corrected several referencing and drafting errors. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comment by August 1, 2005, (or if a public hearing was requested by July 11, 2005) on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received adverse comment from several commenters regarding requirements for effluent from control devices. Commenters also pointed out erroneous changes made to Table 1 of subpart FFFF of part 63.

Accordingly, we are withdrawing the amendments to 40 CFR 63.2485(c)(4) and Table 1 of subpart FFFF of part 63. The amendments are withdrawn as of August 30, 2005. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The provisions for which we did not receive adverse comment will become effective on August 30, 2005, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 24, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–17194 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7962–4]

RIN 2060–AN13

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide for the 2005 Supplemental Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: With this action EPA is taking direct final action to authorize use of 610,665 kilograms of methyl bromide for supplemental critical uses in 2005 through the allocation of additional critical stock allowances (CSAs). This allocation supplements the critical use allowances (CUAs) and CSAs previously allocated for 2005, as published in the **Federal Register** on December 23, 2004 (69 FR 76982). Further, EPA is amending the list of exempted critical uses. With today's action EPA is exempting methyl bromide for critical uses beyond the phaseout under the authority of the Clean Air Act (CAA or the Act) and in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).

DATES: This rule is effective on October 31, 2005 without further notice, unless EPA receives adverse comment by September 29, 2005, or by October 14, 2005 if a hearing is requested. If adverse comments are received, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. If anyone contacts EPA requesting to speak at a public hearing by September 9, 2005, a public hearing will be held on September 14, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0506, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *mebr.allocation@epa.gov*.
- Fax: 202–343–2337 attn: Marta Montoro.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0506. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this direct final rule, contact Marta Montoro by telephone at (202) 343–9321, or by e-mail at *mebr.allocation@epa.gov*, or by mail at Marta Montoro, U.S.

Environmental Protection Agency, Stratospheric Protection Division, (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L St., NW., Washington, DC 20005, attn: Marta Montoro. You may also visit the Ozone Depletion web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment since EPA is not authorizing any additional new production or import of methyl bromide. The additional authorized amounts must come from inventories produced or imported prior to January 1, 2005. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to authorize 610,665 kilograms of methyl bromide for critical uses if adverse comments are filed. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

This action concerns regulation of methyl bromide pursuant to the CAA as a class I, Group VI ozone-depleting substance. Under the CAA, methyl bromide production and consumption (defined as production plus imports minus exports) were phased out on January 1, 2005, apart from certain exemptions, including the critical use exemption, which is the subject of today's rule. In a final rule published December 23, 2004 (69 FR 76982), EPA established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet approved critical uses. As part of that rule, EPA issued critical use allowances (CUAs) for new production and import and critical stock allowances (CSAs) for sale of methyl bromide stocks. In today's action, EPA is amending the list of approved critical uses of methyl bromide and issuing additional CSAs for the 2005 control period. These actions are in accordance with Decision XVI/2 of the countries that have ratified the Montreal Protocol (the ''Parties''), taken at their November 2004 meeting.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application and authorized use of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide, *e.g.* farmers of fruit and vegetable crops, owners of stored food commodity facilities and structures.

The above 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. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Electronic Air Docket ID No. OAR–2004–0506. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA West, 1301 Constitution Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566–1742, Fax: (202) 566–1741. The materials may be inspected from 8:30 am until 4:30 pm Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

Additional supporting documents related to this action may be found in EPA's electronic docket system, docket numbers OAR–2002–0018, OAR–2003–0017, OAR–2003–0230, and in EPA's

paper docket, Air Docket ID No. A–2000–24.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number, OAR–2004–0506.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by fax, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment, in this instance OAR–2004–0506. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider these late comments. If you plan to submit comments, please also notify Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 343–9321.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments to docket OAR–2004–0506.

ii. By Mail. Send one copy of your comments to each of the following two offices: U.S. Environmental Protection Agency, Air and Radiation Docket (6102), Electronic Air Docket ID No. OAR–2003–0230. Washington, DC 20460 and to U.S. Environmental Protection Agency, (6205J) 1200 Pennsylvania Ave., N.W., Washington, DC 20460, attn: Marta Montoro, docket no. OAR–2004–0506.

iii. By Hand Delivery or Courier. Deliver your comments to: Marta Montoro, 1310 L Street NW., Washington, DC 20005, Attention Electronic Air Docket ID No. OAR–2004–0506. Such deliveries are only accepted during the normal hours of operation 9 a.m to 5 p.m.

iv. By Facsimile. Fax your comments to both: (202) 566–1741, Attention Electronic Air Docket ID No. OAR–2003–0230, and to (202) 343–2337 or (202) 343–2338, Attention Marta Montoro, Electronic Air Docket No. OAR–2004–0506.

D. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in the **FOR FURTHER INFORMATION CONTACT** Section, Electronic Air Docket ID No. OAR–2004–0506. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in

the **FOR FURTHER INFORMATION CONTACT** Section.

II. What Is the Background to 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 can be found at 40 CFR Part 82 Subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). 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 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide 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 on the phaseout schedule for methyl bromide 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).

The phaseout schedule for methyl bromide production and consumption was revised in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751) with an interim final rule and with a final rule (68 FR 238) on January 2, 2003. Information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr* and *http://www.unep.org/ozone* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority and by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this status, a restricted use pesticide is subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this final rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in today's action are intended only to implement the CAA restrictions on the production, consumption and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. Legal Basis for This Action

Methyl bromide was added to the Protocol as an ozone depleting substance in 1992 through the Copenhagen amendment to the Protocol. The Parties authorize critical use exemptions through their Decisions.

The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur (58 FR 65018). This phaseout date was established in response to a petition filed in 1991 under sections 602 (c)(3) and 606 (b) of the Clean Air Act Amendments (CAAA) of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption. This date was consistent with section 602 (d) of the CAAA of 1990, which for newly listed class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol to freeze the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting of the Parties in Copenhagen.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At this time, the U.S. continued to have a 2001 phaseout date in accordance with the CAAA of 1990 language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide exemptions for critical uses. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule in the **Federal Register** that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from available stocks and new production or import to meet approved critical uses. Today, EPA is authorizing sale of additional amounts of methyl bromide from inventory for

critical uses in the 2005 control period. In addition, EPA is amending the existing list of approved critical uses.

Today's action reflects Decision XVI/2, taken at the Parties' Sixteenth Meeting in November 2004. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decision IX/6, which set forth criteria for review of proposed critical uses; Decision Ex. I/3, which addressed agreed critical uses, critical-use exemption levels, and allowable levels of new production and consumption for critical uses in 2005; and Decision XVI/2, which, in part, supplemented the critical use categories and exemption levels discussed in Decision Ex. I/3.

For a discussion of the relationship between the relevant provisions of the CAA and Article 2H of the Protocol, and the extent to which EPA takes into account Decisions of the Parties that interpret Article 2H, refer to the December 23, 2004 FR notice (69 FR 76984–76985). Briefly, EPA regards Decisions IX/6, Ex I/3, and XVI/2 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. In today's action, EPA is following the terms of these Decisions. This will ensure consistency with the Montreal Protocol, 42 U.S.C. 7671c(d)(6).

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed as follows: '' Section IA of the Annex to Decision XVI/2 lists the following supplemental critical use categories for the U.S.: Dried fruit and nuts; eggplant field; peppers field; tomato field; dry commodities structures (cocoa); dry commodities—processed foods, herbs, spices, dried milk; ornamentals; smokehouse ham; strawberry fruit''. These are the uses for which the U.S. requested either initial authorization or a higher critical use level in its supplemental request for 2005. EPA is amending the following uses listed in Column A of Appendix L to 40 CFR Part 82; Subpart A to reflect Decision XVI/2: Eggplant; ornamentals; peppers; strawberry fruit; tomatoes; food processing; and commodity storage. Based on the applications underlying the U.S. supplemental request, EPA is modifying Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to add new approved critical users, locations of use, and limiting critical conditions.

Section IB of the Annex to Decision XVI/2 does not list a supplemental level of production or consumption for the U.S. EPA's December 23, 2004 final rule already authorizes the full amount of production and consumption approved in the Parties' prior Decision regarding critical uses in 2005, Decision Ex. I/3. Therefore, EPA is not authorizing any additional production or consumption beyond that already authorized in the December 23, 2004 final rule. Instead, EPA is authorizing sale of additional amounts of methyl bromide from inventory for critical uses in the 2005 control period. This approach is in accordance with the Parties' statement in Decision Ex I/3 that ''a Party with a critical-use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available.''

The December 23, 2004 final rule authorized production of 7,659,000 kilograms (30% of the 1991 consumption baseline) and sale of 1,283,214 kilograms (5% of the 1991 baseline) from pre-phaseout inventories. In today's action, EPA is authorizing the sale of an additional 610,665 kilograms (2.4% of the 1991 baseline) from pre-phaseout inventories for critical uses. Thus, the total critical use amount for 2005 would be 9,552,879 kilograms, with 1,893,879 kilograms coming from pre-phaseout inventories.

V. What Is the Critical Use Exemption Process?

A. Background on Critical Use Exemption Process

Starting in 2002, EPA began notifying applicants as to the availability of an application process for a critical use exemption to the methyl bromide phaseout. The Agency published a notice in the **Federal Register** (68 FR 24737) announcing the deadline to apply, and directing applicants to announcements posted on EPA's methyl bromide Web site at *http://www.epa.gov/ozone/mbr*. Applicants were told they may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (*i.e.* specific conditions which establish a critical need for methyl bromide). This process has been repeated on an annual basis since then.

In response to the yearly requests for critical use exemption applications published in the **Federal Register**, applicants have provided information supporting their position that they have no technically and economically feasible alternatives to methyl bromide available to them. Applicants for the exemption have submitted information on their use of methyl bromide, on research into the use of alternatives to methyl bromide, on efforts to minimize use of methyl bromide and efforts to reduce emissions and on the specific technical and economic research results of testing alternatives to methyl bromide.

The CAA allows the Agency to create an exemption for critical uses to the extent consistent with the Protocol. The critical use exemption process is designed to meet the needs of methyl bromide users who do not have technically and economically feasible alternatives available. In EPA's recently published regulation describing the operational framework for the critical use exemption (69 FR 76982) the majority of critical uses for the 2005 calendar year were established. This action authorizes additional uses that the U.S. government submitted to the Protocol's Ozone Secretariat as a supplemental request in February 2004. In addition, EPA is adding to the number of CSAs previously allocated for the 2005 control period.

For this action, the operational framework for authorizing CSAs is described in EPA's recent regulation, published in the **Federal Register** on December 23, 2004 (69 FR 76982). All elements of the framework, such as the cap, trading provisions, and reporting and recordkeeping obligations, remain the same for this action. However, this rulemaking also allows additional quantities of methyl bromide to be made available from inventory and to augment the list of approved critical uses.

For information on EPA's calculation of CSAs, please see E–Docket OAR–2004–0506.

B. 2005 Supplemental Request

A detailed explanation of the development of the nomination, including the criteria used by expert reviewers, is available in a memo titled ''2003 Nomination Process: Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide from the United States of America'' on E–Docket OAR–2003–0230 (document 104) and E–Docket OAR–2004–0506. This memo applies equally to the 2004 Nomination, which included the supplemental request for 2005. All critical use exemption applications, including those described in the supplemental request for 2005, underwent a rigorous review by highly qualified technical experts. The CUE applications (except to the extent claimed confidential) are available on E–Docket OAR–2004–0506. Data from the applications served as the basis for

the nomination and was augmented by multiple other sources, including but not limited to the National Agricultural Statistics Service of the U.S. Department of Agriculture, the State of California Department of Pesticide Regulation, peer-reviewed articles, and crop budgets.

After submission of the first U.S. Nomination for a Critical Use Exemption for Methyl Bromide, (nomination) in February 2003, EPA and other U.S. government agencies decided to make supplemental requests in February 2004 for certain sectors that did not apply for an exemption in time for the 2003 nomination. For example, in some cases the sector consortia did not file an application during the first round of exemption applications in 2002, but instead did so in 2003. In other cases, sector consortia filed additional materials in 2003. Lastly, some sectors were incorrectly characterized in the first nomination, so EPA amended the sector chapters and amount of requests in the form of the 2005 supplemental request. The review process for the supplemental request was rigorous, with technical and economic criteria in place during the review process.

With the second nomination submitted to the Ozone Secretariat in February 2004, most of which was intended for the 2006 control period, the U.S. government included the supplemental request for 2005 in Appendix B. Appendix B was attached to each of the nomination chapters, available on E–Docket OAR–2004–0506 and *http://www.epa.gov/mbr/nomination_2006.html*. All of the supplemental requests were characterized in the corresponding chapters in the nomination, including explanations of technically and economically infeasible alternatives for each sector. The U.S. originally nominated the following new applicants for the 2005 supplemental request:

Applicant Name
California Cut Flower Commission
National Country Ham Association
Wayco Ham Company
California Date Commission
National Pest Management Association
Michigan Pepper Growers
Michigan Eggplant Growers
Burley & Dark Tobacco USA—transplant trays
Burley & Dark Tobacco USA—field grown
Virginia Tobacco Growers—transplant trays
Michigan Herbaceous Perennials
Ozark Country Hams
Nahunta Pork Center
American Association of Meat Processors

This request was subsequently modified. In August 2004, all of the tobacco applicants withdrew their CUE requests for the 2005 control period and beyond. With regard to the strawberry fruit sector, MBTOC initially recommended a reduction to the U.S. request in this sector. After being provided with additional information, MBTOC revised this recommendation, and the United States was granted a supplemental allocation to make up the difference. The U.S. also requested an additional amount for tomatoes, having received new data regarding pest pressure in two California counties. More information on each of these sectors, including calculations of production losses and other technical data, can be found in the annual nomination on E–Docket OAR–2004–0506. Memos explaining the technical contexts and corrections for both of these sectors are available on E–Docket OAR–2004–0506.

Ornamentals (California Cut Flower Commission and Florida Growers)

This request for a methyl bromide CUE was made on behalf of growers in Florida and members of the California Cut Flower Commission. The ornamentals industry is complex and growers produce multiple species and varieties in a single year. This diversity makes finding methyl bromide alternatives for each crop species very complicated. The nomination for the ornamental sector was for areas with moderate-severe pest pressure and for areas in California where critical users may be prohibited from using 1,3-dichloropropene products because local township caps for this alternative have been reached.

Dry Cured Pork Products (National Country Ham Association, American Association of Meat Processors, Nahunta Pork Center)

For this sector, EPA received several more CUE applications for the 2006 control period that were also requesting methyl bromide for the 2005 control period. It should be noted that Ozark Country Ham and Wayco Ham in the above table were eventually nominated under the National Country Ham Association. The U.S. government nomination included only facilities where dry cured ham, dry cured country ham, hard salami, pepperoni, and sausage are produced. There are no registered alternatives for this sector. The nomination was for facilities owned by the companies that are members of these associations, and for the Nahunta Pork Center.

Dried Fruit and Nuts (California Date Commission)

California produces most of the domestic supply of dates. The nomination was for peak production periods, because high volumes of dates must be processed in order to enter the market quickly for the holiday season, or if there is limited silo availability for using alternatives. Substantial time and production losses would occur if processors were relying on alternatives alone, as there is a short period after harvest in which to fumigate. The nomination is limited to Riverside county.

National Pest Management Association

The U.S. government nominated commodities and food processing plants treated by members of this association. Commodities included are processed foods, spices and herbs, cocoa, and dried milk, and other commodities that were nominated but not authorized. The nomination for facilities that are older and cannot be properly sealed in order to use a methyl bromide alternative, or for facilities that contain sensitive electronic equipment that is subject to corrosivity as a result of fumigation with a methyl bromide alternative, or in instances where heat treatment would cause a commodity to go rancid.

Michigan Pepper Growers/Michigan Eggplant Growers

EPA is including these sectors separately in Appendix L. Initially the request for eggplant and pepper growers in Michigan was included with the request for tomato growers, but the sectors are distinct. The request is for areas where fungal pathogen infestation is moderate to severe.

Michigan Herbaceous Perennials

The U.S. government nominated this group because the currently registered alternatives do not provide adequate treatment for the numerous plant species grown. Research trials for efficacy are ongoing for alternatives not yet registered. The request was for areas where pest pressure is moderate to severe. These growers comprise part of the forest seedling sector but did not submit a CUE application to EPA in 2002, during the first round. They are not currently listed in Column B of Appendix L.

The report prepared by the technical advisory body, discussed further in section V.C., is silent with regard to the 2005 request for Michigan Herbaceous Perennials. Decision XVI/2 did not authorize supplemental amounts for the seedling sector in 2005, nor did it list herbaceous perennials separately as an

agreed critical use category. Thus, Decision XVI/2 did not affect the status of Michigan Herbaceous Perennials for 2005.

C. International Review of Critical Use Exemption Nominations

The criteria for the exemption are delineated in Decision IX/6 of the Parties to the Protocol. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that: (I) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination. The U.S. government reviews applications using these criteria and creates a package for submission to the Ozone Secretariat of the Protocol (the ''critical use nomination'' or CUN). The CUNs of various countries are then reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to the Parties. These bodies make recommendations to the Parties regarding the nominations.

On February 7, 2004, the U.S. government submitted the second U.S. Nomination for a Critical Use Exemption for Methyl Bromide to the Ozone Secretariat of the United Nations Environment Programme. The 2005 supplemental request was submitted as Appendix B to this nomination. This supplemental request, like the remainder of the document, was based on a thorough analysis of the technical and economic feasibility of available alternatives specified by the MBTOC for each critical use and the potential for significant market disruption. The nomination can be found on E-docket on OAR–2004–0506.

In June 2004, the MBTOC sent questions to the U.S. government concerning technical and economic issues in the nomination. These questions, as well as the U.S. government's response, can be accessed on E-docket OAR–2004–0506. The U.S. government's response was transmitted on August 13, 2005. When responding to these questions, the U.S. government explained that critical use exemptions were being sought only in areas with moderate-severe pest pressure, where the use of alternatives would result in substantial yield losses, or where regulatory restrictions or geophysical conditions prohibit the adoption of alternatives. There were questions on all of the sectors described in today's action; however, many questions focused on alternatives in the overall sector instead of the specific supplemental requested amount.

In October, 2004, the MBTOC and the Technical and Economic Assessment Panel (TEAP) issued a final report on critical use nominations for methyl bromide. This report, issued by the United Nations Environment Programme (UNEP) and TEAP, is titled ''Critical Use Nominations for Methyl Bromide: Final Report'' and can be accessed at *http://www.unep.ch/ozone/teap/Reports/MBTOC/MBCUN-october2004.pdf* or on E-docket OAR–2004–0506. In Annex I of the report, the advisory bodies recommended an additional 584,093 kilograms of methyl bromide for U.S. critical uses in 2005. The additional kilograms were recommended for the following sectors: Dried fruit and nuts (dates); dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant; ornamentals; peppers; smokehouse ham; strawberry fruit; and tomatoes.

Based on the recommendations from the advisory bodies, the Parties authorized 610,655 kilograms of methyl bromide for 2005 supplemental uses in the U.S., in Decision XVI/2. The authorization adds 26,562 kilograms to the TEAP recommendation by restoring the full amount of the U.S. request for dry commodities/structures (cocoa beans). The Parties approved the above-mentioned uses referenced in the MBTOC/TEAP report.

In today's action, EPA is adding the new uses to the list of approved critical uses, and allocating additional CSAs for the sale of methyl bromide from inventory for critical uses in 2005.

EPA is also amending the Reporting and Recordkeeping Requirements in 40 CFR part 82 to require that entities report the amount of pre-phaseout methyl bromide inventory, held for sale or transfer to another entity, to the Agency on an annual basis. Entities will be required to differentiate between the amounts owned by them and those owned by other entities. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories.

VI. Distribution of Critical Stock Allowances (CSAs)

A. Basis for Critical Stock Allowance Distribution

With today's action, EPA is allocating critical stock allowances (CSAs) to producers and importers of methyl bromide, and other entities that hold pre-phaseout quantities of methyl bromide for sale, on a pro-rated basis in relation to an average of their 2003 and 2004 holdings of inventory. Each CSA is equivalent to one kilogram of methyl bromide. Thus, an allowance holder must expend one CSA for each kilogram of methyl bromide sold to an approved critical user for approved critical uses.

The methodology for calculating the amount of CSAs for each entity is explained in a memorandum titled ''CSA Description Memo,'' available on E-docket OAR–2004–0506. In summary, EPA has used its authority under Section 114 of the CAA to require that certain regulated entities provide EPA with information about their holdings of methyl bromide.

EPA is allocating CSAs on a pro-rated basis, calculated as an average of the entities' December 31, 2003 and August 25, 2004 holdings of pre-phaseout methyl bromide as baseline. This same baseline was also used to calculate CSAs in the allocation framework rule (69 FR 76982).

EPA also notes that due to a slight baseline reporting error, one entity was granted fewer CSAs in the December, 2004 framework rule than they would have been had this reporting error not occurred. The entity has since clarified the data submitted to EPA. Therefore, EPA is granting this entity sufficient CSAs from the 610,665 supplemental amount to make up the difference and is calculating the distribution of the supplemental CSAs based on the revised baseline. The total amount for distribution using the revised baseline is 610,665 kilograms minus the amount granted off the top to correct the earlier distribution.

B. Distribution of Critical Stock Allowances

Allocated CSAs are granted for a specified control period. EPA is allocating CSAs to the following companies for the 2005 supplemental authorized amounts of critical use methyl bromide.

Company
Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products

Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corporation
Harvey Fertilizer and Gas
Helena Chemical Co.
Hendrix and Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corporation
ProSource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical, Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
Total 610,665 Kilograms

EPA has determined that the individual holdings of stocks of methyl bromide are confidential business information. The amount of CSAs allocated to each company could be used to calculate the individual stock holdings if information on aggregate stock holdings were released. EPA has determined that the aggregate stock information is not confidential business information but is currently withholding that information due to the filing of complaints seeking to enjoin the Agency from its release. Because release could occur depending on the outcome of that litigation, EPA is not listing the number of allowances proposed for distribution to each entity. EPA is placing a document listing the proposed allocations and distribution basis of CSAs for each entity in the confidential portion of the docket.

With today's action, EPA is determining that 610,665 kgs of methyl bromide are required to satisfy critical uses for the 2005 supplemental request. As discussed in Section VII, the amount of the U.S. supplemental request is based on applications received, public and private databases, and a rigorous technical review. EPA is authorizing those entities that hold inventories of methyl bromide to sell an additional 610,665 kgs for approved supplemental critical uses during 2005.

EPA is also clarifying 40 CFR 82.4 (p)(2), which was added to § 82.4 by the final allocation framework rule published on December 23, 2004 (69 FR 76982). Specifically, paragraph (p)(2)(vi) states that, with some exceptions: ''No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period.'' However, EPA did not intend this prohibition to prevent end users who have been using non-critical use methyl bromide during the first part of 2005 from using critical use methyl bromide on the same field or structure for the same use if they became approved critical users as a result of this supplemental rulemaking. Such a result would deprive those end users of the benefit of the exemption solely as a result of the timing of the rule. Thus, EPA is adding the following exception to paragraph (p)(2)(vi): ''or unless, subsequent to that person's use of the non-critical use methyl bromide, that person * * * (b) becomes an approved critical user as a result of rulemaking.'' EPA is also proposing to make a corresponding change to § 82.13, paragraph (2)(dd), which describes the self-certification process for approved critical users: '' * * * I am aware that any agricultural commodity within a treatment chamber, facility, or field I fumigate with critical use methyl bromide cannot subsequently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use * * * unless a local township cap limit now prevents me from using methyl bromide alternatives, or I have now become an approved critical user as a result of rulemaking.''

C. Type of Critical Stock Allowances: Universal

During the proposal and finalization of EPA's previous regulatory action concerning the operational framework for methyl bromide allocation (69 FR 76982), EPA considered several options for authorizing CSAs and CUAs. For CUAs, EPA co-proposed two options for the cap on critical use methyl bromide: a universal cap where all approved critical uses would purchase critical use methyl bromide and a sector-specific cap where each of the 16 critical use sectors would have their own cap of reserved material. In addition, EPA raised the possibility of adopting various hybrid options. The universal cap was supported by most public commenters because of the ease of implementation and cost savings and efficiencies to the regulated community. In the final rulemaking, EPA established two types of CUAs: one for pre-plant soil uses and the other for post-harvest, structural uses.

However, the portion of critical use methyl bromide to come from stocks was both proposed and finalized as a universal cap. EPA received no adverse comment to the proposal to make the quantities from stocks available in a universal fashion.

Paragraph 3 of Decision XVI/2 states that ''Parties should endeavour to ensure that the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel are allocated as listed in Sections IA [2005 quantities] and IIA [2006 quantities] to the annex to the present decision.'' Similar language appeared in Decision Ex I/3. As described in the December 23, 2004 **Federal Register** notice (69 FR 76982), there would be significant administrative and practical difficulties associated with a sector-specific cap. Therefore, EPA has arrived at an allocation system that relies at least partly on the market to allocate quantities on a sectoral basis. EPA anticipates, based on historical use patterns and the research undertaken pursuant to submitting the U.S. nomination, that usage patterns will generally reflect the sectoral quantities found in the relevant annexes to Decisions Ex I/3 and XVI/2.

Therefore, in today's action, EPA is allocating the additional CSAs totaling 610,665 kilograms of critical use methyl bromide, for calendar year 2005, in a universal fashion.

VII. Supplemental Additional Critical Uses for Calendar Year 2005

Based on EPA's assessment of the technical and economic feasibility of alternatives and the potential for a significant market disruption if methyl bromide were not available for the uses proposed for addition in Appendix L, and the lack of any new information received since the submission of the U.S. supplemental request that would change EPA's assessment, EPA is adding new uses to Appendix L as reflected in the table below. EPA is authorizing the additional critical uses for the year 2005 as well as conditions that make these uses ''critical.'' This proposal is based on the data submitted by critical use exemption applicants, as well as public and proprietary data sources.

During the development of the nomination, EPA determined that the following additional uses with the limiting critical conditions specified below qualify to obtain and use critical use methyl bromide. EPA also does not believe that the technical and economic data have changed significantly since submitting the nomination. Therefore EPA believes that the amounts nominated in February 2004 and authorized by the Parties in November 2004 reflect the best available data. However, EPA welcomes submissions of current information regarding

substitutes and alternatives for these uses.

In June 2004, MBTOC submitted questions to the U.S. government about the nomination. While these questions did not specifically concern the supplemental request for 2005, the questions concerned all of the sectors in the supplemental request except for dried fruit and nuts (dates). The questions predominately focused on alternatives to methyl bromide and requested further clarification on points made in the nomination. All of the MBTOC questions and the U.S. government responses, submitted on August 13, 2004, are available on E-docket OAR–2004–0506.

Amendments to Appendix L of CFR Part 82

The following table shows the additions to Appendix L of CFR Part 82.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
PRE-PLANT USES		
Eggplant	Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Ornamentals (Cut flowers)	California Cut Flower Commission and Florida growers.	With a reasonable expectation that moderate to severe pest pressure either already exists or could occur without methyl bromide fumigation, or with reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Peppers (field)	Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Strawberry fruit	California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative, hilly terrain that prevents the distribution of alternative.
Tomatoes	California growers in San Diego and Ventura counties.	With a reasonable expectation that moderate to severe pest pressure either already exists or could occur or where alternatives are ineffective because of hilly terrain.
POST-HARVEST USES		
Food processing	Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk).	With reasonable expectation that one or more of the following limiting critical conditions exists: Older facilities that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, or where heat treatment would cause rancidity to commodities, time to transition to an alternative.
Dried Fruit and Nuts—(dates only)	Growers and packers who are members of the California Date Commission, whose facilities are located only in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: Rapid fumigation is required to meet a critical market window such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.
Dry Cured Pork Products	(A) Members of the National Country Ham Association.	Pork product facilities who are owned by companies that are members of the Association.
	(B) Members of the American Association of Meat Processors.	Pork product facilities owned by companies that are members of the Association.
	(C) Nahunta Pork Center (North Carolina).	

Summary of Supporting Analysis

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''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 will be documented in the public record.

This action will likely have a minor cost savings associated with its implementation, but the Agency did not conduct a formal analysis of savings given that such an analysis would have resulted in negligible savings. This action represents the authorization only 2.5% of 1991 consumption baseline of methyl bromide to be made available for critical uses.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2179.03. This rule supplements the rule published in the **Federal Register** on December 23, 2004 (69 FR 76982). The information collection under these rules is authorized under Sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

The mandatory reporting requirements included in these rules are intended to:

(1) 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;

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

(3) 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.

In this rule, EPA is amending the Reporting and Recordkeeping Requirements in 40 CFR part 82 to require that entities report the amount of pre-phaseout methyl bromide inventory, held for sale or for transfer to another entity, to the Agency on an annual basis. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories.

Collection activity	Number of respondents	Total number of responses	Hours per response	Total hours
Rule Familiarization	54	54	.5	27
Data Compilation (annual basis)	54	54	.5	27
Data Reporting (annual basis)	54	54	.5	27
Total Burden Hours		162		81

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).

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; process and maintain information; disclose and provide 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.

When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in these rules.

To obtain comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Electronic Docket ID number OAR–2004–0506. Submit any comments related to the rule ICR for this rule to EPA and OMB. See **ADDRESSES** Section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington DC 20503 attn: Desk Officer for EPA. Include the EPA ICR number 2179.03 in correspondence related to this ICR.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 2005. The final rule will respond to any OMB or public concerns on the information collection requirements contained in this rule.

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS Code	SIC Code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural Production ..	1112—Vegetable and Melon farming	0171—Berry	0.75
	1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops	
		0181—Ornamental Floriculture and Nursery products.	
Storage Uses	115114—Postharvest crop activities (except Cotton Ginning).	4221—Farm Product Warehousing and Storage	21.5
	493110—General Warehousing and Storage	4225—General Warehousing and Storage	
	493130—Farm product Warehousing Storage ...		

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. Based on the data provided, EPA estimates that there are 3,218 entities that petitioned EPA for an exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between ¼ to ⅓ of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this rule are primarily agricultural entities, producers, importers, and distributors of methyl bromide, as well as any entities holding inventory of methyl bromide.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule will make additional methyl bromide available for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually, as a result of the entire critical use exemption program over its projected duration. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative of the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or by the private sector, in any one year. Today's action contains only one new mandate, which is the reporting requirement for the drawdown of pre-phaseout inventories. Today's amendment does not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local, and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under Section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under Section 204.

E. 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.''

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. Today's rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. The rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

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 rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. 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, section 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 is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5, U.S.C 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 31, 2005.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Methyl Bromide, Ozone, Reporting and Recordkeeping requirements, Treaties.

Dated: August 23, 2005.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 82 is to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

■ 2. Section 82.4 is amended by revising paragraph (p)(2)(vi) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(p) * * *

(2) * * *

(vi) No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period, excepting methyl bromide used under the quarantine and pre-shipment exemption, unless, subsequent to that person's use of the non-critical use methyl bromide, that person (a) becomes subject to a prohibition on the use of methyl bromide alternatives due to the reaching of a local township limit described in Appendix L of this part, or (b) becomes an approved critical user as a result of rulemaking.

* * * * *

■ 3. Section 82.8 is amended by revising paragraph (c)(2) to read as follows:

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

* * * * *

(c) * * *

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2005 on a pro-rata basis in relation to the stocks held by each.

Company
Albemarle
Ameribrom, Inc.

Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros. Products
Great Lakes Chemical Corporation
Harvey Fertilizer and Gas
Helena Chemical Co.
Hendrix and Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corporation
ProSource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical, Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
Total 1,893,879 Kilograms

■ 4. Section 82.13 is amended by revising paragraph (g)(4) introductory text, paragraphs (bb)(2)(iv), (cc)(2)(iv), and (dd) and by adding paragraphs (f)(3)(xviii), (g)(4)(xix), (bb)(2)(v) and (cc)(2)(v) to read as follows:

§ 82.13 Recordkeeping and Reporting Requirements for class I controlled substances.

* * * * *

(f) * * *

(3) *Reporting Requirements—Producers.* For each quarter, except as specified in this paragraph (f)(3), each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

* * * * *

(xviii) Producers shall report annually the amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

(g) * * *

(4) *Reporting Requirements—Importers.* For each quarter, except as specified in this paragraph (g)(4), every importer of a class I controlled substance (including importers of used, recycled or reclaimed controlled substances) must submit to the Administrator a report containing the following information:

* * * * *

(xix) Importers shall report annually the amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(bb) * * *

(2) * * *

(iv) The number of unexpended and expended critical stock allowances;

(v) The amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(cc) * * *

(2) * * *

(iv) The number of unexpended and expended critical stock allowances;

(v) The amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(dd) Every approved critical user purchasing an amount of critical use methyl bromide or purchasing fumigation services with critical use methyl bromide must, for each request, identify the use as a critical use and certify being an approved critical user. The approved critical user certification will state, in part: I certify, under penalty of law, ''I am an approved critical user and I will use this quantity of methyl bromide for an approved critical use. My action conforms to the requirements associated with the critical use exemption published in 40 CFR part 82. I am aware that any agricultural commodity within a treatment chamber, facility, or field I fumigate with critical use methyl bromide can not subsequently or concurrently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use (*e.g.*, a different crop or commodity). I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period, excepting a QPS treatment or a treatment for a different use (*e.g.*, a different crop or commodity), unless a local township limit now prevents me from using methyl bromide alternatives or I have now become an approved critical user as a result of rulemaking.'' The certification will also indicate the type of critical use methyl bromide purchased, the location of the treatment, the crop or commodity treated, the quantity of critical use methyl bromide purchased, the acreage/square footage treated and will be signed and dated by the approved critical user.

Appendix L—[Amended]

■ 5. Appendix L is revised to read as follows:

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation already either exists or could occur without methyl bromide fumigation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, and Virginia growers.	With a reasonable expectation that moderate to severe yellow or purple nutsedge infestation already either exists or could occur without methyl bromide fumigation.
Eggplant	(a) Georgia growers	With a reasonable expectation that moderate to severe yellow or purple nutsedge infestation either already exist or could occur without methyl bromide fumigation.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(c) Michigan Growers	With a reasonable expectation that moderate to severe fungal pathogen infestation already either exists or could occur without methyl bromide fumigation.
Forest Seedlings	(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Arkansas, Alabama, Georgia, South Carolina and Texas.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(c) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, South Carolina, Oregon, and Washington.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(d) Public (government owned) seedling nurseries in the states of California, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia and Wisconsin.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(e) Members of the Nursery Technology Cooperative limited to growing locations in Oregon and Washington.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(f) Michigan seedling nurseries	With a reasonable expectation that one or more of the following limiting critical conditions already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
Ginger	Hawaii growers	With a reasonable expectation that the limiting critical condition already either exists or could occur without methyl bromide fumigation, or moderate to severe bacterial wilt infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	With a reasonable expectation that one or more of the following of limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(c) Members of the California Association of Nurserymen-Citrus and Avocado Growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
Orchard Replant	(a) California stone fruit growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
	(b) California table and raisin grape growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California walnut growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California almond growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) Yoder Brothers Inc. in Florida	For use in all chrysanthemum production.
	(b) California rose nurseries	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California Cut Flower Commission Growers and Florida Growers.	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Peppers	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe yellow or purple nutsedge infestation, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(d) Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation already either exists or could occur without methyl bromide fumigation.
Strawberry Nurseries	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation.
	(b) North Carolina and Tennessee growers.	With a reasonable expectation that the use will occur in the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
Strawberry Fruit	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or karst topography.
	(c) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, Virginia, Ohio and, New Jersey growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
Sweet Potatoes	California growers	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
Tomatoes	(a) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, fungal pathogens infestation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions and already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(d) California growers in San Diego and Ventura.	With a reasonable expectation that moderate to severe pest counties pressure exists and where alternatives are ineffective because of hilly terrain.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	For the production of industry certified pure sod.
	(b) U.S. golf courses	For establishing sod in the construction of new golf courses or the renovation of putting greens, tees, and fairways.
POST–HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For today's rule, "pet food" refers to domestic dog and cat food).	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(c) Kraft Foods in the U.S	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S..	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(e) Members of the National Pest Management Association (associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk).	With reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: older structures that cannot be properly sealed in order to use an alternative to methyl bromide, or the presence of electronic equipment that is subject to corrosivity, or where heat treatment would cause rancidity to a particular commodity, time to transition to an alternative.
Commodity Storage	(a) Gwaltney of Smithfield in the U.S..	For smokehouse ham curing facilities owned by the company.
	Dry cured pork products: (b) Members of the National Country Ham Association.	Pork product facilities who are members of the Association.
	Dry cured pork products: (c) Members of the American Association of Meat Processors.	Pork product facilities who are members of the Association.
	Dry cured pork products: (d) Nahunta Pork Center.	For facilities owned by the company.
	(b) California entities storing walnuts, beans, dried plums, figs, raisins, and pistachios in California.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
	(c) Growers and packers who are members of the California Date Commission, whose facilities are located in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

[FR Doc. 05–17191 Filed 8–29–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15073]

RIN 2127–AI67

Federal Motor Vehicle Safety Standards; Motorcycle Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this document, we (NHTSA) amend the Federal motor vehicle safety standard on motorcycle controls and displays to require that the rear brake control on scooters without a clutch be located on the left handlebar. In doing so, we have selected the second of two alternative proposals that were set forth in a notice of proposed rulemaking published in November 2003. This final rule also includes requirements for motorcycles with single-point (combined) braking for supplemental rear brake controls.

This final rule also makes two additional minor changes to the standard. The first change removes a potentially confusing abbreviation, and the second change clarifies requirements for motorcycle speedometer labeling.

DATES: This final rule takes effect August 30, 2006. Optional compliance is available as of August 30, 2005.

Any petitions for reconsideration of today's final rule must be received by NHTSA no later than October 14, 2005.

ADDRESSES: Petitions for reconsideration of today's final rule should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His fax number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her fax number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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I. What Does FMVSS No. 123 Require at Present?

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays,* specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays. The purpose of FMVSS No. 123 is to minimize accidents caused by operator error in responding to the motoring environment, by standardizing certain motorcycle controls and displays.

Among other requirements, FMVSS No. 123 (at S5.2.1, Table 1) requires the control for a motorcycle's rear brakes to be located on the right side of the motorcycle and be operable by the rider's right foot. Section S5.2.1 at Table 1 also requires the control for a motorcycle's front brakes to be located on the right handlebar.

Although the rear brake control is generally operated by the rider's right foot, FMVSS No. 123 permits a ''motor-driven cycle'' [1] to have its rear brake controlled by a lever on the left handlebar. FMVSS No. 123 also states that, if a motorcycle has an ''automatic clutch'' (*i.e.,* a transmission which eliminates the need for a clutch lever) and a supplemental rear brake control (in addition to the right foot control), the supplemental control must be located on the left handlebar. If a motorcycle is equipped with a single control for both the front and rear brakes, that control must be located and operable in the same manner as a rear brake control.

[1] ''A motorcycle with a motor that produces five brake horsepower or less'' (49 CFR 571.3).