U.S. DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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MEETING

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THURSDAY
NOVEMBER 5, 2020

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The Board met telephonically at 11:00 a.m. Eastern Standard Time, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

AARON BOWMAN
MARK CATLIN
KENNETH Z. SILVER
MIKE VAN DYKE

MEDICAL COMMUNITY

GEORGE FRIEDMAN-JIMENEZ
ROSE GOLDMAN
STEVEN MARKOWITZ
MAREK MIKULSKI

CLAIMANT COMMUNITY

JIM KEY
DURONDA M. POPE
CALIN TEBAY
DIANNE WHITTEN

DESIGNATED FEDERAL OFFICIAL

MICHAEL CHANCE

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

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

11:12 a.m.

MR. CHANCE: Good morning, everyone. My name is Michael Chance. Today is November 5th, 2020, and I'd like to welcome you to today's teleconference meeting with the Department of Labor's Advisory Board on Toxic Substances and Worker Health. I am the Board's Designated Federal Officer or DFO.

I would like to take this opportunity to welcome back returning members to the Board and give a greeting of welcome to those newly appointed members joining us today. I trust you will find the discussion over the next two days illuminating. As always, we appreciate the work of the Board members in preparing for today's meeting and for their forthcoming deliberations.

Today, we are scheduled to meet from 11:00 o'clock, and a little bit of a late start, 11:00 o'clock to 5:00 Eastern Time. There will be a public comment period commencing at 3:30. There will be breaks interspersed in between

there. So for those of you who are new, generally, Dr. Markowitz calls those. But they will be -- they are on the schedule.

This morning, we have a few guest speakers. Since we are empaneling a new Board and welcoming new members, we have special guests to provide additional information that new members will find helpful. OWCP Director Julia Hearthway will welcome the Board. SOL representatives Joseph Plick and Tom Giblin will provide essential information about the Energy statute and the creation of the Board. Please pay close attention as this is valuable information that will prove helpful as we move forward. There will also be other very important key members of the program addressing you as well today.

Today, as you are aware, like recent meetings that we had in April and June, this meeting is completely virtual as a precaution against the COVID-19 pandemic. As always, I hope everyone is staying safe out there and taking

proper precautions. This format is designed to ensure everyone's safety. On the team as the DFO, I am joined virtually by Ms. Carrie Rhoads from the Department of Labor. And you'll also hear from Mr. Kevin Bird from SIDEM who is the contractor who supports our claims.

A few things regarding meeting operations, the timing, as I mentioned, we'll break as needed throughout the proceedings. They are lengthy proceedings and go well into the afternoon. So there will be breaks for the members.

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 the subcommittee. The documents will also be up on the Webex screen so everyone can follow along with the discussion. You can also visit the Board web page for additional information where after clicking on today's meeting date, you'll see a few things. Just bear with me because

there's a couple things I have to get through.

You'll see the page dedicated entirely to today's meeting. The web page contains publicly available material submitted to us in advance. We will publish any materials that are provided to the subcommittee. There you'll also find today's agenda which is helpful to plan your interest. And if you are having a problem, please email us at EnergyAdvisoryBoard@dol.gov.

If you're joining by Webex, please note that the session is for viewing only and will not be interactive. The phones will also be muted for non-Advisory Board members up until the public comment period. Please note that this is a new way of conducting these meetings and we ask you be patient as we work through the unfolding technological issues. You may contact Ms. Rhoads or Mr. Bird at any time throughout this meeting for technical assistance as needed.

A few notes about the meeting minutes and transcripts, a transcript and minutes will be prepared from today's meeting. During Board

discussions today, as we are on a teleconference line, and I do believe that this has already been -- it's already been addressed. I just want to reiterate for the court reporter's benefit, please speak clearly.

Make sure when you are coming on for the first time to announce who you are and so that your name can be clearly recorded. And if you have any issue -- I'm sorry. And I'd also like to ask our transcriber to please let us know if you're having any issues with hearing anyone or having trouble recording today's proceeding because it is important that we get everything transcribed.

As the DFO, I see that the meetings are prepared and ensure they're certified by the Board chair. Minutes of today's meeting will be available on the Board's website no later than 90 days. And today, per FACA regulations, if it's available sooner, they will be published before that 90th day period. Also, although formal minutes will be prepared, we'll also be

publishing verbatim transcripts which are obviously more detailed in nature. Those transcripts should be available on the Board's website within 30 days.

A few notes for those of you who have been on the Board for a while but also for folks that are new, I'd like to remind everybody, 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. And those are not for public disclosure and dissemination, 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 doctors. So please make sure that we are protecting everyone's privacy.

One other important reminder for all of the Board members regarding non-disclosure agreements or NDAs. Recently, Board members havebeen granted access to a redacted contract and other materials. The Energy program has contractors that provide expert opinions from industrial hygienists. Board members will soon have access to other contract information.

Please be mindful that Board members signed a non-disclosure agreement to get access to these contracts and any other information that is shared. And so the terms of contracts and other private information cannot be disclosed or discussed in a public meeting. And these are better discussed in a working group. So please keep that in mind as we proceed through the day.

One last note regarding the Q&A session, there will be an opportunity to ask questions at the end of the sessions as times permits for each individual speaker. I believe at this point, Dr. Markowitz has agreed to control the Q&A period. Due to the nature of

some subjects, questions might require tabling for further consideration.

We certainly do not want to get into the situation of folks having to make policy determinations on the run. So please be respectful of each speaker's time and hold all questions until their session has ended. If we do not have enough time for remaining Q&A, Dr. Markowitz can gather the questions that you have and submit them for further consideration by the program.

I appreciate your patience, as I had to get through all that to get us underway. With that, I will turn it over to Dr. Markowitz. And then I believe it's a little bit of a different today. I believe then after Dr. Markowitz, after you had an opportunity to give your opening address, we turn it back to Carrie so she can introduce Director Hearthway.

MEMBER MARKOWITZ: Okay, meaning that you want us to delay introductions until after Ms. Hearthway? Or you want me to go to

introductions before?

MR. CHANCE: Well, I think you can go on. She might already be on.

MEMBER MARKOWITZ: Okay.

MR. CHANCE: So yeah, just go ahead and do what you need to do, but I think she's going to join us at 11:20.

MEMBER MARKOWITZ: Okay, okay. So good morning. This is Steven Markowitz, Chair of this Board. I want to add to Mr. Chance's welcome to everyone to the first meeting of the Board in this term. The Board previously had two terms.

Just a couple of comments overall, and I'll explain who I am in the introductions. But I've spent four years on the Board. And I'd say the Energy Employees Occupational Illness Compensation Program is an excellent, very well developed program that reflects just an immense amount of work, hard work, dedication, and expertise of the professional staff and others who have stood up the program and maintained and

improved the program over the years.

This program is extremely useful, extremely valuable to Department of Energy workers, former workers in that it has provided over 15 billion dollars in compensation and payment for medical care in relation to occupational illnesses covered under the Act. So it's a very important program. And I think the Board has and will continue to play a useful role in providing advice to the program.

Just to put it into perspective for a moment, I'll just read a very brief section from the original 2000 Act, Energy Employees Occupational Illness Act, from the sense of Congress just to remind us -- I'm getting a little feedback here. Is anybody else getting an echo?

MR. BIRD: Yes.

(Simultaneous speaking.)

MEMBER MARKOWITZ: Yeah, I think it just started up.

MEMBER GOLDMAN: I'm getting a little

echo.

MEMBER MARKOWITZ: Okay. I think it just disappeared. So the original Act says, quote, since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites at the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that documents reveal were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay. And I'll leave it at that. That's the end of the quote there.

But they were put at risk without their knowledge which is the rationale that Congress used to set up the program beginning in 2000. It is a complicated, very ambitious program. I can't think of any other compensation program that really addresses pretty much the full spectrum of occupational illnesses, either at a federal level, if you think of Black Lung

which is really targeted to a certain exposure, certain set of workers, the Agent Orange program, the World Trade Center program.

Again, these are very targeted programs in terms of who's covered and what they cover. Or at a state workers' comp level which, by and large, the states don't really do such a great job on occupational illness. This program, to me over the last number of years, feels like it's, they have to enforce, set up, know, and implement the encyclopedia of occupational health. And so it's a very complicated task.

And I think that you'll see in our discussions, both in our previous recommendations and what we're going to discuss in the future, that we, I think, will have something to add to this process. Lastly, let me just say that I encourage the new Board members who may be a little confused or feel not quite part of the process yet that during the or after the presentations too, raise questions so that you understand this program as quickly as possible so

we can move forward. So let me leave it at that and turn it back to Ms. Rhoads, I think, for Ms. Hearthway. Thank you.

MS. RHOADS: Julia, are you on?

MS. HEARTHWAY: Yes. Yes, I am on.

MS. RHOADS: Great, okay. This is Julia Hearthway. She's the director of the Office of Workers' Compensation Programs which is the agency that houses the EEOICPA program. So thank you for agreeing to speak to the Board today, Julia.

MS. HEARTHWAY: Yes, good morning, everyone. I just wanted to take a few minutes and welcome the Board. Welcome back, those Board members that are returning and provide a very warm welcome and an introduction of myself to the new Board members. We, the entire division, and myself look forward to working with you on this really, as Dr. Markowitz indicated, very, very important endeavor for our energy workers.

I know you have a full agenda today, part of which includes for particularly the new

Board members an overview of the law. There was one aspect I wanted to take just a moment and talk about, and that was the work of our claims examiners in adjudicating cases. The statute waswritten so that claims examiners would evaluate and weigh all the evidence, including the medical evidence.

They are the adjudicators. And we, as well as all of them, work really hard to make sure that quality decisions are being rendered. And I wanted to just very briefly share with you some of the activities we've done, particularly in that regard. We have increased our focus on the individual employee performance.

Our supervisors have been reviewing an average of 20,000 case action samples of claims examiners' work per year. This last year, that was increased from 20,000 to 51,000 case action samples per year. These case action samples represent all aspects of the actions taken in a given case. And they are in addition to the already 11,500 case action samples reviewed

through the accountability review process.

What all that means is that there's now a total of 62,500 case action samples that are reviewed, almost three times what had previously been reviewed. We also recently hired a quality assurance analyst who will conduct quality reviews on a weekly basis, provide immediate feedback to the district office and management as well as the national office, and help guide policy and training management. The results of these quality reviews will beincorporated into performance assessments as supervisors validate and confirm the findings.

And we will have at least 33 percent more case action sampling from it. The program will then work with the results to identify and develop targeted technical training. And our claims examiners have always been incredibly dedicated. And as Dr. Markowitz just indicated, this is a very complex area.

But I wanted to take just a moment and let the Board know the kind of focus we've placed

on the quality of work of our claims examiners and how we've stepped up our review of that and training on that. And with that, a snapshot, I will bid you all good day. And again, my sincere welcome to each of you for doing this incredibly important work that the Board does. Thank you.

MEMBER MARKOWITZ: Okay.

MS. RHOADS: Thank you, Julia. Dr. Markowitz, do you want to just continue with what you were talking before?

MEMBER MARKOWITZ: Sure, great. Thank you. So we're going to do introductions. It's probably -- well, let me just ask a question. On this Webex, is there a way in which the participants, meaning the Board members, can raise their hands or indicate that they want to speak?

MR. BIRD: Sorry, Dr. Markowitz. This is Kevin Bird. I think on the fly here, I can try to figure something out. We were not initially set up for that. But let me see if I can --

MEMBER MARKOWITZ: Okay, sure. Okay. Well, if you figure it out, let us know that. That'd be pretty useful. So --

MEMBER GOLDMAN: Could you put in a chat box?

MR. BIRD: We -- let's talk about that offline. No is the short answer. But let me figure that out.

MEMBER MARKOWITZ: Okay, great. Thank you. So let's do introductions. Let me start, and then I guess I'll call people. That's probably the easiest way to do it.

Steven Markowitz, I'm an occupational medicine physician, epidemiologist, professor of City University of New York. And I've been involved with Department of Energy issues since 1995, helping to set up the Former Worker Program which is a medical screening program for mostly retired or former Department of Energy workers and have run that program at 14 DOE sites and 8 different states. Pretty much since that time, we screen nuclear weapons workers for

occupational illnesses.

In 2001, I served on a Workers Advisory Committee for the Department of Energy after they first passed the act, EEOICPA, in 2000 to provide advice on the set up of that program and the past four years have served as chair of this Board. So let me just -- I'm going to just go down the list here. Ms. Whitten?

MEMBER WHITTEN: Yes, I'm here.

MEMBER MARKOWITZ: Yeah, hi. You want to just introduce yourself?

MEMBER WHITTEN: Sure, Dianne Whitten. I am a health physics technician by trade. I've been in the field since 1988 working exclusively at Hanford. I'm also a member of the NWRCP. I'm currently a HAMTC officer which is the Metal Trades Council that controls the contract for Hanford for the affiliate. And I'm just very honored to be on the Board and looking forward to working with all of you.

MEMBER MARKOWITZ: Thank you. Mr. Tebay?

MEMBER TEBAY: Yeah, Calin Tebay, a sheet metal worker by trade. At about 10, 12 years ago, I switched to health and safety at Hanford. I'm currently the site-wide beryllium health advocate and I'm the representative at the Hanford Workforce Engagement Center as well.

MEMBER MARKOWITZ: Okay, thanks. Mr. Pope? Oh, I'm sorry. Ms. Pope. Ms. Pope.

MEMBER POPE: Thank you. Duronda Pope, I work for the United Steelworkers Union. I am a retired Rocky Flats worker, worked there for 25 years, a returning Board member. Been on the Board for four years. And I'm now director of my department which is the emergency response team.

MEMBER MARKOWITZ: Okay. Welcome back. Mr. Key?

MEMBER KEY: Good morning. My name is Jim Key. I am vice president of United Steelworkers Local 550 located in Paducah, Kentucky. I am president of the United Steelworkers Atomic Energy Workers Council in

Washington, D.C. which encompasses nine of the Department of Energy's EM sites across the nation.

Provided congressional testimony to the House Oversight Investigation Committee hearing on September the 23rd of 1999 specifically on the Paducah workers who had been unwittingly and unknowingly exposed to certain radioisotopes. I spent 9 of the next 12 weeks in D.C. lobbying the congressmen and senators for the passage of the EEOICPA on consent.

MEMBER MARKOWITZ: Thank you and welcome. Dr. Mikulski?

MEMBER MIKULSKI: Yes, hello. This is Marek Mikulski, and I'm an occupational epidemiologist with the University of Iowa, Occupational Environmental Health. I'm the PI on the former worker program providing screenings, medical screenings to former energy workers from the State of Iowa. This is going to be my second term on the Board, and I'm looking forward to working with everybody and with the Department of

Labor. Thank you.

MEMBER MARKOWITZ: Thanks. Dr. Goldman?

MEMBER GOLDMAN: Hi, this is Rose Goldman. I'm an occupational environmental medicine physician and an associate professor of medicine at Harvard Medical School, associate professor of environmental Health at Harvard School of Public Health. I've been doing occupational environmental medicine and clinical medicine since 1981 and also involved various teaching and clinical research-type programs. And I'm honored to be back on the Board this year. I have started last year in the middle of the session. And thank you very much.

MEMBER MARKOWITZ: Thank you. Dr. Friedman-Jimenez?

MEMBER FRIEDMAN-JIMENEZ: George Friedman-Jimenez. I'm an occupational medicine physician. I run the Occupational Environmental Medicine Clinic at Bellevue Hospital, NYU School of Medicine. And my interests are occupational

medicine, clinical, and occupational epidemiology, specifically causal inference at the individual level.

MEMBER MARKOWITZ: Great. Dr. Van Dyke?

MEMBER VAN DYKE: Good morning. This is Mike Van Dyke. I'm an industrial hygienist and associate professor at the University of Colorado Anschutz Medical Campus. My experience in the DOE complex goes back to about 1997. I've been involved off and on with research projects, medical surveillance at several different sites, mostly around beryllium. And I am honored to serve on this Board, and I'm looking forward to getting to know everyone.

MEMBER MARKOWITZ: Happy to have you. Dr. Silver?

MEMBER SILVER: Ken Silver. I'm an associate professor of environmental health in the College of Public Health at East Tennessee State University. My fascination with historical documentation of exposures and emissions at

Department of Energy sites began in my PhD program 25 years ago. I wound up moving to be close to the source of my research at Los Alamos National Laboratory and put aside the research to do evidence-based advocacy with former Los Alamos workers and their family members to get this law passed and implemented.

And I provided Senate testimony in October 2007 when implementation wasn't going very well. We haven't had an in-person meeting for a year. I would've mentioned in the hotel lobby or in the elevator that shortly after that meeting, I got over some of my problems with the industrial hygiene field and became a CIH, so --

MEMBER MARKOWITZ: Great, thanks. Mr. Caitlin -- Catlin. I'm sorry.

MEMBER CATLIN: Thank you. Thanks, Ken. My name is Mark Catlin. I'm an industrial hygienist. I began doing that work in 1981, and I retired about a year and a half ago until COVID hit. And now I'm back working in consulting.

My industrial hygiene work has been

with labor unions including building trades and consulting firms and the University of Washington Occupational Medicine Clinic back in the early '90s. And that's where I first developed my interest in looking at historical exposures and reconstruction for mostly workers with a lot of asbestos exposure at that time. So my work with DOE over the years has taken me to Hanford, Oak Ridge, and to -- most recently to Los Alamos. So I'm really honored to be on the committee and look forward to working with everyone.

MEMBER MARKOWITZ: Great. There's a silver lining to the pandemic is getting Mr. Catlin into the field. That's great. Dr. -- well, it's a small but important silver lining. Dr. Bowman?

MEMBER BOWMAN: Yes, hi. My name is Aaron Bowman. I am a professor and head of the School of Health Sciences at Purdue University. My area of expertise is in toxicology, in particular, metal toxicology, mostly focused around neurological toxicology of metals. I am a

member of the Society of Toxicology and serve on several NIH grant review panels as well as academic journals in the area of toxicology. And again, this is my first meeting on the Board and it is a pleasure to have been invited to serve. Thank you.

MEMBER MARKOWITZ: Thank you. So in just a couple minutes, we're going to hear from Mr. Plick. We're going to do FACA process and rules. So let me spend just a couple minutes on the agenda which is pretty transparent actually.

But the next several presentations, actually the previous Board have also heard these same presentations that are important and required and informative. And then in the afternoon, Ms. Pond and Mr. Vance will provide overviews of the program. Obviously this is important for the new Board members but actually for the returning Board members since it is a complicated program.

It is an opportunity to add to what we know. And I've asked them actually to covered

certain areas in particular which are either topical or a source of perhaps some confusion to us in the past. So I think those aspects will be built into their presentations.

Mr. Chance, when you introduce folks, I think it'd be useful to ask them if they could save a couple minutes, particularly in the morning presentations, in case there are any questions and in the afternoon presentations, if they could say a good ten minutes or more for questions or more for questions because that'll help -- I think help the learning process. Later in the afternoon, we have a public comment period and it's required. But also, it's been extremely important to us in the past.

Most of our meetings have been on site at various DOE communities, Oak Ridge, Paducah, Hanford, Los Alamos, I'm sure I'm forgetting some of the other places, in which we've had the opportunity to hear from former workers or current workers who are advocates who have come to the meetings. And unfortunately, this

telephone-based, web-based meeting format is not hugely conducive to a lot of -- certainly not interaction, but even necessarily hearing much from public commenters, although it is an open period and all people who wish to make public comment are welcome to do so.

We are trying to squeeze an additional presentation. I'm not sure exactly where we're going to place it. We may place it -- if the public comment period ends early, we may place it then. If not, tomorrow. It'll be from Gregory Lewis who's from the Office of Health and Safety from the Department of Energy. And he's going to spend a few minutes talking to us about the Department of Energy role under the act and how it relates to the compensation program.

So tomorrow, Mr. Vance will continue with the demonstration of the Site Exposure Matrices, and then we'll get into Board discussion. And I've listed some topics that are held over from previous Board discussions, areas that still need further discussion and

development is necessary of recommendations to the Department. And then we'll go on and discuss any new issues that have arisen or will arise for future meetings. And we will discuss public comments.

And then finally, we'll develop a work plan for the time between now and our next meeting. We are required to meet twice per year which we have done. We've also had meetings in between those semiannual meetings. Sometimes when we want to make progress with work, address certain recommendations because six months is a long period of time to elapse between -- in terms of getting our work done.

So we usually decide on that at the end of each meeting or soon thereafter. If we break into subgroups or working groups or subcommittees, then depending on the nature of that process, that is either an open process where the public is allowed and encouraged to sit in, those have to be scheduled pretty much a couple months in advance. Sometimes though if

it's a smaller subset of people on the Board, then we have a working group meeting which are a bit more flexible in terms of schedule. So let me turn it back over to Mr. Chance so we can proceed with Mr. Plick.

MR. CHANCE: Thank you, Dr. Markowitz. Kevin, is Mr. Plick on?

MR. BIRD: I can recheck right now, but --

MR. PLICK: Yeah, I'm here.

MR. BIRD: Oh, yeah. He is right there.

MR. CHANCE: All right. I think that it looks like we're running on schedule. Please take it away, sir.

MR. PLICK: Okay. Thank you for having me. Hello, everybody. It's kind of weird to be doing this by phone. But anyway, so my name is Joe Plick. My title at the Department is I'm the Counsel for FOIA and Information Law, and that includes providing advice on the Federal Advisory Committee Act among a whole bunch of

other laws that I oversee provided by FOIA.

So I'm here today just to give you a little quick overview of the Federal Advisory Committee Act, talk a little bit about its purpose and background, about what it requires, and about our agency responsibilities, and sort of how it functions, how the committee functions, and what we do. So to start with, purpose and background of the statute, the government has utilized as committees almost since the founding of the republic. I recently came across the fact that the very first committee that the government established was established by George Washington in 1794 just to study what caused the Whiskey Rebellion.

So committees have been around for a very long time and providing advice to the government. But there came to be a concern that it was kind of opaque that no one knew how many committees there were or what advice they were giving the government or whether they were getting balanced advice. And so Congress took up

the issue and in 1972, it created the Federal Advisory Committee Act which has been slightly amended a couple times but nothing substantive, although there are attempts currently to amend it.

And basically, it recognizes that there's a need for agencies to get this outside advice but that the advice should be balanced and fair. So it governs the establishment, operation and termination of committees. It ensures that committees provide advice that's relevant to the topic for which they're formed. So in other words, it's within the agency's authorization and they are things that the agency really has the ability or power to act on.

It requires agencies to act relatively promptly. As I was coming out of a call, I heard mentioned they actually meet a couple times a year and they have additional meetings. So some committees may meet four times a year. Some may only meet one.

So it's not that, but there had been

situations where committees have really languished and not done much work. So it tries to keep things moving and keep them moving. And related to that, it provides for accountability through cost controls and record keeping requirements. And we'll talk a little bit about some of those in a second.

And then finally, it ensures that Congress and the public are informed about what committees are doing, their reporting requirements to Congress by the agency. And of course in general as we'll talk in a few minutes, meetings are open to the public. So the Act applies to committees that are either required by statute, authorized by statute, set up through an executive order, or an agency can determine that it needs a committee and set it up and follow the rules.

Once it's determined that a committee is going to be established, the agency has to create a charter for the committee that has to be approved by the General Services Administration

which has oversight over Federal Advisory Committee Act matters throughout the government. It seems like kind of an odd choice because when you think of GSA, you generally think of running buildings and things like. But for whatever reason, it was decided that they would be the lead agency. OMB also has a role, particularly in the wake of an executive order that the president promulgated about a year ago.

So the committee has to be balanced as I mentioned and balances both in terms of points of view and the functions to be performed. So it's kind of a -- from the statute's perspective, it's sort of a high level requirement for balance that you have to analyze for each committee very specifically. And statutory committees like this committee may have additional requirements of Congress in terms of how committees are set up.

Meetings are generally public, as I mentioned before. Detailed minutes are required to be kept, and the requirement is specifically that minutes be kept. So if you're transcribing

or recording the meeting, that doesn't count as the minutes.

Agencies -- GSA has let agencies satisfy the requirement through that for a while. But I think they got feedback from the public that if you've got a meeting that lasts two or three days, forcing somebody -- a member of the public to wade through that long of a transcript or watch that much video to find what is going on in the meeting, and maybe the particular part of the meeting that was of interest to them wasn't there. So they reasserted that there had to be actual minutes kept so the public can quickly sort of see what the committee worked on and did. And then if it was transcribed or recorded, then they can go and they find that part of the meeting.

With respect to public comment, I understand this committee permits that. The statute doesn't require it. The statute requires that a member of the public be allowed to provide a written comment either before or shortly after

the meeting. But good practice, especially for a committee like this, I think is to allow public comment.

So the minutes have to be certified by the Chair within 90 days of the meeting so the Chair has some time to review and make sure they're accurate. With respect to meetings, one thing I would note here is because the purpose of FACA is to ensure that the meetings are open to the public, we ask that while you're participating in the meeting -- and this may not be as big of an issue now that you're all kind of on the phone. But if it were an in-person meeting, we would ask people not to talk about substantive matters while they were in town for the meeting but not actually in the meeting.

And also we ask that if any of the members get inquiries from the media that they really direct those inquiries to the Chair and a designated federal official for the committee. Finally, committees, technically, this committee does because it's statutory. But without a

statutory authorization, committees terminate every two years and have to be rechartered and reauthorized. Excuse me.

Moving on to the agency's responsibilities under FACA, I'll just touch briefly. There are a couple of positions that an agency has to maintain with respect to committees. The first one is the committee management officer who is the person who oversees the FACA program in an agency. And as members of a committee, you really probably won't deal with that person at all. It's more your designated federal official.

And so turning to the designated federal official, every committee has to have one. That individual has the authority to approve and call meetings, to approve the agenda, is required to attend, has the authority to adjourn a meeting if he or she determines that it's in the public interest. I don't know that's ever happened.

I can't think of it ever happening for

a DOL committee. I think there may have one or two committees of other agencies over the years that kind of really got off track and they were doing things that had nothing to do with why they were being established and a DFO would shut it down. I don't anticipate that actually being an issue.

The DFO could chair the committee but is not required to and in most cases doesn't. But then that person has the administrative functions of maintaining the records related to cost and membership, maintaining records for public availability, ensuring efficient operation, and providing reports and reporting database that GSA maintains on committees. And the DFO is responsible for making sure that the information on a committee is updated.

There also, if there's a meeting is closed which we will talk about how to do that in a minute and why, then there has to be reporting done on that. Materials that are created by a committee, reports and background materials are

actually filed with the Library of Congress eventually. So those are the rules of the DFO. Occasionally, I would say in a few years, GAO will look at how the government is operating its federal advisory committees. So it may be that that'll happen soon because it's been a while since they've done that.

So the last responsibility that the agency has is to sort of set the agenda for the committee. I don't want to overstate that. But it can set priorities and objectives and it should be a collaborative effort between the committee and the agency as to what they're going to be working on. But they also have to, at the same time, ensure that the committee's advice is independent. There's a strong requirement for that.

So that requirement of setting priorities and objectives, like I said, is collaborative. I mean, you don't want to waste time in a committee doing things that the agency just isn't going to be able to act on because of

budgetary constraints or other things. So that should be in discussions sort of ongoing with the committee and of course within the constraints of what the committee is, in your case, statutorily required to do.

So I'm going to move on now quickly and talk a little bit about closed meetings. Generally, as I mentioned, FACA committees are supposed to be open to the public. But there are reasons why a meeting could be closed. And they generally track exemptions in the Freedom of Information Act.

So in order to close the meeting, it requires approval by the agency and it requires a review by the general counsel or in the Department of Labor's case, the solicitor. And it has to be noticed at least 30 days in advance. The reasons why you might close part of a meeting is if you're discussing national security matters, if you're discussing proprietary information or personal information. Those would be reasons why you might want to close part of a

meeting.

So for example, if there was going to be a discussion that maybe you were going to have individuals come and talk about specific medical conditions or something like that, then you might want to consider closing part of the meeting if there's going to be sensitive medical information. But otherwise, the meetings are open. And like I said, there has to be a report of a meeting is closed.

DOL doesn't generally close meetings. There's one exception for committee related to trade policy where they can talk about trade negotiation policy and things like that. But other than that, they're open. And that one has a separate statutory requirement for the meetings to be closed.

I heard some mention of possible subcommittees. Subcommittees are permitted by FACA. It just makes sense that you would do a subcommittee to break up the work. They're not subject to FACA requirements, although I think

you guys hold you subcommittee meetings publicly. And so long as the subcommittee doesn't become another committee that bypasses the main committee, then you don't actually have to follow all those rules about advanced notice of meetings and things like that. But the agency has to approve the establishment of subcommittees.

And others examples of things that don't have to occur at public meetings, preparatory work. So if you assign a couple of members to draft a recommendation, they can meet and get together and come up with a draft. It's sort of a variation of a subcommittee, and that doesn't have to be done publicly. Also, administrative matters, so to the extent of -- actually, this meeting, my presentation theoretically wouldn't have to be done publicly and things like that.

Public availability of records, a key component of FACA is transparency. So the act generally states that all records, transcripts, minutes, appendixes, working papers, drafts,

studies, agenda, and other documents that are made available and prepared for by the committee shall be available for public inspection. There is a provision that's subject to FOIA, but it's mainly for information that the agency has if it's agency records that would otherwise be exempt under FOIA that is shared with the committee. Those can still be withheld. And again, as I mentioned, the work of subcommittees, it does not have to be public.

Lastly, I'll just briefly touch on the fact, as I mentioned before, there is -- there has been an effort to amend the FACA. It's passed the House a number of times, never been anywhere in the Senate. Basically, the way it would impact members is it would actually probably require more information about members, about the agency's process for identifying members and selecting them. And there might be some additional reporting requirements in the ethics rules.

But again, it hasn't gone anywhere.

But who knows. One of these years, it might suddenly pass and we'll be scrambling. It would also, I think, subject subcommittees to some of the same open meeting requirements as the main committee. So that's my quick run through of FACA. Does anyone have any questions?

MEMBER MARKOWITZ: This is Steve Markowitz. If there are any Board members who have questions, now is the time. We don't really have any chat function on the Webex, so --

MR. BIRD: And this is Kevin. Just a reminder to the Board members to unmute yourself. You might be muted if you do have a question.

MEMBER MARKOWITZ: Okay. Thank you very much.

MR. PLICK: You're welcome.

MEMBER MARKOWITZ: Mr. Chance, do you want to introduce the next speaker?

MR. CHANCE: Yeah, Carrie, could you go ahead?

MS. RHOADS: Yes, sorry. This is Carrie Rhoads from DOL. Tom, you're on the line?

MR. GIBLIN: Yeah, I'm here.

MS. RHOADS: Great. This is Tom Giblin. He's from the Solicitor's Office, the division of the Solicitor's Office that supports the EEOICPA program. He's going to discuss the statute that covers the Energy program and a little bit of the history. Thanks, Tom.

MR. GIBLIN: Thank you, Carrie. And good afternoon to the Board. I did this presentation two years ago, so it's nice to be back. And I can assure folks that I have not aged a single bit in the last two years. You have to take my word on it. I'm sure the folks who've been there two years ago are the same.

As Carrie mentioned, I am the associate solicitor for the -- it's called the Federal Employees' and Energy Workers' Compensation division within SOL. Our acronym is FEEWC, and it's pronounced fee-wick which is no easier than EEOICPA. I guess we were bound to be together.

The FEEWC division, as I said, is

within SOL and it's responsible for providing legal support for the administration of the Energy Employees Occupational Illness Compensation Program, the aforementioned EEOICPA. This legal support involves legal advice which includes statutory interpretation, formal and informal legal opinions, review of the agency policy and procedures, regulatory work, and any litigation associated with EEOICPA.

We don't have what's called independent litigation authority for this program. So that means that anything that's appealed to the federal district court which is where an appeal would go, that is handled by the Department of Justice, DOJ. They represent us, although obviously we provide a significant amount of support since nobody is terribly familiar with the statute. It's a very niche law.

Many of you know that EEOICPA was enacted in 2020 -- I'm sorry, 2000 to provide the medical benefits and compensation for those who

worked in the nuclear weapon industry. It has amended a number of times. But essentially, there are two parts under the act that set out the compensation available for covered employees and their survivors.

Part B of the Act which is part of the original statute provides uniform lump-sum payments and medical benefits to cover the employees and their survivors. And they cover employees with the Department of Energy, its predecessor agencies, certain vendors and contractors and subcontractors. Part B also provides a smaller uniform lump-sum payment and medical benefits to individuals eligible -- found eligible by DOJ for benefits under Section 5 of the Radiation Exposure Compensation Act, also known as RECA and as well to their survivors as well.

Part E of the act provides the variable lump-sum payments. That payment is based on the worker's permanent impairments of the whole body and for qualifying calendar years

of established wage loss. It also provides medical benefits, and it covers DOE contractor employees and also, of course, their survivors as long as the death was due to the covered illness. Part E of the act also provides these same benefits to the uranium miners, millers, and ore transporters covered by Section 5 of RECA and to their survivors as well.

These two parts may seem similar. There are a number of differences and probably you noticed that Part B is fixed amount, Part E, it's a variable amount. They have differences between who is covered, what illnesses they cover, the amount of monetary compensation that is available, and how it's calculated.

As a general rule, Part B is broader as to who is covered but is limited in the types of illnesses that are covered. And by contrast, Part E is quite extensive in the types of illnesses that are covered, but it is limited on who is covered. As I mentioned already, Part B, it's flat. It's a flat amount. And Part E, it's

a variable amount, though there is a statutory maximum.

EEOICPA when it was originally passed, Congress assigned the responsibility of that act to the President of the United States. At that time, it was Bill Clinton. President Clinton, by executive order dated December 7th and Order No. 13179, delegated the primary authority to administer EEOICPA to DOL and also designated certain specific responsibilities to the Department of Health and Human Services and Department of Energy, DOE, and DOJ.

Part E didn't come into existence until 2004. When that was enacted, it actually had -- the Secretary of Labor was directed -- given direct authority to administer that part. As a general matter, OWCP adjudicates claims and pays benefits under EEOICPA, while HHS through the National Institute for Occupational Safety and Health, NIOSH, estimates the amount of radiation received by employees alleged to have sustained cancer as a result of exposure and

establishes the guidelines followed by OWCP when it determines that such cancer is likely related to employment. In addition, DOE and DOJ are responsible for notifying potential claimants and for submitting evidence necessary for OWCP's adjudication.

With respect to the Board, the provision that created was enacted in 2014. That's part of the 2015 National Defense Authorization Act. It created this new section, 7385s-16 which created the Board.

That provision, as you know, has been amended twice, once in 2018, and that just extended the life of the Board from five -- it tacked on another five years. It now sunsets in 2024. It was more recently amended in 2020. Those amendments were a little more extensive, and I'll get to the specifics in a little bit. But generally, they expanded the Board's duties and mandated certain actions by the Secretary.

The responsibility to establish the Board and appoint members was given to the --

originally given to the President. President Obama issued an executive order in June of 2015, 13699. The President established the Board in the Department of Labor, and he delegated to the Secretary of Labor the authority to appoint the members which is to consist no more than 15 members as well as the responsibility for the administration of the Board, including funding, staff, any of the administrative functions under the FACA that Joe just talked about as well as the designation of a senior official of the Department of the director and the staff to the advisory board.

With respect to the duties of the Board, there are now five specific areas. No, let me step back. There are really two duties of the Board. One is to give advice, and there are five specific areas that they are to give advice on. They are one, the Site Exposure Matrices of DOL to the medical guidance for claims examiners, for claims under Part E with respect to weighing the medical evidence of claimants, the

evidentiary requirements for claims under Part B related to lung disease, the work of an industrial hygienist and staff positions and consulting physicians of the Department, and reports of such hygienists and physicians to ensure quality, objectivity, and consistency.

And the newest provision is to provide advice on the claims adjudication process generally, including review of Procedure Manual changes prior to incorporation into the manual and claims for medical benefits. It also allows for other matters of the Secretary to consider as appropriate. And to the best of knowledge, the Secretary has not designated anything else to look at.

Second, the Board is to coordinate exchange of data and findings with the Advisory Board on Radiation and Worker Health, which is HHS. That was established under Section 73840 of the act. As you know, there's conflict of interest provision for the Board members regarding any financial interest related to the

provision of medical benefits under this act. This was reviewed prior to your appointments.

With respect to the amendments in 2020 mandated for the Secretary to do, it's now the Secretary of Labor is to provide the Board with access to any information that the Board considers relevant to carry out its responsibilities. Obviously that was done before, but now it's in the statute and it's to make available to the Board the program's medical director, toxicologist, industrial hygienist, and program support contracts.

The amendment also added provisions that require the Secretary to publicly state whether he accepts or rejects the Board's recommendations and provide either a timeline for when those recommendations will be implemented or the reasons the Secretary does not agree with the Board's recommendations. That, of course, has been done since the inception of the Board. The Secretary has always responded, and that's been posted. I guess really the only thing that's new

would be that we have to provide a timeline if we accept something.

As Dr. Markowitz pointed out, EEOICPA is a complex statute. And it has a lot of unique challenges in providing those rather complex provisions to work that started over 70 years ago. The Department has worked very hard to apply these provisions in a fair and equitable manner.

The program has obviously gained a tremendous amount of experience over the 20 years we've administered that program, and certainly understand the difficulties and challenges that are faced by claimants and the Department. And the scope of the Board's authority, although it is limited to the five areas that I described, it certainly assists us, more specifically OWCP in administration of that program. And that's sort of my general overview. I don't know if folks have any questions they want to ask.

MEMBER MARKOWITZ: So if there are no questions -- I'm just waiting a moment in case

any members need to unmute. But if there's no questions, then I think I want to thank Mr. Giblin very much, and perhaps we should move on. We're a bit early. I'm hoping that Mr. Mancher is available. But I'll leave that up to you, Ms. Rhoads and Mr. Chance.

MR. BIRD: He is with us on the line.

MEMBER MARKOWITZ: Okay.

MS. RHOADS: Okay. Zach, are you able to speak to us?

MR. MANCHER: Yes, I am here.

MS. RHOADS: Great, okay. The next person who's going to talk to you is Zach Mancher from the Solicitor's Office. He's from the Ethics Division. He's going to talk about ethical concerns regarding federal advisory committees and committee members, and especially special government employees which our Board members are.

And this also relates to the document that was sent to all the Board members that is called Ethics for SGEs. So you all have that,

and it's been sent a few times to you all. So thank you very much for agreeing to talk to us today.

MR. MANCHER: Thank you, Carrie. As Carrie mentioned, I am Zach Mancher. I'm a senior ethics attorney here at the Department of Labor. First, I just want to welcome you all to the Department as SGEs, special government employees. I think some of you are returning and have been in this role before, and some of you are new to this. So welcome.

Here at the Department of Labor, we do strive to uphold the highest level of ethical standards. And so along with that, we train all of our employees including SGEs as required on the ethics rules. And we want to make sure that everybody is aware of what the rules are, how they affect them, and have the ability to ask questions to me either now or as questions arise as you undertake some of the work of the committee. And we want to make sure that you're all comfortable with what the rules are and know

what you can and cannot do.

As Carrie mentioned, you've all been sent this document ahead of time and that I'm going to be going through. But it's a great resource. I will just mention Rob Sadler is listed in the most recent version of the document as the counsel for ethics. He has retired. And so Sabrina Gray is now the counsel for ethics. But you can reach our office either the phone numbers that are listed there or through Carrie or through your agency contact. They can get you in touch with us without a problem for any questions that you may have.

(Simultaneous speaking.)

MR. BIRD: And Mr. Mancher?

MR. MANCHER: Yes.

MR. BIRD: I'm sorry. I have a quick question for you. As a matter of mechanics, did you want to have control and be the presenter here, or did you want to prompt me where to move in this document?

MR. MANCHER: Oh, so I can take

control of it if that's possible.

MR. BIRD: Absolutely. Let's do that right now.

MR. MANCHER: Okay. All right. Thank you. It looks like I now have the ability to slide down through the document or at least through the first -- oh, there we go. Can you all see page 2 now?

MR. BIRD: Yes, I can.

MR. MANCHER: Okay. All right. Just checking to make sure that that's how this one works. So here's the names that I was mentioning. So you can still contact me. You can still contact Vanessa Myers.

As we move down, the two other names on this page are Kate O'Scannlain, the Solicitor of Labor, and Peter Constantine who is the Associate Solicitor for Legal Counsel. And they are what are known as the designated agency ethics official and alternate designated agency official, or DAEO and ADAEO, who are the people who are statutorily responsible for the ethics

program at the Department of Labor. And so they supervise the ethics staff and Kate O'Scannlain supervises the entire Office of the Solicitor here at the Labor Department.

So moving into the rules now, financial conflicts of interest is the first rule. This is a criminal statute. So we want to be very clear on it and very clear about what your responsibilities are and in terms of what the prohibitions are. This is one of the main federal government ethics rules in that it essentially prevents employees of the federal government from taking advantage of their position in order to use the powers of their position to make money for themselves or for somebody else on the outside.

As Tom Giblin mentioned, under this committee's statute, you essentially have an additional financial conflict of interest restriction. That essentially makes it so that we don't have to cover this as much as we would normally because it essentially prevented people

from having the types of conflict of interest that I would talk about here from even being on the committee at all. I am still going to cover it now as I move to page 3. But the general rule is that you may not participate as a government official on a particular matter if it would have a direct and predictable effect on your financial interests or those of your spouse, your minor children, your general partners, or with organizations that you are an officer, director, or trustee, partner, employee, things like that.

So the general exceptions to the rule are that you are allowed to have broadly diversified mutual funds, sector mutual funds up to $50,000 within the sector. So broadly diversified mutual funds, so if you owned an S&P 500 and you were doing work that affected one of the companies held in that fund, that would not create an issue no matter how much money you had in that fund. If it was a sector fund, so for instance, an energy sector fund, and the work you were doing affected one of the companies in that,

you could work on that as long as you held no more than $50,000 within that sector. And that includes both an aggregation of all of the funds that you have in the sector, as well as any funds in that sector held by your spouse and minor children.

There's also an exception for stockholdings or bond holdings that are publicly traded of $15,000 or less. And again, this is aggregated between you and your spouse and children. So if you had $10,000 in stock and your spouse had $10,000, that would go above that $15,000.

I do want to mention there's also one specific exception here for federal advisory committee members which is that disqualification is not necessary if the interest is an interest arising from your non-federal employment. Again, because you're special government employees, this is a little bit different than the way that most government employees are in terms of their outside job would create a conflict for them.

Here we understand that you have that outside job because this isn't your everyday full-time job. Again, if you have any questions on these, you should come contact our office.

Next, I'm going to move into the appearance of bias rule. So this is another conflict of interest. It's a non-financial conflict of interest, and this is in the Code of Federal Regulations. This is not a criminal statute. However, it is still a government ethics rules. And so therefore, we do need to follow it as well. This rule essentially says that federal employees may not work on particular matters involving specific parties essentially if a reasonable person would assume that they could not stay unbiased in their actions and so here -- or where you have a covered relationship with somebody involved.

So what do I mean by participate in a specific party matter? A specific party matter is something that is going to affect the individual rights of one particular person or

company or something like that. So it's generally contract, a grant, a lawsuit, an enforcement action, something like that. It's not a broad policy matter that affects a group of companies or individuals at one time. It's the type of thing that has an immediate impact on one particular entity or person.

So like I said, the general rule is that if you have a covered relationship or if there would be the appearance, you would not be able to work on this. What do I mean by a covered relationship? This is somebody with whom you have a business or financial relationship or seeking such relationship other than consumer -- a routine consumer transaction, so somebody you consider a client as opposed to somebody you'd consider a customer, your household members, close relatives.

And here, it goes beyond the close -- the close relative here goes beyond just your spouse and minor children. This would include, parents, grandparents, cousins, aunts, uncles, et

cetera. There's not a specific definition. It's not that it includes second cousins but not third cousins.

It has to do with your actual relationship. Is this somebody that you see at holidays, that you have exchanged gifts with, that you see at life events, something like that, as opposed to somebody who you may biologically be related to but have no actual relationship with in terms of that.

Employers, so something that would affect your employer or clients or prospective employers and clients of your parents, dependent children, or spouse would be covered by this as well. So for instance, your parents' company is involved in a matter. You should not be working on that.

If you changed jobs recently, your former employer for one year after you did work for that former employer or client, essentially some people leave relationships, whether it's employment relationships, on good terms. Some

people leave it on bad terms. Either way, we don't want that to affect you and create this appearance of bias.

And finally, organizations in which you are an active participant, so this is more than mere membership. So this would generally be if you are a board member of some organization or heavily involved, maybe you're on a subcommittee, maybe you run a particular event of that organization. Things where you're involved as more than a mere member, you would not be able to work on. Again, specific party matters that would affect that organization's finances.

I'm now going to move on to non-government or outside activities. Essentially you may engage in non-government -- in outside activities even for pay as long as it doesn't create a conflict with your official duties. And here, that is going to be unlikely that it would.

Generally, this is going to prevent you from being paid for outside speaking or writing activities that are related to your

official position. So SGEs are specifically prohibited from receiving compensation for some activities related to their government participation like I said. But it's only as to matters which you are currently or have been assigned during this current appointment.

So if it's considered to be related to your official duties, if it is performed as part of your official services, it was extended to you -- the invitation was extended to you because of your government position or by somebody with interest before your committee and could be affected by your work, or if it draws substantially on non-public information that you are aware of because of your position. Or like I said, it is about a specific matter which you have been assigned during the previous one-year period. If you have served 60 days or less in a year -- which I am pretty sure should apply to everybody on this committee. I'm pretty sure the members of this committee do not work more than 60 days in a calendar year.

Then these last three bullet points are -- with the dashes are interpreted even more narrowly. And so again, if you have any questions on this, if you're given an offer to speak or to write for pay on something related to the work of this committee, please run it by us first. You can reach out to Carrie. You can reach out to our office directly. That way, you can make sure that you're following this rule.

But like I said, it will apply very narrowly because of that 60-day threshold to you. But you should be aware of that as well. Generally, the rule allows you to teach even for pay, even about things related to your official position as long as the teaching is part of the regularly established curriculum at an accredited institution or some accredited school.

Next, I'm going to cover political activities. This will be, I will say, kind of less important right now than it would have been had we had this presentation last week or last month. But essentially the Hatch Act covers the

political activities of federal employees and that does even affect you as special government employees.

However, as special government employees, it is very limited how much it affects you. Essentially it prevents you from participating in any partisan political activity while you are on duty or in a federal building or using any federal resources. And it prevents you from doing any fundraising, soliciting, accepting, or receiving political contributions on the days that you serve as a federal government employee.

So on those particular days, you may not solicit, accept, or receive political contributions. However, you may do so on other days. It does not prevent you from giving contributions. It is just about soliciting, accepting, or receiving contributions on behalf of particular candidates or political parties or political organizations.

Service as an expert witness is the

next topic here. You may not serve as an expert witness in cases involving your participation here unless that is approved. That is something that actually both my office and Joe Plick's office work on together. So if that is to arise, please reach out to us to make sure that that is approved and that it is -- the type of witness work that you are doing is allowed under the rules.

The next topic here is lobbying the federal government. Because you are considered a federal employee and a federal official, generally, you may not contact other federal officials to influence government actions on behalf of others. However, because you are an SGE, these rules are somewhat limited as they apply to you. And this is a criminal statute as well.

If you serve 60 days or less, which as I said I think is the case for most of you, you may not represent anyone before a federal agency or federal court in any matter -- or state court

actually in any matter involving specific parties if you personally and substantially participated in that matter. So if it is something that relates to work you have done on this committee, you may not contact them then. If it is -- if you serve 60 or more days, then as I mentioned -- then you would not be able to in those matters or in any matters pending before the Department of Labor on any topic. But like I said, I think for all of you it's just going to be the under 60-day restriction.

Federal officials also may not serve as registered agents of foreign governments, and that is the rule across the Board. Quickly we're going to cover bribes, gifts, and salary supplementation. So this, the bribes and salary supplementation, bribery obviously is illegal. That would be accepting a bribe in order to -- that basically somebody promises to give you money or something else in exchange for taking or not taking some official act in your official capacity as an SGE.

In terms of salary supplementation, this is essentially anybody -- other than the federal government paying you to do something that you are doing in your federal official capacity. So essentially, the federal government is the only one who can pay you for the work that you're doing here. So if you are giving a speech in your official capacity, nobody else could pay you for that speech. That's essentially how that comes up.

Gifts, you may not accept gifts from a person who has business before the Department of Labor or who's regulated by the Department unless an exception applies. Luckily, there are many, many exceptions and these will generally cover most gifts that you would receive. We do mention the optics concerns.

Here, the appearance of favoritism or impropriety can cause embarrassment to both you and the Department. And therefore, you should turn away gifts that would create an optics issue, even if they would fall within one of the

exceptions. Again, I think that is unlikely to happen in your case, but I will cover all these exceptions as well just to be clear.

So gifts of $20 or less on a single occasion and up to $50 during a calendar year from a single source may be accepted. So that would be if somebody takes you out for lunch once and it's $15, it would be fine. If they take you out again, $15 dollars, it would be fine. The third time, that would make it 45 dollars for the year, that would still be fine. But if they try to take you out a fourth time under this gift exception, that would not be allowed.

But again, there are a lot of other gift exceptions that I'm going to go through now. And so there might be times when this would be allowed. So gifts based on a personal relationship, so gifts from a friend, gifts from a relative which are, to be honest, most of the gifts that people receive. Those types of things are going to be allowed under that exception and therefore they don't need to fit under that $20

rule or the $50 for the year.

Free attendance and meals at an event where the employee is officially presenting. So if you are giving a speech on behalf of this organization -- on behalf of this committee, you could accept free attendance and any meals or other things that go along with free attendance on that day. You could accept that.

Widely attended events, I think this is unlikely to come up here. This essentially allows free attendance at events when it is deemed to be in the government's interest for you to attend. I think that is unlikely to come up for members of this particular committee.

Items of little intrinsic value such as cards, plaques, trophies, things like that, that are meant merely for display and not for use, those are allowed. Discounts that are available to you for some reason other than federal employment, so your AAA membership or other things like that, you are allowed. Also, gifts for -- oh, I think the main one here is

gifts based on your outside business relationship.

So this is going to come in handy for all of you. If the gift is given to you because of your outside business relationship or outside employment or spouse's outside business relationship or employment and is not enhanced because of your federal position, that gift is okay for you to accept. These last two I think are unlikely to come up, business meals overseas, or gifts from a foreign government. I think those are unlikely to come up, but you could seek our guidance should something like that come up.

I already covered salary supplementation as I mentioned here. Misuse of government resources, this rule is another key one. Essentially you are not allowed to use any government resources for personal use.

So government resources are meant to be used for the purpose of this committee and the work of this committee. That includes your government time, government supplies, and also

the time of government employees. So you cannot use the staff of this committee for your own personal uses. They are here to help you with the work of the committee. They are not here to help you with personal errands or other things like that.

And finally, your official title. So misuse of government resources covers your official title. So you may not use your title or any authority given to you by being on this committee for personal use. So essentially, you may not try and gain any benefit in outside business relationships or things like that because of your official title here. So essentially trying to get some benefit off of that. So you must avoid implying that the government endorses a particular private activity or company or product or anything like that with which you're associated by using your government title.

Another one I mentioned was non-public information. So you may not use any non-public

data, economic analysis, private personnel information, or any other non-public information that you have access to because of your position here for your personal benefit or for the personal benefit of anybody else, whether that be a friend or family member, co-worker, a business associate, anything like that. So if you knew of a lawsuit that was going to happen against a particular company because of your work here, you could not use that to tell others to sell their stock in that particular company or something like that. Again, you may not use your government authority for non-personal activity.

Post-federal employment restrictions, these likely will not affect you very much either. But essentially, if you work on particular matters involving specific parties here which I think is unlikely. However, it might be something that happens in this committee. I'm not completely sure of that.

You essentially are not allowed to represent third parties back to the federal

government on those particular matters. So if you are involved in a particular lawsuit or something like that, you cannot then represent somebody back to the federal government on that, whether it's a federal agency or a federal court. Here I don't think there are going to be any matters that you wouldn't be working on.

But under your official responsibility, that is essentially a rule for supervisors. And for all of you, I don't think there's any supervisory relationship. So that is not something that you need to worry about. Are there any questions here? I can stay on the line for a few more minutes.

MEMBER MARKOWITZ: This is Steven Markowitz. I have a question. So there's a matter that's going to come up before the Board tomorrow that there's a member of the Board who has a particular matter that possibly/probably represents a conflict of interest. Can that person and I discuss this with you towards the end of today or at the beginning of tomorrow?

MR. MANCHER: Yes, yes. We can absolutely discuss that. And I will say one -- as a kind of remedy, generally when members of FACA committees have -- excuse me, have conflicts of interest, generally the remedy is to have that particular member recuse and not participate. Usually it's in the form of leaving the room. Here I assume it would be in the form of getting off of the call for that length of time while they were covering that, and then rejoin the room or -- reenter the room or rejoin the call after the committee is done discussing that particular matter.

MEMBER MARKOWITZ: Okay. Thank you. We'll be in touch.

MR. MANCHER: Okay.

MEMBER MARKOWITZ: Any other questions for Mr. Mancher?

MEMBER FRIEDMAN-JIMENEZ: This is George Friedman-Jimenez. I have a question. Could you please define the word "bias," how you're using it in this context?

MR. MANCHER: This is under the appearance of bias rule. So it is essentially when any -- the rule is that you may not work on a particular matter involving specific parties when a reasonable person would question your impartiality in the matter. And so essentially it is a reasonable person standard where they essentially task the employee themselves with the advice of the ethics officials for the agency to make a determination as to whether a reasonable person would find you to be able to be impartial in the matter.

So I don't know if there's a specific definition of bias. But essentially it's going to be -- or we're going to look at how closely it's related to -- kind of what the relationship is between you and the person who's affected. We're going to look at what your role is in the matter, whether you're kind of merely number crunching or whether it's kind of your opinion and it's something where there is some level of independence in the decision and advice you are

giving.

We're going to look at the relationship between that matter and the individual. So if it's something that your decision directly leads to this person either gaining some right or gaining some money or something else like that. Or is it a decision that affects a regulation that could potentially affect an industry that could affect that person, which would obviously be many more steps down the line and would likely not be considered a direct effect on that person. So there's a number of different factors that we look at. But essentially under the rule, it's up to the individual with the advice of the ethics office to make that determination.

MEMBER FRIEDMAN-JIMENEZ: Okay. Thank you.

MEMBER BOWMAN: This is Aaron Bowman. I had a quick question relating to the use of our official title as special government employees in the context of non-government activity. In

academia, at least elsewhere too, it is common to list on your curriculum vitae or bio sketch various service activities that you're involved in. And those are used to evaluate an individual's expertise or evaluate their suitability for something. Would this mean I should not put that I'm a member of this Board on my CV?

MR. MANCHER: No, you -- absolutely you may put that you're a member of this Board on your resume or CV. What this is really referring to is in terms of trying to essentially get an outside position because of your access to this Board as opposed to kind of listing this as a mark of something that you have done.

It would be similar where somebody was trying to essentially get clients based on saying I have access to this private information. I have this authority as a federal government employee. And therefore, you should hire me in my outside position. The type of thing, a normal activity of putting it on your resume or CV does

not create that type of issue.

MEMBER BOWMAN: Okay. Thank you.

MEMBER GOLDMAN: This is Rose Goldman. I have another question, and it has to do with if you're signing something like a petition or something let's say related to energy, but you're signing it as an individual and you're not noting that you were on this committee. Is that in any way considered a problem?

MR. MANCHER: I think I would need to have a lot more kind of specifics on that. Like I mentioned for SGEs, the rule is a lot narrower in that it would only be if it was about specific party matters that you had worked on in your official capacity, so things that the Board has talked about or that have been assigned to you. So it's not going to kind of cover all matters or all specific party matters or kind of more broad things like -- I'm not sure if you're talking about commenting on regulations or things like that. So I think I would need more specifics. But again, the rule is pretty narrow in what it

prevents you as a special government employee from doing.

MEMBER GOLDMAN: Okay. Thanks.

MR. MANCHER: So we can certainly talk about this more if you can give me more specifics.

MEMBER MARKOWITZ: Are there other questions?

(No response.)

MEMBER MARKOWITZ: Okay. Mr. Mancher, thank you very much. I think if the Board members, if there are questions that come up regarding ethics, we can be in touch through I think Michael Chance, our DFO, who can decide where the issue goes. So --

MR. CHANCE: Yeah, Steven, I'd be happy to coordinate that, especially with some of the newer people who might have some questions. And it can get complicated. I don't want anyone to get in any trouble.

MEMBER MARKOWITZ: Okay. So are there -- Ms. Rhoads, Mr. Chance, are there any

announcements or issues that have arisen? One thing while you're thinking about that, we have a break in a few minutes, is I realize that we can't avail ourselves of a chat function. But if there's a hand raising function, I'm thinking more frankly of tomorrow which is going to be more interactive. If there's a hand raising function that could be enabled, that would be helpful. We don't need an answer right away about that. Any other comments or questions from Board members?

(No response.)

MEMBER MARKOWITZ: Okay. We're running a little ahead. It's about eight of 1:00. Why don't we take our lunch break. And then if we come back 1:20, Mr. Chance or Ms. Rhoads, can we give Ms. Pond -- or if she's on the line, can she start then?

MS. POND: Yeah, I can start then. This is Rachel.

MEMBER MARKOWITZ: Okay, great. Okay, perfect.

MR. BIRD: I think that works. So 1:20?

MEMBER MARKOWITZ: 1:20. So we'll just leave our lines open.

MR. BIRD: Okay.

MEMBER MARKOWITZ: Okay, great.

(Whereupon, the above-entitled matter went off the record at 12:53 p.m. and resumed at 1:25 p.m.)

MS. POND: Good afternoon, everyone. I want to start by welcoming the Board, both new and existing members. I'm very excited to be working with you again this year. Just a little bit of information about me. I am currently the director of the energy program here in Department of Labor. I've been with the program since the very beginning. I was the first policy chief back in 2001. And then in 2008, I took over for Pete Turcic who was my predecessor and I've been the director here since then.

There's been a lot of changes since the beginning of the program. We started with

just one part which is Part B. And then a few years later in 2004, the passed Part E of the statute. So there's a lot that's kind of complicated. I am going to walk you through the pieces of the program. Tom already talked to you in general about what the statute is, so I'm going to try not to repeat too much of what he said.

But what I'll do is I will kind of give you an overview first of what the program is about, the benefits we provide, the items we have to look at. Then I am going to talk a little bit in more detail about the claims process. Dr. Markowitz has asked that I cover certain things that are most relevant to you as the Board and the types of things that you're looking at.

Then I'm going to walk briefly through the statutory duties of the Board. I'm hoping by the time I get to that at the end of the presentation, you will have a context and understand what these various categories mean better because I will have gone through our

process and what we have to look at and do to adjudicate a claim. Then I'll talk briefly about another issue that has come up about impairments, and then I'll take questions.

So I'm going to try to keep this to an hour so you'll have at least 15 minutes of questions. If you can hold those questions till the end or while you think of them, I believe that Dr. Markowitz is going to be able to sort through them and get to them at the end. So jumping right in. Okay. Sorry. Now I'm having trouble with the slides. Kevin?

MR. BIRD: Yeah, did you want me to just take over and you say, next slide?

MS. POND: I guess. I don't know why it's not -- it was working one minute ago, but I guess it's not anymore.

MR. BIRD: Okay. Here, I will just take it. Then when you're ready to move on to the next slide, you just said, next slide.

MS. POND: Okay.

MR. BIRD: Give me one second. Okay.

There we go.

MS. POND: Thank you. So EEOICPA, as Tom indicated, this is a law that's administered by the Department of Labor's division, our division, Energy Occupational Illness Compensation. It's a mouthful. So I tend to call it the energy program. It gets a little confusing when we're referring to the Department of Energy. But hopefully, you'll understand what I mean.

We provide lump-sum compensation and medical benefits to current and former nuclear weapons workers and certain of their survivors. The survivor definition, the definition of the different parts are different depending on what we're looking at. Next slide, please.

So again, Tom mentioned that there are four different agencies involved EEOICPA. I'm going to cover most of what these duties are in this slide presentation. There's Department of Labor, Department of Energy who primarily does employment verification, Department of Health and

Human Services through NIOSH, the National Institute of Occupational Safety and Health. They do the cancer and radiation analysis for us. And the Department of Justice who primarily -- well, their only role is really with the Radiation Exposure Compensation Act which Tom touched on earlier. Next slide, please.

So again, there are two parts. The first was enacted in 2000 and the second was enacted in 2004. There are similarities to both of them in terms of what we need to look for when we're evaluating claims. Basically, we need employment evidence. We need medical evidence. And when there are survivors, we need survivor evidence. What that looks like and how it is evaluated and adjudicated is very different depending on the two different parts. The majority of the statutory duties of the Board I will tell you right now is related to Part E. But there are items related to Part B which I will point out as I go. Next slide, please.

So there is employee eligibility. As

I have indicated, there are three parts, medical, employment, and survivorship. For employee eligibility, there are different issues related to that. So for Part B, we cover DOE contractors and subcontractors as we do with Part E. Part B covers federal employees, but Part E does not. Atomic Weapons Employer, there's a very specific definition for that and that is only covered under Part B, not under Part E. These are all statutory definitions. And then beryllium vendors which are also only covered under Part B but not under Part E. RECA is covered under both parts in different ways. Next slide, please.

This is where it gets the most tricky for us. We have under Part B there's only four conditions, really categories of conditions that are covered. That would be cancer, covered beryllium illness, chronic silicosis, and RECA Section 5 awardees, whereas under Part E, it can be any condition as long as we can determine -- and this is kind of important -- that the statutory definition says that there is a

significant -- that exposure is a significant factor in causing, contributing to, or aggravating the condition.

So under Part B, these definitions for cancer are very specific, and I'll talk a little bit about that in a bit. But you have to meet certain definitions per the statute for any of these conditions. Under Part E, it's a lot more fluid shall I say.

We rely on medical evidence to tell us about this positive factor and to provide us with evidence that we can then evaluate to determine whether the exposure was enough, whether the condition is really related to it, whether it was a significant factor in aggravation and contribution versus causation which is a very different standard. So these are the complicating factors that we really struggle with the most, I believe. And it's under Part E looking at this causative factor. Next slide, please.

Survivor eligibility, I'm not going to

go into a lot of detail on this just because it's not something that you guys really have to worry about as it's not part of your charge. But for your information, the survivorship definition under Part B is first the spouse, then children, and that can include adult children, parents, grandchildren, and grandparents. Under Part E, there is a causative factor meaning that you have to show that the death was related to the condition that would be covered. That is not a criteria for survivors under Part B.

So first, you have to determine that the death was related, then it would be the spouse. If there's no spouse, it would be children. But the children have to have been less than the age of 18, less than the age of 23 and a full-time student, or medically incapable of self-support at the time of death. Next slide, please.

The benefit structure is also very different depending on the part of the program we're looking at. Under Part B, if we determine

that an employer survivor is eligible, they will receive a 150,000-dollar lump sum plus medical benefits for that covered condition. If it's a RECA under Part B, they get 50,000 dollars. That is if they've already been approved for RECA benefits under Department of Energy.

And RECA again is the Radiation Exposure Compensation Act. That's the program that's administered by the Department of Justice, and they will make a determination whether -- and it's primarily uranium miners, millers, and ore transporters. They'll make a determination as to whether or not an individual is eligible under that program. They get 100,000 dollars from the Department of Justice and then we will provide them with the other 50,000 dollars plus medical benefits. They do not get medical benefits under the Department of Justice program. That's all Part B.

Under Part E, once a person is approved, so there's a couple of things I just want to mention. If you get an approval under

Part B, you're going to automatically be approved under Part E as long as you have the covered -- the employment is covered under Part E as an employee. But what we need to look at for this is whether or not a person has impairment.

So they don't automatically get a compensation if they're an employee. They will get approved for medical benefits, whether it's because of a Part B condition or because they're accepted, like, for example, for asbestosis under Part E which is only covered under Part E. Either way, they're going to get an acceptance.

Once they get that acceptance, we then will seek out whether or not they're entitled to additional compensation. And the way we determine that and the way that the law is written is that they can apply for impairment, meaning a whole body person impairment of -- based on their condition. They can get a certain percentage for each level of impairment that they have.

The AMA Guide to the Evaluation of

Permanent Impairment talks about that. I don't belabor this in this presentation, but I'm happy to answer questions about it because it will come up later in terms of a particular issue we're having with this. But basically, we determine whether or not a person has impairment. They get 2,500 dollars per percentage of impairment that they have.

And then we also look at wage loss. And there's a wage loss calculation that provides them between 10,000 and 15,000 dollars for each year of wage loss. That varies. That 10,000 -- between 10,000 and 15,000 varies based on the level of wage loss that they have. And then for survivors, there is a lump sum compensation payable under Part E and that's 125,000 dollars plus any additional wage loss if they're eligible. There is a cap for benefits under both parts, and that's 400,000 dollars for B and E. But there is medical care for any accepted condition. Next slide, please.

So under Part B, there are two

different ways that an individual can get accepted for cancer and that is through a dose reconstruction which is a calculation of the amount of dose that somebody might've been -- radiation dose somebody might've been exposed to in their employment. So the first thing that we're going to do, there's a Special Exposure Cohort or something that was designated by Congress. There are four statutory Special Exposure Cohorts.

Those would be the gaseous diffusion plants and Amchitka Island. And what that means basically is if you're in a Special Exposure Cohort, you get a presumption of causation. There's -- you do not have to go through this dose reconstruction process which I'll talk about in a minute. But you also have to show that you worked in a specific location or a specific job within -- for 250 work days during a period that this facility is designated in the class. You also have to have 22 specified -- one of 22 specified cancers that are named in the law. I

will go through that list of cancers next. Next slide, please.

Obviously, you won't have to memorize them. They'll be on the slide. But to qualify for compensation, a covered employee must have at least one of these 22 specified cancers, leukemia other than chronic lymphocytic leukemia provided the onset was at least two years after first exposure, primary/secondary lung cancer, in situ lung cancer that is discovered during or after a post-mortem exam is excluded, primary or secondary bone cancer, and primary or secondary renal cancers. This continues on the next slide.

The following cancers are included in SEC provided onset was at least five years after first exposure, multiple myeloma, lymphomas other than Hodgkin's disease, and primary cancer of -- you can see the list there. I'm not going to run through the entire list for you. Liver cancer, the exception is if it's cirrhosis or Hepatitis B, it's not covered under the SEC.

Okay. Before we move on to the next

slide, I don't have a slide covering the NIOSH dose reconstruction process. So I'm just going to walk quickly through that for you again. This isn't something that particularly affects what you guys do when it comes to Part B. But the first thing we'll do with a Part B cancer claim is if they don't fit in one of these classes, the other thing I want to quickly go back and mention about the SEC classes is that an individual can petition NIOSH to add a class of employees to the Special Exposure Cohort. And if NIOSH determines that they cannot do a dose reconstruction at a particular site, they can add a Special Exposure Cohort.

Since the four statutory SEC classes, NIOSH has added over 130 new classes and they can add more. It really depends on the circumstances. And they have sole responsibility for making that determination. They also have sole responsibility for undertaking this NIOSH dose reconstruction. We'll have a cancer claim that'll come in. We'll either look to see if

it's in the Special Exposure Cohort.

If not, that claim will go over to NIOSH and they'll conduct a dose reconstruction which involves interview process, reviewing all the records that they have, that they've collected at the site -- the individual sites. And then they'll come out with a report that tells us their results of their process. We then feed that into a computer program that tells us basically whether it's 50 percent or higher likelihood that the individual had sufficient radiation exposure to be provided benefits under the program. So that's cancers under Part B.

Under Part E -- next slide, please -- there's a pretty significant process that we need to go through. I'm going to walk through a little bit more about the process in just a few minutes. But one of the things that we created, so when we first got Part E, we realized that most people don't know what they were necessarily exposed to in the workplace.

They have some medical information

oftentimes. But we realize that maybe we could help by creating some sort of reference point for our claims examiners to look at and to help the claimants in determining what they might have been exposed to. So we created the Site Exposure Matrices, and it's really just a repository of information on toxic substances that were present at Department of Energy and RECA sites covered under Part E.

We did a roundtable at the very beginning when we started this. We went to all the different sites to talk to employees. We worked with the Department of Energy to gather information, and we're constantly still doing that. SEM information is gathered from a variety of sources. And we have not only, like, what particular toxic substances might've been at these sites but what buildings they might've been in. And then we have a separate section that provides information about whether or not there's a link, a scientific link between the toxic substances and certain illnesses. John Vance is

going to talk in more detail about that tomorrow, so I'm not going to belabor it. But I just wanted you to be aware of it since we're talking in general about what we go through. Next slide, please.

So there are certain responsibilities of the claimant. First of all, the burden of proof does lie with the claimant. They file the claim and we will ask them for information that they will collect, copy and submit any relevant records they have. And any information requests that we ask them, they are to do their best to provide it to us.

We do a lot of other things, however, to help with this process. Not only the creation of the SEM, but as I'll walk you through in a moment, there's a lot of other efforts that we make to help them with this burden because our intent throughout the claims adjudication process is to really help the claimant get their claim accepted if they're eligible. And so knowing how difficult this can be for employees and

particularly for survivors to gather this information, that's why we go to these extra efforts to make sure we're helping them get to an acceptance whenever we can. Next slide, please.

To that end, we do have 11 Resource Centers nationwide. The Resource Centers provide us with a lot of assistance at the beginning of the process and throughout the process. We also have four District Offices located in Cleveland, Denver, Jacksonville, and Seattle. And then we have a lot of information on our website that will help sort through these things as we move through looking at cases. Next slide, please.

Just a little bit about what the Resource Centers do. They manage the Resource Center operations. They can help claimants, guide them through the process. They intake claims. They work with us. They're our contractors. So they will work with us on any DOL procedures that need clarification.

They conduct the occupational history interviews. They will provide medical bill

payment assistance. They take incoming calls, and we're in constant communication with them in term of anything that we really need them to be forward facing for claimants, they will help us with. Next slide.

And I'm going to walk you through a little bit more about the actual claim intake process and the decision process. As I said, the claims normally oftentimes are taken by the Resource Centers. However, claimants can submit them directly to the District Office if they want to.

The helpful part about the Resource Centers taking the claim is they can kind of walk claimants either face-to-face or even over the phone through the process. Research Centers are also responsible for the occupational history questionnaires. So I'm going to tell you a little bit about that because this is something that the Board has actually done a lot of work on to help us perfect the occupational history questionnaire.

This is used under Part E cases where we are trying to obtain information from claimants about what they might've been exposed to, where they worked, a little bit more detail about that. So it's a pretty lengthy questionnaire that the Resource Centers will either have an appointment with the claimant to talk to them in person or they'll talk to them over the phone. And we have made some changes to our process for this which John will probably get into when he comes up and talks.

But in general, this is where we start when we try to get employment information in terms of exposures. So we'll ask a series of questions about what the employee remembers they might've been exposed to, what toxic substances they were involved with, what job categories they were in. This can be alternative -- there might've been other ways they -- one job category in one site might need something else than another site.

So this is a place where we can

clarify some of those questions. And so it's really important piece that we do at the very beginning when we get a party claim. And then the District Office, once we get a claim, will immediately send the information that is obtained during the intake process in terms of the employment information we'll send that to the Department of Energy for their employment verification.

So if somebody says they worked at Paducah, we'll send that to the correct Paducah DOE facility, Paducah site to verify that employment. Now unfortunately, it's not always that straightforward because not everybody -- there's not always records. Like, for the smaller sites, sometimes it's a contractor and the DOE doesn't have records.

So we've developed a lot of other venues to try to obtain the information about where somebody worked. Sometimes an employee didn't work there recently. They worked there back in the '40s and '50s and the dates might not

be precise.

So if we can't get it directly from the Department of Energy, we'll go to what they've established, POCs for various contractors. We also rely on other information in terms of union records. Sometimes we can get those. We have the building and construction union that's helped us with obtaining some information about what subcontractors might've been out there.

So there's a lot of things that we do. We'll also go directly to the Social Security Administration where we can't get it from any other source in terms of where they may have worked during a certain period of time. That, of course, is important and when we do our analysis under Part E, particularly for causation or exposure.

So once we've taken the claim in, it goes to the District Office and the District Office has to start claim development. There are some common items that we need to obtain for Part

B and Part E. But that is basically we need to get medical evidence.

The first thing we need before we can do anything, we need a diagnosis. So the claimant needs to provide us with at least this is the claimed condition. Here's some medical evidence to support that. And then, of course, we'll move on to causation and exposure analysis. The employment information, as I said, we get that from Department of Energy and other sources. Next slide, please.

So for the exposure causation piece under Part E, this is what I think the Board has spent a lot of time with helping us on looking at evaluating because it's so not straightforward. There are so many conditions and so many possible toxic substances out there that could be related to these conditions that this is the biggest challenge that we go through. Oftentimes, we'll get medical evidence from a treating document who has been treating this person for a long time, but they're not familiar with what caused it or

isn't always necessarily their objective.

They're treating the patient for their condition, and so they're not trying to focus on how they got the condition. So acknowledging that, we'll first go to a treating physician and ask the question, this is what we believe this person was exposed to. Provide us with some evidence that there was a causal relationship.

But when that fails and when treating physicians aren't able to do that or we may need more information to make that determination, we will prepare a statement of accepted facts. And what that SOAF is, is it is basically it's a compilation of what facts we've gathered in the case so far. So it will list the conditions that are being claimed. It'll list the employment information that we know of.

In some cases, the SOAF can vary depending on what purpose the SOAF is going to be used for. So a SOAF might go to -- and I'm going to talk about the industrial hygienist and that whole process in a moment. But it can go to

different kinds of specialists, an industrial hygienist or a contract medical consultant. And so if it's going to an industrial hygienist, we oftentimes will not have as much exposure information yet. And so that SOAF will contain, here's where we know they worked, there's the job categories we knew they worked in. And then that SOAF will be used as a backbone to make a referral to one of these specialists.

So now I'll talk a little bit about what I mean when I say one of these specialists. So when we get information, we'll check our Site Exposure Matrices once we're looking at a case for Part E to see if there is, first of all, we don't have any information from the claimant at all or we have very limited information. We'll check the Site Exposure Matrices to determine whether or not there's something that we can show in that system, okay, it looks like they might've been exposed to X, Y, and Z, particular toxic substances in this particular site, in this job category.

The Site Exposure Matrices does not go down to the years of employment. We don't have the information to do that. But it does give us an initial idea. And then we can say, okay, well, this person has chronic obstructive pulmonary disease. Let's look at the SEM to see if there's any connection between these toxic substances that somebody is exposed to and the disease.

At that point, that gives us a pretty good basis for understanding what the exposures might have been. And again, this is in absence of anything else we might have from the claimant or the claimant's treatment physician. If we have that information, that will also be included in our analysis.

We'll often go to an industrial hygienist at that point. Now we have two federal industrial hygienists. And then we have -- in the several -- couple of years, we've hired a contractor because we get so many referrals to the industrial hygienist.

So the contractor is made up of industrial hygienists who help us evaluate these claims for exposure analysis. We refer it to them so that we can get a sense of the extent of the exposure, how frequently somebody might've been exposed. Then an industrial hygienist will use records that we provide them.

So one of the items that we collect from the Department of Energy is the DAR records. They're the document acquisition records that they have. Those records are beyond the employment verification, and they will tell us -- provide us with any other information that they might've gathered for this particular employee over the years, including any monitoring that they might've had, any industrial hygiene records that might be there already, medical documents from when they might've visited the clinics, things like that. Those will all come in a DAR request that we get from the Department of Energy.

Once we have gathered that information

and we've reviewed the SEM, we will -- when we refer something to an industrial hygienist, that first goes to our policy branch where the federal industrial hygienists are housed. And they will then oftentimes refer that out to a contract medical consultant. The contract medical consultant will write their report that are pretty detailed, and then they will send back in to the federal industrial hygienist for review to evaluate consistency for making sure that the correct information is in there.

These reports will vary. They rely heavily on literature in the absence of any data that we might have from a claimant or from Department of Energy. They will rely on their expertise. They'll rely on literature. They'll rely on whatever they can in making these assessments. Those are evaluated and reviewed by our federal industrial hygienist and then sent back to our claims examiner for review in the evaluation of each case.

Once we've identified the extent of

exposure, oftentimes depending on the case, we will send it back to a treating physician and say, this is what we know about the person's exposure. Can you provide us with an assessment on whether or not these exposures where a significant factor in causing, contributing to, or aggravating a condition? Sometimes the claimants go to doctors that have a pretty good knowledge of this sort of thing. Other times, they don't.

So in those cases, if we have enough information, we'll go to a contract medical consultant. Again, we developed this contract because we realized that many treating physicians cannot or don't have the expertise or the willingness to go and try to provide us with a causation analysis. And so we'll go to these doctors of various specialties, the occ docs and oncologists and pulmonologists, to ask them for a causation assessment.

We'll say, here's our statement of accepted facts. Here's what we know about the

case in terms of exposure, the medical evidence that we have. When it comes to causation, we will typically send all of the medical documentation that we have related to the condition that we're looking toward. Oftentimes, that's all of it.

And we go to contract medical consultants for other reasons. Sometimes we'll go to them to provide us with an opinion on impairment because that is one of the options. When somebody wants an impairment rating for their whole body impairment, they don't have a doctor to go to. So they will go to -- they will say that they want to go to one of our contract medical consultants. That CMC will then collect the information like a pulmonary function test or other testing necessary to conduct this evaluation for the claimant. And then they'll come back and provide us with their assessment.

Sometimes we'll send something to a contract medical consultant for wage loss. And so that just means we don't have anything from

the claimant's doctor telling us that this wage loss period was related to the condition that we've accepted. So we'll ask that question. Other times, we just need clarification on medical diagnoses because the evidence in the case file is not exactly clear on what diagnosis is actually the proper one.

As with the industrial hygienist, we do have a medical doctor here, a federal doctor who is the director for Office of Workers' Compensation. And we'll evaluate cases in some circumstances when there might be a question. Given that our claims examiners aren't medical doctors, they will evaluate cases sometimes and have a question about how this -- whether this diagnosis is correct, whether this impairment looks proper based on the AMA guidelines, things like that. And so we do have a federal doctor here.

I want to go back, just looking at my notes from what Dr. Markowitz wanted me to cover here. When we send something to an industrial

hygienist, we will send them the occupational history questionnaire, any DAR records that we have the case file, and any other information we have in the case file plus the SOAF and the questions. The questions are often going to be, this is what we know that the person may have been exposed to according to SEM or other information we've gathered. Please provide us with an assessment of the extent of that exposure.

The IH will then come back with information like this person typically would've been working, exposed to this substance, asbestos, for example, on a regular basis at a significant level or at low levels or biweekly, those sorts of things that the IH will come back with. For the medical consultant, as I said, that will vary. For causation, it's going to be a lot more medical evidence than for impairment because impairment, there are specific things they usually need to have in order to make that assessment.

So we do refer cases to them a certain way. If they have questions, there's a way that they can come back and ask for more information. If we then have questions of the contract medical consultants or the IHs, as claims examiners, they can do that.

Now at the end of this whole process, it really is the claims examiner's determination based on the evidence of record whether the totality of that evidence, looking at everything that we have gathered before they'll make that decision. But it will ultimately be the claims examiner's determination. These medical consultants, the IHs, they are to provide information that is used by the claims examiners to make that determination rather than they're not there to make the decision for them. Next slide, please.

So once we've gathered all of this information, the recommended decision is made by the District Office, meaning there's a two-part process for this determination. The District

Office will issue a very detailed and thorough recommended decision which outlines all the various factors they've looked at in the case file to come to a recommendation as to whether to accept the case or deny the case or do something in between, meaning accepted under B or accepted under Part E and not under Part B, things like that. Oftentimes, we get a lot of conditions claimed at the same time.

We get a lot of pulmonary conditions, but we might get other sorts of conditions, the same cancers of different types, very serious conditions, majority of will be lung conditions. Once we've written the claims examiner and the District Office has written that determination, they will send that to the claimant who is provided with a right to object. And that is when it goes to our -- every case goes to the final adjudication branch.

The final adjudication branch is made up of hearing representatives who review the case. They'll look at the recommended decision.

They'll look at the facts in the case and any objections. So at the point between the recommended and the final decision, if the claimant wants to object, they can have a hearing. And lately, it's been by phone. But there are Webex capabilities. We've done them in person where they'll meet with the hearing representative and talk about what their objection is.

Maybe they have additional information they can share or they can ask for a review of the written record where they don't do a hearing but they can submit additional information. Either way, we allow a certain amount of time or 60 days basically for a claimant to choose to do that. Now if it's an acceptance, they have the right to waive the right to object. And we can issue that decision sooner to go ahead and accept the claim.

What the final adjudication branch will do after all of that is they will either affirm the recommended decision, whether it was a

recommended decision to accept or deny. Or they could remand it saying, okay, I have new information now. And therefore, please take a look at this information. Issue a new recommended decision based on it.

They can reverse a case as well. So if we didn't have any medical information or we didn't have the right employment information, we got it at the final adjudication, they can go ahead and say, oh, this is enough to accept. I'm going to reverse to accept. That is something they can do as well.

If after all of that, the claimant still wants to object or maybe they get more information, they can ask for a reconsideration within 30 days. At any time, they can ask for a reopening. So let's say they don't have medical evidence today or tomorrow or in the next six months. They weren't able to obtain the records they needed. But they get those records maybe a year later.

They can always ask for a reopening of

a claim and we'll take a look at what evidence they might have. And some cases, we'll reopen the claim ourselves, meaning the typically way we would do that is to do some sort of a policy change or if there was a change to the Special Exposure Cohort. So oftentimes, NIOSH will add a new Special Exposure Cohort. We will then go back and evaluate every case to see whether the individual might fit into that class and get an acceptance where they might've been denied. Next slide, please.

So I'm going to try to put this in the context -- all of this information that I've just thrown at you in the context of what the Board helps us with and what your statutory duties are. The Site Exposure Matrices, again, I'm not going to talk too much about that because I know that John is doing a whole presentation about it tomorrow. But as I indicated, this is constantly being improved and added to. The Site Exposure Matrices, we're constantly trying to do more research.

And so we've asked the Board in certain circumstances to assist us in the job categories and certain exposures that might be related to that you can research or know about, evaluating the Site Exposure Matrices, in and of itself, to provide us with any information that might be helpful, that we could add to it or improve it in some way. So that's what that first category is about. Medical guidance for claims examiners with respect to the weighing of medical evidence of claimants, this will often tie into the bullet -- the fourth bullet where it talks about the work of staff physicians and consulting physicians and their reports.

So when we talk about medical evidence, as I indicated, claims examiners will get information from treating doctors. They'll get information from sometimes specialists that the claimant goes to. And then if there's a question or if we need clarification, we'll have information from a contract medical consultant. And so what the claims examiner's job is to do is

to evaluate that evidence and come to a conclusion. So one of the things the Board can look at in these areas is just -- and I know that the Board has sometimes looked at consistency and looked at the various CMC reports and things like that. So that's kind of where this falls in.

And then the -- I'll come back to the Part B in a minute. But the work of the industrial hygienist is to ensure quality, objectivity, and consistency. And the Board has provided us with some thoughts about that. I will let John talk to you about the changes we've made as a result of those recommendations from the Board. But again, this is an ever evolving process in terms of what to look at, how much to look at, what we can assume, what we can't assume. So that's basically kind of what this bullet is about. I'm going to go back to the third bullet where it says evidentiary requirements for claims under subtitle B related to lung disease.

And I think what this really refers to

is the beryllium diseases, whether it's beryllium sensitivity or chronic beryllium disease under Part B. There's very specific criteria for what we can accept under Part B and under Part E. And that's laid out in the statute. So there's a pre-1993 criteria and post-1993 criteria that's laid out in the statute. We could probably dedicate a whole session to talking about what that means and we are willing to, if necessary. I know that a lot of the Board has already looked at this issue to an extent.

Part of the issue is there are certain tests that are required, certain assumptions that need to be made when you are evaluating a claim under Part B for chronic beryllium disease. The statute says you need certain tests if it's pre-1993. And they say pre-1993 because people didn't necessarily diagnosis employees or claimants or patients with chronic beryllium disease at that time. Since they didn't necessarily know about it.

So they used skin patch tests instead

of what is now beryllium lymphocyte proliferation test. And a lot of the doctors on this panel already know better than I what that actually means in terms of what information was available back then versus what information we have now. CAT scans can provide a lot of information, but they need to be interpreted to be consistent with chronic beryllium disease. Back in the day, they didn't have doctors that would do that.

So again, I'm not going to go into a lot of detail about the various criteria. Those are laid out in our procedure manual. It's laid out in the regulations, in the statute itself. And we can dedicate some time to going over what chronic beryllium disease really looks like, what the difference between the two dates means. But the reason, I believe it's in the statute or in the duties for the Board is that trying to interpret these tests in the right way or to make sure we get the right information even though the statute is prescriptive. There's a certain level of interpretation of what that means when we're

gathering documentation under Part B for chronic beryllium disease.

And then the next one is -- or the second to last bullet, basically the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits. That's precisely what the statute says the duty is. What that has meant in the past few years with the Board is that you've helped us look at procedure manual updates that we've made, look at the procedure manual related to these other various duties that you're supposed to be looking at to help us with certain causation presumptions, for example.

We've gotten some presumptions from the Board that we can -- instead of having to rely on the SEM and the industrial hygienist and everybody else, we can make an assumption that if you have these certain circumstances, you can make a presumption that a person had asbestosis as a cause or related to their employment, the

same thing with various conditions. So we've got a whole appendix in our procedure manual that kind of walks through all these different presumptions that we have. And the Board has helped us clarify what those presumptions could look like, how we could add to them, how we could improve upon them.

And so that's one area that's been helpful that you guys have been able to help us with and you continue to look at, I believe. But there are others. We've got chapters on just about everything. You want to know about something and how we process a claim, you look at our procedure manual. The procedural manual is really meant for our claims examiners. It's not guidance for the public or anything like that. It's just step-by-step procedures that our claims examiners follow when they're trying to adjudicate a claim. And it goes from every aspect of the claim, from claim intake to final decision.

Now given the fact that it is used so

often and in everyday work and when a change happens to the procedural manual, it impacts how a claims examiner is adjudicating a claim. We need to make these changes in real time as quickly as possible. So while the statute requires that the Board review the procedural manual in advance of publication, we can really only allow a small amount of ten days or so for that to occur because we hold it up too long, the Board has to -- oftentimes, you have to vote on changes and things like that.

And since the meetings are so infrequent, making that happen and being able to make changes to our procedure manual in real time would be more difficult if we allowed -- if we had to allow more time. That being said, the Board does look at the procedure manual all the time and we do make changes as a result of that. So you can make recommendations to change the procedure manual at any time before or after we've publish new changed.

And as Tom pointed out, there are

other matters the Secretary considers appropriate. That's not something that the Secretary himself has never defined. However, when we come across -- us being the DEEOIC, the energy program. When we come across topics that we think might be helpful for the Board to look at, like Parkinsonism is one of the recent ones, and as Dr. Markowitz I'm sure will walk through some of the challenges that we encounter, we will ask the Board for your advice on it.

And so that will lead me into the next item that I want to discuss. I do have a slide on this. So you can leave it where it is. But we have -- and I'm sure that the Board has -- I know that the Board has been provided with some information from some of the advocates regarding some conflicts between different medical opinions regarding impairment.

So we use the AMA guides for the evaluation of permanent impairment. That's in the statute and the regulations to make this determination about what percentage of whole body

a person -- an employee has based on their covered conditions. And so when we rely on those guidelines, there are very specific tables. And if you're looking at lung, there's a particular section you're supposed to go to.

And we rely on either the treating doctor or a contract medical consultant for that evaluation. In some instances, we'll go to our medical director if there's a question about what the treating doctor is saying. Our claim examiners are trained in evaluating all the medical evidence. And in some case, they'll look at the AMA guidelines to determine, okay, if this person is referring to a particular table, where is it in that table?

If there's a question, sometimes they'll go to our medical director for information guidance. And then we'll go back to a treating doctor with any questions that we might have. Or in the midst of that and in the midst of looking at varying different treating physician evaluations, we found that there are

some conflicts with regard to certain tests that are being used to make these determinations and put people in certain classes. The higher a class, obviously the more percentage of impairment they're going to get.

And so what we found is that there is an issue between different opinions about which tests are viable and which tables should be used and how they should be used when you have a condition. So we sent a letter and it was just yesterday. Dr. Markowitz might not have even received it until today, but I think you should've received it yesterday from us to you that kind of covers this issue. It's pretty detailed. I don't want to walk through it all right now. I'd like the Board to have an opportunity to absorb the issues that we're seeing, and then I have a series of questions that perhaps members of the Board could assist us with in terms of resolving some of these conflicts in how to interpret the guide, what tests are appropriate to use or not use. That's

what that issue is really all about.

And although it sounds kind of vague, it is something we're looking at and it's something we'd like you to help us look at. So that's that. And I think I left enough time for questions.

MEMBER MARKOWITZ: Okay. This is Steve Markowitz. Great. Thank you very much, Ms. Pond. That was extremely clear which means that I understand it. But actually, this PowerPoint is on the Board's website for the meeting for today. And actually, if Ms. Rhoads could make it also on the resources for the Board in general because it is an extremely useful reference to go back to. So are there questions? I see that Dr. Bowman has a question.

MEMBER BOWMAN: Hi, thank you. Just a quick question. You were going over sort of the process by which claims go through, and you talked about cases being referred to industrial hygienists or the CMC. Can you just give us a sense as to what fraction of cases are typically

referred to one or the other or both and how that's determined on a case-by-case basis?

MS. POND: So I don't have a percentage of cases for you. What I can tell you is that it's only Part -- well, for industrial hygienists, it's only cases that are for Part E. So it's going to be anything that's not covered under Part B. That would only be covered under Part E typically, so things like COPD, chronic obstructive pulmonary disease, asbestosis. But also we can have kidney disease, any condition really. So sometimes -- and it does happen. It happens more often now, now that claimants and authorized reps are becoming more educated about what we're looking for.

We are getting doctors that will come in with very accurate and thorough records for exposure. Or a claimant has been able to provide us with a lot of information about exposure. And then they'll have a doctor that looks at that and says, I believe that this was aggravating or contributing to it. And then we can go ahead and

accept the case.

Now that's rare, but it's becoming less rare now as the program matures. So when we don't have that, when we get a case -- if we get a case where there's no diagnosis or there's no information at all, then we probably won't refer it because there's just nothing to go on. But if we have at least a prima facie case, we have at least enough information to say, yeah, it looks like -- so the doctors come in and say, I believe that exposure in the workplace is related to it.

It's a paragraph. It doesn't provide us with a lot of information. But it gives us enough to say, okay, well, let's really dig into this. And so we'll look at a case and that's when we'll go to our Site Exposure Matrices first. Again, we're normally not going to just deny a case without doing the additional steps unless, again, there's just no rationale or no information that a person could've been exposed to something that would cause their heart condition or whatever condition it might be or we

don't have a lot of information about that condition. Those might be denied at the front. But before most cases -- most of the Part E cases, I would say the majority of them or maybe 50 percent will go to an industrial hygienist for review on their exposure.

And then again what we're trying to do -- what we always do is we'll go to a treating doctor or we'll go to a CMC just because we want to provide that treating doctor with the opportunity to come back with some sort of opinion on it, whether we look for medical rationale, supporting documentation behind their opinion. But if they come back and say, I believe this exposure is related to it, particularly when they come back and say it was a significant factor in aggravating or contributing to the condition. We can go ahead and accept those without a referral to a CMC.

But in some cases, there's not a lot of information to go on from the treating and we'll go to a CMC. Again, I don't want to

provide you a percentage of how many go to the CMC. It's definitely not all of them. And as I indicated, it's becoming more and more common that treating doctors are able to provide that information. I hope that answers your question, but I'm happy to take follow-up.

MEMBER BOWMAN: It does. Thank you so much.

MEMBER MARKOWITZ: So this is Steven Markowitz. I'm just going to raise something that's related to the previous question. So in terms of -- one of the areas that the Board has looked at and tried to be helpful on is increasing the quality, quantity of exposure information available for decision making. And I know the Department or the programs made changes in the occupational health questionnaire and has used the new occupational health questionnaire. Is Mr. Vance going to talk about that experience?

MS. POND: Yes.

MEMBER MARKOWITZ: Okay, fine. So I won't ask about that. So really for the sake of

clarity for the new members, in the claims process what the claims examiner gets initially is a big application. That includes some limited information about the claimant's job. It might have their job title. It may have their -- well, it'll have what site they worked at. They have some limited history. I think that's on the EE-3 form, but --

MS. POND: Yes.

MEMBER MARKOWITZ: Okay. So that's the initial information the claims examiner gets, and then there's a request to the Department of Energy. And I don't have a claim. I'm not sure.

MS. POND: Unless we know they don't have records, then we'll refer to another POC that we might have for employment verification.

MEMBER MARKOWITZ: Okay, okay. But if there are any exposure records that the Department of Energy has, then those are requested. And then it moves to an occupational health questionnaire which is done by telephone, I think, by a resource center person. Is that

right?

MS. POND: Yes.

MEMBER MARKOWITZ: Okay. And so that information is collected on the occupational health questionnaire and at which point the claims examiner has the initial claim form, has whatever the documents might be obtained from DOE. They have the occupational health questionnaire, and then they would then turn towards the Site Exposure Matrices, the SEM, to do further investigation.

A couple years ago, the Board recommended that the industrial -- and this is later in the process -- but that the industrial hygienist have the opportunity -- if they're brought into a case by the claims examiner, have the opportunity to actually interview the claimant to try to sort out things, get additional information. And the idea being that if the level of information wasn't sufficient really from the various items that I just mentioned that -- and ultimately, this is kind of

a critical point because in a decision about causation, you want to know dose, right? You want to know as much as you can about that exposure.

And so we recommended that the program accepted the mechanism of occupational health interviews and although it seemed to be kind of slow in starting up. But my questions is, has that mechanism been used over the past 6 or 12 months? If so, how many times? What's been the experience? If it hasn't been used, what are the obstacles? If you could just address that or if Mr. Vance is going to address that, then fine, but --

MS. POND: He's planning to address that.

MEMBER MARKOWITZ: Okay, okay.

MS. POND: I think he's got a little bit more information than I do. So I'll let him do that when he gets up.

MEMBER MARKOWITZ: Okay, great. Thank you. I'm looking on the Board for if anybody

else has a question. Feel free to either chime in or raise your Webex hand. I have -- oh, here we go. Dr. Silver?

MEMBER SILVER: Thank you. I seem to recall the time the Board's been up and running there's been at least one occasion where the Board's recommendations were accepted by the program. Changes to the procedure manual were initiated. And the program went back to pull claim files that were adjudicated under the old understandings before the Board's advice created a new understanding. I think the issue may have been asthma or COPD. And then the files previously rejected were given a fresh look. Has that happened on more than one occasion?

MS. POND: Yeah, anytime that we make a determination that affects a -- like, for example, those two that you provided were good examples. But any -- we made some changes to the presumptions on asbestos, on asthma, on mesothelioma. There was a whole slew of them that we made -- that you guys have made some

recommendations to change and we made those changes. So in those cases, we would go back and look up any cases we might've denied for those conditions to see if they might meet the new criteria. So anytime that a significant change is made or presumption is made, anything like that that would really impact the end result, we will go back, pull those cases and look at them again.

MEMBER SILVER: Thank you.

MEMBER MARKOWITZ: Ken, you may need to lower your hand. This is Steve Markowitz. I have a question about industrial hygiene contractors. So these industrial hygiene evaluations or reports are produced by a contractor and then sent to the program office, then reviews them. Has the contractor changed in the past year?

MS. POND: No, I believe it's the same contractor.

MEMBER MARKOWITZ: Oh, okay, okay.

MS. POND: Let me verify that.

MR. VANCE: Hey, Rachel, can everybody hear me?

MS. POND: Yes.

MEMBER MARKOWITZ: Yes.

MR. VANCE: We actually did a transition to a new contractor in the past year.

MS. POND: Sorry. You broke up a little bit, John. Could you repeat that?

MR. VANCE: The answer is yes. We did transfer to a different contract. But it's the same basic operational process.

MEMBER MARKOWITZ: Thanks. So this is Steve Markowitz again. The previous Boards understood that the previous industrial hygiene contractor consisted of many industrial hygienists, perhaps health physicists who had significant previous experience within the DOE complex. Is that true of the new contractor?

MR. VANCE: Yes, it is. In fact, the prior (audio interference) new contract. So a lot of the same individuals are still working on that contract.

MEMBER MARKOWITZ: Okay, okay. Thank you. Other questions?

(No response.)

MEMBER MARKOWITZ: Okay. What I propose at this point, this is Steven Markowitz, is I want to show a table of data really just to break up the type of presentation we're getting. We have a couple minutes before --

MS. POND: Are you calling me monotonous?

MEMBER MARKOWITZ: Oh, no. Oh, no. Not at all.

MS. POND: I know it can get boring with the same stuff.

MEMBER MARKOWITZ: No, no, no. I never called you monotonous. And there's a transcript to prove it.

MS. POND: Oh, no. Sorry. Just joking.

MEMBER MARKOWITZ: That's okay. So what I want to show is a table that the Board looked at a year ago of -- and Kevin, this is not

the sheet that I want to look at.

MR. BIRD: Okay. Let me --

MEMBER MARKOWITZ: It's the Excel spreadsheet you got. It should have multiple --

MR. BIRD: I'll just share the application. Hold on one second.

MEMBER MARKOWITZ: Okay. So let me explain what this is. We requested of the program that we get information on what claims are actually submitted, for what kind of -- for what conditions. Yeah, that's it, for what conditions.

And then of those claims, how many are accepted, so we get a better sense of what the record of the program is. And so the program's data aren't so much organized to answer that kind of question. But we were given this data. And so I thought I'd show it to you.

For the previous Board members, you probably remember this. But for new Board members, I think you'll find it interesting. So this is between 2016 and 2019. These are under

Part E.

These are respiratory conditions, so these were the conditions for which claims were made. And you can see from column E the total number of claims in that three-year -- roughly three-year period, maybe closer to four years. So you can see -- and we list it by most common claims, right? And then you can see on column I the percentage that are improved.

So the leading condition -- and by the way, if anybody has any questions if I'm not being clear, just raise your hand or jump in. That's fine. So if you look at column I, the percent approved, so the leading condition was called other chronic obstructive pulmonary disease. So this is COPD or emphysema. And you can see there were over 2,000 claims.

So this is, by far, the most common respiratory condition for which a claim was submitted. And 52 percent of them were approved, so about half approved, half not approved. If you go down to the next one which is asthma, you

see about 62 percent, almost two-thirds of them were approved in that time period.

And then you go down to the next one which is pneumoconiosis due to asbestos, otherwise known as asbestosis, and 83 percent were approved. So that's about six out of every seven claims were approved. And you can -- I'm not going to go through each row because you can inspect it for yourself.

But you see that in every instance except for something called other respiratory disorders, over 50 percent were approved. Now the other thing that's on this table here is for those that weren't approved what the reason for denial was. And you see that in row -- excuse me, columns J through P, although they're really just a couple of columns that are most populated.

So for instance, for the first one, COPD, it says 52 percent were approved. And for those that weren't approved, 69.8 or 70 percent were not approved because of the claims examining process did not find causation. And in 19

percent of cases, the medical information was insufficient, presumably meaning that there just wasn't enough medical data in the chart to confirm the presence of COPD.

And then you can see the same for the other conditions. Most commonly on the vast majority of these, the reason they're denied is negative causation. And then in some instances, for instance, the pneumoconiosis due to asbestos, 47 percent of the cases the medical information was insufficient. Presumably the case did not include sufficient information to confirm the diagnosis of asbestos.

So just let me show you another one. Let's go to cancer. Well, let's go to Health Conditions Top 20, this Top 20 sheet. And so now these are all the conditions between 2016 and 2019 that were approved or denied, the top 20 in descending order.

And again, column E is the total number of claims for the various conditions which are in column D. Skin cancer is the top one and

then number two is chronic obstructive pulmonary disease which we just looked at. And then so you can look down at what conditions are in the top 20, and you can see in column E how many claims in.

And you see a number of those respiratory conditions in the top 20, and that's what Ms. Pond said before. And then you can look at column I for the percent approval and it's variable. So for instance, malignant neoplasm of the prostate which is prostate cancer which is row 3, 2.7 percent were approved, very low.

But then you get to -- let me see where lung cancer is. Lung cancer is row 14, and malignant neoplasm of the prostate and lung, it's 41 percent were approved. I think that's the highest percentage approval for cancer, at least under Part E. Part B is different.

And then finally, let me show you -- actually, let's go to the neurologic tab, the neurologic top 10 since we have a new Board member who neurotoxins is a particular area of

interest. So again, these are the top conditions in the neurologic. The top one is sleep disorders actually.

Now let me just say that some claims -- and Ms. Pond or Mr. Vance can correct me. But some claims are put in for consequential conditions. I think they are included in this table.

So these might be conditions that occur as a result or in consequence of or secondary to another condition for which a claim has been awarded. But I'm not sure actually whether those are included. The consequential conditions are included in these. Maybe Mr. Vance can clarify that later. But let me just finish the point here and then we can move on.

So 38 percent of claims for -- roughly 500 claims for sleep disorders were approved. Parkinson's disease, it's really a family of Parkinson disorders. Almost half of them were approved between 2016 and 2019. I'm sorry, 46.5 percent. And again, I'm not going to go through

all of these.

Neuropathy or nerve damage in the arms or legs is a relatively common claim. It appears in multiple forms in this top 10 and somewhere between -- it looks like about a third, almost half of them are compensated. So let me leave it at that. We have similar information on renal or kidney disease and then we have -- I think that's maybe a couple of other.

So let me stop here because we're going to hear from Mr. Vance. But if there are any questions about -- and I can make this table available obviously. But if anybody has any questions about these tables, you can raise them now.

(No response.)

MEMBER MARKOWITZ: So I don't know whether Mr. Vance or Ms. Pond, whether you remember whether consequential conditions were included in this listing of claims. Or would this just be the primary diagnosis that the claimants submitted claims for that would be

included here.

MS. POND: John?

MR. VANCE: I cannot confirm. But just looking at that list, I would imagine it includes any condition that was claimed in that ICD-10 code range. So this would probably include the primary and secondary. And the reason I'm looking at that is because that sleep disorder is (audio interference) of other pulmonary conditions that have been approved in a case. So I'm suspecting that this does include consequential illnesses, but I can't confirm it.

MS. POND: Same thing with Alzheimer's disease. I would imagine that's consequential, but --

MEMBER MARKOWITZ: Okay, okay. Thanks. Okay. Ms. Whitten, do you have a question or a comment?

MEMBER WHITTEN: Yes, I was wondering if you also subtract the time it takes from the initial claim to the final decision.

MS. POND: Yes, we have a very robust

metric system of measurements in terms of what we -- I mean, how long it takes to evaluate a claim. We have deadlines for our claims examiners but with flexibility. So I will tell you that if a case does not go to NIOSH which takes a little bit longer, they usually take about 60 days, sometimes longer than that.

But if it doesn't go to NIOSH, our average is about six months to adjudicate initial claims or adjudicate claims or basic claims, meaning it didn't go to a hearing which also takes time. It shouldn't go to NIOSH. So if it's just a general claim, and the majority of them, it takes about six months from the beginning of claim intake to final decision.

MEMBER WHITTEN: All right. Thank you.

MEMBER MARKOWITZ: Okay. I'm sorry. Dr. Bowman?

MEMBER BOWMAN: One other question about types of data available. Has there been a tracking over time about whether denied or

approved the frequency by which various orders are coming up so that there might be at some point a retroactive examination if there's anything out of the ordinary popping up in an unexpected way?

MS. POND: Let me just try to make sure I understand your question. I'm not sure I understand your question. I'm sorry. Can you repeat that?

MEMBER BOWMAN: Yeah. So these workers have potentially some fairly unique exposures, many of which -- obviously any sort of -- looking at causation will rely on best available scientific and medical data. But given that uniqueness, it seems like over time with this program, there would be just sort of information coming in that might represent things that might be outside of current scope of data and whether or not there is this keeping of data so that in the future, one can look back to see if there's an unusual fraction of claims from this population beyond what would be expected

from the normal U.S. population.

MS. POND: Yeah, I understand. I think that if we had a research arm that could evaluate our databases and all of the things that we do, that would be ideal. But we are strictly adjudication, and our resources are all dedicated to reviewing cases as they come in.

Again, as I said earlier, if we do determine that there's a presumption that we can make and then we can go back in time and re-adjudicate claims that are different. And I know that's a different question. But in terms of being able to evaluate this body of data that we've collected, we just don't have the resources to do it.

MEMBER BOWMAN: Sure. Is that data made publicly available?

MS. POND: Not in that format. Again, we collect the data just to adjudicate claims. So we track the things that we track. We don't necessarily -- we're not going to have in our database that we accepted this case based on this

particular chemical or exposure. So first, it's not publicly available in general because it's a database that we have of PII, of private information.

But second, it's not gathered for that purpose. So it's not very easily manipulatable to get there at this point. Obviously, if we were gathering it for a different purpose, it would be available that way. But unfortunately, we use it as a case management system.

MEMBER BOWMAN: Okay. Thank you.

MEMBER MARKOWITZ: Okay. Are there any other questions, comments?

MEMBER CATLIN: Yeah, this is Mark Catlin.

MEMBER MARKOWITZ: Sure.

MEMBER CATLIN: So thank you for the data. So under the reason for denial, the medical or the negative causation percentages or the numbers, is there -- can that data be teased out to separate out cases that just clearly weren't medically appropriate or the exposure was

shown to not be present or that -- and separating that out from the cases where it's just like a lack of information that's able to show something? So is there a way to divide out that data over time?

MS. POND: Unfortunately, I think this is the best we can do on that. But I will say that negative causation -- John, please correct me if I'm wrong. But I believe that negative causation is going to usually include an assessment of exposure and causation where medical information insufficient is usually going to be we just didn't get medical.

And it's pretty basic. We didn't get medical. I think that if there's a causation reason for it, it would not be in that initial category. So while that doesn't tell you whether or not they were -- it was because they didn't have any exposure information, it does tell you that it's just they came in and they didn't have enough medical for us to move forward.

MR. VANCE: Yeah, and that's correct.

MEMBER CATLIN: Okay. Thank you.

MEMBER MARKOWITZ: Dr. Van Dyke?

MEMBER VAN DYKE: Yes, following up on Aaron's question, I mean, I'm curious. Is there anything in the statute or the rules that prohibit you from looking at the data from more of hypothesis generating maybe this exposure, maybe this disease kind of way?

MS. POND: Well, our statute is very -- the statute was created for us to adjudicate claims. And so all of our resources are towards that end. And so the statute says you can't do that. But the statute says you have to do this.

And so all of the resources that we get and the money that we obtain from OMB is supposed to be dedicated towards actually adjudicating claims at the end of the day. So unfortunately, it's just not something that we're going to get resources for based on the way the wording of the text. If there was another piece of it or there was some other -- something else out there that said you need to have a research

arm, that would be a different story.

But this is primarily, here's your mandate. Go adjudicate claims. And that's what we put our resource towards and are required to do.

MEMBER VAN DYKE: Okay. Thank you.

MEMBER MARKOWITZ: Okay. Well, thank you very much. Let's move on to Mr. Vance.

MR. VANCE: Hi. Everybody can hear me all right, Kevin?

MEMBER MARKOWITZ: So far.

MR. VANCE: Okay, good.

MR. BIRD: We can hear you.

MR. VANCE: All right. I just wanted to confirm. All right. So good afternoon, everyone. My name is John Vance. I'm the Policy Branch Chief for the program. I'm going to be providing a little more in depth discussion about some of the interactions that we've had with the Board and just some general program updates.

I know this forum is kind of entertaining with just listening to voices. But

I'll try to be as quick and as concise as I can with this stuff and just try to be mindful of the folks that are brand new to this process. So for the folks that are relatively new, I think both Steve and Rachel have both indicated that really the best resource that we have for explaining our process is our procedure manual. And that's where I'm going to spend a lot of time talking about that, that document.

Again, like Rachel indicated, I mean, it's an employee handbook for all intents and purposes. But it's a public facing document that provides a lot of information about our process. At the end of the day, basically, we look at a compensation program. We're trying to figure out what toxins people came into contact with that could've made them sick.

And so that 800-page document explains the process of answering that question. So it is a very valuable resource for our claims staff and meeting their obligations under the law and the regulation. And so it's very helpful for the

public to understand what we go through in evaluating those cases.

So the procedure manual is a living document. It evolves with time. As our staff develops experiences with cases, as we have input from stakeholders, we will publish updates. And those updates are communicated and released periodically.

All of this information is available on our website. So I would encourage the new folks. The place where I would start would probably be with some of our basic outreach material and then also then turning to our procedure manual just for getting some more in depth insights into the program.

I think that from a contextual standpoint, the important thing that everybody on the Board who's been here knows and new folks which you need to appreciate is that we're trying to do a very difficult, challenging job in the absence of information. And I think that's where the Board has really lent itself to assisting the

program. We're talking about an industrial process that engaged with producing atomic weapons that goes back to 1942.

So we're looking at cases that can go back in time to that date. And we're trying to recreate work histories, occupational exposure histories, characterizing the type of work that people did to try to ascertain whether or not an illness that's been claimed as related to those exposures. So as you can imagine, this is a very -- when everybody is talking about this is a challenging process, that's the number one challenge is trying to create factual information from essentially a lack of it in supporting these cases.

So the procedure manual is a very important document. And this is where a lot of the efforts of the advisory board have been focused, and in particular, Chapter 15, which is our primary Part E causation analysis chapter talking about how we go about making and assessing cases between exposures to toxic

materials and claim disease. So if you start anywhere in the procedure manual, I'd recommend starting to look at Chapter 15. And one of the most important --

MR. BIRD: Hey, John. I'm sorry. This is Kevin. I don't mean interrupt. I just want to make sure you understand that we are not seeing your presentation at the moment. I just wanted to make sure --

MR. VANCE: Yeah, I don't have a specific presentation. I'm just running through some of the updates. And I did want to make mention of the fact that all that I'm talking about, a lot of it is already covered in all of the interactions between the Board and the Department of Labor on its website.

So the advisory board has a link on our site, and we have a lot of information there about our back and forth. So I'm going to be probably covering a lot of stuff that we've already addressed in many of those interactions. But thank you, Kevin, for letting everyone know.

So just some of the most recent updates, and I'm just going to start going through these verbally. We publish, again, procedure manual updates. They're called versions. We're currently on Version 4.3.

Our last edition was published on September 14th. And there were changes that we made, some that were borne out of interactions with the Board, other ones that are just organizational issues. So when you look at these versions that go out, there is something called a transmittal which is basically our formal notification of edits that are going into the procedure manual.

So if you want to become familiar with what the edits and changes are of the transmittal is what we'll notify our staff of what's changing in the procedure manual. So some of the big changes that we have -- that we're incorporated into that last edition was just we've had an organizational change where we are no longer really doing cases on a jurisdictional basis. We

used to assign cases based on the last location of covered employment. That no longer exists.

We are now working on a completely equitable rotational assignment process. So as cases come in, they're assigned on a rotational basis to our district office. So that was big organizational change.

It did not affect any of the locations of our district offices. It's just how those cases are assigned. A change that did occur thanks to input from the Board and Dr. Mikulski, we -- I know he spent a lot of time working on this question with regard to Parkinsonism.

So the Board had recommended as part of our exhibit on our presumptive standards in Exhibit 15-4 some clarification of the aliases for Parkinsonism. So we did make some and agreed to several changes. We now have Parkinsonism as aliases for Parkinson's disease, paralysis agitans, and hemiparkinsonism. I hope the court reporter is having a good time with that.

We have incorporated those into the

procedure manual as aliases. Concurrently, we didn't include this in our procedure manual. But we have made a change to the Site Exposure Matrices which I'll walk through tomorrow morning where we added two different new toxins, carbon disulfide and trichloroethylene. Those now arebeing identified as toxins with a Parkinsonism health effect. So that is a direct change that occurred as a result of input by the Board.

We also updated our asthma language. This has been an area of focus before by the Board. We've changed the language to our asthma presumptive standard a few times given input on the Board.

We just added the sentence talking about the requirement for a qualified physician to provide a well-rationalized explanation, identifying the mechanism for causing or contributing to a condition. So that was added in recently as a consequence of input from the Board. So I'm hoping that some of this is giving you a flavor of some of the work that's done by

the Board and with the Department of Labor.

The next thing which Dr. Markowitz already mentioned is the reworking of our occupational history questionnaire. This is actually a really huge improvement, I think, over the past year with regard to how we go about collecting exposure data. So like I mentioned, the real problem that the program has to overcome is simply the lack of reliable data about what workers did at these sites and what kind of toxins they came into contact with.

And so as part of our process, the important beginning here is getting good information from a claimant. Now that can be an employee themselves or a survivor of an employee, and that starts with this occupational history questionnaire interview that's conducted by our resource center. And so based on a lot of engagement with the Board, we completely reworked our occupational history questionnaire format.

We have now updated that entire process. It's in the new edition of the

procedure manual under resource center chapter. We also have a very new version of the occupational history questionnaire on Exhibit 10-1.

That new occupational history questionnaire format is geared to a much more robust data collection effort when we engage with the claimant. So basically when we're taking a case in, we will set up a call with the claimant. We will try to give them pre-notice that, hey, this is coming. So start thinking about information regarding the type of work that you did or the type of work that you know the employee did and the type of toxic substances that that employee may have had encounters with in their job.

So it is a much more free flowing kind of document. This is reflected in sort of a more broad-based, open-ended questions where we're trying to solicit individualized information from the claimant. And I think that the form itself, this new interview questionnaire, has been very

helpful in collecting more information. And I'll get into why that's so critical as we go along.

But the program did implement this new process. We piloted it. We did make some changes based on just some of our experiences. We added some questions and some input based on the Board.

We are now in full production using that, that new occupational history questionnaire. And since July, we have now completed over 16 -- I'm sorry, 612 occupational history questionnaire interviews based on that new format. And the feedback that I personally have gotten based on my interactions with our resource center is that they think that it is a much better tool in collecting data. And I think that this is a very good example of where the Department of Labor and the advisory board cooperated to really do something substantial with regard to improving the process. So that was a big accomplishment for this past year.

We also had some other changes. This

was not something that came out of the Board. But it shows you sort of the issues that the Department runs into when we actually have on the ground claims examiners doing work when we identify a process issue that arises out of problems with the way people are interpreting information.

And so this is what makes working in the policy branch so much fun is that you have to be very careful with your wording. And so we had, in our changes to the procedure manual, language that CEs and claims examiners and others were having confusion interpreting because it was language that would suggest that an employee needed to count a certain number of exposure days. And so the claims examiners were trying to add up the number of days a person would've had contact with a particular toxin.

That's simply not tenable. It's not something that we can do to any degree of specificity. So we ended up revising in Exhibit 15-4 language that spoke to exposure to toxins

for at least 250 aggregate work days.

We subtly changed that to make it so that it read that the employee had to be employed for that aggregate of work days in a position that would've had significant toxic substance exposure. And so what we did was we changed that language so people could not confuse it and think that the person needed to have a documented case of exposure. They just needed to have the period of employment and then show that they had significant exposure to a particular toxin.

And so we've created that as a change throughout all of that chapter with many standards in that particular exhibit. And I know Dr. Markowitz, this was one of your big things. We deleted this diagnostic matrix that existed in the procedure manual, Exhibit 18-1. It was a document that the Department of Labor had gotten from a contractor way at the beginning of the initiation of Part E talking about the common characteristics of diseases and the diagnostic criteria for those.

And I think it was creating a lot of confusion because folks were looking at that as sort of like a requirement document as far as what would be needed for a diagnosis to be established which it was really never intended to (audio interference) probably ended up agreeing with the Board. But that just needed to be deleted and eliminated. We now leave it pretty much to the judgment of a qualified physician in evaluating clinical and diagnostic evidence as to whether or not there is sufficient basis to diagnose a particular condition.

And then in this last edition, we have also made some very major updates to how we go about assessing home and vehicle modifications. Right now with the population of folks that we have approved medical conditions for, we have vastly expanded the amount of medical benefit management that we do and this is an area where we just had experience with issues relating to about how we go about assessing requests for modifications to homes and vehicles. So we now

have a much more detailed outline for how the Department of Labor goes through assessing medical need and also the reasonableness of cost to accommodate that medical need.

So that was the last edition. And then I was asked to also just sort of bring us up to date on some of the other changes that have occurred. I'm not going to go through everything, but I think that I'll just touch on some things that I think are kind of important from our prior work history with the Board.

We did add this new IH interview process that Dr. Markowitz mentioned. I'm not aware of there being (audio interference) a number of those being done. Those are generally precipitated by a claims examiner needing to have some sort of need to have an industrial hygienist talk to a claimant.

I know in the situations that I'm aware of that the issues generally revolved around some sort of dispute between a level of exposure on an appeal of some sort. So that's

something that is working with a great deal of frequency. I also think that a lot of the information that we're getting in the new industrial hygiene or the occupational history questionnaire is also helping quite a bit on characterizing the employees' understanding of their exposures.

And then again for the Board members for Part E, a lot of the work is focused on Chapter 15 and this Exhibit 15-4 which is our presumptive standards which basically means that if you can meet these specific criteria that are listed in that exhibit, it sort of bypasses the need to have physicians provide causation opinions with regard to the extent of exposure to a toxin and a particular disease. So a lot of effort has been made to try to improve and expand upon those presumptions. And the Board has spent a lot of time doing that.

We've looked at exposure definitions. We've looked at latency improvements to certain conditions (audio interference) some of the

listed criteria. We've defined things more carefully. For example, the definition of chronic respiratory disorder was a change that we made to improve our understanding of how to apply that in case adjudication. We've improved and added all kinds of standards that I think have helped with regard to adding new presumptive standards.

A good example is non-Hodgkin's lymphoma. That was something that the Department sort of initiated on its own. But I think that the Board was in agreement of how we approached that. So it's been a very productive relationship with the Board on that particular chapter and that exhibit. And I think that's where a lot of focus is going to continue into the future.

Some other -- one last thing that I think is an important update just to let everyone know. So the Board had requested some analysis by the Department with regard to one of the presumptive standards listed in Exhibit 15-4 and

has to do with labor categories with a significant level of asbestos exposure. And so we had been asked in the past with providing sort of analysis.

And so what we had was our Site Exposure Matrices contractor went back (audio interference). The Department has received and we've shared that with the Board and I believe it's been shared with all the Board members an asbestos labor analysis that's been completed by Paragon. We have also looked at it. And based on some of the recommendation that have been made, it's more than likely that the Department is going to be proceeding by adding additional labor categories to that standard.

The ones that I have identified are stationary engineers, precision instrument and equipment repairers, heating, ventilation, and air conditioning mechanics, installers, and repairers, and firefighters and supervisors of firefighters. That document again is (audio interference) and it will be something I'm sure

the Board will want to discuss. So those are the main updates.

And again, I would encourage the Board to, especially the new members, take a look at the procedure manual. That is our really down where the rubber hits the road with regard to how we evaluate cases, and it contains a lot of very detailed information. And it has been borne out of our evolution in adjudicating these cases. So it does reflect how we actually go about trying to make that connect between an exposure and a disease in all of the different exceptions and other kinds of complications that we have run into as we administer this law. So that's a very (audio interference) questions?

MEMBER MARKOWITZ: This is Steve Markowitz. I see two hands up, Ms. Whitten and Dr. Van Dyke. But I think that may be from the previous session. If it is, if you wouldn't mind lowering your hand. Otherwise, anybody have any questions? Or Ms. Whitten, do you have a question?

MEMBER WHITTEN: I was just curious. How do you keep that tribal knowledge or certain areas from 1942 if you're rotating cases around the country, like, say, at Hanford? Do you know what I mean?

MR. VANCE: The way that we (audio interference) with our analysis of the different facilities, the Site Exposure Matrices is one of the primary resources available to our staff that provides a lot of information as far as how we go about assessing toxic substances that were utilized at different facilities. The training that I'll give you tomorrow are sort of the overview of the Site Exposure Matrices that that's the process that the claims examiners go through. And so when they're trying to establish the factual framework of a case, they need -- they're professionals at looking at evidence and they're going to look and do a comparative analysis based on what is the information they're getting at whatever facility (audio interference) site exposure matrices or input from subject

matter experts such as our industrial hygienist.

And then they will build that factual framework for a physician to evaluate. If it's not meet under the presumptive standard, then the physician has to then determine whether or not based on the factual framework that's been established in the case whether or not that exposure that's been shown to exist in a case file is enough to aggravate and contribute to our cause of a particular illness.

MS. POND: And this is Rachel.

MR. VANCE: So --

(Simultaneous speaking.)

MS. POND: -- build on that real quick. When we made the change, I think it sounds like what you're referring to is our change to the new case assignment process where they're shifted all over the country. There was some build up in certain district offices of knowledge of certain facilities like Hanford and what particularities to look out for when it comes to employment evidence and things like

that.

We did very extensive training when we -- before we transferred the -- moved to this new case assignment process. We did a week-long training with all of the claims examiners and with the POCs. People who had expertise or had particular knowledge of the various facilities would talk about the differences and what they found and things like that. And we continued to have POCs available to help anybody at the district offices who might have questions.

So we still have that. We also have a lot of information that we have contained online in terms of what references that they can use for the various sites. So we have that sort of information. And I think that the benefits to this new method, at the end of the day, outweigh the issue.

MEMBER MARKOWITZ: Dr. Silver?

MEMBER SILVER: Yes, question for John Vance on the theme of the question I asked Rachel a moment ago. Do-overs, were any of those 612

interviews of claimants who originally had the old OHQ, their claim was adjudicated, and it didn't go well for them? Or were these all fresh case interviews, the 612?

MR. VANCE: Yeah. Dr. Silver, these would represent the initial occupational history questionnaire based on a new incoming case. We have not put in place any kind of redo of the occupational history questionnaire on existing cases.

MEMBER SILVER: And I think the reason the Board was so passionate about taking that on is that claimants are a bit naive and unfamiliar with the program when they have that initial interview. And we didn't have smoking gun proof. But we all had the sense that if the OHQ was poorly done, it would affect the person downstream for months on end as they went through the claims process. I know we have about maybe a dozen claimant advocates who either speak during public comment period or are attending the meeting now. Would you be open to allowing

claimants to get a fresh bite at the apple and have an interview using the new OHQ?

MS. POND: This is Rachel. I think it'll be, first of all, difficult to determine which ones had OHQs in those cases. I think we have -- I think our data, it would be difficult to find out which ones had the OHQs in the case files and trying to pull them out, get the resources to redo them all with the assumption that this one interview is going to make a significant difference in the case. It's a leap.

And so at this point, I'd be open for people to ask for a reopening if they believe that their OHQ could be changed as a result of the new process. But going back and trying to re-adjudicate all of those, I'm not sure that it would really come out to we've got an overwhelming amount of acceptances as a result. But anybody can ask for a reopening at any time.

MEMBER SILVER: That's what I wanted to know because you interpreted my question systematically. I was really just asking whether

well-informed advocates could have their claimant request -- the new OHQ be applied to them. Thank you.

MS. POND: Absolutely they could.

MEMBER MARKOWITZ: This is Steve Markowitz. What's the plan for evaluating the impact or effectiveness of the new OHQ?

MS. POND: Well, we -- actually, our resource centers are -- they're the ones that are implementing this. They track just about everything that they do. So we have a meeting with them this coming -- I think in a couple of weeks. We have an annual meeting with all the managers at the resource centers.

So we can ask them. And I believe they probably already have it in their plan to tell us what they found in terms of how they found that to be helpful. In terms of beyond that, I'll have to get back to you on what other kinds of analysis we can do.

MEMBER MARKOWITZ: Sure. That's fine. Thank you. I realize it wouldn't be so easy,

but at least initial feedback from the managers, from the people who administer the OHQ, and then also from the claims examiners who are going to be -- or already looking at those OHQs --

MS. POND: Absolutely.

MEMBER MARKOWITZ: -- and seeing what difference it makes.

MS. POND: Yes.

MEMBER MARKOWITZ: Any other comments or questions?

(No response.)

MEMBER MARKOWITZ: Okay. So it's 3:15. We're going to take a 15-minute break. We're going to resume promptly at 3:30 for our public comment session. So don't hang up. Just hold on and come back in 15 minutes. Thank you.

(Whereupon, the above-entitled matter went off the record at 3:14 p.m. and resumed at 3:31 p.m.)

MEMBER MARKOWITZ: Hi, welcome. It's Steven Markowitz, Advisory Board on Toxic Substances and Worker Health. We now are into

our public session period, and we've had two public commenters who signed up.

First will be Ms. Terrie Barrie and then we're going to hear from Faye Vlieger, though Ms. Vlieger is traveling and has asked Ms. Barrie to present her comment. So let's start first with Ms. Barrie. Ms. Barrie?

MS. BARRIE: Hi, can you hear me?

MEMBER MARKOWITZ: Sure.

MS. BARRIE: Okay, good. Hello, Dr. Markowitz and members of the Board. My name is Terrie Barrie, and I'm a founding member of the Alliance of Nuclear Worker Advocacy Groups.

I want to express my appreciation to the Board members who volunteered to serve again and to welcome the new Board members. The work you do is so important. The advice given to the Secretary of the Department of Labor has been invaluable and has improved the program.

After reading the briefing materials, I would like to offer a few observations. First of all, the guards and the first responders seem

to have a very rough time with this program, both under Part B and Part E. It seems that the agencies do not have a firm grasp of the scope of their job responsibilities. The guards, for instance, did not just sit in the guard house checking ID badges. The patrolled all over the sites including inside production areas.

I remember seeing a picture of two guards at Rocky Flats. They were fully armed and protecting the door to the vault which held special nuclear materials. I would like to suggest that the SEM administrator schedule teleconferences with these first responders so that the SEM administrators have a fully -- fully understand the exposures involved. Documentation is great, but it doesn't always adequately portray the actual work experience.

I am not particularly happy that the process the Board needs to go through in order to get documents or other information from DEEOIC. Every member of this Board understands their responsibilities under the statute. The request

for the SEM documents is clearly defined in the act. The act also says that DOL is supposed to supply those documentation upon request.

Making the Board submit not only a written request for the documents but also an explanation of why they want it is, in my opinion, insulting. It also delays their work. I believe they requested this information last spring, and here it is six months later. And not only do they have the requested documents from what I understand, but the Board still needs to wait to see if DEEOIC is going to decide they will comply with this request.

A similar situation exists with the Board's request for a technical contractor. This request is years old. OWCP has resisted the Board's request for years before employing another delaying tactic to require the Board to put the request in writing last spring.

Yes, I can understand that the Board needs to explain what they need from this contractor. But OWCP could have and should have

asked for this information when the Board first requested this assistance. I noticed -- and I find this ironic. I noticed that one of the requirements a technical contractor should provide is the ability to organize the claim files so that it is easier for the Board members to review the file.

The Department of Labor could probably save a bit of money on the cost of the technical contractor if the claims examiners had the files organized in the first place. The Department of Labor and OWCP has been delaying the Board from fulfilling its statutory responsibilities since the inception of the Board. I commend the Board members for their service and their commitment to their duties despite the obstacles they face.

I want to skip the next part and go to another section, and then I'll come back to that if that's okay. I want to say a few words about the work of the Ombudsman's Office and in particular the former ombudsman himself, Malcolm Nelson. Mr. Nelson recently retired or is soon

to retire from his position.

He and his staff have helped so many people understand the complexities of the compensation program and the adjudication process. He chose a staff based not only on their knowledge of the program but for their compassion. He was a true leader.

I applaud his work and those of his staff for the work he did not only on behalf of the claimants and their advocates but for the Department of Labor too. He served both groups well. I wish him my sincere best wishes for the next step in life's journey, and he certainly deserves it.

Ms. Vlieger will be discussing, I believe, the problem with impairment ratings. And I'd like to add a few things of my own to add to her comments. So Ms. Vlieger detailed the problems she's -- will be detailing the problems she's experiencing with the impairment claims.

I'd like to add that ANWAG also filed a FOIA request concerning this issue. We

requested a copy of any and all documents, including emails and telephone call summaries which discuss audits of the independent physicians who submit impairment rating reports, including the formation of a possible review board or committee at the national office. We also requested a copy of any and all policy and guidance documents which address the scope of the review of the independent physicians impairment rating reports.

DEEOIC's response was to state, and I quote, DEEOIC has no documents, including emails and telephone call summaries which discuss audits of independent physicians. The letter referred to us -- end quote. The letter referred us to the procedure manual, Chapter 21, which provides instructions for a claims examiner to reach out to the medical director if they have a question about an impairment rating.

But in light of the numerous impairment which have been reviewed by the medical director for just one independent

physician, it does not seem reasonable or logical that there has not been one memo, one directive, one recommendation made during the DEEOIC monthly telephone conferences with claims examiners which resulted in this one physician's report being scrutinized by the medical examiner. I'm glad that DEEOIC requested the Board to weigh in on this issue. And I hope that the letter that Ms. Pond sent to the Board will be posted to their website. And again, I applaud your work and I thank you for your service. And that is all I have. Thank you.

MEMBER MARKOWITZ: Okay. Thank you. So Ms. Barrie, you're going to also transmit Ms. Vlieger's comments?

MS. BARRIE: Pardon me?

MEMBER MARKOWITZ: Are you also going to transmit Ms. Vlieger's comments?

MS. BARRIE: I can if she's not on the phone. She was earlier.

MEMBER MARKOWITZ: Oh, was she? Okay. I was told -- Ms. Vlieger, are you on the phone?

And I was told that she --

MR. BIRD: She is listed as being here. I don't know if she's available, though. She's on the line, though.

MEMBER MARKOWITZ: Okay. Well, let's give her a moment to respond.

MS. VLIEGER: I'm currently driving through the mountains. And so if Terrie could please read my comments for me.

MEMBER MARKOWITZ: Yeah, that sounds like a good health and safety move. Thank you.

MS. BARRIE: Okay, okay. All right. This is from Ms. Vlieger. Dear Dr. Markowitz and advisory board members, I provide these comments today because of the need to make the Board aware of recent actions by the Division of Energy Employees Occupational Illness Compensation Program Director Rachel Pond and Medical Director Dr. Armstrong which are not defined to the procedure manual and represent significant undue influence and intrusion into the claims administration process.

I wrote a letter to EEOICPA, Ms. Pond, on September 23rd, 2020 with my concerns about the actions of Dr. Armstrong and received a nonreply dated October 1st, 2020. In her letter, Director Pond did not answer any of my questions or concerns. I sent a follow-up letter requesting that my questions be answered on November 4th, 2020 and I am awaiting a reply. A copy of the letters have been submitted to the Board's email address, and I believe they're posted there too. Excuse me.

As the Board has the authority to oversee positions of the medical director, I request that you review his opinion and insertion of himself into the claims adjudication process and make recommendations to correct these situations. In approximately March of this year, I was made aware of that impairment rating reports from an independent physician were being sent to Dr. Armstrong per his request. Initially, it appears that Dr. Armstrong was focusing his attention on one physician.

But I have now been made aware that he has instructed the claims examiners and all the district and national offices to send any and all impairment rating reports to him that contain specific words and phrases that Dr. Armstrong contends makes the reports not done in accordance with the AMA guide, 5th Edition. I made a Freedom of Information Act request on June 26, 2020 for emails between Dr. Armstrong, CEs, and Medical Benefits Unit for the period of March 12, 2020 to 6-22-2020 in order to understand what was happening and determine if there was anything that could be done to correct the situation.

I received a response to my FOIA dated July 9, 2020. In the response, DEEOIC stated that they could not release the documents even if redacted because they are part of the claimants' case files and are protected by the Privacy Act. DEEOIC made no effort to provide the requested documents for those claimants' files for which I am the authorized representative and have PA authority to view.

The issue is that Dr. Armstrong has been providing opinions and directly independent IR physicians on his interpretation of the AMA guide. He is also dictating what opinions he will allow and will not allow regardless of the medical evidence. He is doing this through direct letters, directives, emails, memos, and communications to independent IRs and CEs on IR claims.

Dr. Armstrong is inserting himself into claims adjudication process by writing medical opinions that become part of the claims process. These written opinions by Dr. Armstrong are then part of the claim file and used in further adjudication processes. There is no mention of this authority to interpose the medical director's opinion in the procedure manual.

As the Board knows, Dr. Armstrong conducts audits of the contract medical consultant reports. When a CMC or a referenced CMC are requested to provide an opinion for a

claim. And they received records that contained a differing opinion by DEEOIC medical director.

They are improperly influenced to not disagree with the medical director. This influence is to the detriment of the claimant because it unfairly influences the outcome of a situation in favor of the medical director's opinion regardless of merit. The insertion of Dr. Armstrong's opinion into the claim file represents undue influence.

The American Bar Association in the February 1st, 2014 paper defines undue influence as, and I quote, excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In DEEOIC's director's response to me on October 1st, 2020, she stated that, quote, the DEEOIC medical director does not have a relationship with any particular physicians that treat DEEOIC claimants, either inside or outside of DEEOIC, nor does he have the authority over CMCs. He simply provides his personal medical

opinion based on his experience, end quote.

However, the medical director does have audit authority over the CMC reports for quality assurance and to changes in their job performance instructions under the CMC contract. As such, the medical director does have the authority over the CMCs and their opinions. It is mere hubris for the medical director or the DEEOIC director to state otherwise.

Since Director Pond stated in the letter that these are the medical director's personal opinion, they should have no part of the claims adjudication process. Further, any of the medical director's opinions that have been inserted into the claim files should not be used for claims adjudication. The medical director is also significantly delaying claims with his insertion into the process.

In discussions with various claims examiners, the IR reports that are sent to the medical director are done so with no timeline of when there will be a response. In fact, the

medical director does not have any timeliness criteria because he is not part of the claims process. In a number of instances, claims have been delayed in excess of five months because the medical director has created a difference of opinion even though his opinion is not part of the adjudication process.

Because the medical director is operating outside the procedure manual, he is not accountable to the timeliness standards. The delays caused by the injection of the medical director's personal opinion into a claim come from the claims examiners using the medical director's opinion as a differing opinion which forces the claim into an additional adjudication. If the medical director wants to institute changes to the DEEOIC claims process, he should go through the rulemaking process.

DEEOIC director is allowing the medical director to operate outside the program parameters. The DEEOIC director should ensure that the medical director's personal opinions are

not used in the claim adjudication. I agree that the medical director should review and improve the claims adjudication process, but it is not in his purview to replace the program adjudication process in the procedure manual nor to supersede the equitable provisions of the claims process.

While the medical director may have his personal opinions, they are not part of the DEEOIC claims process. I ask the Board to investigate the situation by reviewing Dr. Armstrong's directives, communications, and his personal opinions on specific impairment rating claims. If needed, the advocates can provide specific case identification information to ensure that when you query DEEOIC for applicable claims, you receive accurate information. I also ask the Board to offer recommendations to resolve this issue. Thank you, by Faye Vlieger.

MEMBER MARKOWITZ: Thank you. I would just like to point -- this is Steven Markowitz -- point out to the Board members that what Ms. Barrie just read from Ms. Vlieger is actually on

our website under the public comments verbatim, that exact letter. So it's involved obviously, but you can take a closer look online. So Ms. Rhoads, are there any other public commenters?

MS. RHOADS: Kevin, can you see anybody?

MR. BIRD: I'm asking the moderator now. But if anyone would like to make a public comment who has not already done so, just remember to press star-1.

MEMBER MARKOWITZ: Okay. So the plan now is a couple things. Department is making a request of the Board to assist in looking at some of the medical and/or scientific criteria for judging respiratory impairment. And I don't know -- that request came in yesterday.

I'm not sure, Ms. Rhoads, whether it's been passed along to the Board members. It should be. It should also be posted on our website as soon as possible. But that request does not directly pertain to this particular conflictual issues that were just raised in the

public comment period.

But I do think that tomorrow morning -- and I would like to ask Ms. Pond or Mr. Vance. What's the plan to present that request to the Board tomorrow? Of if I need to rephrase that, can you verbally raise that request with us tomorrow so there's some -- a little bit of opportunity for clarification if needed?

MR. BIRD: Dr. Markowitz, this is Kevin. Just to jump in here, we do have some folks who have requested to make a public comment. So I'll let John or Rachel answer. But once we do that, we do have folks who want to jump in.

MEMBER MARKOWITZ: Okay. Well, I need to know the number. I need to know what their names are.

MR. BIRD: I'm sorry. I will have the moderator put them through if that's okay. Or do you want to -- do you want me to send you the --

MEMBER MARKOWITZ: No, I need to know how many and I need to know the names.

MR. BIRD: All right. We will get that in just one second. The first is Donna Hand.

MEMBER MARKOWITZ: I'm sorry. What was that name?

MR. BIRD: Donna Hand.

MEMBER MARKOWITZ: Oh, Donna Hand? Okay.

MR. BIRD: And as of now, that's the only one.

MEMBER MARKOWITZ: Okay. I don't know whether Ms. Pond or Mr. Vance are still on and whether they can answer that question. But we can go ahead with Ms. Donna Hand and then come back to that. Do you want to patch her though? Ms. Hand, welcome.

MS. HAND: Thank you very much. Can you hear me fine?

MEMBER MARKOWITZ: Yes.

MS. HAND: Okay. Discussing the impairment rating, we -- in the beginning of the program in 2005 when they had their interim

policies and stuff, they stated then that you cannot proportionate. And then again, they stated that you have to use the impairment the proper way with the fifth guide. Well, Dr. Brigham who wrote the majority of the fifth guide as well as the sixth guide had a seminar and I attended that seminar.

And according to him, most doctors -- impairment doctors forget to use Chapter 1 and 2 which means that they are to use in their professional judgment certain issues or concerns in that impairment. I just had an impairment done for a claimant that had chronic beryllium disease and asthma. Well, they wouldn't give any impairment for the asthma and they wouldn't combine the two. So they just gave it for the chronic beryllium disease. And I reminded them that you can also give up to 3 percent for pain. They did not do anything for pain.

Back in 2006, Senator Kennedy as well as others wrote to the Department of OWCP and said that, you must assume all impairment,

specifically the depression and anxiety. And they're still stating that they can't use those because there's nothing in the guide about that which is not really true because there are several states, specifically California, uses the psychiatric impairment evaluated by the Global Assessment of Function Scale. So there's that issue there.

Then the 3 percent of pain is not being used anymore. And back in April the 1st, 2017, OWCP put up a memo. And this is regarding the FECA, but the FECA program is a non-adversarial system such as similar to our system. And it states in there that this clarifies that the disability rating must include all conditions affecting the affected body part as of the time of the rating examination.

It also reads that effects of other non-industrial injuries have to be included in the rating as well. This is not -- by the definition of the impairment which is a loss of functioning, if the asthma and the COPD, both the

respiratory system, then you have to include all of that even though a decision for the asthma was not accepted.

The other issue is that most people with chronic beryllium disease have asthma-like symptoms. And so the doctor -- the treating physician will put asthma. Well, then when the Department of Labor's energy program looks at it, well, we didn't accept asthma so then we're not going to -- you can't pay that.

Well, but in your own policy procedure manual back when it was just Part D before it was unified, you admitted that the chronic beryllium disease has asthma-like symptoms. So there's been several times -- and this is when Ms. Pond was the policy chief was well aware of this policy and this division but now has now admitted all this information that has been going on for nine, ten years before she became the director and before she made the unified procedure manual.

The other issues that I have big concerns with is that they are having nurses talk

to a physician -- a treating physician to understand how to make a well-rationalized report. There is a disconnect between the well-rationalized report because John Vance put out a memo saying that with COPD, they didn't have to have references. But yet they're making my physicians have references.

And if the policy procedure manual is just that, just a thing for them to use, it's not guidance, then that well-rationalized report with references is not required. It's not mandated. It's not even part of the regulation. And the physician told the nurse, I do not have the time to commit to do the research, everything for what you're asking for.

He did do a well-rationalized report before then when we had a hearing and that was submitted. And he was given the work history of the claimant. He was given the Site Exposure Matrices, toxic substances that that claimant would've been exposed to when performing his duties and was given the diagnosed condition.

For example, one of his conditions was neuropathy. Lead is connected to neuropathy. He was exposed in Hanford, and 1947 and 1948 is when he worked, to lead. He had kidney cancer, kidney disease, and the neuropathy. And it took well over 12 months for them to send it to a CMC, and the CMC agreed with his treating physician.

So there's a big problem when I have to have a nurse talk to a physician and then about what a well-rationalized report is and requesting references whenever that is not required. Address and explain and put in a template what a well-rationalized report is. Thank you.

MEMBER MARKOWITZ: Thank you very much. Unless I hear otherwise, I think that may be the end of our public commenters. And so what I'd like to do now since we have some time is to add a not long presentation of Department of Energy role in the EEOICP and supporting the EEOICP in claims evaluation process and introduce if he's -- I think he's probably on the line and

available, Greg Lewis, who is in the Office of Health and Safety of the Department of Energy and has been involved in this program for many, many years. So, Greg?

MR. LEWIS: Hi. Good afternoon, everyone. Can you hear me okay, Dr. Markowitz?

CHAIR MARKOWITZ: Yes.

MR. LEWIS: Okay. Well, I know I stand between everyone and the end of the day, so I'll try not to go too long, but I -- you know, I do want to go into some detail about our role and what we do for the program. If you can go to the next slide?

So, again, my office is the Office of Worker Screening and Compensation Support, which is within the Office of Health and Safety. The Office of Health and Safety primarily deals with current worker activities, health and safety policy, the voluntary protection program, some different epidemiological health studies, things of that nature. But my office within the Office of Health and Safety focuses on two programs

vital to former workers primarily, not exclusively but primarily former workers. One is the Former Worker Medical Screening program, which you heard about a little bit in the introduction. There are at least a couple of members of the Board who are very involved in the former worker program. And my office funds and supports the cooperative agreement holders or grantees that implement those programs. And I'll talk just a little bit about that at the end.

And then the other role that my office performs, of course, is support to Department of Labor and NIOSH in implementing the compensation program, and we think that this is a, you know, really important role and a really important service that Department of Energy provides looking after our former workers and making sure that they get the compensation that they deserve.

Next slide. And actually, if we can just skip passed this slide is fine.

So primarily what my office does for the compensation program is provide records and

information, and we do this in three ways. First, we respond with records related to individual claims. So if someone files a claim with the Department of Labor, Department of Labor is going to DOE to ask for that worker's records. And so is NIOSH as well; if it's a cancer claim or a Part B claim, it goes over to NIOSH in their reconstructing dose, they're going to come to Department of Energy to ask for the records. So that's kind of the biggest role that we play, is providing those individual records packages that allow DOL and NIOSH to do their job.

But we also provide support and assistance for sort of larger scale site characterization projects. I know you guys have heard about the Site Exposure Matrix today and are going to hear more about that tomorrow. We provided, you know, the -- many of the records used for most -- in fact, DOL does get some records from other sources, but I think we provide the bulk of the records used for that Site Exposure Matrix. And we also help NIOSH

with their special exposure cohort research project or safe profiles, things like that.

And then the third thing we do which is much smaller but also very important is we do some research in coordination with Department of Labor and NIOSH into issues related to covered facility designations. For the most part, the facilities are already -- you know, they have been designated. It's published in the *Federal Register* and they're on our covered facilities website. But from time-to-time, we get information and we may add some years or take away some years or list a new site or delist a site as needed and as the research dictates. So those are the three main areas that my office works with the DOE. You can to the next slide, please?

So with individual claims, we do three separate types of requests. We'll get the employment verification from the Department of Labor which is sort of the smallest and most straightforward request just looking for, you

know, did the person work at a DOE site or sites, how long, you know, what was their job title, that kind of thing. Then we'll get -- if it's a Part B claim, we'll get a request from NIOSH for the dose records, the radiological dose records. Sometimes that's medical records, too; wherever there might be information related to radiological exposure.

And then the third type of request, we refer to it as a DAR, a document acquisition request but essentially, that's Department of Labor asking DOE for any information related to that worker's, you know, work and possible exposure. So next slide, please? Next slide. Can everyone hear me?

MR. BIRD: Yes, we can. I didn't (audio interference) slide.

MR. LEWIS: And actually, if could skip passed that to the next one, I'll keep talking. We have a site point of contact at each DOE site, and we rely on them to conduct these searches. And as you'll see, I'm going to talk a

little bit about it. You know, for the individual searches, it's not a situation where one worker has one file and we go to that file cabinet, you know, pull out the file, photocopy it and then send it back. There are records in many different locations, different offices on site. There are different databases or hard copies. There are microfilm, microfiche. It really depends on which worker was there, how long the worker was there, which contractors they worked for. So records can come in many different forms and are in many different places. So it's a bit of a detective project sometimes to find these records, and our site points of contact are the ones that spearhead these processes.

They also work with DOL and NIOSH on the records research projects, so facilitating worker interviews when necessary, you know, trying to identify the types of records that DOL and NIOSH need and facilitating the review of those records, whether it's in person on site or

online via electronic collections. They may also facilitate tours before -- for DOL and NIOSH groups including the DOL Advisory Board. Obviously, with the pandemic and virtual medium, that's not happening but I know for the in-person meetings, we've facilitated tours in the past and if and when things return to normal, we're fully committed to doing so again.

So with the individual claims, our EEOC POC is going to receive the claims through our SERT system, and SERT is the Secure Electronic Records Transfer system. So we set that up. You know, protection of PII and worker privacy is really important to us in these days of, you know, online hackers and, you know, everyone's heard about different companies, different agencies losing, you know, laptops or getting compromised from hackers and compromising people's sensitive information. We're very concerned about that, and we set up our Secure Electronic Records Transfer system to encrypt data and facilitate the secure transfer of

records to and from Department of Labor and NIOSH.

So when we get a claim through that SERT system, typically our site staff, our POC will do some triage on that claim. So they may have the name and Social Security number or things like that, but they may need to cross-reference that with, you know, site ID numbers. At Los Alamos, they call it a Z number. There's various things like that, and they may also need to look up -- you know, people may have gone under maiden names or different names when they worked at the site. So they'll take the information they receive from Department of Labor or NIOSH and, you know, triage that and try to find the different pieces of information that may help them conduct the search on their site. Next slide.

And this is where they're going to send that request out to the different areas on the site. And this isn't true for all DOE sites. For closure sites, typically it's more of a

records library type situation. Like the Department of Energy Office of Legacy Management handles many of the closure sites, and then there are also some closure projects that are ongoing. And when they're focused on the cleanup or when they've already cleaned it up, their records are typically located all in one records center, so it's more of a simple search. But when it's an active site, our POC is going to have to send that records request to different areas that may have responsive records including the HR Department, the Medical Department, Industrial Hygiene, Radiological Controls or Dosimetry. There may be a different group of data source to those incident and accident reports. And then they may have to go directly to the records archive or, you know, each of the different divisions that I talked about, HR, Medical, IH, et cetera, they may have to go to the records archives and then pull those records. Next slide.

So each of those groups is going to conduct a search of their holdings. And again, I sort of alluded to this before but, you know, what that search looks like and the depth and volume of records that, that search is going to find really depends a lot on the employee. You know, if it's a 30-year, you know, career employee who may have worked for multiple prime contracts as they changed out of the years and who may have had multiple, you know, job categories or, you know, moved up or moved around or got trained in different things, we could have to go to, honestly, 20 to 30 different sort of records locations, whether that's, again, microfilm, microfiche, multiple databases, certain hard copy collections. We might have to go to a number of locations to find records for an individual. But on the other hand, of it's a, you know, particularly a construction subcontractor, sometimes we'll really struggle to find anything at all that even puts the employee on site much less provides detailed information

about what they did or their exposure. So it can really depend on the type of employee. Next slide.

So this is just -- you know, it's really hard to read this, and I didn't put this up here for the detail, but this is just an example. I pulled this from our search procedure. I think it may be the Nevada Test Site or now called the Nevada National Security Site, but it doesn't really matter. This is just to kind of give you an example. This is a chart that they put together, sort of mapped out where they might have to go, you know, to conduct a search for employee records. And actually, if you could go to the next slide, it's I think more of the same, and I'll talk about that one.

Yes. So just, you know, for example, I'm going to the second box down under the industrial hygiene records. When you look at it, you know, there's a records source name is one column, and there's years covered and format. So you can see some of the different sources go from

1945 to 2014 are paper files. That's the first line. We have a source, ERS database that's '45 to 2005. There's electronic files. We have an IH archive, S-drive that goes from 2005 to present, electronic files. And if you look down, you know, there is probably just for the IH-files, it looks like there's about maybe 15 different sources covering various years. Some of them are electronic. Some of them hard copy. I see a microfilm in there. And a lot of them overlap so, you know, it's not just one is from 1970 to 1980, one is from 1980 to 1999, et cetera. There's overlap in those sources, and sometimes a worker might be in, you know, multiple sources. Or sometimes the site will understand why someone would be in one versus the other depending on what their job type is or who they were working for in terms of contractors. So it's not always a straightforward process, and it's no always a linear process, but we do try very hard to locate all of the responsive records for each individual. Next slide.

So just -- I'll give you some sort of general metrics about, you know, what we typically do each year. Each -- we do about 16,000 records responses per year, although that's not 16,000 unique individuals. You know, we count the employment verification, the NIOSH request, and the DOL DAR all separately. So we could potentially do three different requests for an individual, although if they don't have a Part B, we might only do two. So it doesn't really match up exactly, but those are -- to us, they're distinct requests. So we do about 16,000 responses per year from over 25 different DOE sites. Next slide.

And these are averages. I always stress this. You know, like I said before, a 30-year career employee who worked for multiple contractors, multiple job sites is going to be well over this. I've single responses up around 3,000 pages and, you know, again, a construction sub, not always but sometimes will be, unfortunately, much lower than this, you know,

possibly nothing or a few pages. But just to give you an idea of the average number of pages for an employment verification, it's about 15. The average for our NIOSH response is about 50 pages, and the average for a DAR is 150 pages, ball park. And again, those are averages. It really depends on the worker, but that gives you an idea of the size of the packages we're (audio interference.) Next slide.

And then as far as timeliness, you know, way back in the beginning of the program, we agreed with DOL and NIOSH to a 60-day goal for us to turn these requests around and get them back to both DOL and NIOSH within 60 days. And FY19, we had a 98 percent on time response rate. Unfortunately, you know, FY20 is going to be much different due to the pandemic. We were significantly down for about three months, and it was a little more or less at certain sites depending on the situation in their area.

But with maximum telework, some sites were able to continue to respond in realtime and

fully to all requests if they had more of their records accessible online and in electronic databases and with less classification issues. But other sites accumulated a significant backlog in the first two, three, or four months of the pandemic. But the good news is with the exception of about two or three of our sites, we are back fully current and with no backlog to the individuals who collect at most sites. So again, our timing and numbers are going to be off this year but, you know, I think we have a good excuse. Next slide.

And then the Site Exposure Matrix, you're going to hear more about that tomorrow, I think, or you may have heard earlier today. I haven't been on the whole call. But it was initially created in the 2006-2008 time frame. Teams from DOL went to every DOE site, gathered records, did extensive research, conducted worker interviews, and focus groups, reviewed thousands of boxes of records and data and apps or copies of, you know, hundreds of documents, possibly

more at some of the sites. And we provided those, you know, reviewed them, et cetera, made sure that they were releasable and provided them over to DOL.

And then we reviewed the -- some database for classification in 2009. Initially, it was only accessible to DOL claims examiners, but there was a push to make it public. And so we reviewed the whole database for classification, and it was released in 2009. Now we continue to review the new additions every six months, so people are able to submit information to the SEM and send it out there doing additional research to augment and improve the SEM. And so every six months, we review the additional data that they've added in there, and then it goes public. Next slide.

And again, we continue to work with DOL. They have -- their contractor team is working their way site-by-site through the DOE sites, both going back and filling in gaps but also filling in the information from whenever

they initially did it, you know, 2006, '07, '08, up through the present day.

And then we also, DOL, might get one off request where the public says, hey, you know, you don't have this in this particular site, or we think this chemical was there, or we think you missed the boat with such and such. So the Department of Labor will come to us or request additional information, and we are -- we do our best to respond to those. Next slide.

Outreach, again, we coordinate with both Department of Labor and NIOSH as well as their ombudsman office and our Former Worker Medical Screening Programs to conduct joint outreach. We've been doing this for probably about 10 years now, because we figure that each of those groups is trying to reach if not exactly the same population, much the same population, for different purposes but certainly, we're trying to reach the same group. And we also found that there was quite a bit of confusion from claimants and workers about which office and

which group did what, so we oftentimes found ourselves, you know, referring people to the other agencies. We figured if we all got together, we could combine forces, it would be more efficient for us, and it would serve the claims better. So we've been working jointly on outreach activities for the past 10 years. And although the in person activity has stopped in the last seven or eight months, whatever it is, we've still been working with DOL and NIOSH to do virtual events and reach out to workers in different fashions. Next slide.

And then I'll just mention I think -- I know a few of the people on this call are very familiar with the Former Worker Program but again, the Former Worker Medical Screening Program is funded by the Department of Energy, but it's administered through cooperative agreement holders so they have, you know, independence from DOE and create their own, you know, medical protocols, and they do their own outreach, and it's their own program. But we do

fund and support those cooperative agreement holders. Their mission is to identify and notify former workers at risk for occupational disease and offer them medical screening that can lead to early detection and treatment. The Former Worker Project program has been going on since 1996.

Next slide. It is free. It, of course, serves all workers from all DOE sites. We try to get them a screening as close to their residence as possible, so we have some programs that are location-specific and serve specific sites and locations. We also have a few national programs that'll cover workers wherever they are, you know, within reason. I think we've done other countries from time-to-time. That's very rare, of course, but, you know, we do have contracts and providers in rural areas, pretty much wherever workers may end up.

And I should probably update that last slide, but -- or that last bullet, but we've done well over 100,000 medical exams, and that was current as of 2015, which I need to update. But

that's only grown since then. So we've done well over that number. Next slide.

And that's some information if folks are interested in more information about the Former Worker Program.

And I think that's my last slide. Yes. And if anyone has questions, I'd be happy to answer them.

CHAIR MARKOWITZ: Okay. This is Steve Markowitz. That was great, a great summary of a lot of information. Thank you. Anybody have questions?

MEMBER GOLDMAN: This is Rose Goldman. I have a question. What you just talked about, the former working -- Formal Worker Medical Screen Program, what -- I mean not to go into a long thing, but what are you screening for, like are you going after workers who have had beryllium exposure or asbestos or radiation; are you going after screening workers for increased risks of certain cancers, because we're going to be talking about that tomorrow? So I'm just

interested how you approach this and what are your key screening programs.

MR. LEWIS: Well, to be honest, I would -- I think either Dr. Markowitz or Dr. Mikulski might be able to answer that question in a lot more detail than I could, because they are intimately involved in the Former Worker Screening Program. Do either of you want to answer that, or do you want me to muddle through?

CHAIR MARKOWITZ: No. Sure. Let me -- this is Steve Markowitz. I'll take a crack. We can share the national medical protocol we use for the program, but we're looking mostly at chronic lung disease, hearing loss, at other chronic conditions, a beryllium sensitivity or disease, and to some extent, cancer. We have -- some of the programs have a very ample lung cancer screening program built in. The other cancer sites, we advise on but we don't do the screening except for some stool cards for colorectal cancer. So it's general occupational diseases with limited cancer screening. I can

send around the medical protocol which will explain it a lot better.

MEMBER GOLDMAN: Okay. I was just curious also what exposures might trigger -- if this is too much to answer now, we can deal with it later -- for example, lung cancer screening or would that be triggered by a certain exposure like asbestos?

CHAIR MARKOWITZ: Sure. You know, again, let me share the protocol because it's the -- it's in the protocol, the exposures and the screening maneuvers and the diseases we're looking for. But the short answer --

MEMBER GOLDMAN: Okay.

CHAIR MARKOWITZ: -- is -- the usual suspects is the short answer.

MEMBER GOLDMAN: Okay. I'll just take a look at that, because it might relate to a presentation I'm doing tomorrow. Thank you.

MR. LEWIS: Yes, okay. Any other questions? Dr. Silver.

MEMBER SILVER: Yes. Thank you, Greg.

Every time I hear you present, I feel a great weight lifted from my shoulders and probably a lot of the other advocates feel that way. You know my history. One of my claims to fame is that I had to sue the Department of Energy to finish part of my dissertation under the Freedom of Information Act. That's in risk analysis a few years back, the final result; and then at one point, for an EEOC POC claimant, we had to work through a congressman's constituent services to get information that the worker knew existed but had not come through in the first four document dumps from Los Alamos.

How many times a year are you contacted by individuals or advocacy groups outside the DOL to DOE line of communication? Are there still people out there who are crazy, frustrated, or congressman's offices and not getting the documents that they know exist that have not come through?

MR. LEWIS: So we get quite a few contacts regularly, probably weekly if not more.

Many of those -- you know, it really runs the gamut. I mean some of them are, you know, I know I have records and the site didn't find them. You know, some of them are I don't necessarily know if I have records, but I'm surprised; I thought I would have had more than what I received, that kind of thing. So, you know -- and with those, it's tough. I mean anytime we get a request, whether it's from an individual, an advocate, or a, you know, a congressman's office, we do everything we can to go back and see is there something we missed.

And occasionally, you know, we will find additional information, whether it was something that was missed or some part of the process, you know, something went wrong. We do occasionally find examples of that, although that's pretty infrequent. We also sometimes are able to find more information because we get more information from the individual, maybe an additional employer or some additional years that, for whatever reason, either, you know, were

not down on the initial forms or somehow didn't translate over to us. So sometimes we can find additional information that way.

But the vast majority of requests like that, that we do get, we're unable to find anything more, you know, and I think, unfortunately, part of the reason why this program was enacted, you know, close to 20 years ago is that the records within DOE were not always kept properly or were not always created at the time. You know, I've heard many workers talk about, you know, the -- you know, things like we left our dosimeters in the truck or, you know, supervisors didn't mark us down for the correct dose. And, you know, again, in any of those individual cases, I don't know whether -- you know, how accurate that is. But, you know, we've certainly heard quite a bit of, you know, comments and testimony to that effect.

So oftentimes we're unable to find any records, you know, whether they should have been created or they existed and -- or were destroyed

way back when. What I always -- you know, what my office tries to do now is we do our best to find every record that we can. If it's out there, if it's still at the DOE site, we do everything we can to find it. And like I said, we do find quite a bit of records on individuals. You know, our average is, going back to that slide, it's somewhere around 200 pages.

But again, you know, for a construction sub, you know, I have spoken with people who've said that they were on a DOE site off and on; you know, not on a consistent basis, but they would be there, you know, maybe every year for some period of time or every couple of years, they'd end up at a project on site if they were a union, you know, tradesman, and we might not be able to find any indication that they were there or only a few pieces of information. Like there was no formal record, but we might, if they ever got hurt while they were there, we might have that record. Or if they happen to have to go into a secure area, we might have a record.

But if the rest of their projects weren't in a secure area or, you know, again, the vast majority of people are not going to get hurt on the, you know, the job, so we may not be able to find a record on them.

So, you know, it's kind of a long answer to a short question, but we do get inquiries. We do -- I talk to people all the time that are frustrated that we didn't find more, but all we can do is do everything we can to find the records that do exist. And I assure you my office really does everything we can to do that.

MEMBER SILVER: Thank you.

CHAIR MARKOWITZ: This is Steve Markowitz. Ms. Whitten, your hand's up, at least on the WebEx, but I think that might be old. Did you want to raise a question or a comment?

MEMBER WHITTEN: No. That's an old hand.

CHAIR MARKOWITZ: Okay. Well, it's 5:30. If there are no other questions or

comments -- unless Mr. Chance has something to say or --

MR. CHANCE: No, Dr. Markowitz. Thank you. I just want to say hi to Greg.

MR. LEWIS: Hi, Mike. Been a long time.

MR. CHANCE: We used to do some work together back in the day, so I just want to say hi to Greg. But no, I don't have anything. I think that -- I don't know if Ms. Pond or John Vance stayed on for this, so I think that what we could do, if it's okay with everybody, you know, when we have the section of time set aside to review the public comments, I think we can share with them at that time tomorrow. I mean they're pretty similar to some of the things that I think the program has been -- has tried to respond in writing and is also seeking some guidance from the Board on. So --

MR. VANCE: Hey, Mike, I'm actually still on. I sat through and listened to everything.

MR. CHANCE: Oh, sorry, John. I didn't --

MR. VANCE: Yes.

(Simultaneous speaking.)

MR. CHANCE: -- so yes, so you can go ahead and take it. I don't know if you have anything to say.

MR. VANCE: Well, yes, I do, and I will simply say that, you know, the Department of Labor has submitted a letter to the Board that explains our perspective and has asked for some input on -- and I think that's where we're going to leave it for right now -- but the letter explains our -- the situation and then it's seeking information about how to best address that particular issue.

CHAIR MARKOWITZ: This is Steve Markowitz. That's fine. The -- just Ms. Rhoads, if you can just make sure that all the Board members get that letter, and if you could post it. And then tomorrow, if there's time, if any of the Board members want any clarification about

the request, the specific DOL request to us, we can perhaps have some discussion about that. Otherwise, if there's nothing else, I think we might be done for today, and we reconvene tomorrow at 11:00 a.m. And tomorrow we're going to have much more back and forth discussion, so I look forward to that. Any questions at all, Board members?

(No response.)

CHAIR MARKOWITZ: Okay. Good. Well, have a good evening then.

MR. CHANCE: Let's adjourn.

MR. LEWIS: All right. Have a good night everybody.

(Whereupon, the above-entitled matter was adjourned at 4:31 p.m.)