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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2013-0369; FRL-9922-39-OAR]

RIN: 2060-AS44

Protection of Stratospheric Ozone: The 2016 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 and the amount of methyl bromide that may be produced or imported for those uses for the 2016 control period. EPA is proposing this action under the authority of the Clean Air Act to reflect consensus decisions of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Sixth Meeting of the Parties in November 2014.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2013-0369**, to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit <http://www.epa.gov/dockets/comments.html> for instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/comments.html>.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205T, 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460; telephone number (202) 343-9055; e-mail address arling.jeremy@epa.gov. 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:

I. Executive Summary

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 year 2016. 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 2016.

II. General Information

A. Does This Action Apply to Me?

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 2016 critical use exemption including growers of vegetable crops, ornamentals, fruits, and nursery stock, and owners of stored food commodities. 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.

III. 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.

IV. 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 (CAA 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 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 countries operating under Article 5 of the Protocol (developing countries).

V. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Permitted 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. Through an interim final rule on July 19, 2001 (66 FR 37751), and a final rule on January 2, 2003 (68 FR 238), EPA amended the regulations to allow for an exemption for quarantine and preshipment purposes.

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 2015.

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 2016, EPA is honoring commitments made by the United States in the Montreal Protocol context.

Under authority of section 604(d)(6) of the CAA, EPA is now proposing the uses that will qualify as approved critical uses for 2016, as well as the amount of methyl bromide that may be produced or imported to satisfy those uses. The proposed critical

uses and amounts reflect Decision XXVI/6, taken at the Twenty-Sixth Meeting of the Parties in November 2014.

VI. 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, Decision IX/6 provides 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 for 2016 through a **Federal Register** notice published on May 31, 2013 (78 FR 32646). 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).¹ 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 take Decisions on 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.

¹ See CAA section 604(d)(6): "To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses"

On January 22, 2014, the United States submitted the twelfth *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 2016 critical uses. In March 2014, MBTOC sent questions to the United States concerning technical and economic issues in the 2016 nomination. The United States transmitted responses to MBTOC in March 2014. In May 2014, the MBTOC provided their interim recommendations on the U.S. nomination in the May TEAP Interim Report. 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 approved in this rule 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 and to indicate which uses meet the criteria for the exemption program for that year.

This proposed action continues the approach established in the 2013 Rule (78 FR 43797, July 22, 2013) 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. 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.

C. Proposed Critical Uses

In Decision XXVI/6, taken in November 2014, the Parties to the Protocol agreed “[t]o permit, for the agreed critical-use categories for 2015 and 2016 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 and 2016 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 XXVI/6 for the United States for 2016:

- 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 for 2016. EPA is proposing to amend the table of critical uses and critical users based on the uses permitted in Decision XXVI/6 and the technical analyses contained in the 2016 U.S. nomination that assess data submitted by applicants to the CUE program.

Specifically, EPA is proposing to remove the food processing uses that were listed as critical uses for 2014. The California Date Commission as well as all users under the food processing use (rice millers, pet food manufacturing facilities, and members of the North American Millers' Association) did not submit CUE applications for 2016 and

therefore were not included in the 2016 U.S. nomination to the Parties of the Montreal Protocol.

EPA is also proposing to remove the remaining commodity uses (walnuts, dried plums, figs, and raisins). These sectors applied for a critical use in 2016 but the United States did not nominate them for 2016. In addition, some sectors that were not on the list of critical uses for 2014 or 2015 submitted applications for 2016. These sectors are: Michigan cucurbit, eggplant, pepper, and tomato growers; Florida eggplant, pepper, strawberry, and tomato 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; and the U.S. Golf Course Superintendents Association. 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. Following this technical review, EPA consulted with the USDA and the Department of State. EPA determined that these users did not meet the critical use criteria in Decision IX/6 and the United States therefore did not include them in the 2016 Critical Use Nomination. EPA notified these sectors of their status by letters dated March 28, 2014. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide. EPA refers readers to the Federal Register Notice “Request for Methyl Bromide Critical Use Exemption Applications for 2017” (79 FR 38887; July 9, 2014) for a summary of information on how the agency evaluated specific uses and available alternatives when considering applications for critical uses for 2016. EPA requests comment on the technical assessments of the applications in the sector summary

documents found in the docket to this rule and the determination that these users did not meet the critical use criteria and whether there is any new or additional information that the agency may consider in preparing future nominations.

EPA is also seeking comment on the technical analyses 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 occurred after the nomination was 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. EPA notes that it will not finalize a rule containing uses beyond those agreed to by the Parties for 2016.

D. Proposed Critical Use Amounts

Table A of the annex to Decision XXVI/6 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2016. The maximum amount of new production and import for U.S. critical uses in 2016, specified in Table B of the annex to Decision XXVI/6, is 234.78 MT, minus available stocks. This figure is equivalent to less than 1 percent of the U.S. 1991 methyl bromide consumption baseline of 25,528 MT.

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 permitted 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. Applying this approach, EPA is proposing to allocate allowances to exempt 140,531 kg of new production and import of methyl bromide for critical uses in 2016, making reductions for available stocks and carryover. EPA invites comment on the proposal to make reductions for available stocks and carryover and on the analyses below.

Available Stocks: For 2016 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 2016. The latest data reported to EPA from December 31, 2014, show existing stocks to be 158,121 kg (158 MT). This shows that 198 MT of pre-2005 stocks were used in 2014. These data do not reflect drawdown of stocks that is likely to occur during 2015.

The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXVI/6 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, the Decision states 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 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 (78 FR 43802).

EPA believes that 5% of existing stocks will be available in 2016 for the two proposed critical uses. As a result of the changes to the FIFRA labeling, methyl bromide sold or distributed in 2015 can only be used for approved critical uses or for quarantine and preshipment purposes. Except for sectors with quarantine and preshipment uses, California strawberries is the only pre-plant sector that will be able to use stocks in 2015 or 2016. EPA does not anticipate stocks to be used for quarantine and preshipment uses as there are no production allowances required to manufacture that material and it tends to be less expensive than stocks. Distributors will therefore likely make stocks available to California strawberry growers in 2015 and 2016.

While EPA is not proposing to estimate the amount that will be used in 2015, EPA believes that at least 5% stocks will be available in 2016. As discussed in the

carryover section below, demand by California strawberry growers in 2014 for critical use methyl bromide was lower than anticipated. For the first time since 2009, not all of the critical use material produced or imported for a control period was sold. Decreased demand for critical use methyl bromide in 2014 means that unsold material already produced will be available in 2015 in addition to stocks.

Furthermore, EPA now knows the national distribution and composition of stocks (e.g. pure or mixed with chloropicrin) due to a recent information collection request under section 114 of the Clean Air Act. EPA believes there is geographically accessible pure methyl bromide for ham producers in the Southeastern U.S. as well as pre-plant methyl bromide for California strawberry producers.

For these reasons, EPA is proposing to find 5% of the existing inventory available for use in 2016. EPA specifically invites comment on whether between 0% and 5% of existing inventory will be available to critical users in 2016, taking into consideration the FIFRA labeling changes, the recent history of inventory drawdown, the amount of unsold 2014 critical use methyl bromide, the removal of the critical stock allowance provisions that limited the amount of stocks that can be sold for critical uses, the quantity and geographical location of approved uses, and the quantity and location of stocks. Existing stocks, as of December 31, 2014, were equal to 158,121 kg. Therefore, EPA is proposing to reduce the amount of new production for 2016 by 7,906 kg.

Carryover Material: EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical use exemption, from being added to the 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 next year. EPA uses these reports to calculate any excess methyl bromide left over from that year's CUE and, using the framework established in the 2005 CUE Rule, reduces the following year's total allocation by that amount. Carryover had been reported to the Agency every year from 2005 to 2009. 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.

In 2015, companies reported that 442,200 kg of methyl bromide was produced or imported for U.S. critical uses in 2014. EPA also received reports that 355,857 kg of critical use methyl bromide was sold to end-users in 2014. EPA calculates that the carryover amount at the end of 2014 was 86,343 kg, which is the difference between the reported amount of critical use methyl bromide produced or imported in 2014 and the reported amount of sales of that material to end users in 2014. EPA's calculation of carryover 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. All U.S. Accounting Frameworks for critical use methyl bromide are available in the public docket for this rulemaking. EPA is therefore proposing to reduce the total level of new production and import for critical uses by 86,343 kg to reflect the amount of carryover material available at the end of 2014, in addition to the 7,906 kg reduction for available stocks discussed above.

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 permitted by the Parties. Neither circumstance has occurred since the nomination was submitted for 2016.

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 permitted 2016 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 critical use allowances for new production or import of methyl bromide equivalent to 140,531 kg to Great Lakes Chemical Corporation, Albemarle Corporation, ICL–IP America, and TriCal, Inc in proportion to their respective baselines. Paragraph 3 of Decision XXVI/6 states 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 permitting critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

EPA is proposing to assign the 7,906 kg reduction for available stocks and 86,343 kg reduction for carryover in proportion to the amounts indicated in Table A of the annex to Decision XXVI/6. In other words, both the pre-plant and the post-harvest allocation would be reduced by 40%. Specifically, the pre-plant allocation for California strawberry

production would decline from 231,540 kg to 138,592 kg and the post-harvest allocation for dry cured ham would decline from 3,240 kg to 1,939 kg. Reported data show that the critical use methyl bromide carried over from 2014 and the existing stocks include both pre-plant and post-harvest material. EPA invites comment on reducing the allocation in this proportional manner or whether an alternate method is preferable.

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. Because EPA is proposing only one use in the pre-plant sector and one use in the post-harvest sector for 2016, this proposed rule follows the breakout of specific uses in Decision XXVI/6.

Emergency Use: 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 and any new information 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.

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

Decision XXVI/6 calls on Parties to apply the criteria in Decision IX/6, paragraph 1 and the conditions set forth in Decision Ex. I/4 (to the extent applicable) to exempted critical uses for the 2016 control period. The following section provides references to sections of this preamble and other documents where EPA considers the criteria of those two Decisions.

Decision IX/6, paragraph 1 contains the critical use criteria, which are summarized in Section III.A of the preamble. The nomination documents detail how each proposed critical use meets the criteria in Decision IX/6, paragraph 1 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; and the development of research and transition plans. The nomination documents also address the requests in Decision Ex. I/4 paragraphs 5 and 6 that Parties consider and implement MBTOC recommendations, where feasible, on actions a Party may take to reduce the critical uses of methyl bromide and include information on the methodology they use to determine economic feasibility.

A discussion of the agency's application of the critical use criteria to the proposed critical uses for 2016 appears in Sections III.A., III.C., and III.D. of this preamble. EPA 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 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 United States has also considered the adoption of alternatives and research into methyl bromide alternatives in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and 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.

F. Emissions Minimization

Previous Decisions of the Parties have stated that critical users shall employ emissions 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)² for methyl bromide, available in the docket to this rulemaking, 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. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually

² Additional information on risk mitigation measures for soil fumigants is available at http://epa.gov/pesticides/reregistration/soil_fumigants/

impermeable film, 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.

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 emissions reduction techniques. The federal government has invested substantial resources into developing and implementing best practices for methyl bromide use, including emissions 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=303,
http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=304, and
<http://www.csrees.usda.gov>.

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 techniques to minimize emissions of methyl bromide to inform EPA of their experiences and to provide information on such techniques with their critical use applications.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at
<http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action was deemed to raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0482. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. 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 regulatory burden, has no net burden or otherwise has a positive economic effect on 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. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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. This action would allocate allowances for the production and import of methyl bromide to private entities. This rule also would limit the proposed critical uses to geographical areas that reflect the scope of the trade associations that applied for a critical use. This rule does not impose any duties or responsibilities on State governments or allocate any rights to produce or use methyl bromide to a State government.

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

This action does not have tribal implications as specified in Executive Order 13175. 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.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 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 action's health and risk assessments are contained in the Regulatory Impacts Analysis and Benefits Analysis found in the docket.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA believes this action 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 action will result in impacts that are, in general, equally distributed across geographical regions in the United States. The impacts do not fall disproportionately on minority or low-income populations but instead vary with a wide

variety of factors. Populations that work or live near fields or other application sites may benefit from the reduced amount of methyl bromide applied, as compared to amounts allowed under previous critical use exemption rules.

List of Subjects in 40 CFR Part 82

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

Dated: June 3, 2015.

Gina McCarthy,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 82 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. 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	2016 Critical use allowances for pre-plant uses* (kilograms)	2016 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	84,222	1,179
Albemarle Corp.	34,634	485
ICL-IP America	19,140	268
TriCal, Inc.	596	8
<i>Total</i>	<i>138,592</i>	<i>1,939</i>

* 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.

* * * * *

3. 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 2016
CONTROL PERIOD**

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User, 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		
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
POST-HARVEST USES		

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