UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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MEETING

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TUESDAY
JANUARY 30, 2018

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The Subcommittee met telephonically at 1:00 p.m. Eastern Time, 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:

DOUG FITZGERALD

ALSO PRESENT:

KEVIN BIRD, SIDEM
CARRIE RHOADS, Alternate DFO

C-O-N-T-E-N-T-S

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

1:06 p.m.

OPERATOR: Welcome. Thank you for standing by. Throughout today's conference, all participants will remain in listen-only mode. Today's conference is being recorded. If you have any objections, you may disconnect at this time. And I'll turn your conference over to Doug Fitzgerald from the Department of Labor. Thank you, you may begin.

MR. FITZGERALD: Good afternoon, everyone. I'm Douglas Fitzgerald and I would like to welcome you today to this meeting at the Department of Labor's Advisory Board on Toxic Substances and Worker Health. I'm the Board's Designated Federal Officer, or DFO.

First, on behalf of the Department of Labor, I would like to express my appreciation for the hard work of our board members over the past months in preparing for these public meetings and for their forthcoming deliberations.

I also wish to thank my colleagues here

at the Department of Labor for all their efforts in preparing for today's meeting, and in particular Carrie Rhoads, our committee staff and alternate DFO, and Kevin Bird of our SIDEM staff who always does a terrific job of preparing for these meetings and running them virtually as well.

As DFO, I serve as the liaison between the Board and the Department. I'm also responsible for ensuring all provisions of the Federal Advisory Committee Act, or the FACA, are met regarding the operations of the Board.

I work closely with the Board's Chair, Dr. Markowitz, and I'm responsible for approving the meeting agenda and for opening and adjourning these meetings. I also work with the appropriate agency officials to ensure that all relevant ethics regulations are satisfied.

Copies of all meeting materials and public comments are or will be available on the Board's website under the heading Meetings. I should note, however, that since some of the documents that we'll be discussing today arrived

too late for posting on the web, they will appear on the website tomorrow. But they will be viewable in WebEx as we have those discussions.

The Board's website can be found at dol.gov/owcp/energy/regs/compliance/advisoryboard.htm, or you can simply Google Advisory Board on Toxic Substances and Worker Health and it's likely to be the first one that comes up.

On that page you also see instructions for participating remotely today. And it should be noted that there's no public comment period scheduled for this full board meeting.

If you are joining by WebEx, please note that this session is for viewing only and will not be interactive. During the meeting, I would request that members be mindful of background noise in their locations, and to place your phones on mute when possible if you are not presenting or engaged in direct discussion with other members since we're recording the meeting to produce transcripts and to ensure the public can hear.

The FACA requires that minutes of this

meeting be prepared to include a description of the matters discussed and the conclusions reached by the Board. As DFO, I ensure that the minutes are prepared and certified by the Board's Chair. The minutes of today's meeting will be available on the Board's website no later than 90 calendar days from today per FACA regulations, but if available sooner, it will be published before the 90th day.

Also, although formal minutes will be prepared because required by the FACA regulations, we will also be publishing verbatim transcripts which are obviously more detailed in nature. We'll work to see those transcripts will be available on the Board's website within the next several weeks.

Now with that, let me just go through a quick roll call and make sure we have all the Board present before I turn it over to Dr. Markowitz. So, Dr. Dement?

MEMBER DEMENT: Present.

MR. FITZGERALD: Dr. Silver?

(No audible response.)

MR. FITZGERALD: Dr. Silver?

(No audible response.)

MR. FITZGERALD: We'll come back to Dr. Silver. Mark Griffon, Mr. Griffon?

MEMBER GRIFFON: Yes, I'm here.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Present.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Here.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Here.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Here.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Here.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Here.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Present.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Here.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Here.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Here.

MR. FITZGERALD: And Dr. Silver?

MEMBER SILVER: Here.

MR. FITZGERALD: Okay. And lastly, Chairman Markowitz?

CHAIR MARKOWITZ: Here.

MR. FITZGERALD: With that, Mr. Chairman, I turn it over to you.

CHAIR MARKOWITZ: Thank you, Doug. Also thank you Carrie and Kevin for supporting this meeting and all of our activities. I would like to welcome everybody back to this Board meeting by telephone which isn't optimal, but it's efficient and we will get our work done.

I want to also welcome the public, I don't know how many members of the public are on

the phone, but we are happy to have you listen. Unfortunately we're not able to have a public comment period.

Some of what we'll do today is on, we'll discuss is on our website, ABTSWH. All you have to do is google that and look at today's meeting, and you'll see about five or six documents that we will discuss.

Several of the documents we'll discuss did not make it to the website as Doug mentioned due to the tardiness of myself and a few select other members of the Board in terms of getting the materials to Carrie.

But in any case, we're going to run through all these things today on the WebEx and by discussion. So hopefully the members of the public will be able to keep up.

I want to take note of sad event, that the passing of Jim Melius who was an occupational medicine physician, he passed away January 1st. He's a friend of many of us and a colleague.

He was for 17 or 18 years chair of the

Radiation Advisory Board of the DOE, and also within New York State instrumental in establishing the permanent health program and the compensation program for World Trade Center workers.

He did many other things at a federal level with NIOSH, at a state level within the New York State Department of Health over the last 20 years, New York State laborers. Many things in his career, and we will miss Jim sorely.

The agenda for today is basically to review our draft replies to Department of Labor's comments on our recommendations. We discussed these issues at the last Board meeting, and what we're going to review is text that hopefully summarizes our opinions and responses, in some instances revisions of recommendations.

We will vote on each of these today. This Board continues, all but one member continue until February 16th. Faye Vlieger's term continues over several weeks after that meaning, I guess, Faye, you'll get to vote on whatever you need to vote on during those weeks.

But in any event, the schedule from today until February 16th is that we will vote on ten items today, the comments. And we will permit limited word changes in what we vote on today over the next week or so and then submit the final documents to Department of Labor within the next ten days or so, if that makes sense.

Most of today's agenda revolves around ten comments or recommendations. If we detect that there's time, we may hear news or any reports from any subcommittees if there is any.

And finally, we, if there's time we might discuss topics we think that the next Board should address. We won't vote on those. Those are just ideas that which we will write up and float for the next Board. We did that preliminarily at the end of the last meeting. I just want to continue that process if there's time.

Any comments or questions? We will take a break at, you know, roughly 2:30, quarter of 3:00. And otherwise, let's start. We can start with the draft on the IOM databases. This is

Recommendation number 2 from October, 2016.

First of several recommendations from October 2016. We're not going to read these draft responses because they're long, and there's no need to read them. But I would ask the drafter to summarize it and then open it up for questions, comments. So I think, Laurie, I think this is yours.

MEMBER WELCH: Yes. I'm ready.

CHAIR MARKOWITZ: Okay.

MEMBER WELCH: Okay, the Board saw a previous draft of this at our last meeting. And the Board recommended that, and I had proposed with that draft that the Department incorporate data from IARC and from EPA's IRIS database to expand the causal links between exposure and disease in SEM.

And at the Board Meeting, several people recommended, and there was a consensus, we should also recommend that at the same time instead of just the two databases we add the National Toxicology Program.

So I did that. I added that. And what you can see now is IARC and IRIS. And if you scroll down a little bit more you'll see that we have, I added National Toxicology Program as well, just you know, a paragraph stating what the NTP is and then added under the process that NTP should be added in the same way we're recommending adding the other databases.

And that's pretty much what we're covering. What's here is that the recommending that the Department review IARC Group 1 and Group 2A carcinogens, and the IRIS database and the NTP will incorporate those causal links into the SEM. And that's it. Open for comments.

CHAIR MARKOWITZ: This is Steve Markowitz. So I keep a couple of suggestions. One is in the additional description of these various sources that you, and the term peer-reviewed because these are authoritative sources. And as though asking the lead for DOL to reinvent anything. So I would just add that term. And my other --

MEMBER WELCH: Okay. Yes. I will.

CHAIR MARKOWITZ: -- suggestion under the recommended process actually, Kevin, if you could -- oh, yes. No we're looking at, under one, it says here DEEOICP should identify team that was, that these recommendations includes individuals with competence in toxicology. I would add epidemiology and occupational medicine just to make it clear.

MEMBER WELCH: Okay. I think that's a good idea. Let me ask you about process. Should we at this point see if there are anybody on the Board objects to those changes, because they sound good to me.

MEMBER FRIEDMAN-JIMENEZ: This is George. I strongly support it because, for example, NTP bases it's known human carcinogen on the epidemiology. It has to have human evidence and the toxicology is secondary. So I'm strongly in support of adding epidemiology and occupational medicine, which is really about the causal inference.

MEMBER WELCH: Do you want to, can we edit it now on the screen or should I make those changes and send another draft? It's easy enough to add it. Under Number 1 we would add competence in toxicology, occupational medicine, and epidemiology.

CHAIR MARKOWITZ: You know -- this is Steve Markowitz. It's unclear to me where epidemiology really exists in OWCP. I don't know where, my sense is that the Paragon contractor is that it's mostly focused on exposure assessments, I could be wrong.

And then we've heard about occupational medicine, toxicology within OWCP, or specifically within DEEOICP. And we really haven't heard at all of epidemiology.

So it's one of the questions I think that Ms. Leiton was going to get back to us about exactly what the range of skills that the Paragon had or brought to the project. But we'll find that out I think in the future.

MEMBER WELCH: If I remember -- this

is Laura Welch again. If I remember on the previous recommendation where we recommended incorporating all the resources in the table. I did have more of a rational that talked about these sources being peer-reviewed. It's possible to incorporate that into this and making it a more complete recommendation. It does refer back to the old one, which I will.

CHAIR MARKOWITZ: Yes, yes. No, this is Steven. That's a good point, actually. Your response should be viewed supplemental to a prior recommendation because you really haven't changed anything. You've really just filled out what the recommendation is.

MEMBER WELCH: Right.

CHAIR MARKOWITZ: Whereas there's another recommendation actually which revised things. Any other comments on this, or should we move on?

(No audible response.)

CHAIR MARKOWITZ: No other comments.

MEMBER FRIEDMAN-JIMENEZ: This is

George. A question. Do you think we should also add industrial hygiene?

MEMBER WELCH: You know, what we're really looking at is we're having people go through peer-review databases. And you're asking them to accept what has already been peer-reviewed and determined by these agencies to be a valid causal link. You don't want to do too much second guessing of those. But I don't think --

MEMBER DEMENT: This is John, I thought of that too, but I had the same sort of thought as Laurie. You know these are already exposure response patterns that have already been reviewed and accepted. So I'm not sure exposure assessment needs to be thrown into there. It's mostly the causal link and accepting those causal links and how to get them into that form.

CHAIR MARKOWITZ: Other comments?

MEMBER CASSANO: Dr. Cassano. I tend to agree with the last two speakers. I think the more we add to this, the more complicated it looks and the more complicated it looks and the more

onerous it appears to the agency. So I would recommend that we just keep it the toxicology, occupational medicine, and epidemiology.

MEMBER FRIEDMAN-JIMENEZ: Sounds good to me.

CHAIR MARKOWITZ: Ken, I know you're not, I think you're not looking at the screen. Do you have any questions in particular about the content here?

MEMBER SILVER: I agree with the last several speakers. Keep it simple, and the causal links are already established.

CHAIR MARKOWITZ: So are there other comments? Otherwise, we'll vote on this.

(No audible response.)

CHAIR MARKOWITZ: Okay, so the motion, is there a motion?

MEMBER WELCH: Well I noted, but I move that we approve it.

MEMBER SOKAS: I second.

MR. FITZGERALD: Dr. Markowitz, this is Doug. I think you should probably at least by

voice vote agree to the changes before you adopt the recommendation. And then we can do the roll call.

CHAIR MARKOWITZ: You're suggesting that we vote on the modifications first and then --

MR. FITZGERALD: Yes.

CHAIR MARKOWITZ: As opposed to just voting on the modified statement or recommendation.

MR. FITZGERALD: I think you can take by voice vote or just ask if there are any objections to the modified language, and then we will note that if there aren't any that it was unanimous and then move the whole recommendation.

CHAIR MARKOWITZ: Okay, thanks. Are there any objections to the minimal changes that we've mentioned so far?

MEMBER FRIEDMAN-JIMENEZ: I don't object, but I have a question on Number 4. So you specified Group 2A, hierarchy 2A, that's the probable human carcinogens. 2B is possible human carcinogens. And it's a different and much larger

group.

MEMBER WELCH: Thank you. I think we should say 2A, and that was my understanding. You're right, it doesn't say that. So if people are okay with that, unless there's any objection, we'll make it 2A.

(No audible response.)

CHAIR MARKOWITZ: Sounds good. Are there any other comments?

(No audible response.)

CHAIR MARKOWITZ: Okay. So Doug, you want to take a roll call for this?

MR. FITZGERALD: Sure. If hearing no objections to the modifications in the language and have someone move for the adoption of this recommendation with modifications.

MEMBER WELCH: Yes, I did.

MR. FITZGERALD: Okay. And that is who?

MEMBER WELCH: Dr. Welch.

MR. FITZGERALD: Dr. Welch. Okay.

MEMBER CASSANO: Dr. Cassano seconds.

MR. FITZGERALD: Okay, thank you. Okay, I will take the roll then. Dr. Dement.

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver.

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffin.

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez.

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden.

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich.

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano.

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch.

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas.

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope.

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger.

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner.

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley.

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina.

MEMBER DOMINA: Yes.

MR. FITZGERALD: And Chairman Markowitz.

CHAIR MARKOWITZ: Yes.

MEMBER WELCH: Before you close the document, we did decide that under Number 4 we should have it say IARC Group 2A. Just get a little A in there. And I'll note we did agree to that. Thank you.

MR. FITZGERALD: Yes, so noted.

CHAIR MARKOWITZ: Okay. The next one is recommendation Number 3 from October, 2016 about hiring former DOE workers to administer the occupational health questionnaire. Okay. So it's being brought on the screen.

Let me just summarize, this is my write-up. So let me summarize the sequence. You know, we recommended that they hire former DOE workers at the resource centers to do the occupational health questionnaire. And DOL's response to that was basically they agree it's beneficial.

In fact, out of the 60 employees at the resource centers, 17 are former DOE workers. And that they encourage the contractor to recruit former DOE workers. And whoever does the occupational health questionnaire, the DOL makes sure they are adequately trained and skilled to do it.

So, that was DOL's response to us, our recommendation. And so what I formulated here is a recognition that we agree about the importance of using former DOE workers. And we recognize the DOL makes a commitment to hire, or at least encourage at the hiring of DOE workers.

But then in what you're looking at, I pose a number of questions that really get to the

detail about how the former DOE workers are used at the resource centers to perform this function. And let me just review them.

I know Ken isn't looking at it, but so how many of these at least 17 DOE workers who are currently employed spend at least a third of their time administering the occupational health questionnaire in the past year?

The one third of their time is arbitrary, but I wanted to put a number on it rather than say, you know, something like substantial. The second question is what percentage of the occupational questionnaires were administered by former DOE workers during the past year.

These two questions are trying to drill down into yes, you have former DOE workers there. We don't know exactly what they're doing to tell us whether they are actually doing the occupational health questionnaire. And if those data are hard to come by, develop those data and consider using them as metrics.

The third question is what job titles

the former DOE workers had when they worked at DOE? Did they occupy job titles that are highly relevant to the kind of exposures that people had at the sites. And thereby, you know, they would be better able to ask the questions about out the occupational health questionnaire.

And then the fourth question is, are there resource centers which aren't doing so well in this score of former of DOE workers that below average in employing former DOE workers, or administering the occupational questionnaire by DOE workers?

And then finally, does the resource center do job vacancy notices. And the recruitments here specifically address the desirability about having former DOE workers work at the resource centers to do the occupational health questionnaires.

So, this is about getting greater detail to see whether the former DOE workers actually are doing what we think they should be doing at a minimum in terms of obtaining better

quality information on the occupational health questionnaire.

So let me just point out one last thing, which is this is not a revised recommendation telling, to the extent that we're advising the DOL, to be more proactive in ensuring the DOL workers, DOE workers are hired at the resource centers. This is much more getting additional information which then could be followed by a stronger recommendation.

But let me leave it at that and open the floor for comments, questions?

MEMBER CASSANO: Steve, this is Dr. Cassano. I think I had written a comment to you prior without sending it to the entire group, unfortunately. As I remember, the resource centers are run by contractors.

And I thought it might be appropriate as part of our ask to ask that we either look at the RFP or the actual contract language to see how that encouragement is worded. And though we're not revising a recommendation to basically see if

they actually make it a required priority to hire DOE, former DOE workers, or if it's just a loosely unenforceable phrase of that encouragement.

CHAIR MARKOWITZ: So, this is Steve Markowitz. So, to address that, we can do, add a bullet at the end and ask specifically, does the contract list the contractor require or have language that specifically encourages hiring DOE workers, meaning that we're asking for the information about what's in, exactly what's in the contract. Does that address your point?

MEMBER CASSANO: I think I would rather say, you know, we would like to know if the RFP or the contract has language that -- yes. That's fine. I would like to see how strong that encouragement is, because quite frankly they could make it a priority. But, so yes, I think that's a fine bullet.

CHAIR MARKOWITZ: So if we just ask does the contract with the resource center contractor require the hiring of former DOE workers, does that --

MEMBER CASSANO: No, I would say make it a priority to hire former DOE workers. Or does the RFP or contract language give former DOE workers priority over other applicants? I think that's the way to put it.

CHAIR MARKOWITZ: Okay. So Kevin, in that what you just typed up, would you go back to require and add require or prioritize, and then a question mark at the end. So Tori, are you looking at that, does that capture your point?

MEMBER CASSANO: Yes, I think we should take require out and just say prioritize the hiring of former DOE workers over other applicants. So after contractor, a contract not contractor. Oh, I see. Contract with the DOE, take out require or. And I would say prioritize the hiring of former DOE workers over other workers.

CHAIR MARKOWITZ: Over other candidates.

MEMBER CASSANO: Other applicants, yes.

CHAIR MARKOWITZ: Or applicants.

MEMBER CASSANO: Or candidates.

CHAIR MARKOWITZ: Applicants, yes. Okay. So does that do it now?

MEMBER CASSANO: Yes.

CHAIR MARKOWITZ: Okay. Other comments, questions?

(No audible response.)

CHAIR MARKOWITZ: Okay. So in that case, are there any objections to the modification that Tori just added, made?

(No audible response.)

CHAIR MARKOWITZ: Okay, there are no objections. So is there a motion to approve this reply to DOL?

MEMBER BODEN: So moved.

CHAIR MARKOWITZ: Okay. That was --

MEMBER BODEN: Les Boden.

CHAIR MARKOWITZ: -- Dr. Boden, yes.

MEMBER FRIEDMAN-JIMENEZ: George Friedman-Jimenez seconds.

CHAIR MARKOWITZ: Okay. So any final comments before we -- so Doug, if you want to do

a roll call here.

MR. FITZGERALD: Will do. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

MR. FITZGERALD: So passed.

CHAIR MARKOWITZ: Okay, we're going to go to the next one. This is Recommendation number 7 from October 2016. And Dr. Sokas is going to take over. But let me remind you that this is the recommendation in which we suggested that occupational medicine function be reorganized within the Department of Labor so that occupational medicine physicians within who worked on DEEOICP blended with physicians who worked on other compensation programs within OWCP, and even physicians who worked in other parts of DOL such

as OSHA. So Rosie, if you want to jump in.

(No audible response.)

CHAIR MARKOWITZ: Rosie, if you're speaking, you're on mute.

MEMBER SOKAS: Sorry about that. Yes, I'm on mute. I apologize. So yes, this is basically a recommendation that we don't want them to necessarily have to reorganize the entire Department of Labor, but there are benefits to having collegial relationships that can improve the quality of the work product.

And in particular, we have concerns about physicians practicing in isolation. Now, the gist of it is really that in fact there are resources throughout the Department of Labor that might be exemplars, but that we await further information from the program.

We understand that within OWCP there's at least one additional physician. But we don't have any real information on that yet. So we're just asking for that information.

CHAIR MARKOWITZ: So this is really

just an information request?

MEMBER SOKAS: That's right.

CHAIR MARKOWITZ: To provoke continued discussion on this issue?

MEMBER SOKAS: Provoke is the operative word, yes.

CHAIR MARKOWITZ: Any comments or questions?

(No audible response.)

CHAIR MARKOWITZ: I'm just holding on for a moment, giving people a chance to -- those who can see it on the screen. Okay. So then I think we need a motion to approve this.

MEMBER SOKAS: So I can, this is Rosie. I'll move to approve.

MEMBER CASSANO: Second.

CHAIR MARKOWITZ: That was Dr. Cassano who seconded. Okay. Any comments?

(No audible response.)

CHAIR MARKOWITZ: So, Doug, you want to do a roll call?

MR. FITZGERALD: Sure. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffin?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: And Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

MR. FITZGERALD: Okay, so moved.

CHAIR MARKOWITZ: Okay, we're going to move on to Recommendation number 8. Kevin, this is from October of 2016. And so this, Tori can handle this.

But while this is being brought up, let me just remind you this is the recommendation in which we suggested that the entire case file go through the contract position or the industrial hygienist so they can look at all the material in the case file as opposed to just what the claims examiner decides is relevant and sends to them. So Tori, you want to continue?

MEMBER CASSANO: Yes. As Dr. Markowitz said, the original recommendation was about the entire claims file. And the Agency's response was a list of reasons for why this recommendation was either inappropriate or impractical.

And at our last face-to-face meeting, there was very strong support for sending the entire case file from all of the board members including the -- and especially including those board members that do this kind of medical record review as part of their practice.

And so the Department of Labor, without reiterating all of this, Department of Labor basically stated their reasons that they could not agree with the recommendation. And if you could scroll down a little bit.

Essentially, what this revised recommendation says is it's our response to each one of those issues essentially saying that the fact that it's too cumbersome for the professionals to look through the whole record is resolved by

having a case map.

Number two, the issue that they didn't want the industrial hygienist and medical examiners to make up their own facts, basically believes the Agency wishes that expert form their opinions based on complete and accurate information and nothing more and nothing less.

And most of us felt that it is inappropriate to ask a professional to render an opinion when they are not permitted to review documents that may be pertinent but were not provided to them. And it creates a tunnel vision and possibly a false response from the professional.

And then finally, the statement that these same contractors do provide expert medical opinions to other federal agencies, and in those contracts they are required to have the entire record.

And so essentially, we're reiterating our initial recommendation with reasons that, and statements that try to allay the Agency's fears

or help modify the Agency's reactions to the recommendation.

CHAIR MARKOWITZ: Thank you. So I know that Dr. Boden is listening. And then maybe we can start with those comments and then move on?

MEMBER CASSANO: Yes. I had no problem with Les' comments, so if somebody has them, so I don't know if Carrie has them. But he added some wording that I was trying to work with and just gave up. So we can add those, I have no objection to that.

CHAIR MARKOWITZ: But I think, Les, I think you should just go over those with the group. So Les, I think you might be on mute because we're not hearing you.

MEMBER BODEN: Correct. So I was just asking, can you put them up, or are they not there available?

MR. FITZGERALD: Yes, we're working to pull them up right now for you.

MEMBER BODEN: Okay. I seem to have -- okay, maybe that's -- okay. So on Issue 2, there

was an objection to our suggestion stating that the CEs are the finders of fact, and that sending the whole file to outside experts would undermine their role as finders of fact.

And the sentence that I added said in addition, finders of fact in our legal system are typically not experts, and we do not believe that using experts undermines the role of the finders of facts. Finders of facts like judges and juries often rely on expert evidence.

The finders of fact then weigh the evidence to determine the facts that they will use in rendering an opinion, which I think, disclaimer, I am not a lawyer. But I think that is a reasonable description of the role of a finder of fact and the role of experts in situations where there is a finder of fact. Should I go on to the next?

CHAIR MARKOWITZ: Yes, I think you should. I think you should. And I do think you're doing the right thing by reading it both because Ken's not looking at it and I think some members of the public may not be able to see it. So that's

a good thing.

MEMBER BODEN: Okay, good. So that was, then Issue number 4, let me just sort of look at it for a second myself. So Issue number 4 is, thank you, if you move up. If you move up to read Issue number 4 at the beginning sort of to help people with it.

So Issue number 4 was when a claims examiner refers a case to an IH or a CMC, they are seeking guidance on a particular set of circumstances from which the specific questions are derived. And then if you can move down to the suggestion.

So my suggestion was to add to that, in addition, the Board's recommendation does not affect the CE's ability to ask specific questions of the IH or the CMC. It provides the consultants with the opportunity to use their expertise to identify information relevant to the CE's questions that was not necessarily recognized as such by the CE.

In reading this, I added a couple of

words which might make it sound a little better. So it's to use their expertise, I said to identify information relative to the CE's questions that would not necessarily be recognized as such by the CE. Thank you.

MEMBER CASSANO: This is Dr. Cassano. I just have one tweak to the first addition. It's the IH and the CMC that are rendering an opinion. The CE is actually making the determination. And so I would like to use to determine the facts that they will be using to make a decision.

So since they already used the term determine the facts in making a determination to be sort of redundant.

MEMBER BODEN: Okay. That's fine with me. I think rendering an opinion and making a decision, I don't care which words we use.

CHAIR MARKOWITZ: Are there further comments on Les' recommended language? Okay. So are there other comments on the entire piece?

MEMBER POPE: This is Duronda Pope. I think this is essential. I agree with Dr. Boden.

Essential, this recommendation and the additions of the -- his recommendations because this is the meat of the claimant's case, and is making sure that all that information is getting to the right people.

CHAIR MARKOWITZ: Thank you. Other comments?

(No audible response.)

CHAIR MARKOWITZ: Okay. Hearing none, is there any objection? Oh, I want to announce to the group that Ken Silver is now on WebEx and can see things. But we still need to consider that members of the public may not be able to see the screens. So we'll try to adapt what we say.

MEMBER SOKAS: And this is Rosie. I can't see the screen either.

CHAIR MARKOWITZ: Okay. So are there any objections to the modifications that Dr. Boden has recommended, has made?

(No audible response.)

CHAIR MARKOWITZ: So there are no

objections. Do I hear a motion to accept then this new recommendation?

MEMBER CASSANO: So moved.

MEMBER DEMENT: John, second.

CHAIR MARKOWITZ: Second, okay. Any final comments on this?

(No audible response.)

CHAIR MARKOWITZ: Okay. So Doug, if you could do a roll call?

MR. FITZGERALD: Certainly. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

MR. FITZGERALD: Okay.

CHAIR MARKOWITZ: Okay. We're going to move on now to the April 2017 Board Meeting.

And we're going to, we have six recommendations to go through. The first is on asbestos. If you can just bring that up.

There was a lot of agreement, I would say, between DOL and us on the issue of asbestos. DOL agreed that they haven't recognized, at least in writing, the issue of asbestos and lung cancer.

And we agreed that certain time parameters, you know, number of days exposed, latency, the gap of time between onset of exposure and when the person develops disease, were important.

There was a little bit of disagreement about what that latency should be for each of the illnesses. DOL preferred using ten years latency for asbestosis. And we had recommended, really for the purposes of keeping it simple, 15 years across the board. But it's fine to use ten years for asbestosis.

The way that this write-up is, and it's a few pages so we're not going to by any means read it. But the way this is structured is that the

recommendation is now revised to include the specifics that we would like to see in this for asbestos related disease.

And we agree that if a person worked 250 days or more, that that would be sufficient, with the exception of mesothelioma which is known to have a smaller dose required. And we agreed with DOL, 30 days is the minimum that can be used for the purposes of presuming a mesothelioma is related to DOE related asbestos exposure.

So if you could scroll down. You can stop there, yes. So DOL raised a couple of areas of disagreement or requests for additional information. One is they made this distinction between exposure and causation presumptions which is different from the way we look at it.

But actually, when you scratch the surface, there's not a whole lot of difference. It's mostly, I think, linguistic and a little bit of procedure.

When we talk about these exposure criteria, 250 days or 30 days or a certain number,

we're talking about whether it should be considered sufficient to be causal if the person has the disease in question. And whereas DOL is really focusing on is this a significant exposure or not, and making distinctions based on 1986 and 1995 and the like.

So in any event, our approach is simpler. But I think for the purposes really of a causation presumption, the differences in approaches in terms of calling them an exposure versus a causation presumption is not a big difference. So I don't think it's really an issue.

They, DOL wanted us to provide more documentation about the listed job titles, and which we will do. I don't include it here because I still have to assemble, I have some but I have to assemble more.

Now our recommendation, if you remember, was for all maintenance and construction job titles. And the List A, which is what's used currently, is not as broad as what we're recommending. So the documentation we will give,

provide, is for all maintenance and construction job titles.

And one side note is when I began to think about this, I thought well why doesn't DOL use what is the federal standard which is the standard, it's called the SOC system that the Department of Labor uses for statistics, which is the classification system of jobs, the standard occupational classification system which was updated actually in 2018.

And so I provided at the end of this what the SOC looks like. And if you could scroll down for a moment, Kevin, so people can see what this looks like. And this is just a standard way of looking at various jobs, first in construction. Yes, just go up a little bit more.

So construction, so you see familiar job titles. It's all inclusive, and it may also to some extent coincide with how some of the research studies supporting asbestos related disease among these workers has been done.

If you go a little further, Kevin, down,

you'll get to the maintenance workers. And the difference, for those who are looking, there's some job titles in red that I made in red because I thought they probably didn't routinely have asbestos exposure at DOE, or they were jobs that weren't really relevant to DOE.

But a question I have for the group when I stop talking will be whether this introduction of SOC is really a useful part of this recommendation at all because DOL has been using, you know from the SEM, it has its own lists of jobs. They have job categories and they have job aliases.

So they've taken the very large number of job titles that I've seen across the complex over time and they have found ways of grouping them into a much more limited number of job titles, not all that dissimilar from what we're looking at on the screen, particularly in the construction trades.

So they have a system, and I'm not sure that system of job categorization is at all broke. So I'm raising the question of whether we should

include an SOC recommendation as part of this, or whether it's just a distraction.

So if you can go back up, Kevin. More importantly is, okay, yes, is that the DOL requested that we provide documentation that 2005 was an important date in terms of exposure.

So our recommendation was if workers worked in maintenance or construction for 250 days or more prior to 2005, that they should be presumed that they had significant or sufficient asbestos exposure so that it would aggravate, contribute, or cause an asbestos related disease.

And DOL said, what's the basis of the 2005. And they've heard our discussion about this, particularly from the members of the Board who work at the sites why we picked that date. But the request from DOL was for some documentation that could support that date.

By documentation they meant a change in DOE policy or procedure, inspection data, evidence of overexposure from industrial hygiene data, or the like. And we haven't been able to

come up with it, to tell you the truth.

I have interacted some with DOE, Greg Lewis and Pat Worthington, asking about the 1995 order, when the 1995 order took effect. This is Order 440.1, a major health and safety order.

And interestingly, orders do not have the authority of regulations for the contractor. So DOE issues an order like it did in 1995, the contractor at DOE does not have to, it's not mandatory that they alter their procedures to comply with that order.

It does become mandatory when the contract period ends and a new contract period begins with the same contractor or with a new contractor. It's built into the contract. But when the order comes down during the period of a contract, it's somewhat encouraged, somewhat optional. It's not mandatory.

So I thought okay, we could use the average length of a contract in existence in 1995 to come up with a more realistic date of when the order became effective. But haven't really been

able to get that information out of DOE, mostly because of logistics of talking to them about this.

And we've been unable to come up with any industrial hygiene data, any inspection reports across the complex that would support 2005 versus 1995. So what I'm recommending is that we use the 1995 date as the date for presumption because the order did take place.

We know things didn't change overnight, but it is a marker of time. And I appreciate that we rejected that marker in terms of the DOL circular. That was slightly different. It was the presumption that all exposure after 1995 was essentially insignificant.

But that it's important to establish, for asbestos, a presumption. And it's key, it's essential to have a date. And if the order 440.1 allows us to get the date of 1995, it will cover an awful lot of people.

And then sometime in the future, we can identify information that would document that exposure to asbestos could be presumed after 1995,

then that information could be supplied to DOE and DOL, they could possibly change the date.

But that 1995 appears to be an acceptable date to DOL. And if we use that and get this accepted as a presumption, it would be a major step forward.

So I'm going to stop now and open it up.

MEMBER WELCH: Stephen and everybody, this is Laurie Welch. I think that's a great plan, and I think having the presumption year at '95 will cover the great majority of people who need to use it. So I think that will make it easier for them to get accepted. So I support that idea.

I think it's a good idea to list those SOC jobs because every time we talk about a list of jobs, I feel like we get back from OWCP you have to tell us which jobs or that's too broad a statement or something like that.

Construction, they have an accepted list. But when we say maintenance, it seems as if they want us to define it. So I think defining

it, maybe it's not defining it the way they use it. But they could match these job titles up with their job titles, or say that they don't need to use these job titles because they have their own list of maintenance jobs.

But it would move us past this response that I keep hearing that they want a list from us of the job titles. Now if I'm wrong on that, then they don't need them. If someone else could weigh in on that?

MEMBER DOMINA: This is Kirk. I don't have a problem with using these job titles to further move this along. But everybody needs to realize it's not inclusive. And the fact is the way that Paragon groups job titles together is not necessarily correct in the fact when you're dealing with jurisdictions and stuff.

And I know I've talked about this a lot in the past. But then this is also where it comes, it's very important for whoever's doing the OHQ to know about specificity at certain job sites and how things were done.

So you know, we can use this list to start with. But then because it's the prime example that's not on here is our health physics techs, our radiation monitors, however you want to word them in your text, they're completely left off this. And they're always, because rad is always a concern before chemicals.

And so they were first in and last out, and I want to make sure everybody doesn't lose sight of that as one glaring hole that's in this list of job titles.

CHAIR MARKOWITZ: This is Steve Markowitz. Yes, I hear you about that. This is just a complete list of construction and maintenance job titles. This is not a complete listing of all job titles who were exposed to asbestos at the facilities.

Think janitors for the moment, or you know, or an obvious group that would have had exposure. It would be at this point too difficult I think to identify outside of construction and maintenance all of the individual job titles on

whom we could develop a presumption of asbestos exposure.

And so I don't disagree with you that there are other job titles that aren't on here. They're not on here because they're not maintenance and construction. And perhaps if this presumption is accepted, then the next step would be to add other job titles, you know, then have a framework.

And then if there are other job titles that people could agree on a presumption basis could be added, then they could be added.

MEMBER DOMINA: This is Kirk again. Yes, I don't disagree with that. I just want to make sure that it's not used against somebody because they're not on the list, and they have to fight harder with letters having to go back and forth between, you know, DOL and the claimant.

MEMBER CASSANO: It's Dr. Cassano. Could we go back up to where we reference the SSOC in the document and how we request that it be used?

CHAIR MARKOWITZ: Yes, it's right there. It's Item number 4.

MEMBER CASSANO: Okay.

MEMBER DEMENT: Hi, this is John. From a practical perspective, the only way this SOC list will be useful is if they can map their job titles, and there may be many, into one or more of these SOC titles.

So in reality, it's going to require them to do some work, to map their job titles into these. I have mixed feelings of whether or not we're introducing more confusion as opposed to less by the SOC classification.

MEMBER CASSANO: I agree with Dr. Dement. I think to consider using this, I think there has to be some way for them to use these job titles to include additional job titles, especially for maintenance workers, but be specific about saying that this is not an exclusive list because as we've seen, especially with presumption, if it's not covered under the presumptions, the great possibility is that the person is denied.

And that goes to the 1995 thing too. I think we need a strong statement that if a worker

is not covered under the presumption, that the claim needs to be evaluated by an industrial hygienist and a CMC.

So I think I'm okay with leaving the SSOCs out of it, as long as we determine that they should include their maintenance workers in the presumption.

MEMBER BODEN: So this is Les Boden. So the question is does listing the standard occupational categories help the DOL determine whether somebody is a construction or maintenance worker.

And I guess, I mean, my sense of it is that independent of that list, it shouldn't be that hard to figure out from somebody's job title if they're construction or maintenance. And if it is hard to figure it out, then it would be hard to map it into job titles in the SOC list.

So that would kind of make me wonder if it helps to have that list. You know, it might be good to get some feedback from the people who are making those decisions or from somebody from

DOL who might be able to tell us whether they think it would help or not.

CHAIR MARKOWITZ: Other comments? This is Steve Markowitz. We could soften the language on the use of the SOC. You know, we could say, to consider relying on the SOC.

I kind of share Laurie's frustration a little bit about the somewhat arbitrary nature of the previous lists we've seen. But I don't want this to serve as a distraction from adopting a presumption about asbestos which is, you know, a very important goal.

And I don't think, frankly I don't think it's necessary to adopt an SOC framework to get it right for the most part.

MEMBER WHITLEY: This is Garry. I think that if you just leave it maintenance or construction categories, then if you were filed on a claim, you're the claimant and you were a maintenance or construction worker, either, it would be pretty easy to get verification from that from your work records and/or from job titles.

And we're reminded over and over that they do not use the SEM to deny cases. So if you just filed a claim and you said you were a maintenance construction worker and told what you were, you know, electrician for me talking, then I don't know why that wouldn't be good enough to do that. I don't know why you need to make it stronger.

MEMBER VLIEGER: This is Faye. The fact that they say they don't deny with the SEM is inaccurate. They say they can't find any links in the SEM, and then require the worker to provide toxic substances which they're not able to do because no one has that information. And there is no monitoring data.

So I do think we need to be specific, and I agree with Kirk in that there are many job titles who are required to be in the field right next to these people that are not on the list that we should address at a later date.

MEMBER TURNER: This is James. What about bystanders? I think we talked about

bystanders.

CHAIR MARKOWITZ: Yes. This is Steve Markowitz. That's a difficult and important issue because you had a lot of production workers who were bystanders when the maintenance guys were doing their work, right.

The problem is defining the boundaries of that, who's in, who's out. And the presumption we're tying to, you know, start with the basics, get the basics right, things we absolutely know. And then use that as a basis for expanding it in the future.

If we were to think through bystanders, we would I think have a very difficult time figuring out where many job titles fit. I'm not denying that it's a problem, it is. But for the purposes of presumption, I just don't see how we can fold that in at this point.

MEMBER CASSANO: This is Dr. Cassano again. I think I agree with Steve and I agree that I think an incremental response to this is probably the best way to do this. Maybe we should leave

this as pure and simple as we can make it and get it accepted, and then revisit it later on or a future board revisit it so that, you know, all of these other additions.

But if we get some basic presumptions established, then I think it would be easier to add some of these more complicated cases to that presumption at a later date.

CHAIR MARKOWITZ: So, any other comments? I mean, I think I know what the issues -- any other comments on the 1995 date?

MEMBER SILVER: When we submit this, Ken Silver here, could we ask DOL to provide the Board with data on people who don't meet the presumption because their exposures occurred after 1995, essentially track how the 1995 bright line is working going forward?

CHAIR MARKOWITZ: Yes, this is Steve Markowitz. That's interesting because it goes to the point of our concern about people who don't meet this presumption not getting a fair shake. And that would be something that could be monitored

and could be tracked.

MEMBER SILVER: Yes. We've had a hard time getting data from DOE contracts. We had a really hard time when 1995 came up in another context. So we may as well put in place a tracking system now.

CHAIR MARKOWITZ: Other comments?

MEMBER BODEN: Ken, this is Les Boden. Could you restate what you would like DOE to provide?

MEMBER SILVER: I don't know --

MEMBER BODEN: DOL to provide, sorry.

MEMBER SILVER: I don't know if it has to go in the language of the presumption. But in the past, we've passed our recommendations along with a little bit of a background statement. And in that background statement we would ask DOL to report back to the Board periodically claims that did not get included in this presumption because the exposures occurred only after 1995.

MEMBER BODEN: All right, so you would want both accepted and not accepted claims?

MEMBER SILVER: Correct, and the Board could then --

MEMBER BODEN: Okay. That's what I wanted to clarify for myself. Thank you.

MEMBER SILVER: Sure.

MEMBER BODEN: I did have one other thought after Garry's simplifying idea to say construction and maintenance. That would then give the worker many ways, many pathways to come in under this presumption.

If their job title didn't leap off the page saying maintenance or construction, they might be able to demonstrate that they worked for a contractor who had one or both of those words attached to them. That would be, you know, a reasonable way of them getting included.

CHAIR MARKOWITZ: Other comments? So this is Steve Markowitz. I think to keep it simple, I suggest that we remove reference to the SOC system and just go with maintenance and construction, because my concern is that it will be a distraction and it will end up being an effort that will take

considerable amount of time and delay use of the asbestos presumption, assuming it's accepted.

MEMBER DOMINA: This is Kirk. I guess I can look at this maintenance for Hanford in a couple different ways because the production workers are under the M&O contract which is maintenance and operations.

So you know, if you're just on this SOC list, is it purely just construction. But yes, and I think simplifying is good. But I think for terminology for me, I can look at the maintenance side as being the M&O side, maintenance and operations which is a production side.

CHAIR MARKOWITZ: This is Steve Markowitz. I don't quite get your point, Kirk.

MEMBER DOMINA: Well, if this is just a construction list, when you simplify it, if you don't know all that background information what we're talking about, to me it includes the production workers also which still leaves out some of our folks.

You know, I'm just saying on how you

can look at it maybe at a 30,000 foot level or whatever.

CHAIR MARKOWITZ: But the maintenance workforce does not include production. I understand the M&O contractor includes both. But if this is limited to maintenance workers, that by definition would not include production.

MEMBER DOMINA: Yes. But looking at it by just simplifying it like that, I see it the other way. I'm just saying, you know, because that's the way the contract is.

And so when you put just maintenance in there, that is the production side because we did a lot of asbestos work on our side. You know, because if it's not Davis-Bacon, it belongs to maintenance, onsite forces, production.

MEMBER POPE: This is Duronda Pope. I agree with Kirk because in a lot of the situations in operations, you had operators and maintenance in the same area, in the same hazardous area. And excluding them I think would be doing them a disservice.

CHAIR MARKOWITZ: Other comments?

(No audible response.)

CHAIR MARKOWITZ: So my proposed modification is to entirely remove reference to the SOC classification system from this revised recommendation. So are there any other comments on that issue?

(No audible response.)

CHAIR MARKOWITZ: I think we should -- are there any objections to removing reference to the SOC?

(No audible response.)

CHAIR MARKOWITZ: Okay. So hearing no objections then, we will remove reference to that. And Kevin, I may need to -- maybe something as simple as removing Item number 4, but I think there are some other pieces. So as long as we remember that it's going to be removed, and I can take care of it.

Are there other modifications for the revised recommendation that are -- at this time?

(No audible response.)

CHAIR MARKOWITZ: Okay. So I think we can take a vote. Is there a motion to accept this?

MEMBER WHITLEY: This is Garry. I'll make a motion to accept it.

CHAIR MARKOWITZ: Is there a second?

MEMBER DEMENT: Second.

CHAIR MARKOWITZ: Any comments?

(No audible response.)

CHAIR MARKOWITZ: Okay. So Doug, if you could take a vote?

MR. FITZGERALD: Sure. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-JIMENEZ?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

MR. FITZGERALD: Motion carries.

CHAIR MARKOWITZ: Okay. We're going to move on to occupational asthma. This is

Recommendation number 2 from April 2017. And Carrie Redlich is going to lead the discussion here.

It is a long document, so I think we'll go with a summary. So if you want to -- okay, it's up. Fine. Okay, Carrie?

MEMBER REDLICH: Yes. So this recommendation has parts related to the criteria to diagnose work-related asthma. The reason the comments are so long, I think unlike a number of the other recommendations, the recommendations were already incorporated into the last manual.

And I think this does raise an issue potentially for other recommendations. But I think I also looked at not only whether the DOL agreed or didn't with our recommendation, but how it was actually implemented in the manual because I think implementation in general can be challenging, even if there's agreement on the content of the recommendation.

So this recommendation has four parts. The first one just related to the definition of work-related asthma, that it should include both

new onset asthma and work-exacerbated asthma. And the DOL agreed with the recommendation, and it was also appropriately incorporated into the revised procedure manual.

So that was the first part. The second part of the recommendation addressed the criteria for the diagnosis of asthma, and the main issue being whether one had to demonstrate physiologically reversible airflow obstruction, or whether some other criterion such as a treating physician's diagnosis or response to asthma medication would also be sufficient.

And for non-physicians, in practice asthma is usually diagnosed based on a clinical assessment and response to treatment rather than a lot of spirometry and other testing.

So, and also the DOL agreed with our second recommendation that other criteria other than demonstrating reversible airflow obstruction was sufficient, which was good.

One issue was in reviewing how this was then incorporated into the new procedure manual,

the wording didn't actually convey as clearly as it could the recommendation. So that's why this goes on a little bit longer.

I don't think we need to go into the detail, but I simply pointed out the area that I thought was confusing, and suggested alternate wording.

So, because basically they agreed that a physician can rely on other clinical information to substantiate his or her diagnosis of asthma, meaning other than demonstrating this reversibility.

But then the example then was spirometry was the best way to do it, and the response to a bronchodilator. So I suggested alternate examples such as, you know, wheezing on exam or documentation of response to treatment, et cetera.

So does anyone have questions or comments? That's the first part of the recommendation.

CHAIR MARKOWITZ: Steve Markowitz. I

think it's beautifully written, and you've done their homework for them, so they should especially thank you.

MEMBER REDLICH: Okay. So moving on to the last two, which are really related. And again, for the non-physicians, generally the general recommendation as far as how you diagnose work-related asthma is first you sort of confirm the diagnosis that you have asthma. And then you address the work-related component.

And so the second in the -- the three and the four, the last two relate to this how you determine the association. And generally it's done by really a careful history and temporal relationship in terms of onset being worse at work, better away from work.

And so that was recommendation #2-3, and the DOL agreed with this recommendation.

And then the fourth one was again addressing the criteria for the work-related component and making the point that there could be a single specific triggering event, but that

that was not typical.

And most commonly, work related asthma occurred following repeated exposures to mixed types of exposures such as dust and fumes. And so the Department of Labor also agreed with this recommendation.

They pointed out that we had given heat and cold as other examples of work exposures that could trigger asthma. And we agreed that those were not good examples given how common those types of exposures were.

And they also, it was -- I'll try to simplify this. The issue sort of also came to whether you had to have a single exposure versus what occurs in the great majority of cases where there is an exposure that is actually a mixture of substances such as the exhaust fumes or the way cigarette smoke is a mixture of multiple different combustion products in the cigarette smoke.

And I think that the confusion arises over the interpretation and the wording of Part E of the Act which states that exposure to a toxic

substance at a covered DOE facility was at least as likely as not a significant factor in aggravating, contributing, or causing the illness.

That's the key wording in the Part E. And so the DOL agreed with us that multiple exposures could cause work-related asthma. But in their wording then, again looking at the manual of how this has been incorporated, the wording was sort of I think sub-optimal.

And the wording suggests that there had to be a single exposure and that the -- to find out where this was, that the qualified physician had to provide specific information on the mechanism for causing the condition and that the strongest justification was when you could identify a specific exposure and substance.

And so we tried to clarify this and first of all show that -- the meaning of what a toxic substance is. And that it's defined frequently as a -- although it could be a single substance, it is commonly a mixture of substances such as gasoline or a number of other examples.

So understanding that there's the importance of following the Act, we felt that there was a misunderstanding of what was meant by a toxic substance and that whether it's cigarette smoke or mixed solvents or diesel exhaust fumes, that there are a number of examples where the toxic substance is actually a mixture of toxic chemicals. And so I think basically the DOL agreed with our recommendation. Again, the way it was implemented in the wording of the new manual was, I think, confusing.

So I have suggested alternate wording to clarify in the manual. And I explained that as coherently as I could. But I'll stop there if anyone has any comments or suggestions.

CHAIR MARKOWITZ: This is Steve Markowitz. So just while we're on this suggested language, for those of us who -- actually, Kevin can bring this up on the screen, too. The suggested language is on which page?

MEMBER REDLICH: That language is actually on page 5.

CHAIR MARKOWITZ: Five, okay. It's the italicized on page 5?

MEMBER REDLICH: Yes. So what I suggested is that -- and I think the -- earlier in the definition, basically it says that the CE does not apply a toxic substance exposure because any dust, vapor, gas, or fume has the potential to affect asthma.

So that current wording is correct and is included. If you go down further under the two -- the Roman, you know, this II, the next paragraph. The bolded section, I thought if that were removed -- so in this case, one needed more to remove certain wording rather than to add additional wording.

But the sections being removed would be the bolded section, the qualified physician must provide a well-rationalized explanation. And there are a number of reasons.

We don't need to go through each sentence, but you know, after many years of studying and being an expert in this area, if I were asked to describe the mechanisms that are causing asthma,

I would be unable to do that.

So I don't think we should request a qualified physician provide that. And then the strongest justification when you could identify the specific incident. I think if that section were removed, that would actually provide greater clarity than having it included.

CHAIR MARKOWITZ: Steve Markowitz. So as it stands now, DOL accepts, I think they have language in their procedure manual that, as you said on page 4, quote, any dust, vapor, gas, or fume has the potential to affect asthma, end quote.

And so that's their standard, they don't require naming of a toxic substance, right?

MEMBER REDLICH: No. So the standard states, just going back to it.

CHAIR MARKOWITZ: It's the third full paragraph.

MEMBER REDLICH: The standard states that an illness can be accepted as -- so this is the bottom of page 3. An illness can be accepted as a compensable covered illness if exposure to

a toxic substance at a covered facility was at least as likely as not.

And I think if we appreciate that the way the NIH and you know, other organizations, and I think scientific community understands a toxic substance, is that that frequently is a mixture of toxic substances.

CHAIR MARKOWITZ: Yes, Steve Markowitz. That's from Part E. That's from the statute.

MEMBER REDLICH: That's correct.

CHAIR MARKOWITZ: I get that. But DOL has already in applying this asthma, and this is on page 4 in the third full paragraph where you quoted from the procedure manual, they -- well, the CE does not apply a toxic substance exposure assessment.

And then skipping on, because any dust, vapor, gas, or fume has the potential to affect asthma. So in the claims evaluation process, then -- just, this is a question. The claims examiner doesn't have to identify a potentially toxic

substance, right?

MEMBER REDLICH: That's correct.

CHAIR MARKOWITZ: Okay. Okay.

MEMBER REDLICH: So I think there's sort of some internal consistency in the wording. It's just the way the wording of the rest of the current manual could confuse a physician or a claims examiner because it sort of wants the specific mechanism and it says that the strongest justification is when the physician can identify the incident that occurred, and the most likely toxic trigger.

So I think that that wording is actually inconsistent with the earlier wording. And the best thing to do would be to remove it.

CHAIR MARKOWITZ: Right. So, Steve Markowitz. So part of your response is that they should do away with the triggering idea?

MEMBER REDLICH: That's correct.

CHAIR MARKOWITZ: Okay. You know, the work related asthma is defined as temporally related symptoms, to work. And they already

concede there's no toxic substance standard they need to apply because any vapor, gas, dust, and fume can do it.

And then they were hung up on this whole idea of identifying a trigger moment or a trigger mechanism. And our recommendation at least sitting here is that the whole triggering concept being removed?

MEMBER REDLICH: Yes.

CHAIR MARKOWITZ: Okay. Thanks.

MEMBER REDLICH: And that is also very consistent with the entire medical literature about work-related asthma.

CHAIR MARKOWITZ: Comments, questions?

(No audible response.)

MEMBER REDLICH: I think I also just commented I was -- the nice thing about the new manual is it's all PDF'd and you can easily search it. The recommendation also has a table with the criteria for diagnosing work-related asthma which just needs major revision and is not accurate.

I didn't include it in the handout.

MEMBER VLIEGER: This is Faye. Perhaps I'm not looking at the most up to date edited version. But on page 4, paragraph 3, second line from the bottom, that on a more likely than not basis for a significant factor, I'm not sure if that's something that Carrie typed up or if that's a quote from the manual. But the statute is as likely as not, like she quoted earlier.

CHAIR MARKOWITZ: Yes. You see that, Carrie?

MEMBER REDLICH: I'm just looking for the spot.

CHAIR MARKOWITZ: Page 4, the second full paragraph. Yes, the paragraph begins there are numerous other examples. We're looking at it on the screen, and if you look at the last sentence.

MEMBER REDLICH: Okay.

CHAIR MARKOWITZ: So, remove more and say as least as, right?

MEMBER REDLICH: I'll correct that. Thank you.

CHAIR MARKOWITZ: Other comments, questions?

(No audible response.)

CHAIR MARKOWITZ: Okay. So hearing none, then --

(Simultaneous speaking.)

MEMBER REDLICH: So, I would just add that having spent my professional career trying to teach practitioners how to diagnose work-related asthma, I think it is challenging.

So I think what is important for this to be implemented is that the training materials and the like, I just think that those need attention because I think it will take some training of those involved to sort of consistently and accurately make the diagnosis.

This is just because it's most physicians don't have, even pulmonary physicians, do not have much experience in diagnosing work-related asthma.

CHAIR MARKOWITZ: This is Steve Markowitz. So, DOL is not going to train the

providers. But if it sets out very clear criteria for this --

MEMBER REDLICH: Yes, that's what I meant.

CHAIR MARKOWITZ: Okay.

MEMBER REDLICH: I meant that I just think it's important that there be clear criteria to provide guidance.

CHAIR MARKOWITZ: Okay, other --

MEMBER REDLICH: Currently that's, you know, such as the -- it's not included here but the current table that is I think meant to do that contains a number of inaccuracies.

CHAIR MARKOWITZ: Any other comments or questions on this topic?

(No audible response.)

CHAIR MARKOWITZ: Okay. I take it there -- are there any objections to Faye's revision of at least as likely as not?

(No audible response.)

CHAIR MARKOWITZ: No objections. So, fine. Is there a motion to accept this revised

recommendation?

MEMBER WELCH: Yes, I move -- Dr. Welch.

CHAIR MARKOWITZ: Second. I second it, Steve Markowitz. Let's vote. Doug, if you could do the roll call.

MR. FITZGERALD: Sure. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

MR. FITZGERALD: The recommendation carries.

CHAIR MARKOWITZ: Okay. It's 2:50. Let's take a ten minute break, and then we'll resume with COPD back at 3:00 p.m.

MR. FITZGERALD: One thing before you sign off, don't sign off. If you could just put

your phones on mute because logging back on could take some time. So if you just want to put your phones on mute and we'll see you in 15 minutes, is that right, Chairman?

CHAIR MARKOWITZ: I put my phone on mute already. Yes, five after 3:00.

MR. FITZGERALD: Five after 3:00. Thank you.

(Whereupon, the above-entitled matter went off the record at 2:51 p.m. and resumed at 3:07 p.m.)

CHAIR MARKOWITZ: Well, we have a quorum, so I think we can get started.

MR. FITZGERALD: Okay.

CHAIR MARKOWITZ: I think we're on COPD. Let's see, Kevin, if you could bring up Item G, yes. Okay, thank you. Okay, Laurie?

MEMBER WELCH: Yes. So this -- we have a response and a re-written proposal based on the -- to try to address the comments that we got from OWCP. So this was the -- the certain five bullet points you're looking at were our understanding

of the primary reasons that OWCP did not accept our first recommendation.

The first one was that they wanted -- they were saying the presumption and any compensation would have to be due to a specific toxic substance. And the program has defined toxic substance as Number 2. And looking at it that way, the VGDF is way too broad.

The Number 4 was that the current presumption for COPD was, like, 20 years of exposure to the substance, and they thought that our -- the OWCP thought that our recommendation of five years of exposure was sufficiently inconsistent with their research. And then they requested clarification of the labor categories.

So the response we've put together basically said that there are many ways in which the Department currently accepts exposure to mixtures and lists some of the ones that are in their work processes and complex mixtures, such as diesel exhaust or welding fumes.

And they clearly accept solvents as a

category, even though that can be a mixture of many, many different kinds. But trying to be somewhat responsive to them, we created something that names a lot of specific agents in addition to VGDF.

Let's see. If you can scroll down some more, Kevin, we're just going to get that next one up that we've got in.

So in terms of their statement that our recommendations are inconsistent with their own review, that it requires 20 years of asbestos exposure, we pretty much said, well, we need to review your documentation.

So now we're moving to what the new presumption is. So if you look under, primarily on Number 2, there are many different ways that a presumption of significant exposure to toxic substances can be accepted as causing COPD.

One would be five years of work with a list of specific agents. And defining where, they would figure out that those people were exposed, either from the OHQ or the EE-3. The next one is five years of work in any one of the job

titles encompassed by major categories.

This one, I used it this way because Stephen was proposing putting those into the asbestos presumption. So I think we have to revisit these.

The last one is five years of exposure with agents that fall into one of those five major toxic substances groups. Within the SEM, agents are grouped into these categories. So if there was an exposure to any particular agent, the claims examiner could look up that agent and see if it fell into one of these five categories.

So that's the main body of these --

(Audio interference)

CHAIR MARKOWITZ: There's some extraneous noise coming through. People should just be sure to put their phone on mute.

MEMBER WELCH: That helped, thanks. So we're still maintaining the emphasis on VGDF but providing alternative ways for the Department to accept claims where that's a factor, either by identifying one of these primary agents, working

in particular job titles, or being exposed to an agent within one of those five groups which are all well recognized causes of COPD.

So, comments or questions?

(No audible response)

MEMBER WELCH: And I would also add that the SEM Subcommittee took a look at this before. We were giving it a wordsmithing before we sent it to the rest of the group.

CHAIR MARKOWITZ: Steve Markowitz. So this is really very nicely written up and, I think, pinpoints and addresses the issues on both Page 1 and 2 that DOL raised. I want to make a comment which -- because we just did occupational asthma, and there we saw language in which DOL accepts that VGDF causes, aggravates, or contributes to work-related asthma and relieves the claims examiner from having to identify, look for a toxic substance.

And yet, when it comes to a different kind of obstructive lung disease, COPD, there's insistence that the VGDF be linked to specific toxic

substances.

I understand that asthma and COPD are a little bit different. And there's a standard for asthma that the doctor has to identify that it's temporally related to work, and that doesn't apply here to COPD. But nonetheless, DOL is displaying some clear flexibility about VGDF with relation to asthma and would appear to be demonstrating a lot less flexibility.

But I do think this scheme solves that problem and overcomes, I think, the principal reluctance that DOL has about the VGDF. Because here, it's clearly tied to either specific toxic substances or groups of toxic substances. So that can no longer be an objection.

I did want to ask the group though on Item 2, presumption of significant chronic exposure to toxic substances. And there it says, quote, claimants will be presumed to have had significant chronic occupational exposure, and it goes on. My question is whether introducing the word significant is potentially confusing in the claims

process.

MEMBER WELCH: Yes, you may be right.

CHAIR MARKOWITZ: I mean, an alternative is simply take it out and say chronic and occupational exposure.

MEMBER WELCH: I actually think that's a good idea. Because significant has terminology in causation statements all the time. And I think it's not required when we're saying -- because here we're saying exposure is sufficient to aggravate, contribute, or cause.

And you don't have to -- we don't have to say it was a significant contributing factor of one of those. So I, unless anyone objects I would accept that amendment. So great, let's do it. We can take it out right were you have it highlighted, and then in the next sentence.

CHAIR MARKOWITZ: And then if you go up in Item 1, it appears again in the first line. And then, Kevin, if you could just do a find/search and see if it's anywhere else that it shouldn't be. So other comments?

MEMBER WELCH: Yes, that's okay to leave it there. That's good.

MEMBER BODEN: Can we go back to the one that you just said leave it there on for a moment?

MEMBER WELCH: Oh, yes. That was in a -- this was a background rationale.

MEMBER BODEN: Right. But -- oh, okay. So I was thinking maybe substantially, but it doesn't matter for the background.

MEMBER WELCH: No. So I guess the question is, for where I mentioned SOC as working the new jobs, should we go back and say any one of the job titles in the categories of construction, installation, maintenance, and repair, or construction maintenance, making it parallel to what we did with asbestos?

CHAIR MARKOWITZ: I think so.

MEMBER WELCH: I think we need to do that.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: Stephen, do you know the

right -- can you make that language work so it matches what --

CHAIR MARKOWITZ: Yes, sure.

MEMBER WELCH: -- we had in asbestos?

CHAIR MARKOWITZ: Sure, sure. And, you know, that's Item B. You know, there are several criteria, right. So the production workers are clearly covered by Item C.

MEMBER WELCH: Yes.

CHAIR MARKOWITZ: So we don't have this problem we had previously.

MEMBER WELCH: But we should still say, work in any one job title in --

CHAIR MARKOWITZ: Maintenance and construction.

MEMBER WELCH: Maintenance and construction. Just work in any one of the maintenance and construction job titles, whatever you would say. That's kind of how we should put it.

So, Kevin, you could have it say five years of work in any one of the maintenance and

construction job titles. Yes, it can be or. Or is fine, construction.

CHAIR MARKOWITZ: And if anybody wants to test Number 5, all you have to do is put -- in the SEM, if you go to any --

MEMBER WELCH: Yes, that's good.

CHAIR MARKOWITZ: -- any job title that sounds like it is likely to be exposed to vapors, gas, dust or fumes. It typically has many different toxic substances associated with that job title.

MEMBER WELCH: That's a good edit, thanks. And A, B, and C may seem to be redundant, but the idea was to be redundant, so that there's not categories that slip between the cracks in some way.

CHAIR MARKOWITZ: Right. So other comments or questions?

MEMBER DEMENT: This is John. Just to reinforce the idea that, you know, in Item C there's categories. They're broad, but they're not always inclusive of everything. For example, we have

metal. But machining aerosols include the metals as well as some of the cutting oils that are associated with it.

MEMBER WELCH: Yes. It's hard to know whether, you know, you'd have to look it up where machining aerosols --

MEMBER DEMENT: We have that covered in Item A.

MEMBER WELCH: Okay, yes. Right, good. Okay.

CHAIR MARKOWITZ: Okay, so Laurie had no objection to taking out significant. So I take it there's no other objections unless someone speaks up now.

(No audible response)

CHAIR MARKOWITZ: So is there a motion to approve this?

MEMBER REDLICH: This is Carrie Redlich. Just before we vote, I would just also note that in the latest version of the procedure manual, I mean, the other piece of this is what the criteria are to diagnose COPD in addition to

the exposure component.

And it just currently has mentioned, you know, bronchoscopy which is not used to diagnose COPD. And there's also a note that, and the employee has a history of being a never smoker. So I just draw attention that I think the written manual needs review and revision.

CHAIR MARKOWITZ: So, this is Steve Markowitz, you know --

MEMBER REDLICH: It's just so that people are aware.

CHAIR MARKOWITZ: I think for the -- when we get around to briefly discussing issues that next Board can take up, I think we should include that, the medical criteria for COPD diagnosis. Because that hasn't been addressed in this recommendation, but it should be addressed. And we should put it on the list.

MEMBER REDLICH: Yes. So I just wanted it noted.

CHAIR MARKOWITZ: Right, right.

MEMBER WELCH: Okay.

CHAIR MARKOWITZ: Other comments?

MEMBER GRIFFON: Yes, Steve, this is Mark Griffon. On Number 4, I lost my connection, so I'm looking at maybe an old version. But on Number 4, I just wanted to make sure we had deleted, I think, the five years can be accumulated by a combination of DOE employment and employment outside of the DOE. Laurie, is that correct?

MEMBER WELCH: Yes.

MEMBER GRIFFON: Was that removed, or was that changed just to be DOE?

MEMBER WELCH: Oh, you know, yes. It needs to come out. And it's funny, I thought I'd taken it out many times. But I guess I went back and worked with an old draft. So yes, we should take that out.

MEMBER GRIFFON: An old version, that's why I asked, yes. Okay.

MEMBER WELCH: Yes.

MEMBER GRIFFON: So that should be removed, right?

MEMBER WELCH: Yes.

MEMBER CASSANO: And that whole sentence or just five years cumulative at DOE and just take out the last three words, or outside DOE, or just remove the whole sentence?

MEMBER WELCH: I think we can just take it out because it's presumed, a duration of five years of employment exposure. It's presumed to be at DOE, because that's the way the legislation is structured. So I think we can take out the whole sentence.

CHAIR MARKOWITZ: Yes.

MEMBER CASSANO: Okay. Does that say anything about -- I'm just wondering about whether they're going to look at that as the duration of five years cumulative versus five years of consistent. Because I think there was someplace else where they looked only at exposure. You know, five years had to be --

CHAIR MARKOWITZ: Consecutive.

MEMBER CASSANO: -- consecutive, excuse me, not consistent.

CHAIR MARKOWITZ: Yes.

MEMBER CASSANO: Versus cumulative. So I think we need the word cumulative in there somewhere.

CHAIR MARKOWITZ: Yes, Steve Markowitz. In four, if you go to four at the end of that line where it says a duration, you say a cumulative duration of five years, so after duration of. And if that's a little awkward, then Laurie can fix it later.

MEMBER WELCH: That's okay. But, like, there's other places where we said, you know, the other, the A, B, and C have five years of work, five years of exposure. I don't think we need to add cumulative there.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: Because, well, also we're defining it down below. I think that's okay.

CHAIR MARKOWITZ: All right, other comments, questions?

(No audible response)

CHAIR MARKOWITZ: Okay, so if not, I think we have a motion, right, to accept? Do we

have a motion to accept?

MR. FITZGERALD: No, I don't think we do.

CHAIR MARKOWITZ: Okay.

MEMBER SOKAS: So it's Rosie, I move to accept.

CHAIR MARKOWITZ: Okay, second?

MEMBER FRIEDMAN-JIMENEZ: This is George. I second.

CHAIR MARKOWITZ: Thank you, comments?

(No audible response)

CHAIR MARKOWITZ: Okay. Doug, the vote.

MR. FITZGERALD: Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner? Mr. Turner, are you on mute?

MEMBER TURNER: Yes.

MR. FITZGERALD: Okay, I got you. Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: And Chairman Markowitz?

CHAIR MARKOWITZ: Yes. Faye, I -- you just seem to be getting worse on every vote. I feel sorry. We only have three more. So hang in there with us.

MEMBER VLIEGER: Thank you.

CHAIR MARKOWITZ: The next one is the occupational health questionnaire. John, are you leading this, or Laurie?

MEMBER DEMENT: I can take it if you'd like.

CHAIR MARKOWITZ: Okay, great.

MEMBER WELCH: Yes, that'll be great.

MEMBER DEMENT: So, the recommendation that's up. We had a long discussion of this at our last Board meeting. And basically, everything that was captured in this response is our discussion.

And if you look at the OWCP response, they believe that they had already updated the OHQ. And we, in fact, saw the revised edition. They

also commented on the VGDF questions. Remember, we specifically wanted those questions in the OHQ. So we've already addressed Item 2. And I think we've taken care of the VGDF issue.

I think the Advisory Board was pretty consistent in its discussion of the OHQ, but the OHQ in relationship to what is the overall intent of the OHQ, and that's to gather occupational history information, is in a complete a manner as possible.

And so we felt still that we should retain the questions of task-based exposures where we could, and you have a reasonable set of tasks for construction. We acknowledge that non-construction was more of a problem. But we asked about exposures in particular, and we asked about the tasks that created those exposures. Some of them were hygienists' perspective. Those are important pieces of information to note.

Can you scroll down to the next page? So basically, you know, I think we've pretty much stayed with our recommendation. I don't see that

we've changed very much.

We simply responded back to DOL with regard to our view, if you will, of the incentive, the occupation history, to gather more information that's useful by hygienists, have that information available in a broader perspective to reviewers of the information, the positions in hygiene as decisions are made.

And I guess to -- at least in my view to reinforce the Board's view that they revise occupation history, it's not likely much of an advance forward with respect to trying to gather this information.

And I'm open, I guess, for discussion and comment. We discussed this at our SEM conference call a few weeks back. And I think this is a reflection of that deliberation as well.

CHAIR MARKOWITZ: The floor is open for comments or questions.

(No audible response)

CHAIR MARKOWITZ: So let me, just to provoke conversation a little bit, and so for, say,

production or non-construction by a maintenance worker, how would what we're recommending differ from what DOL is doing?

MEMBER DEMENT: Well, I think it differs with respect to how we are asking about the task that's generating the exposure. And it's tied in, we recommended it to be tied in with each one of the exposures that are flagged in the OHQ.

So I think if a worker flags an exposure, then the follow-up question is that there is power for your exposure. It allows him, in a precise manner, to describe how that exposure occurred.

A lot of the tasks that non-construction workers would do are, in fact, quite similar to construction workers' tasks. And we expect that they would perhaps flag some of those anyway.

CHAIR MARKOWITZ: All right, thank you.

MEMBER POPE: This is Duronda Pope here. I think part of our discussion as well was

we have production office workers that work in tank farms which had accumulation of different chemicals and toxic substances. And we wanted to make sure that they were included.

MEMBER DEMENT: Yes. I mean, they're clearly included with regard to, first, the toxic substances and then, of course, the description event would be the tank farm work.

MEMBER POPE: Right, thank you.

MEMBER DEMENT: I mean, I think we all acknowledge, and certainly the BTMed Program acknowledges that, you know, how this task is not complete. It represents some of the core tasks that we've identified that BTMed workers do.

There are lots of tasks that are done that are similar to these tasks and so in addition to. But nevertheless, we found that those tasks within themselves, combined with the history of frequency of doing tasks and the duration of doing that task, is not a bad predictor of getting outcomes, and particularly lung diseases that we looked at, and to scan the hearing loss information.

CHAIR MARKOWITZ: Okay, other comments or questions?

MEMBER SILVER: Yes. This is Ken. I want to compliment you on having several places for free-text descriptions. If you think about some of the flaws of the program up to now, there's been a tendency to, you know, draw a matrix, check a box, and break everything down into tiny bites of information.

And I'm sure some of the industrial hygienists in the CMC have been thirsting for more of the kinds of information that, you know, we use all the time in our profession, workers describing how they did what they did.

MEMBER DEMENT: Absolutely. And I think one of the issues that we've already covered is that those reviewers of fact have that information as it was reported and given to the program to review.

MEMBER SILVER: Great.

MEMBER DEMENT: You know, these checking, checks in boxes and lists, I mean, they're

useful, but we've found, over many years of working with it, that the task itself is a predictor of the exposure. And if nothing else, it will be a flag for a hygienist, if he or she reviews that information in the OHQ, to go back and ask the worker more details about that. If it doesn't provide a fact verification of exposure, it will provide a flag to ask more questions.

CHAIR MARKOWITZ: Other comments?

(No audible response)

CHAIR MARKOWITZ: Okay. So there are no modifications proposed here. Then I think we can hear a motion to accept.

MEMBER SILVER: Ken Silver, I make a motion to accept.

CHAIR MARKOWITZ: Is there a second?

MEMBER BODEN: Second.

CHAIR MARKOWITZ: I think it was Mark Griffon.

MEMBER BODEN: Les Boden.

CHAIR MARKOWITZ: Oh, Les. Okay. Any further comments?

(No audible response)

CHAIR MARKOWITZ: Okay, so I think we can take a vote.

MR. FITZGERALD: Okay. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

Okay. We're going to move on to Recommendation Number 5 from April 2017 having to do with enhancing the scientific and technical capacity within the program. We had recommended that.

DOL said they agreed it would be useful to have additional capability. They pointed out that they have some already. The paragon is a contractor. They have a medical director, the nurses, they have a toxicologist. And they look

forward to getting additional assistance from us.

So this response here basically says that -- reiterates what we said before which is that there remain gaps, despite -- we realize they have resources, they have experts. But from our review of claims, the program, procedure manual, there are gaps.

And trying to briefly say what some of those gaps or functions were, for instance, following up on the IOM report, the kind of thing that Laurie Welch talked to us about with the examining IARC, and NTP, and IRIS, we know that DOL no longer has a contract with Haz-Map which is the function that linked exposures with diseases. Someone needs to maintain that, to keep that up, to advance it, and some other things that I mentioned here, evaluating claims for novel -- or conditions where the knowledge base is evolving.

I recall at the beginning of the Board's process two years ago that DOL specifically asked us for some help with some cancers and whether they were caused by certain exposures. And Dr.

Friedman-Jimenez did a very nice review on how to look at a particular question there. These are gaps. And they need to be filled.

And then I cite just a couple of examples of our own experience where, when we took on the issue of presumptions on occupational asthma, on hearing loss, which we haven't heard back from yet, on COPD, and asbestos, that there were, you know, faults basically in the medical and scientific thinking about them.

So we can assist on an ad hoc basis, or the Board can on an advisory basis. But there needs to be some sustained function within the organization that really has expertise in disease causations, and epidemiology, and occupational medicine, above and beyond what they have now. So that's what this says.

Actually, it probably would have been shorter to read it than to explain it, but in any event, any comments, questions?

(No audible response)

CHAIR MARKOWITZ: You know, I suspect

there are other issues in play, budgetary issues, or administrative issues that are behind the scenes. We are arguing this on face value which is, you know, our role. So I suspect there are some other factors going on, not our business at the moment. Any additions, anything missing here?

(No audible response)

CHAIR MARKOWITZ: Okay. Then is there a motion to accept?

MEMBER FRIEDMAN-JIMENEZ: This is George. I move to accept.

CHAIR MARKOWITZ: Okay.

MEMBER WELCH: And this is Laurie, I second that.

CHAIR MARKOWITZ: Okay. So any comments?

(No audible response)

CHAIR MARKOWITZ: Okay, Doug, if you want to do a roll call. Doug?

MR. FITZGERALD: Oh, I'm sorry. I was on mute that time.

Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?

MEMBER SILVER: Yes.

MR. FITZGERALD: Mr. Griffon?

MEMBER GRIFFON: Yes.

MR. FITZGERALD: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MR. FITZGERALD: Dr. Boden?

MEMBER BODEN: Yes.

MR. FITZGERALD: Dr. Redlich?

MEMBER REDLICH: Yes.

MR. FITZGERALD: Dr. Cassano?

MEMBER CASSANO: Yes.

MR. FITZGERALD: Dr. Welch?

MEMBER WELCH: Yes.

MR. FITZGERALD: Dr. Sokas?

MEMBER SOKAS: Yes.

MR. FITZGERALD: Ms. Pope?

MEMBER POPE: Yes.

MR. FITZGERALD: Ms. Vlieger?

MEMBER VLIEGER: Yes.

MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

MR. FITZGERALD: Okay.

CHAIR MARKOWITZ: Okay, so our final recommendation is Number 7. It has to do with the review of claims, excuse me, of CMC and IH reports by the Board. And this response, which Kevin, is a bit late-breaking. So there's a draft, and then Rosie Sokas added some language. I don't know, Carrie Rhoads, do we have access to Dr. Sokas' version? I don't want to put it up necessarily, I just want to know if we have access to it.

MS. RHOADS: It's in my email from this morning.

CHAIR MARKOWITZ: Yes, 12:48 p.m.

MS. RHOADS: Right, yes.

CHAIR MARKOWITZ: Okay, so let me begin the conversation. Then, Rosie, you can take it over. Does that work?

MEMBER SOKAS: Okay.

CHAIR MARKOWITZ: Okay. So I for one feel very strongly about this, that Task Number 4 of the Board specifically states that we will look at the work of the IH's staff physicians and consulting physicians to ensure the quality objectivity, and consistency. And I don't believe that we can do that unless we oversee examination of relevant reports and come to our own conclusions.

DOL's response was, in part, that they have a medical director who's conducting an audit, and they gave us examples of two audits, two quarterly audits from 2016 which were interesting and good. But that doesn't, in my view, supplant what we need to do, which is an independent look at quality, objectivity, and consistency.

Secondly, the medical director, actually in those two audits, he found problems in 13 out of 82 reviewed reports. So that's one

out of every six reports there was a problem that required correction. That's fairly frequent. That's not -- that may or may not be acceptable or unacceptable, but that's fairly frequent in terms of finding issues.

MEMBER WELCH: And Stephen, can I add a comment there?

CHAIR MARKOWITZ: Sure, sure.

MEMBER WELCH: They were not all -- they weren't causation cases either. They were impairment ratings and a whole range of different opinions. So the impairment ratings, I think, are closed a bit easier.

CHAIR MARKOWITZ: Right, yes. Yes, there was a diverse -- he looked at causation, he looked at impairment, he looked at second opinions, and there was a fourth category he looked at.

And finally, the medical director's audit didn't entirely look at -- capture quality, objectivity, and consistency. It didn't address the forms he uses. And his report didn't address, for instance, consistency across different

reports.

So for all those reasons, I think we -- and just the basic fulfillment of our obligation under Task Number 4, the Board needs to look at these claims.

Now, in our previous recommendation, we, I think, requested examining 50 claims. I think that's an inadequate number. And I think that the medical director's audit kind of demonstrates -- he's reviewing 160 or more per year -- demonstrates that we would need to look at more, because there are a lot of factors at play.

There're IH reports, there're CMC reports, there're the impairment ratings, there's the causation, there's second opinion, there're different types of claims, there's, you know, COPD, versus dementia, versus whatever. And so I think that it's going to require looking at, frankly, several hundred claims or reports, not 50, to do the job properly.

So let me turn it over to Rosie who has --

MEMBER SOKAS: Yes. And I just -- I wanted to modify the document that was sent around earlier. Because we have had this conversation back and forth with the Department.

We originally were talking past each other and didn't realize that the medical director was performing any sort of a quality audit. But then when we did see those audits, I think there were very specific and troubling problems with the audit itself, not just the CMC reports that were being audited.

The audit instrument itself was inadequate. And the medical examiner focused on some very narrowly defined issues concerning the AMA guidelines and seemed to miss some other issues that might have been equally important.

So I think we could -- I would like to propose, and I wrote up a couple of items that we actually discussed at the last full Board meeting, that we include in this response to reflect the fact that, yes, we've seen what the medical director has conducted as an audit, and we are not satisfied

with it.

And the first reason is that there's no mention in that audit of whether the information the CE forwarded to the CMC was sufficient or adequate. And that there needs to be a review, a clear understanding that the medical director is looking at the entire record, which I understand he is, and that the first evaluation piece is whether or not the CE has sent forward the information that should have been sent forward.

Now, if the Board's other recommendation that the entire record goes forward as adopted, then this isn't necessary. But, you know, this is kind of a second bite at that apple.

The second requirement that should be clearly expressed back to the Department of Labor is that the forms themselves need to include a medical director assessment about whether or not the CMC made an appropriate determination based on existing DOL guidelines or on the best available scientific information. And that's a judgment call that needs to be included that's nowhere

currently in the evaluation form.

And then the third recommendation is actually a procedural recommendation which is that there should be more than one person conducting these so that you can have kind of a review of the reviewer, basically.

So I would insert those three as examples of changes that could be taking place as we're proceeding, because I don't think we really -- I don't disagree that it's important to do a large-scale audit. And I think that should stay in there. But I don't think we need to wait for that in order to make some fairly straightforward recommendations on quality assessment.

CHAIR MARKOWITZ: So Carrie and Kevin, and is it possible to bring up Rosie's version of this, because she did have the language. And it would help to be able to look at it from that -- this morning or early this afternoon, 12:48.

MR. BIRD: Yes. We're finding it now.

CHAIR MARKOWITZ: Okay, okay.

MEMBER SOKAS: And I apologize. In

that one I didn't, you know, kind of complete the subsequent sentence. So I would leave everything that was originally in it, there. I would just insert these others.

In the meantime, this needs to change. And then the Board also takes the position that it cannot properly advise the Secretary unless, you know, and that continues on to the recommendation for the broader audit.

CHAIR MARKOWITZ: So, this is Steve Markowitz. And here's my question, Rosie. Looking at this, on Line 3 where the, I think, purple text begins, it says, the Board raises the concern that the audit process itself is flawed and fails to address the major questions concerning quality.

And then you list three things. Are those three things that you list, are those all of the concerns that you have about quality and about the process being flawed, or are those just examples? It's just --

MEMBER SOKAS: Those are immediately fixable and low-hanging fruit.

CHAIR MARKOWITZ: Okay. So I would recommend some -- we don't have to do it now, but some language to indicate that either short-term changes that can be easily instituted just so --

MEMBER SOKAS: Okay. I agree with that.

CHAIR MARKOWITZ: Yes.

MEMBER CASSANO: Can we move, oh, can we move this up a little bit so we can see the whole thing? Thanks.

Yes, I think putting a statement in here that says, while the Board still has additional concerns, addressing these three issues immediately would greatly improve the process.

CHAIR MARKOWITZ: And the other question mark was on the third issue you raised where, quote, a review process in which reviews are conducted by two medical experts, end of quote, is that the same CMC report that's being reviewed by two separate doctors?

MEMBER SOKAS: Right. What it is, so you change the requirements of the audit itself

so that you have to answer two additional questions, one, did the CE send forward appropriate information and, two, did the CMC make an appropriate judgment based on that information and on appropriate medical, scientific evidence.

And then that change is implemented by two people. So the medical -- currently the medical director conducts all these audits. And there is a secondary review that takes place by his supervisor who is not a physician but, I believe, may be a nurse by background.

But that's mostly, again, currently on the basis of, you know, there's a kind of a combination of common sense and the rules of the program that get applied at that level.

But there are in -- oh, there is at least one other position in OWCP who could at least do, you know, some auditing just to sort of double check to see if people were saying the same thing.

I mean, there has to be a process in place where it's not a single individual doing it. But the goal would be to have two medical opinions

just to see how things are working out. Because I think there were some concerns raised.

CHAIR MARKOWITZ: Comments, questions?

(No response.)

CHAIR MARKOWITZ: Okay. So I think that the modifications that Rosie is recommending, we need to -- does anyone have any objections to that modification? Any, Rosie, you and I should wordsmith a little bit just to retain the meaning but make it a little bit clearer?

MEMBER SOKAS: Sure.

CHAIR MARKOWITZ: But that's implied regardless. So, okay, hearing no objections then, is there a motion to accept this revised recommendation?

MEMBER FRIEDMAN-JIMENEZ: One small point, this is George. The sentence that said, however the Board takes the position that it cannot properly advise, that now has a big piece put in there, but it's no longer a sentence. So that needs to be fixed grammatically.

CHAIR MARKOWITZ: Right, yes.

MEMBER SOKAS: Right.

CHAIR MARKOWITZ: We will take care of that.

MEMBER FRIEDMAN-JIMENEZ: Okay.

CHAIR MARKOWITZ: Yes, thanks. Okay, so is there a motion to approve or to --

MEMBER CASSANO: Moved.

CHAIR MARKOWITZ: Okay. And is there a second?

MEMBER CASSANO: Tori, this is Tori, so moved.

CHAIR MARKOWITZ: And a second?

MEMBER SOKAS: I'll second, it's Rosie.

CHAIR MARKOWITZ: Okay. So any comments, final comments?

(No response.)

CHAIR MARKOWITZ: Okay. So time for roll call, Doug.

MR. FITZGERALD: Okay. Dr. Dement?

MEMBER DEMENT: Yes.

MR. FITZGERALD: Dr. Silver?
MEMBER SILVER: Yes.
MR. FITZGERALD: Mr. Griffon?
MEMBER GRIFFON: Yes.
MR. FITZGERALD: Dr. Friedman-Jimenez?
MEMBER FRIEDMAN-JIMENEZ: Yes.
MR. FITZGERALD: Dr. Boden?
MEMBER BODEN: Yes.
MR. FITZGERALD: Dr. Redlich?
MEMBER REDLICH: Yes.
MR. FITZGERALD: Dr. Cassano?
MEMBER CASSANO: Yes.
MR. FITZGERALD: Dr. Welch?
MEMBER WELCH: Yes.
MR. FITZGERALD: Dr. Sokas?
MEMBER SOKAS: Yes.
MR. FITZGERALD: Ms. Pope?
MEMBER POPE: Yes.
MR. FITZGERALD: Ms. Vlieger?
MEMBER VLIEGER: Yes.
MR. FITZGERALD: Mr. Turner?

MEMBER TURNER: Yes.

MR. FITZGERALD: Mr. Whitley?

MEMBER WHITLEY: Yes.

MR. FITZGERALD: Mr. Domina?

MEMBER DOMINA: Yes.

MR. FITZGERALD: Chairman Markowitz?

CHAIR MARKOWITZ: Yes.

Okay, we've completed the review of the recommendations. On our original agenda, actually, if you could bring that up, the next was if there are any reports from any subcommittees. I think only the SEM Subcommittee has met. But is there anything to add from that committee or any other committee?

(No response.)

CHAIR MARKOWITZ: Okay. Sounds like you don't have anything. That's fine.

So I think lastly, Kevin, if you could bring up the file that I sent to Carrie a while ago called Prioritizing Issues.

But what I did was I took the minutes from the last meeting. At the end of the meeting,

you may recall, in Santa Fe, we had a brief discussion about issues that the next Board might take up. And I just listed these here. They're in no particular order.

I want to just review them briefly, but mostly I want to have a discussion about adding to them. This is our last meeting. And if there are items that we can recommend that the next Board address, this is the mechanism by which we would do that.

First though, I would take out the word prioritizing. I'd just keep it at issues for the next Board. Because there's no -- this listing of nine, and if we add to it, there's no -- we're not setting priorities.

So briefly then, the first thing is to make progress, additional progress on the issue of what does it mean to apply a standard of aggravated, contributed to, or caused by an exposure. Since we discussed that, we've talked about it, but it needs more direct discussion.

Secondly -- and these, by the way, these

were added from different authors. These are from different people who made these suggestions. And I didn't make any attempt to attribute them to anybody.

To revisit the SEM, we look at the exposure assessment in the claims process. We have made recommendations on the OHQ on these informal workers, or having industrial hygienists talk directly to claimants. This is all exposure-related. And so then we think that SEM should be revisited to see what else needs to be addressed.

And the third thing is to look, and I think this relates to the last recommendation actually, is to look more deeply at available claims data.

There was an exercise that Carrie Redlich referred to, and John Dement did a nice analysis of some claims data, mostly beryllium and lung disease, which was extremely useful. And it's the only time we've done that. And the Board ought to look at additional claims data to identify what's

going on in the program.

There was the suggestion that the Board look at the topics of durable medical equipment authorization. I'm not sure exactly if that fits into any of our tasks. If someone has an idea about that, then we ought to put that in there because on the face of it, there might be some objection to us addressing it.

A fifth is to look at the program's performance on impairment ratings. And I think this would fall under weighing medical evidence in the form of the functions.

Six is to look at additional conditions that are most common for the most commonly denied types of claims, to get additional data on that.

Seventh is to take a closer look at neurologic illnesses. We spent a lot of time on risk certainties, some limited time on cancer, and hardly any time on neurologic illnesses.

There was a suggestion that the Board ought to interact more with the physicians from DOL to get a better understanding of their role

and functioning.

And then finally, it was suggested that the Board have initial presentations from DOL so that they can understand the program from the get-go.

So are there additional ideas, or any modification of these things, or additional things we think the Board should take a look at?

MEMBER DEMENT: This is John. From the OHQ perspective, we had strongly recommended a redraft of OHQ and perhaps in combination with use of former workers, a pilot process to evaluate the OHQ, how well it's collecting information. I think the new Board needs to be more involved with that review of the pilot data.

CHAIR MARKOWITZ: So the pilot data specifically with reference to the OHQ.

MEMBER DEMENT: Yes, yes. We requested, at least our recommendation was to, you know, pilot test the new questionnaire and data gathering process. Because that will be something, I think, the Board ought to be involved

in taking a look at.

CHAIR MARKOWITZ: So, Kevin, I think if you wouldn't mind getting these down on the screen, it would be very helpful.

MR. BIRD: Okay. If you just want to let me know again, sorry.

CHAIR MARKOWITZ: Number 10.

MEMBER DEMENT: I'll just say it again, the new Board needs to be involved in evaluating the pilot data from the OHQ redrafted questionnaire.

MR. BIRD: So you say from the redrafting of the OHQ?

MEMBER DEMENT: Yes, the pilot from the redrafted OHQ questionnaire.

MR. BIRD: How's that?

MEMBER DEMENT: Yes.

MR. BIRD: Okay, perfect.

CHAIR MARKOWITZ: Kind of an obvious thing is to follow-up on Number 11, to follow-up on Board recommendations today's date, including hearing loss.

And I don't know that there was another recommendation that we haven't heard about for the moment. So we need to follow-up on Board recommendations.

And, I think, another Item 12 would be to monitor the outcomes of changes made by DOL in response to Board recommendations. So for instance, they don't have to list this necessarily, but the concern that people who don't meet presumptions will not necessarily get a fair shake in evaluation, that can be looked at.

MEMBER BODEN: Yes. I think it's a great idea to take another look at the changes that have been made and how they continue to affect the claims process.

CHAIR MARKOWITZ: So just on recommendations, if you could replace that period with a comma. No, no, I'm sorry, at the end, Number 12, that's the Board recommendations, including the claims process and outcomes. And I'll clean up the language a little bit.

MEMBER CASSANO: This is Tori. I'd

like to add a couple of things to Number 7 besides neurological illnesses. I think we should add cancers other than respiratory cancers such as urological cancers and hematologic cancers.

(Simultaneous speaking.)

MEMBER WELCH: With that and the neurologic conditions, maybe going back to the issue of how they're determining causation. So if we can get the recommendations to update the SEM with additional causal data, it'll affect the way you approach looking at those conditions. Because I assume you're talking about focusing on causation analysis related to those conditions. And currently, there's been a limited move from SEM, I think.

MEMBER CASSANO: Yes.

MEMBER WELCH: And actually, while I have the mic, Stephen, you had mentioned earlier, related to SEM, to have some process by which Department of Labor continues their contract with the National Library of Medicine, their Haz-Map.

And Haz-Map is being updated. I was

on that site recently, and seeing they have it updated, I thought that we would understand -- understood from Rachel that the Commissioner who may have retired and no one is updating it. But I think that it looks like it is being updated. It has a new format, it looks different than it did six months ago.

CHAIR MARKOWITZ: Good.

MEMBER WELCH: But, you know, there should be -- we should be assured that there's an ongoing connection with Haz-Map and some of the side projects, but improvement in Haz-Map and understanding -- having the Board understand how the National Library of Medicine is managing Haz-Map. It could cause some real problems if they don't -- if they're having it peer reviewed and pulling in other data sources.

CHAIR MARKOWITZ: So, Laurie, not to get concrete, but is there an item to be listed here from your suggestion there?

MEMBER WELCH: Well, I was just saying we have number -- revisit the SEM at a broad level.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: We can add to there, focus on, I think, revisit the SEM at a broad level, somewhere in there, and ensure that DEEOICP still has a relationship with National Library of Medicine for Haz-Map. I think that would probably be enough, as long as we're just mentioning Haz-Map.

CHAIR MARKOWITZ: Now, getting back to Tori's comment about neurologic and hematologic cancers, because, Tori, you wanted to add that to seven.

MEMBER CASSANO: Yes. Yes, just because, I mean, I think neurologic illnesses are important when you look at things like metal intoxicant encephalopathy, but Parkinson's Disease which is related to organic solvent exposure.

But, you know, I think we focus so much on respiratory cancers that to just pinpoint the neurological illnesses without talking about some of these other cancers makes it sound like the only thing that hasn't been addressed properly is the neurological illnesses. And I don't think that's

necessarily the case.

So I thought, you know, adding additional cancers other than respiratory cancers, or just put it like that, because we really didn't look at anything else other than the ovarian cancer as it relates to asbestos exposure.

So there's a whole lot of other stuff out there that we haven't really looked at to see how they are actually adjudicating those claims.

CHAIR MARKOWITZ: So if we took out -- so if we added neurologic illnesses, cancer, took out the toxic encephalopathy, which greatly restricts it, you know, clearly it's broader than that, are there other categories of illness that we should name, basically neurologic illness and cancer is where we're at.

MEMBER CASSANO: Well, we could -- I mean, if we wanted to, endocrine conditions might be something we might want to look at within that. Thanks. Does anybody have anything else to add?

CHAIR MARKOWITZ: So any other items for the list?

MEMBER SILVER: This is Ken. We had two recommendations discussed earlier. One would increase the job satisfaction and collegial environment of the occupational physicians. Another one would hopefully bring about the hiring of people with more expertise in occupational medicine, epidemiology, related subjects.

What about growing the internal talent pool of OWCP's claims examiners? Seems like a lot of them are trained when a new major revision comes down, but the training is really just checking the boxes and complying with the rule.

I think back, this program would have been a dream job for me right out of college. But at the level I function at now, it would be a nightmare. That's kind of sad. It would be nice if people who start off in this program could add to their credentials, and advance along some kind of career path, and become more critical, independent thinkers, and learn a lot of what members on this Board have learned in their careers.

So the next Board maybe could have a

dialogue with the director of OWCP about starting to build something like that. There are so many free webinars that a person with a couple of hours at their desk in a bureaucracy could avail themselves of and add depth to their knowledge of occupational disease and chemical exposures instead of waiting for the program staff to parachute in from Washington.

It would take a fair amount of tweaking the relationship with the union that represents people, but I really think that's the long-term solution for a lot of the problems we've identified.

CHAIR MARKOWITZ: So, Ken, this is Steve Markowitz. So if we added an Item 13, it would be something like examine and encourage additional continuing education for claims examiners. Does that capture it?

MEMBER SILVER: Continuing education and credentialing.

CHAIR MARKOWITZ: Okay, okay. Encourage additional continuing education and credentialing for claims examiners.

MEMBER DEMENT: Thank you.

MEMBER BODEN: This is Les. Related to Ken's point, is there any kind of promotion ladder within so that CEs not only could get additional education but could move up? I just don't know anything about that. And it would fit with Ken's suggestion.

MEMBER CASSANO: I think we had asked about this early on with the Board about what the career progression was and what kind of education the CEs had besides procedural and policy education and if there were those opportunities. So I think that's something that I think got was, sort of, you know, put in the parking lot because of all the other issues we needed to address.

And I think that was something we wanted to do when we could talk to the claims examiners directly. But we're not -- we were not able to do that. So I think that was information we were going to try to get from them.

So I think that's something that we do need to add to this to look at -- and just a statement

that says look at the educational opportunities and career progression for claims examiners and other staff involved in the claims review process.

CHAIR MARKOWITZ: So, Ken, I think we want to slip in Dr. Cassano's phrase: career progression, continuing education, comma, credentialing, and career progression for claims examiners. And was that other staff, Tori?

MEMBER CASSANO: Yes. Career progression for claims examiners and other staff involved in the claims review process.

CHAIR MARKOWITZ: So Item 14, if we're done with that, I would say that we'd encourage the Board to ensure that public comments are appropriately tracked and subsequently integrated into Board discussions. Other comments, issues?

(No response.)

CHAIR MARKOWITZ: I will write a little bit of introductory sentence or two saying that these don't necessarily represent priorities, but that there are some items that should be addressed by the next Board.

MEMBER CASSANO: Could you just scroll up so we could see the whole list from the beginning?

CHAIR MARKOWITZ: Other comments or additions?

MEMBER REDLICH: This is probably just included in one of these many other suggestions, so if -- there were just a number of examples of inconsistencies between, like, the manual and the training materials, so just more of the implementation of the recommendations. So I think that's incorporated.

CHAIR MARKOWITZ: But in your work -- it's Steve Markowitz -- in your work on asthma, you actually saw in the procedure manual that there were inconsistencies, contradictions. Is that right?

MEMBER REDLICH: Yes. And that was sort of common with all the beryllium, sarcoid, and other, you know, in that area.

CHAIR MARKOWITZ: Well, so I think that deserves a separate line actually, a separate item.

MEMBER SOKAS: I agree. It's Rosie.

MEMBER CASSANO: I do too.

CHAIR MARKOWITZ: So it's Number 15.

MR. BIRD: Sorry, Dr. Markowitz, can you repeat that for me?

CHAIR MARKOWITZ: I could if I'd said something.

MEMBER REDLICH: Something like review of the latest procedure manual and training materials for accuracy and consistency.

MEMBER CASSANO: Perfect.

MR. BIRD: You guys want training materials instead of manual? Sorry.

MEMBER REDLICH: Yes, that's -- thank you.

MEMBER FRIEDMAN-JIMENEZ: Okay, this is George. I have one other comment. And I don't see it down. Number 3, I think, that mentioned the Haz-Map, would you like to include also IARC and NTP? Those are the two main sources for causation reviews for cancers.

And I think it would be useful to mention Number 2. And I think it would be useful

to mention them, to focus the new Committee on those two. I think they're very useful. And they should be an integral part of this process.

Do you want to add it after Haz-Map or put a separate line?

MEMBER WELCH: I don't think we need to do that. You know, we're already making a recommendation about it. And I guess even it could have implied that the new Board would follow-up on all the recommendations.

Because we don't want them really to limit it to those. We want them to include all the ones that have been recommended, but this on, I think, since we have a recommendation about it. So we don't need to add it specifically.

Stephen, do you think we should have here, you know, follow-up on all the recommendations or is that just --

CHAIR MARKOWITZ: Yes. I think they're, yes, Number 11. I think it's covered under Number 11.

MEMBER WELCH: Okay.

MEMBER REDLICH: Could we just add a minor edit to Number 15? Review of the latest manuals, circulars, and bulletins, and, comma, circular, comma, bulletins and training materials. Because sometimes the intent seemed to sometimes change when things went from one to the other.

CHAIR MARKOWITZ: Okay, anything else on the list? So we're not, obviously, going to vote on these. These are just items that make sense to us.

That is pretty much the end of our agenda unless anybody has any other matter they want to raise. I am going to discuss the schedule for the next two weeks. But are there any other issues anybody wants to bring up?

(No response.)

CHAIR MARKOWITZ: So --

MEMBER BODEN: This is Les, actually.

CHAIR MARKOWITZ: Yes.

MEMBER BODEN: So I don't know what's going to happen in terms of the appointment of the new Board. But I just wanted to express my thanks,

Stephen, for the really wonderful work that you've done as Chair of the current Board.

MEMBER CASSANO: Hear, hear.

MEMBER FRIEDMAN-JIMENEZ: I second that.

CHAIR MARKOWITZ: Do you take a roll call?

MEMBER SOKAS: And also the pleasure was working with everyone who's on the current Board. So thank you.

CHAIR MARKOWITZ: Yes, my view is that we've really worked well together, you know, the entire group. And we've been productive. We haven't covered everything, but we've covered some very important issues. I don't think we have a complete understanding of this program, but we've gone pretty far in understanding things. And I think it's been a really excellent effort. And personally, very pleasurable to me to work with everybody on this Board.

I want to thank the Department of Labor folks, particularly Carrie Rhoads, Doug

Fitzgerald, and the contractor, Kevin Bird, for the support, the patience, for turning things around quickly, for reminding us of certain things we needed to get done by certain time periods.

And I also wanted to thank the public that's participated in each of our meetings, both the one-timers who showed up at the various sites we went to, but also the people who have consistently come to our meetings, provided public comments, enriched our knowledge. I hope that we've effectively addressed at least some of the issues on people's minds. I know we haven't addressed them all, but with time hopefully they will become addressed. But I appreciated that interaction very much.

I also want to congratulate Laurie Welch who is, I think, retiring tomorrow from --

MEMBER WELCH: That's correct. That is correct.

CHAIR MARKOWITZ: -- a career that began in 1982 or so. So I'm being approximate, because I don't know exactly the date.

I have three phone calls with Laurie tomorrow. So I don't have to say goodbye to her. But I do want to congratulate you on a wonderful career.

MEMBER WELCH: Well, thank you. And, you know, I plan to -- you guys that are staying on the Board, you know, you've got to keep up the work that we started, so I can bask in the glory and not have to have to do any more work. That's my view.

(Laughter.)

CHAIR MARKOWITZ: But I'm happy to say she hasn't -- she's not changing her cell phone number, so that's good too.

MEMBER WELCH: Or my email, yes, my email too. I know, I'm here.

CHAIR MARKOWITZ: Okay, good. Any other comments before, I think, Doug needs to close, or adjourn this meeting, or say something before we close?

MEMBER REDLICH: So maybe I missed this, it's Carrie. What is the plan going forward?

CHAIR MARKOWITZ: Okay. So the plan going forward is that by next Tuesday, February 6th, well, first, Carrie and Kevin are going to send around these recommendations, these things that we've been looking at and working on.

And then the person or persons who have taken the primary responsibility for writing these up are going make whatever small change is needed and send it to me and to Carrie by February 6th. That's next Tuesday. Then we will turn that all around and submit them to DOL, hopefully by February 9th. That's a week before most members of the Board terms expire. Does that time table work?

MEMBER REDLICH: Works for me.

CHAIR MARKOWITZ: That's good, that's good. Hearing no objection, that's good.

So, Doug, do you need to -- is there any official announcement you need to make to --

MR. FITZGERALD: No. I just want to say that, and I think I can speak for Carrie, that we both really appreciate all the work the Board has done on behalf of the program, taking time out

from your personal lives to contribute to this, try to make it a better program. And I want to applaud you and thank you, Stephen, for your leadership as Chairman in this as well. And I hope we all talk very soon. But we will see.

CHAIR MARKOWITZ: Well, I hope Faye begins to talk again very soon.

(Laughter.)

MEMBER VLIEGER: Faye has one question. Do we know the date that they're going to announce the Board members that are seated on the next Board?

MR. FITZGERALD: I've been given no information on that.

MEMBER REDLICH: This is Carrie. One last thing, we had mentioned giving a list of specific cases or claims that we had questions with the final adjudication. I have put together a list from the Part D conditions. I don't know if others from cases they interviewed had any.

And the question is what do we do with that list also. Because it has some identifiers

or has to have some identifiers of the person, how the best way to communicate that in terms of HIPAA compliance.

CHAIR MARKOWITZ: Yes. It's a good point. We did not discuss this.

MS. RHOADS: It might be that faxing that would be the best thing to do. But let me check. And then I'll send an email about that.

MEMBER REDLICH: When we adopt them, they just have -- they have the identifier, I know, the last four numbers of --

MS. RHOADS: If the identifier is related to the Social Security number, we can't email it. So let me check and see what the identifier is, okay.

CHAIR MARKOWITZ: Okay. Any other comments before we adjourn?

(No audible response)

CHAIR MARKOWITZ: Okay. So I'd like to adjourn this meeting of the Board and --

MR. FITZGERALD: Yes, I concur.

CHAIR MARKOWITZ: -- wish everyone well.

(Whereupon, the above-entitled matter went off the record at 4:31 p.m.)