

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

ADVISORY BOARD ON
RADIATION AND WORKER HEALTH

The verbatim transcript of the Meeting of the
Advisory Board on Radiation and Worker Health held
via Teleconference on Friday, March 14, 2003.

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C O N T E N T S

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P A R T I C I P A N T S

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Betty Jean Shinas

Tim Silver, Los Alamos

Bob Tabor, Fernald Atomic Trades and Labor Council

Tim Takaro, University of Washington

P R O C E E D I N G S

1:08 p.m.

1
2
3 **DR. ZIEMER:** Call the full roll, Cori. Let's
4 just go through it.

5 **MS. HOMER:** Henry?

6 **DR. ANDERSON:** I'm here.

7 **MS. HOMER:** Tony Andrade?

8 **DR. ANDRADE:** I'm here.

9 **MS. HOMER:** Roy, I know you're here, and
10 Rich, I know you're here.

11 Mike Gibson?

12 **MR. GIBSON:** Yeah, I'm here.

13 **MS. HOMER:** Mark Griffon?

14 **MR. GRIFFON:** Yeah.

15 **MS. HOMER:** Jim Melius?

16 **DR. MELIUS:** Here.

17 **MS. HOMER:** Wanda Munn?

18 **MS. MUNN:** Here.

19 **MS. HOMER:** Charles, Bob, and Gen?

20 **MR. OWENS:** Here.

21 **MR. PRESLEY:** Here.

22 **DR. ROESSLER:** Here.

23 **MS. HOMER:** Okay. And I know Dr. Ziemer's
24 here and Larry's here. We're all in attendance.

25 **DR. ZIEMER:** Okay, all the Board members are

1 here. I'll call to meeting to order.

2 I'd like to ask if any members of the public
3 are present, and if so would they please
4 identify.

5 **MS. KIEDING:** This is Sylvia Kieding, PACE.

6 **DR. ZIEMER:** Okay, we want to make sure the
7 recorders get the information.

8 Recorders, if you need anybody to spell their
9 name, just indicate.

10 That was Sylvia Kieding?

11 **MS. KIEDING:** Yeah, K-I-E-D-I-N-G.

12 **DR. ZIEMER:** From PACE.

13 Okay, anyone else?

14 **MR. TABOR:** Bob Tabor here from Fernald
15 Atomic Trades and Labor Council. That's T-A-B-O-
16 R, like labor only with a T.

17 **DR. ZIEMER:** Okay, Bob.

18 **MR. FIELD:** This is Bill Field, F-I-E-L-D,
19 from the University of Iowa --

20 **DR. ZIEMER:** Hello, Bill.

21 **MR. FIELD:** College of Public Health,
22 (inaudible).

23 **DR. ZIEMER:** Anyone else?

24 **MS. SHINAS:** This is Betty Jean Shinas, S-H-
25 I-N-A-S, survivor.

1 **DR. ZIEMER:** Okay, Betty Jean.

2 **MS. BARRIE:** This is Terrie Barrie, wife of a
3 sick worker and an advocate.

4 **MS. NEWSOM:** I'm sorry, would you repeat
5 that, please?

6 **MS. BARRIE:** T-E-R-R-I-E, B as in boy, A-R-R-
7 I-E.

8 **MR. TAKARO:** Tim Takaro, University of
9 Washington.

10 **MS. NEWSOM:** Would you spell your last name,
11 please?

12 **MR. TAKARO:** T as in Tom, A-K-A-R-O.

13 **MS. JACQUEZ:** Epifania Jacquez.

14 **MS. NEWSOM:** Excuse me, I can't hear you.

15 **MS. JACQUEZ:** Epifania Jacquez, E-P-I-F-A-N-
16 I-A, J-A-C-Q-U-E-Z. Epifania Jacquez, I am a
17 survivor.

18 **DR. ZIEMER:** Thank you. Anyone else?

19 **MR. LEWIS:** This is Mark Lewis from PACE,
20 Worker Health Protection Program, L-E-W-I-S.

21 **MR. SILVER:** Tim Silver, Los Alamos POW,
22 Silver like the metal.

23 **DR. ZIEMER:** Thank you.

24 **MS. NEWSOM:** I'm sorry, what was the last
25 name again?

1 **MR. SILVER:** Silver, S-I-L-V-E-R.

2 **MR. CASADOS:** Yes, My name is Filimon Casados.
3 I'm one of the POWs.

4 **DR. ZIEMER:** Okay. Do we need a spelling on
5 that?

6 **MS. NEWSOM:** Please.

7 **DR. ZIEMER:** Please spell your name.

8 **MR. CASADOS:** F-I-L-I-M-O-N, C-A-S-A-D-O-S.

9 **DR. ZIEMER:** Okay. Is that all of the
10 members of the public?

11 **MR. LAYBA:** I think you got my name, Larry,
12 did you not?

13 **MR. ELLIOTT:** You need to get it on the
14 record, please.

15 **MR. LAYBA:** Name is Jerry L. Layba, L-A-Y-B-
16 A. I'm also a LA POW, and also with UPTE,
17 University of Professional and Technical
18 Employees, Vice President, from Los Alamos
19 National Laboratory. And also a claimant.

20 **DR. ZIEMER:** Okay, thank you.

21 **MR. SCHOFIELD:** Philip Schofield, S-C-H-O-F-
22 I-E-L-D. I'm with LA POWs and a claimant.

23 **DR. ZIEMER:** Any others?

24 [No responses]

25 **DR. ZIEMER:** Okay, then we will proceed. We

1 have on the agenda --

2 **MS. TOUFEXIS:** Oh, excuse me. I'm sorry --

3 **DR. ZIEMER:** Are there others?

4 **MS. TOUFEXIS:** Yes. Rose Toufexis from the
5 Department of Labor.

6 **MR. KOTSCH:** Jeff Kotsch, K-O-T-S-C-H,
7 Department of Labor.

8 **MS. ROSS:** And this is Rene Ross, CDC
9 Committee Management Office.

10 **MR. NAIMON:** David Naimon with the Department
11 of Health and Human Services.

12 **MS. HOMOKI-TITUS:** Liz Homoki-Titus from the
13 Department of Health and Human Services.

14 **MS. HOMER:** Cori Homer, NIOSH.

15 **MR. SUNDIN:** Dave Sundin, NIOSH.

16 **MR. NETON:** Jim Neton, NIOSH.

17 **MR. HINNEFELD:** Stu Hinnefeld, NIOSH, H-I-N-
18 N-E-F-E-L-D.

19 **MR. KATZ:** Ted Katz, NIOSH.

20 **DR. ZIEMER:** Any other staff members from
21 federal Agencies? Any other members of the
22 public?

23 [No responses]

24 **DR. ZIEMER:** I'm going to ask -- the main
25 thing on our agenda, of course, is the Board's

1 ongoing discussions to lead to comments on the
2 proposed rulemaking on 42 CFR Part 83, which is
3 the proposed rulemaking on Procedure for
4 Designating Classes of Employees as Members of
5 the Special Exposure Cohort.

6 Now I will ask Board members whenever you
7 have a comment, for the benefit of our
8 transcribers and the minute takers, that you
9 please identify yourself even though we may feel
10 like we recognize your voice. We do want to make
11 sure the record indicates who is speaking.

12 Also, for members of the public, we always
13 allow an opportunity for members of the public to
14 present comments or views to the Advisory Board.
15 I thought it would be of value to give such an
16 opportunity here at the beginning, so that the
17 Board may have the benefit of any comments as we
18 proceed into our open discussion. So I want to
19 allow the opportunity right here at the beginning
20 for any public comments. I will also allow
21 additional comments after or at the end, but you
22 may wish to have your comments on the record
23 before the Board actually begins discussing the
24 document that's before us so that we have the
25 benefit of whatever your comments may be.

1 attempted to allow reimbursement to contractors
2 who contest Subtitle D claims.

3 EEOICPA is plain and simple, at least to the
4 workers affected. If a worker develops cancer,
5 NIOSH is to attempt a dose reconstruction. If
6 NIOSH cannot, then the worker can petition to
7 become a member of a Special Exposure Cohort.
8 That's it. Nothing in the law says that NIOSH
9 can change the cancers already given to the
10 workers in Kentucky, Tennessee, Ohio, and Alaska.
11 NIOSH and Health and Human Services are an arm of
12 Congress, and they are to carry out Congress'
13 laws, not change them.

14 And while I'm in favor of a speedy resolution
15 to the compensation for the sick workers, we need
16 more time to read the voluminous information that
17 is out there for us in order to formulate
18 responses. I barely finished reading the posted
19 transcripts from the February meeting, which was
20 over 400 pages, before the rules of the 91 pages
21 were posted on your Web site. EEOICPA is a
22 compassionate legislation. Please don't stop it
23 from (inaudible), and get these people
24 compensated.

25 Thank you.

1 **DR. ZIEMER:** Thank you for those comments.
2 Are there any other members of the public
3 that want to make comments at this time?

4 **MS. SHINAS:** Yes, my name is Betty Jean
5 Shinas, and I'm here to speak to the thousands of
6 claimants who do not have a voice today. My dad
7 worked up in Los Alamos from 1948 to 1979. He
8 died of esophageal cancer.

9 And there is that regulation that proposes to
10 exclude 21 of the 22 cancers that will be
11 considered for compensation, and I'm here today
12 to ask you to abide by the spirit of the law that
13 was passed two and a half years ago by President
14 Clinton. And I question the right that anyone
15 has to change this law in any way.

16 With the change of the administration, what I
17 have seen is that the burden of proof is on the
18 families, and that families are not being
19 compensated in any way. We are being victimized
20 again and again over this. And I just feel like
21 the heart of this program that started, it's
22 lost, and we are just being left on the wayside.
23 And I really strongly disagree with what's going
24 on right now.

25 And as far as notifying the families of what

1 is happening or what the proposal is, there is no
2 way to get that information to us. And I can
3 strongly disagree with what's going on, and I
4 strongly, strongly recommend that you abide by
5 the heart of this program with what was
6 considered to compensate for these families. And
7 I don't think that that's happening right now,
8 and I'm really very disappointed with what's
9 happening.

10 **DR. ZIEMER:** Okay. Thank you for that
11 comment.

12 I will ask if any members of the Board have
13 questions for the commenters as we proceed, you
14 please identify those questions.

15 Also, it appeared to me there may have been
16 some others joining us during these
17 conversations. Have other individuals come on
18 the line, since we need to have that on the
19 record? Is anyone now on the line whose name was
20 not recorded originally?

21 **MS. RAMADAY:** Yes. This is Kathy Ramaday
22 (phonetic) in the CDC Committee Management
23 Office.

24 **DR. ZIEMER:** Kathy, okay.

25 Others?

1 **MR. DOUGHERTY:** Yes, hi. Kevin Dougherty
2 with the Alaska District Council of Laborers in
3 Anchorage, Alaska.

4 **MS. NEWSOM:** Could you spell your last name,
5 please?

6 **MR. DOUGHERTY:** D-O-U-G-H-E-R-T-Y, Kevin.

7 **MS. NEWSOM:** Thank you.

8 **DR. ZIEMER:** Okay. Any others?

9 [No responses]

10 **DR. ZIEMER:** Okay. Let me now ask if there
11 are other members of the public who wish to
12 comment?

13 **MR. LAYBA:** Dr. Ziemer, I'd like to make a
14 comment.

15 **DR. ZIEMER:** Yes, identify yourself for the
16 record.

17 **MR. LAYBA:** Jerry Layba, Los Alamos National
18 Laboratory, UPTE, Vice President.

19 I feel that NIOSH is creating the disease
20 cohort and not an exposure cohort. The point of
21 exposure cohort is to provide workers with a
22 remedy when the the DOE failed to monitor
23 workers' radiation exposure properly and
24 credibly. I don't feel NIOSH is treating workers
25 equitably.

1 I feel that NIOSH should not have (inaudible)
2 authority which Congress set forth to (inaudible)
3 on the 22 recognized cancers. And it's been a
4 very slow process for the State of New Mexico. I
5 see that out of 1,200 claims that are filed,
6 approximately only ten people have been
7 compensated in New Mexico and none under Subtitle
8 D. I would appreciate it if the Board of NIOSH
9 would not change what is presently already law.

10 **DR. ZIEMER:** Okay, thank you, Jerry.

11 **MR. LAYBA:** Thank you, Dr. Ziemer.

12 **DR. ZIEMER:** Other comments?

13 **MS. JACQUEZ:** This is Epifania Jacquez. I am
14 a survivor. And this proposal that you are
15 proposing (inaudible) --

16 **MS. NEWSOM:** Excuse me, would you repeat your
17 name, please?

18 **MS. JACQUEZ:** -- CFR Part 83 that you are
19 proposing goes against the spirit of the law, the
20 compensation act that was signed by our President
21 Clinton at that time.

22 You know, I've heard it said, I heard some
23 places, statistics are people with tears wiped
24 off their faces. And this is actually
25 (inaudible) NIOSH is dealing with, and this is

1 their attitude. This compensation act was
2 supposed to be friendly. It was supposed to be
3 claimant friendly. It has been anything but.

4 At one of our meetings in Santa Fe, at the
5 Inn at Loreda, Dr. Ziemer was asked about
6 esophageal cancer by my sister, Gloria Trujillo,
7 and how it was one of the cancers that was
8 included in this (inaudible) it would be
9 accepted, and then how it affected the organs.
10 And Dr. Ziemer went on to explain to her that
11 absolutely, and we had those records, yes, that
12 was one of the cancers that would be accepted.
13 And this is Dr. Ziemer that testified, that told
14 her that.

15 So anyway, I'm wondering why the discussion
16 on all of these cancers for two and a half years,
17 and only to hear right now that, what, 21 out of
18 the cancers have been struck out, that that is my
19 -- struck out of this Act, and that is my
20 understanding. So I would like to request that
21 perhaps we could have a meeting in Santa Fe again
22 with NIOSH so we could discuss these issues face
23 to face. And I believe that you waived a carrot
24 in front of us for two years, and now of course
25 that's all it was, was the waiving of the carrot.

1 We are -- I am, and we are, people that I
2 represent, I'm sure -- but I am demanding that
3 you throw out this proposal. I'm not even asking
4 you. I am demanding that you throw out this
5 proposal, because it is unfair, it's cruel, it's
6 evil. And as the victims of the Cold War, they
7 deserve better.

8 It's ironic that these victims of the Cold
9 War, such as my father, worked in Los Alamos
10 (inaudible), are not being compensated. Yet
11 we're sending new victims to a new war, with the
12 chances of them being exposed to chemical warfare
13 are great. Of course, they're being provided
14 with protective gear. Workers such as my dad
15 were not. I believe that they were ill-informed
16 of the dangers. And they had monitor readings
17 which I'm sure weren't there in place, always in
18 place.

19 So anyway, my dad, it is my belief that he
20 was a loyal worker who helped construct the Los
21 Alamos facility, and that he is what you are
22 considering a statistic. Do not throw this
23 statistic out. Please, do not. I want you to
24 obliterate 42 CFR Part 83. Again, it lacks
25 dignity, it lacks heart, it lacks caring, it

1 lacks sincerity. And I believe it may even be
2 unconstitutional.

3 **DR. ZIEMER:** Okay.

4 **MS. NEWSOM:** Excuse me, was that Betty Jean?

5 **DR. ZIEMER:** Yeah, we need -- could you re-
6 identify yourself for the recorder here?

7 **MS. JACQUEZ:** Epifania Jacquez, and I am a
8 survivor.

9 **MS. NEWSOM:** Thank you.

10 **MS. JACQUEZ:** (Inaudible)

11 **DR. ZIEMER:** Okay. Thank you.

12 **MS. JACQUEZ:** You're welcome.

13 **DR. ZIEMER:** Are there other comments?

14 **MR. CASADOS:** My name is Filimon Casados.

15 **DR. ZIEMER:** Yes.

16 **MR. CASADOS:** (Inaudible) with that lady who
17 just got through giving her presentation. I
18 worked right alongside with Mr. Armada (phonetic)
19 for many years, and I am sure that if anybody got
20 exposed to any kind of nasty stuff up in Los
21 Alamos, he would certainly would have been one of
22 them.

23 I am one of the victims who had very little
24 to do with beryllium, and I got contaminated
25 somehow or another, and have been through the

1 process. Somehow or another my routing through
2 National Jewish Hospital was somewhat of what you
3 might say miracle. Smart, as of lately the Smart
4 case, girl that got relocated by the fact that
5 it's a miracle, what they call a miracle.

6 My records have been lost to some extent.
7 While I have been trying to secure proper
8 recognition through the Department of Labor up in
9 Denver, I was up to the National Jewish Hospital
10 in December, and I got looked at by Dr. Newman
11 (phonetic). I was given somewhat of a report
12 that hey, great, I have beryllium sensitivity.
13 It's one, two, and three tests that have been
14 conducted. I was somewhat given an indication
15 that I was supposed to pursue this (inaudible)
16 within a year's time.

17 While having been victimized (inaudible), I
18 don't find it very rewarding to hear news that we
19 are being turned down at NIOSH. I am a Cold War
20 veteran of the radioactive sources that were
21 inflicted on me up at Los Alamos. And also I am
22 a veteran of World War II, in which I served my
23 country well. (inaudible) not only once or twice
24 (inaudible) Vietnamese veterans were, we would
25 like to have some recognition by our

1 representation in Congress as well as in the
2 State of New Mexico.

3 Thank you.

4 **DR. ZIEMER:** Thank you.

5 Did we have additional individuals join us on
6 the call that have not yet been recorded in? I
7 did hear a tone that made me think someone else
8 has joined us.

9 [No responses]

10 **DR. ZIEMER:** No? Okay, let me ask for
11 additional public comments.

12 **MR. SCHOFIELD:** Yes, this is Philip
13 Schofield.

14 **DR. ZIEMER:** Philip.

15 **MR. SCHOFIELD:** I would like to comment on
16 the record, if there isn't enough evidence or
17 enough adequate records to even that a person or
18 a group of people need to be in a special cohort,
19 there's not going to be adequate records to know
20 what the vast majority of these people were
21 exposed to.

22 (Inaudible) facilities you were not limited
23 to one radioactive element, isotope. You could
24 be exposed to multiple ones. At Los Alamos a
25 person could be exposed to everything from

1 radioactive iodine, cesium, uranium, plutonium,
2 americium, and the list just goes on. So to
3 limit it says, well, only this particular cancer
4 is going to be put in the special cohort in this
5 area is totally wrong, because you would have to
6 take into account the fact that you really don't
7 know what all different elements and isotopes
8 this person's been exposed to in their career.
9 In some cases you'll be able to determine that.
10 In many cases you will not be able to determine
11 that.

12 Thank you.

13 **DR. ZIEMER:** Okay, thank you, Philip.

14 Other comments?

15 **MS. KIEDING:** Yeah, this is Sylvia Kieding,
16 and I'm with PACE Worker Health Protection
17 Program that has a medical testing program for
18 former and current workers at the three gaseous
19 diffusion plants as well as Idaho National
20 Laboratory. And the three gaseous diffusion
21 plants are part of the SEC, and Idaho is not.

22 Now we have not had much of a chance to read
23 and examine the proposal, but it's not too
24 difficult to see that it does set up another
25 discriminatory scheme for a compensation where

1 again the four SECs are treated differently than
2 anyone else who might be examined. And the
3 people from Idaho would be on the call this
4 morning, except they're on their way back from a
5 meeting on travel, so they're not going to be
6 able to be in on this.

7 But I think that the people -- we had our
8 annual meeting this week, and the people who were
9 part of the SECs are in agreement that this is
10 discriminatory, and they want everyone treated
11 equally. And I remember the -- was it four
12 public meetings last year? -- where that was the
13 concern of everyone, that there wasn't equal
14 treatment. So perhaps we should have more public
15 meetings to hear from the public again.

16 And I do understand, I believe, that the
17 comment period is going to be extended. I'm not
18 sure if that's true, but I had heard that. But
19 that would be good.

20 **DR. ZIEMER:** Okay, thank you, Sylvia.

21 Other comments?

22 **MR. LEWIS:** Yes, this is Mark Lewis from
23 PACE, Worker Health Protection Program. I am a
24 member of a special cohort.

25 I'd like to reiterate what Sylvia Kieding

1 just mentioned, that we do not want special
2 treatment. As a matter of fact, we think that it
3 should be more than what was on ours, and to find
4 out that -- we're finding out that this happened
5 to our nuclear brothers and sisters, Cold War
6 brothers and sisters across the nation. It's
7 alarming. We don't want special treatment at the
8 spirit of the law the way it is.

9 And I agree with all the comments that people
10 have been making. NIOSH shouldn't have the right
11 to just make a disease cohort. I thought that
12 was mentioned very well from the gentleman from
13 Los Alamos, it seemed like a disease cohort
14 rather than an exposure cohort.

15 Thank you.

16 **DR. ZIEMER:** Okay, thank you.

17 Others?

18 **UNIDENTIFIED:** (Inaudible)

19 **DR. ZIEMER:** Is somebody commenting?

20 **MR. LAYBA:** Dr. Ziemer?

21 **DR. ZIEMER:** Yes.

22 **MR. LAYBA:** This s Jerry Layba again.

23 **DR. ZIEMER:** Yes, Jerry.

24 **MR. LAYBA:** And I just want to reiterate that
25 Congress is the one that listed the 22 cancers,

1 and it did not give NIOSH the authority to select
2 which cancers it wanted to include or exclude.
3 And I think NIOSH should abide by that.

4 Thank you.

5 **DR. ZIEMER:** Thank you.

6 Others?

7 **MR. TAKARO:** This is Tim Takaro, University
8 of Washington.

9 I just really learned about this yesterday,
10 so I'm not really prepared for formal comments.
11 But I did have a few questions for the Board. Is
12 now an appropriate time?

13 **DR. ZIEMER:** Actually, the public comment
14 period is for comments. It's not really an
15 opportunity to debate the Board. If you have
16 particular interpretation questions we could
17 probably answer them to some extent today.

18 **MR. TAKARO:** I understand the issue of
19 debating over the phone like this. The questions
20 have to do with the legality of the process, and
21 if indeed NIOSH has the power to overturn the law
22 in this way. That is one question.

23 And the other is question about the basis for
24 choosing particular cancers over another. I
25 understood that these were based upon the

1 radioepi tables, and my question has to do with
2 has NIOSH adopted other criteria?

3 **DR. ZIEMER:** Has NIOSH -- say it again?

4 **MR. TAKARO:** Adopted some other criteria for
5 identifying cancers which may be radiogenic.

6 **DR. ZIEMER:** I don't know if anyone from
7 NIOSH staff is available or prepared to answer
8 that.

9 Jim Neton, is this something you want to
10 address, or --

11 **MR. NETON:** I don't know that I'm prepared to
12 address it at this time.

13 **DR. ZIEMER:** I might -- this is Ziemer again.

14 Just my comment, I suspect that -- I've heard
15 a number of comments that says that NIOSH is
16 planning to overturn the law. I just want to
17 observe that NIOSH is intending to observe the
18 law, as I see it as a Board member. There
19 obviously are some differences of opinion as to
20 what the intent might have been here, but
21 certainly both the Board and NIOSH are clearly
22 interested in following the law. We are required
23 to, and we will do our best to do just that.

24 Are there other public comments?

25 **MR. TAKARO:** Just to make clear what my

1 question has to do with with regard to the
2 legality here, the question really had to do with
3 the power of NIOSH to change a fundamental
4 component like the list of cancers without going
5 back to Congress. That was the legal question.

6 **DR. ZIEMER:** Okay. Again, I'll ask if anyone
7 from the Agency wants to address that, either
8 counsel or staff.

9 **MR. ELLIOTT:** Tim, this is Larry Elliott.

10 Obviously the administration, you know, has
11 been a part of the development of this rule, and
12 there's been several departments besides the
13 Department of Health and Human Services involved
14 in its creation as a proposed rule. I don't
15 believe that anyone feels that we had put forward
16 a rule that is illegal in that sense.

17 **MR. NAIMON:** Dr. Ziemer, this is David
18 Naimon.

19 **DR. ZIEMER:** Yes, David. David is counsel
20 with CDC.

21 **MR. NAIMON:** I would just add that there's no
22 one who believes that this rule is illegal in any
23 sense, that the rule does not change the list of
24 cancers that's in the law, and rulemaking is not
25 able to change a statute. Only Congress and the

1 President can change a statute.

2 **MR. ELLIOTT:** Let me also add -- this is
3 Larry Elliott again.

4 Let me also add to that a bit of an
5 explanation, I guess, but we can't at this point
6 in rulemaking provide interpretation of intent
7 here. But as far as explanation goes, the rule
8 does not read that we would assign one specific
9 cancer to each class that we would propose be
10 added to the Special Exposure Cohort. It implies
11 and specifies that that's an option for us to use
12 where it makes the most sense, given a particular
13 type of exposure scenario. It's not specified
14 that we would do that in every case. In perhaps
15 many instances the whole list of 22 will be used
16 as far as a definition of the class.

17 **MR. TAKARO:** That's very helpful, Larry.
18 Thank you. I obviously have not read the rule,
19 and so the interpretation that I'm taking are
20 from impressions that I've gathered from the
21 testimony today. If indeed that's the approach
22 NIOSH intends to take, then a worker should be
23 able to assume that they will be treated
24 similarly to the other Special Exposure Cohort?

25 **MR. ELLIOTT:** Is that a question or a

1 comment?

2 **MR. TAKARO:** Yes, yes, that's a question.

3 **MR. ELLIOTT:** Well, again, we're not here to
4 provide a Q&A session. We're here to hear public
5 comment. And I can only offer that what I said
6 as an explanation, not an interpretation.

7 **DR. ZIEMER:** This is Ziemer again.

8 I want to again give opportunity for any
9 other members of the public who have comments at
10 this point, to make sure we get them on the
11 record here. Are there any others?

12 **MS. JACQUEZ:** This is Epifania Jacquez, a
13 survivor.

14 **DR. ZIEMER:** Yes, please.

15 **MS. JACQUEZ:** And you know, this is not a
16 question -- what is it -- question and answer
17 session. But you know, you're not giving me any
18 answers. You haven't given anyone correct
19 answers. And I'm wondering as far as the 22
20 cancers, it reminds me of someone, the magician
21 with a hat, and they throw all the cancers out.
22 And then you start taking all, all of those
23 cancers out of that hat. And you leave one in
24 there, and that's the lung cancer.

25 This is what this whole thing is about. And

1 I don't see where it's legal, and I know that
2 it's not -- it's unconscionable, and it's not
3 legal. You say that it's legal. Did I hear one
4 of your representatives? I also have noted that
5 your representatives oftentimes are not very
6 eager to answer questions. But if this session
7 was coming about, you should be prepared to have
8 those answers.

9 And how was I going to be notified of a thing
10 like this? I am a claimant. How was I going to
11 be notified? How was I going to be notified
12 (inaudible) change of this proposal, because this
13 proposal should have been studied. This should
14 have been studied just like the cancer, like you
15 had at the beginning, allowed all those cancers
16 to be considered for a claim. Did you study it
17 before you said that they would be allowable?

18 I mean, it seems to me like the people that
19 don't have answers are you. And I think that the
20 persons that have answers are us. Because to me
21 it's so simple. This is a compensation program.
22 It's supposed to be fair. You've made it so, so
23 difficult for claimants. It hasn't been claimant
24 friendly. We've been told that it's claimant
25 friendly, but it's proven itself not to be.

1 And so I would like, really I would like for
2 another meeting for myself. I'm in Santa Fe.
3 I'd like another meeting. I'd like for people
4 from NIOSH to be there to be able to -- so we can
5 ask questions of them, and then they would have
6 answers for us, clear answers. Because that's
7 their role. That's their job. And so I'm not
8 getting any (inaudible). I've been listening to
9 these calls, and to me you're running around an
10 issue, or you don't know, you don't know the
11 answer. But people do have a right. I know it's
12 a comment session -- I mean, a comment session,
13 but you (inaudible) the right to ask a question.
14 I'm not seeing any answers. So you need to
15 concentrate on this. You need to concentrate on
16 this.

17 And as I said before, Dr. Ziemer, you
18 described to my sister esophageal cancer, and
19 that it -- what organs cancer affected. I can't
20 see why two and a half years you would be
21 discussing cancers. This whole thing (inaudible)
22 around cancer. All of a sudden, all of a sudden
23 they got that hat, and this magician pulled all
24 of them out except for one.

25 And you know what? This boils down to

1 politics, administration. This boils down to
2 money. And that's what it is. I mean, that's
3 the answer. The fewer cases that you have to pay
4 off, the better. How do we eliminate these
5 cases? We make it so hard. We find a place to
6 eliminate them. We find a way to eliminate them
7 (inaudible) by eliminating all the cancers. You
8 know, you first tried to eliminate the survivor
9 cost, and then we fought for it. And it came
10 into the Act, it came back in part of the Act.
11 And now it's how can we -- you know, less money
12 if we eliminate the survivors, and now less money
13 if we eliminate all the cancers. And guess what?
14 We're not stupid.

15 **DR. ZIEMER:** Well, again, we understand the
16 point you're making, and --

17 **MS. JACQUEZ:** I hope I (inaudible) --

18 **DR. ZIEMER:** You recognize that part of this
19 session and the public comments and the Board
20 comments are fed back to NIOSH as they proceed.
21 What we have before us is a proposed rule. It is
22 not a final rule, and the Agency is required to
23 take into consideration public comments, Board
24 comments, other agency comments.

25 So your comments now are on the record, and

1 the Agency does need to take those into
2 consideration as they go forward from this point.
3 So --

4 **MS. JACQUEZ:** Wonderful. This proposal --

5 **DR. ZIEMER:** -- we again thank you for those
6 comments, and we don't have a final rule,
7 remember. We have a --

8 **MS. JACQUEZ:** We don't --

9 **DR. ZIEMER:** -- proposed rule.

10 **MS. JACQUEZ:** -- for God's sake, put a face
11 (inaudible).

12 **DR. ZIEMER:** And so we go forward from this
13 point.

14 Again, other public comments, anyone who
15 hasn't that wishes to comment?

16 **MS. HOMER:** Dr. Ziemer, this is Cori.

17 **DR. ZIEMER:** Cori.

18 **MS. HOMER:** I would like to remind those who
19 are on speaker phone, if they could mute their
20 phone.

21 **DR. ZIEMER:** Getting echos?

22 **MS. HOMER:** Getting echos and background
23 conversations and background noise.

24 **DR. ZIEMER:** Thank you.

25 **MS. SHINAS:** I have already spoken -- it's

1 Betty Jean Shinas again -- but I do want to
2 (inaudible) one thing, that I do really want a
3 strong say that I do have a very strong objection
4 that any changes be made. I really feel that the
5 heart of the program, that the proposal was to
6 try to compensate families, and that it's not
7 going to be done if any changes be made. And I
8 really strongly (inaudible).

9 The biggest problem I had with this is here
10 is something that's going to be changed, and it
11 says, okay, (inaudible) it's only a proposal.
12 But how is that information getting out there to
13 ten thousands of people who are going to be
14 affected by this? And I think the meeting is
15 something about 30 days for comment. Well, how
16 can -- I mean, I feel when I'm speaking I'm just
17 one voice. But the thousands of people that are
18 being affected by this.

19 And I just don't feel like anybody has the
20 right to change this. And it may seem a small
21 change to many of you, but it's a tremendous
22 change to (inaudible) many people that are
23 (inaudible).

24 **DR. ZIEMER:** All right.

25 I want to make sure everybody understands

1 that the law requires that this rulemaking be
2 done, that there be the rule, the Special
3 Exposure Cohort rule. And in order for the
4 agencies involved to proceed and even be able to
5 identify additions to the Special Exposure
6 Cohort, the one that was established by Congress,
7 that this rulemaking has to proceed.

8 So you recognize the Agency on the one hand
9 has the time pressure to try to get a rule in
10 place as soon as feasible in order that they can
11 proceed and identify the special additions to the
12 cohort, and at the same time to have enough time
13 for the public comment. So if you feel the 30
14 days is not enough, the 30 days certainly
15 recognizes the Agency's desire to move forward as
16 required by law to get this rulemaking in place;
17 otherwise, there can be no additions to cohort
18 till the rule is in place. So you have both of
19 these dynamics working, and we're trying to do
20 our best to find the balance between enough time
21 to get the comments, but not to slow the process
22 up so that there is no opportunity for anyone to
23 get an addition to the cohort. So that's kind of
24 the time dilemma.

25 Now with these comments, let me move us

1 forward. And I will allow additional comments at
2 the end of the Board's session if there are
3 additional comments from members of the public.

4 **BOARD DISCUSSION**

5 **DR. ZIEMER:** The Board has before it rule, or
6 the proposed rule, proposed rulemaking, and we
7 have a version that we used at our meeting that
8 is more like a typewritten version rather than
9 the *Federal Register* version. Others have gotten
10 a hold of the *Federal Register* copy and been able
11 to download it.

12 I might tell you that our servers at our
13 university here are all out of order. We can't
14 even get on the Internet right now. So I don't
15 have the *Federal Register* copy. I'm working from
16 the copy that we used at our meeting. So perhaps
17 to expedite things, whenever we're talking we'll
18 refer to a section, section, subsections, and
19 paragraph. And if you're in the *Federal Register*
20 version you might be on one page, and if you're
21 in the other version you might be on a different
22 page. But if we go by the official numbers of
23 the sections we might all be able to track along
24 pretty well.

25 At its meeting which was just one week ago,

1 the Board had identified a number of sections in
2 the rulemaking, or proposed rulemaking, that they
3 were concerned about, and a number of the Board
4 members individually agreed to develop some
5 proposed rewordings or some proposed questions to
6 ask NIOSH to consider as the rulemaking went
7 forward.

8 So what I would propose that we do, we're
9 going to step through the document. And the
10 sections where there were no concerns raised at
11 the Board meeting last week, I will again ask if
12 any concerns have arisen in the meantime.
13 Otherwise, we will move through those sections
14 fairly rapidly.

15 Let me ask if that's agreeable to the Board,
16 and are there any concerns as we proceed in that
17 method?

18 **MS. MUNN:** Dr. Ziemer, this is Wanda.

19 **DR. ZIEMER:** Yes, Wanda.

20 **MS. MUNN:** I do not have any concerns other
21 than the ones that we have already discussed, and
22 for which we have some written comments.

23 But I do have concerns raised as a result of
24 some of the public comments this morning. It
25 appears that someone has the idea that this

1 rulemaking is eliminating 21 out of 22 -- I've
2 heard that several times -- of the cancers that
3 are established under the Act as being
4 compensable. And if the individuals who made
5 those statements would be good enough when they
6 provide written comments to identify where in the
7 rulemaking they believe that statement has taken
8 place, it would be helpful to me, because in my
9 reading I have seen nothing that would indicate
10 that was the case. So I now have some concern
11 about what part of the rule is being so
12 interpreted.

13 **DR. ZIEMER:** Okay. Are you asking for
14 feedback on that at the moment, Wanda --

15 **MS. MUNN:** No, no.

16 **DR. ZIEMER:** -- or you want to just raise
17 that --

18 **MS. MUNN:** I'm not. I'm just asking for the
19 people who have that perception --

20 **DR. ZIEMER:** Maybe later when we reopen it
21 for comment --

22 **MS. MUNN:** Yes.

23 **DR. ZIEMER:** -- that would be an opportunity
24 to identify. It may have to do with some
25 understandings of how the proposed rule would

1 actually be applied.

2 **MS. MUNN:** I would appreciate that.

3 **DR. ZIEMER:** Yeah, okay.

4 Other general comments from the Board?

5 **DR. ANDRADE:** Paul, this is Tony Andrade.

6 **DR. ZIEMER:** Yes, Tony.

7 **DR. ANDRADE:** Indeed, I'm quite surprised.

8 It seems like there is a perception out there
9 that has been promulgated somehow that we are
10 somehow trying to limit or remove cancers that
11 are indicated under the 22. That's, of course,
12 not true.

13 In fact, the proposed rule gives the option
14 to define classes with cancers in addition to
15 those 22. And the only proviso that's in the
16 proposed rulemaking is if those cancers are so
17 identified, which are out of those 22, they may
18 not be compensable. However, they may help to
19 establish a class. And I think that that needs
20 to be -- and perhaps that is part of our work --
21 we need to clarify that particular portion of the
22 rule. Otherwise, I can see where there can be
23 some misinterpretation.

24 **DR. ZIEMER:** Okay, thank you, Tony.

25 Other general comments?

1 **MR. GIBSON:** This is Mike Gibson.

2 **DR. ZIEMER:** Hi, Mike.

3 **MR. GIBSON:** I think what I'm hearing from
4 the public is not necessarily that you may be
5 eliminating some of the cancers, but that NIOSH
6 is claiming in some instances they have to right
7 to limit, to eliminate some of the cancers for a
8 particular class. And based on some of the
9 history of these sites, it sounded like to me
10 they were saying how could you determine that if
11 you can't establish a dose from a radioisotope,
12 how can you determine there wasn't other isotopes
13 present that may have affected other parts of the
14 body, different cancers?

15 **DR. ZIEMER:** Okay. Other comments?

16 **MR. ESPINOSA:** Dr. Ziemer, this is Rich
17 Espinosa.

18 **DR. ZIEMER:** Yes, Rich.

19 **MR. ESPINOSA:** As we go forward with this
20 conference call, I'd like to make a
21 recommendation that any of the new suggestions
22 that weren't at the last Board meeting be reduced
23 to writing and provided to the members, and then
24 voted on in the April conference call.

25 **DR. ZIEMER:** Right. I might add that -- and

1 let me ask the Board members if they've received
2 this -- I believe Jim Melius had some wording on
3 Section 83.9, which was distributed. Wanda had
4 some wordings for a paragraph on -- I don't have
5 the section here; it was page 80 of our original
6 document. And then the only other written ones I
7 saw was from Mark Griffon, who had some comments
8 on Section 83.9.

9 Let me ask, if there are any Board members
10 who did not get a written copy of those proposed
11 recommendations?

12 **MR. PRESLEY:** Dr. Ziemer, this is Bob
13 Presley.

14 **DR. ZIEMER:** Bob.

15 **MR. PRESLEY:** Unless it came out after about
16 7:30 this morning, I (inaudible) copy.

17 **MR. GRIFFON:** Yeah, this is Mark Griffon.
18 Well, I didn't get them either. It's only
19 because I don't have access to e-mail right now.

20 **DR. ZIEMER:** Okay, Jim's came out earlier in
21 the week. Wanda's was Thursday.

22 And Mark, you had one this morning, right?

23 **MS. HOMER:** I e-mailed them all out this
24 morning.

25 **DR. ZIEMER:** Cori said she e-mailed everybody

1 a copy of those. But they're all fairly brief,
2 so maybe when we get to each one we can see
3 whether or not we have enough information then to
4 proceed, or whether we need to delay anything.

5 **MR. ESPINOSA:** Dr. Ziemer, this is Richard
6 Espinosa.

7 **DR. ZIEMER:** Yeah, Rich.

8 **MR. ESPINOSA:** I didn't receive anything on
9 that either, but I also don't have access right
10 now.

11 **DR. ZIEMER:** Ah, okay. I'm wondering if we
12 e-mailed things out even now, are you dependent
13 on the phone you're using for your -- I don't
14 mean e-mail, I mean fax. Can things be faxed out
15 to people?

16 **MS. HOMER:** I can fax if you can give me the
17 numbers.

18 **DR. ZIEMER:** Who needs copies? Let's get --

19 **MS. HOMER:** Yeah, let me fax these out.

20 **MR. GRIFFON:** Mark Griffon, I can give you a
21 fax --

22 **MR. PRESLEY:** Wait just a minute, Cori. Let
23 me go get a fax number.

24 **MS. HOMER:** Mark, do you have a fax number?

25 **MR. GRIFFON:** Yeah, 978 --

1 **MS. HOMER:** 978 --
2 **MR. GRIFFON:** 685 --
3 **MS. HOMER:** 85 --
4 **MR. GRIFFON:** 8780.
5 **MS. HOMER:** 8780.
6 **MR. GRIFFON:** Eight, 8780.
7 **MS. HOMER:** 8780?
8 **MR. GRIFFON:** Right.
9 **MS. HOMER:** All right.
10 **UNIDENTIFIED:** Cori, have a number.
11 **MR. ESPINOSA:** Cori, this is Richard. Area
12 code 505-266-5879.
13 **MS. HOMER:** That's 505-266-5879?
14 **MR. ESPINOSA:** Correct.
15 **MS. HOMER:** Okay. Anyone else?
16 **MS. MURRAY:** Cori, this is Marie. If you
17 could e-mail me I'd appreciate it.
18 **MS. HOMER:** Okay.
19 **MS. MURRAY:** Thank you.
20 **MS. NEWSOM:** Cori, this is Kim. Same for me,
21 e-mail.
22 **MS. HOMER:** All right.
23 **MR. PRESLEY:** Hey, Cori?
24 **MS. HOMER:** Yes.
25 **MR. PRESLEY:** This is Bob Presley.

1 **MS. HOMER:** Okay.

2 **MR. PRESLEY:** 865-574-5942.

3 **MS. HOMER:** 865-574-5942.

4 **MR. PRESLEY:** Yes, ma'am.

5 **MS. HOMER:** All right.

6 **MR. PRESLEY:** If you'll holler at me when you
7 get it, then I'll run up there and get it.

8 **MS. HOMER:** Okay.

9 **MR. PRESLEY:** All right. Thank you.

10 **DR. ANDRADE:** Paul?

11 **DR. ZIEMER:** Anyone else?

12 **DR. ANDRADE:** Paul, this is Tony Andrade.

13 **DR. ZIEMER:** Tony.

14 **DR. ANDRADE:** I would just like to recommend
15 that when we get to those sections in which we
16 have considered changes, that we go ahead and
17 read these over the telephone so that the public
18 --

19 **DR. ZIEMER:** Yes, we certainly will do that.
20 We have to get them on the public record anyway.

21 **DR. ANDRADE:** Absolutely. And I'm almost
22 certain that even some of these short comments
23 may be changed or (inaudible) once they're all
24 together.

25 **DR. ZIEMER:** That's right, that's right.

1 Okay, now I'd like to remind you that the
2 first part of the document -- and by the first
3 part I'm talking about at the very beginning of
4 the document there's a Summary, and there's a
5 section called Supplementary Information, and
6 there's a section called Summary of Public
7 Comments. Everything up to -- get the section
8 number here -- everything up to, in our original
9 document it would be up through the middle of
10 page -- up through page 63 is just information.
11 It's not part of the rule itself. I don't know
12 what that would be in the *Federal Register*
13 version.

14 Larry or anyone, are any Board members
15 working off the *Federal Register* version?

16 **MR. LAYBA:** Dr. Ziemer, Jerry Layba. I'm
17 working on the original *Federal Register*. Is
18 that Executive Order (inaudible) 211?

19 **DR. ZIEMER:** We're not looking at Executive
20 Order. We're looking at 42 CFR 83, Proposed
21 Rulemaking.

22 **MR. LAYBA:** What page is that, sir?

23 **DR. ROESSLER:** I think -- this is Gen -- in
24 the *Federal Register* copy --

25 **MR. LAYBA:** That's what I'm looking at.

1 **DR. ROESSLER:** Yeah, the top of the page
2 would be 11305, and I think the rule itself
3 starts in the middle of the third column. It's
4 just before it says Part 83, Procedures for
5 Designating Classes, and so on.

6 **DR. ZIEMER:** Okay. Everything up to that
7 point is just preliminary information. It talks
8 about how the Board, or rather how the Agency
9 dealt with the first set of comments. Recall
10 that there was a previous proposed rulemaking on
11 this, that there were public comments and Board
12 comments, and this first section dealt with how
13 those comments were dealt with in basically what
14 resulted in this now proposed rulemaking for 42
15 Part 83.

16 The reason for pointing out that that's all
17 preliminary, nothing in there is involved in the
18 rule itself. It's just information. However, we
19 did tell the Board at the last meeting that if
20 there were things in that informational part that
21 the Board felt was confusing either to themselves
22 or the members of the public, that they should
23 point that out.

24 And indeed, if you look at the material Wanda
25 sent -- and you may get that shortly if you

1 didn't already have it -- Wanda did have some
2 comments on three areas in that preliminary part
3 that she felt were unclear. And I'm going to
4 identify those, and we identify that so that
5 NIOSH can consider modifying or rewording some
6 things for the purpose of clarity. This does not
7 affect the rule per se, okay.

8 Now Wanda, which version do you have before
9 you that you're working from? The original
10 version that we used at the meeting?

11 **MS. MUNN:** Yes, I'm working from the Board's
12 version that we used at the meeting.

13 **DR. ZIEMER:** And Gen, or someone who has the
14 *Federal Register* version, perhaps can help.

15 But Wanda's first comment is in the section
16 under Accuracy of Dose Reconstructions. It's
17 Section III, Summary of Public Comments, Item B,
18 Accuracy of Dose Reconstructions, and then in our
19 original version it was on page 15. It's the
20 second to the last paragraph before Section C,
21 Section C being Health Endangerment.

22 **DR. ROESSLER:** That's on page, the bottom of
23 page --

24 **UNIDENTIFIED:** Page 5 of the *Federal*
25 *Register*.

1 **DR. ROESSLER:** Yeah, *Federal Register* copy on
2 page 11296 and the top of 11297, I think.

3 **DR. ZIEMER:** Okay. And the paragraph in
4 question begins, "The Health Physics Society
5 further recommended."

6 **UNIDENTIFIED:** I see it.

7 **DR. ZIEMER:** Okay. So it has to do with a
8 sentence about that, and in particular Wanda was
9 concerned about the last sentence -- well, wait a
10 minute. It's the last sentence on that page.
11 Actually, it's the last sentence of that
12 paragraph that starts out, "The Health Physics
13 Society." It's the sentence that says, "Hence,
14 it may be
15 appropriate to limit the finding that it is not
16 feasible. . . ."

17 Do you all see that sentence?

18 [Affirmative responses]

19 **DR. ZIEMER:** Okay, here's Wanda's comment:

20 "The last sentence on page 15, 'Hence, it may
21 be appropriate . . .' and so on, that sentence,
22 she says, lost me entirely. I read it several
23 times and kept forgetting what the subject was
24 before I get to the end of the sentence. Maybe
25 'infeasible' instead of 'not feasible' would be a

1 place to start, but that doesn't appear to
2 eliminate the confusion. This sentence needs
3 help."

4 So her only point was to ask NIOSH to reword
5 or reclarify that sentence. We don't have to do
6 that ourselves. She's just pointing out to NIOSH
7 that that sentence is confusing.

8 **UNIDENTIFIED:** What is confusing about it?

9 **DR. ZIEMER:** Wanda, this is yours.

10 **MR. LAYBA:** This is Jerry Layba. What is --

11 **DR. ZIEMER:** Jerry, you're not part of the
12 discussion here, I'm sorry. You may listen.

13 **MR. LAYBA:** Okay.

14 **DR. ZIEMER:** Okay?

15 **MR. LAYBA:** Thank you.

16 **DR. ZIEMER:** Wanda?

17 **MS. MUNN:** Yes.

18 **DR. ZIEMER:** Do you want to say what was
19 confusing there?

20 **MS. MUNN:** I simply cannot follow a train of
21 thought to the end of it. "It may be appropriate
22 to limit the finding that it is not feasible to
23 estimate radiation doses with sufficient accuracy
24 to certain tissue-specific cancer
25 sites relevant to individuals with specific types

1 of cancers." It just -- there's something about
2 the syntax of that sentence that ends up being
3 confusing.

4 **DR. ZIEMER:** And again, I don't think we're
5 going to try to reword it here. It's not part of
6 the rule, and we're just pointing out to NIOSH
7 that it's confusing.

8 Okay, Wanda?

9 **MS. MUNN:** In my view there's a syntax
10 problem --

11 **DR. ZIEMER:** Right.

12 **MS. MUNN:** -- and needs to be addressed.

13 **DR. ZIEMER:** Okay.

14 Second item that Wanda raised, Wanda, it says
15 it's under H. Does that -- I think you meant G.

16 **MS. MUNN:** Let me get over to 49 and see.

17 **DR. ZIEMER:** I think it's the section called
18 Submission of Petitions to the Board. Again,
19 this is --

20 **UNIDENTIFIED:** What page, Paul?

21 **DR. ZIEMER:** In our original document it
22 would be page 29. In the *Federal Register* it's -
23 -

24 **DR. ROESSLER:** I think it's 11299.

25 **DR. ZIEMER:** The section called Submission of

1 Petitions to the Board.

2 Wanda, your notes says it's under Section H,
3 but I couldn't find anything under Section H. I
4 think it's Section G, where the sentence begins,
5 "Under Section 83.10, however, the Board will not
6 review petitions that NIOSH finds do not meet the
7 requirements for evaluation."

8 **MS. MUNN:** Now I'm confusing myself.

9 **MR. PRESLEY:** This is Bob Presley. That's
10 one of the comments we had in the meeting.

11 **DR. ZIEMER:** Okay, but now let me point out
12 to you that this is still not part of the rule.

13 **MS. MUNN:** Correct.

14 **DR. ZIEMER:** So that this would only be
15 changed if we changed the rule itself.

16 **MS. MUNN:** Yes.

17 **DR. ZIEMER:** Okay. So Wanda, I'm not sure if
18 you are -- as the rule currently reads, I think
19 the statement is true. And it wasn't clear to me
20 if you were -- I think you were saying here that
21 you're suggesting that the Board should review
22 these petitions. But actually the place to do
23 that would be in the rule itself, in which case
24 this preliminary thing would have to change, as I
25 understand it.

1 And let me ask if Ted Katz is on the line
2 from NIOSH. Ted, did I give her the right
3 information?

4 **MR. KATZ:** Yes, that was perfect.

5 **DR. ZIEMER:** Okay, Wanda?

6 **MS. MUNN:** So we're talking -- I guess I'm
7 looking at one thing, and I think you're talking
8 about another.

9 **DR. ZIEMER:** Okay, you were talking about
10 page 29, right? In your second point that you
11 sent out?

12 **MS. MUNN:** No. In my second point I was
13 talking about page 55, I believe.

14 **DR. ZIEMER:** Oh. When you said second
15 section under H --

16 **MS. MUNN:** The second sentence under H.

17 **DR. ZIEMER:** Okay. Well, your second point,
18 though, here it said comments on the preliminary
19 materials.

20 **MS. MUNN:** Yes, that's correct. Comments on
21 the preliminary material, and number two, I said
22 the second sentence under H.

23 **DR. ZIEMER:** Okay. Where's the H that you're
24 referring to?

25 **MS. MUNN:** It's on page 55.

1 **UNIDENTIFIED:** Page 55.

2 **MR. ELLIOTT:** It's the recommendation for
3 Section 83.10, Doctor.

4 **MS. MUNN:** And that was the simplest --

5 **DR. ZIEMER:** Oh, okay. I had the wrong
6 place, then.

7 **MS. MUNN:** Yeah. I was simply suggesting
8 that the word "that" be changed to "for which,"
9 simply because it clarified it, in my mind.

10 **MR. GRIFFON:** This is Mark Griffon. Page 55
11 is actually a summary of our recommendations,
12 right? The Board's previous recommendations?

13 **MS. MUNN:** That's correct.

14 **UNIDENTIFIED:** Previous recommendation.

15 **MR. GRIFFON:** Right. Okay.

16 **DR. ZIEMER:** Okay. I looked at the wrong
17 place, then. I didn't see where you are. So
18 then --

19 **MS. MUNN:** I was only suggesting the change
20 of the word "that," actually. It's very simple.

21 **DR. ZIEMER:** Oh, okay. Well, let's pass that
22 along to NIOSH, and we won't worry about it
23 further.

24 **MS. MUNN:** Then the substantive comment that
25 I had to make was with respect to page 49.

1 **DR. ZIEMER:** Page 49 of our original
2 document, which is Section A, Dose
3 Reconstructions for Members of the Cohort?

4 **MS. MUNN:** Correct. And it's (inaudible)
5 paragraph of that.

6 **DR. ZIEMER:** And the paragraph that begins,
7 "The ability of NIOSH to conduct such dose
8 reconstructions may depend on whether the claim
9 is for an employee who had radiation exposures
10 that were not considered," and so on?

11 **MS. MUNN:** Correct.

12 **DR. ZIEMER:** Everybody -- Gen, do you want to
13 identify where we are on that one?

14 **DR. ROESSLER:** I'm lost.

15 **DR. ZIEMER:** It's --

16 **DR. ROESSLER:** Maybe somebody else is trying
17 to follow this.

18 **DR. ZIEMER:** It's Section IV, Recommendations
19 of the Advisory Board on Radiation and Worker
20 Health, Roman numeral IV. This is still in the
21 preliminary stuff.

22 **UNIDENTIFIED:** It would be on page 48,
23 wouldn't it?

24 **DR. ZIEMER:** Of our original document, but in
25 the *Federal Register* what page is it?

1 Did you find it in the *Federal Register*, Gen?

2 **UNIDENTIFIED:** It's on the bottom of page
3 11302, I believe.

4 **DR. ZIEMER:** Thank you.

5 **DR. ROESSLER:** Oh, yeah. There it is.

6 **DR. ZIEMER:** Okay. Item A, the third
7 paragraph, the second sentence: "If the employee
8 had sufficient radiation exposure outside of his
9 work experience as a member of the cohort," and
10 so on. Wanda's concern was that this might imply
11 that medical and environmental exposure outside
12 the work environment counts.

13 Did I interpret that correctly, Wanda?

14 **MS. MUNN:** That's correct. That was my
15 concern.

16 **DR. ZIEMER:** I'm wondering if we can't deal
17 with that easily just by inserting the word
18 "occupational."

19 **MS. MUNN:** I thought that inserted after --

20 **DR. ZIEMER:** If the employee had sufficient
21 occupational radiation exposure outside of his
22 work experience as a member of the cohort, would
23 that do it?

24 **MS. MUNN:** It would for me.

25 **DR. ZIEMER:** Anybody object to that? That

1 would just clarify the point Wanda was making.

2 **DR. ANDRADE:** I think that -- this is Tony
3 Andrade. I think that makes perfect sense.

4 **DR. ZIEMER:** I don't want to spend all our
5 time on the preliminaries because we're not into
6 the rule here.

7 But Wanda, those are your comments. I got no
8 other comments from anybody about the preliminary
9 stuff.

10 Are there any others?

11 **MR. GRIFFON:** Paul, this is Mark Griffon.

12 **DR. ZIEMER:** Mark.

13 **MR. GRIFFON:** I have one comment. On page 13

14 --

15 **DR. ZIEMER:** This is 13 of the document we
16 used last --

17 **MR. GRIFFON:** Yeah, the preliminary.

18 **DR. ZIEMER:** Yes.

19 **MR. GRIFFON:** And it's toward the end of the
20 first full paragraph on page 13.

21 **DR. ZIEMER:** Okay. In the *Federal Register*
22 this is the section under III, Summary of Public
23 Comments, Item B, Accuracy of Dose
24 Reconstruction.

25 **DR. ROESSLER:** Page 11296.

1 **DR. ZIEMER:** Page 11296. Okay, Mark.

2 **MR. GRIFFON:** This is Mark again. It reads,
3 "Hence, for the purposes of a compensation
4 program, a dose estimate is sufficiently accurate
5 if it is reasonably certain to be at least as
6 high as a highest dose that could have plausibly
7 have been received."

8 I spoke with NIOSH staff at break of the last
9 Board meeting, and I think they agreed with me
10 that that doesn't make any sense. And I think it
11 would confuse people that were reading the
12 regulation later. I think it should be changed
13 to read, "It is reasonably certain to be no
14 greater than the highest dose that could
15 plausibly have been received."

16 I'd ask Jim Neton if that language was
17 consistent with what we were talking about.

18 **MR. NETON:** Yeah, this is Jim.

19 I remember that discussion. I think that's
20 what we agreed upon. I had a chance to talk to
21 Ted about that. I think that's what we were
22 trying to say here.

23 **MR. GRIFFON:** "At least as high as the
24 highest" just didn't read right to me, anyway. I
25 thought it was confusing, so --

1 **DR. ZIEMER:** And again, this is NIOSH's
2 explanation of how they dealt with some public
3 comments. So the main point here is to make sure
4 that they have clearly stated what it is they are
5 doing here. This is not part of the rule.

6 Okay. Board members, are you ready now to
7 look at the rule itself?

8 **MR. PRESLEY:** Yes. This is Bob Presley.

9 **DR. ZIEMER:** Okay, let's go ahead.

10 I'm going to again go through this now
11 section by section, which will start with 83.0
12 and so on.

13 We're starting, then -- well, actually before
14 it says 83.0, Subpart A, Introduction. Any
15 comments?

16 [No responses]

17 **DR. ZIEMER:** Subpart B, Definitions?

18 [No responses]

19 **DR. ZIEMER:** I'll keep going unless somebody
20 stops me.

21 Subpart C, Procedures for Adding Classes of
22 Employees to the Cohort.

23 Now remember, this is like a table of
24 contents. These are not the actual items. This
25 is just the contents.

1 **MR. GRIFFON:** Back to -- Paul, Mark Griffon.
2 Back to the definitions, I think we did raise
3 an issue about the definition of class of
4 employees, but it's more of -- it's the issue of
5 whether facility or facilities --

6 **DR. ZIEMER:** Which one are you looking at
7 now?

8 **MR. GRIFFON:** Under Definitions, 83.5.

9 **DR. ZIEMER:** Right.

10 **MR. GRIFFON:** Definition for class of
11 employees, and it states that "at the same DOE or
12 AWE facility." And I think at the last meeting
13 the question was raised about --

14 **DR. ZIEMER:** Okay --

15 **MR. GRIFFON:** -- facilities.

16 **DR. ZIEMER:** Yeah, but right now -- okay,
17 hang on. You're actually getting ahead of me.
18 So I was just looking at Subpart B, which -- oh,
19 I see the confusion. I'm just going down the
20 table of contents. Let me go into the parts, and
21 then I'll come back to --

22 **MR. GRIFFON:** I'm sorry.

23 **DR. ZIEMER:** Okay. Now the Subpart A itself,
24 which is 83.0, okay, no changes there?

25 [No responses]

1 **DR. ZIEMER:** Okay, Subpart B -- I'm sorry,
2 Subpart A, Item -- paragraph 83.1. Any changes
3 there?

4 [No responses]

5 **DR. ZIEMER:** Okay. Section 83.2?

6 [No responses]

7 **DR. ZIEMER:** Okay. Now into the specific
8 definitions under 83.5. And the definition that
9 Mark's referring to is definition Item (c), class
10 of employees, means a group -- "for purposes of
11 this rule, a group of employees who work or
12 worked at the same DOE or AWE facility, and for
13 whom the availability of information and recorded
14 data on radiation exposures is comparable with
15 respect to the informational needs of dose
16 reconstructions conducted under 42 CFR 82."

17 Mark, your comment again, now.

18 **MR. GRIFFON:** Just that the issue was raised
19 last time, or at our last meeting, that this is
20 limited to a single facility, and there was a
21 question raised as to whether multiple facilities
22 could be or should be included within that --

23 **DR. ZIEMER:** Or would that be a different
24 cohort or a different class in the cohort? Is
25 that what you're asking?

1 **MR. GRIFFON:** Could a class cross facilities
2 was the issue, and the way this is defined it
3 could not. And we had some discussion around
4 that. I think Rich Espinosa brought this up at
5 the last meeting.

6 **DR. ZIEMER:** Right. NIOSH folks, Jim or Ted,
7 can you comment further on that?

8 **MR. KATZ:** Ted Katz, I'd be glad to.

9 **DR. ZIEMER:** This is Ted.

10 **MR. KATZ:** I'm sorry, this is Ted Katz.

11 And that's right, Richard raised it, and I
12 also responded to that comment by explaining that
13 the statute itself limited us to proscribing that
14 a class of employees be for a specific facility,
15 a single facility. And the language is very
16 clear on this.

17 I can read the language, if you'd like, Dr.
18 Ziemer --

19 **DR. ZIEMER:** That would be fine.

20 **MR. KATZ:** -- for the purposes of this
21 meeting. It's under the section of the law
22 that's called Designation of Additional Members
23 to the Special Exposure Cohort. And the language
24 reads:

25 "The Advisory" -- I'm going to skip a little

1 bit, but "the Advisory Board on Radiation and
2 Worker Health under Section," blah-blah-blah,
3 "shall advise the President where there is a
4 class of employees at any Department of Energy
5 facility at" -- this has been amended, but most
6 of this language is the same -- "who likely were
7 exposed to radiation at that facility, but for
8 whom it is not feasible to estimate with
9 sufficient accuracy the radiation dose they
10 received."

11 So it is a facility-specific determination.
12 And there's then further language elsewhere in
13 here which all refers to it being a determination
14 based on a single facility.

15 **DR. MELIUS:** This is Jim Melius.

16 Ted, is there a definition of (inaudible) in
17 there?

18 **DR. ZIEMER:** Of facility?

19 **MR. KATZ:** There is a definition of facility
20 within EEOICPA, but I would -- I don't have it --

21 **DR. ZIEMER:** Well, didn't the question arise
22 -- for example, let's take Oak Ridge as an
23 example where someone might have spent some time
24 at Y-12, at X-10, K-25. Is that three facilities
25 or one? Wasn't that the question somebody

1 raised, or something analogous to that?

2 **UNIDENTIFIED:** (inaudible)

3 **MR. KATZ:** Right. That's right. And the
4 Department of Labor is -- I mean, we're talking
5 with them to get clarity as to what will be
6 defined as a facility and its use. But it's very
7 general what's said under EEOICPA. So I can't
8 give you a definitive definition of what a
9 facility means, whether it means a single
10 building, or buildings within a single plot of
11 land, or how that is. I cannot answer that right
12 now.

13 **MR. GRIFFON:** This is Mark Griffon. I think
14 that's a critical issue. I'm thinking of Idaho.
15 INEL is a fairly big site, facility, whatever you
16 want to call it. What do you want to call it?
17 That's the question, I guess. Is CPP a separate
18 facility from TAN, from et cetera? So I think we
19 need to have that defined very clearly up front
20 here. Otherwise, we could have pretty strong
21 implications for the rule.

22 **DR. ZIEMER:** Let me ask if there's other
23 Board comments on this issue. I'm wondering if a
24 -- for example, if this was a concern pretty
25 widely on the Board, we could ask NIOSH to

1 include under Definitions a definition of what
2 facility means.

3 **DR. ANDRADE:** Paul?

4 **DR. ZIEMER:** Yes.

5 **DR. ANDRADE:** This is Tony Andrade.

6 **DR. ZIEMER:** Tony.

7 **DR. ANDRADE:** At Los Alamos this is a very --
8 I think it would be very critical to establish a
9 definition of facilities, because indeed here,
10 where we're done work with almost every kind of
11 isotope, we need to understand what technical
12 areas or what areas people have worked in.

13 There may have been many radioisotopes of
14 plutonium or daughters, for example, in certain
15 facilities that exist on site, whereas a person
16 that worked in a plutonium facility that could
17 have been exposed to many plutonium radioisotopes
18 could have been shifted over to work in another
19 what we call facility that dealt with uranium
20 isotopes. And so that definitely has to be
21 clarified.

22 **MR. PRESLEY:** Dr. Ziemer, this is Bob
23 Presley.

24 **DR. ZIEMER:** Yes, Bob.

25 **MR. PRESLEY:** I feel the same way.

1 **DR. MELIUS:** This is Jim Melius. Just to
2 follow up on that, because from a distance I
3 would call, refer to Los Alamos as a DOE
4 facility, singular. Yet Tony, who works there,
5 he obviously refers to different facilities
6 within that facility. And it could make,
7 obviously, make a big difference (inaudible). So
8 I think we need to get -- agree we need to get
9 some clarification on (inaudible) in the limits
10 of whatever's in the law.

11 **DR. DeHART:** Paul, Roy DeHart.

12 **DR. ZIEMER:** Roy.

13 **DR. DeHART:** I certainly agree. And I think
14 we need to make (inaudible) the issue of facility
15 (inaudible) definition should specifically
16 address its use here, not just in the
17 definitional introduction.

18 **MR. NETON:** Dr. Ziemer, this is Jim Neton.
19 I've got a couple of comments.

20 **DR. ZIEMER:** Yeah, Jim.

21 **MR. NETON:** We have a definition of
22 Department of Energy facility here in front of us
23 in the Act, and it says "a Department of Energy
24 facility means any building, structure, or
25 premises including the grounds upon which such

1 building, structure, premises is located."

2 It is somewhat open. But I would suggest
3 that the definition of the class would speak a
4 lot to limiting the facility or expand the
5 facility at that site (inaudible). You've got to
6 look at the class of workers that a dose
7 reconstruction is not possible to be conducted
8 (inaudible). That will be sort of the
9 operational definition of (inaudible).

10 **MR. GRIFFON:** Jim, Mark Griffon.

11 Just for clarification, so you're saying that
12 you said that's a DOE, the DOE definition of a
13 facility. Is that what you're planning on using?

14 **MR. NETON:** Oh, no, that's the Act, is in the
15 Act.

16 **DR. ZIEMER:** The Act itself, not the DOE.

17 **MR. NETON:** The definition (inaudible) the
18 Act.

19 **MR. GRIFFON:** Okay.

20 **MR. NETON:** It's located -- there's some
21 subsets under that, but that (inaudible).

22 **DR. ZIEMER:** Well, since there is a
23 definition in the Act, maybe it would be helpful
24 to include it here for clarity.

25 **MR. NETON:** Yeah, I'm not sure it (inaudible)

1 clarify it too much, based on what I just read.

2 **DR. ZIEMER:** Well, actually it does in the
3 sense that it means that in a particular case you
4 might identify individuals who work in a
5 particular part of Los Alamos, say, or something
6 as opposed to maybe -- oh, I don't know -- let's
7 say a Secretary who's out in some building where
8 they never had any radioactivity.

9 **UNIDENTIFIED:** Oh, yeah.

10 **DR. ZIEMER:** In other words, it's not
11 everybody in Los Alamos at a certain time.

12 **MR. NETON:** It could be defined as small as a
13 structure, per that definition.

14 **MR. GIBSON:** This is Mike Gibson.

15 If I heard Jim's definition as he read it
16 correctly, it said building and grounds --

17 **DR. ZIEMER:** Yeah, would not be restricted to
18 necessarily a structure, right? Could be
19 outdoors or --

20 **UNIDENTIFIED:** (inaudible)

21 **MR. GIBSON:** But what I'm saying is --

22 **DR. ZIEMER:** Or bounds --

23 **MR. GIBSON:** -- at the site I work at,
24 typically the building and grounds, all of the
25 buildings are contiguous based on that

1 geographical ground the site is located on.

2 **DR. ZIEMER:** Um-hum (affirmative).

3 **MS. MUNN:** I had just -- this is Wanda.

4 I had just gone to re-read what the Act said
5 itself, and have taken it upon myself to look up
6 the word "premise" to make sure that my
7 understanding was the same as the dictionary
8 version. "A tract of land with the buildings
9 thereon, building or part of building, with its
10 appurtenances as grounds." So it seems to me the
11 definition in the law is very broad.

12 **DR. ZIEMER:** Any other comments?

13 **DR. ANDRADE:** Paul, this is Tony Andrade.

14 **DR. ZIEMER:** Tony.

15 **DR. ANDRADE:** I guess after thinking about it
16 just for a little while, maybe I can be a little
17 bit more specific. I think that facilities
18 should be -- the definition of facilities should
19 be based upon generally some tie to the type of
20 operation and the radioisotopes involved.

21 [Whereupon, all parties to the conference
22 call were simultaneously disconnected. After
23 allowing time for the parties to reconnect to the
24 conference, another roll call was taken to ensure
25 all members of the Board were present before

1 continuing.]

2

- - -

3

MS. MURRAY: Would you like me to tell you
4 where I was when you left?

5

MS. HOMER: Okay. Everybody got
6 disconnected, so -- Kim, are you there?

7

MS. NEWSOM: Yes, I'm here.

8

MS. HOMER: Very good.

9

MS. MURRAY: Okay. Dr. Andrade had just
10 (inaudible) the definition of facilities to be
11 based on the operation and the radioisotopes
12 involved.

13

DR. ANDRADE: Yes, indeed. I don't know,
14 Paul, if we're ready to proceed or not. I'd like
15 to make a --

16

DR. ZIEMER: I think the Board members are
17 all back. A good number of the general public,
18 it appears, have come back. We have most of the
19 staff members back, so I think we can proceed.
20 Others may still be rejoining us after the
21 disconnect.

22

But go ahead, then, Tony.

23

DR. ANDRADE: Okay. I would just like to
24 reinforce I guess a concern that Mike Gibson had,
25 in that there could be facilities that are on the

1 same piece of ground but that are contiguous in
2 one way, shape, or form in that you could have a
3 building in which types of operations with
4 different radionuclides could be involved, just
5 as a hypothetical example.

6 I really believe that we need some
7 flexibility and good clarity on definition of
8 what a facility is. And even if it's the same
9 building in which two different types of
10 operations are being concerned, are being
11 effected, I really believe that one should be
12 able to define two separate facilities based on
13 operation type.

14 And I wanted to hear what Mike thought about
15 that.

16 **MR. GIBSON:** Well, I guess if -- this is Mike
17 Gibson -- I guess it would lead me to the next --
18 I'm not trying to avoid your question, but it
19 would lead me to the next question, that a lot of
20 workers on a particular site have worked in a
21 building with certain isotopes for five years and
22 then they move to the next building and work
23 there five years, and it's still under the -- I
24 mean, the name of our site is the Mound Facility.
25 So would that preclude someone from being under

1 one or more special cohorts? Or would all of
2 their doses be considered under one exposure
3 cohort for their work history?

4 **DR. ANDRADE:** No, what I'm saying is that for
5 such a person you would have multiple facilities
6 to consider; therefore, multiple opportunities to
7 be defined under the special cohort.

8 **DR. MELIUS:** This is Jim Melius.

9 I would (inaudible) that this as currently
10 being defined is that would not be able to
11 include their time in different -- each of those
12 would be a separate class, and therefore we
13 wouldn't be able to combine their time.

14 If somebody spent, to think of an example,
15 125 days in one such facility and 125 days for
16 another, and they're equally a special -- qualify
17 as a Special Exposure Cohort for whatever
18 particular exposure, then we wouldn't be able to
19 do that. It would not be considered eligible.

20 **DR. ZIEMER:** Well, we -- this is Ziemer.

21 We had some hypotheticals before, and we
22 talked about cases. For example, suppose a
23 person worked a certain amount of time in one
24 part of a facility and their dose is known, and
25 then another part and their dose is known, and

1 then a third place where there dose could not be
2 determined, but the third place didn't meet the
3 250 day criteria. Then what happens, for
4 example? Do you count the times in the other
5 parts of the, quote, "facility" or not? It
6 seemed to me that was an area that was still
7 somewhat ambiguous, was it not?

8 I don't know if NIOSH staff -- had we come to
9 any closure on those kinds of cases?

10 **MR. KATZ:** We did, actually. Sometimes --
11 this is Ted Katz -- but this is something that we
12 talked about at the last Board meeting.

13 But where you can do a dose reconstruction
14 you would not add in those days to the class,
15 meaning that window of time and that location for
16 which you can't do dose reconstructions. So you
17 would do -- people would be added to the cohort
18 who were part of that operation in that location,
19 et cetera, at the right point in time --

20 **DR. ZIEMER:** Where you couldn't do the dose
21 reconstruction --

22 **MR. KATZ:** -- where you cannot do the dose
23 reconstruction. And then their experience
24 outside of that window -- we'll just call it that
25 -- is irrelevant as far as their membership in

1 the cohort. They're part of a cohort based on
2 the period when we couldn't do their dose
3 reconstruction, not based on their other
4 experience.

5 **MR. GRIFFON:** Mark Griffon.

6 Ted, just to follow up on that, you mentioned
7 that for the flip side you would have to make
8 modifications to the dose reconstruction
9 regulations, correct?

10 **MR. KATZ:** Yes. So --

11 **MR. GRIFFON:** So for those cases where you're
12 going to assess their dose outside of the cohort,
13 how do you handle adding in the potential
14 exposure as a member of the cohort into the other
15 time frames or time periods where you could
16 reconstruct the rest of the dose?

17 **MR. KATZ:** That's right, but let me just make
18 that clear for the public so they understand what
19 you're saying more.

20 **MR. GRIFFON:** Make it clear for me, too.

21 **MR. KATZ:** Okay, and for you too, then.

22 But the flip side of this is if someone is
23 made part of a cohort by HHS because of this
24 window of time when we cannot estimate their dose
25 but they don't have one of the 22 cancers that's

1 covered, that's compensable for members of the
2 cohort, then they would still come to NIOSH for a
3 dose reconstruction because they can't be
4 compensated as a member of the cohort unless they
5 have one of those 22 cancers.

6 So what Mark is saying now is in that case
7 they have a different cancer, a cancer that's not
8 covered by the cohort, what happens to them then?
9 And the answer is yes, they come to NIOSH for a
10 dose reconstruction. We would certainly be able
11 to do a dose reconstruction on everything, all of
12 their experience, except for that experience
13 that's comprised by the cohort.

14 And the question is what to do with the dose
15 you can't estimate for that period while they
16 were in the cohort. And that's a question that's
17 still open for this Board to deal with, but it's
18 not a question for this rule because this rule
19 doesn't address that. This is really a question
20 for the dose reconstruction --

21 **DR. ZIEMER:** Dose reconstruction rule.

22 **MR. KATZ:** -- rule.

23 **DR. ZIEMER:** Right, which is separate. Yeah,
24 that we had discussed.

25 Well, let me get back to the point we were

1 discussing, and that is definition of facility.
2 What I'm trying to get to is to find out if one
3 of the Board's comments would be to ask NIOSH to
4 consider including a definition of facility in
5 this section. We don't have to make the
6 definition here ourselves. The issue would be
7 whether or not there should be such a definition
8 in the rule.

9 **DR. MELIUS:** This is Jim Melius.

10 I would disagree with that a little bit,
11 because I think that if NIOSH had an overly
12 restrictive definition of facility that that
13 could affect how the rule was implemented and how
14 we would look at the rule. So I guess rather
15 than just defer to them developing a definition
16 and while we still have time during the comment
17 period, I think we should ask NIOSH to come back
18 with some clarification on that in terms of how
19 they see that working. Or we make a specific
20 recommendation on how we think that facility
21 should be defined, other than leaving it open,
22 because I think it is a critical definition.

23 And my own personal view is that I would see
24 facility as a very broad definition. I'd refer
25 to Los Alamos as a facility, and that we would

1 then use class as a way of -- some way, I'll say,
2 restricting maybe a bit to define the group that
3 would be made a certain part of that facility, or
4 may have worked in a small facility, small
5 facilities that Tony was referring to earlier.

6 I guess I just have concerns about having
7 multiple facilities to deal with and then
8 classes, and what happens, what do we do with
9 people that work in more than one facility?

10 **MS. MUNN:** This is Wanda.

11 I have a tendency to agree with Jim,
12 especially given what we just read about the
13 definition of facility as given in the law. My
14 interpretation of facility prior to that time was
15 much more restrictive. I had a tendency to think
16 technically of a facility as a building or a
17 complex wherein a specific activity took place.
18 To me that's a facility. But the law clearly
19 does not define it that way. The law is much
20 broader, and as Jim said, taken in its broadest
21 sense, could appear to incorporate an entire site
22 since it says all grounds and premises, which
23 include buildings and sites.

24 So it appears to me that perhaps the problem
25 is our own individual definitions in our heads of

1 what the facility is, rather than a problem with
2 the law itself if the law is to be interpreted at
3 its broadest base.

4 **DR. ZIEMER:** Other comments?

5 **UNIDENTIFIED:** Yes, this is --

6 **MR. PRESLEY:** This is Bob Presley.

7 I agree with Wanda. Here in Oak Ridge
8 somebody can work all over an 810-acre site, and
9 they might work in one site one day and not go
10 back to that site for two or three years.

11 **DR. ZIEMER:** By site you're talking about a
12 particular building within --

13 **MR. PRESLEY:** That's correct.

14 **DR. ZIEMER:** -- the facility there?

15 **MR. PRESLEY:** But the hazards are just as
16 important either in the other buildings.

17 **MR. OWENS:** Dr. Ziemer?

18 **DR. ZIEMER:** Yes.

19 **MR. OWENS:** This is Leon Owens.

20 **DR. ZIEMER:** Leon.

21 **MR. OWENS:** I agree with Dr. Melius. For
22 example, in Paducah at the gaseous diffusion
23 plant there is no differentiation between an
24 individual or a worker who works in an
25 administrative building versus a worker who has

1 worked in the production area or in the
2 maintenance area. Provided they have the minimum
3 day requirement and have one of the 22 covered
4 cancers, they are automatically eligible and
5 receive compensation. So I feel that in its
6 broadest sense facility, or the term or
7 definition of facility, should be used to address
8 the other facilities that are covered.

9 **DR. ZIEMER:** Okay, other comments?

10 **MR. ESPINOSA:** Yeah, this is Richard --

11 **MR. GRIFFON:** This is Mark --

12 **DR. ZIEMER:** Okay, Rich Espinosa, and then
13 Mark.

14 **MR. ESPINOSA:** Yes, I also agree with Dr.
15 Melius and what Leon's saying. I believe if we
16 narrow this term to a specific facility and its
17 operation we're also narrowing now people such as
18 building trade members that are required to work
19 from --

20 **DR. ZIEMER:** Building to building --

21 **MR. ESPINOSA:** -- site to site, building to
22 building. So therefore I do agree with what Dr.
23 Melius and Wanda and Leon have said.

24 **DR. ZIEMER:** Okay.

25 And Mark?

1 **MR. GRIFFON:** I just wanted to add on to what
2 Leon way saying and remembering where this
3 discussion started a half hour ago, that facility
4 or facilities.

5 And I remember at the last meeting there was
6 a comment about the Department of Labor
7 regulations, and under 30.214, Section -- just
8 looking at it myself, trying to find it --
9 Section B, it says for the proposes of satisfying
10 the 250 work day requirement -- this is talking
11 about the Special Exposure Cohort, the existing
12 Special Exposure Cohort -- this section, the
13 claimant may aggregate the days of service at
14 more than one gaseous diffusion plant, meaning
15 Paducah, Portsmouth, or K-25.

16 So I think there's -- that's the equity
17 question, I guess, if -- under the Department of
18 Labor. That's how the Department of Labor
19 interpreted that, anyway, that they could go
20 between those three facilities and still meet the
21 eligibility for a Special Exposure Cohort.

22 So I think we should still -- I agree with
23 the need for the definition of facility as well.

24 **DR. ZIEMER:** Okay.

25 Other comments?

1 **MR. NAIMON:** Dr. Ziemer:

2 **DR. ZIEMER:** Yeah.

3 **MR. NAIMON:** This is David Naimon.

4 **DR. ZIEMER:** David.

5 **MR. NAIMON:** I just wanted to point out for
6 the Board that the definition of Special Exposure
7 Cohort actually has a different definition for
8 facility for the Congressionally-created Special
9 Exposure Cohort, and that's not the section that
10 Ted was reading earlier that applies to the
11 addition of new members to the Special Exposure
12 Cohort.

13 **MR. GRIFFON:** Can you -- this is Mark Griffon
14 -- can you tell us where that is, just so we --

15 **MR. NAIMON:** Yeah. It's -- I'm looking at
16 the -- it's the codified version, it's 42 USC
17 7384(1)(14). And if you look at A and B, that is
18 the language the Department of Labor is
19 interpreting in its regulation. And that is
20 different language than what we are interpreting
21 in this regulation.

22 **MS. MUNN:** Would you read that reference once
23 more, please?

24 **MR. NAIMON:** Sure. It's 42 United States
25 Code Section 7384(1), paragraph 14. It's a

1 definition of the term "Member of the Special
2 Exposure Cohort."

3 **MS. MUNN:** Very good. Thank you.

4 **DR. ZIEMER:** Okay, let me see where we have
5 agreement. There seems to be agreement that
6 facility has to be defined.

7 Then beyond that, does the Board wish to try
8 to frame that out yet today in terms of what we
9 think it is, or do you want to ask NIOSH to
10 develop a definition for us to review yet during
11 the comment period? Or how would you like us to
12 proceed?

13 **MS. MUNN:** This is Wanda. I would prefer to
14 have NIOSH frame it for us.

15 **DR. ZIEMER:** Also recognize that NIOSH really
16 is receiving comments that they use to revise the
17 rule. I don't think they're necessarily coming
18 back with iterations that would come to us
19 exclusive of everybody in the world in the
20 meantime --

21 **MR. ELLIOTT:** Dr. Ziemer?

22 **DR. ZIEMER:** Yeah?

23 **MR. ELLIOTT:** This is Larry Elliott.

24 **DR. ZIEMER:** Yeah, Larry.

25 **MR. ELLIOTT:** You're absolutely right. We

1 are in comment period for this proposed
2 rulemaking, and we are seeking on it. So we
3 can't --

4 **DR. ZIEMER:** You can't be coming back, right.

5 **MR. ELLIOTT:** -- intervene that process with
6 --

7 **DR. ZIEMER:** With individual commenters,
8 which --

9 **MR. ELLIOTT:** -- with our interpretation of
10 what we hear you talking about right now.

11 **DR. ZIEMER:** Right, right.

12 So probably, Board members, if we wanted to
13 pursue this, and we do have another conference
14 call scheduled in a couple of weeks, we could in
15 fact at least indicate the parameters that we
16 would like to incorporate into the definition, or
17 even give a sample definition, for example. It
18 would have to be in keeping with the definition
19 in the law itself, but I think that could be done
20 readily.

21 **MR. ELLIOTT:** Absolutely. That would be
22 appropriate for this comment period. Either way
23 would be appropriate.

24 **DR. ZIEMER:** So let me ask, in the interest
25 of time, whether you're willing to have somebody

1 develop a straw man definition for us to work out
2 next time, or do you want to try to hammer it out
3 now?

4 **DR. MELIUS:** This is Jim Melius.

5 I'd be glad to write up something for our
6 next meeting. I don't -- it'd be better --

7 **DR. ZIEMER:** You're talking about for the
8 next conference call?

9 **DR. MELIUS:** Conference call, correct.

10 **MR. ESPINOSA:** I also agree with that. This
11 is Richard.

12 **DR. ZIEMER:** Any objection to having us
13 proceed in that manner? Seems to be general
14 agreement that there ought to be some kind of a
15 definition, and perhaps we could frame out what
16 the Board thinks it should encompass. Is that
17 agreeable?

18 **MS. MUNN:** Yes.

19 **UNIDENTIFIED:** Sounds good.

20 **DR. ZIEMER:** Any objections to proceeding in
21 that manner? So that when we have our conference
22 call in two weeks -- is it two weeks from now,
23 Cori?

24 **MS. HOMER:** Approximately, yeah. A little
25 more, I think.

1 **DR. ZIEMER:** Well, yeah, maybe it's a little
2 more. But whenever that is, it's coming up soon.
3 That we would have something specific to react
4 to. Okay?

5 **DR. ANDRADE:** Paul?

6 **DR. ZIEMER:** Yeah.

7 **DR. ANDRADE:** This is Tony Andrade.

8 **DR. ZIEMER:** Tony.

9 **DR. ANDRADE:** I just wanted to ensure that
10 everybody, the Board and the public included, did
11 not interpret my comments to be such that -- or
12 would be or would lead to some sort of exclusion.
13 What I'm saying, what I was trying to say, is
14 that if people worked at different facilities, as
15 I interpreted it, for an aggregate number of
16 days, then I believe that they would have an
17 extra or a multiple number of opportunities to
18 become part of an exposure cohort.

19 And that's where I'm going, and so I would
20 also like to volunteer to try to put down in
21 writing with some clarity where I'm coming from.

22 **DR. MELIUS:** This is Jim Melius.

23 Maybe -- I mean, I'd be glad to work with
24 Tony and jointly come up with something.

25 **DR. ZIEMER:** That would be fine. If the two

1 of you want to work on that, see if you can come
2 to an agreement, something you could bring to the
3 full group.

4 Any objection to that?

5 [No responses]

6 **DR. ZIEMER:** And if any of you have
7 additional comments for those two individuals,
8 why, you can pass those along as well.

9 Is it okay to move ahead?

10 **MR. GIBSON:** Dr. Ziemer, this is Mike Gibson.

11 **DR. ZIEMER:** Yeah, Mike.

12 **MR. GIBSON:** I have one semi-related comment,
13 as far as we talked about a little earlier if
14 part of your dose you can reconstruct and part of
15 it you can't.

16 That could happen in -- whether we define a
17 facility as a site or an individual building,
18 that could happen to a person in a cohort where
19 they may go in and take out, decommission and
20 take out an actinium production line and
21 reinstall a plutonium production line, be in the
22 same building, meet the time deadlines and
23 everything else. But yet part of their dose was
24 estimated and part of it may not have been. I
25 mean, if they worked in the facility but they

1 worked with two different isotopes under two
2 different periods of time, one of them monitored
3 and maybe one of them not monitored. How would -
4 - there could be an issue there, too.

5 **DR. ZIEMER:** Yeah, I think that we talked
6 about that last time.

7 Ted, you can help us here.

8 But I think what we learned was if you had a
9 section or you had a portion that you couldn't do
10 dose reconstruction on, then you would be
11 eligible for the particular class.

12 Isn't that correct, Ted?

13 **MR. KATZ:** That's --

14 **DR. ZIEMER:** Assuming you had worked there
15 for the prerequisite number of days.

16 **MR. KATZ:** That's right.

17 **DR. ANDRADE:** And Paul -- this is Tony
18 Andrade.

19 I am absolutely supporting Mike and his
20 comment. When you have a situation like that
21 where you have a situation and the dose
22 reconstruction can be performed, and yet for
23 another class of workers that somehow we don't
24 have enough data and we consider them as part of
25 the cohort, then we want to be able to have the

1 flexibility, even if they were nearby, perhaps
2 even in the same building, to consider them for
3 that cohort status.

4 **DR. ZIEMER:** Right, right.

5 **MR. GIBSON:** This is Mike again. Let me
6 maybe try to clarify myself.

7 If a maintenance crew goes in and
8 decommissions a facility that's had a process
9 with some type of isotope, and that same
10 maintenance crew reinstalls and maintains the new
11 lab, one that has a different mission and a
12 different isotope, there's issues about their
13 aggregate days and part of the dose can, can't be
14 reconstructed.

15 **DR. ZIEMER:** My understanding is that would
16 still show up, would it not? When NIOSH dealt
17 with it they either could or couldn't
18 reconstruct. Isn't that correct?

19 **MR. KATZ:** That's correct, Dr. Ziemer.

20 **DR. ZIEMER:** And if they can't, then the
21 special class status comes into play.

22 So there'll be a lot of probably very
23 specific instances, and they'll all be unique.
24 So it's not possible to think of every possible
25 scenario, but --

1 **MR. GIBSON:** This is Mike again. I'm sorry,
2 I didn't mean to cut you off.

3 I'm just saying that's probably happened
4 quite a bit about around the facility on a number
5 of occasions.

6 **DR. ZIEMER:** Yeah. Okay.

7 Okay, any further comments on this definition
8 of facility right now?

9 [No responses]

10 **DR. ZIEMER:** Okay, any others in the
11 Definitions section, 83.5? Any other items?

12 [No responses]

13 **DR. ZIEMER:** Okay, 83.6, anything there?
14 That's the section called Overview of the
15 Procedures.

16 **DR. ANDRADE:** Paul?

17 **DR. ZIEMER:** Yeah.

18 **DR. ANDRADE:** This is Tony Andrade again.

19 **DR. ZIEMER:** Yeah.

20 **DR. ANDRADE:** I just wanted to make it clear,
21 both to those people who have our document and
22 perhaps to public that has the *Federal Register*
23 document, that indeed all 22 cancers are still
24 there. There has been no change.

25 **DR. ZIEMER:** Right. This is 83, Section

1 83.5.

2 DR. ANDRADE: 83.5. We are not --

3 DR. ZIEMER: Section (k).

4 DR. ANDRADE: Right.

5 DR. ZIEMER: Specified cancer.

6 DR. ANDRADE: Right.

7 DR. ZIEMER: And it lists --

8 DR. ANDRADE: Given previous public comments,
9 I just wanted to emphasize the fact that we are
10 not excluding any specified cancers.

11 MR. GRIFFON: This is Mark Griffon.

12 Tony, I agree with you that -- I mean, I
13 think your point is that the definition for
14 specified cancers had not been changed.

15 DR. ANDRADE: No.

16 MR. GRIFFON: Exactly. But in later sections
17 we know that they do allow for site-specific
18 analysis.

19 DR. ANDRADE: Right.

20 MR. GRIFFON: So I don't -- you know. But
21 that's correct, the definition hasn't been
22 changed.

23 DR. ZIEMER: Okay, other comments on that?

24 [No responses]

25 DR. ZIEMER: Okay, we're in Subpart C now,

1 83.6, Overview of procedures.

2 [No responses]

3 **DR. ZIEMER:** 83.7, Who can submit a petition.

4 Any changes there?

5 [No responses]

6 **DR. ZIEMER:** 83.8, How is a petition
7 submitted?

8 **DR. MELIUS:** This is Jim Melius, and it's
9 just a comment.

10 I think when we construct our comments we
11 should have a general section on praising NIOSH
12 for making some of the changes that have been
13 suggested by us and others, that they were
14 responsive.

15 **DR. ZIEMER:** In the introduction.

16 **DR. MELIUS:** Yeah. So even though we're not
17 commenting on these sections, I think we're not
18 commenting because we're pleased that there have
19 been changes. So we ought to reflect --

20 **DR. ZIEMER:** Right.

21 **DR. MELIUS:** -- Secretary.

22 **DR. ZIEMER:** I think we can -- without
23 objection, we would include that in our report to
24 the Secretary. We would thank NIOSH for being
25 responsive to the earlier comments, right?

1 **DR. MELIUS:** Yeah. And this is one section
2 where they were, that's why I brought it up.

3 **DR. ZIEMER:** Okay, thank you, Jim.

4 Let's proceed then, 83.9, What information
5 must the petition include? And I have flagged
6 this one.

7 Mark, you had an item on this one. It was
8 under Section (c), where it says the petition
9 must include the following, and then it would be
10 paragraph Arabic (2), Roman numeral (iii), small
11 (iii). Is that correct?

12 **MR. GRIFFON:** That's correct.

13 **DR. ZIEMER:** "A report from a health
14 physicist" is the way it currently reads, or it
15 starts "A report from a health physicist." Mark
16 now has suggested this, and let me read for the
17 record Mark's comment. Mark says: "I was asked
18 to provide a proposed revision for Section 83.9"
19 --

20 **MR. GRIFFON:** Should be (c) (2).

21 **DR. ZIEMER:** -- "83.9(c) (2) (iii)" -- that is,
22 little c, Arabic 2, small Roman numeral iii.
23 "The following is proposed to replace the
24 existing paragraph."

25 Now I'm reading what Mark is proposing,

1 quote:

2 "A report from a health physicist or other
3 individual with expertise in dose reconstruction
4 describing the limitations of DOE or AWE records
5 on radiation exposures at the facility, as
6 relevant to the petition. This report should
7 specify the basis for believing the stated
8 limitations might prevent the completion of dose
9 reconstructions for members of the class under 42
10 CFR Part 82 and related NIOSH technical
11 implementation guidelines," and then the word
12 "or," which leads to the next section, would
13 remain there.

14 This was mainly an effort to clarify the
15 meaning of the existing language.

16 Isn't that correct, Mark?

17 **MR. GRIFFON:** That's correct, and clarify.
18 And I guess I --

19 **DR. ZIEMER:** Yeah, and the other one talked
20 about documenting the limitations rather than
21 describing them or pointing out what that expert
22 thinks the limitations are. It wasn't clear what
23 documenting them meant, I don't think.

24 **MR. GRIFFON:** Right. And the other, just
25 softening some of those adjectives. I think the

1 other you caught, the one was describing versus
2 documenting.

3 And the other part was believing the stated
4 limitations rather than finding these documents
5 or these documented limitations. And I guess in
6 the audit world and things like that, finding
7 that these documented limitations, a finding
8 certainly is a higher level bar, to my
9 interpretation anyway. So I thought that at
10 least get in the door we should maybe lower the
11 bar a bit.

12 That doesn't mean that NIOSH won't reject it,
13 but --

14 **DR. ZIEMER:** No. And probably the meaning of
15 the original words wasn't that it was some kind
16 of an official finding --

17 **MR. GRIFFON:** Right.

18 **DR. ZIEMER:** -- in the the sense that the
19 wording is usually used. It's basically what the
20 basis of this expert's opinion is. Just tell us
21 why you think that, right?

22 **MR. GRIFFON:** Right.

23 The other reason, and I refer back to
24 83.9(c)(ii), the introductory paragraph to this
25 section, in there they say the basis for

1 believing. So I grabbed believing from there,
2 and I thought that was consistent with that.

3 **DR. ZIEMER:** Right.

4 **MR. GRIFFON:** I would offer another change to
5 that paragraph as well --

6 **DR. ZIEMER:** Well, let's take these one at a
7 time.

8 **MR. GRIFFON:** Sure.

9 **DR. ZIEMER:** So that's what Mark is proposing
10 that we would recommend to NIOSH, that they
11 consider replacing this section with this new
12 wording which is basically for clarity, and not
13 necessarily a change in the concept but to make
14 it more clear exactly what is expected.

15 Let me ask if any of the Board members have
16 comments or objections to this proposed change,
17 or do you support it?

18 **DR. ANDRADE:** This is Tony Andrade.

19 **DR. ZIEMER:** Tony.

20 **DR. ANDRADE:** I feel that those
21 clarifications were very well done. And if the
22 Chair could ask for a motion, I think that the
23 Board would probably be ready to --

24 **DR. ZIEMER:** To accept this?

25 **DR. ANDRADE:** To accept this, and to propose

1 it as a change to the Secretary.

2 **DR. ZIEMER:** I'm quite willing to do that.
3 And let me do it with the caveat that this would
4 be sort of conditional because you'll have
5 another crack at this when we have our next
6 conference call, that if you had some second
7 thoughts we could actually further polish it, let
8 me put it that way. But we do want to get the
9 sense of the Board at least.

10 Mark, do you want to propose that as a
11 motion?

12 **MR. GRIFFON:** Sure, I'll propose it as a
13 motion.

14 **DR. ZIEMER:** And Tony, you're seconding it,
15 then?

16 **DR. ANDRADE:** Tony Andrade, I second that.

17 **DR. ZIEMER:** So we have a recommendation that
18 this new language be recommended to NIOSH to
19 replace existing language.

20 Now let me ask for discussion, comments, pros
21 or cons. Anyone speaking against this motion?

22 [No responses]

23 **DR. ZIEMER:** Anyone speaking for the motion?
24 Anybody speaking?

25 **MR. ESPINOSA:** Yeah, Richard Espinosa. I

1 speak in favor of the motion.

2 **DR. ZIEMER:** This is Rich?

3 **MR. ESPINOSA:** Yeah.

4 **DR. ZIEMER:** Espinosa.

5 **MR. ESPINOSA:** I believe it helps clarify
6 this section, and I'm in favor of it.

7 **MR. GIBSON:** This is Mike Gibson. I agree
8 also.

9 **DR. ZIEMER:** Mike, thank you.

10 Others, pro or con?

11 **DR. ANDERSON:** This is Andy. I'm for it.

12 **DR. ROESSLER:** This is Gen. I'm for it.

13 **DR. ZIEMER:** Okay. Let me ask if there's
14 anyone objecting?

15 [No responses]

16 **DR. ZIEMER:** Board, I'm going to -- well,
17 we'll go ahead and for the record we'll vote.

18 Cori, if you'd take the roll call, I'll vote
19 last.

20 **MS. HOMER:** Certainly.

21 Henry Anderson?

22 **DR. ANDERSON:** Yes.

23 **MS. HOMER:** Tony Andrade?

24 **DR. ANDRADE:** Yes.

25 **MS. HOMER:** Roy DeHart?

1 **DR. DeHART:** Yes.

2 **MS. HOMER:** Richard Espinosa?

3 **MR. ESPINOSA:** Yes.

4 **MS. HOMER:** Michael Gibson?

5 **MR. GIBSON:** Yes.

6 **MS. HOMER:** Mark Griffon?

7 **MR. GRIFFON:** Yes.

8 **MS. HOMER:** Dr. Melius?

9 **DR. MELIUS:** Yes.

10 **MS. HOMER:** Wanda Munn?

11 [No responses]

12 **DR. ZIEMER:** Did we lose Wanda?

13 **MS. MUNN:** No. Yes.

14 **MS. HOMER:** Okay. Leon?

15 **MR. OWENS:** Yes.

16 **MS. HOMER:** Bob Presley?

17 **MR. PRESLEY:** Yes.

18 **MS. HOMER:** Gen Roessler?

19 **DR. ROESSLER:** Yes.

20 **MS. HOMER:** Okay.

21 **DR. ZIEMER:** And I vote yes.

22 **MS. HOMER:** And Dr. Ziemer.

23 **DR. ZIEMER:** Thank you.

24 Then we can move immediately on. I'd like to
25 call attention to the next section, which is

1 Section (iv), right? The very next paragraph.

2 We agreed, I believe, at our meeting to clean
3 up the wording there. I just want to review for
4 you what I think the new wording is, and I
5 believe we already agreed to this. But just to
6 make sure we all have it, insert the words
7 "scientific or technical" in front of the word
8 "report" so that it says "a scientific or
9 technical report published by a", and then delete
10 "scientific" and just put "governmental," change
11 "government" to "governmental agency or published
12 in a peer-reviewed scientific journal," and so
13 on.

14 I believe that was clean-up wording proposed
15 by Mark Griffon?

16 **MR. GRIFFON:** No, that was actually proposed
17 by Roy DeHart.

18 **DR. ZIEMER:** Oh, Roy DeHart, okay.

19 **MR. GRIFFON:** But I thought we also dropped
20 off the end of the sentence, Roy. Didn't you
21 propose --

22 **DR. ZIEMER:** Yeah, you're right. And we
23 agreed the very last phrase, starting with "and
24 also finds," that we would recommend deleting the
25 rest of that phrase.

1 **DR. DeHART:** Paul, I did also insert on that
2 third line, "dosimetry and related information
3 that is otherwise unavailable," so the two words
4 "is otherwise" replacing the "are."

5 **DR. ZIEMER:** Dosimetry and related
6 information that --

7 **MS. MUNN:** Is otherwise.

8 **DR. ZIEMER:** -- is, that's -- is otherwise,
9 okay. That's basically a grammatical or
10 editorial, but that's good. Is otherwise
11 unavailable. And we had agreed to those changes
12 already.

13 I want to ask that the Board consider one
14 other kind of friendly amendment. The current
15 proposed thing would say a scientific or
16 technical report published by a governmental
17 agency. I would suggest that we use instead of
18 the word "published" use the word "issued,"
19 because agency reports are not quite in the same
20 category as what I would call a publication.

21 Does anybody object to that?

22 **DR. DeHART:** Could we insert, rather than
23 deleting "published," so that it would --

24 **DR. ZIEMER:** Published or issued?

25 **DR. DeHART:** Yes.

1 **DR. ZIEMER:** Is that okay? Anybody object to
2 that?

3 [No responses]

4 **DR. ZIEMER:** I take it by consent.

5 **UNIDENTIFIED:** No problem.

6 **DR. ZIEMER:** Okay. Good.

7 Question?

8 **MR. ESPINOSA:** This is Richard Espinosa.

9 Can you please read that again in its
10 entirety?

11 **DR. ZIEMER:** Okay, here's the way the
12 sentence will now read:

13 "A scientific or technical report published
14 or issued by a governmental agency or published
15 in a peer-reviewed scientific journal that
16 identifies dosimetry and related information that
17 is otherwise (due to either a lack of monitoring
18 or the destruction or loss of records)" -- oh,
19 I'm sorry. I left out the word 'unavailable' --
20 "is otherwise unavailable (due to either lack of
21 monitoring or destruction or loss of records) for
22 estimating the radiation doses of employees
23 covered by the petition."

24 That's a terribly long sentence. Sounds more
25 confusing to me than it originally did, but --

1 **MR. KATZ:** Dr. Ziemer?

2 **DR. ZIEMER:** Yeah?

3 **MR. KATZ:** This is Ted Katz.

4 I think this is changing a meaning in a way
5 you actually don't want, but --

6 **DR. ZIEMER:** Tell us what --

7 **MR. KATZ:** Because the "otherwise" would
8 hence imply that this report has the information
9 we need to do the dose reconstructions, and hence
10 it's nowhere else but there. But that's not what
11 we're saying. I don't think it's what you would
12 want to say. You're wanting to say is that the
13 information's not available, not in the
14 government report and nowhere else.

15 **DR. ZIEMER:** You're thinking the word
16 "otherwise" is misleading?

17 **MR. KATZ:** Yes.

18 **DR. ZIEMER:** Rather than stating it's simply
19 unavailable?

20 **UNIDENTIFIED:** Is unavailable, yeah.

21 **MR. KATZ:** Right.

22 **DR. ZIEMER:** I think that was our intent.
23 Anyone object to dropping the word "otherwise" so
24 there's no ambiguity, that we're not saying it's
25 available, but we're saying it's not available?

1 **MR. KATZ:** I would just -- Dr. Ziemer, it's
2 Ted Katz again -- this is mostly just a
3 (inaudible) note, but I think "is" is actually
4 not grammatically correct, because we're talking
5 about dosimetry and related information. It's
6 plural. Those are two elements.

7 **UNIDENTIFIED:** Okay.

8 **DR. ZIEMER:** Okay, Henry's conceding on that.
9 I think he read it as the last phrase being that
10 the information, related information. I think
11 you're right, it's both dosimetry and related
12 information that are unavailable, correct.

13 Okay. Well, I'm going to leave this one
14 before we end up with the original statement.
15 Okay, let's move on.

16 I have flagged -- we're now under -- just go
17 down, the next paragraph is Item (3), and then
18 there's Roman (i) and (ii). Under Roman (ii) --

19 **MR. GRIFFON:** Paul?

20 **DR. ZIEMER:** Yes?

21 **MR. GRIFFON:** Mark Griffon.

22 **DR. ZIEMER:** Yes, Mark.

23 **MR. GRIFFON:** Before we leave this Section
24 83.9(c)(2), the lead-in paragraph --

25 **DR. ZIEMER:** Oh, (c)(2).

1 **MR. GRIFFON:** And I didn't make these -- I
2 wasn't asked to write language on this, so I
3 didn't. But when I was doing the other one, I
4 thought it might be useful to (inaudible) this
5 again too.

6 **DR. ZIEMER:** Okay, what --

7 **MR. GRIFFON:** It reads, "A description of the
8 petitioner's basis for believing," and I was
9 going to insert "DOE or AWE records may be
10 inadequate."

11 **DR. ZIEMER:** This is (c) -- which item is
12 this?

13 **MR. GRIFFON:** This is 83.9, Section (c),
14 number (2).

15 **DR. ZIEMER:** Oh, okay. Got it. Description
16 of petitioner's basis?

17 **MR. GRIFFON:** Right. For believing, and
18 right now it says "records and information
19 available are inadequate." And I propose to
20 change "records and information available are
21 inadequate" to read "DOE or AWE records may be
22 inadequate." And that's really --

23 **DR. ZIEMER:** Inserting DOE and AWE?

24 **MR. GRIFFON:** Records may be inadequate, yes.

25 **DR. ZIEMER:** Believing DOE and AWE records

1 and information available, instead of "are," "may
2 be"?

3 **MR. GRIFFON:** Not "available," either. Just
4 "may be inadequate." "Believing DOE or AWE
5 records and information may be inadequate."

6 **DR. ZIEMER:** And deleting the word
7 "available?"

8 **MR. GRIFFON:** Um-hum (affirmative).

9 **UNIDENTIFIED:** (Inaudible)

10 **DR. ZIEMER:** Let me ask for others --

11 **MS. MUNN:** Why would we want to limit the
12 lack of records and information to DOE or AWE
13 records?

14 **MR. GRIFFON:** Well -- that's a good question.

15 **MS. MUNN:** I wouldn't -- why isn't it better
16 as is? Isn't it broader as --

17 **DR. ZIEMER:** Remember, we said that they
18 could also be using records that others have
19 published which may not be records of DOE. If
20 somebody had documented, let's say, an excursion
21 at some site. Were you suggesting it be limited?
22 What's the --

23 **MR. GRIFFON:** No -- Mark Griffon again --
24 maybe I need to rethink this, but I was trying to
25 be consistent just with the paragraph that we

1 just had the motion on, which was (iii), Roman
2 numeral small -- Roman numeral (iii), where it
3 says DOE or AWE records. But maybe that's --

4 **DR. ZIEMER:** But the other one is --

5 **MR. GRIFFON:** Broader than that.

6 **DR. ZIEMER:** Yeah, yeah.

7 **MR. GRIFFON:** Maybe I need to relook at that.

8 I was also paying attention to the word
9 "available," but I may have to rethink that.
10 I'll withdraw that comment.

11 **DR. ZIEMER:** Okay, so just leave it as it is
12 for now.

13 **MR. GRIFFON:** For now, yeah.

14 **DR. ZIEMER:** Okay. So we haven't done
15 anything on that. You can raise that again next
16 time if you have some concerns.

17 Okay, plowing ahead here, I had flagged, do
18 we have a concern at the end of this section? It
19 would be Item Arabic (3), Roman numeral (ii),
20 concerning affidavit by two employees.

21 **DR. MELIUS:** This is Jim Melius.

22 **DR. ZIEMER:** Yes, Jim. You had suggested it.

23 **DR. MELIUS:** But I actually, from the looks
24 of what I circulated, or I hopefully got
25 circulated at least to the Committee, there were

1 three paragraphs there that deal with three
2 separate sections. And the first -- and they're
3 written up in the form of a recommendation -- the
4 first one actually deals with the lead paragraph,
5 paragraph (3), the one that's labeled (3) above
6 that. I think if we take them in order it might
7 be --

8 **DR. ZIEMER:** That's correct.

9 Jim's, if you look at this material Jim sent,
10 it's labeled Section 83.9, Petition Information.
11 Jim's first paragraph has to do -- and we
12 discussed this before with the question of
13 whether items -- well, whether this -- was it
14 items 1 and 2?

15 **DR. MELIUS:** Whether this whole section --

16 **DR. ZIEMER:** This whole section, Arabic (3),
17 should really be part of the next -- let's see,
18 it would be -- should it be part of Section
19 83.11, I think is what you were asking at the
20 time, right?

21 **MS. MUNN:** That was what we discussed, I
22 think.

23 **DR. MELIUS:** It falls in between, and --

24 **DR. ZIEMER:** Or maybe it's a separate
25 section.

1 In any event, it was the issue of whether
2 this should be moved. So there's a narration
3 here that suggests that NIOSH can reconsider the
4 placement of this section within the regulation.

5 In other words, is this the right place for
6 it, is what you're saying, Jim. Is that correct?

7 **DR. MELIUS:** Correct.

8 **DR. ZIEMER:** And so Jim's first paragraph has
9 to do with that issue, and maybe we can sort of
10 take these sequentially.

11 So let me see if anyone has any comments on
12 Jim's first suggestion here, that NIOSH
13 reconsider the placement of this section within
14 the regulation.

15 **MS. MUNN:** Wanda.

16 I think that's a reasonable request. But in
17 looking at it again, I have been unable to
18 identify exactly where I think it ought to go.
19 So that doesn't sound like an easy task to me. I
20 agree with the concept.

21 **DR. ZIEMER:** Any others?

22 [No responses]

23 **DR. ZIEMER:** Now I might just say that the
24 sentence that starts, "The Board recommends that
25 NIOSH reconsider the placement of this section

1 within the regulation" could be read that we
2 don't think there should be -- this section
3 shouldn't be in the regulation, reconsider
4 putting this in the regulation even.

5 Do you understand what I'm saying here, Jim?
6 "The Board recommends that NIOSH reconsider the
7 placement of this section within the regulation"
8 might be interpreted as saying that perhaps it
9 shouldn't be in the regulation. You're asking
10 that it really -- it's the location or where the
11 placement should be, not that it be in there, but
12 where, correct?

13 **DR. MELIUS:** Maybe if we -- how about if
14 NIOSH consider changing the placement of this
15 section within the regulation?

16 **MS. MUNN:** Yeah.

17 **DR. ZIEMER:** That NIOSH consider -- say it
18 again?

19 **MS. MUNN:** Changing.

20 **DR. ZIEMER:** Changing the placement. That
21 would clarify it. We're not asking them whether
22 it should be in the reg or not, but where in the
23 reg. So if we change that wording slightly, I
24 think that would clarify it.

25 Let me ask again now, with that sort of minor

1 clarification, are there any objections to this
2 becoming part of our recommendation? It's
3 basically a structural thing, where in the
4 regulation should it be so it doesn't confuse
5 people.

6 [No responses]

7 **DR. ZIEMER:** There appear to be none, so I'm
8 going to take it without objection that we would
9 make such a comment --

10 **MR. HANSON:** I just joined this conference
11 call. I just called in from Idaho. Do you have
12 anybody else on from Idaho, INEL, at all?

13 **DR. ZIEMER:** Would you identify yourself,
14 please?

15 **MR. HANSON:** Yes. My name is Gaylan Hanson
16 (phonetic).

17 **DR. ZIEMER:** Gaylan.

18 **MR. HANSON:** I'm currently a welder at the
19 INEL. I'm also the PACE Union Health and Safety
20 rep here for BBWI.

21 **DR. ZIEMER:** Thank you. Anyone else from
22 Idaho on the call currently?

23 [No responses]

24 **DR. ZIEMER:** There were some other PACE
25 people on earlier.

1 **MR. HANSON:** This stuff's way over a welder's
2 head, okay, reading this stuff. But when you get
3 a chance I'd like to say something, then I can
4 sign off. But go ahead with what you --

5 **DR. ZIEMER:** Yeah. We'll have another public
6 comment period here a little later, if that's
7 agreeable. Are you able to stay on the line for
8 a while, or do you just --

9 **MR. HANSON:** Not really.

10 **DR. ZIEMER:** Okay. If the Board doesn't
11 object, let's take this individual's comments
12 now. Is that agreeable?

13 **MS. MUNN:** Fine.

14 **DR. ZIEMER:** Yes, if you would proceed that
15 would be fine. We'd be glad to hear from you.

16 **MR. HANSON:** I appreciate your time.

17 Anyway, I've worked at the INEL for 31-plus
18 years as a welder, and I've be involved with the
19 Worker Health Protection Program with dealing
20 with the actual former workers that have filed
21 claims, okay. And of course, I've seen a lot
22 come through my office.

23 There's two particular areas that I have
24 interest in. One of them is the chemical
25 processing plant. And looking over some of these

1 changes, if you can't construct the doses I'm a
2 little concerned on eliminating possible cancers,
3 because chemical processing plant has, I'd say,
4 about the same cocktail of radiation, et cetera,
5 as Portsmouth, Paducah, and Oak Ridge, if you
6 want to come right down to it. I would say
7 that's one of our nastiest areas, okay.

8 Also, SL-1 folks -- I don't know how many of
9 you are familiar with the SL-1 --

10 **DR. ZIEMER:** Yes, we are.

11 **MR. HANSON:** Okay. Those folks, I feel, with
12 the high dose that they got in a short period and
13 with the inadequate monitoring, et cetera, which
14 those folks were subjected to, I feel some
15 special consideration should be given to anyone
16 from SL-1 who may have filed a claim.

17 Other than that, this other stuff's over my
18 head, okay.

19 **DR. ZIEMER:** Okay.

20 **MR. HANSON:** As far as eliminating the
21 cancers, I have a problem with just because a
22 person can't calculate a particular dose of a
23 particular radionuclide or whatever. I myself
24 personally hate to see that number reduced for
25 certain cohorts, okay.

1 **DR. ZIEMER:** Okay. Appreciate your comment
2 on that.

3 **MR. HANSON:** And radon, this has been an
4 issue I've followed for a lot of years. At INEL
5 I know they have never really did radon dose
6 reconstruction to speak of. And every time I've
7 brought it up, they've always explained it away
8 about being half-life and daughters, and it isn't
9 going to hurt you anyway. I wanted to try to get
10 like a \$10 test kit to hang in certain areas.
11 They wouldn't really want to go for that. So the
12 radon part I'm a little concerned about.

13 **DR. ZIEMER:** Okay.

14 **MR. HANSON:** And we do have a lot of radon
15 areas at INEL, and there is no real -- what do
16 you want to call it -- monitoring on that.

17 **DR. ZIEMER:** Monitoring of radon, okay.

18 **MR. HANSON:** I wish I was really smart and I
19 could help all these folks out here in Idaho,
20 because we kind of feel we were left out of the
21 whole picture pretty well, and we're at the mercy
22 of you folks, okay.

23 **DR. ZIEMER:** Okay.

24 **MR. HANSON:** And anything that you may be
25 able to help us with we appreciate. And you say

1 there may -- is there going to be another public
2 call on this at a future time?

3 **DR. ZIEMER:** We're expecting to probably
4 continue with another conference call in a couple
5 of weeks. That date will be announced in the
6 *Federal Register* and on our Web site as well.

7 **MR. HANSON:** On the Web site then, okay. And
8 I won't take any more of your time.

9 **DR. ZIEMER:** Okay. Thank you for those
10 comments.

11 **MR. HANSON:** Thank you.

12 **DR. ZIEMER:** Okay. Then we'll return now to
13 Jim Melius's document.

14 His second paragraph talks about the witness
15 affidavits for the medical information, and
16 suggesting that the Board indicate that amongst
17 the two witnesses if one was an employee, was the
18 petitioner, that that count as one of the two.
19 Remember, we had some confusion as to whether the
20 two had to be two people beyond the petitioner,
21 or if the petitioner could be one of those if the
22 petitioner were an individual witness as opposed
23 to a group that was petitioning.

24 Jim, does that pretty well capture it?

25 **DR. MELIUS:** (Inaudible)

1 **DR. ZIEMER:** We have the wording before us.
2 This may -- let's see what the feedback is from
3 the Board. Are you in agreement with Jim's
4 recommendation that the two be clarified in the
5 way that Jim has described?

6 **DR. ANDRADE:** Paul, this is Tony Andrade.

7 **DR. ZIEMER:** Yes, Tony.

8 **DR. ANDRADE:** I would like to move that we
9 adopt what Jim Melius has written out.

10 **DR. ZIEMER:** Okay. Are you referring to the
11 -- this paragraph or --

12 **DR. ANDRADE:** That paragraph.

13 **DR. ZIEMER:** That paragraph, okay.

14 **DR. ANDRADE:** Right. And that we -- well,
15 the movement is actually to adopt that and to
16 recommend it to the Secretary.

17 **DR. ZIEMER:** Okay. Let me ask for a second,
18 then.

19 **DR. MELIUS:** This is Jim. I'll second.

20 **DR. ZIEMER:** Okay. I'm glad you're
21 supporting your own words, Jim.

22 So this is a formal motion. Again, I want to
23 add the caveat that we should consider these sort
24 of -- I don't want to say preliminary, but we'll
25 have another crack at things if you want to make

1 any final changes when we have our next
2 conference call. But otherwise this would hold
3 or stand as a recommendation unless we change it
4 later.

5 Further discussion on this?

6 **MR. GIBSON:** This is Mike Gibson. Just one
7 comment.

8 **DR. ZIEMER:** Yeah, Mike.

9 **MR. GIBSON:** When they talk about toward the
10 end of Jim's paragraph if the petitioner was an
11 employee who witnessed the incident, that would
12 not preclude -- it would not have to be a
13 contractor employee; it could be a subcontractor,
14 building trade employee. Is that my -- I
15 understood the meaning there?

16 **DR. ZIEMER:** Sure. I think that's correct,
17 right?

18 **DR. MELIUS:** Yeah.

19 **MR. GRIFFON:** Okay. I just did want to
20 clarify that.

21 **DR. ZIEMER:** Yeah.

22 Any other comments?

23 **MS. MUNN:** This is Wanda. I still have some
24 lingering residual concern over the concept of
25 requiring only one corroborating statement, but I

1 certainly understand that in some instances you'd
2 be doing well to get that, I guess. And I think
3 this presents a dilemma of how to be as claimant
4 friendly as possible and still try to remain
5 within the realms of reasonably expected evidence
6 of corroboration. I really have some hesitance
7 about that section.

8 **DR. ZIEMER:** Right. That may be a more
9 fundamental reservation. I think Jim's had to do
10 with more of a fairness issue. For example, if
11 the petition were an organization then two
12 witnesses only are required.

13 **MS. MUNN:** Correct.

14 **DR. ZIEMER:** Whereas if the petitioner were
15 an individual who had witnessed it, he still
16 needs two more.

17 **MS. MUNN:** Yeah.

18 **DR. ZIEMER:** So you end up with three.

19 I think, Jim. Is that a fair description of
20 the fairness issue?

21 **DR. MELIUS:** Correct. If one looks at the
22 actually wording in the document, it's
23 confirmation by two employees who witnessed the
24 incident, providing this evidence is consistent
25 with other information available to NIOSH. So

1 it's not like they're automatically qualified as
2 a class or Special Exposure Cohort. It's just --
3 this is still at a preliminary stage, so --

4 **MS. MUNN:** Yeah, I understand. I'm not
5 suggesting changing your wording. I'm just
6 expressing some concern.

7 **DR. DeHART:** Paul, this is Roy.

8 **DR. ZIEMER:** Yeah.

9 **DR. DeHART:** I share Wanda's concern. But I
10 also have to look at a 50-year time event, and
11 how many people would necessarily be available to
12 be a witness? And consequently, I think the bare
13 minimum that we can require should be the
14 direction we go.

15 **DR. ZIEMER:** Yeah, thank you.

16 Other comments?

17 **MR. ESPINOSA:** Paul, this is Richard
18 Espinosa.

19 **DR. ZIEMER:** Yeah, Rich.

20 **MR. ESPINOSA:** The only thing that I'm
21 concerned about is the survivors and how they
22 would petition. (inaudible) explain to me. Oh,
23 that's in the next --

24 **DR. ZIEMER:** Jim has tried to address that in
25 the third paragraph, so let's handle that

1 separately if we could, Rich. Would that be all
2 right?

3 **MR. ESPINOSA:** Yeah, I think I got confused
4 or ahead of myself. Thank you.

5 **DR. ZIEMER:** Yeah. Okay, others?

6 **MR. GIBSON:** This is Mike Gibson.

7 **DR. ZIEMER:** Mike.

8 **MR. GIBSON:** I just (inaudible) saying,
9 because sometimes there could be an event that
10 happened, people typically work in a buddy
11 system, just two workers working together. And
12 then there may be other people involved to react
13 to the situation, so trying to require more than
14 two witnesses sometimes could be hard to do.

15 **DR. ZIEMER:** Yeah. So you speak in favor of
16 the motion, then?

17 **MR. GIBSON:** Yes.

18 **MR. PRESLEY:** This is Bob Presley.

19 I speak in favor of the motion, because we
20 didn't start the three-man rule till way up in
21 the 90s.

22 **DR. ZIEMER:** Thank you.

23 Okay, are you ready to vote on this? This
24 basically would be to adopt the second paragraph
25 as part of our recommendations; that is, Jim

1 Melius' proposed paragraph becomes a
2 clarification of this current wording.

3 All who favor that say aye -- well, let's do
4 it -- we'll have to do a roll call here.

5 Cori, can we take the roll call here on this
6 vote?

7 **MS. HOMER:** Okay, Henry Anderson?

8 **DR. ANDERSON:** Yes.

9 **MS. HOMER:** Tony Andrade?

10 **DR. ANDRADE:** Yes.

11 **MS. HOMER:** Roy DeHart?

12 **DR. DeHART:** Yes.

13 **MS. HOMER:** Richard Espinosa?

14 **MR. ESPINOSA:** Yes.

15 **MS. HOMER:** Michael Gibson?

16 **MR. GIBSON:** Yes.

17 **MS. HOMER:** Mark Griffon?

18 **MR. GRIFFON:** Yes.

19 **MS. HOMER:** Jim Melius?

20 **DR. MELIUS:** Yes.

21 **MS. HOMER:** Wanda Munn?

22 **MS. MUNN:** Yes.

23 **MS. HOMER:** Leon Owens?

24 **MR. OWENS:** Yes.

25 **MS. HOMER:** Robert Presley?

1 **MR. PRESLEY:** Yes.

2 **MS. HOMER:** Gen Roessler?

3 **DR. ROESSLER:** Yes.

4 **MS. HOMER:** Dr. Ziemer?

5 **DR. ZIEMER:** Yes.

6 So the ayes's have it, and that is approved.

7 Then we come to Jim's third paragraph, which
8 is -- and this would be something new. It's not
9 addressed, I think. The issue, and it might be
10 an Item Roman numeral small (iii), it's the issue
11 of what do you do if you lack either a second
12 witness or there aren't any witnesses, and you're
13 dealing only with survivors, but there might be
14 some indication that there was an event many
15 years ago.

16 So Jim has proposed the following. I guess
17 I'll read this into the record. Jim's proposal -
18 - this is not necessarily wording for the rule,
19 but a proposed recommendation to NIOSH to
20 consider. And Jim's proposal is this:

21 "The Board is also concerned that a
22 petitioner may have difficulty finding witnesses
23 for an exposure incident that occurred many years
24 ago. Witnesses may no longer be living or may be
25 difficult to identify or locate. In such a case,

1 the Board recommends that NIOSH offer the option
2 for other parties to submit confirmation of the
3 incident in the absence of available witnesses or
4 records.

5 "For example, affidavits from the widows of
6 three employees who may have been involved in
7 exposure incidents would be acceptable if those
8 widows recall similar reports from their spouses
9 about the exposure incident at the time that it
10 occurred."

11 That's the end of the recommendation. And I
12 might parenthetically say that the key is the
13 second -- I'm sorry, it would be the third
14 sentence, "The Board recommends that NIOSH offer
15 the option of other parties to submit." I think
16 the last sentence is a "for example." It's not
17 necessarily limited to that, or not necessarily
18 is that exactly.

19 Right, Jim?

20 **DR. MELIUS:** Correct. It's just one --

21 **DR. ZIEMER:** That's just one sort of thing
22 that's kind of a --

23 **UNIDENTIFIED:** (inaudible)

24 **DR. ZIEMER:** Yeah. So let's get some
25 reaction to this. We can have a formal motion,

1 or we can just get some feedback and see what the
2 Board's feeling is on it at this point.

3 **MR. GIBSON:** This is Mike Gibson.

4 I think this was raised because of Roman
5 numeral (ii).

6 **DR. ZIEMER:** Roman (ii) restricts it to
7 employees who witnessed something. The issue was
8 what if we have an incident where only survivors
9 are left. That is the --

10 **MR. GIBSON:** Correct. I raised the issue. I
11 was more saying should it maybe be replaced or
12 added to that.

13 **DR. ZIEMER:** Yeah. This would be an
14 addition. As I say, it might be a Roman numeral
15 (iii) to that section.

16 Who has a comment?

17 **MR. ESPINOSA:** Richard Espinosa.

18 I'd like to go ahead and move it forward as a
19 --

20 **UNIDENTIFIED:** (Inaudible)

21 **MR. ESPINOSA:** -- as a motion.

22 **DR. ZIEMER:** Okay. Rich, you're moving that
23 we accept the recommendation of Jim on this one?

24 **MR. ESPINOSA:** Yes,

25 **MR. OWENS:** I second that motion, Dr. Ziemer.

1 This is Leon Owens.

2 **DR. ZIEMER:** Okay. This is before us as a
3 motion, open for comments or discussion.

4 **DR. ROESSLER:** This is Gen.

5 I guess because he's saying for example, it
6 doesn't matter that it just says widows?

7 **DR. ZIEMER:** Yeah, there's a gender concern
8 here, right, Gen?

9 **DR. ROESSLER:** Yes. And I suppose back at
10 the time this might have taken place this
11 probably was true, but I think when this is
12 rewritten I'd recommend that we remove the
13 gender-specific part of it.

14 **DR. ZIEMER:** It might just says survivors or
15 something.

16 **MR. PRESLEY:** Exactly right. Better put
17 survivors rather than widows.

18 **DR. ZIEMER:** We'll consider that a friendly
19 amendment.

20 **MR. GIBSON:** This is Mike Gibson. Could I
21 offer --

22 **DR. ZIEMER:** Yeah, Mike.

23 **MR. GIBSON:** -- friendly amendment. Where it
24 says "for example," could we put "but not limited
25 to?"

1 **MR. ESPINOSA:** -- agree with that --

2 **DR. ZIEMER:** Yeah. Of course, that's
3 inherent in the words "for example," but it may
4 be that in a formal recommendation to the
5 Secretary we'd have to reconstruct this a little
6 bit anyway. The key is the earlier part of that
7 --

8 **UNIDENTIFIED:** (Inaudible)

9 **DR. ZIEMER:** I'm sorry, is there a comment?

10 **MR. ELLIOTT:** We have some background noise,
11 that if somebody's speaking in the background if
12 they could be quiet a moment.

13 **DR. ZIEMER:** Yeah, maybe a speaker phone or
14 something.

15 **MR. ELLIOTT:** Yeah.

16 **DR. ZIEMER:** Yeah, but I'll make a note here.
17 For example, but not limited to.

18 **MS. MUNN:** Or we can simply say eligible
19 survivors, affidavits from eligible survivors of
20 three employees.

21 **DR. ZIEMER:** Yeah.

22 **DR. MELIUS:** This is Jim Melius.

23 Let me just offer one way maybe not to have
24 to deal with the example, but just to limit the
25 motion to the first three sentences. That's

1 really the recommendation.

2 **DR. ZIEMER:** Yeah, because we probably
3 wouldn't send the rest of this to the Secretary.

4 **DR. MELIUS:** And I meant it just as an
5 illustration.

6 **DR. ZIEMER:** For the Board to think about.
7 Understood?

8 **UNIDENTIFIED:** Yeah.

9 **DR. ZIEMER:** Jim is saying let's not include
10 the "for example" as part of the formal
11 recommendation.

12 **UNIDENTIFIED:** Right.

13 **DR. ZIEMER:** Is that okay with the motioner?

14 **MR. ESPINOSA:** Yeah, that's fine with me.

15 **DR. ZIEMER:** Okay. And the seconder?

16 **MR. OWEN:** Yes, sir. That's fine with me,
17 Dr. Ziemer.

18 **DR. ZIEMER:** Okay. Are you ready to vote on
19 this recommendation?

20 **MS. MUNN:** Yes.

21 **DR. ZIEMER:** Okay. All who are in favor --
22 I'm sorry, we've got to take a roll call here.
23 Cori, let's have a roll call.

24 **MS. HOMER:** Okay.

25 Henry Anderson?

1 **DR. ANDERSON:** Yes.
2 **MS. HOMER:** Tony Andrade?
3 **DR. ANDRADE:** Yes.
4 **DR. DeHART:** Yes.
5 **MS. HOMER:** Roy DeHart --
6 Richard Espinosa?
7 **MR. ESPINOSA:** Yes.
8 **MS. HOMER:** Richard?
9 **MR. ESPINOSA:** Yes.
10 **MS. HOMER:** Okay.
11 Michael Gibson?
12 **MR. GIBSON:** Yes.
13 **MS. HOMER:** Mark Griffon?
14 **MR. GRIFFON:** Yes.
15 **MS. HOMER:** Jim Melius?
16 **DR. MELIUS:** Yes.
17 **MS. HOMER:** Wanda Munn?
18 **MS. MUNN:** Yes.
19 **MS. HOMER:** Leon Owens?
20 **MR. OWENS:** Yes.
21 **MS. HOMER:** Bob Presley?
22 **MR. PRESLEY:** Yes.
23 **MS. HOMER:** And Gen Roessler?
24 **DR. ROESSLER:** Yes.
25 **MS. HOMER:** Dr. Ziemer?

1 **DR. ZIEMER:** Yes.

2 Okay, the motion carries. Thank you.

3 **MR. ELLIOTT:** Dr. Ziemer?

4 **DR. ZIEMER:** Yes.

5 **MR. ELLIOTT:** If I could intervene at this
6 point, a couple of things, just timekeeping.
7 You've got about 15 minutes --

8 **DR. ZIEMER:** Right.

9 **MR. ELLIOTT:** And then there will be a 10
10 minute beep, perhaps, just as a warning that we
11 only have 10 minutes left.

12 **DR. ZIEMER:** Right.

13 **MR. ELLIOTT:** And I needed to say that the
14 Board's discussion in this teleconference as well
15 as that last week in face-to-face meeting will
16 become part of the docket, as will the further
17 teleconference that you have.

18 **DR. ZIEMER:** Right. That's right.

19 **MR. ELLIOTT:** So we should, before we hang
20 up, we need to establish the time and date for
21 that, if possible.

22 **DR. ZIEMER:** For the next one, that's
23 correct. Okay, good.

24 I'm going to move us ahead here. I think
25 we're up to 83.10, Section 83.10. At the last

1 meeting we were okay on that, so I'm going to
2 move ahead unless there's an item.

3 I have flagged 83.11, Item (b). I guess
4 there was a question on --

5 **UNIDENTIFIED:** (Inaudible)

6 **DR. ZIEMER:** I'm sorry?

7 [No responses]

8 **DR. ZIEMER:** The decision that the petition
9 has failed to meet the requirements for
10 evaluation, and the basis for this decision.

11 Was there an issue on whether that was
12 appealable, and if so to whom?

13 **DR. MELIUS:** This is Jim Melius.

14 There was -- that question is asked in the
15 preamble. NIOSH, if I recall right, isn't asking
16 for comments on should that be appealable. And I
17 think we had some discussion of it without any
18 real resolution --

19 **DR. ZIEMER:** Right.

20 **DR. MELIUS:** -- of our --

21 **UNIDENTIFIED:** Paul?

22 **DR. ZIEMER:** Yes.

23 [No responses]

24 **DR. ZIEMER:** I'm still hearing a lot of
25 background noise, but let me ask if anyone has

1 any comments on that right now.

2 **MS. MUNN:** This is Wanda.

3 My only comment is that I had a note written
4 in the margins here saying we had an issue with
5 whether there should be other administrative
6 review available than what we have. And my
7 memory is that we did not come to a conclusion on
8 that.

9 **MR. PRESLEY:** This is Bob Presley.

10 That's mine too, because I wrote a note on
11 here that says one more appeal, and then
12 question, by who.

13 **DR. ZIEMER:** Well, you may recall if you look
14 up in the prior paragraph -- let's look at the
15 sequence -- the petitioner makes a petition,
16 NIOSH makes a determination.

17 Let's say initially they determine the
18 petitioner has not met the requirements; there's
19 something inadequate about the petition. And
20 under Item (a), NIOSH notifies the petitioner of
21 any requirements that are not met and assists the
22 petitioner in meeting the requirements so the
23 petition gets revised. So that's where we said
24 NIOSH said no, and they help the petitioner
25 revise it. It then is resubmitted.

1 Now, 30 days later, it's reviewed; in this
2 case that's cited here, decision that it fails to
3 meet the requirements is the second no. Do you
4 remember this discussion?

5 **MS. MUNN:** Yes.

6 **DR. ZIEMER:** Yes.

7 **MS. MUNN:** Very well.

8 **DR. ZIEMER:** And the question we were asking
9 ourselves is should there yet be a third round,
10 or is it three no's, or is two no's enough?

11 **MS. MUNN:** And it's all coming back to me
12 now. We agreed tentatively at the time two no's
13 was adequate.

14 **MR. PRESLEY:** That's correct. I agree with
15 that.

16 **DR. ZIEMER:** So if we feel that that is
17 adequate at that point, then we can say so. If
18 NIOSH has asked for comments on this section we
19 can say that it's adequate, or we can simply not
20 say anything to it, which means we don't object
21 to it.

22 **DR. MELIUS:** Jim Melius.

23 I agree with -- that that is adequate. So I
24 think we need to try to resolve what our
25 recommendation will be.

1 **DR. ANDRADE:** This is Tony Andrade.

2 I think if you look at little (c), if there
3 is new information NIOSH may reconsider the
4 decision not to --

5 **DR. ZIEMER:** Oh, yeah. Yeah. So there is a
6 process if new information comes to light.

7 **DR. ANDRADE:** Exactly. So what I'm saying is
8 that I believe that the process as described in
9 this document is adequate.

10 **MS. MUNN:** You're probably covered. This is
11 Wanda. In my personal view, there is no need to
12 make further comment.

13 **DR. ZIEMER:** Okay, any other comments? Is
14 there a consensus that this is adequate? And we
15 can make -- and would you like the report to the
16 Secretary to so state?

17 **UNIDENTIFIED:** (Inaudible)

18 **DR. ZIEMER:** I'm sorry?

19 **MR. PRESLEY:** This is Bob Presley. I agree
20 with that.

21 **DR. ZIEMER:** I'm going to, without objection,
22 we'll include in the recommendation that since
23 NIOSH did ask for comments on this, the Board
24 believes that this procedure is adequate as it
25 stands.

1 **DR. MELIUS:** Jim Melius. I object to
2 (inaudible) statement.

3 **DR. ZIEMER:** I'm sorry?

4 **DR. MELIUS:** I object to that statement. At
5 least, I personally don't feel that this is
6 adequate.

7 **DR. ZIEMER:** Oh, I thought you said it was.

8 **DR. MELIUS:** Oh, no. Opposite.

9 **DR. ZIEMER:** Give us your view then, Jim.

10 **DR. MELIUS:** I just (inaudible) personally
11 that (inaudible) once they've provided all the
12 information, worked with NIOSH, that they should
13 have some right of appeal within HHS for this --

14 **UNIDENTIFIED:** (Inaudible)

15 **DR. MELIUS:** -- be treated in an arbitrary or
16 unfair manner by NIOSH for their petition.

17 **DR. ANDRADE:** This is Tony Andrade.

18 I really believe that little (c) covers that.
19 I just -- if we add something extra, we're going
20 to be talking about a third or a fourth -- I'm
21 sorry --

22 **UNIDENTIFIED:** (Inaudible)

23 **DR. ANDRADE:** Some sort of a decision
24 process. That -- we're going to be talking about
25 four no's.

1 **UNIDENTIFIED:** (Inaudible)

2 **DR. ZIEMER:** What's that? Are we still
3 getting -- we're getting back --

4 **MR. ELLIOTT:** We still have some background
5 noise.

6 **MS. MUNN:** I think somebody is carrying on
7 other conversations that we're picking up.

8 **UNIDENTIFIED:** Right.

9 **DR. ZIEMER:** Let me get other comments on
10 this.

11 **MR. ESPINOSA:** Paul, this is Richard
12 Espinosa.

13 **DR. ZIEMER:** Yeah, Rich.

14 **MR. ESPINOSA:** In the preamble on page 27, it
15 kind of states a -- almost kind of as a warning,
16 it states the more broadly the class is defined
17 the less likely HHS is to identify all possible
18 subgroups.

19 You know, I kind of have a problem with that,
20 as well as the section that we're going over. I
21 do believe that there needs to be an appeals
22 process, whether it's three or four times. And I
23 also agree with what Andrade is saying, you know,
24 as new information comes up.

25 The thing that I have a concern with is with

1 the survivors that are going to be petitioning as
2 well as other members -- other people that may be
3 petitioning, how are they going to get this new
4 information to where they can file this appeal?

5 **DR. ZIEMER:** Yeah. And remember we're
6 talking about an appeal on the adequacy of the
7 petition, not an -- this has nothing to do with
8 an appeal on a petition which has been evaluated.
9 This is a -- this is an unevaluated petition. In
10 fact, one of our problems was the use of the word
11 "evaluation" in this case also, wasn't it?

12 **UNIDENTIFIED:** Yes.

13 **MR. PRESLEY:** Yes.

14 **MR. GRIFFON:** This is Mark Griffon.

15 I think I'm remembering this discussion now,
16 too. And that I follow your --

17 **DR. ZIEMER:** It's the adequacy of the
18 petition to even be considered.

19 **MR. GRIFFON:** Right. I follow your two
20 strikes theory, Paul. I also remember the
21 discussion that those two strikes are within
22 NIOSH.

23 **DR. ZIEMER:** Right, that's correct.

24 **MR. GRIFFON:** That's an appeal process --

25 **DR. ZIEMER:** That's correct.

1 **MR. GRIFFON:** -- would be outside.

2 **DR. ZIEMER:** And the way we had stated -- we
3 had asked NIOSH -- we didn't want to be in the
4 loop on petitions that were not considered --
5 that is, petitions that were not considered
6 because of inadequacy.

7 **MR. GRIFFON:** Correct. But should they have
8 one final appeal chance outside of NIOSH, I guess
9 that was -- you know, within --

10 **DR. ZIEMER:** Within the agency.

11 **MR. GRIFFON:** -- HHS, yeah, within the
12 agency. That was sort of the logic behind what
13 Jim was saying.

14 **DR. ZIEMER:** Right.

15 **MR. GRIFFON:** I guess the other thing, I
16 agree with Tony. If they can find additional
17 information to enhance their claim, they have
18 that opportunity in subsection (c).

19 But it may be that they don't know anything
20 more. They can't add to their petition in any
21 way. They get rejected, and this is just a final
22 administrative process, I guess, to let them
23 appeal outside so they get -- I know there's two
24 strikes, you're saying, but they're both from the
25 same group.

1 **DR. ZIEMER:** Same umpire, huh?

2 **MR. GRIFFON:** Umpire. Better analogy, yeah.

3 **DR. ZIEMER:** Right. Okay.

4 **UNIDENTIFIED:** Mark?

5 **DR. ZIEMER:** And we don't know, I don't think
6 the Board can mandate how the agency does
7 appeals. We may have to simply raise the issue
8 of, for example, we think there should be a
9 process where -- if you want to go this way --
10 that there should be some additional appeal
11 process, and ask the agency to consider what that
12 might be, what form that might take.

13 **UNIDENTIFIED:** But not through the Board.

14 **DR. ZIEMER:** Well, you know, we may -- we
15 don't want to be an adjudicating body because
16 that's not our role. And it may be that a
17 process that would allow appeal to the Secretary
18 or something. But we don't know that that's how
19 the agency would be able to do it. So I'm not
20 sure if we can dictate what that should be, but
21 we could raise the issue that there should be
22 something.

23 **DR. ANDERSON:** This is Andy.

24 I would agree with that. I think with the
25 public comments we got today and elsewhere, it is

1 fairly complex and there's a lot of concern. My
2 guess would be if people are unhappy, the only
3 public forum to express it is going to be with
4 our Board. But whether we're adjudicatory or
5 not, we're going to hear those. And it would be
6 nice to know that there is some mechanism, kind
7 of a catch-all, at NIOSH to address those.

8 **DR. ANDRADE:** Paul, and Mark and others, let
9 me just remind you that NIOSH holds the expertise
10 to make these kinds of judgments. They're being
11 given at least two attempts or two opportunities
12 to review a case. And if we start to try and
13 take it up a chain to where we start getting less
14 and less -- how shall I say it -- professional
15 experience on dealing with these things, then I
16 think we're really barking up the wrong tree.

17 I truly believe that this document as
18 written, and given the fact that if a claimant or
19 survivor, whatever, can present any new
20 information for consideration, I think it's
21 absolutely fair.

22 And I would like to refer back to the long
23 discussion that we had during our last meeting
24 during which Wanda said, okay, when is no, no?
25 We've got to be practical about this. It cannot

1 be -- it's unfair to provide unreasonable
2 expectations to petitioners or people on their
3 behalf to believe that somebody else in some sort
4 of administrative, not professional capability,
5 can make some sort of judgment on these things.

6 **DR. ZIEMER:** Okay, now I'm going to at this
7 point rule that we will -- because we have to
8 meet this time limit on this call, we can't go
9 over the three hours, I'm going to rule that
10 we'll have to carry this issue forward to our
11 next conference call. That will give all of you
12 time to think further on this issue. We'll pick
13 it up at that point.

14 And then we have one remaining item that --
15 let's see, one of the later sections that was,
16 Wanda, was your item.

17 **MS. MUNN:** Oh, yes. And it's very
18 simplistic.

19 **DR. ZIEMER:** Yeah, it's not a real big one.
20 But we can pick this up at this point.

21 Because before we leave this phone call
22 today, we have to agree on a time for our follow-
23 up conference call. I would ask you, because we
24 only have about three minutes left here, we need
25 to get our calendars out right now.

1 **MR. ELLIOTT:** Did you not set a date and time
2 at the --

3 **DR. ZIEMER:** Yeah, I'm looking to see. I
4 thought we had blocked off --

5 **MS. HOMER:** August 4th from 1:00 to 4:00.

6 **DR. ZIEMER:** What was it?

7 **MS. HOMER:** April 4th -- good heavens --
8 April 4th from 1:00 to 4:00.

9 **MR. PRESLEY:** Right.

10 **DR. ZIEMER:** April 4th -- yes, that's what I
11 have blocked off.

12 Is that still -- that's two weeks from today,
13 right?

14 **DR. ROESSLER:** This is Gen.

15 I was not at the meeting when this was
16 discussed. I will not be available at that time,
17 but I know that we can't get everybody.

18 **DR. ZIEMER:** Had we ruled out April 3rd? Oh,
19 we did. I had a conflict. Well, I will be on
20 travel on April 3rd. I'll be flying from
21 Richland, Washington back to Indiana, and that's
22 not easy to do.

23 **MS. MUNN:** No, it's sure not.

24 This is Wanda. I actually have conflicts on
25 the 4th, but whatever they are I'll work around

1 them. I'll be somewhere between here and
2 Spokane.

3 **DR. ZIEMER:** Let's see. There's one other --
4 the 4th was dictated in part by the 30-day time
5 limit on the comment period. We had recommended
6 at our last meeting that NIOSH consider extending
7 or CDC consider extending the comment period by
8 15 days. That was a formal request by the Board.
9 It is my understanding that that request will go
10 forward. I don't have to necessarily send the
11 Secretary a letter on that. I think that's in
12 process.

13 I don't know if I can ask NIOSH at this time,
14 do we know the status of that request and whether
15 that is a possibility, or can we say at this
16 point?

17 **MR. ELLIOTT:** This is Larry Elliott.

18 I've been out of touch, as most of you know,
19 most of this week. So I'd ask if David Naimon
20 could speak to that, or --

21 **DR. ZIEMER:** Or Cori?

22 **MR. ELLIOTT:** Or Ted Katz, perhaps.

23 **MR. NAIMON:** This is David Naimon.

24 The Department is aware of the request, but
25 obviously no decision has been made as of yet.

1 **DR. ZIEMER:** Otherwise the deadline for
2 comments is the 7th, is it, of April?

3 **UNIDENTIFIED:** Yes.

4 **DR. ZIEMER:** And what form do the comments
5 needs to be in? Do they need to be like
6 postmarked, or if they're on the public record by
7 the 7th are they --

8 **MR. ELLIOTT:** Written comments need to be
9 submitted and postmarked by the 7th.

10 **DR. ZIEMER:** By the 7th, okay.

11 **UNIDENTIFIED:** Paul?

12 **DR. ZIEMER:** Yes?

13 **MS. MUNN:** And Federal regulations preclude
14 our doing anything on the 28th, right? Not
15 enough time for notice.

16 **DR. ZIEMER:** To do what on the 28th?

17 **MS. MUNN:** Anything on the 28th.

18 **UNIDENTIFIED:** Have a phone call on the 28th?

19 **UNIDENTIFIED:** That's what I was going to
20 ask.

21 **MR. ELLIOTT:** I don't know.

22 Cori, can we post something by the 28th?

23 **DR. ZIEMER:** That's two weeks from now.

24 **MS. HOMER:** Sure.

25 **MR. ELLIOTT:** We'd have to get it out

1 tomorrow.

2 **MS. HOMER:** Oh, yeah.

3 **MR. ELLIOTT:** Or today.

4 **DR. ZIEMER:** Is there any member of the Board
5 who could not participant in a telephone
6 conference on the 28th?

7 **MR. ESPINOSA:** Depending on the time, Paul.
8 This is Richard Espinosa.

9 **DR. ZIEMER:** How's 1:00 p.m. our time? That
10 would be what, 11:00 yours?

11 **MR. ESPINOSA:** Yeah, that'd be 11:00 mine. I
12 think I can do it, but I might have to tune in
13 just a little bit late.

14 **DR. ZIEMER:** Well, do you want to start at
15 2:00 our time, which would be noon your time?

16 **DR. ANDERSON:** Two is better for me in
17 Wisconsin.

18 **MS. HOMER:** From 2:00 to 5:00, then?

19 **DR. ZIEMER:** Two to five Eastern time?

20 **MR. ESPINOSA:** That would be a lot better for
21 me, Paul.

22 **DR. ZIEMER:** Anybody object to that?

23 **MR. GRIFFON:** Hey, Paul, Mark Griffon.

24 Is that in addition to the April 4th call?

25 **DR. ZIEMER:** Hopefully it will be instead of,

1 because --

2 **UNIDENTIFIED:** We'll still keep the place and
3 time for --

4 **DR. ZIEMER:** Keep a place marker, but realize
5 we already have some conflicts.

6 **DR. DeHART:** Paul, this is Roy.

7 I won't need a satellite phone if we go on
8 the 28th as proposed.

9 **DR. ZIEMER:** Okay, that will be good.

10 I think we've agreed to that. Any
11 objections?

12 Cori, we'll try that then.

13 **MS. HOMER:** Okay.

14 **DR. ZIEMER:** Two weeks from today.

15 **UNIDENTIFIED:** Can I make one more
16 suggestion, Paul?

17 **DR. ZIEMER:** Yes.

18 **UNIDENTIFIED:** Can we put an agenda for that -
19 - well, I don't know if we need -- I mean, just
20 agree that we're going to start off with 83.13,
21 maybe, and go backwards through this thing or
22 something? It seems at each meeting --

23 **DR. ZIEMER:** We'll start right where we left
24 off here, 83.13.

25 **UNIDENTIFIED:** Okay. Because that's the

1 meatiest section, and we really need some
2 discussion on it.

3 **DR. ZIEMER:** Wait a minute. Is it 13?

4 **UNIDENTIFIED:** We left off at 83.11.

5 **DR. ZIEMER:** Eleven. We're at 83.11, Mark.

6 **MR. GRIFFON:** Okay.

7 **DR. ZIEMER:** That's where we'll start, and
8 then we'll pick up Wanda's item, which is shortly
9 after that. And then if we need to revisit
10 anything we can.

11 **MR. GRIFFON:** Fine. That's what I was going
12 to propose. Thank you.

13 **DR. ZIEMER:** Okay.

14 **MR. ESPINOSA:** Paul, Richard Espinosa again.

15 **DR. ZIEMER:** Rich.

16 **MR. ESPINOSA:** Just as a recommendation on
17 what I did before, if anything -- if anybody
18 wants to make recommendations and stuff like
19 that, reduce them to writing and send them to the
20 Board. That sure helped out a lot --

21 **DR. ZIEMER:** Yes, same thing --

22 **MR. ESPINOSA:** -- a lot less --

23 **DR. ZIEMER:** Same thing, but get them in a
24 few days ahead so Cori can get them out.

25 **MS. HOMER:** That's right.

1 **DR. ZIEMER:** Now I had indicated at the
2 beginning that I did want to allow further public
3 comments; however, we are limited on this phone
4 time and we're at the limit at the moment. But
5 we did actually hear all the comments that were
6 provided at the beginning. So I think we'll have
7 to defer any additional ones to the next call,
8 and there will be additional opportunity then for
9 public comments as well.

10 I thank everybody for their time and effort.
11 I think we made good progress here, and we'll
12 talk to everyone then in two weeks.

13 **MR. FIELD:** Paul, I have a quick question.
14 Bill Field from University of Iowa.

15 Is there any way that we can submit comments
16 to you that could be included as part of the
17 public record, rather than waiting two weeks?

18 **DR. ZIEMER:** As part of the Board's records?

19 **MR. FIELD:** Yes.

20 **DR. ZIEMER:** Or as comments on the ruling?

21 **MR. FIELD:** Both.

22 **DR. ZIEMER:** You can do both.

23 Let me ask, comments to the Board will still
24 need to go to NIOSH, because they need to be
25 posted -- they should not be sent to the

1 Chairman. They should be sent to CDC or NIOSH.

2 Larry or Cori, can you help me on this?

3 **MR. ELLIOTT:** Bill, you can send them to Dr.
4 Ziemer's attention at the NIOSH address on our
5 Web site, or you could use the OCAS e-mail box to
6 submit comments, and we'll make sure that those
7 are transmitted to the Board.

8 **MR. MILLER:** Paul, this is Richard Miller.

9 **DR. ZIEMER:** Yes, Rich.

10 **MR. MILLER:** I just would like to suggest a
11 change in your process. This is the second
12 conference call that -- maybe the third one I sat
13 in on. Your public comment period always comes
14 at the very end, and as a result what winds up
15 happening is you run out of time.

16 **DR. ZIEMER:** No, we had it at the beginning,
17 Richard.

18 **MR. MILLER:** Well, I guess I missed your
19 beginning, then.

20 **DR. ZIEMER:** We had almost an hour of public
21 comment period.

22 **MR. MILLER:** Okay, well, it wasn't posted on
23 the Web, and I didn't know that that was what
24 your agenda was going to be. All right.

25 **DR. ZIEMER:** Well, we actually wanted to get

1 the comments beforehand so we had the benefit of
2 them --

3 **MR. MILLER:** Oh, okay. That's fine. I
4 didn't hear that, and when I got on you were
5 already in deliberation.

6 **DR. ZIEMER:** I'm sorry, Richard, that that
7 occurred, and we will -- I would expect to do
8 them at the beginning next time too, so that we
9 don't have it at the end, as you suggested.

10 **MR. MILLER:** Okay. Well, I just heard you --

11 **DR. ZIEMER:** Sorry we missed you on that,
12 Richard.

13 **MR. MILLER:** Take care.

14 **DR. ZIEMER:** Okay, thank you, everyone.

15 [Whereupon, the meeting was adjourned at
16 approximately 4:05 p.m.]

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C E R T I F I C A T E

STATE OF GEORGIA)
)
 COUNTY OF DEKALB)

I, KIM S. NEWSOM, being a Certified Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript, consisting of 147 pages, was reduced to typewriting by me personally or under my direct supervision, and is a true, complete, and correct transcript of the aforesaid proceedings reported by me.

I further certify that I am not related to, employed by, counsel to, or attorney for any parties, attorneys, or counsel involved herein; nor am I financially interested in this matter.

This transcript is not deemed to be certified unless this certificate page is dated and signed by me.

WITNESS MY HAND AND OFFICIAL SEAL this 27th day of March, 2003.

KIM S. NEWSOM, CCR-CVR
 CCR No. B-1642

[SEAL]