



ASSOCIATION *of*
FISH & WILDLIFE
AGENCIES

The voice of fish and wildlife agencies

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December 6, 2006

Dr. Ron DeHaven, Administrator
Animal and Plant Health Inspection Service (APHIS)
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 312-E
Washington, DC 20250

RE: Docket No. 00-108-5

Dear Dr. DeHaven,

Subject docket number was published on Friday, November 3, 2006, noticing the receipt of 3 petitions (one from AFWA) requesting delay in the effective date of, and requesting further comments on, the Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk and Moose: Final Rule. The Association appreciates your responsiveness to our concerns regarding this final rule by delaying its effective date and seeking further comment. Our most fundamental concern with the final rule remains as detailed in our August 3, 2006 petition. That is, preemption of more restrictive state action precludes the state fish and wildlife agencies from fulfilling their statutory obligation to their citizens of responsible resource management of free-ranging cervids. In the absence of significant changes to the final rule to restore legal deference to more stringent state regulatory programs, the Association strongly recommends that the final rule be vitiated.

We acknowledge that USDA has a mission to ensure the vitality of U.S. domestic agriculture and considers captive cervid farming to be alternative livestock. We also appreciate that the final rule sought to bring some consistency to regulation of the interstate movement of captive cervids from a CWD disease management perspective. However, the final rule remains deficient in a fundamental area: it diminishes risk reduction methods that many States have currently imposed, and consequently, increases the risk of spreading CWD to free-ranging cervids. These consequences are unacceptable both to the states and to the millions of hunters and wildlife enthusiasts in the United States. Further, we believe that legitimate and responsible captive-cervid owners have demonstrated their support for a rigorous disease management program. Finally, we believe that the final rule remains deficient from a disease management perspective.

The preemption of well-founded State regulations by a less stringent Federal regulation increases the risk of spreading CWD and diminishes long-standing, risk reduction measures that States have taken in the extended absence of a Federal CWD program. The Federal regulation should be a minimum standard and APHIS should not preempt State programs that minimize CWD risk to a level that the State is willing to accept. While some states could find the high level of risk inherent in the Federal program acceptable, others will tolerate only a lower level of risk under a more stringent program. Still other States will not accept any risks associated with interstate or intrastate movement, or even private ownership of cervid species, and have acted accordingly. The U.S. Department of Agriculture must respect the States' obligation and authority for responsible resource management of free-ranging cervids, and should not compromise State programs that utilize more stringent risk reduction standards.

Because individuals in States without CWD programs may enter the Federal program and because States may adopt it, the Federal program must be strongly grounded in science. The Association believes that currently this is not the case. As published in July 2006, the Federal program will initially allow interstate movement of animals after herd monitoring periods less than the well-documented, minimal incubation period of CWD. This approach allows the highest risk animals into interstate commerce and dramatically increases opportunities for CWD to spread. If APHIS offers this phase-in period to enhance "buy-in" and reduce potential hardships on captive cervid operators, we believe that this is unnecessary. Responsible captive cervid owners endorsed appropriate disease surveillance many years ago and have monitored their herds for nearly a decade or more. If the intent of APHIS truly is to prevent the spread of CWD, rapidly eliminate it from farmed and captive cervids, and base Federal regulations on science as stated in the Proposed and Final Rules, then the **herd monitoring period required for interstate movement should be 5 years for the very same reasons APHIS uses to justify the 5-year monitoring period for herd certification.**

With respect to APHIS' solicitation of "additional safeguards" for States to mitigate or reduce the risk of disease transmission, AFWA strongly encourages APHIS to work with the States to encourage and recommend that they develop, enhance, and/or maintain programs that mitigate risks, particularly in areas in which APHIS lacks authority. Examples include, but are not limited to, mandatory captive herd participation with disease monitoring and certification, individual animal identification and regular herd inventories, fencing and escape reporting requirements, and regulation of intrastate animal movement. Several of these measures are components of the Federal herd certification and interstate shipping programs and are well-justified risk reduction practices. In view of the stated goal of rapid elimination of CWD from farmed and captive cervids, APHIS should promote comprehensive State programs that address all risk factors, including those that APHIS cannot address, and APHIS should respect State authority to do so.

The U.S. Department of Agriculture investment in ensuring the vitality of domestic agriculture is backed by funding to indemnify captive - cervid owners should it be necessary to depopulate their herds to manage CWD. No such indemnification exists for the billions of dollars of sportsmen and women's investment in ensuring the health and sustainability of free-ranging cervids in the United States, largely through the conservation programs of the state fish and wildlife agencies. The 2001 National Survey of Fishing, Hunting and Wildlife Related Activities conducted by the USFWS estimates that big-game hunters contributed \$10.1 Billion to the U.S. economy through

expenditures for equipment, travel and other expenses related to hunting. Any disease management regimen that doesn't minimize risk as much as possible to this investment is not prudent. We believe that the APHIS final rule must do better, or it should be set aside.

We remind APHIS that, when a Federal rule is meant to preempt State law the federal agency promulgating the rule must provide notice to state and local officials of this fact in the proposed rule (Executive Order 13137, dated August 4, 1999). The proposed rule did not meet this basic notice requirement, and thus violates certain federalism principles set out on the Executive Order.

The Association appreciates the opportunity to provide further comment on the final CWD rule but remains convinced that, absent significant changes that would give legal deference to more stringent state programs, and further tightening of the interstate movement standards, the final rule should be vitiated.

Sincerely,



Edward Parker, President
Association of Fish and Wildlife Agencies

Cc: State Fish and Wildlife Directors
Dr. John Clifford, Assistant Administrator, Veterinary Services