

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

VOLUME II

The verbatim transcript of the Meeting of the
Advisory Board on Radiation and Worker Health held
at the Washington Court Hotel, Washington, D.C.,
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P R O C E E D I N G S

9:00 a.m.

1
2
3 **DR. ZIEMER:** Good morning again, everyone.
4 We'll resume deliberations of the Advisory Board
5 on Radiation and Worker Health.

6 (Comment off the record)

7 **DR. ZIEMER:** For members of the public,
8 again we remind you that if you wish to make
9 public comment during the meeting today, there is
10 a sign-up sheet in the foyer or the entryway.
11 Please sign up.

12 Also, those members of the public who wish
13 to have copies of the minutes of this meeting,
14 there is a sheet for signing up to make such a
15 request for those minutes.

16 On our agendas, as distributed and as
17 published, we always have a footnote that says
18 agenda items are subject to change as priorities
19 dictate. And based on that footnote, I will
20 exercise the Chair's prerogative to rearrange the
21 schedule somewhat.

22 We have at the front end here some
23 administrative housekeeping things that we want
24 to take care of, and then it would seem
25 appropriate to also handle the Board work

1 schedule items at that time. So we'll move the
2 10:30 item, Board work schedule. We'll move that
3 up and do that immediately following the
4 administrative housekeeping things. That will
5 allow us, then, basically the rest of the morning
6 to work on the development of the Board's
7 comments relating to the dose reconstruction
8 rule.

9 So without objection, we'll make that
10 rearrangement of the morning agenda.

11 There will also be time for public comment.
12 And depending on how far we get this morning, we
13 will then take a look at the afternoon agenda.

14 So let us begin with these housekeeping
15 items, and Cori, if you will come at this time
16 and take care of the administrative housekeeping
17 matters, and then we'll -- Larry will join us
18 with some additional materials.

19 **MS. HOMER:** Thank you.

20 Good morning, ladies and gentlemen. I just
21 wanted to update you on your salary and travel
22 pay issues. I wanted to let you know that your
23 salary should be direct deposited into your
24 accounts tomorrow. I don't have in front of me
25 the number of days you'll be paid for. If you

1 have any questions on that you can just give me a
2 call. It will be less taxes. And if you have
3 forwarded your voucher information to us, myself
4 or Nichole, then it's either being worked on or
5 it's been signed and is going to be reimbursed.

6 I do want to ask if any of you have any
7 questions at all about how you're paid, how
8 you're reimbursed, anything about your travel
9 issues, per diem, how that's paid?

10 (No response)

11 **MS. HOMER:** I know some folks have asked
12 about per diem for travel.

13 **MS. MUNN:** Cori, will we be getting some
14 sort of document in the mail --

15 **UNIDENTIFIED:** Use your mike, Wanda.

16 **MS. MUNN:** Will we be receiving some sort of
17 written information about itemization of our per
18 diem and travel funds?

19 **MS. HOMER:** That will come on your travel
20 voucher. When that comes to you, for those of
21 you who have seen one or have signed one, your
22 voucher will come to you for signature and
23 dating.

24 **MS. MUNN:** Okay.

25 **MS. HOMER:** And if you have any questions at

1 that time, looking it over, you can call myself
2 or Nichole on that. You will also be getting, as
3 soon as I have it, your earnings and leave
4 statement for salary, and that will tell you how
5 much was deposited into your account. If you
6 have not received that in your account, please
7 call me as soon as you know. That way I can go
8 back and check when it was paid, what day it was
9 supposed to have been deposited, and we can get
10 that taken care of as quickly as possible.

11 Also, for the time you spent reviewing the
12 technical guidelines, if you could let Larry know
13 how much time you spent.

14 And any other questions?

15 **DR. DEHART:** And the time on the phone call?

16 **MS. HOMER:** Yes, the time on the phone call
17 as well.

18 I guess that'll be it.

19 **DR. ZIEMER:** Okay. Larry, you have
20 additional items?

21 **MR. ELLIOTT:** Yes. Let's do it the way we
22 did last meeting. If you'll just jot me a note
23 with the number of hours of prep time, then I
24 sign off on that note and hand it over to Cori to
25 take care of your salary for prep time for the

1 teleconference. And we know what the
2 teleconference was; you'll get that covered. And
3 then your preparation time for yesterday and
4 today's meeting.

5 I think there was one question, and I'm not
6 sure everybody got an answer to. That was how do
7 I know -- this came up yesterday -- how do I know
8 when my salary gets deposited, and how do I know
9 when my travel voucher or my travel expense gets
10 deposited to my account? When you sign off on
11 your travel voucher, make note of -- and you
12 should get a copy of this for your own records --
13 but make note of what that dollar value is, and
14 that's what will be actually added to your
15 account for your travel. But your salary will
16 not be X number of days times your salary; it'll
17 be minus the tax. So that'll be a figure that we
18 can't predict for you.

19 The other thing, under the Board work
20 schedule, we -- as Dr. Ziemer used his
21 prerogative to move this up, we need to talk
22 about the -- we tentatively have March 25th and
23 26th set aside in your calendars for the next
24 meeting. What work do we have for that meeting,
25 and do we need to have that meeting? Should we

1 postpone that meeting? I think that's a topic of
2 this agenda item at this point in time.

3 It's very unlikely that we would have the
4 Special Exposure Cohort procedures ready for
5 review in March, at that time frame. It's just
6 too hard for me to predict right now. The only
7 thing I would see that the Board could work on in
8 March would be to come together to discuss or to
9 decide how to conduct its review of dose
10 reconstructions.

11 I would suggest to you that the review of
12 dose reconstructions would probably not start,
13 however, until early fall; late, late summer,
14 early fall. I think it's important for us to
15 build a completed case load of those for you to
16 sample from. I don't think you want to start out
17 looking at the first 100 or so, or first ten that
18 come out of the gate. But I think you need to
19 come to grips and decide, discuss and decide how
20 you want to approach setting up a review of dose
21 reconstructions.

22 I know there were several other things that
23 were proposed yesterday for presentations to the
24 Board, and we certainly are willing to
25 accommodate those interests. But I would ask

1 that you consider our preparation for those kind
2 of presentations at this point in time takes
3 staff away from completing some of their
4 necessary work that we have in order to try to
5 achieve our goals. And we can certainly get to
6 those things later on, but that would be just my
7 suggestion for your consideration.

8 So I'll turn it over to the Chair, and you
9 should discuss how you want to proceed.

10 **DR. ZIEMER:** First of all, let me suggest
11 something here, and then we can entertain other
12 comments.

13 It's clear that the staff has an immediate
14 job of getting the responses to the comments for
15 the two rule-makings and getting the rule-making
16 out the door. I think you were shooting for an
17 April 1st to get that out your door and into the
18 system. It would seem to me that it would be in
19 the interest of the NIOSH staff if we did not
20 have a meeting in March that would detract from
21 their ability to get that immediate job done.

22 The pressing issues for this Board were the
23 comments on Part 81 and 82, which we hope to
24 complete today, so that I don't see a compelling
25 reason to meet in March, but there may be a

1 compelling reason not to meet in March.

2 Personal views? Let's get other comments.

3 Yes, James.

4 **DR. MELIUS:** What are you proposing, then,
5 as the next meeting, just roughly?

6 **DR. ZIEMER:** Then it would be an April time
7 frame. Did we collect the April -- you have the
8 April possibilities there?

9 **MS. HOMER:** Looks like in April the second
10 week. Dr. Anderson is only available on the
11 12th. Everybody else seems to be available all
12 week. The third week looks good. That would be
13 the 14th through the 20th.

14 **DR. DEHART:** I'm out that total week.

15 **DR. ANDERSON:** Yeah, I've got a wedding at
16 the end of the week -- not mine.

17 **DR. ROESSLER:** Cori, I must not have put it
18 on, but I'm out the week of -- I'm out April 9th
19 through 11th.

20 **MS. HOMER:** 9th through 11th? Okay.

21 **DR. ROESSLER:** And then in addition, on my
22 agenda, I changed an EPA advisory committee
23 meeting from March to April 23rd to 25th. But you
24 can't get everybody, probably.

25 **MS. HOMER:** Well, how does the 22nd and 23rd

1 or 23rd and 24th sound?

2 **DR. ANDERSON:** That's the EIS conference at
3 CDC that week. For me, anyway, and I would
4 assume --

5 **DR. ZIEMER:** I'm out the 23rd. Actually
6 I'll be in Los Alamos on the 23rd. Maybe we
7 could meet out there.

8 **MR. ESPINOSA:** Sounds good to me.

9 **DR. ZIEMER:** Roy, did you say you were out
10 the week of the 15th?

11 **DR. DEHART:** Actually, I'm out -- well,
12 certainly from the 13th through the 18th.
13 Aerospace medical meeting.

14 **DR. ZIEMER:** Was the week of the 8th a
15 possibility?

16 **DR. ROESSLER:** Well, the 10th and 11th,
17 that's the NCRP meeting.

18 **DR. ZIEMER:** That's right here, so if we met
19 the 8th and the 9th, why you could just go right
20 over there, right?

21 **DR. ROESSLER:** Sure.

22 **DR. ANDERSON:** Yeah, I have a conflict on --
23 I think, Jim, you're on the Rocky Flats --

24 **DR. MELIUS:** Yeah, we both -

25 **DR. ZIEMER:** Okay. Is the 11th and 12th of

1 April out, also?

2 **UNIDENTIFIED:** The 12th is okay, but not the
3 11th.

4 **DR. ZIEMER:** What about -- I'm out the 4th
5 and 5th, but what about the 1st through 3rd? Any
6 problems there?

7 **UNIDENTIFIED:** For which month?

8 **MR. ELLIOTT:** That's too close.

9 **DR. MELIUS:** We've already committed -- all
10 of us have set aside those other two. To move it
11 a week is hardly worth it.

12 **DR. ZIEMER:** Oh, right, that doesn't help
13 much.

14 **DR. ANDERSON:** May 2 or 3?

15 **MS. HOMER:** First week of May looks open.

16 **DR. ZIEMER:** Any conflicts beginning April
17 29 through May 3rd?

18 (No responses)

19 **DR. ZIEMER:** Hey, looks good, doesn't it?

20 **DR. ANDERSON:** I have a conflict Monday and
21 Tuesday, but --

22 **DR. ZIEMER:** That's the 29th and 30th.

23 **DR. ANDERSON:** Yeah. So 1, 2, or 3 is fine.

24 **DR. ZIEMER:** Anyone with a conflict May 1st
25 through 3rd?

1 (No response)

2 **DR. ZIEMER:** Shall we try for either 1st and
3 2nd, or 2nd and 3rd?

4 **UNIDENTIFIED:** I'm sorry?

5 **DR. ZIEMER:** 1st and 2nd, or 2nd and 3rd,
6 depending on availability of facilities and so
7 on? Does that sound --

8 **MS. HOMER:** That's good.

9 **DR. ZIEMER:** Okay, let's all pencil that in.
10 Block off 1st through 3rd until we get it
11 finalized.

12 Any reason we shouldn't just meet here again
13 in D.C.?

14 (No response)

15 **DR. ZIEMER:** Sounds okay.

16 **MS. HOMER:** I'll check on the availability
17 of the hotels.

18 **DR. ZIEMER:** Cherry blossoms still out then,
19 or -- is that on your calendar? Too late.

20 Okay, we have tentative dates, then, blocked
21 off for that meeting. Now let me make sure, is
22 everybody agreeable that we should postpone till
23 then? Is there any that feel that there's
24 compelling reason to meet in March? I don't want
25 to preclude that.

1 Yes, Roy, please.

2 **DR. DEHART:** I was just curious. There are
3 probably some topics that would not need
4 presentation by the NIOSH group, but where others
5 from outside could come in. We were hearing
6 yesterday about a number of dose critical issues
7 where when it was really -- the paper record was
8 really checked, it was found not to be adequate.
9 Could we hear those stories? That's the kind of
10 information that perhaps wouldn't take so much
11 time. But again, you see a lot of people sitting
12 around here that might have to be here in any
13 case, which would interfere with the staff, I
14 don't know.

15 **DR. MELIUS:** Yeah, I think along those lines
16 there's those topics.

17 I think it would be useful to hear a
18 legislative history or background, particularly
19 with relationship to Special Exposure Cohorts.
20 But I think there's other sections that would be
21 helpful to hear from some of the Congressional
22 staff. There's David Michaels, there's a lot of
23 -- somebody can choose who, but sort of a panel
24 to present to us the legislative background.

25 There's a number of topics related to the

1 IREP model and so forth that we had talked about
2 at the first meeting, that I think it would be
3 useful to get a panel together to give us
4 background on some of the issues related to that.

5 So I don't think it necessarily has to
6 require the NIOSH staff to spend a lot of time
7 preparing for us, and that will somewhat depend
8 on where they are with the various regulations.
9 But I think getting some of that background
10 together with information would be good, and
11 would be a good use of a meeting so that down the
12 road we're prepared for -- as these issues come
13 up.

14 **DR. ZIEMER:** Let me ask both Roy and Jim,
15 are you suggesting that there's an urgency to do
16 that in March rather than, say, April? Certainly
17 that could be part of the April thing. I think
18 these folks are going to be pretty well tied up
19 through March anyway, so maybe having that topic
20 at the April meeting might still be appropriate
21 to have.

22 **DR. MELIUS:** Yes, that's what I was saying.

23 **DR. DEHART:** That would be fine with me. I
24 just would like to see some of that information
25 presented soon.

1 **DR. ZIEMER:** Henry had a comment.

2 **DR. ANDERSON:** Yeah, I would agree. I would
3 like to hear some of the other background, and
4 maybe have some of the peer reviewers from the
5 IREP come in and talk about their -- have more of
6 a dialogue with them at some point in time.

7 And I think we also probably then need to do
8 some planning on how are we going to organize to
9 review -- I've just felt that we're very much in
10 a reactive mode, and to wait only until we have
11 something from NIOSH to present and review, we
12 may want to think about what are some of the more
13 proactive things that might be something that we
14 would carry on between several meetings.

15 But April, in order to do that -- we could
16 probably put that -- I just don't want to get us
17 rushed again, because next will be coming the
18 NIOSH responses to the rule package, and changes
19 there that we may want to discuss as well. This
20 might be a catch-up meeting for us to look at
21 things that are good for us, but I don't feel
22 strongly about not postponing. I just don't want
23 to get caught down the line, that we spend all
24 our time reacting on a rapid basis rather than
25 kind of beginning to plan a process for the long

1 term.

2 **DR. ZIEMER:** Okay, good comment. Thank you.
3 Others? Wanda.

4 **MS. MUNN:** I agree fairly strongly with what
5 Henry had to say.

6 I think it may take us a little time to get
7 our thoughts in order with respect to how we do
8 want to approach these evaluations we're going to
9 undertake. I think we ought to give the NIOSH
10 staff all the space they need in March to do
11 these ugly things they have to do to try to make
12 their deadline. By the same token, I'm
13 uncomfortable with putting our next meeting off
14 too far. I think it may be to our detriment to
15 have too much time between our meetings, even
16 though regularity, obviously with a group like
17 this, is going to be impossible.

18 But there are several items -- I shouldn't
19 say several -- there's at least one item that I
20 would like to discuss with the group at some
21 juncture before we get too far down the road.
22 It's already behind us and nothing that can be
23 done about it, but there is some language in the
24 law that establishes this entire procedure, which
25 is -- there's not much of it, but what's there is

1 misleading, to say the least, and inaccurate is
2 the kindest word one can say about it.

3 For a group like this to not comment on
4 that, I think would be inappropriate, and at some
5 juncture I'd like to discuss that with the Board.
6 But -- and would like that not to be long after
7 all of the disbursements have begun to take
8 place.

9 **DR. ZIEMER:** Thank you. Wanda, let me ask.
10 However, are you comfortable with the meeting
11 date that we're talking about, or are you urging
12 us to meet again in March? You said that you
13 wanted to give them space, so I took that to mean
14 you're okay with this proposed meeting date that
15 we talked about.

16 **MS. MUNN:** I think we should just throw up
17 our hands with respect to March.

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

19 **MS. MUNN:** It looks impossible to me.

20 **DR. ZIEMER:** Thank you.

21 **MS. MUNN:** And my preference would have been
22 April, but that also looks impossible at this
23 juncture.

24 **DR. ZIEMER:** Well, we're not too far out of
25 April, so --

1 **MS. MUNN:** This is true, so May is fine.

2 **DR. ZIEMER:** Thank you.

3 Any other comments as --

4 **DR. ANDERSON:** Do we want to look at some
5 other dates? By the time we get to May, I think
6 we're then going to find that June is gone,
7 because everybody's going to fail. So if we're
8 going to plan for three or four meetings four to
9 six weeks apart, we may want to start to look at
10 some of those dates.

11 **DR. ZIEMER:** Cori, can we distribute the
12 calendars, or do you want to just have us tell
13 you what our bad dates are again through May,
14 June, and on beyond?

15 **MS. HOMER:** Yeah, you have May.

16 **DR. ZIEMER:** Okay. In the packet -- is it
17 in the packet? There is a tab in the packet
18 called 2002 year planner. So I think, Cori, if
19 this is what you want, have each person put their
20 name on that, and then X out your bad dates. Is
21 that how we want to do that?

22 **MS. HOMER:** Yes.

23 **DR. MELIUS:** That's how we did it last time.

24 **MS. HOMER:** We did it that way last time.

25 **DR. ZIEMER:** But how far did -- last time we

1 only had through May, so --

2 **MS. HOMER:** Some folks have given me June,
3 but --

4 **DR. ROESSLER:** But that changes.

5 **UNIDENTIFIED:** It changes.

6 **MS. HOMER:** Yes, it does.

7 **DR. ZIEMER:** Why don't you update that, and
8 let's -- how far can we go now? Can we take it
9 on through at least August, and get those dates?
10 And then turn those in yet today. Thank you.

11 Could we also then ask the staff, as you're
12 able to begin identifying who might some of these
13 presenters be -- again, I think there will be
14 time, but we do have to allow those people time
15 to schedule things, too. So having a little
16 advance notice will be important there.

17 Jim.

18 **DR. MELIUS:** Could I make a suggestion that
19 maybe we set up a -- I don't know if it's a
20 subcommittee or group, just to work with the
21 Chair, a couple of people to help choose some of
22 the people, or we can work with the staff in
23 terms of coming up with some names and people
24 from the outside that we might want to come in
25 for those meetings? That might make it easier,

1 rather than have the staff calling around and --

2 **DR. ZIEMER:** Let me -- Jim, would this work
3 just as if you know of or have suggestions, just
4 to turn those over to Larry, and let them try to
5 put together something? Do you think you need --
6 do we need a subcommittee, or --

7 **DR. MELIUS:** That would be -- if they want,
8 prefer that way, that's fine, too.

9 **MR. ELLIOTT:** That would be great. Whatever
10 your suggestions are, if you can give them to me.
11 And certainly I've already talked with David
12 Michaels. I think he would be pleased to accept
13 an invitation to present on the legislative
14 background to you. Josh Silverman and I spoke
15 this morning, and I think DOE would welcome an
16 invitation to talk about records. But others,
17 I'm sure there are other people that you know of
18 you would like to hear from.

19 **DR. MELIUS:** Can I just -- maybe if we can
20 do that interactively, then, if you could then e-
21 mail out what you think will be the agenda and
22 who the speakers would be. Then if someone says,
23 well, I really think we ought to hear from
24 someone with this viewpoint or this experience
25 would be a good addition, or some point, then I

1 think at least we're not getting to the meeting
2 and saying, well, next meeting we should have
3 somebody else come in.

4 The other thing I would request maybe for
5 setting up this meeting, so we don't get to May
6 and be struggling with a July meeting, because by
7 that time our calendars will all have changed
8 also, is if Larry could work with the Chair. And
9 I think somebody's just going to make a decision
10 at some point that not everyone can be there, and
11 maybe make it your -- we'll have someone to blame
12 besides Larry.

13 **DR. ZIEMER:** I was hoping that wouldn't
14 happen, but we'll do that. Sure, we'll do that.

15 **DR. MELIUS:** But also, again, if you'd let
16 us know. There are times we can move meetings if
17 we're not available, just -- the farther ahead we
18 can do this, I think the better, that's all.

19 **DR. ZIEMER:** Right, it's sort of the first
20 thing on the calendar is going to get the
21 priority in many cases, so right.

22 **DR. MELIUS:** Exactly.

23 **DR. ZIEMER:** Right.

24 Okay, other comments?

25 Thank you, that's very helpful.

1 (No response)

2 **DR. ZIEMER:** Let us now proceed to the
3 discussion and development of the dose
4 reconstruction rule comments.

5 We did ask for each of you to give some
6 thought and maybe jot down some ideas. What I
7 thought we might do to begin is to prepare a kind
8 of inventory of the items that we want to
9 address, just to identify them. We sort of did
10 this at the end of the session yesterday. But
11 I've asked Cori to help us by preparing an
12 overhead; that is, she will prepare it as we make
13 the inventory.

14 Is this agreeable, to try to identify the
15 items that we wish to comment on? And then we
16 can talk about actually developing the formal
17 comments after we see what it is that's before us
18 in terms of numbers of items and the subjects.
19 Is that agreeable, to try to get an inventory
20 here?

21 Now one of the reasons I'm suggesting we do
22 this is because I've started an inventory. I
23 actually have a list of eight items that I put
24 together, I think based on yesterday's comments.
25 And so what I thought I would do is identify

1 these, and then we can either delete or add to
2 them. But most of these -- and these aren't my
3 ideas. These are ones that I think I heard
4 yesterday from the Board.

5 For example, the first item would be to move
6 the paragraph Item J Section 2 (sic), and you can
7 say move Item J, Section 2, page 50981, to the
8 body of the rule. This is the one dealing with
9 the role of this Board. Actually, the whole
10 paragraph, which is not only the role of the
11 Board but the general idea of revising, perhaps
12 the whole thing should move. So maybe to
13 identify this, move Item J, sentence -- let's say
14 Item J of the background section to the body of
15 the rule. We can come back and talk about these,
16 but let me get the list up here.

17 **MS. HOMER:** Move Item J from background to
18 where?

19 **DR. ZIEMER:** To the body of the rule. I'm
20 not sure where that would go, actually, but --

21 **DR. DEHART:** It's page 50981.

22 **DR. ZIEMER:** Yeah, page 50981 is where that
23 is. That's where this section is.

24 The second item is Section 82.10, paragraph
25 (j), so 82.10(j), clarify the use of the term

1 "validated."

2 **DR. ROESSLER:** What page is that on?

3 **MS. NEWSOM:** 50988.

4 **DR. ZIEMER:** Third item, clarify the steps
5 and time line for -- oh, I'm sorry, I should have
6 given you the section first. That's all right,
7 put it in the next -- that'll be Section
8 82.10(m), (n), (o). Clarify the steps and time
9 line for claimant's action on form OCAS-1,
10 claimant's actions on form OCAS-1.

11 Section 82.14(f)(1), clarify the use -- this
12 is one I just picked up; we didn't talk about
13 this. But the title of this uses the word "may,"
14 and the words used -- use the word "will." There
15 seems to be a discrepancy, so I'm suggesting a
16 clarification on the use of "may" and "will."
17 It's -- let's get the page -- page 50989.

18 If you look at the title of Section 82 --
19 I'm sorry, I have the wrong one. It's 82.13.
20 I'm sorry, I gave you the wrong one, 82.13. I
21 gave you the wrong one there. Just cross out the
22 (f)(1); it's just 82.13. Look at the title, and
23 then the sentence right after the title. It
24 appears to me to be a conflict. We might decide
25 it isn't, but put it down here for the moment.

1 82.14(f)(1), and this is one that was not
2 discussed yesterday. But I noticed last evening,
3 and maybe I'll ask the question, and probably
4 should direct it to Jim Neton. On the medical
5 screening with X-rays, are there other medical
6 screening procedures that use radiation that may
7 not be X-rays that should be included? Were
8 there any nuclear medicine procedures or other
9 imaging modalities, or is it only medical X-rays?

10 **DR. NETON:** There are no other modalities
11 that I'm aware of as far as nuclear medicine,
12 screens or something like that, that were
13 required, occupationally required, in what I
14 would consider like a surveillance-type program.

15 **DR. ZIEMER:** Therefore only -- so, then, as
16 far as I'm concerned this can drop out. I was
17 just raising the question as to whether that was
18 restrictive in a way that it was not intended, so
19 I think it can drop out.

20 82.18, this is another one that we did not
21 discuss, but I picked up last night. It requires
22 the use of NCRP (sic) models. There's nothing
23 said about the fact that they should be current
24 models. Is there a need for clarification? So
25 right now I've just said to clarify that.

1 **DR. NETON:** Do you mean ICRP models?

2 **DR. ZIEMER:** ICRP; did I say NC? I meant
3 ICRP models. The statement is that ICRP models
4 will be used. Do we want to say current ICRP
5 models or something like that? So that was my
6 point in raising that.

7 Next item is 82.28(b), clarify the
8 restriction concerning the availability of the
9 names of claimants to researchers. Clarify the
10 restriction concerning the availability of the
11 names of claimants to researchers.

12 Then the last item on my list is answer the
13 three questions.

14 Now I'm aware that there is at least one and
15 possibly two that I simply couldn't remember or
16 hadn't made a note on, and so -- but some of you
17 will remember your own items from yesterday to
18 add to this list. So let me now open it up.

19 I think, Jim, you may have had one that I
20 simply couldn't remember.

21 **DR. MELIUS:** No, I've forgotten it also.

22 **DR. ZIEMER:** Good, I feel good about that,
23 then. If you don't remember it --

24 **DR. MELIUS:** I don't.

25 **DR. ZIEMER:** Well, if it comes to you --

1 does anyone remember the great idea Jim had
2 yesterday?

3 **MS. MURRAY:** I'll check back in my notes
4 from yesterday and see, because I underline
5 things that look like --

6 **DR. ZIEMER:** Good, okay. Are there some
7 others?

8 (No response)

9 **DR. ZIEMER:** Did you have one that I missed
10 here? Okay, please, Bob.

11 **MR. PRESLEY:** Bob Presley. Yesterday we
12 came out on 82.16 where it says evaluate and
13 validate, and I had marked word "validate" on
14 there. We had some discussion on that. I don't
15 think that's up there.

16 **DR. ZIEMER:** Item two, Bob.

17 **MR. PRESLEY:** I'm sorry.

18 **DR. ZIEMER:** I think that was the one that
19 you had raised, clarify the use of the term
20 "validated" in Section 82 -- is that the right
21 section? Is there another --

22 **MR. PRESLEY:** 82.16 is the one I marked it
23 on.

24 **DR. ZIEMER:** Oh, okay. So is there another
25 one, then?

1 **DR. ANDERSON:** Yes. I think you've caught
2 it.

3 **DR. ZIEMER:** Yes, that is 82.16.

4 **DR. ANDERSON:** And there was also on --

5 **DR. ZIEMER:** Actually, it looks like it's
6 82.16. The 82.16 is simply in the sentence.
7 It's not that --

8 **MR. PRESLEY:** That's right, I'm sorry.

9 **DR. ZIEMER:** It actually is 82.10, but the
10 sentence just ahead of that ends with the words
11 82.16, and it makes it look like that's the
12 reference.

13 So what I'm asking now, we have this list
14 before us. Are there any things on the list that
15 you think we should not comment on? Are there
16 some things that aren't on the list that we
17 should comment on?

18 **MR. PRESLEY:** Bob Presley again. I had
19 marked 82.12, that title, will it be possible to
20 conduct dose reconstruction for all claimants --
21 for all claims? We had a discussion on that.

22 **DR. MELIUS:** Can I follow up on that? I'm
23 not sure if this fits as a comment directly on
24 that, or is an answer to one of the three
25 questions.

1 But I believe we should comment on the
2 limits of -- I don't think that the regulations
3 in what we've heard so far have clarified, at
4 least for my mind, when NIOSH will not be able to
5 do an accurate dose reconstruction.

6 Now some of this backs into the whole issue
7 of Special Exposure Cohorts, because one of our
8 tasks in the legislation is to advise the
9 Secretary when they're not able to do an accurate
10 dose reconstruction, if there are groups of
11 people for whom they cannot do it. And so it's
12 hard to -- it may be that the Special Exposure
13 Cohort regulations, if they come out there, would
14 specify this.

15 But I think we ought to comment that this is
16 something that the Board needs to continue to
17 monitor and work with NIOSH on. I'm just very
18 uncomfortable with the implication that we're
19 going to reconstruct every dose. Well, you can
20 do that, but how accurate will it be, and so
21 forth. And I think we should say that that's
22 something the Board needs to continue to follow
23 and work with NIOSH on.

24 **DR. ZIEMER:** Jim, let me ask this. Are you
25 suggesting that this might be a sort of general

1 comment as opposed to some change in the rule-
2 making? In other words, it seems conceivable
3 that dealing with that in detail might be in the
4 guidance document as opposed to the rule, but
5 that perhaps you would wish to have the Board
6 comment in a general sense as opposed to adding
7 something to the rule, some detail that spells
8 out how they're going to make this decision, or -
9 -

10 **DR. MELIUS:** I think there are options.
11 Whether -- I can't come up with wording that
12 could be put in the regulation right now. I
13 think that's difficult, particularly until
14 they've done the Special Exposure Cohort. You
15 can define it by -- from the other side, from the
16 Special Exposure Cohort side, easier than you can
17 say when can you not do it in terms of a
18 regulation.

19 I think it's more likely through the
20 manuals, the procedures, and so forth that we
21 would be able to advise them and get
22 clarification on that. I spent some time last
23 night going through those sections of the manuals
24 that we were given, handbooks, and trying to see
25 if there was adequate information in there, and I

1 was not. I don't believe there is at this point
2 in time. It is something that is very hard to
3 define. How do you define when you can't do
4 something is difficult.

5 But I think it's such a critical point that
6 we need to comment on it in a general way,
7 leaving a number of options; that this is
8 something that would be clarified either in
9 regulation, in procedure, or as we work with
10 NIOSH on reviewing the dose reconstructions that
11 they do. And I would hope that that would be one
12 focus of our reviews.

13 **DR. ZIEMER:** It appears to me, then, that
14 that concept might be included as part of our
15 comments to question one -

16 **DR. MELIUS:** (Nods head)

17 **DR. ZIEMER:** -- which is does the interim
18 rule make appropriate use of current science for
19 conducting dose reconstruction, and in that
20 context to raise this issue. Would that be
21 agreeable?

22 **DR. MELIUS:** And I also think it pertains --
23 I think it's question two that talks about the
24 efficiency of the process --

25 **DR. ZIEMER:** Yes.

1 **DR. MELIUS:** -- because there's also how
2 much effort do you put into doing this. The more
3 effort, the greater accuracy or whatever. But it
4 may be out of proportion to what you gain.

5 **DR. ZIEMER:** So let me ask you to take it
6 upon yourself to make sure, as we word both
7 question one and two, that that idea gets
8 incorporated in an appropriate way, then. Thank
9 you.

10 Other items?

11 **MS. MUNN:** No, I just wanted to comment on
12 what Jim had just said.

13 I found last night when I was trying to put
14 together my comments with respect to the three
15 items we felt we needed to comment on that
16 precisely because of the kinds of things you
17 mentioned, Jim, I found these things overlapping
18 and not as easy to quantify in terms of response
19 to number one, response to number two, and
20 response to number three. So I --

21 **DR. ZIEMER:** They probably aren't mutually
22 exclusive, yes.

23 **MS. MUNN:** So I wound up with language that
24 did accommodate several of the things that you
25 were speaking of; whether in the way you want, I

1 don't know. But I think they probably fall in
2 the general --

3 **DR. ZIEMER:** We'll hopefully make use of
4 that in just a little bit, then. Okay.

5 Again, let me ask if there are other items,
6 then, that we need to identify here, separate
7 items?

8 (No response)

9 **DR. ZIEMER:** Is there anything on the list
10 that you would wish just to delete or not
11 address?

12 (No response)

13 **DR. ZIEMER:** Some of these may turn out to
14 be as simple as clarify the use of the word
15 "may."

16 **MS. MURRAY:** Yeah, that one -- let's me see
17 -- number four, is that about the closing after
18 60 days? That was one you had brought up
19 yesterday.

20 **DR. ZIEMER:** No, the closing after 60 days
21 has to do with the clarification of the steps and
22 time line, item three. It's the time line thing.

23 **MS. MURRAY:** Okay.

24 **DR. ZIEMER:** That was the 60-day issue.

25 **MS. MURRAY:** I'm still looking.

1 **DR. ZIEMER:** If something else turns up, we
2 can always come back. I'm not saying this is
3 restrictive at this point, but it sort of gives
4 us a road map of where we have to go today to
5 sort of finish our task.

6 Do I sense that there's general agreement
7 that this scopes what we have to do?

8 (No response)

9 **DR. ZIEMER:** Now as we look at this list, a
10 number of these items are very straightforward
11 and simply require a sentence or two. To move
12 Item J, for example, and we can get wording
13 that's similar to what we said last time. We
14 don't need to spend a lot of time here, but we'll
15 have one of us work up that wording.

16 Clarify the use of the term "validated,"
17 clarify steps and time line for claimants,
18 clarify use of the word "may." I guess almost
19 everything, one through six, is probably fairly
20 straightforward, a single sentence or two,
21 probably, which means we would focus most of our
22 attention on the three questions.

23 It occurs to me, though, there was an
24 additional question -- maybe Dr. Roessler doesn't
25 wish to raise it, but Gen, didn't you have -- you

1 were going to talk -- or you talked to me about
2 the use of the term "precision and accuracy." Is
3 that something you don't wish to raise, or do
4 wish to raise?

5 **DR. ROESSLER:** I think I have to now.

6 (Laughter)

7 **DR. ROESSLER:** I will raise it, since you
8 brought it up. It's not --

9 **DR. ZIEMER:** Well, I thought maybe you were
10 just being shy.

11 **DR. ROESSLER:** It's not in the rule -- well,
12 it's not in the part we were looking at. It's on
13 page 50978, in the second question that we are
14 going to deal with. And it's the use of the -

15 **DR. ZIEMER:** Part of the question itself, is
16 it not?

17 **DR. ROESSLER:** It's part of the question
18 itself, and it's the word "precision." And I
19 guess before I talked this morning to a number of
20 people, I would have thought that based on
21 Larry's comments that they are going to try and
22 produce the most accurate results possible; that
23 should be accuracy. But now I'm not sure what
24 the word should be. I think perhaps as we deal
25 with that question we should look at the wording

1 on it.

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

3 Wanda.

4 **MS. MUNN:** That was one of the things I
5 addressed in my generalized wording, and what I
6 said was the Board recognizes that if efficient
7 and expeditious consideration of claims is to be
8 made, absolute precision is not possible. And
9 that's, I think, a response to the question they
10 wanted answered, and incorporates the recognition
11 that the further down the precise road you go,
12 the more time and money are being incorporated in
13 the process.

14 **DR. ZIEMER:** So perhaps the issue will
15 emerge in an appropriate way as we word the
16 answer to the question. Okay.

17 Now let me ask how many of you, on your own,
18 prepared sets of wording such as Wanda has done?

19 Wanda, you have some words. Robert, you
20 have some. Gen has some. Three sets of wording,
21 okay.

22 Wanda, did you prepare words for all three
23 questions?

24 **MS. MUNN:** Yes, I did, but I did not number
25 them one, two, three. They're all sort of --

1 **DR. ZIEMER:** 1A, 1B, 1C, I guess.

2 **MS. MUNN:** Well, as Jim pointed out, some of
3 them --

4 **DR. ZIEMER:** Okay. But you've tried to
5 address them all?

6 **MS. MUNN:** Yes.

7 **DR. ZIEMER:** Robert, how about you?

8 **MR. PRESLEY:** Yes.

9 **DR. ZIEMER:** Gen?

10 **DR. ROESSLER:** I mostly have two comments on
11 two, the second question.

12 **DR. ZIEMER:** And -- the first and the
13 second, or --

14 **DR. ROESSLER:** No, just --

15 **DR. ZIEMER:** Oh, just comments on number
16 two, okay. I thought you meant -

17 **DR. ROESSLER:** I couldn't think of really
18 anything to do with the first, other than using
19 part of what we did last time.

20 **DR. ZIEMER:** Okay. Now let me ask the group
21 if you would like to work on these three
22 questions as a committee of the whole, or we can
23 have each individual get their words up for us as
24 straw men to look at, or do you prefer to break
25 into smaller groups?

1 **DR. MELIUS:** I think the committee as a
2 whole would be better.

3 **DR. ZIEMER:** Okay, we can do that.

4 Now I'm trying to see what the most
5 expeditious way to do this would be. I have a -
6 Okay, go ahead. Henry's got a suggestion.

7 **DR. ANDERSON:** I was going to say, since I
8 raised the availability of names, do we want to
9 just leave it kind of generic like this? Or do
10 you want us to propose specific language, because
11 there are some --

12 **DR. ZIEMER:** No, I want some specific
13 language on each of these, and --

14 **DR. ANDERSON:** Because I have some specific
15 correction or additional language that would
16 clarify six that I -

17 **DR. ZIEMER:** Right, If we have that, then
18 we'll do that.

19 Let me suggest the following, and we'll take
20 a -- we're going to take a break. But I'll ask
21 each of those who have prepared something, if we
22 can get it -- is it readable if we photocopied it
23 onto a transparency?

24 **MS. MUNN:** Just barely.

25 **DR. ZIEMER:** Just barely. Well, the

1 alternative would be to take a transparency
2 during the break and have you write on the
3 transparency.

4 **MS. MUNN:** Oh, please, do take this and make
5 a transparency of it.

6 **DR. ZIEMER:** Let me ask Cori -- is Cori
7 still here? Well, we'll take a break and find
8 out during the break, because maybe what we can
9 do is take that, do a blow-up of it and then a
10 transparency, and get it up before us so we can
11 see the words. And if we can do that on the
12 others, either hand-write them onto a
13 transparency, or we'll photocopy them. And then
14 after the break then we can work on the words.

15 Is that agreeable? Okay, let's take a
16 15-minute break.

17 (Whereupon, a recess was taken from
18 9:53 to 10:25 a.m.)

19 - - -

20 **DR. ZIEMER:** I'd like to call us back to
21 order.

22 We're going to work here a little bit in
23 real time. Cori has already typed in some
24 sentences which will be straw men for the general
25 big three questions. We also have some words for

1 the sort of brief sentence ones that we talked
2 about. And I think right now these are being
3 numbered in the order that we had them on the
4 overhead, the first one being the moving of
5 Section J from the background or the preamble of
6 the rule-making, moving that into the body of the
7 rule-making. And those words are being put up
8 there even as we speak.

9 I might ask you to open your books to 50981,
10 Section J, because as I proposed the wording on
11 this it would basically be to move the whole
12 section, which includes the sentence about the
13 public petitioning for changes in the rule-
14 making, as well as the Board's review of proposed
15 changes in the rule-making.

16 The words here now would say that the Board
17 recommends that Section J, concerning changes to
18 scientific elements underlying the dose
19 reconstruction process, be moved to the main body
20 of the rule, and then it should say so as -- the
21 main body of the rule so as to formalize the
22 updating process -- you need to insert a "so"
23 after the word "rule" at the beginning of the
24 line that you're on there, Cori - so as to
25 formalize the updating process.

1 It is actually Section K, how will NIOSH
2 make changes in the scientific elements
3 underlying. It should be Section K.

4 **MS. HOMER:** Instead of J?

5 **DR. ZIEMER:** Instead of J, be moved to the
6 main body of the rule so as to formalize the
7 updating process. And I guess all we really need
8 to say there is the updating process, including
9 the role of the Board, and that'll parallel, or
10 the role of the Advisory Board. We don't have to
11 go through all the details.

12 Should we say Advisory Board?

13 **UNIDENTIFIED:** Yes.

14 **DR. ZIEMER:** Okay.

15 Now, Cori, why don't you go ahead and start
16 working on that second brief one that you have
17 while we look at --

18 **MS. HOMER:** Marie's working on it.

19 **DR. ZIEMER:** Oh, okay. Okay.

20 Let's look at those words. We can just take
21 these -- some of these I think will be fairly
22 simple.

23 Is there any comment on that first one
24 there, just that first sentence? Just the first
25 sentence up there. That's the first

1 recommendation. Nothing to do with the three
2 questions. That's just the moving of that
3 section on updating from the preamble to the body
4 of the rule. It basically codifies the role of
5 the Board in changes.

6 (No response)

7 **DR. ZIEMER:** Can I have a motion that we
8 adopt this as a recommendation?

9 **DR. DEHART:** So moved.

10 **DR. ZIEMER:** Second?

11 **UNIDENTIFIED:** (Inaudible)

12 **DR. ZIEMER:** Formal discussion on this?

13 (No response)

14 **DR. ZIEMER:** Word changes, pro or con?

15 (No response)

16 **DR. ZIEMER:** All in favor, say aye.

17 (Affirmative responses)

18 **DR. ZIEMER:** Opposed?

19 (No response)

20 **DR. ZIEMER:** Now I might add that -- I'm not
21 proposing that we're going to adopt all these as
22 we go. I think some of the simple ones we'll
23 just do, but I want to save particularly our
24 actions on the three questions and so on till
25 after the public comment period today, in

1 fairness to hear other views. Some of these are
2 more sort of minor things in how the rule is
3 written right now.

4 We had the item on clarifying the use of the
5 term "validated." And Roy, did you -- who
6 rewrote that? Did somebody rewrite that?

7 **DR. DEHART:** That was number three.

8 **DR. ZIEMER:** That was number three?

9 **MS. MURRAY:** Just about done.

10 **DR. ZIEMER:** Just about done?

11 What was number two?

12 **MS. HOMER:** (inaudible)

13 **DR. ZIEMER:** I meant number two from our
14 early list. I had on my list that number two was
15 the use of the word "validated."

16 **MR. PRESLEY:** That's right, 82.10(j).

17 **DR. ZIEMER:** Yes.

18 **DR. DEHART:** Do you have the overhead?

19 **DR. ZIEMER:** Yes.

20 **MS. HOMER:** Number two, Section 82.10,
21 paragraph (j), clarify the use of the term
22 "validated" on page 50988.

23 **DR. ANDERSON:** It seems to that what we
24 might want to do is ask -- that might be a good
25 one for a definition, that if they were to define

1 "validated" up front in their list of
2 definitions, then that would tell us what they
3 mean.

4 **DR. ZIEMER:** So possibly something as
5 follows: The Advisory Board requests that the
6 term "validated" be either defined or clarified.

7 **DR. ANDERSON:** Yeah.

8 **DR. ZIEMER:** Let's say "validated" as used
9 in Section 82.10(j).

10 Now let me ask if that captures the idea,
11 because this may be all we need to do on that.
12 Does someone wish to move adoption of that?

13 **MR. PRESLEY:** So moved.

14 **DR. ZIEMER:** Second?

15 **MS. MUNN:** Second.

16 **DR. ZIEMER:** Any discussion?

17 (No response)

18 **DR. ZIEMER:** All in favor, say aye.

19 (Affirmative responses)

20 **DR. ZIEMER:** Any opposed say no.

21 (No response)

22 **DR. ZIEMER:** Carried.

23 The third one had to do with the time line.
24 Is that correct?

25 **MS. HOMER:** Clarify steps and time line for

1 claimants.

2 **DR. ZIEMER:** Right. And Henry, did you have
3 the words on that?

4 **DR. ANDERSON:** No.

5 **DR. ZIEMER:** Who did the time line words?
6 Did anybody?

7 (No response)

8 **DR. ZIEMER:** Okay, we'll come back to that
9 one, then.

10 What we had as number four was the use of
11 the word "may" versus "will." If you'll turn to
12 Section 82.13, and I'd like to ask Ted -- is Ted
13 here? Yes, Ted, you explained that to me, I
14 think, in a satisfactory way. We may be able to
15 drop it. I'd like you to clarify that to the
16 Advisory Board.

17 **MR. KATZ:** Sure, thanks.

18 So the title says, what sources of
19 information may be used for dose reconstruction?
20 And we want that to be inclusive of
21 possibilities, but not binding NIOSH to using all
22 sources under that title in each instance.

23 And then the following sentence, which Dr.
24 Ziemer noted sounds contradictory, it says NIOSH
25 will use the following sources of information for

1 dose reconstructions, but it has the caveat "as
2 necessary," so it in fact isn't binding NIOSH to
3 use all of those sources for each instance.

4 So they're actually, I think, they're
5 consistent and appropriately organized.

6 **DR. ZIEMER:** So I was comfortable with that
7 explanation, and felt we probably could drop
8 this. But I wanted, since we had it on the
9 floor, to see if there are those who wish to keep
10 it, or are you satisfied with what you just heard
11 as the explanation?

12 (No response)

13 **DR. ZIEMER:** Are there any that object to
14 just dropping that one?

15 (No response)

16 **DR. ZIEMER:** Without objection, it will drop
17 from our inventory of comments.

18 Thank you, Ted.

19 We'll allow for those editorial corrections.
20 The intent was clear. Let's see.

21 Pardon me?

22 **MR. PRESLEY:** Bob Presley. We said we were
23 going to drop five. Is that correct?

24 **DR. ZIEMER:** I think the number that I had
25 it here on my list was four. Was it four? Was

1 four on our inventory list, the use of "may" and
2 "will." Okay. We're just dropping that one.

3 I have number five as being the reference to
4 the ICRP models. Might I suggest that on that
5 one, rather than us trying to specify what ICRP
6 models are to be used -- right now, as it appears
7 in here, there would be no restrictions on what
8 ICRP models are used, including the ICRP 2. And
9 I think that's not the intent. The intent is to
10 use current models, but it doesn't say that,
11 either.

12 So perhaps the best thing that we could do
13 right now is to ask NIOSH to clarify in some way
14 the intent and meaning of the phrase "ICRP
15 models," so as to -- without us trying to say
16 what those models are. I know that the intent is
17 to use current models, but current models may
18 change. And how rapidly does NIOSH need to
19 change when a new model comes out is also an
20 issue.

21 I don't think we can solve that today, but
22 perhaps the way to address this is simply to ask
23 NIOSH to clarify their intent on the phrase "use
24 ICRP models."

25 **DR. ANDERSON:** Could we put a modifier in

1 front and say most appropriate, which would --

2 **DR. ZIEMER:** Well, perhaps without us trying
3 to do the wording for them, simply ask the staff
4 to clarify that.

5 Would that -- let me ask either Larry or
6 Jim, is this something that you could clarify the
7 wording? We would simply ask that that be
8 clarified in the final document.

9 **DR. NETON:** Yes, I think we could do that.

10 **DR. ZIEMER:** So that the recommendation --
11 let's see where we are here. Okay, we'll just
12 pause a minute, because they're inputting some
13 other words for a later comment.

14 **DR. MELIUS:** I wrote up number three and
15 gave it to them, so --

16 **DR. ZIEMER:** Okay, thank you. Number three
17 on the inventory list, yes.

18 **DR. ZIEMER:** Okay. Henry has suggested that
19 the words that just show up there under number
20 one be added to our original number one that we
21 adopted on the issue of moving Section K into the
22 body. Is that correct, Henry? This is simply
23 some words of amplification on the
24 recommendation.

25 (Reading) The rule does an admirable job of

1 providing an objective process for conducting
2 dose reconstruction. However, the assessment of
3 the adequacy of the exposure information will
4 involve professional judgment; thus some
5 subjectivity. The Board plays an important role
6 through its review of such decisions on dose
7 reconstructions, and that role needs to be
8 included in the rule.

9 **DR. ANDERSON:** I just thought we needed to
10 have a strong justification. Otherwise it sounds
11 very self-serving.

12 **DR. ZIEMER:** So Henry, you are making this
13 as a motion to add this to what we adopted for
14 the number one comment?

15 **DR. ANDERSON:** Yes.

16 **DR. ZIEMER:** Is there a second?

17 **DR. ROESSLER:** Second.

18 **DR. ZIEMER:** Any discussion?

19 (No response)

20 **DR. ZIEMER:** All in favor of this addition
21 to number one, say aye.

22 (Affirmative responses)

23 **DR. ZIEMER:** Any opposed, say no.

24 (No response)

25 **DR. ZIEMER:** Thank you.

1 Now the one that's going up there now is
2 number three, I believe, the time line issue.

3 Is this the one, Jim, that you prepared?

4 **DR. MELIUS:** Yes.

5 **DR. ZIEMER:** So what's being typed there
6 would be preceded by a pound sign three from our
7 inventory list.

8 (Reading) The Board recommends that NIOSH
9 clarify 82(m), (n), (o) in regards to the time
10 line for the claimants or representative of the
11 claimants to provide information to NIOSH as to -
12 -

13 **DR. MELIUS:** And to sign or submit.

14 **DR. ZIEMER:** And to sign or -- yeah, rather
15 than as. And to sign or submit form OCAS-1.

16 So while that's being typed before you, turn
17 to page 50988, right-hand column, and there are
18 the Sections (m), (n) and (o).

19 So the words that Jim has proposed here now:

20 (Reading) The Board recommends that NIOSH
21 clarify 82.10(m), (n), (o) in regards to the time
22 line for the claimants or representative of the
23 claimants -- should that be representatives?

24 **UNIDENTIFIED:** Claimants or their
25 representatives --

1 **DR. ZIEMER:** -- of the claimants -- that
2 could be editorial -- to provide information to
3 NIOSH and to sign or submit form OCAS-1. NIOSH
4 should ensure that the claimants or
5 representatives of the claimants have adequate
6 time to obtain and submit additional information
7 to NIOSH.

8 That's the proposed wording. Was that a
9 motion, Jim, to -

10 **DR. MELIUS:** Yes.

11 **DR. ZIEMER:** -- to include that?

12 Is there a second?

13 **MR. ESPINOSA:** Second.

14 **DR. ZIEMER:** And seconded.

15 Let me ask -- you haven't said anything
16 other than clarify. Is there an issue on the 60-
17 day, or do you think this will -- the
18 clarification that you're asking for will address
19 the 60-day issue?

20 **DR. MELIUS:** (inaudible) the 60 days.
21 Remember, the 60 days is (inaudible) how you
22 interpret -

23 **MS. NEWSOM:** Would you use your mike,
24 please?

25 **DR. MELIUS:** Sorry. It's as much how you

1 interpret (m), (n), and (o), and Ted and I
2 disagree on some of those paragraphs, but I think
3 it's just a matter of clarification.

4 **DR. ZIEMER:** So this would at least point
5 out that there's some degree of ambiguity there
6 that needs to be looked at.

7 Further discussion?

8 (No response)

9 **DR. ZIEMER:** Are you ready to act on motion
10 to adopt this recommendation?

11 Yes, Wanda.

12 **MS. MUNN:** One minor comment. When we were
13 talking about it originally, we said we wanted
14 clarification of the steps and time line. Do we
15 want to include --

16 **DR. ZIEMER:** Yes, I have that same wording
17 in my notes.

18 Jim and the seconder, do you object to
19 adding the word "steps?"

20 **DR. MELIUS:** No.

21 **DR. ZIEMER:** The steps and time line in line
22 one?

23 **DR. MELIUS:** I probably said it yesterday
24 and forgot, but --

25 **DR. ZIEMER:** That's the one you forgot, yes.

1 Steps and time line. And an editorial change,
2 let's say again the Advisory Board at the
3 beginning of the sentence.

4 Without objection, this is the motion, then.

5 **DR. MELIUS:** Could I -- if we're
6 editorializing, actually the wording, I think,
7 used in the regulation is "authorized
8 representative of the claimant," is the --

9 **DR. ZIEMER:** So noted. A friendly editorial
10 amendment, without objection, will be included.

11 Are we prepared now to act on this
12 recommendation?

13 All those in favor will say aye.

14 (Affirmative responses)

15 **DR. ZIEMER:** All opposed.

16 (No response)

17 **DR. ZIEMER:** Eyes above the nose, as they
18 say. That didn't work, did it?

19 **MR. ELLIOTT:** I laughed.

20 **DR. ZIEMER:** I was just seeing if
21 everybody's awake.

22 **DR. MELIUS:** And by the next meeting, your
23 staff better start laughing when you laugh,
24 right?

25 (Laughter)

1 **DR. MELIUS:** Speak to them, Larry.

2 **MR. ELLIOTT:** Point well taken.

3 **DR. ANDERSON:** Cori, did you get my number
4 six?

5 **MS. HOMER:** That's a good question.

6 **MS. MURRAY:** Uh-oh, is that this one
7 (indicating)?

8 (Laughter)

9 **DR. ZIEMER:** We have punts on one, two,
10 three. Number four was dropped. Number five was
11 the ICRP model one. Where is number five?

12 **MS. HOMER:** (inaudible)

13 **DR. ZIEMER:** Okay, thank you. We'll pause
14 for a moment.

15 Okay, we're back to number five on the
16 inventory list, which was Section 82.18. In
17 referring to ICRP models, the Advisory Board --
18 I'll give you some words here -- In referring to
19 ICRP models in Section 82.18 -- start the
20 sentence over.

21 In referring to ICRP models in Section 82.18
22 -- actually, I already don't like this sentence
23 because I know what's going to happen. This is
24 going to end up as a dangling participle.

25 (Laughter)

1 **DR. ZIEMER:** And I want to advise everyone
2 that dangling participles are one thing that I
3 hate. I jump on my graduate students for them
4 all the time, and I can assure you that almost
5 any sentence beginning with I-N-G, including the
6 documents we reviewed yesterday, are full of
7 dangling participles, which someone needs to deal
8 with. So this sentence is going to be changed
9 before I even get it out. We're going to go back
10 to the Advisory Board -- we're going to get rid
11 of the dangling participle before it dangles.

12 **MS. MURRAY:** You can cut and paste later,
13 Cori.

14 **DR. ZIEMER:** Sorry.

15 The Advisory Board recommends that Section
16 82.18 concerning the use of ICRP models be
17 clarified so as to clearly indicate the models
18 that NIOSH intends to use.

19 Now let me ask somebody to move this
20 formally, and we'll get it on the floor here.

21 **DR. ROESSLER:** So moved.

22 **DR. ZIEMER:** Seconded?

23 **MR. PRESLEY:** (inaudible)

24 **DR. ZIEMER:** And seconded.

25 The intent here is -- let me editorialize --

1 the intent here is not to ask them to list the
2 models in the document, but rather to indicate
3 how they decide what models to use. And I think
4 the intent is to use current models, but if we
5 ask them to put the word "current" in, then that
6 locks them into changing every time, immediately
7 when a new model comes out. And there has to be
8 some process by which the use of even new models
9 as they come out is handled.

10 So perhaps we simply ask them to clarify,
11 and I think Jim and Larry have indicated that the
12 might come up with some appropriate words to make
13 sure that everybody understands it's the current
14 models within reason, so to speak. And does this
15 wording cover what we want to say here?

16 And I think Wanda, do you have you hand up?

17 **MS. MUNN:** Yes, I do. In the second line,
18 could we -- don't type anything yet, Cori --
19 could we say indicate which models NIOSH intends
20 to use and the rationale for that choice?

21 **DR. ZIEMER:** I like that. I'll take that as
22 a friendly amendment if the mover and seconder
23 will assume that to be a friendly amendment.

24 **MS. HOMER:** To indicate which?

25 **MS. MUNN:** Which, take out "the," and you

1 can take out "that." Which models NIOSH intends
2 to use, comma --

3 **DR. ZIEMER:** Yes?

4 **DR. ROESSLER:** I thought of suggesting that,
5 too, but then to me "which" is very specific. To
6 me it would mean that they'd have to tell us.

7 **MR. PRESLEY:** That's what I -

8 **DR. ROESSLER:** I think it was better to
9 leave it -- I know what Wanda's saying, but I'm
10 afraid the "which" can be interpreted to mean
11 that they have to tell us the numbers or the
12 exact models.

13 **DR. ZIEMER:** That's not the intent here
14 either, is it, Wanda?

15 **MS. MUNN:** No, it isn't.

16 **DR. ZIEMER:** So that friendly amendment
17 turned out not to be so friendly, then.

18 **MS. MUNN:** That's true. It just screwed up
19 the whole thing.

20 **DR. ZIEMER:** It's rapidly turning to an
21 adversarial amendment.

22 **DR. ROESSLER:** What words did --

23 **MS. MUNN:** We don't want that.

24 **DR. ROESSLER:** What words did you use when
25 you had the dangling participle? I think there

1 were some other words in that section that might
2 have worked better.

3 **DR. ZIEMER:** Well, I don't want to return to
4 that.

5 **DR. ROESSLER:** No, I'm not saying to use the
6 I-N-G word, but on your paper there you had
7 something written after that that might work.

8 **DR. ZIEMER:** Well, I originally on my notes
9 had that we want them to specify that the most
10 current models are to be used, but I don't think
11 we want to specify here the exact wording of
12 this. I think the intent here would be to ask
13 them to word it in such a way that it's clear
14 that they are using current models, and have a
15 framework for incorporating new models as they
16 come into play.

17 **MS. MURRAY:** Could you just say current
18 models?

19 **DR. DEHART:** Aren't the people who are going
20 to answer that here, hearing our comments?

21 **MR. ELLIOTT:** This is sufficient.

22 **DR. ZIEMER:** Yeah, if this is sufficient, it
23 was simply to ask them to clarify. And part of
24 their clarification may be we're not going to
25 tell you the model numbers, but we're going to

1 tell you more the intent and the process.

2 So maybe we're all right as we -- did the
3 mover and seconder agree that this is what they
4 really were intending to move and second? Yes?

5 **MR. PRESLEY:** That's fine.

6 **DR. ZIEMER:** We finally got their motion out
7 of them.

8 Ted, now a comment.

9 **MR. KATZ:** Is it all right, Dr. Ziemer, if I
10 just make a comment?

11 I'm a little bit concerned about this
12 language, because the public might read this --
13 despite the fact that we know what you're driving
14 at here, the public might read this as the Board
15 saying, in effect, we want you to specify the
16 models. And that could be a problem, then, in
17 terms of producing a final rule, and maybe that
18 rule being challenged if someone in the public
19 then says, well, NIOSH didn't do what its
20 Advisory Board said.

21 **DR. ZIEMER:** Thank you. It's certainly not
22 our intent to do that, so we may need to think of
23 some words to modify this to make it clear that
24 we simply want to -- we want to indicate -- want
25 them to indicate how they will decide what models

1 to use, I guess is the issue, right?

2 Jim, can you help us with some words here?

3 **DR. MELIUS:** Well, I don't have wording, but
4 I think what we want to do -- we have in our
5 first recommendation a process for how they would
6 change to a new model.

7 **DR. ZIEMER:** Yes.

8 **DR. MELIUS:** It would come back to the Board
9 and go through that process. So I think we want
10 to just indicate for this current -- at the
11 current time, presently, what models they will be
12 using. I think we want some language just to
13 indicate that they should be scientifically --
14 reflect current state of the science in this
15 area.

16 **DR. ZIEMER:** So you're suggesting that this
17 might even go so far as to say so as to clearly
18 indicate that they intend to use current models
19 at the time that the rule is adopted?

20 **DR. MELIUS:** Yeah.

21 **DR. ZIEMER:** Because there is a provision
22 for changing the models.

23 **DR. MELIUS:** Right. And I don't think --
24 are there any models that are just very recently
25 adopted, that there'd be some concern or question

1 about?

2 **DR. ZIEMER:** Ted, can you answer that?

3 **MR. KATZ:** We don't think so. I think
4 that'll be all right.

5 **UNIDENTIFIED:** That's what you're using
6 (inaudible).

7 **DR. ANDERSON:** Is there any risk that in the
8 future ICRP won't be the ultimate source of
9 models, and that there might well be a -

10 **DR. ZIEMER:** Well, that --

11 **DR. ANDERSON:** I mean, this ties them into -
12 - it's you're going to use ICRP.

13 **DR. ZIEMER:** Well, they're currently tied
14 into that here anyway, and that's pretty
15 problematical. I don't know that we should try
16 to deal with that.

17 **DR. MELIUS:** Yeah, but again, the process --

18 **DR. ZIEMER:** Right.

19 **DR. MELIUS:** -- would allow that to be
20 (inaudible) -

21 **DR. ZIEMER:** Right. I think it's a good
22 suggestion.

23 Why don't you just give us a motion to amend
24 here, and what words would you put in there to
25 indicate that NIOSH -- to clearly indicate that

1 NIOSH intends to use current models at the time
2 of the adoption of the rule-making, or something
3 like that?

4 **DR. MELIUS:** Yeah, I think just to clearly
5 indicate that NIOSH intends to use current ICRP
6 models.

7 **DR. ZIEMER:** Do we need to say at the time
8 of the adoption of the rule-making, or --

9 **DR. MELIUS:** Okay.

10 **DR. ZIEMER:** No?

11 **DR. MELIUS:** I don't think so, but we've --
12 I don't have any objections to that.

13 **DR. ZIEMER:** Let's just formalize this.
14 This is a motion to amend.

15 Is there a second?

16 **DR. DEHART:** Second.

17 **DR. ZIEMER:** Any discussion?

18 (No response)

19 **DR. ZIEMER:** All in favor to amend, say aye.

20 (Affirmative responses)

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

22 (No response)

23 **DR. ZIEMER:** Now the motion before us is
24 number five, as written. Okay, let's vote.

25 All in favor, say aye.

1 (Affirmative responses)

2 **DR. ZIEMER:** Any opposed?

3 (No response)

4 **DR. ZIEMER:** The motion carries. Number
5 five is adopted.

6 Let's see, four was dropped. Can we move --
7 where you have number one there, where you say
8 add, can you do a cut and paste now and stick
9 that up with the original part of number one so
10 we can see that?

11 Now you can move that number one up to where
12 the original one was. Pound sign one, right.
13 Pound sign one at the beginning. We're sort of
14 distinguishing between the three questions in the
15 inventory numbers here. And then you can drop
16 the word "add" there at the end, then.

17 This has already been adopted. We just
18 wanted to get it all together. Did we pass the
19 second -- yeah, I thought we did. But I think
20 there was -- somebody wanted to make a comment.

21 Ted, did you want to make a comment on this?

22 **MR. KATZ:** I would, thank you. You may want
23 to consider the statement in there, all methods
24 proposed -- this is in the second paragraph --
25 will result in significant bias in favor of the

1 claimant. And -

2 **DR. ZIEMER:** Wait, hold on. We're not there
3 yet, Ted.

4 **MR. KATZ:** Okay.

5 **DR. ZIEMER:** That's a separate item. That's
6 a separate item.

7 **MR. KATZ:** Sorry.

8 **DR. ZIEMER:** Did you have a comment on just
9 that first paragraph? Okay, that's fine.

10 One, two, three; four was dropped; five
11 we've done. Six is the Privacy Act issue and the
12 researchers. And Henry, is this your --

13 **DR. ANDERSON:** Yeah.

14 **DR. ZIEMER:** Okay. Henry is making a motion
15 that we say except as provided under -- this
16 would say the Advisory Board recommends that
17 Section 82.28(b) be revised so as to state that;
18 and then the words would be, quote, "except as
19 provided for under the Privacy Act, researchers
20 will not receive names," et cetera.

21 So that's your motion?

22 **DR. ANDERSON:** Yes.

23 **DR. ZIEMER:** Is there a second?

24 **MR. ESPINOSA:** Second.

25 **DR. ZIEMER:** Now wasn't there already a

1 Privacy Act statement in there?

2 **DR. ANDERSON:** It starts in there, yes.

3 **DR. ZIEMER:** So are you suggesting that
4 paragraph (b) be replaced by these words, or how
5 would the --

6 **DR. ANDERSON:** No, it's the end. It's the
7 second -- it's the last sentence. You could
8 delete --

9 **DR. ZIEMER:** Okay. It repeats the Privacy
10 Act issue, or what?

11 **DR. ANDERSON:** Yes, right. And my
12 understanding was that NIOSH wanted to make it
13 clear that except for the Privacy Act,
14 categorically no names would be released.

15 **DR. ZIEMER:** Okay. So basically this
16 motion, if adopted, does not restrict the
17 releasing of names, but only says it will only be
18 done within the provisions of the Privacy Act.

19 **DR. ANDERSON:** Yes.

20 **DR. ZIEMER:** Rather than the complete
21 exclusion.

22 **DR. ANDERSON:** Yeah.

23 **DR. ZIEMER:** I think that was the intent,
24 right? Okay.

25 **DR. MELIUS:** Can I offer just a friendly

1 amendment to clarify that? That we recommend
2 that the last sentence of Section -

3 **DR. ANDERSON:** Yes.

4 **DR. MELIUS:** -- 82.28 be --

5 **DR. ZIEMER:** Thank you. That, without
6 objection, will be added.

7 **MS. HOMER:** That this will be added to the
8 last sentence?

9 **DR. ANDERSON:** Yes.

10 **DR. ZIEMER:** Section -- put it after the
11 (b), I think, Cori, Section 82.28(b) --

12 **DR. MELIUS:** The last sentence.

13 **DR. ZIEMER:** -- last sentence be revised so
14 as to state. Okay.

15 This now is the motion before us. Any other
16 discussion?

17 Wanda, thank you.

18 **MS. MUNN:** I guess I have some concern that
19 there are other identifying demographic items
20 which would identify individuals other than just
21 their names. For example, anybody who knows my
22 Social Security number can find out who I am.
23 And so I would suggest that possibly the
24 insertion of "or other clearly identifiable data"
25 --

1 **DR. ZIEMER:** Before we take that as a formal
2 motion, let me ask you a question. Does the
3 Privacy Act itself cover that kind of issue so
4 that this broad statement takes care of that?

5 Jim, and then Larry.

6 **DR. MELIUS:** I think the preceding sentence
7 actually addresses Wanda's concerns. The problem
8 is that it wasn't clear that the last sentence
9 was -- that names were specifically covered, but
10 other information, as I read that sentence, would
11 be; other identifying information would be
12 covered. So I think the preceding sentence takes
13 care of your concern.

14 **MR. ELLIOTT:** The Privacy Act does address
15 confidential information.

16 **DR. ZIEMER:** Including --

17 **MR. ELLIOTT:** Not only name, Social Security
18 number, any personal identifiable information
19 like job title. If that's the only job title in
20 that plant, we could not use that. So it
21 addresses all of that.

22 **DR. ZIEMER:** Thank you.

23 Further comments or -- yes, Henry.

24 **DR. ANDERSON:** Yeah, my druthers would be to
25 have deleted that sentence, because I think it's

1 all covered in the first part. And I would
2 agree, I think one could interpret this to mean
3 that everything else would be fair game, although
4 I think legally you would be bound by the -- if
5 you said it was confidential, or identify --
6 personal -- we could say researchers will not
7 receive names of claimants or covered employees
8 or other identifying information. I don't know.

9 **MR. ELLIOTT:** If I could offer a suggestion
10 and a comment here. We understand what your
11 concern is with this language. If you simply
12 just ask us to clarify the intent of that
13 passage, we can do so, and we have to do so with
14 guidance from general counsel and the Privacy Act
15 officer, okay?

16 **DR. ANDERSON:** Yeah.

17 **MR. ELLIOTT:** Now this is kind of a tricky
18 entry here, and I need to get clearance and
19 guidance from both of those sources of support.
20 So don't lock me into not adding a sentence you
21 want to see added, because it could go counter to
22 what -

23 **DR. ZIEMER:** Yeah. So what you're saying is
24 that it may be that legally this is not the right
25 sentence anyway to put in there, or there may be

1 a better way of doing it. And the way to get
2 around that, then, would simply be to ask --

3 **DR. ANDERSON:** The last sentence be
4 clarified.

5 **DR. ZIEMER:** -- that this be clarified.

6 **DR. ANDERSON:** As to the intent of it.

7 **MR. ELLIOTT:** That's what you want.

8 **DR. ANDERSON:** Yeah.

9 **DR. ZIEMER:** Do the mover and seconder wish
10 to withdraw that motion and make a substitute
11 motion?

12 **DR. ANDERSON:** Yes, I'll withdraw.

13 **DR. ZIEMER:** The motion has been withdrawn.

14 Do you wish to give us a substitute motion,
15 such as the Advisory Board recommends that
16 Section 82.28(b), last sentence, be clarified?

17 **DR. ANDERSON:** Yes.

18 **MS. HOMER:** Be clarified, period?

19 **DR. ZIEMER:** Be clarified so as to what? Or
20 clarified in regards to -- yes?

21 **DR. MELIUS:** In regards to the coverage of
22 the Privacy Act for that information?

23 **MR. ELLIOTT:** That's fine.

24 **DR. ANDERSON:** Yeah, that's good.

25 **DR. ZIEMER:** Okay, who's moving that?

1 Henry, that's your new motion, right?

2 **DR. ANDERSON:** I will, yes.

3 **DR. ZIEMER:** Thank you. Who seconded
4 Henry's new motion?

5 **MR. ESPINOSA:** Second.

6 **DR. ZIEMER:** Okay. In just a moment you'll
7 get to see what your motion is.

8 **DR. ANDERSON:** That got it. That's it.

9 **DR. ZIEMER:** Thank you.

10 Any discussion on this?

11 (No response)

12 **DR. ZIEMER:** All in favor, say aye.

13 (Affirmative responses)

14 **DR. ZIEMER:** Any opposed?

15 (No response)

16 **DR. ZIEMER:** Motion carries. Thank you.

17 Now have we covered all the inventory items?

18 **DR. ANDERSON:** I think so.

19 **DR. ZIEMER:** With the exclusion of the three
20 broad questions? Okay.

21 Now I'd like to have us get the words of the
22 -- the proposed words of the three broad
23 questions before us. I think the word "interim"
24 there, does that start number one?

25 **MS. HOMER:** Yes, it does. Well, it starts

1 what Ms. Wunn -- Ms. Munn submitted to me.
2 Excuse me.

3 **DR. ZIEMER:** It's almost easier to say
4 Wanda, isn't it?

5 **MS. HOMER:** Wanda.

6 **DR. ZIEMER:** Yes, Wanda, please. Could you
7 repeat what you just said?

8 **MS. MUNN:** Those two paragraphs were
9 intended to cover all three of the issues that
10 were placed before us.

11 **DR. ZIEMER:** Right, thank you for clarifying
12 that.

13 In a sense, Wanda has integrated her
14 comments to cover the three paragraphs. We need
15 to determine whether or not we should simply say
16 that we're commenting on all three with sort of a
17 set of statements, or whether we will in fact at
18 some point break them back down into three
19 pieces. But we're looking at, I think, three
20 paragraphs -- for the moment, let's put a one
21 there, if we might, just -- so we have one, which
22 right now is in two paragraphs; and then the
23 number two there is the next part.

24 So that's what we would have before us as a
25 sort of starting points as general comments on

1 the three questions.

2 **MS. MUNN:** Actually, I believe we have
3 number three also, don't we? I think that's --

4 **DR. ZIEMER:** Is there a --

5 **MS. MUNN:** Someone wrote --

6 **DR. ZIEMER:** Well, that number three is --
7 oh, yes. Okay, right. Okay. Now we have --
8 right now we do have those three general sets of
9 comments.

10 Now just for procedural matters let me just
11 ask someone to move those three, and we'll just
12 have them before us, and then we'll discuss them.

13 **DR. DEHART:** I move.

14 **DR. ZIEMER:** And we're not going to -- as I
15 said, I'm going to specify that we not vote on
16 these. We may not vote on them till after lunch,
17 even. But I want to get them out here, discuss
18 them.

19 I also want to have opportunity for public
20 comment not only on these items, but just other
21 comments that might be -- again, reminding
22 members of the public if you do wish to comment
23 and haven't done so, please get your name on the
24 comment roster. We're actually scheduled for
25 public comment, I think, in 15 minutes.

1 So we have a little time for some
2 preliminary discussion here.

3 **DR. DEHART:** Are you wanting a motion?

4 **DR. ZIEMER:** Yes.

5 **DR. DEHART:** I would propose the motion.

6 **DR. ZIEMER:** Okay.

7 **MS. MUNN:** Second.

8 **DR. ZIEMER:** Motion to adopt these four
9 paragraphs. Is there a second?

10 **MS. MUNN:** Second.

11 **DR. ZIEMER:** Okay. Now discussion. And for
12 convenience, you might want to just talk about
13 them a paragraph at a time, although realizing
14 there's a sense in which there's some integration
15 here it may not be fully possible.

16 Comments? Roy, please.

17 **DR. DEHART:** I don't know whether it's
18 appropriate to try to incorporate a single answer
19 to the three questions, but I like the concept of
20 doing that. And in fact, item number three
21 listed there is appropriately covered by the
22 second paragraph.

23 **MS. NEWSOM:** Dr. Ziemer, might I suggest you
24 read those into the record?

25 **DR. ZIEMER:** Okay, read them into the

1 record. Let me ask the officer of the Board, the
2 Federal officer, to read them into the record.
3 New title.

4 **MR. ELLIOTT:** Okay.

5 **DR. ZIEMER:** I was trying to think of that
6 official title, but I knew you were a Fed and I
7 knew you were some kind of an officer, so --

8 **MR. ELLIOTT:** You can call me whatever you
9 wish to call me.

10 (Reading) Number one, interim proposed rule
11 42 CFR Part 82 makes appropriate use of current
12 science in reconstruction of radiation dose
13 scenarios to the extent practicable. The Board
14 recognizes that if the efficient and expeditious
15 consideration of claims is to be made, absolute
16 precision is not possible. All methods proposed
17 will result in significant bias in favor of the
18 claimant, and in that regard are consistently
19 conservative.

20 The process for involving the claimant is
21 fair and provides multiple opportunities for
22 interaction with the involved agencies. Indeed,
23 in cases where acceptably dependable exposure
24 data do not exist, the claimant or claimant
25 family may be the only source available to

1 provide information that could form the basis for
2 dose reconstruction. This circumstance
3 automatically injects a high but unavoidable
4 level of uncertainty into the calculation.
5 However, we view the proposed methods for
6 addressing these cases to be as equitable as
7 reasonably achievable at this time.

8 Number two, the interim rule outlining
9 methods for radiation dose reconstruction uses a
10 number of innovative, scientifically sound, and
11 implementable techniques which make the dose
12 reconstruction process efficient without the loss
13 of proper decision-making information.

14 Number three, the Board agrees that the
15 interim rule implements an appropriate process to
16 involve the claimant, from the formal claims
17 application to interview to feedback on the
18 specific dose reconstruction.

19 **DR. ZIEMER:** Thank you. So this is the
20 motion before us.

21 It occurs to me that we have the makings of
22 a new acronym here, AERA, As Equitable as
23 Reasonably Achievable. Why not.

24 (Laughter)

25 **DR. ZIEMER:** Okay, let's have discussion.

1 Is implementable not a word? Why is that under -
2 -

3 **MS. HOMER:** It doesn't recognize it.

4 **DR. ZIEMER:** It doesn't recognize it as a
5 word. Okay.

6 **DR. ROESSLER:** It doesn't recognize NIOSH,
7 either. So what?

8 (Laughter)

9 **DR. ZIEMER:** Jim, did you have a comment?

10 **DR. MELIUS:** Yeah. I object and don't
11 believe that the third sentence of the first
12 paragraph is accurate. I don't believe that all
13 methods result in significant bias in favor of
14 the claimant and et cetera. I think there may be
15 some that are -- I guess I don't like the term
16 "bias," but depending on how it's defined, but I
17 think there are some parts of the methods that
18 are conservative, but certainly not all of them
19 are. So I would actually propose striking that
20 sentence. I don't believe it's necessary to
21 answer certainly the first question.

22 I also object to the -- it really it starts
23 with the third sentence of the second paragraph,
24 which is also the last sentence. I don't believe
25 that using a claimant or claimant family as a

1 source of information automatically injects a
2 high level of uncertainty. An easy example of
3 that would be that the claimant or claimant's
4 family points out that John Doe worked with Bob
5 Smith, and that that then leads NIOSH to look at
6 John -- look at Mr. Smith's exposure records and
7 use them to reconstruct a dose estimate for John
8 Doe. So I think there's a lot of circumstances
9 there where that would not automatically have a
10 high level of uncertainty. And again, I don't
11 think that that section is necessary here.

12 **DR. ROESSLER:** I'd like to agree with Jim on
13 the first point in particular. And I think one
14 way to get rid of what I think are two
15 objections. The "all methods" -- this is in the
16 third sentence in the first paragraph there --
17 that "all methods" part and the significant bias.
18 I really don't like the word "bias" in here,
19 because it has a scientific meaning and it has a
20 kind of a general meaning. So I think his
21 suggestion to just delete the paragraph might
22 work. Or if not, we can change some of the words
23 -- sentence, that last sentence.

24 **DR. ZIEMER:** Let me ask the Board at this
25 time, do you wish the Chair to entertain specific

1 motions to change this, or do you prefer to have
2 sort of a general discussion on all these points
3 and then do changes all at once?

4 **DR. DEHART:** Prefer a general discussion.

5 **DR. ZIEMER:** First, and just leave the words
6 for the moment, and then ask for formal motions
7 for amendments? Okay.

8 Is that agreeable, and we'll come back and -
9 -

10 **DR. MELIUS:** Yeah.

11 **DR. ZIEMER:** Okay, sort of get general
12 comments first, and then we can entertain
13 changes.

14 **MR. PRESLEY:** Bob Presley.

15 **DR. ZIEMER:** Bob.

16 **MR. PRESLEY:** In the first sentence up
17 there, would you want to say scientific
18 technologies in reconstruction? It's just
19 wordsmithing, but it puts the words "science" and
20 "technology" there. That's just a thought.

21 **DR. ZIEMER:** Thank you. Keep that thought.
22 I believe the reason that was used is because
23 that's the terminology used in the question. The
24 specific question is does the interim rule make
25 appropriate use of current science, and I believe

1 that was why the word is used. That does not
2 preclude us from saying current science and
3 technology or something, but I believe that's the
4 reason.

5 Okay, other comments?

6 **DR. MELIUS:** This is more in terms of an
7 additional subject that should be discussed,
8 though it would fit to some extent in the second
9 paragraph that's up there under number one.

10 And again, going to the second sentence,
11 indeed, where cases where acceptably dependable
12 exposure data do not exist, I would like to add
13 some section there, as I mentioned before, where
14 we -- I have concerns about the ability of the
15 method to, or I guess the lack of clarification
16 on the part of NIOSH in these current regulations
17 and procedures, on how they will deal with the
18 situation where there is limited information
19 available and their ability to accurately
20 reconstruct the dose. And then again, this gets
21 into the issue of the Special Exposure Cohorts.

22 And I would be in favor of sort of working
23 from that point there, the start of that second
24 sentence, to talk about some of the uncertainties
25 and difficulties in that area. I think without

1 necessarily focusing on the claimant or the
2 claimant family as being the source of some of
3 these issues, but rather that it's a general
4 issue that the Board and NIOSH have to wrestle
5 with in terms of doing these dose
6 reconstructions, and that there's a limited
7 ability to do that.

8 At some point NIOSH will not be able to do
9 that, and we're presuming that the Special
10 Exposure Cohort provisions will step in at that
11 point, but we really haven't seen that yet.

12 **DR. ZIEMER:** Thank you for those comments.
13 And Jim, perhaps we might consider adding a
14 couple of sentences that might be developed over
15 lunch that could -- rather than try to do that
16 right here as we sit. It's a good idea, and
17 maybe get a straw man couple of sentences, which
18 if you would be willing to think about that.

19 **DR. MELIUS:** If it can fit on a small
20 napkin, we'll --

21 **DR. ZIEMER:** Right, thank you. We'll limit
22 the size of the napkins.

23 Wanda.

24 **MS. MUNN:** The author would like to suggest
25 a potential change for that third sentence of the

1 first paragraph that was objected to. Would it
2 be acceptable to say the methods proposed tend to
3 favor the claimant, and in that regard are
4 consistently conservative? Would that be
5 acceptable?

6 **DR. ZIEMER:** You're asking the group in
7 general?

8 **MS. MUNN:** Yes.

9 **DR. ZIEMER:** And again, without doing
10 revisions at the moment, get that thought down,
11 and then we can come back. And maybe others want
12 to think about that for a little bit, as well.

13 **DR. ANDERSON:** Yeah, instead of the
14 consistently conservative, I'd probably use are
15 consistent with an occupational illness
16 compensation program, or the concept, something
17 like that. Because that's in the question, and I
18 think the idea here is the intent of the law.
19 This is consistent with that.

20 **DR. ZIEMER:** Okay. Keep that, Henry. Keep
21 that ready.

22 Other comments on any of the paragraphs?
23 Yes, Gen.

24 **DR. ROESSLER:** I'm not clear what we're
25 doing. Are we looking at number one as being the

1 answer on all three? Or are we considering all
2 three steps now with number two and number three
3 specifically answering questions two and three?

4 **DR. ZIEMER:** Well, I think as was indicated
5 earlier, there's a sense in which perhaps the
6 first two paragraphs sort of answer all three, so
7 right now it's not fully separated out. And it
8 may be, depending on how we modify and so on,
9 that we will just have a set of comments that
10 aren't necessarily one, two, and three, but we
11 say that in response to the three questions we
12 have the following comments, and we don't
13 necessarily say they're one to one. That's a
14 possibility.

15 I think Wanda, who's the original composer
16 of the first two paragraphs, has indicated that
17 she has integrated her comments in a sense that
18 they sort of overlap, as I understood it.

19 Wanda, is that not correct?

20 **MS. MUNN:** (Nods head)

21 **DR. ZIEMER:** Let's not look at these at the
22 moment as being in one-to-one correspondence with
23 the three questions in the NIOSH document.

24 Are there other comments at this point?

25 (No response)

1 **DR. ZIEMER:** If there are not, I'm going to
2 declare a recess on our deliberations on this,
3 without objection. We are not tabling it, but
4 are simply -- will come back. We want to have
5 opportunity for public comment on this or other
6 matters before the lunch hour, have an
7 opportunity for you to give further thought to
8 these words during the lunch hour. And then my
9 proposal would be that we come back, either with
10 specific modifications or actions, right after
11 lunch.

12 We have no sign-ups. Let me just ask if
13 there are any comments from the public.

14 Yes, please. Richard, if you would use the
15 front mike, and it will be easier for everyone.

16 **MR. MILLER:** Hi, it's Richard Miller.

17 I just have one question. As I was reading
18 your discussion, what is the plan for -- in these
19 rules and as the committee looks at them, if you
20 have a situation where DOE has calculated a dose,
21 lo and behold, and the estimate that they come up
22 with that may be in the employee's record winds
23 up being higher based on the methods that the DOE
24 used than the methods that are applied through
25 the NIOSH dose reconstruction process, will you

1 use the NIOSH outcome or the DOE outcome in that
2 circumstance?

3 **DR. ZIEMER:** I think we'll have to have the
4 staff answer that. But before they do, let's
5 also recognize that the DOE number will be a
6 point number. I think the NIOSH number's going
7 to be a distribution with a mean and several
8 standard deviations. And I guess your question
9 would be what if that 95 percent number is still,
10 say, less than the DOE number?

11 **MR. MILLER:** Right, if you wind up --

12 **DR. ZIEMER:** Point number?

13 **MR. MILLER:** Right, if you wind up -- if 99
14 (sic) percent is what's used as the upper
15 confidence limit, and you wind up with a delta
16 between that and what DOE came up with as their
17 estimate.

18 **DR. ZIEMER:** Yes. And here's Jim to -- Jim
19 Neton to answer that.

20 **DR. NETON:** It's our intent that we would
21 use our estimate, not the Department of Energy
22 estimate, given the fact -- and I think you're
23 alluding to a scenario where we would actually
24 not use this efficiency process, and we would
25 drop out and have to do a complete dose

1 reconstruction on the individual rather than do
2 these conservative estimates at the two ends.
3 And if we got to that point, we would use our
4 estimate, which would be not a point estimate as
5 the Department of Energy uses, but it would be an
6 estimate with an uncertainty distribution about
7 it.

8 Also, it is unlikely that there will be a
9 one-to-one correspondence, because the Department
10 of Energy typically only from the internal dose
11 perspective calculates effective dose equivalent.
12 They don't normally calculate -- well, they will
13 calculate the dose to the highest exposed organ.
14 For instance, many of the organs that we're
15 calculating doses for are not estimated doses in
16 the Department of Energy system.

17 Also, when the IREP program runs, it uses
18 equivalent dose, not effective dose. And then
19 the radiation weighting factors that are applied
20 are applied as distributions within the IREP
21 program, which adds another level of uncertainty
22 to the estimate, thereby essentially increasing
23 the claimant's chance or probability of
24 compensation.

25 So there's a number of differences that

1 exist.

2 **MR. MILLER:** Oh, I think that's right, Jim.
3 I just was posing the hypothetical, because you
4 could easily wind up with an annual dose. As you
5 -- and you're correct, the IREP model inserts a
6 dose for each year throughout the latency period
7 up to the point of the cancer.

8 **DR. NETON:** Right.

9 **MR. MILLER:** And so you're introducing a
10 distribution for each year on a, I guess, a
11 committed basis, but not an effective dose basis.

12 **DR. NETON:** Right. And there are no annual
13 internal doses calculated in the Department of
14 Energy system. They are assigned in that year,
15 but they're calculated over a 50-year time
16 period.

17 **MR. MILLER:** That's today. But prior to
18 1990 -- and correct me if I'm wrong -- the
19 Department of Energy never calculated committed
20 dose. And it only was a result both of ICRP --
21 the new ICRP that came out and the DOE's Price-
22 Anderson regulations that were promulgated that
23 required the calculation of committed effective
24 dose.

25 **DR. NETON:** That's correct.

1 **MR. MILLER:** But that's only post-1990, and
2 so I guess how would you deal with that if it was
3 pre-1990?

4 **DR. NETON:** Pre-1990 annual doses were not
5 calculated either for an internal perspective.
6 There were maximum permissible organ burdens or
7 maximum permissible body burden levels that can
8 be related to annual dose or a dose to the organ.
9 But in my experience, most sites did not
10 calculate an annual dose to an internal organ and
11 record it in their records. It's unlikely that
12 you'll find --

13 **MR. MILLER:** Well, we wind up with it with
14 those where you have relatively short biological
15 half-lives. Say you have a biological half life
16 of -- I'm quite familiar with some cases where
17 there'd, say, be 30 days or so, and so you
18 actually could and would have what is effectively
19 an annual dose. I'm just trying to figure out,
20 what do you if there's a conflict between what
21 DOE comes up with as a data set, and what you're
22 saying is there's no possibility of comparison
23 between the two?

24 **DR. NETON:** Right. Even if there were a
25 situation where DOE would have a higher annual

1 dose than we were putting into our IREP input,
2 it's not intuitively obvious to me that the
3 person would be better served using the
4 distribution that we applied to the dose that had
5 a lower central tendency estimate than the point
6 estimate that the Department of Energy provided.
7 You understand what I'm saying?

8 **MR. MILLER:** Oh, I certainly understand it.
9 I'm just asking about what happens if you --

10 **DR. NETON:** Again, the short answer is we
11 would use our approach and not the Department of
12 Energy's.

13 **MR. MILLER:** That's the answer. Okay, thank
14 you.

15 **DR. NETON:** I probably should have said
16 that.

17 **DR. ZIEMER:** Thank you.

18 Are there any other members of the public
19 that wish to comment?

20 (No response)

21 **DR. ZIEMER:** Jim, on the board.

22 **DR. MELIUS:** I have a procedural issue. I
23 have done my wording, and I can give it to Cori
24 now. I don't know if you want to try to break
25 for lunch now and come back, or do we want to --

1 **DR. ZIEMER:** I think we -- I wasn't sure
2 what we would have in the way of public comment,
3 so we had allowed on the calendar or on the
4 agenda 30 minutes. Obviously we have time, and
5 we can proceed. I'm quite willing that we
6 proceed. I think others are interested in
7 pushing ahead.

8 While that wording -- is this wording for a
9 modification here?

10 **DR. MELIUS:** Yeah, and actually fits -

11 **DR. ZIEMER:** Before she inserts that, would
12 you move to amend, then?

13 **DR. MELIUS:** Yeah, I would move to amend.

14 **DR. ZIEMER:** And can you read your amendment
15 to us? Before we insert it, I want to get it on
16 the floor and --

17 **DR. MELIUS:** Okay. This would be inserted
18 right up here -

19 **MS. MURRAY:** You need to be at a microphone,
20 I'm sorry.

21 **DR. MELIUS:** Oh, okay. And this will need
22 some further wordsmithing.

23 (Reading) Indeed, in cases where acceptably
24 dependable personal exposure data do not exist,
25 NIOSH will utilize other sources of information

1 as the basis for dose reconstruction. This
2 approach unavoidably injects additional
3 uncertainty into the calculation of dose.
4 However, we view the proposed methods as being
5 appropriate for the available information.

6 Another paragraph:

7 (Reading) There will be many circumstances
8 where NIOSH will not be able to estimate the dose
9 with sufficient accuracy. These circumstances
10 need to be clarified in the implementation of the
11 regulation and in the Board's review of NIOSH's
12 dose reconstruction work. Groups whose exposure
13 cannot be estimated with sufficient accuracy will
14 be candidates for Special Exposure Cohorts.

15 **DR. ZIEMER:** Is there a second to the
16 motion?

17 **DR. DEHART:** Second.

18 **DR. ZIEMER:** Okay, it's seconded.

19 Now before we act on the motion, I'd like to
20 ask that it be inserted with the redline insert
21 so we keep the old words there for the group to
22 see. And then we'll have an opportunity to
23 discuss it without losing the current words.
24 Because if the amendment were to be defeated, we
25 don't want to have lost what we had. So we're

1 going to do a redline insert.

2 While that's being typed in, let's look
3 ahead here at the agenda. The afternoon agenda
4 calls for a Board working session and discussion
5 of our comments, which is what we're doing now.
6 The only other thing on the afternoon agenda is
7 the public comment period.

8 If in fact we're able to come to closure
9 here -- in fact, let me ask the Board, do you
10 wish to continue working even if we go past 12:00
11 in order to come to closure on these items?

12 **DR. ROESSLER:** Yes.

13 **DR. DEHART:** Yes.

14 **DR. ANDERSON:** Yes.

15 **DR. ROESSLER:** It's Valentine's Day.

16 **DR. ZIEMER:** It's Valentine's Day, okay.

17 Then we will push ahead.

18 Let me ask if there are any members of the
19 public who had planned to make additional
20 comments this afternoon. We don't want to
21 preclude anyone if you were saving up something
22 for this afternoon.

23 (No response)

24 **DR. ZIEMER:** It appears not. So we will
25 then, without objection, push ahead and try to

1 finish, at which time we will have completed our
2 duties for this meeting, and we'll go to our
3 various Valentine's parties, which for some of us
4 will be in the airport, I'm sure.

5 **MS. GADOLA:** While you're working on that, I
6 had a question for Wanda. On the first sentence
7 when she -- at the end you have to the extent
8 practicable. And I'm not sure -- well, I think I
9 do know what you meant by practicable, but I was
10 sort of wondering if other people might
11 misrepresent that.

12 **DR. ZIEMER:** Are you talking about the
13 current wording, or what Wanda was proposing?

14 **MS. GADOLA:** The one that Wanda was
15 proposing. The first sentence in number one
16 where it says that it makes appropriate use of
17 current science in reconstruction of radiation
18 dose scenarios to the extent practicable. My
19 concern was that some of the public might take
20 that as meaning, well, we only did as much as we
21 were easily able to do.

22 And I don't think that was your intent,
23 Wanda.

24 **MS. MUNN:** I thought the second sentence
25 clarified that, Sally.

1 **DR. ZIEMER:** Sally, were you suggesting that
2 that phrase "to the extent practicable" simply be
3 deleted, or --

4 **MS. GADOLA:** I was thinking maybe instead of
5 practicable, you would say possible or allowable.
6 To us it might mean exactly the same thing, but I
7 was just wondering for those in the public that
8 might be viewing this a little bit differently,
9 and they might be criticizing that while saying,
10 well, you could have done a better job if you had
11 looked a little harder.

12 **DR. ZIEMER:** Yeah, and I suppose one of the
13 issues on the use of the word "practicable" is
14 often -- carries with it the balance between what
15 is possible -- I mean, given enough time and
16 money a lot of things are possible. But if you
17 have to spend \$5 million to reconstruct a dose,
18 that is not -- it may be possible but not
19 practical.

20 **MS. MUNN:** Which is why I worded this -

21 **DR. ZIEMER:** So it is the issue of what
22 those words mean. I think the word "possible" is
23 not the right one. What was the other one you
24 used, Sally?

25 **MS. GADOLA:** Allowable.

1 **DR. ZIEMER:** Allowable. Why don't we ponder
2 that for a bit, and we can come back to that.
3 Are you also doing the strike-out on this -- of
4 the words that won't apply if the new thing's
5 adopted?

6 **DR. MELIUS:** Actually, everything below the
7 red down to number two will be struck out, I
8 think.

9 **MS. HOMER:** The red is the new stuff.

10 **DR. ZIEMER:** Yes. I'm asking what is going
11 to be stricken.

12 **DR. MELIUS:** Everything after the red down
13 to number two.

14 **DR. ZIEMER:** Okay. So if you delete that,
15 it'll still stay there with a line through it.
16 Yeah, right.

17 **DR. MELIUS:** Yeah, it's just a little hard
18 to keep the original without --

19 **DR. ZIEMER:** Right. Let me ask the court
20 recorder if -- you did get the original insert
21 words, I believe, correct? Do we need to reread
22 what this would say in the context, or are we
23 okay with what you have? There are some words
24 that are going to be struck, but -- we'll get the
25 final thing there. If we need to reread it,

1 we'll do so.

2 **MS. NEWSOM:** Yeah, I think reread it before
3 you take a vote on it.

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

5 Now let me ask Jim, is this everything that
6 you were including in your motion?

7 **DR. MELIUS:** Correct.

8 **DR. ZIEMER:** It would be to insert the red
9 and strike out the items indicated.

10 **DR. MELIUS:** Right. I just want to clarify,
11 I have utilized some of the wording from what was
12 originally up there, so it's a little bit -- it
13 is confusing, but --

14 **DR. ZIEMER:** Okay, so let's ask Larry to
15 read this as the second paragraph now. Read this
16 for the official record, that paragraph.

17 **MR. ELLIOTT:** (Reading) The process for
18 involving the claimant is fair and provides
19 multiple opportunities for interaction with the
20 involved agencies. Indeed, in the cases where
21 acceptably dependable personal exposure data do
22 not exist, NIOSH will utilize other sources of
23 information as the basis for dose reconstruction.
24 This approach unavoidably injects additional
25 uncertainty into the calculation of dose.

1 However, we view the proper methods as being
2 appropriate for the available information.

3 There will be many circumstances where NIOSH
4 will not be able to estimate the dose with
5 sufficient accuracy. Those circumstances need to
6 be clarified in the implementation of the
7 regulation and in the Board's review of NIOSH's
8 dose reconstruction work. Groups whose exposure
9 cannot be estimated with sufficient accuracy will
10 be candidates for Special Exposure Cohorts.

11 **DR. ZIEMER:** Might I ask, Jim, where it says
12 we may view the proper methods, was it your
13 intent to say proper or proposed methods?

14 **DR. MELIUS:** Proposed.

15 **DR. ZIEMER:** It's -- the word was
16 "proposed," right. So that is not a change, it's
17 simply an editorial -- I think that proposes what
18 you had originally said.

19 **DR. MELIUS:** Yes.

20 **DR. ZIEMER:** The proper methods are always
21 appropriate, but proposed methods may not be.

22 **DR. MELIUS:** And can I just -- one other
23 clarification, that last red sentence, "with
24 sufficient accuracy may be candidates," not "will
25 be candidates."

1 **DR. ZIEMER:** Well, "may be" will capture it,
2 I think, right? We don't know if they should or
3 not, but they may be. So consider that an
4 editorial change.

5 This now is the motion before us. Wanda,
6 comment.

7 **MS. MUNN:** As the maker of the original
8 motion, I am pleased to accept this revision as
9 appropriate.

10 **DR. ZIEMER:** Thank you.

11 We are handling it as an amendment, rather
12 than a friendly amendment since it's rather
13 extensive.

14 Other comments? Larry.

15 **MR. ELLIOTT:** As Ted rightfully whispers
16 into my ear, there's only one Special Exposure
17 Cohort, so that should be singular, not plural.

18 **DR. ZIEMER:** May be candidates for the
19 Special Exposure Cohort. Consider that an
20 editorial change, as opposed to an amendment.

21 Other comments? Henry.

22 **DR. ANDERSON:** Do you want to just address
23 paragraph two? I have a suggested change for the
24 third sentence in paragraph one, I think.

25 **DR. ZIEMER:** Right now the motion before us

1 is this item in red, plus the strikeout. We'll
2 deal with that.

3 Any other comments on this change or
4 modification of paragraph two?

5 (No response)

6 **DR. ZIEMER:** If not, let's vote on the
7 amendment to modify paragraph two as shown.

8 All in favor, say aye.

9 (Affirmative responses)

10 **DR. ZIEMER:** Any opposed?

11 (No response)

12 **DR. ZIEMER:** The motion carries.

13 Now we're back to the original motion, as
14 amended, which is the items one and two and
15 three.

16 Henry, you have something on paragraph one.

17 **DR. ANDERSON:** (Inaudible)

18 **DR. ZIEMER:** This would be -- Henry, would
19 you read for us --

20 **DR. ANDERSON:** I'll read it. What I have -

21 **MS. MURRAY:** At a microphone.

22 **UNIDENTIFIED:** Use the mike.

23 **DR. ZIEMER:** You can use the podium mike.

24 **DR. ANDERSON:** What I propose --

25 **DR. ZIEMER:** This will be inserted as the

1 second to last sentence in the first paragraph.

2 **DR. ANDERSON:** Yes. It would say the
3 methods proposed are intended to result in dose
4 estimates favorable to the claimant, and are
5 appropriate to the occupational illness
6 compensation program envisioned by the EEOICPA --
7 which is the legislation.

8 **DR. ZIEMER:** Okay, that's a motion to amend.
9 Is there a second to that?

10 **MR. ESPINOSA:** Second.

11 **DR. ZIEMER:** Seconded. So we'll do a
12 redline strikeout of those words here.

13 (Comments off the record)

14 **DR. ZIEMER:** A comment from Ted Katz.

15 **MR. KATZ:** This is again largely editorial,
16 but down below in the second paragraph we have
17 right now -- and this is courtesy, in part, from
18 Josh, Department of Energy -- but we say there
19 will be many circumstances where NIOSH will not
20 be able to estimate the dose with sufficient
21 accuracy. Those circumstances -- you can break
22 that into two sentences, for one; and I would
23 just add, you may want to consider also, instead
24 of prejudging whether there's many or some, you
25 might just want to say there will be

1 circumstances, rather than quantifying them.

2 **DR. ZIEMER:** Thank you, Ted. Actually, as I
3 look at this, that is a run-on sentence,
4 editorially. I don't see any dangling
5 participles, but it is a run-on sentence. And
6 without objection, we should insert a period
7 after "accuracy" and then start a new sentence,
8 "Those circumstances."

9 The point on whether there will be many, I
10 suppose is problematical. Is there any objection
11 to leaving out the word "many?" Any objection?

12 (No response)

13 **DR. ZIEMER:** Without objection, that
14 editorial, there will be circumstances where
15 NIOSH will not be able to estimate the dose with
16 sufficient accuracy.

17 Gen.

18 **DR. ROESSLER:** Should the word be "may"
19 instead of "will?" We don't know for sure there
20 will.

21 **DR. ZIEMER:** Well, and certainly "may" is
22 inclusive of both the zero and every other --
23 without objection, that's an editorial change.

24 **DR. MELIUS:** I object.

25 **DR. ZIEMER:** There will be?

1 **DR. MELIUS:** I think there will be. It's
2 hard for me to imagine where there will not be,
3 given all our discussions here.

4 **DR. ZIEMER:** So you'd rather leave it in as
5 -

6 **DR. MELIUS:** The legislation provides for
7 that. There already is a Special Exposure Cohort
8 where that's, I think -

9 **DR. ZIEMER:** Thank you.

10 **DR. MELIUS:** -- what Congress presumed.

11 **DR. ZIEMER:** Okay, so there is objection to
12 that. So the only way we'll change that is by
13 motion. Are you making a motion?

14 **DR. ROESSLER:** (Shakes head)

15 **DR. ZIEMER:** No. Okay. Where there's a
16 will, there's a way. There will be
17 circumstances. Okay.

18 Now is there any strikeout -- this was --

19 **DR. ANDERSON:** Yes, the last sentence.

20 **DR. ZIEMER:** Last sentence gets stricken.
21 So that the proposed amendment is to insert what
22 I said was the second to last sentence, now will
23 become the new last sentence, since we will
24 strike out the previous last sentence. And the
25 new paragraph one reads as follows.

1 **MR. ELLIOTT:** I'm getting better at this,
2 aren't I?

3 (Reading) Number one, interim proposed rule
4 42 CFR Part 82 makes appropriate use of current
5 science in reconstruction of radiation dose
6 scenarios to the extent practicable. The Board
7 recognizes that if the efficient and expeditious
8 considerations of claims is to be made, absolute
9 precision is not possible. The methods proposed
10 are intended to result in dose estimates
11 favorable to the claimants and are appropriate to
12 the occupational illness compensation program
13 envisioned by EEOICPA.

14 **DR. ZIEMER:** That motion is before us.

15 Any comments? Wanda.

16 **MS. MUNN:** My only comment is with respect
17 to the original use of the word "conservative."
18 I think one of the things that is sometimes
19 confusing to readers other than technical readers
20 is what does conservative mean. And in these
21 cases, I believe both the intent and the
22 application of these methods was to be
23 conservative, to give the claimant the benefit of
24 the doubt.

25 So I'm wondering if it's possible to insert

1 that so that the sentence would read the methods
2 proposed are intended to result in dose estimates
3 favorable to the claimants, comma, are
4 conservative, comma, and are appropriate to the
5 -- does that confuse the issue?

6 **DR. ANDERSON:** Yeah, your point is exactly
7 why I did it. Conservative could be cautious, or
8 it could be as you said. That's why I put it in,
9 favorable to the claimant. It's maybe not
10 concise language, but the idea was conservative,
11 as you said, can be interpreted to be -- can
12 either be high or low.

13 **DR. ZIEMER:** Normally probably would be
14 interpreted as being the lower one. But maybe a
15 way to get around this and meet Wanda's comment
16 would be to say that the -- get the sentence here
17 -- dose estimates -- result in conservative dose
18 estimates, parenthesis, favorable to the
19 claimants, parenthesis.

20 **DR. ANDERSON:** Sure.

21 **MS. MUNN:** Yes.

22 **DR. ZIEMER:** That's one way. I'm not
23 proposing that; don't insert it. It's just one
24 way to do it. Roy.

25 **DR. DEHART:** (Inaudible)

1 **DR. ZIEMER:** Use the mike there, Roy.

2 **DR. DEHART:** To get rid of the parenthetical
3 phrase, why not say results in dose estimates
4 that are consistently conservative and favorable
5 to the claimant?

6 **DR. ZIEMER:** Henry, does that -- is that a
7 friendly amendment?

8 **DR. ANDERSON:** I do have somewhat of a
9 problem. Consistently conservative, again,
10 suggests to me low. And it's favorable then to
11 their health, but not necessarily to their --

12 **DR. ZIEMER:** So you're speaking -- you'd
13 rather not have the word "conservative" in there.

14 **DR. ANDERSON:** I just think the
15 "conservative" -- I understand what you're
16 getting at, but I just think that's problematic.

17 **DR. ZIEMER:** Wanda.

18 **MS. MUNN:** And that's exactly why I used it
19 the way I did in the original sentence, that it's
20 intended to favor the claimant, and in that
21 regard is consistently conservative. I wanted to
22 tie the word "conservative" to the "favorable to
23 the claimant."

24 **DR. ZIEMER:** Other comments? Gen.

25 **DR. ROESSLER:** I tend to go along with

1 Henry. I think introducing the word
2 "conservative" at all, even trying to kind of
3 explain it, is confusing. I think we've really
4 captured it here by just saying estimates
5 favorable to the claimants, as long as that's
6 grammatically correct.

7 **DR. ZIEMER:** Other comments? Do you --

8 **DR. ANDERSON:** Just a question, and I don't
9 remember, is "conservative" used anywhere in the
10 proposed rule?

11 **MR. ELLIOTT:** I do not believe we've used
12 the term "conservative" in the proposed rule.
13 But you did see it used in the draft
14 implementation guidelines, which I have a big
15 issue with, and you won't see it in the next
16 version that you have presented.

17 **DR. ZIEMER:** That may answer the question.

18 **DR. ANDERSON:** That answers the question.

19 **DR. ZIEMER:** Are you ready to vote?

20 Okay, all who favor amending the document in
21 paragraph one as shown, by the addition of the
22 redlined paragraph and the deletion of the -- or
23 sentence, rather, and deletion of the indicated
24 sentence, say aye.

25 (Affirmative responses)

1 **DR. ZIEMER:** Opposed?

2 (No response)

3 **DR. ZIEMER:** Okay.

4 Now we're back to the document as amended.
5 We've looked at paragraph one, paragraph two.
6 Let's see, and then we have a paragraph which has
7 a number two, which is paragraph three. That's
8 all right, leave it as it is for the moment.

9 The interim rule outlining methods and so
10 on, anything on this paragraph? Gen.

11 **DR. ROESSLER:** That was my wording before
12 Wanda tried to capture everything in the first
13 part. And right at the moment, unless somebody
14 thinks it adds something, I think it's redundant.
15 And so I think it should be deleted.

16 **DR. ZIEMER:** The motion then would be to
17 delete this third paragraph, which carries the
18 number two. Is there a second?

19 **MS. MUNN:** Second.

20 **DR. ZIEMER:** Do we need to -- well, let's
21 just line that out, just so we have it there
22 before us, so we'll do a strikeout on that for
23 the moment. This is a proposed motion by Gen
24 Roessler to strike that paragraph, second by
25 Wanda.

1 Discussion?

2 (No response)

3 **DR. ZIEMER:** Those who favor deleting this
4 paragraph, say aye.

5 (Affirmative responses)

6 **DR. ZIEMER:** Opposed?

7 (No response)

8 **DR. ZIEMER:** Okay, it's deleted.

9 Third -- fourth paragraph, carrying number
10 three.

11 **DR. MELIUS:** Can you go back? I can't
12 remember what's the first sentence of the second
13 paragraph. I think again number three is
14 redundant, I think, with the first sentence of
15 the second paragraph.

16 **DR. ZIEMER:** Therefore you are proposing --

17 **DR. MELIUS:** I move that we drop that number
18 three.

19 **DR. ZIEMER:** Motion to drop that paragraph.

20 **DR. DEHART:** Second.

21 **DR. ZIEMER:** Seconded. We'll do a strikeout
22 here, and ask for comments on that proposed
23 amendment.

24 (No response)

25 **DR. ZIEMER:** Ready to vote?

1 Those who favor dropping this paragraph,
2 which is also a sentence, say aye.

3 (Affirmative responses)

4 **DR. ZIEMER:** Opposed?

5 (No response)

6 **DR. ZIEMER:** And that drops off the map.

7 Now let's back the screen down so we can see
8 what's left on that document. No, no, the other
9 way, please. I just want to get those first two
10 paragraphs before us -- there.

11 So what you have on the screen now, which is
12 the two paragraphs, right now constitutes the
13 Board's response to the three questions. Now I
14 ask if we have answered the three questions to
15 your satisfaction? That's a question to the
16 Board, not to the staff, to the Board.

17 (No response)

18 **DR. ZIEMER:** Is there anything you wish to
19 add or delete?

20 (No response)

21 **DR. ZIEMER:** I'm going to give you about
22 five minutes to think about that, because we're
23 going to have a comfort break here since we're
24 not having lunch. Okay, let's take a stretch
25 before we do a final vote. Five official

1 minutes; let's see if we get everybody back here
2 by then.

3 (Whereupon, a recess was taken from
4 12:04 to 12:15 p.m.)

5 - - -

6 **DR. ZIEMER:** I believe we're ready to vote
7 now on these two paragraphs as amended. It was
8 originally four paragraphs, now down to two, as
9 amended. Let me ask once again, are there any
10 other comments or -- yes, questions. Gen
11 Roessler.

12 **DR. ROESSLER:** Are we wordsmithing before or
13 after the vote, because in the first sentence we
14 discussed a possible change of the words.

15 **DR. ZIEMER:** Well, I think if there are word
16 changes, let's get them right now before us. If
17 they're editorial, minor, let's just go ahead and
18 do it.

19 **DR. ROESSLER:** Well, I think it's more than
20 editorial. I think we discussed in the first
21 sentence the words "to the extent practicable,"
22 and I don't have a suggestion for different
23 words, but I don't like the word "practicable."
24 And I thought we were going to come back to this
25 part and discuss it again.

1 **DR. ZIEMER:** I think it's appropriate now.
2 If we want to change that, let's do it now. I
3 don't know what the change would be if it's not
4 "practicable." Is it "reasonable," "reasonably
5 achievable"?

6 **DR. MELIUS:** I would just suggest dropping
7 "to the extent practicable." I think appropriate
8 captures that idea, because part of whether
9 something's appropriate or not is whether it's
10 practical and efficient and so forth. So I just
11 don't think we need --

12 **DR. ZIEMER:** So that would be one way of
13 handling this, would simply be to drop the phrase
14 "to the extent practicable." That's not a formal
15 motion yet, or was it a formal motion? Well,
16 let's hear some comments.

17 Wanda, because this is your sentence.

18 **MS. MUNN:** I guess I still -- I understand
19 the issues that folks have with "practicable."
20 But by the same token I think it's a necessary
21 prerequisite for the second sentence, because
22 what we're trying to make very clear is that
23 good, fast, and cheap, you can have any two out
24 of three. That's really what we're saying here.
25 And if you don't say "practicable" before you

1 talk about efficient and expeditious, then you're
2 not getting the sense of what I thought we were
3 trying to capture.

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

5 Other comments? So Wanda is urging us to
6 keep it, and Jim, I don't know if you were urging
7 -- you were suggesting as an alternative to drop
8 it. Do you object to not dropping it?

9 **DR. MELIUS:** No, it doesn't bother me.

10 **DR. ZIEMER:** Gen? Gen's okay with it.
11 Okay.

12 **MS. GADOLA:** Since I first --

13 **DR. ZIEMER:** The motion still before us is
14 the original as -- okay, wait a minute. Sally,
15 yes.

16 **MS. GADOLA:** Since I first brought that up,
17 I felt uncomfortable because I was afraid that
18 the public would misinterpret that. And even --
19 I still have a little bit of doubt there, I do
20 think that the rest of the information that we've
21 now added clarifies that word, so I feel more at
22 ease with it than I did before.

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

24 Okay, I take it that we're ready to vote,
25 then, this point, it appears. So we will be

1 voting now on adopting these two paragraphs, as
2 you see there -- that is, with the new words in
3 red and the deleted words stricken.

4 All in favor, say aye.

5 (Affirmative responses)

6 **DR. ZIEMER:** And those opposed, say no.

7 (No response)

8 **DR. ZIEMER:** And the motion carries.

9 We now have adopted all of the items I think
10 that we had before us. Is there anything that's
11 been omitted?

12 (No response)

13 **DR. ZIEMER:** Then I would ask, if the Board
14 is agreeable, I will take these -- again, they
15 will be formatted into letter form. I may
16 rearrange the order, and may have some sentences
17 that say in response to the three questions the
18 Board has the following comments, something of
19 that sort, without changing the items that have
20 been officially approved.

21 Is it agreeable that the Chair would have
22 the prerogative of formatting this into letter
23 form, somewhat like we did before? But it would
24 probably all be in one letter, or else a letter
25 with an appendix or an attachment, and a meeting

1 agenda, again as we did before.

2 (No response)

3 **DR. ZIEMER:** Without objection, we'll
4 proceed on that basis. We'll make copies
5 available to everyone. Oh, wait --

6 **DR. ANDERSON:** I was just thinking, I think
7 leaving this as an attachment that goes part of
8 the record is important. I wonder if in the
9 covering letter we might want to mention
10 something about that this kind of a work in --
11 the dose reconstruction as opposed to the other
12 is more of a work in progress, and that we look
13 forward to working closely with NIOSH as this is
14 implemented and our revisions are considered, or
15 things like that.

16 **DR. ZIEMER:** I'd be glad --

17 **DR. ANDERSON:** So it really is -- the proof
18 is going to be in the pudding, once it's --

19 **DR. ZIEMER:** Okay, I'd be glad to do that.
20 And Henry, before you leave, just write that down
21 on a piece of paper, save me from writing it
22 down. No, I certainly -- I don't mean to be
23 facetious. I just want to be sure to capture
24 your words on that, and any others that have some
25 thoughts that you want to include.

1 Also, I'm wondering if it's possible -- and
2 I'll just ask Cori, and I think at this point you
3 can go ahead and tell the machine to get rid of
4 that strikeout stuff. Is it possible to get a
5 printout of these for anyone that wants to take
6 with, or not? Maybe not. Maybe the thing to do,
7 you can e-mail these to us, can you not?

8 **MR. ELLIOTT:** We'll e-mail the text that
9 you've approved.

10 **DR. ZIEMER:** Right, not --

11 **MR. ELLIOTT:** So all the Board has --

12 **DR. ZIEMER:** I just want to make sure
13 everybody has that. You'll be able to get that
14 in the next day or two, probably.

15 **MR. ELLIOTT:** Yeah.

16 **DR. ZIEMER:** Okay, that'll be good. Is
17 everybody okay on that?

18 **DR. MELIUS:** Yeah, I would just -- could you
19 also share this, what we've written and the
20 process and so forth, with Tony, who couldn't be
21 here?

22 **MR. ELLIOTT:** Yes.

23 **DR. MELIUS:** Just so he's --

24 **MR. ELLIOTT:** Absolutely. Everything that
25 we've assembled as a product from the last two

1 days of meeting will be shared with Tony.

2 **DR. MELIUS:** Sort of get it to him, and I
3 don't -- if there was additional comments or
4 questions he has, I think we should just try to -
5 - you know.

6 **DR. ZIEMER:** Now everybody's okay on that
7 process, then?

8 (No responses)

9 **DR. ZIEMER:** One final thing I'd like to
10 request if the staff is able to do this, and
11 maybe to have general counsel or somebody that's
12 available to you, I would like to see if we can
13 find out precisely what the FACA rules are for
14 advisory committees, as opposed to Federal
15 agencies, on this issue of predecisional drafts,
16 the extent to which we can work individually and
17 exchange information.

18 Not that we're going to, because our work is
19 done; but if we have situations like we had last
20 time, I'd like to find out exactly -- because
21 I've heard several versions from different
22 members of the public on exactly what the
23 requirements are, and the comments I've gotten
24 are completely 180 degrees apart. I don't know
25 what the legal requirement is on that.

1 Obviously we're going to try to make
2 everything as public as possible. But there's a
3 sense in which you come to a screeching halt if
4 you can't work sort of off-line at times.

5 **MR. ELLIOTT:** We certainly will get a
6 counsel's guidance and committee management's
7 guidance on that, and we'll send it to you.

8 **DR. ZIEMER:** And we want to do whatever's
9 both fair to the Board and to the public.

10 **MR. ELLIOTT:** Understood.

11 **DR. ZIEMER:** Just to find out what is the
12 requirement.

13 Are there any other items that need to come
14 before us?

15 **DR. DEHART:** I don't know whether you care
16 to mention it or not, but this was with unanimous
17 consent.

18 **DR. ZIEMER:** The record will show that these
19 things were adopted with unanimous consent,
20 recognizing that one of our members is absent.
21 Tony is not here today.

22 **MR. ELLIOTT:** And just for everyone's
23 reminder, the public comment period remains open
24 for dose reconstruction rule 82 CFR -- 42 CFR 82
25 until March 1st. Once your letter has been sent

1 forward to the Secretary, it also will be added
2 that day to the docket on this rule. Public
3 comment can be received until March 1st.

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

5 Any other items that need to come before us?
6 Any other comments for the good of the order?

7 (No response)

8 **DR. ZIEMER:** Any other public comments?

9 (No response)

10 **DR. ZIEMER:** If not, we stand adjourned.

11 **MR. ESPINOSA:** Paul, just --

12 **DR. ZIEMER:** Hold on, hold on just a moment,
13 because --

14 **MR. ESPINOSA:** Because of the public
15 interest in this and people coming from out of
16 town and out of state, is there any way that the
17 Board can reserve more rooms?

18 **MS. HOMER:** Well, the difficulty with
19 putting more rooms on a block is that we just
20 don't know for sure who's going to be on there.

21 **MR. ESPINOSA:** Is there any way or any
22 manner that --

23 **DR. ZIEMER:** Use your mike, please.

24 **MR. ESPINOSA:** Is there any way or any
25 manner that people that are interested in this

1 can get in contact with NIOSH, CDC?

2 **MS. HOMER:** They can contact me. The
3 difficulty is in setting up the contract. I'd
4 have to let them know at the time I'm arranging
5 the contract how many people will be attending.
6 All I can do is guarantee an estimated amount
7 based on the Board's attendance and staff
8 attendance. So if I know ahead of time, I can
9 tell them.

10 **MR. ELLIOTT:** We certainly would appreciate
11 hearing from folks who want to attend the
12 meeting, but we cannot provide them space. We
13 can help them -- we can identify other hotels
14 that they might be able to get space in. But it
15 helps us to have advance notice of who wishes to
16 attend the meeting, and we'll try to assist them
17 in what ways we can.

18 **DR. ZIEMER:** Thanks.

19 **DR. ANDERSON:** Just one last --

20 **DR. ZIEMER:** Henry.

21 **DR. ANDERSON:** What is our process -- I
22 think we had some ideas about the next meeting
23 and what we'd like to see. And how are we going
24 to -- what's our process to get things on the
25 agenda for the next meeting and subsequent

1 meeting?

2 **DR. ZIEMER:** Right. We agreed that if you
3 had suggested individuals or groups that you
4 wanted to hear from, we would let Larry know what
5 those are, either by individual or by agency or
6 topic. Larry and I would work up an agenda which
7 we'll share with the group in a draft form to see
8 if -- and this is for the April meeting, now,
9 we're talking about and --

10 **UNIDENTIFIED:** May.

11 **DR. ZIEMER:** Yeah, the April meeting, which
12 will be held in May. And I think that's what
13 we've agreed on. Is that --

14 **MR. ELLIOTT:** Yeah.

15 **DR. ZIEMER:** Okay. Thank you, everyone.
16 We'll see you next time. Be sure to give Larry
17 your time sheets, as it were, and calendars to
18 Cori.

19 (Whereupon, the meeting was
20 adjourned at 12:29 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 120 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.

WITNESS MY HAND AND OFFICIAL SEAL this 7th day of March, 2002.

 KIM S. NEWSOM, CCR-CVR
 CCR No. B-1642

(SEAL)