

USDA/APHIS
GUIDELINES FOR FEDERAL RECOGNITION OF A STATE
MANAGED PHYTOSANITARY PROGRAM

INTRODUCTION

This guideline describes procedures established by the Animal and Plant Health Inspection Service, Plant Protection and Quarantine (APHIS-PPQ) to petition the Agency for official recognition of state-level plant pest regulations and associated actions. This program contributes to the accomplishment of USDA-APHIS Mission Priority #1 to strengthen safeguarding systems domestically and in other countries, and Mission Priority #3 to facilitate safe agricultural trade through effective management of sanitary and phytosanitary issues, as stated in the APHIS Strategic Plan (2007-2012).

INTERNATIONAL FRAMEWORK

As a member of the World Trade Organization (WTO) the US agrees to observe the provisions of WTO agreements, including the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). APHIS-PPQ is the US Agency with primary responsibility for the implementation of phytosanitary measures. As such, PPQ is also responsible for provisions of the Agreement related to phytosanitary measures, including those implemented in the US by other than the national government. PPQ's role in this regard is to ensure that these entities comply with relevant provisions of the Agreement and do not take measures which are, directly or indirectly, inconsistent with the provisions of the Agreement. Further clarification of the role of PPQ under the SPS Agreement is provided by the International Plant Protection Convention (IPPC) and associated international standards. The IPPC is specifically identified by the SPS Agreement as holding the responsibility for standard setting associated with phytosanitary measures.

Under the IPPC's International Standards for Phytosanitary Measures (ISPM) No.5, Supplement No.1, a national government or a National Plant Protection Organization (NPPO) should establish or recognize Official Control under appropriate legislative authority. The national government or NPPO should perform, manage, supervise, or at minimum, audit/review the Official Control program and ensure its enforcement. Agencies other than the NPPO may be responsible for aspects of official control programs, and certain aspects of official control programs may be the responsibility of sub-national authorities.

REGULATORY CONDITIONS FOR IMPLEMENTATION

APHIS-PPQ has the primary authority and responsibility for phytosanitary measures associated with preventing the introduction and spread of exotic plant pests. In instances where a plant pest has become established in the United States but APHIS-PPQ decides not to take regulatory actions or establish regulatory programs, States may take actions and establish programs domestically. APHIS-PPQ can officially recognize these programs as the basis for taking regulatory actions at ports of entry which are consistent with the intent of the State-managed program.

There are two situations where States may apply for Federal recognition of their phytosanitary programs:

1. When APHIS-PPQ does not regulate a plant pest of limited distribution in the United States, a State that has that pest within its own borders may implement procedures to eradicate the plant pest or to contain the plant pest within its borders.
2. When APHIS-PPQ does not regulate a plant pest of limited distribution in the United States, a State without that pest may implement procedures to exclude the pest in order to prevent the risk of introduction of the plant pest within its borders.

When there is a possibility that a trading partner may challenge APHIS-PPQ's import requirements based on the presence of a regulated pest in the United States, APHIS-PPQ may encourage a State where that pest occurs to establish a State Managed Phytosanitary Program which can be recognized by APHIS-PPQ and thereby provide the justification for consistent actions against the same pest when found with imports at ports of entry.

Without federal recognition of a State Managed Phytosanitary Program, the pest's regulatory status when found with imports may change from actionable to non-actionable, i.e. no action will be taken if the pest is detected at ports of entry. Establishing a State Managed Phytosanitary Program that is officially recognized by APHIS-PPQ ensures that action will be taken at ports of entry if the imported article is destined to a recognized State and avoids potential discrimination claims by trading partners.

To obtain a program's designation as a FRSMP Program, States (through the National Plant Board) must petition APHIS-PPQ to recognize their established or proposed programs to exclude, eradicate or contain a regulated plant pest.

PETITION PROCEDURES

The State should provide the following supporting information and documentation.

1. Presence.

Evidence the pest does not exist in the State, or if it does exist, that it is being contained or there are programs in place for eradication. Include appropriate survey data, define the infested area(s), endangered area(s), and protected area(s), and the procedures used for establishing containment (including exclusion) or eradication.

2. Possible entry and establishment.

Evidence that the pest could enter and become established in the State, or if it already exists in the state, that it could become widespread.

3. Economic/ environmental harm.

Evidence that the pest could cause economic and/or environmental harm in the State.

4. Maintenance/ Verification.

A description of the State actions used to maintain and monitor for pest freedom, limit distribution, or containment (including exclusion) including a description of monitoring programs.

5. Quarantine regulations.

A copy of the State, local or tribal quarantine regulations that provide for enforcement of the appropriate programs.

PROTOCOL FOR REGULATED NON-QUARANTINE PESTS

The State should provide the following supporting information and documentation.

1. Economic harm/ Vulnerability.

Evidence that a particular pest could cause significant harm to plants for planting if the pest was not managed through a certification program.

2. Quarantine regulations/ Testing.

Evidence the State has regulatory authority and a program established to manage the levels of the pest in plants for planting that are the hosts for the pest and a copy of the State, local or tribal quarantine regulations that provide for the enforcement of a management program, and testing protocols. Provide a description of recent State actions taken under these regulations and the testing protocols used in the program.

3. Management/ Verification.

A description of State actions to manage the level and/or verify producers' management of pest in the plants for planting, where the pest is maintained below a level that can affect production, health, or marketability of plants for planting and cause an unacceptable economic impact to those plants.

WHERE TO SEND A PETITION

Please send your Petitions for federal recognition of a state managed phytosanitary program for both quarantine and regulated non-quarantine pests, or your questions regarding the program, to Ms. Diane Schuble, Staff Officer, Emergency and Domestic Programs, PPQ, APHIS, at Diane.L.Schuble@aphis.usda.gov.

ADMINISTRATIVE REQUIREMENTS

APHIS-PPQ will require State Plant Regulatory Officials, to commit, in writing, the willingness to allocate resources necessary to implement and maintain the program. State Plant Regulatory Officials will identify the State's authority by citing the relevant regulations. State Plant Regulatory Officials will provide a description of how to implement the program, such as surveys, inspections, and compliance agreements.

CRITERIA USED TO EVALUATE THE PETITION

The criteria will be available electronically in the Federally Recognized State Managed Phytosanitary Program manual. [Insert link]

AUDIT/REVIEW REQUIREMENTS

States will submit annual accomplishment reports and APHIS-PPQ will audit programs for survey and monitoring in order to confirm compliance. APHIS-PPQ will base the audits on the procedures submitted in protocol items 1, 4, and 5 for Quarantine Pests and protocol item 3 for Regulated Non-Quarantine Pests. Any non-compliance must be addressed appropriately.

DEFINITIONS

From ISPM No 5

Endangered Area – An area where ecological factors favor the establishment of a pest whose presence in the area will result in economically important loss

Monitoring - An official ongoing process to verify phytosanitary situations

Protected Area - A regulated area that an NPPO has determined to be the minimum area necessary for the effective protection of an endangered area

Quarantine Pest - 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

Regulated Non-Quarantine Pest - 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

Surveillance - An official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures

Survey - An official procedure conducted over a defined period of time to determine the characteristics of a pest population or to determine which species occur in an area

From Plant Protection Act of 2000

State-

The term “State” means any of several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

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OMB APPROVED:

0579-0365
Exp: 2/28/17