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**REPORT ON LEGISLATION BY THE  
ANIMAL LAW COMMITTEE**

**H.R. 746  
S.388**

**Rep. Blumenauer  
Sen. Booker**

AN ACT to amend the Animal Welfare Act to require humane treatment of animals by Federal Government facilities.

**Animal Welfare in Agricultural Research Endeavors Act**

**SUMMARY OF PROPOSED LEGISLATION**

The proposed legislation (H.R. 746 and S.388, the Animal Welfare in Agricultural Research Endeavors Act or the AWARE Act) would amend the Animal Welfare Act (“AWA”) (7 U.S.C. §§ 2131-2159) to ensure that, for farm animals, certain minimum standards of humane care are adhered to in any federal research facility “having laboratory animal facilities.” Specifically, the proposed legislation would amend 7 U.S.C. section 2144: first, by expanding the reach of the AWA protections and requirements regarding humane care to include “any federal research facility . . . having laboratory animal facilities,” and second, by removing the exclusions for farm animals used in agricultural research at those federal facilities.<sup>1</sup>

**BACKGROUND**

The AWA is the federal law regulating the use and treatment of animals in research, exhibition and for use as pets.<sup>2</sup> Under the AWA, the United States Department of Agriculture

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<sup>1</sup> 7 U.S.C. § 2144, as amended, would read: “(1) IN GENERAL.—Subject to paragraph (3), any Federal research facility or any other department, agency, or instrumentality of the United States having laboratory animal facilities shall comply with the standards and other requirements promulgated by the Secretary for a research facility under sections 2143(a), (f), (g), and (h) of this title. (2) ANIMAL EXHIBITION.—Any department, agency, or instrumentality of the United States exhibiting animals shall comply with the standards promulgated by the Secretary under sections 2143(a), (f), (g), and (h) of this title. (3) EXCLUSIONS NOT APPLICABLE.—For purposes of the application of standards and other requirements described in paragraph (1) to a Federal research facility or any other department, agency, or instrumentality of the United States having laboratory animal facilities, the exclusions contained in section 2(g)(3) shall not apply.”

<sup>2</sup> See 7 U.S.C. § 2131(1).

(USDA) is directed to promulgate standards governing the “humane handling, care, treatment and transportation of animals by dealers, research facilities, and exhibitors,”<sup>3</sup> which must “include minimum requirements with respect to handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature,”<sup>4</sup> as well as, in the case of animals in research facilities, “requirements for animal care, treatment, and practices in experimental procedures” to minimize pain and distress.<sup>5</sup>

Currently, the term “animal” under the AWA is defined as “any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet” with exclusions.<sup>6</sup> Farm animals, or those animals including “livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber,” are expressly excluded from the definition of “animal” under the AWA.<sup>7</sup> As a result, in the case of farm animals, research facilities do not need to comply with the minimum requirements regarding humane care, treatment and practices as they do with the animals covered under the AWA.<sup>8</sup> This would change for federal research facilities under the proposed legislation.

The AWA distinguishes research facilities in general from federal research facilities. Federal research facilities are separately defined as: “each department, agency or instrumentality of the United States which uses live animals for research or experimentation.”<sup>9</sup> If enacted into law, the proposed legislation will affect only federal research facilities “having laboratory animal facilities,” and will include farm animals in such facilities that are currently excluded under the AWA as subject to the protections of sections 2143(a), (f), (g), and (h).

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<sup>3</sup> 7 U.S.C § 2143(a)(1)

<sup>4</sup> 7 U.S.C § 2143(a)(2)(A).

<sup>5</sup> 7 U.S.C § 2143(a)(3)(A).

<sup>6</sup> 7 U.S.C. § 2132(g).

<sup>7</sup> See 7 U.S.C. § 2132(g)(3) (term animal excludes “other farm animals, such as, but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber”). See also 9 CFR 1.1 (“*Farm animal* means any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals”).

<sup>8</sup> 7 U.S.C. § 2143.

<sup>9</sup> 7 U.S.C. § 2132(o).

## JUSTIFICATION

The Committee supports the proposed legislation because it would significantly increase the number of animals protected under the AWA and the amendment is necessary due to the egregious treatment of animals as documented in a *New York Times* exposé in 2015.

The Agricultural Research Service, the principal research agency of the USDA, oversees approximately 40 federal research facilities that conduct research involving farm animals,<sup>10</sup> which include: U.S. Meat Animal Research Center (MARC), the National Animal Disease Center, Henry A. Wallace Beltsville Agricultural Research Center, and Southern Plains Agricultural Research Center, as well as others.<sup>11</sup> In early 2015, the MARC facility, a federal research center in Nebraska, became the subject of a *New York Times* investigation regarding its horrific experiments and mistreatment of farm animals.<sup>12</sup> As revealed in *The New York Times* exposé, over half a million animals have been housed at MARC since 1985, including pigs, cows and lambs, with many having been subjected to neglect, illness, premature death, and painful and fatal experiments<sup>13</sup>—at a cost to taxpayers in the last decade totaling nearly 200 million dollars.<sup>14</sup>

As noted by Rep. Earl Blumenauer when introducing the AWARE Act, experiments at MARC included “experiments to increase the number of twin births in cows and expand the litter size of pigs, without consideration of animal health impacts, and trying to breed ‘easy care’ lambs that are born in open fields without human assistance.”<sup>15</sup> In other experiments, “pregnant ewes were injected with so much of the male hormone testosterone that it began to deform their babies’ genitals, making urination difficult.”<sup>16</sup> Additionally, due to lack of appropriate care, 625 animals died from mastitis, a treatable infection of the udder; at least 6,500 animals have starved to death<sup>17</sup>; and “[u]nknown numbers have died from negligence such as easily treatable infections, exposure to bad weather, or attacks by predators.”<sup>18</sup>

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<sup>10</sup> Animal Welfare Institute, *Animal Welfare in Agricultural Research Endeavors (AWARE) Act*, <https://awionline.org/content/animal-welfare-agricultural-research-endeavors-aware-act> (All websites last visited February 9, 2016).

<sup>11</sup> See Agricultural Research Service, USDA, Key ARS Offices and Locations, [www.ars.usda.gov](http://www.ars.usda.gov).

<sup>12</sup> Michael Moss, *U.S. Research Lab Lets Livestock Suffer in Quest for Profit*, N.Y. TIMES (Jan. 29, 2015), <http://www.nytimes.com/2015/01/20/dining/animal-welfare-at-risk-in-experiments-for-meat-industry.html>.

<sup>13</sup> *Id.*

<sup>14</sup> Animal Welfare Institute, *supra* note 10.

<sup>15</sup> 161 CONG. REC. E170 (Feb. 5, 2015) (statement of Rep. Earl Blumenauer), *available at* <http://www.gpo.gov/fdsys/pkg/CREC-2015-02-05/html/CREC-2015-02-05-pt1-PgE170-4.htm>.

<sup>16</sup> Moss, *supra* note 12.

<sup>17</sup> *Id.*

<sup>18</sup> Blumenauer, *supra* note 15.

These kinds of horrific animal welfare scenarios with respect to farm animals at federal research facilities would be addressed by the proposed legislation, which would require federal research facilities, like MARC, to comply with the standards of humane care and treatment under the AWA. The AWARE Act addresses an arbitrary distinction in the current AWA, which treats farm animals in research facilities (currently excluded from protection under the AWA) differently from non-farm animals at research facilities (which are covered under the AWA), even though they all are capable of experiencing pain and suffering to the same extent and degree. Furthermore, under the AWA, whether an animal is a “farm animal” depends not just on its species but also on its intended use, such as for food or fiber, and, therefore, the same type of animal may be subject to the protections of the AWA in certain contexts but not others. Currently, federal research facilities conducting non-agricultural research on farm animals are required to comply with the AWA, while federal research facilities conducting agricultural research on farm animals are not so required. Such inconsistencies are arbitrary and irrational.

Moreover, to hold federal facilities experimenting on farm animals to the same minimum standards of care as research facilities experimenting on non-farm animals would be more consistent with Congress’ determination that it is “essential to regulate . . . [the] housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes....”<sup>19</sup> Previous amendments to the AWA have expanded its scope and reach, and Congress has stated that the amendments “reflect the importance of the ‘three R’s: reduction in the number of animals used [in research], refinement of cruel techniques, and replacement of animals with plants and computer simulations.”<sup>20</sup> The proposed legislation is consistent with and reflects this purpose.

Notably, while the proposed legislation is supported by various groups—including the American Society for the Prevention of Cruelty to Animals (ASPCA), Animal Welfare Institute (AWI), Humane Society of the United States (HSUS), and National Anti-Vivisection Society (NAVA)—to date, there are no organizations officially opposing it.<sup>21</sup> However, the *New York Times*’ exposé, which led to the introduction of the AWARE Act, prompted the USDA to establish the Agricultural Research Service (ARS) Animal Handling and Welfare Review Panel (ARS-AHWRP), and directed it to conduct a review of MARC facility and evaluate its animal care and use program.<sup>22</sup> After a three-day site visit, the ARS-AHWRP review panel found “no

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<sup>19</sup> 7 U.S.C. § 2131.

<sup>20</sup> Nicole Fox, Note & Comment, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 WHITTIER L. REV. 145-183 (1995) (quoting 137 Cong. Rec. E1295 (1991).), available at <https://www.animallaw.info/article/inadequate-protection-animals-against-cruel-animal-husbandry-practices-under-united-states>.

<sup>21</sup> See Simpolfy, <https://www.simpolfy.com/bills/52090-s-388-a-bill-to-amend-the-animal-welfar> (indicating that there are no organizations officially opposing the proposed legislation).

<sup>22</sup> Agricultural Research Service – Animal Handling and Welfare Review Panel, Findings and Recommendations on the Animal Care and Well-Being at the U.S. Meat Animal Research Center to the Secretary of Agriculture and the REE Under Secretary (March 9, 2015), available at [http://www.ree.usda.gov/ree/news/USMARC\\_AWHR\\_Panel\\_Report\\_PrePublic\\_Hearing\\_030602015.pdf](http://www.ree.usda.gov/ree/news/USMARC_AWHR_Panel_Report_PrePublic_Hearing_030602015.pdf).

evidence of poor animal handling, animal abuse, or inadequate veterinary care,”<sup>23</sup> observed “[w]ithout exception...healthy and well-cared for animals,”<sup>24</sup> even “exceptional animal handling skills,”<sup>25</sup> and concluded that their observations were “indicative of how animals are routinely handled at the facility, ” not just during the visit.<sup>26</sup> These findings may suggest, unjustifiably, a lack of basis for the proposed legislation and that the problems it seeks to address are more fictional than real.

As several critical responses to the review panel’s report pointed out, however, including those from The New England Anti-Vivisection Society (NEAVS),<sup>27</sup> Animal Legal Defense Fund (ALDF),<sup>28</sup> American Anti-Vivisection Society (AAVS),<sup>29</sup> Animal Welfare Institute (AWI),<sup>30</sup> Animal Defenders International (ADI),<sup>31</sup> and the Humane Society of the United States (HSUS),<sup>32</sup> the three-day review, which was pre-announced, did not perform any review of the numerous allegations of abuse and mistreatment reported in the *New York Times* article. The latter was based on interviews with veterinarian and scientist Dr. James Keen, who worked at the MARC facility for 24 years; interviews with two dozen current and former employees; and reviews of thousands of internal records obtained via the Freedom of Information Act.<sup>33</sup> By contrast, as noted by the NEAVS, the report by the review panel did not rely on any review of MARC’s past research practices; interviews with employees regarding the allegations in the article; internal records indicating past neglect and abuse; mortality statistics in research protocols; or personnel records.<sup>34</sup> Accordingly, the panel’s observations, based solely on a three-day pre-announced visit, do not establish an absence of past egregious abuse and neglect.

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<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> Letter from Jacklyn Leeds, Esq. and Theodora Capaldo, Ed.D., New England Anti-Vivisection Society, to United States Department of Agriculture (Mar. 13, 2015), <http://www.ree.usda.gov/ree/news/NEAVS.pdf>.

<sup>28</sup> Letter from Kelsey Eberly, Esq. Animal Legal Defense Fund, to United States Department of Agriculture (March 18, 2015), <http://www.ree.usda.gov/ree/news/2015-03-18-ALDF-MARC-Comment.pdf>.

<sup>29</sup> Letter from Vicki Katrinak, Senior Policy Analyst of the American Anti-Vivisection Society, to the United States Department of Agriculture (Mar. 18, 2015), <http://www.ree.usda.gov/ree/news/AAVS-comments-to-USDA-re-US-MARC.pdf>.

<sup>30</sup> Letter from Christopher J. Heyde, Deputy Director, Government and Legal Affairs of the Animal Welfare Institute, to United States Department of Agriculture (Mar. 18, 2015), <http://www.ree.usda.gov/ree/news/AWIComments.pdf>.

<sup>31</sup> Letter From Christina Scaringe, General Counsel of Animal Defenders International, to the United States Department of Agriculture (Mar. 18, 2015), <http://www.ree.usda.gov/ree/news/ADI-response-to-UMARC-Panel-Report.pdf>.

<sup>32</sup> Letter From Kathleen Conlee, Vice President, Animal Research Issues of the Humane Society of the United States (Mar. 18, 2015), <http://www.ree.usda.gov/ree/news/HSUS.pdf>.

<sup>33</sup> Moss, *supra* note 12.

<sup>34</sup> Letter from Jacklyn Leeds, Esq. and Theodora Capaldo, Ed.D., *supra* note 27, at 3-4.

Additionally, while the ARS-AHWRP panel found no evidence of animal mistreatment as alleged in the *New York Times* article, it did nevertheless conclude that there were several problems at the MARC facility, including with “the conduct of the Institutional Animal Care and Use Committee,” and provided several recommendations for improvement.<sup>35</sup> In particular, with respect to the MARC Institutional Animal Care and Use Committee (IACUC)—whose responsibilities include “review[ing] and approv[ing] or disapprov[ing] protocols and other proposed activities . . . related to agricultural animal care and use in research and teaching”—the panel concluded that it failed to fulfill its responsibilities with respect to ARS’s policies and procedures.<sup>36</sup> The process for reviewing and approving research projects at MARC did not involve any formal review or approval by IACUC members, which should have included consideration of, among other things:

- Availability or appropriateness of alternative procedures or models (e.g., less invasive procedures, cell or tissue culture, or computer simulations) for the proposed research or teaching activity. [ . . . ]
- Aspects of the proposed experiment or demonstration having to do directly with animal care and use, including justification for the species and (or) strain of animal used; justification for the number of animals used; and a description of procedures that may cause discomfort, distress, or pain and methods of alleviation including anesthesia, analgesia, tranquilizers, and nonpharmacologic means, as well as justification for any procedures that involve unalleviated pain, discomfort, or distress[.]
- Appropriateness of procedures and post-procedural care[.]
- Criteria and process for timely intervention, removal of animals from a study, or euthanasia if painful and stressful outcomes are anticipated[.]<sup>37</sup>

Under the proposed legislation, federal research facilities housing and experimenting on farm animals would be subject to the standards set forth in section 2143(a) of the AWA, which simply means that those facilities would be held to the same standards with respect to humane treatment of farm animals as that accorded to other types of animals in research facilities. Specifically, those standards include requirements: to “ensure that animal pain and distress are minimized, including adequate veterinary care with the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia,”<sup>38</sup> to consider “alternatives to any procedure likely to produce pain to or distress in an experimental animal,”<sup>39</sup> and in regards to “any practice which could

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<sup>35</sup> Agricultural Research Service – Animal Handling and Welfare Review Panel, *supra* note 22.

<sup>36</sup> *Id.* at 8.

<sup>37</sup> *Id.* at 8.

<sup>38</sup> 7 U.S.C § 2143(a)(3)(A).

<sup>39</sup> 7 U.S.C § 2143(a)(3)(B).

cause pain to animals,” such as consultation with a “doctor of veterinary medicine”<sup>40</sup> and “use of tranquilizers, analgesics, and anesthetics.”<sup>41</sup> As such vital welfare considerations were clearly lacking at the MARC facility, the proposed legislation is a much needed remedy.

Finally, opposition to the proposed legislation seems rooted in a potential slippery slope concern. The AWARE Act does not address farm animal research at non-federal facilities, but “some policymakers are concerned that such an amendment could be a first step to on-farm regulation of livestock at commercial farms, dairies, ranches, and feedlots under AWA permit and inspection provisions.”<sup>42</sup> The issue of whether the AWA’s protections should reach farm animals at non-federal research facilities should be addressed on its own terms if and when it arises. Federal research facilities, which are funded by taxpayers, must be held to a standard of animal care that is acceptable to the public.

## CONCLUSION

For the foregoing reasons, the Committee supports the proposed legislation.

Animal Law Committee  
Lori Barrett, Chair

March 2016

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<sup>40</sup> 7 U.S.C § 2143(a)(3)(C)(i).

<sup>41</sup> 7 U.S.C § 2143(a)(3)(C)(ii).

<sup>42</sup> Congressional Research Service, Meat Animal Research Center: The Animal Welfare Act and Farm Animal Research (July 1, 2015), <https://www.hsdl.org/?view&did=768459>.