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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2017-0056]

RIN 0579-AE42

Removal of Emerald Ash Borer Domestic Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the domestic quarantine regulations for the plant pest emerald ash borer. This action will discontinue the domestic regulatory component of the emerald ash borer program as a means to more effectively direct available resources toward management and containment of the pest. Funding previously allocated to the implementation and enforcement of these domestic quarantine regulations will instead be directed to nonregulatory options to mitigate and control the pest.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Bolton, National Policy Manager, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 851-3594; Herbert.Bolton@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Emerald ash borer (EAB, *Agrilus planipennis*) is a destructive wood-boring pest of ash (*Fraxinus* spp.) native to China and other areas of East Asia. First discovered in the United States in southeast Michigan in 2002, EAB is well-suited for climatic conditions in the

continental United States and is able to attack and kill healthy trees in both natural and urban environments. As a result, EAB infestations have been detected in 35 States and the District of Columbia, with additional infestations that have not yet been detected likely.[1] The Animal and Plant Health Inspection Service (APHIS), through notice and comment rulemaking, instituted a domestic quarantine program for EAB that has been in place since 2003 (see 68 FR 59082-59091, Docket No. 02-125-1).

The regulations in "Subpart J—Emerald Ash Borer" (7 CFR 301.53-1 through 301.53-9, referred to below as the regulations) list quarantined areas that contain or are suspected to contain EAB. The regulations also identify, among other things, regulated articles and the conditions governing the interstate movement of such regulated articles from quarantined areas in order to prevent the spread of EAB more broadly within the United States.

Since the implementation of the domestic quarantine program, several factors had adversely affected its overall effectiveness in managing the spread of EAB. First, during the Midwestern housing boom that began in the 1990s, ash trees often were planted in new housing developments because of their hardiness and general resistance to drought conditions. Developers frequently sourced these trees from nurseries that were later determined to be heavily infested with EAB and that were subsequently put under quarantine.[2] It was several years after the issuance of domestic quarantine regulations before a revised survey apparatus, using a lure-based trap, was developed in 2007. This revised survey apparatus identified many long-standing

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[1] The list of quarantined areas is available at https://www.aphis.usda.gov/plant_health/plant_pest_info/emerald_ash_b/downloads/eab-areas-quarantined.pdf.

[2] That Michigan nurseries shipped infested nursery stock prior to development of the EAB regulations, see Haack, R.A. et al. *Emerald Ash Borer Biology and Invasion History*, pp. 1-14 Chapter 1 in: Van Driesche, R.G. and Reardon, R., Ed. *Biology and Control of Emerald Ash Borer*. USDA, Forest Service, Forest Health Technology Enterprise Team, Morgantown, WV, FHTET-2014-09, March 2015. Referred to below as *Haack et al.* https://www.fs.fed.us/foresthealth/technology/pdfs/FHTET-2014-09_Biology_Control_EAB.pdf.

infestations of EAB in residential areas, leading to a substantial increase in the number of counties under quarantine.[3]

Second, the regulations did not prevent the spread of EAB throughout its geographical range, which has expanded over time. In fiscal year (FY) 2016 alone, APHIS issued 16 Federal Orders designating additional quarantined areas for EAB, and many of these Federal Orders designated multiple quarantined areas[4]. For example, one of the Federal Orders designated an additional 44 counties as quarantined areas for EAB. From an initial quarantined area of 13 counties in Michigan, now more than one quarter of the geographical area of the conterminous United States is under quarantine for EAB.

In light of these difficulties, on September 19, 2018, we published in the *Federal Register* a proposed rule (83 FR 47310-47312, Docket No. APHIS-2017-0056) to remove the domestic quarantine regulations for EAB in order to direct available resources towards management and containment of the pest.[5] We solicited comments concerning our proposal for 60 days ending November 19, 2018.

We received 146 comments by the close of the comment period. They were from another Federal agency, State departments of agriculture, State departments of forestry and/or natural resources, Tribal nations, a group representing the wooden pallet industry within the United States, conservation groups, arborists, foresters, and private citizens.

Of the commenters, 25 suggested that we finalize the proposed rule as written. The remaining commenters raised concerns or questions regarding the rule and its supporting documents. We discuss these comments below, by topic.

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[3] See Abell, K., et. al., *Trapping Techniques for Emerald Ash Borer and Its Introduced Parasitoids*, Chapter 7 in: Van Driesche, R.G. and Reardon, R., Ed. *Biology and Control of Emerald Ash Borer*. USDA, Forest Service, Forest Health Technology Enterprise Team, Morgantown, WV, FHTET-2014-09, March 2015.

[4] To view these Federal Orders, go to https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/emerald-ash-borer/ct_quarantine.

[5] To view the proposed rule, its supporting documents, and the comments that we received, go to https://www.regulations.gov/docket?D=APHIS-2017-0056.

Basis for the Proposed Rule

Several commenters interpreted the proposed rule to be based on a determination that EAB is not a significant plant pest. Similarly, several commenters interpreted the proposed rule to be based on a desire to provide relief to regulated entities within areas currently quarantined for EAB, or a desire to reduce Federal regulation. One commenter stated that the basis for the rule was a February 2017 Executive Order 13771, which directs Federal agencies to identify two regulations for repeal for each new regulation promulgated.[6] Another commenter stated that the rule was an effort by Northern and Middle-Atlantic States to deliberately adversely impact Southern and Western States. The commenters cited multiple examples of EAB's destructiveness, and urged us to retain the regulations.

The proposed rule was not based on a determination that EAB is an insignificant plant pest, nor was it based on a desire to reduce or repeal Federal regulations or provide regulatory relief to currently regulated entities, regardless of the efficacy of the regulations, or a desire by Northern and Middle-Atlantic States to deliberately adversely impact other States. Rather, it was based on a determination that the domestic quarantine regulations have been unable to prevent the spread of EAB. This is reflected in the size of the quarantined area for EAB at the time the 2018 proposed rule was issued. At that time, more than 1,100 counties in the United States were under quarantine, comprising an area of almost 880,000 square miles, or more than one quarter of the geographical area of the conterminous United States. Since the proposed rule was issued, three additional States, nine counties, and portions of an additional county were added to the quarantined area for EAB. As we mentioned earlier in this document, this represents an exponential increase from the initial quarantined area, which was comprised of 13 counties in Michigan.

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[6] See https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs.

We discuss some of the factors that led to the spread of EAB later in this document, under the section titled "Need to Retain Existing Quarantine Regulations."

Efficacy of Existing Quarantine Regulations

A number of commenters interpreted the rule to be based on our determination that the domestic quarantine regulations have proven ineffective at preventing the spread of EAB, but disagreed with the validity of this determination. The commenters often cited personal experience or anecdotal examples of the efficacy of the current regulations or pointed to the efficacy of other Federal domestic quarantine programs administered by APHIS, such as that for Asian longhorned beetle (ALB).

We acknowledge the possible validity of the experiences and examples provided by the commenters, but do not consider them to be indicative of the overall efficacy of the domestic quarantine program for EAB. On the whole, the program has been unable to prevent the spread of EAB, as evidenced by the current size of the quarantined area relative to the 13 counties in Michigan that comprised the initial quarantined area.

In that regard, the success of one Federal domestic quarantine program is not indicative of the success of another. For example, as one commenter pointed out, APHIS and State departments of agriculture have been able to eradicate several localized populations of ALB and release areas from quarantine. This has not occurred within the EAB program; not a single area has ever been released from quarantine.

One commenter stated that there was no means for APHIS to ascertain the full effects of the current program at precluding the spread of EAB.

We agree that ascertaining each and every effect of the current program is not possible, but do not consider such an evaluation necessary in order to determine whether the program on the whole has been able to prevent the spread of EAB. The size of the quarantined area for EAB at the time the proposed rule was issued, relative to the size of the initial quarantined area of 13

counties in Michigan, is a reliable indicator that the program was unable to prevent the spread of EAB.

Need to Retain Existing Quarantine Regulations

Many commenters stated that it was necessary to retain the regulations to prevent the further spread of EAB, and that removal of the regulations would place them at a heightened risk of EAB introduction and establishment. Some commenters lived within currently quarantined areas but stated that EAB was not present in their area or was not widely prevalent based on survey results. Other commenters lived in areas that were immediately outside the quarantined areas and were concerned that removing restrictions on the movement of host material could hasten the introduction of EAB into their area. Finally, some of the commenters lived in Western States (States west of the Rocky Mountains) and stated that, because of geographical boundaries between the currently quarantined areas and their State, natural spread was unlikely, at least for the foreseeable future. Those commenters stated that the only way EAB was likely to be introduced to their State was through human-assisted movement, and that removing the quarantine would increase the likelihood that infested material was moved into their State. A number of these commenters stated that native ash in their State was in riparian or forest environments, and that deforestation as a result of EAB could have significant adverse impacts, such as increased likelihood of flooding.

With regard to those commenters within the currently quarantined areas, we disagree that removing the Federal quarantine regulations places the commenters at a heightened risk of EAB spread or has environmental or economic impacts. This is for two reasons.

The first reason is that, in 2012, APHIS issued a Federal Order[7] allowing unrestricted interstate movement of host articles within a contiguous quarantined area. This Federal Order is

[7]The Federal Order is available at https://nationalplantboard.org/wp-content/uploads/docs/spro/spro_eab_2012_05_31.pdf.

still in effect; thus, finalizing the proposed rule will have no net impact on interstate movement of articles within this area.

The second reason is that, consistent with our statutory limitations under the Plant Protection Act (PPA, 7 U.S.C. 7711 *et seq*.,) the Federal quarantine regulations for EAB pertained only to interstate movement of regulated articles in commerce. This did not address noncommercial movement of regulated articles, intrastate movement, or natural spread. With respect to natural spread, research suggests a mated female EAB can fly up to 12.5 miles a day.[8] Moreover, a female that mates can live up to 6 weeks.[9] This does not preclude the possibility that some mated female EAB may fly more than 100 miles before mortality.

With regard to those commenters currently immediately outside the quarantined area, we also disagree that removing the Federal quarantine regulations places the commenters at a heightened risk of EAB spread or has environmental or economic impacts. This is also for two reasons. The first is the ability of EAB to naturally and rapidly spread without human assistance. The second is the lack of effective detection methods for EAB. EAB is a cryptic pest and there is not an effective pheromone lure for EAB; thus, trap catches are often a lagging indicator of a long-standing and sizable established population for EAB.[10] In general, when EAB is initially

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[8] Taylor, R.A.J., *et al*. *Flight Performance of* Agrilus planipennis *(Coleoptera: Buprestidae) on a Flight Mill and in Free Flight*. 2010. Journal of Insect Behavior. 23: 128-148.

[9] Cappaert, David, *et al*. 2005. *Emerald Ash Borer in North America: A research and regulatory challenge*. American Entomologist. 51: 152-165.

[10] See Ryall, K., *Detection and Sampling of Emerald Ash Borer (Coleoptera: Buprestidae) Infestations*, 2015. Can. Entomol. 147:290-299. Found at https://www.cambridge.org/core/journals/canadian-entomologist/article/detection-and-sampling-of-emerald-ash-borer-coleoptera-buprestidae-infestations/671D5F7160E19CDA09A4159D4B903A1B. See also Marshall, J. M., A. J. Storer, I. Fraser, and V. C. Mastro. 2010. *Efficacy of trap and lure types for detection of Agrilus planipennis (Col., Buprestidae) at low density*. Journal of Applied Entomology, Vol. 134, 4, pp. 296-302. Found at: https://onlinelibrary.wiley.com/doi/full/10.1111/j.1439-0418.2009.01455.x.

detected via survey, we have found that an established population has typically been present in the area a minimum of 3 to 5 years undetected.[11]

Visual detection of EAB also has significant limitations. Visual detection is almost always based on finding signs or symptoms of EAB infestation in declining ash trees, rather than visual detection of the pest itself. There is thus a lag period between initial establishment and detection, and correspondingly, between initial pest establishment and designation of the area as a quarantined area for EAB. This is also why we do not consider areas of low pest prevalence to exist for EAB—a handful of detections are indicative of a much larger established population.[12]

With regard to commenters in Western States, we disagree that the only way EAB could enter the State is through human-assisted movement. We acknowledge that the presence of geographical barriers, such as the Rocky Mountain range, and the absence of host material along the Great Plains, could significantly impede the rate of natural spread of EAB. We also acknowledge that EAB's feeding patterns in the absence of ash and deciduous hardwood are still being researched and evaluated, and it is, accordingly, possible that EAB does not adapt quickly to the absence of preferred host material. However, it is the Agency's experience that widely prevalent plant pests tend, over time, to spread throughout the geographical range of their hosts, and we have no reason to consider EAB to be biologically unique in this manner.

Nonetheless, we agree that, in the absence of Federal regulations, there could be a higher likelihood that EAB will be introduced into a Western State sooner through the movement of infested host material than would occur through natural spread. However, the degree to which this likelihood is increased is difficult to quantify. In the absence of Federal regulations, States are free to establish their own regulations governing the movement of EAB host material into

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[11] See *Haack et al*.

[12] See https://www.aphis.usda.gov/plant_health/plant_pest_info/emerald_ash_b/downloads/EAB-FieldRelease-Guidelines.pdf.

their State, and at least one such Western State signaled their intent to do so in their comments on the rule. Additionally, there will still be awareness and outreach efforts, which we discuss later in this document, to dissuade the public from non-commercial movement of EAB host material into Western States. To the extent that we can, we will support communities in these efforts, and, we have delayed publication of this final rule to afford States time to develop regulations regarding the movement of EAB host material.

Several commenters stated that the economic analysis that accompanied the proposed rule was flawed insofar as it was based on the same assumption that removing the regulations would not contribute to the spread of EAB. A number of the commenters also stated that the rule should have been accompanied by an environmental assessment or environmental impact statement assessing the likelihood of cumulative impacts of human-assisted spread of EAB that would not otherwise occur if the regulations remained in place.

We agree that there is an economic cost if EAB is introduced into a Western State sooner through the movement of infested host material than would occur through natural spread. For that reason, to the extent that we can, in the economic analysis for this final rule, we list activities that have historically been associated with the new introduction of EAB into a previously unaffected area, along with a range of costs for each activity. However, we also acknowledge a high degree of uncertainty regarding the number of entities that will incur those costs, for the reasons mentioned above.

Finally, we considered the proposed rule to be categorically exempt from preparation of an environmental assessment or environmental impact statement. We did this because the National Environmental Policy Act (NEPA, 42 U.S.C. 4231 *et seq*.,) and subsequent agency implementing regulations instruct Agencies to evaluate the environmental impacts of proposed Federal actions. We determined that this action is a class of actions previously determined to meet categorically excludable criteria as established in 7 CFR 372.5. A record of categorical

exclusion analysis was prepared to assess and confirm that there would be no adverse environmental impacts as a result of this rulemaking.

We acknowledge that commenters suggested that we consider the impact of human-assisted spread of EAB that would not otherwise occur. However, our experience with EAB has shown that human-assisted spread continued regardless of the regulations, which are limited, and that the natural spread of EAB is rapid, significant, and extremely difficult to control. For the reasons discussed above, this remains our determination.

Two commenters asked if any studies exist that examine the possible ecological and societal impacts of EAB establishment in the Western United States. One of the commenters stated that, if no such studies exist, APHIS should conduct such a study prior to issuing a final rule.

We are not aware of any such studies. For reasons discussed in the section below, we do not consider delays in issuing or making effective this final rule to be in the best long-term interests of the Federal EAB program.

Request for Delay of Final Rule

A number of commenters stated that Federal deregulation of EAB is probably inevitable given the scope of the area under quarantine, but asked for a delay in the publication or effective date of the final rule to allow the commenter's State or community to plan for deregulation. Several of these commenters stated that they were unaware of APHIS' intent to deregulate EAB until the proposed rule was issued and stated that APHIS had done an inadequate job communicating this intent. All commenters urged us to continue regulatory and enforcement activities until the rule became effective.

The proposed rule is a result of several years of public discussions with an increasing number of stakeholders. APHIS began expressing concerns regarding the efficacy of the EAB program in public forums as early as 2012, when the FY 2013 budget submitted to Congress indicated that we had not discovered effective tools to prevent the spread of EAB, and that, as a

result, we had not discovered a means to efficiently use resources to prevent the spread of EAB.[13] In the same budget, we also indicated that biocontrol activities could be a more viable long-term strategy than regulatory and enforcement activities.

In 2015, we discussed the possibility of deregulation of EAB to the Continental Dialogue on Non-Native Forest Insects and Diseases, an audience of State and local governments, forestry groups, non-governmental organizations, and other Federal agencies.[14] In 2016, we discussed possibly deregulating EAB, and shifting program resources to biocontrol activities, with the National Association of State Foresters and the National Plant Board, which represents the plant protection division of State departments of agriculture; these discussions continued into 2017.[15] Additionally, throughout the development of the proposed rule, APHIS talked with numerous State, local, and Tribal communities on a regular basis to discuss concerns that the communities had with possible deregulation. This included the ongoing discussion with the National Association of State Foresters and the National Plant Board mentioned above, a Tribal meeting in which nine Tribes who had expressed concerns about the rule were invited to further elaborate on those concerns and discuss possible remediations, several webinars with State departments of

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[13] "APHIS continues to face challenges in addressing tree and wood pests such as EAB, and seeks to efficiently use resources to address pests where success is achievable, such as eradicating the ALB. The EAB is an exotic forest pest that has killed millions of ash trees in the United States. First found in Michigan in 2002, it has spread to 14 additional States (Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin) and continues to spread. Due to the lack of tools available, the Agency changed focus from an eradication strategy to preventing the human-assisted spread and minimizing the impacts of natural spread of the pest through early detection and quarantine regulations.
With the requested decrease, the Agency would further reduce its role in addressing the EAB and scale back activities to manage an outreach program, provide national coordination and oversight, and continue developing biological control agents. Biological control is the most promising option for managing EAB populations over the long term. In 2013, APHIS proposes to release biological control agents in all States that request releases." Found at: https://www.usda.gov/obpa/congressional-justifications/fy2013-explanatory-notes.

[14] For further information regarding the Continental Dialogue on Non-Native Forest Insects and Diseases, go to https://continentalforestdialogue.org/.

[15] For further information regarding the National Association of State Foresters, go to https://www.stateforesters.org/. For further information regarding the National Plant Board, go to https://nationalplantboard.org/.

agriculture, and discussions with the New York Partnership for Invasive Species Management and The Nature Conservancy.

The proposed rule itself provided notification pursuant to the Administrative Procedure Act (APA, 5 U.S.C. 505 *et seq*.) of APHIS' intent to remove the domestic quarantine regulations for EAB, and APHIS provided notification of the publication of the rule through the APHIS Stakeholder Registry in accordance with standard Agency practices.

We recognize the damage and impact that EAB can inflict on a community and appreciate the desire of commenters to be afforded additional time to prepare for possible deregulation within their particular State or community. As we mentioned previously, to the extent that we can, we will support communities in these efforts, and we have delayed publication of this final rule to afford States time to develop regulations regarding the movement of EAB host material. However, we do not believe an additional delay in the effective date of the rule to be in the best interests of the Federal EAB program.

As mentioned above, regardless of funding or tactics employed, the EAB domestic quarantine regulations have been, on the whole, ineffective at preventing the spread of EAB, especially given the natural dispersion capabilities of the pest. Continuing to devote program resources to regulatory and enforcement activities that have proven thus far to be ineffective over an ever-expanding quarantined area is an inefficient use of those resources.

Additionally, continuing to devote resources to these activities limits APHIS from reallocating the resources to activities that could be of greater long-term benefit to slowing the spread of EAB or helping affected communities recover from EAB infestation. These include further development and deployment of EAB biological control organisms; further research into integrated pest management of EAB that can be used at the local level to help safeguard an ash population of significant importance to a community; and further research, in tandem with the U.S. Department of Agriculture (USDA) Forest Service and other Federal agencies, into the phenomenon of "lingering ash," or ash trees that are still alive and present in the landscape in

areas of otherwise heavy infestation, and integration of the findings of that research into the EAB program.

Several commenters asked for APHIS to provide guidance or best practices in management of EAB to State and local communities prior to issuing this final rule.

To the extent that resources allow, we have provided and intend to continue to provide such assistance. For example, we have an agreement with the North Carolina State University, North Carolina Department of Agriculture and Consumer Services, and the City of Raleigh, NC at their waste-water management location to assist these organizations in investigating EAB phenology within a watershed environment.

Biological Control for EAB

Several commenters construed the proposed rule to suggest that APHIS has identified biological control (biocontrol) organisms that are effective at preventing the spread of EAB. The commenters asked for the scientific evidence in support of those claims. Other commenters stated that it was their understanding that several of the organisms had limited geographical ranges and could not be used in every area of the United States that is currently infested with EAB. Several commenters stated that the "real world" efficacy of biocontrol within the EAB program had not been proven and all usage to date has been experimental and study based. Commenters also asked for more information regarding the biocontrol agents and asked whether APHIS has evaluated the agents for their interactions with non-target organisms and other effects on the environment prior to authorizing their use within the EAB program.

While we did state in the proposed rule that biocontrol has been a "promising approach" towards mitigating and controlling for EAB, we also clarified that the biocontrol efforts that demonstrated such promising results had been in protecting ash regrowth in areas that had been previously infested with EAB.[16] We did not state that we had discovered a biocontrol organism that would be effective at preventing EAB from spreading into currently unaffected areas. The

[16] See 87 FR 47310.

biocontrol organisms currently used within the EAB program are tiny stingless parasitic wasps that reproduce within EAB. Because of their dependency on an EAB host, these parasitoids cannot be used in an area until it is already infested with EAB.

Four biocontrol organisms are currently used by the EAB program within areas that are infested with EAB. The four organisms currently used are *Spathius agrilli*, *Spathius galinae*, *Tetrastichus planipennisi*, and *Oobius agrilli*. Commenters are correct that the organisms differ in terms of biology and ecological range. Information regarding the biology of the organisms, as well as current parameters for their release within the domestic quarantine program, are found here: https://www.aphis.usda.gov/plant_health/plant_pest_info/emerald_ash_b/downloads/EAB-FieldRelease-Guidelines.pdf. There are no current plans to revise those parameters as a result of this final rule; however, we consistently review emerging research and recovery records to refine our approach.

Pursuant to APHIS' NEPA implementing regulations in 7 CFR part 372, APHIS prepares environmental assessments before the initial release into the environment of any biocontrol organism. Among other things, these assessments evaluate known and possible non-target effects.

Several commenters asked APHIS to provide a specific budgetary allocation or percentage of total program funding that we would commit to allocating to biocontrol research and deployment following removal of the domestic quarantine regulations.

We cannot project a specific budgetary allocation or percentage of total funding to biocontrol efforts following deregulation. As we discuss below, we have already begun to obligate program funds on biocontrol in the coming years, and it is APHIS' current intent to devote a substantial portion of funding for EAB each fiscal year to biocontrol. However, APHIS regularly monitors all EAB program activities for efficacy, including the use of biocontrol. If research into integrated pest management or "lingering ash" suggests that these are more

efficient uses of program resources than biocontrol, we will reallocate funds to these activities accordingly. Additionally, we note that funding directed towards any tactic or technique in the EAB program is contingent on the level of Federal appropriations for the program as a whole, which can differ from fiscal year to fiscal year.

Several commenters expressed concern that the rule did not propose a regulatory framework that would specify parameters for APHIS' release of biocontrol organisms. The commenters stated that, in the absence of such a framework, APHIS could divert funds to other tactics within the EAB program or to another domestic quarantine program entirely following removal of the domestic quarantine regulations for EAB.

We do not consider a regulatory framework for the release of biological control to be necessary. As we mentioned above, guidelines regarding the release of biocontrol organisms have already been developed and are publicly available, and APHIS has adhered to them in the absence of a regulatory framework for the release of biological control within the EAB program. Additionally, as we have to date, we will update these guidelines on an ongoing basis to incorporate additional findings or the approval of additional biocontrol organisms. We will notify the public via the APHIS Stakeholder Registry of any substantive change to the guidelines. A sign-up for the Registry is found here: https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new.

Because of the time required to rear, evaluate, and release parasitoid populations, budgeting for EAB biocontrol requires allocating funds in one fiscal year for the development of biocontrol organisms that will be released into the environment in another fiscal year. Accordingly, we do not need to put a regulatory framework in place in order to ensure that funds are obligated for release efforts in the coming years; these funds have already been obligated.

There is a possibility that, in subsequent years, APHIS could divert funding from biocontrol to other tactics and techniques within the EAB program. However, we consider this flexibility to be in the best interest of the EAB program. As we mentioned above, we regularly

monitor all EAB program activities for efficacy. If a program activity proves to be a more effective use of Agency funds than biocontrol, it is appropriate for us to reallocate funding accordingly.

Similarly, Federal funding for the EAB program is part of a larger line item Congressional appropriation for Tree and Wood Pests, which also is used to fund our gypsy moth and ALB programs, among others. Each fiscal year, APHIS evaluates how best to allocate the funding among the programs based on program needs and efficacy of the program to date.

Finally, several commenters urged us to increase funding for biocontrol within the EAB program while also maintaining the current level of funding for regulatory and enforcement activities.

This is not possible given current funding levels and existing Agency obligations for the pest programs within the Tree and Wood Pest line item. That being said, regardless of the level of funds available at APHIS' disposal for EAB, we no longer consider regulatory and enforcement activities to be an effective use of program funds.

Alternatives to the Proposed Rule

Several commenters agreed that the EAB quarantine regulations had been unable to prevent the spread of EAB but suggested alternate tactics that they believed could slow the further spread of EAB. Suggested tactics were: Mechanical removal of all ash trees in the United States; mechanical removal of ash in urban environments outside of the quarantine and replanting with trees that are not a host for EAB; prophylactically treating ash trees to preclude EAB infestation (either as a stand-alone mitigation or in conjunction with restrictions on the movement of host material); safeguarding culturally or environmentally important ash populations, such as those in riparian areas or along watersheds, through integrated pest management; removing the Federal quarantine on contiguously quarantined areas while maintaining it in areas that are adjacent to currently unaffected areas; requiring all EAB host material to be heat treated or debarked prior to movement; providing economic incentives to

mills and lumberyards to treat all hardwood lumber prior to interstate movement; requiring all container ships to be fumigated for EAB upon arrival into the United States; devoting all Federal resources to increased surveillance in currently unaffected areas; increasing EAB funding by drawing from other existing Agency funds or establishing an interagency working group to pool funds; or lobbying Congress and encouraging others to lobby Congress for increased appropriations. We discuss these suggestions below in the order in which they are presented in this paragraph.

Removal of all ash trees in the United States, or in areas of the United States in which EAB is not currently known to occur, is impracticable, as is prophylactic treatment of all ash.

Safeguarding culturally or environmentally important local populations of ash through integrated pest management may be possible in some instances, and APHIS has supported and will continue to evaluate requests by Tribal, local, or regional communities for such management; as noted above, we are currently engaged in one such effort with the City of Raleigh, NC. However, integrated pest management for EAB is both cost- and labor-intensive and cannot be done on a national level.

As we mentioned above, in 2012, we issued a Federal Order which relieved restrictions on the interstate movement of host material for EAB within contiguously quarantined areas. This was coupled with reallocating resources to outlying areas within the quarantine. Accordingly, this solution has already been implemented and has not proven effective at preventing the spread of EAB to unaffected areas.

While debarking and heat treatment are effective at addressing those two pathways, as we mentioned previously in this document, there are numerous other pathways that have contributed to the overall spread of EAB within the United States, many of which are outside the scope of APHIS' statutory authority.

Because of the lack of efficacy of the traps and lures for EAB, as discussed above, we do not consider allocating all funding to increased surveying with traps to be an effective use of Federal resources.

APHIS does not have the legal authority to provide financial incentives for phytosanitary treatments.

Revising import requirements relative to EAB host material is outside the scope of this rulemaking. However, because EAB is established and widespread in the United States, we do not consider mandatory fumigation at ports of entry to be warranted or an effective deterrent to the further spread of EAB within the United States.

As we mentioned previously in this document, APHIS' EAB funding is drawn from a larger line item that addresses Tree and Wood Pests within APHIS' appropriation from Congress. APHIS has some flexibility within the Tree and Wood Pests line item itself to move money between domestic quarantine programs within the line item, which includes funding for ALB, gypsy moth, and other pests, in addition to EAB, but we must consider the best use of the funds to meet our overall goals of using the funds as effectively as possible in order to safeguard American agriculture.

Because of the sheer size of the current quarantined area for EAB, the historic ineffectiveness of quarantine and enforcement measures, and the lack of optimal detection methods, we do not have a sufficient basis for allocating or seeking additional resources through the appropriations process for the EAB program. For these same reasons, while we have partnered and continue to explore partnerships with other Federal agencies on EAB research and methods development, such as USDA's Agricultural Research Service and Forest Service, we do not believe that requesting additional budgetary resources from other Federal agencies to allocate to existing regulatory and enforcement strategies will prevent the spread of EAB or be an effective use of those funds.

Finally, APHIS is prohibited from using appropriated funds to lobby Congress, directly or indirectly, for Federal funding without explicit Congressional authorization to do so (see 18 U.S.C. 1913). For the reasons discussed in the previous paragraph, we do not consider seeking Congressional authorization to do so to be warranted.

Status of Surveys for EAB

Several commenters asked whether Federal surveys for EAB will continue if EAB is deregulated. A number of these commenters asked, if our intent was to continue surveys, what parameters we would use following deregulation. A few commenters stated that they had heard that "citizen surveys" would be employed following deregulation and asked for further information regarding the meaning of that term.

Federally contracted trapping survey for EAB ceased as of 2019. APHIS will provide traps and lures to State and Tribal cooperators without cost, as requested, out of our existing supply until it is depleted. However, States and Tribes should be aware of some of the limitations of these traps and lures discussed earlier in this document. (For further discussion of these limitations, see the section heading "Need to Retain Existing Quarantine Regulations").

"Citizen surveys" refer to reporting done by the general public of EAB or signs and symptoms of EAB infestation. In recent years, citizen detections have accounted for the vast majority of all new identifications of EAB infestations. Citizens who detect signs or symptoms of EAB have been encouraged to contact their State Plant Regulatory Official, or SPRO. A list of all SPROs is found here: https://nationalplantboard.org/membership/.

Status of Outreach

Many commenters stated that the proposed rule undercut communications and outreach efforts in their State or community to warn the public about the severity of EAB. A number of these commenters stated that the rule was in tension with communication efforts to warn the public about the plant pest risk associated with the movement of firewood, in particular. Several commenters requested outreach resources from APHIS following removal of the quarantine

regulations or inquired regarding what outreach APHIS had planned. On a related manner, several commenters asked what efforts APHIS would take, following deregulation, to continue outreach and education related to the movement of firewood.

As we discussed previously in this document, the proposed rule was not based on a determination that EAB is an insignificant plant pest, nor did we claim it to be. However, we do acknowledge that local and regional campaigns may have often emphasized the importance of compliance with Federal EAB regulations, and the proposed rule could have created difficulties with regard to those communication strategies. To that end, we will work with States, through associations such as the National Plant Board, to promote awareness of the dangers of EAB following removal of the domestic quarantine regulations.

APHIS outreach related to the movement of firewood will remain substantially similar or increase following removal of the domestic quarantine regulations for EAB. We will continue to encourage the public to buy firewood where they burn it and to refrain from moving firewood to areas of the United States that are not under Federal quarantine for other pests of firewood.

In that regard, we disagree with commenters that the deregulation of EAB undermines national communications efforts regarding the movement of firewood. The primary national communications tool to warn the public about the plant pest risk associated with the movement of firewood is the Don't Move Firewood campaign, which is administered by The Nature Conservancy with support from APHIS and other Federal agencies.[17] This campaign has consistently stressed that firewood is a high-risk pathway for many pests of national or regional concern, and not just EAB. To the extent that the communication mentioned EAB, it was as an illustrative example of one such pest. We have, however, allocated funds to The Nature Conservancy so that the Don't Move Firewood campaign continues to promote awareness of EAB as a pest of firewood in currently unaffected or recently affected States.

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[17] See https://www.dontmovefirewood.org/.

State Regulation of Firewood and Other EAB Host Material

Several commenters stated that, in the absence of Federal regulation of EAB, States would be free to establish their own regulations regarding the movement of EAB host material. A number of these commenters stated that this could result in State regulations that differed significantly from State to State, and that differing State regulations could be difficult for producers and shippers to comply with.

We agree with the commenters that one of the upshots of the rule is the possibility of States developing their own interstate movement requirements for EAB host articles, and, as we noted previously in this document, one State department of agriculture signaled their intent to issue such regulations during the comment period for the proposed rule. While States will be free to set requirements as they see fit, we have taken efforts, in coordination with State departments of agriculture, to develop a template for State regulations regarding the movement of certain EAB host materials. We discuss these efforts below.

Several commenters pointed out that, under the current domestic quarantine regulations for EAB, firewood is a regulated article, and must either be debarked or heat treated prior to interstate movement. The commenters stated that firewood is a pathway for many other plant pests, and that the EAB domestic quarantine regulations serve to preempt what otherwise is a significant number of differing State requirements regarding the movement of firewood. Some commenters urged us to retain firewood as a regulated article for EAB; others urged us to propose a distinct Federal regulation for the interstate movement of firewood; others asked us to coordinate with State departments of agriculture to establish a coordinated framework for State regulations of firewood. One commenter stated that we should monitor and oversee the implementation of such State regulations.

Maintaining the domestic quarantine regulations for EAB but limiting the scope of regulation to firewood would require us to continue to devote program resources to regulatory and enforcement activities. As we mentioned above, this would preclude the resources from

being used on other non-regulatory activities and initiatives that we consider to be in the best long-term interest of the Federal EAB program.

In 2010, we prepared a risk assessment regarding the plant pest risks associated with the movement of firewood.[18] While the assessment identified many significant plant pests associated with firewood, the assessment also found that many of these pests were only economically significant if they established in a certain region of the country, and thus did not always warrant official control. Concurrent to the development of the assessment, a National Firewood Task Force was convened by the National Plant Board, composed of Federal, State, and nongovernmental organization representatives.

While both the risk assessment and the Task Force suggested a coordinated national approach to mitigate the risk associated with the movement of firewood, APHIS encountered several factors that suggested that Federal regulation of firewood itself, independent of any particular domestic quarantine program, would not be operationally feasible. Regulating at the national level for regionally significant pests could result in regulations that were overly restrictive for some States and not commensurate with risk; requiring firewood to be heat treated prior to movement (which was recommended by the Task Force) would not be operationally feasible in the winter for producers in Northern States, and thus a de facto prohibition on interstate commerce; and Federal regulation would not address significant non-commercial pathways, such as campers moving it to campgrounds and national parks.

For all these reasons, APHIS and the National Plant Board ultimately decided that the best national strategy was (1) the development of a standardized template that States may choose to use for their regulation of firewood, in conjunction with (2) a national outreach campaign to alert the public to the plant pest risks associated with the non-commercial movement of firewood.

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[18] See https://www.aphis.usda.gov/import_export/plants/plant_imports/firewood/firewood_pathway_assessment.pdf.

With regard to the first component of that strategy, the National Plant Board has recently developed this template, with APHIS support, and distributed it to State departments of agriculture to aid in development of State regulations. If a State requests our oversight of the implementation of their State regulations, we will assist to the degree we can; however, such oversight is voluntary, and APHIS cannot compel States to do so. The National Plant Board has also supplemented this template by developing best management practices regarding the interstate movement of firewood for the purposes of heating a home.[19]

With regard to the second, as we mentioned previously in this document, APHIS will continue to warn the public about the dangers of moving firewood following deregulation of EAB through the Don't Move Firewood campaign.

One commenter asked how the plant pest risks associated with the interstate movement of ash nursery stock will be addressed following deregulation of EAB. As is the case with all EAB host materials, States will be free to regulate the movement of the nursery stock into their State as they see fit.

Tribal Concerns

A number of Tribal nations commented in opposition to the proposed rule. Many of these Tribes stated that ash was of economic and cultural importance to their Tribe. Several Tribes indicated that ash was also of religious significance to their Tribe, insofar as the Tribe's creation heritage stressed its importance, and two Tribes indicated that their Tribe relied on ash for ecological purposes. Several of the Tribes mentioned that they had raised this concern to APHIS during Tribal consultation and stated that the rule was therefore in violation of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." One of the commenters also suggested the rule was issued in violation of the National Historic Preservation Act (54 U.S.C. 300101 *et seq*.).

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[19] Both the template and the recommendations are found in this document: https://nationalplantboard.org/wp-content/uploads/docs/docs_policies/firewood_2020_2.pdf.

APHIS is committed to full compliance with Executive Order 13175 and the National Historic Preservation Act. To that end, we engaged in Tribal consultation prior to the issuance of the proposed rule in accordance with Departmental regulations and guidelines regarding the order and the Act.

We acknowledge that several Tribes raised the concerns stated by the commenters during Tribal consultation, and have dialogued with those Tribes throughout the development of this final rule to identify means to remediate these concerns. For example, APHIS partnered with the U.S. Forest Service and University of Vermont to conduct a workshop in May 2019 for nine Tribes that provided training to survey for EAB, identify high value trees to preserve, and develop a best management program including the release of biocontrol organisms.[20] APHIS will continue to host similar workshops to help Tribes preserve ash populations of cultural significance to the Tribes.

However, for the reasons discussed above, we have decided that the only viable long-term use of Federal resources within the EAB program entails removing the domestic quarantine for EAB and reallocation of resources currently devoted to regulatory and enforcement activities to other purposes.

In this regard, we disagree with the commenters that the issuance of the proposed rule violated Executive Order 13175 or the National Historic Preservation Act. Neither the order nor the Act precludes a Federal agency from acting if Tribes raise concerns regarding the action contemplated; rather, the order and the Act dictate sustained and meaningful consultation with Tribes to resolve concerns that are raised. APHIS has engaged and continues to engage in such consultation.

Further information regarding Tribal outreach efforts is contained in the Tribal impact statement that accompanies this final rule.

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[20] See https://www.uvm.edu/rsenr/towards-preservation-cultural-keystone-species-assessing-future-black-ash-following-emerald.

Comments Regarding International Trade in EAB Host Articles

One commenter asked if we were also removing our regulations regarding the importation of EAB host material from Canada.

We did not propose to do so because the regulations have prohibited the importation of several EAB host articles, most notably ash wood chips and bark chips, and have required phytosanitary treatments for other articles that are effective not only for EAB, but also for other wood-boring pests. As a result, we were uncertain of the plant pest risk associated with the importation of EAB host material from Canada, in the absence of EAB-specific prohibitions and restrictions and considered it prudent to conduct a risk assessment before proposing any revisions to those prohibitions and restrictions. That risk assessment is ongoing.

Another commenter asked if we would still take action at ports of entry if EAB is discovered on an imported host commodity. They pointed out that the family to which EAB belongs is "actionable" in its entirety.

If a pest is found on an imported EAB host commodity and can only be identified taxonomically to family, we would continue to take action on it; if we were able to identify it as EAB, we would not. However, States could petition us using APHIS' Federally Recognized State Managed Phytosanitary Program, or FRSMP, to prohibit the movement of material found to be infested into their State.[21]

A number of commenters stated that the rule could adversely impact U.S. exports to Canada and Norway; some of the commenters asserted that APHIS had failed to consider these potential impacts in the proposed rule and its supporting documents.

These are potential impacts associated with deregulation of EAB and were evaluated in the economic analysis associated with the proposed rule.

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[21] Information regarding the petition process within FRSMP is found here: https://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/downloads/petition_guidelines.pdf.

Several commenters asked us if Canada or Mexico had expressed concerns regarding deregulation of EAB within the United States, particularly as it pertains to a heightened likelihood of possible natural spread of EAB into their countries.

Neither Mexico nor Canada has expressed concerns regarding deregulation of EAB. Canada has indicated that, in accordance with standard policy, they will consider the United States to be generally infested with EAB following deregulation. Possible implications of such a designation are discussed in the final economic analysis.

Coordination with other Federal Agencies

A commenter suggested we coordinate with the Forest Service to establish a program to sustain and replace native ash trees.

APHIS has long partnered with the U.S. Forest Service to address the spread of EAB within the United States and identify means of protecting native ash trees. As we mentioned previously in this document, these efforts include co-funding research into the phenomenon of "lingering ash," and co-hosting a May 2019 workshop for Tribal nations to help them identify high value trees to preserve and develop a best management program, including the release of biocontrol.

We intend to continue these efforts following deregulation, as resources allow. However, as we also mentioned previously in this document, a nationwide initiative to protect and/or replace native ash populations is cost-prohibitive.

A commenter asked if APHIS had engaged the National Park Service (NPS) about Federal deregulation of EAB and inquired whether NPS could issue regulations prohibiting the movement of firewood into national parks.

APHIS did not engage NPS prior to issuance of the proposed rule, but we do see merit in increased collaboration between our agency and theirs and will share the commenter's suggestion with NPS. This collaboration is distinct from the issuance of this final rule, and does not impact the conclusions of this rule.

Compliance with Executive Orders, Statutes, and International Standards

Several commenters stated that APHIS should not have designated the rule not significant under Executive Order 12866 and suggested that the Office of Management and Budget (OMB) should have reviewed the rule.

OMB, rather than APHIS, designated the rule not significant, and thus not subject to their review under Executive Order 12866.

One commenter suggested that the proposed rule should have been reviewed for legal sufficiency and compliance with statutory requirements by USDA's Office of General Counsel (OGC).

OGC reviewed the proposed rule.

One commenter pointed out that the section of the proposed rule beneath the heading, "Paperwork Reduction Act," indicated that there were no reporting, recordkeeping, or third-party disclosure requirements associated with the proposed rule. The commenter asserted that APHIS had therefore failed to evaluate whether there were such Paperwork Reduction Act implications. Several other commenters stated that the proposed rule should have been evaluated for Paperwork Reduction Act implications.

The statement beneath the heading "Paperwork Reduction Act" in the proposed rule did not mean that APHIS excluded the rule from evaluation under the Paperwork Reduction Act, but rather that we did evaluate the rule under the Paperwork Reduction Act and determined it not to have reporting, recordkeeping, or third-party disclosure requirements.

One commenter stated that the proposed rule was not reviewed for compliance with Executive Order 13777.

The proposed rule was evaluated by the Regulatory Reform Officer for USDA in accordance with Executive Order 13777.

Several commenters expressed concerns regarding the economic analysis that accompanied the proposed rule.

We discuss these comments in the economic analysis that accompanies this final rule.

Several commenters stated that APHIS had not complied with NEPA, and an environmental assessment or environmental impact statement should have accompanied the proposed rule.

For reasons discussed earlier in this document, we considered the proposed rule to be a category of actions exempt under APHIS' NEPA implementing regulations from preparation of an environmental assessment or environmental impact statement.

One commenter stated that we had violated international standards issued by the International Plant Protection Convention (IPPC), to which the United States is a signatory. The commenter stated that the IPPC definition of a *quarantine pest* requires pests that are established within a country to be under official control in order to continue to be considered of quarantine significance. The commenter pointed out that the proposed rule had not explicitly indicated that one of the practical implications of removing the domestic quarantine regulations for EAB would be that EAB would no longer be a quarantine pest. The commenter asserted that this omission violated IPPC standards.

We agree with the commenter's interpretation of the IPPC definition of *quarantine pest*, as well as the assertion that removing Federal domestic quarantine regulations for EAB would remove its designation as a quarantine pest under IPPC standards.

However, we do not agree that failing to mention this in the proposed rule violates those standards. Insofar as the IPPC definition of *quarantine pest* requires pests already established in a country to be under official control in order to continue to be considered quarantine pests, and the proposed rule proposed to rescind APHIS' official control program for EAB, we consider the implication of that rescission to be sufficiently clear without an explicit statement that EAB will no longer meet the IPPC definition of a *quarantine pest* as a result of this rule.

Miscellaneous

One commenter stated that ash helps reduce the impact of carbon emissions into the atmosphere.

This is true but is not germane to this rulemaking.

One commenter asked if velvet ash was a host of EAB, and, if so, whether it was a preferred host.

Because the geographic range of velvet ash within the United States lies outside of the area of the United States where EAB is known to occur, it is currently unknown how EAB and velvet ash will interact within the environment of the United States. However, velvet ash was a preferred host for EAB in China, and we have no reason to believe it will not be a similar host within the United States.[22]

A commenter asked if neonicotinoids were used as treatments within the EAB program, and, if so, whether there were any plans to reduce or eliminate their usage.

Neonicotinoids, particularly imidacloprid, were historically used within the EAB program to treat ash trees. However, such treatments have been almost entirely discontinued within the program, and, on the rare occasion when they still occur, a different insecticide, emamectin benzoate, which is not a neonicotinoid, is currently used. We have no plans to use neonicotinoids within the context of integrated pest management following deregulation of EAB.

A commenter suggested we prepare a "Lessons Learned" document to evaluate the successes and failures of the domestic EAB program and to determine what factors contributed to the ultimate ineffectiveness of the program.

While we tend to reserve such evaluations for particular procedures or policies in order to limit their scope and thus have greater assurances about the accuracy of their conclusions, we will take the commenter's suggestion into consideration.

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[22] See Wang *et al*. *The biology and ecology of the emerald ash borer,* Agrilus planipennis*, in China*. *Journal of Insect Science*, Volume 10, Issue 1, 2010, 128.

Therefore, for the reasons given in the proposed rule and this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

In accordance with 5 U.S.C. 603, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this final rule on small entities. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is removing the domestic quarantine regulations for the plant pest emerald ash borer (EAB, *Agrilus planipennis*, Fairmare). This action discontinues the domestic regulatory component of the EAB program. Funding allocated to the implementation and enforcement of these quarantine regulations will instead be directed to a non-regulatory option of assessment of and deployment of biological control agents for EAB. Biological control will be the primary tool used to control the pest and mitigate losses.

There are currently more than 800 active EAB compliance agreements, covering establishments that include sawmills, logging/lumber producers, firewood producers, and pallet manufacturers. The purpose of the compliance agreements is to ensure observance of the applicable requirements for handling regulated articles. Establishments involved in processing, wholesaling, retailing, shipping, carrying, or other similar actions on regulated articles require a compliance agreement to move regulated articles out of a Federal quarantine area.

Under this rule, establishments operating under EAB compliance agreements will no longer incur costs of complying with Federal EAB quarantine regulations, although States could still

impose restrictions. Businesses will forgo the paperwork and recordkeeping costs of managing Federal compliance agreements. However, some businesses may still bear treatment costs, if treatment is for purposes besides prevention of EAB dissemination. Costs avoided under the rule depend on the type of treatment and whether treatment still occurs for purposes other than those related to the Federal EAB regulatory restrictions on interstate movement.

Articles currently regulated for EAB include hardwood firewood, chips, mulch, ash nursery stock, green lumber, logs, and wood packaging material (WPM) containing ash. Articles can be treated by bark removal, kiln sterilization, heat treatment, chipping, composting, or fumigation, depending on the product.

For affected industries, we can estimate the cost savings if treatment were to cease entirely (see table A). Currently, there are 166 active EAB compliance agreements where sawmills and logging/lumber establishments have identified kiln sterilization as a method of treatment. If all of these producers were to stop heat treating ash lumber or logs as a result of this rule, the total cost savings for producers could be between about $896,600 and $1.5 million annually.

There are 103 active EAB compliance agreements where heat treatment of firewood is identified as a treatment. If all of these firewood producers were to stop heat treating firewood as a result of this rule, the total cost savings for producers could be between about $93,400 and $700,000 annually.

There are 70 active EAB compliance agreements where heat treatment is identified as the pallet treatment. If all of these producers are producing ash pallets and were to stop heat treating as a result of this rule, the total cost savings for producers could be between about $8.8 million and $13.3 million annually. If all 349 establishments with compliance agreements where debarking is identified as a treatment were to stop secondary sorting and additional bark removal in the absence of EAB regulations, the total annual labor cost savings for producers could be about $1.7 million annually. If all 397 establishments with compliance agreements where

chipping or grinding is identified as a treatment were to stop re-grinding regulated materials in the absence of EAB regulations, the total annual cost savings for producers could be about $10.6 million annually. The annual cost savings for these various entities could total between about $9.8 million and $27.8 million annually. (It should be noted that this range of cost savings does not include compliance costs for any State regulations that may be developed in the absence of Federal regulation of EAB; this is because such costs are conjectural and outside of Federal control.)

Table A. Potential Cost Savings if Treatment were to cease with removal of EAB Regulation

Product	Treatment	Compliance agreements	Treatment Costs Low Value ($ Millions)	Treatment Costs High Value ($ Millions)
Logs/Lumber	Kiln Sterilization	166	0.9	1.5
	Debarking	349	-	1.7
Firewood	Heat Treatment	103	0.09	0.7
Pallets	Heat Treatment	70	8.8	13.3
Chips, branches, waste, mulch, etc.	Chipping / Grinding	397	-	10.6
Total		N/A[1]	9.8	27.8

[1] Cannot be summed. Some compliance agreements cover multiple products and treatment methods.

Since no effective quarantine treatments are available for ash nursery stock, there are no compliance agreements issued for interstate movement of that regulated article. According to the latest Census of Horticultural Specialties, there were 316 establishments selling ash trees, 232 with wholesale sales, operating in States that were at least partially quarantined for EAB in 2014. Sales volumes for at least some of these operations could increase if their sales are currently constrained because of the Federal quarantine.

Internationally, deregulation of EAB may affect exports of ash to Norway and Canada, the two countries that have import restrictions with respect to EAB host material. Norway uses pest-free areas in import determinations. With removal of the domestic quarantine regulations, it is unlikely that Norway will recognize any area in the United States as EAB free. All exports of

ash logs and lumber to Norway will likely be subject to debarking and additional material removal requirements. From 2014 through 2018, exports to Norway represented less than one-tenth of one percent of U.S. ash exports. We estimate that labor costs for overseeing the debarking on these exports total less than $500.

The United States also exports to Canada products such as hardwood firewood, ash chips and mulch, ash nursery stock, ash lumber and logs, and WPM with an ash component from areas not now quarantined. Canada has indicated that they will consider the United States generally infested for EAB following Federal deregulation, therefore, ash products from areas outside the current U.S. quarantine area will be subject to restrictions in order to enter Canada. New Canadian restrictions will likely depend on the product and its destination within Canada. In 2017 and 2018, Canada received about 3 percent of U.S. ash lumber exports, and about 4 percent of U.S. ash log exports. Additionally, of about 98,000 phytosanitary certificates (PCs) issued from January 2012 through June 2019 for propagative materials exported to Canada, a little more than 1 percent was specifically for ash products. Based on available data, we estimate that additional heat treatment costs and labor costs for overseeing debarking of ash lumber and logs exported to Canada could range from about $55,000 to $94,400. Because of the absence of a phytosanitary treatment for ash nursery stock for EAB, we anticipate that exports of ash nursery stock to Canada will be prohibited by Canada. From January 2012 through June 2019, ash products comprised a little more than one percent of shipments of propagative material to Canada.

Taking into consideration the expected cost savings shown in table A and these estimated costs of exporting ash to Norway and Canada following deregulation, and in accordance with guidance on complying with Executive Order 13771, the single primary estimate of the annual cost savings of this rule is $18.8 million in 2016 dollars, the mid-point estimate annualized in perpetuity using a 7 percent discount rate.

EAB has now been found in 35 States and the District of Columbia and it is likely that there are infestations that have not yet been detected. Newly identified infestations are estimated to be 4 to 5 years or more in age. Known infestations cover more than 27 percent of the native ash range within the conterminous United States.

EAB infestations impose costs on communities typically associated with the treatment or removal and replacement of affected trees. In addition, infestation can result in loss of ecosystem services. Regulatory activities may slow the spread of EAB and delay associated losses by inhibiting human-assisted dispersal of infestations. However, consistent with APHIS' statutory authority, the activities only mitigated one pathway for EAB spread, movement of host material in interstate commerce. They did not address intrastate movement, non-commercial movement, or natural spread, each of which is a known pathway for the spread of EAB. As a result, regardless of funding or tactics employed, the EAB domestic quarantine regulations have been, on the whole, unable to prevent the spread of EAB.

Any delay in EAB spread attributable to the quarantine regulations and associated delay in economic and environmental losses will end with this rule. The domestic quarantine regulations for EAB have not substantially reduced the likelihood of introduction and establishment of the pest in quarantine-adjacent areas. Interstate movement of EAB host articles is unrestricted within areas of contiguous quarantine, and irrespective of human-assisted spread, a mated EAB is capable of flying up to 100 miles in her lifetime, resulting in a high potential for natural spread.

EAB's spread through the United States to date suggests it will become established throughout its entire geographical range irrespective of Federal regulation, as EAB can overcome significant natural barriers during a flight season and, as mentioned above, Federal regulations do not address non-commercial movement of EAB host material. The possibility that the pest could reach EAB-free States more quickly in the absence of Federal regulation of host material is difficult to quantify. For the difference in rates of spread to be significant, quarantine activities

must be able to mitigate all or at least most pathways for that spread. As noted above, resources available for quarantine activities have declined while the area under quarantine continues to expand. Human-assisted introduction may be mitigated by State regulations, and at least one State has indicated it will establish its own quarantine program following Federal deregulation.

Continuing to devote resources to regulatory activities would constrain APHIS' allocation of resources to activities that could be of greater long-term benefit in slowing the spread of EAB and helping affected communities recover from EAB infestation. These activities include further development and deployment of EAB biological control organisms; further investigation of integrated pest management of EAB that can be used at the local level to help safeguard an ash population of significant importance to a community; and further research, in tandem with other Federal Agencies, into the phenomenon of "lingering ash," or ash trees that are still alive and present in the landscape in areas of otherwise heavy infestation, and integration of the findings of that research into the EAB program.

Public outreach activities outside the EAB regulatory program will remain substantially similar or increase following removal of the domestic quarantine regulations for EAB. We will continue to work with our State counterparts to encourage the public to buy firewood where they burn it and to refrain from moving firewood to areas of the United States that are not under Federal quarantine for pests of firewood. The primary national communications tool to warn the public about the plant pest risk associated with the movement of firewood is the Don't Move Firewood campaign, which is administered by The Nature Conservancy with support from APHIS and other Federal agencies.

In sum, this rule's elimination of compliance requirements will yield cost savings for affected entities within EAB quarantined areas. Moreover, sales volumes for at least some of these operations could increase if their sales have been constrained because of the Federal quarantine. Costs avoided will depend on the type of treatment and whether treatment still occurs for non-quarantine purposes. Costs ultimately borne also will depend on whether States

decide to establish and enforce their own EAB quarantine programs. We anticipate States will continue to impose movement restrictions on firewood, with the regulatory requirements varying from State to State. The National Plant Board developed a template for State regulation of firewood, as well as best management practices regarding the commercial movement of firewood for the purposes of heating a home or building. Internationally, this rule may affect exports of ash products to Norway and Canada. Longer term, the impact of the rule on ash populations in natural and urban environments within and outside currently quarantined areas—and on businesses that grow, use, or process ash—will depend on how much sooner EAB is introduced into un-infested areas within the continental United States than would have occurred under the existing, decreasingly effective quarantine regulations.

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 2 CFR chapter IV.)

Executive Order 12988

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

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government

and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

APHIS has assessed the impact of this rule on Native American Tribes and determined that this rule does have Tribal implications that require Tribal consultation under Executive Order 13175. APHIS has engaged in Tribal consultation with Tribes regarding this rule; these consultations are summarized in the Tribal impact statement that accompanies this rule.

Paperwork Reduction Act

This rule contains no reporting, recordkeeping, or third-party disclosure requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq*.), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

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).

Subpart J—[Removed and Reserved]

2. Subpart J, consisting of §§ 301.53-1 through 301.53-9, is removed and reserved.

Done in Washington, DC, this 1st day of December 2020.

Michael Watson

Acting Administrator, Animal and Plant Health Inspection Service.

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