

articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to include a portion of Hudson County, NJ, and additional areas in New York City, NY. These quarantined areas are described in the rule portion of this document.

Regulated Articles

Section 301.51–2 of the regulations designates certain items as regulated articles. Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51–4 through 301.51–9 of the regulations. Regulated articles listed in § 301.51–2(a) have included green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Betula* (birch), *Hibiscus syriacus* L. (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus*. This list of genera was based on scientific literature provided by government officials, scientists, and government and individual researchers from China as well as limited survey information collected in the United States at the time of discovery of the pest.

Based on additional survey experience and research, we are amending the list of regulated articles by removing *Hibiscus syriacus* L. (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), and *Citrus*, and by adding *Albizia* (mimosa), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), and *Sorbus* (mountain ash). With respect to each of the eight genera that we are removing from the list of regulated articles, surveys conducted over the course of several years in New York and Illinois have shown that either (1) the genus is not present in the quarantined areas or (2) there is no evidence that ALB can complete its development in the genus. Conversely, with respect to the five genera we are adding, inspectors have found ALB completing its development

in those genera within the quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of ALB to noninfested areas of the United States. 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 rule 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.

This interim rule amends the ALB regulations by expanding the quarantined area in New York City, NY, and adding portions of Hudson County, NJ, to the list of quarantined areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted.

The following analysis addresses the economic effects of the interim rule on small entities. The businesses potentially affected by this interim rule are nurseries, arborists, tree removal services, firewood dealers, garden centers, landscapers, recyclers of waste material, and lumber and building material outlets. The quarantined areas expanded or established by this interim rule encompass approximately 10 square miles (6 square miles in New York and 4 square miles in New Jersey). Within those areas, there is one potentially affected entity (a nursery). While the size of the entity is unknown, it is reasonable to assume that it would be classified as a small entity, based on the Small Business Administration's size standards.¹

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter

into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with ALB, and, as a result, the inspector would not be able to issue a certificate. In this case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.51–5(b). Whether or not the affected entity would be denied certificates as a result of inspections of regulated articles is unknown. However, because it is located in a densely populated urban area, the nursery is more likely to be receiving regulated articles from outside the quarantined area than it is to be shipping regulated articles interstate to non-quarantined areas. It is unlikely, therefore, that the nursery would be moving regulated articles that would require inspection in the first place.

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

¹ The overwhelming majority of entities are considered small by SBA standards.