



October 6, 2023

Submitted Electronically via: <https://rfi.grants.nih.gov/?s=642efed5df978d53f508c072>

RE: Response to *Request for Information (RFI) on Flexibilities for Streamlining IACUC Review of Protocols and Significant Changes* (NOT-OD-23-152)

To Whom It May Concern:

We write to offer comments in response to NIH's request for comments on the [*Request for Information \(RFI\) on Flexibilities for Streamlining IACUC Review of Protocols and Significant Changes*](#) ("RFI"). COGR is an association of over 200 public and private U.S. research universities and affiliated academic medical centers and research institutes. We focus on the impact of federal regulations, policies, and practices on the performance of research conducted at our member institutions, and we advocate for sound, efficient, and effective regulation that safeguards research and minimizes administrative and cost burdens.

COGR and its member institutions recognize the importance of ensuring the health, safety, and welfare of laboratory animals used in research, and our institutions strive to adopt and promote effective practices in this area. Toward these ends, we fully support the 21st Century Cures Act ("Cures Act") mandate that:

[T]he Director of National Institutes of Health, in collaboration with the Secretary of Agriculture and the Commissioner of Food and Drugs, shall complete 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.*]

In view of the clarity of the Cures Act's directive, we are disappointed that the RFI does not include new revisions to existing guidance that actually reduce administrative burden. Rather, the portions of the RFI for which OLAW indicates it will accept comments,¹ are mainly a restatement of long-standing flexibilities that have been in effect since well before the enactment of the Cures Act in December 2016.² Our specific comments on the RFI are set forth below under the relevant section headings.

¹ Despite the RFI's inclusion of a very detailed background statement that bears directly on the implementation of the proposed guidance sections, the [RFI webpage](#) states that OLAW will "only consider comments regarding the information under the Information Requested section of the RFI."

² See, e.g., *Guidance to IACUCs Regarding Use of Designated Member Review (DMR) for Animal Study Proposal Review Subsequent to Full Committee Review (FCR)*, [NOT-OD-09-035](#) (Jan. 8, 2009).

Proposed Guidance for Streamlining DMR³

DMR, which does not require a quorum of the IACUC at a convened meeting, may reduce administrative burden and enhance review efficiency by decreasing the turnaround time for IACUC review and approval. The following flexibilities may be used with DMR:

- 1. The IACUC may determine a reduced, but reasonable, time frame agreed upon by the IACUC to obtain concurrence to call for FCR from all members or concurrence by silent assent once the full time has elapsed (e.g., three instead of seven business days).***
- 2. Submissions may be routed for DMR to allow the DMR process to be initiated while the IACUC is provided time to call for FCR. However, the outcome of the review cannot be finalized until all IACUC members have been provided a reasonable time to call for FCR ([OPRR Reports 90-01](#)). If all voting members respond before the end of the predetermined time frame, and there are no requests for FCR, DMR may be finalized.***
- 3. The IACUC may establish criteria for which some types of research or significant changes may be flagged for DMR. All members must be provided a reasonable time to call for FCR, but the DMR process may be initiated during that time. Only when there are no requests for FCR at the end of the predetermined time frame, may DMR be finalized.***

Comments

In April 2023, OLAW updated Frequently Asked Question (FAQ) D.23 on protocol review to state:

[23. May IACUC members call for FCR after the deadline for a response to allow DMR has passed?](#)

Yes. Any IACUC member may call for FCR up until the activity has been approved. After approval, IACUC members may address issues through other means, such as submitting an animal welfare concern or through continuing review.

Echoing this FAQ, the RFI's background section on FCR and DMR states that that "[a]ny IACUC member may, ***at any time***, request to see the revised protocol or request FCR." [***Emphasis added.***]

Both these statements completely undercut the concept of the IACUC establishing an effective and enforced pre-determined period during which a member may call for FCR. Indeed, given OLAW's stance that a member may call for FCR even after a deadline has passed, it makes no sense for the IACUC to establish any period short of protocol approval in which to call for FCR. Moreover, in taking this position, OLAW effectively negates the following RFI provisions as a means to reduce administrative burden:

³ As used in this letter "DMR" means "designated member review," "FCR" means "full IACUC committee review," and "VVC" means "veterinary verification and consultation."

- The IACUC may determine a reduced, but reasonable, time frame . . . to obtain concurrence to call for FCR . . .
- If all voting members respond before the end of the predetermined time frame [to call for FCR], and there are no requests for FCR, DMR may be finalized.
- Only when there are no requests for FCR at the end of the predetermined time frame, may DMR be finalized.

COGR urges OLAW to modify its approach by permitting IACUCs to establish a reasonable **and enforceable period for receipt of FCR requests and eliminate any policy or guidance to the contrary**. Further, OLAW should explicitly state that IACUCs may terminate the period for receipt of FCR requests prior to approval via DMR. Such an approach would fulfill the Cures Act's call for revisions that reduce administrative burden, while "maintaining the integrity and credibility of research findings and protection of research animals." Indeed, given the restrictions on the use of DMR, along with the fact that OLAW requires any predetermined period for requesting DMR to be reasonable and clearly communicated to members, it is unclear how prohibiting an IACUC from enforcing its policy establishing a period for receipt of FCR requests contributes to either effective IACUC administration or improved laboratory animal health, safety, and welfare.

- 4. The IACUC chairperson may designate only one qualified member to conduct the review, which may reduce the burden associated with designating multiple reviewers because it eliminates the requirements that:*
 - *Reviewers must be unanimous in any decision.*
 - *Reviewers must review identical versions of the protocol.*
 - *If modifications are requested by any reviewer, then the other reviewers must agree to the modifications.*
- 5. The IACUC has the flexibility to determine the best way for the chairperson to assign the designated reviewer, including creating a policy. The policy should accommodate future assignment changes for conflicts of interest or unavailable reviewers, while ensuring that the designated member is qualified to conduct the review. Using a rotational list of reviewers based on their expertise, and appointing a vice chairperson to assign reviewers in the chairperson's absence are other mechanisms to increase efficiency.*
- 6. Designated reviewers may refer to scientific-based publications in peer-reviewed journals or guidelines prepared by professional organizations (see OLAW [FAQ D.17.](#)) as an alternative to ad hoc consultants.*
- 7. The IACUC may determine the best means of documenting the DMR process from review to approval (e.g., emails or forms).*

Comments

Aside from the unusual and somewhat confusing reference to FAQ D.17 ([What guidelines should IACUCs follow for fishes, amphibians, reptiles, birds, and other nontraditional species used in research?](#)) in paragraph 6, COGR concurs with each of the foregoing provisions of the RFI. However, in the first sentence of item 4, we suggest adding the text “and approval” after the word “review” to make clear that the DMR process contemplates both actions.

Finally, we note that like other provisions in the RFI, these items do not constitute new revisions of OLAW policy/guidance that result in reduced administrative burden. Rather they restate prior guidance (e.g., [FAQ D.3](#)), reflect provisions commonly included in IACUC policies/processes, or are readily deduced from a plain reading of the provision.

8. *Designated member approval does not require subsequent reapproval by the IACUC at a convened meeting.*

Comments

COGR concurs with this provision. As previously stated, however, we urge OLAW to clearly state that the IACUC can limit calls for FCR to a predetermined period that may expire prior to approval of a protocol via DMR.

9. *The IACUC may expedite the three-year complete review of an ongoing protocol that is due to expire. This may only occur during extenuating circumstances, such as disasters impacting research or extended unplanned PI unavailability. The intent of this flexibility is to permit the continuation of research in accordance with [PHS Policy IV.C.5](#).*

The expedited review process must include the following parameters:

- *Members may agree to a shortened response time to call for FCR. If no member calls for FCR, the protocol may be reviewed by DMR ([PHS Policy IV.C.2](#)).*
- *The IACUC must have a policy describing a shortened approval period for ongoing activities (i.e., previously approved protocols due to expire) to extend only for the duration of the unplanned circumstances.*
- *No significant changes are allowed using the expedited process. Any significant changes must be submitted and reviewed after the circumstances have resolved.*

Comments:

Although this provision may be helpful, the circumstances in which it may be used are so limited as to make its application exceedingly rare (i.e., it is unusual to have a three-year complete review of a protocol that does not require a significant change).

Proposed Guidance for Streamlining DMR subsequent to FCR

To avoid temporal delays and reduce burden, DMR subsequent to FCR provides the following flexibilities for IACUCs to have the revised protocol reviewed and approved:

1. *Neither a convened meeting nor a vote is necessary to propose a DMR subsequent to FCR policy. Emails and forms are acceptable, though each member must be given the opportunity to provide their input in person or electronically prior to its approval. The policy may be implemented as soon as all members agree to it. New members must be informed of the policy and agree to its use.*
2. *Members are not required to sign the policy (either physically or electronically) and there is no requirement for a written statement at every meeting.*
3. *If an IACUC uses a primary reviewer during FCR, the IACUC chairperson may designate this reviewer for DMR subsequent to FCR and for any future proposed significant changes, provided no member calls for FCR.*

Comments

COGR applauds OLAW's statement that "[m]embers are not required to sign the policy (either physically or electronically) and there is no requirement for a written statement at every meeting." There has been considerable confusion on this point in view of OLAW FAQ D.19.2.a:

19. May an IACUC use designated member review (DMR) to review an animal study protocol subsequent to full committee review (FCR) when modifications are needed to secure approval?

When substantive information is lacking from a protocol, the committee may have questions requiring a response from the PI. In such situations, the IACUC may take the following actions:

1. If **all** members of the IACUC **are** present at a meeting, the committee may vote to require modifications to secure approval and have the revised research protocol reviewed and approved by designated member review or returned for FCR at a convened meeting. These IACUC actions require two different processes. A majority vote of the quorum present is required for the protocol outcome of 'require modification to secure approval.' However, to determine to review the resubmitted protocol by DMR, the entire IACUC membership (all members) must agree. The DMR is designated by the IACUC Chair.
2. If **any** members of the IACUC **are not** present at a meeting, the committee may use DMR subsequent to FCR according to the following stipulations:
 - a. All IACUC members agree **in advance in writing** that the quorum of members present at a convened meeting may decide by unanimous vote to use DMR subsequent to FCR when modification is needed to secure approval. However, any member of the IACUC may request to see the revised protocol and/or request FCR up until the revised protocol has been approved. [**Emphasis in original.**] . . .

COGR encourages OLAW to modify the foregoing FAQ to make it consistent with the statement in the RFI.

Proposed Guidance for Streamlining VVC

The following flexibilities for VVC may be implemented:

- 1. IACUCs may authorize more than one veterinarian, who need not be an employee, to conduct VVC. If the veterinarian determines the requested change is consistent with the VVC policy and appropriate for the animals in question, it may go into effect immediately.*
- 2. IACUCs may use established references (e.g., formularies, guidance documents, institutional policies, standard operating procedures) to set allowable parameters for each VVC-eligible significant change included in the VVC policy. This reduces the burden of developing references when established references that meet the needs of the IACUC are already available.*
- 3. The IACUC has flexibility to determine the processing and documentation of VVC (e.g., emails or forms handled by any individual in the IACUC office, IACUC chairperson, or veterinarians).*
- 4. Changes handled by VVC do not require subsequent reapproval by, or notification to, the IACUC.*

Proposed Guidance for Streamlining Administrative Handling of Increase in Previously Approved Animal Numbers

An increase in previously approved animal numbers (PHS Policy IV.D.1.a.) may be handled administratively according to an IACUC-approved policy. The following flexibilities may be implemented:

- 1. The increase may be expressed as a percentage, an exact number, or a number relative to the original number approved, and may be taxa-specific (e.g., a 10% increase in rodents).*
- 2. The IACUC has flexibility to determine the most appropriate individuals and means of handling and documenting this process. (e.g., emails or forms handled by any individual in the IACUC office, IACUC chairperson, or veterinarians).*
- 3. Changes handled administratively do not require subsequent reapproval by, or notification to, the IACUC.*

Comments

As opposed to establishing new flexibilities that reduce administrative burden, the provisions outlined in these two sections concern items that have either been included in prior guidance (see, e.g., [NOT-OD-14-126](#), [NOT-OD-14-063](#)) and/or are typically addressed through IACUC/institutional policies and procedures (i.e., whether a veterinarian conducting VCC must be an institutional employee, notification to the IACUC of certain administrative actions).

Conclusion

We appreciate the opportunity to offer comments on the RFI and hope that OLAW will give serious consideration to the recommendations that we have offered. Further, as OLAW continues its efforts to implement the Cures Act's directive, we urge the agency to take a broader approach, and develop new flexibilities to reduce unnecessary administrative burden, in addition to reminding institutions of existing flexibilities. Taking this approach will assist researchers and IACUC administrators by allowing them to better concentrate their time and efforts on the conduct of science and oversight of the animal care and use program.

Please feel free to contact me or Kris West, COGR's Director of Research Ethics and Compliance at kwest@cogr.edu should you have any questions regarding this transmittal.

Sincerely,

A handwritten signature in black ink that reads "M. Owens". The signature is written in a cursive style with a large, stylized "M" and "O".

Matt Owens
President