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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–019–2]

Certification Program for Imported Articles of *Pelargonium* spp. and *Solanum* spp. To Prevent Introduction of Potato Brown Rot

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur. The requirements of the certification program are designed to ensure that *Ralstonia solanacearum* race 3 biovar 2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. We have determined that the restrictions presently in place do not adequately mitigate the risk that imported articles of *Pelargonium* spp. and *Solanum* spp. could introduce this bacterial strain, which causes potato brown rot, into the United States. This action is necessary to prevent the introduction of this bacterial strain into the United States.

DATES: This interim rule is effective May 24, 2004. We will consider all comments that we receive on or before June 22, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–019–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–019–2.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–019–2'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for propagation.

In an interim rule effective May 16, 2003, and published in the **Federal Register** on May 23, 2003 (68 FR 28115–28119, Docket No. 03–019–1), we amended the regulations by requiring an additional declaration on the phytosanitary certificates that must accompany all articles of *Pelargonium* spp. and *Solanum* spp. imported into the United States. (Articles of *Pelargonium* spp. and *Solanum* spp. imported under the Canadian greenhouse-grown restricted plant program, which are not required to be accompanied by a phytosanitary certificate when they are offered for importation into the United States, are exempt from this requirement.) The interim rule was necessary because recent introductions of *Ralstonia solanacearum* race 3 biovar 2, the bacterium that causes potato brown rot, had shown that articles of *Pelargonium* spp. and *Solanum* spp. can serve as vectors for its transmission. The additional declaration required by the interim rule must state either that the articles of *Pelargonium* spp. and *Solanum* spp. were produced in a production site that has been tested and found to be free of *R. solanacearum* race 3 biovar 2 or that *R. solanacearum* race 3 biovar 2 is not known to occur in the region in which the articles were produced.

Comments on the interim rule were required to be received on or before July 22, 2003. We received four comments by that date, from representatives of industry associations and from a State government. All of the commenters supported the interim rule. Three of the commenters asked the Animal and Plant Health Inspection Service (APHIS) to take additional steps to ensure that imported articles of *Pelargonium* spp. and *Solanum* spp. do not introduce *R. solanacearum* race 3 biovar 2 into the United States.

Two of these commenters urged APHIS to develop a certification program for foreign production sites in countries where *R. solanacearum* race 3 biovar 2 is known to occur that wish to export articles of *Pelargonium* spp. and *Solanum* spp. to the United States. These commenters stated that such a program would greatly reduce the risk of introducing *R. solanacearum* race 3 biovar 2 into the United States via imported articles of *Pelargonium* spp. and *Solanum* spp. We agree with these

commenters. In addition, since our May 2003 interim rule became effective, we have encountered several difficulties that have demonstrated to us that we need to implement a certification program immediately.

As we discussed in the first interim rule, race 3 of the bacterium *R. solanacearum* affects the potato (*Solanum tuberosum L.*) and causes potato brown rot. This race of the bacterium is widely distributed in temperate areas of the world, including some parts of the United States. It causes potatoes to rot, making them unusable and seriously affecting potato yields. The bacterium is extremely difficult to eradicate both because of its many alternate hosts and because of its ability to survive in water. Letting an infected field lie fallow or using alternate, non-potato crops for a growing season is not effective, as the bacterium survives in various common weeds, including *Solanum* species such as nightshade. The bacterium can also be transmitted from infected fields to other fields by streams and runoff.

At least three biovars of *R. solanacearum* race 3 are distinguished on the basis of biochemical properties. Biovar 1, which is currently established in the United States, does not tolerate cold temperatures; its establishment is thus limited to the southern part of the United States. However, biovar 2, which is not present in the United States, is adapted to low temperatures and is found in temperate zones, meaning that it could thrive in the northern States where most U.S. potatoes are produced. If *R. solanacearum* race 3 biovar 2 were to become established in the United States, it would likely have a devastating impact on potato production.

Biovar 1 is currently established in the United States, and we have not established an official control program for it. Therefore, in accordance with international trade agreements, we do not place restrictions on the importation of articles that may be infected with biovar 1. Biovar 2, however, is not established in the United States and is considered a pest of quarantine significance. Therefore, under those same international agreements, we are free to place restrictions on the importation of articles that may be infected with biovar 2.

One approach to preventing the entry of *R. solanacearum* race 3 biovar 2 would be to test articles of *Pelargonium* spp. and *Solanum* spp. that are offered for importation into the United States at the port of entry. For such an approach to be effective, our tests would need to be able to distinguish between the biovars of the bacterium and to identify the presence of *R. solanacearum* race 3 biovar 2. However, there currently exists no standalone, specific test for *R. solanacearum* race 3 biovar 2 that is practical for testing articles of *Pelargonium* spp. and *Solanum* spp. at ports of entry. Therefore, our May 2003 interim rule required that the phytosanitary certificate accompanying imported articles of *Pelargonium* spp. and *Solanum* spp. contain an additional declaration either that the articles were produced in a production site that has been tested and found to be free of *R. solanacearum* race 3 biovar 2, which we believed would be effective due to the fact that production sites can be effectively tested for the bacterium, or that *R. solanacearum* race 3 biovar 2 is not known to occur in the region in which the articles were produced.

At the time our May 2003 interim rule became effective, an emergency program had been initiated to identify and destroy plants in the United States that tested positive for infection with *R. solanacearum* race 3 biovar 2. This program was initiated in February 2003 after *R. solanacearum* race 3 biovar 2 was detected at nursery facilities that had received geraniums from Kenya. The emergency program, which continued beyond the effective date of the interim rule, eradicated the bacterium within the United States. We believe that some of the plants we identified as infected during this effort entered the United States after the effective date of the interim rule, meaning that the additional declarations required by the interim rule do not provide adequate protection against the risk of introduction of *R. solanacearum* race 3 biovar 2 into the United States. It is clear that additional steps should be taken to prevent the introduction of this dangerous bacterium.

Therefore, in this interim rule, we are adding a certification program that must be implemented at production sites in countries where *R. solanacearum* race 3 biovar 2 is known to occur that produce articles of *Pelargonium* spp. and *Solanum* spp. to be offered for importation into the United States.

Certification Program for Production Sites

In this interim rule, we are amending the regulations to require that articles of *Pelargonium* spp. and *Solanum* spp. grown in countries where *R. solanacearum* race 3 biovar 2 is known to occur be produced in accordance with the requirements in § 319.37–5(r)(3), as revised by this interim rule, to be eligible for importation into the United States.

These requirements are designed to ensure that even if *R. solanacearum* race 3 biovar 2 is present in the environment surrounding the production site in which the articles of *Pelargonium* spp. or *Solanum* spp. are produced, the bacterium will not enter the production site. Registration and certification of production sites will allow us to determine the production site from which any imported articles of *Pelargonium* spp. and *Solanum* spp. originated. This will facilitate monitoring of the program and allow for quicker reactions to any problems we detect. Ongoing monitoring is also prescribed to ensure that the certification program is properly implemented and fully effective. The requirements of this certification program, contained in § 319.37–5(r)(3), are described below.

- The national plant protection organization of the country in which the articles are produced (the NPPO) must enter into a bilateral workplan with APHIS. This bilateral workplan must set out conditions for monitoring the production of articles of *Pelargonium* spp. and *Solanum* spp., for enforcement of the requirements in this interim rule, and for the establishment of a trust fund.
- The production site where the articles of *Pelargonium* spp. and *Solanum* spp. intended for export to the United States are produced must be registered with and certified by both APHIS and the NPPO. As part of the certification process, production sites must be initially approved and thereafter visited at least once a year by APHIS and the NPPO to verify compliance with the requirements of this interim rule.
- The production site must conduct ongoing testing for *R. solanacearum* race 3 biovar 2. Only those articles of *Pelargonium* spp. or *Solanum* spp. that have been tested with negative results for the presence of *R. solanacearum* race 3 biovar 2 may be used in production and export. Records of the testing must be kept for two growing seasons and made available to representatives of APHIS and of the NPPO. All testing procedures must be approved by APHIS.

We are currently aware of two acceptable methods for testing production facilities: An enzyme-linked immunosorbent assay (ELISA), which can confirm that no *Ralstonia* spp. bacteria are present, and a polymerase chain reaction (PCR) test that can confirm that no *R. solanacearum* race 3 biovar 2 bacteria are present. Domestic greenhouses tested for *R. solanacearum* race 3 biovar 2 during the recent eradication effort typically used ELISA

to screen potentially symptomatic material; if the material was infected with *Ralstonia* spp., the PCR test was used to determine whether *R. solanacearum* race 3 biovar 2 was present. Other testing methods may be used if APHIS determines that those methods are adequate to confirm that production facilities are free of *R. solanacearum* race 3 biovar 2.

- The production site must be constructed in a manner that ensures that outside water cannot enter the production site. The production site must be surrounded by a 1-meter buffer that is sloped so that water drains away from the production site.
- Dicotyledonous weeds must be controlled both within the production site and around it. The production site and the 1-meter buffer surrounding the production site must be free of dicotyledonous weeds.
- All equipment that comes in contact with articles of *Pelargonium* spp. or *Solanum* spp. within the production site must be adequately sanitized so that *R. solanacearum* race 3 biovar 2 cannot be transmitted between plants or enter from outside the production site via the equipment.
- Production site personnel must adequately sanitize their clothing and shoes and wash their hands before entering the production site to prevent the entry of *R. solanacearum* race 3 biovar 2 into the production site.
- Growing media for articles of *Pelargonium* spp. and *Solanum* spp. must be free of *R. solanacearum* race 3 biovar 2. Growing media and containers for articles of *Pelargonium* spp. and *Solanum* spp. must not come in contact with soil, and soil may not be used as a growing medium.
- Water used in maintenance of the plants at the production site must be free of *R. solanacearum* race 3 biovar 2. The production site must either derive the water from an APHIS-approved source or treat the water with an APHIS-approved treatment before use.
- Growing media at the production site must not come in direct contact with any water source, such as an emitter or a hose end. If a drip irrigation system is used, backflow devices must be installed to prevent any *R. solanacearum* race 3 biovar 2 that may be present from spreading to the rest of the production site through the irrigation system. Ebb and flow irrigation may not be used.
- Production site personnel must be educated regarding the various pathways through which *R. solanacearum* race 3 biovar 2 can be introduced into a production site and must be trained to recognize symptoms of *R. solanacearum* race 3 biovar 2 infection in articles of *Pelargonium* spp. or *Solanum* spp. in the production site.

Articles of *Pelargonium* spp. or *Solanum* spp. produced for export within an approved production site must be handled and packed in a manner adequate to prevent the presence of *R. solanacearum* race 3 biovar 2. The articles must be labeled with information indicating the production site from which the articles originated.

- If *R. solanacearum* race 3 biovar 2 is found in the production site or in consignments from the production site, the production site will be ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States. A production site may be reinstated if a reinspection reveals that the site is free of *R. solanacearum* race 3 biovar 2 and all problems in the production site have been addressed and corrected to the satisfaction of APHIS.
- The phytosanitary certificate of inspection required by § 319.37–4 that accompanies these articles must contain an additional declaration that states ''These articles have been produced in accordance with the requirements in 7 CFR 319.37–5(r)(3).''
- The government of the country in which the articles are produced must enter into a trust fund agreement with APHIS before each growing season. The government of the country in which the articles are produced or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of the requirements of § 319.37–5(r)(3). These costs will include administrative expenses incurred in conducting the services enumerated in § 319.37–5(r)(3) and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. (Specific provisions for making payments to this trust fund may be found in the rule portion of this document.)

We believe the additional requirements in this certification program will prevent the introduction of *R. solanacearum* race 3 biovar 2 into the United States while allowing the continued importation of articles of *Pelargonium* spp. and *Solanum* spp.

Other Comments

One commenter suggested that we consider requiring importers of articles of *Pelargonium* spp. and *Solanum* spp. to post a bond, which would be used to reimburse domestic growers who may be adversely affected by the introduction of *R. solanacearum* race 3 biovar 2 via such articles. We believe that the certification program we are establishing in this interim rule is a more direct and more effective means of ensuring that articles of *Pelargonium* spp. and *Solanum* spp. that are offered for importation will not serve as a pathway for the introduction of *R. solanacearum* race 3 biovar 2.

Two commenters urged APHIS to continue with its review of the nursery stock regulations, to prevent introductions of both *R. solanacearum* race 3 biovar 2 and other plant pests. We agree that this review is essential to safeguarding plant health, and we will continue our work on it.

Other Changes

As discussed above, our May 2003 interim rule required that the phytosanitary certificate accompanying all articles of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* race 3 biovar 2 is not known to occur contain an additional declaration to that effect. In this interim rule, we are amending the regulations established by the May 2003 interim rule to exempt articles of *Solanum* spp. from Canada from this requirement. Canada is the only country in which *R. solanacearum* race 3 biovar 2 is not known to occur that is currently eligible to export articles of *Solanum* spp. to the United States; the importation of articles of *Solanum* spp. from all other countries where *R. solanacearum* race 3 biovar 2 is not known to occur is prohibited in § 319.37–2(a), due to risks posed by other plant pests. Therefore, the burden of the requirement for the additional declaration on the phytosanitary certificate accompanying articles of *Solanum* spp. from countries where *R. solanacearum* race 3 biovar 2 is not known to occur has fallen solely on Canadian exporters of these articles. We do not believe requiring the additional declaration for articles of *Solanum* spp. exported from Canada provides additional protection against the introduction of *R. solanacearum* race 3 biovar 2. Therefore, this interim rule provides an exemption from that requirement for those articles.

The regulations established by our May 2003 interim rule referred to ''production facilities'' where articles were produced for export to the United States. The term we typically use to refer to such entities is ''production site,'' so we have amended the provisions established in our May 2003 interim rule so that they now refer to ''production sites'' rather than ''production facilities.'' In addition, we

have added a definition of the term *production site* to § 319.37–1, *i.e.:* ''A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.'' This is the same definition we provide in § 319.56–1 of our fruits and vegetables regulations, except that we have added greenhouse and screenhouse to the list of examples. We believe this change will improve the clarity of the regulations.

In addition, we have made several editorial changes to the provisions established by our May 2003 interim rule:

- The original regulations referred to ''regions'' where *R. solanacearum* race 3 biovar 2 is not known to occur. The preferred term in this context is ''country.'' We use the term ''country'' in revised § 319.37–5(r).
- The additional declaration required by the original § 319.37–5(r)(2) was required to read ''*Ralstonia solanacearum* race 3 biovar 2 is not known to occur in the country of origin of the articles in this shipment.'' To be consistent with the phrasing of other, similar additional declarations in the regulations, we have shortened this to read ''*Ralstonia solanacearum* race 3 biovar 2 is not known to occur in the country of origin'' in this interim rule.
- We had referred in the original § 319.37–5(r)(2) and (r)(3) to *R. solanacearum* race 3 biovar 2 either being known or not known to occur in the country of origin ''at the time of arrival at the port of first arrival in the United States.'' We do not believe this language is necessary to ensure phytosanitary security; if a consignment of articles was shipped to the United States from a country where *R. solanacearum* race 3 biovar 2 was not known to occur, but where the bacterium was found while the articles were in transit, we would use our authority under the Plant Protection Act to prevent the entry of the articles. Thus, we have omitted that language in revised § 319.37–5(r).
- We had used the term ''plants'' in the additional declaration required by the original § 319.37–5(r)(3), rather than the term ''articles,'' which is the term we used elsewhere in the regulatory text. This interim rule corrects that error.

Immediate Action

Immediate action is necessary to prevent the importation of articles of *Pelargonium* spp. and *Solanum* spp. that come from countries where *R. solanacearum* race 3 biovar 2 is known to occur and that have been produced in production sites that may not be free of that bacterium. Because the importation of these articles may serve as a pathway for the introduction of *R. solanacearum* race 3 biovar 2 into the United States, and because the existing restrictions do not adequately mitigate the risk that imported articles of *Pelargonium* spp. and *Solanum* spp. that are infected with *R. solanacearum* race 3 biovar 2 could introduce this bacterial strain into the United States, allowing the importation of these articles to continue without further restrictions would pose an unacceptable risk of introducing *R. solanacearum* race 3 biovar 2 into the United States.

This rule is being made effective 30 days after publication because importers, exporters, NPPOs, and others will need 30 days to prepare for the changes in operations that will become necessary on the effective date of this rule. Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these circumstances, we find good cause under 5 U.S.C. 553 to make this rule effective 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

In this interim rule, APHIS is amending the regulations to establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur. The requirements of the certification program are designed to ensure that *Ralstonia solanacearum* race 3 biovar 2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. APHIS has determined that the restrictions presently in place do not adequately mitigate the risk that imported articles of *Pelargonium* spp. and *Solanum* spp. could introduce this bacterial strain, which causes potato brown rot, into the United States. This action is necessary to prevent the introduction of this bacterial strain into the United States.

The production site certification program will impact approximately 11 different nurseries. Two of these nurseries are located in Guatemala, three in Mexico, one in China, two in Kenya, and three in Costa Rica. The average cost of upgrading these 11 production sites to comply with the production site requirements in this interim rule has been estimated at approximately $70,000 per site.[1] However, many of these production sites have already upgraded their facilities due to the outbreak of *R. solanacearum* race 3 biovar 2 in early 2003. Thus, to the extent that these upgrades fulfill the production site requirements contained in this rule, compliance costs for some production sites would be lower than this estimate.

Pelargonium (geranium) spp.

Based on growers' receipts, U.S. floriculture and nursery crop sales totaled $14 billion in 2002. Total sales of U.S. geraniums were estimated at $204 million for 2002.[2] The United States imported $44 million worth of cuttings and slips of which geraniums comprised some unknown part.[3] Geraniums are the most popular bedding plant in North America; approximately 20,000 growers cultivate these plants.

APHIS has determined that the 2003 *R. solanacearum* race 3 biovar 2 outbreak occurred when geranium cuttings arrived from Kenya carrying the *R. solanacearum* race 3 biovar 2 bacterium. The *R. solanacearum* race 3 biovar 2 outbreak in 2003 led to the disposal of 1.9 million geraniums; the disposed plants had a total value of approximately $1.5 to $2 million.

Solanum spp.

The genus *Solanum* comprises a large group of both tender and hardy, herbaceous shrubby climbing plants. Several species can be found in North America either growing wild or as decorative plants, but two—potatoes and eggplants—are grown as vegetables. The *R. solanacearum* race 3 biovar 2 bacterium, which is widely distributed

[1] Society of American Florists.

[2] Electronic Outlook Report from the Economic Research Service, Floriculture and Nursery Crops Outlook, September 12, 2002, Alberto Jerardo.

[3] World Trade Atlas 2002, U.S. imports of unrooted cuttings and slips of plants, code # 0602100000.

in temperate regions, causes the disease potato brown rot. In 2002, 1.3 million acres of U.S. potatoes were harvested; the potato harvest was valued at $3.2 billion, and $123 million worth of U.S. potatoes were exported to the rest of the world.[4] The value of potato fields infected with *R. solanacearum* race 3 biovar 2 could be drastically reduced if not completely eliminated. The bacterium causes potatoes to have unsightly brown rings in the vegetable, making them worthless for human consumption. Most likely, U.S. producers with fields infected with this bacterium would be required to quarantine their fields and destroy the potatoes to prevent the spread of the disease.

The United Kingdom has experienced five outbreaks of potato brown rot that have caused minor impacts to overall potato production.[5] Certain areas in South America have seen potato losses from 5 percent to 100 percent due to potato brown rot. If potato brown rot were to become established in the United States, the potato industry could potentially lose hundreds of millions of dollars due to direct losses and indirect losses from quarantines and diminished export markets.

This interim rule will allow imports of articles of *Pelargonium* spp. and *Solanum* spp. to continue as long as the articles have been produced in accordance with the certification program requirements in § 319.37–5(r)(3) and are accompanied by a phytosanitary certificate stating that they have been produced in accordance with these requirements. This interim rule will help safeguard U.S. agriculture against the possible introduction of *R. solanacearum* race 3 biovar 2.

Impact on Small Entities

The Regulatory Flexibility Act requires that APHIS consider the economic impact of its rules on small entities. The Small Business Administration (SBA) classifies nursery and tree production businesses as small entities (North American Industry Classification System category 111421) if their annual sales receipts are $750,000 or less. In 2001, 1,691 floriculture operations out of a total of 10,965 operations had sales of $500,000 or more.[6] Therefore, at least 85 percent of all floriculture operations can be classified as small; it is likely that an even higher percentage can be classified as small due to the $250,000 discrepancy.

The costs of complying with the production site certification requirements are not expected to significantly affect costs or revenues of small-entity floriculture operators in the United States. Some portion of the cost of site certification may be passed onto U.S. buyers of geranium cuttings in the form of higher prices, but this effect is expected to be minor.

The rule will have a negative impact on offshore operations due to the costs involved in complying with the additional nursery site certification requirements. Experts in the industry have estimated that updating the 11 offshore nursery sites will cost approximately $770,000 total, or $70,000 per site. It is difficult to determine the impact without knowing average revenues generated at these 11 nursery sites.

While the costs for production sites to comply with the requirements will result in a negative impact on offshore production sites, the requirements will help ensure that future nursery shipments entering the United States are free of *R. solanacearum* race 3 biovar 2. The 2003 *R. solanacearum* race 3 biovar 2 outbreak alone cost the floriculture industry $1.5 to $2 million in geranium plant losses. The *R. solanacearum* race 3 biovar 2 outbreak could have jeopardized not only the entire U.S. geranium industry, which is estimated to be worth $204 million per year, but also the potato industry, which is estimated to be worth $3.2 billion per year, if it had not been contained and eradicated.[7] It is evident that the potential benefits of certifying offshore production sites that produce *Pelargonium* spp. and *Solanum* spp. outweigh the costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0246 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03–019–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 03–019–2 and send your comments within 60 days of publication of this rule.

This interim rule establishes a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur. In order to comply with the requirements of the certification program, exporting production sites and importers will need to obtain the necessary additional declaration on the phytosanitary certificate accompanying the imported articles of *Pelargonium* spp. and *Solanum* spp. and submit documentation for the compliance agreement and trust fund required by this interim rule. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic,

[4] National Agricultural Statistical Service (NASS) data on U.S. potato production, 2002; Foreign Agricultural Service data on potato exports, 2002.

[5] British Department of Environment, Food and Rural Affairs, Service Delivery Unit, Plant Health Division.

[6] NASS, Agricultural Statistics Board, U.S. Department of Agriculture, 2001 Floriculture Crops.

[7] Electronic Outlook Report from the Economic Service, Floriculture and Nursery Crops Outlook, September 12th, 2002, Alberto Jerardo; and NASS data U.S. potato production, 2002, along with FAS data on potato exports 2002.

mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5049 hours per response.

Respondents: Growers and State plant regulatory officials.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 67.33.

Estimated annual number of responses: 1,010.

Estimated total annual burden on respondents: 510 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.37–1, a new definition of *production site* is added in alphabetical order to read as follows:

§ 319.37–1 Definitions.

* * * * *

Production site. A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.

* * * * *

■ 3. In § 319.37–5, paragraph (r) and the OMB control number citation at the end of the section are revised to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(r) Any restricted article of *Pelargonium* spp. or *Solanum* spp. presented for importation into the United States may not be imported unless it meets the following requirements:

(1) Any restricted article of *Pelargonium* spp. or *Solanum* spp. imported from Canada under the provisions of the greenhouse-grown restricted plant program as described in § 319.37–4(c) must be presented for importation at the port of first arrival in the United States with a certificate of inspection in the form of a label in accordance with § 319.37–4(c)(1)(iv).

(2) For any article of *Pelargonium* spp. or *Solanum* spp. that does not meet the requirements of paragraph (r)(1) of this section and is from a country where *Ralstonia solanacearum* race 3 biovar 2 is not known to occur, the phytosanitary certificate of inspection required by § 319.37–4 must contain an additional declaration that states "*Ralstonia solanacearum* race 3 biovar 2 is not known to occur in the country of origin''; *Provided,* that this additional declaration is not required on the phytosanitary certificate of inspection accompanying articles of *Solanum* spp. from Canada that do not meet the requirements of paragraph (r)(1) of this section.

(3) Any article of *Pelargonium* spp. or *Solanum* spp. that is from a country where *Ralstonia solanacearum* race 3 biovar 2 is known to occur must meet the following requirements:

(i) The national plant protection organization of the country in which the articles are produced (the NPPO) must have entered into a bilateral workplan with APHIS. This bilateral workplan must set out conditions for monitoring the production of articles of *Pelargonium* spp. and *Solanum* spp., for enforcement of the requirements of this paragraph (r)(3), and for the establishment of a trust fund as provided for in paragraph (r)(3)(xv) of this section.

(ii) The production site where the articles of *Pelargonium* spp. and *Solanum* spp. intended for export to the United States are produced must be registered with and certified by both APHIS and the NPPO. As part of the certification process, production sites must be initially approved and thereafter visited at least once a year by APHIS and the NPPO to verify compliance with the requirements of this paragraph (r)(3).

(iii) The production site must conduct ongoing testing for *R. solanacearum* race 3 biovar 2. Only those articles of *Pelargonium* spp. or *Solanum* spp. that have been tested with negative results for the presence of *R. solanacearum* race 3 biovar 2 may be used in production and export. Records of the testing must be kept for two growing seasons and made available to representatives of APHIS and of the NPPO. All testing procedures must be approved by APHIS.

(iv) The production site must be constructed in a manner that ensures that outside water cannot enter the production site. The production site must be surrounded by a 1-meter buffer that is sloped so that water drains away from the production site.

(v) Dicotyledonous weeds must be controlled both within the production site and around it. The production site and the 1-meter buffer surrounding the production site must be free of dicotyledonous weeds.

(vi) All equipment that comes in contact with articles of *Pelargonium* spp. or *Solanum* spp. within the production site must be adequately sanitized so that *R. solanacearum* race 3 biovar 2 cannot be transmitted between plants or enter from outside the production site via the equipment.

(vii) Production site personnel must adequately sanitize their clothing and shoes and wash their hands before entering the production site to prevent the entry of *R. solanacearum* race 3 biovar 2 into the production site.

(viii) Growing media for articles of *Pelargonium* spp. and *Solanum* spp. must be free of *R. solanacearum* race 3 biovar 2. Growing media and containers for articles of *Pelargonium* spp. and *Solanum* spp. must not come in contact with soil, and soil may not be used as a growing medium.

(ix) Water used in maintenance of the plants at the production site must be free of *R. solanacearum* race 3 biovar 2. The production site must either derive the water from an APHIS-approved source or treat the water with an APHIS-approved treatment before use.

(x) Growing media at the production site must not come in direct contact with any water source, such as an

emitter or a hose end. If a drip irrigation system is used, backflow devices must be installed to prevent any *R. solanacearum* race 3 biovar 2 that may be present from spreading to the rest of the production site through the irrigation system. Ebb and flow irrigation may not be used.

(xi) Production site personnel must be educated regarding the various pathways through which *R. solanacearum* race 3 biovar 2 can be introduced into a production site and must be trained to recognize symptoms of *R. solanacearum* race 3 biovar 2 infection in articles of *Pelargonium* spp. or *Solanum* spp. in the production site.

(xii) Articles of *Pelargonium* spp. or *Solanum* spp. produced for export within an approved production site must be handled and packed in a manner adequate to prevent the presence of *R. solanacearum* race 3 biovar 2. The articles must be labeled with information indicating the production site from which the articles originated.

(xiii) If *R. solanacearum* race 3 biovar 2 is found in the production site or in consignments from the production site, the production site will be ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States. A production site may be reinstated if a reinspection reveals that the production site is free of *R. solanacearum* race 3 biovar 2 and all problems in the production site have been addressed and corrected to the satisfaction of APHIS.

(xiv) The phytosanitary certificate of inspection required by § 319.37–4 that accompanies these articles must contain an additional declaration that states ''These articles have been produced in accordance with the requirements in 7 CFR 319.37–5(r)(3).''

(xv) The government of the country in which the articles are produced must enter into a trust fund agreement with APHIS before each growing season. The government of the country in which the articles are produced or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (r)(3) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (r)(3) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of the country in which the articles are produced or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of the country in which the articles are produced or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of the country in which the articles are produced or its designated representative or held on account until needed.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0176, 0579–0221, and 0579–0246.)

Done in Washington, DC, this 20th day of April, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–9262 Filed 4–22–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV04–979–1 FR]

Melons Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Melon Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.06 to $0.09 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning on October 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an