



## THE CENTRAL PLANT BOARD

Illinois · Indiana · Iowa · Kansas · Michigan  
Minnesota · Missouri · Nebraska · North Dakota  
Ohio · South Dakota · Wisconsin

---

---

### CENTRAL PLANT BOARD 2008 ANNUAL MEETING Madison, Wisconsin

#### RESOLUTION NO. 4

#### SPECIAL NEED PROCESS FOR STATES TO PREEMPTION LANGUAGE IN THE FEDERAL PLANT PROTECTION ACT

The Federal Plant Protection Act currently preempts state action in 7 USC 7756 Sec. 436, “Preemption, (b) REGULATION OF INTERSTATE COMMERCE.—(1) IN GENERAL.—Except as provided in paragraph (2), no State or political subdivision of a State may regulate the movement in interstate commerce of any [regulated] article...if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States.” The exception in paragraph 2 states as follows: “(2) EXCEPTIONS.—(A) REGULATIONS CONSISTENT WITH FEDERAL REGULATIONS.—A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of [regulated] articles...that are consistent with and do not exceed the regulations or orders issued by the Secretary. (B) SPECIAL NEED.—A State or political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of [regulated] articles...that are in addition to the prohibitions or restrictions imposed by the Secretary, if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.” This preemption language is unnecessary and a burden to the states.

In the United States Constitution, the Commerce Clause states, “The Congress shall have power...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes,” thus giving the power to the federal government to regulate commerce between states. Before the year 2000, this clause was the solid underpinning of federal power to regulate interstate trade. Additional power, through preemption, should not be needed and could seriously compromise a state’s right to protect its resources through exposure to private law suits.

The Commerce Clause should be sufficient, as it has been historically, in protecting the federal government’s ability to regulate interstate commerce. The 2000 addition of the preemption language in the federal PPA opens states to needless litigation from private parties whenever the states attempt to use actions to address the introduction or spread of regulated plant pests. Furthermore, while the Special Need exception exists in statute, no rules have been finalized for application for the exemption, nor has any exemption been granted since 2000 that is on record.

**BE IT RESOLVED**, by the Central Plant Board at its 84<sup>th</sup> annual meeting in Madison, Wisconsin on March 13, 2008 that USDA APHIS facilitate the development of a process that allows states to quickly and effectively receive special need permission from the Secretary to impose additional prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that may be under prohibitions or restrictions by the Secretary.

**BE IT FURTHER RESOLVED**, that USDA in close cooperation with the National Plant Board create and develop this process by January 1, 2009

**Distribution:**

Cindy Smith, USDA APHIS  
Rebecca Bech, USDA APHIS PPQ  
Bob Ehart, NASDA  
Gray Haun, NPB  
Aurelio Posadas, NPB  
NPB Regional Presidents