

# Rules and Regulations

Federal Register

Vol. 72, No. 154

Friday, August 10, 2007

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## 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:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, an interim rule that amended the witchweed regulations by adding or removing areas in North Carolina and South Carolina from the list of regulated areas. Based on information provided by the State of South Carolina, this final rule removes one farm from the list of suppressive areas that appeared in the interim rule. This action is necessary to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

**DATES:** *Effective Date:* August 10, 2007.

**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 20737-1231; (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.

In an interim rule<sup>1</sup> effective February 15, 2007, and published in the **Federal Register** on February 22, 2007 (72 FR 7923-7926, Docket No. APHIS-2006-0170), we amended 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. In addition to removing these areas from the list of regulated areas in § 301.80-2a, we also added several areas to the list and revised the descriptions of several areas on the list.

We solicited comments on the interim rule for 60 days ending on April 23, 2007. We did not receive any comments. However, subsequent to the publication of the interim rule, agricultural officials with the State of South Carolina informed us that one farm in Marion County, SC, where witchweed had been eradicated was erroneously listed in the interim rule as a suppressive area. Therefore, in this final rule, we are removing that farm from the list of regulated areas.

Therefore, for the reasons given in the interim rule and this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

#### Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule became effective on February 15, 2007. This rule amends the description of the regulated areas to remove a farm where witchweed has been eradicated.

<sup>1</sup> To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0170>.

Immediate action is warranted to relieve restrictions on the interstate movement of regulated articles from that farm.

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

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

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 72 FR 7923-7926 on February 22, 2007, is adopted as a final rule with the following change:

#### 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).

#### § 301.80-2a [Amended]

■ 2. In § 301.80-2a, under the heading "South Carolina", the list of suppressive areas is amended by removing, under Marion County, the entry "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."

Done in Washington, DC, this 6th day of August 2007.

**Cindy Smith,**

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

[FR Doc. E7-15711 Filed 8-9-07; 8:45 am]

**BILLING CODE 3410-34-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 171

RIN 3150-A115

#### NRC Size Standards; Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the size standards it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act and making

the same change to its annual fee rule. NRC is increasing the receipts-based small business size standard from \$5 million to \$6.5 million to conform to the standard set by the Small Business Administration (SBA). This size standard reflects the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard on January 23, 2002 (67 FR 3041) and on December 6, 2005 (70 FR 72577) to account for inflation.

**DATES:** The direct final rule will become effective on October 24, 2007, unless significant adverse comments on the amendment are received by September 10, 2007. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after September 10, 2007 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number [RIN 3150-A115] in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information, such as name, address, phone, e-mail address, etc. will not be removed from your submission.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the

NRC's rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [PDR@nrc.gov](mailto:PDR@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Michael Lesar, Chief, Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7163, e-mail [mtl@nrc.gov](mailto:mtl@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The NRC established its size standards on December 9, 1985 (50 FR 50241). On November 6, 1991 (56 FR 56671), NRC conformed its format for size standards to mirror the definitions of small entities in the Regulatory Flexibility Act. NRC last adjusted its receipts-based size standard levels in a final rule published in the **Federal Register** on April 11, 1995 (60 FR 18344).

The NRC is increasing its receipts-based small business size standard from \$5.0 million to \$6.5 million. This adjustment is to conform to the SBA receipts-based business size standard, the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard for inflation on January 23, 2002 (67 FR 3041) and again on December 6, 2005 (70 FR 72577). The NRC is not revising any of its other size standards at this time. The NRC has coordinated these size standards with the Assistant Director for Size Standards, SBA. This rule change will result in reduced annual fees being imposed on licensees under the FY 2007 fee rule for those licensees with receipts between \$5.0 million and \$6.5 million.

**Procedural Background**

This rulemaking has the simple aim of updating NRC's size standards to reflect those of the SBA. Because the NRC believes that this action should not cause controversy, the NRC is using the direct final rule process for this rule. The amendment in this rule will

become effective on October 24, 2007, shortly after the August 6, 2007 effective date of NRC's final license, inspection, and annual fee rule for FY 2007 (72 FR 31401; 6/6/2007). However, if the NRC receives significant adverse comments on this direct final rule by September 10, 2007, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

**Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is modifying its size standards. This action does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

## Plain Language

The Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

## Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the regulation.

## Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and are expected to result in an increase in the number of NRC licensees that qualify as small entities for annual fee assessments and other purposes.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule is administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and are

expected to result in an increase in the number of NRC licensees that qualify as small entities.

## Backfit Analysis

The NRC has determined that a backfit analysis is not required for this direct final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

## Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

## List of Subjects

### 10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Source material, Special nuclear material, Waste treatment and disposal.

### 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 171.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133,

2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.810, paragraph (a)(1) is revised to read as follows:

### § 2.810 NRC size standards.

(a) \* \* \*

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$6.5 million or less over its last 3 completed fiscal years; or

\* \* \* \* \*

## PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 3. The authority citation for part 171 continues to read as follows:

**Authority:** Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); and as amended by Title IV, Pub. L. 109-103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

**§ 171.16 [Amended]**

■ 4. In § 171.16, paragraph (c) introductory text is revised to read as follows:

\* \* \* \* \*

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced

annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-for-Profit Organizations (Gross Annual Receipts):	
\$350,000 to \$6.5 million .....	\$2,300
Less than \$350,000 .....	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees .....	2,300
Less than 35 employees .....	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000 .....	2,300
Less than 20,000 .....	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees .....	2,300
Less than 35 employees .....	500

\* \* \* \* \*

Dated at Rockville, Maryland, this 27th day of July, 2007.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. E7-15555 Filed 8-9-07; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2007-28771; Airspace Docket No. 07-ACE-8]

#### Modification of Class E Airspace; Fort Scott, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying Class E airspace at Fort Scott Municipal Airport, KS. Standard Instrument Approach Procedures have been developed for Fort Scott Municipal Airport, KS. Additional controlled airspace extending upward from the surface and upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Fort Scott Municipal Airport, KS.

**DATES:** This direct final rule is effective on 0901 UTC, December 20, 2007. The

director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 1, 2007.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You must identify the docket number FAA-2007-28771/Airspace Docket No. 07-ACE-8 at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO, 64106; at telephone number (816) 329-2522.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area at Fort Scott Municipal Airport, KS. The radius of the Class E airspace area extending upward from 700 feet or more above the surface of the earth is expanded from

within a 6.4-mile radius to within a 7-mile radius of the airport. This modification brings the legal description of the Fort Scott Municipal Airport, KS Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1 of the same order. The Class E airspace designations listed in this document would be published subsequently in the Order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be