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# PPQ's Policy for the Federal Recognition of State Managed Phytosanitary Programs

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## Purpose

The purpose of this document is to communicate APHIS-PPQ's policy for the recognition of State managed phytosanitary programs. We are establishing this policy through regulatory authority provided by Section 411 and 414 of the [Plant Protection Act](#) (PPA) (7 U.S.C. 7711) and to maintain a consistent safeguarding and trade policy by alignment with [International Standard for Phytosanitary Measures \(ISPM\) No. 5](#), Supplement No.1, Guidelines on the interpretation and application of the concepts of "official control" and "not widely distributed."

The purpose of the Federally Recognized State Managed Phytosanitary Program (FRSMP) is to provide federal recognition of official control programs implemented by States to eradicate or contain a plant pest that is otherwise not regulated through a federal domestic program by APHIS-PPQ. State-managed programs that exclude a pest from a State where it is not present and where economic or environmental harm would result from its introduction may also qualify for consideration.

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## Background

Under the Plant Protection Act, as amended (PPA, 7 U.S.C. 7701 et seq.), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

While the Secretary has the authority to regulate all plant pests, the Secretary has chosen to narrow the scope of the plant pests that require action at the U.S. ports of entry to be consistent with international obligations.

As a contracting party to the [International Plant Protection Convention \(IPPC\)](#)<sup>1</sup>, the United States has agreed to observe the general and specific principles of the convention as they relate to international trade. One such general principle provides that “countries shall institute restrictive measures only where such measures are made necessary by phytosanitary considerations, to prevent the introduction of quarantine pests.” Accordingly, there is an expectation on the part of other contracting parties to the IPPC (i.e., our trading partners) that APHIS would not exercise its authority under the PPA to prohibit or restrict the importation of a plant, plant product, or other article unless such action was necessary to prevent the introduction of a quarantine pest.

The IPPC’s [“Glossary of Phytosanitary Terms”](#) defines quarantine pest as “a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.” While the first consideration (“a pest of economic importance ... not yet present there”) may be readily understood, the concept of “official control” is subject to further definition. Specifically, the IPPC defines official control as “The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests.” A regulated non-quarantine pest is defined as a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party.

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1 The IPPC is recognized as the standard-setting body for international phytosanitary issues in the [World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures](#).

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Under the FRSMP Program, PPQ will be responsible for policies regarding port inspections that restrict commodities infested with a particular pest destined for protected States. State partners will be responsible for collaborating on a common program for each pest, establishing eradication, control, or exclusion programs and petitioning for federal recognition of those programs.

[7 CFR part 330.200](#) et seq. requires a plant pest permit to be issued by APHIS before any pest may be imported into or moved interstate within the United States. [7 CFR part 330.106](#) specifies that APHIS may take remedial measures at a port of entry if a plant pest is detected on a commodity and no such plant pest permit has been issued.

Upon implementation of the program, PPQ will regulate FRSMP Program pests at ports of entry under [7 CFR 330.106](#). PPQ will enter into a Memorandum of Understanding (MOU) with a State upon recognition of its program, to which subsequent FRSMP Program pests will be added. Phytosanitary requirements for interstate commerce into FRSMP States will be equivalent to those expected from foreign trading partners.

When a pest is detected at a U.S. port of entry, APHIS-PPQ will establish complementary regulatory policies to prevent movement of the pest in imported commodities and/or conveyances arriving in States where a FRSMP Program is in place for that pest. APHIS-PPQ will also consider programs that exclude a pest from a State where it is not present, and where economic or environmental harm would result from its introduction. This additional consideration is supported by the IPPC's [ISPM No. 5](#) Supplement 1 Guidelines on the interpretation and application of the concepts of "official control" and "not widely distributed" under "Requirements," which states "...official control includes restrictions related to movement into and within the protected area(s) including measures applied at import."

Any State(s) that can justify that they would be economically or environmentally endangered by the introduction of a particular pest can apply for the designation "protected area" if the pest is not present or if present, is being officially contained or eradicated. APHIS-PPQ has discretionary authority to recognize State phytosanitary programs under the [Plant Protection Act of 2000](#) (PPA). The [International Plant Protection Convention](#) (IPPC) includes provisions for the implementation of official control programs (eradication or containment) by sub-national authorities such as States, provided such programs are officially authorized and audited by the National Plant Protection Organization (NPPO). APHIS-PPQ is the NPPO for the United States.

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Following initial implementation of the program, APHIS intends to amend [330.200](#) et seq. to establish a general plant pest permit for all FRSMPS. The list of FRSMPS covered by this permit, and the restrictions upon their movement within the United States, will be maintained online. Following establishment of such a permit, whenever we approve an additional State petition for a FRSMPS, we will amend the general permit accordingly. This permit, which we will issue pursuant to Section 411 of the PPA, will provide an additional regulatory structure to codify actions taken by APHIS under the FRSMPS program.

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## Policy

For recognition of FRSMPS programs, PPQ intends to accept petitions (one common petition for each pest) from interested States, review the petitions, and make decisions based on the established criteria and standards. PPQ will notify the States of the decision. If PPQ accepts the FRSMPS program, PPQ will establish a policy to take action at U. S. ports of entry for such pests arriving in a State with a FRSMPS program for that pest. PPQ will regulate pests in federally recognized programs to the State level at ports of entry. PPQ will continue its policy to take action on pests that are pending review under the FRSMPS Program, but this status will change when:

1. An FRSMPS program is established and recognized,
2. States have expressed no interest in a FRSMPS program, or
3. States are unable to establish an FRSMPS program that meets international requirements and PPQ cannot justify continued action.

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## Definitions

Refer to the [FRSMPS Program Manual](#) Glossary for definitions.

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## Process

Procedures for the following processes will be found in the [FRSMPS Program Manual](#).

- ◆ State Submission of Petition for Federal Recognition of FRSMPS Program
- ◆ Official Control Advisory Panel (OCAP) Review Process
- ◆ FRSMPS Program Internal Process to Evaluate Compliance
- ◆ FRSMPS Program Process at Port of Entry

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## Alternate Petition Process for PPQ-initiated FRSMP Program Decisions

The PPQ FRSMP Program Coordinator will identify actionable pests that may be considered for State managed phytosanitary programs because they have been established in the United States, are **not** widely distributed, and are **not** under official control by APHIS-PPQ. Within the PPA, section 414 authorizes the Secretary to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that, among other things, is moving into the United States and that the Secretary has reason to believe is infested with a plant pest or noxious weed at the time of the movement. Under this authority, consignments of imported articles are inspected at the port of entry to determine whether plant pests are associated with them and, if so, prescribe remedial measures as described in the Act. APHIS typically refers to such measures as “taking action” at the port of entry to prevent a plant pest from being introduced into or further disseminated within the United States. Pests that are subject to such actions are referred to as “actionable pests.” PPQ will continue to take action for pests with limited distribution under this authority.

PPQ will reconsider the actionable status of these pests pending a decision for a State managed phytosanitary program by presenting pest risk information to the National Plant Board periodically throughout the year. If no State Plant Regulatory Official (SPRO) is interested in a state-managed phytosanitary program, action will no longer be taken at ports of entry for that pest. When a State or States indicate interest in a phytosanitary program for a particular pest, the pest will remain actionable until APHIS-PPQ and the interested States have concluded analyses leading to a FRSMP petition.

If none of the States petition for a FRSMP program, PPQ will stop taking action on that pest at ports of entry.

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## Approved Programs

Approved programs will be subject to audit/monitoring requirements. State Departments of Agriculture will assure program data is entered into the appropriate database and will be required to submit annual reports.

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## Preclearance

PPQ Preclearance Work Plans will include options for remedial action when a FRSMP Program pest is detected upon inspection in the exporting country.

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## Memorandum of Understanding (MOU)

Upon approval of a petition, program States (Cooperators) will enter into an MOU with USDA-APHIS-PPQ. The MOU will define the terms under which the States and PPQ will take action on FRSMP Program pests and mitigation methods to be applied.

States may join an existing FRSMP pest program through a petition agreeing to established terms.

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## Termination

- ◆ States shall notify the FRSMP Program Coordinator of a decision to terminate an approved program
- ◆ APHIS PPQ may terminate federal recognition of a program for non-performance after discussions with State Partners

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## Notice to Industry and Trading Partners

When PPQ's FRSMP Program becomes operational, PPQ will submit a Federal Register Notice, followed by a World Trade Organization Notice. The APHIS Stakeholder Registry will provide notification of new approved petitions to those subscribed as requesting notices of official control/FRSMP. PPQ will also issue a SPRO Letter. PPQ will post all programs and related information to the public on the [FRSMP Program website](#). State programs will be identified as for containment, eradication, or exclusion in order to indicate pest presence or absence.

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## Inquiries

Direct inquiries to [FRSMP@aphis.usda.gov](mailto:FRSMP@aphis.usda.gov)