

Sample Essay Review Question

You represent the Defenders of Nature, a wildlife advocacy group devoted to the protection of nature and animal welfare. Your client has called with an alarming development.

The U.S. Department of Agriculture, along with several other federal agencies, is charged with implementing the federal Animal Cruelty Prevention Act. The Act notes in its statutory purposes that Congress has grown concerned over needless death and suffering inflicted on animals used for scientific experimentation, and the Act empowers several agencies – including the U.S. Department of Agriculture – to define “reasonable laboratory practices” that would assure protection of animal well-being while promoting scientific investigations to the maximum extent possible. The U.S. Department of Agriculture has already passed numerous regulations under the Act to govern scientific research in government-funded agricultural laboratories and animal facilities, and it continues to promulgate new rules in response to developing research trends.

One of those new trends has surfaced. Researchers have recently successfully resurrected extinct animal species through the use of cloning technology, and they have begun serious scientific efforts to bring back several keystone animals and reintroduce them into the wild. These animals would include the passenger pigeon, the thylacine (Tasmanian wolf), the woolly mammoth and several extinct species of birds and mammals whose mummified remains contain trace amounts of DNA. This technology, however, is highly experimental, and it has resulted in hundreds of unviable fetuses, spontaneous fetal deaths, and crippling birth defects for every healthy birth. Even the healthy animals tend to experience a shortened life span and numerous degenerative illnesses prior to death.

In response, the U.S. Department of Agriculture has published in the Federal Register a guidance memorandum that interprets “reasonable laboratory practices” in the Animal Cruelty Prevention Act and its own regulations to categorically exempt all efforts to resurrect extinct species. In effect, the Department has concluded that any injury suffered by particular research animals is far outweighed by the harm of continued extinction of the species. In particular, the Department invited public input and comment on its memorandum, and it noted that it will not enforce any of the Animal Cruelty Prevention Act’s provisions against researchers whose work seeks to restore formerly extinct species. The Department also pointed to the complex scientific, legal and ethical issues posed by this research, the multiple demands on the Department’s resources, and the voluminous comments that the Department expected to receive on its notice.

Your client wants to ultimately challenge the agency’s action in federal court. You review the Animal Cruelty Prevention Act and see that it does not set out a separate legal procedure to challenge agency actions under that Act, and it simply incorporates by reference the federal Administrative Procedure Act for the standards and procedures of any judicial review.

Can your client bring a legal action to challenge the agency’s action? If yes, what standard(s) of review would apply in that action, and what relief can you seek?