

# Adapting to change: The USDA's 'teachable moment'

B. Taylor Bennett & Matthew R. Bailey

On January 17, 2016, the USDA announced that Animal Care had updated two chapters in its Animal Welfare Inspection Guide<sup>1</sup> (<http://content.govdelivery.com/accounts/USDAAPHIS/bulletins/13044a6>): Chapter 2 ('Required Inspection Procedures') and Chapter 6 ('Veterinary Care'). The changes to Chapter 6 include an expansion of the topics covered and a reorganization of some of the existing subjects. The table of contents includes a notice that states, "This Chapter applies to licensees only. For veterinary care requirements for Research Facilities see Chapter 7." Of particular note is the section in Chapter 2 that contains specific guidance to the Animal Care inspectors about how to use 'teachable moments' when addressing certain minor noncompliant items.

According to the announcement, a teachable moment is a minor noncompliant item (NCI) that will be corrected quickly, is not affecting animal welfare and has not been previously cited. If there is any effect on animal welfare, it cannot be considered a teachable moment for purposes of the inspection process. This is an educational approach to the inspection process, and the agency sees teachable moments as an opportunity to work with facilities to bring minor issues into compliance with the Animal Welfare Act regulations<sup>2</sup>.

In the section on 'Teachable Moments' there are several notable statements. One statement addresses finding an issue that is not 'noncompliant', but could become so in the future. If this occurs, the inspector is instructed to discuss the issue with the facility representative, but not to list it as a teachable moment. For something to be considered a teachable moment it must be a minor NCI that is not affecting animal welfare, is not perceived as becoming a direct or repeat NCI, will be quickly corrected by the facility, and was not previously cited or listed as

a teachable moment. Included in the criteria for a teachable moment are the terms 'critical' and 'serious' in reference to NCIs, but these terms are undefined. Inspectors are instructed to complete a 90-day follow-up inspection of facilities that have numerous teachable moments. When a teachable moment is identified, the inspector will document it by completing the Teachable Moments form with the inspection date, the certificate and customer number, and the applicable section number with a brief description of the issue.

After the forms are reviewed by the inspector's Supervising Animal Care Specialist, they are uploaded to the Animal Care Inspection Service database. Once they are uploaded, they are then available to anyone who files a Freedom of Information Act (FOIA) request. An example of such a request was submitted on August 12, 2015, for "All records related to the agency's practice and/or planned practice of not issuing Animal Welfare Act citations for non-compliances that the agency deems to be minor, and of instead using these instances as 'teachable moments'" ([https://www.aphis.usda.gov/aphis/resources/foia/ct\\_foia\\_logs](https://www.aphis.usda.gov/aphis/resources/foia/ct_foia_logs)). While the FOIA log did not indicate that the requested information had been released at the time the log was posted, we are aware that it has been released, but are not aware of the outcome of the release. We will not speculate about how the information will be used, but in a recent feature we stated that "FOIA can also be exploited by outside groups to acquire information with the intention of spreading propaganda and curtailing progress in activities with which they disagree"<sup>3</sup>. It would be unfortunate if that was the case with teachable moments, which were intended by the USDA to be "an educational approach that allows an inspector and a licensed/registered facility to work together to bring minor issues at that facility that are not impacting animal

welfare into compliance with Animal Welfare Act regulations and standards."

We entitled this article "Adapting to change: The USDA's teachable moment" because it is important for those who manage animal care and use programs to stay informed of changes in the requirements and methods of the regulatory agencies, so that programs can adapt as seamlessly as possible. While the use of 'teachable moments' would appear to be a commendable approach with the goal of improving the welfare of animals covered under the Animal Welfare Act by allowing the agency to focus on NCIs that do affect animal welfare, the fact that the forms are now subject to FOIA requests might lead to documented teachable moments being portrayed no differently than an actual citation. To ensure the intent of the teachable moment is achieved—that the inspector and the facility work together to address minor issues of noncompliance that do not affect animal welfare—the USDA may wish to consider having the inspector complete the form that contains the inspection date, the certificate and customer number, and the applicable section or subsection number. The research facility representative could then prepare a description of the event for the institution's files, which the Veterinary Medical Officer would review and approve. This would then be the first order of business for review during the next inspection. Such an approach is consistent with how the inspector's review of protocols is handled, and this would allow all those involved to adapt to the changes to the inspection process in the spirit in which these changes were intended.

1. United States Department of Agriculture. *Animal Welfare Inspection Guide* (US Department of Agriculture, Riverdale, MD, 2015).
2. Animal Welfare Act regulations. 9 CFR. Chapter I, Subchapter A.
3. Bennett, B.T., Cardon, A.D., & Bailey, M.R. Use of FOIA by animal rights activists. *Lab Anim. (NY)* 452, 55 (2016).