UNITED STATES DEPARTMENT OF LABOR

+ + + + +

ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

+ + + + +

MEETING

+ + + + +

MONDAY
OCTOBER 17, 2016

+ + + + +

The Advisory Board met in the Comfort Inn Oak Ridge-Knoxville, 433 S. Rutgers Avenue, Oak Ridge, Tennessee, at 3:12 p.m., Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

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

MEDICAL COMMUNITY:

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

CLAIMANT COMMUNITY:

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

DESIGNATED FEDERAL OFFICIAL:

ANTONIO RIOS

ALSO PRESENT:

RACHEL LEITON, Director, DEEOIC*
JOHN VANCE, Branch Chief, DEEOIC Policy,
Regulations and Procedures

*Participating by phone

CONTENTS

Welcome/Introductions/Logistics 4

Review of Agenda 20

Advisory Board Issues 25

SEM Subcommittee 43

Adjourn 104

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

2 (3:12 p.m.)

3 WELCOME/INTRODUCTIONS/LOGISTICS

4 MR. RIOS: I guess we're about to
5 begin. Good afternoon, everyone. My name is
6 Tony Rios. I apologize that we're starting a
7 few minutes late. The Board went on a facility
8 tour, and they took a little longer to get back
9 than we anticipated, so we're just running
10 about 15 minutes late.

11 I am the Designated Federal Official
12 for the Advisory Board. Again, my name is Tony
13 Rios. And my role as the Designated Federal
14 Official is that I am the liaison between the
15 Advisory Board and the Department.

16 Before we begin, I'm going to go
17 over some very quick housekeeping items. So
18 the bathrooms are located right by the
19 reception area. All you do is walk out the
20 doors out there, make a left, and then right as
21 you approach the reception desk, make another
22 left.

1 We have a full agenda for the next
2 couple of days. And you should note that
3 agenda -- obviously, the beginning of this is
4 proof that agenda times are just approximate.
5 Copies of all the meeting materials and public
6 comments are available on the Board's website
7 under the heading "Meetings."
8 The Board's website can be found at
9 the following address: that's
10 dol.gov/owcp/energy/regs/compliance/advisoryboa
11 rd.htm. I tell everybody that an easier way to
12 get there is just to Google the Advisory Board
13 on Toxic Substances and Worker Health, and it
14 will probably be the first link that comes up.
15 If you haven't done so already, I
16 encourage you to visit the Board's website.
17 After clicking on today's meeting date, you'll
18 see a page dedicated entirely to this week's
19 meetings. Like I said, we're going to publish
20 any materials that are provided by our
21 presenters, anything that's been sent to us
22 already, and anything that's provided to us

1 that we haven't previously received.

2 There, you will also find today's

3 agenda, as well as instructions for

4 participating remotely in both the meeting and

5 the public comment sessions for Tuesday and

6 Wednesday. If you're joining us by WebEx,

7 please note that the web session is for viewing

8 only and will not be interactive.

9 Also, please note that if you're

10 calling into the WebEx, the phones will be

11 muted until the public comment periods open on

12 Tuesday and Wednesday. If you're having

13 trouble hearing us or if you're having any

14 technical issues, I ask that you please contact

15 us by email at energyadvisoryboard@dol.gov, and

16 we'll try to resolve any issues as they come

17 up.

18 During the Board discussions and

19 prior to the public comment periods, I request

20 that people in the room remain as quiet as

21 possible since we're recording the proceedings

22 today to produce transcripts. I also want to

1 remind everybody that while we do have a
2 scheduled hour tomorrow and on Wednesday for
3 public comments, this is not a question and
4 answer session, but, rather, it's an
5 opportunity for you to provide comments about
6 the topics that are being considered to the
7 Board -- by the Board, excuse me.
8 If for any reason the Board members
9 require clarification on an issue that requires
10 participation from the public, then the Board
11 may request such information through the Chair
12 or myself, and we will then ask the members of
13 the public to come up and speak.
14 Minutes of today's meeting will be
15 available on the Board's website no later than
16 90 calendar days from today. And although
17 formal minutes will be prepared because they're
18 required by the regulations, we will be
19 publishing verbatim transcripts as soon as
20 they're available for publishing.
21 A special note to all the Board
22 members and also to anyone who is coming up to

1 the podium to speak, please press the button
2 with the man's face in order to turn your
3 microphone on. We only have a maximum of three
4 microphones that can be on at the same time, so
5 if you're not speaking, please turn it off,
6 otherwise you are precluding others from
7 speaking.
8 And before I turn it over to Dr.
9 Markowitz, I want to address the members of the
10 public that are here today. A couple of you
11 asked me before the meeting whether we would be
12 asking you for case file numbers or whether we
13 would be asking you for your personal
14 information, such as the Social Security
15 numbers, and if we would be adjudicating or
16 investigating your claims. So I'm going to
17 explain to you a little about what today's
18 meeting is about.
19 First, there will not be any claims
20 that will be adjudicated here. The process to
21 adjudicate claims, however, will be discussed.
22 A little bit of background on

1 advisory committees. Every administration
2 since the inception of the United States has
3 utilized advisory groups. The government turns
4 to advisory groups such as this one for aid and
5 recommendations on how to go about achieving
6 its governmental affairs. Committees provide a
7 means by which the best brains and experience
8 available in all fields of business, society,
9 government and the professions can be made
10 available to the government at little cost.
11 So what you will be witnessing today
12 is, excluding the public comment period, is the
13 deliberative process in which the Board members
14 engage as they are preparing to provide the
15 Department of Labor recommendations regarding
16 the administration of the Energy Employees
17 Occupational Illness Compensation Act, as it
18 relates to four discrete subject matter areas.
19 And the reason that we invite the public to
20 participate and to monitor the Board's
21 deliberations is to ensure transparency.
22 So I hope that you find today's and

1 tomorrow's and Wednesday's meetings
2 informative.
3 So with that, I convene this meeting
4 of the Advisory Board on Toxic Substances and
5 Worker Health, and Mr. Chairman, I turn it over
6 to you.
7 CHAIR MARKOWITZ: Thank you.
8 My name is Steven Markowitz, and I'm
9 Chair of this Advisory Board. And I'd like to
10 welcome my sister and fellow Board members.
11 And on the behalf of the Board, welcome to the
12 public as well, those of you who are present
13 today and also those who are on the phone. By
14 the way, do we know how many people are calling
15 in to this meeting? Five people, okay.
16 So we met last time, our first board
17 meeting in Washington, D.C., and we
18 intentionally requested to meet here in Oak
19 Ridge because it's the largest DOE community;
20 it's the most number of claims that have come
21 from DOE. And so we wanted both to be
22 available for the public to hear our

1 discussions here in person in Oak Ridge, but
2 also we wanted to be able to hear from you
3 during the public comment period. So I welcome
4 you.
5 I'd like to spend a -- let's do
6 actually introductions. By the way, can you
7 hear me in the back over there? Can you hear
8 me okay? Not well?
9 I have a cold, so you may also be
10 hearing me cough. But can you hear me any
11 better now?
12 Okay, we'll try -- how about now?
13 Okay, that's better. We'll get rid of this
14 annoying thing.
15 Okay, so let's do introductions. As
16 I said, my name is Steven Markowitz. I am an
17 occupational medicine physician and
18 epidemiologist from the City University of New
19 York and have been involved with the Former
20 Worker Screening Program for 20 years. Laurie.
21 MEMBER WELCH: Thank you. I'm
22 Laurie Welch. I'm also an occupational

1 physician. And for the past, oh, I guess 15
2 years I've worked for the Center for
3 Construction Research and Training in
4 Washington, D.C., and through that, for the
5 Building Trades Medical Screening Program.
6 MEMBER POPE: I'm Duronda Pope with
7 the United Steelworkers. I am a former worker
8 of Rocky Flats. I worked there 25 years, and
9 presently am working with United Steelworkers.
10 MEMBER SOKAS: My name is Rosemary
11 Sokas. I'm an occupational physician at
12 Georgetown University and have worked in the
13 past at OSHA and NIOSH.
14 MEMBER BODEN: Hi. My name is Les
15 Boden. I'm a professor in the Environmental
16 Health Department at Boston University School
17 of Public Health. Was involved for several
18 years at the Nevada Test Site Former Worker
19 Screening Program. And also, I'm an expert in
20 injury compensation and illness compensation.
21 MEMBER TURNER: My name is James
22 Turner. I worked at Rocky Flats Nuclear

1 Weapons Plant for about 26 years. I was
2 diagnosed in 1990 with chronic beryllium
3 disease.
4 MEMBER REDLICH: I'm Carrie Redlich.
5 I'm also an occupational physician and a
6 pulmonologist and Director of the Yale
7 Occupational and Environmental Medicine
8 Program.
9 MEMBER SILVER: I'm Ken Silver,
10 Associate Professor of Environmental Health in
11 the College of Public Health at East Tennessee
12 State University. Before coming to Tennessee
13 13 years ago, I worked very closely with Los
14 Alamos families and workers to help get the
15 compensation law passed and implemented, just
16 like many people around here have done.
17 MEMBER VLIEGER: Good afternoon.
18 Faye Vlieger. My background prior to working
19 at the Hanford site was in the U.S. Department
20 of Defense for the Air National Guard. And
21 then I worked at Hanford and was involved in a
22 chemical exposure in 2002. And my background

1 at Hanford was as a planner/scheduler where I
2 worked all over the site, planning work
3 packages and working with the engineers and the
4 different shops submitting the work packages
5 schedules. And I've been doing advocacy under
6 this program since 2004.
7 MEMBER CASSANO: Hi. I'm Tori
8 Cassano. I'm also an occupational physician.
9 My background is military in the Navy as an
10 Undersea Medical Officer, Radiation Health
11 Officer, then at VA in both the Environmental
12 Health Program and then the Medical Disability
13 Program.
14 MEMBER WHITLEY: I'm Gary Whitley.
15 I worked at the Y-12 National Security Complex
16 for 42 years and retired. Was the President of
17 the Atomic Trade and Labor Council and now work
18 for the Worker Health Protection Program for
19 retired workers here in Oak Ridge.
20 MEMBER DEMENT: I'm John Dement.
21 I'm with the Duke University Medical Center,
22 industrial hygienist and epidemiologist. And

1 I've been with the building trades Former
2 Worker Program since its inception about 15
3 years ago.
4 MEMBER FRIEDMAN-JIMENEZ: Hi. I'm
5 George Friedman-Jimenez. I'm an occupational
6 environmental medicine physician and an
7 epidemiologist at Bellevue Hospital in New York
8 City and NYU School of Medicine.
9 MEMBER DOMINA: My name's Kirk
10 Domina. I'm the employee health advocate for
11 the Hanford Atomic Metal Trades Council in
12 Richland, Washington. HAMTC represents about
13 2,800 workers through 14 affiliated unions.
14 I've been out there 33 years. I'm still a
15 current worker. And I'm glad everybody's here,
16 and hopefully we can help you guys out.
17 CHAIR MARKOWITZ: Okay, thank you.
18 Let me just mention that Mark
19 Griffon, who is an Advisory Board member,
20 health physicist, and industrial hygienist
21 wasn't able to make it in person today. His
22 wife is having emergency surgery. But he

1 expects to participate over the phone at least
2 for part of the meeting.
3 Lokie, could you grab that
4 microphone right there. What I'd like to do is
5 just have the members of the public just
6 announce who you are. And if you're from an
7 agency, announce the agency. Or if you work
8 here at in Oak Ridge at DOE, just mention that
9 as well. Let's do this quickly though, so that
10 we can -- but we'd like to know who's in the
11 room with us.
12 MR. LEWIS: Sure, I'm Greg Lewis.
13 And I'm with the Office of Environment, Health,
14 Safety and Security for the Department of
15 Energy.
16 MS. HARMOND: Hi. I'm Lokie
17 Harmond. I work with EEOICPA as well.
18 MR. LEREW: I'm Tim Lerew. I'm the
19 Chairperson with the Cold War Patriots Advisory
20 Committee.
21 MS. ADKISSON: I'm Susan Adkisson.
22 I used to work at the Resource Center here in

1 Oak Ridge. Now I'm the Regional Director of
2 Cold War Patriots.
3 MR. NELSON: Hello. I'm Malcolm
4 Nelson. I'm the Department of Labor's
5 Ombudsman for the Energy Program.
6 MS. QUINN: Trish Quinn with
7 Building Trades Medical Screening Program.
8 DR. RINGEN: Knut Ringen. I work
9 with Trish.
10 MR. BEATTY: Ray Beatty, Fernald
11 Medical Screening Program Coordinator.
12 MR. BRUMMETT: Larry Brummett. I
13 worked at the K-25 site in Oak Ridge.
14 MR. VANCE: Good afternoon,
15 everyone. My name is John Vance. I am the
16 Policy Branch Chief for the Energy Employees
17 Compensation Program.
18 MS. PEARSON: Yes. I'm Tiffiney
19 Pearson. I'm the Clinical Director for
20 Critical Nurse Staffing, and I'm also the
21 daughter of a former worker.
22 MS. HEIDEL: Karen Heidel, former

1 worker at K-25.

2 MR. DENSON: John Denson, K-25,

3 retired.

4 MS. GIBSON: Paige Gibson, Former

5 Worker Program at Mound since 2005. And I also

6 worked at the Mound Plant for 15 years.

7 MR. EASTER: Gus Easter. I worked

8 at K-25 for 35 years as an operator.

9 MR. HYDEN: Dean Hyden. I was a

10 machinist at Y-12 for nine years and K-25 for

11 13 years.

12 MR. ONG: Tee Lea Ong, Professional

13 Case Management.

14 MR. HILL: J.B. Hill, Jr. I worked

15 at K-25 for 33 years.

16 MR. PRESLEY: Louise Presley, 36-

17 and-a-half years at Y-12, and widow of Bob

18 Presley, who worked 44 years at Y-12.

19 MR. SHAFTO: Doug Shafto, working at

20 K-25.

21 MR. BELL: Glenn Bell. I worked a

22 little short of 40 years at Y-12. I'm a CBD

1 victim and former Chairman of the Y-12
2 Beryllium Support Group.
3 MR. MOORE: My name is Hershell
4 Moore. I'm a carcinoma cancer survivor, here
5 with my wife and the Cold War Patriots.
6 MS. LOVELACE: I'm Jan Lovelace.
7 I'm a widow of a fireman from the X-10, and
8 claimant. I'm also a claimant myself, denied,
9 and I worked at X-10 and Y-12.
10 MS. PEGUES: My name is Etter
11 Pegues, and I am the widow of Eldred Arnold
12 Pegues that worked at Y-12 for 32 years. And
13 he was a machinist there. And he passed away
14 with cancer.
15 MS. ALLEN: My name is Sandy Allen.
16 I'm a nationally-certified patient advocate and
17 social worker. And I work for Quality Private
18 Duty.
19 MS. MARTIN: I'm Betty Martin. I
20 worked at K-25, X-10 and Y-12. I retired from
21 Y-12 with 31 years of service. My husband
22 retired from X-10. And he is deceased. And I

1 am the widow of Bill Martin.
2 MS. J. BARRIE: And I'm Jill Barrie.
3 And both of my parents are cancer -- were
4 cancer survivors. My dad is now deceased. And
5 my mother has been denied any benefits.
6 MR. BURNETT: Mitchell Burnett. I
7 retired from Y-12.
8 MS. HAND: Donna Hand, worker
9 advocate and also a survivor claimant.
10 MR. MARTIN: Claude Martin, K-25 and
11 Y-12.
12 MS. T. BARRIE: Terry Barrie, the
13 Alliance of Nuclear Worker Advocacy Groups, and
14 wife of a sick worker from Rocky Flats.
15 MS. JERISON: Deb Jerison. I'm the
16 daughter of a Mound worker, and Director of the
17 Energy Employees Claimant Assistance Project.
18 MS. LEITON: This is Rachel Leiton.
19 I'm with the Department of Labor. I'm the
20 Director of the Energy Compensation Program.
21 REVIEW OF AGENDA
22 CHAIR MARKOWITZ: Okay, thank you

1 very much.
2 I'm going to spend a couple minutes
3 just reviewing the agenda. Which, for those of
4 you, if you don't have a paper copy, is
5 available online. But I can give you the broad
6 outlines right now.
7 I'm going to spend -- after the
8 review of the agenda, I'm going to spend a few
9 minutes just talking about our progress to date
10 and some other administrative issues.
11 And then at 4:00, we'll talk -- the
12 Subcommittee, one of four subcommittees, will
13 begin, deliver their report and raise issues
14 that we will discuss.
15 I should remind people that this
16 Board was formed, chartered to really address
17 four issues. One is to take a look at the site
18 exposure matrices that are used in the claims
19 process, to see how/if they might be improved.
20 Secondly, to look at medical issues, in
21 particular around Part B, lung disease issues.
22 Third is to look at how well and the

1 consistency and quality of the industrial
2 hygiene and physician input into the claims
3 process. And then finally to look -- the
4 fourth task is to take a look at how the claims
5 examiners use medical information/medical
6 evidence to make their decisions and how that
7 might be improved.
8 So those four committees will report
9 out beginning in a few minutes. The
10 SiteExposure Matrices Subcommittee today at
11 4:00 -- or as soon as I get done. And then,
12 assuming that won't be completed, we'll resume
13 that tomorrow morning at 8:30.
14 At 9:00 or so, we will start with
15 the Part B Lung Disease Subcommittee. We'll
16 take a break, and then spend a few minutes
17 talking about a particular circular and memo
18 that DOE -- that DOL has put out regarding how
19 claims examiners will look at exposures before
20 and after 1995 and the significance in terms of
21 DOE's workers for being at risk for disease.
22 We will also discuss another memo or policy put

1 out by the program regarding solvents and
2 hearing loss.
3 Part of the function of the Board as
4 we conceive it is to provide scientific and
5 medical input into certain issues. So we are
6 looking at particular circulars, bulletins,
7 policies that DOL has to see if we can be
8 helpful in discussing and perhaps improving
9 them.
10 After lunch tomorrow, the
11 subcommittee is dealing with the work of the
12 industrial hygienists and the physicians --
13 physician consultants in the claims process,
14 we'll be discussing that.
15 And then Greg Lewis from the
16 Department of Energy will be talking about the
17 records that DOE provides to DOL in helping out
18 with the claims process. And forgive the typo
19 in the written agenda; it's Department of
20 Energy, DOE records.
21 And then we will, towards the end of
22 the afternoon, be talking about, through the

1 fourth subcommittee, how claims examiners look
2 at medical evidence and how they make their
3 decisions and the quality, perhaps, of those
4 decisions.
5 On Wednesday we -- And then there's
6 a public comment period from 5:00 to 6:00
7 tomorrow.
8 Wednesday, we will meet from 8:30 to
9 2:00 p.m. At the end, from 1:00 to 2:00 p.m.,
10 will be a second public comment period. Most
11 of that day, however, will be spent discussing
12 selected issues that we thought would be useful
13 to discuss. Some of them actually we were
14 asked -- at least one of them, we were asked by
15 DOL to help them figure out, which is the issue
16 of: people should receive compensation for
17 conditions which were aggravated, contributed
18 or caused by toxic exposures at DOE, what that
19 particular phrase means.
20 And then we will be discussing the
21 use of presumptions, which DOL has already
22 begun over the last several years, but how

1 further use of the presumptions might be useful
2 in settling claims or coming to decisions about
3 claims in a perhaps more expeditious or
4 consistent manner.
5 And then we will have some time to
6 discuss any new issues raised by the Board
7 during the next two days, then deal with issues
8 like next meeting and other administrative
9 issues. So then and finally, to finish off
10 with a second public comment period on
11 Wednesday, 1:00 to 2:00 p.m.
12 So that's the agenda. Is there any,
13 at this point do the Board members have
14 anything else they wanted to add to the agenda?
15 (No response.)
16 CHAIR MARKOWITZ: Nothing.
17 So let me spend -- we're pretty much
18 on time now actually -- I want to talk about in
19 part what we've done to date.
20 ADVISORY BOARD ISSUES
21 CHAIR MARKOWITZ: We met the end of
22 April, six months ago, the full Board, and we

1 spent much of that time learning about the
2 program. The Compensation Program is a
3 complicated program. Part B over the last ten
4 years, it has provided multiple billions of
5 dollars in compensation for DOE workers. And
6 it is an elaborate program.
7 Some of us on the Board have some
8 familiarity with that program in various ways.
9 But we're all, I would say, still coming up to
10 speed understanding that program. And I think
11 we've come a far way, actually, in
12 understanding. But there's still gaps, and we
13 will need to fill those gaps. And so if there
14 are things we don't get quite right, we're
15 hoping that we get some feedback in terms of
16 factual issues with regard to running of the
17 program that DOL can provide for us.
18 We met for two-and-a-half days at
19 the end of April. We formed four subcommittees
20 around the four tasks. And those four
21 subcommittees have collectively met seven times
22 since that time. Three of the subcommittees

1 met twice. This is by telephone. And one
2 subcommittee met one time. So that's during
3 July and September we've had meetings.
4 Now those have all been public
5 access. They've been announced in the Federal
6 Register. And I think in all of the meetings
7 we've had some public listening on to those
8 phone calls. Each of those meetings results in
9 minutes, which will be -- which are available
10 to the public. The ones from September aren't
11 yet available because there's some time delays
12 in composing them, reviewing them, approving
13 them and the like. But the point is we're
14 trying to make all of our work as transparent
15 as possible and as accessible as possible
16 through the web and the like.
17 We have made multiple requests to
18 DOL. But, actually, let me hold off on that.
19 Discuss that in a minute.
20 Now at the April meeting we were
21 given the opportunity to comment on proposed
22 rule changes by DOL in the program. And we

1 provided a number of recommendations to the
2 Department of Labor regarding the proposed rule
3 changes. I met several weeks, about three
4 weeks ago at the request of Secretary Perez. I
5 met with him briefly in Washington and listened
6 to him. He is very supportive of this advisory
7 board. He is interested. He is serious.
8 For those of you who haven't had any
9 contact with Secretary Perez, I suggest
10 visiting the DOL website, reading his, some of
11 his speeches and the like. You will see a very
12 dedicated, experienced person who is absolutely
13 committed to improving the welfare of workers,
14 and including, I think, his support for this
15 committee.
16 Interestingly, he's an attorney.
17 His background is more in civil rights. But he
18 says he has four siblings who are physicians,
19 and one of whom is a lung doctor. And then he
20 asked me what occupational medicine was. So I
21 figured that meant that his four siblings
22 couldn't answer that question.

1 (Laughter.)

2 CHAIR MARKOWITZ: But I would say at
3 least he was interested, so -- okay, so let me
4 move on to the status of the proposed rule
5 changes. So DOL proposed, I don't recall the
6 exact time line but sometime in the last year
7 or so, some changes in the operation of the
8 program and the rules that govern the program.
9 And they reopened the period for us to be able
10 to make comments, which we did. We submitted
11 our recommendations. They are being
12 considered, like other comments and
13 recommendations by the public, as part of their
14 rulemaking process.

15 That rulemaking process is governed
16 by the Administrative Procedures Act. Okay,
17 I'm getting this language down here. And so
18 that, we enter now a silent period in which DOL
19 is doing its work, looking at our
20 recommendations and other comments, and
21 ultimately deciding what the final rule will
22 look like. So we don't get feedback for our

1 recommendations. Those are the rules.
2 And we will ultimately find out,
3 hopefully, that our recommendations had some
4 impact on what the rules look like. But that's
5 the way it works. And so for those of you
6 looking for what did DOL say in response to our
7 recommendations, the answer is that they're
8 including them in what they consider in terms
9 of elaborating their final rule. So and that's
10 governed by an act larger than they are. So
11 that's fine.
12 Now we have made multiple, many
13 requests to DOL for information, for copies of
14 reports, manuals, procedures, things that are
15 not available on the web and the like. And the
16 Associate Designated Federal Official, Carrie
17 Rhoads, has prepared, and this is just really
18 at the end of last week, a 23- or 24-page list
19 of our requests and the program's response to
20 our request and their current status. Many of,
21 I would say the majority of our requests have
22 been complied with. They have provided that

1 information. Or if they couldn't provide the
2 information, they told us what the status is,
3 or if it was outside DOL, how they would go and
4 seek that information.
5 So I advised the Board members to
6 take a look at that list. It's just been
7 available -- it's on the web for the public,
8 but it's just become available or becoming
9 available. But take a look during your spare
10 time in the next couple days. And so we can
11 discuss, probably on Wednesday morning, if
12 there are issues that we -- questions we have
13 regarding the current status of these things.
14 But, understandably, we haven't really had a
15 chance to go through them individually yet.
16 But do take a look at that.
17 I would like to raise an issue to
18 the Board for discussion. So this Board has
19 been asked to provide recommendations to the
20 Secretary of Labor regarding aspects of the
21 program, areas that might be enhanced within
22 the program. And we did provide a set of

1 recommendations at the first meeting, but that
2 was around the specific rule changes.
3 Over the next period of time, we
4 will be making recommendations. And we could
5 make those recommendations as we develop them,
6 meaning at each Board meeting, in which we
7 would vote on and present them. Or we could
8 bunch them up in a certain, at a certain
9 meeting, wait a meeting until we have several
10 recommendations and then present them as a
11 group.
12 The Department of Labor has
13 requested when we make a recommendation that we
14 provide some succinct written rationale for the
15 recommendation that reflects our thinking about
16 why we would make such a recommendation, which
17 seems to me to be an entirely reasonable
18 request. We need to vote on those
19 recommendations as an entire Board.
20 This is a question actually for Mr.
21 Rios. Are we only permitted to vote in person
22 at full Board meetings, or is there a way

1 electronically of voting for recommendations
2 between meetings?
3 MR. RIOS: The purpose and the
4 spirit behind the FACA is to have all
5 deliberations be accessible to the public. So
6 voting procedures in all meetings, FACA
7 meetings, not just for this Board but others
8 that I'm a member of, have been done in front
9 of the public.
10 CHAIR MARKOWITZ: Okay. So the
11 second question is, we've only envisioned full
12 Board meetings to occur in person twice per
13 year at six months apart. Is it possible to
14 have a telephone meeting of the full Board that
15 would be accessible to the public?
16 And what I'm driving at really is
17 that sometimes six months may be a very long
18 interval for something that we think should be
19 moved on more quickly. So is it possible to
20 have a full Board meeting by telephone,
21 accessible to the public, in which we discuss
22 and make recommendations?

1 MR. RIOS: Absolutely.
2 CHAIR MARKOWITZ: Okay. That's
3 good.
4 The second question I have is that
5 we can vote on a recommendation, say at this
6 meeting, but we may not be able to come up with
7 a succinct rationale for that recommendation at
8 this meeting. We could identify the elements
9 of that rationale, bullet points, which then a
10 couple people would go back and write up into
11 reasonable language. If we agree as a board on
12 those bullet points, is there any need for the
13 entire Board to have to approve the written
14 rationale, or is it only the text of the
15 recommendation that really needs to be approved
16 by the Board?
17 MR. RIOS: If the basis of the
18 recommendation that you vote on is sufficiently
19 described in whatever bullet points you're
20 going to vote on, then that's sufficient. If
21 you want to then provide a document with the
22 rationale or the bases for your

1 recommendations, that's fine.

2 CHAIR MARKOWITZ: Okay, great.

3 Excellent. So other Board comments on this

4 issue? Les.

5 MEMBER BODEN: So I just actually

6 had a question. If, going back to Tony's

7 response to your first question, if -- I don't

8 see how it would be other than transparent if

9 the individual members of the Board voted

10 electronically on something and their

11 individual votes were made public. So I'm not

12 quite sure that it's, that your response was,

13 necessarily ruled out that possibility. I'd

14 just like you to comment on that.

15 MR. RIOS: As I prefaced in my

16 response, that was based on every committee

17 vote that I've been participating in and that

18 I've witnessed. Generally, when there's a

19 vote, there is some discussion before the vote

20 is cast. So I don't know whether that would

21 stifle that conversation, that dialogue between

22 the Board members if you simply sent something

1 out and electronically recorded everybody's
2 vote.
3 That's not to say that you can't. I
4 just haven't seen it personally. I can
5 certainly get back to the Board on that
6 particular issue. I would just reiterate that
7 the spirit of the FACA is to make all
8 deliberations accessible to the public.
9 CHAIR MARKOWITZ: Other comments or
10 questions? Dr. Sokas.
11 MEMBER SOKAS: So this seems like a
12 good meeting to have several recommendations
13 developed. And I guess my question is: do you
14 want the people with -- because in some of the
15 subcommittee deliberations there's already
16 been, you know, the groundwork laid for some of
17 that. Is there -- would it be useful to have
18 particular recommendations made in writing that
19 could be put up on the screen ahead of time?
20 And when would you like those by?
21 CHAIR MARKOWITZ: I think draft
22 recommendations would be appropriate, sure.

1 Theissue of when available by, you could send
2 them tothe Department of Labor Energy Advisory
3 Board. It really gets into issues that are
4 overseen by the rules regarding the extent to
5 which there can be Board communication without
6 regarding the public.
7 MEMBER SOKAS: I meant today.
8 CHAIR MARKOWITZ: Oh.
9 MEMBER SOKAS: Sorry. I mean, for
10 example, we could plan at the end of each of
11 the subcommittees to have a couple of
12 recommendations ready in other words and just
13 have them as part of the subcommittee
14 presentations.
15 CHAIR MARKOWITZ: Sure. That's a
16 good idea.
17 MEMBER SOKAS: Okay.
18 CHAIR MARKOWITZ: Other comments,
19 questions?
20 (No response.)
21 CHAIR MARKOWITZ: Okay. Then,
22 lastly, one of the board members asked that we

1 just remind or point out to the Board and the
2 public any new changes in either the Procedures
3 Manual, the circulars, the memos, the bulletins
4 from DOL that have occurred since our last
5 board meeting in April of this year.
6 And, actually, I looked online. The
7 only thing that I could identify was a
8 bulletin, which is very interesting and you
9 should look at, we're going to discuss it on
10 day three, which is relating to direct disease-
11 linked work processes, whereby part of the
12 decision making of the claims would be -- the
13 claims examiners would be to look at the kind
14 of work processes that claimant workers were
15 involved with and the extent to which that can
16 be readily linked to certain diseases or health
17 outcomes in a way that might expedite the
18 claims decision-making process.
19 So if you haven't -- it's online, so
20 if you haven't seen it, take a look. And it's
21 also in our, in the package that the Board got.
22 Were there other, did anybody notice

1 any other written bulletins, memos or the like
2 since April 2011? And John Vance, I don't want
3 to by any means put you on the spot, but is
4 there anything else that has occurred since the
5 board meeting that's published in DOL in the
6 realm of policy changes that we should be aware
7 of? Oh great, could you --
8 MR. VANCE: Okay. Good afternoon,
9 everyone. So, again, my name is John Vance.
10 I'm the Policy Branch Chief at Energy Employees
11 Program.
12 Yes, we did issue -- and I'm just
13 going to go down the list that I had someone
14 put together for me. So we did have our direct
15 disease-linked bulletin that was issued. We
16 did issue several circulars involving newly-
17 established special exposure cohort classes.
18 So those would start with 1604, 1605 and 1606.
19 That's the classification number for each
20 circular.
21 We also made multiple updates to our
22 Procedure Manual. And for anyone who's

1 interested in knowing what has actually
2 specifically changed in the Procedure Manual,
3 when we publish our Procedure Manual changes,
4 we issue a transmittal, which is basically a
5 notification that we are updating our
6 procedural manual. That transmittal will
7 identify the subject matter within that
8 Procedure Manual that is changing. Okay.
9 We had an update to several of our
10 file maintenance chapters. In Chapter 1, which
11 was just an introductory section: processing
12 mail, case creation. We issued in June of 2016
13 an update to our Procedure Manual Chapter 2-
14 1200, establishing survivorship.
15 Transmittal 1608 was issued in July
16 of 2016. That was an update to Chapter 2-0500
17 which is establishing covered employment.
18 We had a update in Transmittal 1609,
19 which was issued in September of 2016,
20 regarding Procedure Manual 2-0600, establishing
21 SEC status.
22 In August of 2016, we issued

1 Transmittal 1610 for Chapter 2-0400, which was
2 relating to representative services.
3 Transmittal 1611, issued in
4 September of 2016, was for a Chapter 3-0800 for
5 overpayment processing.
6 And then Transmittal 1612, issued
7 September of 2016, for Chapter 3-0700, which
8 related to post-award administration
9 procedures.
10 So that's the complete list of our
11 procedures since April.
12 CHAIR MARKOWITZ: Okay. Thank you,
13 John. Question, Ms. Vlieger?
14 MEMBER VLIEGER: My question was you
15 read those in rapid fire for all of us. Is
16 that list available for us somewhere?
17 MR. VANCE: Yes. All of, all of our
18 Procedure Manual updates for Fiscal Year 2016
19 are listed on our website, as are our circulars
20 and our bulletins. So you can just go to our
21 website, and all of those are publicly
22 available.

1 MEMBER VLIEGER: I'm asking --
2 MR. VANCE: And they're listed by
3 fiscal year.
4 MEMBER VLIEGER: I'm asking if the
5 Board could have a handout, please.
6 CHAIR MARKOWITZ: Well, is it -- so,
7 yes, I'm sorry.
8 MEMBER VLIEGER: No, go ahead. Go
9 ahead.
10 CHAIR MARKOWITZ: Well, the question
11 is whether, when something new is issued, can
12 we just automatically be notified that there is
13 something new available? Or is there a system
14 already in place so --
15 MR. VANCE: Yes, the system is in
16 place that once we issue a transmittal it will
17 immediately go up on our website, or certainly
18 after its publication. And there's a
19 publication process that we go through in order
20 to, you know, get those bulletin, circulars and
21 Procedural Manual updates cleared through the
22 Department of Labor. And once they're

1 published, that means they become publicly
2 available. They'll be on our website. But we
3 can certainly provide a list of those that
4 we've issued since April.
5 CHAIR MARKOWITZ: Okay, fine.
6 MR. VANCE: That shouldn't be a
7 problem.
8 CHAIR MARKOWITZ: So we'll work out
9 a mechanism where that can be done on a regular
10 basis, so that we're up to date with what's
11 happening, which is the goal.
12 MEMBER VLIEGER: Okay.
13 CHAIR MARKOWITZ: Thank you.
14 Any other comments, questions? Dr.
15 Cassano.
16 MEMBER CASSANO: And the context
17 changes, the textual changes are actually in
18 the bulletin so you know what was the prior
19 language?
20 MR. VANCE: Only in the -- when we
21 issue an update to our Procedural Manual --
22 MEMBER CASSANO: Right.

1 MR. VANCE: -- content changes are
2 described in the transmittal sheet that
3 accompanies that release. So when you go to
4 the website, there will be the new edition of
5 the Procedural Manual chapter, and then there
6 will be a transmittal that will notify the
7 public, and anybody who's interested in what
8 has changed in that Procedural Manual chapter.
9 MEMBER CASSANO: Okay.
10 CHAIR MARKOWITZ: Any other comments
11 or questions? Thank you, Mr. Vance.
12 MR. VANCE: Thank you.
13 CHAIR MARKOWITZ: Okay, so let's
14 move on here. We're going to move to the first
15 subcommittee report discussion.
16 This is the Site Exposure Matrices
17 Subcommittee, read by Dr. Laurie Welch.
18 SEM SUBCOMMITTEE
19 MEMBER WELCH: I can get started in
20 the absence of slides. I'm capable of doing
21 that. And PowerPoint is usually designed, you
22 know, at 4:00 in the afternoon to put people to

1 sleep anyway. And then if it turns out Kevin
2 didn't get my email, then I'll run up and get
3 them off of with a flash drive.
4 So our task was to help the
5 Department of Labor improve the Site Exposure
6 Matrix. And we had as a guide to start with a,
7 I don't know, hundred-and-something page
8 Institute of Medicine report because the
9 Institute of Medicine had reviewed the Site
10 Exposure Matrix and published a pretty
11 extensive report with specific recommendations.
12 We had asked Department of Labor to
13 let us know how they'd responded to those
14 recommendations. And we did get a memo.
15 I'm not sure, did that go out? Did
16 everyone know? I mean our committee read it,
17 but I don't know -- and it's available on the
18 website, but I'm not sure if everyone else saw
19 it? No? You don't have them? Okay.
20 Well, so the response, which I have
21 up on my computer, and I can describe it to
22 you, but it think it maybe makes more sense to

1 go through -- yes, that's the one.
2 It's in the briefing book. Great.
3 It's in the briefing book as the OWCP response
4 to the National Institute of Medicine, if you
5 want to take a look at that.
6 CHAIR MARKOWITZ: I think it's the
7 last item.
8 MEMBER WELCH: Yes.
9 So I think I -- can we take a little
10 break while I run up and get my slides, the
11 PowerPoint slides. Because Steve didn't get an
12 email from me. Okay. That's the document but
13 I -- well I, you know, I can --
14 Oh yes, I can email them to you
15 right now. But I did that yesterday, and it
16 didn't seem to have worked.
17 (Pause.)
18 Okay, so while Kevin's seeing if my
19 email worked this time. As a group, when we
20 had a conference -- we had two conference
21 calls. The first call, we really tried to
22 establish what we saw as our mission. And the

1 Site Exposure Matrix has two big roles, one of
2 which is to establish exposure. So it, you
3 know, it includes lots of information from the
4 sites about where chemicals were used and what
5 processes occurred, what agents were used. And
6 then they're linked to specific locations at
7 the different sites.
8 The other is to establish
9 exposure/disease relationships. And OWCP has
10 used a database called Haz-Map, that's
11 maintained in the website of the National
12 Library of Medicine, as the basis for those
13 exposure/disease relationships.
14 So we, as a group, discussed if we
15 thought that, on the exposure assessment side,
16 should we limit our discussion to SEM. And we
17 quickly came to the conclusion that, no,
18 there's other sources for determining if a
19 worker has had exposure, and that includes the
20 Occupational Health Questionnaire, and other
21 potential sources of exposure information that
22 might not be in the SEM. There are sites for

1 which a SEM doesn't exist, so you have to turn
2 to other sources.
3 And other sources could be detailed
4 information from the worker, affidavits from
5 co-workers. So there's a whole lot of other
6 sources of information. And since we felt that
7 our responsibility was really to look at making
8 sure that OWCP has the best information on the
9 workers' exposure, we should also address the
10 Occupational History Questionnaire and how we
11 could generally improve other exposure
12 assessments for claimants. So that was one
13 thing we decided that was in our
14 responsibility.
15 And then also to really go through
16 the OWCP response to the National Institute of
17 Medicine report, we decided to kind of start
18 with the things that they thought were most
19 important and see if we could help them with
20 implementation. And we are not finished with
21 this discussion, and we're certainly not
22 finished with all the details that the IOM has.

1 But we've come up with some specific
2 recommendations.
3 And at our first meeting, we also
4 talked about what kind of data we would like to
5 see in terms -- because it's really hard to
6 understand this program without knowing what
7 kind of claims are coming in and what kind of
8 claims -- where is exposure assessment a
9 problem? Is it a particular kind of diagnosis?
10 Is it a particular site? Is it of anything
11 that we need to hone in on?
12 So to do that, we really needed to
13 look at claims. So based on our first meeting
14 we made some requests to the Department of
15 Labor. And then between the first meeting and
16 the second meeting Dr. Markowitz and I had some
17 conversations with the people at Labor to
18 better understand what they could -- how they
19 could respond to our requests.
20 And we kind of had to go back to
21 ground zero with our requests. I think
22 understanding the way in which the database for

1 Department of Labor, for OWCP, for EEOICPA is
2 constructed. And then I guess we ended up -- I
3 ended up understanding that it's a claims
4 management database, but it's not really a
5 research database. So it's, things that we
6 would have assumed were present --
7 It doesn't look very promising,
8 Kevin, does it? Ah, great. Yeah, is it --
9 Great. Okay. This is maybe a little bit hard
10 to read. But so I've kind of, I covered part
11 of this already. There, that's great.
12 Okay. So although our specific task
13 was to improve the SEM, we thought we needed to
14 look at all the potential inputs, which is
15 pretty much what I said. And that we
16 specifically thought that we should try to
17 improve the Occupational History Questionnaire.
18 I noticed in the response to our
19 requests from OWCP, it seems as if there is a
20 process already for improving the
21 questionnaire. So we'll have to kind of
22 intersect with that if that's being done

1 internally while we're also considering it.
2 But that one of the comments that was made at
3 the last big Board meeting, and also in our
4 Committee meeting, was that the current version
5 of the OHQ doesn't have a description of tasks.
6 And tasks are often how occupational physicians
7 identify exposures.
8 The workers may not know what they
9 were exposed to in general. And in this
10 particular situation in particular, because so
11 many things were classified, and people forget,
12 but that there's a lot of tasks that have
13 things in common. The task of welding includes
14 certain, we can assume certain exposures, for
15 example. That's an obvious one.
16 So that the expert industrial
17 hygienists who will be helping the claims
18 examiners adjudicate these claims, information
19 about tasks, even without more detailed
20 discussion from the individual, would be
21 helpful. So that's one of the things we
22 noticed. We thought it was a pretty

1 significant limitation.
2 We had also asked the Department of
3 Labor to explain to us how the OHQ was
4 administered. And it's administered at the
5 resource centers. The staff there do their
6 best to help someone complete it. But no one
7 has any more additional expertise. The people
8 administering the questionnaire don't have
9 additional expertise on what the tasks or
10 materials would have been. So we had decided
11 we were going to come up with some
12 recommendations on how to improve that at our
13 first meeting.
14 Can I have the next slide? So we
15 wanted to follow up on our IOM report and that
16 we'd come up with specific recommendations.
17 DOL had said in its response that, you know,
18 the IOM made a lot of recommendations, and some
19 of them weren't specific enough for them to act
20 on. So we thought we would go through that
21 response and the IOM report and see if we could
22 provide something more helpful. And we talked

1 a little bit about our data needs.
2 Can I do the next one? We made a
3 list of other things that we wanted information
4 on, wanted to discuss. And I haven't looked
5 through all the responses. But I'm going to
6 come back to this again.
7 I would say, you know, I feel like
8 our task in a way is pretty straightforward.
9 But then in order to really understand what we
10 need to do, we need to know a lot more. So I
11 think we're really just getting started.
12 Some of the other items that we
13 identified in our first meeting we wanted to
14 address were some of the presumptions that are
15 used for adjudicating claims to see if we
16 thought that -- it's a relatively small number,
17 but we wanted to see how they were working,
18 which would require looking at some claims.
19 And there were some specific memorandum, I
20 don't know whether they call it a transmittal
21 or a circular or some kind of document, that
22 had to deal with specific exposures. We call

1 it the 1995 Memo. And our committee wanted to
2 know more about that so we could discuss that
3 in more detail.
4 Next slide.
5 Progress? I guess that was my
6 question mark, you know. Did we make any? I
7 think we did.
8 And so on our second, second meeting
9 we agreed on what we think are recommendations
10 for the way forward with some of the big IOM
11 recommendations: a process for enhancing the
12 OHQ and for expanding exposure assessments. So
13 I feel like we made some, as a committee, we
14 made some really good progress.
15 This can all be modified as we get
16 to looking at individual claims. But I don't
17 think any of this would change. I think we
18 could probably make it more specific as we look
19 for individual claims.
20 So what I thought might make sense
21 is stop here and take -- see if people have
22 questions about where we were, and then go

1 through these recommendations one at a time and
2 have the Board discuss them. And we can, you
3 know, the members of our subcommittee can
4 explain how we got here. And so with the idea
5 that I could take back comments from people and
6 try to make these into recommendations that the
7 Board could accept before the end of the
8 meeting on Wednesday.
9 So do people have, before delving
10 into those specific recommendations, do people
11 have questions?
12 MEMBER VLIEGER: Could you identify
13 for the public which people are on which
14 subcommittee?
15 MEMBER WELCH: Oh yeah, okay. Well,
16 that would -- Do we have it listed in our
17 agenda?
18 Okay. So our subcommittee is John
19 Dement and Gary Whitley. Kirk, you've been on
20 the call. Faye, you've been on the call. I
21 don't think you're really a member of the
22 subcommittee, but she's been a really active

1 participant. Myself. And is that it? Oh,
2 Steve's on all the subcommittees. Steve, Dr.
3 Markowitz is on all the subcommittees.
4 CHAIR MARKOWITZ: Not all the
5 subcommittees.
6 MEMBER WELCH: Well you've certainly
7 been on our calls. So thanks, Faye.
8 MEMBER VLIEGER: I just have one
9 other question of clarification. I know we
10 haven't reviewed this response packet yet, but
11 I started to skim it. And under DOL's response
12 to the Occupational History Questionnaire, you
13 had mentioned that they are working on adding
14 tasks to that. Was that something that was
15 assigned --
16 MEMBER WELCH: No.
17 MEMBER VLIEGER: -- to you or?
18 MEMBER WELCH: I don't know that
19 they're working on adding tasks. It's my
20 understanding they're working on improving it.
21 MEMBER VLIEGER: Okay.
22 MEMBER WELCH: But other, nothing, I

1 don't know what specifically the plan is there.
2 MEMBER VLIEGER: The answer that
3 they gave us was -- that we -- from our
4 previous question, which may not have been
5 exactly the same, is that they completed that
6 task. We might want to take a backstep on
7 that.
8 MEMBER WELCH: Okay. I'll take a
9 look at that. Completed the task of improving
10 the OHQ?
11 MEMBER VLIEGER: Of whatever
12 question we had asked them about the OHQ, which
13 in this case it said, how was it developed and
14 by whom? And they said, well, they have their
15 response in the packet of their responses to
16 us.
17 MEMBER WELCH: Okay. Yeah.
18 MEMBER VLIEGER: And that task is
19 completed, so --
20 MEMBER WELCH: The task of telling
21 us how they developed what they currently use.
22 MEMBER VLIEGER: Right.

1 MEMBER WELCH: Right. I think we
2 sort of jumped past that anyway because we
3 started thinking already about ways to make it
4 better.
5 Les?
6 MEMBER BODEN: Laura, is there a
7 process in place for conversations with DOL so
8 that our advisory board, your subcommittee, is
9 working with them in some way and not parallel?
10 MEMBER WELCH: John, do you want to?
11 We don't, we haven't talked about it. I know
12 it's Mr. Vance's, your group is working on the
13 OHQ.
14 CHAIR MARKOWITZ: Let me just
15 comment before John.
16 When we've requested to speak to DOL
17 personnel on the phone, that request has always
18 been complied with. So we don't have a -- we
19 haven't figured out an ongoing way to go back
20 and forth on particular issues, but they've
21 always been receptive when we've requested a
22 phone call to help clarify.

1 MEMBER WELCH: That's, that's
2 probably a good enough response.
3 I mean I think it's something that
4 we have to work on. And maybe after we've
5 worked through the recommendations, that will
6 inform some of the back and forth, where we go
7 with that. Okay.
8 MEMBER VLIEGER: One other thing,
9 Dr. Welch.
10 I noted also in DOL's response that
11 they have discontinued their relationship with
12 Haz-Map in their responses. There's a recent
13 discontinuation.
14 MEMBER WELCH: No.
15 MEMBER VLIEGER: Yeah. In their
16 responses it says that they -- for the SEM, the
17 Haz-Map links that Dr. Brown does not currently
18 work directly for DOL or as a SEM contractor.
19 DOL also recently ended their
20 memorandum of understanding with Health and
21 Human Services and the National Library of
22 Medicine.

1 So just so you know, if we were
2 going to be using those links, so that MOU has
3 expired.
4 CHAIR MARKOWITZ: So actually, Mr.
5 Vance, could we just ask for clarification of
6 that, what that exactly means, that the DOL
7 either no longer has the contract or no longer
8 has an active relationship with NLM, National
9 Library of Medicine, around the Haz-Map?
10 MR. VANCE: Yeah. Let me -- this
11 is, this is John Vance. I'm not sure exactly
12 what all you guys are looking at with regard to
13 that. But I do know that we still maintain the
14 linkages for the use of the site exposure
15 matrices derived from the data maintained in
16 Haz-Map. So I'm not sure. I know that we have
17 lots of different arranges with regard to Haz-
18 Map, but with regard to MOUs and that sort of
19 thing, I'm not really familiar with that.
20 I, I think Rachel might be on the
21 line as well. She might be able to provide a
22 little, a little bit more context for that, for

1 that question, if she's able to hear.
2 MS. LEITON: This is Rachel.
3 We, we don't really have an MOU any
4 longer. I'll need to check on these. I know
5 that we don't work specifically on a contract
6 with the same version that we used to. But I
7 really need to, to double check. I can give
8 you an answer probably tomorrow as to exactly
9 what our relationship with NLM at this point.
10 MR. VANCE: But just to clarify, we
11 still utilize Haz-Map as the base, as the basis
12 for our health effect data in the Site Exposure
13 Matrices. That has not changed.
14 MS. LEITON: Yes, we do.
15 CHAIR MARKOWITZ: Thank you.
16 Dr. Silver?
17 MEMBER SILVER: Perhaps in your
18 investigation you could take a close look at
19 how claimant responses to the questions about
20 personal protective equipment are used in the
21 claims process. There are a couple of
22 questions on the OHQ: Were respirators

1 available? Did you use them?
2 Most families don't go through this
3 process ever, and those who do, do it once.
4 Because OHQ is early in the process, I could
5 see a lot of people coming out of these
6 national security facilities giving what they
7 think is the right answer to that question:
8 yes, I wore my respirator.
9 I teach, you know, 120 miles from
10 here and there's a widespread misconception
11 that workers' comp programs have an element of
12 negligence. They don't. It's a no fault
13 system.
14 So I can think of a couple of
15 reasons why early in the process people might
16 say, sir, yes sir, I always wore my respirator.
17 And would that be counted against them in
18 evaluating their exposures as their claim is
19 evaluated?
20 CHAIR MARKOWITZ: Mr. Domina?
21 MEMBER DOMINA: I think it also
22 needs to be clarified what type of respirator

1 you wore for what type of environment. Because
2 early in my career we wore HEPA for rad, but it
3 didn't cover any chemical because there wasn't
4 anything available. So it's the person that's
5 asking the question has to have knowledge of
6 what processes and stuff they're talking about
7 because it's in the details.
8 And that's where a lot of it falls
9 through because certain types of equipment, or
10 whatever, and the type of work we were doing at
11 the time, you had to get it done, you know.
12 And so I think it's important to know that it
13 was their proper equipment available. Because
14 like when I started with my career you wore a
15 respirator, but there was no program to verify.
16 The guy next to you told you this one looks
17 like it will fit. They told you how to get
18 dressed when you started, on and on and on.
19 There was no formal training for this.
20 And so I think it's important for
21 the people to know that just because you pick
22 people from now that may have certain

1 backgrounds that don't know the background of
2 this program and how far back it goes, you got
3 to have the right people to get it done
4 correctly.
5 CHAIR MARKOWITZ: Dr. Sokas?
6 MEMBER SOKAS: Two comments or
7 questions. One is, in occupational medicine,
8 typically when we ask a question of someone for
9 a 30-year history and we're asking them whether
10 protective equipment was provided, we typically
11 do that not to say, oh, the equipment was so
12 effective that there was no potential for
13 adverse health outcomes, we typically use it as
14 a marker that in fact there was something bad
15 enough that the equipment was made available
16 but nobody really expects that people were
17 using it adequately or every single time they
18 needed to.
19 So rather than be a marker that
20 there was an exposure, to mark it that there
21 probably was. And I don't know if what you're
22 doing in, you know, if the interpretation of

1 the OHQ is part of the mandate, but I would
2 suggest that that might be helpful.
3 The other comment I just had is I
4 think in most occupational medicine practices
5 the family history is no longer obtained. And
6 if it is, it's certainly not the first thing
7 that's obtained. And so I would just suggest
8 considering deleting that from the beginning of
9 the, the form.
10 CHAIR MARKOWITZ: Yes, Dr. Cassano?
11 MEMBER CASSANO: I would agree with
12 Rosie and basically go almost farther and say
13 that whether or not somebody says they used
14 personal protective equipment is irrelevant in
15 determining whether or not an exposure
16 occurred.
17 CHAIR MARKOWITZ: Dr. Dement?
18 MEMBER DEMENT: Just as a point on
19 protective equipment. As an industrial
20 hygienist, for the most part the equipment
21 itself has to be selected appropriately. But
22 without a complete program that includes making

1 sure that it's fit appropriately and that it's
2 worn, historically these programs in terms of
3 protection actually afforded have been pretty
4 marginal.
5 So to the extent they're considered
6 in these programs, based on the cases I've
7 reviewed and based on what we've seen, I
8 haven't seen it used that much. But I haven't
9 reviewed that many cases either.
10 MEMBER WELCH: You know, I think one
11 of the things our committee is going to do is
12 request -- we want to try to find cases that
13 were denied because the exposure was
14 inadequate. And then is it inadequate because
15 the SEM's inadequate or the OHQ is inadequate
16 or just there's information missing?
17 It could be information the worker
18 knows but that it didn't get recorded in this
19 process. And there needs to be a look back
20 again potentially. And the way we've figured
21 out to do that is to take maybe a couple of
22 specific diseases because OWCP can put together

1 a set of -- they can't give us diagnosis and
2 denial for a whole range of things because it's
3 fairly complicated to construct a complete set
4 of a specific diagnosis. But we're going to
5 pick some big ones and then look at the ones
6 that were denied because of causation.
7 They can deny because employment
8 wasn't verified, because the survivor isn't
9 eligible, because it's the wrong medical
10 diagnosis, a bunch of things. But one specific
11 category for classifying denial is causation.
12 And that's where we think that's where we'll
13 find the ones where the exposure was
14 insufficient to cause the disease, either
15 because the link doesn't exist with that
16 exposure or group of exposures, or because
17 someone assessed the exposure as insufficient.
18 But, you know, it may take us --
19 there's no way to, there's no way to get any
20 closer to say, all right, well denied because
21 the OHQ was used, or something. I mean it's
22 just we just have to go through some and get a

1 better sense of it.
2 But I, I think that's why we thought
3 it was important to have multiple sources of
4 input on the exposure history for the
5 individual so that if one of them is less than
6 adequate some -- another one may, you know,
7 make up for it. As we all do in practice.
8 It's, you know, if the worker doesn't remember,
9 you have a lot of other sources for what the
10 person may have been exposed to.
11 MEMBER DOMINA: We're also going to
12 have to address the sites that don't have a
13 SEM. Like Grand Junction Operations is one.
14 There's -- because we have sites that have an
15 SEC with no SEMs. And so that's going to be an
16 issue. And I believe there's like 34 sites
17 that don't have a SEM, and so we're going to
18 have to address that.
19 MEMBER WELCH: That's what I'm
20 saying, our three recommendations we'll make
21 today are, you know, who knows, are they the
22 tip of the iceberg? They're some of the ones

1 that were most important in the IOM report,
2 which is kind of why we focused on those
3 because somebody's already pointed them out as
4 being big issues.
5 But I think that's a very important
6 issue and that you probably have a better
7 understanding than anybody else on the
8 committee, you and Gary, about how those cases
9 if there is no SEM, how are they adjudicated?
10 Because it seems to be important. But I think
11 that's, that's on our next list once we've
12 finished with these big pictures.
13 CHAIR MARKOWITZ: Just to interrupt,
14 Ms. Leiton wants to make a comment.
15 MS. LEITON: Yes. I just want to
16 respond to your question about MLN. I had to
17 check on it.
18 We actually don't have any formal
19 relationship with them anymore. We get the
20 information as they publish it. The Haz-Map is
21 published by them, so we get it just like
22 anybody else would publicly.

1 So we used to have a contract with
2 Dr. Jay Brown. We don't anymore. We don't
3 have an MOU with MLN either.
4 So that's, so that's the issue.
5 OPERATOR: Mark Griffon has left the
6 conference.
7 MEMBER WELCH: Rachel, this is
8 Laurie Welch. It was hard to understand you.
9 But I think I understood what you're saying is
10 that you, you'll continue to use Haz-Map as it
11 is updated to the public but you don't -- no
12 longer have a specific contract with Dr. Brown
13 to get anything faster or different?
14 MS. LEITON: Yes, that's correct.
15 MEMBER WELCH: Okay.
16 MS. LEITON: Thank you. Just wanted
17 to make sure I could clarify that for you.
18 CHAIR MARKOWITZ: Dr. Boden?
19 MEMBER BODEN: Just, just listening
20 to the comments about the question about
21 personal protective equipment raises the
22 question about whether this advisory committee

1 might suggest that that question be deleted
2 because it would provide no useful information
3 and might be misleading if the answer is in the
4 affirmative.
5 CHAIR MARKOWITZ: So let me ask the
6 Board members, those who want to make comments,
7 just to indicate you want to make a comment by
8 turning your name card into the vertical
9 position. Otherwise I'm trying to read your
10 face and decide whether you want to speak or
11 not.
12 Dr. Dement.
13 MEMBER DEMENT: I think the question
14 is not a bad question, Les. I think when it's
15 used for the purpose of saying that the
16 employee did work in areas in which their
17 employer determined that personal protective
18 equipment would be required, it does, as we
19 discussed before, indicate acknowledgment of a
20 potential exposure.
21 I think clarification is needed in
22 terms of how it's actually used. And to

1 dismiss an exposure that a worker lists on the
2 OHQ because they used PPE, would not be
3 appropriate.
4 CHAIR MARKOWITZ: But, you know, I
5 would question the ability to get the level of
6 detail about use of PPE on the OHQ, on the
7 Occupational Health Questionnaire, whether
8 sufficient detail can really be obtained to
9 really make it useful in terms of judging
10 exposure.
11 Dr. Cassano?
12 MEMBER CASSANO: Yeah. I think I'm
13 sort of in the middle of, my feelings are in
14 the middle of that. I agree that I think it
15 should stay on there, for all of the reasons
16 that Rosie and Dr. Dement mentioned, but I
17 think it could very easily be said that in no
18 case shall it be used to deny a claim assuming
19 that no exposure occurred.
20 That, that would be my feeling.
21 Because it does give you some useful
22 information, especially if somebody is in a

1 working work category where the exposure matrix
2 says they weren't exposed, and they write on
3 their occupational health history that, yeah,
4 somebody told me I needed to be in a respirator
5 when I was in this building. And so that gives
6 you some information.
7 But the fact that they used it or
8 may have used it should not preclude granting
9 the claim because by assuming that no exposure
10 occurred.
11 Does that make any sense?
12 CHAIR MARKOWITZ: Ms. Vlieger, did
13 you have a comment in direct response to this?
14 MEMBER VLIEGER: I do. I would
15 rather have something to go off of than
16 nothing. I would like to leave it in.
17 And the problem between sites is all
18 of the jargon, so that when people went home at
19 night and things sounded innocuous, makes it
20 difficult to determine what happened if there's
21 nothing there. So all this common language
22 jargon that was used specifically for secrecy,

1 when they talk about their exposures and what
2 they were doing, even process names have jargon
3 names. So I would rather have something that
4 talks about what they did, how they did it,
5 than to not have anything.
6 And even if they had the option of
7 not wearing, it should be asked, was it
8 operating? Could you opt out? And that
9 question's not on there. Because many times
10 the workers are told, Here's the option. But
11 for whatever reason, whatever mindset, they opt
12 out. And that question is not there.
13 CHAIR MARKOWITZ: Dr. Welch?
14 MEMBER WELCH: You know, I think our
15 little committee can, can work with these
16 comments. I know that on the building trades
17 screening program medical history we ask
18 questions that try to get at the question, were
19 you working in a hazardous area? So we might
20 suggest changing, were you working in an area
21 where PPE was required or PPE was, you know,
22 suggested? Because we do ask if people worked

1 in an area where they had -- were they ever
2 stopped from work? Worked in an area that had
3 to be decontaminated?
4 And asked about hazardous buildings
5 as well, which is really hard to do. I mean
6 besides having had a tour at Oak Ridge I could
7 see that the building part could be an hour in
8 itself.
9 But so I think it's useful comments
10 and we can certainly take those into
11 consideration. I think certainly, I mean
12 everybody is saying the same thing, that where
13 the worker used personal protective equipment
14 should not be used to assume that the exposure
15 was prevented, that there was no exposure
16 because they used PPE. But the opposite is
17 probably true, it's identifying hazardous work.
18 And but I don't think we have any
19 way to instruct the Department of Labor of how
20 to use that information. We just need to
21 collect it in a way that reflects that view of
22 the -- asks those questions in a way that it's

1 clear they're being asked as part of an
2 assessment of the hazards rather than a
3 reduction of the hazards. That's what I'd say.
4 So I think we can, that's very
5 helpful, I think we can work with that.
6 CHAIR MARKOWITZ: But I would add
7 that I think there is a lot of room for
8 misinterpretation either by claims examiners or
9 industrial hygienists who don't speak with the
10 claimants, or by physicians who are reviewing
11 paper and not speaking with the claimants. A
12 lot of room for -- whatever caveat or working
13 we put in there, there's still a lot of room
14 for misinterpretation that if the person says
15 they used PPE, personal protective equipment,
16 the respirator and the like, that the person
17 reviewing that information could easily
18 interpret that as meaning the person did not
19 have significant exposure.
20 So I don't know whether that
21 misinterpretation can really be guarded
22 against.

1 Mr. Whitley?

2 MR. WHITLEY: Keep in mind also that
3 you may have worked there 30 years. And for 15
4 years you didn't wear any PPE. But you left
5 work on Friday and you went in Monday morning
6 and the sign on the door says you need PPE to
7 go back in the area you worked on Friday.

8 So to answer that question if you
9 were an employee, would be tough if you were
10 doing the questionnaire because half of my
11 career I didn't need it, now half of my career
12 I do need it. It's not a cut and dry question.

13 MEMBER WELCH: Well, I hope that
14 some of our recommendations that we're going to
15 make, you know, that they will address this
16 question by enhancing the information from the
17 OHQ and not making it be the only way a worker
18 reports his history, so.

19 Should I -- I think we best move to
20 the next slide.

21 So that the Institute of Medicine
22 recommended that OWCP not rely solely on Haz-

1 Map to identify exposure/disease relationships.
2 And they recommended that other data sources be
3 used. And they used the terms to assure those
4 links are current, comprehensive and
5 transparent.
6 And we definitely would agree with
7 that. I mean people should be able to look at
8 the disease relationships, exposure-disease
9 relationships that are in some -- and under --
10 and believe that these are up to date.
11 So our committee came up with
12 recommendations. When I went back and compare
13 them to the IOM report, they're really not that
14 different. And because we agreed with the IOM
15 that there are other data sources that are not
16 primary literature, they're not suggesting that
17 OWCP have a committee to review primary
18 literature and decide new causation.
19 But there are agencies like the EPA
20 and the International Agency for Research on
21 Cancer and the National Toxicology Program that
22 put together major efforts, millions of dollars

1 to assess the health effects of one particular
2 chemical or groups of chemicals, and that OWCP
3 should have a way to incorporate those.
4 Haz-Map may incorporate those and it
5 may not. And if it does, it may not
6 incorporate it until it appears in a textbook,
7 which could be a delay of a number of years.
8 But when EPA puts something in its IRIS
9 database to say that this exposure causes this
10 disease, we don't have to review that again.
11 We can rely on EPA.
12 So our recommendation was to have a
13 committee, which DOL has told us they can't do
14 because they can't afford it. But we don't
15 think this is a major expenditure of time on
16 the committee's behalf to come up with a list
17 of other sources, to take Haz-Map and expand
18 it. And because of the nature of who's on our
19 committee, I don't want to be the one to make
20 the list. I mean we need some people,
21 definitely EPA and National Toxicology Program
22 are probably the leading ones, and IARC, are

1 probably the leading ones.
2 And IOM had listed some options in
3 Table 78. And they've listed probably most of
4 the ones that, that we would come up with
5 actually. I don't know we'd want to do another
6 list.
7 And then OWCP would need some
8 guidance on how to use that information to put
9 it into SEM as a disease cause link.
10 In some ways, the way the SEM is
11 constructed now, it makes it fairly easy
12 because there's no assessment in SEM of the
13 duration and extent of exposure. And that's,
14 it's, that's a problem that IOM identified. I
15 don't think it's -- it's not possible to add
16 that to SEM on a, on a site-specific basis.
17 It's not possible to say that TCE in this
18 particular location was used to this, that a
19 pipefitter doing this kind of welding would
20 have this level of exposure to cadmium, for
21 example. That, that's just not available. So
22 we couldn't do that.

1 But this advisory committee could
2 help the OWCP folks understand how to use that
3 causation data. I mean Haz-Map doesn't do it
4 either. Haz-Map does limit it I think to some
5 degree to occupational exposures because it's
6 really designed for primary care providers.
7 And if we're including EPA, you know, they're
8 looking at much lower exposures.
9 So, you know, there may be a causal
10 link but it may not be sufficient to say that
11 there could be an occupational cause. So
12 there's some expert assessment to get from
13 what's in the EPA IRIS database as causal into
14 something that should be considered causal or
15 contributory or aggregating in this program.
16 But, again, we didn't think that's
17 that complicated. And Tori's agreeing with me.
18 But then I went back and read the
19 IOM report and I said, oh, we just said what
20 the IOM said. It said they should use these
21 other data sources and get an expert committee
22 to help them figure out how to do it.

1 So we can't make it any easier, and
2 it has to be done. At least that's our
3 committee's recommendation. But it doesn't
4 seem like a burdensome task.
5 So let's discuss that one.
6 CHAIR MARKOWITZ: So let me -- Oh,
7 Rosie, Dr. Sokas?
8 MEMBER SOKAS: I mean I think I
9 would just comment that if this committee has
10 access to subcontractors or if the program
11 itself has access itself to subcontractors, I
12 do think -- so, so I interpreted this response
13 to the IOM committee as saying we wanted you to
14 do it for us. And, you know, and we said, no,
15 we didn't really have the time or the, you
16 know, personnel to do that for you.
17 And I don't know that this group
18 does either. I think that pulling together the
19 information on the specific questions to
20 populate better what the -- I mean I think all
21 those, those websites are useful but it takes
22 somebody to do that. And I think maybe a

1 recommendation could be that it's worth it if
2 you're going to be assessing, you know, the
3 claims based on this information to, to let a
4 small subcontract for people to pull that
5 information in. And then I think it's
6 reasonable for the Board, for subcommittees on
7 the Board to address that.
8 And I think Tori's subcommittee
9 probably, you know, has a lot of overlap on
10 that question. But, but that there -- that the
11 response has to be "life is hard." You have to
12 put in the resources if you're going to
13 actually go after this. It's not just, oh, we
14 want. You know, we don't have those, that
15 information.
16 CHAIR MARKOWITZ: My reading of the
17 IOM report was that they were deeply critical
18 of the Haz-Map database and procedure, and also
19 of SEM and the way it used Haz-Map. And then
20 set out a bunch of tests that should be done
21 that would take a lot of resources.
22 I mean if you think about it, DOL's

1 told us they've identified now 17,000 agents or
2 agent mixtures or brand names of agents used in
3 the complex. And unlike certain programs, like
4 Black Lung, which target a single disease, in
5 EEOICPA Part E every disease in the book is a
6 target; right? So you're matching up 17,000
7 agents with every disease in the book.
8 So I think IOM set out a very large
9 task, set of tasks for DOL. And I think that
10 the recommendation Dr. Welch is discussing is
11 identifying a specific, finite task that's a
12 good starting point -- or not necessarily
13 starting point, because DOL's already made some
14 changes, but a good point in which to advance
15 this, in which this -- and mind you, it's a no-
16 brainer, we've got organizations which have
17 spent a lot of resources, engaged a lot of
18 experts in reviewing agents and looking at
19 causation for diseases, including those that
20 Laurie mentioned, and some others.
21 The list of things they looked at is
22 not endless. It's finite. And without a ton

1 of -- And I think, by the way, that many of
2 them probably are, are in Haz-Map already. But
3 there should be reassurance that, at a minimum,
4 what a consensus organizations through careful
5 peer review, high quality process, have already
6 concluded should be in the Haz-Map, should be
7 in SEM. And there shouldn't be any question
8 about that.
9 And then getting on to the next
10 task, which is surveying the literature for
11 other associations and deciding about those,
12 that's a, that's a whole other thing, which IOM
13 also begins to address. But the first step is
14 to simply take what's already recognized as
15 being authoritative reports on causality and
16 making sure that the Haz-Map and the SEM
17 reflects those.
18 Dr. Welch.
19 MEMBER WELCH: So our committee was
20 recommending that Department of Labor use those
21 sources. And if EPA, IARC, and NTP, and
22 whatever source you choose have not determined

1 a causal link, that OWCP does not have to go
2 and do a detailed review on that chemical
3 independent. Because there will be agents for
4 which there's a new association, for which
5 there may be strong literature. But at some
6 point in the very near future EPA or IARC or
7 NTP will convene a committee and make a
8 decision on that.
9 And I think that asking OWCP, or we
10 agreed that asking OWCP to do that before EPA
11 gets to it is not necessary. But improving the
12 causal links in SEM -- and I do think probably
13 most of the ones that would be found in the
14 other sources are there, but it will, it will
15 make it possible to continuously add new
16 materials that have been reviewed through a
17 rigorous process without having Department of
18 Labor to have to create essentially an EPA-
19 style or an IARC-style committee to review
20 chemicals.
21 So I think it's, even though it may
22 not be 100 percent up to date, I, I think

1 keeping it there keeps it doable within the
2 context of this program.
3 The question of whether an
4 individual worker could then come in to make a
5 causation argument, that's something else.
6 That's an individual case that someone could
7 have. They could make a really good claim and
8 it could go to CMC and industrial hygienists
9 and they could say, yeah, we actually think
10 even though that causal link is not in SEM we
11 could award it. That would be a different way
12 to sort of allow people to stay current, to
13 have that option, and that a really expert
14 report could create a causal link.
15 But so I think I was just saying
16 that, Steven, or Dr. Markowitz, because you had
17 suggested and you pointed out that the way IOM
18 wrote it could imply that Department of Labor
19 should do those detailed reviews themselves.
20 But I think, given the nature of the program
21 and the resources, that it makes more sense to
22 rely on other really high quality federal and

1 international agencies to do those reviews.
2 MEMBER VLIEGER: I just had a
3 question. In the whole process of the IOM
4 report did DOL have any objections to using
5 those databases? Or is it they didn't have
6 access to them routinely? Or that claims
7 examiners didn't understand them?
8 As I'm looking on page 78 of the IOM
9 report and they all seem pretty clear cut. It
10 doesn't seem like there's a no-brainer in there
11 at all.
12 MEMBER WELCH: Well, I think that
13 the -- it's not that the -- IOM was suggesting
14 that those links be added to the SEM, not that
15 claims examiners should review those links. So
16 --
17 MEMBER VLIEGER: But ultimately they
18 do if it's in the SEM.
19 MEMBER WELCH: But if it's in the
20 SEM, then the organization then says you can
21 use this link.
22 If you're leaving it up to the

1 claims examiner, then they have this what could
2 be seen as a really big responsibility to make
3 up a new disease-exposure link. So I think
4 getting it into the SEM, which then stands as
5 OWCP's textbook on disease-exposure
6 relationships is the important part of it.
7 And I think that's, I think that's
8 what you were saying.
9 MEMBER VLIEGER: We were looking at
10 -- I've got the report right here and I was
11 trying to figure out how many pages of
12 references there were. It looks like it's a
13 page-and-a-third of references.
14 MEMBER WELCH: Yeah, the resources.
15 Right.
16 And I think if you, if you read the
17 response that we got from OWCP on, you know,
18 what out of the IOM report they implemented and
19 what they did not, it's my understanding from
20 the written report was that this recommendation
21 to use those other data sources seemed
22 difficult and they just couldn't figure out how

1 to do it, and didn't have the resources for
2 another expert committee.
3 So we were hoping to make it seem
4 more reasonable. And this Board could advise
5 on how to get that done, and something that's
6 not a major, it's not like creating this board
7 and having all those meetings, it would be
8 something a lot simpler.
9 CHAIR MARKOWITZ: Dr. Cassano?
10 MEMBER CASSANO: Yeah. One thing I
11 thought maybe we could do to help DOL a little
12 bit is whittle that page-and-a-half of
13 references down to maybe the three or four
14 where they would get the most bang for their
15 buck first, such as IARC and National
16 Toxicology Program, and then IRIS after that.
17 But also give them some information
18 on some monographs that are written
19 specifically for a specific agent. There's a
20 wonderful National Research Council monograph
21 on TCE that I use in my work all the time
22 because it actually contradicts the IOM report

1 on the TCEs when they were talking about the
2 Camp Lejeune. And they were written three,
3 three years apart.
4 So you have to in some ways keep up
5 with the literature. But it would drive
6 somebody crazy to try to do that in the context
7 of what they're trying to do at DOL. So I
8 think if we, if we whittle it down to three or
9 four where they're going to get the best
10 information, the most comprehensive
11 information, that would work.
12 CHAIR MARKOWITZ: No, I, I don't
13 agree with that. This list that IOM gave us on
14 page 78, 79, in the table, just to be clear,
15 it's Table 3.1. Not in the text. Because in
16 the text they mention other databases but just
17 in the table, these are, this is a very finite
18 task. These agencies don't review that many
19 chemicals all that often. They don't,
20 unfortunately, right? Because it's a very
21 protracted process, resource-intensive process.
22 And they only review two, three per year at

1 most.

2 So it's not all that expensive to

3 incorporate these tasks. To go beyond that

4 would be more expensive. And I, we're trying

5 to separate out what's feasible from what might

6 be done more down the road.

7 So I wouldn't agree with whittling

8 this. In fact, I would disagree a little bit

9 with Dr. Welch. I think, to me this is the

10 first step. And then the question, not to be

11 necessarily discussed today, but the first

12 question is how can DOL monitor the literature

13 for other consensus statements beyond these

14 organizations?

15 So what you mentioned, one, there

16 are other professional organizations put out

17 consensus statements about diseases. Monitor

18 other consensus statements or reviews that are

19 very, literature reviews that are very

20 definitive, and use that to improve the

21 disease/exposure link.

22 Because it would be a shame to miss

1 out on those consensus documents beyond this
2 list. And I'm not talking about DOL sitting
3 there monitoring ToxLine and PubMed database
4 and looking at, you know, for all the latest
5 about this or that individual study because I
6 think that would be very challenging for DOL to
7 do.
8 But I am talking about beyond this
9 finite list of using -- of making sure that
10 there are consensuses that are in the medical,
11 published medical literature that this
12 compensation program should be taking advantage
13 of.
14 MEMBER VLIEGER: I would just like
15 to add one comment to that. Because of the
16 restriction that has been placed using the SEM
17 in claim adjudication, what I have seen a
18 number of times is when we stray from anything
19 that is specifically referenced in Haz-Map, the
20 claims examiner won't accept it without an
21 outside toxicologist agreeing with it.
22 So when we've gone to these other

1 sources, which are well respected in advocating
2 for the workers, DOL won't accept that. I had
3 -- at a hearing I was told that anything I
4 printed from PubMed and National Library of
5 Medicine wouldn't be accepted unless it was
6 linked in Haz-Map. So at least if we could
7 just say you have to consider these sources as
8 a start, instead of saying we aren't going to
9 accept them because it's not linked in SEM.
10 So as a start we need to at least
11 open that door.
12 CHAIR MARKOWITZ: Dr. Sokas.
13 MEMBER SOKAS: Two comments. One
14 is, even for IARC, I mean one of the
15 conversations was that at first only the IARC 1
16 agents were included. And so there are
17 actually some OSHA standards that don't, you
18 know, where it's an IARC -- you know what I'm
19 saying.
20 So there, some of that needs a
21 little bit of, you know, kind of attention and
22 guidance.

1 I had a question that really came up
2 in our subcommittee when we reviewed the phone
3 calls but I think it might apply here, which
4 was that the -- there was an example where
5 there was some guidance that had been provided
6 by NCI, which I think all of us would consider
7 a reliable source, and the Solicitor of Labor
8 refused to allow the NCI information to be
9 taken into account.
10 And I was wondering if we could get
11 some clarification of that? Because it does
12 raise the issue of what are the -- what, I
13 would really like to know what happened between
14 NCI and the Solicitor of Labor, to find out
15 where the determinations that NCI made were
16 determined to be not applicable. And I don't
17 know if we have that information available to
18 us or not.
19 CHAIR MARKOWITZ: Well that is a
20 question we should put to DOL. I don't know
21 whether Mr. Vance or Ms. Leiton can speak to
22 that, have enough information or are prepared

1 to speak to that. If so, fine. Otherwise
2 we'll just pose that question and ask for a
3 response.
4 So we will pose the question and
5 we'll get a written response from DOL there.
6 Other comments, questions? Yes, Dr.
7 Redlich?
8 MEMBER REDLICH: I may have, I may
9 have missed this, but has there been sort of
10 just sort of general principle of causation in
11 terms of where the bar would be? You know, if
12 something is a possible human carcinogen, is
13 that sufficient, you know, versus probable?
14 Because it's very reasonable in situations like
15 this to, you know, pick a lower bar than let's
16 say IARC uses.
17 And, you know, even if you have this
18 perfect list of A can cause B, you then have
19 the individual and how much exposure would that
20 individual need, which is a very hard decision.
21 And I don't know how, you know, people could
22 make that. You know, that's, you know, so the

1 VA with Agent Orange, World Trade Center, you
2 know, presumptions have helped really
3 facilitate the process.
4 CHAIR MARKOWITZ: I'm sorry, I
5 wasn't keeping track of who's first. Dr.
6 Boden?
7 MEMBER BODEN: Just I think that's
8 very important. I think it's actually on our
9 agenda for tomorrow, the cause contributed or
10 aggravated discussion. So I think we need to
11 spend time on this.
12 CHAIR MARKOWITZ: That's for
13 Wednesday. But, that's for Wednesday, but I
14 wouldn't expect any miracle answers in that
15 discussion. But, but yes.
16 I think the IOM report though did
17 specify that causal -- the criteria for
18 causation should be spec -- should be described
19 in the program. And that's one of the, that's
20 one of the tasks they wanted some outside
21 future expert advisory committee to address.
22 Dr. Cassano?

1 MEMBER CASSANO: Yeah. I, in
2 response to the first part of what you said, I
3 think, you know, if it's just -- if that, if
4 the consensus document just looked -- this is
5 one of my pet peeves -- if they just look at
6 epidemiology and the epidemiology isn't there
7 yet because of latency issues, or whatever,
8 then you're sort of out of luck.
9 But if you, you have to look at both
10 the toxicology and the epidemiology. And if
11 there is a reasonable pathophysiologic pathway
12 to getting from this exposure to this disease
13 that's been proven, then I think that needs to
14 be used, rather than just looking at, you know,
15 statistically significant epidemiology.
16 CHAIR MARKOWITZ: I see a number of
17 vertical name cards. But I -- right, right.
18 Dr. Welch?
19 MEMBER WELCH: So in response, Dr.
20 Redlich, in response to what you said,
21 currently now the causation is determined by
22 Haz-Map. So if Haz-Map said that, you know,

1 something that was an IARC probable as opposed
2 to known, known human carcinogen, then DOL
3 would look at it. And if it hasn't, it hasn't.
4 So which -- I don't actually know
5 the answer to that. I'd have to, to look that
6 up. But it is part of then the question of
7 also, like, which agents do you include? And
8 in an individual case how do you say that cause
9 contributed? Those are two different decisions
10 that have to happen before you determine a
11 claim.
12 CHAIR MARKOWITZ: Dr. Sokas?
13 MEMBER SOKAS: That just kind of
14 points out, again, the difference between what
15 Haz-Map was created for, which was for primary
16 care clinicians interacting with people coming
17 to their offices where you can do real harm if
18 you assume an association that, that, you know,
19 may not be the major thing for that individual.
20 And certainly the family
21 practitioners would go nuts if they had to, you
22 know, kind of take into consideration some of

1 the items that are perfectly appropriate to
2 take into consideration for determining
3 contribution or causality for a compensation
4 program.
5 So it just it was a program that was
6 reasonably designed for a specific purpose,
7 that was used for a different purpose for which
8 it really isn't appropriate.
9 CHAIR MARKOWITZ: Dr. Silver?
10 MEMBER SILVER: I think Faye Vlieger
11 hinted at this. One benefit of giving those
12 consensus bodies a seat at the table, if you
13 will, a place on the computer screen when the
14 claims examiner opens Haz-Map is that the
15 advocates, the authorized representatives can
16 get some traction. They can cite those sources
17 and point to the, point the claims examiner to
18 those sources and say look at the evidence
19 we're providing. It may not be in Haz-Map but
20 these are reputable sources and it's part of
21 the opinion of sufficient probative value, da-
22 da-da-da-da, that we're submitting now for the

1 third time.

2 CHAIR MARKOWITZ: But I think the

3 point is that if DOL embarked on an expeditious

4 process to take all these experts -- expert

5 consensus statements and folded them into the

6 SEM, that the claims examiner could find it in

7 the SEM, reliably find it in the SEM and not

8 rely on looking at additional authoritative

9 sources.

10 MEMBER SILVER: It may take them a

11 while to incorporate the latest evidence. And

12 once the claims examiners get familiar with the

13 alphabet soup of NTP, IARC, et cetera, newly

14 emerging evidence would have validity in the

15 process of adjudicating claims I think.

16 CHAIR MARKOWITZ: Dr. Cassano?

17 MEMBER CASSANO: I think the way you

18 may be able to handle that is if when the CE

19 sees something like that, even if it's not an

20 expert medical opinion that has it written out

21 that whenever they see these documents, because

22 they can't parse it, that at that point it goes

1 to an -- immediately goes to an industrial
2 hygienist and/or the CMC to evaluate.
3 Because what we saw, I think, a lot
4 -- and I don't want to get too much into my
5 subcommittee -- but was that a lot of
6 information was discounted by the CE and never
7 got to somebody with the expertise to actually
8 parse it.
9 CHAIR MARKOWITZ: Ms. Vlieger?
10 MEMBER VLIEGER: I would concur with
11 that in that I've actually been told because it
12 is not a SEM link it will not be forwarded
13 because it's not considered valid medical
14 evidence.
15 So just getting them to accept the
16 lexicon, even if it's not attached, the lexicon
17 that's listed in the IOM report of other
18 agencies, just to have that as accepted
19 evidence, right now the claimants don't get to
20 use that unless they pull in very expensive
21 experts that then are vetted, and a lot of them
22 are actually able to provide evidence in court.

1 So, and that's not something that's
2 available to the majority of the claimants. So
3 when valid medical studies that support an
4 illness are provided, that they don't discount
5 it and parse from the file because they aren't
6 accepted under the rules right now.
7 MEMBER WELCH: Well I guess the hope
8 was that, I mean this process of going through
9 what's in, let's say we use all the sources in
10 the IOM table, it's a little bit of work to go
11 through and make sure that everything that's
12 identified there as having a causal link with
13 exposures is included in SEM. The great
14 majority of them will be because they're
15 longstanding links. And then a process to
16 update it annually.
17 So look at, you know, once a year
18 look what comes out from NTP and EPA. NIOSH
19 doesn't ever publish a criteria document
20 anymore. And ATSDR is not doing anything. So
21 it's not, there's not a lot new coming out.
22 I think it's going to be a lot

1 easier to implement what you guys are
2 suggesting if it's right in the SEM, you know.
3 So, right, you could have a case where there's
4 something new that's just come out of NTP, a
5 new causal link that's not in SEM, and you, as
6 an advocate might be arguing that the claims
7 examiner should look at that. That should be
8 the exception rather than the rule. Let's just
9 get it in there. And let's not, let's not sit
10 here and think, oh, that's going to take two
11 years to get it done.
12 MEMBER VLIEGER: We see a lot of
13 unusual non-Hodgkin lymphomas. And the other
14 agencies are finding the links. But when we
15 apply for them they get, the CMC doesn't use
16 current, and so then these unusual non-
17 Hodgkin's lymphomas that have medical evidence
18 from the general public behind them are
19 ignored.
20 And offline we could discuss that.
21 But so when we see these cancers that we know
22 that as a group they're caused by a certain

1 group of chemicals, these people are high
2 priority workers with more than 20 years with
3 those chemicals. But then their specific odd
4 little non-Hodgkin's lymphoma is discounted
5 because it doesn't have the full
6 epidemiological study behind it, and it's not
7 an IARC 1 listing, so it doesn't ever get on
8 anybody's radar.
9 So but I -- we can talk about that.
10 CHAIR MARKOWITZ: Sure.
11 Dr. Friedman-Jimenez?
12 DR. FRIEDMAN-JIMENEZ: Yeah. I
13 think this is a very difficult area. When you
14 get to a possible association where you're at,
15 say, the IARC 2.A probable carcinogen versus
16 IARC 2.B possible carcinogen level, now you're
17 really out of the realm of a claims examiner
18 making that decision.
19 And, in fact, any of us in this room
20 would not have the skill set to do that. Most
21 doctors don't. Most epidemiologists don't.
22 Most toxicologists don't. You have to really

1 have a broad skill set. And then you have to
2 be uninterested, I mean you have to be -- not
3 have a conflict of interest. And many of the
4 real top experts often work for industry or
5 they work for the government or they have some
6 other conflict of interest that -- so it's a
7 real difficult area.
8 And I think that it really has --
9 there needs to be a mechanism by which these
10 difficult cases get considered at that level by
11 someone that, or people that have that skill
12 set. And, for example, in New York State
13 there's an impartial specialist unit, part of
14 the Workers' Comp Board, where they send
15 difficult cases to experts to make a final
16 adjudication. And that works to some degree.
17 But it's not easy at all.
18 And I think to expect a claims
19 examiner to decide these cases based on, on
20 sort of a cookbook formulation is not going to
21 work once you get to those, that level of
22 uncertainty in whether the exposure is

1 carcinogenic.
2 MEMBER WELCH: But I would just say
3 to that, that unusual cases are unusual. And
4 at this point we need to fix, no, we need to
5 fix the problems for the run of the mill cases.
6 George, no, it's like I mean -- anyway we don't
7 have -- we get to stop.
8 DR. FRIEDMAN-JIMENEZ: Just one
9 quick. Unusual cases are very common because
10 there are many different types of unusual
11 cases. There are thousands of chemicals out
12 there for which there is not enough known. And
13 it could be an unusual case.
14 So even though it's unusual in the
15 sense that it may be less probable, there are
16 many different -- the universe is very large,
17 so unusual cases are not necessarily rare.
18 CHAIR MARKOWITZ: Okay, so it's 5:00
19 o'clock, which means we're going to adjourn for
20 the day.
21 Mr. Rios, anything people need to
22 know? Okay, we're going to start up again 8:30

1 tomorrow morning. Thank you to the public for
2 participating, listening at least. And we will
3 continue tomorrow morning.
4 (Whereupon, at 5:00 p.m., the
5 Advisory Board recessed, to reconvene at 8:30
6 a.m., October 18, 2016.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1