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

Contents

Purpose	2
Background	2
Policy	4
Definitions	5
From ISPM No. 5	5
From Plant Protection Act of 2000	5
From Official Control Advisory Panel Charter	5
Process	6
Draft Process for States to Petition for Federal Recognition of a Phytosanitary Program	6
Alternate Process for PPQ-initiated FRSMP Program Decisions, (including deregulation evaluation of established pests)	6
FRSMP Program Internal Process to Evaluate Petitions	6
State Submits Petition for Federal Recognition of FRSMP Program	7
FRSMP Program Coordinator Receives Petition from a State	8
Official Control Advisory Panel (OCAP) Review Process	10
Approved Programs	11
Memorandum of Understanding (MOU)	11
Termination	11
Action to Support the FRSMP Program at Ports of Entry	11
FRSMP Program Process at the Port of Entry	12
FRSMP Program Flow at the Port of Entry	12
FRSMP Program Internal Process to Evaluate Compliance	12
Preclearance	12
Notice to Industry and Trading Partners	13
Inquiries	13
Flow Charts	13

Purpose

The purpose of this document is to communicate PPQ's policy for the recognition of State managed phytosanitary programs. We are establishing this policy through regulatory authority provided by Section 412 of the [Plant Protection Act \(PPA\)](#) (7 U.S.C. 7712) and in alignment with [International Standard for Phytosanitary Measures \(ISPM\) No. 5](#), Supplement No.1, Guidelines on the Interpretation and Application of the Concept of Official Control for Regulated Pests.

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, contain, and/or exclude a plant pest that is otherwise not regulated through a federal domestic program by PPQ. When a pest is detected at a U.S. port of entry, PPQ will establish complementary regulatory policies to prevent movement of the pest in imported commodities and/or conveyances destined to States where a FRSMP Program is in place for that pest. 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). As the NPPO for the United States, PPQ has discretionary authority to recognize State programs under the [Plant Protection Act of 2000 \(PPA\)](#). PPQ will extend eligibility to programs that exclude a pest from a State where it is not present, but which would be economically or environmentally endangered by its introduction. This additional consideration is supported by the IPPC's [ISPM No. 5 Supplement No. 1](#). "General Requirements" for official control include "measures related to controls on movement into and within the protected area(s) including measures applied at import." Any State(s) that can justify 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.

Background

Under Section 412 of the PPA, the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States. The Secretary has delegated the authority for enforcing the PPA to the APHIS Administrator.

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 IPPC, which is recognized in the [World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures](#) as the standard-setting body for international phytosanitary issues, 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 official 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. PPQ will not offer the option of regulated non-quarantine pest programs at this time.

An FRSMP Program addresses pests of limited distribution within the United States that are not currently regulated under a domestic federal program or quarantine pests that are being considered for deregulation, as well as regulated non-quarantine pests. In the interest of protecting areas that would be economically or environmentally endangered by the introduction of a quarantine pest of limited distribution, USDA will also consider State programs for plant pest exclusion.

Under this 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. 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.

Policy

For recognition of FRSMP 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 FRSMP program, PPQ will establish a policy to take action at U. S. ports of entry for such pests destined to a State with a FRSMP program. Pests in federally recognized programs will be regulated to State level at ports of entry. PPQ will continue its policy to take action on pests that are pending review under the FRSMP Program, but this status will change when:

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

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.

From Official Control Advisory Panel Charter

Sponsor. Individual or entity that organizes and is committed to the development of a product, program or project [[BusinessDictionary.com](https://www.businessdictionary.com/)]. For the APHIS-PPQ FRSMP Program, the Sponsor is responsible for coordinating and leading communication and planning among interested State Plant Regulatory Officials (SPROs). The initiating SPRO may sponsor the final petition or defer that role to another participating SPRO. The sponsoring State will be identified in the title of the program - i.e. The Federally Recognized State Managed Phytosanitary Program for “Pest A” Sponsored by the State of “B.”

Process

Draft Process for States to Petition for Federal Recognition of a Phytosanitary Program

1. The SPRO uses a checklist to evaluate the pest candidate and consults with the PPQ FRSMP Coordinator for questions.
2. If the pest candidate is suitable, the SPRO then notifies the NPB of intent to petition. The SPRO will contact the NBP President and Executive Secretary, and may consult with the PPQ FRSMP Program Coordinator.
3. The NPB solicits interest from other SPROs, working through Regional Presidents. Refer to **Figure 1** on **page 14** for options.

Alternate Process for PPQ-initiated FRSMP Program Decisions, (including deregulation evaluation of established pests)

The PPQ FRSMP Program Coordinator will establish a list of regulated pests that may be considered for State managed phytosanitary programs because they have been established in the United States. PPQ will reconsider the regulatory status of these pests pending a decision for a State managed phytosanitary program by presenting up to 10 pests to the National Plant Board periodically throughout the year. Risk information will be included for each pest. If no SPRO is interested, the pest will be removed from the pending list and action will no longer be taken at ports of entry for that pest. If a State or States indicate interest in a phytosanitary program for a particular pest, States will be given 60 days to consider a proposed candidate for a FRSMP Program petition. After 60 days, if no State expresses interest, PPQ will stop taking action on that pest at ports of entry. Refer to **Figure 2** on **page 15** for possible outcomes of the evaluation.

FRSMP Program Internal Process to Evaluate Petitions

1. The State sponsor submits a petition to the PPQ FRSMP Program Coordinator.
2. The PPQ FRSMP Program Coordinator checks to make sure the petition is complete. If the petition is complete, refer to OCAP and see **Figure 3** on **page 16**. If the petition is **not** complete, contact the applicant to address incomplete areas.

State Submits Petition for Federal Recognition of FRSM Program

The following information will be required in a Petition for Federal Recognition of a State-managed phytosanitary program (see **Figure 1** on **page 14** and **Figure 2** on **page 15**):

Protocol for Quarantine Pests

1. Presence

Provide 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

Provide 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

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

4. Maintenance/Verification

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

5. Quarantine regulations

Provide a copy of the State, local or tribal quarantine regulations that provide for enforcement of the appropriate programs. (Pests in federally recognized programs will be regulated to State level at ports of entry.)

**Protocol for
Regulated
Non-Quarantine
Pests (RNQP)**

The RNQP option is not currently available.

1. Economic harm/Vulnerability

Provide 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

Provide 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

Provide a description of State actions used 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.

FRSMP Program Coordinator Receives Petition from a State

Upon receipt of a petition from a State, the FRSMP Program Coordinator will track petition applications.

**Quarantine
Pests**

The FRSMP Program Coordinator will verify completeness of submission of information for a proposed quarantine pest, including checking the petition for:

- ◆ Evidence the pest does not exist in the State, or if it does exist, it is being contained or eradicated
- ◆ Evidence pest could enter and become established in the State, or if already present could become widespread
- ◆ Evidence that the pest could cause economic and/or environmental harm in the State
- ◆ Characteristics that may make the State vulnerable
- ◆ State actions used to maintain pest freedom or limit distribution
- ◆ Verification that a program exists to assure pest freedom is maintained (if never present or eradicated)
- ◆ A copy of the State, local or tribal quarantine regulations that provide for enforcement of the appropriate programs

**Regulated
Non-Quarantine
Pests**

After reviewing the petition, the FRSMP Program Coordinator will proceed to the next step if complete. If the petition is incomplete, the FRSMP Program Coordinator will contact the petitioner for areas that need to be addressed.

The RNQP option is not currently available.

The FRSMP Program Coordinator will verify completeness of submission of information of a proposed regulated non-quarantine pest, including checking the petition for:

- ◆ Evidence the pest could cause significant harm to plants for planting if not managed through a certification program
- ◆ Evidence the State has regulatory authority and a program established to manage the levels of the pest in plants for planting that are hosts for the pest
- ◆ 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.
- ◆ State actions to manage the level and/or verify producers' management of the pest in 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 impact to those plants

After reviewing the petition, the FRSMP Program Coordinator will proceed to the next step if complete. If the petition is incomplete, the FRSMP Program Coordinator will contact the petitioner for areas that need to be addressed.

Official Control Advisory Panel (OCAP) Review Process

See **Figure 3** on **page 16** for detailed information.

The FRSMP Program Coordinator will refer petitions to the OCAP.

- ◆ FRSMP evaluation criteria will guide the panel's decision
- ◆ The criteria to be used by the OCAP in making its determination about whether to recommend approval or denial of the petition may include:
 - ❖ Pest risk argument that demonstrates that the pest does not occur in the proposed protected areas by citing sources such as supporting survey data
 - ❖ Pest risk argument that demonstrates that the pest is economically/environmentally significant and likely to establish in the proposed protected areas
 - ❖ Proposed measures that are the least restrictive needed to assure adequate protection
 - ❖ Domestic measures, including those administered by States, that are equivalent to international measures
 - ❖ Proposed measures apply only to shipments entering proposed protected areas
 - ❖ Protected area should not be highly susceptible to unimpeded natural spread of the pest
- ◆ At a minimum, panel members will include the FRSMP Program Coordinator and designee of the Emergency and Domestic Programs (EDP) Associate Director, National Identification Services Staff member as primary Plant Health Programs (PHP) representative, Center for Plant Health Science and Technology technical representative, Eastern and Western Regional Representatives
- ◆ Upon review, the OCAP will recommend acceptance or denial of the petition to the Directors of EDP and PHP, who will review and recommend a decision to the PPQ Deputy Administrator for final approval

Upon petition acceptance and program implementation, the FRSMP Program Coordinator will notify the following APHIS/PPQ staffs: Center for Plant Health Science and Technology; Regulations, Permits & Manuals; National Identification Service; Phytosanitary Issues Management; Quarantine Policy & Analysis Staff; Emergency & Domestic Programs; cc: Executive Director Plant Health Programs; Assistant Deputy Administrator, Emergency and Domestic Programs.

The FRSMP Program Coordinator will assure the issuance of a SPRO letter and add the program to the FRSMP Program website and manual. National Identification Services will update the database with pest name, status (quarantine pest or regulated non-quarantine pest) and regulated States.

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.

Memorandum of Understanding (MOU)

Upon approval of a petition, program States (Cooperators) will enter into an MOU with USDA-APHIS-PPQ. If a State finds a FRSMP Program pest upon inspection of a product and determines that the product is in foreign commerce, then the State must notify PPQ and cooperate with PPQ as to what mitigations need be applied.

Termination

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

Action to Support the FRSMP Program at Ports of Entry

An Emergency Action Notification – PPQ Form 523 (EAN) is used for Formal Communication of Remedial Measures. When a pest is detected on an imported commodity, and PPQ identifies it as under the FRSMP Program, the following procedure will take place:



For a shortened summary of the following procedure, refer to [Figure 4](#) on [page 17](#).

If the commodity enters a port in a State or is destined to a State which has a federally recognized State managed phytosanitary program, the options to the importer will be the least restrictive measure that is feasible and adequate to prevent the dissemination of any plant pest new to or not known to be widely prevalent or distributed as per the Plant Protection Act of 2000. The CBPAS or PPQ Officer will follow the appropriate manual for specific instructions.

If the commodity is not arriving in or destined to a State having a federally recognized State managed phytosanitary program, no regulatory action will be taken on the commodity. The EAN, however, will be issued as an official notice to the owner or his agent. PPQ identifiers or National Identification Services through PPQ identifiers will relate the remedial action to the CBPAS or PPQ Officer who is issuing the EAN. The CBPAS or PPQ Officer will follow the appropriate manual for specific instructions.

The EAN will communicate that remedial measures are required before the commodity can move to a FRSMP Program State for that pest. Should a future decision be made to move the shipment to a State with a FRSMP program for the pest present in the shipment, the shipment must meet treatment requirements in order to be moved there. The EAN may show the [FRSMP website](#) for additional information. Failure to comply with those requirements will be cause for a violation under Section 414 of the Plant Protection Act.

FRSMP Program Process at the Port of Entry

1. The Agricultural commodity is imported and inspected at the U.S. port of entry (POE).
2. A plant pest is detected and identified. For a more detailed description of the process, refer to the [Manual for Agricultural Clearance](#) or the Plant Inspection Stations Manual.

FRSMP Program Flow at the Port of Entry

A FRSMP Program pest¹ is detected on an imported shipment. Refer to [Figure 5](#) on [page 18](#) for the process.

FRSMP Program Internal Process to Evaluate Compliance

When the EAN communicating required remedial measures is issued to an owner or agent whose commodity is not destined to a State with a federally recognized State managed phytosanitary program, PPQ will also communicate with the appropriate internal PPQ group for periodic quality assurance follow up in the market place. The internal PPQ group may confirm by shipping records that the shipment did not move to that State. If records indicate that the shipment did indeed enter the State without remedial measures, State and/or federal agencies may pursue a violation.

Preclearance

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

¹ FRSMP pests are quarantine pests that require phytosanitary action.

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. PPQ will announce new programs in a press release, which will also be listed on the APHIS home page "In the News" section. The PPQ Stakeholder Registry will provide communication of new programs to those subscribed as requesting notices of official control/FRSMP. PPQ will issue a SPRO Letter. PPQ will post all programs and related information to the public on the [FRSMP Program website](#). To clarify pest presence, State programs will be identified as for containment, eradication, or exclusion.

Inquiries

Direct inquiries to Diane Schuble (Diane.L.Schuble@aphis.usda.gov), National Coordinator for Official Control at (301) 851-2334.

Flow Charts

For a graphical representation of the processes, refer to the flow charts on the following pages.

DRAFT

State Petition Process

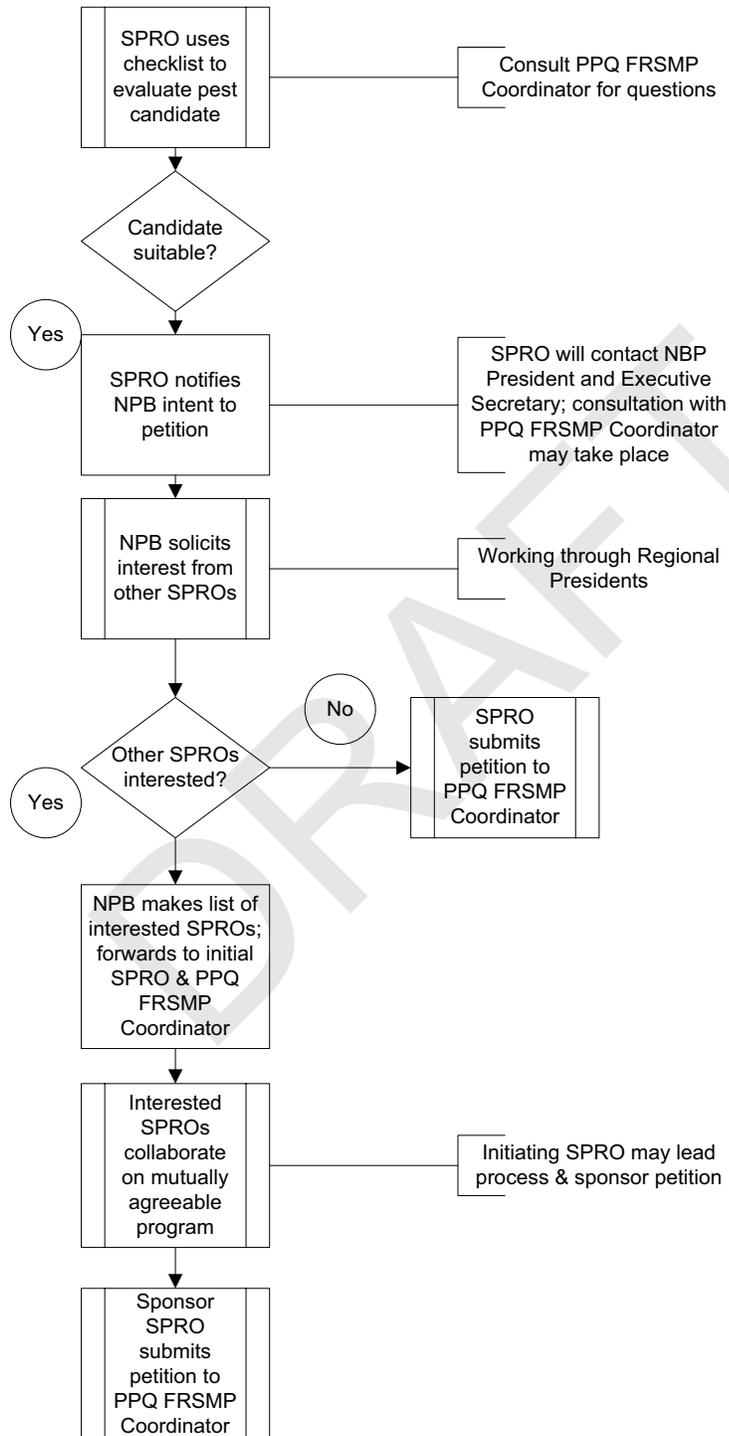


FIGURE 1 Draft Process for States to Petition for Federal Recognition of a Phytosanitary Program

Alternate Process

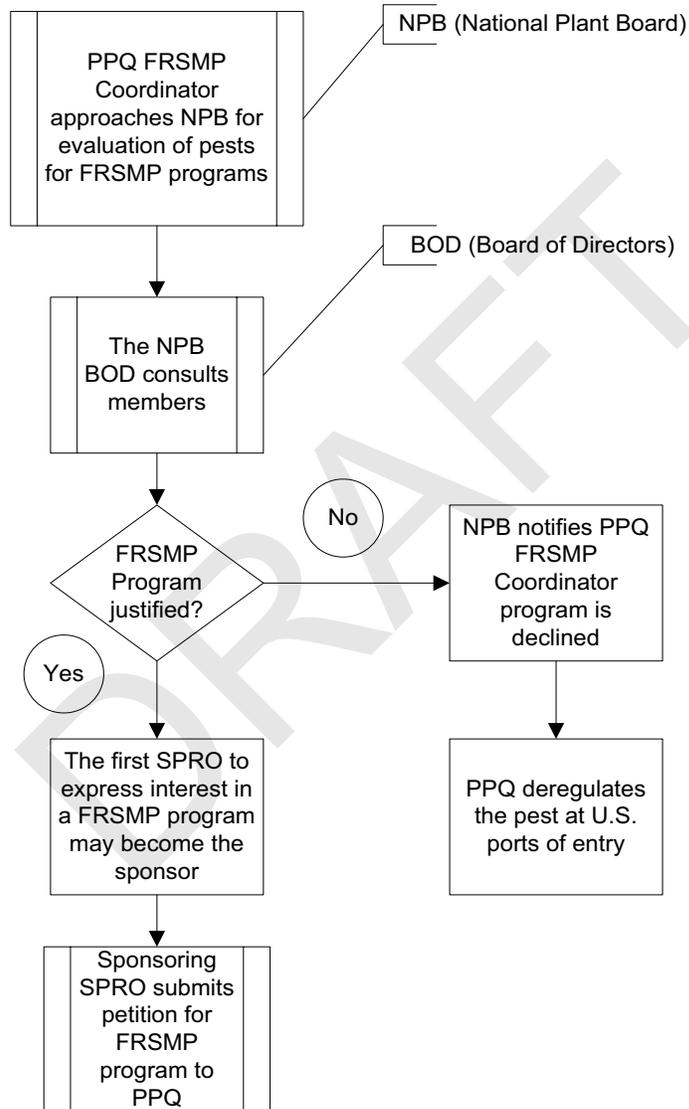


FIGURE 2 Alternate Process for PPQ-initiated FRSMP Program Decisions (including Deregulation Evaluation of Established Pests)

PPQ Internal Process

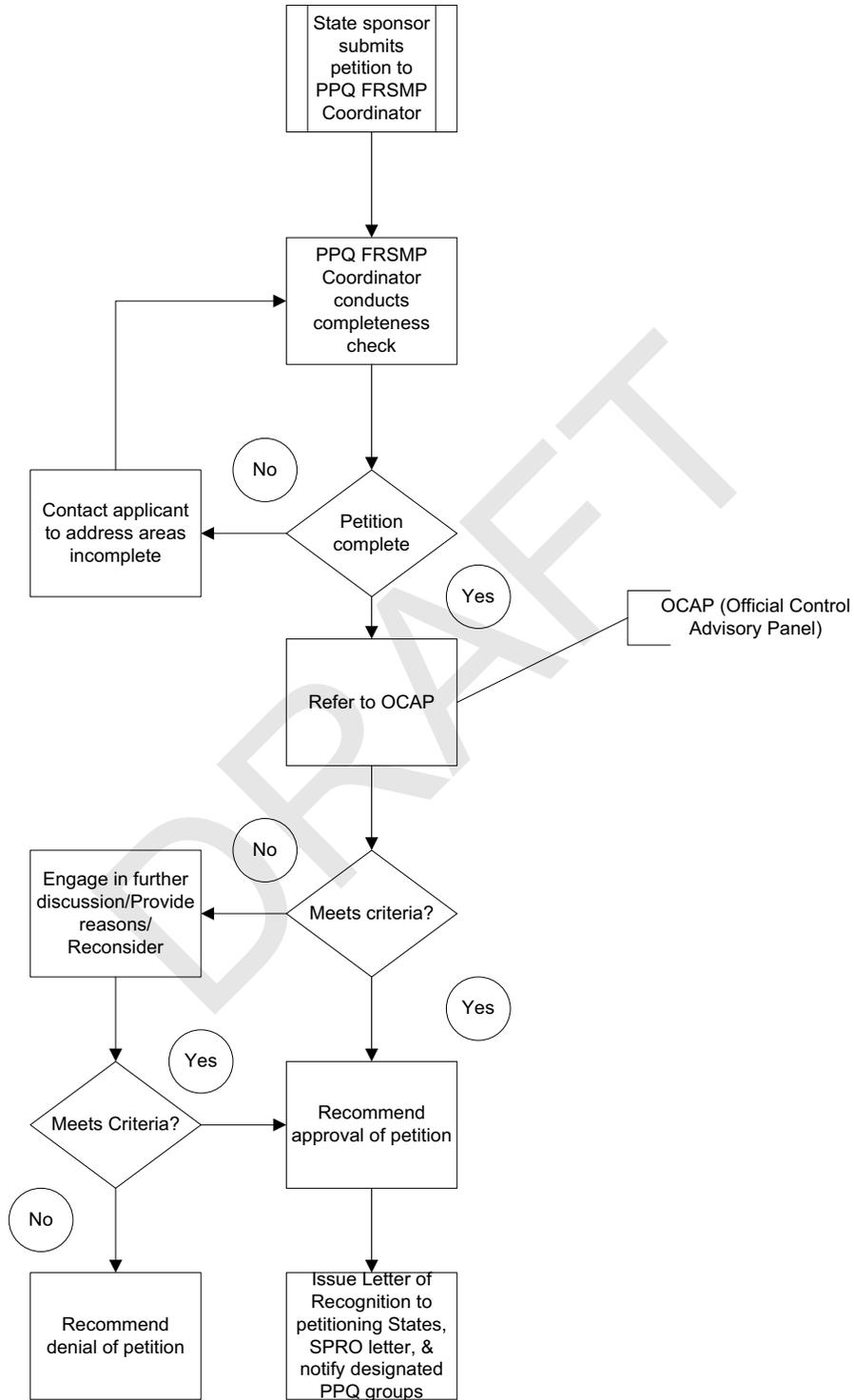


FIGURE 3 FRSMP Internal Process to Evaluate Petitions

General Port of Entry Process

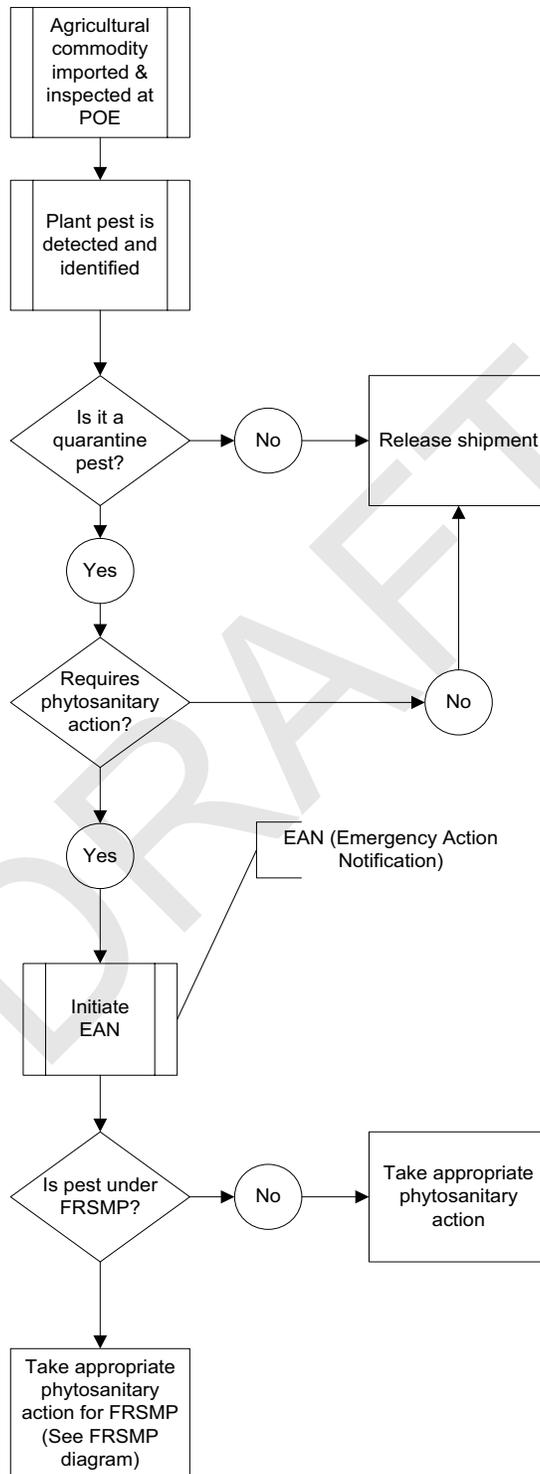


FIGURE 4 FRSM Program Process at Port of Entry

FRSMP Program Flow Diagram

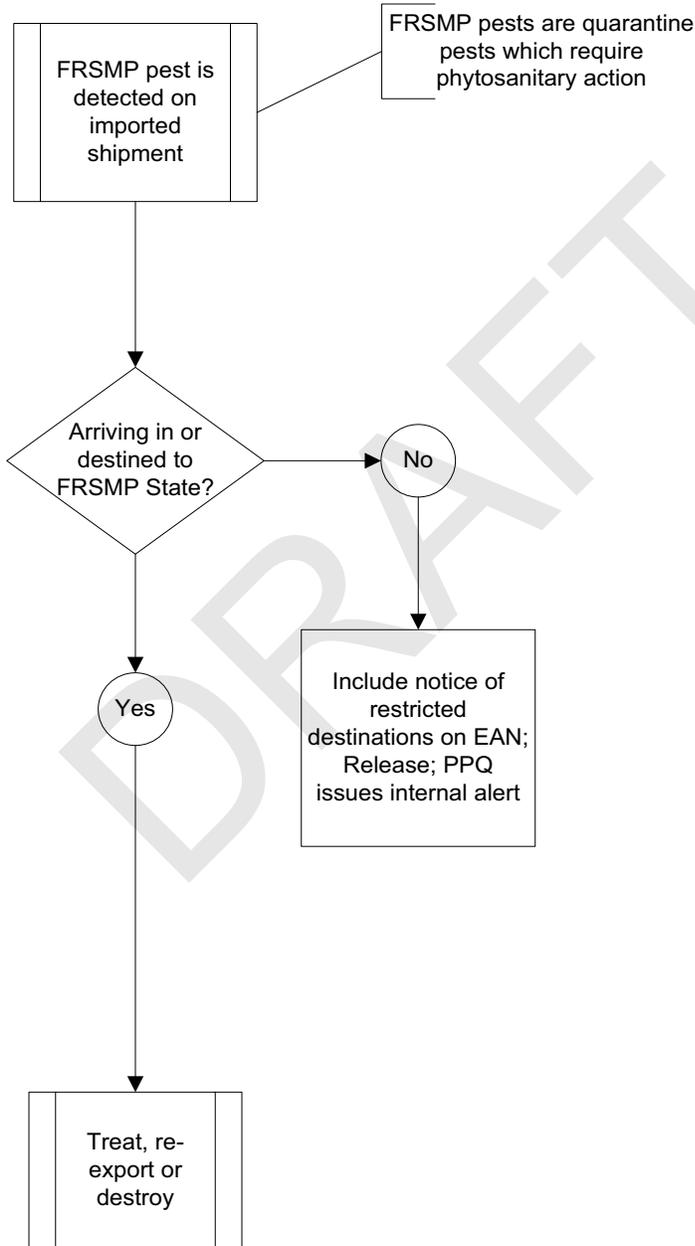


FIGURE 5 FRSMP Program Flow Diagram