List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–3, paragraph (c), under the heading New Jersey, the entry for Hudson County is removed and the entry for Middlesex and Union Counties is revised to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

New Jersey

Middlesex and Union Counties. That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of St. Georges Avenue and Wood Avenue; then east on Wood Avenue to Curtis Street; then north on Curtis Street to East Baltimore Avenue; then east on East Baltimore Avenue to Dill Avenue; then north on Dill Avenue to Grant Street; then southeast on Grant Street to Alberta Avenue; then northeast on Alberta Avenue to County Road 616 (Park Avenue); then southeast on County Road 616 (Park Avenue) to U.S. Route 1; then north on U.S. Route 1 to Allen Street; then southeast on Allen Street to the east side of the New Jersey Turnpike right-of-way; then south along the east side of the New Jersey Turnpike right-of-way to Marshes Creek; then southeast along Marshes Creek to the Rahway River; then west along the south side of the Rahway River to Cross Creek; then south along Cross Creek through the wetlands to Peter J. Sica Industrial Drive; then east and south on Peter J. Sica Industrial Drive to Roosevelt Avenue (State Route 602); then west on Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest on Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue; then north on St. Georges Avenue to the point of beginning.

* * * * *

Done in Washington, DC, this 18th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–21169 Filed 10–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–019–3]

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: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the regulations by establishing a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 (R3B2) is known to occur. The interim rule prohibited the importation of articles of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur unless the articles are produced in accordance with the certification program. This final rule amends the regulations by modifying some of the requirements of the certification program to make them clearer and more flexible, by providing for the establishment of areas that are free of *R. solanacearum* R3B2 within countries where the bacterium is known to occur, and by exempting imported seeds of *Pelargonium* spp. and *Solanum* spp. from all requirements related to *R. solanacearum* R3B2. The requirements of the certification program are designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. This certification program is necessary to prevent the introduction of this bacterial strain into the United States.

EFFECTIVE DATE: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6653.

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 that the phytosanitary certificates that must accompany all articles of *Pelargonium* spp. and *Solanum* spp. imported into the United States contain an additional declaration. (Articles of *Pelargonium* spp. and *Solanum* spp. imported under the Canadian greenhouse-grown restricted plant program in § 319.37–4(c), 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 May 2003 interim rule was necessary because introductions of *R. solanacearum* R3B2, 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 May 2003 interim rule had to state either that the articles of *Pelargonium* spp. and *Solanum* spp. were produced in a production site that had been tested and found to be free of *R. solanacearum* R3B2 or that *R. solanacearum* R3B2 was not known to occur in the region in which the articles were produced.

We received comments on that interim rule requesting that we establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where *R. solanacearum* R3B2 is known to occur.

In addition, an introduction of the bacterium into the United States via infected geranium cuttings (*Pelargonium* spp.) was confirmed in February 2003; during the subsequent eradication effort, APHIS found some infected articles of *Pelargonium* spp.

that we believed were imported after the effective date of the May 2003 interim rule. This indicated to us that additional mitigations against the risk of introducing *R. solanacearum* R3B2 via imported articles of *Pelargonium* spp. and *Solanum* spp. were necessary.

Accordingly, in a subsequent interim rule effective May 24, 2004, and published in the **Federal Register** on April 23, 2004 (69 FR 21941–21947, Docket No. 03–019–2), we amended the regulations by requiring that articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where *R. solanacearum* R3B2 is known to occur be grown in accordance with a certification program. The certification program, which includes production site construction requirements, testing requirements, and operational requirements, is designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States via the importation of articles of *Pelargonium* spp. and *Solanum* spp. The interim rule also required that imported articles of *Pelargonium* spp. and *Solanum* spp. from countries where the bacterium *R. solanacearum* R3B2 is known to occur be accompanied by a phytosanitary certificate with an additional declaration stating that the articles were produced in accordance with the requirements of the certification program. We took this action based on our determination that the restrictions that had been added to the regulations in the May 2003 interim rule did not adequately mitigate the risk that imported articles of *Pelargonium* spp. and *Solanum* spp. could introduce this bacterial strain into the United States.

We solicited comments concerning the April 2004 interim rule for 60 days ending June 22, 2004. We received 10 comments by that date. They were from State and foreign plant protection organizations, nursery stock growers, industry associations, and university researchers. We have carefully considered all of the comments we received. They are discussed below by topic.

General Comments

Two commenters asserted that the available scientific evidence did not support placing any restrictions on the importation of articles of *Pelargonium* spp. and *Solanum* spp. to prevent the introduction of *R. solanacearum* R3B2, further claiming that the decision to establish the certification program in the April 2004 interim rule was driven by politics rather than science. One of these commenters also stated that there is no evidence that articles of *Pelargonium* spp. that are infected with *R. solanacearum* R3B2 pose a threat to the environment in general or potatoes in particular, noting that the recent introductions of the bacterium that had prompted our interim rules had not resulted in any introductions of *R. solanacearum* R3B2 into the environment. (Potatoes were identified in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in both interim rules as the *Solanum* crop that could experience the greatest magnitude of negative economic effects if *R. solanacearum* R3B2 was introduced into the United States.)

The Animal and Plant Health Inspection Service (APHIS) considers *R. solanacearum* R3B2 to be a quarantine pest. The bacterium is not known to occur in the United States; 10 years of field surveys undertaken by APHIS and by State governments have failed to discover any evidence of *R. solanacearum* R3B2 in the environment.

As mentioned above, an introduction of the bacterium into the United States via infected geranium cuttings (*Pelargonium* spp.) was confirmed in February 2003. The bacterium was subsequently eradicated; more than 2.1 million plants at 471 greenhouses throughout the United States were destroyed as part of the eradication effort. The eradication effort was, as one of the commenters noted, successful at preventing the introduction of *R. solanacearum* R3B2 into the wider U.S. environment. The survey procedures used to make this determination are described in detail in the 2004 New Pest Response Guidelines (Action Plan) issued in response to the introduction of *R. solanacearum* R3B2 into the United States.[1]

Experiences in other countries suggest that if *R. solanacearum* R3B2 were to become established in the United States, it would have a significant impact on U.S. potato production; the bacterium causes potatoes to rot through, making them unusable and seriously affecting potato yields. In addition, if *R. solanacearum* R3B2 were to be introduced into the U.S. environment, the bacterium would be 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 a means of eradicating *R. solanacearum* R3B2, 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. Therefore, it is imperative that APHIS implement measures restrictive enough to prevent *R. solanacearum* R3B2 from being introduced into the United States via the importation of potentially infected articles. The requirements of the certification program are designed to meet that goal.

Typically, APHIS simply prohibits the importation of articles of nursery stock that pose a risk of introducing plant pathogens such as *R. solanacearum* R3B2 into the United States, as plant pathogens are substantially more difficult to detect and neutralize than other plant pests. However, as indicated in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in the April 2004 interim rule, the United States imports substantial quantities of *Pelargonium* spp., and we did not want to halt this trade if there was an effective alternative. We believe the requirements of the certification program strike a balance by allowing continued importation of articles of *Pelargonium* spp. and *Solanum* spp. but ensuring that such importation does not introduce *R. solanacearum* R3B2 into the United States.

One commenter asserted that the requirements of the certification program are identical to the requirements of the Minimum Sanitation Protocols for Offshore Geranium Cutting Production that APHIS issued in response to the February 2003 introduction of *R. solanacearum* R3B2 via imported geranium cuttings.[2] The commenter asked what assurance we have that the certification program will be effective, since some infected geranium cuttings appeared to have entered the United States after the Minimum Sanitation Protocols were issued.

We believe that the apparent entry of infected geranium cuttings after the Minimum Sanitation Protocols were issued was due to the failure of one importer to properly implement the Minimum Sanitation Protocols, rather than a deficiency in the protocols themselves. (The Minimum Sanitation

[1] This document may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/ep/ralstonia/rasltoniaactionplanv4web.pdf.* Copies of all documents related to APHIS' response to the introduction of *R. solanacearum* R3B2 into the United States may also be requested from the person listed under **FOR FURTHER INFORMATION CONTACT.**

[2] The Minimum Sanitation Protocols for Offshore Geranium Cutting Production may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/ep/ralstonia/ralstoniaworkplan.pdf.*

Protocols contain requirements that are similar to, but more specific than, the requirements of the certification program.) We continue to believe that the requirements of the certification program will be effective at preventing the introduction of *R. solanacearum* R3B2 into the United States if they are properly implemented under the oversight of APHIS and the national plant protection organization (NPPO) of the country of origin of the imported articles. Adding the certification program to the regulations via our April 2004 interim rule helped to ensure that any production requirements imposed by APHIS are properly implemented. We are making no changes to the April 2004 interim rule in response to this comment.

One commenter stated that the workplans developed among APHIS, the NPPOs of exporting countries, and the owners or operators of production sites need to address operational details of production under the certification program more specifically than the regulations established by the April 2004 interim rule do.

We agree with this comment. The regulations describing the certification program are intended to establish the necessary performance standards, while the workplans cited by the commenter are intended to describe in greater detail what needs to be done at a specific production site or sites to meet these standards. We have prepared a workplan for this program by combining the Minimum Sanitation Protocols for Offshore Geranium Cutting Production with a testing and sampling plan and a signature page, which is signed by APHIS and the NPPO of each exporting country. The workplan requires the inspection personnel of the exporting country's NPPO to work in conjunction with APHIS when appropriate, and to provide the oversight needed to demonstrate that each production site will carry out the procedures, sampling, and testing described in the workplan. Additionally, the workplan requires the exporting country's NPPO to provide the proper phytosanitary certification of all host material, which includes the additional declaration ''Tested and found free of Ralstonia solanacearum race 3 biovar 2.''

One commenter suggested that APHIS establish a Web site that would provide updates to the public whenever the best management practices associated with growing articles of *Pelargonium* spp. and *Solanum* spp. are changed.

APHIS maintains documents pertaining to *R. solanacearum* R3B2 on the Plant Protection and Quarantine Web page, at *http://www.aphis.usda.gov/ppq/ep/ralstonia/index.html.* That Web site hosts the documents cited in this final rule related to the production of articles of *Pelargonium* spp. and *Solanum* spp. for export to the United States in countries or areas where *R. solanacearum* R3B2 is known to occur, along with more general information about APHIS efforts to prevent the introduction of the bacterium into the United States. We will continue to update that Web page to reflect advances in scientific knowledge and amendments to our regulations regarding *R. solanacearum* R3B2, including changes to the best management practices associated with growing articles of *Pelargonium* spp. and *Solanum* spp.

Characteristics of R. solanacearum R3B2

The April 2004 interim rule included information about the means by which *R. solanacearum* R3B2 can spread and the reasons it is difficult to eradicate. This information is presented above under the heading ''General Comments'' in the context of discussing why it was necessary to restrict the importation of articles of articles of *Pelargonium* spp. and *Solanum* spp.; it served a similar function in the interim rule. We received several comments concerning this information.

One commenter stated that the spread of *R. solanacearum* R3B2 from field to field via run-off water had never been substantiated to the commenter's knowledge in Europe. This commenter cited establishment in wild bittersweet (*Solanum duclamara*) and subsequent irrigation with contaminated surface water as of more importance. Another commenter stated that no scientific evidence suggests that *R. solanacearum* R3B2 can survive in water.

Once *R. solanacearum* R3B2 is introduced into the environment, its primary means of spread is via contaminated run-off water or irrigation water. This has been proven by experiences in the United Kingdom (UK).[3] Furthermore, the first commenter provided additional evidence that suggests it is necessary to address the risk of transmission of the bacterium into a production site via contaminated water.

In response to the second commenter's assertion, the bacterium does not survive indefinitely in water, as it requires food to metabolize, but it can survive for the limited time required for plant-to-plant transmission via run-off water.

One commenter stated that *Pelargonium* spp. are not preferred hosts for *R. solanacearum* R3B2, so crop losses in *Pelargonium* spp. due to the bacterium are minimal and can be easily eliminated by proper production practices. This commenter also stated that *R. solanacearum* R3B2 rarely results in substantial yield losses in potatoes in cooler climates, and a proper control program can cause it to occur only sporadically and easily eliminate it from the production column.

We agree with the commenter's statement regarding the host status of *Pelargonium* spp. for *R. solanacearum* R3B2; however, since infected articles of *Pelargonium* spp. have introduced *R. solanacearum* R3B2 into the United States, necessitating eradication efforts that were costly both to APHIS and to U.S. nursery stock growers, we believe it is necessary to regulate their importation from countries where *R. solanacearum* R3B2 is known to occur.

With regard to the commenter's assertions about the potential impact of *R. solanacearum* R3B2 on potato crops, it should be reiterated that *R. solanacearum* R3B2 is a quarantine pest that is not known to occur in the United States. It can be difficult to predict the impact of a plant pest in a new environment. In addition, if *R. solanacearum* R3B2 were introduced into the United States, APHIS would likely place a quarantine on any areas of the United States where the bacterium was known to occur, which would result in increased production costs for U.S. producers of articles of *Pelargonium* spp. and *Solanum* spp. and the possible loss of export markets for such articles. As described in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in both interim rules, losses for U.S. potato producers due to quarantines and reduced export markets could potentially amount to hundreds of millions of dollars in the event of an introduction of *R. solanacearum* R3B2 into the United States. We do not believe that the information cited by the commenter warrants reconsideration of *R. solanacearum* R3B2's status as a quarantine pest or warrants relaxing any of the restrictions on the importation of articles of *Pelargonium* spp. and *Solanum* spp. that we added to the regulations in the two interim rules.

One commenter felt that our use of the term ''dangerous'' to describe *R. solanacearum* R3B2 and our statement

[3] Summarized by John Elphinstone, Central Science Laboratory, Department for Environment, Food, and Rural Affairs, York, UK, in ''Monitoring and control of the potato brown rot bacterium (Ralstonia solanacearum) in the UK.'' This presentation was given at ''Planning for *Ralstonia solanacearum* R3B2 Detection on Solanaceous Crops in the U.S.,'' meeting held at APHIS headquarters on June 19, 2003.

that an introduction of *R. solanacearum* R3B2 into the United States ''could be devastating to U.S. potato production'' were unnecessarily inflammatory.

Our use of the term ''dangerous'' was intended to indicate that *R. solanacearum* R3B2 has the potential to cause economic damage to crops in the United States if it is introduced and spreads to the wider environment. Similarly, our use of the term ''devastating'' to describe the potential impact of *R. solanacearum* R3B2 on U.S. potato production was intended to reflect the fact that 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. (These possibilities were discussed in the analysis under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in both interim rules.) To address this commenter's concern, in the preamble to this final rule, we will refer more directly to the potential economic impact of *R. solanacearum* R3B2 when discussing the importance of preventing its introduction into the United States. No changes to the regulations established by the two interim rules are necessary as a result of this comment.

We also received comments regarding two other characteristics of *R. solanacearum* R3B2.

First, both interim rules restricted the importation of articles of *Pelargonium* spp. and *Solanum* spp.; the term ''articles'' is understood to refer to both plants and all propagative material that can be derived from a plant, including seed. Two commenters disputed the implied assertion that *R. solanacearum* R3B2 could be transmitted via seed and asked us to exempt seed of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium exists from the requirements established by the two interim rules.

The commenters are correct that *R. solanacearum* R3B2 is not a seedborne pathogen and that we should, therefore, exempt seeds from the requirements for imported articles of *Pelargonium* spp. and *Solanum* spp. that we established in § 319.37–5(r) in the two interim rules. We have done so in this final rule by adding a statement to the introductory text of § 319.37–5(r) stating that seeds are not subject to that paragraph's requirements. (We are not amending the entries for ''*Pelargonium* spp. not meeting the conditions for importation in § 319.37–5(r)'' and ''*Solanum* spp. not meeting the conditions for importation in § 319.37–5(r)'' in the table of prohibited articles in § 319.37–2(a), because the entries for prohibited articles in that table include seed only if specifically mentioned.)

Although we are exempting seed from the requirements of paragraph § 319.37–5(r) in this final rule, we will refer simply to ''articles of *Pelargonium* spp. and *Solanum* spp.'' in the following discussion of comments for ease of reading.

Second, both interim rules also limited the articles that were regulated to those of *Pelargonium* spp. and *Solanum* spp. One commenter asked if the host range of *R. solanacearum* R3B2 was limited to articles of *Pelargonium* spp. and *Solanum* spp., and stated that if it is not, the importation of asexual propagative material from the entire host range of the bacterium should be restricted.

We agree that other plants can serve as hosts for *R. solanacearum* R3B2, and we are reviewing the available evidence regarding plants that may serve as hosts for *R. solanacearum* R3B2. If necessary, we will conduct further rulemaking to address any risks their importation may pose. Such an action would afford the public, and foreign producers of these species in particular, an opportunity to comment on the suitability and effectiveness of the certification program's requirements for production of those species. Thus, we are making no changes to the regulations established by the two interim rules in response to this comment.

R. solanacearum in the United States

In the April 2004 interim rule, we made the following statements about the presence of *R. solanacearum* in the United States:

''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 cannot 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.''

We received several comments regarding these statements.

One commenter stated that it is not *R. solanacearum* race 3 biovar 1 that does not tolerate cold temperatures and that is present in the United States, but rather *R. solanacearum* race 1 biovar 1.

At the time the commenter submitted this comment, during the 60 days after the publication of the April 2004 interim rule, the commenter was correct. The races of *R. solanacearum* are distinguished on the basis of their primary hosts; race 1 causes bacterial wilt on tomatoes, while race 3 causes brown rot on potatoes. Both race 1 and race 3 can infect hosts other than their primary hosts. *R. solanacearum* race 1 biovar 1 is established in the southeast United States.

A strain of *Ralstonia* was discovered in samples from a greenhouse and pond in the State of Florida in September 2004. It was eventually identified as *R. solanacearum* biovar 1, but testing has to this point produced conflicting results as to what race of the bacterium is present in the samples. Regardless, APHIS is not treating any *R. solanacearum* of biovar 1 as a quarantine pest.

In the absence of further information regarding the strain of *R. solanacearum* that we discovered in Florida in September 2004, we will refer to the strain of *R. solanacearum* that is present in the United States as race 1 biovar 1 in the preamble of this final rule. However, because the interim rules addressed *R. solanacearum* R3B2 and the bacterium present in Florida has been determined not to be a biovar 2 *R. solanacearum* bacterium, no changes to the regulations established by the two interim rules are necessary as a result of this comment.

Two commenters asked APHIS to present evidence that *R. solanacearum* R3B2 is not present in the United States. These commenters stated that U.S. potato growers are not required to test wilted plants for *R. solanacearum* R3B2, which means that it is unknown whether *R. solanacearum* R3B2 exists in U.S. potatoes. Another commenter took issue with our statement that *R. solanacearum* R3B2 is not present in the United States, since APHIS conducted a recent eradication effort against the bacterium, and suggested that we state

instead that we are attempting to eradicate *R. solanacearum* R3B2 within the United States.

All of the available data indicate that our eradication effort has been successful at preventing *R. solanacearum* R3B2 from becoming established within the United States. Data from surveys conducted both by APHIS and by State governments indicate that *R. solanacearum* R3B2 is not present in the United States.

Potato growers within the United States are not required by APHIS to test their wilted plants for *R. solanacearum* R3B2 because the bacterium is not known to occur in the United States. If *R. solanacearum* R3B2 were known to occur in the United States, we would establish a domestic quarantine in order to pursue its eradication or containment. Such a quarantine would be likely to include a requirement that potato growers submit wilted plants for testing.

Many States have potato certification programs to ensure freedom from disease and to improve marketability for their potato crops. These State programs require potato producers to test for disease organisms that may occur in the production cycle if the potato plants show symptoms such as wilting. These programs do not specifically seek to identify *R. solanacearum* R3B2 infections because the bacterium is not known to occur in the United States, but the presence of symptoms caused by *R. solanacearum* R3B2 infection would indicate that a disease is present, and the potatoes would be subsequently tested for diseases, including *R. solanacearum* R3B2, until the cause of the symptoms was determined.

As indicated above, survey data indicate that *R. solanacearum* R3B2 is not present in the United States; these data are what led us to the conclusion that *R. solanacearum* R3B2 is not known to occur in the United States.

One commenter cited three publications that the commenter believed could indicate that *R. solanacearum* R3B2 is present in the United States:

• In a 1979 finding of *R. solanacearum* drawn from *Pelargonium* x *hortorum* in the United States,[4] the race and biovar of the bacterium were unclear, but pathogenicity tests showed that the isolates from the plant failed to cause disease on tobacco, which the commenter asserted was typical of *R. solanacearum* R3B2. However, this finding would also be consistent with *R. solanacearum* race 1 biovar 1, which APHIS has acknowledged is established in the United States. Therefore, no definitive statement about the presence of *R. solanacearum* R3B2 in the United States can be made based on this finding.

• The commenter pointed out that *R. solanacearum* R3B2 was found on *Pelargonium zonale* in Wisconsin in 1999.[5] However, the bacterium was found only in greenhouses; APHIS eradicated the bacterium after it was found, and there is no evidence that it was transmitted into the wider U.S. environment.

• The commenter also noted that *R. solanacearum* race 1 biovar 1 has been found on *P. zonale* in Ohio.[6] *R. solanacearum* race 1 biovar 1, as noted above, is established in the United States, and APHIS has not established an official control program for it. The interim rules placed restrictions on the importation of articles of *Pelargonium* spp. and *Solanum* spp. to prevent the introduction of *R. solanacearum* R3B2.

This commenter also asked for information on official control of *R. solanacearum* in the United States. As described above, *R. solanacearum* race 1 biovar 1 is established in the United States, and APHIS has not established an official control program for it, nor have we established an official control program for any other biovar of race 1. We do not have an official control program for *R. solanacearum* R3B2 because that strain of the bacterium is not known to occur in the United States. Races 2, 4, and 5 are also not known to occur in the United States. As mentioned earlier in this document, we are not treating the *R. solanacearum* biovar 1 bacterium found in Florida as a quarantine pest.

Two commenters stated that they were not aware of any evidence that *R. solanacearum* R3B2 could survive in a northern climate. Another commenter argued that our assertion that *R. solanacearum* R3B2 is adapted to low temperatures may not be justified by the available evidence and suggested that we state instead that R3B2 ''appears to be adapted to lower temperatures.''

Janse (1996) indicates that R3B2 is, in fact, adapted to low temperatures.[7] If we become aware of any new research disputing the existing evidence, we will evaluate it and, if necessary, update the regulations.

Distribution of R. solanacearum in Other Countries

In the May 2003 interim rule, we listed the following countries as countries where *R. solanacearum* R3B2 is not known to occur: Algeria, Austria, Belarus, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Israel, Italy, Latvia, Lithuania, Moldavia, Morocco, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, and Ukraine. (We did not provide this list in the April 2004 interim rule; one commenter on that interim rule asked that we provide it here.) Two comments on the April 2004 interim rule raised issues related to this list.

The April 2004 interim rule exempted articles of *Solanum* spp. from Canada from the requirement that the phytosanitary certificate accompanying articles of *Solanum* spp. must contain an additional declaration; Canada is the only country allowed to export articles of *Solanum* spp. other than true seed to the United States, as the importation of *Solanum* spp. other than seed from other countries is prohibited due to other disease risks. One commenter asked whether *R. solanacearum* R3B2 might have entered Canada after it entered the United States in 2003.

We are aware of no evidence suggesting that *R. solanacearum* R3B2 has occurred in Canada, and the Canadian NPPO has not reported its presence. All the evidence available indicates that APHIS was successful at confining the *R. solanacearum* R3B2 in the United States to a few hundred facilities and that the bacterium was not transmitted into the wider environment in the United States, much less in Canada. As a signatory nation to the International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization, Canada is obligated to report any discoveries of *R. solanacearum* R3B2 to the IPPC.

One commenter, the Secretaria de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación of Mexico (SAGARPA, Mexico's NPPO), requested that Mexico be added to the list of countries where *R. solanacearum* R3B2 is not known to occur. The commenter stated that the only article that states that *R. solanacearum* R3B2 occurs in Mexico, a 1978 publication by Dr. Leopoldo Fucikovsky, used an oxidase test to determine that *R. solanacearum*

[4] Strider, D.L., Jones, R.K., and Haygood, R.A. 1981. ''Southern bacterial wilt of geranium caused by *Pseudomonas solanacearum*,'' *Plant Disease* 65: 52–53.

[5] Hudelson, B.D. 1999. ''Southern wilt.'' *University of Wisconsin Garden Facts,* May 11, 1999.

[6] Nameth, S. 1999. ''Bacterial disease alert in geraniums.'' *FlowerTECH2* 4: 65–67.

[7] Janse, J. D. 1996. ''Potato brown rot in Western Europe—History, presence, occurrence and some remarks on possible origin, epidemiology and control strategies.'' *EPPO Bull.* 26: 679–985.

R3B2 was present. The oxidase test is inadequate to establish the presence of *R. solanacearum* R3B2 since the test reacts not only with *R. solanacearum* R3B2 but also with phenols and other plant chemistry components. According to the commenter, all recent studies regarding the occurrence of *R. solanacearum* R3B2 have not discovered the bacterium in Mexico. The commenter also stated that Mexico performs surveys for *R. solanacearum* R3B2 using enzyme-linked immunosorbent assays (ELISA) and polymerase chain reaction (PCR) tests and has found no evidence of the bacterium.

SAGARPA did not provide citations for the studies it cited as supporting its view. If SAGARPA wishes to provide us with more specific information establishing Mexico's freedom from *R. solanacearum* R3B2, such as parameters of any surveys undertaken and the results of those surveys, we will consider it. Alternatively, SAGARPA may propose to establish an area within Mexico as free of *R. solanacearum* R3B2; the process for doing so is described in more detail under the heading ''Pest-Free Areas and Nurseries,'' which follows directly.

Pest-Free Areas and Nurseries

The April 2004 interim rule requires that articles of *Pelargonium* spp. and *Solanum* spp. that are imported into the United States from a country where *R. solanacearum* R3B2 is known to occur be produced in accordance with the certification program established by that interim rule. Two commenters acknowledged the necessity of placing restrictions on the importation of articles other than seed of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur, but stated that the requirements of the certification program are unnecessarily restrictive given the phytosanitary controls already in place in certain countries that export articles of *Pelargonium* spp. and *Solanum* spp. These two commenters asked that we recognize areas within a country where *R. solanacearum* R3B2 is known to occur as areas free of *R. solanacearum* R3B2.

APHIS recognizes areas within a country as being free of plant pests in accordance with the requirements in International Standards for Phytosanitary Measures (ISPM) Publication No. 4, ''Requirements for the Establishment of Pest Free Areas,'' which was published in 1996 by the IPPC and which is incorporated by reference into our regulations at 7 CFR 300.5.[8] To establish a pest-free area under this standard, a country must establish three main components: Systems to establish freedom, phytosanitary measures to maintain freedom, and checks to ensure that freedom has been maintained. The standard sets out performance-based requirements relating to each of these three components. Any country wishing to establish an area within its borders as free of *R. solanacearum* R3B2 may submit the appropriate information in accordance with ''Requirements for the Establishment of Pest Free Areas'' and propose that APHIS recognize the area in question as an area that is free of *R. solanacearum* R3B2. APHIS will evaluate whether the components the country has established are sufficient to establish the area as a pest-free area. At the present time, no foreign NPPO has submitted such a proposal.

However, the regulations established by the two interim rules do not explicitly provide for the possible recognition of an area within a country as free of *R. solanacearum* R3B2. To allow for this possibility, we are adding a new paragraph (r)(2)(ii) to the regulations in § 319.37–5. This paragraph will exempt articles of *Pelargonium* spp. and *Solanum* spp. imported from areas free of *R. solanacearum* R3B2 within countries where *R. solanacearum* R3B2 is known to occur from the requirements of the certification program. Instead, such articles will be required to be accompanied by a phytosanitary certificate containing an additional declaration that states ''This article is from an area that has been established as free of *Ralstonia solanacearum* race 3 biovar 2.'' We are moving the requirements presently in paragraph (r)(2) into a new paragraph (r)(2)(i) to accommodate this change.

These two commenters also asked that we recognize the growing practices in certain nurseries as sufficient to ensure the freedom of articles of *Pelargonium* spp. and *Solanum* spp. produced in those nurseries from *R. solanacearum* R3B2.

One of these commenters noted that the presence of *R. solanacearum* R3B2 in the UK has been minimized. All production of potato and tomato within the European Union (EU) is under official compliance with EU production directive 98/57/EC. The requirements of this directive have ensured that outbreaks of potato brown rot and tomato bacterial wilt (a disease caused in tomatoes by *R. solanacearum* R3B2) have been contained at the place of production. Directive 98/57/EC also includes measures for the safe disposal of any infected crops, therefore removing any possibility of the pathogen's spread through trade. Furthermore, annual surveys conducted by the UK's NPPO ensure that the current locations of contaminated watercourses are known and that irrigation from such sources is prohibited. As a result, only five cases of the disease have been detected in ware potato crops, and only one case has been detected in tomatoes. The commenter stated that there have been no findings of *R. solanacearum* R3B2 in the UK since 2000.

The other commenter asked specifically that we exclude *Solanum nigrum* produced under protected cultivation from the final rule. The commenter also stated that *R. solanacearum* R3B2 is not known to occur in some nurseries producing *Pelargonium* spp. in EU Member States. The commenter further argued that, if growing practices are sufficient to exclude *R. solanacearum* R3B2 from a production site, the testing provisions of the certification program would be superfluous.

We believe that the requirements of the certification program are all essential to ensuring that articles of *Pelargonium* spp. and *Solanum* spp. that are imported into the United States from a country where *R. solanacearum* R3B2 is known to occur do not introduce that bacterium into the United States. Accordingly, we will recognize the growing practices in certain nurseries (including protected cultivation) as sufficient to ensure the freedom of articles produced in those nurseries from *R. solanacearum* R3B2 only if those practices satisfy the requirements of the certification program. Growers in countries where *R. solanacearum* R3B2 is known to occur who believe that their production practices satisfy the requirements of the certification program may request to have those production practices evaluated by APHIS.

With regard to the first commenter's description of production practices in the UK, we consider the UK to be a country where *R. solanacearum* R3B2 is known to occur, and the commenter did not dispute that. If certain areas in the UK are believed to be free of *R. solanacearum* R3B2, the NPPO of the UK may attempt to establish their pest-free status by submitting the information required by ISPM Publication No. 4 to APHIS for further evaluation as described above. Otherwise, UK growers should request

[8] ISPM publications can be viewed on the Internet at *https://www.ippc.int/id/13399*.

to have their production practices recognized by APHIS as satisfying the requirements of the certification program.

We disagree with the second commenter's assertion that testing is superfluous in a production site that has taken measures to exclude *R. solanacearum* R3B2. Just as the establishment of a pest-free area requires checks to ensure that the area remains free of the relevant pest, testing is an important means of ensuring that the measures a production site has taken to exclude *R. solanacearum* R3B2 are being properly implemented and thus excluding the bacterium. We are making no changes to the April 2004 interim rule in response to these comments.

Testing for R. solanacearum R3B2

One commenter asked us to specify what criteria must be met to determine whether an area is free of *R. solanacearum* R3B2 and what tests may be used to determine that a production site is free of *R. solanacearum* R3B2.

As mentioned earlier in this document, the determination that an area is free of a pest is based on our assessment of components that include, but are not limited to, regular checks to ensure that the area remains free of the pest. Testing may be carried out using any means that the country in which the proposed pest-free area is located deems practical and that APHIS determines to be effective.

The April 2004 interim rule stated that we are currently aware of two acceptable methods for testing production sites: An ELISA, which can determine whether *Ralstonia* spp. bacteria are present, and a PCR test that can determine whether *R. solanacearum* R3B2 bacteria are present. Domestic greenhouses tested for *R. solanacearum* R3B2 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 those bacteria were race 3, biovar 2. Other testing methods may be used if APHIS determines that those methods are adequate to confirm that production facilities are free of *R. solanacearum* R3B2.

The preamble of the April 2004 interim rule stated: ''One approach to preventing the entry of *R. solanacearum* R3B2 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* R3B2. 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.'' One commenter stated that testing for *R. solanacearum* R3B2 at ports of entry is quite possible; alternatively, imported articles could be tested during postentry inspections of the nurseries where the articles are further cultivated.

We do not dispute that such testing is possible; however, APHIS currently lacks the infrastructure and resources to either perform the PCR test at the port of entry or perform an ELISA at the port of entry, hold the tested articles until the test results are available, and then run a separate PCR test on any articles that tested positive by ELISA for the presence of *Ralstonia* spp. Therefore, we have focused our efforts on excluding *R. solanacearum* R3B2 from articles offered for importation into the United States.

Specific Provisions of the Certification Program

The April 2004 interim rule added a definition of *production site* to § 319.37–1 that read: ''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 definition was taken from ISPM Publication No. 5, ''Glossary of Phytosanitary Terms 2002.'' [9]

One commenter stated that this definition might cause confusion with regard to some of the requirements of the certification program. For example, § 319.37–5(r)(3)(iv) of the certification program established by the April 2004 interim rule requires the production site for articles of *Pelargonium* spp. and *Solanum* spp. to be surrounded by a 1-meter buffer. The commenter suggested that, given the definition of *production site* established in the April 2004 interim rule, this requirement could be interpreted to mean that an entire farm, composed of multiple greenhouses in which articles of *Pelargonium* spp. and *Solanum* spp. are produced, is required to be surrounded by a buffer, rather than the individual greenhouses. The commenter cited similar potential problems regarding the certification program's requirement in § 319.37–5(r)(3)(v) that the buffer be kept free of dicotyledonous weeds.

The definition of *production site* established in the April 2004 interim rule states that the production site may include ''the entire production site or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.'' Under this definition, on a farm that is managed as a single production site for phytosanitary purposes but is composed of multiple greenhouses, each individual greenhouse in the farm is considered to be a portion of the production site. (Individual greenhouses are considered to be individual production sites only if they are managed separately for phytosanitary purposes, as provided for in the definition.) Thus, the production site in this case would not include all the land of the farm on which the greenhouses are located but rather all the portions of the farm in which production of articles of *Pelargonium* spp. and *Solanum* spp. takes place—the individual greenhouses. Thus, each individual greenhouse on such a farm would be required to have a 1-meter buffer that is kept free of dicotyledonous weeds.

We are making no changes to the definition of *production site* in response to this comment. However, we are revising paragraphs (r)(3)(iv) and (r)(3)(v), which refer to the production site in the context of the requirements the commenter mentioned, to clarify that these requirements apply to each greenhouse on the production site rather than the entire production site. We believe these changes addresses the commenter's concern.

Paragraph (r)(3)(iii) of the certification program established in § 319.37–5 by the April 2004 interim rule required that production sites conduct ongoing testing for *R. solanacearum* R3B2 and that only those articles of *Pelargonium* spp. and *Solanum* spp. that have been tested with negative results for the presence of *R. solanacearum* R3B2 may be used in production and export. One commenter was concerned that this requirement could be interpreted to mean that each article exported to the United States must be tested.

We did not intend to require that each article used in production and export be tested individually; rather, we intended to require that each article that has been used in production and export be part of a group of articles that has been tested in accordance with a protocol sufficient to determine, with a high degree of certainty, whether the articles in the group are infected with *R. solanacearum* R3B2. Details of the

[9] ISPM publications can be viewed on the Internet at *https://www.ippc.int/id/13399*.

testing and the statistical plan for the testing protocol are specified in the workplan developed by APHIS, the foreign NPPO, and the owner or operator of the production site.

The commenter is correct in stating that the language in the April 2004 interim rule is ambiguous on this point. Therefore, we are amending paragraph (r)(3)(iii) to state that only articles of *Pelargonium* spp. and *Solanum* spp. from a group of articles that has been tested according to an APHIS-approved testing protocol with negative results for the presence of *R. solanacearum* R3B2 may be used in production and export.

Paragraph (r)(3)(iv) of the certification program established by the April 2004 interim rule required that the production site be constructed in a manner that ensures that outside water cannot enter the production site. One commenter pointed out that water is necessary to grow plants, and this water must be brought into the production site from outside the production site; the interim rule technically excluded such water. The commenter suggested changing the requirement to state that the production site must be constructed in a manner that ensures that runoff water from areas surrounding the production site cannot enter the production site.

We agree with this comment and have changed paragraph (r)(3)(iv) of the certification program established by the April 2004 interim rule as the commenter suggests.

Paragraph (r)(3)(viii) of the certification program established by the April 2004 interim rule prohibited growing media and containers for articles of *Pelargonium* spp. and *Solanum* spp. from coming into contact with soil and prohibited the use of soil as a growing medium for articles of *Pelargonium* spp. and *Solanum* spp. One commenter hypothesized that pasteurized soil might in the future be considered an adequate growing medium and asked that, to ensure that the certification program could accommodate such a future development, we remove the prohibitions relating to soil and refer instead to APHIS-approved growing media in paragraph (r)(3)(viii).

We agree that it would be best to provide such flexibility in the regulations in the case that pasteurized soil becomes an acceptable growing medium. Therefore, we have changed paragraph (r)(3)(viii) of the certification program established by the April 2004 interim rule as the commenter requested. However, it is important to reiterate that soil of any kind will not be considered an APHIS-approved growing medium at this time.

Paragraph (r)(3)(ix) of the certification program established by the April 2004 interim rule required that water used in maintenance of the plants at the production site be free of *R. solanacearum* R3B2. It also required that the production site derive the water from an APHIS-approved source or treat the water with an APHIS-approved treatment before use. Two commenters expressed concerns about this requirement. One stated that no nurseries in the UK use surface water in the production of articles of *Pelargonium* spp., and infected *Solanum dulcamara* outside of contaminated watercourses have not been identified during official inspections over many years. Therefore, no water-borne route of transmission for *R. solanacearum* R3B2 into UK nurseries has been identified. The second commenter stated that rain water, tap water, or water from deep wells is used in the production of articles of *Pelargonium* spp. in the Netherlands, Belgium, and Germany.

If the water sources cited by the commenters can be proven to be free of *R. solanacearum* R3B2, APHIS will approve the sources for use in the production of articles of *Pelargonium* spp. and *Solanum* spp. under the certification program; approval will be granted in the workplan developed among APHIS, the NPPO of the exporting country, and the owner or operator of the production site. We are making no changes to the April 2004 interim rule in response to these comments.

Paragraph (r)(3)(x) of the certification program established by the April 2004 interim rule prohibited the use of ebb-and-flow irrigation in the production of articles of *Pelargonium* spp. and *Solanum* spp. under the certification program. We prohibited the use of ebb-and-flow irrigation because it exposes all the articles grown using such an irrigation system to any *R. solanacearum* R3B2 that may be present in any one article in the system. One commenter stated that ebb-and-flow irrigation should not be prohibited in production facilities located in areas within a country where *R. solanacearum* R3B2 is not known to occur.

We agree that this requirement would be unjustified if an exporting country where *R. solanacearum* R3B2 is known to occur established, in accordance with the ''Requirements for the Establishment of Pest Free Areas'' referred to above, that an area within that country is free of *R. solanacearum* R3B2. In fact, under this final rule, production facilities in such a pest-free area would be eligible to export articles of *Pelargonium* spp. and *Solanum* spp. under paragraph § 319.37–5(r)(2)(ii) of the regulations, which requires only that the phytosanitary certificate accompanying the articles contain an additional declaration that states that the articles are from an area that has been established as free of *R. solanacearum* R3B2 in accordance with ISPM No. 4, ''Requirements for the Establishment of Pest Free Areas.'' However, as discussed above, APHIS has received no requests to establish such pest-free areas at this time.

Paragraph (r)(3)(xii) of the certification program established by the April 2004 interim rule required that articles of *Pelargonium* spp. and *Solanum* spp. produced for export within an approved production site be handled and packed in a manner adequate to prevent the presence of *R. solanacearum* R3B2. One commenter recommended that the word ''presence'' be changed to ''introduction,'' or that the word ''introduction'' be added to this requirement.

The intent of the certification program is to prevent the introduction of *R. solanacearum* R3B2 into the United States. Therefore, we agree with this commenter, and we have changed the word ''presence'' to ''introduction'' in paragraph (r)(3)(xii) of the certification program established by the April 2004 interim rule as the commenter suggests.

Paragraph (r)(3)(xiii) of the certification program established by the April 2004 interim rule stated that if *R. solanacearum* R3B2 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. The paragraph further stated that a production site may be reinstated if a reinspection reveals that the production site is free of *R. solanacearum* R3B2 and all problems in the production site have been addressed and corrected to the satisfaction of APHIS.

One commenter asked us to rewrite this paragraph to provide for the possibility of individual greenhouses in a production site to be declared ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States if articles of *Pelargonium* spp. or *Solanum* spp. infected with *R. solanacearum* R3B2 can be traced back to an individual greenhouse in a production site, rather than declaring the entire production site ineligible.

We believe it is safe to declare an individual greenhouse among several greenhouses ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States only if the greenhouse is managed separately for phytosanitary purposes and thus qualifies as a production site itself, as specified in the definition of *production site* that the April 2004 interim rule added to § 319.37–1. Otherwise, production practices in a production site composed of multiple greenhouses could spread *R. solanacearum* R3B2 from one greenhouse to another, meaning that it would not be safe to allow importation from any greenhouse in a production site in which one greenhouse produced articles of *Pelargonium* spp. or *Solanum* spp. infected with *R. solanacearum* R3B2. We are making no changes to the April 2004 interim rule in response to this comment.

One commenter stated that production sites should have to be tested with negative results three times over a 90-day period in order to be considered eligible for reinstatement into the certification program. This commenter further requested that details of the testing that would be required for reinstatement and other requirements for reinstatement be included in the regulations.

The three-test, 90-day standard the commenter suggests is a reasonable standard, but it may not be appropriate in all cases. We prefer to specify conditions for production site testing and reinstatement in the workplan developed among APHIS, the NPPO of the exporting country, and the operator of the production site, in order to take into account local production conditions and capabilities. We are making no changes to the April 2004 interim rule in response to this comment.

Paragraph (r)(3)(xv) of the certification program established by the April 2004 interim rule required that the government of the country in which articles other than seed of *Pelargonium* spp. or *Solanum* spp. are produced 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 § 319.37–5 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.

One commenter stated that the trust fund requirement adds an economic cost to the production of articles of *Pelargonium* spp. or *Solanum* spp. that does not contribute to the maintenance of plant health and is therefore not justifiable.

The trust fund requirement is common practice under many other APHIS import regulations (e.g., importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff). The trust fund is intended to ensure that the government of the country in which the articles are produced or its designated representative bears the cost of the certification program, rather than U.S. taxpayers. (The government of the country in which the articles are produced is, of course, free to pass this cost on to production sites producing articles of *Pelargonium* spp. or *Solanum* spp. for export to the United States.) Requiring that APHIS subsidize the production of articles of *Pelargonium* spp. or *Solanum* spp. grown in foreign countries for export to the United States would, we believe, be a misallocation of APHIS' limited resources. We are making no changes to the April 2004 interim rule in response to this comment.

Two commenters expressed concern about the administration of the trust fund. One stated that there is no assurance that the governments of countries in which articles of *Pelargonium* spp. or *Solanum* spp. are produced will participate in setting up the trust fund; without such assurance, exporters might not be able to participate due to governmental reluctance. The other asked that APHIS itself, rather than the exporting country, establish and administer the trust fund so that it will cover the APHIS costs without making it uneconomical for exporting companies to continue production.

APHIS does, in fact, establish and administer the trust fund in the certification program established in the April 2004 interim rule. The government of the country in which the articles are produced or its designated representative deposits money into the fund in response to APHIS estimates of costs and in response to actual costs as determined by APHIS. As noted above, the government of the country in which the articles are produced is free to pass this cost on to production sites producing articles of *Pelargonium* spp. or *Solanum* spp. for export to the United States. We are making no changes to the April 2004 interim rule in response to these comments.

In the section of the April 2004 interim rule in which we responded to comments, we described one comment as suggesting that APHIS impose an import bond on all imports of articles of *Pelargonium* spp. or *Solanum* spp. Two commenters on the April 2004 interim rule stated that we should require an import bond; one suggested that an import bond would be appropriate if compensation is not provided for articles of *Pelargonium* spp. or *Solanum* spp. destroyed during eradication efforts.

We continue to believe that the certification program we established in that 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* R3B2.

Other Comments

One commenter recommended that, rather than place restrictions on the importation of articles of *Pelargonium* spp. or *Solanum* spp., we simply prohibit the importation of all nursery stock. We do not believe such an action is necessary or warranted.

One commenter suggested that *R. solanacearum* R3B2 should be removed from the list of select agents in 7 CFR 331.3(a). We continue to believe, based on input from USDA's Agricultural Research Service, Forest Service, and Cooperative State Research, Education, and Extension Service and consultation with the American Phytopathological Society, that *R. solanacearum* R3B2 poses a severe threat to plant health or plant products, and the commenter

provided no evidence to the contrary. In any case, removing *R. solanacearum* R3B2 from that list is beyond the scope of this rulemaking.

One commenter urged APHIS to continue with its review of the nursery stock regulations, to prevent introductions of both *R. solanacearum* R3B2 and other plant pests. We agree that this review is essential to safeguarding plant health, and we published an advance notice of proposed rulemaking soliciting comments on approaches to revising the nursery stock regulations on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).

Three commenters addressed various aspects of the eradication effort that APHIS undertook after the presence of *R. solanacearum* R3B2 was confirmed in the United States in February 2003, including reinstatement procedures for facilities where *R. solanacearum* R3B2 was present, the speed with which the eradication effort was conducted, the treatment of individual greenhouses as production sites, and the fact that APHIS did not pay compensation to the owners of plants destroyed during this eradication effort.

The effort to eradicate *R. solanacearum* R3B2 within the United States was conducted under the authority granted to APHIS in the Plant Protection Act (7 U.S.C. 7714), which states that if the Secretary considers it necessary in order to prevent the dissemination of a plant pest or noxious weed that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant that is moving into or through the United States or interstate, or has moved into or through the United States or interstate, and the Secretary has reason to believe is infested with a plant pest or noxious weed at the time of the movement. The Plant Protection Act further states that if that situation should occur, the Secretary may order the owner of any plant to destroy the plant without cost to the Federal Government and in the manner the Secretary considers appropriate.

The May 2003 and April 2004 interim rules placed restrictions on the importation of articles of *Pelargonium* spp. or *Solanum* spp. in order to address the risk that such importation could introduce *R. solanacearum* R3B2 into the United States; the domestic eradication effort is beyond the scope of this rulemaking.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on May 24, 2004. This rule clarifies certain requirements in the certification program established by the interim rule and amends other requirements to provide additional options. Immediate action is necessary to amend the certification program in order to ensure that its requirements are easily understood and to make the certification program more flexible. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

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 the April 2004 interim rule, APHIS amended the regulations to establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *R. solanacearum* R3B2 is known to occur. The interim rule prohibited the importation of articles of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur unless the articles are produced in accordance with the certification program. This final rule amends the regulations by modifying some of the requirements of the certification program to make them clearer and more flexible, by providing for the establishment of areas that are free of *R. solanacearum* R3B2 within countries where *R. solanacearum* R3B2 is known to occur, and exempting imported seeds of *Pelargonium* spp. and *Solanum* spp. from all requirements related to *R. solanacearum* R3B2. The requirements of the certification program are designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. This certification program is necessary to prevent the introduction of this bacterial strain into the United States.

The production site certification program impacts 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 the April 2004 interim rule has been estimated at approximately $70,000 per site.[10] However, many of these production sites had already upgraded their facilities due to the outbreak of *R. solanacearum* R3B2 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 have been 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.[11] The United States imported $44 million worth of cuttings and slips of which geraniums comprised some unknown part.[12] 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* R3B2 outbreak occurred when geranium cuttings arrived from Kenya carrying the *R. solanacearum* R3B2 bacterium. The *R. solanacearum* R3B2 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* R3B2 bacterium, which is widely distributed in temperate regions, causes the disease potato brown rot. In 2002, 1.3 million acres of U.S. potatoes were harvested;

[10] Society of American Florists.

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

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

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.[13] The value of potato fields infected with *R. solanacearum* R3B2 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 UK has experienced five outbreaks of potato brown rot that have caused minor impacts to overall potato production.[14] 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.

The April 2004 interim rule allowed imports of articles of *Pelargonium* spp. and *Solanum* spp. to continue as long as the articles are 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 those requirements. The interim rule helped safeguard U.S. agriculture against the possible introduction of *R. solanacearum* R3B2.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their 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.[15] 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 interim rule had 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 cost approximately $770,000 total, or $70,000 per site. However, this final rule makes changes to the production site requirements to allow affected entities some flexibility in meeting them. 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 resulted in a negative impact on offshore production sites, the requirements help to ensure that future nursery shipments entering the United States are free of *R. solanacearum* R3B2. The 2003 *R. solanacearum* R3B2 outbreak alone cost the floriculture industry $1.5 to $2 million in geranium plant losses. The *R. solanacearum* R3B2 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.[16] It is evident that the 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.

List of Subjects in 7 CFR Part 319

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

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

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

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

[16] 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.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 69 FR 21941–21947 on April 23, 2004, is adopted as a final rule with the following changes:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37–5 is amended as follows:

■ a. By revising paragraph (r), introductory text, to read as set forth below.

■ b. By revising paragraph (r)(2) to read as set forth below.

■ c. In paragraph (r)(3), in the introductory text, by adding the words ''or area'' after the word ''country.''

■ d. By revising the second sentence of paragraph (r)(3)(iii) to read as set forth below.

■ e. By revising paragraphs (r)(3)(iv) and (r)(3)(v) to read as set forth below.

■ f. In paragraph (r)(3)(vii), by removing the words ''must not come in contact with soil, and soil may not be used as a growing medium'' and adding the words ''must not come in contact with growing media that could transmit *R. solanacearum* race 3 biovar 2 and must be grown in an APHIS-approved growing medium'' in their place.

■ g. In paragraph (r)(3)(xii), by removing the word ''presence'' and adding the word ''introduction'' in its place.

§ 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 requirements of this paragraph (r). Seeds are not subject to the requirements of this paragraph (r).

(1) * * *

(2) (i) 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 or area 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.

(ii) 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 an area that has been established as free of *Ralstonia solanacearum* race 3 biovar 2 in accordance with International Standards for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas,'' which is incorporated by reference at § 300.5 of this chapter, the phytosanitary certificate required by § 319.37–4 must contain an additional declaration that states ''This article is from an area that has been established as free of *Ralstonia solanacearum* race 3 biovar 2.''

(3) * * *

(iii) * * * Only articles of *Pelargonium* spp. and *Solanum* spp. from a group of articles that has been tested according to an APHIS-approved testing protocol with negative results for the presence of *R. solanacearum* race 3 biovar 2 may be used in production and export. * * *

(iv) Each greenhouse on the production site must be constructed in a manner that ensures that runoff water from areas surrounding the greenhouses cannot enter the greenhouses. The greenhouses must be surrounded by a 1-meter buffer that is sloped so that water drains away from the greenhouses.

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

* * * * *

Done in Washington, DC, this 18th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–21168 Filed 10–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2005–22047; Airspace Docket No. 05-ANM–10

RIN 2120–AA66

Revision of VOR Federal Airway V–343; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends Federal Airway V–343 from the Bozeman, MT, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) to the initial approach fix for the Area Navigation (RNAV) runway 15 approach to the Bert Mooney Airport (BTM), MT. Specifically, this action will enhance the management of air traffic arrivals at BTM.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to revise VOR Federal Airway V–343 by extending the airway to the initial approach for the BTM airport (70 FR 49222). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that published in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to revise VOR Federal Airway V–343 by extending the airway from the Bozeman, MT, VORTAC to the initial approach fix for the RNAV runway 15 approach to the BTM, MT.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–343 [Revised]

From Dubios, ID; Bozeman, MT, INT Bozeman, MT, 302° and Whitehall, MT, 342° Radials.

* * * * *

Issued in Washington, DC, October 17, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–21144 Filed 10–21–05; 8:45 am]

BILLING CODE 4910–13–P