Note: text has been edited for clarity.

Reporting Noncompliant Events to OLAW

Speaker: Axel Wolff, D.V.M., Director, Division of Compliance Oversight, OLAW

Moderator: Jerry Collins, Ph. D., Division of Policy and Education, OLAW and Yale University

Broadcast Date: March 5, 2009. A recording of the seminar can be viewed at https://webmeeting.nih.gov/p31061868/

Good morning or good afternoon, depending upon your local time zone and welcome to the next in our series of OLAW IACUC Staff Outreach Online Seminars. My name is Jerry Collins and I will serve as the moderator of today's session. You'll notice the slides are changing; we have a slight glitch here. We'll get back to that in a moment so please ignore the slides for a moment or so. We encourage you to submit your questions online during the presentation by today's speaker. Please direct your attention to the top left corner of your monitor. If you would like to submit a question, please type it in the text field at the bottom of the "submit a question Q & A box" and press the arrow to submit. Once submitted, your questions will appear in the upper portion of the chat box on your screen but will only be seen by you and the staff here in the office. [If you are viewing the recorded seminar, you will not be able to submit questions. If you have questions, you may email OLAW at olaw@od.nih.gov.] This session will be recorded and made available to all interested parties. It will be posted within a week in the Education Section of the OLAW website. If you would like to access archived versions of those sessions, you may do so on the OLAW webpage by clicking on the heading titled OLAW Staff Outreach under the Education Section on that page.

Our speaker today is Dr. Axel Wolff. Dr. Wolff currently serves as director, Division of Compliance Oversight, Office of Laboratory Animal Welfare here at the National Institutes of Health. At OLAW, he has also served as a Senior Assurance Officer. He is a commissioned officer in the U.S. Public Health Service and has attained the rank of Captain. Prior to joining OLAW, Dr. Wolff was the director of the Veterinary Resources Program, NIH's Intramural biomedical research support program. He also directed the NIH's Animal Quarantine Facility and served at the Neurology Institute. Dr. Wolff's interest in unique research animals has involved him in work with armadillos, chimpanzees, and fruit bats as well as the more common species. He serves on the editorial board of Lab Animal and has published on various topics including primate enrichment and PHS Policy interpretation. Dr. Wolff, would you please begin your presentation entitled *Reporting Noncompliant Events to OLAW.*

Thank you, Dr. Collins, and thank you all for joining us for this webinar in which we're going to address reporting of noncompliant events to OLAW. We're going to cover specific examples of noncompliant activities, examples of the most common incidents reported to OLAW along with the common corrective actions, implications of noncompliance, and how to avoid it.

The information we will discuss is applicable to any institution receiving Public Health Service funds for the conduct of research, testing, or training using live vertebrate animals. The Public Health Service Policy on Humane Care and Use of Laboratory Animals, or PHS Policy for short, outlines the requirements an institution must follow to

ensure the humane care and use of animals in PHS-supported activities. This Policy is based on a Public Law which was issued in 1985. The institution agrees in its Assurance to comply with the PHS Policy as a prerequisite for receiving PHS funding.

The PHS Policy outlines what must be reported to OLAW in section IV. F.3., namely, number (1) any serious or continuing noncompliance with this Policy, (2) any serious deviation from the provisions of the Guide for the Care and Use of Laboratory Animals or (3) any suspension of an activity by the Institutional Animal Care and Use Committee, known as an IACUC.

The PHS Policy 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. The *Guide* uses performance standards based on science and gives a baseline for IACUCs and veterinarians to follow. The *Guide* is currently in the process of being updated with a target release date of 2010.

In response to questions posed by grantees inquiring about specific examples of reportable and non reportable incidents, OLAW issued a Guidance Notice in 2005 [NOT–OD-05-034] which provided numerous examples of the types of situations to be reported, as well as when and how to report. I will now cover some of these examples to illustrate what is expected in each of the three reportable categories listed in the PHS Policy.

Serious or continuing noncompliance with PHS Policy can constitute a number of things such as performing animal research that has not

received prior approval from the IACUC, failure by investigators to follow the approved protocol, failure of animal care and use staff to follow IACUC approved institutional policies or procedures, or a failure of the institution to correct deficiencies identified during the semi annual evaluation in a timely manner.

Examples of serious deviations from the provisions of the *Guide* would include any conditions that jeopardize the health or wellbeing of animals including accidents, natural disasters, or physical plant failures. Problems identified in the overall program of veterinary care, occupational health, or staff training not corrected as outlined in the plan and schedule would need to be reported.

The suspension of an activity by the IACUC occurs after review of the matter by a convened IACUC quorum with a majority of the members voting for suspension which then results in temporary or permanent interruption of the animal research. The Institutional Official is to consult with the IACUC, take corrective action and report this to OLAW.

Serious noncompliance or deviation from the *Guide* must be reported whether identified internally or by other agencies, site visitors or consultants including USDA, CDC, FDA, members from the Association for the Assessment and Accreditation of Laboratory Animal Care International, known as AAALAC, or any other NIH officials on official site visits. Appropriate institutional policies are to be in place to ensure prompt self-identification, correction, and reporting of noncompliance. OLAW assesses reports of alleged noncompliance from numerous

sources, including those just mentioned as well as institutional employees, members of the public or animal activist organizations.

The semiannual program review and facility inspection report is not required to be routinely submitted to OLAW except for non AAALAC accredited institutions submitting Assurances. However, if during the semiannual evaluation, a serious problem is identified that qualifies for prompt reporting, then it must be reported.

What does prompt reporting mean? Well, it means as soon as possible when the facts are actually ascertained. Preliminary report can be made by phone, fax, e-mail, but should not be held up until the matter is resolved. The final report is to contain specific and reasonable plans and schedules for correction. The PHS Policy oversight system is based on OLAW-monitored self-regulation and self-reporting.

When the IACUC suspends a PHS-supported project, a direct report must also be made to the PHS funding component. No charges for research activities with animals are to be made to the grant during the suspension period. Costs for animal maintenance may be allowed by the funding component on a case-by-case basis. We request that you please confirm in the final report to OLAW that the grant was not charged for these unallowable costs.

I will now go over some examples of noncompliant incidents commonly reported to OLAW and the types of corrective actions institutions have taken in response. One of the most reported items consists of an investigator carrying out animal research which has not received IACUC approval - either by not obtaining initial approval, working

under an expired protocol, working on a suspended protocol, or implementing an unapproved significant change.

In this case, the corrective actions taken would consist of stopping this unapproved activity, placing the animals on a holding protocol, and obtaining IACUC approval. As I mentioned before the PHS grant cannot be charged for these unauthorized activities. The staff is counseled and retrained on relevant policies. Often enhanced laboratory oversight is put in place, communication is improved, and research staff is given a better understanding of the protocol's content.

Another common problem involves the IACUC itself. Sometimes a committee is not properly constituted, or it conducts business in the absence of a quorum when one is required, or it allows animal activities to continue after the 3-year approval has ended.
IACUC problems usually stem from inadequate training or monitoring.

Corrective actions in this case would consist of IACUC members taking additional training, such as taking the online OLAW tutorial, attending an IACUC 101, SCAW IACUC or PRIM&R IACUC training. Official actions undertaken without a quorum or inappropriate membership need to be reapproved with a quorum or properly constituted committee. The IACUC needs to conduct adequate post approval monitoring in order to ensure that animal activities are being carried out as described in the protocol. Good communication between the IACUC and the animal users and animal care staff is essential.

Many noncompliance reports involve problems with the clinical care of the animals such as inadequate perioperative monitoring, failure to

provide required analgesia, failure to ensure death after a euthanasia procedure, failure to follow the veterinarian's orders, or a failure to separate rodents which leads to chronically overcrowded cages.

In this case the corrective actions to address these clinical problems include establishment of standing operating procedures, assigning dedicated personnel, keeping adequate records, ensuring that staff is properly trained, ensuring that the veterinarian has appropriate authority, and establishing SOPs for addressing the separation of weaned rodents.

Recordkeeping requirements. Institutions must have good recordkeeping systems in place and must keep a copy of the Assurance, minutes of IACUC meetings, records of IACUC review of protocols, semiannual reports including minority reports, and the determination of accrediting bodies such as AAALAC.

What are the implications of identifying and reporting noncompliance? Well, primarily the result is the implementation of corrective and preventative measures which ultimately leads to an improved animal care and use program. However, should an institution not effectively address noncompliance, OLAW does have the authority to restrict or withdraw the Assurance which would prevent receipt of PHS funds for animal work. Sometimes special Terms and Conditions can be placed on awards, costs may be disallowed, a grant can be terminated, and in the most egregious situations, the matter may be turned over to the Department of Justice for criminal prosecution.

The best way to avoid noncompliance is by having clear institutional policies and procedures in place, a strong training program for staff at all levels, regular continuing education, and effective channels of communication. Internal mechanisms must be in place for staff to register animal related concerns with the IACUC.

The institution is responsible for the financial and administrative aspects of the grant and the animal care and use program. The investigators are accountable for carrying out the research as approved by the IACUC and for complying with the animal care and use program. And the IACUC, along with the Institutional Official, provides oversight over this animal care and use program.

NIH expects an institutional climate that promotes compliance, relevant internal policies, adequate training, effective checks and balances, and open communication channels within the institution and with NIH.

In summary, prompt reports must be made to OLAW in cases of serious or continuing noncompliance with the PHS Policy, serious deviations from the *Guide* or any suspension of activity by the IACUC.

Grantees are encouraged to contact OLAW for advice or assistance. If you are unsure whether an incident is reportable, feel free to call [301-496-7163] or email us [olaw@od.nih.gov]. It is always preferable to report items than to cover the matter up, as the consequences are less desirable if reportable events are withheld but discovered later. Besides the requirement for reporting as outlined in the PHS Policy and agreed to in the Assurance, OLAW needs to be apprised of serious

noncompliance in order to represent the institution to the other Public Health Service agencies, Congress or the media.

You can contact OLAW via email and can receive current announcements, policy interpretation updates, training opportunities or notices via the Listserv. Thank you for attending this webinar and I'll spend the remainder of the time addressing questions.

Thank you Dr. Wolff. We will spend the reminder of our allotted time responding to questions that we have received from you, the participants. And we will begin with some questions that were submitted prior to this webinar. Please remember that you may submit questions that are relevant to a topic in the days preceding the broadcast.

Axel, the first question: **How do we know if an event should be reported and is it a problem if we call to discuss the possible need to report an event?** Well, as I mentioned, in response to this question from grantees in the past, OLAW issued guidance in 2005 [Guidance on Prompt Reporting to OLAW under the PHS Policy on Humane Care and Use of Laboratory Animals] with some very specific bulleted examples of the most common types of things that need to be reported as well as examples of things that didn't need to be reported. We do encourage you to call [301-496-7163] us if you have a question. You may consult and we won't write this down, it doesn't become a matter of record if you're just calling for advice. However, if you do have an incident to report, by all means, call us and we can make a preliminary report over the phone.

What would happen if during that conversation it was

determined that in fact an incident that was being discussed was something that needed to be reported? I would indicate that we are going to make a written preliminary record of this and that's to be followed up then with a final report from the IO once the matter has been resolved.

Our next question. **If the PI volunteers to stop his animal study because of unexpected morbidity or mortality in some of the animals, is that reportable to OLAW?** If the PI stopped the study because the underlying event, which triggered them stopping it, was a reportable item, why then, yes, it would be reportable. Similarly, if the IACUC suspends an activity through official action, that would be reportable as well. But if the PI stopped the study in response to a non reportable event, just stopping a study in and of itself is not a reportable item. OK. Just because I certainly have heard this question come up quite a bit - just to restate that: **Am I correct in saying that if an activity is halted for a brief period of time in order to determine what the problem is, and if it's determined that the problem is <u>not</u> a reportable event, then neither the stoppage of that activity, assuming the IACUC didn't suspend it, nor the event itself, is reportable?** That is correct.

Moving on to our next question. **Is there a preferred method for doing the preliminary report to OLAW? By phone? By email? By fax?** Well, whatever is most convenient for the caller. You can do it by any of those means. We just stress that it should be done as quickly as possible.

After the preliminary report, what is the best way for an institution to handle a reportable incident? Well, the IACUC is expected to investigate the matter and then formulate corrective and preventive measures. Once that's been done, the Institutional Official sends us a final report with those corrective and preventive measures.
Then Axel, again - just for clarification - once the report comes here, what happens after that? And in addition to that - is it necessary to include both the name of the investigator and, if there is PHS funding associated with the event, the grant number in the final report? You do not need to put the PI's name in the report, but if it is a PHS-funded project, we do need to have the grant number.
And what happens with the report here? OLAW acknowledges receipt of the report. We take a look at the nature of the incident and then determine whether the corrective and preventive measures offered up by the institution do address the problem and have a reasonable expectation of preventing it in the future, and if all those factors are met, then we thank the institution, the report goes on file here, and that - for that incident – the matter is closed.

Thank you. Our next question. **What is the difference between a significant deficiency that is observed during a semi annual review and an event that must be reported to OLAW?** If a significant deficiency constitutes a reportable item, it must be reported. However, conversely, not every reportable item is a significant deficiency. For instance, work was conducted by an IACUC without a quorum present when one was required. That does not necessarily impact the health and welfare of the animals, so in that

case it's a reportable item but wouldn't be qualified as a significant deficiency.

Thank you. Our next question. **You are being asked to elaborate on the number of FTEs [full time equivalent positions] that should be expected to support an IACUC with 200 to 500 protocols and - also part of the question is - what shows good institutional commitment?** For this item there is really no federal directive regarding the number of FTEs required. I'd recommend for a question like this, check with colleagues on a professional forum such as Comp Med to determine what [are] the best practices are out there in the community. But PHS Policy does not direct how many FTEs are needed for a program.

OK, our next one. **Please elaborate on the role of training that should be encouraged by the IACUC to the research community.** The U.S. Government Principles, which can be found in the PHS Policy, call for investigators and other personnel to be appropriately qualified and experienced for conducting procedures on living animals. It says in there that adequate arrangements shall be made for their in-service training including the proper and humane care and use of laboratory animals. An IACUC needs to assess the training and qualification of personnel as well as make recommendations in the semi annual report to the Institutional Official regarding the training of personnel. IACUCs are not responsible for conducting this training - the institution is. And OLAW doesn't actually direct the type of training. However, training is absolutely essential to make sure folks know what they're doing prior to handling animals.

Axel, our next question. **When the final report on an incident is complete, does it have to be sent from the IO? Can the IO just endorse the report from the IACUC and say they concur?** The PHS Policy says that the IACUC, through the IO, shall promptly provide OLAW with a full explanation of the consequences and actions taken when something like this happens. So either method is acceptable.

The next question is a two-part question. **Relating to a catastrophe like a hurricane, or tornado, or major flood. The first part asks how soon would OLAW want to know about the status of the facilities and if there is damage, is notification necessary [correction] - if there is no damage - is notification necessary? And the second part of the question is - what if the damage impacts the ability of the laboratory to conduct research? Will NIH help?** We don't [OLAW doesn't] expect a response immediately. We suggest that as soon as the situation is stable and the primary priorities have been taken care of - such as human and animal health - after that's been addressed - then you'd notify OLAW and whoever else you need to about the matter. If no damage has occurred, it's not necessary to report to us, but OLAW and NIH does appreciate courtesy calls from our grantees to confirm that everyone is safe. But actually you do not need to file a report if nothing happened. As far as whether NIH will assist grantees, NIH has done it in the past when natural disasters have occurred, so I assume that practice will continue.

We've now finished with the questions that came in before the meeting. And now we have a series of questions that are coming in even as we're speaking. The first one is: **if a protocol expires and the animals are placed on a holding protocol, does this**

constitute a suspension of activity by the IACUC? It does not. If the protocol expires and the animals are placed on the holding protocol and no research activities are done during the time that the protocol is not approved, you're OK. You don't need to report that to us or the funding component. It's only when work is being conducted without an approval that the matter becomes an unapproved activity that does need to be reported.

OK. Our next question, **the individual thought that only significant deficiencies not corrected in the IACUC specific time frame, it would have to be reported. But you stated any serious deficiency had to be reported whether it was corrected in a timely manner or not. So could you expound on that, please, Axel?** There may be some confusion here about uncorrected significant deficiencies. They need to be reported to USDA after 15 days. So we [OLAW] would only need to know about a significant deficiency if it meets the bullets in our reporting Guidance - in other words - if it impacts the health and safety of the animals. But conversely, whether a significant or minor deficiency - if something isn't chronically corrected in a timely fashion - either one of those would need to be reported to us. That doesn't mean that an IACUC can't readjust a reasonable plan and schedule. However, if a plan and schedule is made, but the situation just does not get corrected, whether significant or minor, it would need to be reported because then there seems to be some institutional problem. So a significant deficiency that meets one of the bulleted points on our Guidance that impacts the health and safety of the animals that would need to be reported to us. And uncorrected deficiencies, major or minor, if they

were not corrected in a reasonable timeframe where they constantly have to be readjusted, that would also need to be reported.
And then - just - again to clarify, when we talk about the USDA requirements, if there is a significant deficiency that has been identified by the IACUC, they've established a correction date and the institution fails to correct that deficiency by that date, then within 15 days of that deadline, the requirement is that the report be made to USDA.

Our third question, coming up along, now, with some of the ones we're receiving from other folks: **How do you handle an event that is not PHS- or NIH-funded? Like events that occur on protocols that are funded in-house?** If something is not PHS- or NIH-funded, then there are several things that need to be considered. If your Assurance states that you will report every incident regardless of funding, then you would report it. If your Assurance does not state that, but just uses the standard language, then there's a few other things to consider. If the event impacted PHS-funded work, it would need to be reported. If it's of an overarching programmatic nature - such as an overarching problem with veterinary care or the entire training program - that would also need to be reported. But if your Assurance doesn't state that it's going to be reported - and if it doesn't impact the PHS-funded work and it's a discreet item that occurred - then it's really up to you whether you want to report or not - but you're not required to.

Axel, the next question, the questioner says that **it sounded as if we were saying that it is the responsibility of the IACUC to report charges to the grant on expired protocols. Is that true?** Okay.

What I'm saying with this is that we had put out, in conjunction with OPERA [Office of Policy for Extramural Research Administration] one of our sister departments here at NIH, a Guidance to Grants and Contracts [NIH Policy on Allowable Costs for Grant Activities Involving Animals when Terms and Conditions are not Upheld] from NIH which stated that if work is conducted that has not been approved by the IACUC or work is being done at an institution that does not have an Assurance - that does not meet the Terms and Conditions of the Grants Policy Statement - and of course, work done without IACUC approval also is a violation of PHS Policy. So those items need to be reported to us [OLAW] as well as to the funding component. We would like to know that indeed when you report to us [OLAW], that you also met that other reporting requirement, namely to the funding component. If the work was done and inadvertently charged to the grant and then that charge is removed, we [OLAW] would appreciate knowing about it and that you let the funding component know. We just want to make sure that loop is closed.

Axel, just for clarification, I think the investigator [questioner] was asking **if it's the IACUC's responsibility for reporting to both groups, or is there a shared responsibility and the IACUC is responsible for reporting the - ah - adverse event or the - I'm sorry - I'm backing on myself here - is it the IACUC's responsibility to report charges on an expired protocol or is it an institutional responsibility and, perhaps, does that responsibility reside somewhere else in the institution, not within the IACUC?** Yes, it can reside somewhere else, it could reside in the Department of Sponsored Programs or whoever handles those types of reports to the funding component. It doesn't necessarily have

to be the IACUC that does that.
Thank you for that clarification.

Is it acceptable for the initial communication to be a letter, or is that confusing when the - quote - official communication is also going to be a letter? Well, as I mentioned, the initial communication to us can be by any of those formats, you can call it in and we'll take an oral report over the phone, fax, email, whichever method is convenient. The final report should be - and this can be as a PDF or an email letter - but it should be a final letter coming from the Institutional Official when the matter has been resolved.

OK, our next question. **How many times would an incident have to occur of overcrowding before it was considered to become chronic?** That really depends on what your institution finds. If you see one overcrowded cage - you know - one day every few months, I wouldn't consider that chronic. We also wouldn't consider it a reportable event if you have a policy in place that stipulates animals will be separated by the animal care staff at such and such a date, so that it's established that if the investigator doesn't do it, then the institution has some means of taking care of it. But coming across one overcrowded cage, may not necessarily be a reportable item. But the cases where we hear about it - it's chronic - animals are found on a routine basis having too many per cage because they weren't weaned on time. In that case there's a problem with an institutional policy and it would be reportable.

The next question, if an unapproved procedure is done on animals, do the animals have to be euthanized? Not necessarily. I

mean that's really up to the nature of the type of procedure done, the type of animal, the type of study, euthanasia doesn't necessarily need to be immediate corrective action for that. It certainly can be - if you have a group of mice that have all been inoculated with the wrong substance - I'm not sure what else you would do with them. But if another animal had some minor procedure done that wasn't approved - I don't know that it necessarily needs to be euthanized because of that.

I wondering if - in this case - the underlying question is - if some unapproved work has been done on an animal - once that work has been approved - can work continue to be done on that animal or can it not be used because the initial work was unapproved?

That's very case specific. I mean the initial work, if it wasn't approved, wouldn't be valid and allowable, so it's very hard to say. We can't condone the conduct of unapproved work. But that doesn't mean that that animal would immediately need to be euthanized - its not a real clear answer I'm giving you, but basically - no - an animal does not need to be euthanized - but, however if it was given a substance that wasn't approved, it's not real clear - what can be done with the animal unless it can be used on some other study or something.

It's probably also wise to remember that in a situation like this that most journals now are requiring certification that all the work included in a report was reviewed and approved by an IACUC or a relevant organization. So that may also fit into the thinking process here in responding to this question.

Our next one. **Can the IACUC determine if something is serious and reportable or is this something that can only be determined**

by this office [OLAW]? Well the IACUC is the body that needs to determine that. We put out guidance in order to help you determine that - there is information out there that should make that decision a little easier. What we do is to encourage folks to call us if the IACUC can't determine this because it's just not clear. But really the IACUC is the body that needs to determine that - and most IACUCs do - they only check with us if they have a question on something. So the IACUC is the body at the institution that has the responsibility for making these decisions.

The next question. **Is it reportable if you do not have a public non-affiliated member and addendums and protocols are being reviewed?** By "do not have a public member" - does it mean you don't have one appointed? The appointment requirements for the members on the IACUC are pretty clear. A public non-affiliated member is a necessary part of - a required member - on that IACUC. However, that person does not need to be in attendance at every meeting. You're just required to have a quorum. So if that person missed one meeting - but you still have a quorum present and that person is duly appointed - that meeting can go ahead. However both our office [OLAW] and USDA look over membership - um - minutes, membership of the folks that attended there. And if the same person is repeatedly absent, we would request the institute consider replacing that person because they're not really fulfilling their responsibility - but missing one meeting is not a problem - but not having a member appointed at all, is.

Next question. **The individual asks if they are correct in understanding that all significant deficiencies reported in a**

semi annual report are, by definition, reportable items. I think that the example that you gave earlier on - points out that that's not the case - so you might want to repeat that example - just once again. All right - well a significant deficiency immediately affects the health and welfare of the animal. If you discover - as you're walking around - that your rooms are overheating - yes - that's reportable. But not every single reportable item is necessarily a significant deficiency. And vise versa. Not every significant deficiency is necessarily a reportable item. So - in the example you used earlier - it could go in either direction.

The next question. **This one's a little bit longer. Regarding holding protocols in the following scenario: A protocol covering a PHS-funded project expires before a three year renewal. About a week later, the protocol is approved. Would this be considered a reportable noncompliance? Can the *per diems* still be charged against the grant? Can animals with burden, for example tumor burden or surgically placed cannulas, be transferred to holding protocols?** OK - if a protocol is ready to expire, and the animals are placed on a holding protocol - that - in and of itself - is not a reportable item. It's the conduct of work - experimental work - during the time that the protocol is not approved, that it is reportable. As far as can the *per diems* be recovered while they're on the holding protocol? That needs to be worked out with the funding component on a case-by-case basis. You can call your grants manager and ask if that's allowable. That's not really for our office [OLAW] to decide. Usually they're pretty lenient with that if it's for a short period of time, but we really can't predict that. While the animals are on that holding protocol - you mentioned here that they have

tumor burden or cannulas - certainly they need to be given veterinary care - but data can't be gathered and no actual research can be conducted on them. If they're on a diabetic study or something like that - certainly we would expect them to get their insulin - but that would be under the holding protocol veterinary care - but the PIs at that point in time should not be doing any research. And they really shouldn't be charging the grant for any research activities - they shouldn't be conducting them.

Axel, if I could just add a little twist to this one. **Since there's no requirement that the IACUC review every single item in a protocol, it seems that in this situation it might be possible for the IACUC to approve a very limited protocol which only has in it the things that need to be done in order to keep the animals going until the full blown protocol could be approved in a week or two. Does that sound to you like a possible way around this problem?** I'd be somewhat careful. If it looks like the investigator is continuing to conduct work under this holding protocol, that would not be acceptable. If the veterinarian is doing things for the benefit - health and welfare - of the animal - certainly that's acceptable and probably not even necessary to be on a holding protocol if it's considered veterinary care.

Thank you. **Next question is what is the best way to notify the funding agency of reportable events?** Whoever your contact person is that deals with the grants managers, that's the route you should go. People in sponsored programs offices do it - sometimes compliance officers do it - whatever works at your agency. I'm not really sure what answer to give for that because there are a variety of ways to contact the grants manager - and so whatever you've been

using to do your grants management communication would be an acceptable method to notify the funding agency of the reportable event. You need to check the grant number - find out which grants manager - most likely - at NIH has that grants portfolio and then get in touch with that person.

OK our next question. **To whom should someone be reporting - who at NIH - be reporting serious deficiencies?** Deficiencies of what kind? I mean serious deficiencies with the PHS Policy would be reported to us [OLAW]. Serious deficiency on a study - like a suspension - needs to be reported to the funding component [also]. That goes along with the question I just answered above what needs to be reported to the grants manager and also probably a good idea to report to the program official that has the grant in their portfolio.

Our next question. **NIH-funded IACUC- approved protocol is suspended. Should all NIH funding be suspended or just animal activity funds associated with that study?** As you know some of these grants are huge. They can involve human subjects and all kinds of other issues. The suspension by the IACUC should be pretty limited to the animal activities on that grant. I mean - so if there are other items that are being carried out such as data processing or something like that - tissue processing - that can continue. But the IACUC suspends it because they feel that either animals are in jeopardy or work isn't been done as approved on the protocol - those immediate activities - most likely the ones closest to the animals involved - need to be stopped. Also if you have numerous different species on the grant or on that protocol - and only one species is in trouble - theoretically some of that other work could continue as well. It's the

immediate activity that's being stopped for cause that we're talking about here.

The next question, again, relates to reporting and it asks who can or should do the reporting? When reporting initial noncompliance, that initial report should be - we say - by an authorized individual from the institution - so it's somebody that really has the authority to make a report on behalf of the institution - but that could be the vet, IACUC person - the chair usually - but it could be anybody on the IACUC if they're authorized to do so - and it could be a compliance officer - it could even be a senior facility manager if they have the facts. It needs to be someone that has the authority and full grasp of the facts. But then the final report has to come from the IACUC through the Institutional Official.

Our next question relates to subawards. It asks if non-compliance occurs under a PHS subaward, what is the subawardee IACUC's responsibility or obligation for reporting back to the prime awardee institution? And then I guess I'll also add to this question is there any obligation on the part of the subawardee to report to this office [OLAW] as well? OK, the primary grantee has the primary responsibility under the grant. If they award a subaward - this has also been put out in some of our Guidance [No Requirement for Duplicate Review and NIH Policy on Allowable Costs for Grant Activities Involving Animals when Terms and Conditions are not Upheld] - they need to be making sure that that subgrantee has an Assurance and IACUC approval and they need to be cognizant of what is occurring with their protocol at that institution. We've said that if institutions have Assurances, they both have

IACUCs, we do not require dual approval of a study - however if something goes wrong at the subawardee - it's absolutely incumbent on them to report that to the primary grantee. The primary grantee can make the noncompliance report to OLAW or it can delegate that responsibility to the subawarded site because they probably have better knowledge of what actually happened. So you don't actually need to make two reports - but the primary grantee cannot just wash his hands once that grant gets subawarded to someone else and they really should - both IACUCs should - be in touch on the studies that are being performed at the subawardee's site.

OK our final question related to today's topic, non-compliance. **What information concerning - regarding FOIA [Freedom of Information Act] requests are contained within in a report? What details must be included in the report to OLAW? Can you provide any examples of details - other than the name of the principle investigator - that can be withheld? So I think that what the question is asking is what is the minimum amount of information that needs to be there and what - if any - of that information would be available through FOIA?** Well, everything - just about everything - is available under FOIA except for the specific FOIA exemptions. We had a previous webinar [Freedom of Information Act Policies] that addressed that. You might as well consider that just about everything is available under FOIA once it's here [at OLAW]. So - we do need to have enough of an account to know the species involved, the nature of the noncompliance, and then the very specific corrective and preventive measures that were taken to address it, but you don't need to go into any kind of information about room numbers, individual's names, anything like that. But yes - we do need

the grant number, and we do need enough information to be able to assess what exactly went wrong and then what was done to correct it. But anything that you feel doesn't add in a material manner to that case and that you're worried about having released under FOIA - doesn't need to be included. If we get a report that's really very scant, we will ask you for more information. Because if we can make - if we have a clear understanding of and assess what was done to correct the matter - that's really all we need.

Thank you Dr. Wolff. That ends the session for today. Although there were some other questions on some other topics, we would encourage those of you that have those questions to get back to us and give us your input on either the topics you would suggest for future sessions and also the possibility - perhaps - of having a session where we would have more of a question and answer period rather than a specific focus on a given topic. We're very grateful to all of you for taking time from your busy schedule to allow OLAW to explain its position on these issues of importance and we really do hope that you will send us your comments and suggestions about both this and future seminars. You can send that to the OLAW email box [olaw@od.nih.gov] which can be found at the bottom of the OLAW webpage. The link is OLAW help. That address can also be found in the email you received confirming your registration. We are currently developing topics for 2010 and would truly appreciate receiving from you - your suggestions. Again thank you very much for your participation. Good-bye.