to find it for the worker, and give it to Department of -- we can't -- we can't establish exposure. We have to send it to an IH.

Then hypertension. I got one claimant approved for hypertension. She has a picture of her working there with lead, soldering lead. All the rest of the ones that are also working with lead, and in fact, after a chelation has even lead in their bodies still, denied.

I had the same district office consultant, or DMC, out of the Jacksonville office state that a non-Hodgkin's lymphoma will be caused by benzene for a male worker at the Pinellas Plant and a male worker at the Savannah River.

But the two female workers who were

also diagnosed with non-Hodgkin's, and also exposed to benzene are denied, and it's the same physician.

I have where, just because uranium caused kidney disease at Savannah River, doesn't mean it's going to cause kidney disease at Oak Ridge.

If you have trichloroethylene that caused kidney cancer, doesn't mean it's going to cause chronic kidney disease.

You know, you have Camp Lejeune people just drinking the water for trichloroethylene, where these workers bathed in it. You have, you know, acute exposures from the World Trade Centers, and you have presumptive diseases, and that was acute exposures. We're talking about chronic exposures.

I want to speak about the wage loss for medical evidence you needed to establish it. It doesn't make sense, if you're already accepted a covered illness, then you've accepted that he was exposed to a toxic substance that caused that

illness.

So, if you accepted that he caused that illness, that person could no longer do that same job and continue being exposed to that same toxin. He would have to change jobs or he would have had to quit, early retirement, because you should not keep on exposing him to that same toxic substance.

But yet, you want to have a trigger month and you want to have medical evidence. I even sat down with a physician. We did exactly what Department of Labor wanted, and did the medical evidence for wage loss. Still denied.

Spent $3,000 of our own money to a physician in Chicago. This doctor was a lawyer, industrial hygienist, and also wrote four books on heavy metal toxicity, so he was an OCC doctor.

Is there a link? Is there a substance -- toxic substance that will aggravate, contribute to or cause ulcerative colitis and colon polyps?

He looked, researched. Inorganic

solvents will, and there are several studies. He included the studies. Ms. Leiton wrote back. Even though his credentials are great, he wasn't specific. So, we can't grant it.

I called up the doctor and I said -- he said, "As a lawyer, no doctor is going to say that." No doctor is going to tell you what specific chemical will do it.

But as the medical doctor, I need more money, because I'm going to do more research.

These claimants don't have it. You know, so, we do need a -- as one suggested, a triage. Okay, if it's this, this and this, go ahead and give it to them. If it's more difficult, then yes, give your complex cases to the IH, to the CMC's. But if it's a very simple -- and that's what Congress' intent was, timely, uniform, Administrative Procedure Act, timely, consistent, and that's not what we're having.

Here, what, ten years after the last amendment. Two-thousand-six was our final regulations for Part E, and 10 years, and we're

still having problems with it. It really doesn't make sense, and it's not fair to these workers, nor their families now, because we're running now, for Pinellas, we've got 600 workers passed away, and out of that 600, 350 of them filed claims and were denied. That's just one facility.

I have represented claimants all the way across all the facilities, and we just -- you know, thank you, thank you, thank you for being here, but again, simplified, uniform and I think even during the Congressional Committee reports at the very beginning of this program, there was a -- either a representative or a Senator. He said -- he's an Administrative Law Judge, he said, "Working comp cases are very difficult."

Do not make that hurdle difficult for these workers, and everyone agreed. A bipartisan said, "We will not make this hurdle difficult."

So, if you're making the medical evidence to be specific, you're making toxic exposure specific, that's ridiculous, and the

Paper Reduction Act needs to come in there, because you're making a lot of paperwork.

The Federal Employee's Compensation Act was just amended, the regulations were, and they have a new form now too. There is CE -- CA-35, and it says, "Occupational disease or illness," and they have a set check-off plant.

The very first step is for the worker, the claimant, to do a little history and it's very -- and the very end of it, then after the history, it goes to the doctor later on, and then at the end it says, "The nature of exposure, was it primary, secondary, intermittent or environmental?"

Then the degree. Was it heavy, medium, light or ambient, and the frequency, hours per day. But you just check it off. Very simple.

You know, so, why can't it be tweaked to meet this program? You know, the occupational history interview, I don't know. I don't know. I tell all my claimants, "If you don't know, say

'unknown'," because believe it or not, those chemicals were there.

The two chemicals in Agent Orange, one of them -- one of them though -- one tri-something or other, was in every single facility, and you got cadmium and cadmium compounds. You've got cadmium-109, which is a radioactive compound.

So, radiation needs to be addressed under Part E, as well, because the site exposure matrix lists radiation as a toxic substance. The 12th Federal report of carcinogens lists radiation, ionizing radiation as a carcinogen, as a toxic substance.

Underneath the definition of this Act, it's a toxic substance. So, if it's a toxic substance, at least as likely as not, less than 50 percent, more than suspicion, because we know that it will aggravate, contribute or cause cell damage. We know that there is cancer at Stage 0, which is what? At the very, very beginning. It doesn't have to be evasive cancer before they should be underneath this program, and even the

BEIR VII and V report even, has stated it will cause benign non-cancer diseases and illnesses.

So, you already have all these other Advisory Boards, listing all these illnesses, known to these toxic substances, known to these other work industries. Why are we -- you know, start again at the wheel. Thank you.

CHAIR MARKOWITZ: Thank you very much. Next, I should say for people on the phone, if you want to participate in the public comment or make a comment, please let the moderator know.

Our next speaker will be -- the last one present will be Stephanie Carroll.

MS. CARROLL: Thank you. Okay, well, as you know, I know all about beryllium disease, so I have a lot to say about it.

One thing that was under your purview to review was page 32 of the new regulation on chronic beryllium disease, and I just want to go over it, in hopes that someone -- you know, I truly do object to the fact that you don't have more time to comment on these rules, because I

think this is very important, and it is changing the intent of Congress and the Act.

So, the intent of these changes seem to make it next to impossible for BE workers that meet the previous criteria, previous to these changes, in line with the Act, to be approved.

Already, it is very difficult to be approved for an established beryllium illness in this program.

I started at page 28, because there was an issue there, but and it's the basis for this statement. Let's see, page 2830.114(c).

OWCP will evaluate evidence in accordance with recognized and accepted diagnostic criteria used by physicians, I agree, to determine whether the claimant has established the medical condition in accordance with the Act.

You do not have to be diagnosed with chronic beryllium disease or diagnosed with beryllium sensitization, to meet the criteria that's been established by the Act. That is so important, and I think it's very difficult for

claims examiners even, to understand what that means.

So, when a doctor says, "This person does not have chronic beryllium disease," that in no way should affect a claim examiner's review of the case and understanding that the person has met the diagnostic criteria, set out by Congress, and the whole reason for the EEOICPA in the first place.

So, but they just -- they can't put those two things together. A doctor says, "You don't have the disease, but I'm supposed to approve you for beryllium disease." So, it just doesn't happen.

Let's see. On page 28, 30.114(b)(3). Okay, this is a change not intended by the Act. It was the only -- it was only consequential injuries that ever required a fully rationalized report to approve the condition.

The addition of this requirement for all covered illnesses is not in line with the Act, and allows for CE's to judge the validity of

a physician's opinions.

Example, I had somebody with chronic beryllium disease for many years. He had signs of pulmonary hypertension. They wouldn't accept that the pulmonary hypertension was secondary to chronic beryllium disease.

I had to get a UCLA professor of medicine, he was a cardiologist, write a two page report, describing how chronic beryllium disease could possibly lead to pulmonary hypertension.

This refusal to accept pulmonary hypertension related to chronic beryllium disease, pneumoconiosis or any other lung diseases at this point is a cost saving measure. They're trying to reduce the cost of treating pulmonary hypertension, and we all know where pulmonary hypertension leads.

So, right about now, it's been about the last year or so, they've done everything they can to refuse pulmonary hypertension.

In the procedure manual, there used to be a list of pretty much, accepted conditions

related to chronic beryllium disease. They definitely didn't require a well-rationalized medical report from a UCLA professor of medicine and cardiologist to describe how pulmonary hypertension and cor pulmonale, let's see, what else is -- well, see, those, I think that's a pretty good point right there. I think you can all agree that it's not much of a leap to go into those two conditions from chronic beryllium disease.

But it's this well-rationalized letter that's going to really get the workers. It's scary, what's happening.

So, for covered beryllium illnesses under Part B, medical evidence is set forth in 30.207 page 31, and that is also under the purview of the Board.

Okay, so, written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. I just wanted to point that out, and the 30.207 that they -- it looks like they added,

"How does a claimant prove a diagnosis of a beryllium disease covered under Part B?" Seems like an innocuous question.

What it should read is, "How does a claimant prove that the employee developed a covered beryllium illness?"

When they changed the language to, "How does a claimant prove a diagnosis of a beryllium disease covered under Part B," they are now leading us into believe that it is a disease that has to be diagnosed by a physician and now, it doesn't have to just meet the Act's requirements.

So, now, there are -- they're massaging us into page 32.

Okay, so, okay, did that. Got it. Okay, so, now, I'm on page 32, one, two, two -- it looks like D, where they added some language.

OWCP will use certain -- or will use criteria in either of these paragraphs of this section to establish the employee developed chronic beryllium disease as follows.

It's not developed chronic beryllium disease. It's established a beryllium illness. That's from the Act, but when they describe it this way, it becomes an illness that has to be diagnosed by a doctor.

Okay, so now, if you just go down to number two, this is referring to Part B, or not Part B. This is referring to post '93 CBD. The Act has laid out exactly what is needed for that.

Now, they've added something else to the Act, another requirement. I don't know how they were able to do this, but number two says, "If the earliest dated medical evidence shows that the employee was either treated for or diagnosed with a chronic respiratory disorder, on or after '93, the criteria set forth in paragraph C1 of this section must be used."

Oh, that's interesting. Now, you have to have -- have been treated or diagnosed with a chronic respiratory disorder, before you can even get close to meeting the Act's requirements to establish a beryllium illness, which is establish

chronic beryllium disease.

They have added to the Act, that you must have been treated or diagnosed with a chronic respiratory disorder.

Now, you know most of my clients have been, but to change the requirements of the Act and actually add another requirement, that should be listed in the Act, that is scary. I cannot believe they're doing that.

So, if you go back -- just to the top of the page, diagnosis after '93, you have to be beryllium sensitized, and you have to have a lung biopsy, showing granulomas. This is very important, or a lymphocytic process consistent with CBD.

Dr. Lee Newman was contracted to help claims examiners determine when they look at a biopsy report, if the lymphocytic process consists of a CBD and the Act, actually exist.

So, when they see specific things on the pathology, like a positive BAL, lymphocytosis, which the numbers of lymphocytosis

just willy-nilly go up and down in the procedure manual.

It used to be for 14 or 15 years, 10 percent lymphocytes on lavage was enough to qualify for a lymphocytic process consistent with.

They just decided to change it because a CMC said that he didn't agree with that number, and so, Dr. McTier did her investigation, but in her investigation of that requirement, of 10 percent, which hundreds of people hopefully were approved based on, now this one claimant is not going to be approved. She said there was nothing in the procedure manual talking about the lymphocytosis numbers.

Well, that's funny. Dr. Lee Newman actually describes it. It's peer reviewed. It's got the footnotes and all references, and he determined 10 percent lymphocytes was enough to express a lymphocytic process consistent with CBD, and I have one claim based on that.

Now, if somebody doesn't have me as

their authorized rep, there is no way at 14 percent lymphocytes positive BAL, CT, PFT's, everything else, they'd be able to get approved. They just won't.

CHAIR MARKOWITZ: One more minute.

MS. CARROLL: Okay, and then a CT scan showing changes, that's fine. Pulmonary function test and exercise test showing pulmonary deficits consistent with chronic beryllium disease.

Right now, they do want a doctor to say it's consistent with CBD. I don't believe that the Act required that. It's if you have obstruction, restriction and mixed process or other issues that are showing that you have -- that you have pulmonary deficits. That should be enough, and I think that's what Congress meant.

So, I would just please, for all of my workers and so many beryllium workers out there, and people that are suffering through all the monitoring and never being diagnosed with CBD, if someone on this Board could make comments on this section, it would really help.

I know that my comments are not going to be -- I don't think as respected as comments coming not from the Board, but from people on the Board, it would make a big difference.

So, thank you, and if anybody ever has any questions or wants any data on chronic beryllium disease and beryllium workers, I've got 150 cases full of treating and site records and exposure records, and I'd be happy to share it with researchers. Thank you very much.

CHAIR MARKOWITZ: Thank you. So, our next speaker is by phone. If the moderator could make contact with Madeline Caudill, who has requested five minutes.

OPERATOR: She has dialed in at this time.

CHAIR MARKOWITZ: Okay, so, moderator, is anyone else by phone requested time?

OPERATOR: I don't have anyone cued up. But again, if you have a comment, you may press Star-One, and that will bring you into the queue for your comment, and we'll stand by.

CHAIR MARKOWITZ: And I should tell you, if there is anybody else who is actually present in the room and would like to make a comment, you're welcome at this time.

So, speaking to the moderator, if you could let us know in the next minute or so, whether anybody else has requested time, I'd appreciate it.

OPERATOR: Will do, and again, we're standing by. If you have a comment from the phone, it is Star-One.

CHAIR MARKOWITZ: Okay, so, it seems that no one else has additional comments. So, this will be the end of the public comment period. Thank you very much.

So, we will now return to our discussion of the proposed rule changes, and which means that we need to bring up on the screen, if you can go back -- we're going back actually, to the three issues that we already discussed yesterday, and we actually have drawn up some proposed language.

So, we've had time to think about those, and we're going to review them again and vote on them. So, going back to number one.

This is on page -- it's 232(a), page 40. I'm sorry, 231(a). It relates to proof of employment.

So, let me just say to satisfy the request of my specifying the connection between these proposed rule changes for the next three, and the scope of the Board, that proof of employment, proof of toxic exposure and proof of diagnosis that's relevant to the exposure are all covered within certainly, our Tasks A, B, C and D, I think. So, just to specify that.

Does someone want to read this? This is the language we drew up yesterday. I'm sorry, read this out loud.

MEMBER CASSANO: Your designated reader will comply here.

Thirty-point-two-three-one (a) proof of employment, it's on page 3940 for anyone that can't read the board.

"The Board finds that the proposed new language is vague and contradictory. The Board notes that the proposed new language contradicts Section 30.111(c) in a manner that limits the value of affidavits."

"If the goal is to increase the likelihood that affidavits are valid, then guidelines on what elements need to be included in an affidavit should be issued to clarify the claimant's task of proving an employment history in the absence of other evidence."

"The Board recommends that the proposed rule changes not be made."

CHAIR MARKOWITZ: Okay, so, we're open to comments now, discussion. Dr. Boden?

MEMBER BODEN: I move that the Board accept the comment as written.

MEMBER CASSANO: Second.

CHAIR MARKOWITZ: Okay, so it's open to discussion. Dr. Welch?

MEMBER WELCH: One of the things I had wanted to do was -- this same language appears in

other places.

So, it appears in -- and I guess we're going to discuss it in the next section.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: So, we want to make sure that those two are consistent with each other.

CHAIR MARKOWITZ: Right, okay, good point.

MEMBER WELCH: And maybe we should -- can we look at the 12(b) before we --

CHAIR MARKOWITZ: That's a good point.

MEMBER WELCH: And now, it's up on the screen. I think so. I mean, I think we can -- we can't really see them together, unless you make the text smaller, but -- good, I think we can, actually.

CHAIR MARKOWITZ: Okay. So, Dr. Cassano, could you just read out loud --

MEMBER CASSANO: The second one?

CHAIR MARKOWITZ: Yes, it's 30.11(2)(b), right.

MEMBER CASSANO: Right, 30.11(2)(b) evidence of covered employment, it's on page 27.

"The Board proposes the following language for this section."

"If the only evidence of covered employment is a written affidavit and declaration subject to penalty of perjury by the employee, survivor or any other person, and DOE or another entity either disagrees -- either disagrees with the assertion of covered employment or cannot concur or disagrees with the assertion of covered employment, then OWCP will evaluate probative value of the affidavit under Section 30.111."

PARTICIPANT: I don't think the microphone was on.

MEMBER CASSANO: I guess I have to re-read it? Sorry. Section 30.11(2)(b) evidence of covered employment on page 27.

"The Board proposes the following language for this section." Sub-Item 3.

"If the only evidence of covered employment is a written affidavit or declaration

subject to penalty of perjury by the employee, survivor or any other person, and DOE or another entity either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP will evaluate the probative value of the affidavit under Section 30.111."

CHAIR MARKOWITZ: Okay, so, you can see, we tried to conform this second issue, or second item, to the first item, limited by the current language that exists in the second current -- second item, meaning the specific language disagrees or cannot concur or disagree, which is in the current regulation, and not subject to change.

So, comments? We should consider these together, I think, because they really are close cousins. Comments? Dr. Welch?

MEMBER WELCH: So, the -- what we are in the prior -- in the comment further up, what we're recommending deleting is pretty much, the language that we are proposing for the second

part.

Now, that's fine, because there is no need to repeat it on subsequent pages, and we can just refer back to that -- that other section.

But because we were -- where it says -- if I'm following my -- if my brain is working right.

But I -- I still think that the statement -- the discussion we have under the first point that the -- you know, if the goal is to increase the likelihood of affidavits are valued, then guidelines would be helpful.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: I mean, it's -- it is -- the two are consistent with each other.

CHAIR MARKOWITZ: That's right. That's right. I mean, probative -- the probative value term in the second part should refer back to the guidelines that we're recommending in the first part.

PARTICIPANT: Okay.

CHAIR MARKOWITZ: It should increase

the probative value, if the claimant meets the guidelines.

Other comments or -- okay, so, we should consider these -- this set -- this really -- of a couple of recommend -- well, really, a single recommendation together.

Is there any need to read this out loud?

Okay, so, all those in favor, raise your hand. Okay, all those opposed, and any abstentions?

So, 15 members of the Board are present all vote in favor of this recommendation.

So, next we move to -- it's 30.231(b) which is -- hold on, I'm sorry, 30.231(b) which is proof of exposure to a toxic substance. This is on page 40 of the written version of the proposed rule changes.

Does anybody need to see on the screen? Maybe we should just place for a moment -- if you could place for a moment, 231(b) on the screen, mostly for the attendees who don't have

the book in front of them.

So, to summarize, we don't really need to read this. To summarize, these -- this regulation addresses the sources that OWCP will use to develop a probative thing or obtain probative factual evidence for the purpose of establishing exposure to a toxic substance, and it lists three sources.

The first is DOE. DOE former worker program or DOE contractor, essentially. The second is the site exposure matrices and the third is any other entity deemed by OWCP to be reliable.

So, if we could now move to our draft recommendation.

MEMBER CASSANO: The draft regulation states proof of -- Board recommends that DOL issue guidelines on how OWCP determines reliability of information under this section.

The Board recommends that the following language be added to this section in the -- by manner of adding a new number three,

number four -- number three and number four.

That number three now read, "Occupational history or affidavit obtained from the claimant and/or coworkers," or number four, "Occupational history obtained by a healthcare provider, other than those who are part of the DOE former worker program, or any other entity or source that is deemed by OWCP to provide reliable information to establish that the employee was exposed to a toxic substance at a DOE facility or RECA Section 5 facility."

CHAIR MARKOWITZ: Okay, discussion? So, if there is no discussion, can we have a motion?

MEMBER CASSANO: Motion to accept.

CHAIR MARKOWITZ: And second? So, the motion is to accept this recommendation, and all those in favor? All those opposed? Any abstentions?

So, it's 15 members present and 15 voting in favor. Very homogenous-minded group.

Okay, so, let's move onto the next

one, which is establishing diagnosis of covered illness. This is 30.232(a)(1) and (2).

MEMBER CASSANO: You have the new -- does he have the new language?

Okay, just to reiterate what the old -- the proposed language from OWCP was, and this is what the employee must provide to have a claim processed.

The language was written medical evidence containing a physician's diagnosis of the employee's covered illness, as that term is defined in Section 30.5(s) and the physician's reasoning for his or her opinion regarding causation, and to any other evidence OWCP may deem necessary to show that the employee has or had an illness that resulted from an exposure to a toxic substance while working at either a DOE facility, etcetera, etcetera.

That's not -- okay.

CHAIR MARKOWITZ: Okay.

MEMBER CASSANO: Yes, there it is. So, new proposed language states -- where did it

go?

CHAIR MARKOWITZ: It's coming back.

MEMBER CASSANO: Okay, sorry. That number one, written medical evidence containing a physician's diagnosis of the employee's illness as that term is defined in Section 30.5, and then Sub-A is if possible, that evidence should contain a statement indicating how/why, let's keep it simple, the physician believes that the employee's illness was caused, contributed or aggravated by the exposure.

Sub-Part B says, "If the claimant submits an opinion of a qualified physician, as defined in Section 30.230(d)(3), which provides a rationale for determining that the employees illness was caused, contributed or aggravated by the exposure, then the opinion should be considered probative by OWCP."

CHAIR MARKOWITZ: So this -- so, this has some compliment to what we were looking at yesterday, and I'm wondering whether Kevin, you could take the one from yesterday and put it

right above this, and see if we need to blend it at all.

For instance, right, yes. Yes, that paragraph and -- yes, right up to there, yes. I guess so, yes.

I think that we could -- can we remove that --

MEMBER CASSANO: Yes, we can remove all that.

CHAIR MARKOWITZ: No, no, the first paragraph, right? The question, right, we can get rid of that.

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: So, let's now -- that's fine there, but let's look at the new language that we've just seen. No, no, scroll down, so we can take a look at the new language first.

Well, okay, let me read -- if you could go back up. Let me read the old -- the language we were looking at yesterday, just so -- and if you can make it a little bit larger.

"The Board recommends that DOL remove the requirement the claimant must produce written medical evidence wherein, the physician describes the 'reasoning' for his or her opinion regarding causation."

Now, I'm going to skip over the next paragraph, the italics, that's new. We hadn't seen that yesterday. That was a draft I made to try to address some of the issues, so, I'm just going to stick with what we were doing yesterday.

"The Board believes that sufficient expertise and causation of occupational illness is unlikely to be available in DOE communities, and that the time and commitment of physicians to produce such documented report makes this requirement unrealistic and places too great a burden on claimants."

Right, so this is -- that's the rationale, right, okay, and then, "In addition, the Board is concerned that any other evidence," the phrase, "Any other evidence OWCP may deem necessary," is overly broad, unnecessary and may

form the basis for adversarial interactions between OWCP and claimants.

Okay, so, now, if you can bring up -- scroll up, so we can look at the new language. Right.

So, I have a question about the (b) where it says, "If a claimant submits an opinion from a qualified physician, which provides a rationale that addresses the core issue of cause, contributed or aggravated, then the opinion should be considered probative."

I could imagine instances in which a qualified physician provides a lousy rationale --

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: -- and it shouldn't be considered probative.

MEMBER CASSANO: But I think the idea of considered probative means that they look at it for probative value, and then they can either accept or reject it.

CHAIR MARKOWITZ: So, you mean should be evaluated for probative value?

MEMBER CASSANO: Yes. But I think what we were hearing yesterday was that they basically disregarded out of hand, and they're not even looked at for their probative value.

So, evaluated for probative value may be better.

MEMBER CASSANO: Okay, so, yes, you can take out, Kevin -- if you take out 'should be considered', and or take out 'considered' and just put 'evaluated'.

MEMBER WELCH: You could just say 'may be' instead of 'should be'.

MEMBER CASSANO: No, then they can turn it -- should be evaluated, may be evaluated --

CHAIR MARKOWITZ: Right, it's for probative value, and then take out the -- no -- yes, right.

MEMBER WELCH: And just the --

MEMBER CASSANO: Yes, evaluated for value is just --

MEMBER WELCH: Assessed?

MEMBER CASSANO: That's why sometimes words end up when you got --

CHAIR MARKOWITZ: Another -- this new language omits something that the new proposed regulation addresses, which is on page 41, the new language one, it -- that the claimant must provide "written medical evidence containing a physician's diagnosis of employee's covered illness".

So, there, DOE -- I mean, DOL is appropriately requiring medical evidence of the diagnosis, right? Your new language doesn't address that.

MEMBER CASSANO: Yes, it does, because it says, "As defined in Section 30.5," and we had a big discussion yesterday about covered illness and the fact that it's a defined term, and that they would have to then -- by saying it's a covered illness, the physician would have to prove that it was a covered illness, and I think the idea was that you wanted any illness under Part E submitted to be at least considered for

coverage, correct.

CHAIR MARKOWITZ: Okay. So, I would suggest adding after the 30.5(s), an 'and', so it's clear that there are two different pieces --

MEMBER CASSANO: Okay.

CHAIR MARKOWITZ: -- that are being required, or not required, but the first piece is required and the second piece is if possible. Right there. Yes, right there.

MEMBER CASSANO: And?

CHAIR MARKOWITZ: Yes, and. Dr. Welch?

PARTICIPANT: Should there be a colon?

CHAIR MARKOWITZ: No, just adding it.

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: Okay. Yes, Dr. Welch?

MEMBER WELCH: So, two things, sort of as a friendly amendment.

We might want to make (b)(2) instead of (b), because the (a) really relates to the same letter that has the physician's diagnosis,

and that refers to a second one.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: The other thing, and I don't know the answer to this is, the employee's illness as defined in Section 30.5(s), 30.5(s) defines covered illness. So, it has the toxic effect in it.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: So, you know, it's kind of like I think what we're trying to say is there's both a diagnosis, a medical diagnosis, and then there is the work-relatedness decision.

This written medical evidence focuses on the diagnosis --

CHAIR MARKOWITZ: Right.

MEMBER WELCH: -- of the employees' illness --

CHAIR MARKOWITZ: So, would that --

MEMBER CASSANO: So, 30 --

MEMBER WELCH: -- and necessary -- maybe I don't think we should keep in that 'as defined', because then that seems to imply it's

the entire covered illness.

CHAIR MARKOWITZ: Right. I mean, the -- we could solve that by, in that second line after the one, which says as that term is defined, simply saying the employee's illness that is the subject of the claim, right? That's -- I think that --

MEMBER CASSANO: Okay.

CHAIR MARKOWITZ: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: As I read it, 30.5(s) says that the illness or death resulted from exposure to a toxic substance and doesn't seem to include aggravation or contributing cause.

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: Right, right. Yes, maybe --

MEMBER CASSANO: That's what we said every time it's mentioned that we --

CHAIR MARKOWITZ: Yes.

MEMBER CASSANO: It needs to be clear

that the -- that they meet the statutory language.

CHAIR MARKOWITZ: Right.

PARTICIPANT: Because it's mentioned -- that wording --

MEMBER FRIEDMAN-JIMENEZ: Are they going to change that? Since it's not part of the changes that are proposed.

CHAIR MARKOWITZ: Right, right.

MEMBER FRIEDMAN-JIMENEZ: I'm thinking we should just state it outright, rather than referring.

CHAIR MARKOWITZ: Right, okay, well that would be a new recommendation, which we can consider after we resolve this.

We've gotten rid of the problem here, because we got rid of the reference to 30.5(s) but we can take that up next, actually.

So, let's -- the suggestion pending was that we form an Item Number 2, right?

MEMBER CASSANO: Instead of (b).

CHAIR MARKOWITZ: Right, okay, so, can

we do that?

MEMBER CASSANO: I'll accept that as a friendly amendment, yes.

CHAIR MARKOWITZ: Okay, can you not only accept it, can you create it?

MEMBER CASSANO: We can create it.

CHAIR MARKOWITZ: Okay, so --

MEMBER BODEN: Then there's an (a) without a (b).

MEMBER CASSANO: Then there's an (a) without a (b), which is why I did that.

MEMBER BODEN: Why not just then, if we're going to make a (2), just have the (a) --

PARTICIPANT: Be part of one.

MEMBER BODEN: -- be part of one.

MEMBER CASSANO: Part of the sentence.

MEMBER BODEN: And just not --

MEMBER CASSANO: yes.

MEMBER BODEN: -- strike the 'and' then and just have the 'if possible', follow the --

MEMBER CASSANO: So, claim and if

possible, and if possible, if you want to use an Oxford 'and'.

CHAIR MARKOWITZ: Okay, okay, okay. So, yes, if -- okay, so, the idea is you take out the "a", right?

MEMBER CASSANO: You take out the "a".

CHAIR MARKOWITZ: And after the 'and', and comma if possible --

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: -- comma, right, okay. Okay, then Kevin, after the 'possible', if you could put a comma, right?

MEMBER CASSANO: So, I guess it's not technically an Oxford comma.

MEMBER GRIFFON: I hesitate to even raise this question, because I'm worn out.

But I mean, this section that we're commenting on, if you look at the header, could be simply reference to covered illnesses.

So, even though we're deleting the reference part from that paragraph, that defines covered illness, the whole second phrase is

addressing covered illness.

MEMBER CASSANO: Well --

MEMBER GRIFFON: I don't even think that --

MEMBER CASSANO: But I think what they're saying is, eventually it's going to be determined, whether it's covered. So, if you want to establish it as covered illness, you at least have to give them a diagnosis of some illness to be evaluated for covered illness, not that you have to give them a definitively covered illness first, because a lot of people wouldn't know that.

CHAIR MARKOWITZ: Right, it's okay, because the proposed change under this 'establish the employee has been diagnosed with a covered illness' is setting out the requirement that you have to prove diagnosis and you've got to prove the causation, essentially, right, or contribution, aggravation, etcetera.

That is what the proposed language is. Our proposal is that we agree, you have to prove

the diagnosis and that you should consider the -- if the physician produces a rationalized report regarding causation, but you don't require it, in order to establish a covered illness.

Then obviously there are other -- the CE is including, you know, considering a whole other set of things, the CMC report, the SEM, etcetera, to come to that conclusion. Dr. Welch?

MEMBER WELCH: So, as far I could tell, this is the only place in the regulation that talks about making the link to toxic exposure, and Tori and I sort of disagreed about whether to delete the number two, in the proposed language, where it says, "Any other evidence OWCP may deem necessary to show that employee has had an illness resulting from exposure to toxic substance."

Because by doing what we did, we're saying that the claimant does not have to provide a rationalized medical opinion on the link with toxic exposure, and then it's implied that that happens in some other way, and maybe that's fine,

or maybe we should put in here that then OWCP has to find information to shed light on that question. Do you understand what I'm saying?

MEMBER CASSANO: But I think if we put it here, it means that the claimant has to provide whatever other information OWCP may continually ask for, you know, "I want the CT scan. I want the chest x-ray. I want the lab report. I want all of this," to establish this is a covered illness.

So, that's why I think it -- it becomes a way to constantly ask for information that the CE may want, not for any real probative reason.

You might say that if the above is not available, then OWCP may ask for any other useful information.

CHAIR MARKOWITZ: Dr. Friedman-Jimenez, you have something on this particular point or something else? I just want to pursue this discussion -- this -- okay, I'm sorry.

MEMBER BODEN: Actually, I have first,

something that I can't control myself about, that is incredibly minor, which is that the 'which' in number two should be a 'that'.

But aside from that, I do actually have a comment on this.

If you look back at the four that was crossed out right above this section, I notice something very interesting. That four -- so, this is directly above the section we're talking about. It's 30.232(a)(4).

In that sentence, it talks about -- and so, this is what's being replaced by the thing we're talking about.

It talks about that the employee has or had an illness, that may have arisen from exposure to a toxic substance, which is really different from that resulted from an exposure to a toxic substance.

So, the first one says, "We want evidence to show you that this is kind of in the ballpark of something that we may want to compensate," and the second says that before we

proceed, we want something that shows us that this is, and I think those are actually two really different things, and that if we accept something onto that we say deemed necessary to show that the employee may have -- has or had an illness that may have arisen from exposure to a toxic substance.

CHAIR MARKOWITZ: So, just to summarize, what he's -- I think you're suggesting is that you actually change the word 'resulted' in item number two, to 'may have arisen'.

MEMBER BODEN: Right.

CHAIR MARKOWITZ: Yes.

MEMBER SOKAS: So, I agree about deleting sub-paragraph two because I think the point of this piece right here is really to show that there is an illness, right?

It's not necessarily at this point, to show that there is an illness that's related. You show there is a toxic exposure, then you show there's an illness, and then if -- if you can, under one or two -- you know, (a)(1) or (a)(2)

there, link the two, that's great, and it would be helpful if the treating physician can do that or somebody else can do that, but that the burden of doing that does not necessarily fall on the claimant, that the burden for the claimant is to show there is some illness there.

Then there are later procedures that can talk about linking the two.

CHAIR MARKOWITZ: I'm sorry, Dr. Redlich? Okay, is there a response to Dr. Sokas? Dr. Welch?

MEMBER WELCH: Well, I think that in the regulation, I imagine, and I didn't read it thoroughly, so someone should correct me, but I think this is where that relationship is talked about, and it's -- it's not -- and so, it doesn't then say, and the agency has a responsibility to make the determination of causation or work -- by trying to say work-relatedness, because we know what that means.

But you know, again, I think I'd have to maybe go through it in more detail, to

understand -- even understand how the regulation relates to the processes that are -- I don't know how much has to be specified here or not.

So, but it's -- but this section does -- had always -- has always said covered illness, because that was not changed. So, this section was covered illness.

But it used to say, if you read the strike through stuff, provide the diagnosis, and then as Les pointed out, provide some information that would suggest that it may have arisen out of employment.

CHAIR MARKOWITZ: Well, let me just say that covered illness is two words. One is proving the illness and the other is proving the coverage. So, I think that's what's encompassed by this section. That's the only way it can really be interpreted. Dr. Redlich?

MEMBER REDLICH: As just a general statement -- as just a general statement about this whole process.

I would like it somewhere -- I feel

that it's just inappropriate. This has been in place for years. To suddenly have a rush to edit it, where we don't really understand, it's complicated wording, with all these tracked changes, of who it's actually changing the intent of things, and since a lot of this actually relates to the questions we were asked to address, why you would want to finalize something before we've had a chance to do our homework, and more intelligently address these issues, this just seems out of order and unproductive, because it's going to make something more final, where we haven't even become educated or addressed the questions that we've been asked to address.

I don't see what the urgency -- it doesn't sound like claims have been being processed with such great speed, that you know, whether this gets changed now or several months from now.

But I'm just confused about this whole process.

CHAIR MARKOWITZ: Well, let me just

begin to respond just --

MEMBER REDLICH: I mean, personally, I would prefer to not comment on this until I was more --

CHAIR MARKOWITZ: Right.

MEMBER REDLICH: -- up to speed and understood all the issues.

CHAIR MARKOWITZ: So, I understand the frustration, and I actually mentioned at the beginning that this was a challenge. The notice of proposed rulemaking has -- is going forward regardless of us.

We've been invited to provide some input, some recommendations about the proposed rule changes, which is what we're doing.

That train is likely going to move regardless of what we do. So, this is our opportunity.

MEMBER REDLICH: So, there isn't an opportunity to delay that rulemaking, that's not possible? I don't know what the rules are. So.

CHAIR MARKOWITZ: Yes.

MEMBER REDLICH: If it isn't, then you want to make the best of a situation.

CHAIR MARKOWITZ: That's what we're doing, I think.

MEMBER REDLICH: Okay.

CHAIR MARKOWITZ: And I also think that some of these issues, we're going to be visiting, right? As we've been asked to do, over the next period of time, and we'll have more to say, but you know, the proposed rule changes has its own time table. Dr. Welch?

MEMBER WELCH: But maybe to make you feel better, there are how many public comments about the website about these rules, 300, something like that?

MEMBER REDLICH: Yes.

MEMBER WELCH: So, there are people who know more than us, who have commented on this same language.

So, in a way, if we're coming out with something similar to 280 of those 300 comments, then we know more than we think we do. You know

what I mean?

MEMBER REDLICH: I haven't read those comments.

MEMBER WELCH: Exactly.

MEMBER REDLICH: I haven't done that.

MEMBER WELCH: I've only read some of them. So, but --

MEMBER REDLICH: But that would be relevant, because I think that there are people who know way more about this than I do, and I would appreciate their input.

MEMBER WELCH: Right, and I think -- I mean, I think the problem -- what Steve said is, you know, there is a -- there's deadlines for changing -- for regulation --

MEMBER REDLICH: That's why I said --

MEMBER WELCH: -- and we're stuck with it.

CHAIR MARKOWITZ: Having said that, if we feel truly uninformed about a given proposed change, then frankly, we should not provide input because that's not going to be valuable to the

process.

So, the -- while we might not have all the knowledge and experience we want, we have to have a certain level of comfort with this material in order to be able to provide changes and feel confident that we're being productive. Dr. Dement?

MEMBER DEMENT: I guess when our group discussed this, my concern with the changes, there are a lot of changes here.

This striking out language has been there for a long time. So, the scenario that I see, that they are shifting from is where I go to a doctor, I have a diagnosis and he says, it may be or could be or it likely is related to work at one of the sites, but it's not at this level of medical written reason report.

But the -- the worker still needs the opportunity to file that, to have that case developed through the process over time.

I just saw this as completely short-circuiting that and throwing the onus right back

on the worker, to have this reasoned report before they get a chance to even develop the case.

CHAIR MARKOWITZ: Right.

MEMBER CASSANO: And then the language takes that out. The new language --

MEMBER DEMENT: It takes it out.

CHAIR MARKOWITZ: Right.

MEMBER DEMENT: So, my recommendations would be -- why do we need to change language that's already there?

CHAIR MARKOWITZ: Yes.

MEMBER DEMENT: Just my comment.

MEMBER WELCH: I remember yesterday, Faye, didn't you say or someone -- someone on this side of the table was saying you didn't like the old language.

So, that would be helpful, because I thought the easiest thing was to go back to the old language, but the -- if there is something wrong with it, we should do that.

CHAIR MARKOWITZ: But one solution

might be to -- instead of us recommending specific language, which is to express our concern and strong feeling about the problems presented by the new language without necessarily proposing specific language that would replace the proposed --

MEMBER REDLICH: I think that's a good approach because there is so many changes in so many places, that we're actually going to find them all and fix them all, so that they're all consistent.

I think if we state what our concerns are, that sounds like a good idea.

CHAIR MARKOWITZ: So, you want to scroll back up? Sure, I'm sorry.

MEMBER VLIEGER: It's taken 10 years to get this bite at the apple. I am really concerned that we're not going to take advantage of it, at least to fix the problems with the employee being required to produce evidence that does not exist in order to establish a claim.

CHAIR MARKOWITZ: Thank you. Can you

scroll up?

MEMBER SOKAS: Can I have a question?

CHAIR MARKOWITZ: Sure. Dr. Sokas.

MEMBER SOKAS: So, just also a procedural question.

I think the other thing that happens when all of the comments are in and it's closed, that in any preamble to any new publication of rules, they have to address the comments that were received and what the determination was made and why, right?

So, that all gets done at some point. I just don't know when exactly that gets done.

MEMBER CASSANO: I think when they publish the final rule. You don't have a second bite at the apple.

MEMBER SOKAS: Okay. What is that time line?

CHAIR MARKOWITZ: The time line for the proposed rulemaking?

MEMBER SOKAS: Yes.

CHAIR MARKOWITZ: I don't -- the

comments are closed as of May 9th, I believe, but what happens after -- how long it appears -- the period is after that, I don't know.

I don't -- it's not set, I don't think, unless, is there --

MR. RIOS: It under-goes a series of reviews.

CHAIR MARKOWITZ: Right.

MR. RIOS: That are within the department and then over to OMB.

MEMBER SOKAS: That's where we get the second bite. We go see OMB.

MEMBER WELCH: If you listened to Dr. Michael's this morning, OSHA started the silica rule 18 years ago. So, I mean, there is no -- there is no legal requirement to finish it in a -- well, the definition of a timely manner Depends on the eyes of the beholder.

So, I mean, this version of the silica rule took -- all the time lines were missed, particularly the OMB part.

MEMBER REDLICH: But that's -- there

was a lot of industry wanting to delay.

CHAIR MARKOWITZ: Okay, so, let's continue here. If you could move the third paragraph to the front -- to the top, and so, it -- no, the one above it, that one, right, just above the -- right. No, no, right below 30.232.

So, we start off with our beliefs. The Board believes that sufficient expertise and causation of our case is unlikely to be available in DOE communities, time commitment with physicians to produce such document report makes the requirement unrealistic and places too great a burden on claimants.

The Board recommends that DOL remove the requirement that the claimant must produce written medical evidence, wherein the physician describes the reasoning for his or her opinion regarding causation.

So, that's -- we're not saying what the language ought to be. We're expressing our clear view on the issue.

I think that it -- what's italicized

can be removed. Oh, so, yes, it can be removed there.

MEMBER BODEN: So, do we also --

CHAIR MARKOWITZ: And then we have this additional -- yes, if you could just get rid of that. Thanks, and then additional issue and it -- the Board is concerned that "any other evidence OWCP may deem necessary is overly broad and unnecessary and may form the basis for adversarial interactions between OWCP and claimant".

MEMBER BODEN: So, there is where I think my concern about the changing the 'may' to the 'must' or changing the wording 'resulting from' to 'may' to resulting from -- from may have -- arisen from --

CHAIR MARKOWITZ: Right.

MEMBER BODEN: -- needs to be pointed out.

CHAIR MARKOWITZ: Right. Okay. Okay, so, after it says -- after 'claimants', Kevin, keep going down. Right? Next paragraph.

The -- the Board recommends that in Section --

MEMBER BODEN: I think we should say something that the Board is concerned that the change of language from the -- from the employee has or -- where is it? That may have -- an illness that may have arisen from exposure to a toxic substance, to no --

CHAIR MARKOWITZ: Illness that resulted from?

MEMBER BODEN: To resulting --

CHAIR MARKOWITZ: Right, right.

MEMBER BODEN: I'm just looking for the --

CHAIR MARKOWITZ: It's number two, line two. Got it?

MEMBER BODEN: To show that the employee has or had an illness that resulted from --

CHAIR MARKOWITZ: Right.

MEMBER BODEN: -- places an extra burden -- an extra, unnecessary burden on

claimants.

CHAIR MARKOWITZ: To -- an illness that resulted from an exposure to a toxic substance. End of quote.

MEMBER BODEN: Right.

CHAIR MARKOWITZ: And now, you need to finish the sentence.

MEMBER BODEN: Places an unnecessary burden on claimant.

CHAIR MARKOWITZ: It's the same sentence, but yes.

MEMBER BODEN: Yes.

MEMBER WELCH: And maybe it's redundant, but the information about toxic exposure and toxic substances in the current process usually doesn't come from the claimant. They're relying on the site exposure matrix.

So, that it's -- this -- maybe we don't have to say anything more than an unspecified -- but the -- a lot -- a lot of the information comes from other sources, the document acquisition request, the SEM and things

like that.

CHAIR MARKOWITZ: I don't -- that's part of the system. It's handled elsewhere. I don't think we need to address that.

I mean, in the previous section, for instance, D, with a list of sources -- so, can we strike the language below that?

MEMBER CASSANO: Have we determined --

MEMBER BODEN: Let's not strike it yet.

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: Yes, yes, no, well, I understand. That's the --

MEMBER BODEN: Yes.

CHAIR MARKOWITZ: I'm raising the question. I'm not --

MEMBER WELCH: The item that's point two, the number two, is not addressed in our comments yet. If we want to add something specific to say that -- or we'll be quiet about that. I think that's worth discussing.

I think number one, we've covered,

that -- the (a)(1), I think we've covered -- what Kevin just highlighted, I think we've covered that. We've discussed that in our general comments.

MEMBER CASSANO: I think --

CHAIR MARKOWITZ: Yes, hang on.

MEMBER CASSANO: -- the question right now, as I understand it, is whether to just put the concerns in without moving language versus moving language, as well.

So, is that a vote at this point or what?

MEMBER BODEN: I'd like to hear from the folks who have experience in this, and have concerns about the original language about whether you think it would be better for us to suggest language or to state our concerns.

MEMBER WHITLEY: In my opinion, if we don't have time to write the language that we know takes the loop-holes out and makes the claimant have to do a bunch of things to jump through, we'd better be -- be better off to just

say what we started to say, that this language needs to be looked at, and we disagree with what they're doing.

I don't think that we -- unless we think we can word-smith it to take care of it, I think we'd better off just to show that we're unhappy with it.

MEMBER CASSANO: So, you don't think this solves the problem? This language solves the problem.

CHAIR MARKOWITZ: You know, I think --

MS. POPE: I have a comment.

CHAIR MARKOWITZ: I'm sorry, Ms. Pope.

MEMBER POPE: I am somewhat in agreement with Garry, but I think that if we don't do something, in terms of the language, I don't think it carries as much weight if we just go with putting our recommendations. It just seems like it's a softer approach, opposed to saying that this is what we'd like to see in the language.

CHAIR MARKOWITZ: But I -- I don't see where -- the language we're looking at, having this language helps above and beyond, what we have above this, wherein, which we clearly express what we regard as the major problem here, which is requiring, you know, the claimant to do this.

MS. POPE: Are you saying in this particular section?

CHAIR MARKOWITZ: Right, right, right. You know, can I just ask for some clarification on what number two means, exactly?

We're saying what, that OWCP should evaluate the probative value of the physician's rationale? Is that essentially what we're saying?

MEMBER CASSANO: Well, if -- what the thinking was, was that you know, if they go through the effort of producing a good -- a medical opinion, with -- from a person with the qualifications that they stipulate in the definitions, that they should at least look at

that as potentially probative, rather than just dismissing it out of hand, which is what happens now, because nowhere else in this whole regulation does it state anything about the -- we talked a lot about the fact that the treating physician can't come up with decent -- but if somebody does come up with a decent one, there is nothing that tells the claims examiner, yes, you've got to look at this at least and make a decision as to whether it's probative or not.

That's, I guess -- I'm just looking at it from the system.

MEMBER VLIEGER: Can we scroll back up to -- can we scroll back up to the previous section and look at the definition of the section and then maybe that will clarify what we're trying to do and not do here?

CHAIR MARKOWITZ: So, you want to go back to the proposed rules?

MEMBER VLIEGER: No, I just -- the --

CHAIR MARKOWITZ: Okay, okay.

MEMBER VLIEGER: What we're proposing

above.

CHAIR MARKOWITZ: Okay.

MEMBER VLIEGER: So, 232, the section itself. How does a claimant establish that the employee has been diagnosed with a covered illness?

So, there we're establishing the criteria of how to make the diagnosis.

MEMBER CASSANO: No, we're establishing what you have -- what a claimant has to provide, and right now, it says they've got to provide all this other stuff, including the rationale, that there is a change in there, and we're changing it back to no, all they need to provide is the physician's diagnosis, and oh, by the way, if there is reasoning or if there is a medical opinion, then you have to provide that.

MEMBER VLIEGER: Okay, and then the second section changes this requirement how, where it's saying we're going to consider what the physician statement is that's provided by the employee?

MEMBER CASSANO: If it's -- you know, I think let's -- I don't know.

What we're saying is that if -- on their definition of a qualified physician, there is a rational opinion that they -- you told us yesterday that it was -- they just -- they don't even look at it but --

MEMBER VLIEGER: But with the qualifier at the bottom that says this will be considered -- let's go back down, where you're saying let's look at it as whether it's probative or not, still has the option of being thrown out in its entirety.

MEMBER CASSANO: Well, it could be a lousy rationale.

MEMBER VLIEGER: Right. But assessed for probative value, I think should be considered probative, unless it doesn't meet the requirement.

MEMBER CASSANO: Well, that is what the original language was, considered probative.

CHAIR MARKOWITZ: Yes, no, I don't

think --

MEMBER VLIEGER: I don't think we're going to be able to fix this in one paragraph.

CHAIR MARKOWITZ: Yes, I don't think you could say it's by default, the default is that it's -- it's probably a tremendous variation of these physician reports, but we could -- if you go back up, we could address this by saying, at the end of the second paragraph, where -- the second sentence where it says, "The Board recommends that DOL remove the requirements," you could add a sentence -- you don't have to write this yet.

But that the Board recommends that if the claimant produces a report that addresses causation, aggravation, contribution, that the Board assess this report for its probative value.

In other words, put in something to address the same point, but not give the particular language.

MEMBER CASSANO: Yes, so, take number two from the language and put it up there to

recommend, that would do it.

CHAIR MARKOWITZ: Okay, so, if we could just scroll down, yes. No, not -- number two, and then bring it up and then we're going to --

MEMBER CASSANO: You could say the Board recommends that.

CHAIR MARKOWITZ: Where? So, right there, right there, yes.

MEMBER CASSANO: And then put the Board will also recommend.

CHAIR MARKOWITZ: So, the Board -- that's actually just dropped in there. Before the 'if', you could say, "The Board recommends." Right.

MEMBER CASSANO: I changed that back.

CHAIR MARKOWITZ: Okay, we're not there yet. We're not there yet. We'll save that. We'll save that for last, yes. Dr. Silver?

MEMBER SILVER: When we were word-smithing too, a little while ago, 'may' was

changed because people thought it was too wimpy, to 'should'.

In fact, the opposite of 'may' in regulation and legislation is 'shall'. So, let's go all the way. We're just recommending that it 'shall'.

MEMBER CASSANO: Yes, I'd like to use 'shall' a lot.

MEMBER SILVER: Yes.

MEMBER CASSANO: Yes.

MEMBER SILVER: Throw it in there.

CHAIR MARKOWITZ: I'm sorry, what is the specific suggestion?

MEMBER SILVER: At the very end -- where did it go?

MEMBER CASSANO: Shall be assessed.

MEMBER SILVER: Shall be assessed, rather than should.

CHAIR MARKOWITZ: Okay.

MEMBER CASSANO: But 'shall' is more --

CHAIR MARKOWITZ: Okay, no, hold on.

MEMBER SILVER: Aim higher, like our union friends.

CHAIR MARKOWITZ: Yes, but just to be clear, we're not -- we're not writing the -- the proposed changes. We're expressing our point of view. So, 'shall' or 'should be' is fine.

Can we now get rid of -- if we go -- scroll down, Kevin.

MEMBER CASSANO: Get rid of that line.

CHAIR MARKOWITZ: Yes, (a)(2) and (3), right, those go? Okay, yes.

MEMBER CASSANO: And (a) as well, yes.

CHAIR MARKOWITZ: Yes. Okay, and you can get rid of -- delete that paragraph too, whatever that was.

(Simultaneous speaking.)

MEMBER WELCH: So, the sub-paragraph two was the one that said OWCP can ask for anything that has an illness resulting from exposure. So, we addressed that.

CHAIR MARKOWITZ: We already addressed that.

MEMBER WELCH: The illness resulting from exposure, did we? Did we?

MEMBER CASSANO: It's down below. The very last sentence. It might be gone already.

MEMBER WELCH: Yes, there it is.

MEMBER CASSANO: Is it completely gone? There was a little tag sentence at the end. Yes, it's gone.

CHAIR MARKOWITZ: Okay, so, now you can -- yes, you can get rid of the one. If you scroll up, we might be able to see the whole thing now. Okay, okay.

Okay, okay, so, yes, that's fine. So, there's a motion to approve this. Any second? Yes. Comments? Dr. Redlich?

MEMBER REDLICH: When we're done with this one.

CHAIR MARKOWITZ: Okay.

MEMBER REDLICH: I just needed clarification.

CHAIR MARKOWITZ: Okay.

MEMBER REDLICH: On something.

CHAIR MARKOWITZ: Okay, sure. So, any further comments about this?

Okay, so --

PARTICIPANT: Can we take one minute for just background on this?

CHAIR MARKOWITZ: No, I'm sorry, no. No, that's not allowed. Public comment period is over. Okay, so, any other -- okay, so, we're going to take a vote.

All those in favor of this recommendation? Raise your hand. All those opposed? All those abstaining?

So, it's there are 15 members present and all vote in favor of this recommendation. Dr. Redlich?

MEMBER REDLICH: So, I just need some -- okay, I just need some clarification of our task.

In particular, since the committee addressing the issues related to beryllium and lung disease, so --

CHAIR MARKOWITZ: I'm sorry, can I

just interrupt for one moment?

MEMBER REDLICH: Yes.

CHAIR MARKOWITZ: There was a -- a request, I think either you or George, to one final issue on the proposed changes, that we wanted to address, which was where -- we're making consistent, in where possible in the regulation, that causation actually refers to aggravation, contribution and causation, that we -- that's the way that we understood.

Is this something that we want to -- to --

MEMBER REDLICH: Yes.

CHAIR MARKOWITZ: Okay.

MEMBER REDLICH: Yes.

CHAIR MARKOWITZ: Okay, so, if we could just handle that, and then get back to this issue.

This is a brand new recommendation. There is no language yet for this.

MEMBER REDLICH: Not for this specific.

CHAIR MARKOWITZ: Right. Yes, this is -- yes, if you could put this into the other draft recommendations.

Okay, so, yes, you can take that out. You can take that out. Right. Yes, yes, right there. Okay, okay.

So, can someone propose some language here? Okay, okay, yes.

MEMBER WELCH: Well, it's right in the middle of the screen. It's close to what we are talking about, right?

CHAIR MARKOWITZ: Right.

MEMBER REDLICH: Is this the statutory language?

CHAIR MARKOWITZ: That's being quoted here? No, this is from the regulations.

MEMBER BODEN: So, I'm thinking the first sentence, the Board notes the frequent references in the regulations to "diseases caused by toxic substances".

The Board also notes that -- the Board notes the frequent references in the proposed

regulations to "diseases caused by toxic substances".

The Board also notes that the statute refers to --

CHAIR MARKOWITZ: Aggravation, contribution.

MEMBER BODEN: -- aggravation, contribution and --

CHAIR MARKOWITZ: Causation.

MEMBER BODEN: -- causation. We recommend that the -- that the agency examine all references to causation and ensure that they are consistent with the statute.

MR. RIOS: Yes.

CHAIR MARKOWITZ: Yes, yes, yes. Okay, so, I'm sorry, Les, can you just repeat that?

MEMBER BODEN: No. Repeat which part?

CHAIR MARKOWITZ: Well, the Board notes that the regulations make frequent references to causation, right?

MEMBER BODEN: To causation.

CHAIR MARKOWITZ: Right.

MEMBER BODEN: The Board also notes that the Act refers to -- here --

CHAIR MARKOWITZ: Aggravation, contribution and causation.

MEMBER BODEN: The Board, therefore, recommends that the proposed changes in the regulations make changes -- I said it better before.

MEMBER WELCH: You did.

MEMBER BODEN: I know.

MEMBER WELCH: Reflects what?

MEMBER BODEN: Right, reflect the language of the Act. Thank you.

MEMBER WELCH: Editorial note, aggravation, contribution, causation.

MEMBER BODEN: Okay.

CHAIR MARKOWITZ: Okay, so, comments? Discussion? Okay.

MEMBER WELCH: Move to approve.

CHAIR MARKOWITZ: Okay, second? Okay, we don't need to read this because you read this.

All those in favor? All those opposed? Any abstentions?

Fifteen members present. All vote in favor of the recommendation.

So, that concludes our input, comments, recommendations regarding proposed regulations.

MEMBER REDLICH: So, I --

CHAIR MARKOWITZ: I'm going to double-check, to make sure that we have in fact, voted on all of them, while we move onto other matters.

MEMBER REDLICH: Well, I was a little unclear. Certain ones were selected for us to comment and look at, and others were not.

So, I'm a little unclear. Were the ones related to Part E the ones that we were commenting on, but not the ones on B or --

CHAIR MARKOWITZ: No, the way that --

MEMBER REDLICH: How was it sort of picked which --

CHAIR MARKOWITZ: Sure, sure.

MEMBER REDLICH: -- ones you were

focusing on?

CHAIR MARKOWITZ: The process was that we're invited to provide input into the proposed changes.

We were briefed by DOL about the proposed changes. DOL provided us with guidance as to what they considered to be within the scope and not in the scope of the Board's charter.

We were free at any moment to look at any proposed change that we thought was addressed within our scope -- our scope, our charter, and take up that proposed change and examine it and discuss it.

So, that was not a -- the -- DOL's input and guidance about what was in or not in our scope was not a requirement. We were, at all times, free to select on our own, what changes and in fact, we discussed that at the briefing. We discussed that on our subcommittee calls, and since that time.

So, now, I was the one who came up with the list, the initial list of the things

that we've discussed on the subcommittee calls, but again, called for members to add additional proposed changes that they thought we should address.

So, that's -- that's where we are today.

MEMBER REDLICH: Okay, my brain may have been a little slow in terms of the processing all of this.

The reason I'm questioning it is because our task -- one of the major subcommittees is addressing a number of issues around chronic beryllium disease and the benefits under Part B.

CHAIR MARKOWITZ: Right.

MEMBER REDLICH: And yet, there are sections in this document relating to that, that we haven't really --

CHAIR MARKOWITZ: Sure.

MEMBER REDLICH: -- or I haven't gone over that carefully, and so, that is a little bit of what my concern is, because that does appear

to be under what we have been asked to look at, not just the Part E.

CHAIR MARKOWITZ: Right.

MEMBER REDLICH: And so, you know, this whole added paragraph, I assume it has impact because that's why it was added, but I'm not really clear fully on it.

CHAIR MARKOWITZ: Right.

MEMBER REDLICH: And I guess it's a little bit late now to address that, and I suspect public comments have probably addressed it.

CHAIR MARKOWITZ: I agree with you, that it could be regarded as within our scope, and we have not discussed it, and I agree with you, it's probably too late to provide input into that.

But yes, we are -- as I said before, individual Board members are certainly welcome to look at proposed changes, provide input into the record, DOL's record on comments.

So, let's -- we have about 20 minutes

before we need to close, and I want to just now move to purely administrative matters, such as the subsequent meetings. Couple of issues.

I want to talk about scheduling the subcommittee meetings. If we -- let's say the subcommittees were to circulate dates and agree on a date by, say next Wednesday, come to agreement on a date that they're going to meet by next Wednesday, the earliest that you could meet would be June 22nd, given the seven week delay.

So, June 22nd is approaching the end of June. So, my question to the subcommittees is, can we attempt and strive to by next Wednesday, May 4th, come to, within each subcommittee, a mutually agreed upon date for each subcommittee telephone meeting that would occur, essentially, the last week in June? Give or take, I mean, just the -- the approximate time frame.

MEMBER SOKAS: So, I mean, it's kind of related, but we're talking -- I mean, I hate to be this picky about it, but if we're talking a

two hour phone call as opposed to a two day phone call, that's easier to -- do you see what I'm saying?

CHAIR MARKOWITZ: Yes, yes, sure.

MEMBER SOKAS: So, what do we think is going to be necessary, because that will help with the scheduling.

CHAIR MARKOWITZ: Yes, right. So, that's open for discussion.

Mark, you've got some experience here, but different Boards.

MEMBER GRIFFON: I was just going to ask, just so we can all get our heads around this a little bit.

Can you run through who the committee members -- like the four committees and who is on them? I know I volunteered for two. You know, I know mine. I know mine, but I don't know who else is on it.

Then I mean, I would advise that we just caucus on our way out. You know, we have calendars in our hands. It might --

Maybe not. Maybe not. Right, right, right.

(Simultaneous speaking.)

MEMBER CASSANO: Then I presume that the four subcommittees can't meet on the same day, because they're public. So, we have to deconflict --

MEMBER GRIFFON: That's right.

MEMBER CASSANO: -- those as well.

CHAIR MARKOWITZ: So, let me ask, is it -- does a four hour time slot seem reasonable?

MEMBER GRIFFON: Yes.

CHAIR MARKOWITZ: No, no.

MEMBER GRIFFON: Not to exceed, right.

CHAIR MARKOWITZ: For the subcommittee to meet.

MEMBER GRIFFON: Right.

CHAIR MARKOWITZ: No, but that's a -- Dr. Welch?

MEMBER WELCH: Well, what I was thinking of doing too was, you know, creating a discussion agenda in advance of the subcommittee

meeting, and one thing -- one consideration for the group is, I think we all would like some reports from the -- the database, some general information on claims.

I mean, some of it is in the annual reports. So, one question is whether we can get anything else before the first subcommittee meeting, if we were doing some records requests, because if it turns out that we could get something in two months, we might have the subcommittee wait a little bit longer.

So, you know, I think that it's -- four hours is reasonable if we don't have a whole lot to work on. If it turns out we're going to have a lot to work on -- I can't be on a phone call more than four hours. So, you know, I mean, usually by two and a half, I'm ready to go.

So, we might want to schedule multiple ones, if we're going to have more to work on.

CHAIR MARKOWITZ: Sure, I'm sorry, Mr. Rios has an answer to that question.

MR. RIOS: So, from the Agency's

perspective, we can try to make anything available to you that you request in advance of your subcommittee meetings.

But I don't -- but I don't know if your initial subcommittee meeting was to identify the data that you're going to need. So.

MEMBER WELCH: I think we'd be able to identify some of it -- some of it at -- during the course of this meeting. I think we've identified some things that we would like to see, and having it in advance of the subcommittee, might make things move faster.

MEMBER REDLICH: The stuff we've already asked for.

CHAIR MARKOWITZ: Okay, but the material we've already asked for are already -- are reports that -- and audit performances and things --

MEMBER WELCH: And percentages of the -- you know, what are the -- yes.

CHAIR MARKOWITZ: Okay, yes?

MEMBER BODEN: Just a question about

that. I know we asked for a whole bunch of things. I didn't write all of them down. I know they'll be in the minutes. Is there a way of somebody's combing the minutes and providing that to us?

CHAIR MARKOWITZ: Yes.

MEMBER VLIEGER: Didn't the department keep a list as we were going? Yes?

MEMBER BODEN: Or either way.

MR. RIOS: There is three lists that are going. So, we need to reconcile them, but at the same time, we will look at the recordings.

Depending on how quickly you want the list back and how accurate, meaning accuracy is only -- you're only going to achieve that if we listen to the recording.

So, do you want to -- do you want us the list of the last two days, and then give you the list, because we can do that.

CHAIR MARKOWITZ: No. I would like the -- send me the initial lists, and I will refine them with assistance from Board members, and turn

them back to you, and then we can supplement them with any additions from the review of the recording. Yes, Dr. Redlich?

MEMBER REDLICH: Could you just clarify, because I'm not that familiar with public meetings, and what communication is okay, between the members or not, as far as -- so, let's say there was a -- for an example, a list of data that I thought would be useful to request, and if I wanted input from the other subcommittee members, is there anything else you'd like to request?

Could I send an email to everyone --

CHAIR MARKOWITZ: Right.

MEMBER REDLICH: -- requesting that or -- I just need some guidance --

CHAIR MARKOWITZ: Sure, sure, sure.

MEMBER REDLICH: -- on what is considered appropriate.

CHAIR MARKOWITZ: Yes. I'm turning that to Mr. Rios.

MR. RIOS: So, the rule book said that

even for your subcommittee meetings, you don't need to be this transparent.

But since you all selected to be as transparent, to have the public participate in everything you deliberate, then you've changed the rule book for yourselves.

So, if -- so, the requirements are not that you have to have even the subcommittee meetings in public.

With respect to the -- can you send me an email asking for information and can I send it to your subcommittee? Absolutely. But does that conflict with your desire to be transparent? I don't know.

But per the regulations, the subcommittee can send me emails. I can send emails to the subcommittee. The subcommittee can have telephone calls without the public notice, but the only thing that I would warn you against is that if you're going to publicly state that the public was -- was capable of witnessing your deliberations, then you want to be

consistent in your approach.

CHAIR MARKOWITZ: Sure, and let me just say that, yes, we'll have to define some boundaries, because we want an open process and the meetings will be open. That's what we voted on.

On the other hand, there is a certain amount of interaction that needs to occur for us to make progress in what we're asked to do, without a two month delay in that.

So, what we'll -- we'll have to determine what those boundaries are.

So, did we -- did we settle on what time -- how long these subcommittee meetings might be?

MEMBER WELCH: Three hours.

CHAIR MARKOWITZ: Three to four hours, okay, okay, and it is realistic that by sometime mid next week or sometime next week, the subcommittees might be able to decide on some dates, and so, we can get the process along?

Okay, Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Would it be possible to do two two-hour meetings instead of a four-hour meeting, because four hours is -- I am suggesting that we have shorter meetings and more frequent, because four hours is a big chunk of the day and really affects the rest of your schedule more.

CHAIR MARKOWITZ: Well, I am going to leave that up to the subcommittee chairs to float. Yes, Dr. Silver?

MEMBER SILVER: Dr. Markowitz, I don't know if this is helpful, but yesterday, I jotted down three things you wanted the subcommittees to do, define initial issues and scope, define data and information needs, and review and draft initial work plan with time table.

So, maybe the chair of each subcommittee could figure out how many hours we need to do those three things. Is there more to it?

CHAIR MARKOWITZ: All right, not that I have.

MEMBER FRIEDMAN-JIMENEZ: I think there was a report from the data and the data request.

CHAIR MARKOWITZ: Right.

MEMBER SILVER: The second was -- yes, the second was define data and information needs and review.

CHAIR MARKOWITZ: Yes, okay. Okay.

MEMBER SILVER: So, rather than pick the time and fill it up, those are the three things we should do and figure out how much time we need.

CHAIR MARKOWITZ: Okay, so, let's discuss the Fall meeting. I think that Mr. Rios can float some dates soon, because I know people's calendars begin to schedule up with -- some with teaching and other activities.

So, that we need considerable notice on the Fall meeting, and we'll just circulate some times.

But I -- I favored late September, towards the first half of October, so that we

don't get too deep into the Fall, so we can continue some momentum, but we're going to float some dates and it will -- I would recommend a two-day meeting. Not a three-day meeting, because it will be more effective over two days, and we can do as much in two days, except this time, as we could do in three days. Dr. Welch?

MEMBER WELCH: I don't know if this would be helpful in terms of the notification issues for the subcommittees, but we might --

CHAIR MARKOWITZ: I need to hear this.

MEMBER WELCH: We might consider having a regular time for a subcommittee meeting, so that instead of -- you know, for each one, having to go through the notification process, would it be possible to say this subcommittee is going to meet -- is going to call -- have a call on a certain day, and then if we don't have it, we don't have it.

We could discuss that in our schedule -- whether that fits people's schedules. But would that help with the Federal Register Notice

or would we still have to do a Federal Register Notice for each committee meeting?

MR. RIOS: So, let me read you a section in the regulations, okay?

It's Section 102-3.160, and it states, "What activities of an Advisory Board are not subject to the notice in open meeting requirements of the Act?"

The following activities of an Advisory Committee are excluded from the procedural requirements contained in this sub-part.

The first is defined as preparatory work, and it's meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research or analyze relevant issues and facts in preparation for a meeting of the Advisory Committee or to draft position papers for deliberation by the Advisory Committee, and so, that was the first, preparatory work.

The second is administrative work.

Meetings of two or more advisory committee or subcommittee members, convened solely to discuss administrative matters of the Advisory Committee or to receive administrative information from the Federal Officer or agency.

So, this -- the administrative work piece, that sub-section says that you can convene two or more advisory committee members to receive information from the agency.

MEMBER BODEN: So, I understand that we may not be subject to those rules, but the question of wanting to be open and we need to somehow let people know that they can hear what we're saying --

MR. RIOS: Well, the reason I read you that section in the regulation is because that section does not cover subcommittees, and in fact, that regulation covered other activities that two or more members of the parent committee can engage in, and if you -- and I will read you the administrative work section again, because that specifically addresses subcommittee members.

So, again, Sub-Section B states administrative work. Meetings of two or more advisory committee or subcommittee members convened slowly -- solely and slowly, to discuss administrative matters of the advisory committee or to receive administrative information from a Federal Officer or Agency.

So, your stated desire yesterday or two days ago was to have the subcommittee meetings open to the public. This section that I just read you does not pertain solely to subcommittee meetings, but to administrative work or preparatory work that the committee may engage in.

So, it doesn't conflict with your stated purpose, but I just want you to be clear.

MEMBER VLIEGER: So, prep work and administrative work is excluded from the public?

MR. RIOS: Subcommittee meetings can also be excluded from the public. But your stated desire was to have the public participate in your subcommittee meetings.

Right now, you're talking about administrative work and receiving and requesting information from the agency. Can you do that over email? Yes, because the regs allow you to do all of that outside of the public view.

MEMBER VLIEGER: All right.

MR. RIOS: So, the reason I read you that is because I want you to know that it doesn't conflict with your desire.

MEMBER REDLICH: So, my --

MEMBER WELCH: And the information between ourselves?

MEMBER CASSANO: So, I have a follow up question then.

The three things that Ken wrote down, as you know, determining an agenda, requesting information and I forget what the third one is, could that be considered preparatory, because I don't know if I want to wait until the middle of June to figure out what my agenda is going to be or to determine what information I'm going to want my subcommittee members to look at, before

we deliberate in the middle of June.

So, if we can consider that prep work, then we can move on with that, and actually have some deliberation occurring in June, otherwise we've already put ourselves seven weeks behind, to be able to do anything.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: Well, I mean, I think what Tony said is we can -- we, you know, under the Act, these subcommittee actions don't have to meet all the specific requirements of the public notification, but we did decide we want to notify the public.

MR. RIOS: Except in this --

MEMBER WELCH: And if we want to notify the public by putting it in the Federal Register, then that's the amount of time frame we need.

We could do emails and stuff before the meeting, that would get us better prepared for the meeting, but I think we still want to have it published in the Federal Register, so

that the public would know the subcommittee meetings are happening. That would be my recommendation, but we could do some additional prep work in advance, if we want to, by email.

MR. RIOS: Just to be clear, whenever you communicate with each other, as members of the committee or subcommittee, you have to copy me, yes.

CHAIR MARKOWITZ: Okay, anything else on the -- Dr. Redlich?

MEMBER REDLICH: An email with the rules would be helpful.

MR. RIOS: I can send you all, all the relevant regulations.

MEMBER REDLICH: Thank you.

CHAIR MARKOWITZ: Okay, so, that covers subcommittee and the advanced notice, and our meeting in the Fall. Let's discuss very briefly, well, I just want to talk about where -- not decide on where we're going to meet, but just open the -- the floor to the fact that we may not meet here next time. We may meet in a different

location.

But is there anything? We have five minutes until we adjourn. Is there anything else that -- on the administrative front that we need to address?

If you have any questions about travel or things like that, credit card reimbursement, Mr. Kevin Bird is over here and he can answer your questions. Yes, Mr. Griffon?

MEMBER GRIFFON: Just one question. You mentioned the September meeting. Did you want to discuss location? You mentioned that before.

CHAIR MARKOWITZ: Yes, yes. But is there anything beyond that?

MEMBER GRIFFON: I'm sorry, okay.

CHAIR MARKOWITZ: Okay, so, the idea is we could meet here in Washington, or we could meet at a different location. Different location could be presumably -- well, I don't think they put Department of Energy sites in Hawaii much.

But there's a lot of logic to being in

proximity to --

MEMBER TURNER: Denver or Kansas City.

CHAIR MARKOWITZ: What's that?

MEMBER TURNER: I said Denver or Kansas City.

CHAIR MARKOWITZ: Okay, so, to be in proximity to DOE workers, right, so that people can attend and listen and provide public comment.

MEMBER SILVER: Could we do a site visit at the same time?

CHAIR MARKOWITZ: Okay, so, yes. So, we could -- let's -- if we just start -- I just need your attention, I just need your attention for five more minutes.

We could consider a site visit, but in principle, does anyone have any strong feelings about whether we meet in proximity to a DOE community or where the DOE workers are, as opposed to meeting here? Okay, Dr. Welch?

MEMBER WELCH: I think we should meet near the sites, if we can arrange that, where the DOE communities, but the communities are

primarily, at least the ones we know are located around the specific sites, the big sites, like Oak Ridge and Hanford and Savannah River, and I think we'd get a lot of interest from the public if we met in those areas.

CHAIR MARKOWITZ: Okay.

MEMBER GRIFFON: Steven?

CHAIR MARKOWITZ: Yes, Mark?

MEMBER GRIFFON: One other thing that we may consider is where the Radiation Board met for their meeting, because it might be beneficial --

MR. RIOS: Your microphone is off.

MEMBER GRIFFON: Oh. You know, it may be beneficial to have the meeting in the same location as the Radiation Board, you know, a few days before or a few days after, whatever.

Just a thought, or you may want to -- not want to conflict with that --

CHAIR MARKOWITZ: Right, right.

MEMBER GRIFFON: -- because a lot of the same claimants are going to be involved in

those meetings.

CHAIR MARKOWITZ: Right, right.

MEMBER GRIFFON: So, just to check those schedules, yes, and I think we have -- they are meeting, I think in September.

CHAIR MARKOWITZ: Right.

MEMBER GRIFFON: So, just to -- yes.

CHAIR MARKOWITZ: I have a question, actually for Ms. Leiton.

If we meet not in Washington, will there be some attendance from people, DOL, your unit, so that we can continue interaction?

MS. LEITON: We absolutely plan on attending.

CHAIR MARKOWITZ: Okay, great. Okay, great, thank you.

MS. LEITON: One other thing, if you don't mind, just we do have to do outreach task groups, and sometimes, you know, we'll go to these locations.

So, I don't know if you want to either consider going to where we're going, or again,

not going where we're going, to either be -- have that done -- let them be part of this or avoid --

CHAIR MARKOWITZ: Right.

MS. LEITON: -- you know, whichever conflicts, so we've got to schedule that as well.

CHAIR MARKOWITZ: Okay, great. Thank you. We'll look at that schedule.

Okay, so, I understand. That settles that. Any other questions before we close? Yes?

MS. POPE: Can we have Kevin give a overview of the credit card information?

CHAIR MARKOWITZ: Okay, Kevin, you have the floor, to explain the credit card to us.

MR. BIRD: So, basically you all have travel reimbursement forms in your packet. Fill those out, or I -- after the conference, we can also email them to you.

Just include all your expenses, not including food and meals already reimbursed per diem basis, so that's a flat fee. Provide receipts for anything over $75, and then you -- we will process that, reimburse you and then you

will pay that credit card bill. Five days.

MR. RIOS: It's five days.

MR. BIRD: Just give me your travel reimbursement form within five days from now.

MEMBER REDLICH: That's in our packet?

MR. BIRD: It is, and I'll email it to everyone, so you have an electronic copy.

MEMBER WELCH: Kevin, what about cash receipts?

MR. BIRD: Over $75.

MEMBER WELCH: Okay, thank you.

CHAIR MARKOWITZ: Okay, so, one last -- if I could have your attention. I would just like to thank numerous people here. Mr. Rios, Ms. Rhodes, Mr. Salandro, who has been back there.

Mr. Bird, who is key to many things for us. Also, thank Ms. Leiton and the DOL for not only being extremely informative, but also being very clear about your desire for our input into these various issues. So, we appreciate that.

Also, thank the Ombudsman and Ombudsman's office for participating, and thank the hard working members of the Board. The meeting is adjourned.

(Whereupon, the above-entitled matter went off the record at 3:00 p.m.)

D

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Advisory Board on Toxic Substances and Worker Health

Before: US DOL

Date: 04-28-16

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R. Gross

Court Reporter