U.S. DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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WEDNESDAY
JUNE 29, 2022

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

SCIENTIFIC COMMUNITY
AARON BOWMAN
MARK CATLIN
KENNETH SILVER
MIKE VAN DYKE

MEDICAL COMMUNITY
GEORGE FRIEDMAN-JIMENEZ
STEVEN MARKOWITZ, Chair
MAREK MIKULSKI

CLAIMANT COMMUNITY
JIM KEY
DURONDA POPE
CALIN TEBAY

DESIGNATED FEDERAL OFFICIAL
RYAN JANSEN

ALSO PRESENT
KEVIN BIRD, SIDEM
CARRIE RHOADS, DOL
JOHN VANCE, DOL

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1:04 p.m.

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

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

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

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

Copies of all the meeting materials will be available on the Board's website under the heading Meetings. The documents will also be up on the Webex screen so everybody can follow along with the discussion. The Board's website for all matters can be found at dol.gov/owcp/energy/regs/compliance/advisoryboard.htm. If you have not already visited the Board's website, I encourage you to do so. After clicking on today's date, you will see a variety of information, including a page dedicated entirely to today's meeting.

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

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

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

Today there will be no public comment session, but written comments may be submitted to energyadvisoryboard@dol.gov. A transcript, and minutes will be prepared from today's meeting. During the discussions today, please speak clearly enough for the transcriber to understand. When you begin speaking, especially at the start of the meeting, make sure that you state your name, so that it's clear who is saying what.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR MARKOWITZ: Dr. Van Dyke?

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

CHAIR MARKOWITZ: Dr. Friedman-Jimenez?

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

CHAIR MARKOWITZ: Dr. Mikulski?

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

CHAIR MARKOWITZ: Ms. Pope?

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

CHAIR MARKOWITZ: Mr. Tebay?

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

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

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

industrial hygiene report language.

Then we'll get back to asbestos presumptions, take a break, or we'll see where the break fits depending on how long things take. We're going to help in general, try to remember our comments about our claims review from before our May meeting. We're going to briefly review public comments, in particular those that are in writing on our website. And then finally kind of formulate a list of items that we think the next Board should address.

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

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

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

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

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

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

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

MEMBER BOWMAN: Yes, I agree.

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

MEMBER SILVER: Yes.

MS. RHOADS: Okay. Dr. Van Dyke?

MEMBER VAN DYKE: Yes, I agree.

MS. RHOADS: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes, I agree.

MS. RHOADS: Dr. Markowitz?

CHAIR MARKOWITZ: Yes.

MS. RHOADS: Dr. Mikulski?

MEMBER MIKULSKI: Yes, I agree.

MS. RHOADS: Ms. Pope?

MEMBER POPE: Yes, I agree.

MS. RHOADS: Mr. Tebay?

MEMBER TEBAY: I agree.

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

CHAIR MARKOWITZ: Okay, yeah, so that passes. I'll remind the Board: there are 12 members of the Board, to pass any recommendation we need a majority, meaning seven votes. Not the majority of people present, but a majority of the total Board. So, there are eight people present. You can't vote by proxy, so in order to pass any recommendation, we would need at least seven people to agree with that recommendation.

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

draft recommendation.

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

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

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

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

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

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

borderlines.

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

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

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

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

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

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

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

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

borderline tests be interpreted as a positive test.

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

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

MEMBER FRIEDMAN-JIMENEZ: Okay, great.

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

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

CHAIR MARKOWITZ: Yes, I approve.

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

MEMBER SILVER: Yes.

MS. RHOADS: Dr. Van Dyke?

MEMBER VAN DYKE: Yes.

MS. RHOADS: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MS. RHOADS: Dr. Markowitz?

CHAIR MARKOWITZ: Yes.

MS. RHOADS: Dr. Mikulski?

MEMBER MIKULSKI: Yes, I approve.

MS. RHOADS: Ms. Pope?

MEMBER POPE: Yes, I approve.

MS. RHOADS: Mr. Tebay?

MEMBER TEBAY: I approve.

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

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

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

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

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

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

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

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

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

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

A better sense of claimant's workplace

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

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

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

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

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

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

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

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

MEMBER VAN DYKE: I support the concept for sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR MARKOWITZ: Other comments? Go ahead.

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

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

CHAIR MARKOWITZ: Okay, so Mike, hold

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMBER VAN DYKE: I can do it. I can

paste it in there.

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

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

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

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

were in excess of the regulatory standards.

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

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

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

Maybe comparisons of claimants'

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

CHAIR MARKOWITZ: Yeah. Friendly amendment accepted.

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

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

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

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

CHAIR MARKOWITZ: I would just comment that there's supposed to be access in the IH data if they exist, in the overview of a claim anyway. So, the second to last line, I would, between lack support, I would add the word objective, lack of objective support. Support alone is too weak a word. Other comments, improvements, suggestions?

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

interesting --

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

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

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

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

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

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

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

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

MEMBER VAN DYKE: How about must describe?

MEMBER BOWMAN: Describe, that's good

too.

MEMBER VAN DYKE: The available industrial hygiene data.

MEMBER BOWMAN: Great. Even if you --

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

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

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

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

suggestions on the language of the recommendation?

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

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

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

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

like that.

CHAIR MARKOWITZ: Okay.

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

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

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

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

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

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

hygiene data.

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

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

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

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

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

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

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

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

the same thing.

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

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

Okay, final comments? Then I think

Carrie, can we do a roll call?

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

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

CHAIR MARKOWITZ: Yeah, sure.

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

MEMBER VAN DYKE: Yes.

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

CHAIR MARKOWITZ: Yeah, relevant to

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

MEMBER VAN DYKE: I think that's good.

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

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

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

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

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

MEMBER BOWMAN: Yes.

MS. RHOADS: Dr. Silver?

MEMBER SILVER: Yes.

MS. RHOADS: Dr. Van Dyke?

MEMBER VAN DYKE: Yes.

MS. RHOADS: Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: Yes.

MS. RHOADS: Dr. Markowitz?

CHAIR MARKOWITZ: Yes.

MS. RHOADS: Dr. Mikulski?

MEMBER MIKULSKI: Yes.

MS. RHOADS: Ms. Pope?

MEMBER POPE: Yes.

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

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

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

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

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

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

MS. RHOADS: Okay.

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

MS. RHOADS: Sure.

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

Okay, next item on the agenda. 208,

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

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

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

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

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

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

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

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

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

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

I have an opinion about that, but I want to just summarize what the PTS response is. They also -- their basic point is that what chemical engineers, mechanical engineers, and industrial safety engineers did in a DOE complex is not sufficiently similar to what the broader national set of these very same types of engineers as reflected in the NOMS to enable us to presume that the DOE engineers had asbestos exposure.

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

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

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

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

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

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

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

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

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

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

And I think that's the issue, I agree

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

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

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

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

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

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

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

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

CHAIR MARKOWITZ: No.

MEMBER SILVER: No, well that's --

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

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

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

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

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

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

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

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

Reminder, our charter is that we are

supposed to look at with reference to the industrial hygiene, and staff positions within the program at the consistency, quality, and accuracy of the industrial hygiene, and the medical reports. So, consistency, objectivity, and quality, or accuracy, and quality of those reports.

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

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

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

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

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

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

CHAIR MARKOWITZ: Guidance to the

industrial hygienists?

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

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

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

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

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

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

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

in their 1985 inventory said were there.

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

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

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

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

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

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

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

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

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

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

CHAIR MARKOWITZ: Feel free.

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

on exposures, and then it reaches the CMC.

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

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

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

hygienist, and the physicians.

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

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

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

CHAIR MARKOWITZ: Yeah.

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

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

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

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

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

don't have pulmonary fibrosis?

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

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

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

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

MEMBER SILVER: Well, my one last

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

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

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

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

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

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

question.

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

MEMBER SILVER: No, 7716.

MR. VANCE: All right.

MEMBER SILVER: Page 72 is the final decision.

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

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

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

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

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

claims.

CHAIR MARKOWITZ: Okay, thank you.

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

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

It's on page 199 out of 701, although

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

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

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

And how should we do that? Because

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

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

MEMBER FRIEDMAN-JIMENEZ: This is George. I have a quick question related to that. Has anyone expressed any satisfaction, or dissatisfaction with the way that we're doing it now? The people that make the public comments, are they satisfied that the Board is hearing them adequately, and that the Department of Labor is dealing with them appropriately?

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

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

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

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

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

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

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

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

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

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

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

CHAIR MARKOWITZ: Yeah, okay.

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

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

MEMBER FRIEDMAN-JIMENEZ: Before we go

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

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

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

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

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

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

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

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

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

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

MEMBER FRIEDMAN-JIMENEZ: All right, good.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

last time.

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

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

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

Okay, so I hear no objection to that,

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

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

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

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

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

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

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

CHAIR MARKOWITZ: Sure, go ahead.

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

CHAIR MARKOWITZ: Okay.

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

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

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

MR. JANSEN: I think so.

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

system, a system that evolves, improves.

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

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

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

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

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

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

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

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

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

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

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

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

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