

# *Advocacy Update*

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# Federal

## **Senate Passes FY 2004 Labor-HHS Bill, Specter-Harkin-Feinstein NIH Funding Amendment Fails**

On September 10, the Senate, with a vote of 94-0, agreed to the appropriations bill with funding for all federal agencies under the Department of Health and Human Services (HHS), including the National Institutes of Health (NIH), Centers for Disease Control and Prevention (CDC) and Food and Drug Administration (FDA). The amendment to add an additional \$1.5 billion to the NIH, sponsored by Sens. Arlen Specter (R-PA), Tom Harkin (D-IA) and Diane Feinstein (D-CA), was defeated by a vote of 52 to 43. Because a budget point of order was raised, the amendment required 60 votes to pass. The measure will head to a conference committee to resolve disparate numbers, notably the \$320 million difference the Senate added in NIH funding over the House number. The House-passed appropriations bill includes a \$681 million increase for NIH, while the Senate-passed version includes a \$1 billion increase.

## **Amendment to Labor-HHS Bill Defeated**

On July 10, Rep. Pat Toomey (R-PA) offered an amendment (subsequently defeated) to the Labor-HHS spending bill that would have killed a select number of grants the National Institutes of Health (NIH) was preparing to fund. As a result of the amendment, a letter to the Senate leadership (the Senate will consider the spending bill in September) is circulating around the research advocacy community in support of the NIH merit review process. During debate on the amendment, Rep. David Obey (D-WI) defended merit review within NIH. "I strongly urge the Members to resist the temptation to select a few grants for defunding because they do not like the sound of them...It would set a dangerous precedent and put a chill on medical research if we start to micromanage individual NIH grants."

## **APHIS Proposes Increased User Fees for Vets**

On July 24, the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture (USDA) included a proposed rule in the Federal Register (FR) seeking to increase user fees for veterinary diagnostic services.

APHIS says the increase would "...reflect changes in our operating costs and changes in calculating our costs." APHIS is also proposing to set rates for multiple fiscal years and "to provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account." The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorized APHIS to set and collect these fees.

## **Rep. Nethercutt to Reintroduce Eco-Terror Prevention Bill**

Rep. George Nethercutt (R-WA), concerned about all the crimes groups like the Earth Liberation Front (ELF) commit, will reintroduce his Agro-Terrorism Prevention Act, originally introduced in August, 2001 in the 107th Congress. This bill will establish a federal database of attacks such as the one that the ELF perpetrated against SUV dealerships in California last month and the arsons in San Diego. "It's important to trace the broader picture of what these guys are involved with, and you're seeing that now in California. These groups are impervious to law enforcement," said Rob Neal, spokesman for Rep. Nethercutt, in an interview with the *Inland Valley Daily Bulletin*. He and his boss are not the only ones on Capitol Hill who feel that way. "What's the difference between this and somebody going in and blowing up a building?" asks Rep. Richard Pombo (R-CA), the Chairman of the House Resources Committee.

## **Animal and Plant Health Inspection Service Call for Comments on Animal Transport**

The USDA is requesting comment on applying the Animal Welfare Act (AWA) regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia. While these AWA regulations and standards have been enforced on U.S. air carriers, foreign air carriers, as a matter of policy, have not been asked to comply with the regulations, although some have done so voluntarily. It is the USDA's determination to begin regulating foreign air carriers will ensure that any animal covered by the AWA, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the AWA regulations and standards. The USDA intends to begin applying these AWA regulations and standards unless substantial issues bearing on the effects of this action are brought to our attention. This determination to regulate will be effective on April 7, 2004, unless the USDA receives comments raising substantial issues bearing on the effects of this action by **December 9, 2003**

You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-012-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-012-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-012-1" on the subject line.

## **The Supreme Court**

On Monday, the Supreme Court refused to consider whether residential breeders of dogs and cats should have to get federal licenses. Animal welfare groups, led by the Washington-based Doris Day Animal League, argued that people who sell and breed animals out of their homes should be regulated, to prevent inhumane puppy mills. A federal animal welfare law exempts retail pet stores from oversight, and an appeals court said the exemption includes breeders in private homes. The case is *Doris Day Animal League v. Veneman*, 02-1807.

## **Proposed Rule on Medical Records**

The comment period for the Proposed Rule on Medical Records ended June 10, 2003. With the Proposed Rule, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture has proposed to amend the Animal Welfare Act regulations to require that research facilities, dealers, and exhibitors maintain medical records as part of their program of adequate veterinary care. APHIS has reported a total of 9,821 comments were received, all of which have been reviewed as of August 1. APHIS reports that its summary and response is currently being prepared.

## **APHIS Update on Rats, Mice, and Birds**

On July 30, 2003, a final rule that will place the new language of the Animal Welfare Act (AWA) into the definition of "animal" in the 9 CFR (Regulations) and an Announced Notice of Proposed Rulemaking (ANPR) was submitted for their final approvals prior to publishing. This process could take several months. The final rule will amend the definition of animal in the regulations to be the same as the AWA was amended to by the Farm Bill, and the ANPR will announce the Animal and Plant Health Inspection Service's (APHIS) planned rulemaking to define standards so that these species can be regulated. There will be no regulation of these species until standards can be developed.

## **National Academy of Sciences Recommends Changes to NIH**

The National Academy of Sciences (NAS), together with the National Research Council (NRC), are advocating organizational changes at the National Institutes of Health (NIH), specifically the merging of some institutes with similar mandates and devoting more of individual institute budgets towards conducting research across NIH institutes, so-called trans-NIH research. While NAS found that the basic structure of the NIH is “not unreasonable,” the NAS committee recommended that several intramural as well as extramural clinical research programs be combined into a new institute called the “National Center for Clinical Research and Research Resources.” Other recommendations may include a six-year term for the NIH director (unless removed sooner by the President of the United States), changes to the unique status of the National Cancer Institute (NCI), and a review of the “One HHS” initiative, since NAS and NRC believe that centralizing or outsourcing such factors as personnel recruitment and grant management could have unknown consequences for NIH’s mandate. The NAS report came one day after NIH announced the formation of a new steering committee.

## **Episcopal Church Approves Resolution About Animals**

While media attention was focused on the Episcopal Church USA’s election of its first openly gay bishop earlier this summer, other resolutions were passed at the recent General Convention in Minneapolis. One is entitled, “Stewardship: The Protection of Animals from Cruel Treatment.” The final version approved, subject to text review before publication, read as follows:” Resolved, the House of Bishops concurring, That the 74th General Convention recognize that responsible care of animals falls within the stewardship of creation, and be it further Resolved, That the Episcopal Church encourage its members to ensure that husbandry methods for captive and domestic animals would prohibit suffering in such conditions as puppy mills and factory-farms; and be it further Resolved, That the Episcopal Church’s Peace and Justice Office identify existing guidelines to educate its members to adhere to ethical standards in the care and treatment of animals; and be it further Resolved, That the Episcopal Church, through its Office of Government Relations, identify and advocate for legislation protecting animals and effective enforcement measures.” The House of Bishops was initially presented with a pure animal rights-based position that called for church members to extend the credo of “love thy neighbor as yourself” to the whole animal kingdom. That draft was voted down after one delegate pointed out that his congregation was made up mostly of “unrepentant carnivores.” **Source:** *AMP News Service Digest*, August 22, 2003

## **USDA Proposal Regarding Pain and Distress**

The USDA will not act on its proposal to define distress and revise its animals pain and distress classification system at this time, according to a USDA presentation at the PRIM&R Conference in San Diego.

## **USDA Wants Larger DVM/PhD Base**

The Agriculture Research Service (ARS) is launching a pilot program that will pay for tuition, books and laboratory fees of a selected veterinarian, who wants to obtain a Ph.D. in order to conduct animal disease research. ARS is the chief scientific research agency of the U.S. Department of Agriculture. Interested parties can obtain more information by calling Roric Well at 301/504-1479.

## **Lawsuit Filed by the Association for Veterinarians for Animal Rights**

A lawsuit filed by the Association for Veterinarians for Animal Rights against the USDA. The following is an excerpt from the actual lawsuit, which could greatly impact veterinary schools and research on animals at Universities.

“Petitioners also request that USDA strongly enforce the amended rules and USDA’s regulations by preventing the frequent violations of the alternative provisions by veterinary schools. Due to widespread violations of the alternative provisions, petitioners also request that USDA conduct a rulemaking to amend its regulations to clarify the review of alternatives requirements. These actions are necessary in order to eliminate the violations of the AWA and USDA’s implementing regulations by veterinary schools that unnecessarily use and kill animals. “

Dr. Paula Kislak, a Santa Barbara veterinarian, has been named the new president of the Association of Veterinarians for Animal Rights (AVAR). Kislak has served on the AVAR board since 1998. Outgoing president Dr. Nedim Buyukmihci is leaving to head up the Animal Protection Institute's primate sanctuary in Texas.

## **DOT Issues Final Federal Rule on Animal Air Transport**

The Federal Aviation Administration (FAA), an agency within the Department of Transportation (DOT), issued its final rule in the August 11, 2003, Federal Register requiring air carriers to compile and submit reports on incidents involving animals during air transport. In the final rule, "animal" is defined as "any warm or cold blooded animal that, at the time of transportation, is being kept as a pet in a family household in the United States." The majority of the 3,760 comments received were in favor of the then-proposed rule.

# State

## **Transgenic Aquatic Species**

The Department of Fish and Game have finalized their permitting process for special permits for permission to possession and use transgenic aquatic species in California. Through the expedited permitting process allowed for under the new rules, 13 research facilities applied for permits and received speedy processing. In accordance with the public comment requirement of the regulations, these 13 applications were formally presented to the Fish and Game Commission at their October 3 meeting in Redding. I am happy to report that the Commission approved all thirteen.

## **Proposition 54 - "Classification by Race, Ethnicity, Color or National Origin" Defeated**

Widely regarded as a threat to medical research and clinical testing by limiting the collection or racial data, it was defeated at the October 7 election.

## **Pet Guardianship an Item In Santa Monica**

At the September 9<sup>th</sup> Santa Monica City Council meeting several attendees requested that the Council adopt an ordinance changing the word "owner" to "guardian" relative to pet animals in the city Municipal Code, and gave related direction to staff. As a result, the City Council will consider amendments to its animal control ordinance and has asked for sample language. The City Attorney is investing it. Proponents pressed for the change claiming that the term "guardian" promotes kinder treatment of animals.

For additional information about the pet guardianship issues, including facts sheets, etc., please contact the CBRA Office.

Santa Monica residents who wish to register their opposition should write or fax the city council immediately, as the council will likely hear this proposal again in October.

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## Other States

**Eco-Terrorism** - A number of members from the Pennsylvania House have introduced HB 1928, which defines “eco-terrorism” and mandates a felony of the third degree upon conviction if the perpetrator causes damage of \$5000 or more to animals, natural resources or animal facilities. The bill has been referred to the House Committee on the Judiciary.

**Pet Guardianship and Rhode Island** - Two years ago, Rhode Island became the first state to codify the concept of animal guardianship in state law. On February 11, several state legislators used that law to launch a wholesale assault on pet ownership when they introduced H5817, an animal cruelty bill that:

- allows shelters to petition for revocation of guardianship of impounded animals;
- gives members and employees of a wide variety of enforcement agencies the authority to investigate cruelty complaints;
- bans procedures that remove all or part of an organ unless “necessary for proper veterinary care or population control”;
- sets a category of “aggravated cruelty or neglect” with felony punishments;
- mandates a bond for the care of impounded animals;
- requires owners to pay for the care of impounded animals even if the charges are withdrawn or dismissed;
- requires annual registration of those convicted of animal abuse in Rhode Island or other states;
- requires motorists to stop and provide aid if they hit an animal;
- provides for employment of special humane agents;
- requires people in 21 job categories to report suspected animal abuse;
- allows lawsuits for damages plus additional compensation up to \$1000 per “violation” inflicted on a pet;
- and
- allows lawsuits and compensation up to \$10,000 for the death of a pet caused by the actions of a third party.

The bill also codifies procedures for euthanasia, requires counseling for those convicted of abuse, and makes the registration records open to the public. The bill covers all living non-human creatures. The word “owner” does not appear in the bill. Instead, definitions include “*Guardian means a person who has control, custody, possession, title, or other legal interest in an animal.*”

# International

## **New Ban for Animal Rights Protestors**

A UK ban preventing animal rights activists from demonstrating at Huntingdon Life Sciences, has been extended to include the company's suppliers. Activists say they will challenge the ban, which uses a law designed to protect the victims of stalkers. Mr. Justice Owen confirmed yesterday at the High Court that temporary exclusion orders under the Protection from Harassment Act would continue to protect the customers of Huntingdon Life Sciences, which is based in Cambridgeshire.

## **Animal Rights Activists 'are terrorists'**

AMSTERDAM - A parliamentary majority believes that animal rights activists who engage in threats, violence and arson should be considered as terrorists. The Liberal VVD, Christian Democrat CDA and populist LPF have asked Justice Minister Piet Hein Donner to amend proposed terrorism legislation, which he recently lodged in Parliament. The legislation allows for the easier tracing and tougher sentencing of extremists. Minister Donner said animal rights activists do not come under the terrorism legislation because they only campaign against several organizations, rather than the State. The CDA, VVD and LPF thus demanded an amendment to the proposal, an NOS news report said. The CDA, VVD and LPF have been long-opposed to the often violent protest actions of animal rights activists, who often direct their rage at fur animal breeders and the staff of bio-industry companies that perform tests on animals.

## **European Ban on Animal-tested Cosmetics Being Challenged**

France has lodged a case at the European court of justice (Luxembourg) demanding that the ban be overturned on both technical and legal grounds. France is home to the cosmetic conglomerate L'Oreal, which many believe is behind the legal maneuverings. Many also think that the ban will face a legal challenge from the European federation for cosmetic ingredients. The European Federation for Cosmetic Ingredients, which represents 70 companies in Switzerland, Belgium, France, Germany and Italy, is taking a similar legal step in another European court. *The Guardian* calls their case "a separate but equally discreet challenge . . . that is also designed to kill the ban." Animal rights supporters are said to be appalled by the legal challenges, while still confident the European courts would throw both cases out.

## **Thailand Drafting Lab Animal Cruelty Law**

Thailand's chairman of the National Research Commission's committee on research animals has stated that Thai scientists often have their assistants kill lab animals by cruel methods, such as drowning, decapitation, and live burial. As a result the Commission is drafting a law to ensure the humane treatment of research animals. The chairman also stated that the cruelty often results from a reluctance, from personal or religious reasons, of scientists to carry out the killing themselves. They then delegate the responsibility to their assistants, who are either careless or not familiar with the regulations. Copies of the manual regarding how to treat lab animals have been distributed, but are apparently often ignored.

## **Australia Introduces Animal Cruelty Bill**

Senator Bartlett has introduced the "National Animal Welfare Bill," which would rescind powers that individual Australian states currently have regarding the regulation of animal welfare, and place them instead in the hands of a new national authority. This authority would appoint federal inspectors who would investigate research and veterinary facilities, farms, zoos and residences. The law would extend across all state borders, since Sen. Bartlett believes the state regulations were not meeting community expectations. "Many of the state regimes are filled with loopholes, are not enforceable and are resourced inadequately." Australia is one of the few western nations without a national animal welfare act.