UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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SUBCOMMITTEE ON SITE EXPOSURE MATRICES (AREA #1)

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MEETING

+ + + + +

TUESDAY,
SEPTEMBER 20, 2016

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The Subcommittee met telephonically at 1:00 p.m. Eastern Time, Laura Welch, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT

MEDICAL COMMUNITY:

STEVEN MARKOWITZ
LAURA S. WELCH, Chair

CLAIMANT COMMUNITY:

KIRK D. DOMINA
GARRY M. WHITLEY

OTHER ADVISORY BOARD MEMBERS PRESENT

FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

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

Introductions 4

Request for data on claims by specific
ICD codes................................. 9

Request for case examples with
presumptions 34

DOL's response to IOM report on SEM 39

Request for access to SEM database 50

Review of OHQ completed at
resource centers 62

Development of the 1995 memo 84

Adjourn 106

1 P-R-O-C-E-E-D-I-N-G-S
2 1:01 p.m.
3 MS. RHOADS: Good morning, everyone,
4 or good afternoon, depending on where you are.
5 My name is Carrie Rhoads, and I'd like
6 to welcome you to today's teleconference meeting
7 of the Department of Labor's Advisory Board on
8 Toxic Substances and Worker Health, the
9 Subcommittee on Site Exposure Matrices or SEM,
10 S-E-M.
11 I'm the Board's Designated Federal
12 Officer, or DFO, for today's meeting.
13 First, we appreciate the time and the
14 work of our Board members in preparing for this
15 meeting, and for all their forthcoming work.
16 I'll introduce the Board members on the
17 subcommittee, and we'll do a quick roll call. If
18 you could just respond quickly to when I say your
19 name.
20 Dr. Laura Welch is the Chair of the
21 subcommittee.
22 CHAIR WELCH: I'm here.

1 MS. RHOADS: And the members are Dr.
2 John Dement.
3 MEMBER DEMENT: Here.
4 MS. RHOADS: Mr. Garry Whitley.
5 MEMBER WHITLEY: Here.
6 MS. RHOADS: Mr. Kirk Domina. Oh, I'm
7 sorry. We'll have to move on. Mr. Mark Griffon
8 will not be joining the call today. Dr. Steven
9 Markowitz.
10 MEMBER MARKOWITZ: Here.
11 MS. RHOADS: And he is also the Chair
12 of the Board. And Ms. Faye Vlieger, another member
13 of the Board who is also on the line.
14 We are scheduled to meet from 1:00 to
15 3:00 p.m. Eastern Time. In the room with me is
16 Melissa Schroeder from SIDEM, our contractor.
17 Regarding the meeting today, it's a
18 two-hour meeting, so we're not planning on taking
19 any breaks unless someone needs to. Copies of
20 all meeting materials and any written public
21 comments are or will be available on the Board's
22 website under the heading "Meetings" and the

1 listing there for this subcommittee meeting.
2 The documents will also be up on the
3 WebEx screen, so everyone can follow along with the
4 discussion.
5 The Board's website can be found at
6 dol.gov/owcp/energy/regs/compliance/advisoryboa
7 rd.htm.
8 If you haven't already visited the
9 Board's website, I encourage you to do so.
10 Clicking on today's meeting date, you'll see a page
11 dedicated entirely to today's meeting. The web
12 page contains publicly-available materials
13 submitted to us in advance of the meeting. And we
14 will publish any materials that are provided to the
15 subcommittee. There, you should also find today's
16 agenda as well as instructions for participating
17 remotely.
18 If you are participating remotely and
19 you're having a problem, please email us at
20 EnergyAdvisoryBoard@dol.gov.
21 If you're joining by WebEx, please note
22 that the session is for viewing only and will not

1 be interactive. The phones will also be muted for
2 non-Advisory Board members.
3 Please note that we do not have a
4 scheduled public comment session today. The
5 call-in information has been posted on the Advisory
6 Board website, so the public may listen in but not
7 participate in the subcommittee's discussion.
8 The Advisory Board voted at its April
9 meeting that subcommittee meetings should be open
10 to the public, so a transcript and minutes will be
11 prepared from today's meeting.
12 During our Board discussion today, as
13 we're on a teleconference line, please speak
14 clearly enough for the transcriber to understand.
15 When you begin speaking, especially at the start
16 of the meeting, please state your name so we can
17 get an accurate record of the discussion.
18 Also, I'd like to ask our transcriber to
19 please let us know if you're having an issue with
20 hearing anyone or with the recording.
21 As DFO, I see that the minutes are
22 prepared and ensure they're certified by the Chair.

1 The minutes of today's meeting will be available
2 on the Board's website no later than 90 calendar
3 days from today, per the FACA regulations. If
4 they're available sooner, they'll be published
5 before the 90th day.
6 Also, although formal minutes will be
7 prepared, we'll also be publishing verbatim
8 transcripts which are, obviously, more detailed in
9 nature. Those transcripts should be available on
10 the Board's website within 30 days.
11 I'd like to remind the Advisory Board
12 members that there are some materials that have
13 been provided to you in your capacity as special
14 government employees and members of the Board,
15 which are not for public disclosure and cannot be
16 shared or discussed publicly, including in this
17 meeting. Please be aware of this as we continue
18 with the meeting today.
19 The materials can be discussed in a
20 general way, which does not include using any
21 personally identifiable information, such as
22 names, addresses, specific facilities, if a case

1 is being discussed, or a doctor's name.
2 And with that, I convene this meeting
3 of the Advisory Board on Toxic Substances and
4 Worker Health, Subcommittee on Site Exposure
5 Matrices. I'll turn it over Dr. Welch, who is the
6 Chair of the subcommittee.
7 CHAIR WELCH: Thank you, Carrie.
8 I had an agenda, and I kept cutting
9 things out, so we can work through the couple of
10 things that I had written down. And then we've
11 added some more information about -- we're going
12 to call on the 1995 circular.
13 So what I thought we would do first is,
14 I've asked you to look at some case files. And I
15 wanted to make sure that everybody had kind of an
16 understanding of the process. Or if you had
17 questions or other information you wanted. The
18 idea was to look at some of the beryllium cases,
19 even though that's not in our technical subject
20 area, to understand what comes with that and how
21 they're handled.
22 And I've seen many before. I wasn't

1 sure that John or Mark had seen these kind of
2 issues. Kirk probably has as well. So we'll be
3 discussing those. Were there other things that
4 people wanted to know about the flow or any
5 discussion points that you wanted? Anything that
6 you wanted to talk about, looking at those cases?
7 Okay.
8 (Laughter.)
9 MEMBER MARKOWITZ: Laurie. This is
10 Steve Markowitz. It'd be a lot easier for all
11 those separate files with each individual record
12 were merged so you didn't have to keep opening and
13 closing files.
14 CHAIR WELCH: That, too. Or even if
15 they had a date on them, you know.
16 MEMBER MARKOWITZ: Right. Yes,
17 something about the title of them. But anyway,
18 that's just a minor issue.
19 CHAIR WELCH: That's true. It did
20 make it harder to peruse. And I guess if we ask
21 for other case files, then we can definitely make
22 that request, that those files be merged in some

1 way, or put them all in one PDF.
2 MEMBER MARKOWITZ: Right. Put all the
3 medical records together, all the certain types of
4 records together, so it's easier to just flip
5 through them.
6 CHAIR WELCH: Yes. That's a very good
7 idea. That's true.
8 Okay. Now, the other thing I wanted to
9 talk about, which will take us a little more time,
10 is we had requested data. And Carrie put out the
11 memo I sent you. It's what I'm going to run through
12 now.
13 We had more information on claims by
14 specific ICD codes so that we can get an idea of
15 what people are filing for and what's happened to
16 those cases. We've asked for the site and whether
17 the claims were accepted or denied, and a reason
18 for denial.
19 What Steven and I found out through some
20 interim informational calls with DOL staff is that
21 they don't really code incoming claims in a
22 systematic way. I think they do designate them as

1 a category, like pulmonary disease. But sometimes
2 the claim is just given a name, COPD, but not a code.
3 So in order to find all of the COPD
4 cases, which Doug Pennington did provide for us,
5 he had to do the logic that's attached to the
6 document I send you. But it would be almost
7 impossible for him to do that for all records.
8 We can go back and ask for this kind of
9 detailed data on another diagnosis or diagnosis
10 category, but probably, we couldn't really get what
11 we had wanted, which would be a list of the kind
12 of things -- the medical information on claims and
13 then what are people filing for.
14 I do think we can get it in the, you
15 know, ten major categories: pulmonary disease,
16 heart disease, COPD. Because I've seen that in the
17 annual reports from DOL. They use these, I think
18 it's ten categories and then "Other". But until
19 we go back and ask about those, I'm not sure we could
20 get the breakdown and then know how many are denied
21 or accepted. We just have to go back and ask and
22 see what we can get.

1 It's a very different response to know
2 that we really can't get a data dump of claim files
3 by a data classification. Giving it by one
4 specific disease, I don't find that very helpful.
5 So I would like to, you know, spend a few minutes
6 discussing where we go from here.
7 MEMBER MARKOWITZ: Laurie, can I just
8 interrupt for one second?
9 CHAIR WELCH: Absolutely.
10 MEMBER MARKOWITZ: Yes, Steven
11 Markowitz. I have a question about the
12 explanation of this table of data they gave us.
13 And my apologies for the people on the call who
14 aren't looking at it or don't have access to this
15 table. But I will just describe what it is.
16 There are certain individual cases in
17 which one column indicates that the claim was
18 denied. Yet they still seem to contain ICD codes
19 and ICD code description. And so --
20 CHAIR WELCH: You're looking at the
21 spreadsheet that we got on the CD?
22 MEMBER MARKOWITZ: Yes, yes, yes. And

1 there are any number claims like this, you'll
2 readily seen them, in which it indicates the date
3 that the case was created, the medical condition
4 type, which is pulmonary disease. And then it
5 gives the ICD code, 496, which is COPD. And then
6 it gives the - a descriptor, chronic airway
7 obstruction.
8 And then at a later point, in Column K,
9 it indicates that the determination was that, I
10 think, the case was denied. And what I don't quite
11 understand is, I thought if it was denied, they
12 didn't identify the ICD code or the code
13 descriptor.
14 CHAIR WELCH: Well, it's not
15 systematic. But, you know, so sometimes people
16 put in the code as they enter it in. Which is why
17 when you look down there, you'll see a number of
18 claims that don't have an ICD code.
19 MEMBER MARKOWITZ: Right.
20 CHAIR WELCH: So many of them do have
21 it. Yes, I could get an answer from Doug of what
22 those definitions were. And I think FDD is final

1 decision denial, and FDA is final decision accepted
2 here.
3 MS. RHOADS: Hi. I'm sorry. This is
4 Carrie. Can I interrupt for one second and just
5 to make sure that Mr. Domina is now on the line?
6 MEMBER DOMINA: Yes, I'm here.
7 MS. RHOADS: Great. Thank you.
8 Okay. I'm sorry for interrupting. Go
9 ahead.
10 CHAIR WELCH: That's okay, because I'm
11 not going to really pull up the spreadsheet. But
12 there's pretty much that, yes, the code is in there.
13 Every one of them is categorized as medical
14 condition type: pulmonary disease. So every claim
15 is categorized with a medical condition type. But
16 then, you know, of these, probably it looks like
17 maybe 80 percent have an ICD code, but then the
18 others don't.
19 MEMBER MARKOWITZ: Right, right, yes.
20 I'm just assuming that they can clarify for us.
21 Because the importance of it is that if we're
22 interested in looking at the universe of denied

1 claims to see what's happened with them, we don't
2 quite know how complete the universe is from
3 looking at this table, but it may be more complete
4 than we think. Either that, or if we're interested
5 in looking at denied cases, it may, nonetheless,
6 allow us to identify a large number of cases that
7 were denied in which we know that the claimant was
8 discussing -- you know, COPD was one of the issues
9 that the claim was for.
10 So it might be, even though we can't
11 identify the total universe, we can still use the
12 data on this table to identify cases that we'd want
13 to look at and learn from.
14 CHAIR WELCH: Yes. And that thought
15 was good, yes.
16 MEMBER DEMENT: Related to this issues
17 is the data that we received. Actually, I think
18 Part B Committee requested it. We received a data
19 file before the last conference call.
20 I summarized the medical conditions
21 that were listed in there. And I'm curious
22 because, in there, only COPD was classified under

1 496 or 492. Anyway, but the question is, how
2 complete is that data set then? Yes, many of the
3 filed claims have no ICD code or are not classified
4 as COPD. Seems like that data set is also rather
5 incomplete.
6 CHAIR WELCH: Well, actually when we
7 were on this call with Doug Pennington talking
8 about the data, I asked him that. I said our
9 Beryllium Subcommittee has looked at most of the
10 claims. And he said, oh, but we sent that out with
11 the a disclaimer saying it wasn't a complete list
12 of claims for the same reason.
13 But then on the latest spreadsheet that
14 you got this week, I think he extended the logic
15 to try to physically do the same as they did with
16 this. They're trying to find all the claims by
17 using text descriptors and the ICD codes. And it's
18 the best they can do. It's probably pretty
19 complete.
20 But if somebody -- you know, later on
21 the spreadsheet, there are a couple of lines where
22 it just says pulmonary disease. And it was denied,

1 but there's not descriptor at all. So they're
2 giving us -- we can get all the pulmonary diseases,
3 and it turns out the majority of them are COPD. But
4 then the denial ones, the ones that have no ICD code
5 or text descriptor for the medical diagnosis are
6 much more likely to have been denied.
7 But Steven, what you said is good. If
8 we give up on the idea we know what the universe
9 of claims are, you know, what proportion of them
10 are COPD versus heart disease versus diabetes, we
11 can definitely use these to get cases, to look at
12 individual cases. So if we were interested in
13 presumptions, and they have presumptions for cases
14 for COPD, and we want to see how the presumptions
15 we used can handle the claim, this is a good way
16 to do that.
17 And then we could get -- John had
18 created a data request for the Beryllium
19 Subcommittee or the Part B Lung Disease
20 Subcommittee. And they were able to respond to
21 that, giving quite a bit of information in fields
22 where they had individual claims. And so, you

1 know, if they said it's denied, then, you know, back
2 and forth, too. They can't give us everything, but
3 what the final determination date was and stuff.
4 I think that we can learn a lot by
5 looking at individual cases, but there's still many
6 individual cases. And it doesn't seem like
7 there's some way to characterize them any further
8 than what we have here. Like, were they denied
9 because employment wasn't verified? Or were they
10 denied because they had a medical opinion that
11 turned it down? And they're not collecting that
12 information in a way that we could get it. We'd
13 have to go through individual claims to find those.
14 But we can still find claims that are listed here.
15 I think what I want to do is go back.
16 Now that I understand the conditions, that they
17 have these broad categories and conditions,
18 pulmonary disease, other lung disease. That we
19 could at least get a description of the number of
20 those that are accepted and denied.
21 Because when I look at their annual
22 report, it's not there. The most recent annual

1 report on the DOL website, it's from 2012, and it
2 has reasons for denial of claims but not the
3 spectrum of accepted claims. But I think that that
4 would be the concern on the data. But the denial
5 ones, probably 30 percent are lung disease, which
6 is an aspect of COPD and other lung disease. But
7 that's probably not representative of the claims
8 they're covering; it's a different universe.
9 But I'm confident we can get that. I
10 think that'd help us a little bit knowing where to
11 focus there. Because the one reason I thought it's
12 important to know the universe is that 30 percent
13 of all of their claims are COPD. This one doesn't
14 really have the COPD claims.
15 And we want to make sure that our
16 committee is helping with the exposure assessment
17 side of the current activities they're doing. And
18 if it's a lot of them in SEM, then we'll be missing,
19 we won't be able to help them as well as we could
20 if we understand the kind of claims that are coming
21 in.
22 Well, we can get, I think -- and maybe

1 even possibly before the October meeting, we'll get
2 an idea. I mean, I haven't seen it. Maybe other
3 people have seen it. Just something that says, you
4 know, in the last ten years, we've had these many
5 claims, and they were in these categories. And
6 this proportion was accepted, and this proportion
7 was denied by each category.
8 I've been wanting to look into that and
9 looking on the website to them; it's not easy to
10 find. So I will take on getting that, and then we
11 can decide where to go.
12 MEMBER MARKOWITZ: Laurie, it's Steven
13 Markowitz. Repeat what the thing you said you're
14 going to try to obtain.
15 CHAIR WELCH: We had wanted claims data
16 by ICD code. I think we can get it by medical
17 condition type because each type of claim coming
18 in is categorized into a medical condition. And
19 the medical conditions are COPD, other lung
20 disease, acidosis, heart disease, and then I think
21 smaller.
22 The very top, big ones I just mentioned,

1 they got almost 50 percent of the denials. And
2 then what I was looking at didn't have accepted
3 claims. Just to get a sense of just the big
4 categories, what are the claims that they're
5 handling? I think that would be useful, and it
6 shouldn't be hard.
7 I can't really get my head around the
8 idea that we can't either understand the universe
9 of these claims. We can understand more about
10 accepted claims, if that's helpful. We could
11 probably get a lot more information on accepted
12 claims.
13 MEMBER VLIEGER: This is Faye. I'm
14 sorry to interrupt. But did Doug Pennington
15 provide you a copy of the data dictionary for their
16 codes and stuff that they use on these entries?
17 CHAIR WELCH: He didn't, but I asked
18 him what they meant, what the codes meant. And he
19 sent it as an email.
20 MEMBER VLIEGER: Okay. We actually
21 have a copy of that. I believe Deb Jerison has it.
22 I can get the link and send it to you.

1 CHAIR WELCH: Okay. That'd be great.
2 MEMBER VLIEGER: All right.
3 CHAIR WELCH: So then are there other
4 cases, are there individual cases or individual
5 diagnoses that we'd like to know more about before
6 our next meeting? And Steve, let me ask you, when
7 we meet as the Board in October --
8 MEMBER MARKOWITZ: Right.
9 CHAIR WELCH: -- are we going to have
10 any breakouts by subcommittee? Or are we going to
11 be all -- you know, there'll be plenary with
12 subcommittees reporting back and discussing our
13 work?
14 MEMBER MARKOWITZ: I think we were
15 going to meet as a whole. And we're going to be
16 reporting back and then allowing other board
17 members to discuss what each of the subcommittees
18 is, you know, discussing.
19 I haven't thought through whether we
20 logistically could even do subcommittee meetings,
21 in part because of public access and other things.
22 So, I mean, Carrie and I can discuss that offline.

1 But I think, for the next meeting, we're not going
2 to achieve it. Everything will be done as a full
3 committee.
4 CHAIR WELCH: Well, and probably the
5 amount of time we have, that would take, the full
6 committee would take all that time. And so, that
7 means we don't need to request data in advance of
8 the October meeting.
9 And so, after the October meeting,
10 we'll probably have a better idea of what -- because
11 I know some of the other subcommittees also were
12 requesting these overall statistics on claims.
13 And then the two, the medical process committee and
14 the claimant, and then that's derived for the
15 committee. So it may have been that they have gotten
16 a different view of how the data works and what we
17 can get out of it. So I think other than me trying
18 to get this broad view, I don't see a need for us
19 to request additional data now. Unless you all
20 think we should look at some of these COPD claims
21 and see how some -- instead of going to the trouble
22 to give us their case files.

1 MEMBER DEMENT: Hey, Laurie. This is
2 John. I still wonder, the issue that's missing for
3 me right now is to what extent in these claims, COPD
4 whatever. To what extent is the SEM, use of the
5 SEM, in conjunction with the occupational history
6 that we're collecting. To what extent are those
7 claims being denied based on ways to instrument and
8 whether or not those two instruments are providing
9 the --
10 CHAIR WELCH: Yes, that's a good point.
11 MEMBER DEMENT: -- information to make
12 an informed decision. So far, you know, just
13 looking at a few claims, I don't have a sense of
14 that. And to me, that's the objective of what
15 we're aiming to get at.
16 CHAIR WELCH: That's a good point. In
17 the beryllium claims, the SEM is not really
18 relevant, so we have --
19 MEMBER DEMENT: No. It's not an
20 element in the beryllium, but it is on Part E for
21 most --
22 CHAIR WELCH: Absolutely, absolutely.

1 MEMBER DEMENT: So my question goes at,
2 for our subcommittees, how do we dive into what
3 information we have to determine if the SEM is
4 entering into -- in a big way -- negative claims
5 decisions that might be contrary, for example, what
6 we might call a no exposure association for a
7 particular job and job category?
8 CHAIR WELCH: Yes. That is a good
9 point.
10 MEMBER DEMENT: And frankly, I don't
11 know how to get at that. The data that we have in
12 the spreadsheets is not going to get it. They
13 don't have in there -- and I'm talking back to, on
14 the phone, the other committee, the Part B
15 committee.
16 We have a new data field that was
17 provided. The reasons for denial, and I'll just
18 read aloud, employee not covered, minimal payable
19 benefit met, medical condition not covered,
20 medical information insufficient, and then lastly
21 a negative causation result.
22 So along that spectrum of reasons for

1 denial, the only one, to me, that would possibly
2 be a reason to take a look at it, to see if the SEM
3 or the occupational history play a role, would be
4 the negative causation result.
5 CHAIR WELCH: Yes. Well, it's great
6 to be able to sort it down to that level.
7 MEMBER DEMENT: So, you know, for me,
8 if we could have a subset of claims where a negative
9 causation result for some of these conditions.
10 Say, COPD was present, can we look at those in
11 greater detail?
12 CHAIR WELCH: That's really helpful.
13 I agree. Do you determine the claims that you had
14 that information on, did you get a sense of what
15 proportion of them were the negative causation
16 result?
17 MEMBER DEMENT: Well, I can give you a
18 quick sense of that in just a moment. The negative
19 causation result, and I'll discuss one of the
20 problems with the data is, for example, in Part E,
21 a negative causation result, it looks like it's
22 sort of a big issue, 46 percent, looks like, is a

1 result, a negative causation result.

2 CHAIR WELCH: And those were the viewed

3 claims that had a Part E?

4 MEMBER DEMENT: No, these are the

5 overall, but it has to do with -- you know, and these

6 are lung disease claims that we're looking at. I

7 mean, it's beryllium sensitivity, CBD, silicosis,

8 interstitial lung disease, COPD, asthma and

9 sarcoidosis.

10 CHAIR WELCH: Well, you know, it makes

11 sense to me that a high proportion with a negative

12 causation. Because insufficient medical evidence,

13 generally, the worker can circle back and get that,

14 and the employee not being covered --

15 MEMBER DEMENT: There's no technical

16 reason in the maximum benefit. That all goes back

17 to the statutes of what it does and doesn't do.

18 CHAIR WELCH: Right.

19 MEMBER DEMENT: And I wonder, I don't

20 know this category, employee not covered. I don't

21 know exactly what that means, you know, from an

22 interpretation point of view.

1 (Simultaneous speaking.)
2 MEMBER VLIEGER: If I could interject
3 a moment. Employee not covered usually means that
4 they don't find adequate site presence for
5 employment. So they can't actually place someone
6 where they applied for the benefit from.
7 And then there is a group of claims that
8 get sent to contract medical consultants after
9 review by the IH and toxicologist that are denied.
10 Sometimes they don't even get sent to the IH or the
11 toxicologist. So I don't know how to even code
12 those.
13 The toxicologist would say -- as they
14 did at our meeting in April -- well, there's these
15 three chemicals that I'm allowed to look at. And,
16 of course, the answer is no because those chemicals
17 are not exposed in a pure state.
18 So when the CMC would get the IH and tox
19 report in, they never go against the IH or the tox.
20 So I don't know if those are even coded. But many
21 times they don't go to the IH or toxicologist
22 because these workers were not monitored for

1 chemical exposures.
2 But the site presence of the chemical
3 exists on the SEM. So the worker is not given the
4 benefit of the doubt of exposure because they don't
5 have exposure records or that the chemical is on
6 the SEM. I know it's a little convoluted, but I
7 don't even know that they code those separately
8 about what goes to a CMC and what the result is.
9 CHAIR WELCH: I think not for that.
10 But I think if they decided that there wasn't
11 sufficient exposure to cause the disease for which
12 its claimed, or no exposure that the caused the
13 disease, they call it a negative causation as well.
14 So I think any time where it's not they
15 administer the thing, like, they've reached their
16 maximum benefit, they didn't have covered
17 employment. You know, the survivor can't
18 demonstrate that it was abated. It's probably all
19 going to end up in the, you know, causation not
20 established.
21 MEMBER VLIEGER: Yes. And I think the
22 Board was sent a copy of the Department of Energy

1 letter to the DIAB meeting, DIAB and ANWAG meeting,
2 from March of this year. The Department of Energy
3 said they don't have records for the employees of
4 their chemical exposures. So the employee can't
5 come up with something that doesn't exist.
6 CHAIR WELCH: Yes. It's kind of a
7 smaller point. And it's an important point but
8 it's more granular than what we're talking about
9 now about trying to find ones there. It don't know
10 if we could see that process. And I think we're
11 going to have to -- if we can, you know, take the
12 universe of denied claims and get it down to only
13 half of them, the negative causation results.
14 I mean, I don't remember. John, were
15 they able to tell you whether there was a CMC or
16 industrial hygiene review in those cases?
17 MEMBER DEMENT: There is a data field.
18 I didn't find it informative. So there's a field
19 called last CMC that's an IH referral. And there
20 is a -- you know, so we could pick some that had
21 more of both. But it's not clear that we could do
22 one or the other.

1 CHAIR WELCH: Right. And actually, if
2 they're being denied without going to the CMC or
3 IH, that would be useful to look at those claims,
4 too.
5 The reason we got this spreadsheet that
6 was for six months in 2014 was because the thought
7 was we had gone through the adjudication process.
8 So 2014 is probably the most recent year we can look
9 at claims.
10 In the spreadsheet they sent us, there
11 are about no more than 350 claims. So now if I go
12 back and ask Doug to give us that information on,
13 you know, the reason for denial and we can randomly
14 pick 50 claims that had a negative causation
15 result. Maybe 50 is too many.
16 MEMBER DEMENT: I actually been
17 advised between subcommittee members to take a look
18 at it, I guess. I mean, we haven't even saw that.
19 CHAIR WELCH: Yes. I think we could
20 divide it up and review and then find ones that may
21 or may not be very demonstrative.
22 MEMBER DEMENT: Right.

1 CHAIR WELCH: And if the file were all
2 in one PDF -- as Steven suggested -- it would be
3 a lot easier to maybe just kind of, I mean, you would
4 have to go to the final determination decision to
5 see what the outlook was. And you can tell whether
6 it was denied because of either the rationale in
7 there is pretty clear. And then go to the back of
8 the report, at the end of the report. So as long
9 as we can find it, then it wouldn't terribly hard,
10 but we can start with a few of them and start with
11 25.
12 MEMBER VLIEGER: I just wanted to let
13 you know that I did send a copy of the DOL data
14 dictionary.
15 CHAIR WELCH: Okay.
16 MEMBER MARKOWITZ: Well, I have a
17 question. It's Steven Markowitz. At some point,
18 DOL starting applying presumptions to COPD. Isn't
19 that right?
20 CHAIR WELCH: If it had a presumption.
21 Whether they apply it and when they apply it, I
22 don't really know, the presumption. MEMBER

1 MARKOWITZ: So my full question is, if they did,
2 if they change their policy at some point, we should
3 just understand the timing. If we're --
4 CHAIR WELCH: Yes.
5 MEMBER MARKOWITZ: -- going to, you
6 know, sink our teeth into 2014 claims. Just so we
7 don't want to have looked at those and then
8 discovered, oh, yes, they changed some policy in
9 2015 relevant to their decision making. That's
10 all.
11 CHAIR WELCH: Right. And I just
12 actually had that -- I had that page. I don't know
13 if I saved it, but -- my WebEx page just went, "Thank
14 you for using WebEx." Oh, well. I'll have to find
15 that some other time. But that's a good point.
16 I think the COPD one was in 2016 or late
17 2015. So the cases we're looking at would be prior
18 to the new presumption, but --
19 MEMBER VLIEGER: This is Faye. And
20 the bulletin you're talking about for presumption
21 of COPD is 16-02, and it was issued December 28th
22 of 2015. And it expires December of this year,

1 meaning it may be incorporated in a new procedure
2 manual.
3 MEMBER MARKOWITZ: This is Steven. So
4 we just need to factor that into what we're looking
5 at. That's all.
6 CHAIR WELCH: Yes, yes.
7 MEMBER MARKOWITZ: Probably not on
8 this call, but --
9 CHAIR WELCH: Yes. No, no. But I
10 think it would be something that I can explore with
11 Carrie and Doug, if there's a way to -- if in 2016
12 there are current claims. I mean, where there's
13 only been a denial of COPD, we can look at those.
14 Even if they're going to be remanded back again and
15 then being reviewed again. But if it was because
16 of the causation would be -- I mean, we would have
17 to see what's happening with that presumption.
18 Okay.
19 MEMBER MARKOWITZ: Right. And then
20 according to the performance report - this is Steve
21 Markowitz - the performance report that was sent
22 to us, they appear to be making decisions on a fair

1 number of claims within what appears to be
2 approximately five months. If I have the right
3 one. I'm not quite sure.
4 My point being that it's possible that
5 even if we begin to look at claims from January 2016
6 and the few months after that, we may be able to
7 soon gauge how that presumption is working. Maybe
8 a little helpful, but anyway, just a thought.
9 CHAIR WELCH: No, I think that's a very
10 good idea. And also, you know, if the process now
11 is to be sending people to a meeting and have most
12 the cases getting industrial hygiene reviews,
13 looking at ones that are older than that also
14 wouldn't really help us understand the current
15 process.
16 I know that, you know, we just heard
17 that the contract was put out which has been out
18 for - but maybe for the past - for 2016, they've
19 been getting industrial hygiene reviews. I think
20 it does make sense to look at more current cases,
21 even though they're not going to be representative
22 of all the cases because some take longer. If we

1 look at ones that were denied, we'll get a sense
2 of that part. We'll start seeing what's there.
3 And it's never been systematic, I don't think,
4 unfortunately.
5 Okay. So then I will try to get a
6 couple of different reports. And John, that's
7 really helpful that you want to see that other data
8 set to understand more of what we could get. I
9 think that'll be good.
10 The other thing I sent you was what they
11 called a straw-man. I don't know what else to call
12 it. Some ideas about how we could -- you know, DOL
13 wanted us to help. Then we come to the Institute
14 of Medicine report.
15 And we got a memo from DOL, from OWCP,
16 basically saying, well, you know, we looked at the
17 report and see those really amazing
18 recommendations and this is what we've done. And
19 then I had it in mine that I added some other
20 recommendations.
21 Because you could go through both
22 documents, because that makes sense to go through

1 what I proposed. And then there are other things
2 that they mentioned in their response memo that we
3 could also check on, if that’s in there.
4 And then, you know, we talked about this
5 IOM report last time. It's clear that OWCP hasn't
6 fully implemented because the recommendations are
7 quite big. And, you know, so our Advisory Board
8 doesn't want to take on necessarily everything
9 we're thinking IOM recommended to do, because it's
10 a very big project.
11 So my first suggestion was that instead
12 of having some process to peer review literature,
13 that we ask OWCP to use reliable sources, major
14 sources like IARC, EPA and then Washington
15 Toxicology Program, which would leave it out of
16 only being relied on and then with Haz-Map. But
17 it does, there's a certain line before something
18 is reviewed at IARC and found to be an acceptable
19 example. But I think it'd be an improvement --
20 MR. SALANDRO: This is the
21 transcriber.
22 CHAIR WELCH: -- and if it's something

1 that --

2 MR. SALANDRO: I'm having a hard time

3 catching that last sentence.

4 CHAIR WELCH: Which one?

5 MR. SALANDRO: Are you on

6 speakerphone?

7 CHAIR WELCH: I am, yes.

8 MR. SALANDRO: Is there a way you could

9 switch to your handset? It's getting a little

10 muffled.

11 CHAIR WELCH: I'll try. Hang on one

12 second. I'll just hold the phone to my ear. Is

13 that better?

14 MEMBER MARKOWITZ: Yes. That's much

15 better.

16 MR. SALANDRO: That's much better.

17 CHAIR WELCH: Okay. Okay. Just

18 makes it harder for me to take notes, but that's

19 okay.

20 So I guess I was saying that I think,

21 you know, it's a compromise to say that OWCP would

22 use expert sources rather than doing peer review

1 of ongoing literature. But I think it would an
2 improvement over what they have. So what do you
3 all think of that idea?
4 MEMBER MARKOWITZ: Steven Markowitz.
5 I think it's an excellent idea. I think that
6 enormous effort is put in by these other sources,
7 the IARC, EPA and TC, etcetera. Multi-year
8 efforts looking at individual agents, referral
9 peer review. They're comprehensive and they come
10 to conclusions. And I think Haz-Map probably
11 takes advantage of a fair amount of that. But
12 probably not, on a timely basis at least, according
13 IOM.
14 So it's, you know, in a way, kind of a
15 no-brainer to do that. And it's certainly the
16 simplest approach. It's not simple because
17 there's still a whole bunch of decisions that have
18 to be made. But I think it's a really feasible
19 starting point.
20 CHAIR WELCH: John, what do you think?
21 MEMBER DEMENT: I agree. I think
22 these are low hanging fruit, what Steve says are.

1 There's a tremendous amount of effort put into the
2 peer review. These are accessible. It covers
3 cancer in particular. But some of the EPA ATSDR
4 cover other substances well. So I think those low
5 hanging fruit will all be pulled in.
6 CHAIR WELCH: And Kirk and Faye?
7 MEMBER VLIEGER: This is Faye. This
8 would be wonderful because it follows current
9 science. And it takes away the issue with Haz-Map
10 and the lack of peer review in the previous reports
11 about its inability to move quickly enough with
12 what's going on.
13 There is something that's kind of on the
14 edges of this that the Department says when you use
15 any of this data currently. And that is, well, we
16 don't take web searches. Well, most of us don't
17 have access to journals and be able to hand them
18 the whole journals. And so, when you say to use
19 this data, you know, you should make it clear that
20 the easiest way to get that now is through online
21 journals and not hard, you know, textbooks.
22 So I would just like to add that little

1 caveat that all of these I have used, or attempted
2 to use for claimants in the past, that I get the
3 place to comment, well, just because you say it says
4 that doesn't mean we have to accept it. And
5 besides, it's from the Web. So just a little side
6 note.
7 CHAIR WELCH: Okay. Yes. Thank you.
8 Well, good. And then Kirk, do you have any
9 thoughts about it?
10 MEMBER DOMINA: No. I think anything
11 that we can do to help the claimant, making it
12 easier. Because, you know, when we get into the
13 second questions, I still have issues with the SEM,
14 being we have eight sites that have Special
15 Exposure Cohorts that have no SEMs. And there's
16 a total of 34 sites that have no SEMs. And so,
17 that's an issue when you've got somebody trying to
18 get a Part E claim, because they're just going to
19 say no.
20 CHAIR WELCH: Yes. That's right, yes.
21 And it's if you're having a SEM, it has to be almost
22 like a Special Exposure Cohort where you don't use

1 a SEM. You have to use other things. And that's
2 --
3 MEMBER DOMINA: Right, and --
4 CHAIR WELCH: -- kind of a no-brainer,
5 isn't it? Yes.
6 MEMBER DOMINA: Then, I mean, it's,
7 like, come on. We got to do something.
8 CHAIR WELCH: Yes.
9 MEMBER DOMINA: Especially when
10 there's that many sites that don't have them. Then
11 that needs to be -- because to me, that almost --
12 I wonder about what John brought up earlier about
13 employees not covered. Is that some of it that's
14 brought into it because there isn't a SEM on
15 whatever given site?
16 CHAIR WELCH: That would probably be
17 that, you know, they couldn't substantiate the
18 exposure. And when employers -- employees worked
19 there, but then they say, well, you say you were
20 exposed, but we have no evidence to substantiate
21 it.
22 MEMBER DOMINA: Right.

1 CHAIR WELCH: Yes. And so, using the
2 absence of a SEM --
3 MEMBER DOMINA: That's right.
4 CHAIR WELCH: -- in some ways, yes.
5 You know, I guess maybe we could ask for different
6 claims, but I don't know how we'd find claims that
7 look like that.
8 MEMBER MARKOWITZ: This is Steven. We
9 should look at claims from a place that has no SEMs
10 and see actually how they make decisions.
11 CHAIR WELCH: Yes. Good point.
12 MEMBER MARKOWITZ: I mean, you know,
13 presumably the rely more on the Occupational
14 History Questionnaire and, you know, the native
15 intelligence of somebody or other. But we should
16 just look at them and see what's happening.
17 MEMBER WHITLEY: Garry here. I think
18 Steven knows that it would be very smart. But
19 here's part of why you get that nothing claim.
20 I'll give you a real quick example.
21 Monday, I met with a guy that was a
22 physicist and he had bladder cancer, a young man,

1 about 45 years old. Never smoked. Well, when you
2 go into the SEM and look up physicist, there's no
3 chemicals listed. And when you look up and go to
4 the building he worked in, there's some chemicals.
5 But he'd get the letter back from them that the SEM
6 does not show that he ever worked with those.
7 Well, his treating physician is telling him exactly
8 what chemical he thinks because the physician had
9 written a letter telling exactly what chemical he
10 thinks he worked with out there.
11 If the SEM database does not say
12 anything about a physicist working with, I'll use
13 trichloroethylene or whatever. And even if you
14 find it, that's what causes bladder cancer, you get
15 a letter back from the CE that says the SEM database
16 don't show that you worked with that.
17 CHAIR WELCH: But that's at a site
18 where you know that their SEM database is not
19 complete. Or it probably wouldn't have anything
20 for those kind of occupations, definitely. I
21 mean, it gets in --
22 MEMBER DEMENT: Another question that

1 I have and it's, okay, let's say that, you know,
2 the person has died of cancer. And if you look at
3 their occupation history, I'm hoping that, you
4 know, some of these chemicals that are related to
5 bladder cancer might actually be in there, if the
6 history was collected in a consistent and detailed
7 way.
8 Let's say, for example, and I don't know
9 this case, but that the occupation history actually
10 mentions work with a known bladder carcinogen.
11 How does that factor in if the SEM is negative?
12 MEMBER VLIEGER: I can answer that
13 question. This is Faye. If there's no exposure
14 data from either an incident or an accident where
15 they would've done air sampling, I have a number
16 of experimental chemists and metallurgists who
17 were turned down for their diseases because it
18 wasn't in the SEM and there was no monitoring data.
19 MEMBER MARKOWITZ: So this is Steven.
20 You know, we have to figure this out. Because, you
21 know, what I think it's been presented to us that
22 the claims examiners looking at all possible

1 sources for exposure information and doesn't have
2 a set priority order in mind.
3 And yet we repeatedly hear that the SEM
4 rules and over other sources like the Occupational
5 History Questionnaire and the like. So we just
6 need to figure out what's actually going on here.
7 Because, clearly, they're different views on this.
8 MEMBER DEMENT: The other thing that --
9 and I've reviewed a fair amount of these case files
10 that we've been sent. Most of them in Part B
11 Committee. And the occupational history that's in
12 the file is so variable in terms of quality and
13 completeness.
14 It gets to a point where you wonder
15 there should be a lot more attention given to trying
16 to make that more complete by more assistance to
17 the claimant. Because way through their history
18 and actually get specific information like
19 chemicals in the past they may have done. As
20 opposed to a general thing, okay, you're a laborer
21 and you're at Oak Ridge. I'm going to the SEM and
22 it doesn't list a bladder carcinogen, then you

1 weren't exposed.
2 MEMBER VLIEGER: Right. This is Faye
3 again. This goes back to the incomplete or rather
4 most of the Occupational History Questionnaires
5 that they do for the program. The Building Trades
6 Medical Screening Program actually has built a
7 database of exposure materials for the workers by
8 labor category and it's quite extensive.
9 But yet when we provide that to the
10 Department of Labor because it's not in the SEM -
11 and it's not on the OHQ because of the way the OHQ,
12 the Occupational History Questionnaire, is
13 written- it's normally not accepted as fact.
14 So there is another source for some of
15 this we could look at in the Building Trades data
16 that they've assembled. In the past, when the
17 advocates have asked for a copy of that, they're
18 calling it proprietary. But they might let us have
19 it. I don't know.
20 CHAIR WELCH: That's proprietary? You
21 mean Department of Labor is saying that the
22 Building Trades --

1 MEMBER VLIEGER: The Building Trades
2 is saying, well, that's our database and we're not
3 going to share it. But, you know --
4 CHAIR WELCH: Well, that's me and John.
5 (Laughter.)
6 MEMBER VLIEGER: When I've asked the
7 regional people for access to it, you know, to help
8 the claimant, that's the answer I've gotten. So,
9 you know, if you guys can change that, because
10 that's very --
11 CHAIR WELCH: Well, the database?
12 It's not really. Well, let's do something. The
13 Occupational History Questionnaire is my next
14 agenda item. And there's two things: there's
15 that and that 1995 memo. And we'll see what we can
16 get to.
17 But if we could go through the rest of
18 my proposal and the IOM, then we can then move onto
19 the Occupational History Questionnaires. Is that
20 okay?
21 MEMBER VLIEGER: Yes. Sounds great.
22 CHAIR WELCH: Okay. So if we did --

1 MEMBER MARKOWITZ: Laurie, this is
2 Steven. I'm sorry to interrupt. I just want to
3 --
4 CHAIR WELCH: That's okay.
5 MEMBER MARKOWITZ: -- take the next
6 step on this idea of encouraging the Department or
7 the program to use these other expert data.
8 CHAIR WELCH: Yes.
9 MEMBER MARKOWITZ: I think the DOL
10 report recommended this, yes, when the report
11 recommended this, the DOL's response is, you know,
12 they don't have the resources at the moment. I'm
13 sure they don't, you know, but they're interested.
14 So the question is, not on this call, but do we need
15 to provide a more specific proposal on how to make
16 this happen in order to move the process along?
17 CHAIR WELCH: I think so. I mean, I
18 was thinking that we need some new committee of some
19 sort that would develop criteria of how to use these
20 websites. I mean, IARC it's pretty
21 straightforward. But EPA, you know, it has an
22 exposure level of concern and it's not really set

1 to be used for a compensation system. They
2 identify toxicity of chemicals. But how to make
3 it work for OWCP, I don't really know. Same with
4 the National Toxicology Program.
5 So I think that it would take a
6 committee of some kind to develop the criteria and
7 then some kind of ongoing, you know, annual peer
8 review of what's come out from those different
9 sources. But if we proposed that they have another
10 committee, I think we hear they don't have the
11 resources. So I don't know where to quite go with
12 that.
13 It's not as big a committee as during
14 the ongoing peer review of the entire literature,
15 which is the way I seem to do it and, you know, DOL
16 said that we just can't do that. This would be
17 something much more circumscribed.
18 I think it would be good to have a
19 proposal. You know, and as far as saying we need
20 a committee to develop a process for using those
21 extra resources.
22 MEMBER MARKOWITZ: Well, you know,

1 maybe that's something we can just give more
2 thought about before the October meeting and then
3 try to --
4 CHAIR WELCH: Okay.
5 MEMBER MARKOWITZ: -- fix out there and
6 develop a --
7 CHAIR WELCH: Okay.
8 MEMBER MARKOWITZ: -- real plan.
9 CHAIR WELCH: Yes.
10 MEMBER MARKOWITZ: And we may get some
11 feedback from DOL as to what, you know, further
12 specifics we can provide on that, you know, would
13 help them. You know, say, for instance, we could
14 get more funding, etcetera. You know, what would
15 be helpful?
16 CHAIR WELCH: Okay.
17 MEMBER MARKOWITZ: You know, or can we
18 pilot this from our Board? Can we pilot this
19 effort to demonstrate what it can do, as a way of,
20 you know, convincing the parties that be that it
21 can be done and should be done? That kind of
22 question.

1 CHAIR WELCH: You know, I think we
2 could do that. You know, pick one or two of these
3 sources and develop a protocol. That couldn't too
4 hard.
5 But I think the important thing is that
6 it be done in a transparent and in a way with a lot
7 of different kind of input. As opposed to just
8 getting one person whose hired for DOL to develop
9 a system. So it being under the auspices of our
10 committee would keep it in that category of, you
11 know, technically the access and a lot of input from
12 different sources.
13 MEMBER MARKOWITZ: This is Steve. I
14 would add, though, that the sources we're talking
15 about, so far, like, the World Health Organization,
16 like, the National Toxicology Program, all their
17 reviews are done transparently with public input.
18 So that, at least the decisions they come to, it
19 had gone through, generally speaking, a very good
20 process.
21 That's not against transparency by us.
22 I'm just saying that, at least, as opposed to the

1 systematic review published in some journal by a
2 set of authors who, you know, have done their own
3 work. But it hasn't been subject either to a
4 scrupulous peer review or public transparency.
5 CHAIR WELCH: Yes. I agree with you.
6 And I think the next step is saying if we think
7 something causes, you know, toxicity, how do you
8 get from that determination into something that DOL
9 can use?
10 And I don't understand the EPA
11 determinations well enough. I don't know how to
12 make a recommendation about that. But it's a
13 one-time thing, you know. It could be that if EPA
14 says it covers this toxicity, then that is added
15 to this causation and that's how it gets done and
16 that's sufficient. And, you know, it would be
17 easiest if some subset of the Board did this work
18 and they brought it back to the Board. That would
19 the easiest process in understanding this --
20 MEMBER VLIEGER: I wanted to share
21 sources up for the SEM. Previously, I had asked
22 that the TRI reports that the DOE sites have to do

1 to EPA, the chemicals they're storing. And that's
2 part of the community disclosure program they have
3 for the toxins that are near the cities and centers
4 of the population.
5 And I asked the Department of Labor to
6 use that for the SEM when I contacted the SEM
7 contractor directly. They said that they wouldn't
8 be able to use it. So we may have to look at what
9 the Department of Energy allows in their
10 negotiations the DOL to actually be on the SEM.
11 CHAIR WELCH: It's just, you know, if
12 it's an exposure that the workers have.
13 MEMBER VLIEGER: Right. Well, they
14 were chemicals listed on the TRI report that are
15 held in storage and they're used. And then they
16 have certain quantities on site. They have to
17 report to the state through the EPA every year.
18 Those chemicals don't necessarily match what's on
19 the SEM. So I had requested that the TRI report
20 be used in the SEM source, and --
21 CHAIR WELCH: Yes. But I guess they
22 would be -- you know, we'd have to identify where

1 they came from, if they're waste from the plant.
2 And, you know, somebody needs to go back and
3 understand the process to develop them. Unless
4 you only want to add them for people who are doing
5 their storage work, which is another option.
6 MEMBER VLIEGER: Yes, yes. It's just
7 that, you know, we need to look at what DOE allows,
8 too. Because they're in the process on the SEM
9 inclusion.
10 CHAIR WELCH: Yes. Okay. I guess the
11 other thing I put in this, my little proposal, on
12 IOM was IOM said that SEM doesn't adequately
13 address mixtures or synergistic processes. And
14 that if we were to establish a committee that's
15 going to help inform the SEM on adding other data
16 sources, I guess that's whether these resources are
17 going to be sufficient to look at mixtures.
18 I think that they would be. I mean,
19 definitely IARC looks at mixtures. That whether
20 EPA and ATSDR do, I'm not sure. Mixtures such as
21 logging, I guess, which are ones that we deal with
22 all the time.

1 And I actually didn't have anything to
2 think about synergy, but I feel like that could be,
3 you know, down the road. Because there's so much
4 missing now for some basic exposures, that synergy
5 doesn't seem quite as essential, in my humble
6 opinion.
7 And one other recommendation I had in
8 there, that I think I'll swing back to it when we
9 talk about the Occupational History Questionnaire.
10 And this issue of --
11 MEMBER MARKOWITZ: The industrial
12 hygiene interview?
13 CHAIR WELCH: Yes.
14 MEMBER MARKOWITZ: Okay.
15 CHAIR WELCH: I mean, that relates to
16 what we were talking about before, about how the
17 claim is developed and this Occupational History
18 and the SEM and who uses what and who gets work
19 information. Okay. So Steven, maybe I'll just
20 brainstorm with you a little bit, on another call,
21 how we can flush out my idea. I'm glad you all
22 liked it.

1 And let me just take a quick look at
2 their response. I was curious, and we can ask for
3 this. In their response to the IOM, when they said
4 actions taken in response to IOM recommendations,
5 one of them was that it added links to work
6 processes.
7 So they've added a link to a process
8 that it causes a certain disease. And I have no
9 idea how they did that. I mean, where is that
10 coming from? So they're adding causation
11 information to the SEM. Maybe it's coming out of
12 Haz-Map. I don't know. But I was curious because
13 it's important that they add processes and
14 mixtures, but I'm not sure where they get their data
15 from. Think I should, you know, to ask them to
16 explain that?
17 MEMBER DEMENT: Sure.
18 CHAIR WELCH: Okay. Okay. So then
19 let's switch over to talk about either the
20 Occupational History Questionnaire, I guess, or
21 its process of how it’s used.
22 You guys have all looked at the

1 Occupational History Questionnaire, correct? I
2 think, if you want to bring it up, it's actually
3 on our meeting page under the --
4 Carrie, I've been dropped off the WebEx
5 and I can't choose to log back in because it says
6 I'm logged in.
7 MS. RHOADS: I have the Occupational
8 History Questionnaire up on the WebEx.
9 CHAIR WELCH: Okay. But I have it up
10 on my computer anyway, so --
11 MS. RHOADS: Yes. It's up.
12 CHAIR WELCH: Or I will in a second.
13 MS. RHOADS: A copy of that was
14 distributed at the DC meeting as well.
15 CHAIR WELCH: Yes. So, you know, it's
16 not terrible, but, John, it doesn't do what we were
17 saying it should do. I mean, it asks about
18 specific metals and dust. You know, it's got a few
19 substances that are there on the last couple of
20 pages.
21 It asks people about their work
22 processes, but doesn't ask for any detail about

1 really what they did in that work process. And
2 then it asks about specific exposures to finish
3 that list.
4 In addition to which, it's my
5 understanding that its staff in the outreach
6 offices that fill out the questionnaire, and they
7 don't have any specific training or expertise. So
8 that the Occupational History Questionnaire, it's
9 a beginning, but it's not enough. It's not enough.
10 You know, someone who knows about
11 exposure assessment, and knows about the work they
12 did, would have to do it to get more information.
13 Which is why I suggested that they change the
14 process and have the industrial hygienist call the
15 claimant.
16 You know, I know we're going to hear
17 that we can't possibly do that. It's way too much
18 work. But to turn people down because they didn't
19 collect the information that would support the
20 claim just doesn't seem right.
21 And I'm not sure I see any other -- you
22 know, so these two pages of work categories. What

1 class they were in or, you know, what job title they
2 were in and then there's these work areas. You can
3 ask them about work activities, but --
4 MEMBER DEMENT: You know, Laura, some
5 of the questionnaires that I've reviewed, they do
6 get into some of the claimant's work activity. So
7 there's a piece on it, I think, a little further.
8 CHAIR WELCH: Yes.
9 MEMBER DEMENT: They do talk a little
10 bit about, you know, how they work with some of
11 these materials. But, in general, that I find that
12 these are relatively incomplete.
13 CHAIR WELCH: Yes.
14 MEMBER DEMENT: And the industrial
15 hygienist reviewing a case file, it'd almost be
16 required that I go back and talk to this person to
17 get more information. For example, if they listed
18 a chemical that had no information about how they
19 came in contact with it. I mean, was it --
20 CHAIR WELCH: Right.
21 MEMBER DEMENT: -- just because they
22 were in the building or did they actually do

1 something with it? Or is somebody allowing them
2 to do something with it and they were secondarily
3 exposed? I mean, these are important issues. But
4 I didn't know how many IH reviews they do for some
5 cases that are fairly relatively small.
6 CHAIR WELCH: And also so they're
7 saying they're sending all the cases to an IH. So
8 they say at the last meeting.
9 MEMBER DEMENT: All cases?
10 CHAIR WELCH: Yes. I mean, that's
11 what Rachel said. You can clarify that, though.
12 That's for this big contract, so that they can --
13 MEMBER MARKOWITZ: Yes. This is
14 Steven actually. On the response to the IOM
15 report, they use some data about this. I don't
16 know when exactly it was written but it says, I'm
17 quoting, "To date, the OIC has submitted over 400
18 employee referrals for BGI," that's the
19 contractor, "Exposure assessment with the
20 possibility of 110 incompletions," end of quote.
21 So I think since signing on this contractor in the
22 summer of 2016, they've been informed, and I don't

1 know if that's all of them or have a number exactly,
2 but it's a lot.
3 CHAIR WELCH: Yes.
4 MEMBER MARKOWITZ: This is Steven.
5 You know, the thing is, is that we know the SEM
6 really -- we know it by design and by just the
7 feasibility, it doesn't have a nature of exposure
8 duration intensity. And so, the IH can't get that
9 from the SEM.
10 The Occupational History Questionnaire
11 is very limited on that issue. And so, if they
12 really want to get at causation, then they can't
13 rely on the --
14 I think what the IH has been doing,
15 without speaking directly with individuals, is
16 they've been relying on their general knowledge of
17 industrial hygiene. And what can be expected to
18 happen in an industrial facility, in a construction
19 site, etcetera, general knowledge. And the
20 opportunity to get actually specific knowledge
21 from the individual should be exploited.
22 CHAIR WELCH: And if some things, you

1 can't -- you know, with the physicist with bladder
2 cancer, you're not going to be able to generalize
3 your knowledge. You need to know his specific
4 exposures. And as a panel, as an Advisory Board,
5 we're telling them that the information they have,
6 we know for sure it's not sufficient, to just kind
7 of go through it and review to some groups of their
8 claims.
9 I mean, if somebody is, you know, a
10 laborer who worked at any one of these sites in 1968
11 to 1978, yes, sure, asbestos-related disease.
12 That's not a problem. An industrial hygienist
13 could assume that that occurred. But otherwise,
14 you're looking at some very specific exposures that
15 could be causing it. So I think we all agree.
16 MEMBER DEMENT: And one of the cases
17 that was sent to us, it happened to be a laundry
18 worker. And this was a case that claimed CBD. And
19 one of the things that was denied based on the lack
20 of specific exposure information. But, you know,
21 we all know industrial clothes, there are laundry
22 workers historically the likelihood they had been

1 exposed. But this is a case where I think the
2 hygienist should've gone back and talked with the
3 individual.
4 MEMBER WHITLEY: Garry here.
5 MEMBER MARKOWITZ: There -- oh, I'm
6 sorry. Garry?
7 MEMBER WHITLEY: Part of that problem
8 is, you know, if we're going to work to help fix
9 the program, we got a big list of chemicals. We
10 do your first physical, we give them to people and
11 ask them to do the best they can, if they think the
12 chemicals they think they might've worked with.
13 Over 90 percent of them can't tell us
14 any because they say, you know, I've been retired,
15 you know, 15 years. I have no idea what I worked
16 with. So I think that's part of the problem. The
17 people don't have a clue what they worked with.
18 CHAIR WELCH: And sometimes, you know,
19 if you're going from the disease backwards. It's
20 like, you know, if you had somebody with bladder
21 cancer, you don't need to know everything they
22 worked with. You need to know, did they work with

1 these specific things? And so, if you go back and
2 ask them that, and if you understand the process
3 in which it was used, they may be able to say, oh,
4 yes, I did use that.
5 So it takes a very knowledgeable person
6 to do that and which is why, according to what's
7 going in, is good. But afterwards, many times you
8 have to go back.
9 I was thinking, Steven, do you remember
10 that Brian Schwartz used to do detailed reports for
11 a lot of his or some of his individuals. And I
12 think he called people up. You know, and even
13 though he had a questionnaire and a physical and
14 everything to put together their case. I don't
15 know if wouldn't help to get that from him at all,
16 but I'm sure he would tell us. Go ahead, sorry.
17 MEMBER MARKOWITZ: Yes, yes. It's
18 Steven. Going with what Garry has to say. So the
19 interview shouldn't be used against a claimant. I
20 mean, there is the risk that if they don't remember
21 a whole lot. And the IH thinks, well, I've gone
22 straight to the source and I can't confirm

1 exposure.
2 But the reality is, is that people
3 didn't know when they were working, what they were
4 working with, much less 20 or 30 years later. So
5 we need to couch our recommendation and sort of
6 express some of the limitations of the approach.
7 The other thing is that, you know,
8 whether this interview should be -- the claimant
9 should be open to or allowed to have a second party
10 with them when they're doing this interview, to
11 help sometimes explain the questions or what have
12 you.
13 But I'd like to hear from people on the
14 phone about whether this is a good idea. People
15 from the facilities and from the advocate community
16 whether this is a good idea.
17 MEMBER VLIEGER: This is Faye. I help
18 claimants fill out the Occupational History
19 Questionnaire. And it is so limited in what you
20 can provide with it. And the questions don't help
21 the claimant at all.
22 So if there was someone actually

1 looking at the work processes that the claimant
2 might have been affiliated with, that would be
3 great. But to make it -- so something has always
4 been a problem, even with the work processes has
5 been added. Because many of the workers could be
6 associated with the work process but they wouldn't
7 necessarily be the primary user of the work process
8 and they're exposed as well.
9 So the exclusions that Department of
10 Labor assigns to things now really needs to be
11 broadened. And if the Occupational History
12 Questionnaire was changed in such a way that it
13 actually was relevant to each worker, that would,
14 you know, help things quite a bit.
15 I know it's more of a work burden, but
16 it needs to be done. You know, they could actually
17 assign someone to each resource center to do this
18 instead of, you know, making it an end product thing
19 by the time the IH sees it.
20 CHAIR WELCH: Well, I think you
21 probably need both. I think we probably need to
22 improve the completeness and the accuracy. But

1 most of all, the completeness of the occupational
2 history coming in. But a lot of times, they're
3 very detailed questions the IH should be asking.
4 But, like, to know -- because you have
5 an hour long narrative from somebody about what
6 they did and it wouldn't even capture any of them.
7 The people didn't know what they're working with,
8 but, you know, John Dement would know. Because
9 we've looked at some of the site reports that if
10 a person did this kind of work, they had that kind
11 of exposure. So that industrial hygienist can
12 know things that the worker didn't know, if they're
13 using all of the resources.
14 But I think, you know, we should try to
15 improve it coming in. But I don't think that's
16 going to be enough. I don't think the occupational
17 questionnaire can ever be sufficient to say, you
18 know, if that doesn't have some information
19 assembled and the fact that it's absent doesn't
20 mean that the case is not related to the exposures
21 that maybe the worker doesn't remember it and SEM
22 doesn't have it.

1 So the only way to figure that out is
2 to go back again to the worker. In some cases
3 there, you can't figure it out at all. But at least
4 everyone has done their due diligence, whatever you
5 want to call it.
6 MEMBER WHITLEY: Garry here. If a
7 claimant comes and hasn't filed a claim yet and has
8 a specific cancer that should be covered, before
9 he files a claim, I give him things from SEM
10 database. I'll print him off the chemicals that
11 the SEM says cause that disease, the labor category
12 that he worked at, and then the chemicals in the
13 building that he worked with.
14 You better be sure that the SEM says
15 they're our there worked at a certain building, or
16 they'll come back and say we don't show that a
17 pipefitter worked in that building. Well, we all
18 know that a pipefitter works every building until
19 they've got water.
20 But anyway, if they take all that with
21 them, they won. It seems like they do pretty good
22 with all these chemicals they worked out there.

1 But the Department is not going to allow or don't
2 have the person filling out this stuff to even look
3 on the database to help them with that.
4 MEMBER DOMINA: Hey, this is Kirk.
5 And, you know, I agree with Garry because it's in
6 the details in a lot of this. Just like earlier
7 when you were talking about a laundry worker. When
8 I was at a reactor at 100-N, you had the laundry
9 workers. It went to a different facility, but the
10 reactor operators on our side of the building
11 handled the laundry. And there could be the
12 laborers when construction was in there during
13 maintenance outages.
14 And then the same thing with a lot of
15 the different chemicals and certain things. If
16 you were using them in an ARA or something, you were
17 wearing a particulate cartridge. But if it's only
18 made for rad, it wasn't for chemicals.
19 And so, unless you have somebody that
20 has knowledge on facilities and the different
21 things that went on, because it's in the details.
22 And that's where I think a lot of it gets lost. And

1 I understand it's a huge undertaking, but we owe
2 it to these people. Do a better job for them.
3 Because they are getting a lot of help.
4 And, you know, especially, like, you know, where
5 I'm at. I mean, when you look at the list of
6 facilities when a bunch of them are torn down, I
7 mean, I've been in a lot of places. There's no
8 record of it because I went over there and worked
9 for a day or two or whatever. And, you know, I
10 don't remember the name of all these buildings or
11 the bunkers or whatever.
12 And the people that do this maybe now
13 for Department of Labor, you got to go back in time
14 and see how things were done at that point in a time.
15 And we were in a Cold War and certain things
16 happened, like, when during a reactor operations.
17 It's like, you get it done, you know.
18 I mean, and there's no record of you did
19 some certain event during some certain time because
20 you had an emergency and you happened to be on gray
21 guard and it's on a weekend. They don't call
22 nobody. You get it done.

1 And it's all in the details. And for
2 people that have never worked here and think that
3 they can know exactly what we're exposed to and it's
4 frustrating from the claimant community, for the
5 workers. Because we know this stuff existed
6 because we lived it. And then for somebody else
7 who lives 3,000 miles away to tell us that it
8 doesn't, that's an issue.
9 CHAIR WELCH: Yes. I think that DOL
10 probably has a -- I mean, they're trying to manage
11 it by they want some other validation, other than
12 the worker's description of what he or she did, if
13 it's not in the SEM. But maybe we can establish
14 something else, like, a coworker. In the same way
15 you can do employment where, in the beginning, they
16 rely on people to verify employment through
17 affidavits if the data wasn't there.
18 MEMBER DOMINA: There is no IH data for
19 a lot of this stuff at that point of time. It's
20 usually against you. Just, like, in the 100 areas,
21 it wasn't until, like, '99 or 2000, they said we
22 had alpha contamination but they never looked for

1 it until then. And so, it's the same thing.
2 They'll go after stuff but they don't want to know.
3 CHAIR WELCH: Well, I think that one is
4 definitely true, yes, but -- no, go ahead Steven.
5 MEMBER MARKOWITZ: Well, so we can
6 recommend the resource center hire X former workers
7 to be trained up and administer the Occupational
8 History Questionnaire.
9 CHAIR WELCH: Yes. I think that's a
10 very good recommendation since --
11 MEMBER DOMINA: This is just another
12 problem after what Steven said with that. I
13 understand that in the general sense. But with
14 that being said, it may also be somebody who has
15 that particular skill set just so you do get the
16 particulars better.
17 Just how, you know, when I've had DOL
18 tell me that Hanford doesn't have boilermaker
19 welders when it's a job classification for us.
20 And, you know, there's pipefitter welders and
21 millwright welders and electrician welders.
22 And, you know, so there's these other

1 different things that come into play. Where a
2 particular craft knows their skill set better than
3 somebody else. Where it may be you had a general
4 big person, but then on the interview process. But
5 somebody also who has that skill set for that
6 particular craft.
7 I mean, it's just like with our janitors
8 at 100-N, they were in the radiation buffer areas.
9 Because if there's tile back there, you know,
10 there's concrete in between, the tile belongs to
11 the janitors. So they're back in the work areas,
12 in the change room, because there happens to be tile
13 on the floor. You know, the same thing
14 intermingling, co-mingling with all the other
15 craft workers and everybody.
16 And so, if you don't understand that,
17 you know, and have them move our lunchrooms because
18 the background radiation is too high, that it's a
19 lunchroom for how many years. Or there's so much
20 asbestos in our main lunchroom, you know. But
21 there's no record of that.
22 MEMBER WHITLEY: I think what you

1 suggested would be a big help here. It would be
2 a big help because right now the people at the
3 resource center do it. That person, they've never
4 been inside of the plant, never worked at the plant,
5 have really no idea.
6 They're really doing the best that they
7 can. They're asking the question, but the people
8 are asking, seeing the claimant doesn't have an
9 idea of what he's trying to do. He don't know.
10 And so, something like that. I don't
11 know how or where you find those people. But I do
12 think anything like that would be a big plus.
13 Because if you get this thing off the wrong foot,
14 they won. Like Kirk said a while ago, it's all in
15 the details. If he gets off on the wrong foot, you
16 can almost kiss it.
17 CHAIR WELCH: I mean, for the Building
18 Trades, John developed a questionnaire that goes
19 through -- it's a little bit -- in some ways it's
20 easier. Because it's much more likely that
21 approximately each one of these facilities does
22 similar work, you know, an operator.

1 And I think that, in terms of the
2 questionnaire, we also require certain area
3 process of trying to understand at each site, are
4 there things that you can assume about certain job
5 title building combinations or something?
6 Because you can't assume exposures based on job
7 title from any of the production workers.
8 So in addition to having former workers
9 hired and trained to answer the questionnaire,
10 probably needs to be some continuous improvement
11 there to always be better at understanding the data
12 collecting. And so, that when people for next year
13 asking questionnaires of workers at that same site,
14 they know to add questions about something that's
15 come up.
16 And I don't know how the OWCP could
17 handle that at the resource centers. I guess just
18 you just need a separate entity. And, you know,
19 to have a quality assurance committee or some
20 process that continues to update the Occupational
21 History Questionnaire.
22 MEMBER WHITLEY: And also we've had

1 claims examiners tell people that coworker
2 affidavits really don't carry much weight anymore.
3 CHAIR WELCH: Right.
4 MEMBER MARKOWITZ: This is Steven. So
5 improving the OHQ should be on the April Board
6 agenda from this Subcommittee.
7 CHAIR WELCH: Yes.
8 MEMBER MARKOWITZ: Okay. Okay. We
9 are developing a plan to do that.
10 CHAIR WELCH: But I think we also, at
11 the same time, want to make it clear that how good
12 the OHQ is, as good as we can make it, there still
13 needs to be the opportunity for the industrial
14 hygienist to call the worker.
15 If there's some information that he or
16 she thinks they need that's missing. And you've
17 got a work-related disease but they can't identify
18 that exposure. Well, they should talk to those
19 people. And maybe it's not and maybe it didn't
20 happen. And I --
21 MEMBER MARKOWITZ: Those are entirely
22 compatible recommendations.

1 CHAIR WELCH: Absolutely.
2 MEMBER DEMENT: This is John Dement.
3 To what extent do the resource centers currently
4 employ workers that were former workers from the
5 sites at all?
6 MEMBER WHITLEY: Garry here. I don't
7 think ours have any.
8 MEMBER DEMENT: So construction
9 workers, we found that particularly a couple in
10 trying to help us focus on things that are
11 important. Some of those issues that you just
12 talked about, some of the exposures that you never
13 get in just a job classification, we could come up
14 to and to review that as well as some focus groups
15 that we have as we started the program. We've held
16 them periodically along the way as well. And there
17 are just some exposures in job classifications in
18 construction but they could never find.
19 MEMBER MARKOWITZ: This is Steven.
20 Our former worker program employs all the former
21 workers. So the resource centers really don't
22 have the opportunity to hire any of them.

1 (Laughter.)
2 MEMBER DEMENT: I wonder who we have
3 there.
4 CHAIR WELCH: There's a lot of them.
5 There's a lot. There's a lot of them here.
6 MEMBER MARKOWITZ: Right, right.
7 CHAIR WELCH: You could get them.
8 They have a lot, but you could give them 30,000
9 people where there's a bunch of them out there
10 still.
11 MEMBER MARKOWITZ: Two hundred
12 thousand.
13 CHAIR WELCH: Yes, exactly. Okay. I
14 think what I'll do for this particular topic is I'll
15 try to add some specifics, and send it to you all
16 to look at before we have an opportunity to present
17 it to the full board. You know, kind of outline
18 what we've talked about and so we can all agree on
19 what we'll be presenting as a proposal. Good.
20 Thanks for this.
21 Just I wanted to tell you all that after
22 our last big board meeting, John Vance got in touch

1 with Trish Quinn, who's the administrator of the
2 Building Trades Program to say, well, we hear you
3 have a really good Occupational History
4 Questionnaire. Can we use yours to improve ours?
5 And that was sort of funny because, you
6 know, we didn't recommend that, you know. It's
7 like why don't you wait until the Board comes back
8 with some recommendations about a process to do
9 that? It's a great idea, though. So I think
10 they're interested. They want to do it.
11 MEMBER MARKOWITZ: Yes. And you've
12 been keeping it secret all these years.
13 CHAIR WELCH: Yes. No, not exactly.
14 Okay. So those are my recommendations and we've
15 talked about the OHQ.
16 So the last thing, because we still have
17 28 minutes that we can talk about, unless everybody
18 is exhausted. This, what we call the 1995
19 circular. Which when you read the circular, it
20 says that after 1995, exposures on the sites were
21 all controlled.
22 And so, one would have to demonstrate

1 exposure, being that is a big presumption that
2 exposure has occurred. But the explanation that
3 we got back from DOL in the email that Carrie
4 forwarded to us, they had seemed much less rigid
5 than the answer they replied.
6 Should we walk through the whole 1995
7 decision process, or does everybody still feel on
8 top of that?
9 MEMBER MARKOWITZ: I think if you
10 walked through just briefly, it would probably
11 help.
12 CHAIR WELCH: Okay. So one of the
13 documents that we got is this memo from January
14 20th, 2015 to all staff in the policy branch.
15 Basically saying they've looked at the available
16 information and that, you know, DEEOIC's
17 information to provide sources to make finding of
18 exposure such as site exposure matrices, other
19 sources.
20 And then they kind of walk through what
21 the history of occupational health and safety is
22 on the sites. And they say that in 1995, DOE issued

1 Order 440 Part 1, which established a standardized
2 occupational health and safety protocol for all
3 federal and contractor employees.
4 Which included a written work of
5 production program and guidelines to enhance work
6 safety process including "more or less monitoring
7 of potential workplace chemicals, physical,
8 biological, ergonomic hazards, guidelines and ways
9 to stop work."
10 And so, DOL has picked that date, when
11 DOE issued this order in 1995, to say that there's
12 a finding of the program that DOE implemented the
13 significant and rigorous employee occupational
14 safety and health code and the publication of that
15 order. And since they published the order, DOL
16 finds that, after 1995, any exposure to a toxic
17 substance by an employee working at that kind of
18 facility occurred within existing regulatory
19 standards or guidelines.
20 Because DOE implemented so you have to
21 have it off the safety program, DOL is assuming
22 that, as of that date, all exposures were

1 controlled to regulatory standards. And so then,
2 based on that, it's just kind of a line in the sand
3 about if we can prevent exposures before that, but
4 you shouldn't have exposures after that.
5 And in the email, which I think, Carrie,
6 did that come from Rachel, the one that you sent
7 out?
8 MS. RHOADS: Yes.
9 CHAIR WELCH: It didn't say we were
10 using it to make the determinations. We're using
11 it just to decide who would go to industrial
12 hygiene. And it doesn't make any sense to me
13 because the circular says you can contain
14 exposures.
15 Let's see. I'm trying to find that
16 email.
17 MEMBER DEMENT: Laura, if you actually
18 look at the last two paragraphs of the circular,
19 it gets them out, a little outage in terms of
20 meaning the exposures, in terms of causation.
21 CHAIR WELCH: The --
22 MEMBER DEMENT: The last two paragraphs

1 of the memo?

2 CHAIR WELCH: That memo, I can't --

3 MEMBER DEMENT: It's on the last page

4 of the memo.

5 CHAIR WELCH: Where it says -- can you

6 tell me what you're looking at?

7 MEMBER DEMENT: Yes. If there's

8 compelling, probative evidence that documents

9 exposures at any level above this threshold or

10 measurable exposures in an unprotective

11 environment is kind of the division. But the last

12 paragraph says any findings of exposure, including

13 infrequent, incidental exposure, require review of

14 a physician to opine on the possibility of

15 causation.

16 But, you know, I think it's something

17 that's in your station. And it doesn't seem

18 inappropriate to say that after 1995, things

19 improved. It does seem inappropriate for me to

20 entirely eliminate the possibility that a worker

21 can provide evidence, supporting statements about

22 their exposures that an industrial hygienist would

1 likely opine to be above some established
2 threshold.
3 The other issue for me is that even
4 exposures above some established threshold, on
5 some of these does not exclude the possibility of
6 causation.
7 CHAIR WELCH: That should, too.
8 Absolutely.
9 MEMBER MARKOWITZ: This is Steven.
10 John, I just want to make sure I understand your
11 point. The logic of this policy is that exposures
12 below regulatory thresholds wouldn't be harmful.
13 And are you're saying the opposite, which is that
14 --
15 MEMBER DEMENT: I think that's the
16 intent here in some ways. But I think the memo does
17 leave some out with regard to some interpretation
18 that would say exposures were likely below some
19 occupational exposure limits, okay? But we know
20 the exposures of below established occupational
21 exposure limits are not without risk. And it's
22 entirely appropriate in those cases to have some

1 informed review of the case. And I think that does
2 it in a sort of roundabout way.
3 CHAIR WELCH: I guess it'd be hard for
4 us to know how this was being used to adjudicate
5 claims.
6 MEMBER DEMENT: Yes. I think it's
7 been used as yes, no. And I don't think it should
8 be.
9 MEMBER DOMINA: Hey, this Kirk. You
10 know, back in that time frame, you know, they still
11 were monitoring for stuff. I mean, no matter how
12 you look at it.
13 And the other thing is it was going on
14 at that time. We're in the middle of the contract
15 with our current employer. And so, when you're
16 going to come in and say that they're going to just
17 blanket across the board implement this new safety
18 program, the employer is going to ask for a request
19 for equitable adjustment. And if DOE does not
20 provide money for that, they're going to push back.
21 Because I remember that time frame. We
22 didn't hire anybody for a couple of years because

1 we didn't have a lot of money, you know. And you
2 still went about your work. But, you know, they
3 still did not measure for anything except for rad.
4 That's what was supposedly supposed to be the big
5 hazard.
6 And so, it still comes down that there
7 is still no documents for any type of IH monitoring
8 because they just didn't do it. And so --
9 MEMBER DEMENT: I think the other --
10 MEMBER DOMINA: -- the lines they drew.
11 MEMBER DEMENT: -- issue with regard to
12 even improving conditions, it doesn't happen
13 overnight either.
14 MEMBER DOMINA: No.
15 MEMBER DEMENT: As you say, you know,
16 how are people putting programs in place,
17 implementation, also takes a good job to get in
18 place. Even --
19 MEMBER DOMINA: Years.
20 MEMBER DEMENT: -- if it's successful
21 in the end. So it wouldn't be a magic date at all.
22 MEMBER DOMINA: No.

1 CHAIR WELCH: Yes. I don't see how
2 this approach adds anything to their adjudication
3 because unless you need an interval, like a line
4 in the sand. Because they picked their certain --
5 they're saying there's a change at this date which
6 we know is not true, that that date was a magic date.
7 And that exposures after that date would've been
8 maintained within existing regulatory standards
9 which is unlikely.
10 But then they did say, well, you know,
11 if there's -- the problem is the line that says if
12 there's compelling, probative evidence that
13 documents exposures at any level above the
14 threshold or measurable exposures in an
15 unprotective environment. But that is interpreted
16 as being some kind of industrial hygiene
17 monitoring, not book report.
18 So I think if you add all the nuances
19 that we're saying need to be here, maybe you should
20 pull this out. Because it's a judgment of whether
21 exposures, at some point in time, were low enough.
22 You know, people may have had some exposure to this

1 certain compound, but it was well controlled and
2 always done with respirators. But that's a
3 judgment based on each individual case. I don't
4 think you make this assumption.
5 You want to try to figure out how this
6 has been used? I don't know how to do that, but
7 we could try.
8 MEMBER MARKOWITZ: Laura, this is
9 Steven. You know what? I think my hunch is what
10 they were trying to do is since the SEM doesn't
11 include frequency, intensity, or duration of
12 exposure, they were trying to assimilate the idea
13 that exposure conditions in many places were
14 probably getting better over time. And the SEM
15 doesn't recognize that because it doesn't address
16 the extent of exposure.
17 So they were kind of, and I'm guessing
18 here, trying to come up with something, albeit,
19 this is a blunt instrument, a blunt way to do it.
20 But come up with something that acknowledges that
21 exposure conditions have probably improved. Even
22 if as Kirk says, you know, monitoring wasn't done

1 all that frequently.
2 So we can try to look at how they use
3 this. And I agree, the headline is of this policy
4 which is what I'm sure the claims examiner
5 understands, the difference of the fine print which
6 is totally qualifying.
7 But I think the underlying problem is
8 that, is there some way of accommodating the idea
9 that conditions in many places probably did improve
10 over time? Not a given date, you know, not January
11 1st, 1995, but in general. And how did the claims
12 have you processed accommodate that that happened?
13 But, you know, that's my hunch. I don't know if
14 that's, in fact, true.
15 CHAIR WELCH: In a way, it's a similar
16 question. You know, if a worker reported that they
17 worked in a particular building and then the SEM
18 has a toxic substance in that building. That would
19 substantiate our workers, the fact that they were
20 exposed. Even though you or I may say, we're not
21 going to know what it's doing. And I could make
22 a better assessment.

1 So it's a similar situation. Well, you
2 know, things changed over time and also, you know,
3 you have to assess by their exposure. So it's only
4 one way of trying to provide some nuance to the SEM.
5 But, you know, I think that the medical
6 profession or the medical -- in terms of medical
7 consultants, or one of the CMCs contract medical
8 consultants, they often say that they didn't have
9 enough exposure to cause this disease, you know,
10 based on what he did.
11 MEMBER DEMENT: Now, that it's put
12 forth in the memo that was sent to you after. The
13 rationale for eliminating IH review is backwards,
14 that if you tell me that you were a pipefitter
15 pre-1995 at one of these facilities and you have
16 a related lung disease, it's pretty clear, right?
17 CHAIR WELCH: Right.
18 MEMBER DEMENT: If you tell me you were
19 a pipefitter when you first started after 1995.
20 Let's say you have a condition. When in this
21 presumption of low exposure may or may not be true.
22 Which means I need to go back to the hygienist to

1 ask questions.
2 Okay, tell me what you did as a
3 pipefitter. Tell me where you worked for, where
4 you worked with and what kind of protection you
5 used. And so it becomes more important down at the
6 low exposure side, to me, to have the IH review.
7 CHAIR WELCH: That's a good point, yes,
8 yes.
9 MEMBER MARKOWITZ: Yes. This is
10 Steven. You know, I think if the OHQ and the IH
11 interview work properly, you could do away with
12 this memo.
13 MEMBER DEMENT: I think so, too.
14 MEMBER MARKOWITZ: So, you know, if we
15 can get moving there, then because if I'm an
16 occupational medicine doctor interviewing a
17 patient and trying to decide whether there's
18 causation. What I'm going to do is a good OHQ and
19 whatever I can do by way of an industrial hygiene,
20 you know, interview and make that decision. And
21 we're just trying to replicate that in the claims
22 process. So, yes, if you improve the OHQ and the

1 IH, there wouldn't be a need for this all or none
2 kind of memo.
3 CHAIR WELCH: That, you said well.
4 And my brain was trying to work out that. That's
5 good.
6 MEMBER DOMINA: Yes, it is.
7 MEMBER DEMENT: Yes. Some of these
8 industrial hygiene reviews, you know, I don't know
9 well enough if they're getting referred out or not.
10 But some of them just may not need to be done.
11 I mean, you can have some presumptions
12 of some of these exposure disease relationships
13 that you can be pretty definite or true pre-1995,
14 you know. And so, you could concentrate on some
15 of those a little more and do a far more in-depth
16 investigation. And put your resources where the
17 questions are as opposed to, you know, not
18 acknowledging a known occupation disease
19 association.
20 CHAIR WELCH: Yes. So you could take
21 this whole memo and turn it around. And so, before
22 1995, where we didn't require comprehensive health

1 and safety programs. So, therefore, it's likely
2 you could presume exposures were not well
3 controlled.
4 MEMBER DEMENT: Yes. If you were
5 exposed to asbestos after 1995 and you can say that
6 you were exposed to asbestos. Then you have a 1/0,
7 1/1 assessment consistent with asbestosis, job
8 done. You don't need a review.
9 CHAIR WELCH: Right, before '95, yes.
10 I mean, I think it makes, in a way, asbestos isn't
11 such a good example. Because you can really know
12 in the history of the weapons context, when they
13 stopped using certain tasks and operations, then
14 you could totally tell time then for it. But some
15 of the other compounds, you don't know. And still
16 so much -- you know, there's so much secrecy.
17 MEMBER DEMENT: That's certainly one
18 of the cases and I find it sort of strange. There
19 was actually a case of silicosis in which the
20 B-reader said it was a 1/1. And yet the medical
21 record said because it didn't say silicosis, it
22 wasn't supported which is contrary what even

1 they're own guy had said.
2 CHAIR WELCH: Yes, right. Well, you
3 know, I bet a lot of these. It's like I feel where
4 do you find these people? In a garbage can? That
5 is just so grumpy because --
6 MEMBER DEMENT: Most of it, they have
7 mixed presentation anyway. So, you know, it's
8 1/1.
9 CHAIR WELCH: Right.
10 MEMBER DEMENT: It should say
11 silicosis.
12 CHAIR WELCH: Yes.
13 MEMBER DEMENT: And a document
14 exposure of a minor.
15 CHAIR WELCH: Right. I mean, and to
16 say what it has to be, you know, rounded up below
17 capacities has been demonstrated not to be true.
18 Because that's, like, if it's that, it's easy. But
19 if it's not, it still has a very high likelihood
20 of being silicosis.
21 But sometimes there's more
22 sophisticated knowledge than what the consultant

1 physicians have. I mean, I see a lot of things that
2 don't make sense coming back. Which is why some
3 quality review would've been interesting. But I
4 think what we've learned is that the DOL hands that
5 all over to the contractor. They don't really hire
6 workers. They don't have doctors or training, but
7 that's a different committee where we have that in
8 our meeting next month.
9 MEMBER MARKOWITZ: So this is Steven.
10 I just want to add one point. Maybe not everybody
11 is aware. The readings on regulatory standards
12 haven't been changed in decades. I should know but
13 I don't quite know whether DOE follows OSHA
14 standards for, you know, the ones that don't make
15 the headlines like beryllium and silica and the
16 like.
17 But virtually all of the OSHA standards
18 date from the 70s, except the handful that have been
19 specifically updated since that time. So the idea
20 that regulatory standards are entirely protective
21 is not true.
22 CHAIR WELCH: That's the negative

1 things that were used in these facilities. There
2 is no regulatory standard.
3 MEMBER MARKOWITZ: Right.
4 CHAIR WELCH: None. Because they're
5 using very specialized compounds and mixtures and
6 things like that. For which, you know, the workers
7 didn't know what it was. I don't even know -- well,
8 they didn't have industrial hygienists before
9 these started coming in and saying, you know what?
10 You have more than radiation in these claims.
11 I should figure out from you guys, if
12 you're interested. I have some, the report on
13 Portsmouth. It's probably in the -- was it in the
14 files that you reviewed, John, when we did the site
15 assessments?
16 MEMBER DEMENT: It is, yes.
17 CHAIR WELCH: It's kind of amazing what
18 a mess that was, in terms of health and safety, in
19 terms of exposures, you know. Because they had
20 physicists but not industrial hygienists, health
21 physicists. And, I mean, it was just -- it's for
22 someone who hasn't worked there. People who have

1 worked there, obviously, know what it's like. But
2 if you haven't worked there, it's amazing.
3 So if I can, I have her file upstairs
4 because I was involved in some big cases at
5 Portsmouth. I'll see if I can find them and I'll
6 bring them along and circulate them around.
7 That's what makes me think you can't
8 say, oh, well, in '92, it was a disaster but in '95
9 was fine. But, you know, the standards are old.
10 They're not protective. The exposures probably
11 continued after '95 and they're not standards.
12 So your report was the best one, Steven,
13 that if we change the process, they can drop the
14 circular altogether. Because the process would
15 allow more nuance to every case. A better
16 assessment for every case.
17 MEMBER DEMENT: You know, and this
18 process will never be perfect. But I think, you
19 know, having more informed decisions by the IH
20 going to the contract medical consultant, it's
21 going to have a better outcome.
22 CHAIR WELCH: Yes, yes. Well, guys we

1 are finished with our agenda and my agenda.
2 Steven, what's your vision for how our subcommittee
3 is going to report back to the big committee next
4 month?
5 MEMBER MARKOWITZ: You know, I can
6 figure that out. I can think we're going to have
7 to prioritize certain topics by each subcommittee
8 because each subcommittee is dealing a bunch of
9 important topics. I'll figure out where the
10 overlap is so we can, you know, coordinate the
11 discussion there. But I don't know. I have to
12 figure that out. We have to talk about it.
13 CHAIR WELCH: I mean, well, so I'll
14 write a summary of our call and that'll help. You
15 may not have a ton of points to cover, but I'm sure
16 many of them which were in our discussion.
17 MEMBER MARKOWITZ: Right. Well, I
18 mean, our priorities should be either
19 recommendations that the Subcommittee is coming up
20 with. Also, important issues for which the full
21 board, you want to get additional opinions, you
22 know, immediate recommendations.

1 CHAIR WELCH: Okay. All right.
2 Well, I will, by the end of next week, probably
3 because I'm going to be away, to get you a summary
4 of what we've talked about and the recommendations
5 I think we're wanting to make back to the full
6 committee.
7 MEMBER MARKOWITZ: And it's Steven. I
8 have notes I'm going to scan and send you in a couple
9 of minutes.
10 CHAIR WELCH: Fantastic because I was
11 taking notes, too. But yours will definitely
12 help. Great. Okay. Thank you all very much and
13 see you in Oak Ridge.
14 MEMBER WHITLEY: This is Garry. Do we
15 have any of the agenda yet on the times of the
16 meetings? I'm having people ask what are the times
17 of our meetings for the next at Oak Ridge.
18 MEMBER MARKOWITZ: Yes. We have the
19 time, the general times, and I'm not sure --
20 MS. RHOADS: This is Carrie. The
21 federal registered notice will be published
22 tomorrow. And the meeting times in there are

1 listed as 3 to 5 o'clock on Monday. And it's
2 all-day meeting on Tuesday with a public comment
3 session at the end. And then Wednesday until 2
4 o'clock with the last hour being public comments.
5 MEMBER WHITLEY: Are you there, would
6 you say, probably 8:30 then?
7 MS. RHOADS: Yes.
8 MEMBER WHITLEY: Okay, and thanks.
9 MEMBER MARKOWITZ: But Garry, you got
10 to get on the tour with us on Monday morning, you
11 know.
12 MEMBER WHITLEY: Yes. Someone has got
13 to tell you the truth.
14 (Laughter.)
15 MEMBER DOMINA: Amen, brother.
16 CHAIR WELCH: It's going to be great.
17 And then --
18 MEMBER WHITLEY: It will be good.
19 CHAIR WELCH: Good.
20 MEMBER MARKOWITZ: Okay. Thank you.
21 CHAIR WELCH: See you all then.
22 Bye-bye.

1 (Whereupon, the above-entitled matter
2 went off the record at 2:57 p.m.)
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