

9-12-2012

Resolution 2012-01-06 Requesting the Department of Agriculture to Remove Provisions for Preemption From the Final Interim Rule

Association of Fish and Wildlife Agencies

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Recommended Citation

Association of Fish and Wildlife Agencies, *Resolution 2012-01-06 Requesting the Department of Agriculture to Remove Provisions for Preemption From the Final Interim Rule* (2012),

Available at: http://digitalcommons.law.msu.edu/afwa_reso/158

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Resolution 2012-01-06

**REQUESTING THE DEPARTMENT OF AGRICULTURE TO REMOVE PROVISIONS FOR
PREEMPTION FROM THE FINAL INTERIM RULE**

WHEREAS, the primary authority and capacity to protect and manage fish and resident wildlife within their borders resides in the states; and

WHEREAS, the states have a significant interest in protecting its native wildlife resources from the transmission of wildlife diseases in captive cervid populations that originate outside a state; and

WHEREAS, on June 13, 2012, the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) published a supplemental rule entitled Chronic Wasting Disease (CWD) Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose; Interim Final Rule (Final Rule) in the Federal Register; and

WHEREAS, CWD is a serious threat to our country's valuable wildlife resources and associated recreation, and the Association of Fish and Wildlife Agencies strongly supports efforts to control CWD in captive cervids in order to reduce the threat they pose to the country's native wildlife; and

WHEREAS, the Interim Final Rule violates the principle of federal deference to state jurisdiction over resident wildlife, it is not necessary, it interferes with the state's ability to take reasonable measures to protect its native wildlife populations, and there are no appropriated funds to support a federal CWD program, thereby forcing states to manage CWD risks in the prolonged absence of a federal program which was first suggested in 1998; and

WHEREAS, AFWA questions the appropriateness, as well as the legality, of having the public comment period end on August 13, 2012 and the simultaneous effective date of the Interim Final Rule, without prior publication of any federal response to the public comments; and

WHEREAS, the Interim Final Rule was adopted pursuant to the Secretary of Agriculture's rulemaking authority under the Animal Health Protection Act (AHPA), which only authorizes the Secretary to adopt regulations to prevent the introduction or dissemination of any pest or disease to livestock; and only authorizes the Secretary to prohibit or restrict movement in interstate commerce or the use of any means of conveyance or facility as authorized by congressional delegation of authority, and Congress has not authorized the Secretary to weaken or preempt state regulations established to prevent disease transmission; and

WHEREAS, the Interim Final Rule goes beyond the Secretary's authority by authorizing the interstate movement of cervids and preempts any state reasonable regulation or authority to prevent movement of CWD into or through a state; and

WHEREAS, the Interim Final Rule which authorizes the interstate movement of cervids and preempts state regulations that have the purpose to prevent the introduction or dissemination of CWD into a state exceeds the Secretary's rulemaking authority under the AHPA; and

WHEREAS, the provision in the Interim Final Rule that states cannot reasonably regulate the transit of captive deer, elk, or moose through a state unlawfully usurps the states' authority to regulate captive wildlife and to protect native wildlife by allowing captive cervids to enter and move through the states without the states' ability to impose regulations necessary to protect native wildlife; and

WHEREAS, the Interim Final Rule ignores the states' legitimate concerns for captive cervid escapes during transit through emergency unloading and accidents as well as disallows all measures the states have implemented to mitigate the CWD importation risks to an acceptable level which is within the prerogative of each state to determine the acceptable level; and

WHEREAS, while the Interim Final Rule provides for state regulations that are more restrictive for captive cervids that remain in a state, it also provides that subject to the availability of appropriated funds for a federal CWD Herd Certification Program, the owner of a herd grandfathered in a state may apply to the APHIS veterinarian in charge if no Approved State CWD Herd Program exists in the herd's State, potentially circumventing a state's decision to not allow captive cervid operations; and

NOW, THEREFORE, BE IT RESOLVED, that the Association of Fish and Wildlife Agencies, at its annual convention at Hilton Head Island, South Carolina, on September 12, 2012, in the strongest possible terms rejects the intrusion into state resident wildlife management authority provided by this Interim final Rule; and request that the Secretary limit the CWD rules scope to the rule making authority conveyed to the Secretary under the provisions of the AHPA by removing provisions for preemption from the final Interim Rule; and

FURTHER, BE IT RESOLVED, that AFWA forwards this resolution along with a cover letter to Secretary Tom Vilsack, USDA, requesting a meeting with the Secretary to discuss the intrusion into state resident wildlife management authority provided by this Interim Final Rule.

*Submitted by the Fish and Wildlife Health Committee and
The Executive Committee of AFWA*