

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-042-1]

#### Witchweed; Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina from the list of regulated areas. These changes affect five counties in North Carolina and two counties in South Carolina. These actions are necessary in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

**DATES:** This interim rule was effective February 4, 2003. We will consider all comments that we receive on or before April 11, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-042-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-042-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and

address in your message and "Docket No. 02-042-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-5225.

#### SUPPLEMENTARY INFORMATION:

##### Background

Witchweed (*Striga* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Within the United States, witchweed is only found in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80-10 (referred to below as the regulations), quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

Section 301.80-2(a) provides that the Deputy Administrator will designate as regulated areas each quarantined State, or each portion of a quarantined State, in which witchweed has been found, in which there is reason to believe that witchweed is present, or that it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Regulated areas, which are listed in § 301.80-2a, are designated as either

suppressive areas or generally infested areas. Suppressive areas are those portions of the regulated areas where eradication of infestation is undertaken as an objective. Currently, all the regulated areas listed in § 301.80-2a are designated as suppressive areas.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a regulated area will prevent the interstate spread of witchweed.

#### Changes to the List of Regulated Areas

In this interim rule, we are amending the list of regulated areas in § 301.80-2a by removing areas in Bladen, Columbus, Cumberland, Pender, and Robeson Counties, NC, and Dillon, Horry, and Marion Counties, SC, from the list of suppressive areas. The areas we are removing from Columbus County, NC, and Dillon County, SC, were the only suppressive areas in those counties; therefore, we have removed the entries for Columbus County, NC, and Dillon County, SC, from the list of regulated areas.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, we no longer need to list these areas as suppressive areas for the purpose of preventing the spread of witchweed. This action relieves restrictions on the movement of regulated articles from these areas that are no longer necessary.

In addition to removing areas from the list of regulated areas in § 301.80-2a, we are also adding several areas to that list. Specifically, we are adding 6 farms in Robeson County, NC, 11 farms in Horry County, SC, and 6 farms in Marion County, SC, as suppressive areas. We are taking this action because we have determined that witchweed occurs in these areas; therefore, we need to list these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. As a result of this action, the restrictions described in § 301.80-3 of the regulations on the interstate movement of regulated articles from suppressive areas will apply to the movement of regulated articles from the 6 farms in North

Carolina and the 17 farms in South Carolina that we are designating as suppressive areas. The entire regulated area is described in the rule portion of this document.

#### Immediate Action

Immediate action is necessary to update the list of areas in order to: (1) Relieve restrictions on the interstate movement of regulated articles from areas that are no longer infested with witchweed, and (2) prevent the spread of witchweed from newly infested areas into uninfested areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see DATES* above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina from the list of regulated areas. These changes affect five counties in North Carolina and two counties in South Carolina. These actions are necessary in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

Preventing the spread of witchweed has been an important goal for decades. Since 1951, witchweed has been found in a total of 38 counties in North Carolina and South Carolina, but currently, only portions of 8 counties are listed as suppressive areas. No areas are listed as generally infested.

Witchweed affects U.S. corn, sorghum, and sugar cane producers. During 1999–2001, the average annual value of those crops was \$201.5 million in North Carolina and South Carolina. If allowed

to spread throughout the United States, witchweed could cost an estimated \$1 billion in annual control costs in addition to an estimated 10 percent loss in yields for U.S. corn producers alone. U.S. sorghum and sugar cane producers would likewise bear additional costs. Using these figures, preventing the further spread of witchweed prevents an estimated \$36.49 million in costs for North Carolina and South Carolina and an estimated \$3.45 billion in costs for the entire United States.

In comparison, the costs of controlling witchweed are relatively low. Estimates for costs in 2002 are \$1.32 million. Control activities include the use of herbicides to kill witchweed and its hosts. Producers with active witchweed infestations receive free herbicide applications, which provide the added benefit of controlling other weeds. Hence, the benefits of the witchweed control program clearly outweigh its costs.

The U.S. Small Business Administration (SBA) defines a small agricultural producer as one with annual sales receipts of \$750,000 or less. In the suppressive areas of North Carolina, most producers grow corn, soybeans, cotton, tobacco, sweet potatoes, or peanuts. It can be assumed that a similar variety of crops is grown in South Carolina. During 1997–2001, 83 percent of North Carolina's producers had annual sales of \$99,999 or less and 17 percent had annual sales of \$100,000 or more. It is, therefore, reasonable to assume that the majority of producers potentially affected by the witchweed quarantine are small entities under SBA standards.

Agricultural producers in suppressive areas bear costs associated with the movement of regulated articles into or through non-suppressive areas. For example, sweet potatoes and other crops that are harvested with attached soil must be cleaned in order to remove any witchweed seeds. Additionally, producers moving articles must arrange for their inspection, obtain a certificate or limited permit, or enter into a compliance agreement. Agricultural machinery must also be cleaned prior to movement; however, all costs of machinery cleaning are paid for by the Federal government. Although specific data are unavailable, we estimate that the annual costs borne directly by agricultural producers in witchweed regulated areas are very low.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.80–2a is revised to read as follows:

#### § 301.80–2a Regulated areas; generally infested and suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

#### North Carolina

- (1) *Generally infested areas.* None.
- (2) *Suppressive areas.*

*Bladen County.* That area north of a line beginning at the intersection of the Robeson-Bladen County line and State Highway 211, then east along State Highway 211 Bypass to State Highway 242, then northeast along State Highway 242 to U.S. Highway 701, then north along U.S. Highway 701 to the Cape

Fear River, then southeast along the Cape Fear River to the Bladen-Columbus County line.

The Hardison, H.B., farm located on a field road 0.25 mile northwest of its intersection with State Secondary Road 1719 and 0.2 mile west of its intersection with State Secondary Road 1797.

*Cumberland County.* That area bounded on the west by the Cape Fear River, then by a line running east and northeast along the Fayetteville city limits to U.S. Highway 301, then northeast along U.S. Highway 301 to Interstate 95, then northeast along Interstate 95 to U.S. Highway 13, then east and northeast along U.S. Highway 13 to the Cumberland-Sampson County line.

The Bullock, Berline, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its intersection with U.S. Highway 301.

The Lewis, David, farm located on the west side of U.S. Highway 301 and 0.1 mile south of its intersection with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its intersection with U.S. Highway 301.

*Pender County.* The Hardie, George, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Peterson, Grady, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Zibelin, John, farm located 0.5 mile east of State Secondary Road 1105, 1.2 miles south of its intersection with State Secondary Road 1104.

*Robeson County.* That area south of a line beginning at the intersection of State Highway 211 with the Robeson-Bladen County line, then west to its intersection with the Robeson-Hoke County line.

The Biggs, Furman, farm located on the west side of State Secondary Road 1956, 0.3 mile southeast of its intersection with State Secondary Road 1959.

The Blanks, Donnie, farm located on the west side of State Secondary Road 1761, 0.3 mile north of its junction with State Secondary Road 1758.

The Britt, R.B., farm located on both sides of State Secondary Road 1765, 0.2

mile southeast of its junction with State Secondary Road 1758.

The Burnett, C.C., farm located on the north side of State Secondary Road 1757, 0.2 mile northeast of its junction with State Road 1001.

The McMillan, J.P., farm located on both sides of State Secondary Road 1770, 1.25 miles north of its junction with State Highway 211.

The McNair Investment farm located on the north side of State Secondary Road 1764, 1.5 miles west of its intersection with State Secondary Road 1762.

*Sampson County.* That area south of a line beginning at a point where U.S. Highway 421 intersects the Sampson-Harnett County line, then southeast along U.S. Highway 421 to the Sampson-Pender County line.

### South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

*Horry County.* That area bounded by a line beginning at a point where State Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to State Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to State Highway 9, the point of beginning.

The Jenerette, Miriam, farm located on the east side of Secondary Road 23, 3.4 miles south of the intersection of State Highway 917 and Secondary Road 23.

The Stanley, Andrew, farm located on the east side of State Highway 90, 0.2 mile east of its junction with an unpaved road known as Andrew Road.

The Livingston, Donnie, farm located on the east side of State Highway 90, 0.5 mile southeast of its junction with the State Secondary Road known as Bombing Range Road and 0.6 mile southeast of its junction with an unpaved road known as Dewitt Road and 0.2 mile west of its junction with an unpaved road known as Sand Hill Lane.

The Lewis, Lula, farm located on west side of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Livingston Lane and 0.1 mile east of its junction with an unpaved road known as Beecher Lane.

The Chestnut, Alberta, farm located on the west side of State Highway 90,

0.3 mile west of its junction with a State Secondary Road known as Pint Circle.

The Stanley, Sam, farm located on the west side of State Highway 90, 0.4 mile west of its junction with a State Secondary Road known as Pint Circle.

The Adams, Lena J., farm located on the west side of State Highway 90, 1.2 miles west of its junction with the State Secondary Road known as Pint Circle.

The James, Norman, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Thompson Road.

The Todd, Don, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Tilley Swamp Road.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Vereen, Rufus C., farm located east of State Highway 90, 0.4 mile east of its junction with the State Secondary Road known as Old Chesterfield Road.

*Marion County.* The Brown, Lewis, farm located on the south side of State Highway 76, 1.4 miles south of its junction with State Secondary Road 201.

The Rowell, Molite, farm located on the west side of State Secondary Road 9, 0.2 mile west of its junction with an unpaved road known as Molitz Road.

The Taw Caw Plantation farm located on the south side of State Highway 76, 1.3 miles south of its junction with an unpaved road known as Bubba Road.

The Washington, James, Estate, farm located on the south side of State Highway 76, 0.1 mile south of its junction with an unpaved road known as Samuel Road.

The Hughes, Roosevelt, farm located west of State Secondary 9 and its junction with an unpaved road known as Bishop Road.

The Fowler, Herbert, Estate, farm located east of State Highway 501, 1.4 miles northeast of its junction with an unpaved road known as Bowling Creek Road and 0.1 mile north of its junction with an unpaved road known as Salem Road.

Done in Washington, DC, this 4th day of February 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03-3182 Filed 2-7-03; 8:45 am]

**BILLING CODE 3410-34-P**