

March 14, 2005

Department of Health and Human Services
National Institutes of Health
42 CFR Part 9
RIN 0925-AA31

Proposed Rules on Standards of Care for Chimpanzees Held in the Federally Supported Chimpanzee Sanctuary System

These comments are submitted as the collaborative work of the New England Anti-Vivisection Society, Fauna Sanctuary, Save The Chimps (formerly Center for Captive Chimpanzee Care), Center for Great Apes, Laboratory Primate Advocacy Group, Primate Rescue Center, Chimpanzee and Human Communication Institute, The Humane Society of the United States, and In Defense of Animals in response to the National Institutes of Health's notice of proposed rulemaking regarding the standards of care for chimpanzees in the federal sanctuary system. The above organizations collectively represent more than 8.7 million Americans.

We are aware that in most cases the federal sanctuary system will be receiving chimpanzees bearing psychological and emotional scars from years in a laboratory. In addition, many will likely be in poor health or at least somewhat compromised from previous use in multiple and varied research. Many of our comments are made with this in mind.

I. Opening Statements

A. We support language in **Sec. 9.6 Animal Care, Well-being, Husbandry, Veterinary Care, and Euthanasia** which consider the psychological and behavioral well-being and social needs of all chimpanzees transferred from laboratories. Any sanctuary for chimpanzees formerly housed in laboratories must, wherever feasible, prioritize the needs of the individuals over those of the institution in order to fully promote health and well-being. A sanctuary must be more than just an enriched laboratory environment and allow, as well as encourage, chimpanzees to express their individual and innate behaviors to the greatest degree possible. Years of institutionalization coupled with the continual threat of discomfort, and fear or suffering from biomedical or intrusive behavioral research has taken a toll on chimpanzees not unlike the toll prolonged institutionalization takes on humans. Retirement facilities must be prepared to deal with this aspect of care and must be required to have a program for the re-socialization of the chimpanzees.

B. We support the proposed regulations which recognize that social interactions and group dynamics are a key aspect of chimpanzee quality of life. Every effort should be made to minimize disruptions in social or family groups. This regulation should include the requirement that no chimpanzee who formerly lived in a group should be sent to a

federal sanctuary without members of his/her social group. If an individual chimpanzee requires retirement because of ill health or is no longer psychologically fit enough to tolerate more work in protocols, or because of his/her previous research use, or because they are considered “surplus” at their facility, then compatible family or group members must be transferred into sanctuary as well.

C. We support minimizing disruption through staff stability. Allowing chimpanzees to remain in a stable environment with a minimum of intrusions and disruptions is essential to well-being. In addition to keeping the chimpanzees’ social structure intact it is also important that they maintain stable human interactions. In addition, volunteer staff should not be allowed contact with any chimpanzees until after a six month trial period and only if the volunteer agrees to commit to regular involvement. If they do not, volunteers should be restricted to areas outside of actual chimpanzee contact.

1. Sec. 9.9 Facility Staffing (f) Behaviorist

The proposed regulations state:

The Behaviorist(s) must be qualified through training and experience. The person must have formal training in one of the behavioral sciences and experience working with and observing nonhuman primates, or have developed expertise through at least four years of experience working with chimpanzees;

We believe that the behaviorist’s required experience must also include working specifically with nonhuman primates doing introductions and forming social groups. Should the behaviorist be unsuccessful in attempts to socialize particular individuals, it is recommended that they consult with chimpanzee experts from outside of their facility who are experienced in re-socialization.

In the interests of facilitating socialization, the behaviorist should be granted access to the donating institution before the transfer occurs so that they can observe the incoming chimpanzees and speak to individuals that have cared for them.

2. Sec. 9.9 (c) Personnel

The proposed regulations state:

Animal care personnel must be properly trained or experienced in providing care for the chimpanzees. Caregivers must have experience or be trained in the daily care of chimpanzees, including husbandry, enrichment techniques and observation for illness. Personnel must be familiar with regulations, guidelines and policies that relate to their duties, including basic emergency care. The Sanctuary must provide for formal or on-the-job training to facilitate the effective implementation of a high-quality and humane care program for the chimpanzees. The Sanctuary CEO is responsible for assuring that staff hired to care for the chimpanzees have a working knowledge of the physiological and behavioral needs of chimpanzees. A formal training program for new employees shall be developed and implemented. The

Sanctuary shall develop a mechanism to document employee-training activities that include chimpanzee biology, husbandry, behavior, signs of well-being vs. illness or maladaptation, zoonoses, and enrichment and socialization techniques, among other relevant subject areas. Training must be documented and available for review by regulatory, accrediting, and other agencies with a need to know;

Consistent with Sec. 9.9 is the need for all sanctuary facilities to establish criteria for the hiring of care staff that includes more than just a requirement for experience in physical responsibilities. Sanctuaries within the federal system must develop a means to assess potential staff sensitivity to the emotional/behavioral and social needs of the chimpanzees. Individuals without prior experience who demonstrate maturity, intelligence and a sincere commitment to working with chimpanzees should also be considered as appropriate candidates.

A personnel manual must outline not only job responsibilities, benefits and applicable law, but clearly articulate what would be considered violations of their responsibilities to the chimpanzees in the area of psychological/behavioral care as well as physical care. This list must identify the violation and the course of action the sanctuary will take depending on the severity of the violation. This list should include a prohibition against: a) using power hoses as a means of routine control (hoses can be used *only* as a last resort to break up fights that could result in serious injury); b) taunting or provoking aggression or fear; c) depriving or neglecting needs as means of punishment; and d) inflicting pain, injury or stress for any reason.

All personnel should be required to attend a minimum of twice yearly trainings with nationally recognized chimpanzee experts regarding meeting the psychological/behavioral as well as physicals need of the chimpanzees and receive on-going supervision as needed.

D. We support language in **Sec. 9.6 Animal Care, Well-Being, Husbandry, Veterinary Care and Euthanasia** that emphasizes minimizing the use of physical and chemical restraint **Sec. 9.6 (7)**

II. Recommendations Concerning Veterinary Care

A. Veterinary Records

Complete veterinary records and a comprehensive health history must accompany every chimpanzee from the institution to the sanctuary system. Though the proposed regulations indicate that records of exposure to infectious agents accompany each chimpanzee to the sanctuary under the section on **Occupational Health and Safety and Biosafety Requirements Sec. 9.10 (2)**, we did not see any requirement for a full health history under **Sec. 9.6 Animal Care, Well-Being, Husbandry, Veterinary Care and Euthanasia**.

Apart from infectious disease exposure, the sanctuary should have complete information about: all prior illnesses, all surgeries, all research protocol procedures, number and dates

of all “knockdowns,” (routine or otherwise including dose and type of anesthetic used and response to anesthetic), reproductive events (pregnancies, births, miscarriages, sterilization, etc.), medications administered, allergies to any known medications, foods or environmental substances and their specific allergic response, diet and weight history including any histories of poor appetite, and any other pertinent health data including information on significant behavioral events (such as aggressiveness, stereotypic behaviors, self-injurious behaviors, and episodes of depression/anxiety), complete caging/social history (including any preference for being solitary, etc.) and other information which will aid in determining and responding to the physical and behavioral needs of the individual.

We are aware that under **Sec. 9.5 (2) Chimpanzees Ownership, Fees and Studies** it states: “Complete histories must accompany each chimpanzee.” However, we believe that without clearly defining what must be included in the histories, some chimpanzees may not be accompanied by information necessary to their future care and well-being. The present statement in Sec. 9.5 (2) is neither clear nor stringent enough. This requirement warrants inclusion under Veterinary Care and not under Ownership, Fees and Studies.

The regulations must be more specific about requiring a full veterinary record and health history for all incoming chimpanzees as well information about types or areas of research for which they were used in order to ensure optimal health care and well-being.

B. Sec. 9.2 Definitions/ Invasive research (8) Darting

Darting or anesthesia induction other than at the annual exam or in the case of an emergency in which the chimpanzee’s well-being is at stake.

We strongly support the prohibition on darting but believe the regulations should impose clearer guidelines should an emergency or medical need arise requiring that a chimpanzee be anesthetized. Because of the extreme trauma associated with being darted while surrounded by multiple personnel, sanctuary regulations should note that this method is wholly inadvisable and should be avoided. It is important that the sanctuary environment differ significantly from the laboratory environment, and allow chimpanzees formerly used in research to feel a measure of security and protection against prior traumatic events. Darting should be a last resort in every instance including physical exams. In all cases and under all circumstances, personnel with a positive and trusting relationship with the individual chimpanzee in question should always be present during any events likely to cause fear, anxiety or stress for that chimpanzee. Based on what we know about darting, it is emotionally debilitating and carries physical risks. Every effort should be made to avoid it.

C. Sec. 9.6 (c) (2) Preventative Medicine and Animal Health Programs – Annual Physicals

Unless warranted because of ongoing physical problems or concerns, complete physicals requiring anesthesia must be limited. Every effort should be made to conduct physicals

during times when a chimpanzee is being treated for another purpose, i.e. injury or surgery. Minimizing the need for anesthesia must be a high priority. All efforts should be made to condition chimpanzees to receive as much medical attention as possible without resorting to knockdowns.

We support all recommendations for training chimpanzees through positive reinforcement to aid in providing them with medical care and attention. When anesthesia is needed for an examination or to administer care, the chimpanzee should be pre-medicated with a sedative which can be placed in food or drink.

Complete and current medical records would limit the need for routine entry physicals that demand yet another course of anesthesia. Veterinary records should precede the chimpanzee's arrival at the sanctuary by no less than 2 weeks. The attending veterinarian should be given ample time to review records and to be adequately prepared to address the veterinary needs of the new arrivals.

If an entry physical is deemed necessary by the receiving veterinarian given the medical history, the examination, at the receiving veterinarian's request, could be done the day of transfer at the donating institution *if* the chimpanzee needs to be anesthetized prior to transport. The receiving veterinarian may request specific tests or exams. This collaborative process would eliminate the need for a second anesthesia upon arrival.

Attending veterinarians from the donating institution should be available to consult with sanctuary veterinarians for as long as needed to avoid unnecessary procedures or omissions due to a lack of complete understanding of the individual chimpanzee's unique medical history and needs. Notes from such consultations should be part of the individual chimpanzee's permanent medical records.

D. Sec. 9.8 Animal Record 4(b) Necropsy

The proposed regulations state:

The CHIMP Act requires that necropsy records from chimpanzees previously used in federally funded research projects be made available on a reasonable basis to investigators engaged in biomedical or behavioral research. In order to comply with this provision, the contractor for the Sanctuary system must devise a plan that will allow interested parties to contact the Sanctuary and receive necropsy records when they become available.

We propose that veterinarians currently retained by any sanctuaries caring for any chimpanzees formerly used in biomedical research be granted access to necropsy reports, as these veterinarians will be caring for chimpanzees with similar veterinary/research histories and will likely benefit from the knowledge acquired through necropsy reports. To limit access to these necropsy records to only those investigators engaged in biomedical or behavioral research fails to acknowledge the importance of such information to the care and well-being of other formerly federally used or supported chimpanzees with related research histories.

E. Quarantine Sec. 9.6 (3)

If chimpanzees from the donating institution had been housed together they should be quarantined together.

F. Observation, diagnosis, prevention and treatment of illness Sec. 9.6 (6)

Staff should be required to report directly to the attending veterinarian or other appropriate parties any concerns or observations about the health and well-being of individual(s). Staff working with the chimpanzees on a daily basis often notice subtle changes that could be critical to the chimpanzee's well being. If the attending veterinarian or supervisor does not address the issue in a timely manner then the staff member should have a prescribed course of action to take to report their concerns without fear of reprisal.

G. Post-surgical Care Sec. 9.6 (8)

Though chimpanzees need to be separated from cage/group mates during recovery from anesthetics they should recover in an adjacent or nearby cage that allows visual contact whenever possible.

III. Recommendations regarding Sec. 9.4 Physical Facility Policies and Design

We support the proposed regulations as set forth in this section. The emphasis on daily observation with minimal disturbance is important (clause (2)) and the inclusion of large outdoor compounds, corrals or other ranging areas is optimal. We would like to offer that chimpanzees should be provided as much freedom as possible, within the limitations imposed by safety precautions. We support the regulations which call for safe, secure areas which protect chimpanzees from disturbances as well as prevent escape.

Visual barriers, either natural (e.g. trees or berms) or artificial (e.g. wall panels) within both the indoor and outdoor enclosures are important. They have been shown to aid in diffusion of aggressive episodes by providing quick refuge or a chance to reduce visual stimulation.

We make the following recommendations in the area of housing and facility design:

A. Heating, ventilation and air-conditioning Sec. 9.4 Physical Facility Policies and Design Heating, ventilation and air-conditioning

The regulations state:

In general, the design of the Sanctuary facility can be such that the mechanical systems may not be required, except in tightly closed areas. (ix) Heating, ventilation, and air-conditioning (HVAC) must comply with the standards of the Guide when chimpanzees must be confined to closed, indoor quarters for isolation, treatment or other situations on

a short-term basis. It is critical to provide ventilation that allows chimpanzees to seek a thermo-neutral zone that fits their needs. In general, the design of the Sanctuary facility can be such that the mechanical systems may not be required, except in tightly closed areas. The use of shelters, nesting materials, circulating fans, and space heaters are examples of means that address the comfort needs of the chimpanzees.

We do not support this regulation without the temperature qualifications and remedies we suggest.

The regulations should adhere to a range of temperatures appropriate for and comfortable to chimpanzees. Once this range is established, the internal enclosures must be maintained within that range. Outdoor temperatures which naturally vary from this range will be provided with natural and manmade shelters which the chimpanzees can select for greater warmth or cooling. A centralized heating and/or cooling system (fans or air conditioning) must be in place if this temperature range cannot be maintained in indoor enclosures.

Chimpanzees should not be left outside without means to freely re-enter during inclement weather. Internal temperatures must be checked regularly to assure faults in the system be detected. If employed, automatic timers on lighting devices should be adjusted to allow for seasonal fluctuations and to permit normal diurnal cycles to remain undisturbed.

B. Use of Space heaters as discussed in **Sec. 9.4 (a) (2) (ix)** refers to using space heaters as implements which may address the comfort of chimpanzees. The use of space heaters in any areas should be prohibited. Space heaters are very prone to fires and their use in the sanctuary system should not be allowed. There have been numerous instances of tragic fires occurring and heavy tolls in animal life when space heaters have been used in captive animal settings.

In the event of a fire, the ability to evacuate the chimpanzees would be difficult if at all possible. As such, all caution must be taken to avoid the likelihood of a life-threatening event from which evacuation is not an option.

C. Sec. 9.6 (2) (iv) Bedding

The regulations offer the following about nesting in Sec 9.6 (Animal care... well-being)

(iv) Nesting, sleeping, and resting. The Sanctuary must contain sufficient outdoor or ranging space and structures (natural or artificial) for the chimpanzees to build nesting areas for sleeping and resting. The site shall not be located in an area where it is noisy or frequently interrupted by human activity;

The site should have enough areas/structures to provide refuge and shade for all group members so that less dominant members will have equal access.

And also from Sec 9.6:

An environmental enrichment program must be in place to encourage the expression of natural behavior such as social interaction, locomotion, climbing, foraging, resting, playing, manipulating objects, and nest building.

Bedding and nesting materials are extremely important for chimpanzee well-being. The proposed regulations indicate that nesting materials will be made available (**Sec 9.6 (2) (ii) and Sec 9.6 (2) (iv)**). However, in Sec. 9.6 (1) it states: “Chimpanzees must have access to food, water and bedding (if appropriate) at all times.” We believe there are no instances when bedding would not be appropriate. Should there be post surgical wounds or sutured injuries for which a material such as natural hay bedding could be harmful, the chimpanzee should be provided clean blankets.

The words “adequate and appropriate” bedding should be inserted in Sec 9.6 (1) and the words “if appropriate” should be deleted. Sample materials that meet the requirement for “adequate and appropriate” should be listed, such as dry natural hay or grasses or branches of sufficient quantity; or washable or disposable blankets. Old and arthritic chimpanzees should be provided with whatever additional materials are needed to minimize their discomfort.

Fresh bedding must be provided daily. Finally, sufficient amounts of bedding must be provided to each group to assure that no chimpanzee is left without bedding.

D. Transfer Doors

Laterally sliding transfer doors are safer and should be used wherever possible.

IV. Comments on specific regulations

A. Sec. 9.6 (2) (v) Feeding

The proposed regulations Sec. 9.6(2) (v) Feeding indicate that “Diets will be supplemented with natural foods” in addition to a commercially prepared diet. We believe this statement must be reversed: The majority of the nutrition should come from natural food diets supplemented with commercially prepared food, such as monkey chow. Chimpanzees should have a variety of fresh foods available to them in sufficient quantity in a large distribution area to assure access for everyone.

“Enrichment” must be provided a minimum of twice daily in a manner that engages their interest, occupies their time and elicits foraging behaviors. Old food or chow should be removed from the enclosures and not used as subsequent meal portions.

B. Prohibit contact with the public

Sec 9.3 (a) (5) Sanctuary Policies and Responsibilities states that exhibiting the chimpanzees is prohibited at the sanctuary. However, it also states:

This policy does not prohibit educational activities that may involve limited viewing of chimpanzees in their environment

The only educational viewing of the chimpanzees should be through camcorders or other non-intrusive electronic options set up at a visitors' center. The visitor's center should be located in an area away from the chimpanzees. All efforts must be made to not disturb their daily lives. Therefore, there must be no contact with the public and any education work must adhere to that requirement.

C. Community Member of SCCC

Sec. 9.3 (a) (7) talks about the establishment of a Sanctuary Chimpanzee Care Committee (SCCC) which will be "responsible for oversight of the facility programs and operations to ensure the health and well-being of the chimpanzees ..." Clause (v) states that one committee member must be from the community, "including at least one with affiliation or employment with an animal protection organization ..."

We propose that one committee seat on the SCCC be a rotating position for a representative from a reputable sanctuary with experience in the care of chimpanzees formerly used in research. The seat should change every two years to provide an opportunity for diverse input.

Sec 9.3 (a)(7)(vi)(B) states that the Sanctuary Chimpanzee Care Committee will:

Review and approve proposed education programs that might interfere with the chimpanzees' well-being or routine activities;

The word "approve" should be changed to "disapprove." There should be no educational programs that interfere with the chimpanzees' well-being or routine.

D. Addenda to Sec 9.3 (a)(10) on seropositive chimpanzees addresses procedures for chimpanzees who are harboring or have been exposed to infectious agents. This section should emphasize that these chimpanzees should, as with all other chimpanzees within the sanctuary, be socially housed.

E. Addenda to Sec. 9.6 (b) (10) Emergency, weekend and holiday care

Staffing ratios should be adequate enough to maintain an effective program of behavioral enrichment as well as tending to the physical needs of the chimpanzees at all times.

Staff should be provided with radios to facilitate communication, particularly useful for emergencies.

V. Special Needs to be Addressed

A section of the regulations termed Special Needs should be added. In it the following categories must be defined:

A. Aged Chimpanzees

The proposed regulations make no mention of geriatric needs other than to state “The special needs of aged chimpanzees must be considered and addressed as they may be sick, have limited movement capabilities, or have other conditions that require special consideration.” This is included under Feeding. (Sec. 9.6 (v)).

This area of geriatric care should be developed further and given greater importance especially given the likelihood that many of the chimpanzees allowed to enter the federal sanctuary system will be older and suffering from years of confinement and/or experimental exposures that may have left them compromised beyond their chronological age.

Several sanctuaries that house former research subjects have created geriatric friendly enclosures with necessities similar to those that are required in human nursing or assisted living facilities. For example, they have stationary bar grips on the walls positioned to assist with ambulation; ramps which can allow ease of mobility rather than structures to climb; and, smooth surfaces like mats and rubber cushions to prevent arthritic individuals from having to lie or move across hard, abrasive or irregular surfaces.

The physical needs of an aging chimpanzee must be attended to with astute and frequent observation so that provisions for different foods, supplements, etc. can be better determined.

B. Formerly single housed chimpanzees

Federally funded sanctuaries will be home to former research subjects who may have been housed alone for a significant part of their lives. It can be difficult for them to successfully become part of a group. Every attempt should be made to integrate them into a social group.

C. Personal and private space

The proposed regulations state: 9.6 1 (ii)

At a minimum, chimpanzees confined to cages, runs, or similar enclosures shall be housed in pairs or larger groups unless contraindicated for medical, behavioral or other justifiable reasons. These enclosures must be designed to allow any member of the group to disengage from aggression by other chimpanzees through the provision of climbing devices, resting boards, sufficient space, or accessibility to adjoining cages or outdoor cages. Visual, tactile, and auditory contact should be maintained where possible.

All of the chimpanzees should be socially housed. In the rare instances where this is contraindicated, every effort should be made to pair them with a compatible member of the group.

Also from 9.6 (2) (ii)

Enrichment should be emphasized for chimpanzees that must be confined to smaller, indoor spaces. Chimpanzees must be able to retreat from areas where they feel threatened or agitated by close human encounters or encounters with other chimpanzees;

We agree with Sec. 9.6 (2) (ii) and in addition, recommend that since some chimpanzees, even when living comfortably in a group, require alone time, a provision should be made to allow for individual space that is not only in response to a need to “disengage from aggression.” Individuals should have access to quiet, alone space as they choose.

D. Unintentional births

If a baby is accidentally born at the facility, the infant must be kept with his/her mother for life. If there is a bona fide reason why the baby cannot remain with his/her mother, then every effort should be made to reunite the baby with her/ his mother or if that fails, then with a surrogate chimpanzee parent.

In conclusion, we recommend that the federally funded sanctuary system adopt standards of accreditation that exceed those established for laboratories and zoos. The standards should reflect the high quality of care that privately funded sanctuaries provide.

Further, while the award contract for facilities participating in the federally funded sanctuary system reads: “NIH expects the Contractor to request ‘courtesy’ USDA inspections,” we believe federally funded sanctuary facilities should be routinely and officially inspected by USDA. To assure standards of care and appropriate recourse should those standards be breached, we recommend adoption of the following language for the federal sanctuary system:

“The USDA’s Animal and Plant Health Inspection Service (APHIS) shall have legal jurisdiction to enforce the Animal Welfare Act over all facilities resulting from or regulated by the CHIMP Act. All such facilities shall be subject unconditionally to any state or local law, regulation or ordinance relating to the treatment, transportation, housing and/or handling of chimpanzees, including but not limited to any state cruelty to animals statute, veterinary practice act or department of health law, and regulation or law in the jurisdiction where the facilities are located. All federally funded sanctuary facilities shall voluntarily waive any exemption contained in any aforementioned state or local law for the purposes of enforcement of that law, rule or regulation. All veterinarians associated with any federally

funded sanctuary facility shall become licensed according to the veterinary practice act where the facility is located, and shall consequently become unconditionally subject to said practice acts, including any investigations or discipline that a state veterinary board shall administer.”

Our final comment is that the phrase “permanent retirement” used in the Supplementary Information section and the word “sanctuary” as used throughout the proposed regulations need to be addressed. The word sanctuary implies a place of permanent refuge and protection, asylum, cover, harbor, or haven. **We ask that DHHS agree to provide any and all chimpanzees retired into the federal sanctuary system with permanent protection from any further research.**

Removing a chimpanzee from a sanctuary and putting him/her back into a laboratory environment or research protocol is not retirement. We firmly believe that the chimpanzees sent into retirement should be provided permanent protection from further research as was the original intention of the CHIMP Act. We believe that a sanctuary funded by public tax dollars as well as private donations from the caring public must be responsive to that public and their growing concerns for greater protection and respect for chimpanzees.

We appreciate the opportunity to present our comments for consideration. We thank DHHS for drafting these regulations. We encourage the staff and advisory board of the federal sanctuary system to continue to update these regulations and policies and to incorporate the standards of excellence that many not-for-profit chimpanzee sanctuaries embrace. New standards of care for federally owned or supported chimpanzees are long overdue. We look forward to this opportunity to utilize our collective experience and first hand knowledge to help chimpanzees.

Respectfully,

The signatories (in alphabetical order),

Center for Great Apes
Chimpanzee and Human Communication Institute
Chimpanzee Collaboratory
Fauna Sanctuary
Humane Society of the United States
In Defense of Animals
Laboratory Primate Advocacy Group
New England Anti-Vivisection Society
Primate Rescue Center
Project R&R
Save the Chimps