6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2010-0280; FRL-9809-7]

RIN: 2060-AR41

Protection of Stratospheric Ozone: The 2013 Critical Use Exemption from the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is authorizing uses that qualify for the 2013 critical use exemption (CUE) and specifying the amount of methyl bromide that may be produced or imported for those uses. EPA is also amending the regulatory framework to remove certain requirements related to sale of pre-phaseout inventory for critical uses. EPA is taking this action under the authority of the Clean Air Act to reflect a consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Third Meeting of the Parties.

DATES: This rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0280. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only

in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Jeremy Arling by telephone at (202) 343-9055, or by e-mail at arling.jeremy@epa.gov or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. You may also visit the methyl bromide section of the Ozone Depletion website of EPA's Stratospheric Protection Division at www.epa.gov/ozone/mbr for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2013. Under the Clean Air Act, methyl bromide consumption (consumption is defined under section 601 of the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use and the quarantine and preshipment (QPS) exemptions. With this action, EPA is authorizing uses that qualify for

the 2013 critical use exemption as well as specific amounts of methyl bromide that may be produced and imported for critical uses in 2013.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: "The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on **[Insert date of publication in the FEDERAL REGISTER]**. APA section 553(d) allows an effective date less than 30 days after publication for a rule that "that grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1). Since today's action can be considered to either grant an exemption for limited critical uses during 2013 from the general prohibition on production or import of methyl bromide after the phaseout date of January 1, 2005, or relieve a restriction that would otherwise prevent production or import of methyl bromide or sale of pre-phaseout inventory for critical uses, EPA is making this action effective immediately upon publication.

Table of Contents

I. General Information

A. Regulated Entities

Entities and categories of entities potentially regulated by this action include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2013 critical use exemption including growers of vegetable crops, fruits, and nursery stock, and owners of stored food commodities and structures such as grain mills and processors. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions

regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. What is the Critical Use Exemption Process?

A. Background of the Process

Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties in 1997, the Parties established the criteria for an exemption in Decision IX/6. In that Decision, the Parties agreed 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 public health and are suitable to the crops and circumstances of the nomination." EPA promulgated these criteria in the definition of "critical use" at 40 CFR 82.3. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic feasibility" may change. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE.

In addition, the Parties decided that production and consumption, if any, of methyl bromide for critical uses should be permitted only if a variety of conditions have been met, including that all technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide, that research

programs are in place to develop and deploy alternatives and substitutes, and that methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on July 15, 2010 (75 FR 41177), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, ongoing research programs into the use of alternatives to methyl bromide in their sector, and efforts to minimize use and emissions of methyl bromide.

EPA reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, an interagency workgroup reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of the U.S. critical use nomination (CUN). Annually since 2003, the U.S. Department of State has submitted a CUN to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review each Party's CUN and make recommendations to the Parties on the nominations. The Parties then make Decisions on the authorization of critical use exemptions for particular Parties, including how much methyl bromide may be supplied

for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On February 4, 2011, the U.S. Government (USG) submitted the ninth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2013 critical uses. In February 2011, MBTOC sent questions to the USG concerning technical and economic issues in the 2013 nomination. The USG transmitted responses to MBTOC in February, 2011. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The critical uses and amounts in this final rule reflect the analysis contained in those documents.

B. How Does This Rule Relate to Previous Critical Use Exemption Rules?

The December 23, 2004, Framework Rule established the framework for the critical use exemption program in the United States, including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt specific quantities of production and import of methyl bromide, to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which

uses meet the criteria for the exemption program for that year. See 71 FR 5985 (February 6, 2006), 71 FR 75386 (December 14, 2006), 72 FR 74118 (December 28, 2007), 74 FR 19878 (April 30, 2009), 75 FR 23167 (May 3, 2010), 76 FR 60737 (September 30, 2011), and 77 FR 29218 (May 17, 2012).

Today's action changes the EPA's approach for determining the amounts of Critical Use Allowances (CUAs) to be allocated for critical uses in 2013. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. A control period is a calendar year. See 40 CFR 82.3. The control period at issue in this rule is 2013. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule.

Today's action also removes from the regulatory framework the restriction that limits the sale of inventory to critical uses through allocations of Critical Stock Allowances (CSA). A CSA was the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. The removal of this prohibition is discussed in more detail below.

C. Critical Uses

Today's action amends the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXIII/4. In that Decision, taken in November 2011, the Parties to the Protocol agreed "to permit, for the agreed critical-use categories for 2013 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2013 set forth in table B of the annex to the present decision which are necessary to satisfy critical uses …" The following uses are those set forth in table A of the annex to Decision XXIII/4 for the United States:

- Commodities
- Mills and food processing structures
- Dried cured pork
- Cucurbits
- Eggplant – field
- Nursery stock – fruit, nuts, flowers
- Orchard replants
- Ornamentals
- Peppers – field
- Strawberry – field
- Strawberry runners
- Tomatoes – field

EPA sought comment on the technical analysis contained in the U.S. nomination (available for public review in the docket), and information regarding any changes to the registration (including cancellations or registrations), use, or efficacy of alternatives that have occurred after the 2013 U.S. CUN was forwarded.

EPA received two comments about the critical use nomination process. One commenter stated that the process should be based in sound science, and be transparent, fair and objective. The nomination process should meet the critical need for methyl

bromide from the industries and individuals that apply. The second commenter stated there is no meaningful opportunity for an applicant that is not included in the CUN to object or challenge the CUN.

EPA agrees with the comment that the nomination process should be based in sound science and meet the critical needs of the applicants. EPA also strives to make the process transparent, fair, and objective. EPA conducts a rigorous technical assessment of the applications and evaluates data and current research to establish an internationally defensible basis for the nominations. In doing so the agency works with the State Department, USDA, state pesticide agencies, researchers, fumigators and applicants to assess whether there are technically or economically feasible alternatives, and whether a significant market disruption would result from the lack of a CUE.

The U.S. CUN is submitted on behalf of the U.S. government by the Department of State to the Parties to the Montreal Protocol. The Department of State has an extensive stakeholder engagement process to solicit input on the U.S. CUN. Private parties are encouraged to participate in that process. In the most recent round, EPA has worked to further improve the transparency of the nomination process by collaborating more closely with the applicants than in previous years. Shortly after receiving the applications, EPA informed the applicants of any obvious data gaps and scheduled meetings to discuss the needed information. In some instances, EPA followed up with additional calls and meetings. As a result of this technical review, EPA may determine that an applicant has not sufficiently shown that the regulatory and Montreal Protocol criteria for a critical use are met. After submitting the 2015 nomination, EPA held calls with all the applicants to discuss the technical basis for the nomination and to show how

future applications can be strengthened. EPA has posted on its web site, and added to the docket, a schedule detailing upcoming deadlines and past interactions with applicants.

In addition, EPA received comment that the agency should clarify what constitutes a significant market disruption since the commenter considers the term to be vague and subject to various interpretations by EPA. The term "significant market disruption" is left to the discretion of each Party to the Protocol to interpret. The agency has previously provided its interpretation of the term, and EPA refers readers to the preamble for the 2006 CUE rule (71 FR 5989, February 6, 2006) 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. As explained in greater detail in those documents, 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 received comment that all of the uses contained in the nomination be authorized as critical uses for 2013. EPA agrees and is not removing any uses, commodities or otherwise, that were nominated and approved by the Parties for use in 2013. EPA did not receive any data that would support removing uses that were nominated and approved by the Parties. EPA received one comment that there should be no uses of methyl bromide given its effect on the stratospheric ozone layer, and one comment that CUE authorization should not impede the adoption of alternatives. EPA disagrees that all methyl bromide use should stop and does not believe that the CUE authorization for 2013 will impede the continued adoption of methyl bromide

alternatives. The CUN addresses the need for methyl bromide for the 2013 critical uses, which, as described in the nomination chapters found in the docket, are uses for which EPA has found there are not technically and economically feasible alternatives. In addition, the 2013 critical uses were reviewed by the technical bodies to the Ozone Secretariat and authorized by the Parties to the Montreal Protocol.

EPA also received a comment that the agency should reopen the nominations for 2013 to account for the withdrawal of iodomethane from the U.S. market, especially if the availability of iodomethane was the reason the USG did not nominate certain sectors. At this point it is not possible for the USG to reopen nominations for 2013. As described in the previous section, in order to provide time for EPA to promulgate a rule authorizing critical use exemptions for a particular control period, the USG submits a nomination the January two years prior to the control period at issue. In addition, if the USG had submitted a supplemental request for 2013 this January, the Parties would not have been able to consider it until November of 2013, which would not provide relief to growers.

EPA is finalizing the lists of approved critical uses and approved critical users as proposed. First, as discussed in the proposal, EPA is removing from Appendix L two users that did not submit applications and therefore were not included in the U.S. nomination. These users are California rose nursery growers and Maryland tomato growers. Second, EPA is removing the National Pest Management Association (NPMA) food processing as an approved critical user. The NPMA did not initially apply to be a critical user in 2013 and the Parties have not authorized a critical use for NPMA for 2013.

Members of the NPMA have worked to transition from methyl bromide to alternative practices and alternative fumigants like sulfuryl fluoride. In January 2004, EPA registered the first food uses of sulfuryl fluoride for control of insect pests in grain processing facilities and in harvested and processed food commodities such as cereal grains, dried fruits, and tree nuts. In July 2005, EPA approved sulfuryl fluoride for treatment of additional harvested and processed food commodities such as coffee and cocoa beans, and for fumigation of food handling and processing facilities.

On January 19, 2011, EPA proposed to revoke the residue limits on food, known as tolerances, for fluoride on the food commodities approved for treatment with sulfuryl fluoride (76 FR 3422). In response to this proposal, the NPMA submitted a supplemental request for 2013 methyl bromide use during the open period for 2014 applications. The USG did not include NPMA's supplemental request in the 2014 nomination submitted to UNEP on January 31, 2012, because EPA has only proposed to revoke the tolerances for sulfuryl fluoride and has not taken action in any final rule. U.S. critical use nominations are based on final decisions about alternatives. Additionally, the proposed tolerance revocation included a staggered implementation scheme, making it unlikely that any specific revocation will be effective in 2013. Therefore, EPA is not finalizing NPMA as an approved critical user in 2013.

Third, EPA is removing sectors or users that applied for a critical use in 2013 but that the United States did not nominate for 2013. EPA conducted a thorough technical assessment of each application and considered the effects that the loss of methyl bromide would have for each agricultural sector, and whether significant market disruption would occur as a result. As a result of this technical review, the USG determined that certain

sectors or users did not meet the critical use criteria in Decision IX/6, and the USG therefore did not include them in the 2013 Critical Use Nomination. EPA notified these sectors of their status in July 2011, and those letters are in the public docket for this rule. These sectors are: members of the Southeastern Cucurbit Consortium and cucurbit growers in Maryland and Delaware; growers in the forest nursery sector (Southern Forest Nursery Management Cooperative, Northeastern Forest and Conservation Nursery Association, and Michigan seedling growers); members of the Southeastern Pepper Consortium; members of the Southeastern Strawberry Consortium and Florida strawberry growers; California sweet potato slip growers; members of the Southeastern Tomato Consortium and Virginia tomato growers. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide.

Finally, EPA is limiting the CUE for cucurbit, eggplant, pepper, and tomato sectors in Georgia to small growers. The EPA review of the available information for Georgia indicates that farmers growing fewer than 10 acres of these crops need an additional year to successfully transition to the alternatives. These small growers do not have as much experience with the alternatives and need to convert their equipment to the University of Georgia (UGA) "3-Way" mixture (a combination of 1,3-dichloropropene, chloropicrin, and metam). The EPA conducted an economic assessment of small growers' ability to convert their equipment (see revised nomination, dated July 14, in the docket). The assessment demonstrates that despite the UGA 3-Way mixture being more affordable than methyl bromide plus chloropicrin on a per acre basis, retrofitting farm equipment to use the UGA 3-Way mixture at a cost of $3,450 is not affordable for growers under four acres, amortized over 10 years at 7% interest (7% is a home equity

loan rate for this region at the time the nomination was submitted; interest on agricultural loans could be lower). However, due to variations in impacts for individual growers and uncertainties in the assumptions used in the economic analysis, farms smaller than 10 acres are reasonably expected to incur negative impacts from having to covert to the UGA 3-Way mixture. This analysis can be found in the July 14, 2011, reply to MBTOC available in the docket to this rule. Therefore, EPA is limiting the Georgia cucurbit, eggplant, pepper, and tomato critical uses to small growers, which EPA defines as growers growing fewer than 10 acres.

EPA is repeating the following clarifications made in previous years for ease of reference. The "local township limits prohibiting 1,3-dichloropropene" are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, "pet food" under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, "rapid fumigation" for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

EPA received a request from two commenters that the agency confirm that being removed from the table of approved critical uses for 2013 does not preclude the use from being added back in the future. The Agency reviews every application received each year against the CUE criteria. The removal of a user from the list of approved critical uses indicates that a determination was made that technically or economically feasible alternatives exist. However, the EPA recognizes that circumstances may change, or additional information emerge, that could merit including that use in a future nomination.

Furthermore, EPA recognizes that in 2003 the Parties to the Montreal Protocol recognized in Decision ExI.3 that each Party should aim at significantly and progressively decreasing its production and consumption of methyl bromide for critical uses with the intention of completely phasing out methyl bromide as soon as technically and economically feasible alternatives are available.

D. Critical Use Amounts

Table A of the annex to Decision XXIII/4 lists critical uses agreed to by the Parties to the Montreal Protocol. The maximum amount of new production and consumption for U.S. critical uses, specified in Table B of Decision XXIII/4, is 562,326 kg, minus available stocks. This figure is equivalent to 2.2% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg.

EPA received three comments supporting the proposal to allocate at least the full amount authorized by the Parties. Two of those commenters stated that EPA should allocate more than the amount requested in the CUN. One commenter stated that this is appropriate since the nomination was based on the continued availability of iodomethane. The other commenter stated that the CUN was inadequate and failed to reflect the need for methyl bromide as identified in the applications that were filed. Therefore, the proposed amount is insufficient to meet the critical needs of U.S. growers. One commenter questioned whether it would ever be appropriate for EPA to allocate less than the full amount authorized by the Parties.

EPA is not allocating at or above the amount in the CUN. The CUN itself exceeds the amount authorized by the Parties. As EPA stated in the proposed rule, EPA views the determination of the total allocation, up to the amount authorized by the Parties, as an

appropriate exercise of discretion. The agency will not increase the quantities in the final rule beyond those authorized by the Parties, but may exercise its discretion to allocate less. Article 2H(5) of the Montreal Protocol provides that the 2005 methyl bromide phaseout shall not apply ‘‘to the extent the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.’’ Decision XXIII/4 contains the Parties’ critical use authorization for 2013. In this rule, EPA is honoring commitments made by the United States in the Montreal Protocol context, including Decision XXIII/4. For 2013, EPA is allocating the full amount authorized by the Parties.

In the past, EPA has also made reductions to the CUA amount to account for the amount specifically authorized for research, on the assumption that research amounts would come from inventory. One commenter stated that EPA failed to account for research use of methyl bromide in the proposed rule and should return to the previously established policy and allocate a separate research purpose allocation. EPA responds that the 2013 CUN did not include, and the Parties did not authorize, a separate amount for research, as had been done in prior years. As discussed in more detail in the 2011 CUE final rule (76 FR 60736, 60743, September 30, 2011), EPA views research as part of the nomination for each individual critical use. Therefore, EPA is not making any adjustments for research, carryover, or the uptake of alternatives.

Carryover Material The Parties in paragraph 6 of Decision XXIII/4 “urge parties operating under critical-use exemptions to put in place effective systems to discourage the accumulation of methyl bromide produced under the exemption.” EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical

use exemption from being added to the existing pre-2005 inventory. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this "carryover" from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing inventory (which applies to pre-2005 material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

All critical use methyl bromide that companies reported to be produced or imported in 2011 was sold to end users. The information reported to EPA is that 1,499 MT of critical use methyl bromide was produced or imported in 2011. Slightly more than the amount produced or imported was actually sold to end-users. This additional amount was due to distributors selling material that was carried over from the prior control period. Therefore, EPA is applying the carryover deduction of 0 kg to the new production amount. EPA's calculation of the amount of carryover at the end of 2011 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. Past U.S. Accounting Frameworks, including the one for 2011, are available in the public docket for this rulemaking.

Uptake of Alternatives Under the existing framework, EPA considers data on the availability of alternatives that it receives following submission of each nomination to

UNEP. In previous rules EPA has reduced the total CUE amount when a new alternative has been registered. When an alternative is withdrawn, EPA will not increase the total CUE amount above the amount authorized by the Parties. However, the section on critical stock allowances below discusses how EPA is responding to the withdrawal of iodomethane.

Since the USG submitted the 2013 CUN, Dimethyl Disulfide (DMDS) has been registered in additional states. In July 2010, EPA registered DMDS to control nematodes, weeds, and pathogens in tomatoes, peppers, eggplants, curcurbits, strawberries, ornamentals and forest nursery seedlings, and onions. The CUN considered only a limited uptake of DMDS in 2013 as only a few states had registered DMDS and it was not registered in either California or Florida. EPA received comment that DMDS is now registered in twenty-seven states, including Georgia and Florida. The commenter requests that EPA reduce the new production/import allocation to reflect the increased registrations and to reflect the success that growers have had in transitioning to alternatives generally. EPA also received one comment supporting the proposal not to make reductions for DMDS in the Southeast. The commenter also stated that even if California were to register DMDS, growers would transition cautiously to ensure it works for their circumstances.

EPA is not making a reduction to the new production/import allocation based on these additional state registrations. As discussed below, 91% of the amount authorized for 2013 is for critical uses in California, which has not yet registered DMDS. Growers in Florida account for less than 3% of the authorized amount. EPA anticipates that the

uptake of DMDS in Florida will therefore not significantly affect total demand for critical use methyl bromide.

EPA does not believe that the progress California and Florida strawberry growers have made in transitioning to alternatives means, as one commenter suggests, that the EPA should reduce the allocation amounts in the 2013 rule. EPA recognizes that strawberry growers are successfully transitioning to alternatives, and the CUE allocation for strawberries has been declining as that transition has occurred. EPA has considered the transition made to date, and the ability of strawberry growers to further transition, when developing the nomination. Transition rates for alternatives have already been applied for authorized 2013 critical use amounts through the nomination and authorization process.

One commenter stated that the proposed rule did not take into account the proposed tolerance revocation of sulfuryl fluoride. As EPA has stated in prior rules, this allocation rule is based on the current status of alternatives and is limited to 2013. The proposed tolerance revocation includes a staggered implementation scheme so that it is unlikely that any specific revocation will be effective as soon as 2013 (76 FR 3447). Therefore, EPA has not based the allocation amounts for 2013 on any anticipated impacts of that proposal on methyl bromide use.

In summary, EPA is exempting 562,326 kg of new production and import of methyl bromide for critical uses in 2013. EPA is allocating allowances to the four companies that hold baseline allowances. The allocation, as in previous years, is in proportion to those baseline amounts, as shown in the table at 40 CFR 82.8(c)(1).

Paragraph 3 of Decision XXIII/4 states "that parties shall endeavor to license, permit, authorize or allocate quantities of methyl bromide for critical uses as listed in table A of the annex to the present decision." This is similar to language in prior Decisions authorizing critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. EPA received one comment supporting the continued use of the universal allocation approach. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the agency believes that the approach adopted in the Framework Rule is the most appropriate approach and that it is likely the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

E. Critical Stock Allowances

Decision XXIII/4 indicates that the United States' permitted level of production and consumption for 2013 is 562,326 kg minus "available stocks."As part of this rulemaking, EPA considered what amount, if any, of existing stocks may be available to critical users during 2013.

1. Determining the Level of Available Stocks

Individual Parties have the ability to determine their level of available stocks. The Parties to the Protocol recognized in their Decisions that the amount of available stocks may differ from the total amount of existing stocks. Decision XXIII/4 states that "production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks…" In addition, earlier Decisions refer to the use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Decision XXIII/4 reinforces this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption in Table B.

Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision. Pre-phaseout inventory, or "stocks," refers to methyl bromide that was produced using consumption allowances prior to the 2005 phaseout date under the Clean Air Act and the Montreal Protocol. It does not include methyl bromide that was produced after January 1, 2005, under the critical use exemption and carried over into subsequent years. Nor does it include methyl bromide produced 1) under the quarantine and preshipment (QPS) exemption, 2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or 3) for feedstock or transformation purposes.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the end of 2012 is 627,066 kg. As explained in the 2008 CUE Rule, EPA intends to continue releasing aggregate methyl bromide inventory data reported to the

agency under the reporting requirements at 40 CFR 82.13 at the end of each control period. If the number of competitors in the industry were to decline appreciably, EPA may revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA did not propose to change the treatment of submitted information but welcomes information concerning the composition of the industry. The aggregate information for 2003 through 2013 is available in the docket.

Consistent with EPA's past practice, and our commitments to the Parties, EPA considered the level of "available stocks" that may be allocated in this rulemaking. EPA requested comments on two approaches for determining how many CSAs to allocate. Under the first approach, the agency would calculate "available stocks" as either 5% or 0% of the existing inventory, as was reported to EPA on January 1, 2012. The second approach would be to continue using the existing framework of estimating drawdown and a supply chain factor. EPA is finalizing the first approach but finds that no stocks are available to meet the critical demand for 2013. Therefore, EPA is not issuing CSAs in this final rule.

In this final rule, EPA is rejecting the older approach of using the existing framework to estimate drawdown. In the 2012 Final Rule, EPA recognized that our "estimates [of available stocks] have become increasingly inexact in characterizing actual drawdown of pre-phaseout inventory, as the amounts in inventory have declined over time. EPA intends to consider the adequacy of using this formula to assess 'available stocks' in a future action."

Initially, the drawdown estimate was a simple linear model based on past years' rates. EPA modified the approach in the 2009 CUE Rule when it became apparent that the inventory was decreasing exponentially rather than linearly. EPA noted that the slowing rate of drawdown was based mostly on the business decisions of the companies that hold pre-phaseout inventory, and included aspects that are difficult for EPA to know or quantify, such as honoring long-term relationships with non-CUE customers or holding inventory in response to price fluctuations. To refine the analysis in subsequent rules EPA separately analyzed the use of inventory on critical uses, for which there are a set number of allowances, and non-critical uses, for which there are not.

Despite increased specificity, precise estimates still proved elusive. In successive years, EPA substantially overestimated inventory drawdown. In the 2012 Rule, EPA estimated a drawdown of 1,110,633 kg, when the actual drawdown was half that amount, or 556,794 kg. The results of the methodology using the updated data were sufficiently different that EPA considered providing additional notice and the opportunity to comment to incorporate them into the final allocation rule. EPA is concerned that as the total amount of both the U.S. authorization and the pre-phaseout stocks become smaller, efforts to perfect EPA estimates in this area will delay needed rulemaking. The fact that the agency's projections consistently over-estimate the amount of inventory that will be drawn down is evidence that the approach substantially over-estimates the availability of pre-phaseout stocks.

EPA believes constraints on the ability of critical users to acquire and use stocks may become worse due to a recent change in the geographic distribution of critical users. In the past, EPA has considered all pre-phaseout inventory to be available to all users,

regardless of location. This assumption, as discussed in the 2009 CUE rule (74 FR 19887, April 30, 2009), was based on the fact that inventory is held in California and the Southeast, the two primary critical use growing regions, as well as other locations around the country. While the geographic distribution of inventory generally remains the same, the authorized critical uses have shifted to California over the last two years. In the 2011 control period, 49% of the total authorization was for pre-plant uses in California and 38% was for pre-plant uses in the Southeast. In 2013, this ratio is 91% and 4% respectively.[1] EPA believes that inventory held in the Southeast may not be equally available to critical users in California. Unlike newly produced or imported material, which enters nationwide distribution networks, inventory is mostly held by regional distributors. EPA received comment that the first priority of these distributors is to maintain the supply and service obligations they have to their customers within the geographic areas where they operate.

EPA proposed to allocate CSAs equal to 5% of the January 1, 2012, reported inventory, which is equal to 62,444 kg. EPA based this percentage on historic patterns of use. Since 2006, the amount of prior year inventory used through the expenditure of CSAs has ranged from 8% to 26%. EPA proposed an amount less than the historic pattern in an effort to ensure that the amount allocated for 2013 would be available to critical users in that year.

[1] EPA treats company-specific methyl bromide inventory information as confidential and believes that disaggregating the inventory data by geographic area could potentially reveal CBI. EPA solicited comment on this issue but did not propose to release data showing how much inventory is located in or near California. However, even in the absence of specific inventory data broken down by region, EPA believes that the fact that over 90% of critical use is in California is relevant to judging the availability of existing stocks.

EPA also solicited comment on allocating 0 kg from stocks. EPA was particularly interested in comments from critical stock allowance holders who would be barred under the existing framework from selling inventory to critical users in 2013 absent an allocation of CSAs. EPA stated it was interested in learning whether an allocation at or close to 0 kg would prevent the drawdown of stocks or prevent the fulfillment of contracts or commitments to sell pre-phaseout inventory in 2013. EPA also sought comment on whether the restriction at 40 CFR 82.4(p) that limits the sale of inventory to critical uses through the CSA allocation should be lifted.

One commenter agreed that the prior calculation was unacceptably time consuming, unwieldy and prone to inaccuracies. This commenter stated that, especially with the withdrawal of iodomethane, EPA should authorize the full amount of critical use methyl bromide authorized by the Parties, and that even that amount may be insufficient to meet the needs of growers. However, this commenter also stated that a limited amount of CSAs is still appropriate to provide registrants and distributors flexibility to meet the needs of all growers. Therefore, this commenter supported the proposal to allocate 5% of the prior year's starting inventory.

One commenter stated that the full amount for critical uses should come from new production. This commenter points out that the private parties holding stocks are the only ones who can decide to make them available, and states that it would be unreasonable to reduce the amount of new production due to those stocks. Another commenter stated that

it was important for existing stocks to be available for drawdown, since otherwise stocks will never be used.[2]

EPA has considered all of these comments, and recent developments related to the critical use of methyl bromide, and has determined that it will allocate the full amount of the critical use authorization to new production, but also lift the prohibition on selling stocks of methyl bromide for critical uses without a CSA.

EPA intends for the entire allocation of critical use allowances and critical stock allowances to be expended to meet each year's critical demand. However, the total allocation of critical stock allowances has never been used. In fact, typically one third to one half of the critical stock allowances allocated each year remains unexpended. EPA believes there is demand for methyl bromide given the fact that there was no carryover in 2010 and 2011. This means that all the methyl bromide that was produced or imported for critical uses for those years was used. However, 40% of the 2010 and 30% of the 2011 critical stock allowance allocations were not used.

Consistent with these data, comments to this and past allocation rules state that the existing inventory is not actually available to users because of reductions in the number of distributors and market decisions by distributors to sell inventory to current customers or hold inventory for future use. The recent concentration of critical uses in California may also mean that stocks in the Southeast are even more unavailable as a practical matter for critical users. The data show that inventory is continually less

[2] The commenter also stated that the stocks of methyl bromide should be available to non-critical uses. This commenter disagrees with EPA's Reregistration Eligibility Decision that resulted in the removal of various non-exempt uses from the methyl bromide product labels. This comment is beyond the scope of this rulemaking.

"available" than EPA estimated. At the same time, meeting the demand for critical use methyl bromide is especially important for 2013 due to the withdrawal of iodomethane. In light of these circumstances, including the facts that the agency is unable to require the sale of inventory to meet the critical demand and there is evidence that inventory will not be sold to meet that demand, EPA is determining that there are not stocks available to be allocated for 2013. Therefore, EPA is allocating 0 CSAs for 2013.

2. Amending the Critical Stock Allowance Framework

For the reasons discussed above, EPA believes, as a practical matter, existing stocks of methyl bromide are not available for critical users in 2013. However, at the same time, EPA agrees that it would not be appropriate to completely prohibit use of existing stocks, since EPA does not believe that stocks should be held indefinitely. EPA solicited comment on whether the prohibition on selling stocks of MeBr for a critical use without a CSA should be lifted. After consideration of comments, EPA is lifting the prohibition.

One provision in the framework rule, 40 CFR 82.4(p), limits the amount of pre-phaseout methyl bromide that can be sold for critical uses to the amount of critical stock allowances held by that distributor. EPA developed the concept of critical stock allowances in the Framework Rule to meet the requirement of Decision Ex I/3(3). That Decision states that "a Party using stocks under paragraph 2 above shall prohibit the use of stocks [for critical uses]… when amounts from stocks combined with allowable production and consumption for critical uses exceed the total level for that Party set forth in annex II A to the present report.''

As discussed in the Framework Rule, EPA read Decision Ex I/3(3) as calling for limits on the use of stocks for approved critical uses in order to receive the benefit of new production and import in that Decision for 2005. However, Decision Ex I/3(3) was only applicable to the 2005 control period. Subsequent Decisions by the Parties authorizing critical uses and new production and import amounts for later control periods did not contain similar language. For the reasons discussed herein, EPA no longer believes that the restrictions established by EPA to meet the requirements of Decision Ex I/3(3) remain appropriate. EPA believes this approach is consistent with Decision XXIII/4 which authorizes an amount of new production and import of methyl bromide for 2013 but does not call for limits on the total use of methyl bromide for critical uses.

Several changes relevant to the drawdown of the pre-phaseout inventory have occurred since 2004. When the critical use exemption was being established by the Parties, the United States made assurances that it would responsibly manage the inventory. At that time, the inventory was 16,422 MT which is 26 times greater than the level of inventory today. The United States and other Parties were concerned that this large amount of inventory could overwhelm the critical use exemption. EPA therefore limited the use of inventory on critical uses through the issuance of critical stock allowances.

Since that time, EPA has taken further steps to restrict the use of stocks through FIFRA labeling changes. Under the reregistration decision for methyl bromide, EPA removed all but seven non-critical "Group II uses" from the pre-plant methyl bromide labels. Four of those seven uses were cancelled as of December 31, 2012, two will be removed at the end of 2013, and the last will be removed at the end of 2014. As these

Group II uses are removed from product labels, and as the number of critical uses decreases, the demand for pre-phaseout inventory will continue to decline. The decreasing number of uses and geographical limitations on critical use discussed above may also lead to a slowing in the rate of inventory drawdown.

Together these two actions have the potential to significantly limit the use of inventory. However it is clear that the concerns expressed through Decision Ex I/3(3), to restrict the use of stocks, has also changed. Decision XXII/6, which authorized critical uses for 2012, stressed that "parties should reduce their stocks of methyl bromide retained for employment in critical-use exemptions to a minimum in as short a time period as possible." EPA believes that ending the restriction on the use of stocks for critical uses is appropriate to avoid a situation, either now or in the future, where the inventory becomes practically inaccessible. If this occurs, there will be few uses of inventory and stocks could remain indefinitely.

To implement this change EPA is removing the restrictions at § 82.4(p)(ii) and (iii). In addition, EPA is removing the reference to CSAs from the definition of "critical use methyl bromide." EPA believes additional conforming changes may be appropriate but will address those changes in a future rulemaking.

EPA also requested comment on potential mechanisms within the Clean Air Act or other statutory authorities to respond to the withdrawal of iodomethane, and other unforeseen or emergency situations. EPA received three comments requesting that the agency undertake a rulemaking to implement Decision IX/7 regarding emergency uses of methyl bromide. One commenter noted that EPA announced in 2000 that it would draft a rule for emergency uses, which would be separate from its authority to grant emergency

or crisis exemptions under FIFRA section 18. The commenter noted that clarification of the process for emergency uses, whether through section 18 or through additional rulemaking, is warranted since previous section 18 exemptions had been granted for methyl bromide prior to the 2005 phase-out.

As EPA noted in the notice of proposed rulemaking and elsewhere, this rule implements the Clean Air Act's requirement to phase out consumption and production of methyl bromide, subject to the critical use exemption. Nothing in this rule is intended to derogate from FIFRA or provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide.

The commenter went on to note that Australia and Canada have also utilized the Decision IX/7 emergency exemption provision of the Montreal Protocol. Another commenter notes that unforeseen shortages of methyl bromide alternatives could have the same effect as other emergency conditions that may warrant use exemptions.

This spring EPA held discussions with USDA and the Department of State on whether emergency situations may arise that warrant the use of methyl bromide and other tools that could potentially address immediate and unforeseen needs for methyl bromide.

F. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 1 and 4 of Decision XXIII/4 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2013 control period. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in Section II of this preamble. EPA solicited comments on the technical and economic basis for determining

that the uses listed in this rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section II.E. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption.

The remaining considerations are addressed in the nomination documents including: the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility.

Some of these criteria are evaluated in other documents as well. For example, the United States has considered the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, updated in October 2009. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

There continues to be a need for methyl bromide in order to conduct the research required by Decision IX/6. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. As discussed in the preamble to the 2010 CUE rule (75 FR 23179, May 3, 2010), research is a key element of the critical use process. Research on the crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. While researchers may continue to use newly produced material for field, post-harvest, and emission minimization studies requiring the use of methyl bromide, EPA encourages researchers to use pre-phaseout inventory. EPA also encourages distributors to make inventory available to researchers, to promote the continuing effort to assist growers to transition critical use crops to alternatives.

G. Emissions Minimization

Previous decisions have stated that critical users shall employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. EPA developed a comprehensive strategy for risk mitigation through the 2006 Reregistration Eligibility Decision (RED) for methyl bromide, which is implemented through restrictions on how methyl bromide products can be used. This approach requires that methyl bromide labels include directions that treated sites be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film (VIF), by allowing smaller buffer zones around those sites. In addition

to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed.

EPA will continue to work with the U.S. Department of Agriculture – Agricultural Research Service (USDA-ARS) and the National Institute for Food and Agriculture (USDA-NIFA) to promote emission reduction techniques. The federal government has invested substantial resources into best practices for methyl bromide use, including emission reduction practices. The Cooperative Extension System, which receives some support from USDA-NIFA provides locally appropriate and project-focused outreach education regarding methyl bromide transition best practices. Additional information on USDA research on alternatives and emissions reduction can be found at: http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=308 and http://www.csrees.usda.gov/fo/methylbromideicgp.cfm.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. EPA also encourages researchers and users who are using such techniques to inform EPA of their experiences and to provide such information with their critical use applications.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this final rule is a "significant regulatory action" because it was deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings and this action does not add any new requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business

Administration's regulations at 13 CFR 121.201 (see Table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112- Vegetable and Melon farming 1113- Fruit and Nut Tree Farming 1114- Greenhouse, Nursery, and Floriculture Production	0171- Berry Crops 0172- Grapes 0173- Tree Nuts 0175- Deciduous Tree Fruits (except apple orchards and farms) 0179- Fruit and Tree Nuts, NEC 0181- Ornamental Floriculture and Nursery Products 0831- Forest Nurseries and Gathering of Forest Products	$0.75 million
Storage Uses	115114- Postharvest Crop activities (except Cotton Ginning) 311211- Flour Milling 311212- Rice Milling 493110- General Warehousing and Storage 493130- Farm Product Warehousing and Storage	 2041- Flour and Other Grain Mill Products 2044- Rice Milling 4225- General Warehousing and Storage 4221- Farm Product Warehousing and Storage	$7 million 500 employees 500 employees $25.5 million $25.5 million
Distributors and Applicators	115112- Soil Preparation, Planting and Cultivating	0721- Crop Planting, Cultivation, and Protection	$7 million
Producers and Importers	325320- Pesticide and Other Agricultural Chemical Manufacturing	2879- Pesticides and Agricultural Chemicals, NEC	500 employees

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. 603- 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this

rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action confers a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). We have therefore concluded that this rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is expected to affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132,

and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this action from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicited additional comment on this action from tribal officials.

G. Executive Order No. 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution,

or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the United States.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective [**Insert date of publication in the Federal Register**].

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

DATED: July 16, 2013

Bob Perciasepe,
Acting Administrator

For the reasons stated in the preamble, 40 CFR Part 82 is amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

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

2. Section 82.3 is amended by revising the definition of "Critical use methyl bromide" to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Critical use methyl bromide means the class I, Group VI controlled substance produced or imported through expending a critical use allowance or that portion of inventory produced or imported prior to the January 1, 2005 phaseout date that is sold only for approved critical uses.

* * * * *

3. Section 82.4 is amended by revising paragraph (p)(1) to read as follows:

§ 82.4 Prohibitions for Class I controlled substances.

* * * * *

(p) * * *

(1) No person shall sell critical use methyl bromide without first receiving a certification from the purchaser that the quantity purchased will be sold or used solely for an approved critical use. Every kilogram of critical use methyl bromide sold without first obtaining such certification constitutes a separate violation of this subpart.

* * * * *

4. Section 82.8 is amended as follows:

a. Revising paragraph (c) introductory text;

b. Revising the table in paragraph (c)(1);

c. Removing and reserving paragraph (c)(2).

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) Effective January 1, 2005, critical use allowances are apportioned as set forth in paragraph (c)(1) of this section for the exempted production and import of class I, Group VI controlled substances specifically for those approved critical uses listed in appendix L to this subpart for the applicable control period. Every kilogram of production and import in excess of the total number and type of unexpended critical use allowances held for a particular type of use constitutes a separate violation of this subpart.

(1) * * *

Company	**2013 Critical use allowances for pre-plant uses* (kilograms)**	**2013 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp. A Chemtura Company	323,564	18,162
Albemarle Corp.	133,057	7,469
ICL-IP America	73,530	4,127

TriCal, Inc.	2,289	129
*Total***	*532,440*	*29,886*

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) [Reserved]

5. Appendix L to Subpart A is revised to read as follows:

APPENDIX L TO SUBPART A OF PART 82 – APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2013 CONTROL PERIOD

Column A	Column B	Column C
Approved Critical Uses	**Approved Critical User and Location of Use**	**Limiting Critical Conditions** that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe root knot nematode infestation
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
	(b) Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation Moderate to severe pythium collar, crown and root rot Moderate to severe southern blight infestation Restrictions on alternatives due to karst topographical features
Nursery Stock (Fruit, Nut, Flower)	Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers	Moderate to severe nematode infestation Medium to heavy clay soils Local township limits prohibiting 1,3-dichloropropene
Orchard Replant	California stone fruit, table and raisin grape, wine grape, walnut, and almond growers	Moderate to severe nematode infestation Moderate to severe soilborne disease infestation Replanted orchard soils to prevent orchard replant disease Medium to heavy soils Local township limits prohibiting 1,3-dichloropropene
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Local township limits prohibiting 1,3-dichloropropene

	(b) Florida growers	Moderate to severe weed infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
Peppers	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
	(b) Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots Moderate to severe southern blight infestation, crown or root rot Restrictions on alternatives due to karst topographical features
Strawberry Fruit	California growers	Moderate to severe black root rot or crown rot Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation Local township limits prohibiting 1,3-dichloropropene Time to transition to an alternative
Strawberry Nurseries	California growers	Moderate to severe soilborne disease infestation Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematode infestation
Tomatoes	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
	(b) Georgia growers on fewer than 10 acres	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association	Moderate to severe beetle, weevil, or moth infestation Presence of sensitive electronic equipment subject to corrosion Time to transition to an alternative
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute	Moderate to severe beetle, moth, or cockroach infestation Presence of sensitive electronic equipment subject to corrosion Time to transition to an alternative
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation Presence of sensitive electronic equipment subject to corrosion Time to transition to an alternative
Commodities	California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season

Dry Cured Pork Products	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation Cheese/ham skipper infestation Dermested beetle infestation Ham mite infestation

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