

October 26, 2021

Via Electronic Submission to <https://rfi.grants.nih.gov/?s=60259995154f0000c6001bd2>
National Institutes of Health (NIH)
Office of the Director

Copy Sent Via Postal Service to:
Office of Laboratory Animal Welfare (OLAW)
National Institutes of Health
6700B Rockledge Drive, Suite 2500, MSC 6910
Bethesda, MD 20817

RE: Comments Submitted in Response to NOT-OD-21-161, Request for Information

To Whom It May Concern:

On behalf of the Association of American Medical Colleges (AAMC), the Council on Governmental Relations (COGR), and the National Association for Biomedical Research (NABR), we appreciate the opportunity afforded by NIH's Office of Laboratory Animal Welfare (OLAW) to submit comments in response to [NOT-OD-21-161](#), "Request for Information (RFI) on Clarifying the Reporting Requirements for Departures from the *Guide for the Care and Use of Laboratory Animals*" (the "Guide"). Each of our associations knows that many important scientific and medical advances are made possible only through research involving animals, and we are firmly committed to the responsible and ethical conduct of that research

Our member institutions are leaders in biomedical research and appreciate the need for clear standards that both protect the health, safety, and welfare of animals used in research and minimize associated administrative burden on researchers, institutional animal care and use committees (IACUCS), and other participants in research animal care and use programs. These goals are not mutually exclusive, as the elimination or tailoring of requirements to remove unnecessary or duplicative items frees time, personnel, and other resources for use in more responsive animal care activities.

Our comments here encompass both general and specific aspects of the RFI that we believe could be better tailored to protect animal welfare while reducing burden. In brief, these comments focus on three main points: (a) that agencies should take broader action to eliminate unnecessary and burdensome requirements on animal research; (b) that the Guide is not a regulatory document, and should not be treated as such in this RFI and in associated documents; and (c) that NIH should embrace the flexibility afforded by "should"

statements in the Guide and the institutional use of alternative compliance strategies they permit.

Background: Congress recognized the negative impact of unnecessary regulatory burden on animal research when it passed the 21st Century Cures Act¹ (“Cures Act”). Specifically, the Cures Act directed the NIH, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA) to examine regulations and policies governing animal research with the goal of “reduc[ing] administrative burden on investigators while maintaining the integrity and credibility of research findings and protection to research animals.” Shortly after passage of the Cures Act, AAMC, COGR, NABR, and the Federation of American Societies for Experimental Biology (FASEB) convened a workshop to provide “actionable recommendations for promoting regulatory efficiency, animal welfare, and sound science” and produced a report – “Reforming Animal Research Regulations” (RARR) -- detailing the recommendations that were developed.² We have drawn upon those recommendations in developing our comments in this letter.

General Comments Regarding the RFI: Before turning to comments on specific items in the [RFI response form](#), we offer the following general comments on the overall nature and scope of the RFI.

- **Carrying Out the Cures Act’s Mandate:** In response to the Cures Act’s directive to reduce administrative burden, OLAW has issued this and other RFIs³ that highlight existing flexibilities in the Public Health Service Policy on Humane Care and Use of Laboratory Animals (“PHS Policy”)⁴ that may assist in the reduction of administrative burden. We appreciate OLAW’s development of these documents, which serve as useful tools for animal care and use programs. We respectfully suggest, however, that the Cures Act mandate calls for much broader and transformative reform, not merely incremental marginal revisions. Specifically, Section 2034(d) of the Act requires NIH, USDA, and FDA to

[C]omplete a review of applicable regulations and policies for the care and use of laboratory animals *and make revisions, as appropriate*, to reduce administrative burden on investigators while maintaining the integrity and credibility of research findings and protection of research animals.
[Emphasis added].⁵

¹ Pub. L. 114-255, §2034(d), 130 Stat. 1033 (2016).

² [“Reforming Animal Research Regulations: Workshop Recommendations to Reduce Regulatory Burden”](#) (Oct. 24, 2017).

³ See, e.g., [NOT-OD-20-145](#), “RFI on Flexibilities for Conducting Semiannual Animal Facility Inspections”; [NOT-OD-20-169](#), “RFI on Encouraging AAALAC International-Accredited Institutions to Use Sections of the AAALAC Program Description in the OLAW Animal Welfare Assurance”; [NOT-OD-21-118](#), “RFI on Flexibilities to Reduce Administrative Burden While Continuing to Apply the PHS Policy to Zebrafish Immediately After Hatching.”

⁴ <https://olaw.nih.gov/policies-laws/phs-policy.htm>

⁵ [Pub. L. 114-255, 130 Stat. 1033 \(Dec. 13, 2016\)](#).

Thus, we urge NIH to reconsider this RFI in terms of the existing language in Section IV.A.1. of the PHS Policy and accompanying guidance upon which the RFI is based. Specific areas for revision are discussed in the following comments.

- **Avoiding Treatment of the Guide as a Regulatory Document:** We request that NIH re-examine the RFI’s treatment of the Guide as a regulatory document. As stated in the RARR report:

The Guide for the Care and Use of Laboratory Animals (Guide) is not a regulatory document. Given that, OLAW should use the Guide as it was intended, namely, “to assist institutions in caring for and using laboratory animals in ways judged to be professionally and humanely appropriate.”

The RFI’s language itself states that the Guide is a “widely accepted and respected primary reference on animal care and use,” and incorporating the Guide into the PHS Policy does not alter the document’s fundamental nature. “The PHS requires institutions to use the Guide for the Care and Use of Laboratory Animals (Guide) as a basis for developing and implementing an institutional program for activities involving animals.”⁶ Accordingly, OLAW’s interpretation of the PHS Policy and associated guidance (e.g., [OLAW FAQs on the PHS Policy](#)) should be modified to make clear that the Guide is not a set of regulations, but rather a reference tool to assist institutions in carrying out their animal care and use programs.

- **Ensuring Appropriate Treatment of “Should” Statements in the Guide:** One of our key concerns regarding the RFI is that we do not believe that it treats “should” statements in the way that the Guide intended. In its discussion of “must, should, and may” statements, the Guide describes “should” statements as “strong recommendation[s] for achieving a goal,” with full recognition that “individual circumstances might justify an alternative strategy.”⁷ The discussion goes on to state that the Guide “is written in general terms so that its recommendations can be applied in diverse institutions and settings” and further that:

This approach requires that users, IACUCs, veterinarians, and producers apply professional judgment in making specific decisions regarding animal care and use.⁸

In sum, the Guide clearly recognizes that “should” statements are recommendations; that alternative strategies may be applied in different institutions and settings; and that IACUCs should use their professional judgment in making specific decisions regarding the use of alternative strategies. As stated in the RARR report:

⁶ [PHS Policy](#) at § IV.A.1.

⁷ [Guide](#) at p. 8.

⁸ *Id.*

The Guide allows facilities to produce welfare outcomes for animals in diverse and innovative ways by permitting alternative strategies to “should” statements upon approval by the IACUC. Thus, OLAW should revise FAQ C7 . . . to ensure that IACUC-approved alternative strategies from “should” statements in the Guide are not deemed departures or deviations and are not required to be included in the semiannual report to the Institutional Official.

We again recommend that OLAW PHS Policy FAQ C.7. be modified as described above. Additionally, we request that the language of the RFI and the accompanying documents (e.g., Guide Exceptions List, Must Statements checklist) recognize that “should” statements are “recommendations” by eliminating verbiage that describes failure to adhere to a “should” statement as a “departure from the Guide” and by describing changes from these recommendations as “alternative strategies,” not “exceptions.” Finally, as we note in our specific comments below, the use of such “alternative strategies” should not require reporting to the Institutional Official (IO).

Specific Comments on Provisions of the RFI: Here we set out our comments regarding specific text within the RFI. These comments are listed under the section headings of the RFI that they address.

“Background” Section, Paragraph 2: In reviewing the RFI, we noted a misstatement in this paragraph regarding the requirements of PHS Policy, Section IV.F.3. The RFI text states that Section IV.F.3 “requires that Assured institutions report noncompliant, unapproved departures from the Guide to OLAW.” The text of Section IV.F.3.b. that appears in the PHS Policy, however, states that reporting is required for “any serious deviation from the provisions of the Guide.” We recommend that the wording in the RFI be conformed to the text that appears in the Section IV.F.3.b.

“Information Requested” Section:

- **Item 1, “Guide Exceptions List”:** As described in our comments on “Ensuring Appropriate Treatment of ‘Should’ Statements in the Guide,” we suggest that the language of the exceptions list be modified to eliminate verbiage that describes failure to adhere to a “should” statement as a “departure from the Guide” and by describing changes from these “should” statement recommendations as “alternative strategies,” not “exceptions.
- **Item 2, “Guide Must Statements checklist”:** This checklist contains two items that we believe require clarification:
 - The first item is referenced in the checklist as appearing on page 26 of the Guide and states “IACUC members named in protocols or who have other conflicts must recuse themselves from decisions regarding these protocols.” This Guide statement is unclear as to the meaning of the term “other conflicts,” and we suggest that the checklist be modified to note that regulations and PHS Policy language should be consulted and take precedence over the Guide.

- The second item is referenced in the checklist as appearing on page 35 of the Guide and states “Animals that cannot be relocated or protected from the consequences of the disaster must be humanely euthanized.” Depending on the nature of the disaster, this mandate could put institutional personnel at great risk. We suggest that OLAW note in this checklist that the risk to personnel must be considered in determining if this task can be safely and appropriately undertaken.
- **“Reporting to the Institutional Official (IO) in the semiannual report is not required for,” #2 – “A specifically described Guide exception from a should statement”:**

Please see the discussion above regarding appropriate treatment of “should” statements in the Guide. For the reasons previously mentioned, we believe that requiring IACUC approved alternative strategies to “should” statements be considered a departure from the Guide and reported to the IO does not comport with the Guide’s intent or purpose. Further, such an application of the Guide imposes unduly stringent requirements that obviate the Guide’s performance-based practices and results in unnecessary and burdensome reporting requirements. We suggest that this section be modified to state that the use of “alternative strategies” to “should” statements need not be reported to the IO.
- **“Reporting to the Institutional Official (IO) in the semiannual report is not required for,” #3 -- “Deviations from a should statement in the *Guide* using established performance standards”:** In line with our foregoing discussion of the appropriate treatment of “should” statements, this section describes “alternative strategies,” and recognizes that the Guide permits those responsible for managing animal care and use programs to use such strategies in addressing “should statements.” Thus, we believe that use of the term “deviation” to describe allowable alternative strategies to “should” statements is inappropriate and should be modified.
- **“Reporting to OLAW is required for,” #1 and #2:**
 - With respect to both #1 and #2, please see the discussion above regarding appropriate treatment of “should” statements in the Guide. The use of the term “deviation” in each of these items to describe allowable “alternative strategies” is inappropriate because the Guide intends for institutions to employ such strategies.
 - With respect to #1, we suggest that the language in the “Discussion” bullet point be conformed with the language of PHS Policy §IV.F.3(b) by deleting “noncompliance” and substituting “serious deviation from provisions of the Guide.”
 - Item #2.a. provides an example concerning a cleaning schedule that did not adhere to a “should” statement in the Guide and was not approved in advance by the IACUC. It is unclear, however, if failure to follow the original schedule negatively impacted the animals’ health or well-being or the quality of the research. If it did not, we question whether the example given is actually a “serious deviation from the cited provision of the Guide” that is reportable in accordance with section PHS Policy, Section IV.F.

Conclusion

Each of the associations on this letter, and their member institutions, recognize the importance of animal research and the need to conduct that research responsibly and ethically. Indeed, the rapid development of COVID-19 vaccines during the course of the current pandemic, would not have been possible without research involving animals. This example underscores the need for regulatory agencies to fully embrace the Cures Act's charge to review and revise current animal regulations and policies with the goal of eliminating unnecessarily burdensome requirements that do not contribute to health, safety, and welfare of research animals in an efficient and effective manner. As stated in the Guide's preface, the Committee approached its task of developing the Guide's eighth edition by:

Carry[ing] forward the balance between ethical and science-based practice that has always been the basis of the Guide and fulfilled its role to provide an updated resource that enables the research community to proceed responsibly and in a self-regulatory manner with animal experimentation. The Guide is predicated on the understanding that the exercise of professional judgment both upholds the central notion of performance standards and obviates the need for more stringent regulations.⁹

Accordingly, we urge OLAW to make the suggested revisions to this RFI, as well as the interpretations of the PHS Policy provisions and associated guidance, that do not conform with the stated purpose of the Guide. These revisions will truly eliminate unnecessary administrative burden and permit institutions to make full use of the flexibilities that the Guide affords.

Once again, we appreciate the opportunity to provide these comments, and points of contact are noted below for each association should you have any questions regarding this transmittal.

Points of Contact:

AAMC: Stephen Heinig at sheinig@aamc.org

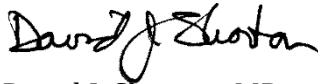
COGR: Kris West at kwest@cogr.edu

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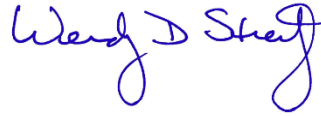
[Signatures on following page.]

⁹ [Guide](#) at p. xiv.

Sincerely,



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The AAMC (Association of American Medical Colleges) is a nonprofit association dedicated to transforming health through medical education, health care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; approximately 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies. The Council on Governmental Relations (COGR) is an association of 190 research universities and affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions. The National Association for Biomedical Research (NABR) is a 501(c)(6) non-profit association dedicated to sound public policy for the humane use of animals in biomedical research, education, and testing. NABR provides a unified voice for the scientific community on legislative, regulatory, and legal matters affecting the responsible, humane, and ethical use of laboratory animals. Members include more than 340 universities, medical and veterinary schools, teaching hospitals, pharmaceutical and biotechnology companies, patient groups, and academic and professional societies who rely on humane and responsible animal research to advance global human and animal health.