ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7014–5]

RIN 2060–A142

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this rulemaking, EPA is taking interim final action to amend the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). Today's amendments incorporate an exemption permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and required by recent changes in Title VI of the CAA. Specifically, EPA is creating a temporary exemption, through December 31, 2002, from the consumption and production phaseout for quantities of Class I, Group VI controlled substances (methyl bromide) that are used for quarantine and preshipment. Following public comment, EPA intends to issue a final action to extend this exemption beyond December 31, 2002. EPA is also actively pursuing a separate notice and comment rulemaking, with stakeholder involvement, to establish methyl bromide exemptions for critical uses and emergency uses beyond the phaseout of production and import on January 1, 2005.

DATES: This rule is effective July 19, 2001 and the additions to 40 CFR Part 82 will remain in effect through December 31, 2002. The provisions and requirements established in today's rule apply to the entire 2001 and 2002 calendar years (control periods). EPA will consider all written comments received by October 12, 2001 to determine whether any changes are necessary prior to issuing a final action to extend this exemption beyond December 31, 2002.

ADDRESSES: Should you have comments that are directly related to this rulemaking please submit them in duplicate (two copies) to: Air Docket No. A–2000–24, U.S. Environmental Protection Agency, Mail Code 6102, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. In addition, should you have comments that are separately related to a different issue than those raised by this rulemaking you may send them directly to U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Materials relevant to this rulemaking are contained in Docket No. A–2000–24. The Docket is located in room M–1500, First Floor, Waterside Mall at 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8:30 am until 5:30 pm Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–564–9185.

SUPPLEMENTARY INFORMATION: EPA is taking this action as an interim final rule without prior proposal and public comment because EPA finds that the good cause exemption from the notice-and-comment rulemaking requirement of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, applies here. Section 307(d) of the Clean Air Act (CAA) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA307(d)(3)). The promulgation or revision of regulations under title VI of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA. Section 553(b)(B) of the APA, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and comment public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA has determined that there is good cause for making today's rule an interim final rule without prior proposal and opportunity for comment because we view these revisions as protecting commodity trade from the adverse impacts of quarantine pest infestations, as well as protecting the supply of imported fruits and vegetables available to the general public. Without the creation of the exemption by this rule, quantities of methyl bromide used for quarantine and preshipment would be counted against the production and consumption allowances already limited by prior rulemaking (65 FR 70795), which for 2001 constitute 50% of the baseline. Having to compete for non-exempt methyl bromide, without today's exemption, fumigators at U.S. ports might not be able to meet U.S. requirements to treat imported commodities (under the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) requirements). This could jeopardize the supplies of these commodities for U.S. consumers because in the absence of required treatments ships would be turned away. Alternatively, the absence of today's exemption could increase the risk of an outbreak of a quarantine pest within the United States because shipments are typically unloaded onto the docks in preparation for fumigation with methyl bromide. Unloading containers at the docks could occur prior to a realization that methyl bromide is unavailable at the port and thereby jeopardize U.S. commodities with a quarantine pest infestation. If an infestation of a quarantine pest occurs, the amount of methyl bromide used could greatly increase. For example, when the port of Houston was infested with the Mediterranean snail, a fumigator who typically uses 40,000–50,000 pounds a year, used 21,000 pounds in 7½ weeks to treat this outbreak of a quarantine pest. In addition, exporters might not be able to ship U.S. commodities overseas because they would not be able to meet foreign import requirements without today's exemption. Thus, notice and public procedure are impracticable and contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Nonetheless, EPA is providing 90 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change is warranted prior to taking final action that would extend this exemption beyond December 31, 2002. The phaseout program operates in control periods that correspond to calendar years. EPA believes that the exemption should correspond to whole control periods, i.e., entire calendar years. EPA does not believe it will be possible to take final action before the end of the 2001 control period. Because the Agency is providing a 90-day comment period and wants to ensure there is sufficient time to carefully review comments and consider other approaches, and to simplify the administrative implementation for affected entities, today's exemption is effective through December 31, 2002.

Section 553(d) of the APA generally provides that rules may not take effect

earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action grants an exemption from the phaseout of production and import of methyl bromide, EPA is making this action effective immediately to ensure the availability of methyl bromide for quarantine and preshipment through December 31, 2002.

EPA emphasizes that this rule is intended only to address the basic implementation of the methyl bromide quarantine and preshipment exemptions according to the definitions agreed upon by the Montreal Protocol Parties. Any deviations from the Protocol Parties' definitions are constrained by the Protocol and the Clean Air Act, and therefore are not addressed in today's rulemaking.

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Entities potentially regulated by this action are those associated with methyl bromide that is used for quarantine and preshipment applications. In addition, this action potentially regulates entities importing and exporting methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide. Distributors of methyl bromide used for quarantine and preshipment. Applicators of methyl bromide used for quarantine and preshipment. Commodity Owners or Shippers of Goods that request the quarantine or preshipment application of methyl bromide in accordance with treatments, official controls or requirements.

Table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Is the Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection.

Today's action amends the existing EPA regulations published under Title VI of the CAA that govern the production and consumption of ozone-depleting substances. Today's action establishes an exemption from the methyl bromide production and import reduction and phaseout schedule for quantities to be used for quarantine and preshipment applications. Today's amendments are intended to implement requirements of the Protocol and the CAA, including amendments to Title VI as created by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) (Section 604(d)(5) of the Clean Air Act).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of ozone-depleting substances, as required under the Protocol and CAA, are accomplished through the Allowance Program.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), December 10, 1993 (58 FR 65018).

for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. For methyl bromide, 1991 was the baseline year used to establish the ceiling and assign company-specific production and import rights. Production or import rights are called ''allowances.'' Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, save for a few narrow exemptions. For methyl bromide the remaining schedule for the phaseout of production and consumption allowances is as follows: 50 percent reduction of baseline beginning January 29, 2001, 70 percent reduction of baseline beginning January 1, 2003, and a 100 percent reduction of baseline beginning January 1, 2005, with narrow exemptions for critical uses and emergencies, as well as for quarantine and preshipment uses.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: Consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in Groups of class I controlled substances are in Appendix A and Appendix F in Subpart A of 40 CFR Part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in Appendix B and Appendix F in Subpart A.

II. What Is Methyl Bromide?

Methyl bromide is used in the United States and throughout the world as a fumigant to control a variety of pests in many different situations. Methyl bromide is an odorless, colorless, toxic gas. Methyl bromide is a broad spectrum pesticide, which is used as a fumigant to control a variety of pests, such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Information on methyl bromide can be found at the following sites of the World Wide Web: *www.epa.gov/ozone/mbr/mbrqu.html* and *www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

III. What Are Examples of Quarantine and Preshipment Uses of Methyl Bromide?

An example of a quarantine use of methyl bromide is the fumigation of commodities such as rice and spices that are subject to infestation by a specific and officially recognized quarantine pest, such as the khapra beetle (Trogoderma granarium Everts). The purpose of quarantine fumigation is to prevent the introduction of specific quarantine pest(s) into a defined geographical area, such as an importing country. An example of a preshipment use of methyl bromide is the application to wheat because of official phytosanitary requirements at the shipment destination. In 1998, the Methyl Bromide Technical Options Committee (MBTOC), a sub-group under the independent advisory body of the Technical and Economic Assessment Panel (TEAP) to the Montreal Protocol, published an assessment that gives further details about uses of methyl bromide and possible alternatives and substitutes for controlling pests.

IV. What Is the Legal Authority for Exempting Production and Consumption of Methyl Bromide for Quarantine and Preshipment Applications?

In Article 2H of the Montreal Protocol, which establishes the phaseout schedule for methyl bromide for developed countries, paragraph 6 states that, ''[t]he calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications.'' EPA notes that paragraph 6, of Article 2H indicates that the exemption is to exclude from the U.S.'s calculation of methyl bromide consumption and production the amounts used by the U.S. for quarantine and preshipment applications. In addition, Article 7 of the Protocol was recently amended regarding methyl bromide and now requires each Party to report on, ''the annual amount used for quarantine and preshipment applications.'' Beyond the critical uses allowed in Article 2H, Paragraph 5, quarantine and preshipment uses are the only exemptions explicitly allowed for under the Montreal Protocol.

The recent amendments to Title VI of the Clean Air Act regarding methyl bromide include a new provision on ''Sanitation and Food Protection,'' which is related to the Protocol exemption for quarantine and preshipment. This new Section 604(d)(5) of Title VI of the CAA, on Sanitation and Food Protection, was added by Section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). This new Section 604(d)(5) says, ''To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State or local sanitation or food protection standard.'' Prior to Congressional passage of Section 604(d)(5), the CAA did not provide authority for creating such an exemption to the methyl bromide phaseout schedule. Therefore, by today's interim final regulation, EPA is implementing the express language provided in Article 2H, paragraph 6, of the Protocol under the authority provided by section 604(d)(5) of the CAA. EPA is also acting in a manner consistent with, and to fulfill the obligations of, section 614(b) of the CAA. Section 614(b) of the CAA states that, ''[t]his title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.''

At a July 1999 meeting with the Methyl Bromide Industry Panel, EPA received a legal memorandum from their counsel regarding the definition of quarantine and preshipment and the recent amendment adding Section

604(d)(5) to the Clean Air Act. The argument made in the Methyl Bromide Industry Panel's legal memorandum is that the introductory phrase (''to the extent consistent with the Montreal Protocol's quarantine and pre-shipment provisions'') in Section 604(d)(5) of the Clean Air Act does not require EPA to make its regulations consistent with the ''preshipment'' and ''quarantine'' definitions in Decision VII/5 and Decision XI/12 of the Parties to the Protocol. The issue raised by the Methyl Bromide Industry Panel's legal memorandum is whether the reference to the ''Montreal Protocol's quarantine and preshipment provisions,'' in Section 604(d)(5) refers only to the single provision found in Article 2H, paragraph 6 of the Protocol (which provides that the ''calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and preshipment applications'') or also refers to Decision VI/11, Decision VII/5, Decision XI/12, and Decision XI/13 of the Parties. The Methyl Bromide Industry Panel's legal memorandum also notes that Section 602 of the CAA defines the Montreal Protocol as, The Montreal Protocol on Substances that Deplete the Ozone Layer and its amendments and adjustments without specific reference to Decisions by the Parties to the Protocol.

The provisions of the Vienna Convention on the Law of Treaties (VCLT), 8 International Legal Materials 679 (1969), that concern treaty interpretation generally reflect customary international law. Article 31 of the VCLT sets forth the general rule of treaty interpretation. Paragraph 1 of Article 31 provides that a treaty ''shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'' Paragraph 3 of Article 31 of the VCLT states, ''[t]here shall be taken into account, together with any context: * * * (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.'' Decisions VI/11, VII/5, XI/12 and XI/13 constitute subsequent consensus agreements among the Parties to the Montreal Protocol (including the United States) regarding the interpretation and application of the quarantine and preshipment provision of Article 2H. Therefore, it is appropriate for EPA, when determining what is consistent with the ''Montreal Protocol's quarantine and preshipment provisions,'' to take into account Decisions VI/11, VII/5, XI/12, and XI/13.

Furthermore, in amending the CAA, Congress specifically cited the plural ''quarantine and preshipment provisions.'' If Congress intended for this phrase to be limited to the single provision in the Protocol referencing quarantine and preshipment in Article 2H, and not the subsequent Decisions between the Parties regarding interpretation or application of the treaty, Congress would have presumably directed the Agency to be consistent with the singular provision.

Precedents within the current regulations (40 CFR Part 82) demonstrate that the United States has routinely considered Decisions that clarify and interpret obligations under the Montreal Protocol to be authoritative and that such Decisions of the Parties are currently implemented through regulations under the CAA. For example, the United States' current regulatory definition of a ''controlled substance'' is based on a Decision by the Parties (Decision IV/12) that clarifies Article 1, paragraph 4 of the Protocol.

In another example, the current process in the United States for implementing the Protocol's essential-use exemption relies on Decisions by the Parties for the specific definition of what is an ''essential use.'' In the process of preparing the United States' annual nomination, the U.S. relies on Decision IV/25 to evaluate applications that are submitted by U.S. entities who are requesting an essential-use exemption. In addition, the U.S. government considers whether the information that will be provided in the national nomination is in accordance with Decision VIII/10, as well as whether it is in accordance with the conditions to be applied in providing an exemption under Decision VI/9, Decision VII/28, and Decision VIII/9. Consideration of these Decisions by the U.S. government is important because the U.S. nomination is reviewed by the Protocol's TEAP, who then makes recommendations to the Parties based on the Decisions. The essential-use exemptions nominated by the U.S. government are ultimately considered and authorized by the Parties in the context of these Decisions. The control measures in Article 2 of the Protocol allow for essential-use exemptions (for the production and consumption of controlled substances beyond phaseout dates). However, the Parties' interpretation of the phrase ''essential use'' and their agreements regarding the application of this exemption appear in Decisions.

Finally, EPA is in the process of developing regulations that would implement Decision IX/7 of the Parties by allowing an exemption for ''emergency methyl bromide use.'' Decision IX/7 reflects an agreement among the Parties to the Protocol regarding the interpretation and application of the critical-use exemption provided for in Article 2H(5) of the Protocol. Decision IX/7 directs the Ozone Secretariat and the TEAP to ''evaluate the [emergency] use according to the ''critical methyl bromide use'' criteria and present this information to the next meeting of the Parties for review * * *''

The examples above illustrate how U.S. regulations incorporate Decisions by the Parties to the Protocol. Other precedents for incorporating Decisions by the Protocol Parties into current U.S. regulations can be found in 40 CFR Part 82, Subpart A.

V. What Is the Definition of Quarantine and Preshipment Applications?

In today's action, EPA is defining quarantine and preshipment applications as agreed by the Parties to the Montreal Protocol. The Parties to the Protocol agreed to the following definition of ''quarantine applications'' in Decision VII/5: ''quarantine applications, with respect to methyl bromide, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.''

The Parties to the Protocol first agreed to the following definition for preshipment applications of methyl bromide in Decisions VI/11 and VII/5: ''preshipment applications are those treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country or existing phytosanitary or sanitary requirements of the exporting country.'' At the 11th Meeting of the Parties in December 1999, the Parties further clarified the intent of the term preshipment, by agreeing to the following definition in Decision XI/12: ''* * * preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting

country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.''

With today's action, EPA is defining quarantine applications and preshipment applications, for implementing the exemption to the methyl bromide production and consumption phaseout schedule mandated by the new section 604(d)(5) of the CAA and in a manner consistent with section 614(b) of the CAA, as follows:

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

As specified in the above definitions, which mirror exactly those specified by the Protocol, a quarantine application of methyl bromide must be ''performed by, or authorized by, a national plant, animal or environmental protection, or health authority.'' In addition, as delineated in the above definition, quarantine applications must be directed at quarantine pests. Today's definition of preshipment applications is limited to applications ''to meet the official requirements of the importing country or existing official requirements of the exporting country.'' The definition of preshipment applications specifies that the phrase ''official requirements'' means ''those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority.''

A. Are There Clarifications Regarding Trade Within the U.S.?

The Technical and Economic Assessment Panel (TEAP) provided the Parties to the Protocol with analyses and clarifications of the definition of ''quarantine applications,'' recommending that Decision VII/5 be interpreted to include officially required treatments for intra-country trade within the territory of the Party. Therefore, for purposes of today's regulation, ''quarantine applications'' include inter-state and inter-county treatments required to control quarantine pests. This is consistent with the Montreal Protocol and reconciles the language with Section 604(d)(5) of the CAA on Sanitation and Food Protection, which refers to international, Federal, state and local requirements. In recognizing official state, county, tribal, and local quarantine requirements, EPA interprets the definition of quarantine applications such that intra-country quarantine treatments required by state, county, tribal, and local plant, animal, environmental, or health government authorities constitute official control.

In contrast to the definition of quarantine applications, which accommodates intra-country trade, the Protocol definition of preshipment applications is specific to trade between countries because of the phrase ''applications within 21 days prior to export.'' Therefore, for purposes of today's regulation, the exemption for preshipment applications is limited to the movement of goods from the U.S. to another country, and does not include movement of goods within the U.S.

B. Are There Additional Qualifiers Associated With the Definition of Preshipment Applications?

In 1998, the TEAP provided interim explanatory notes to assist the Parties in the consistent implementation of the exemption for preshipment applications, highlighting that preshipment applications are ''* * * not intended to cover informal or purely contractual or commercial arrangements not required under official regulations.'' (April 1998 TEAP Report, page 145). The definition of ''preshipment applications'' focuses on applications ''to meet the official requirements of the importing country or existing official requirements of the exporting country.'' The definition of preshipment applications specifies that the phrase ''official requirements'' means ''those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority.''

The definition of preshipment applications in Decision XI/12 contains the phrase ''existing official requirements of the exporting country,'' (emphasis added), which implies the need to establish a cutoff date when a preshipment requirement is existing. With today's action, however, for the interim period through December 31, 2002, EPA will interpret the word ''existing'' to mean simply that the preshipment requirement must be in existence at the time of the specific treatment. It is important to note that the exporting country referred to in the phrase is the United States.

EPA is seeking comments on ways to interpret the term ''existing'' in the preshipment applications definition for development of the final version of this regulation. Options for interpreting the term ''existing official requirements'' might be to exempt official preshipment requirements of the exporting country that were: (1) In effect prior to the date the Parties to the Protocol adopted Decision XI/12, which was December 3, 1999, (2) in effect at the time this interim final rule is published in the **Federal Register**, (3) in place at the time the final rule on the quarantine and preshipment exemption is published in the **Federal Register**, (4) existing at the time of the methyl bromide application (since it would be an ''existing'' requirement of the exporting country upon going into effect). EPA seeks comments on these possible interpretations of the phrase ''existing official requirements of the exporting country.''

For the interim period through December 31, 2002, EPA will also interpret the phrase ''to meet the * * * official requirements of the exporting country'' as exempting methyl bromide used to fumigate a commodity when it is to meet a United States food sanitation requirement and the fumigation occurs within 21 days prior to export from the United States. For example, today's action considers methyl bromide used to meet food sanitation requirements of the U.S. government (such as requirements for food in interstate commerce under the Federal Food Drug and Cosmetic Act, as monitored by the Food and Drug Administration) to be exempt under the definition of preshipment applications for the interim period through December 31, 2002, when the methyl bromide is applied within the 21 days prior to export to a foreign country. EPA is seeking comments on this interpretation of the definition of ''preshipment applications.''

It should be noted that if an importing country were to establish a new official requirement for the preshipment application of methyl bromide, nothing in this rule would prevent a U.S. exporter from using methyl bromide to meet the new requirement of the importing country.

C. Are There Additional Qualifiers Associated With the Definition of Quarantine Applications?

With today's action, EPA is establishing that for the interim period through December 31, 2002, the exemption for quarantine applications will apply when methyl bromide is among a list of treatments or official control options for quarantine pests or if methyl bromide is required for an emergency U.S. quarantine application. Under Section 3, Section 18, and Section 24a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is notified of emergency quarantine applications of methyl bromide in accordance with specific requirements published under FIFRA. In addition, for the interim period (through December 31, 2002), methyl bromide will be exempted for quarantine applications on U.S. commodities for export when the foreign country simply has a broad performance-based quarantine requirement. In other words, today's action exempts methyl bromide in situations when the foreign country's regulations require a certification that U.S. commodities be exported free of quarantine pests. EPA understands that both USDA/APHIS and State agencies issue ''phytosanitary certificates'' that accompany U.S. commodities exported to foreign countries. These phytosanitary certificates are often required by importing foreign countries to ensure that U.S. exports are free of quarantine pests. To the extent that methyl bromide is used by a U.S. exporter to meet a foreign quarantine requirement, then the phytosanitary certificates (PPQ Form 577, PPQ Form 578, and PPQ Form 579) issued by USDA/APHIS or an authorized State agency will be an additional means for EPA to cross-check quarantine applications of methyl bromide under today's exemption. However, EPA is not exempting methyl bromide used for non-quarantine applications, even if the U.S. exporter must obtain a phytosanitary certificate for the export of the commodity. Today's exemption applies to the use of methyl bromide to meet a foreign quarantine requirement when a phytosanitary certificate is issued for a U.S. exported commodity. If PPQ Forms or other types of certificates are issued for commodities meeting state or local quarantine requirements then methyl bromide used in these cases is considered exempt under today's action.

To assist in development of the final version of this regulation, EPA is seeking comments on the variety of ways of interpreting the methyl bromide exemption for quarantine applications. One approach would be to limit the exemption to cases when regulations list methyl bromide as the unique treatment or control for specific quarantine pests.

A second approach would be to apply the exemption in cases when methyl bromide is among a list of treatment or control options for quarantine pests. Presumably, currently existing quarantine regulations that include methyl bromide among a list of treatment or control options indicate that other treatments or controls on the list can be used to address the quarantine pest(s).

A third approach would be to apply the exemption in cases when methyl bromide is required for an emergency quarantine application.

A fourth approach would be to apply the exemption to quarantine applications when there is a broad performance-based quarantine requirement. This would be a situation when the regulations require that a commodity be exported/imported free of quarantine pests. The Agency understands that many importing countries have quarantine regulations which broadly require commodities to be free of quarantine pests without specifying the types of treatments or controls. EPA seeks comment on these various ways of interpreting the exemption for quarantine applications.

Combinations of the above approaches for applying the exemption for quarantine applications, including combinations where the exemption is applied differently depending on whether a commodity is being imported into, moved within, or exported from the U.S., are possible as demonstrated by the conditions established with today's action for the interim period through December 31, 2002 (first paragraph in V.C. above). Today's action exempts methyl bromide for imports when methyl bromide is among a list of treatments or official control options for quarantine pests or if methyl bromide is required for an emergency U.S. quarantine application, and exempts methyl bromide for exported U.S. commodities when the foreign country simply has a broad performance-based quarantine requirement. Another possible combination of the above approaches would be to institute the exemption for treatments of commodities being imported into the U.S., or moved within U.S., when the quarantine regulations uniquely list methyl bromide as the treatment/control option, while at the same time exempting methyl bromide for the export of U.S. commodities when the foreign quarantine requirement lists methyl bromide among a list of treatment/control options. In this latter example for exports, the exemption might apply only in cases when a phytosanitary certificate is issued for a U.S. commodity to meet the foreign quarantine requirement and methyl bromide is among the list of treatment/control options. EPA is seeking comments on the approaches above and possible combinations of these as demonstrated by the conditions established with today's action for the interim period through December 31, 2002.

The Agency intends to consider prior Decisions by the Parties to the Protocol, such as paragraph (c) of Decision VII/5 which states, ''[i]n applying these definitions, all countries are urged to refrain from use of methyl bromide and to use non-ozone-depleting technologies wherever possible.'' Further, the Parties to the Protocol agreed in Decision XI/13, ''to request the Parties to review their national plant, animal, environmental, health and stored product regulations with a view to removing the requirement for use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist.'' The need to have incentives for people to switch to non-ozone-depleting methods for controlling quarantine pests will also be included in development of the final version of this regulation and EPA is seeking comments on this issue.

EPA is interested in comments addressing the effect of each of these potential approaches on methyl bromide use. EPA recognizes that the price of methyl bromide will play a key role in determining uses, especially where alternatives are available. Basic economic principles of supply and demand suggest that the price of methyl bromide is likely to increase during the phaseout period as supply is constrained. A question remains as to whether this increase will also be seen in the price of quantities of methyl bromide exempted for quarantine and preshipment applications, or whether the exempted methyl bromide for quarantine and preshipment applications will be priced differently than non-exempt quantities. We are interested in comments that address the merits of relying on a potential price increase for methyl bromide exempted for quarantine and preshipment applications—at least over the initial phaseout period—as a way of governing its use for these purposes.

D. How Do the Definitions of Quarantine and Preshipment Aplications Apply to Food Sanitation?

With today's action, for the interim period through December 31, 2002, the exemption of methyl bromide for quarantine applications will not apply to preventative treatments to meet food sanitation standards. Please note that if the methyl bromide use were to occur within 21 days prior to export to another country it would be exempted under the definition of ''preshipment applications'' if it was to meet the official requirements of the importing country or existing official requirements of the exporting country (see discussion in Part V.B. above).

Some U.S. industries have stated that not having methyl bromide for the preventative treatment of their commodities against non-quarantine pests could jeopardize their ability to bring the commodity to market because they would not be able to meet food sanitation standards. EPA is aware that alternative treatments may be technically and economically available for many industries currently using methyl bromide to maintain food sanitation or meet food sanitation standards.

For those industries facing food sanitation challenges, production of methyl bromide will continue until the 2005 phaseout, albeit in limited quantities. For the period beyond the 2005 phaseout, these industries, as well as others, will be able to apply for a ''critical-use'' exemption for continued production and/or import of methyl bromide. Consistent with the Protocol, Parties can apply for a critical-use exemption beyond the 2005 phaseout for specific uses where there are no technically and economically feasible alternatives. Although the critical-use exemption is not available until after 2005, EPA has initiated a separate process with stakeholder input to develop a critical-use exemption. In 2002, a separate **Federal Register** notice will be published asking for people to submit specific information to substantiate requests for a critical-use exemption. However, at this time no decisions have yet been made regarding what uses will be exempted as ''critical.''

EPA understands that certain industries often use methyl bromide as a prophylactic treatment for periodic quality control fumigations associated with food sanitation. Stored commodities, such as dried fruits, nuts, and cocoa beans, as well as grain mills and pasta manufacturing facilities are often fumigated periodically with methyl bromide to prevent populations of pests, such as insects and rodents, from increasing to a point where they would adversely affect food quality. Fumigations with methyl bromide of stored commodities, or food-processing facilities, as preventative measures to maintain food sanitation are directed at controlling populations of pests that are generally endemic to the U.S. and are not designed or intended to ''prevent the introduction, establishment and/or spread of quarantine pests.'' Congress directed EPA to create an exemption, ''consistent with the Montreal Protocol's quarantine and preshipment provisions.'' The quarantine definition from Decision VII/5 of the Protocol stresses that exempt applications of methyl bromide are ''to prevent the introduction, establishment and/or spread of quarantine pests (including diseases).'' This focus on ''quarantine pests'' seems to be the core of the definition and establishes the limit on exempted quarantine applications.

The definition of preshipment applications from Decision XI/12 includes a time constraint of ''21 days prior to export,'' which establishes the limit on the exempted preshipment uses. Thus, the periodic prophylactic fumigation of a commodity, or, the prophylactic fumigation of a food-processing facility which is not to meet quarantine requirements and which is outside of the 21 days prior to export would not be exempt under the Protocol's definition of quarantine applications or preshipment applications.

The Agency is seeking comments on the prophylactic uses of methyl bromide to meet food sanitation standards. The Agency intends to use this information to assist in development of the critical-use exemption process as discussed above.

E. How Do These Definitions Apply to ''Propagative Material''?

The use of methyl bromide to fumigate the soil for growing propagative material, such as strawberry propagative rhizomes, differs from many quarantine applications of methyl bromide. In the specific example of quarantine treatment of strawberry propagative material that was brought to EPA's attention, Japanese regulations require that the underground portions of the imported propagative rhizomes (of the strawberry planting stock) be certified to have been grown in soil that is free of quarantine pests. To meet this Japanese quarantine requirement, and other similar quarantine requirements, U.S. nurseries fumigate the soil with methyl bromide to raise strawberry propagative material. Methyl bromide is used to fumigate the soil before each transplanting (a number of times over 3–5 years) because Japanese requirements dictate that soil in which the strawberry propagative rhizomes are grown be free of quarantine pests. EPA is unaware of how much methyl bromide is used in the growing of strawberry propagative material in the U.S. to meet this or other foreign or domestic quarantine requirements and seeks comments on this specific quarantine application. In addition, the Agency is seeking similar information on other types of plants for planting for which methyl bromide is used as a pre-plant treatment (soil treatment) to ensure propagative materials meet quarantine requirements.

With today's action, for the interim period through December 31, 2002, the exemption for quarantine applications applies to methyl bromide used for growing propagative material, such as strawberry rhizomes, if the methyl bromide is being used to grow propagative material to meet official quarantine requirements of the destination to which it will be shipped. To ensure that the use of methyl bromide for propagative material is consistent with the Protocol's quarantine provisions, applicators availing themselves of the exemption during the interim period must maintain records of each methyl bromide application. These records must certify that the methyl bromide treatments are being undertaken to meet quarantine requirements of the intended destination country for the specific propagative material.

Monitoring methyl bromide used for propagative materials will be a large challenge. The propagative materials may be grown in close proximity to crops that do not qualify for the quarantine and preshipment exemption. EPA believes that it may be difficult to ensure that farmers growing propagative material in a small nursery in the corner of their acreage were meeting the requirements associated with the quarantine exemption—that the methyl bromide purchased under the exemption for the nursery was only used for the propagative material—and growers were not using the methyl bromide for fumigation of their larger acreage where the actual crop was being grown (*i.e.,* strawberry fruit versus propagative material). Monitoring for such an abuse of the exempted methyl bromide may be difficult because both uses would be soil fumigations on the same farm—in adjoining fields.

Another difficulty in compliance monitoring may be caused by the 3–5 year time horizon for growing

strawberry propagative materials. The growing cycle for strawberry propagative materials necessitates soil fumigation with methyl bromide several times over a 3–5 year period to protect the specific germplasm (genetic material) that is desired by the Japanese, or others, as well as to allow the grower to certify that the underground portions of the propagative plants are free of quarantine pests. A system is needed to document and ensure the validity of claims by farmers that they are using exempted methyl bromide over the 3–5 years to grow strawberry seedlings for export to meet Japanese or other quarantine requirements. However, EPA recognizes that some farmers will legitimately justify using exempted methyl bromide to meet Japanese or other quarantine requirements for strawberry seedlings, yet due to economic or market conditions these farmers will not send the seedlings to Japan or another destination that has a relevant quarantine requirement. To address this compliance monitoring challenge, the Agency is seeking comments on establishing a recordkeeping requirement for quarantine applications that involve the use of methyl bromide in soil fumigation for the growth of propagative material. EPA is also seeking comments on whether the U.S. growers of propagative materials, in general, should be required to report periodically on methyl bromide used to meet quarantine requirements.

The use of exempted methyl bromide to grow propagative material that the grower planned to ship to a destination with a propagative material quarantine requirement, but which the grower ultimately shipped to a destination without such a requirement, may raise compliance issues for the United States' obligations under the Protocol. EPA is seeking comments on the necessity of, and the nature of, possible compensatory measures. If methyl bromide is used to grow propagative material with the intention of meeting a quarantine requirement of a particular importing country or domestic location, but in the end is sent instead to a destination without a quarantine requirement for the propagative material, the use of the methyl bromide is not exempt under the Protocol. Rather, the quantity used would count against the United States' cap for domestic methyl bromide consumption (currently limited to 50% of baseline for 2001). The U.S. could exceed its control obligations under the Protocol if all U.S. production and consumption allowances for methyl bromide were expended in a particular control period (calendar year) and some methyl bromide in the same control period was mistakenly exempted for quarantine applications when, in fact, the propagative material was sent to a place without quarantine requirements. EPA is seeking comments on several possible options for rectifying this potential situation of non-compliance.

Under the first approach, a person who uses exempted methyl bromide to meet a propagative material quarantine requirement, and who ultimately changes the material's destination to one without a quarantine requirement, would be required to buy an equivalent amount of production allowances for any ozone-depleting substance, on an ozone-depleting potential (ODP) basis, and retire those allowances. In other words, the allowances could not be expended for new production in accordance with Subpart A of 40 CFR Part 82. For example, if a person used 1,000 kilograms of exempted methyl bromide on strawberry propagative material to meet the quarantine requirement of the intended destination but delivered the propagative material to a destination without a quarantine requirement, that person would be required to purchase the ODP equivalent of 1,000 kilograms of methyl bromide production allowances to compensate for the United States' exceeding the methyl bromide production cap.

A second approach would be for the person to destroy an amount of ozone-depleting substances that is equivalent on an ODP basis. Thus, the person would be required to purchase and destroy quantities of existing stocks of ozone-depleting substances, rather than being required to purchase and retire allowances, as in the first approach.

A third approach would require the person to purchase, and store, a quantity of non-exempt methyl bromide equivalent to the quantity of exempt methyl bromide used in the growing of propagative material. This stored (banked) quantity of non-exempt methyl bromide would be insurance against the need to compensate for the United States' specific methyl bromide compliance obligations of zero production after the phaseout, or in the case when all production and consumption allowances had been expended for the particular control period prior to the phaseout. If, in this third option, the propagative material was in fact sent to a destination with a quarantine requirement for that particular propagative material, the person could then sell or use the quantity of non-exempt methyl bromide that was being stored as ''insurance''. However, if the propagative material was ultimately sent to a destination without a quarantine requirement and compensatory measures were needed to ensure the United States meets its compliance obligations under the Protocol, the person holding the stored quantity of non-exempt methyl bromide would be required to pay for its destruction. This option addresses issues of the long time horizon between methyl bromide use and the shipment of the propagative material, as well as the United States' specific methyl bromide compliance obligations under the Protocol both before and after the phaseout.

EPA is seeking comments regarding compliance and enforcement issues related to soil uses of methyl bromide for propagative material to meet quarantine requirements, in general, as well as the specific approaches described above. In addition, the Agency is seeking information on existing certification programs and recordkeeping requirements associated with the pre-plant soil use of methyl bromide for growing propagative material to meet quarantine requirements. EPA is seeking comments on the possible recordkeeping and reporting aspects of the specific approaches described above for rectifying possible non-compliance. Resolving these compliance monitoring and enforcement issues will be important not only to ensure U.S. compliance with obligations under the Protocol but also to maintain a level playing field for all growers in each particular commodity market.

F. How Do These Definitions Apply to In-Transit Applications?

With today's action, for the interim period through December 31, 2002, quantities of methyl bromide used to control quarantine pests on commodities in-transit to the U.S. or traveling within the U.S. are exempt when the use is to meet a quarantine, official control requirement that lists methyl bromide (see discussion in Part V.C. above). Quantities of methyl bromide used to control quarantine pests on commodities that are in-transit from the U.S. to another country, to meet the importing country's quarantine requirements, are also exempt. However, for the interim period, the in-transit application of methyl bromide after a shipment leaves the United States is not an exempt preshipment application because the application would not occur ''within 21 days prior to export'' from the United States (emphasis added). As above, it should

be noted that for purposes of today's regulation, the word ''export'' is interpreted to mean the departure of a commodity from the United States or another foreign country.

EPA is seeking comments on the extent of the practice of fumigating commodities for non-quarantine purposes while in-transit.

VI. What Is the Process for Exempting Methyl Bromide for Use in Quarantine and Preshipment Applications?

With this action, EPA is establishing a process to exempt methyl bromide used for quarantine and preshipment applications from the Allowance Program's control measures that phase out production and consumption of methyl bromide (described in Part I. Background above). Today's action exempts quantities of methyl bromide used for quarantine and preshipment applications from the production and consumption reduction steps through December 31, 2002. The final version of this rule will address the exemption for quantities of methyl bromide used for quarantine and preshipment applications for the period that includes the remaining reduction steps and the eventual phaseout of production and consumption under the Montreal Protocol and Clean Air Act.

EPA is creating a flexible process for exempting production and consumption of methyl bromide for quarantine and preshipment applications that is responsive to demands arising when commodities need to be protected from infestations by quarantine pests and when commodities need to be protected immediately prior to shipment in accordance with official requirements. Today's action includes a certification and reporting procedure under authority of the Clean Air Act (CAA) that exempts production and consumption of methyl bromide for quarantine and preshipment applications from the reduction steps through December 31, 2002.

A. Are Producer and Importer Quarterly Reports and Recordkeeping Changing?

Producers and importers must distinguish between quantities of methyl bromide produced or imported for quarantine and preshipment applications and quantities produced or imported for other categories, such as transformation, when submitting quarterly reports that are otherwise currently required under § 82.13. As with quantities for transformation, the quantities of methyl bromide produced or imported for quarantine and preshipment applications are exempt, and are not counted against a company's production allowances and consumption allowances. In other words, the quantity reported specifically for quarantine and preshipment applications by the producer or importer will not be counted when determining the production allowances and consumption allowances expended during the quarter. The production allowances and consumption allowances held by each U.S. company at the beginning of the year, in accordance with § 82.5, § 82.6 and § 82.7, establish the U.S. limit on the amount of production and consumption of methyl bromide for all non-exempted uses in accordance with obligations under the Montreal Protocol. The relationship between each company's baseline production allowances and baseline consumption allowances and the reduction steps in these allowances is in accordance with the control measures under the Montreal Protocol and the Clean Air Act as described in Part I of today's rule and in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

Methyl bromide produced or imported and specifically designated for quarantine and preshipment applications will not be counted as net production or net import for the purposes of the Allowance Program. Net production or net import represents the number of production allowances and consumption allowances expended by a company. Currently, producers and importers provide information on the gross quantity of methyl bromide produced or imported in a quarter. In the same quarterly report, producers and importers indicate the quantity specifically designated for transformation and the quantity specifically designated for destruction which are exempt from the reduction steps and phaseout. These quantities for transformation and for destruction are subtracted from the gross quantity in order to calculate a company's net production or net import. With today's action, producers and importers must also provide information on the quantity of methyl bromide designated solely for quarantine and preshipment applications. This quantity of methyl bromide solely for quarantine and preshipment applications is exempt and producers and importers should also subtract it from the gross quantity in order to calculate net production or net import. Finally, domestic purchasers (distributors or customers) must provide producers and importers with certifications of the quantities being purchased that are designated solely for quarantine and preshipment applications (discussion of requirements for foreign purchasers appears below in Part VI.D). Certifications from distributors will attest that the material will be sold only for quarantine and preshipment applications, and certifications from applicators purchasing directly from a producer or importer will attest that the material will be used only for quarantine and preshipment applications.

In developing today's regulation, EPA initially considered a system of refunding allowances to producers and importers based on amounts of methyl bromide certified as having been purchased solely for quarantine and preshipment applications reported to the Agency by distributors. However, EPA decided a process of refunding allowances would be time-consuming and would likely impede the commercial availability of methyl bromide. EPA also believes a process of refunding allowances to producers and importers based on certification of purchases solely for quarantine and preshipment applications would be more burdensome to implement for both the industry and the Agency. With this action, EPA is simply exempting through December 31, 2002, methyl bromide production and import for quarantine and preshipment applications from the requirement to expend allowances, as is currently done for methyl bromide for transformation or destruction.

In developing today's action, EPA also considered another option for exempting methyl bromide for quarantine and preshipment applications. EPA considered a procedure that would allow the Agency to follow specific quantities of quarantine or preshipment methyl bromide through the chain of commerce (similar to a RCRA hazardous waste manifest) but rejected this option as being overly burdensome with little additional benefit. The option of a manifest system to track quarantine and preshipment quantities through the market would have relied on methyl bromide's regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As a FIFRA regulated substance, cylinders of methyl bromide are marked with unique registration numbers and labels that prescribe the use of the substance. Although EPA is not tracking cylinders by registration number through the chain of commerce, the Agency is still working with industry on a possible change to the FIFRA label (see Part VI.E below) which would reflect requirements of this rulemaking under CAA authority. If the

FIFRA label on methyl bromide is changed in the future to create a unique product solely for quarantine and preshipment applications, in accordance with the provisions of the Protocol and CAA, then EPA believes identifying material that is exempt because it is designated explicitly for quarantine and preshipment applications will be facilitated.

B. Are Methyl Bromide Applicators Required To Report?

Today's action includes a certification requirement for purchases of methyl bromide by applicators. Applicators must submit a certification to the seller of the methyl bromide when they want to purchase a specific quantity of methyl bromide explicitly for quarantine and preshipment applications. The applicator will certify that the quantity purchased will be used solely for quarantine and preshipment applications. The applicator must send the certification to the company selling the methyl bromide before the seller ships the cylinders of methyl bromide (*i.e.,* certification before shipment).

With today's action, for the interim period through December 31, 2002, the distributor must send a Quarantine and Preshipment Certification Form to any person who places an order for a quantity of methyl bromide that is explicitly and solely for quarantine and preshipment applications as defined in today's action. The applicator, upon receiving the form, must check the box indicating that the particular quantity being ordered is solely for quarantine and preshipment applications as defined on the form (the definition above in Part V) and will neither be sold nor used for any other purpose. The applicator must sign the form certifying, under penalty of law, that the quantity of methyl bromide purchased will be used solely for quarantine and preshipment applications in accordance with the definitions. The applicator must return the completed and signed form to the distributor. The distributor retains the certification form in order to compile data that they will submit to EPA on the quantity of methyl bromide purchased under the exemption for quarantine and preshipment applications. The certification form ensures that quantities of methyl bromide produced or imported under the exemption for quarantine and preshipment applications are used only in accordance with the strict requirements of the exemption. It is important to note that the applicator will also be able to purchase non-exempt methyl bromide until the phaseout date for methyl bromide.

Today's interim rule does not require the distributor to send a Certification Form for every methyl bromide purchase '' instead, distributors are only required to send a Certification Form when an applicator wants to purchase a quantity solely for quarantine and preshipment applications. However, the distributor of methyl bromide may want to send the Certification Form to customers (applicators) for every methyl bromide quantity before the actual purchase and shipment of the material. Doing so would allow the distributor and the applicator to distinctly track the quantities of exempt and non-exempt methyl bromide. To assist in developing the final rule, EPA is seeking comments on the merits and burdens associated this type of shipment-by-shipment certification method as compared to the approach outlined in today's rule. EPA is also interested in comments addressing the implications of a FIFRA label for exempt quantitites of methyl bromide (as discussed in Part VI.E. below).

For quarantine applications, the applicator must collect documentation citing the regulatory requirement or other official requirement that justifies the use of methyl bromide. Acceptable documentation for a quarantine application includes the forms provided directly to the applicator by an official from a national plant, animal, environmental protection or health authority requesting the treatment of commodities to control quarantine pests. In the absence of official documentation from a plant, animal, environmental protection or health authority, the commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the regulation requiring a quarantine treatment or quarantine official control. Likewise, the applicator must collect documentation citing the official requirement calling for a preshipment application. The commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the official requirement for a preshipment application. The letter that the commodity owner, shipper or their agent presents to the applicator must include the following statement: ''I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements.'' Both the commodity owner, shipper or their agent and the applicator must maintain this letter for three years in accordance with current recordkeeping requirements in 40 CFR part 82, subpart A. Neither the applicator nor the commodity owner, shipper or their agent are required to submit the letter to EPA. EPA is seeking comments on these procedures, for purposes of developing the final rule.

C. Are Distributors Required To Report?

With today's action, for the interim period through December 31, 2002, EPA is requiring that a person who distributes methyl bromide to applicators (the distributor) compile all the information from applicator certifications (as described in Part VI.B, above) on an annual basis and submit the summary data to EPA. If certifications were signed by applicators at the time the specific quantity of methyl bromide was ordered, in accordance with the procedures described above in VI.B. but the signature of the certification was before date of today's publication, then the distributor can consider those quantities exempt and should include them in the annual report to EPA. In other words, if certifications were signed contemporaneously with an order for a quantity of methyl bromide solely for quarantine and preshipment applications, the distributor should include this quantity in their annual report to EPA, as long as the certifications were signed within the 2001 or 2002 control periods (calendar years).

In development of the final version of this regulation, EPA is seeking comments on whether annual, bi-annual or quarterly reporting of this information would be easier to manage for the distributors of methyl bromide. Companies responsible for reporting on other ozone-depleting substances have clearly expressed their preference for quarterly reporting because it reduces the burden of an end-of-year crunch to compile twelve months of data. Regardless of the reporting periodicity, the distributor must compile all certifications received during the period to obtain the total quantity that purchasers certified to be for quarantine and preshipment applications. The collection of information on the quantity of methyl bromide sold and certified for quarantine and preshipment applications is needed so that the U.S. can respond to a recent amendment to the Protocol. The amendment, to which the Parties agreed

at their Eleventh Meeting in Beijing in 1999, adds a provision to Article 7 (Reporting of Data), requiring Parties to submit information on the amounts of methyl bromide used for quarantine and preshipment applications. Reporting by the distributors will allow a comparison between the quantities of methyl bromide sold and certified for quarantine and preshipment applications with the amount of methyl bromide produced and imported for quarantine and preshipment applications, as reported in the producers'/importers' report as described in Part VI.A above.

D. What About Reporting of Methyl Bromide Exported for Quarantine and Preshipment Applications?

EPA considered many options for collecting information on the quantity of methyl bromide produced in the U.S. and then exported for quarantine and preshipment applications. With today's action, producers and others that export methyl bromide must report the total quantity of methyl bromide explicitly exported to individual foreign countries for quarantine and preshipment applications on a quarterly basis. Currently, producers and exporters distinguish other exempted quantities of methyl bromide explicitly exported for transformation or destruction. For each export of methyl bromide for quarantine and preshipment applications, as for exports for transformation or destruction, the exporter must obtain a certification from the foreign person (entity) importing the methyl bromide stating that the material will be used only for quarantine and preshipment applications. These certifications must be submitted with the quarterly reports. These certifications will then be shared with the appropriate foreign government officials in the importing country and the compiled data will be shared with UNEP advisory bodies to the Protocol. Certifications must accompany the reporting on quantities exported for quarantine and preshipment applications because of a concern that the U.S., as one of the largest worldwide producers of methyl bromide, could potentially contribute to the creation of a loophole for non-exempt uses of methyl bromide around the globe. EPA feels it will be important to closely monitor and track production of methyl bromide that is exported for quarantine and preshipment applications because these uses are exempt from Protocol control measures.

EPA considered linking periodic reporting on the quantity of methyl bromide exported for quarantine and preshipment applications with a system for refunding allowances. EPA also considered the option of establishing a ceiling on the export of exempted methyl bromide for quarantine and preshipment applications according to historical export levels. EPA considered this option because the U.S. is one of the largest global producers of methyl bromide and EPA is concerned that exempted production of methyl bromide for quarantine and preshipment exports might become a loophole if those exempted quantities were to be used by other Parties for non-quarantine or non-preshipment applications. At this time, EPA has no indication that abuse of the quarantine and preshipment exemption will occur, but the Agency will monitor the situation closely. For development of the final version of the rule, EPA is seeking comments on today's recordkeeping and reporting requirements and other variations for monitoring quantities of methyl bromide produced in the U.S. and exported for quarantine and preshipment applications.

E. Will There Be a FIFRA Pesticide Label Change?

In parallel with today's action, EPA's Office of Pesticide Programs is working with the Methyl Bromide Industry Panel to develop a registration and label change for methyl bromide products under authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The proposed registration/label change under FIFRA would create unique methyl bromide products solely and specifically for quarantine and preshipment applications. A registration/label change would designate individual cylinders of methyl bromide specifically for quarantine and preshipment applications and it would be illegal to use the material in these cylinders for other uses. Under an approved registration/label change there would be unique registration numbers for the new labels that would accompany each cylinder through the chain of commerce from producers or importers to the end-user (the applicator). As currently required under FIFRA, establishments would report total quantities of methyl bromide under this new quarantine and preshipment registration/label to EPA's Office of Pesticide Programs on an annual basis. Following a change in the FIFRA authorized registration/label, as well as today's final action, it will be possible for the Agency to reconcile the total quantity of methyl bromide certified to be solely for quarantine and preshipment applications under procedures described Part VI.B and VI.C above, the total quantity of methyl bromide produced or imported for quarantine and preshipment applications under today's Part VI.A above, and the annual FIFRA establishment reports on methyl bromide, which reference specific products by registration number.

VII. What Are Other Considerations and Situations on Which EPA Is Seeking Comment?

EPA is seeking comments on the following paragraphs that describe possible variations on the exemption that have not been incorporated into today's action and therefore are not effective during the interim period (through December 31, 2002). To assist in developing the final version of the regulation, EPA is seeking comments regarding the items described below. In addition, EPA will consider comments and questions regarding aspects of today's action that are effective for the interim period. If a person has a question about whether a certain aspect of today's interim action applies to their situation, EPA is encouraging the submission of written questions accompanied by a detailed description of how methyl bromide relates to the person's particular enterprise. The Agency will consider questions about whether aspects of today's interim action apply in the context of EPA's regular process for issuing written determinations.

A. What Are Considerations on Which the Agency Is Seeking Comment Regarding Definitions Under the International Plant Protection Convention (IPPC)?

Under the International Standards for Phytosanitary Measures (ISPMs) adopted by members of the International Plant Protection Convention (IPPC) on April 22, 2001, the definition of ''official control'' is different than the definition that was agreed to by the Parties to the Montreal Protocol. The IPPC definition of the phrase ''official control'' is, ''the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or the management of regulated non-quarantine pests.'' The IPPC glossary of phytosanitary terms defines ''official'' as ''established, authorized or performed by a National Plant Protection Organization (NPPO).'' In the United States, the NPPO is the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) Program.

Further, under the ISPMs adopted by the IPPC, the phrase ''regulated non-quarantine pests'' is defined as, ''a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contacting party.'' Because the IPPC definition of ''regulated non-quarantine pest'' refers to ''plants for planting,'' the phytosanitary measure is limited to propagative materials, such as strawberry seedlings. Although the IPPC's definition of ''official control'' includes regulated non-quarantine pests, it should be noted that the Montreal Protocol does not include these regulated non-quarantine pests. In 1998, the TEAP explicitly laid out the differences between the IPPC's and the Montreal Protocol's definitions of ''official control'' for consideration by the Parties. The Parties rejected making any changes to the Protocol's definition of ''official control'' even when presented with the IPPC language. EPA is seeking comments on possible changes to EPA's interpretation of the phrase ''official control'' as used in today's exemption, for purposes of the final rule.

B. What Are considerations on Which the Agency Is Seeking Comment Regarding Prophylactic Fumigation of U.S. Exports When the Fumigation Is Not Mandated by Import Regulations?

U.S. businesses sometimes use methyl bromide against non-quarantine pests for a commodity that is being exported because it is known that the importing country will treat with methyl bromide at the port of entry if the detected level of these non-quarantine pests during port-of-entry inspection exceeds that country's standards. Some U.S. exporters give their commodities a prophylactic treatment in the U.S. to prevent a much more damaging treatment in the receiving country that could occur if non-quarantine pests were found; possibly reducing the quality of the commodity. In cases where an official foreign Party requirement is specific to quarantine pests, or there is a general performance-based quarantine requirement, the use of methyl bromide under the exemption for quarantine applications would be appropriate. In addition, fumigation with methyl bromide to meet U.S. government non-quarantine pest requirements within 21 days prior to export of the commodity would also be exempt under the definition of preshipment applications. However, EPA is seeking comments that would clarify the scope of the prophylactic use of methyl bromide described in this section, where the official foreign Party requirement is *not* specific to quarantine pests.

C. What Are Considerations on Which the Agency Is Seeking Comment Regarding the Exclusion of Specific Quarantine and Preshipment Applications From the Exemption at Some Future Time?

The Parties to the Protocol in Decision XI/13 request Parties to ''review their national plant, animal, environmental, health and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist.'' The reason for a review process would be to limit the production and import of methyl bromide to only those cases where no other ''technologically and economically feasible alternatives exist.'' Through time, it is likely that the use of methyl bromide will be less and less necessary for quarantine and preshipment applications. When technically and economically feasible alternatives to methyl bromide are available, a process could be devised that would allow the U.S. to limit the use of this ozone-depleting substance while taking into account the need to protect international trade. In the years beyond the methyl bromide production and consumption phaseout, there will continue to be an exemption for quarantine and preshipment applications but there may no longer be price pressures for moving away from these quarantine and preshipment uses of methyl bromide. Therefore, the Parties to the Protocol emphasize the importance of reviewing quarantine and preshipment applications and identifying when technically and economically feasible alternatives exist, and removing these applications from the exemption.

One option for implementing a review process would be to establish a procedure for excluding specific quarantine and preshipment applications from the exemption when EPA determines by notice and comment rulemaking that alternatives are in significant international use for the specific applications. Such a process would allow U.S. users of methyl bromide for quarantine and preshipment applications to make the case that although alternative(s) are in significant international use, the specific circumstances of their U.S. applications are unique (e.g., the alternatives are not feasible or commercially available in the U.S.) and continue to warrant the use of methyl bromide.

Other options for implementing a review process include: (1) Immediately prior to the 2005 methyl bromide phaseout, reviewing and listing all quarantine and preshipment applications that would be exempt beyond the phaseout through notice and comment rulemaking asking for justifications for continued use, (2) eliminating the exemption for quarantine and preshipment applications after the phaseout and asking users to apply for critical-use exemptions where no technically or economically feasible alternatives exist, and (3) conducting periodic reviews (i.e., 3 or 5 years) for listing through notice and comment rulemaking the specific quarantine and preshipment applications that would be exempt because there were no technically or economically feasible alternatives. EPA seeks comments on these and any other potential processes for reviewing the exemption for quarantine and preshipment applications, where technically and economically feasible alternatives exist.

As an alternative to a formal review process, EPA might rely on market prices to guide methyl bromide use. The effectiveness of this price mechanism is to some extent dependent on the behavior of methyl bromide prices over the phasedown period, and particularly on whether a separate market evolves for the pure grade of methyl bromide needed for quarantine and preshipment uses. Basic economic supply and demand principles suggest that the price of methyl bromide is likely to increase during the phaseout period, thereby providing incentives for the development and use of alternatives. Following the phaseout period after January 1, 2005, we expect the price of methyl bromide exempted for quarantine and preshipment applications (and other exemptions that may be established in the future) to likely be determined by the cost of manufacturing those quantities and not by further decreases in supply. We are interested in comments on this view. We are especially interested in comments addressing: (1) The likely behavior of the price of exempt and non-exempt quantities of methyl bromide during the phaseout; (2) the likely behavior of the price of exempt methyl bromide after the phaseout, (3) the impact on these prices of establishing a FIFRA label explicitly for the methyl bromide exempt for quarantine and preshipment applications, (4) the possible impact of

other Federal actions that would influence pricing of methyl bromide, and (5) the value of a price mechanism in assuring that methyl bromide is directed toward those uses where there are no alternatives and/or where it provides the greatest value.

D. What Are Considerations on Which the Agency Is Seeking Comment Regarding National Security Fumigations?

EPA is seeking comments on the possible need for methyl bromide to meet special national security quarantine requirements. The Agency understands that it might be necessary to treat military or other U.S. government property with methyl bromide for import to eliminate possible contamination with biological weapons. EPA is seeking comments on whether a national security quarantine situation could arise that would require a specific exemption. In considering this question, commenters should be aware that prior to the phaseout date some methyl bromide will still be produced without use restrictions, and after the phaseout date, methyl bromide would be available under the emergency use exemption consistent with Decision IX/7 as agreed by the Parties to the Protocol.

VIII. What Are the Steps To Conform the U.S. Methyl Bromide Phaseout Schedule and Exemptions to the Montreal Protocol and the Amended Clean Air Act?

During stakeholder meetings, and in the proposal and final rules that established the 25 percent reduction in methyl bromide baseline allowances beginning in 1999 (64 FR 9290, 64 FR 29240), EPA described its intention to follow with separate rulemakings that would include the additional phaseout steps for methyl bromide and establish additional exemptions in accordance with the Protocol and the CAA. The rule establishing the remaining reduction and phaseout schedule for methyl bromide was published November 28, 2000 (65 FR 70795). The reduction and phaseout schedule is listed above at the end of Part I.

After the phaseout on January 1, 2005, critical-use exemptions are permitted under the Montreal Protocol and the Clean Air Act when nominated by the United States and approved by the Parties. In addition, an emergency use exemption of no more than 20 metric tonnes is available after the phaseout on January 1, 2005. EPA, in consultation with the U.S. Department of Agriculture, is in the process of developing a rulemaking to establish the emergency-use and critical-use exemptions. In 2001, EPA initiated stakeholder meetings to develop rulemaking that will establish the process for an emergency use exemption and the process for critical-use exemptions, which will be designed to ensure the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. In 2002, a separate **Federal Register** notice will be published asking for people to submit specific information to substantiate requests for a critical-use exemption. However, at this time no decisions have yet been made regarding what uses will be exempted as ''critical.'' Sometime in advance of 2005, EPA will establish a process for an emergecny use exemption through notice and comment rulemaking.

IX. Administrative Requirements

A. Unfunded Mandates Reform Act

Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as explained in the Supplementary Information section of this rulemaking, it is not subject to section 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as explained in the **SUPPLEMENTARY INFORMATION** section of this rulemaking, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations on the original rule submitted to them will be documented in the public record.

D. Applicability of E.O. 13045—Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply.

E. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule for six (6) months under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and the emergency approval provisions of 5 CFR 1320.13. The OMB control number is 2060–0170.

Today's action also serves as the first notice of a request for comment on an extension of today's approval. EPA will follow this action with a second notice in the **Federal Register** regarding

today's information collection. EPA is soliciting comments on specific aspects of the information collection as described below. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Comments must be submitted on or before September 17, 2001. Copies of material supporting this ICR notice are available free of charge from the Stratospheric Ozone Protection Hotline at 1–800–296–1996 between the hours of 10 am and 4 pm Eastern Standard Time or may be received electronically by sending an e-mail to land.tom@epa.gov. For further information contact, Tom Land, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202)–564–9185, or facsimile (202)–565–2155.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on August 4, 1998, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.18).

In relation to the expected benefits of today's exemption from the phaseout schedule for methyl bromide, this action is adding additional reporting and recordkeeping requirements. This action increases the information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action adds reporting by distributors of methyl bromide regarding the total quantity sold that is certified to be solely for quarantine and preshipment applications. This action also requires applicators of methyl bromide to certify that specified quantities purchased will be used solely for quarantine and preshipment applications. Producers and importers of methyl bromide must include additional information in existing quarterly reports. In addition, producers that export and third-party exporters must submit additional information regarding quantities of methyl bromide exported for quarantine and preshipment applications. Today's action also includes recordkeeping requirements associated with the reporting listed above and an additional recordkeeping requirement for commodity owners or shippers who must formally request methyl bromide use citing the treatment, official control or official requirement for the quarantine and preshipment application.

The information collection under this action is designed to implement the exemption in paragraph 5 under article 2H of the Montreal Protocol for quantities of methyl bromide used for quarantine and preshipment applications as well as the exemption under 604(d)(5) of the CAA. The information collection under this rule is authorized under sections 603(b) and 603(d) of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in this rule are intended to:

(1) Allow exempted production and import for a specific exemption and the consequent tracking of that production and import;

(2) Respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies;

(3) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(4) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(5) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

The information collection requirements for this action have an estimated reporting burden averaging 1.38 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of the reports.

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producers and Importers Report	4	4	16	1	16
Exporters Report	2	4	8	8	64
Applicator Certification	15	6	90	0.5	45
Distributor Report	15	1	15	16	240
Commodity Owner, Shipper or Agent Recordkeeping	500	10	500	1	500

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Total Burden Hrs					865

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

F. Executive Order 13132 (Federalism):

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not in any way restrict States from continuing to operate their plant, animal, environmental, health or stored product protection programs associated with quarantine and preshipment applications. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

On January 1, 2001, EO 13084 was superseded by EO 13175. However, this rule was developed during the period when EO 13084 was still in force, and so tribal considerations were addressed under EO 13084. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. The 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

X. Congressional Review

A. Submission to Congress and the Comptroller General

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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 19, 2001.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Methyl Bromide, Quarantine, Preshipment, Ozone layer.

Dated: July 11, 2001.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for the terms, ''Applicator'', ''Commodity owner, shipper or their agent'', ''Distributor of methyl bromide'', ''Preshipment applications'', and ''Quarantine applications''.

§ 82.3 Definitions.

As used in this subpart, the term:

Applicator means the person who applies methyl bromide.

* * * * *

Commodity owner, shipper or their agent means the person requesting that an applicator use methyl bromide for quarantine or preshipment applications.

* * * * *

Distributor of methyl bromide means the person directly selling a class I, Group VI controlled substance to an applicator.

* * * * *

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

* * * * *

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where:

(1) Official control is that performed by, or authorized by, a national plant, animal or environmental protection or health authority;

(2) Quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

* * * * *

3. Section 82.4 is amended by redesignating paragraph (a) as (a)(1) and republishing the text, adding paragraph (a)(2), redesignating paragraph (c) as (c)(1) and republishing the text, adding paragraph (c)(2), redesignating paragraph (k) as (k)(1) and republishing the text, and adding paragraph (k)(2) as follows:

§ 82.4 Prohibitions.

(a)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) From January 1, 2001 through December 31, 2002, production of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (a)(1) of this section if it is solely for quarantine or preshipment applications as defined in this Subpart.

* * * * *

(c)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(2) From January 1, 2001 through December 31, 2002, production and import of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (c)(1) of this section if it is solely for quarantine or preshipment applications as defined in this Subpart.

* * * * *

(k)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels, used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels and used controlled substances.

(2) Notwithstanding paragraph (k)(1) of this section, from January 1, 2001 through December 31, 2002, for class I, Group VI controlled substances, consumption allowances are not required to import quantities solely for quarantine or preshipment applications as defined in this Subpart.

* * * * *

4. Section 82.13 is amended by:

a. Adding paragraphs (f)(2)(xvii) through (f)(2)(xix), and (f)(3)(xiii) through (f)(3)(xv),

b. Adding paragraphs (g)(1)(xvii) through (g)(1)(xix), and (g)(4)(xv) through (g)(4)(xvii),

c. Revising paragraph (h),

(d). Adding paragraphs (aa), (bb), and (cc).

The revisions and additions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances produced for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances produced solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

(3) * * *

(xiii) The amount of class I, Group VI controlled substances sold or transferred during the quarter to a person other than the producer solely for quarantine and preshipment applications;

(xiv) A list of the quantities of class I, Group VI controlled substance produced by the producer and exported by the producer and/or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not produced expending production or consumption allowances; and

(xv) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

* * * * *

(g) * * *

(1) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances imported for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances imported solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances imported solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

* * * * *

(4) * * *

(xv) The amount of class I, Group VI controlled substance sold or transferred during the quarter to a person other than the importer solely for quarantine and preshipment applications;

(xvi) A list of the quantities of class I, Group VI controlled substance exported by the importer and or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not imported expending consumption allowances; and

(xvii) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this Subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(h) *Reporting Requirements—Exporters.*

(1) For any exports of class I controlled substances (except Group VI) not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I controlled substance (except Group VI) must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, or destruction verifications (as in paragraph(k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances.

(2) For any exports of class I, Group VI controlled substances not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I, Group VI controlled substance must submit to the Administrator the following information within 45 days after the end of each quarter in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, the

destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this Subpart.

* * * * *

(aa) Every distributor of methyl bromide (class I, Group VI controlled substances) who purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this Subpart must comply with recordkeeping and reporting requirements specified in this paragraph (aa) of this section.

(1) Every distributor of methyl bromide must certify to the producer or importer that quantities received that were produced or imported solely for quarantine and preshipment applications under the exemptions in this Subpart will be used only for quarantine applications or preshipment applications in accordance with the definitions in this Subpart.

(2) Every distributor of a quantity of methyl bromide that was produced or imported solely for quarantine or preshipment applications under the exemptions in this Subpart must receive from an applicator a certification of the quantity of class I, Group VI controlled substances ordered, prior to delivery of the quantity, stating that the quantity will be used solely for quarantine or preshipment applications in accordance with definitions in this Subpart.

(3) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart must maintain the certifications as records for 3 years.

(4) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart must report to the Administrator within 45 days after the end of the control period, the total quantity delivered for which certifications were received that stated the class I, Group VI controlled substance would be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart.

(bb) Every applicator of class I, Group VI controlled substances who purchases or receives a quantity produced or imported solely for quarantine and preshipment applications under the exemptions in this Subpart must comply with recordkeeping and reporting requirements specified in this paragraph (bb) of this section.

(1) Recordkeeping—Applicators. Every applicator of class I, Group VI controlled substances produced or imported solely for quarantine and preshipment applications under the exemptions of this Subpart must maintain, for every application, a document from the commodity owner, shipper or their agent requesting the use of class I, Group VI controlled substances citing the regulatory requirement that justifies its use in accordance with definitions in this Subpart. These documents shall be retained for 3 years.

(2) Reporting—Applicators. Every applicator of class I, Group VI controlled substances who purchases or receives a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions in this Subpart shall provide the distributor of the methyl bromide, prior to shipment of the class I, Group VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and preshipment applications as defined in this Subpart.

(cc) Every commodity owner, shipper or their agent requesting an applicator to use a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions of this Subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this Subpart and citing the regulatory requirement that justifies the use of the class I, Group VI controlled substance in accordance with definitions in this Subpart.

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