

1 being friendly, the second to last line on that
2 first page, referring to the adequacy, I believe
3 that the actual wording in EEOICPA is "scientific
4 validity and quality". Is that not true? Can
5 somebody help me? Is -- were you quoting, Jim, or
6 -- I --

7 DR. MELIUS: I was paraphrasing but not
8 quoting.

9 DR. ZIEMER: I think that "scientific quality
10 and adequacy" are the actual words and I'm
11 suggesting that we use that. That's the concept
12 for adequacy, but insofar as we can actually quote
13 the --

14 DR. MELIUS: That would be fine, and also
15 while you were out, we gave -- I think it's usual
16 these letters -- that you have a final say in
17 terms of grammar and style issues, so...

18 DR. ZIEMER: I have another question, also,
19 again -- and maybe this will also be within the
20 prerogative of the working thing. Were you
21 quoting from section 42 USC 738 -- 3874(q)? Have
22 you confirmed that that is the exact -- it is in
23 quotes in your letter.

24 DR. MELIUS: (Off microphone) I believe it
25 (Inaudible).

1 DR. ZIEMER: Well, in any event, where we're
2 quoting exactly, I will make sure that we quote it
3 exactly.

4 The other comment I had was in the second to
5 last paragraph, "Procedures for Designing (sic)
6 Classes of Employees" and so on, I wonder if it
7 would be good to expand that to include the --
8 well, in the second sentence you have the dates of
9 the rulemaking and in the first sentence we don't
10 -- we just have the year. I was going to suggest
11 that we add in there the month of the issuing of
12 the rulemaking and the dates of the comment period
13 in both sentences. You have it in the one but not
14 the other.

15 DR. MELIUS: I didn't have --

16 DR. ZIEMER: I'll dig that out. If you're
17 agreed, we'll just add those.

18 DR. MELIUS: That's fine.

19 DR. ZIEMER: Are there any other -- yes, Gen
20 Roessler.

21 DR. ROESSLER: Mine is grammatical and I
22 probably shouldn't even bring it up, but I want to
23 remind the Chair -- and I'm sure that as an
24 academic person who deals with dangling
25 participles so well that he'll recognize that a

1 Board -- the Advisory Board is an "it", not an
2 "our" or not "us".

3 DR. ZIEMER: I've already changed my copies.

4 DR. ROESSLER: You marked al-- thank you.

5 DR. ZIEMER: Yes. Tony and Robert.

6 DR. ANDRADE: Okay, one final proposed
7 amendment, and that is to change wording such that
8 we can combine the last two short paragraphs, as
9 follows. We start with "Potentially eligible" and
10 we continue on with "classes of workers" et
11 cetera, and keep the rest of that small paragraph
12 as is. And then at the end of that paragraph,
13 append "Hence, we" and then follow through with
14 the last part of the last paragraph, so it would
15 read "Hence, we urge you to finalize the Special
16 Exposure Cohort rule" et cetera, et cetera. In
17 other words, we'd take out the piece that, again -
18 -

19 DR. ZIEMER: This is the delay issue again.

20 DR. ANDRADE: The delay issue.

21 DR. ZIEMER: Okay. I guess if that was
22 friendly before, it's still friendly. Is that
23 the --

24 DR. MELIUS: Yeah, I have no objection to
25 taking that out.

1 DR. ANDRADE: That is my --

2 DR. ZIEMER: Agree to that change?

3 DR. ANDRADE: Right.

4 DR. ZIEMER: Hence -- hence, the Board --

5 DR. ANDRADE: The Board --

6 DR. ZIEMER: -- urges you... Thank you. Are
7 there any further friendly or unfriendly
8 amendments?

9 (No responses)

10 Are you ready to vote on this proposed
11 letter? You appear to be ready to vote -- pardon
12 me?

13 UNIDENTIFIED: (Off microphone) (Inaudible)
14 second.

15 DR. ZIEMER: It was seconded originally
16 before it went on the table, so -- right.

17 Okay, all in favor say aye.

18 (Affirmative responses)

19 Any opposed, no.

20 (No responses)

21 Any abstentions?

22 (No responses)

23 The ayes have it, and we will prepare the
24 final letter and copies will be distributed, as
25 well, to the Board. Thank you.

1 well as copy of the original letter, to Secretary
2 Thompson. Okay? So -- any comments or questions
3 on that letter?

4 DR. MELIUS: I guess I would like -- first of
5 all, I'd like to try to work out some procedure so
6 we understand how these letters will be handled.
7 When I -- as I recalled the last meeting and
8 checked back to the transcript, we talked about
9 that you were going to consult -- the Chair was
10 going to consult with NIOSH about these issues and
11 then share with us what was going to happen, and
12 it was -- the "share" was vague, but I was at
13 least expecting to get a copy of what was being
14 sent. And if there were policy or other issues
15 related to the Board, that the Board would be
16 consulted in some way on addressing these, that
17 this -- and frankly, I don't completely understand
18 what your response was and -- do that, so I think
19 in the -- guess what I would ask in the future is
20 that when these letters come in that we spend some
21 time sort of being more specific about what the
22 follow-up is. 'Cause I'm not trying to fault you
23 in that sense, 'cause --

24 DR. ZIEMER: No, I appreciate that.

25 DR. MELIUS: -- we might have misunderstood

1 that, but also that if there are policy or other
2 issues that are raised by this that affect -- that
3 are on behalf of the Board, then I think the Board
4 needs to talk about them and have some input into
5 them.

6 DR. ZIEMER: Thank you for that comment. I
7 was vague at the last meeting 'cause I had only
8 just received the letter and seen it on the way
9 in, and I wanted to have a chance to kind of match
10 it against our stated responsibilities. We were,
11 in a sense, being asked to do some things that
12 were sort of what I would classify as being
13 mandated by a Congressional group to do certain
14 tasks. Our charge comes else-- from -- from a --
15 both the President and from our charter. And so
16 basically, after having laid the letter side-by-
17 side with our stated responsibilities, I simply --
18 it appeared to me that the first effort to, if
19 there were issues, had to go to the Agency.
20 Congress, I think, can direct in fact probably
21 agencies to do those sorts of things. But in any
22 event, officially to transmit their concerns to
23 the Agency, and then secondly to let them know
24 what we were doing in the way of audit procedures.
25 We're being asked to specifically do an audit

1 where we didn't even have procedures in place.
2 Our selection of what we audit has to be based on
3 the principles that we develop and not necessarily
4 simply audit when -- when Congress asks us to,
5 unless they wish to change the legislation. But
6 that was the nature -- I don't think that I set
7 any policy in responding. I simply told them what
8 we were doing, that as we developed the audit
9 procedures that we will ask the Agency to share
10 them with -- with them. So that's the response --
11 I wasn't -- I get a number of letters from
12 individuals on a variety of things. If they're
13 addressed to me personally and not the Board, then
14 I respond to them. I do not try to act on behalf
15 of the Board in terms of changing anything or
16 setting any policy. I just told them what we're
17 doing. That was my response. But I'd be glad to
18 -- if the Board wishes, on these kinds of things,
19 to see the response in advance, I'm glad to do
20 that, too. I don't have any problem with that.

21 **DR. MELIUS:** Again, speaking personally, I
22 think when -- I think we've talked about this
23 before, there are letters that come in from
24 individual claimants. They may come to you, they
25 may come to the entire Board, and I think we've

1 discussed some of the pitfalls of those as well as
2 being discreet in how we handle them in terms of
3 response and so forth and those I have concern-- I
4 think when we get a letter from someone in
5 Congress to the Advisory Board clearly asking the
6 Advisory Board to do something, that that ought to
7 be something we -- we discuss, or at least be
8 informed about the response, that if you're
9 someone in Congress, you read the law and the law
10 clearly says that we are going to be reviewing
11 dose reconstructions and so forth. And so I think
12 you at least, from reading the law, it would be
13 appropriate for them to turn to us and ask us to
14 do that. And certainly the request was made on
15 behalf of their constituents from the -- you know,
16 it wasn't the -- their whim and I don't think it
17 was a issue of, you know, what the Executive was
18 or was not doing. You know, these are two
19 Republicans and a Democrat that -- that wrote this
20 letter.

21 I also think that in the response -- at least
22 I would have preferred you indicating -- at least
23 giving a little bit better -- more of an update on
24 where we were in this process. It wasn't just
25 that NIOSH would -- or HHS would communicate

1 procedures, but that we were actually -- you know,
2 at that time were in the process of awarding
3 contract and taking up the -- to review site
4 profiles, as well as individual dose
5 reconstructions and that we would be making a
6 selection. Now whether or not we take their
7 desire in account in making that selection I think
8 is, you know, something we could discuss. But in
9 several ways it -- it's moot now after the
10 previous actions we've taken this morning, but I
11 guess I get a little worried that if we defer too
12 much to NIOSH that we're implying that NIOSH or
13 HHS is entirely in control of this process and
14 that that has implications in terms of the
15 independence of our review. And we -- I think our
16 charge to review is -- when Congress set this up
17 was for an independent review related to certain
18 parameters of the dose reconstruction and that we
19 need to be careful that when we communicate that
20 we convey that we are doing an independent review
21 and that -- us and then that NIOSH is well aware
22 of that and I think supportive of -- of the need
23 for the credibility of that -- that process.

24 DR. ZIEMER: I thought the second paragraph
25 basically said that, but maybe not in the words

1 others would have used, but -- yeah. And at that
2 point I wasn't prepared to give them a timetable
3 'cause we were still in flux. I simply said we
4 are in the process. But thank you for those
5 comments.

6 Other comments? Tony?

7 **DR. ANDRADE:** Paul, perhaps -- perhaps we
8 should set a bar. The original legislation for
9 EEOICPA was developed by Congressmen, even with
10 great participation from Congressmen from my
11 state, and it seems like although we shouldn't
12 respond to the specific tasking that -- or not
13 necessarily respond to the specific tasking that
14 comes about because it -- this can become a
15 circus. Okay? This can set a bad precedent if we
16 were to do so. I think that what -- the bar or
17 the threshold that I'm talking about may be that
18 if there are Congressional communications that go
19 to you or to others on the Board, that we share
20 those and that we discuss those before -- and
21 perhaps the Board get together and collectively
22 put a -- an appropriate response together.

23 **DR. ZIEMER:** I certainly -- be glad to do
24 that. Others want to weigh in on this?

25 **DR. ANDERSON:** I think it's a -- it was a