

■ 2. A new temporary § 165.T11-0841 is added to read as follows:

**§ 165.T11-0841 Safety Zone; Mississippi River, Mile Marker 230 to Mile Marker 234, in the vicinity of Baton Rouge, LA.**

(a) *Location.* The following area is a temporary safety zone: All waters of the Mississippi River beginning at mile marker 230 and ending at mile marker 234, extending the entire width of the river, in the vicinity of Baton Rouge.

(b) *Effective Date.* This section is effective from 7 a.m. CST on August 28, 2011 until 7 a.m. CST on November 25, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless vessels have met the specific instructions or are authorized by the Captain of the Port New Orleans or designated representative as further explained below.

(2) Persons or vessels requiring entry into or passage through must have met the specific instructions or request permission from the Captain of the Port New Orleans or a designated representative. They may be contacted via VHF Channel 12, 67, or via telephone at (504) 365-2514.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The instructions of the Captain of the Port in are as follows:

(i) The Captain of the Port New Orleans has implemented a temporary safety Zone on the Lower Mississippi River (LMR) extending the entire width of the river from Mile Marker (MM) 230 to MM 234. The LMR will be open to one-way traffic from 7 a.m. CST, August 28, 2011 and continue through 7 a.m. CST, November 25, 2011. This operation will continue 24 hours a day.

(ii) Vessels must request permission to transit through the area from Vessel Traffic Service Lower Mississippi River in New Orleans on VHF channel 12 or 67. The temporary check-in points are no lower than MM 239 for southbound vessels and no higher than MM 228 for northbound vessels.

(d) *Informational Broadcasts.* The Captain of the Port, New Orleans or a designated representative will inform the public through broadcast notices to mariners (BNM) and/or marine safety information bulletins (MSIB) of the effective period for the safety zone, requirements, and of any changes in the effective period, requirements or size of the safety zone.

Dated: August 27, 2011.

**P. W. Gautier,**

*Captain, U.S. Coast Guard, Captain of the Port, New Orleans.*

[FR Doc. 2011-25182 Filed 9-29-11; 8:45 am]

**BILLING CODE 9110-04-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[EPA-HQ-OAR-2008-0321; FRL-9473-5]**

**RIN 2060-AP92**

**Protection of Stratospheric Ozone: The 2011 Critical Use Exemption From the Phaseout of Methyl Bromide**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing uses that qualify for the 2011 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2011. EPA is taking this action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-First Meeting of the Parties.

**DATES:** *Effective Date:* September 30, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2008-0321. All documents in the docket are listed on the <http://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](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742).

**FOR FURTHER INFORMATION CONTACT:** For further information about this rule,

contact Jeremy Arling by telephone at (202) 343-9055, or by e-mail at [arling.jeremy@epa.gov](mailto:arling.jeremy@epa.gov) or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the methyl bromide section of the ozone layer protection Web site at <http://www.epa.gov/ozone/mbr> for further information about the methyl bromide critical use exemption, other stratospheric ozone protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:** This rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2011. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is finalizing the uses that qualify for the 2011 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2011.

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## I. General Information

### A. Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2011 critical use exemption including farmers of vegetable crops, fruits and nursery stock and owners of stored food commodities and structures such as grain mills and processors. This rulemaking does not affect applications for future control periods.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

## II. What is 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 the phaseout of 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 rule implementing 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 this rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The provisions in this action are intended only to implement the CAA Title VI 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. EPA initially published the regulatory program 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 U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 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 industrialized country's level of methyl

bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized 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, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting 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 made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. 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 with reduction steps leading to a 2005 phaseout in industrialized countries and a 2015 phaseout for developing 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 (CAA) to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line 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 direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA again amended the regulations to allow for an exemption for quarantine and pre-shipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final 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 control periods from 2006 to 2010. Under authority of section 604(d)(6) of the CAA, this action lists approved critical uses in 2011 and specifies the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This rule reflects Decision XXI/11, taken at the Twenty-First Meeting of the Parties in November 2009. In accordance with Article 2H(5), 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 proposed critical uses. The status of Decisions is addressed in *NRDC v. EPA*, (464 F.3d 1, DC Cir. 2006) and in EPA’s “Supplemental Brief for the Respondent,” filed in *NRDC v. EPA* and available in the docket for this action. In this rule on critical uses for 2011, 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

The critical use exemption is designed to permit the production and import of methyl bromide for uses that

do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties (1997) the criteria for the exemption appeared in Decision IX/6. In that Decision, the Parties agreed that “a use of methyl bromide should qualify as ‘critical’ only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.” These criteria are reflected in EPA’s definition of “critical use” at 40 CFR 82.3.

In response to EPA’s request for critical use exemption applications published in the **Federal Register** on May 2, 2008 (73 FR 24282), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives, and efforts to minimize use and emissions.

EPA’s Office of Pesticide Programs 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, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants’ research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually 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 the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular

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

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled “Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America,” contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 23, 2009, the U.S. Government (USG) submitted the seventh *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2011 critical uses. In February 2009, MBTOC sent two sets of questions to the USG concerning technical and economic issues in the 2011 nomination, one for post-harvest uses and one for pre-plant uses. The USG transmitted responses to MBTOC on April 10, 2009. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The critical uses and amounts in this rule reflect the analysis contained in those documents.

EPA sought comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and information regarding changes to the registration or use of alternatives that have transpired after the 2011 U.S. nomination was written. EPA did not propose to estimate uptake of Iodomethane in California in 2011 due to uncertainties created by the California label. Specifically, the California label has larger buffer zones and lower use rates than the Federal label. EPA does not have efficacy studies at the California label’s lower use rates and is uncertain how widely it will be adopted without that data.

Two commenters agreed that the California label and other state regulations constrain the adoption of iodomethane in that state. The registrant of iodomethane stated that they are continuing to work with California Department of Pesticide Regulations to improve applicability of iodomethane in that state. The comment, however, did not include any data on which EPA could base an estimate of uptake of iodomethane in California in 2011. Therefore, EPA is not reducing the amount of new production for 2011 for the uptake of iodomethane in California.

EPA received a comment stating the difficulty pet food facilities have using alternatives including longer periods of downtime needed to effectively use those fumigants or the presence of electronics that may corrode if exposed to phosphene. The commenter also noted that the use of sulfur dioxide for pet food is low given that pet food is not listed on the sulfur dioxide label as a commodity that can be fumigated. EPA's critical use nomination for structures includes these specific concerns about these alternatives and they, in part, form the basis for pet food being recognized as a critical use in 2011.

One commenter stated that some growers are having problems with pre-plant alternatives, specifically the re-emergence of plant pests after several years of fumigating with alternatives. The commenter requested that a survey of Florida growers that had been submitted to EPA in June 2011 in support of the 2013 CUN be added to the docket for this rule. EPA received these data too late to consider them for the 2011 rule but EPA is reviewing the data in support of the 2013 CUN. The contents of the survey are claimed CBI and therefore will be added to the confidential portion of a future rulemaking docket.

#### B. How does this rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., 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 from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), 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 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), 74 FR 19878 (calendar year 2009), and 75 FR 23167 (calendar year 2010).

#### C. Critical Uses

In Decision XXI/11, taken in November 2009, the Parties to the Protocol agreed "to permit, for the agreed critical use categories for 2011 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex. I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2011 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses \* \* \*". The following uses are those set forth in table C of the annex to Decision XXI/11 for the United States:

- Commodities
- NPMA food processing structures (cocoa beans removed)<sup>1</sup>
- Mills and processors
- Dried cured pork
- Cucurbits
- Eggplant—field
- Forest nursery seedlings
- Nursery stock—fruits, nuts, flowers
- Orchard replant
- Ornamentals
- Peppers—field
- Strawberries—field
- Strawberry runners
- Tomatoes—field
- Sweet potato slips

EPA is modifying the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXI/11. The amendments to the table of critical uses is based in part on the technical analysis contained in the 2011 CUN that assesses data submitted by applicants to the CUE program. EPA is removing ornamental growers in New York. MBTOC did not recommend this use for 2011, concluding that alternatives are available for replacing methyl bromide use in *Anemone coronaria*. The Parties did not authorize this use. EPA agrees with the Parties' conclusion, and is not listing this use as critical for 2011. Second, EPA is removing Michigan cucurbit growers, Michigan eggplant growers, Michigan ornamental growers (specifically, herbaceous perennial growers), Michigan tomato growers,

<sup>1</sup>NPMA, National Pest Management Association, includes both food processing structures and processed foods.

Michigan pepper growers, and members of the Western Raspberry Nursery Consortium operating in Washington State. These users did not submit applications and were not part of the CUN. The Parties have not authorized them as critical uses for 2011 and EPA is not listing these uses as critical for this control period.

EPA received one comment agreeing that the listed critical uses have a continuing need for access to methyl bromide under a 2011 CUE. EPA also received two comments that there should be no uses of methyl bromide given its toxicity and effect on the stratospheric ozone layer. EPA disagrees that all methyl bromide use should stop. EPA's CUN addresses the need for methyl bromide for the proposed critical uses. In addition, the proposed critical uses were reviewed by the technical bodies to the Ozone Secretariat and authorized by the Parties to the Montreal Protocol. Concerns about the toxicity of methyl bromide are addressed under FIFRA and other authorities and are beyond the scope of this rulemaking. EPA is finalizing the proposed changes to the table.

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

#### D. Critical Use Amounts

Table C of the annex to Decision XXI/11 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol in 2009 as critical uses for 2011. When added together, the total authorized critical use for 2011 is 2,055,200 kg, which is equivalent to 8.1% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of new production or import authorized by the Parties is 1,855,200 kg (7.3% of baseline) as set forth in Table D of the annex to Decision XXI/11. The difference between the total authorized amount and the authorized amount of new production is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory. This difference is 200,000 kg (0.8% of baseline). EPA

proposed to allocate 482,333 kg (1.9% of baseline) in the form of Critical Stock Allowances (CSA) for sale of existing pre-phaseout inventory for critical uses in 2011. EPA also proposed to exempt limited amounts of new production and import of methyl bromide for critical uses for 2011 in the amount of 1,500,000 kg (5.9% of baseline). EPA is finalizing the amount of new production and import contained in the proposed rule. For the reasons discussed below, EPA is increasing the CSA allocation from 482,333 kg to 555,200 kg (2.2% of baseline). Thus the total allocation for 2011 is 2,055,200 (8.1% of baseline).

As discussed in the proposed rule, EPA calculated the allocation amounts differently than in past CUE allocation rulemakings. Initially, EPA used the methodology established in the 2008 CUE Rule to determine the level of "available stocks," from which the CSA and CUA allowances are calculated. As described in previous CUE allocation rules, one input to this methodology is the previous year's inventory drawdown. Consistent with past practice, EPA prepared an estimate of the pre-phaseout inventory on December 31, 2010.

Due to the timing of the 2011 CUE rulemaking, EPA issued a No Action Assurance letter December 22, 2010, to allow Critical Use Allowance holders to continue producing and importing methyl bromide beyond December 31, 2010, in the absence of allowances, subject to certain conditions. The amounts authorized in the December 22, 2010, letter, and a subsequent clarification letter dated January 13, 2011, were based on the estimates of the 2010 inventory drawdown. Specifically, EPA clarified that producers and importers "may assume that the allocations for production and import will equal at least 1,500 MT." After EPA issued the No Action Assurance letter, companies submitted their annual end of year reports to EPA containing data about how much pre-phaseout inventory they held on December 31, 2010. These data show that the pre-phaseout inventory is greater than the estimated amounts that formed the basis of the No Action Assurance letter. If EPA were to use these data in the existing methodology for calculating "available stocks," this would result in more "available stocks" and fewer allowances for new production or import as compared to the December 2010-January 2011 estimates. However, because regulated entities have been acting on the estimate developed for the No Action Assurance letter in good faith, EPA proposed the amount provided for in the No Action

Assurance letter, as clarified by the January 2011 letter.

EPA received one comment about the increasing lateness of the CUE rules. The commenter described how producers and distributors need advanced notice of their allowances so they may plan their production and import schedule. Growers also need the approval of critical uses before fumigating with critical use methyl bromide. EPA is aware of the delay and is developing the 2012 CUE rule as quickly as possible. However, the Agency must conduct a notice and comment rulemaking for each year's allocation which takes a significant amount of time. The commenter encouraged EPA to move to a two-year allocation schedule, suggesting that we nominate two years together and issue a rule to address both years. To date the Parties have only approved critical uses through 2012 and the U.S. government has only submitted nominations through 2013. Therefore, EPA would be unable to write a rule covering the 2012 and 2013 control periods before 2012. In addition, moving to a two-year nomination system would require the U.S. to project the needs of critical users several years in advance. As a result, the nominations would be less accurate for that second year.

EPA received two comments that the total allocation for 2011 should be 2,055,200 kg, which is the amount the Parties authorized, rather than 1,982,333, which is what EPA proposed. The commenters expressed frustration that the EPA reduces the allocated amounts from those authorized by the Parties. One of the commenters states that it is inconceivable that since the nomination was submitted less than 18 months ago, EPA has developed sufficient scientific and objective information that supports a reduction. In past CUE Rules, EPA has made reductions after considering several factors. First, EPA considers new data on alternatives such as the registration of a new alternative not considered when the CUN was submitted to UNEP. EPA does not have new data regarding the uptake of alternatives and is not reducing the total CUE amount on that basis. Second, in some past years, EPA has made reductions to the new production/import amount equal to the amounts approved by the Parties specifically for research. As discussed below, the U.S. did not nominate any separate additional amount for research for 2011 and therefore EPA is not making reductions for that purpose.

Third, EPA has made reductions to the new production/import amount to account for amounts of methyl bromide

produced in one control period but not sold in that control period. This amount is referred to as the "carryover." 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. In past CUE rules, EPA deducted 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. Companies reported that the carryover from 2009 to 2010 was 72,867 kg. In the proposed 2011 CUE Rule, however, EPA did not propose to reduce the amount of new production and import by 72,867 kg because EPA proposed to honor the amounts allowed in the No Action Assurance letter. Instead, EPA proposed to reduce the total authorization by this carryover amount.

Based on the comments received, EPA is not reducing the total authorization by the carryover amount in this final rule, because the only means to do so would be through an adjustment to the CSA amount. Carryover is separate from "stockpiled" methyl bromide, which is material that was produced prior to the phaseout in 2005. EPA does not believe it is necessary to reduce the number of critical stock allowances to account for the carryover of critical use methyl bromide produced but not sold in 2009. On the contrary, EPA seeks to encourage the use of pre-phaseout inventory. Therefore, as compared to the proposal, EPA is increasing the CSA allocation by 72,867 kg to a total of 555,200 kg. EPA does not believe that this will result in the accumulation of critical use methyl bromide. Due to the timing of this year's CUE rule, EPA has data indicating that the full 72,867 kg of carryover from 2009 was sold in 2010. In addition, EPA has since received end of year data for 2010 showing that there is no carryover from the 2010 control period either. Therefore, EPA is finalizing a total allocation that matches the Parties' authorization for 2011.

Three commenters stated that EPA should not be allocating fewer CUEs than the amount authorized by the Parties given EPA's January 19, 2011, proposal to grant objections to the tolerances established for sulfuryl fluoride and fluoride under section 408 of the Federal Food, Drug, and Cosmetic Act (76 FR 3422). This CUE Rule is based on the current status of alternatives and is limited to 2011. The proposed revocation of tolerances for

sulfuryl fluoride has not been finalized and does not apply to use in 2011. Therefore, EPA has not based the allocation amounts in the 2011 CUE Rule on that proposal. In addition, commenters should note that EPA proposed a staggered implementation for withdrawal of the affected tolerances (76 FR 3447).

EPA also took comment on how to account for the fact that the critical use allowance allocation of 1,500,000 kg is greater than what would be allocated if it were based on the “available stocks” calculation using end of year inventory data. The proposal stated that EPA could reduce critical use allowances for new production and import in the 2012 allocation rule. EPA received one comment that while the distribution between stocks and new production is different than the result produced by the framework calculation, the total amount is unaffected. In addition, the commenter stated that the calculations in the 2012 rule will automatically compensate for the lesser drawdown of inventory in 2011. EPA will address this issue further in the notice of proposed rulemaking for the 2012 CUE rule.

#### *E. Critical Use Allowance Allocations*

EPA is allocating 2011 critical use allowances for new production or import of methyl bromide up to the amount of 1,500,000 kg (5.9% of baseline) as shown in the table at 40 CFR 82.8(c)(1). Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

One commenter objected to EPA allocating only 1,500,000 kg for new production or import. The commenter stated that Decision XXI/11 authorized 1,855,200 kg for new production and import. EPA disagrees with the commenter’s interpretation of Decision XXI/11. In Table D of Decision XXI/11, the Parties authorized 1,855,200 kg for new production and import “minus available stocks.” EPA is acting consistently with Decision XXI/11 by considering “available stocks.” How EPA determines “available stocks” is discussed in the next section.

Paragraph three of Decision XXI/11 states “that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of

the annex to the present decision.” This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), 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, but continues to welcome comments on this issue.

One commenter stated that the demand for methyl bromide exceeds the supply granted to the post-harvest sector. That commenter requested that their uses receive priority over other post harvest uses. It would be counter to EPA’s past practice to grant priority for some critical uses over others. EPA does not have a system in place for ranking critical uses against each other. Rather, EPA allows the market to determine the distribution of methyl bromide among critical uses in the post-harvest or pre-plant sectors.

Finally, one commenter noted a typographical error in the table in 40 CFR 82.8(c)(1). The proposed post-harvest amount for ICL-IP was listed as 12,267 kg but should have read 16,267 kg. The final rule corrects this error.

#### *F. Critical Stock Allowance Allocations*

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of “critical use methyl bromide” intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also

established trading provisions that allow CUAs to be converted into CSAs.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is “available” for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that “production and consumption, if any, of methyl bromide for critical uses should be permitted only if \* \* \* methyl bromide is not available in sufficient quantity and quality from existing stocks.” Previous decisions refer to use of “quantities of methyl bromide from stocks that the Party has recognized to be available.” Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXI/11 reinforces this concept by including the phrase “minus available stocks” as a footnote to the United States’ authorized level of production and consumption in Table D. 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 Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties. In each of the subsequent CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2010 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

EPA views the inclusion of these additional amounts in the calculation of the year’s overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to “permit” a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the

CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency “may” create an exemption for critical uses, providing EPA with substantial discretion.

In this final rule, EPA is allocating the equivalent of 555,200 kg in the form of CSAs. This amount is greater than EPA proposed but less than the amount of “available stocks.” The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2011 was 1,802,705 kg. EPA’s analysis of “available stocks” shows that there are 610,715 kg of stocks available for use in 2011. In the proposal, EPA took the total U.S. authorization as a starting point, subtracted the new production and import amount stated in the No Action Assurance provided to industry in December 2010, and then subtracted a carryover amount before reaching the tentative conclusion that the CSA amount should be the equivalent of 482,333 kg. EPA received comments, discussed above, that the total CUE amount should not be less than the U.S. authorization. After considering those comments and evaluating its approach to carryover in the specific circumstances of this year’s allocation, EPA has determined that the CSA amount should be the difference between the total U.S. authorization and the proposed new production and import amount, which is the equivalent of 555,200 kg. Because at least 555,200 kg of stocks are available, EPA is increasing the CSA allocation in the final rule so that the CSA and CUA allocations taken together equal the total U.S. authorization.

Two commenters also stated that the Agency is incorrect to assume that 482,333 kg of pre-phaseout inventory will be available for critical uses in 2011. Instead, the commenters stated that EPA should allocate only 200,000 kg from stocks, which is the difference between the total authorization and the maximum authorized new production amount. The commenters also say that the distributors that own stocks are free to sell them for any purpose, including for non-CUE uses, and that EPA cannot control how or whether inventory is sold.

EPA agrees that the allocation system allows distributors of inventory to respond to market conditions instead of requiring them to sell inventory to critical users. EPA issues CSAs as a mechanism to track the use of stocks for critical uses. Under section 82.4(p),

stocks may not be sold for use on critical uses if the seller does not hold the corresponding amount of CSAs. Critical users may purchase either newly produced or imported critical use methyl bromide or stocks sold through the expenditure of CSAs. EPA chose this approach, at least in part, to promote market flexibility and efficiency. The fact that distributors can choose to sell to non-critical users does not mean that the inventory is unavailable to critical users. End of year reported data show that the inventory on December 31, 2010, was 1,802,715 kg. Of this amount, EPA estimates that 610,715 kg of stocks are available for use in 2011. While EPA is allocating more critical stock allowances than proposed, the amount is still less than the “available stocks.” EPA expects that holders of pre-phaseout inventory will be able to expend the full amount of CSA allocations in order to satisfy the needs of critical users.

Two commenters stated that inventory was disproportionately distributed among fewer distributors and thus is unavailable to critical users. EPA collects information annually on the number of companies that hold inventory. These data support the comment that some companies no longer maintain any pre-phaseout inventory. However, there has not been a significant change in the overall distribution of inventory among companies. Inventory is still held by companies in large amounts in both California and the Southeast, the two largest markets for critical use methyl bromide. If some critical users were unable to purchase inventory, that is due to market decisions by distributors, not the quantity of methyl bromide held in inventory.

One commenter stated that the CSA allocation failed to consider the effect of a catastrophic failure in the domestic supply of methyl bromide, either for 2011 or for future years. The commenter states that the critical stock allowance levels undercut EPA’s own analysis that the amount necessary to address a catastrophic failure could be as much as 58% of the critical need. EPA disagrees with the commenter’s conclusion. EPA’s supply chain factor calculation for 2011 indicates that 1,192,000 kg (2,055,200 kg  $\times$  0.58) is the maximum amount of inventory that would be needed in the event of a supply disruption. With 1,802,715 kg of existing inventory for 2011, EPA’s analysis of “available stocks” shows that there are 610,715 kg of stocks available for use in 2011. EPA is actually allocating only the equivalent of 555,200 kg in the form of CSAs due

to the No Action Assurance provided to industry in December 2010.

EPA also disagrees with the comment that it did not consider the effect of this rule on availability of stocks for supply disruptions in the future. The supply chain factor is proportional to the CUE amount. The authorization for 2012 and potential authorization for 2013 continue to decline in pace with both the inventory and the supply chain factor. In 2012, the U.S. was authorized 1,022,826 kg of critical use methyl bromide. EPA estimates that the SCF will be 429,000 kg for 2012, which is less than the estimated amount of stocks in 2012. EPA will discuss this in more detail in the proposed 2012 CUE rule.

EPA reiterates that the SCF is not a “reserve” or “strategic inventory” of methyl bromide. Rather, it is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts, in cases where CSA amounts are greater than the amounts stipulated by the Parties. EPA does not guarantee that critical users will have access to inventory in the event of a supply disruption. The timely distribution of pre-phaseout stocks would depend upon business decisions made by suppliers. However, the SCF is large enough to give suppliers the opportunity to provide uninterrupted distribution in the analyzed scenario.

EPA is allocating CSAs to the entities shown in the table for the 2011 control period in the amount of 555,200 kg (2.2% of baseline). EPA is updating the table by incorporating information from recent mergers. Therefore, EPA is listing a single entry for Royster Clark, UAP Southeast (NC), and UAP Southeast (SC) called Crop Production Services. The CSA allocation for Crop Production Services is the sum of the three allocations that would have gone to Royster Clark and the two UAP Southeast entities.

EPA’s allocation of CSAs is based on each company’s proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA’s treatment of company-specific methyl bromide inventory information as confidential. *NRDC v. Leavitt*, 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA

may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. As explained in the 2008 CUE Rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. In past years, EPA has noted that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. A commenter to the 2008 CUE Rule stated that the aggregate data should be confidential if there are fewer than three competitors. More than three companies continue to sell pre-phaseout inventory. While EPA is not adopting a definitive threshold number of companies at this point, EPA has not received any information suggesting that the number of companies has declined to the point that EPA should consider treating the aggregate as confidential information. Therefore, EPA will continue making aggregate inventory information available. The aggregate information for 2003 through 2010 is available in the docket for this rulemaking.

#### *G. The Criteria in Decisions IX/6 and Ex. I/4*

Paragraphs 2 and 6 of Decision XXI/11 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2011 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.C, V.D, and V.E. of this preamble. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section V.F. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl

Bromide for the United States of America" for further elaboration.

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

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

EPA received one comment that the Agency should adjust production and import levels in the 2011 CUE Rule to account for research amounts. The commenter implied that EPA had a previous policy of adjusting the production and import level upward to provide an allocation for research. This is not an accurate characterization of EPA's policy. Prior to 2010, the U.S. Nomination did contain a separate amount for research. While the Parties approved research as a critical use, their decisions encouraged the use of inventory to meet critical research needs. In the corresponding CUE rules, EPA responded to the Parties' decisions by reducing the new production/import amounts by the research amount, leaving the research portion of the total critical use exemption to be met through the use of CSAs. In the CUN for the 2011 control period, as in the CUN for the 2010 control period, the U.S. government did not nominate a separate, additional amount specifically for research purposes. Nonetheless, both the 2010 and 2011 nominations were broad enough to cover both research and non-research uses. While EPA continues to encourage use of inventory for research purposes, EPA is not reducing the CUA level as it did in pre-2010 CUE rules to subtract a research amount

because no specific research amount has been identified. EPA also is not increasing the CUA allocation because the Parties did not authorize specific amounts for this purpose in addition to the authorization for pre-plant and post-harvest uses. EPA understands the Parties' decision as including the research amounts in the amounts authorized for pre-plant and post-harvest uses. As discussed in the preamble to the 2010 CUE rule (75 FR 23179), research is a key element of the critical use process. EPA is retaining research on the crops shown in the table in Appendix L to subpart A as a critical use of methyl bromide. While EPA encourages use of pre-phaseout inventory for research purposes, researchers may use either newly produced methyl bromide or pre-phaseout inventory for field, post-harvest, and emission minimization studies requiring the use of methyl bromide.

#### *H. Emissions Minimization*

Previous decisions have stated that Parties shall request critical users to 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. Through the recent Reregistration Eligibility Decision (RED) for methyl bromide, the Agency requires that methyl bromide applications be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also encourages the use of high-barrier tarps, such as virtually impermeable film (VIF), by providing credits that applicators can use to minimize their buffer zones. 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 USG reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed. Emissions minimization efforts should not be limited to pre-plant fumigations. While the RED addresses emissions minimization only in the context of pre-plant fumigation, EPA also urges users to reduce emissions from structures and port facilities through the use of recapture technologies.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations.

The Agency encourages researchers and users who are successfully utilizing 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 action is a “significant regulatory action.” This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been

documented in the docket for this action.

*B. Paperwork Reduction Act*

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

*C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-

and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s regulations at 13 CFR 121.201; (2) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (3) 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 (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that

3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2008 down to 2,000 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers stop applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small

businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this rule on small entities, EPA certifies 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 exempt 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 rule would relieve regulatory burden for all small entities.

#### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and does 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 does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule primarily affects producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this action from State and local officials.

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

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

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule does not 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 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 rule does not involve technical standards therefore

EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule 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 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.

#### K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective September 30, 2011.

#### List of Subjects in 40 CFR Part 82

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

Dated: September 26, 2011.  
 Lisa P. Jackson,  
 Administrator.

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

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

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

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

■ 2. Section 82.8 is amended as follows:

- a. By revising the table in paragraph (c)(1);
- b. By revising paragraph (c)(2) including the table.

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

\* \* \* \* \*  
 (c) \* \* \*  
 (1) \* \* \*

Company	2011 Critical use allowances for pre-plant uses* (kilograms)	2011 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp. A Chemtura Company .....	839,966	71,584
Albemarle Corp. ....	345,413	29,437
ICL-IP America .....	190,883	16,267
TriCal, Inc .....	5,943	507
<i>Total**</i> .....	<i>1,382,206</i>	<i>117,794</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.

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

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2011 on a pro-rata basis in relation to the inventory held by each.

**Company**

Albemarle  
 Bill Clark Pest Control, Inc.  
 Burnside Services, Inc.  
 Cardinal Professional Products

Chemtura Corp.  
 Crop Production Services  
 Degesch America, Inc.  
 Helena Chemical Co.  
 Hendrix & Dail  
 Hy Yield Products  
 ICL-IP America  
 Industrial Fumigant Company  
 Pacific Ag Supplies Inc.  
 Pest Fog Sales Corp.  
 Prosource One  
 Reddick Fumigants  
 Trical Inc.

Trident Agricultural Products  
 Univar  
 Western Fumigation  
 TOTAL—555,200 kilograms

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

**APPENDIX L TO SUBPART A OF PART 82—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2011 CONTROL PERIOD**

Column A Approved Critical Uses	Column B Approved Critical User and Location of Use	Column C Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
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**PRE-PLANT USES**

Cucurbits .....	(a) Growers in Delaware and Maryland ..... (b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant .....	(a) Florida growers .....  (b) Georgia growers .....	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
Forest Nursery Seedlings ....	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.  (b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.

Column A Approved Critical Uses	Column B Approved Critical User and Location of Use	Column C Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	<p>(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.</p> <p>(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.</p> <p>(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.</p> <p>(f) Michigan growers .....</p>	<p>Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation. Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe nematode infestation. Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.</p>
Nursery Stock (Fruit, Nut, Flower).	<p>(a) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. (b) California rose nurseries .....</p>	<p>Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.</p>
Orchard Replant .....	California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	<p>Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.</p>
Ornamentals .....	<p>(a) California growers .....</p> <p>(b) Florida growers .....</p>	<p>Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.</p>
Peppers .....	<p>(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers. (b) Florida growers .....</p> <p>(c) Georgia growers .....</p>	<p>Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features.</p>
Strawberry Fruit .....	<p>(a) California growers .....</p> <p>(b) Florida growers .....</p> <p>(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.</p>	<p>Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot.</p>

Column A Approved Critical Uses	Column B Approved Critical User and Location of Use	Column C Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Strawberry Nurseries .....	(a) California growers .....	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation.
Sweet Potato Slips .....	California growers .....	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes .....	(a) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(b) Maryland growers .....	Moderate to severe fungal pathogen infestation.

**POST-HARVEST USES**

Food Processing .....	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.  (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.  (c) Members of the North American Millers' Association in the U.S.  (d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities .....	California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products .....	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc..	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 65**

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1219]

**Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the

changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community