NATIONAL COMMISSION ON FORENSIC SCIENCE

National Institute of Standards and Technology
U.S. Department of Commerce

Transparency of Quality Management System Documents

Subcommittee
Interim Solutions

Type of Work Product
Adjudication of Public Comments on Draft Recommendations Document

Summary
The document received 16 comments. Below is a summary of the issues raised and the subcommittee's response.

Favorable Comments

1. Seven comments were strongly supportive of the document and thought the measure would improve transparency, trust, and reduce public expense by reducing costly litigation. One individual suggested that the directive should go further and require that FSSPs and FMSPs post all the data from validation studies on the website and not just summaries.

The subcommittee previously considered requiring that full validation studies be posted but ultimately determined that there were instances where this requirement would be too onerous. The subcommittee notes that the document does not prohibit FSSPs and FMSPs from posting more than a summary and would encourage FSSPs and FMSPs to post studies in their entirety where possible.

The American Society of Crime Laboratory Directors (ASCLD) had six substantive comments.

1. Provide a definition of internal validation summaries. ASCLD recommended the following wording: "The executive summary of each validation study should contain the following: scope, summary of major events/experiments performed, summary of results, summary of major conclusions and the summary of methods implemented by the forensic provider."

The subcommittee adopted this suggestion and the proposed wording but added that the "executive summary of each validation study should *at a minimum* contain ...."

2. Provide guidance for the minimum required elements of a RCA recommendation disclosure. ASCLD proposed the following language: "Recommendations from RCAs undertaken, including at a minimum any changes made to quality documents, notifications issued to any stakeholder (without identifying the entity) regarding the impact of the nonconformity,

any resultant Brady implications the lab is aware of, number of cases reviewed/audited as a result of the issue, and number of cases where an amended report was necessary. Excluding (a) information regarding the specifics of the underlying case investigated or the investigation itself, and (b) confidential, privileged or attorney work product information regarding specific individuals."

The subcommittee adopted this suggestion but reworded the suggested language for (a) as follows: "information that would permit the identification of individuals involved in the underlying case or the investigation itself." The subcommittee was concerned that the ASCLD language could be misconstrued to suggest that the summary could not even describe the nature of the case, for example, that it was a homicide or a rape case.

3. Redactions of personnel information, and protected intellectual property should be tied to applicable law and sensitive law enforcement procedures should be defined. ASCLD recommended the following language: "while sometimes necessary, redactions of personnel information, protected intellectual property, or sensitive law enforcement procedures should be as limited as possible while still allowing forensic providers to comply with applicable labor, intellectual property, and other applicable public records statutes." No definition was suggested for sensitive law enforcement procedures.

One other commenter also recommended that local law should govern redactions.

The subcommittee adopted ASCLD's proposed language. To address defining "sensitive law enforcement procedures" the subcommittee moved a sentence from the implementation portion and put it after the discussion of redactions. The sentence that was moved is: "Technical information that is otherwise in the public realm and/or known by the larger science community should not be redacted." While recognizing that the exception for sensitive law enforcement procedures could be misused, the subcommittee did not believe there was a workable definition. Instead, this provision depends on institutions to follow the spirit of the directive.

4. Funding. The recommendation was for the Commission to encourage the Attorney General to include dedicated funding for state and local laboratories in the Department of Justice's budget request to implement this directive.

The subcommittee addressed this comment by taking the second paragraph of the implementation section and moving it up to be a 4th directive and added funding to the list of possible means to encourage universal publication. Thus the 4th directive is

"The US Attorney General should encourage the universal publication of quality management systems documents from all non-DOJ FSSPs and FMSPs by any means available including providing funding or information technology or infrastructure support where possible to state and local FSSPs and FSMPs."

ASCLD recommended specific funding sources but the subcommittee chose to defer to the DOJ on if and how to provide funding.

5. Eliminate footnote 1 and 2. ASCLD stated that there are many laboratories in the vanguard of document disclosure and that by limiting the footnote to a few examples the document suggests that only these FSSPs are at the forefront.

The subcommittee felt that the examples are helpful for the less informed reader and each footnote starts with the phrase "for example" so the document does not suggest these are the only FSSPs posting documents. The subcommittee did add some additional examples.

6. Position descriptions. The recommendation was to include CVs and to do so for all FSSP and FMSP staff (analyst, scientist, and manager).

Several other commenters also suggested including the position description of more FSSP and FMSP employees than just analysts. The subcommittee adopted the recommendation to include CVs along with position descriptions and to expand the covered positions. The sentence now reads as follows: "Classification standards (e.g., position requirements, minimum qualification requirements) and curricula vitae for all analysts, scientists, and managers with positions of oversight over forensic testing, research or quality management."

Additional Comments Received

1. Several individuals suggested addressing the distinction that appears in the ISO standards between "documents" and "records".

The subcommittee has added a footnote to make clear it is using the common definition and not the ISO definition and referring the reader to the list provided.

2. Some commenters recommended that "records" or the RCA summaries should not be readily available. One wanted the RCAs to be "readily available upon request" but did not want them posted on the website. These commenters questioned whether posting might inhibit candor and/or might be prohibited under the applicable ISO standard. One commenter provided a defense for publication of RCAs summaries under the ISO standards.

The subcommittee has limited the information to be provided for RCAs summaries in a manner that does not implicate "customer" information and is consistent the previously approved directive recommendation for "Root Cause Analysis in Forensic Science" adopted on August 11, 2015.

3. One commenter raised concerns about whether the vagueness of the example items will "lead to an over application" of this directive and that Commission should instead rely on accreditation to achieve the goals of this directive.

The subcommittee disagrees that accreditation alone can address the goals of this directive or that the over application is likely given the specificity of the list provided.

4. One commenter suggested that any litigator, and not just federal prosecutors, should use FSSPs and FMSPs that make quality management documents readily available.

The subcommittee addressed this concern by taking the second paragraph in the implementation section and making it a fourth directive in which the subcommittee asks the Attorney General to encourage this practice beyond the Department of Justice and federal prosecutions by any other means available.

5. One commenter argued that FMSPs should be excluded because most QA issues for FMSPs relate to personnel issues that are confidential and because "the directive includes many items that do not apply in medicolegal death investigation and forensic medicine service provider settings."

The subcommittee has specifically excluded personnel information. Further, this directive does not address whether these documents should exist, only that they be publically available if they exist.