UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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WORKING GROUP ON PRESUMPTIONS

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MEETING

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TUESDAY, MARCH 14, 2017

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The Working Group met telephonically at 1:00 p.m. Eastern Time, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:
JOHN M. DEMENT
KENNETH Z. SILVER
LESLIE I. BODEN

MEDICAL COMMUNITY:
STEVEN MARKOWITZ, Chair
LAURA S. WELCH

CLAIMANT COMMUNITY:
GARRY M. WHITLEY
FAYE VLIEGER

DESIGNATED FEDERAL OFFICER:
CARRIE RHOADS

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

1:07 p.m.

MS. RHOADS: Thank you. Hello, everybody. My name is Carrie Rhoads and I'd like to welcome you to today's teleconference meeting of the Department of Labor's Advisory Board on Toxic Substances and Worker Health, the Presumptions Working Group. I am the Board's Designated Federal Officer, or DFO, for today's meeting.

First, we do appreciate that the Board members spend in preparing and deliberating at the meeting. I'll introduce the Board members and take a quick roll call. Dr. Steven Markowitz is the chair of this group and chair of the Advisory Board on general.

CHAIR MARKOWITZ: I am here.

MS. RHOADS: And the members are Dr. Victoria Cassano and I think she's not called in yet. Ms. Faye Vlieger.

MEMBER VLIEGER: Faye here.

MS. RHOADS: Dr. Leslie Boden.

MEMBER BODEN: Here.

MS. RHOADS: Mr. Garry Whitley.

MEMBER WHITLEY: Here.

MS. RHOADS: Dr. Laura Welch.

MEMBER WELCH: Here.

MS. RHOADS: Dr. John Dement.

MEMBER DEMENT: Here.

MS. RHOADS: And Dr. Ken Silver.

MEMBER SILVER: Here.

MS. RHOADS: We're scheduled to meet from 1:00 to 3:30 p.m. Eastern Time today. In the room with me is Melissa Schroeder from SIDEM, our contractor.

Today, we may take a break at 2:30 or so and it's up to Dr. Markowitz at the time if that's a good time to break or if we want to skip it that's fine, too.

Copies of all meeting materials and any written public comments are or will be available on the Board's website under the heading Meetings and the listing there for this subcommittee meeting.

The documents will also be up on the WebEx screen so everyone can follow along with the discussion.

The Board's website can be found at dol.gov/owcp/energy/regs/compliance/advisoryboard.htm. If you haven't already visited the Board's website I do encourage you to do that.

If you click on today's meeting date you'll see a page dedicated entirely to today's meeting. The webpage contains publicly available material submitted to us in advance of the meeting and we will publish any materials that are provided to the subcommittee.

There you should also find today's agenda as well as instructions for participating remotely. If you are participating remotely and you're having a problem please email us at energyadvisoryboard@dol.gov.

If you're joining by WebEx please note the discussion is for viewing only and

will not be interactive. The phones will also be muted for non-Advisory Board members.

Please note that we do not have a scheduled public comment session today. The call-in information has been posted on the Advisory Board website so the public may listen in but not participate in the subcommittee's discussions.

The Advisory Board voted at its April 2016 meeting that subcommittee meetings should be open to the public. A transcript and minutes will be prepared from today's meeting.

During the Board discussions today, as we are on a teleconference line, please speak clearly enough for the transcriber to understand and when you being speaking, especially at the start of the meeting, please state your name so we can get an accurate record of the discussion.

Also, I'd like the transcriber to please let us know if you're having trouble hearing or with the recording.

As the DFO, I see that the minutes are prepared and ensure they are certified by the chair. The minutes of today's meeting will be available on the Board's website no later than 90 calendar days from today per FACA regulations. But if they are available sooner we will publish them sooner.

Although formal minutes will be prepared we will also be publishing verbatim transcripts which are obviously more detailed. Those transcripts should be available on the Board's website within 30 days.

I would like to remind the Advisory Board members that there are some materials that have been provided to you in your capacity as special government employees and members of the Board which are not for public disclosure and cannot be shared or discussed publicly including in this meeting.

Please be aware of this as we continue with the meeting today. These materials can be discussed in a general way

which does not include using any personally identifiable information such as names, addresses, specific facilities of the cases being discussed or doctor names.

And with that, I convene this meeting of the Advisory Board on Toxic Substances and Worker Health, the Presumptions Working Group, and I am turning it over to Dr. Markowitz, who's the chair.

CHAIR MARKOWITZ: Thank you, Carrie, and thank you for all the preparatory work that you do and have done in relation to this meeting and the other subcommittee meeting -- Board meetings.

I'd like to welcome fellow and sister board members to this call and also members of the public who may be on the phone or may be on the WebEx as well. I see a few on the WebEx.

We very much value your input, especially since some of you have either worked at DOE sites for long periods of time or have

been involved with DOE workers in the compensation program or other related DOE worker programs and thereby can provide very useful advice to us so thank you for participating.

Today we are going to review my discussion about presumptions and I have prepared some proposed remedies or alternatives, modifications to some of the current policies of DOL in their use of presumptions.

And just as we go through them keep in mind I put those up in part to reflect the conversation that we had in our last meeting and other discussions we have had but also as starting points for discussion.

So please don't interpret them as, you know, proposed solutions per se but just as specific ideas as a way of stimulating and really jump starting sort of concrete solutions to these -- what I regard as problems.

What I would hope to do by the end

of this call is get ideas -- more ideas about modifications out on the table with the hope that we can firm them up and bring -- hopefully bring some specific recommendations to our next meeting next month, actually.

Any comments or questions at this point? Okay. So let's start. If you could advance the slide on the WebEx. Okay.

So I showed this slide last time and I just -- I'll just do it briefly this time as well. These are other federal programs -- compensation programs. Maybe not the greatest colored slide but it shows you for the different programs what the targeted exposures are and also what some of the eligibility criteria are and you can see that for most of the programs actually the eligibility criteria are quite broad, in particular with reference to the kind of exposure information that is used in those programs to determine compensability that the causal criteria are not all that specific.

In particular, given a relative void in exposure information, say, for Agent Orange for vets or some of the other exposures, World Trade Center included, that they use time parameters -- time and location parameters, basically, to develop the presumptions.

So that's the overall context of the special dedicated occupational compensation programs run by the federal government over the last really 30 years or so.

Next slide. Going back to the 2000 Act, there were exposure presumptions in the Act established for two types of exposures -- radiation and for silica -- and it's, I think, helpful to remind ourselves just for a moment about these presumptions. It is legislated so DOL follows them without modification.

And in the original Act if a person worked essentially the equivalent of one year at any of the three diffusion plants before 1992 in a job which was monitored or a comparable job in which radiation was

monitored, then they automatically entered the special exposure cohort and became eligible for compensation for -- if they developed one of 22 cancers or so.

And, of course, there have been an additional 110 or so special exposure cohorts defined in the last 16 years across the complex.

So looking at that just for the moment it gives you a duration, it gives you the calendar time and it gives you something about the job that is needed to develop or deserve compensation.

For silica, again, a minimum duration, the -- I looked specifically again for any information about jobs or exposure and in the Act it simply says was present during mining of the town and this was at one of two fields, specifically in Nevada or Alaska.

So those are presumptions that were promulgated by Congress at the beginning of the program and relatively, I think, stripped set

of parameters.

By the way, as I am going through this I may not stop every -- after every slide and ask for comments or so -- or questions. So just jump in.

Next slide. So the elements of presumption, at least on the exposure side that were used in the original Act or have been used since by DOL in its policies but are also used in the other federal compensation programs I list the elements there.

Job title really is a proxy for the likelihood of and frequency of exposure. Since we rarely have direct information about intensity of exposure by way of airborne measurements or other measurements we use a proxy for intensity.

And then we also look at job title particularly in the absence of other information about the frequency of -- a possible frequency or a likely frequency of exposure.

Calendar years can be important because exposures were in general worse many years back. But that is a tricky element as we saw in the 1995 circular on policy that DOL had, which it had just rescinded in making a decision based on the likelihood of exposure after 1995.

And then latency, which is included at least once in DOL presumptions, but we will get to that, and then we are not going to deal with today diagnostic criteria, which is more technical and it is being dealt with in the subcommittee on Part B, lung disease CBD and to a lesser extent keratosis. We are not going to deal with it here in these diseases that we talk about.

Any comments? Okay. Next slide.

So what I did then was to take the original Act's presumptions on radiation-related cancer in silica and put it in this table so that we can look at duration job title, calendar years and the issue of latency,

although it wasn't included for those two sets of presumptions.

And I went over this when I went over the previous slide but I am going to be showing this kind of slide, this kind of table with reference to some of the other outcomes and so I just wanted to introduce this with the original conditions identified in the year 2000.

Next. So asbestos is important because it was at all the sites. It's important because it's caused more death and disease than any other single occupational toxin, broadly, in industry.

And it's also important because it appears in several different locations in the procedures manual and in a bulletin and circular and I am not even sure -- I've looked multiple times -- I am not even sure whether I attached at all the places where it's mentioned. And if anybody on this call knows of additional written guidance for the claims

process that addresses asbestos please let us know or if you know right now just please mention it because I'd like to add it. These different statements appear to have been elaborated at different times and not all of them are dated.

So in particular I am a little uncertain about when things are moved to the procedure manual. The transmittals, bulletins and circulars.

But in any case, it's probably not all that critical. Next.

So these are the asbestos-related diseases identified by DOL. This was in a circular in 2015 and that's the universal behaviors that they deal with more or less.

In pink I've indicated the diseases that are specific for asbestos exposure. Most people on the call know this but there may be some who don't and that may have some impact on how we think about exposure presumption.

And the other conditions in yellow

are not specific to asbestos and have other causes including some that have, for the most part, cancer of the ovary were the cause of most instances commonly known.

We have -- I have to say that I don't have a good sense on the claims process of how frequently these entities appear in the claims. COPD, we know, is relatively common. But for the other conditions, has anybody seen any data on -- from DOL directly on numbers of cases or rates over time?

So it's -- we will just move on. Next slide.

So in the procedures manual the first kind of look at asbestos that DOL seems to have taken I provided the direct quote and if you'd just look in that paragraph it says that the detection of exposure would be based on whole different factors such as period that the person worked, type of work performed and location of employment. That was the original outline of what was to be considered. So this

is still in the procedure manual. Next.

And so this -- the next piece that I could find actually dealt specifically with ovarian cancer. I think this was in response to the change in the Haz-Map where ovarian cancer was added as an outcome following the IARC review of asbestos in 2012 where they added ovarian cancer as an outcome related to asbestos and here for the first time you see actually the exposure presumptions in relation to an asbestos condition which factor in some of the time factors that we are interested in.

So we do require a year of exposure in a job title and a restricted list of job titles, which I'll show in a moment and that this year of exposure had occurred before 1986 so calendar -- there is some calendar time specification and then for the first time they say it's got to be a 20-year latency period between first exposure to asbestos at DOE and the subsequent -- and really the diagnosis of ovarian cancer.

Next slide. And this is the list of 19 -- our list A. Mostly construction and maintenance job titles. Very few others, and these are -- this is the list that DOL identifies as very high likelihood of asbestos exposure, at least going back in time.

Next slide. Now, I found exposure presumptions for asbestosis and I am not quite sure when this was added. It appears to be after the Circular 15-05. So it appears to be relatively recent and as with ovarian cancer requires a year of exposure although it doesn't specify any calendar time to give the 10-year latency.

Next. We have to keep reminding ourselves that DOL does address claims that don't meet the presumption criteria. They do set out a description for the claims examiners to do.

And so, for instance, if a woman who has ovarian cancer reports asbestos exposure or somehow in the process the claims examiner

learns about asbestos exposure.

If they don't meet that year -- if it was post-1986, it didn't meet the 20-year latency or any of that the claims examiner would refer to the industrial hygienist for review. I have no idea how many cases or what the outcome of these reviews are. And next.

So I took the cancer of the ovary and asbestosis and I put it in the same kind of table that I set out before for duration, job title, calendar year, the latency, and you can see just comparing ovaries with -- ovarian cancer with asbestosis is some difference in the -- in the DOL approach.

Now, some of that may well be justified, by the way. Asbestosis requires a fair amount of asbestos exposure and cancer of the ovary perhaps less or any other conditions perhaps less. We will get into that. But in any case, I wanted to just understand -- look at how they approach this and standardize it. And I would add COPD here, although we will be

talking a little bit about -- more about that later.

But for COPD the duration is not one year but 20 years of exposure to asbestos. They use List A and now they've set that exposure and, again, this policy appears to be in the last year or two they said that exposure to having had occurred prior to 1980.

So comments? Questions? Let's go to the next slide.

MEMBER VLIEGER: Sorry, Dr. Markowitz. This is Faye. Is there any documentation for why there is this wide range of exposure dates and levels and times?

CHAIR MARKOWITZ: If you could go to the previous slide.

MEMBER VLIEGER: What guidance was given for these?

CHAIR MARKOWITZ: Right. So, you know, what I've accessed is the circulars or bulletins, whatever statements appear. I don't see -- I don't see rationale. I mean, I don't

see a scientific summary that forms the basis for these decisions.

COURT REPORTER: Dr. Markowitz, this is the transcriber. Could you speak up please?

CHAIR MARKOWITZ: Sure, sorry. Is this better?

COURT REPORTER: That sounds better.

CHAIR MARKOWITZ: Okay, good. I don't know -- yes, I am not aware of any. Has anybody else ever seen any?

MEMBER WELCH: This is Laura. I've looked for it and actually we requested some explanations from DOL at one point in the past but never got anything that made sense to me, just that somebody had reviewed the literature and it was reported in the information.

I could probably -- I can find -- I'll dig up that response because it did make some specific references. But as we know, you wouldn't and none of us would pick that 20 years but I don't think that the references really defend that position. But I'll find out

and circulate it.

CHAIR MARKOWITZ: Great. I mean, there was a document, Faye, actually that you referred us to dating back to 2006. The contractor had performed an analysis and it appears in -- I think it's called the matrix in -- attached to -- I think it's the procedure manual. We are going to look at an excerpt from that later.

But it doesn't really provide references or lay out the rationale, certainly not for cancer of the ovaries. It may -- there is no real rationale there. There is a little bit more detail but no real rationale.

MEMBER VLIEGER: Okay. Thank you.

CHAIR MARKOWITZ: Okay. So next slide. So this is Circular 15-05 and we can go to the next slide. This is important because here they actually tried to address the whole set of asbestos diseases.

Next slide. And we reviewed this in the past but this is something -- this contains

elements that require some modification. So we need to look at it again and try to figure out what we think -- how we think it should be fixed.

So this is for claimants who claim asbestos-related diseases. So for some of us, you know, when we think of asbestosis or we think of asbestos-related plural, you know, we think of mesothelioma. We are certain that there was asbestos exposure previously. For some of the other conditions like lung cancer or cancer of the ovary there may or may not have been asbestos exposure.

The -- this guidance directs the claims examiner to assume -- and after 1986, that asbestos occurred but at levels below the accepted standards, in general.

However, the exception to that is for our List A who are believed -- who the claims examiners told had a greater potential for asbestos exposure, at least for this one decade, 1986 to 1995, and then it is accepted

that they were potentially exposed but likely at low levels.

So, presumably, we don't know what low levels -- how that relates to accepted standards or not but, again, the assumption is that they were -- that even this group which has previously been identified as being very likely to have asbestos exposure between '86 and '95 it's asserted that their levels were likely to be low.

Now, this gets us into this problem of date setting, of assigning specific years to events happening, protections being put in place, practices changing, which we are uncertain about and which we felt uncomfortable about in relation to the post-'95 circular that's just been rescinded. And this raises that same problem of -- let's continue this slide.

And here's List A again for those of you who haven't memorized it. Next. So now what the claims examiner has to do, even for

this date, is find definitive and compelling evidence to show that the post-'86 really worked on consistent unprotected contact with asbestos or ACM.

So this is now -- this is not an industrial hygiene task. This is for the CE to gather that information and to make a judgment about that and then the circular sets out what time the information should be used.

Next slide. And so the CE, having collected relevant information, examining it, than make a decision that if the exposure is above the guidelines then the IH is involved to make a further decision. Next slide.

However, this -- there is a sentence which is the paragraph that I -- we looked at last time that appears to contradict everything or much of what was just said, which is that any finding of exposure including infrequent incidental exposure requires the physician to take a look at it, to opine on the possibility of causation, including even minimal exposure.

So it's not clear whether the CE can just find minimal exposure, not enough to send it to the IH but then has to send it to the CMC for a medical opinion in which case, frankly, the doctor is a little hamstrung because they don't -- they don't have the IH input otherwise. It's just unclear here what this apparent contradiction means. Next slide.

So to summarize it, they don't say anything really about pre-'86 exposure. So they are not explicit about that. They don't list its presumptions about that.

And then for after '86 you assume it was below the accepted standard, presumably the OSHA standard in '86 except for List A workers. Next slide.

List A workers we can assume it was perhaps above the standard but it was likely low and then to show that it was greater than low the standard is definitive and compelling evidence that's consistent on protected contact. Next.

And then refer to an IH if you find that evidence. But, frankly, number six, any exposure requires physician input. Next slide.

So one issue here is what about pre-'86 presumptions. It's largely silent on that, although -- well, and then the problem in the '86 to '95 exposure is that that assertion is not really based on any evidence. No evidence has been provided and, frankly, it's doubtful that such evidence exists. And then the way in which -- number three is the way in which the language is crafted, designation of this decade of List A work has no exposure. Doesn't really facilitate decision making because the CE still has to gather information of the health exposure to asbestos. Whatever real information might exist would allow a real decision. Next slide.

Now, the problem is that occupational physicians would have sometimes a difficult time citing what constitutes consistent unprotected contact with asbestos or

ACM and the CE is put in the position of having to make that difficult judgment.

And then finally the layout of how the CE makes the decision on low levels then contradicted by the statement about the physician review. Next.

So there are some remedies that we could propose for some of these problems. One is we could expand List A, and actually could you move to the next slide for a minute because I want to see where we are at and then we can move back. The next one. One more. Okay. Go back two now. Okay. Go back one more, please. No, no. I am sorry. Go back one more. That's it.

So List A contains some maintenance and construction job titles and very few other job titles at the plant. So one remedy would be to propose on a rationalized basis a broader set of titles that likely had asbestos exposure in the past.

That may be seen a little

differently for if the claimant has asbestosis or mesothelioma or you know they had asbestos exposure somewhere than for the less specific asbestos diseases.

The -- secondly, is to rescind the presumption of that low exposure post-1986. The real information that exists about exposure has to be looked at. So there would be no need for a presumption. Certainly if a person is -- has a claim for asbestosis or asbestos-related diseases like mesothelioma then you wouldn't guess about exposure. You would look everywhere you could for exposure. But I would argue even for the less specific asbestos diseases if the claim is asbestos exposure make no assumption about what happened post-'86 but look at what's actually available for the CE for decision making.

Third possible remedy is to pick a calendar year as the cutoff that has a safety margin. So that's extremely vague and I apologize. But I can understand why DOL picked

single years for decision making. It's clear it has some rationale in reality. 1986, 1990, 1995, we know the conditions likely did improve over time in many places in the complex.

The problem is that -- on that it's a little implausible to believe in a given year the problem was solved or that conditions changed so much that you want to remove a presumption.

And so one consideration we might look at is whether we would look at a year or a timeframe and then simply add 10 years to that to figure that yes, asbestos use drastically declined in the 1980s and in general there was greater knowledge in the workplace in the 1980s but that that -- that may have taken 10 years to really settle in. And instead of taking a single year -- '86, '90, '96 or the year 2000, in other words, an additional 10 years and say it took that much longer to disseminate. That is to say if we want to propose year timeframes to just say they can be useful. So that's one

idea.

And so number four is simply to beat the system, which is come up with minimum exposure durations and latencies to the extent that they are credible for all the asbestos-related diseases.

So, you know, let me stop here and I have some other -- this list is a little bit longer and then I come up with some specific ideas on what these criteria should look like.

So why don't we -- if people have comments on these -- what I've just shown that would be -- that would be good.

MEMBER BODEN: Steven, this is Les Boden.

CHAIR MARKOWITZ: Sure.

MEMBER BODEN: I'm assuming you can hear me.

CHAIR MARKOWITZ: I can hear you. Sure.

MEMBER BODEN: Okay. Good. So I have a comment and a question. The comment is

in terms of exposure, would those diseases that are asbestos specific, we know that the person had some asbestos exposure where they didn't develop the disease.

So one might think about a presumption that said some evidence of asbestos exposure from other -- let me try that again. Absent work in other asbestos-exposed occupations that one would presume exposure at DOE for somebody who had asbestosis, mesothelioma, asbestos-related plural disease and the second is a question. In terms of the dates, presumably one route of exposure is by exposure to existing asbestos that was placed there historically and I am wondering, especially given recent evidence about the prevalence -- the incidence of mesothelioma, how easy it is going to be to establish a specific date. So those are -- that's my comment and my question.

MEMBER WELCH: And this is Laurie. I've got a couple of comments unless you want

to specifically respond to Les' comment first, Steven.

CHAIR MARKOWITZ: No, no. Well, I'd rather have a round table discussion than a question and answer so go ahead.

MEMBER WELCH: Okay. One little thing is that the -- I think there actually is a presumption built into the documents you showed us when it said that 250 days was sufficient. So I think it's without necessarily saying 250 days before 1986's decision I think the way -- I would read it that way. And then they are just saying after '86 you can't assume exposure and that it's vague -- don't know how you deal with it after that point.

But the other thing is I actually don't agree that if someone has a diagnosis of asbestosis you could presume asbestos exposure because you need to know that they had asbestos exposure to make a diagnosis of asbestosis. You know, having scarring on the chest x-ray

isn't necessarily asbestosis with non-exposure history. And probably most people who file a claim are not coming in with a medical diagnosis of asbestosis. They are coming in with an abnormal x-ray and a history of asbestos exposure. So they are -- because people don't have to have a medical diagnosis or report from a physician before they file a claim.

So I think what you have is you have people who are -- if asbestos exposure is demonstrated then they can be presumed to have asbestos because they have characteristic findings.

But I think it would help to clarify that question too, you know, could have, like, your chart talks about the exposure but then not talking about the diagnostic criteria for the disease and I think for asbestosis we'd probably want to go back and incorporate what the APS recommended through diagnostic criteria which is basically asbestos exposure and

characteristic findings. Those are my two points.

The third point is there is -- given the fact that there were many different restrictions on asbestos use starting in 1973 through the 1970s in terms of bin and pipe covering and spray-on of asbestos-containing materials there was -- I think there really was a quantitative change in the nature of exposures that people had.

I don't know that you can say that it -- I mean, 1986 is 13 years after spray-on asbestos exposure was banned and it's kind of a weird number because it's not 10 years after use of pipe covering -- asbestos-containing pipe covering was banned. There are still other materials but in terms of the kind of the general exposure people are getting in industrial facilities the use of pipe covering is really a major exposure.

So I don't think -- it's not without reasons whether it's the right way to do it.

It's pretty clear from what we put up there it doesn't -- even if you wanted to say someone should be considering the kind of exposures workers would have had in the 1990s you can't get the claims examiner to do it. It would really probably have to be an industrial hygienist.

So if you're going to send these cases to industrial hygiene you don't need to put these kind of things in there. The industrial hygienist would do one assessment of each individual case.

And the other thing related to that is, you know, this circular was written before DOL was decided -- the industrial hygienist would have a contract with industrial hygiene so that they can do individual assessments.

So it's probably -- probably would be perfectly acceptable, given how they are handling the cases now to get rid of dates altogether, as you're recommending.

But if you want to put it in as a

presumption then it wouldn't have to go to industrial hygiene.

MEMBER DEMENT: John Dement. As an industrial hygienist, it's still very difficult to obtain a real quantitative assessment of exposure given the broad range of dates and a lot of unknowns with regard to task.

One of the other possibilities -- I think if we will -- we will probably all agree as from the '70s through the '90s, certainly as control for asbestos standards were changed, exposure levels generally decreased over time. So we have a -- so there is 250 days written into the statute.

I would say from, you know, from the '70s through the '90s there is probably a downward trend. One alternative is to require a little bit longer duration of work during this time period as opposed to 250 days prior as a presumption that exposures still would have occurred with that at a lower level and acknowledging that or requiring a longer

duration.

MEMBER VLIEGER: This is Faye. I think one of the things that's being discussed here is whether or not new applications were done that you have to consider that these -- none of these facilities is new and many have been going through different remodeling cycles and the workers are there for that as well as D&D that's going on at all those facilities.

So it's not necessarily the new application but that they are also in shuttering old installations of asbestos and that they are still working the areas that have old applications of asbestos. So I just wanted to have you keep that in mind.

MEMBER WELCH: Yes. No, that's true. I still think that there are differences in the kind of exposures people had once the spray-on application was stopped. So yes, then I think we are familiar with that.

CHAIR MARKOWITZ: Yes, and think about the -- this is Steven -- the -- dealing

with the asbestos in place is that it's probably a smaller set of workers who have significant exposures to those compared to earlier when asbestos was newly used and removed.

And then secondly, the protections for the -- against asbestos exposure in the later years, into the '90s, the protections were probably better.

But this is not to say that we would support the blanket no exposure occurred after date X. It's a question of when you go when you move from presumptions to looking at individual cases -- circumstances of individual cases.

So to get back to Les' point about -- the first comment, I think, about factoring in non-DOE exposures, my understanding is that's just completely off the table -- that DOL is not allowed to in the claims examination process consider occupational exposures other than those at DOE.

MEMBER WELCH: I think that's true, yes. I believe it's true.

MEMBER BODEN: This is Les, and perhaps that wouldn't work, but let me just clarify the idea. And I think that Laura's comment sort of made this anyhow.

My idea was if you didn't need and if -- if there wasn't any evidence of DOE exposure but there was also no evidence of non-DOE exposure that that might work in the person's favor. But I am convinced now that that was a wrong idea.

CHAIR MARKOWITZ: Well, the other -- I mean, asbestosis is a very specific issue because you don't come in with a diagnosis of asbestosis unless the doctor has identified asbestos exposure in the past, and combine that with x-ray of other findings, it leads them to believe the person has asbestosis.

So they may be wrongly diagnosed but probably specifically diagnosed. So that also changes it for that particular condition.

MEMBER WELCH: But I was making the point they don't have to have a diagnosis to file a claim.

CHAIR MARKOWITZ: Right. Yes. But how do they file a claim for asbestosis if --

MEMBER WELCH: They file a claim but they don't -- and they would submit whatever they think supports the claim. I guess, you know, Faye could talk about that but they could file a claim saying that it's asbestosis.

CHAIR MARKOWITZ: Okay. Some medical. Yes.

MEMBER VLIEGER: Department of Labor hasn't necessarily accepted behavior reports even though they come from the Former Workers Screening Program. This is Faye. Sorry, I didn't introduce myself.

Sometimes the workers actually go take the Former Workers Screening stuff that says we believe you need to have this reviewed and then the pulmonologist, some of the pulmonologists in this area, will actually make

a diagnosis of asbestos disease.

In other cases where the pulmonologist, a long-time family pulmonologist refuses to make a diagnosis we provide all the evidence and it goes to a CMC. So it's a kind of a mixed bag of how it's accepted or diagnosed.

CHAIR MARKOWITZ: Other thoughts or comments?

MEMBER SILVER: Yes. This is Ken. Should we also be thinking about splitting mesothelioma off of the special case of asbestos-specific disease? I'm particularly uncomfortable with the requirement for consistent exposure. I know others keep up on the literature, but because it's been associated with trivial exposures over the years I'd be much more comfortable if the criterion were simply unprotected exposure.

MEMBER WELCH: Or just any exposure. Because if there was protection that was sufficient then there would be no exposure.

You know what I mean? There's no point to give anybody a reason to kind of give wiggle room in their interpretation.

CHAIR MARKOWITZ: This is Steven. Does that mean, then, for mesothelioma that if the CE finds any evidence of asbestos exposure that the CE then can make the determination, with mesothelioma, make the determination of causation and bypass the IH and the physician?

Is that what -- by the way, this is the way I think occupational hazard is treated, and we will talk about that in a minute. So it's not unheard of for this stuff.

MEMBER WELCH: Yes. No. Yes, absolutely. I think that's right, that if somebody has a diagnosis of mesothelioma, and that if there is any exposure to asbestos, then we can presume it's an asbestos-related disease and an accept the claim.

CHAIR MARKOWITZ: What about do you want to factor in latency at all?

MEMBER WELCH: Yes, I think that

would be reasonable.

CHAIR MARKOWITZ: Yes. So we will pick up, like, 15 years prior or something like that.

MEMBER WELCH: Oh, you could go longer. I mean, 15 is fine. Twenty is fine. You know, the average latency for mesothelioma diagnosis now is over 40 years. Yes.

CHAIR MARKOWITZ: Okay.

MEMBER BODEN: Can I back up to the one word in there that at least makes me uncomfortable? And that is the unprotected. It's my limited understanding, at least, of protections in the workplace is that it's sometimes hard to tell if the position is protected or not.

MEMBER DEMENT: This is John Dement. I agree with Les. I think that that words need to come out. Exposure is exposure and leaving it in I think just makes confusion and also presumes that some of the PPE actually works and works well, and sometimes it actually

doesn't.

CHAIR MARKOWITZ: So, this is Steven. So to carry it further, should the CE play any role in triaging asbestos claims based on exposure? Or should it be that the CE's role when faced with any asbestos-related disease is to gather whatever exposure evidence exists and then refer all cases over to an IH or a CMC? Then they're not in the position of deciding what consistent means, deciding what unprotected means.

MEMBER WELCH: I don't think you need to do that for mesothelioma. I think that the claims examiner should be able to accept the claim.

CHAIR MARKOWITZ: How about for the other conditions?

MEMBER DEMENT: This is John. I agree. I think the role of the CE is to gather information and get as much as possible with regard to the frequency, duration, intensity, all these things that are important.

I think we need to write the presumptions to have presumptions that allow a vast majority of them to go forward without a lot of additional work. But I think the rest you could go through your IH assessment. And IH assessment is just really still a tough issue here. You know, it's subject to the information available, of course. It's also subject to the skill and experience of the IH taking a look at the data.

MEMBER BODEN: So this is Les again. One other clarification. If it seems that we are discussing both things that are directly presumption-related and things that aren't that we might want to bring back to the full committee.

So, for example, under what circumstances the claims examiner should send cases on is not exactly a presumptions issue. An important issue.

MEMBER WELCH: But, Les, wouldn't it be one -- if you have a presumption then isn't

it the case that the ones that don't meet the presumption get sent on so they sort of are, you know, bookends to each other or --

MEMBER BODEN: Well, I think that's somewhat of an open question. That is, it could be, if you don't meet the presumption, then what do you do next? And maybe for some cases the CE doesn't send them on and for some cases they do. I'm just agnostic about that. I agree with what -- I mean, logically speaking, that's the case, although I agree with what John just said a couple of minutes ago.

It may be, you know, even for cases that don't have presumptions, that the whole committee will want to look at that, decisions involving whether a case gets sent on or not and what information is sent on to the IH or the medical.

CHAIR MARKOWITZ: Right. So this is Steven. So, you know, we can recommend criteria for presumptions, and if they don't

meet the presumptions then the CE can -- it could be the CE could make a decision on the case or the CE could be obligated to send the case on for expert review.

MEMBER BODEN: And when they send the case on they could be obligated to provide certain information which they might not --

MEMBER WHITLEY: Gary here. In Oak Ridge the majority of the people who file for any lung-related stuff, as asbestosis or COPD or whatever, they have a pulmonary doctor's diagnosis that they take with them that says, basically, I've got asbestosis. They already are diagnosed by a pulmonary doctor.

CHAIR MARKOWITZ: Right. So that's helpful. So let's just continue on the slides. So there's just two more on this issue, I think. A couple more. Anyway, if you go to the next slide, let's see. Next slide. Yes, we've already covered this one. And then we go to the next slide. Slide 28.

So here what I did was to try to

fill out the cells, dividing up asbestos-specific and non-specific conditions, looking at different elements that constitute exposure and then proposing some timeframes. And I think these could be useful to discuss this point.

For instance, obviously, 250 days doesn't apply to mesothelioma, so that needs to be refined. But I want to discuss the job titles for a moment because the list seems overly restrictive. It consists almost entirely of maintenance and construction titles. I don't know whether it includes all relevant maintenance and construction titles. Does anybody have a sense of that?

MEMBER VLIEGER: This is Faye. It doesn't. It doesn't. For instance, there's a lot of people in and around the job site that are not protected. For example, as a production planner I had full access to walk in anywhere and it didn't matter that active work was going on. I was not required to wear any

respiratory protection and I had to be out in the field to assess how well a job was going or not going and to plan for future jobs.

And so planners, production planners, that sort of thing, are not considered. There's also people like expediters that are constantly in and out of the field and we're not classified as production or maintenance. We're classified as exempt employees. And so there's a lot of, you know, ants out in the field that aren't necessarily accounted for in this list.

CHAIR MARKOWITZ: Did you say ants?

MEMBER VLIEGER: I did. We kind of scurry around like ants when we're doing a job.

MEMBER WELCH: Steven, can I add something?

CHAIR MARKOWITZ: Yes.

MEMBER WELCH: This is Laurie. Can I add something? I think that one of the issues with job titles that we have seen with the application of the hearing loss presumption

when there's a list of job titles, because there's so many job titles within the DOE complex sometimes people are doing the job equivalent to that job title but it's not that job title and people's claims have been denied because they were in the wrong job title.

So, I mean, I think we might want to be looking at something that's not saying "job title," but we could say type of work or something like that, which then does require more judgment on somebody's part.

You know, at one point they figured out how many production job titles. There were 25,000 different job titles in production. A crazy number, and one person stays in the same job and then they have over their career a number of different job titles. Just something to keep in mind when we start -- I mean, I think what you have in your slide there makes a lot of sense. But how we get from that, which are kind of work areas, to something that a claims examiner can use may take some thinking.

CHAIR MARKOWITZ: This is Steven. So, in our formal work program, which I think it's 14 sites, we have thousands of job titles, and it's frankly been the bane of our program. And in maintenance and production, in engineering, our approach was to, best as we could, divide them into six groups, occupational categories, we called them, occupational groups.

And the four that are under job titles here are four of those groups. The other two are administrative positions and service workers. Now, some administrative, some service workers may have exposure to asbestos. But it would be less routine, less predicted, predictable than, say, production or engineering, by way of comparison.

So one approach is to say to the claims examiner, if their job titles fall into one of these four occupational categories, we can presume asbestos exposure in some timeframe.

MEMBER WELCH: Yes, I'm good with them.

CHAIR MARKOWITZ: I mean, there's the practical problem of -- yes, the claim is not going to come in, in one of these occupational categories, come in in specific job titles and so there's a translation challenge to go from the specific to this more general. But for the sake of presumption it could be done.

My question is, do we have enough evidence to support production and engineering? Because I think we have enough evidence on maintenance and construction. And it's an open question.

MEMBER WELCH: The answer is in your answer. I mean, you can learn them from many of those people.

CHAIR MARKOWITZ: Exactly. Exactly. And we can discuss that later. But anyway, this is an approach that's certainly broader than List A and solves certain problems. The

question is whether there is sufficient rationale for it.

John, what do you think?

MEMBER DEMENT: Well, I think it all gets down to what specifically were they doing? And as Laura says, there is so many jobs that have different titles that are actually doing similar work.

So then it gets down to the task, and I think there are -- we could probably expand this list of presumed or known exposed jobs a bit. And some of the things that Faye has talked about I think are important. I don't think we are ever going to feel very comfortable that we've captured all of that. You know, perhaps just the statement that those we know are exposed. There can be others based on the exposure tasks that are involved that could be similar.

And I don't know, the SEM committee has been working on trying to get a little more specific with regard to tasks that certainly

production types of workers might do. And I guess we're hopeful that that might help with this issue that we are sort of dealing with right here. But I think we can expand this list of presumed exposures, but it's never going to be all that complete.

MEMBER BODEN: This is Les. I'm wondering if there is a way, without being too vague, of talking about job titles that are similar or equivalent to ones on the list, so that if somebody is, I don't know, a painter on one list and a master painter on the other list, that they don't, the master painter doesn't get left out.

MEMBER DEMENT: I agree. The SEM does some of that. I mean, it does map some of these things in together, and it does have at least a brief description of the task. So if a worker did a similar task in a similar timeframe then they should allow that to be a presumed exposure as well.

CHAIR MARKOWITZ: So do you think

it's reasonable to set any calendar year to provide a limit for the asbestos-related diseases?

MEMBER DEMENT: Yes, this is John. I don't think any hard date is going to be useful or sensible, but I do think, you know, as Laurie's talked about, after banning some of the applications when we moved forward in time the different OSHA regulations were put in place, and different regulations for removal of asbestos were put in place, I think it was being presumed that exposures likely decreased.

Now, whether or not they decreased to the "lower than" guidelines on a routine basis is quite questionable.

MEMBER WELCH: And if we are thinking about a presumption, this isn't -- we don't have to say, you know, any exposure after some period of time is nonexistent. It would be if you're exposed before a certain period of time you can presume to have been exposed. And then after that the burden of proof is harder,

maybe. I mean, it would go to industrial hygiene with you and me. One of the goals of presumptions would be to help people reduce the burden of the claims, both on DOL and on the workers, by saying, okay, if you meet these criteria we have all the information we need. So I think we can take years for that. I mean, Steven has proposed some in the slide that you have up.

MEMBER DEMENT: I think, as I look at it, an exposure presumption as it sort of gets to the IH issue, to me a presumption should have some surrogates of exposure that allow you to come, if you apply it, that you come to the conclusion that if you had sent that to an industrial hygienist and they did their exposure assessment, then it would be more likely than not that the IH would have given a positive exposure determination for the case.

So, you know, what we are doing is, in my view, we are trying to cull off that

first 50 percent that we can say, if I go to the industrial hygienist it is highly likely that they are going to give a positive exposure assessment. To me, you know, going back and sort of dealing with this threshold that we were given in the Act, those 250 days, is a good starting place. As, you know, sort of looking at that going forward, again, we might just consider some dates and not making a fixed criteria but requiring a little more duration for some of these asbestos-related diseases, certainly exposure for mesothelioma.

CHAIR MARKOWITZ: This is Steven. One amendment, friendly amendment, to what you just said, John, is that we use presumptions when we don't know and we don't have detailed information.

So it wouldn't be just the case that, had this been sent to the IH, the IH likely would have concurred. It's also the case that, had we sent this to the IH, the IH might have said, "well, who knows because I

don't really have -- the information is not available about that exposure to be able to make a determination."

I mean, that, to me, was what the whole -- in the original Act in 2000 when they made the SEC with the radiation exposure was an admission that they didn't have enough data and they were going then simply convert it to a presumption. And I think, you know --

MEMBER DEMENT: Steve, I agree with you, and that's the situation still here with the IH. I mean, they are still dealing with very limited information.

The SEM committee is making some recommendations on, you know, when the IH gets involved in some of these cases. And they could make a more informed determination, certainly, than a non-trained individual, but they are still very limited in trying to make an even semi-quantitative exposure determination in these cases.

CHAIR MARKOWITZ: Right, which is an

argument for the presumption.

MEMBER DEMENT: It is, absolutely, an argument for presumption.

CHAIR MARKOWITZ: Yes. Well, okay. So, we need to move on. So any further final comments?

MEMBER WHITLEY: Garry here. I think we go back to these job titles. Your idea of the groups, like the maintenance, construction, production, folks, like, in six groups, it would be easier for a claimant to convince the CE that they fall into that group if the job category is not one listed in that group than it would be for them. Because the CE is going to come back say you're not an electrician so you don't fall into this group.

So I think that, with job titles, if we could go to the large groups, kind of like you've got on your chart, then it might be easier for the claimant to fall into the right category.

MEMBER BODEN: So "construction,"

for example, rather than all the specific construction occupations.

MEMBER WHITLEY: Yes. Or like Faye said, a planner or a supervisor is out there with the people working right beside them but they don't fall into one of these groups necessarily, or especially when I go back to the group on the A List a while ago. But they are part of maintenance. But it would be easier to convince -- because to tell you the truth, the coworker letters and all that don't matter. It's whatever the CE looks at. If they've got a list and you're not in that list, you're done.

CHAIR MARKOWITZ: Yes. And, you know, the job titles -- the specific -- this is Steven -- the job titles that DOL must get on these claims, there must be just enormous variations. This job category approach would simplify things. But we should move on. Do we have the next slide?

The next slide, we already discussed

this point, which is that if the claims don't come through the presumption process that they don't see the IH or CMC. And we've already answered this question, I think, of should there be a minimum threshold of exposure before the CE refers? Which is, our inclination is, on asbestos-related diseases, that those that don't meet whatever set of presumptions are developed get referred to IH or MD.

Okay. Next. We have 10 minutes before we're going to break. So let's push forward because we have some important issues here.

Asthma, next slide. So here I just want to review what the bulletin says. It was developed in the last year and a half, really, and it's different from all the other approaches that DOL uses, which is that if evidence comes as part of the claim that there's occupational asthma, that the CE is instructed not to look at -- look further in terms of exposures or go to the SEM. I think

actually the policy says that asthma's been removed from the Site Exposure Matrices.

And the challenge comes for former workers, really. Item number two, OA, is occupational asthma. So what's a CE to do if a person files a claim if they stopped working for DOE 10 years ago and they file a claim for occupational asthma? Perhaps even this was developed or diagnosed years after they ended their work at DOE. And DOL recognizes that situation and sets out some prescriptions of what it wants from the treating physician and it goes to the CMC. That seems like a reasonable approach, actually.

One topic that -- oh, we can go to the next slide and then I want to raise an issue. And for asthma claims that they don't have work-related rationale, meaning a physician didn't develop that, that the DOL's consultant gets involved. And then finally, when they change this policy, we just need to remind ourselves sometimes that what DOL then

does is go back and look and see if these claims were denied and then right the situation so that everybody's treated the same.

The question I have that arises, and I want to thank one of the advocates for raising this, is that it doesn't really address work-related asthma that represents the agents or exposures that might exacerbate already existing asthma that a physician might not recognize as occupational asthma. And there's not a whole lot of language around that situation.

And I don't know whether anybody has any experience with this in the claims process or has any suggestions about this. This would be, I suppose, an asthma claim in which the treating physician is silent or says it's "asthma exacerbated by," but doesn't call it occupational asthma. In that instance if the claims examiner is even recognizing it as falling into the DOL definition.

But in any case, does anybody have

any experience with this?

MEMBER VLIEGER: I've seen this happen. The acceptance of occupational asthma to this point has been varied. Even if the doctor says it's occupational asthma, the CE, if they don't find that the person could have been exposed to anything in their research, it gets sent to the contract medical consultant with limited information in the statement of accepted facts, which is called a SOAF, and then the claimant is denied.

We have a lot of administrative types who worked next to or in the same shops as welders, sheet metal people, pipe fitters, chemical things, and they come down with occupational asthma. And the majority of them are turned down because their job title is excluding them from this consideration.

So, yes, I've seen it happen. You know, the case of the email that was sent to us in regards to this as it being exacerbated, on the flip side of that I've got a claimant right

now that was sent to a CMC with a statement of accepted facts that did not include asbestos, and they accepted occupational asthma. But then the Department of Labor said, oh, wait, any dust can cause asthma, we're going to include asbestos as a dust and send it back. And now they are saying that the occupational asthma is asbestos-related. So, I mean, I've seen some really hoop-jumping things on different claims. It doesn't seem to be consistent.

CHAIR MARKOWITZ: Well, I'm sure a little bit of asbestos exposure will be accompanied by other dust also. So they need to pin it on the asbestos initially.

MEMBER VLIEGER: I would agree with you on that. But the Department evidently has some guidance that dust means asbestos dust too. So --

MEMBER WELCH: Steven, can you talk up a little more again?

CHAIR MARKOWITZ: Yes, I can. Sorry

about that. Is this better?

MEMBER WELCH: Yes.

CHAIR MARKOWITZ: Can you hear me any better?

MEMBER WELCH: Yes.

CHAIR MARKOWITZ: Okay. Well, I think we should look at some language that addresses the exacerbation issue. That bulletin one, which is relatively recent, which addresses this occupational asthma question, that it can give some specific guidance to CEs around exacerbation of asthma in relation to the exposures at DOE.

So I will take a look at that and develop something. Any other comments on asthma before we take our break?

MEMBER WHITLEY: Hi, Steve. Garry. Recently I've seen the CE will send it back to the treating physician if they diagnose it as asthma or occupational asthma. They will send back to the treating physician to be more specific why he came up with that. I don't

know what they end up getting most times. You know, he's already diagnosed it. But the CEs are sending it back to the treating physician a lot now.

CHAIR MARKOWITZ: Well, you know -- this is Steven -- that raises the question whether they are actually applying the policy, if that's happening. And it also raises the question of whether we should look at some asthma claims.

Does anybody recall if the Board looked at any asthma claims at all? I can't remember.

MEMBER WELCH: I don't think so. We haven't, with the SEM committee we haven't.

CHAIR MARKOWITZ: Yes. And we'd want to do those claims in this coming -- since this bulletin's been in effect to see how it's applied. Okay. Let me make a note of that.

MEMBER SILVER: This is Ken. I think this whole area may be beyond the Presumptions Working Group. It's an area where

they really need some continuing education. I've been involved in a couple of claims where the distinctions among job-induced asthma versus work-aggravated asthma versus rad versus multiple chemical sensitivity was all a big blur.

And I can't imagine that if the policy directives handed down are going to sort that out to the claims examiner. So if there were an opportunity for a continuing education program I would emphasize this area.

CHAIR MARKOWITZ: Plus, you know -- this is Steven -- we should look at when DOL does put into place a new policy, the extent to which the policy is adopted. And DOL may have done that and we can ask them for that, actually.

Okay. So let's take a break for five minutes. It's 2:30. Be back at 2:35, all right?

(Whereupon, the above-entitled matter went off the record at 2:29 p.m. and

resumed at 2:39 p.m.)

CHAIR MARKOWITZ: Okay. So, as Laurie just pointed out, the SEM committee, which meets next week, is dealing with this issue of COPD and presumptions. So we needn't dwell on this too long, but I did want to raise some issues that they may or may not have fully discussed. But in any event, let's proceed. We can go to the next slide.

So, there's very little that I could find, in the procedure manual or otherwise, about COPD. One was a general piece, which is shown on this slide and the second related to asbestos.

And Laurie, were you able to find anything else?

MEMBER WELCH: No. This actually was part of a matrix that had it in the table. So these statements are like, if this is present the claims examiner can award the claim without a CMC. And then on the next -- on the other side of the matrix it tells them when

they have to refer to the CMC, which is the alternate here.

CHAIR MARKOWITZ: Right.

MEMBER WELCH: But there wasn't a whole lot of explanation with that exhibit.

CHAIR MARKOWITZ: This is what the matrix says. And I don't know whether this is actually what the claims examiners follow or not. But this is what's in black and white, outside of a later, a more recent bulletin, a very recent bulletin regarding asbestos and COPD.

MEMBER WELCH: Right.

CHAIR MARKOWITZ: The claims examiner had to have a physician diagnosis of COPD and there has to be some supportive abnormal medical tests. And then they list the tests, which we needn't go into.

Secondly, it says that the employee has a history of being a never smoker. And I'm not sure how to interpret that, exactly, whether it just means the claims are restricted

to never smokers, but this is what it says. And then there needs to be the absence of other diseases that can explain the findings. Next slide.

MEMBER WELCH: I would say I think that this wasn't kind of written as a presumption. It was written as if the claims examiner sees a case like this it's kind of such a slam dunk that you don't need any other assistance.

So it was sort of a presumption but it wasn't saying -- I think it's not -- this seems to imply that DOL thinks that COPD due to dust or due to work can't occur if somebody smokes. But that's not the case. They are just saying if the person smokes they want a CMC to look at it to look at the relative contribution.

CHAIR MARKOWITZ: Well, is that what you saw in writing, Laurie, or is that your general understanding of what goes on?

MEMBER WELCH: Yes, I think that the

-- when you look at that exhibit in the actual matrix, in the other column it says you need a CMC opinion to look at the contribution for smoking.

CHAIR MARKOWITZ: Right. Okay. So I just want to point out -- which slide are you looking at? We are looking at the ones with the --

(Simultaneous speaking.)

CHAIR MARKOWITZ: Right. Right. So how this language is applied, there are problems with it. I don't see how CE can routinely look at the abnormal spirometry or CT scan or any of the two other things listed and make the determination on a routine basis that's supportive of COPD. Obviously, smokers who are exposed to occupational exposures get COPD. And then ruling out other lung diseases that can explain the findings can be a very complicated task, sometimes even for physicians. So it's clearly not something within the province of the claims examiner.

MEMBER WELCH: Yes.

CHAIR MARKOWITZ: Next slide. So this is both in 15-02 relating to COPD and asbestos exposure. Here we see, you know, plenty of minimum exposure prior to 1980 on List A and -- excuse me, or absence as the IH weighs in and finds support for significant asbestos exposure. So, a very narrow kind of set of hoops to jump through for a person to have COPD related to asbestos. Next.

And here's the list. Next. So these are some of the issues. And stay tuned. The SEM committee is going to develop some solutions to these. But using the same framework we've used previously, what are the things that need to be decided around presumptions?

List A just relates to asbestos. And as the SEM committee has dealt with and demonstrated or will demonstrate, that actually it's pretty well established that exposures to vapors, gas, dust, and fumes -- as call VGDF --

over time can cause COPD, certainly aggravate or contribute to COPD. And that represents an enormous universe of workers within the DOE complex. Of course, you have to identify those workers who had those exposures and the SEM committee has a solution to that.

Second is how long the exposures need to be: two years, five years? Are calendar years relevant, you know, if exposures improved over time? And here we're not talking about, you know, asbestos-specific regulations or standards. We're talking about VGDF. So it's a very broad set of exposures. But I'm sure, Garry, you'd tell us how these exposures in 2010 were probably lower than they were back in 1995.

Now, these are latency. And that is, does there have to be any time period between the onset of exposures at DOE and the appearance of COPD? And this is interesting because this is where actually I think aggravation and contribution really kick in

here.

If a person, let's say, given a scenario, let's say a person develops COPD that didn't have exposure at DOE, develops COPD related to cigarette smoke or what have you. And then gets a job at DOE or the job changes such that they now have exposures to dust, vapors, et cetera, and develops an exacerbation of COPD. And so we would recognize that that's aggravation. That latency would be zero. There would be no gap in time between the exposure and the onset of disease.

And then, finally, an interesting issue that we grapple with in our Former Worker Program is a person, DOE worker stops work in the year 2000, the COPD is diagnosed in 2010, and can we attribute that in part to exposures that occurred at DOE prior to 2000? Or how much time period can be allowed to elapse before we can say yes or no, there was DOE contribution.

So let me stop there and just open

it up for --

MEMBER BODEN: This is Les. I have one question actually about the last -- about the time since cessation of exposure, which is it's -- that time has to be that -- not the time to when the COPD initially, you know, started. It has to be in the time to diagnosis.

So it really depends on somebody's going to a doctor and the doctor diagnosing it, which makes it hard to understand how you could have a specific time period. What would be the empirical basis of that?

MEMBER DEMENT: We know -- this is John -- we know that COPD is largely under diagnosed.

MEMBER BODEN: Yes.

MEMBER DEMENT: Actually, based on a model review of some of these claims I see these totally opposite criteria applied. I see the -- I see where a worker many years after their DOE employment in fact develop or is

diagnosed -- developed probably earlier but diagnosed with COPD specifically and the physician reviewing the case said that it wasn't related because it didn't occur more approximately through their employment with DOE. I've actually seen it used in the -- in the opposite direction.

MEMBER BODEN: Yes. No, I think potentially what this says -- what you just described is what this says. It says you need to have it diagnosed within five years.

MEMBER DEMENT: I don't know if I agree with that at all.

MEMBER BODEN: No, I am --

MEMBER DEMENT: I have seen workers, at least based on our analyses, that seemed to develop COPD long after that then they are -- I mean, diagnosed with that. They probably had the disease all along and the physician never told them they had it. So I think five years is probably not quite required.

MEMBER WELCH: Yes, I would actually

-- I wouldn't have a, you know, time after the end of employment because people's lung function deteriorates over time and we know that people who have COPD deteriorate a little bit faster. So someone could have left employment with mild COPD and it progresses over time but still were contributed.

So I don't -- you know, I think it's where having a five-year exposure requirement -- I mean, you'd be -- I'd be pretty confident that any COPD that developed over time in that worker that that dust contributed and you'd not have to worry about what time it appeared. I was talking to Rosie about this yesterday actually because we were reminding ourselves how many times in residency training you see somebody who's physically perfectly well until they got this chest cold and then they have terrible COPD. There is no way they were perfectly well. They just had gotten kind of used to their limitations and thought it was due to aging or something. So people can have

-- you know, as John said, it's often under diagnosed.

MEMBER DEMENT: Yes, the clinical diagnosis occurs.

MEMBER WELCH: Yes.

MEMBER WHITLEY: Garry here. I agree because a lot of these people, until they get the flu or something else, you know, they have a chronic problem, they don't go to a pulmonologist and don't get diagnosed until later in life because they hadn't had any problem. Then they go.

But my other question is you go to your treating doctor, the specialist, the pulmonologist, and he diagnoses COPD and they -- they turn that in as a claim, what does the CE do with that?

Do they -- do they send it on to the -- to the medical doctor or do they -- what do they do with it?

MEMBER VLIEGER: Garry, that matrix that they are talking about on one of the

slides is actually from the econometrics study where they put together those causation tables that's in the procedure manual now and that whole econometrics study was funded by the Department of Labor.

So that's the place that the CE starts is with that table -- COPD table.

CHAIR MARKOWITZ: What about the issue -- this is Steven -- what about the issue of calendar years? If we pursue a presumption set of criteria here would we leave out calendar years entirely, simply say claimants for COPD -- they were exposed -- you know, through developmental exposure information -- they were exposed to VGDF for five, seven, 10 years -- you know, year 2005 to 2015 and developed COPD? What we think is probably those exposures were less than they were had they occurred in '75 to '85. But is there any need at all to put in calendar years or is there any basis on which to include or exclude them?

MEMBER WELCH: I would not put in calendar years because I think that some of the big -- among construction workers some of the big contributors are welding in silica and there is no OSHA standard that requires controlling those STDs. So we'd be saying well, we'd be relying on DOE to tell -- the contractors to control those and we have seen development of the silica standards.

There was so much testimony that current exposures, you know, as in 2013 are very, very high for some tasks and activities. So I don't think we can presume that they are controlled because it would be a good idea and there is a lot of knowledge found in OSHA standards people aren't really controlling exposures. My two cents.

CHAIR MARKOWITZ: And does smoking play any role in the consideration by the CE or should smoking play any role? It's a rhetorical question but --

MEMBER WHITLEY: Garry. I believe -

- smoking, as you all know, doesn't play a role but still the VG, you know, that still aggravates that condition.

CHAIR MARKOWITZ: Right. Yes.

MEMBER VLIEGER: This is Faye. There is something that's not being considered in the discussion that's guidance to the CEs right now is the policy memos that we are not seeing on this issue and also it's on all of the issues that the claims examiners review.

And then there are monthly calls that are done between the district offices and CEs with the national office to discuss adjudicating claims that don't necessarily fall into the procedure manual and there is an entire library of those monthly calls and policy memos that we are not privy to that are being used to influence this and future procedure manual changes.

So when we -- when we look for, you know, reasons why they are making decisions some of it's not apparent to the public.

CHAIR MARKOWITZ: Well, we will request them because there is no sense in us developing recommendations without understanding, at least in writing, what they use to make their decisions. So I --

MEMBER VLIEGER: I agree. I agree, and the only time we know that they exist is if they accidentally mention them in a decision and then we can request the specific one.

But they are not -- they are not on the Web.

CHAIR MARKOWITZ: Okay. Yes. Okay. So I'll submit a request for those. Other comments? Because this will be further discussed on the SEM call.

MEMBER SILVER: This is Ken in relation to your smoking question. Right now they have a rather extreme formulation. Is there data to support something a little more claimant friendly along the lines of quit smoking more than X years ago? I seem to recall some work I did in Boston years ago that

lung function decrements among smokers returned to baseline about 10 years after they quit smoking, or was it 20 years?

MEMBER WELCH: I don't think smoking is relevant here, Ken. I mean, people can get both smoking and dust that contributes to their COPD and that's -- so it doesn't matter if they are a smoker or not. And if you -- if you had COPD and you quit smoking your lung function doesn't go back to normal. You just -- you've got it. I mean, it won't get -- it might not get worse quite as fast as if you were smoking.

MEMBER BODEN: Well, your position, Laura, is more worker friendly than Ken's is, I think.

MEMBER WELCH: Yes.

MEMBER BODEN: Because you don't look at the smoking.

MEMBER WELCH: Yes, I don't think -- I really don't think you can make a case to discount for smoking because let's say somebody has a -- a lot of it depends on the relative

contribution but the way the law is written it doesn't really matter. It's not a -- it's not a -- you don't parse them out and say oh, it's 20 percent dust and 80 percent smoking. So it's 20 percent dust or 10 percent dust it's still compensable under this law.

So as long as dust is known to be a cause or VGDF is known to be a cause then it's a cause. Doesn't matter if someone smoked. So yes, I don't -- I don't think they should take smoking into account.

And one reason to have a presumption for this is that most of the people who are CMCs can't wrap their head around that. They think somebody who smokes you should deny their claim. So and if that's not what the evidence supports so I think it'll help the workers quite a bit to have that presumption of any kind.

CHAIR MARKOWITZ: You know -- this is Steven -- and it may be that it's because they are looking at that matrix and seeing that

it favors, you know, the nonsmoking person.

MEMBER WELCH: I don't -- I can't even find that anymore. I mean, I was just going with the latest version. I have the procedure manual. I can't find it. But, you know, looking through the --

CHAIR MARKOWITZ: It's in Chapter -- it's in the procedures manual Chapter 2. I can't remember which section but I can send it to you.

MEMBER WELCH: Okay. I should have it. It's just I have so many procedure manuals on my disc and, you know, they've been revised and if it's still in the current one --

CHAIR MARKOWITZ: Actually, it's 2-1000 in the slides -- on the COPD slides I actually have it -- I have it in I don't know which slide. It's -- but in any case, I'll send it to you but it's on the slide.

MEMBER WELCH: Mm-hmm.

CHAIR MARKOWITZ: Okay. Any other comments on the COPD because these are going to

be treated in greater depth next week.

Okay. So settlements and hearing loss -- if -- let me see. On the WebEx we are looking at a -- the current criteria slide, right? No, that's not -- the next slide. Next slide. Next slide. Okay. There we go.

All right. So just to review to present, worker has to have 10 years of consecutive exposure -- consecutive years.

MEMBER WELCH: Continuous. Continuous.

CHAIR MARKOWITZ: Continuous, yes. Continuous.

MEMBER WELCH: Yes. So if somebody just, you know, I mean, the way it's been interpreted that they would -- they switched jobs and were out of the site for six months then you have to start over.

CHAIR MARKOWITZ: Right. And next is it has to occur before 1990. There are seven main solvents which are fairly common solvents. Twenty job titles and as opposed to

List A or -- these are -- many of these are much broader than or much more common -- let me put it that way -- operators. Very common are maintenance mechanics, instrument mechanics. Let me see -- I don't know whether -- here on the next line, see if we have a list here. Yes, there they are. These are -- it's different from the list.

It does include some of the maintenance or construction trades but it has other titles like machinist, like janitor, like lavatory workers, guards, chemical operators, other operators, which is a very inclusive term. So it is -- it is a broad set of, like -- well, there again there are a lot of people, obviously that don't fit into this.

Previous slide. And it's silent on the issue of latency and then it'll address the issue of time since cessation of exposure so we can pretty much forget about that.

Can you skip forward two slides? Okay. So the recent memo from the

toxicologist, Dr. Stokes, internal to the national office, was shared with us and just to summarize it, the DOE started using some textbooks on this issue of hearing loss and solvent exposure and cited studies that show that less than eight years of exposure to solvents does not -- is not associated with hearing loss in those three studies that were cited and then there was a study cited that showed that on average -- average of 12 years of solvent exposure is related to hearing loss. And then that memo states that it assumes that the mechanism of hearing loss is the same for all of the seven solvents. Next slide.

So here's the same framework and raising some questions. All you see in column two is the current criteria and then some possible new criteria.

And so there are a bunch of questions here. The easiest one to me is 10 continuous years. I have no insight. I am wondering if anybody has any clue how it was

determined that continuous exposure was necessary because I've never heard of that in any occupational studies of chronic disease.

MEMBER WELCH: Yes, I'd agree with you. If you look at the epidemiology, they don't -- the people have had, you know, 20 years of work in this industry, for example, but there is no -- how that was assessed and whether the people had continuous exposure that process is not known. You know, it was based on their employment history.

CHAIR MARKOWITZ: Right. I mean, the --

MEMBER WELCH: And --

CHAIR MARKOWITZ: No, go ahead. You have anything else?

MEMBER WELCH: Yes. The other thing is that you can -- you can tell from that slide that the studies they were relying on were from 2007 and prior. There is been quite a bit of published since then that could probably help us with the number of years that you could --

you know, if you want the presumption to be well, if somebody has this number of years you're, you know, 90 percent sure contributory or 50 percent sure it's contributory and a smaller number of years would go to an industrial hygienist.

But I think we could probably find that -- I thought that Rosie's committee was trying to put together something on hearing loss -- a presumption. But at one point I did pull those papers. I have them someplace.

CHAIR MARKOWITZ: Right, and --

MEMBER WELCH: I don't remember it but --

CHAIR MARKOWITZ: And there was a Power -- we saw a PowerPoint, actually. I think, Laura, you presented a PowerPoint at one of the meetings. I don't know if it was --

MEMBER WELCH: Yes, I did. But it didn't have a recommendation for specific levels. But like I said, I did -- I did look through the papers and I -- I don't know. I'd

have to go refresh my memory but I think we are --

CHAIR MARKOWITZ: Yes, but -- okay.

MEMBER WELCH: -- we could come up with something that would be -- you'd have to have fewer years and a -- I don't know if you want to use job title or you want to use workers report of tasks because when we review the occupational history we are going to recommend that people collect much more information on task and it's part of that duration and intensity. You don't -- you don't have to rely on job title if you're willing to rely on the worker's occupational history.

CHAIR MARKOWITZ: Well, and then there is -- then there is -- this is Steven -- the question is what goes into a presumption versus what goes into the individual evaluation.

But I want to get back to this continuous exposure for a moment. Garry or Faye, do you have any sense of whether claims

are denied where people have 10 years of exposure prior to 1990 but it wasn't continuous? Is this a -- is this an issue at all?

MEMBER VLIEGER: Yes.

MEMBER WHITLEY: Garry here. Yes, let me tell you a couple of things. I've seen hundreds of these cases. If you've got, first of all, nine years and 10 months you would get a letter back that says you don't have 10 years.

Plus, if you've got -- let's say you were a janitor two years and then you were a chemical operator for 10 more years or nine and a half years they won't tie those two together a lot of times. You have to fight them to say both categories are in that group. But they want 10 years as an electrician or 10 years as a chemical operator, not two as a janitor and eight as a chemical operator, which both of them are listed.

The other thing is on those 22 job

titles if you're not exactly -- if you're an instrument mechanic, an instrument mechanic is not listed but a maintenance mechanic is and electrical mechanic is, which is the same title, they say maintenance mechanic is not listed so you don't get the claim. Of course, those seven solvents did not go away in 1990. So that's what's really happening. They are taking it to the letter of the law and you got to say exactly the job title and have the exact 10 years or you won't get there.

CHAIR MARKOWITZ: Well, yes. This is Steven. Well, the good news it's actually not in the law so it can be changed. Faye, did you want to add something?

MEMBER VLIEGER: Yes. I am seeing the same thing as Garry, that if they had a break in that 10 years and right now it's, you know, the date they have, kind of the 10 years prior to that, if they have a break in those 10 years or it doesn't meet exactly 10 years then the claim is denied.

I had to go in on one claim and prove through earnings statements that the worker was actually performing a 60-hour week and not a 40-hour week and thereby had the required exposure because of the number of Saturdays and overtime that he had.

So, I mean, they are holding it to the letter of the law to an eight-hour exposure day.

MEMBER BODEN: Hi, this is Les. So this discussion also suggests that if we do recommend specific presumptions that in the presumption we make it clear that this is a floor and not a ceiling in some way or another and I think it would involve some more discussion to decide exactly how to do that to make it effective.

CHAIR MARKOWITZ: What -- it's Steven -- so if there were a clause, Les, that is part of the language in the presumption -- a clause that for individuals who do not need this presumption this is a procedure that needs

to be followed with some specificity. Is that what you're talking about? Or are you saying that we can have that language there but if it's not applied then that's -- it doesn't work.

MEMBER BODEN: Right. Yes, I like that idea, you know, with saying something like if a person doesn't meet the presumption this does not imply that they are not entitled to benefits.

It means that you have to do A, B and C, whatever it means. I think that's exactly the right way to frame it.

MEMBER WELCH: Yes, and for this -- for this particular set of requirements it was -- it was -- it wasn't just a presumption. It was said if you don't meet these requirements it's not compensable.

So I mean, it is a presumption but it was an exclusive presumption, I guess, which is not true with all the other ones that they have put forward. So I think it's worth

explicitly saying that it's not exclusive or prohibitive.

CHAIR MARKOWITZ: What about there are seven specified solvents and they are very common ones. I am not sure that there is literature on each individual solvents in that class.

Does it make sense to look at broadening it to include other solvents that have the same chemical class as the seven specified solvents, admitting that there is probably no medical literature on those or haven't been looked at. But they are similar enough chemically that you would expect a similar outcome.

MEMBER BODEN: I think that's an interesting idea. This is Les. But I think then what we would have to do, since I don't think the claims examiner is that, say, that the claims examiner should refer this to an I -- this specific question to an IH is this solvent in a class of the ones listed and if it

is then I am sure it would hold.

CHAIR MARKOWITZ: This is Steven. But what if, for instance, the SEM included a universe of 30 solvents and they were looked at and it was determined that 20 of them were close cousins of the seven specified solvents? And then have a list of the specified solvents that was expanded now so it could be used in the presumption -- the presumption rather than have it moved to the IH.

MEMBER WELCH: I think that makes sense. This is Laurie. I think that makes a lot of sense because it would be -- it could be the next level of common solvents. I remember when I looked at the literature was that the -- those are ones for which there were animal studies that allowed you to pick -- if you wanted to pick a specific solvent the worker exposure studies -- epi studies or solvents in general. But there are specific animal studies on those seven. So it's a very -- it's more clear that you can say they are causative

because you have that mechanism of action. But I do think it's worthwhile expanding to ones that are in the same class.

MEMBER BODEN: I think if we can list them that would be great and avoid the IH coming into it.

MEMBER WELCH: Yes.

CHAIR MARKOWITZ: And so -- so this is Steven -- so what do we do about the job titles? Now, there is -- with the modified occupational health questionnaire there may be some more useful information in there. But my question is are those -- would those details plug into a presumption or does that -- is that simply more detail that the IH can have in order to make a decision? But is there any -- is there any way of looking at those -- expanding those job titles to include similar job titles, similar enough that -- or to identifying the broader universe of solvent-exposed workers?

I can tell you from our Former

Worker program that's hard to do actually.

MEMBER WELCH: For some reason this set of criteria -- these presumptions for hearing loss are so restrictive it's -- each criterion is restrictive. You know, the continuous exposure, having to have 10 years and be in a job title that are chosen because they had very high exposures.

So if you have 10 years why not have it -- people doing a range of tasks and then, you know, somebody has to ask -- assess out so that the tasks that are on the occupational history you could add them specifically or be -- or they are recommending that the hygienist be able to call the worker to explore information that's not available in the statement.

We could get -- instead of having to rely on job title go back and say if people were cleaning metal parts or, you know, it's just a range of tasks that entail solvent exposure and that might get you included.

MEMBER DEMENT: This is John. I think if we -- if the recommendations that I think the SEM committee is likely to make go into place, it will, first of all, they expand the tasks that are there that are likely to have solvent exposures.

The other thing it will do, and maybe this will help with the production workers whose tasks are much less defining and quite broad and many, we are suggesting a -- that a description be provided -- that the worker themself provide a description of the task -- excuse me -- that exposed them to an agent like a solvent.

But that will require probably an IH review of that and I think that's okay. At least it allows for the opening and we are not shutting the door. People who are not in one of those jobs, that classification, they have a way to get into the compensation process reasonably.

CHAIR MARKOWITZ: So but that sort

of takes it a little bit outside of presumption.

MEMBER DEMENT: I'm not sure it does. If we write a presumption in a way that I think we are talking, we make sure that it's not an exclusionary presumption. It's inclusive and hopefully the wording will open the door to this more thoughtful process of looking at what the worker defines as their task.

CHAIR MARKOWITZ: Okay. Got it.

MEMBER WELCH: But John, are you thinking there would be -- there'd be a list of job titles still where those necessitate high exposure tasks and then if someone wasn't in these job titles but they reported exposures to solvents and described the task would any of those allow the claims examiner to award the worker, you know, accept a claim or would -- if it -- would they always have to go to the industrial hygienist track?

MEMBER DEMENT: No, I think that --

MEMBER WELCH: Like if somebody --

MEMBER DEMENT: No, I think that's a subject for discussion. Certainly, some of the tasks that you mentioned, Laurie, the solid decreasing, you know, a lot of useful solvents for cleaning, you know, you could presume that. You know, those are very high exposure tasks. There may be some others but --

MEMBER WELCH: Yes.

MEMBER DEMENT: -- might go -- you know, might have to go through the hygienist.

MEMBER WELCH: So we could work on that, a list of tasks that would be -- you'd presume exposure and then the process, then saying beyond this industrial hygienist would review them with the information from their occupational history questionnaire?

MEMBER DEMENT: Sounds like a reasonable price.

MEMBER WHITLEY: If you even added -- on the job title if you even added an asterisk that said or equivalent to job titles

or something that would at least, if not in those 22, the CEs just think you don't get it and send it back and it never gets to an IH. Excuse me.

If you even had an option for them to say, well, it's not these 22 but it is in the same category then send it on to an IH maybe. But there is got to be some loop there that lets the CE have an option to not -- not just deny it.

MEMBER DEMENT: I think Garry makes a good point.

MEMBER WELCH: Right.

MEMBER DEMENT: We have a lot of -- even in the SEM there is lots of alias for job titles statement or perform similar tasks listed to include at least --

CHAIR MARKOWITZ: And lastly, is there any -- what's the sense about calendar years?

MEMBER VLIEGER: This is Faye. I work with a few of the painters from the

Hanford site and their materials may have changed but they still contain the agents to come extent and no one ever measures how much of that is aerosolized and your mounts don't always sit properly when they are working in hot weather from that. There is not reach. So I don't think that the user applicable particularly to the construction workers that are using these things in all variance in all type of spaces and different applications. I just don't see it. One painter comes to mind. We were fighting his hearing loss. Went into the place at work, took a photograph of a material that had calulene in it and when we presented that to DOL they were confused.

MEMBER WHITLEY: Garry here. The reason I don't think the 1990 is equivalent is that we all agree that in the later years they got better controls.

But let me tell you what they did with those controls. They went from it being sitting out in the open where you used to get

up and use it anyway you wanted to until they were in a controlled cabinet. You went over and signed it out and still used the same material for years that you always used. It just was controlled and they knew that somebody used it.

But it -- they didn't change those materials until after 2000 or something, really.

CHAIR MARKOWITZ: Final comments on this? Because we have got just a couple more minutes left and not much more to discuss until I wrap it up.

MEMBER SILVER: Sort of an inverse example that occurs to me, looking at the list, is that the roofing industry switched to single-ply roofing systems in the late '80s, early '90s.

Roofers aren't even on the list and they got multiple various solvent exposures beginning around 1990 and those continue to this day. So all kinds of problems.

MEMBER WELCH: Yes, that's a good point because there is this -- the industry changes and exposures change, except for, you know, compounds that were completely eliminated from use. You could look at a year but I think the -- setting the time like 1990 is kind of like their 1995 presumption. Just oh, well, things got better so exposures are less but it's not based on an analysis of the specifics at hand.

MEMBER SILVER: Toxicity flooring would be another example.

MEMBER WELCH: Yes.

MEMBER SILVER: Masons would.

MEMBER WHITLEY: Welders are not on the list, Steven. You know they clean them after they weld it.

CHAIR MARKOWITZ: Okay. So let's wrap -- we will wrap this up. I've got to figure out where exactly this sits in terms of making further progress, I mean, because there is interest by -- expressed by various groups.

So I'll figure that out.

So do you have the next slide? So having solved all those problems, the question is are there other reasonably common conditions that might be right for beginning to think about the presumptions?

MEMBER WELCH: I think my -- my recommendation being slightly cynical is let's push forward with a couple of these, like maybe hearing and COPD, and see if DOL is willing to do what they said and change the presumptions before we spend a lot of time developing more. Sorry, I am outside -- if it's really noisy. Sorry.

CHAIR MARKOWITZ: No, that's okay.

MEMBER WELCH: Because who could get the -- who could get hearing loss and COPD ready to present at the Board meeting in April and make recommendations to the department and see how they respond.

Asbestos, too, if you want to work on that. But I think the hearing loss and COPD

could be -- this could definitely be ready.

CHAIR MARKOWITZ: Any other comments on that?

MEMBER BODEN: It sounds like a reasonable approach. I mean, we won't do more as time but got to start some place.

MEMBER WELCH: Yes. I am going to jump off because I am walking down the street and my hands are cold.

MEMBER BODEN: Not only big issues and if we tackle those then we have made progress --

MEMBER WELCH: Yes.

MEMBER BODEN: -- I think we move forward.

CHAIR MARKOWITZ: Okay. So the next slide, last slide, is the time table then for making progress on these. The -- it would be ideal if we could -- if we are far enough along to present draft language at the April meeting on some set of presumptions and then discuss those and if we come to agreement agree on the

elements with the final writing to occur after the meeting but, you know, shortly after that meeting and the question is what can we get that done for. You know, we could probably get that done for COPD, probably for solvents and probably for asbestos.

Whether we are actually -- there was a fair amount of variation, I think, and opinion on this call and I am not sure that we can come -- I am not sure we are going to be able to come to complete agreement on these things in the April meeting. But there is no harm in aiming for that. There is nothing else that'll move the process along. Any comments?

MEMBER WHITLEY: This is Garry. I agree that we ought to try April/May to get two or three, or the ones you just named, and sequence them, get them out and let's see what -- how they fly.

MEMBER VLIEGER: This is Faye. I agree. Guys, I am going to sign off so I'll --

CHAIR MARKOWITZ: Yes. Okay.

MEMBER VLIEGER: -- if anything else happens in the next couple minutes I'll hear it from Steven.

CHAIR MARKOWITZ: Okay, great. Thanks. Okay. So we are at the end of call. Any final comments?

MEMBER SILVER: Yes. This is Ken. Both lists omit industrial hygiene technician and if we recommend collapsing the asbestos list into maintenance, construction, production and engineering I think we should put monitors, particularly for asbestos.

There were people trained as radiation control techs who were Johnny on the spot for spec lists and other off-normal events and similarly for solvents where there were working complaints. They were often on the scene to take measurements and it's not easy to say the industrial hygiene techs are afraid to go into portions of certain plants. But that was not the case 20, 30 years ago and I think it's inarguable that there are high exposure

risks for both asbestos and solvent.

CHAIR MARKOWITZ: Good point. So Carrie, remind me -- can we circulate within this working group draft documents? If it doesn't go to look at before the April meeting so that we can better prepare? Is there any --

MS. RHOADS: No, you can do that.

CHAIR MARKOWITZ: -- does that violate any rules?

MS. RHOADS: No, you can do that. That's just the work of the subcommittee. But just make sure to copy the regular DOL inbox.

CHAIR MARKOWITZ: Well, usually we address it to the DOL inbox and copy everybody else.

MS. RHOADS: Yes.

CHAIR MARKOWITZ: But I guess we could do that.

MS. RHOADS: Right.

CHAIR MARKOWITZ: Okay. We will aim for that. Okay. So if -- Carrie, I don't know if you have anything you need to say but let me

just thank people on the call, both the Board members and the members of the public that were out there.

I think it was a productive call, actually, getting some opinions and observations out on the table and hopefully it'll lead to some firmed up drafts of some presumption criteria in which we can help DOL improve the program.

Any other closing comments?

MEMBER VLIEGER: Not from me.

MEMBER BODEN: Thank you, Steven.

CHAIR MARKOWITZ: Okay. Take care.

MS. RHOADS: Thanks, everybody.

(Whereupon, the above-entitled matter went off the record at 3:29 p.m.)