

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0170]

#### Witchweed Quarantine Regulations; Regulated Areas in North Carolina and South Carolina

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

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

**SUMMARY:** We are amending the list of regulated areas in the witchweed quarantine and regulations by adding or removing areas in North Carolina and South Carolina. 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 is effective February 15, 2007. We will consider all comments that we receive on or before April 23, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0170 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.Regulations.gov), including instructions for accessing documents, submitting

comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0170, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0170.

*Reading Room:* 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.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Alan V. Tasker, Noxious Weeds Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1237; (301) 734–5708.

#### SUPPLEMENTARY INFORMATION:

##### Background

Witchweed (*Striga* spp.) is a parasitic plant that attacks some of the most important crops in the United States (corn, sorghum, sugar cane, and rice), feeding off the roots of its host and causing degeneration. 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 affected areas within 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 Cumberland, Pender, Robeson, and Sampson Counties, NC, and Horry and Marion Counties, SC, from the list of suppressive 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 the list and revising the descriptions of several areas on the list. Specifically, we are adding 4 farms in Cumberland County, NC, 1 farm in Pender County, NC, 3 farms in Robeson County, NC, 5 farms in Sampson County, NC, 17 farms in Horry County, SC, and 9 farms in Marion County, SC, as suppressive areas. We are also expanding the large suppressive areas in Bladen, Robeson, and Sampson Counties, NC. We are

taking these actions 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 these actions, 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 farms 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.

**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 under Executive Order 12866.

Since 1951, witchweed has been found in 38 counties in North and South Carolina; only 7 counties are currently infested, and witchweed has not been allowed to spread beyond the borders of North Carolina and South Carolina. From 1956 to 2006, the number of infested acres has been reduced from 450,000 to around 2,494, i.e., 2,097 acres in North Carolina and 397 acres in South Carolina (table 1).<sup>1</sup>

TABLE 1.—NEW FARMS DESIGNATED AS SUPPRESSIVE AREAS IN THIS RULE

County	Number of farms	Acreage	Value of production in the county in 2006 (\$1,000)
Bladen Co., NC .....	1	571.3	\$5,734
Cumberland Co., NC .....	5	963.3	2,108
Pender Co., NC .....	1	4.6	3,085
Robeson Co., NC .....	3	499.3	11,527
Sampson Co., NC .....	5	58.5	9,102
North Carolina total .....	15	2,097	<sup>1</sup> 31,556
Horry Co., SC .....	17	237.2	4,211
Marion Co., SC .....	12	159.5	1,462
South Carolina total .....	29	396.7	<sup>2</sup> 5,673

Source: USDA, NASS, Crop Values, 2005 Summary, Pr 2(06), February 2006; <http://www.nass.usda.gov/QuickStats/Crops>, and "Witchweed Eradication Project Status at the End of 2005," North Carolina Department of Agriculture and Consumer Services.

<sup>1</sup> 16% of State total.  
<sup>2</sup> 8.5% of State total.

If witchweed is allowed to spread throughout the United States, it could cause an estimated \$1.08 billion in annual control costs plus an additional 10 percent in yield losses for U.S. corn alone.<sup>2</sup> The value of corn production in North Carolina and South Carolina in 2006 was about \$264 million. Using these figures, preventing the further spread of witchweed prevents an estimated \$39.6 million in costs for North Carolina and South Carolina and an estimated \$3.7 billion in costs for the entire United States. In comparison, the costs of controlling witchweed have been relatively low.

Real expenditures ranged from a high of \$18.95 million in 1961 to a low of \$1.32 million estimated for 2002.

In North Carolina, approximately 73 percent of the costs of control activities

are funded by the Federal Government, with the remainder funded by the State. In South Carolina, 100 percent of all control activities are funded by the Federal Government.

Control activities include the use of pre- and post-emergence herbicides to kill witchweed and weed hosts. Agricultural producers with witchweed infestations receive free herbicide applications, which not only get rid of witchweed but also control other weeds throughout the growing season, and free ethylene gas treatments. Ethylene gas is a plant growth promoter that increases yields of cultivated crops.

The witchweed eradication program has had a positive economic impact on agricultural producers with manageable witchweed infestations. Agricultural producers only bear costs associated

with the movement of regulated articles from suppressive areas into non-suppressive areas. For example, crops with soil attached after harvesting must be cleaned in order to remove witchweed seeds. In addition, producers moving regulated articles must arrange for inspection to obtain a certificate or limited permit or enter into a compliance agreement, which will allow them to issue certificates and limited permits. Agricultural machinery must also be cleaned and treated prior to movement, but 100 percent of machinery treatment and cleaning expenses are covered by the Federal Government.

Although data were unavailable, quarantine compliance costs borne directly by agricultural producers are apparently very small.

<sup>1</sup> USDA, APHIS, PPO, Program Aid No. 1783, page 5, and "Witchweed Eradication Project Status at the End of 2005," survey data, David Patterson (personal communication).

<sup>2</sup> Sand, P.F. and J.D. Manley, "The Witchweed Eradication Program, Survey, Regulatory and Control," pp. 141–150 in P.F. Sand, R.E. Eplee, and R.G. Westbrooks [eds.] "Witchweed Research and

Control in the United States," Weed Science Society of America, Champaign, IL (1990).

The rule will affect at least 29 entities located within the newly expanded suppressive areas in North Carolina and South Carolina. In the suppressive areas of North Carolina, roughly 15 to 20 percent of the agricultural producers grow corn, 20 to 25 percent grow soybeans, 30 percent grow cotton, and the remaining 25 to 35 percent grow tobacco, sweet potatoes, peanuts, and other crops. We assume a similar mix of crops is produced in the suppressive areas of South Carolina.

The U.S. Small Business Administration (SBA) defines a small agricultural producer as one with annual sales receipts of \$750,000 or less. During 2000–2005, 85 percent of the agricultural producers in North Carolina had annual sales of \$99,999 or less, and 15 percent had annual sales of \$100,000 or more.

We do not know the specific size of these 29 farms. However, based on agricultural State statistics, the majority (i.e., 83 percent) of North Carolina and South Carolina farms had less than \$100,000 in annual sales. It is therefore reasonable to assume that the majority of these farms are small according to SBA criteria.

These farms are required to incur quarantine compliance costs. However, the annual reduction in infested acres has undoubtedly benefited growers by reducing control costs and yield losses attributable to witchweed. In addition, discounted benefits for small North Carolina and South Carolina corn producers may be much larger than the discounted costs associated with the program.

Continuing to regulate an area that is not infested with witchweed, therefore, would represent an unnecessary cost on small entities in the area. Similarly, not regulating an area infested with witchweed could jeopardize the future success of a program with a proven and cost-effective track record.

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 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. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. In § 301.80–2a, the entries for North Carolina and South Carolina are revised to read as follows:

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

\* \* \* \* \*

#### NORTH CAROLINA

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

*Bladen County.* That area located north and east of the Cape Fear River.

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 on U.S. Highway 301 to Interstate 95, then northeast on Interstate 95 to U.S. Highway 13, then east and northeast on U.S. Highway 13 to the Cumberland-Sampson County line.

The Barker, P.R., farm located on the south side of State Secondary Road 2242, 0.2 mile south of Interstate 95 on State Secondary Road 2252.

The Jackson, Ellis, farm located on the west side of State Secondary Road 1003 and 0.4 mile south of its intersection with N.C. Highway 59.

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

The McLaughlin, Cornell, farm located on the south side of State Secondary Road 2221 and 0.2 mile east of its intersection with State Secondary Road 2367.

The Thigpen, William, farm located on the south side of State Secondary Road 2212 and 1 mile west of its intersection with N.C. Highway 87.

*Pender County.* The Cones Folly farm located along a farm road 2.3 miles south of its intersection with State Secondary Road 1201 and 2.2 miles southeast of its intersection with State Secondary Road 1200.

*Robeson County.* That area bounded on the west by the Robeson County/Scotland County line; then by a line running east along the Robeson County/Hoke County line to N.C. Highway 211; then southeast on N.C. Highway 211 to the Robeson County/Bladen County line; then south along the Robeson County/Bladen County line and the Robeson County/Columbus County line to U.S. Highway 74; then northwest on U.S. Highway 74 to N.C. Highway 41; then south on N.C. Highway 41 to the South Carolina State line; and then northwest along the South Carolina State line to the Robeson County/Scotland County line. (This area may be more generally described as that part of Robeson County lying south and west of N.C. Highway 211, bounded by U.S. Highway 74 east of N.C. Highway 41 and by the South Carolina line west of N.C. Highway 41.)

The Brown, James, farm located on the south side of a private road known as Reola Drive, 0.1 mile east of its intersection with State Secondary Road 1823, which intersection is 0.7 mile south of the intersection of State Secondary Road 1823 with State Secondary Road 1774.

The Buie, Joshua, farm located on a farm road 0.8 mile south of its intersection with State Secondary Road 1529 and 0.3 mile southwest of the right of way of Interstate Highway 95.

The Lewis, Knox, farm located on the south side of State Secondary Road 1752, 0.5 mile east of its intersection with State Secondary Road 1318.

*Sampson County.* That area bounded on the north by N.C. Highway 24 and on the east by U.S. Highway 701.

The Brady-Johnson, William, property located on a private road in the town of Salemburg, 0.1 mile north of its

intersection with Church Street and 0.1 mile west of its intersection with N.C. Highway 242.

The Carter, Raeford, farm located on the west side of State Secondary Road 1144, 0.2 mile north of its intersection with State Secondary Road 1143.

The Lucas, June, estate located at the end of State Secondary Road 1496, 1.0 mile northwest of its intersection with State Secondary Road 1233.

The Parker, David, farm located on the northwest side of the intersection of a private road known as David Parker Lane and State Secondary Road 1301, 0.5 mile north of the intersection of State Secondary Road 1301 with N.C. Highway 24.

The Riley, Troy Lee, property located 0.05 mile west of the end of a private road known as Stage Coach Lane, 0.2 mile north of the intersection of Stage Coach Lane and N.C. Highway 24, in the town of Autryville.

#### **SOUTH CAROLINA**

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

*Horry County.* The Bell, Richard, farm located on the east side of State Highway 90, 5.7 miles north of its intersection with State Highway 22.

The Chestnut, Jacob T., farm located on the west side of an unpaved road known as Short Cut Road, 0.2 mile north of its junction with an unpaved road known as Pint Circle Road, 0.4 mile east of its junction with and 0.8 mile north of its junction with State Highway 90.

The Cribbs, L.V., farm located on the west side of an unpaved road known as Causey Road, 3.3 miles north of its intersection with a secondary road known as Sandplant Road and 2.1 miles west of its intersection with State Highway 76.

The Cribbs, L.V., farm located on the east side of an unpaved road known as Causey Road, 2.8 miles north of its intersection with a secondary road known as Sandplant Road and 2.1 miles west of its intersection with State Highway 76.

The Gerald, Kenneth, farm located on the south side of a secondary highway known as Lake Swamp Road, 0.4 mile east of its intersection with a secondary highway known as Nichols Highway South and 1.6 miles south of its intersection with State Highway 917.

The Gerald, Ravenell, farm located on the north side of an unpaved road known as Farming Dale Road, 0.6 mile north of its junction with State Highway 917 and 1.1 miles east of its intersection with a secondary highway known as Nichols Highway.

The Hammonds, Austin J., farm located on the north side of a secondary road known as Sandplant Road, 1.5 miles west of its intersection with State Highway 76 and 1.7 miles north of its intersection with State Highway 9.

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 Mae, Blossie, farm located on the west side of an unpaved road known as Dela Road, 0.3 mile south of its intersection with a secondary road known as Pint Circle Road, 0.2 mile west of its intersection with State Highway 90, and 3.5 miles north of its intersection with State Highway 22.

The McDaniel, Ellis, farm located on the south side of State Highway 917, 1.4 miles west of its intersection with a secondary highway known as Nichols Highway.

The Smith, Tommy G., farm located on the south side of a secondary road known as Old Chesterfield Road, 0.5 mile east of its intersection with State Highway 90 and 2.7 miles north of its intersection with State Highway 22.

The Strickland, Quincy, farm located on the north side of State Highway 917, 1.2 miles west of its intersection with a secondary highway known as Nichols Highway.

The Stroud, J.B., farm located on the east side of an unpaved road known as Providence Drive, 1.3 miles north of its junction with an unpaved road known as Tranquil Road, 0.5 mile west of its junction with a secondary highway known as Nichols Highway North and 2.3 miles north of its intersection with State Highway 917.

The Vault, Bennie, farm located on the west side of an unpaved road known as Strawberry Road, 0.5 mile south of its junction with State Highway 90.

Vereen, Isiah, farm located on the west side of an unpaved road known as West Shore Road, 1.6 miles south of its junction with State Highway 90.

Vereen, Lula, farm located on the north side of a secondary road known as Dogwood Road, 1.6 miles north of its intersection with State Highway 22, then 0.7 mile east of its intersection with State Highway 90.

The Willoughby, Shane, farm located on the north side of an unpaved road known as Farming Dale Road, 0.4 mile north of its junction with State Highway 917 and 1.1 miles east of its intersection with a secondary highway known as Nichols Highway.

The Worley, Floyd C., farm located on both sides of a secondary road known as Sandplant Road, 1.1 miles west of its intersection with State Highway 76 and

1.7 miles north of its intersection with State Highway 9.

*Marion County.* The Baxley, Warner, farm located on the west side of Penderboro Road, 1.6 miles north of its intersection with the State Highway 501 Bypass.

The Best Woods Road and Bubba Road farm located on both sides of Best Woods Road, 1.4 miles south of its intersection with State Highway 76.

The Erwin, Harold, farm located on the west side of the State secondary road known as Laughin Road, 1 mile north of its intersection with State Highway 76.

The Gerald, Issaic, farm located on the west side of a secondary road known as Foxworth Road, 0.3 mile northwest of its intersection with Secondary Road 9.

The Holmes, Issaic, farm located on the east side of an unpaved road known as Phill Road, 0.5 mile south of its junction with State Highway 9 and 5 miles east of its intersection with State Highway 41-A.

The Johnson, J. D., farm located on the west side of an unpaved road known as Harold Road, 0.6 mile north of its intersection with Old Mullins Road and 1.3 miles west of its intersection with North Main Street in Nichols.

The Keen, Davis, Estate farm located on the south side of an unpaved road known as Frazier Road, 0.7 mile northwest of its intersection with Secondary Road 9.

The Porter, Hubert, farm located on the south side of an unpaved road known as Bubba Road, 1.3 miles south from its intersection with State Highway 76.

The Richardson, Billy, farm located on the east side of Secondary Road 908, 0.8 mile north of its intersection with State Highway 378.

The Rogers, Paul, farm located on the north side of an unpaved road known as Tobacco Barn Road, 0.8 mile west of its intersection with a State secondary road known as E. Sellers Road and 1.7 miles north of its intersection with State Highway 41-A.

Done in Washington, DC, this 15th day of February 2007.

**Elizabeth E. Gaston,**

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

[FR Doc. E7-3013 Filed 2-21-07; 8:45 am]

**BILLING CODE 3410-34-P**