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September 13, 2012

Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Ave., S.W. – 6<sup>th</sup> Floor  
Washington, D.C. 20201

Dear Secretary Sebelius,

On behalf of the Board of Directors and the supporters of the National Anti-Vivisection Society, I am writing to give our endorsement of the Petition for Rulemaking requesting an amendment of existing regulations governing implementation of the Chimpanzee Health Improvement, Maintenance and Protection (CHIMP) Act, as submitted by the New England Anti-Vivisection Society and other organizations.

The National Anti-Vivisection Society, a nonprofit organization based in Chicago, fully agrees with the purpose of this petition, which would accomplish a goal intended by passage of the CHIMP Act—to retire chimpanzees no longer used or needed for research to a sanctuary. One component of this law was achieved when Chimp Haven was given a contract to build a sanctuary to accept chimpanzees, for which the need was identified in the 1997 report from the National Research Council's Institute for Laboratory Animal Research (ILAR), "Chimpanzees in Research: Strategies for Their Ethical Care, Management, and Use."

The ILAR committee, in finding that "the concept of sanctuaries capable of providing for the long-term care and well-being of chimpanzees that are no longer needed for research and breeding should become an integral component of the strategic plan to achieve the best and most cost-effective solutions to the current dilemma," laid the groundwork for passage of the CHIMP Act in 2000. It was due to the ILAR committee's report that the need for a sanctuary system was confirmed. This respected committee of scientists and other experts recommended that retiring chimpanzees to a sanctuary was a cost-effective and humane solution that then gave impetus to passage of the CHIMP Act. It should be noted that passage of the CHIMP Act was the result of a unanimous and bi-partisan vote from both the Senate and the House of Representatives.

The ILAR report encouraged the formation of the Chimpanzee Management Program (ChiMP) under the auspices of the National Institutes of Health (NIH). The report also went on to say that: "The committee urges that the ChiMP office encourage and assist in efforts now being led by private initiatives and animal-protection organizations to develop sanctuary facilities for chimpanzees that are *no longer needed* for research or breeding." This has not been done as NIH has instead chosen to warehouse its chimpanzees rather than to relinquish them to the sanctuary established to care for these animals—at a significant cost to tax-payers and to the well-being of the chimpanzees.

The ILAR report was based in part on the presumptions that the long-term use of chimpanzees would continue in U.S. laboratories, and that chimpanzees were a valuable tool in human health research. The more recent report from the Institute of Medicine, “Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity (2011),” was the result of an in-depth investigation to determine whether chimpanzees were necessary at all to further human health research. The report concluded in large part that chimpanzees are NOT necessary for most research and urged NIH to review all of its protocols relying on chimpanzees and to end research that does not conform to specific guidelines for their further use.

But what will happen to these chimpanzees? Under the terms of the CHIMP Act, they should be retired to Chimp Haven to live out their lives in a natural and social setting, freeing up valuable resources and saving taxpayers money. However, NIH has demonstrated over the years that it does not consider participation in the sanctuary system to be necessary or required, contrary to the CHIMP Act’s intent. While the language of the CHIMP Act specifically refers to chimpanzees used by NIH and other federal agencies, the underlying regulations contain no language mandating that chimpanzees who are no longer being used MUST be retired.

The language of the CHIMP Act provides: “The Secretary shall provide for the establishment and operation in accordance with this section of a system to provide for the lifetime care of chimpanzees *that have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government*, and with respect to which it has been determined by the Secretary that the chimpanzees are not needed for such research (in this section referred to as ‘surplus chimpanzees’).” Such determinations have never been made by the Secretary of Health and Human Services and NIH has chosen not to comply with this specific directive, contrary to the clear will of a Congress that gave its full support to passage of the CHIMP Act.

According to the Congressional Record at the time the bill passed the Senate, it was clear that “The bill calls on the scientists themselves to make the determination that a chimpanzee is no longer useful for research and to formally release the chimpanzee to the sanctuary system for permanent cessation of scientific experimentation.” The regulations established for administering this Act, 42 C.F.R. Part 9, Standards of Care for Chimpanzees Held in the Federally Supported Sanctuary System, does not address the process by which that decision is to be made or when a federal agency must relinquish a chimpanzee for retirement.

While § 9.1, *Applicability and purpose*, specifically addresses the purpose for the passage of the CHIMP Act, “The Chimpanzee Health Improvement, Maintenance, and Protection Act (Pub. L. 106–551, referred to as the “CHIMP Act” or “Chimpanzee Retirement Act”) was enacted by Congress to provide for the establishment and operation of a sanctuary system to provide lifetime care for chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by the agencies of the Federal Government, and that are determined to be no longer needed for such research,” it fails to define what criteria should be used to determine when a chimpanzee is “no longer needed for such research,” or to outline a procedure for transferring an animal to the sanctuary.

This petition for rulemaking presents specific and credible guidelines for federal agencies to use in making a determination, while establishing a mandate that will result in the actual removal of chimpanzees from federally-funded laboratories when this determination is reached.

While it is clear that most researchers are reluctant to undertake research using the chimpanzee model because of the scientific, logistical and ethical restrictions that such research entails, institutions have been reluctant to release chimpanzees. Given the fact that chimpanzee studies traditionally use a very small number of animals, and individual animals are often treated under different conditions, highly variable data is generated which lacks statistical significance. Furthermore, the fact that these animals have been used in multiple protocols and that the data produced from the chimpanzee model is questionable and very difficult to interpret should make the institutions eager to relinquish individual animals.

Instead, NIH has withheld a great number of chimpanzees available to be retired from placement in a sanctuary. This is despite the fact that many researchers have already recognized the limitations of using chimpanzees and have chosen to use other models to address their scientific questions. Chimpanzees should not simply be warehoused because researchers are concerned with losing a potential research model, or for the “just in case scenario,” or to maintain a lucrative stream of revenue to a research facility. This is especially true when taxpayer money has been appropriated to retire these animals to an existing sanctuary facility, established solely for the purpose of providing lifetime care for these animals.

We fully support this petition for rulemaking, to amend existing federal regulations to ensure that chimpanzees who are no longer “necessary” or “in use” are retired as intended by the CHIMP Act.

Sincerely,



Peggy Cunniff  
Executive director

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NATIONAL ANTI-VIVISECTION SOCIETY