1 review those.

2 **DR. ZIEMER:** Right.

3 **DR. ANDERSON:** Should there be an

4 administrative process.

5 **DR. MELIUS:** Wasn't it originally that they --

6 everything came to here.

7 **DR. ZIEMER:** This is basically responsive to

8 our previous recommendation, that NIOSH will handle

9 these -- and basically they are petitions which in

10 some way or another are inadequate and get sent

11 back, that they're not -- unevaluated petitions.

12 **DR. MELIUS:** I think what -- and Larry, correct

13 me -- I think NIOSH is asking the public to comment

14 on should there be a process -- administrative

15 process, and I think Richard laid out some of the

16 options -- Richard Miller -- some of the options for

17 that, one of which is the Board, and the other would

18 be administrative remedies within or outside the

19 bar-- are there others that -- I guess I'm asking

20 Larry, Ted or somebody...

21 **MR. KATZ:** I mean we don't have other ideas, if

22 that's what you mean, other than it's either going

23 to be in HHS, an administrative group in HHS is

24 going to review it or -- I mean you made a decision

25 about the Board before, but you can of course revoke

1 that decision. I mean --

2 **DR. MELIUS:** Well, the decision about the Board

3 was that we wouldn't review all of them. If we have

4 a review process or -- they're going to come up

5 anyway.

6 **MR. KATZ:** I mean this actually was abiding by

7 the Board's directions very directly. It was we're

8 going to get all the positive ones anyway that pass

9 muster. It was what should happen with the ones we

10 --

11 **DR. MELIUS:** Well, we expect you to provide an

12 answer, not another question.

13 **MR. KATZ:** Well --

14 **DR. MELIUS:** I mean now you're kicking it back

15 to us.

16 **DR. ZIEMER:** What's being asked here really is

17 what does the petitioner -- what options does the

18 petitioner now have. Is there a way to appeal --

19 obviously they can provide more information and have

20 it reconsidered, because part (c) actually allows

21 for that. (Reading) Based on new information,

22 NIOSH, at its discretion, may reconsider a decision

23 not to select.

24 That's one option that's built in here, it

25 appears, that the petitioner has additional

1 information. Are you asking what if there's no
2 additional information but they just don't think the
3 decision was the right one, that the petition in
4 fact is adequate and should have been considered.
5 **DR. MELIUS:** They feel that it -- the
6 petitioner feels that it's adequate and maybe not in
7 a position to obtain more information or whatever to
8 satisfy what NIOSH said is wrong with it or why it
9 doesn't qualify, and I think the question is should
10 there be an appeal mechanism.
11 **DR. ZIEMER:** Maybe we can frame it this way. I
12 don't know that the Board has to come up with the
13 answer to that. We may raise that as a question to
14 be considered going forward, ask the staff to
15 consider what appeal mechanism there would be for a
16 petition that was -- what I'm saying is we don't
17 have to come up with the change for the rule. We
18 can direct the staff --
19 **DR. MELIUS:** No, well, I think we have to make
20 a -- we have to decide whether we want to make a
21 recommendation that there should be a process. And
22 my personal feeling is that there ought -- there
23 should be a review process on that, an appeal
24 process, that should be within the Department.
25 **DR. ZIEMER:** Do others want to weigh in on that

1 and if we reach a consensus then we can include
2 that. Okay. Tony?
3 **DR. ANDRADE:** Perhaps I'm just being dense this
4 afternoon at this hour, but again, I refer people to
5 83.16. Recall the fact that we talked about, quote,
6 evaluated petitions, whether positive or not, and
7 that --
8 **DR. ZIEMER:** But these are unevaluated. These
9 are unevaluated.
10 **DR. ANDRADE:** Once they are evaluated. Okay.
11 Once they are evaluated.
12 **DR. ZIEMER:** No, we're talking about the ones
13 that do not get evaluated. They simply get turned
14 down because --
15 **DR. MELIUS:** It's incomplete.
16 **DR. ZIEMER:** -- they're incomplete. The
17 petition never really gets evaluated. NIOSH says
18 there's not enough information here -- or you don't
19 meet the requirements for having a petition. Yes,
20 that is a form of evaluation.
21 **DR. MELIUS:** It gets evaluated as to whether it
22 meets the requirements. It doesn't get evaluated as
23 to whether it -- the class qualifies as a Special
24 Exposure Cohort.
25 **DR. ZIEMER:** Yeah, and maybe we need a

1 different term 'cause this talks about evaluating
2 the petition and that other section talks about
3 evaluating the petition. One is an evaluation --
4 **MS. MUNN:** This is an application.
5 **DR. MELIUS:** Wait another half-hour, we'll
6 confuse you even more.
7 **DR. ZIEMER:** That in itself is perhaps a
8 semantics issue that needs to be clarified. The
9 ones in section 83.16 do have an appeal process.
10 They have been evaluated as a petition. These are
11 ones where they have decided not to evaluate them.
12 There's a petition and it is not going to be
13 evaluated 'cause it's inadequate or incomplete,
14 which in itself is an evaluation, so...
15 So the question right now is does the Board
16 feel that there should be some mechanism for
17 petitioners whose petitions fail to meet the
18 requirements for evaluation to be reviewed -- for
19 that decision to be reviewed. Jim has suggested
20 there should be.
21 Wanda, you're...
22 **MS. MUNN:** At some juncture there has to be a
23 no. And if we're not going to accept this no as
24 no, then of course what's the next step is the
25 question here. And my question is, and is that next

1 step then the no? Where does no become no?
2 **DR. ZIEMER:** Just like with your kids, is it
3 the first no that really counts?
4 **MS. MUNN:** Uh-huh, or is it the second no or
5 the third no?
6 **DR. ZIEMER:** When is no really no? I don't
7 know.
8 **DR. MELIUS:** I think actually Bob's ahead of
9 me, so --
10 **DR. ZIEMER:** Bob, go ahead.
11 **MR. PRESLEY:** When this petition is turned down
12 at this time, do they get any type of a notification
13 that says why they're being turned down?
14 **UNIDENTIFIED:** (Inaudible)
15 **MR. PRESLEY:** Okay, then if -- then it's
16 explained.
17 **DR. ZIEMER:** Rich and then --
18 **DR. MELIUS:** If I re--
19 **MR. ESPINOSA:** Go ahead, go ahead.
20 **DR. MELIUS:** I'm sorry. As I recall from our
21 previous discussions of this, the Board wanted to
22 remove itself so that we wouldn't be into -- it was
23 in some sense an issue of time involved, also, that
24 we wouldn't be repeatedly reviewing, saying go back
25 for more information and then come back -- and so

1 this would -- process would stretch out, that the
2 process would be facilitated by having NIOSH
3 directly dealing with the issue of obtaining --
4 determining whether or not these petitions contained
5 adequate information to qualify. And I think that
6 -- I think that makes sense. We shouldn't be -- the
7 Board doesn't need -- have to be involved in
8 continually reviewing all these petitions.
9 At the same time I feel that the general public
10 should have some measure of appeal from a -- you
11 know, an arbitrary decision or a bad decision made
12 by a governmental agency and that providing some
13 process within the government for people doing that
14 is appropriate and fair -- doesn't necessarily
15 involve us in the...
16 **DR. ZIEMER:** Rich?
17 **MR. ESPINOSA:** With the recommendation that Dr.
18 Melius made, I'm in favor of -- the main reason why
19 is on page 25, second paragraph, operations of
20 concerns, as a building and construction trade
21 member, you know, a lot of times I don't understand
22 what's being done in the facility or facilities, for
23 that matter. And you know, to be real specific of
24 the operations in the -- of the -- of the stuff
25 going on in the facility, I don't know if it can be

1 done from a person from the building and
2 construction trades or janitors or the guards, for
3 that matter.
4 And the same goes with -- you know, on page 27
5 it almost kind of seems -- you know, you've got to
6 be real specific for the petition not to get thrown
7 out, and I'm not sure how specific some -- some of
8 these claimants are going to be.
9 **DR. ZIEMER:** Henry?
10 **DR. ANDERSON:** I mean it seems to me there's
11 kind of two decisions. One, do you want a formal
12 mechanism or do you want to have -- based on new
13 information. New information could be NIOSH looks
14 at it and says boy, this is a tough call. I come to
15 the Board and say what do you guys think, and we say
16 well, why don't you go ahead. I mean that's new
17 information, we have given some information, but it
18 isn't the formal appeal process where you have to
19 file documentation or something like that. I mean
20 that -- I would -- seem to me there's enough in here
21 that if somebody really felt it was an egregious
22 problem, that could in and of itself be new
23 information. So it's a matter of if you -- do you
24 want to have a formal process, which would be -- it
25 goes into a process that the petition might then

1 feel they have to hire legal assistance to go
2 through that process or not. I don't know what
3 other sorts of decisions are appealed, but that
4 could have financial ramifications on the individual
5 that might -- if we say formally you're going to
6 have this process, then that is the process they
7 have to follow.
8 **DR. ZIEMER:** Let me insert something here, make
9 sure we're all in the same place. I believe that
10 this is already the second no. The first no is in
11 item (a) where -- what happens to petitions that do
12 not satisfy the requirements. NIOSH notifies the
13 petitioner of any requirements that are not met and
14 assists them in getting new information and gives
15 them another 30 days to revise it. Then a new --
16 then the clock starts again. And this thing called
17 the final decision is no a second time. So I
18 believe what we would be talking about now is, is
19 there yet another loop, 'cause this has two loops in
20 it already. So an additional appeal, if you want to
21 call it that, I think is yet a third no.
22 Now is -- are we all on the same page on that?
23 Do I understand this correctly, and that was your
24 understanding when you raised the issue that --
25 **DR. MELIUS:** And I think the issue is that

1 there are -- they've received two no's from NIOSH
2 and then should they have the right to have that
3 second no reviewed by another party.
4 **DR. ZIEMER:** Somebody, and it may be the Board.
5 **DR. MELIUS:** Originally the party was going to
6 be the Board. The Board said -- it was a little bit
7 more complicated, a different way, but the Board
8 said we didn't want to be the reviewer and have to
9 deal with all these and there's some other
10 procedural issues, so should there be a -- you know,
11 an out -- a third no, a review of that second no by
12 another group. And if there's an administrative
13 process within the Department for doing that, that's
14 another possibility and I think some of our struggle
15 with this is that we're not real sure what the
16 process is within the Department.
17 At the same time I think we don't want to be --
18 have to -- if that review becomes an automatic or
19 that -- then it's going to end up being that much
20 more that we have to do. Is that practical, and
21 maybe that may -- it's an option.
22 **DR. ZIEMER:** I think we also have the issue of
23 the defined role of this Board. We do have a very
24 specific role in recommending Special Exposure
25 Cohorts. We don't -- I think we don't have a role

1 in sort of -- if I can call it adjudicating
2 Departmental decisions. It's quite true that this
3 decision does have something to do as to whether a
4 Special Cohort is recommended, so we're not
5 completely out of the loop, perhaps. But I've
6 expressed this concern before that we not get
7 involved in the staff work of NIOSH, that we are
8 focused on our sort of legislated responsibility, so
9 -- you know, whatever -- if there's a review
10 process, I would hope it would be something within
11 the Agency. But it looks like there -- one review
12 has already occurred and, you know.
13 **DR. MELIUS:** Well, but so -- but the two no's
14 are from -- the first two no's come from -- come
15 from Larry, I guess. And I guess if somebody seeks
16 a third --
17 **DR. ZIEMER:** So the third time, go ask your
18 mother.
19 **DR. MELIUS:** Well, who's Larry's mother, and if
20 they can tell us who his mother is, you know, that's
21 -- that process would be -- and I agree with you.
22 At the same time it's sort of a gray area since I
23 guess our role is -- of the Board is to review the
24 point of views, but the evaluation of those
25 petitions and the final recommendations and -- once

1 they're accepted. And I'm unclear how much we
2 should be involved in accepting them.
3 **DR. ZIEMER:** Okay. The issue is, should there
4 be this additional appeal; and if so, who. And I'm
5 going to suggest we leave it there right now.
6 Unless -- unless somebody's -- really knows how --
7 what the answers to those are, 'cause we can revisit
8 it next Friday. And maybe we'll all have bright
9 ideas.
10 Okay, that's 83.11. 83.12 -- oh, I'm sorry,
11 Rich. Did you have something else and then -- I'm
12 sorry.
13 **MR. ESPINOSA:** Can we step back to 69 real
14 quick and --
15 **DR. ZIEMER:** Sixty-nine?
16 **MR. ESPINOSA:** Paragraph (c), class of
17 employees. Can we change facility to facilities?
18 **DR. ZIEMER:** Where are you again?
19 **MR. ESPINOSA:** Page 69, class of employees, a
20 group of employees who worked or work at the same
21 DOE or AWE facility, can we change that to
22 facilities?
23 **DR. ZIEMER:** Let me ask if this language is
24 from the legislation or where does this definition
25 of class of employees come from? Because that in

1 part might tell us whether we can --
2 **MR. KATZ:** Can you hold one second for that? I
3 need to find a piece of paper.
4 **DR. ZIEMER:** Okay.
5 (Pause)
6 **MR. KATZ:** Okay, thank you. This is -- I mean
7 this is the issue that Richard raised about multiple
8 facilities. That's what -- that's what's being
9 proposed here, that we say multiple facilities
10 instead of, you know, facility. And Richard pointed
11 to then language that has to do with specified
12 cancers -- let me find you the language -- bullet
13 down here -- yes, the difference between DOL using
14 multiple facilities to aggregate 250 days and our
15 using -- requiring it be at a facility under this
16 rule is that it's different sections of this
17 legislation with slightly different language that
18 makes the requirement at a facility, and our
19 language has no wiggle room, is sort of the bottom
20 line. Our language leaves, you know, no room for
21 interpretation that it could be multiple facilities,
22 whereas the DOL language has some wiggle room and
23 they were able to interpret it as multiple
24 facilities, or I believe that's how that occurred,
25 you know, though I haven't --

1 **DR. ZIEMER:** So you're saying this definition
2 comes from the legislation which defines it this
3 way?
4 **MR. KATZ:** So that -- so the legislation
5 specifically talks about that these are classes at a
6 facility and at that facility, singular. Which we
7 explain and you'll see that discussion in the
8 preamble, and that's why we were constrained to
9 limit it to a single facility, but it's -- we had
10 different statutory language to deal with than DOL.
11 **DR. ZIEMER:** Thank you. So at the moment then
12 I guess that suggests that -- that it may have to
13 stay that way because of the definition in the law.
14 Okay. Thank you.
15 83.13, page 79. Okay? Moving ahead? 83.13,
16 top of 80, I've got a flag here. Item (1) near the
17 top of the page.
18 **DR. MELIUS:** I'm not sure that we're capable of
19 discussing this at this point in time on a Friday
20 afternoon, but --
21 **DR. ZIEMER:** No, but -- but we can --
22 **DR. MELIUS:** -- it's a big issue.
23 **DR. ZIEMER:** We can frame the issue so that
24 people can give it some thought between now and next
25 Friday.

1 **DR. MELIUS:** And that's what I was about to...
2 Right, yeah.
3 **DR. ZIEMER:** Jim, I think you raised it, so you
4 want to reframe it for us?
5 **DR. MELIUS:** And I think the framework for that
6 issue is the same framework from our previous
7 comments, that NIOSH has not really defined in any
8 detail how this operates, how they will make this
9 determination. They've changed it somewhat from the
10 last time, but there's still a very vague framework
11 for making this determination that a dose can or
12 cannot be reconstructed with sufficient accuracy.
13 And I think the framework for the question is have
14 the changes that they've made and has the currently
15 language adequately defined that, and I certainly --
16 I don't believe it still does.
17 They -- I should point out that it -- I think -
18 - believe it points out in the preamble that -- some
19 later steps that NIOSH will do to try to clarify
20 some of this issue and -- including providing some
21 examples. But we've -- we were also told that last
22 time and we still don't have the examples to go
23 over, so -- and that -- so if we're going to do it
24 on a case by case basis with sort of a case law that
25 would develop from these examples, I think that

1 leaves us -- to me it's still problematic.
2 **DR. ZIEMER:** Could you clarify for me the
3 nature of the issue? Is it -- it's more than a
4 wording issue. It is an issue of whether or not in
5 fact what is described here can be done. Is that
6 correct?
7 **DR. MELIUS:** Whether it provides adequate --
8 **DR. ZIEMER:** Or if they're --
9 **DR. MELIUS:** -- guidelines --
10 **DR. ZIEMER:** -- telling us how -- how it will.
11 **DR. MELIUS:** Yeah, that it could lead to
12 arbitrary conflicting decisions because as this is
13 applied that I don't believe that there would be --
14 arbitrary and inconsistent decisions, because as
15 this is applied it doesn't provide enough of a
16 framework or guidance for determining whether or not
17 a dose can be determined with sufficient accuracy.
18 **DR. ZIEMER:** In which case the comment might be
19 along the lines of what you had just said.
20 **DR. MELIUS:** Correct.
21 **DR. ZIEMER:** Without saying what -- how you
22 would change it to address it, but raising the
23 issue.
24 **DR. MELIUS:** Correct.
25 **DR. ZIEMER:** Tony?

1 **DR. ANDRADE:** I really believe that this is an
2 issue of a definition of sufficiency. I think NIOSH
3 has done a very nice job in the following sub-
4 bullets in pointing out examples of the types of
5 information that might provide sufficient accuracy.
6 However, it's -- if you think about it, there can be
7 an infinity of particular situations. And I think
8 that this is going to have to be handled on a case
9 by case basis. And if we belabor this or if we try
10 to put down exact definitions of what constitutes
11 sufficiency, we're going to end up with a 1,000-page
12 document. So I think that we've got to keep in the
13 back of our minds that most of these petitions are
14 really going to be unique situations.
15 **DR. ZIEMER:** Who else has comments on this one?
16 Okay, we'll -- we'll plan to revisit it Friday.
17 The bottom of the page I have a note -- I
18 think, Wanda, this was yours -- that --
19 **MS. MUNN:** Yes, it was.
20 **DR. ZIEMER:** -- the wording here gives the idea
21 that dosimetry data are not important or something
22 along that line. That's not what we want to convey,
23 but -- we want to convey that --
24 **MS. MUNN:** Right. I had suggested language
25 that I can throw out next Friday.

1 **DR. ZIEMER:** Okay. So Wanda will reword -- or
2 give us some suggested language Friday. Thank you.
3 Top of 81 I've flagged. It's the issue of not
4 feasible to estimate radiation doses. Jim, I think
5 that was also possibly your issue?
6 **DR. MELIUS:** Well, the -- that was actually I
7 think the first issue, but I think what the issue
8 there is in section (iv) and in section (iii) at the
9 bottom of the page is the tissue-specific cancer
10 site issue, that what they're proposing is that this
11 will somehow be limited to particular cancer sites
12 and I think it's stated more directly at the bottom
13 of the page under number (iii), (reading) NIOSH's
14 finding that it was not feasible to estimate
15 radiation dose with sufficient accuracy --
16 (inaudible) one or more types of cancer, that whole
17 section there. (Reading) identification of a set of
18 one or more types of cancers to which NIOSH's
19 findings that it was not feasible to estimate
20 radiation doses with sufficient accuracy.
21 **DR. ZIEMER:** And the issue is centered around
22 the debate on whether or not, if you could -- if you
23 can't estimate the dose for a particular organ, say
24 the lung, can you do it for any other organs.
25 **DR. MELIUS:** Yeah, or --

1 **DR. ZIEMER:** In essence is what it does, other
2 than saying it's got to be very low and therefore
3 insignificant.
4 **DR. MELIUS:** Yeah. Yeah, what is the test
5 going to be to evaluate why -- when you can't --
6 you've already determined you can't do it for one
7 organ system, how can you say you can do it for
8 another? It really -- actually let me restate -- I
9 don't think I stated that correctly, is that when
10 you made a determination you cannot determine the
11 dose with sufficient accuracy, how can you then
12 limit that to just an organ system or a series of
13 organ systems.
14 **DR. ZIEMER:** And Jim may be able to comment on
15 that. Actually I can probably think of some ways
16 that could be done, and others might --
17 **DR. MELIUS:** I think two.
18 **DR. ZIEMER:** But let's hear from Jim.
19 **DR. NETON:** I just want to say one thing. I
20 think that we have to insert the key word
21 "plausible" in there, a "plausible" dose, which is
22 not -- well, it's not an implausible dose, by
23 definition. You know, it has to be a plausible dose
24 that you could come up with to reconstruct that
25 makes sense.

1 The converse of that, though, is if there were
2 implausible doses that don't pass the reasonableness
3 test that one could assign and do a dose
4 reconstruction for other organs, one could do that.
5 I mean it's --
6 **DR. MELIUS:** But I have trouble --
7 **DR. NETON:** And do a dose reconstruction.
8 **DR. MELIUS:** Without belaboring this, but have
9 trouble when distinguishing how you separate -- if
10 it's not feasible to do with sufficient accuracy,
11 then what is a plausible dose --
12 **DR. NETON:** Let's take the case of a uranium
13 inhalation where it's plausible to -- it's
14 implausible to come up with an upper limit -- it's
15 plausi-- you could come up with an upper limit based
16 on -- you have no monitoring data at all. You know
17 the person worked with uranium and you know that
18 uranium concentrates in the lung, so lung cancer.
19 You could do a -- you couldn't do a dose
20 reconstruction for the lung. However, you could
21 come up with implausible exposure scenarios where
22 one would have to inhale five pounds of -- if one
23 inhaled five pounds of uranium, which would be
24 biologically -- choking the person, and one could
25 still calculate a dose and demonstrate that the dose

1 reconstruction was done and the probability of
2 causation was very small for certain remaining
3 organs, then you've done that. I mean you have to
4 be able to pass the reasonableness test here.
5 One cannot assume people inhaled five pounds of
6 uranium and say that those cancers should be
7 considered part of the Special Exposure Cohort -- or
8 those doses, those organs.
9 **DR. MELIUS:** Can I just add, though, I think
10 you're -- that's what you're intending to do, then I
11 think you need to state that much more clearly in
12 these regulations. I mean I can agree with the
13 concept. I have trouble seeing how you
14 operationalize it and how you make that
15 determination from going from -- in different
16 situations and if my recollection's right, these two
17 paragraphs on page 81 is the only place where you
18 describe how you will do that. You don't define
19 these terms and this just -- so I think an
20 alternative is not that we reject this, but also is
21 --
22 **DR. ZIEMER:** Or maybe spell it out, and
23 actually I --
24 **DR. MELIUS:** Spell it out.
25 **DR. ZIEMER:** You actually -- you end up going

1 in reverse. You say okay, if I had a cancer in this
2 organ, what kind of loading in this other part of
3 the body do I need to deliver sufficient dose to
4 this other -- to this organ. And if it's, for
5 example, takes five pounds of uranium in the lungs
6 to give you some --
7 **DR. NETON:** This is a real example --
8 **MR. GRIFFON:** These are all --
9 **DR. NETON:** -- this could happen.
10 **MR. GRIFFON:** The thing that we -- and I've
11 talked to Jim during the break on this and yesterday
12 a little bit, too, but I mean -- I mean the question
13 then I have is you didn't have adequate information
14 about the radiation source term to make a maximum
15 estimate, and yet now you're telling me in this
16 example that it was only natural uranium that was --
17 you know, so we're loading with uranium, almost five
18 pounds --
19 **DR. NETON:** Well, I was --
20 **DR. ZIEMER:** Oh, no --
21 **MR. GRIFFON:** -- when in fact if --
22 **DR. NETON:** Well, the source term would have to
23 be known, but I mean at least in terms of its type.
24 **MR. GRIFFON:** And then if the source term's
25 known, in many examples you're going to be able to

1 estimate a maximum pretty well.
2 **DR. NETON:** No, no --
3 **MR. GRIFFON:** I mean I --
4 **DR. NETON:** That's not correct. If we don't
5 know what type of operation was done -- grinding,
6 welding, cutting and there's fumes all over the
7 place -- we have no idea of knowing what reasonable
8 or -- what's the word we're talking about --
9 plausible doses could have been received by this
10 person. But we do know that the person could not
11 physically inhale five pounds of uranium -- I don't
12 care how much uranium was there, but we would have
13 to know, you're correct, that uranium was present
14 and there were no other radionuclides in the mix.
15 Remember, we're not saying that we're going to
16 do this for every case. This just allows us the
17 option to set, in those circumstances where we can
18 clearly define it, the option to do that so that we
19 don't end up granting SEC status for cancers that
20 are implausible under these exposure circumstances.
21 So they have to pass the reasonableness test, in my
22 mind. You cannot --
23 **MR. GRIFFON:** Yeah, but --
24 **DR. NETON:** You cannot grant SEC status for a
25 person who would have to inhale an unreasonable

1 amount of material to develop that cancer.
2 **MR. GRIFFON:** I don't disagree with that, but
3 you -- you see the logic, also, that if you have
4 insufficient information, you don't have dosimetry,
5 you don't -- you know, you're limited on dosimetry
6 data, you're limited on source term data, you can't
7 even calculate a maximum --
8 **DR. NETON:** We're not saying we would do
9 that --
10 **MR. GRIFFON:** -- and then you're turning around
11 and saying you have a pretty -- pretty tight handle
12 on --
13 **DR. ZIEMER:** You're not saying you don't have
14 any data. Right?
15 **MR. GRIFFON:** -- (inaudible) involved.
16 **DR. NETON:** No. If we knew it was a uranium
17 facility and there was --
18 **DR. ZIEMER:** But you don't know anything about
19 --
20 **DR. NETON:** -- a transuranic contamination --
21 **DR. ZIEMER:** -- the magnitude of the amount.
22 **DR. NETON:** Right.
23 **MR. GRIFFON:** Or -- but I mean that -- that's
24 the question I have is that, in the absence of all
25 that other data, how -- you know --

1 **DR. ZIEMER:** Well, I guess --

2 **MR. GRIFFON:** -- how -- how sure are we that --

3 that these are the only isotopes involved? I'll

4 give you a --

5 **DR. NETON:** That's a different issue.

6 **MR. GRIFFON:** I mean not to --

7 **DR. ZIEMER:** That's a different scenario,

8 though, than you're talking about.

9 **DR. NETON:** That's a different issue.

10 **DR. ZIEMER:** Then in fact you in fact open the

11 door to all the others anyway, don't you?

12 **DR. NETON:** I suppose. That's what the Board

13 would weigh in on once we provide -- move the

14 petition forward.

15 **DR. ZIEMER:** But what you're asking for is

16 guidance on how they would do what they're

17 describing here right now.

18 **DR. MELIUS:** Yeah, it looks like --

19 **DR. ZIEMER:** You're --

20 **DR. MELIUS:** Personally, unless I see more

21 detail how this would be operational as to how these

22 determinations would be made, I find it very hard to

23 accept this approach, but -- you know, I think we're

24 open and...

25 **MR. ELLIOTT:** For Mark's scenario it wouldn't

1 be a cancer-specific class definition.

2 **DR. ZIEMER:** If you had all --

3 **MR. ELLIOTT:** We would go with an SEC, the
4 whole -- I mean the whole presumptive list.

5 **DR. NETON:** Yeah.

6 **MR. ELLIOTT:** Because we don't know what the
7 radionuclide in the mix is.

8 **MR. GRIFFON:** Right, right, right, but I'm
9 turning it -- I'm turning it around and saying give
10 me an example where you would know the mix but you
11 couldn't calculate a maximum. I think Jim attempted
12 to do that -- I still have to think through some of
13 these what-ifs myself, but --

14 **DR. NETON:** This would be used on a limited
15 basis when we knew there were certain scenarios that
16 did not pass some reasonableness test. I think
17 radon is another one of those we talked about, or
18 any situation -- it's not just internal exposure.
19 It's any situation where you have partial body
20 irradiation. The entire body is not uniformly
21 irradiated, which happens most of the time in
22 internal exposures, especially with these actinide
23 elements that only deposit in two or three organ
24 sites to any appreciable degree. We're not saying
25 the dose is zero, but we're saying that we feel that

1 there are going to be certain circumstances --
2 **MR. GRIFFON:** And they had --
3 **DR. NETON:** Okay.
4 **MR. GRIFFON:** And they had no other exposures
5 or the other exposures can't be reconstructed.
6 **DR. NETON:** We would have to be very sure that
7 there were no other exposures that we could identify
8 --
9 **MR. GRIFFON:** I mean I'm just -- I'm just
10 wondering how often that scenario is even plausible
11 and whether --
12 **DR. NETON:** But do we need --
13 **MR. GRIFFON:** -- it's worth going down this
14 path.
15 **DR. ZIEMER:** May not.
16 **DR. NETON:** All we're saying is we're allowing
17 for that possibility. We're not saying we're going
18 to exercise it in every case or required to exercise
19 that in every case, but we need to -- think that we
20 should have the option available to do that.
21 **DR. ZIEMER:** Okay. The issue's been framed and
22 we know what kind of question to ask on that. I
23 think --
24 **MR. GRIFFON:** (Inaudible) --
25 **DR. ZIEMER:** Yeah.

1 **MR. GRIFFON:** -- one more thing on that. I
2 think that -- and this is part of the reason I would
3 be -- more time is helpful for me, also. In the
4 preamble -- I know the Health Physics Society
5 commented on this, those comments must be on the --
6 on the web site?
7 **MR. ELLIOTT:** Oh, yeah.
8 **MR. GRIFFON:** Okay. So it might be -- that
9 might be useful for us to look at before the
10 conference call.
11 **MR. ELLIOTT:** Yes, the --
12 **MR. GRIFFON:** So we get a sense of what their
13 rationale was for --
14 **MR. ELLIOTT:** The previous NPRM and the docket
15 that contains all the comments are on the web site.
16 **DR. ZIEMER:** Yeah. And incidentally, that
17 would be useful if you would all look at that before
18 the next conference call to acquaint yourself with
19 those comments.
20 Now on page -- oh, I'm sorry. Henry.
21 **DR. ANDERSON:** I just read it as not
22 permissive, but as will. And if you look at top of
23 81, it says if it's not feasible to estimate the
24 dose with sufficient accuracy, will also determine
25 whether such finding is limited at tissue-spe-- so

1 it says in each case you will determine that as
2 opposed to you may. I don't know if that -- so in
3 every -- every instance, you will consider that,
4 that it might be limited.
5 **UNIDENTIFIED:** (Inaudible)
6 **DR. ZIEMER:** On page 82 I had flagged the
7 endangerment to health, but I think we've discussed
8 that already. It's used generically here. Were
9 there any other issues on that?
10 Okay. Anything on 83? On 84 we -- on 83.14 we
11 had the issue of evaluating a petition by a claimant
12 whose dose reconstruction could not be complete
13 under 42 CFR 82. I guess we've already discussed
14 the issues pertaining to that, so this section in
15 itself -- I don't think there was anything there,
16 unless somebody can identify it for me. I'm sort of
17 just marking which ones look like they're okay as
18 they stand here.
19 83.15, Ted pointed out some things there that
20 were new, but are there any items there of concern?
21 Okay. 83.16? 83.17?
22 **DR. ANDRADE:** On 83.16, just a minor point.
23 **DR. ZIEMER:** Uh-huh.
24 **DR. ANDRADE:** On item (c), it says HHS will
25 issue a final decision on the designation and

1 definition of the class. It just doesn't say how
2 long it'll take the Secretary to do so.
3 **DR. ZIEMER:** So you're suggesting there should
4 be a time limit in there?
5 **DR. ANDRADE:** Right.
6 **DR. ZIEMER:** Let me ask the staff if they can
7 sort of react to that. Would that be helpful and
8 wouldn't there ordinarily be a time value in there?
9 Let's see, you have 30 days -- going back to
10 (b), provide the petitioner 30 days to contest a
11 decision. And then, Tony, you're asking after the
12 30 days --
13 **DR. ANDRADE:** After the 30 days.
14 **DR. ZIEMER:** -- is this a year later, a month
15 later, that day or --
16 **DR. ANDRADE:** Right.
17 **DR. ZIEMER:** -- or is there a need for --
18 **DR. ANDRADE:** Given the importance of this
19 whole SEC rule to the public, I think that -- it
20 might not please the Secretary, but it would be
21 prudent to put in there a deadline.
22 **DR. ZIEMER:** Without us specifying it, could --
23 what the number of days is, could we suggest that
24 that be considered and an appropriate...
25 **UNIDENTIFIED:** I think so.

1 **DR. ANDERSON:** (Off microphone) If the
2 petitioner has 30 days to file an appeal, the
3 Secretary ought to have 30 days to respond.
4 **DR. ZIEMER:** Well, I'm suggesting that our
5 comment not specify what the time should be, but --
6 right. Okay.
7 **DR. MELIUS:** Thirty-one.
8 **DR. ZIEMER:** Fair's fair, right.
9 **DR. MELIUS:** Thirty-one.
10 **DR. ZIEMER:** 83.17, I guess we all begrudgingly
11 agreed that we can't change the role of Congress.
12 **DR. ANDERSON:** (Off microphone) But we can
13 limit them to five days.
14 **DR. ZIEMER:** They limited themselves to five
15 days. That is, the staff did.
16 83.18? Okay, I think we've pretty well framed
17 out the issues that we need to discuss next time. I
18 commend you all on -- we're going to get done here I
19 think by 5:00.
20 Let me ask if there are any final comments on
21 the document before we leave it today. I know
22 there's a fatigue factor that sets in. You're all
23 in favor of --
24 **UNIDENTIFIED:** There's a document?
25 **MULTIPLE SPEAKERS:** (Inaudible)

1 **DR. ZIEMER:** No, I think it's been very
2 helpful. There are just a few items we need to
3 spend some time on. It might very well be that we
4 can be pretty close to closure at the next meeting.
5 Wanda has a comment.
6 **MS. MUNN:** Do we anticipate addressing the
7 prologue during our discussion?
8 **DR. ZIEMER:** Well, keep in mind, the prologue
9 or whatever the proper term is -- preamble, is not
10 really part of the rule. However, if there are
11 errors or changes that should be made in that, I
12 suppose we should try to identify those. There's no
13 reason we shouldn't. Right? So certainly that's
14 game for comment, to say you know, this statement in
15 the preamble is wrong or should be revised in some
16 way. But it's not part of the rule.
17 **MS. MUNN:** I understand.
18 **DR. ZIEMER:** It's just an explanation of how
19 they proceeded and dealt with the comments.
20 Okay. Let me ask if there are any housekeeping
21 items -- I think Cori's gone. You can turn in your
22 prep hours for this meeting to Larry. Turn in your
23 travel vouchers to Cori as soon as possible. Any
24 other items to come before us?
25 Leon, are you still there? We've lost Leon

1 again. Well, Leon will figure out that the meeting
2 has ended.
3 We have some information on our next meeting at
4 Oak Ridge.
5 **MR. PRESLEY:** (Off microphone) One other thing,
6 do we want to come up with a date when we want to
7 come up here and do some training -- another meeting
8 in Cincinnati?
9 **UNIDENTIFIED:** The whole Board.
10 **MR. PRESLEY:** The whole Board?
11 **DR. ZIEMER:** This would be a date after the Oak
12 Ridge meeting, I presume. And therefore -- the Oak
13 Ridge meeting is May 19. We would be talking
14 perhaps about -- this is strictly training? It
15 wouldn't be a -- would this be a -- this doesn't
16 have to be an announced session of the Board and
17 open to the public to come? That presents some
18 problems in terms of viewing records and so on.
19 **MR. ELLIOTT:** You've got some Privacy Act
20 issues.
21 **DR. ZIEMER:** I guess we can identify a date and
22 -- but not have Cori execute anything until we find
23 out how that can be done.
24 **MR. ELLIOTT:** I think it is important for the -
25 - all Board members to experience what those

1 yesterday in the working group experienced. My
2 suggestion to you would be, to get around this --
3 the Privacy Act constraints that we all are going to
4 operate under here -- that you identify a -- maybe
5 two working groups to do the same thing that the
6 working group did yesterday. Just get familiarized
7 with the information that you're going to see. That
8 way you won't have a quorum of the Board. It
9 doesn't have to be a public forum. You can look --
10 **DR. ZIEMER:** We won't be conducting business.
11 **MR. ELLIOTT:** Won't be conducting business. It
12 is a working group session to familiarize, as an
13 individual, yourself with the administrative record.
14 That would be how I would suggest you go about it.
15 That way we can accommodate that with real finished
16 cases and full administrative record to support the
17 decision.
18 **DR. ANDERSON:** How long a training period? Or
19 could we do this as --
20 **DR. ZIEMER:** One day.
21 **DR. ANDERSON:** A whole day or --
22 **UNIDENTIFIED:** Five or six hours.
23 **MR. ESPINOSA:** Or two half-days.
24 **DR. ANDERSON:** No, I was just wondering, if we
25 broke up into two groups, we could -- if one came in

1 one day and the other the next day --
2 **MR. ELLIOTT:** That's fine.
3 **DR. ANDERSON:** -- we wouldn't have to --
4 **DR. MELIUS:** 'Cause we didn't meet --
5 **DR. ANDERSON:** -- disrupt your group too
6 much --
7 **MR. ELLIOTT:** No, no.
8 **DR. ANDERSON:** -- by scheduling groups in on
9 different days.
10 **DR. ZIEMER:** But they wouldn't necessarily have
11 to be back to back, either, if we had --
12 **MR. ELLIOTT:** No.
13 **DR. ZIEMER:** -- people that had schedule
14 conflicts.
15 **MR. ELLIOTT:** No, we had essentially -- let's
16 see, five -- six of you go through yesterday.
17 Right?
18 **UNIDENTIFIED:** Five.
19 **MR. ELLIOTT:** Five? Well, Dr. Ziemer was there
20 --
21 **DR. ZIEMER:** But I didn't go through the first
22 part with them. I only was there for the --
23 **MR. ELLIOTT:** Okay, so we --
24 **DR. ZIEMER:** -- discussion on the procedures.
25 **MR. ELLIOTT:** -- got five done -- We got five

1 done. You have seven more individuals who should go
2 through this experience. If you break that out into
3 two groups, you could come any time you wish.
4 **DR. ZIEMER:** Right.
5 **MR. ELLIOTT:** As a group. I'd just ask that.
6 I don't want to get seven individual dates where we
7 --
8 **DR. MELIUS:** Can you circulate some possible
9 dates and see if we can all fit into them for -- for
10 these visits?
11 **MR. ELLIOTT:** I will ask Cori to tap you for
12 your availability, right.
13 **DR. ZIEMER:** But let me ask, on working groups
14 don't I have to actually appoint them and charge
15 them with a task?
16 **MR. ELLIOTT:** Yes, you do.
17 **DR. ZIEMER:** And so it might be helpful simply
18 to get three of you and four of you and have a
19 working group chairman for each, and that chairman
20 can work with the other two or three and with Jim
21 and find a common date and we don't have to sit here
22 in the full group. Who is it that needs -- it would
23 be Tony, Jim, Wanda -- and I would be involved
24 'cause I haven't gone through a full session. And
25 Leon and Henry. Okay. So Tony, are you willing to

1 be the group leader --

2 **DR. ANDRADE:** Yes.

3 **DR. ZIEMER:** -- for one of the groups? It

4 would be you, Jim, Wanda and -- is that one group?

5 **UNIDENTIFIED:** Leon.

6 **DR. ZIEMER:** Okay, and let's say -- and Leon.

7 **DR. ANDRADE:** Okay.

8 **DR. ZIEMER:** And then you simply find a -- work

9 with Jim and find a date.

10 **DR. ANDRADE:** Okay.

11 **DR. ZIEMER:** Okay. And then Henry -- and you

12 be the chair of the other group? Okay, and then

13 it's you and Mike and Roy --

14 **DR. DEHART:** No.

15 **DR. ZIEMER:** No, you were there already.

16 You're -- he's going to be in China -- and me.

17 **DR. ANDERSON:** Okay.

18 **DR. ZIEMER:** The three of us. Right?

19 **DR. DEHART:** Paul, I would suggest this be

20 later than sooner. It needs to be closer to the

21 time you're actually going to be starting again.

22 **DR. ANDERSON:** So after Knoxville -- or after -

23 -

24 **DR. ZIEMER:** Yeah, this could be in -- this

25 could be June, July time.

1 **DR. MELIUS:** Yeah, that's what I was going --
2 **DR. ZIEMER:** So there's no big urgency.
3 **DR. ANDERSON:** We can talk about it at the next
4 meeting.
5 **DR. ZIEMER:** Okay, so those are the two working
6 groups and they are simply charged with the
7 responsibility of learning the system. Okay?
8 Is there any other business to come before us
9 today?
10 **MR. ESPINOSA:** For the -- for the meeting after
11 Oak Ridge, after the May -- I found it a lot easier
12 on me if -- you know, we're kind of scheduling two
13 meetings in advance and it's been a lot easier for
14 me to move my stuff around. Is it possible that we
15 can schedule the next meeting now?
16 **DR. ZIEMER:** Sure. Or we can at least identify
17 and have -- Cori would have to confirm it.
18 **DR. MELIUS:** There were some issues I thought
19 that came up regarding the task order business and
20 timing and so forth. I thought Larry had to clarify
21 those.
22 **MR. ELLIOTT:** I would ask that you hold off on
23 scheduling your following meeting until we get into
24 May. Let's -- if we can do that at May, it would
25 make a lot more sense to me --

1 **DR. ZIEMER:** But it's probably not going to be
2 till July.
3 **UNIDENTIFIED:** (Inaudible) time frame.
4 **DR. ZIEMER:** Yeah.
5 **DR. MELIUS:** Well, if you could even start
6 circulating something beginning of May when you --
7 when you feel you're comfortable in terms of timing.
8 **MR. ELLIOTT:** Yeah. Yeah, we could do that.
9 Maybe at -- in advance of the May meeting. First of
10 May we could tap everybody's availability. We'll
11 have it at the May meeting.
12 **MR. ESPINOSA:** It's just, you know, if we could
13 schedule a lot more in advance.
14 **DR. ZIEMER:** Right. Anything else for the good
15 of the order? Then this meeting is adjourned.
16 (Meeting adjourned)
17
18

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C E R T I F I C A T E

STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, STEVEN RAY GREEN, being a Certified Merit Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript 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 _____ day of April, 2003.

____
STEVEN RAY GREEN, CVR-CM
GA CCR No. A-2102