6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2013-0369, FRL- 9816-9]

Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Solicitation of Applications and Information on Alternatives.

SUMMARY: EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2016. Critical use exemptions last only one year. All entities interested in obtaining a critical use exemption for 2016 must provide EPA with technical and economic information to support a "critical use" claim and must do so by the deadline specified in this notice even if they have applied for an exemption in previous years. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

DATES: Applications for the 2016 critical use exemption must be submitted on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA encourages users to submit their applications electronically to Jeremy Arling, Stratospheric Protection Division, at arling.jeremy@epa.gov. If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to 202-343-2338 by the application deadline. Applications for the methyl bromide critical use exemption can also be submitted by U.S. mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200

Pennsylvania Ave, N.W., Washington, DC 20460 or by courier delivery to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St. NW, Room 1047E, Washington DC 20005.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1-800-296-1996; also http://www.epa.gov/ozone/mbr.

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., N.W., Washington, DC, 20460, 703-308-8136. Email: chism.bill@epa.gov

Regulatory Information: Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., N.W., Washington, DC, 20460, 202-343-9055. Email: arling.jeremy@epa.gov

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I. What do I need to know to respond to this request for applications?

A. Who can respond to this request for information?

Entities interested in obtaining a critical use exemption must complete the application form available at http://www.epa.gov/ozone/mbr/cueinfo.html. The application may be submitted by a consortium representing multiple users who have similar circumstances or by individual users. EPA encourages groups of users with similar circumstances to submit a single application.

While anyone interested in obtaining a critical use exemption may apply, EPA notes that in January, 2013, the United States government submitted its nomination for critical use exemption during 2015, and that nomination included only three uses (strawberries, fresh dates and dry cured ham). Since information about alternatives, economic impacts, and other factors relevant to the critical use criteria change from year to year, applicants must provide all of the necessary technical and economic information, whether or not a use has been nominated for a critical use exemption in the past.

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g., technical or economic feasibility research).

B. How do I obtain an application form for the methyl bromide critical use exemption?

Application forms for the methyl bromide critical use exemption can be obtained in PDF, Microsoft Word, and Microsoft Excel formats at EPA's website http://www.epa.gov/ozone/mbr/cueinfo.html or at Docket ID No. EPA-HQ-OAR-2013-0369 at http://www.regulations.gov.

C. What must applicants address when applying for a critical use exemption?

To support the assertion that a specific use of methyl bromide meets the requirements of the critical use exemption, applicants must demonstrate that there are no technically and economically feasible alternatives available for that use. EPA's website contains a list of

available and potential alternatives at http://www.epa.gov/ozone/mbr/alts.html. Applicants must show that they are taking steps to minimize their critical use of methyl bromide and any associated emissions. In addition, applicants must describe research plans which includes the pest(s), chemical(s), or management practice(s) they will be testing to support their transition from methyl bromide.

Below, EPA is providing information on how it evaluated specific uses in considering nominations for critical uses for 2015, as well as specific information needed for the U.S. to successfully defend its nominations for critical uses.

Commodities such as dried fruit and nuts

Data reviewed by EPA as part of the 2015 nomination process indicate that sulfuryl fluoride is effective against key pests. The industry has mostly converted to sulfuryl fluoride and no market disruption has occurred. For this sector, rapid fumigation is not a critical condition. Therefore, products can be treated with sulfuryl fluoride or phosphine and be held for relatively long periods of time without a significant economic impact. To support a nomination, applicants must address potential economic losses due to pest pressures, changes in quality, changes in timing, and any other economic implications for producers when converting to alternatives. Alternatives for which such information is needed are: sulfuryl fluoride, propylene oxide (PPO), phosphine, and controlled atmosphere/temperature treatment system. Applicants should include the costs to retrofit equipment or design and construct new fumigation chambers for these alternatives. For the economic assessment applicants must provide: the amount of fumigant gas used (both methyl bromide and alternatives, which may include heat), price per pound of the fumigant gas from the most recent use season, application rates, differences in time required for fumigation, differences in labor inputs (i.e., hours and wages) associated with alternatives, the

amount of commodity treated with each fumigant/treatment and the value of the commodity being treated/produced. Also provide information on changes in costs for any other practices or equipment used (e.g. sanitation and IPM) that are not needed when methyl bromide is used for fumigation. Include information on the size of fumigation chambers where methyl bromide is used, the percent of commodity fumigated under tarps, the length of the harvest season, peak of the harvest season and duration, and volume of commodity treated daily at the harvest peak.

Where applicable, also provide examples of specific customer requests regarding pest infestation and examples of any phytosanitary requirements of foreign markets (e.g., import requirements of other countries) that may necessitate use of methyl bromide accompanied by explanation of why the methyl bromide quarantine and preshipment (QPS) exemption is not applicable for this purpose. Also include information on what pest control practices organic producers are using for their commodity.

Structures and Facilities (flour mills, rice mills, pet food)

Published data reviewed by EPA during the 2015 nomination process did not show a statistically significant difference in control effectiveness between methyl bromide and sulfuryl fluoride or heat treatments. The cost of alternatives is also generally less than cost of methyl bromide except for heat alone. To support a nomination, applicants must address potential economic losses due to pest pressures, changes in quality, changes in timing, and any other economic implications for producers when converting to alternatives. Alternatives for which such information is needed are: sulfuryl fluoride, micro-sanitation, and heat. Applicants should include the costs to retrofit equipment for these pest control methods. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season, application rates, differences

in time required for fumigation, differences in labor inputs (i.e., hours and wages) associated with alternatives, and value of the commodity being treated/produced. List how many mills have been fumigated with methyl bromide over the last three years; the rate, volume, and target CT of methyl bromide at each location; volume of each facility; number of fumigations per year; and date the facility was constructed.

Where applicable, also provide examples of specific customer requests regarding pest infestation and examples of any phytosanitary requirements of foreign markets (e.g., import requirements of other countries) that may necessitate use of methyl bromide accompanied by explanation of why the QPS exemption is not applicable for this purpose. Also include information on what pest control practices organic producers are using for their facilities.

Dried Cured Pork

Applicants must list how many facilities have been fumigated with methyl bromide over the last three years; the rate, volume, and target CT of methyl bromide at each location; volume of each facility; number of fumigations per year; and the materials from which the facility was constructed. It is also important for this sector to specify research plans into alternatives and alternative practices to support the transition from methyl bromide.

Cucurbits, Eggplant, Pepper, and Tomato

In reviewing data for the 2015 CUE nomination, EPA found that although no single alternative is effective for all pest problems, a review of multiple year data indicates that the alternatives in various combinations provide control equal or superior to methyl bromide plus chloropicrin. Several research studies show that the three way mixture of 1,3-dichloropene plus chloropicrin plus metam sodium can effectively suppress pathogens (*P. capsici, F. oxysporum*) and nematodes. To support a nomination, applicants must address potential changes to yield,

quality, and timing when converting to alternatives, including: the mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and any fumigationless system (if data are available). Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Strawberry Fruit

Based on EPA's review of information as part of the 2015 nomination process, EPA believes there will continue to be a reduced critical need for methyl bromide in the near future as advances are made 1) in safely applying 100% chloropicrin, 2) in strategies to improve efficacy in applying 1,3-dichloropropene, and 3) in transitioning from experimental to commercial use of non-chemical tools, such as steam, anaerobic soil disinfestations, and substrate production. To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: the mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), or dimethyl disulfide (DMDS) in states other than California, and any fumigationless system (if data are available). Applications must address regulatory and economic implications for growers and your region's production of these crops using these

alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Orchard Replant,

EPA's review of data in the 2015 nomination process indicated that while no single alternative is effective for all pest problems, numerous field trials indicate alternatives to methyl bromide are effective. Therefore, EPA concluded that transitioning to the alternatives was feasible without substantial losses. Registered alternatives are available for individual-hole treatments and soil preparation procedures are available to enable effective treatment with alternatives even in soils with high moisture content. To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: the mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to

operate equipment associated with alternatives.

Ornamentals

In considering nominations for 2015, EPA found that while no single alternative is effective for all pest problems, a review of multiple year data indicates that the alternatives in various combinations provide control equal or superior to methyl bromide plus chloropicrin. Research demonstrates that 1,3-dichloropene plus chloropicrin, the three way mixture of 1,3-dichloropene plus chloropicrin plus metam sodium, and dimethyl disulfide plus chloropicrin all show excellent results. To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: the mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Nurseries

In considering this sector in the 2015 nomination process, EPA noted that a Special Local Need label allows Telone II to be used in accordance with certification standards for propagative

material.[1] To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: the mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Golf Courses

To date, EPA has not found that a significant market disruption would occur in the golf industry in the absence of methyl bromide. To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: Basamid, chloropicrin, 1,3-dichloropene, 1,3-dichloropene plus chloropicrin, metam sodium, and steam. Applications must address regulatory and economic implications for growers using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: price per pound of fumigant gas used (both methyl

1 EPA also noted that growers can use a combination of methyl bromide for quarantine situations and 1,3-D plus chloropicrin for non-quarantine situations to meet certification requirements

bromide and alternatives) from the most recent use season; application rates; economic impact for the golf course from a transition to alternatives (e.g. downtime when resurfacing); differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives. Supporting evidence might be included that would demonstrate that alternatives lead to more frequent resurfacing and therefore, greater adverse economic impacts.

D. What if I applied for a critical use exemption in a previous year?

Critical use exemptions are valid for only one year and do not automatically renew. All users desiring to obtain an exemption for 2016 must apply to EPA even if they have applied for critical uses in prior years. Because of the latest changes in registrations, costs, and economic aspects for producing critical use crops and commodities, applicants must fill out the application form completely.

E. What portions of the applications will be considered confidential business information?

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2 subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA

receives it, EPA may make it available to the public without further notice.

Do not include on the "Worksheet 6: Application Summary" page of the application any information that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Please note, claiming business confidentiality may delay EPA's ability to review your application.

II. What is the legal authority for the critical use exemption?

A. What is the Clean Air Act (CAA) authority for the critical use exemption?

In October 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the *Montreal Protocol on Substances that Deplete the Ozone Layer* for industrialized countries and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, the production and consumption of methyl bromide was phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol. EPA has defined "critical use" at 40 CFR 82.3.

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production or consumption

allowances prior to 2005, while not confined to critical uses under EPA's phaseout regulations, are subject to the labeling restrictions under FIFRA.

B. What is the Montreal Protocol authority for the critical use exemption?

The Montreal Protocol provides that the Parties may exempt "the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses" (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses."

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination and an exemption from the production and consumption phaseout:

(a) That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from

existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination . . . . Non-Article 5 Parties [e.g., developed countries, including the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. . . .

The term "significant market disruption" is left to the discretion of each Party to the Protocol to interpret. EPA's interpretation of this term has several dimensions, including looking at potential effects on both demand and supply for a commodity, evaluating potential losses at both an individual level and at an aggregate level, and evaluating potential losses in both relative and absolute terms. EPA refers readers to the preamble for the 2006 CUE rule (71 FR 5989) as well as to the memo in the docket titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" for further elaboration.

C. What is the timing for applications for the 2015 control period?

There is both a domestic and international component to the critical use exemption process. The projected timeline for the process for the 2016 critical use exemption is below. A more detailed schedule is on EPA's web site at http://www.epa.gov/ozone/mbr/cueinfo.html.

[**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**]: Solicit applications for the methyl bromide critical use exemption for 2016.

[**INSERT DATE OF 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**]: Deadline for submitting critical use exemption applications to EPA.

Fall 2013: U.S. Government (EPA, Department of State, U.S. Department of Agriculture, and other interested Federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2014: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2014: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) review the nominations for critical use exemptions.

Mid 2014: Parties consider TEAP/MBTOC recommendations.

November 2014: Parties decide whether to authorize critical use exemptions for methyl bromide for production and consumption in 2016.

Mid 2015: EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2016.

Late 2015: EPA publishes final rule allocating critical use exemptions in the U.S. for 2016.

January 1, 2016: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2016 control period.

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

DATED: May 16, 2013.

Sarah Dunham, Director,
Office of Atmospheric Programs.

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