6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2014-0065; FRL-9903-64-OAR]

RIN: 2060-AR80

Protection of Stratospheric Ozone: The 2014 and 2015 Critical Use Exemption from the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing uses that qualify for the critical use exemption (CUE) and the amount of methyl bromide that may be produced or imported for those uses for both the 2014 and 2015 control periods. EPA is proposing this action under the authority of the Clean Air Act to reflect consensus decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Fourth and Twenty-Fifth Meetings of the Parties. EPA is also proposing to amend the regulatory framework to remove provisions related to sale of pre-phaseout inventory for critical uses. EPA is seeking comment on the list of critical uses, on EPA's determination of the specific amounts of methyl bromide that may be produced and imported for those uses, and on the amendments to the regulatory framework.

DATES: Comments must be submitted by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

REGISTER]. If a hearing is requested it will be held on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection website www.epa.gov/ozone/strathome.html. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2014-0065**, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-Docket@epa.gov
- Fax: (202) 566-9744
- Phone: (202) 566-1742
- U.S. Mail: Docket EPA-HQ-OAR-2014-0065, U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460
- Hand Delivery or Courier: Docket EPA-HQ-OAR-2014-0065, EPA Docket Center - Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2014-0065. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal

information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: 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 will be 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 proposed 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 proposed 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 years 2014 and 2015. 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 proposing and seeking comment on the uses that will qualify for the critical use exemption as well as specific amounts of methyl bromide that may be produced and imported for proposed critical uses for the 2014 and 2015 control periods. EPA also seeks

comment on the amendments to the regulatory framework to remove provisions related to sale of pre-phaseout inventory for critical uses.

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I. General Information

A. Regulated Entities

Entities and categories of entities potentially regulated by this proposed action include producers, importers, and exporters of methyl bromide; applicators and

distributors of methyl bromide; and users of methyl bromide that applied for the 2014 and 2015 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 proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed 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.

B. What Should I Consider When Preparing My Comments?

1. *Confidential Business Information*. Do not submit confidential business information (CBI) to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
- Follow directions - The agency may ask you to respond to specific questions or

organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at http://www.epa.gov/ozone/mbr.

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed

rule implementing Title VI of the Clean Air Act is intended to derogate from 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. Entities affected by this proposal must comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when producing, importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide. The provisions in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What Is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol in 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United

States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each developed country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze on the level of methyl bromide production and consumption for developed countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance. This rule froze U.S. production and consumption at the 1991 baseline level of 25,528,270 kilograms, and set forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which, for newly listed Class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances."

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties agreed to adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for developed countries with exemptions permitted for critical uses.

At that time, the United States continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in developed countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for Article 5 countries.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to align the U.S. phaseout of methyl bromide with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105-277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a rulemaking on November 28, 2000 (65 FR 70795), which allowed for the reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes through an interim final rule on July 19, 2001 (66 FR 37751), and a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a rule (the "Framework Rule") that established the framework for the critical use exemption, set forth a list of approved critical uses for 2005, and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the annual control periods from 2006 to 2012. In the 2013 rule, EPA amended the framework to remove certain requirements related to sale of pre-phaseout inventory for critical uses.

Under authority of section 604(d)(6) of the CAA, EPA is proposing the uses that will qualify as approved critical uses for two separate control periods (2014 and 2015) as well as the amount of methyl bromide that may be produced or imported to satisfy those uses in each of those years. EPA is also proposing to amend the regulatory framework to remove additional provisions related to sale of pre-phaseout inventory for critical uses. The proposed critical uses and amounts for 2014 reflect Decision XXIV/5, taken at the Twenty-Fourth Meeting of the Parties in November 2012. The proposed critical uses and amounts for 2015 reflect Decision XXV/4, taken at the Twenty-Fifth Meeting of the Parties in October 2013.

In accordance with Article 2H(5) of the Montreal Protocol, the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of critical uses. The status of Decisions is addressed in NRDC v. EPA, (464 F.3d 1, D.C. Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in NRDC v. EPA and available in the docket for this

proposed action. In this proposed rule on critical uses for 2014 and 2015, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. 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 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. 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.

EPA requested critical use exemption applications through **Federal Register** notices published on June 14, 2011 (76 FR 34700) (for the 2014 control period) and on May 17, 2012 (77 FR 29341) (for the 2015 control period). Applicants submitted data on

their use of methyl bromide, the technical and economic feasibility of using alternatives, ongoing research programs into the use of alternatives 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. 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. 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. EPA then provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On January 31, 2012, the United States submitted the tenth *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 2014 critical uses. In February 2012, MBTOC sent questions to the United States concerning technical and economic issues in the 2014 nomination. The United States transmitted responses to MBTOC in March, 2012. In May 2012, the MBTOC provided their interim recommendations on the U.S. nomination in the May TEAP Progress Report. In that report, MBTOC posed questions about the U.S. nominations for dried fruit, dried cured ham, and strawberries. The United States responded to those questions in August 2012. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

On January 24, 2013, the United States submitted the eleventh *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 2015 critical uses. In February and March 2013, MBTOC sent questions to the United States concerning technical and economic issues in the 2015 nomination. The United States transmitted responses to MBTOC in March, 2013. In May 2013, the MBTOC provided its interim recommendations on the U.S. nomination in the May TEAP Progress Report and posed additional questions about the U.S. nominations. The United States responded to those questions in August 2013. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analyses contained in those documents.

B. How Does This Proposed 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), 77 FR 29218 (May 17, 2012), and 78 FR 43797 (July 22, 2013).

Unlike in previous years, EPA today proposes critical uses for both 2014 and 2015. EPA is proposing to do so to expedite the issuance of 2015 allowances. EPA has received repeated comments in recent years that a failure to issue CUE allowances in a timely fashion places manufacturers and distributors, who need to plan for the upcoming growing season, in a difficult position. For 2013, the final rule was not effective until July 22, 2013, and EPA recognizes that this late date could cause difficulties for growers as well as manufacturers and distributors. EPA seeks to avoid such difficulties for 2015 by issuing the authorization for that year in this rulemaking.

Today's proposed action continues the approach established in the 2013 rule for determining the amounts of Critical Use Allowances (CUAs) to be allocated for critical

uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kilogram (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 two control periods at issue in this rule are 2014 and 2015. Each year's allowances expire at the end of that control period and, as explained in the Framework Rule, are not bankable from one year to the next.

The 2013 Rule also removed from the regulatory framework the restriction that limits the sale of inventory for 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. Under the framework, the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller was prohibited. Today, EPA is proposing to remove all of the remaining provisions in 40 CFR part 82 related to critical stock allowances.

C. Proposed Critical Uses

In Decision XXIV/5, taken in November 2012, the Parties to the Protocol agreed "to permit, for the agreed critical-use categories for 2014 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 2014 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 XXIV/5 for the United States:

- Commodities
- Mills and food processing structures

- Cured pork
- Strawberry – field

In Decision XXV/4, taken in October 2013, the Parties to the Protocol agreed "[t]o permit, for the agreed critical-use categories for 2015 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 2015 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 XXV/4 for the United States:

- Cured pork
- Strawberry – field

EPA is proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXIV/5 and Decision XXV/4. EPA is proposing to amend the table of critical uses and critical users based on the authorizations in Decision XXIV/5 and Decision XXV/4 and the technical analyses contained in the 2014 and 2015 U.S. nominations that assess data submitted by applicants to the CUE program.

EPA is seeking comment on the technical analyses contained in the U.S. nominations (available for public review in the docket). Specifically, EPA requests information regarding any changes to the registration (including cancellations or registrations), use, or efficacy of alternatives that have occurred after the nominations were submitted. 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.

The following are proposed changes to the existing appendix, starting with changes due to the applications and analysis conducted for the 2014 control period. For 2014, EPA is proposing to remove Georgia growers of cucurbits, eggplants, peppers, and tomatoes. These groups did not submit applications for 2014 and therefore were not included in the 2014 U.S. nomination.

EPA is proposing to remove sectors or users that applied for a critical use in 2014 but that the United States did not nominate for 2014. 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 United States Government (USG) determined that certain sectors or users did not meet the critical use criteria in Decision IX/6 and the United States therefore did not include them in the 2014 Critical Use Nomination. EPA notified these sectors of their status by letters dated February 7, 2012. These sectors are orchard replant for California wine grape growers and Florida growers of eggplants, peppers, and tomatoes. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide.

Some sectors that were not included in the 2014 Critical Use Nomination submitted supplemental applications for 2014. These sectors are: the California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; California

strawberry nurseries; stored walnuts; and the U.S. Golf Course Superintendents Association. For those sectors the USG came to a decision that the sectors not nominated have not provided rigorous and convincing evidence that they meet the criteria laid out in Decision IX/6, and further that no new problem or large yield/quality loss had been demonstrated that warranted seeking a supplemental authorization from the Parties to the Montreal Protocol.

The following are proposed changes to the existing appendix due to the applications and analysis conducted for the 2015 control period. For 2015 EPA is proposing to remove California wine grape growers and Florida growers of eggplants, peppers, tomatoes, and strawberries. These groups did not submit applications for 2015 and therefore were not included in the 2015 U.S. nomination.

EPA is proposing to remove sectors or users that applied for a critical use in 2015 but that the United States did not nominate for 2015. As described above EPA conducted a thorough technical assessment of each application and the USG determined that certain sectors or users did not meet the critical use criteria. EPA notified these sectors of their status by letters dated March 26, 2013. These sectors are rice millers, pet food manufacturing facilities, members of the North American Millers Association, and California entities storing walnuts, dried plums, figs, and raisins. In addition, EPA is proposing to remove entities storing dates as a critical use for 2015. While the United States nominated this sector for 2015, MBTOC did not recommend that this sector be a critical use in 2015 and the Parties did not authorize this use.

EPA has received supplemental applications for 2015 from sectors that the United States did not nominate for 2015. These sectors are: Michigan cucurbit, eggplant, pepper,

and tomato growers; Florida eggplant, pepper, tomato, and strawberry growers; the California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; the U.S. Golf Course Superintendents Association; and stored walnuts, dried plums, figs, and raisins in California. The USG is currently reviewing these supplemental applications for 2015 and EPA is not proposing at this time to authorize critical use for these sectors. EPA is not proposing at this time to authorize critical use for these sectors but may take future action as appropriate.

Finally, EPA is adding information to Column B of appendix L to clarify which critical uses are approved for which control periods. EPA is not proposing other changes to the table but 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 refers to instances in which 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.

D. Proposed Critical Use Amounts

Table A of the annex to Decision XXIV/5 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2014. The maximum amount of new production and import for U.S. critical uses, specified in Table B of Decision XXIV/5, is

442,337 kg, minus available stocks. This figure is equivalent to 1.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg.

Similarly, Table A of the annex to Decision XXV/4 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2015. The maximum amount of new production and import for U.S. critical uses, specified in Table B of Decision XXV/4, is 376,900 kg, minus available stocks. This figure is equivalent to 1.5 % of the U.S. 1991 methyl bromide consumption baseline.

For 2014 and 2015, EPA is proposing to determine the level of new production and import according to the framework and as modified by the 2013 Rule. Under this approach, the amount of new production for each control period would equal the total amount authorized by the Parties to the Montreal Protocol in their Decisions minus any reductions for available stocks, carryover, and the uptake of alternatives. These terms (available stocks, carryover, and the uptake of alternatives) are discussed in detail below. As established in the 2013 Rule, EPA would not allocate critical stock allowances. EPA would still determine whether there are any "available stocks" and reduce the new production allocation by that amount. Applying this approach, EPA is proposing to allocate allowances to exempt 442,337 kg of new production and import of methyl bromide for critical uses in 2014 and 376,900 kg of new production and import for 2015.

Available Stocks: For 2014 and 2015 the Parties indicated that the United States should use "available stocks," but did not indicate a minimum amount expected to be taken from stocks. Consistent with EPA's past practice, EPA is considering what amount, if any, of the existing stocks may be available to critical users during 2014 and 2015. The amount of existing stocks reported to EPA as of December 31, 2012, was 627,066 kg.

The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Both Decision XXIV/5 and Decision XXV/4 state 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, the Decisions recognize that "parties operating under critical-use exemptions should take into account the extent to which methyl bromide is available in sufficient quantity and quality from existing stocks…." Earlier Decisions also refer to the use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties may determine their level of available stocks. 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.

In the 2013 CUE Rule (78 FR 43797, July 22, 2013), EPA established an approach that considered whether a percentage of the existing inventory was available. In that rule, EPA took comment on whether 0% or 5% of the existing stocks was available. The final rule found that 0% was available to be allocated for critical use in 2013 for a number of reasons including: a pattern of significant underestimation of inventory drawdown; the increasing concentration of critical users in California while inventory remained distributed nationwide; and the recognition that the agency cannot compel distributors to sell inventory to critical users. For further discussion, please see the 2013 CUE Rule. EPA believes these circumstances remain true for 2014 and 2015.

In addition, the 2013 CUE Rule removed the restriction that critical stock allowances be expended to sell inventory to critical uses. As a result, for the first time in the history of the CUE program, distributors were free to sell their entire remaining inventory to critical users. At this time, EPA is unable to calculate what effect this policy change may have had on the remaining inventory, although the agency will docket end of year inventory data that will be reported to EPA in February 2014. EPA notes that it may be difficult to assess the impact of this change, which went into effect in mid-2013, simply from updated inventory data. EPA solicits comments on whether, and how, to draw inferences as to the availability of stocks for critical uses based on inventory figures as of December 31, 2013, (e.g., whether the magnitude of the reduction in pre-phaseout stocks could be evidence of the degree of availability for critical uses).

For these reasons, EPA is proposing to find 0% of the existing inventory available for 2014 and 2015. EPA specifically invites comment on whether 0% or 5% of existing inventory will be available to critical users in 2014 and/or 2015, taking into consideration the recent history of inventory drawdown, the removal of the critical stock allowance provisions, the quantity and geographical location of authorized uses, and the quantity and location of stocks.

Existing stocks, as of December 31, 2012, were equal to 627,066 kg. Therefore, 5% would be 31,353 kg. Were EPA to find 5% of existing stocks to be available, EPA would reduce the amount of new production for 2014 and/or for 2015 by 31,353 kg. EPA notes that it is not proposing to allocate a corresponding amount of critical stock allowances, as had been the case prior to 2013. EPA removed the requirement to expend critical stock allowances when selling inventory to critical users in the 2013 CUE Rule.

EPA notes that it will receive updated end of year inventory data in February 2014. EPA anticipates that inventory will have been further drawn down, and therefore 5% of the existing stocks, based on the updated data, is likely to be significantly less than 31,353 kg. EPA solicits comment on whether, if EPA concludes some portion of existing stocks are "available," EPA should calculate the portion that is available for 2014 and/or 2015 based on the updated data for inventory as of December 31, 2013.

Carryover Material: The Parties in paragraph 9 of Decision XXIV/5 "urge parties operating under critical-use exemptions to put in place effective systems to discourage the accumulation of methyl bromide produced under the exemptions." 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. So for example, the amount of carryover from 2012 is factored into the determination for 2014. 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.

All critical use methyl bromide that companies reported to be produced or imported in 2012 was sold to end users. 759 MT of critical use methyl bromide was

produced or imported in 2012. Slightly more than the amount produced or imported was actually sold to end-users. This additional amount was from distributors selling material that was carried over from the prior control period. Therefore, EPA is proposing to apply the carryover deduction of 0 kg to the new production amount for 2014. EPA's calculation of the amount of carryover at the end of 2012 is consistent with the method used in previous CUE rules, and with the format in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. Past U.S. Accounting Frameworks, including the one for 2012, are available in the public docket for this rulemaking.

Production, import, and sales data for 2013 will be reported to EPA in February 2014. Without these data, the agency is unable to calculate how, or whether, a reduction for carryover would affect the 2015 allocation amount. However, EPA anticipates that the carryover will remain 0 kg, as it has been at that level since 2009. Based on information available, EPA believes that the demand for critical use methyl bromide continues to be high and all material produced or imported for a particular control period is sold in that control period. Therefore, while the proposed allocation amount for 2015 assumes 0 kg of carryover in 2013, EPA proposes to use the reported data to calculate the actual carryover amount for 2013, and subtract that amount (if any) from the authorization for new production and import in the final rule.

Uptake of Alternatives: 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 and increased the new production amount when an alternative is withdrawn, but not above the amount authorized by the Parties.

Since the United States submitted the 2014 CUN on January 31, 2012, the California Department of Pesticide Regulation has proposed control measures for the use of chloropicrin with the intent of reducing risk from acute exposures that might occur near fields fumigated with products containing chloropicrin. Because this regulation is at the proposed stage and has not been finalized, EPA is unable to state what effects these changes may have on the availability of methyl bromide alternatives for 2014. It is more likely that the proposed changes to the chloropicrin regulation would affect the 2015 control period and EPA specifically invites comments on the implications for 2015. However EPA is not proposing to make any reductions for either the 2014 or 2015 control periods because of these uncertainties. The critical use exemption program has historically only relied on final actions when determining the availability of alternatives. EPA is not aware of any other actions regarding alternatives that would lead to either an increase or decrease in 2014 and 2015.

EPA is not proposing to make any other modifications to CUE amounts to account for availability of alternatives. Rates of transition to alternatives have already been applied for authorized 2014 and 2015 critical use amounts through the nomination and authorization process. EPA will consider new data received during the comment period and continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

Allocation Amounts: EPA is proposing to allocate 2014 critical use allowances for new production or import of methyl bromide equivalent to 442,337 kg. Because EPA

is taking comment on finding 5% of existing inventory to be available, EPA is also taking comment on an allocation of 410,984 kg. EPA is also proposing to allocate 2015 critical use allowances for new production or import of methyl bromide equivalent to 376,900 kg. EPA is also taking comment on whether it should find 5% of existing inventory to be available, which would result in an allocation of 345,547 kg. EPA is taking further comment on whether, if EPA concludes some portion of existing stocks are "available," EPA should calculate the portion that is available for 2014 and/or 2015 based on the updated data for inventory to be submitted in February 2014.

EPA is proposing to allocate the 2014 and 2015 allowances to the four companies that hold baseline allowances. The proposed allocations, as in previous years, are in proportion to those baseline amounts, as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). Paragraph 3 of Decision XXIV/5 and paragraph 5 of Decision XXV/4 state that "parties shall endeavour 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 proposed Framework Rule contained 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 in the final Framework Rule 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. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), and because of the limited number of authorized uses, the agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

E. Amending the Critical Stock Allowance Framework

The 2013 Rule removed the provisions at § 82.4(p)(ii) and (iii) requiring the use of critical stock allowances for sales of inventory to critical users. In addition, EPA made some necessary conforming changes to 40 CFR Part 82, which follow from removing those restrictions including removing the reference to the restriction on selling inventory pursuant to a CSA from the definition of "critical use methyl bromide."

The 2013 Rule also stated that EPA believed additional conforming changes may be appropriate but that it would address those changes in a future rulemaking. Today EPA is proposing and taking comment on removing the remaining references to critical stock allowances in 40 CFR Part 82. EPA believes these provisions are no longer necessary if the agency is not allocating separate critical stock allowances. Specifically, EPA is proposing to remove the definitions of "critical stock allowance," "critical stock allowance holder," and "unexpended critical stock allowance" from § 82.3. EPA is proposing to no longer allow for the intercompany transfer of critical stock allowances at § 82.12(a)[1] or the exchange of critical use allowances for critical stock allowances at § 82.12(e). EPA is also proposing to remove the reporting and recordkeeping requirements related to critical stock allowances in § 82.13(3) and (4). EPA invites comment on the

[1] This provision allows any critical stock allowance holder ("transferror") to transfer critical stock allowances to any critical stock allowance holder or any methyl bromide producer, importer, distributor, or third party applicator ("transferee").

necessity of these provisions, the appropriateness of removing them from the Code of Federal Regulations, and whether there are other provisions that should be amended in light of the removal of the requirement to use critical stock allowances for sales of inventory to critical users.

In 2013 EPA held discussions with USDA and the Department of State on tools that could potentially address immediate and unforeseen needs for methyl bromide including whether emergency situations may arise that warrant the use of methyl bromide consistent with the treaty, recognizing that emergency uses are not intended as a replacement for CUE uses. In August, EPA held a stakeholder meeting to present, among other things, the findings of those discussions and noted that the three agencies had not yet identified any specific situations that could not be addressed by current mechanisms. The U.S. government is committed to using flexibility in the Protocol's existing mechanisms as an avenue to address changes in national circumstance that affect the transition to alternatives. EPA welcomes comments on specific emergency situations that may necessitate the use of methyl bromide, consistent with the requirements of the Montreal Protocol, and which could be difficult to address using current tools and authorities.

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

Decision XXIV/5 and Decision XXV/4 call on Parties to apply the conditions and criteria listed in Decisions Ex. I/4 (to the extent applicable) and IX/6 paragraph 1 to exempted critical uses for the 2014 and 2015 control periods. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., and V.C. of this preamble. Section V.C. solicits comments on the technical and

economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria 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 paragraph (1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section V.D. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6 paragraph (1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption. EPA refers readers to the preamble to 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 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.

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 paragraphs 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 (see Decision IX/6 paragraph (1)(b)(iii)) 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 paragraph 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 of the Parties 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 2009 Reregistration Eligibility Decision (RED) for methyl bromide, which is implemented through restrictions on how methyl bromide products can be used. This approach means that methyl bromide labels require 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 developing and implementing 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. 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.

VI. 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 proposal 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. This rule does propose to remove requirements related to the recordkeeping and reporting of critical stock allowances which would decrease the information collection burden. 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**	**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	$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	$7 million 500 employees 500 employees $25.5 million $25.5 million

Distributors and Applicators	115112- Soil Preparation, Planting and Cultivating	$7 million
Producers and Importers	325320- Pesticide and Other Agricultural Chemical Manufacturing	500 employees

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect 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 the critical use exemption. 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 proposed 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 would allow the use of methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer 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 proposed 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 would provide 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 proposed rule is expected to affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed 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 solicits comment on this proposed 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 solicits additional comment on this proposed 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 proposed 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 proposed 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 proposed 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering 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 proposed rule will 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 proposed 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.

List of Subjects in 40 CFR Part 82

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

DATED: February 14, 2014

Gina McCarthy,
Administrator

For the reasons stated in the preamble, 40 CFR Part 82 is proposed to be 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.

§ 82.3 [Amended]

2. Amend § 82.3 by removing the definitions for “Critical stock allowance (CSA)”, “Critical stock allowance (CSA) holder” and “Unexpended critical stock allowance (CSA)”.

3. Amend § 82.8 by revising the table in paragraph (c)(1) to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Company	**2014 Critical use allowances for pre-plant uses* (kilograms)**	**2014 Critical use allowances for post-harvest uses* (kilograms)**	**2015 Critical use allowances for pre-plant uses* (kilograms)**	**2015 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp. A Chemtura Company	252,236	16,572	227,073	1,969
Albemarle Corp.	103,725	6,815	93,378	810
ICL-IP America	57,321	3,766	51,602	447
TriCal, Inc.	1,785	117	1,607	14
Total	*415,067*	*27,270*	*373,660*	*3,240*

* 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 for the appropriate control period.

* * * * *

4. Amend § 82.12 by revising paragraph (a) and removing paragraph (e) to read as follows:

§ 82.12 Transfers of allowances for class I controlled substances

(a) Inter-company transfers. (1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person (“transferor”) may transfer to any other person (“transferee”) any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (“transferor”) may transfer to any other person (“transferee”) any amount of the transferor's Article 5 allowances. After January 1, 2002, any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) (“transferor”) may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs. After January 1, 2005, any critical use allowance holder (“transferor”) may transfer critical use allowances to any other person (“transferee”).

* * * * *

5. Amend §82.13 by:

a. Revising paragraphs (f)(3)(iv) and (g)(4)(vii); and

b. Removing and reserving paragraphs (bb)(2)(iv) and (cc)(2)(iv)

The revised text reads as follows.

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(f) * * *

(3) * * *

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, critical use allowances (pre-plant), critical use allowances (post-harvest), and amount of essential-use allowances and destruction and transformation credits conferred at the end of that quarter;

* * * * *

(g) * * *

(4) * * *

(vii) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter and the total sum of expended and unexpended critical use allowances (pre-plant) and unexpended critical use allowances (post-harvest);

* * * * *

6. Amend Subpart A by revising Appendix L to read as follows:

APPENDIX L TO SUBPART A OF PART 82 – APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2014 AND 2015 CONTROL PERIODS

Column A	Column B	Column C
Approved Critical Uses	**Approved Critical User, Location of Use, and Control Period**	**Limiting Critical Conditions** that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Strawberry Fruit	California growers. Control periods 2014 and 2015.	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

POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association. Control period 2014.	Moderate to severe beetle, weevil, or moth infestation Presence of sensitive electronic equipment subject to corrosion
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. Control period 2014.	Moderate to severe beetle, moth, or cockroach infestation Presence of sensitive electronic equipment subject to corrosion
	(c) Members of the North American Millers' Association in the U.S. Control period 2014.	Moderate to severe beetle infestation Presence of sensitive electronic equipment subject to corrosion
Commodities	California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California. Control period 2014.	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. Control periods 2014 and 2015.	Red legged ham beetle infestation Cheese/ham skipper infestation Dermested beetle infestation Ham mite infestation

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