[FR Doc. E8–28171 Filed 11–26–08; 8:45 am]

BILLING CODE 8320–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0009; FRL–8746–6]

RIN 2060–AO78

Protection of Stratospheric Ozone: The 2009 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an exemption to the phaseout of methyl bromide to meet the needs of 2009 critical uses. Specifically, EPA is proposing uses that qualify for the 2009 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2009. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Nineteenth Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by December 29, 2008. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on December 3, 2008. If a hearing is requested it will be held on December 15, 2008 and comments will be due to the Agency January 12, 2009. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *http://www.epa.gov/ozone/strathome.html*. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0009, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket EPA–HQ–OAR–2008–0009, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket EPA–HQ–OAR–2008–0009, Air and Radiation Docket at 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. EPA–HQ–OAR–2008–0009. 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.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2009. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2009 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2009.

Table of Contents

I. General Information

Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; users of methyl bromide, e.g., farmers of vegetable crops, fruits and nursery stock; owners of stored food commodities and structures such as grain mills and processors; and agricultural researchers.

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

What Should I Consider When Preparing My Comments?

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is Methyl Bromide?

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

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to certain Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed 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 proposal 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 this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

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

The 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 (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270

kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed Class I ozone depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

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

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

On December 23, 2004 (69 FR 76982), EPA published a final rule that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework to the 2006, 2007, and 2008 control periods. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2009 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action reflects Decision XIX/9, taken at the Nineteenth Meeting of the Parties in September 2007. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA*, (464 F.3d 1, D.C. Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants of the process for obtaining a critical use exemption from the methyl bromide phaseout. The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives. On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that 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 that establish a critical need for methyl bromide). EPA has repeated this process annually since then.

The criteria for the exemption initially appeared in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3.

In response to the annual requests for critical use exemption applications published in the **Federal Register**, applicants provide data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submit data on their use of methyl bromide, on research programs into the use of alternatives to methyl bromide, and on efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State submits the CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, subsequently review the CUNs of the various countries and make recommendations to the Parties on the nominations. The Parties then take a Decision to authorize a critical use exemption for a particular country. The Decision also identifies how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the Clean Air Act, for each exemption

period, EPA consults with the United States Department of Agriculture and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

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

On December 22, 2006, the U.S. Government (USG) submitted the fifth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This fifth nomination contained the request for 2009 critical uses. In February 2007, MBTOC sent questions to the USG concerning technical and economic issues in the 2009 nomination. The USG transmitted preliminary responses to MBTOC on March 13, 2007. The USG received a second round of questions from MBTOC and submitted responses to those questions in May, 2007. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The determination in this proposed rule reflects the analysis contained in those documents.

B. How Does This Proposed Rule Relate to Previous Critical Use Exemption Rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the operational framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year) and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), and 72 FR 74118 (calendar year 2008).

Today's action proposes the uses that would qualify as critical uses for 2009 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. The uses that EPA is proposing to qualify as 2009 critical uses are the uses which the USG included in the fifth CUN, and which were approved by the Parties in Decision XIX/9. EPA is not proposing to modify the Framework Rule or the basic elements of the refined approach to determining the level of available stocks finalized in the 2008 CUE rule published on December 28, 2007.

C. Proposed Critical Uses

In Decision XIX/9, taken in September 2007, the Parties to the Protocol agreed ''to permit, for the agreed critical use categories for 2009, set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2009 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *.''

The following uses are those set forth in table C of the annex to Decision XIX/9: Commodities, NPMA food processing structures (cocoa beans removed),[1] Mills and processors, Dried cured pork, Cucurbits, Eggplant—field, Forest nursery seedlings, Nursery stock—fruit, nut, flower, Orchard replant, Ornamentals, Peppers—field, Strawberry—field, Strawberry runners, Tomatoes—field, Sweet potato slips. The agreed critical use levels for 2009 total 4,261,974 kilograms (kg), which is equivalent to 16.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. However, the maximum amount of allowable new production and import as set forth in table D of Decision XIX/9 is 3,961,974 kg (15.5% of baseline), minus available stocks. For the reasons described in section V.D of this preamble, EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for 2009 up to the amount of 1,617,921 kg (6.3% of baseline), with 2,576,987 kg (10.1% of baseline) coming from pre-phaseout inventory (i.e., stocks).

In this proposed rule, EPA is proposing to modify 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XIX/9 for the 2009 control period (calendar year). The Agency is proposing to amend the table of critical uses based, in part, on the technical analysis contained in the 2009 U.S. nomination that assesses data submitted by applicants to the critical use exemption program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA is seeking comment on the technical analysis (which is provided in the docket) and seeks information regarding changes to the registration or use of alternatives that may have transpired after the 2009 U.S. nomination was written. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption. EPA notes that while the Agency may, in response to comments, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties, the Agency does not intend to increase the quantities or add new uses in the final rule beyond those authorized by the Parties. Therefore, if there has been a change in registration of an alternative that results in that alternative no longer being available to a particular use, EPA does not intend to add uses or amounts of methyl bromide beyond those identified here to appendix L as part of this rulemaking. Under such circumstances, the user should apply to EPA, requesting that the U.S. nominate its use for a critical use exemption in the future. Based on the information described above, EPA is proposing that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2009.

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods. This year's exemption does not include cocoa beans.

TABLE I—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions That exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan.	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit, table and raising grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.

TABLE I—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
	(b) Florida growers	Moderate to severe weed infestation.
		Moderate to severe soilborne disease infestation..
		Moderate to severe nematode infestation..
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation..
		A need for methyl bromide for research purposes..
	(c) Michigan herbaceous perennial growers.	Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe yellow nutsedge and other weed infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe pythium root, collar, crown and root rots.
		A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.
		Moderate to severe southern blight infestation, crown or root rot.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes.
	(d) Michigan growers	Moderate to severe soilborne disease infestation.
		A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
		Time to transition to an alternative.
		A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Carolina geranium or cut-leaf evening primrose infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe black root and crown rot.
		A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers.	Moderate to severe black root rot.
		Moderate to severe root-knot nematode infestation.
		Moderate to severe yellow and purple nutsedge infestation.
		A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation.
		Moderate to severe fungal pathogen infestation.
		A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
		A need for methyl bromide for research purposes.
	(c) Maryland growers	High water tables and proximity to environmentally sensitive estuaries which limit use of 1–3D.

TABLE I—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
		Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S.	Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(e) Members of the National Pest Management Association treating facilities, spaces, and equipment associated with processed food, cheese, herbs, and spices.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season. Export to countries which do not allow the use of sulfuryl fluoride. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

EPA is proposing to amend the table in 40 CFR part 82, subpart A, appendix L, as reflected above. Specifically, changes made to the table include: Adding cucurbits grown in Maryland and Delaware as a critical use under the limiting critical conditions listed in the table; moving herbaceous perennials grown in Michigan from forest nursery seedlings to ornamentals; adding ''restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation'' as a limiting critical condition for Georgia grown peppers; adding tomatoes grown in Maryland as a critical use under the limiting critical conditions listed in the table; adding ''export to countries which do not allow the use of sulfuryl fluoride'' as a limiting critical condition for commodities; and revising the description of NPMA to remove cocoa beans.

In addition, EPA is proposing editorial changes to Table I to remove redundancy and ensure that the limiting critical conditions are described uniformly throughout. For example, within a critical use, all critical users with the same limiting critical conditions are to be consolidated into the same row. EPA also proposes to move clarifying information from the table to the preamble to improve readability. Therefore, EPA clarifies here that the ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to domestic dog and cat food. Finally, ''rapid fumigation'' for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives. EPA does not intend for these edits to change the effect of any of the limiting critical conditions, the approved critical user, location of use, or any other aspect of the table.

Since the critical use exemption was first established, many critical users have transitioned to alternatives and a variety of sectors that were once critical uses no longer are. These uses include ginger, golf courses and turf production, tobacco, cocoa beans, and pistachios.

The categories listed in Table I above have been designated critical uses for 2009 in Decision XIX/9 of the Parties. The amount of methyl bromide approved for research purposes is included in the amount of methyl bromide approved by the Parties for the commodities for which ''research purposes'' is indicated as a limiting critical condition in the table above. As explained in Section V.D.5., EPA is proposing to issue CSAs to allow the sale of 22,171 kg of methyl bromide from existing stocks for research purposes.

In accordance with Decision XIX/9, available on the docket for this rulemaking, EPA is proposing that the following sectors be allowed to use critical use methyl bromide for research purposes: Commodities, cucurbits, eggplant (field), nursery stock (fruit, nut, flower), orchard replant, ornamentals, peppers (field), strawberry (field), strawberry runners, sweet potato slips, and tomatoes (field). As discussed below, EPA allows the use of newly produced methyl bromide for research purposes but encourages researchers to use pre-phaseout inventory. In their applications to EPA, these sectors identified research programs that require the use of methyl bromide.

D. Proposed Critical Use Amounts

Section V.C. of this preamble explains that Table C of the annex to Decision XIX/9 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the authorized critical use amounts for 2009 total 4,261,974 kilograms (kg), which is equivalent to 16.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg as defined at 40 CFR 82.3. However, the maximum amount of

authorized new production or import as set forth in Table D of the annex to Decision XIX/9 is 3,961,974 kg (15.5% of baseline).

EPA is proposing to exempt limited amounts of new production and import of methyl bromide for critical uses for 2009 in the amount of 1,617,921 kg (6.3% of baseline) as shown in Table II. EPA is also proposing to allow sale of 2,576,987 kg (10.1% of baseline) of existing inventories for critical uses in 2009. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from stocks for critical uses. The sub-sections below explain EPA's reasons for proposing the above critical use amounts for 2009.

1. Background of Proposed Critical Use Amounts

The December 23, 2004, Framework Rule and subsequent CUE rules each took note of language regarding stocks of methyl bromide in relevant decisions of the Parties. In developing this proposed action, the Agency notes that paragraph seven of Decision XIX/9 contains the following language: ''That each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and, in particular, the criterion laid down in paragraph 1(b)(ii) of decision IX/6.''

In the Framework Rule, which established the architecture of the CUE program and set out the exempted levels of critical use for 2005, EPA interpreted paragraph 5 of Decision Ex. I/3, which is similar to Decision XIX/9(7), ''as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses'' (69 FR 76987). Consistent with that interpretation, the Framework Rule (69 FR 52366) established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these basic CSA provisions for calendar year 2009.

Paragraph 5 of Decision XIX/9 further addresses pre-phaseout inventory of methyl bromide. The Decision states ''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 differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available.'' In the August 25, 2004, proposed Framework Rule (69 FR 52366), EPA proposed to adjust the authorized level of new production and consumption for critical uses by the amount of ''available stocks.'' The methodology for determining the amount of available stocks considered exports, methyl bromide for feedstock uses, and the need for a buffer in case of catastrophic events. However, the final Framework Rule did not adopt the proposed methodology for determining available stocks. Instead, EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties (Total Authorized CUE Amount – Authorized New Production and Import).

In the 2006, 2007, and 2008 CUE Rules, EPA issued a number of CSAs that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For that control period, the difference in the Parties' decision between the total CUE amount and the amount of new production and import was 3.6% of baseline. In the 2007 rule, EPA added to the minimum amount (6.3% of baseline) an additional amount (1.2% of baseline) for a total of 1,914,600 CSAs (7.5% of baseline). In the 2008 rule, EPA added to the minimum amount (3.0% of baseline) an additional amount (3.8% of baseline) for a total of 1,729,689 CSAs (6.8% of baseline). Due to allocating additional CSAs, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2008 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in these earlier rulemakings, EPA views the allocation of additional CSA amounts as an appropriate exercise of its discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties agreed to ''permit'' a particular level of production and consumption; they did not—and could not—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to exempt the full amount permitted by the Parties. Section 604(d)(6) of the Clean Air Act (CAA) does not require EPA to exempt any amount of production and consumption for critical uses, but instead specifies that the Agency ''may'' exempt amounts for production, importation, and consumption, thus providing EPA with substantial discretion in creating critical use exemptions.

Prior to determining the CSA amount for a particular year, EPA considers what portion of ''existing'' stocks is ''available'' for critical uses. As discussed in the 2008 rulemaking, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that ''production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks.'' In addition, Decision XIX/9, as well as earlier decisions, refers to use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XIX/9 further reinforces this concept by including the phrase ''minus available stocks'' as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the Clean Air Act does not require that EPA adjust the amount of new production and import to reflect the availability of stocks: however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision. In this action, EPA is not proposing to change its practice of adjusting the level of new production and import authorized by the Parties to reflect the availability of stocks.

EPA introduced in the 2008 CUE rule a refined approach for determining the amount of existing methyl bromide stocks that is available for critical uses. (72 FR 74118). That approach involves the concept of a ''Supply Chain Factor'' (SCF). The SCF represents EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. The SCF appears in the formula finalized in the 2008 CUE rule for calculating the available stocks. That formula was expressed as $AS = ES - D - SCF$, where AS = available stocks; ES = existing pre-phaseout stocks of methyl

bromide held in the United States by producers, importers, and distributors; and D = estimated drawdown of existing stocks. In the 2008 rulemaking, EPA stated that it would use the refined approach in 2008 and each year thereafter as appropriate and feasible (72 FR 14134). EPA is not proposing any changes to the concept of a ''Supply Chain Factor'' or to the formula finalized in the 2008 CUE rule for calculating the available stocks. EPA finds that this approach continues to be appropriate and feasible, as it is the most reasonable, efficient, and transparent way for the Agency to continue to facilitate responsible management of the pre-phaseout inventory. Therefore the Agency intends to use the same basic SCF approach in its calculation of how much sale of existing stocks and how much production and import to allow for critical uses in 2009. The Agency plans, however, to use more current data as inputs to some of the underlying calculations, and is proposing to adopt a new statistical model for projecting future inventory of pre-2005 methyl bromide.

2. Calculation of Available Pre-Phaseout Inventory

In this action, EPA intends to adjust the authorized level of new production and consumption for critical uses to account for the amount of existing pre-phaseout inventory that is ''available'' for critical uses. EPA proposes to calculate the amount of existing stocks that is available for critical uses in 2009 based on the Supply Chain Factor and formula introduced in the 2008 CUE final rule (72 FR 74118). EPA will allow sales of the amount of existing pre-phaseout inventory that the Agency has determined to be available for critical uses by issuing an equivalent number of CSAs on a one-CSA-per-one-kilogram-of-methyl-bromide basis.

As described in the 2008 CUE Rule, EPA calculates the amount of available stocks as follows: $AS_{2009} = ES_{2008} - D_{2008} - SCF_{2009}$, where AS_{2009} is the available stocks on January 1, 2009; ES_{2008} is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2008; D_{2008} is the estimated drawdown of existing stocks during calendar year 2008; and SCF_{2009} is the supply chain factor for 2009. Using the above method, EPA calculates that 2,576,987 kg (10.1% of baseline) of existing pre-phaseout stocks of methyl bromide will be ''available'' for critical uses on January 1, 2009. This calculation uses EPA's preferred approach to estimating the 2008 drawdown, as discussed in more detail below. If EPA were to estimate the 2008 drawdown using the approach taken in the 2008 CUE rule, the calculated amount of available stocks would be 777 MT (3% of baseline). For the reasons described below, EPA prefers the approach it is proposing in today's action. EPA, however, seeks comment on the amount of the pre-phaseout stock that it estimates will be available for critical uses on January 1, 2009.

In the above formula, ''ES_{2008}'' refers to pre-phaseout inventory—i.e., existing stocks of methyl bromide that was produced before January 1, 2005, and that is still held by domestic producers, distributors, and third-party applicators. January 1, 2005, was the phaseout date for production and import of methyl bromide in the United States. ES_{2008} does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. EPA addresses the carryover amount in section V.D.4 of this preamble. In the 2007 and 2008 CUE rules, EPA deducted the amount carried over into a new control period from the amount of allowable new production for the control periods in question. In this 2009 CUE proposed rule, EPA proposes to maintain the carry over deduction. ''ES_{2008}'' also does not include methyl bromide produced (1) under the quarantine and preshipment (QPS) exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. Methyl bromide produced for QPS uses or for export to Article 5 countries may not be sold to domestic entities for critical uses and, therefore, is separate from the CUE program. Thus, such amounts have been removed from the calculation of the amount of ''available stocks'' for critical uses. EPA also considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Despite prior requests, EPA has received no data that show that pre-phaseout inventory is mixed with chloropicrin and is unsuitable for post-harvest uses. Unless the Agency receives evidence otherwise, it will assume all pre-2005 inventory is suitable for all uses. Similarly, EPA considers inventory methyl bromide to be available to users in California and the Southeastern United States. EPA bases this conclusion on the geographic distribution of the companies that are granted CSAs (See Table III). EPA welcomes comments on the availability of pre-phaseout inventory based on geography.

(a) Supply Chain Factor

EPA's method for determining the amount of available stocks for critical uses includes a supply chain factor which for 2009 can be expressed as ''SCF_{2009}.'' The supply chain factor represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. For 2009, EPA proposes to use a supply chain factor equal to 2,352,013 kg in the Agency's calculation of the amount of available stocks. Consistent with the 2008 CUE rule, EPA is proposing a conservative estimate of the supply chain factor that considers a supply disruption during the estimated peak 15-week period of critical use supply. As described in the 2008 CUE rule, EPA estimates that in the event of a major supply disruption, it would take 15 weeks for significant imports of methyl bromide to reach the U.S. Using updated numbers on average production during each quarter of the year, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) accounts for 55% of annual critical use methyl bromide production. EPA, therefore, estimates that the peak 15-week shortfall in 2009 could be 2,352,013 kg (55.186% × 4,261,974 kg).

As EPA stated in the 2008 CUE Rule, the supply chain factor is not a ''reserve'' or ''strategic inventory'' of methyl bromide. Rather, it is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. For further general discussion of the supply chain factor, see the final 2008 CUE rule (72 FR 74118). Further detail about the analysis used to derive the value for the 2009 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

(b) Estimated Drawdown

In the 2008 CUE rule, EPA estimated the drawdown of existing stocks, the D_{2008} term in the above equation, by using a simple linear fit estimation of inventory data from all available years. In this action, EPA proposes not to estimate drawdown using a linear fit projection as done last year but instead use an exponential projection for 2008. EPA invites comment on both methods of estimating the 2008 drawdown as well as on any alternative method of estimating drawdown.

EPA's projections are based on fitting either an exponential curve (the agency's preferred approach for this

rulemaking) or a linear curve (the agency's approach finalized last year) to reported annual data on pre-phaseout inventory. Given the small sample size (5 data observations), the reader should be cautious about drawing inferences. However, the Agency believes, combined with other information, the exponential curve approach may present a more reasonable approach to projecting the drawdown of pre-phaseout inventory.

EPA is proposing to estimate the drawdown of inventory in 2008 based on an exponential projection. Using this method, EPA projects that the pre-phaseout methyl bromide inventory, which was 6,457,806 kg on January 1, 2008, will be drawn down by 1,528,806 kg during 2008. This will result in a pre-phaseout inventory of 4,929,000 kg on January 1, 2009. EPA's proposed methodology for estimating the inventory drawdown is described in more detail in the Technical Support Document available on the public docket for this rulemaking.

When EPA looks at the market conditions that could affect the drawdown of inventory, EPA believes that the exponential estimate (1,529 MT) provides a more reasonable reflection of market conditions than the linear estimate (3,329 MT). The exponential estimate closely matches the drawdown in 2007, which was 1,213 MT whereas the linear estimate most closely matches the drawdown in 2004, which was 3,428 MT and the highest drawdown in EPA's data set. EPA believes that the market conditions in 2008 are different enough from those in 2004 that the rate of drawdown during 2008 will be more like the rate of drawdown of 2007 than 2004. First, the Critical Use Exemption process did not exist in 2004, as that was the last year of the methyl bromide phaseout. EPA believes that the economics and use patterns pre-phaseout are different than conditions after the phaseout. Second, at the beginning of 2004, the inventory was 16,422 MT, a substantially higher amount than the estimated inventory at the end of 2008, regardless of the drawdown estimate used. Third, the price of methyl bromide has increased roughly 30–50% since 2004. Therefore, today growers face stronger economic incentive to use alternatives and reduce application rates than they did in 2004. Fourth, more alternatives are available, including sulfuryl fluoride and iodomethane, reducing the total demand for methyl bromide. Fifth, sales data reported to EPA show that less of the inventory was used for non-critical uses in 2007 than 2006. In 2006, 1,519 MT of pre-phaseout inventory was for non-critical uses, whereas in 2007, this dropped to 291 MT.

EPA also considered estimating the drawdown of inventoried methyl bromide using the simple linear fit that EPA has used in all of the previous CUE rules. Under the linear estimate, the drawdown in 2008 would be 3,329 MT. Using the equation discussed above, $AS_{2009} = ES_{2008} - D_{2008} - SCF_{2009}$, ''Available Stocks 2009'' under the linear method would be 777 MT. Therefore the CSA amount would be 777 MT, or 3.0% of baseline. Using the same calculation summarized in Section V.D.7, new production would be 3,418 MT, or 13.4% of baseline. This value falls below the 15.5% of baseline authorized by the Parties in Decision XIX/9. This amount of new production is greater than the level allocated in the 2008 CUE Rule, which was 3,084 MT, or 12.1% of baseline. EPA welcomes comment on the linear approach and its potential outcomes for the values of new production and CSAs.

The goal of EPA's methodology for the CSA allocation is to allocate CSAs equal to ''available stocks'' such that the private sector has the flexibility to retain in inventory the amount needed in case of a catastrophic supply chain failure (the Supply Chain Factor). As the Agency stated in the 2008 CUE Rule and in Section V.D.3 below, once the inventory declines below the SCF level, the Agency will not require any additional drawdown of stocks beyond what is required by the Parties to the Protocol.

EPA invites comment on both the linear and exponential methods of estimating 2008 drawdown. EPA also welcomes comment on any alternative method of estimating drawdown as well as the market conditions affecting the decline in inventory use. Most helpful to the Agency in determining the drawdown in 2008 is not an evaluation of statistical methods but data on whether inventory during 2008 is being depleted at rates similar to 2007 or whether it is being depleted faster than that.

3. Approach for Determining Critical Use Amounts

EPA estimates that, as of January 1, 2009, 2,576,987 kg of pre-phaseout inventory will meet the definition of ''available stocks'' as calculated using the approach described in Section V.D.2. of this preamble. Based on these calculated figures and the allocation approach described in this section, and after making reductions for carry over and research amounts as explained in sections V.D.4. and V.D.5. of this preamble, EPA proposes to allocate critical use allowances (CUAs) permitting 1,617,921 kg of new methyl bromide production and import for critical uses in 2009, and to allow sale of 2,576,987 kg from existing stocks for critical uses by allocating an equivalent number of critical stock allowances (CSAs). EPA seeks comment on the amount of CUAs and CSAs that the Agency is proposing to distribute in 2009.

In this action, EPA is proposing to allocate CSAs in an amount equal to the estimated number of kilograms of available stocks on January 1, 2009. As in past years, EPA intends to allocate a total number of CUAs such that the total number of CUAs and CSAs is not greater than the total critical use amount authorized by the Parties for the year in question. To account for carry over amounts of methyl bromide, amounts for research purposes, or for other appropriate reasons, including updated information on alternatives, EPA may allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties for the year in question. As in previous CUE rules, because the proposed amount is less than the total amount authorized by the Parties, the Agency seeks comment on the reasons for, and amounts of, each reduction.

EPA recognizes that in a future CUE allocation rule proposal, the Agency could estimate, using the method described in Section V.D.2., that the amount of available stocks at the beginning of a future year is less than the difference between the total critical use amount authorized by the Parties and the amount of new production and imports authorized by the Parties for the year in question. This scenario can be described with the following inequality: Available Stocks < (Total CUE Amount Authorized − New Production and Imports Authorized). Under the approach introduced in the 2008 CUE rule, in such a case EPA would propose to allow the maximum amount of new production and imports authorized by the Parties, minus any reductions as described above and finalized in the 2008 CUE Rule. EPA would also allow critical users to access a limited amount of existing stocks by allocating a number of CSAs equal to the difference between the total CUE amount authorized by the Parties and the amount of new production and imports authorized for the year in question (CSA = Total CUE Amount Authorized − New Production and Imports Authorized), again minus any reductions as discussed here. EPA will continue to collect inventory data and make critical use allocations on an annual basis. Similarly, unless the

Parties approve multi-year critical use exemptions, EPA intends to continue to calculate the amount of available stocks on an annual basis and to explain those calculations in the annual CUE allocation rulemaking process.

4. Treatment of Carry Over Material

As described in the December 23, 2004, Framework Rule (69 FR 76997), EPA is not permitting entities to build stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Under the current regulations, quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a calendar year must be reported to EPA the following year. These reporting requirements appear at 40 CFR 82.13(f)(3), 82.13(g)(4), 82.13(h)(1), 82.13(bb)(2), and 82.13(cc)(2). EPA uses the reported information to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. An amount equivalent to this ''carry over,'' whether pre-plant or post-harvest, is then deducted from the total level of allowable new production and import in the year following the year of the data report. For example, the amount of carry over from 2005, which was reported in 2006, was deducted from the allowable amount of production or import for critical uses in 2007. As discussed in section V.D.2., carry over material is not included in EPA's definition of existing stocks (ES) as it applies to the proposed formula for determining the amount of available stocks (AS). EPA is not including carry over amounts as part of ES, because doing so could lead to a double-counting of carry over amounts, and thus a double reduction of critical use allowances (CUAs).

In 2008, 57 entities reported information to EPA under the reporting requirements at 40 CFR 82.13 about critical use methyl bromide production, imports, exports, sales and/or inventory holdings in 2007. 4,314,150 kg of critical use methyl bromide was acquired through production or import in 2007. The information reported to EPA indicates that 4,269,255 kg of critical use methyl bromide was exported or sold to end-users in 2007. EPA calculates that the carry over amount at the end of 2007 was 44,895 kg, which is the difference between the reported amount of critical use methyl bromide acquired in 2007 and the reported amount of exports or sales of that material to end users in 2007 (4,314,150 kg − 4,269,255 kg = 44,895 kg). EPA's calculation of the amount of carry over at the end of 2007 is consistent with the method used in the final 2008 CUE Rule, and with the method agreed to by the Parties in Decision XVI/6, which established the Accounting Framework for critical use methyl bromide, for calculating column L of the U.S. Accounting Framework. The 2007 U.S. Accounting Framework is available in the public docket for this rulemaking.

As a result of stakeholder concerns regarding the completeness of reporting and in response to public comment, EPA stated in the 2008 CUE Rule (72 FR 74137) that:

> It would be beneficial to acquire the names of all distributors and third-party applicators with critical use exemption reporting requirements under 40 CFR 82.13. Collecting the names of these entities will facilitate Agency follow-up with non-reporters, allowing collection of necessary information in a more targeted manner than collecting detailed information from all entities. In early 2008 EPA will use its information gathering authority under section 114 of the Clean Air Act to ask all entities that sell critical use methyl bromide to report the names of all non-end user entities (i.e.producers, importers, distributors and third-party applicators) to which they sold critical use methyl bromide during the 2007 control period.

On January 31, 2008, EPA sent letters to all producers, distributors, and third-party applicators of critical use methyl bromide that it was aware of asking for ''the name and address of each non-end user entity (i.e. distributors of methyl bromide and third-party applicators of methyl bromide) to which your company sold critical use methyl bromide during calendar year 2007.'' As a result, EPA received contact information for distributors and third-party applicators that had never reported sales data to EPA as well as actual sales reports from some of those new entities. On March 11, 2008, the Agency sent a follow-up letter to the previously unknown entities that had not reported sales data for 2007 and reminded them of their reporting obligations under 40 CFR 82.13. The Agency has received 18 responses from previously unknown entities satisfying the required annual reporting requirements. The Agency is considering options to pursue the remaining unreported data. EPA may take into account additional reports received within a reasonable time in calculating the carry over amount for the final 2009 rule.

In previous CUE rules, EPA has used the approach described in the Framework Rule for implementing carry over reductions. Consistent with that approach, EPA is proposing to reduce the total level of new production and import for critical uses by 44,895 kg to reflect the total level of carry over material in existence at the end of 2007. After applying this reduction to the total volumes of allowable new production or import, EPA pro-rated CUAs to each company based on their 1991 baseline market share.

EPA continues to seek comment on ways to improve the completeness of data reporting by affected companies. It is important for stakeholders to recognize that the process for calculating the amount of carry over CUE material each year relies on sales to end-user data reported to EPA by distributors and applicators.

5. Amounts for Research Purposes

As in the 2008 CUE rule, EPA is proposing to encourage research needs to be met through the sale of inventory by deducting the amount needed for research from the overall critical use production level and issuing additional CSAs in that amount.

The use of methyl bromide under the critical use exemption for research is distinct from the use of methyl bromide under the laboratory and analytical use exemption. Decision XVIII/15(1) authorizes ''the production and consumption of [methyl bromide] necessary to satisfy laboratory and analytical critical uses.'' Paragraph 2 of that Decision states that methyl bromide produced under the exemption for laboratory and analytical uses may be used as a reference or standard; in laboratory toxicology studies; to compare the efficacy of methyl bromide and its alternatives inside a laboratory; and as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock. On December 27, 2007, EPA promulgated regulations implementing the exemption authorized in Decision XVIII/15 (72 FR 73264).

There continues to be a need for methyl bromide for research purposes that do not meet the criteria for laboratory and analytical uses, as defined in Decision XVIII/15. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. The critical use sectors that were approved by the Parties to use methyl bromide for research purposes in 2009 are listed in Section V.C. and have ''research purposes'' listed in their limiting critical conditions in Table I of this preamble.

In this action, EPA is proposing to allow sale of 22,171 kg of existing stocks for research purposes in 2009 to account for the amount authorized for those

purposes. EPA proposes to allow methyl bromide sale from stocks for exempted research purposes by expending CSAs. An explanation of what amounts of methyl bromide and of what sectors qualify for research purposes can be found in Section V.C. of this preamble. If EPA adopts this proposal, the Agency will continue to encourage methyl bromide suppliers to sell inventory to researchers and to encourage researchers to purchase inventory for research purposes. EPA seeks comment on its proposal to issue CSAs for sale of methyl bromide stocks for exempted research purposes.

6. Methyl Bromide Alternatives

In the 2006 CUE Rule (71 FR 5985), EPA allocated less methyl bromide for critical uses than was authorized by the Parties in order to account for the recent registration of sulfuryl fluoride. The allocation reductions in that rule reflected transition rates that were included for the first time in the 2007 U.S. Critical Use Nomination (CUN). In the 2008 CUE Rule (72 FR 74139), EPA explained that the transition rates had already been applied as part of the international review process for that year, and therefore it was not necessary to apply them as part of the Agency's domestic rulemaking. EPA did, however, reduce the total volume of critical use methyl bromide in the final CUE rule for 2008 by 27,769 kg to account for new data indicating the uptake of two alternatives, sulfuryl fluoride and iodomethane.

For 2009, EPA is not proposing to make any further reductions in post-harvest or pre-plant critical use allowances to account for the uptake of sulfuryl fluoride or any other pre-plant or post-harvest alternative with the exception of iodomethane, which is discussed below. In the 2009 CUN the Agency applied transition rates for all critical use sectors. The TEAP report of August 2007 included reductions in its recommendations for critical use categories based on the transition rates in the 2009 CUN. The TEAP's recommendations were then considered in the Parties' 2009 authorization amounts, as listed in Decision XIX/9. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2009 critical use amounts.

Furthermore, the 2010 CUN, which represents the most recent analysis and the best available data for methyl bromide alternatives, does not conclude that transition rates should be increased for 2009. As the 2010 CUN reflects, the United States Government has not found new information that supports changing the 2009 transition rates included in the 2009 CUN and applied by MBTOC. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means.

Finally, although the Agency intends for the final rule to account for use of iodomethane in the 2009 control period, this proposed rule does not include a specific reduction to account for that use. Because EPA initially registered iodomethane on a time-limited basis, which was to expire in October 2008, EPA did not nominate its use as an alternative to the TEAP. Thus EPA did not make any reductions in the 2009 or 2010 CUNs to account for iodomethane uptake. On October 2, 2008, EPA renewed the registration of iodomethane. The Agency will account for any potential market uptake of iodomethane in the final rule given that the alternative's registration status has changed. The amount of market uptake will also depend on how many and which States have registered iodomethane for use. Iodomethane is currently registered for use in 47 states, including Florida. EPA requests comment on the amount of estimated market uptake of iodomethane to include in the final rule. For reference, the estimated market uptake for iodomethane in the 2008 rule was 14,472 kg. At that time, 14 states, which did not include Florida, had registered iodomethane for use.

EPA seeks comment on its proposal not to make further reductions in 2009 to account for the uptake of methyl bromide alternatives other than iodomethane, because the Agency has already accounted for these other alternatives' transition rates. EPA continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

7. Summary of Calculations

The calculations described above for determining the level of new production and critical stock allowances are summarized in the table below:

	Kilograms
Step 1: Calculate supply chain factor:	
U.S. authorization for 2009	4,261,974
− Further reduction for uptake of alternatives	0
= One year's CUE need	4,261,974
x Percentage of year's production to recover from production failure	55.186%
= Supply Chain Factor	2,352,013
Step 2: Calculate available stocks:	
Existing pre-phaseout inventory on January 1, 2008 ("ES2008")	6,457,806
− Estimated drawdown of inventory during 2008 ("D2008")	1,528,806
− Supply Chain Factor	2,352,013
= Available stocks ("AS2009") = Critical Stock Allowance	2,576,987
Step 3: Calculate carry over:	
Reported as produced/imported in 2007	4,314,150
− Reported as sold in 2007	4,269,255
= Carry over	44,895
Step 4: Calculate new production:	
U.S. authorization for 2009	4,261,974
− Critical Stock Allowance (Step 2)	2,576,987
− Carryover (Step 3)	44,895
− Amounts Used for Research	22,171
− Uptake of alternatives	0
= New production = Critical Use Allowance	1,617,921

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

Paragraphs 2 and 7 of Decision XIX/9 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2009 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the Agency is soliciting comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption (CUE). The critical use nominations (CUNs) detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

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

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

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

F. Emissions Minimization

Decision XIX/9, paragraph 11 states that Parties shall request critical users to employ ''emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible.'' In the judgment of USG scientists, use of virtually impermeable film (VIF) tarps allows pest control with lower application rates in addition to minimizing emissions. The quantity of methyl bromide nominated by the U.S. Government reflects the lower application rates necessary when using tarps. Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide by implementing measures such as the ones listed above, to the extent consistent with State and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how further emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is proposing to allocate 2009 critical use allowances for new production or import of methyl bromide up to the amount of 1,617.921 kg (6.3% of baseline) as shown in Table II below. EPA is seeking comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2009. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. This proposal for allocating the following number of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

TABLE II—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2009 Critical use allowances for pre-plant uses * (kilograms)	2009 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	888,477	94,733
Albemarle Corp	365,362	38,956
Ameribrom, Inc	201,907	21,528
TriCal, Inc	6,287	670
Total [2]	1,462,032	155,888

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to 40 CFR part 82.

Paragraph six of Decision XIX/9 states ''that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in Decisions Ex. I/3(4), Ex. II/1(4), XVII/9(4), and XVIII/13(5) regarding 2005, 2006, 2007, and 2008 critical uses, respectively. The language from these Decisions calls on Parties to

[2] Due to rounding, numbers do not add exactly.

endeavor to allocate critical use methyl bromide on a sector basis.

EPA's August 2004 proposed Framework Rule (69 FR 52366) proposed several options for allocating critical use allowances, expressing a preference for a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-specific approach would pose significant administrative and practical difficulties. Although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent use data in the current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current use patterns take place in a market where all pre-plant and post-harvest methyl bromide uses compete for a lump sum supply of critical use material. Therefore, the Agency believes that under a system of universal allocations, divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP. These issues were addressed in previous rules and EPA is not aware of any factors that would alter the analysis performed during the development of the Framework Rule.

EPA is not proposing to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an endeavor to address Decision XIX/9(6), EPA will consider additional comment on the Agency's allocation of CUAs in the two groupings (pre-plant and post-harvest) that the Agency has employed in the past.

H. Critical Stock Allowance Allocations

For the reasons described in Section V.D., EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the 2009 control period in the amount of 2,576,987 kg (10.1% of baseline). This proposed amount of CSA allowances is consistent with the approach to determining available stocks introduced in the 2008 CUE rule and described in section V.D.4.

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

TABLE III—PROPOSED ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company		
Albemarle	Hendrix & Dail	Royster-Clark, Inc.
Ameribrom, Inc.	Hy Yield Bromine	Trical Inc.
Bill Clark Pest Control, Inc.	Industrial Fumigation Company	Trident Agricultural Products
Burnside Services, Inc.	Pacific Ag	UAP Southeast (NC)
Cardinal Professional Products	Pest Fog Sales Corp.	UAP Southeast (SC)
Chemtura Corp.	Prosource One	Univar
Degesch America, Inc.	Reddick Fumigants	Western Fumigation
Helena Chemical Co.		
Total—2,576,987 kilograms		

Several companies that receive very small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently retire their allowances. Some companies receive as few as 6 allowances which allow the holder to sell up to 6 kilograms of methyl bromide to critical uses. Due to the small allocation and because they typically do not sell critical use methyl bromide, some companies find the allocation of CSAs, and associated record-keeping and reporting requirements, to be unduly burdensome.

In response to this concern, for the last two rounds of CUE allocation rulemakings EPA has allowed CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the Agency. Such companies would not receive CSA allocations and would be excluded from future allocations. During the comment period for the 2008 CUE Rule, seven companies voluntarily agreed to permanently relinquish their allowances. In the final 2008 CUE Rule, the Agency reallocated all allowances forfeited by these companies to the remaining companies on a pro-rata basis. EPA continues to strongly encourage CSA holders to take advantage of this voluntary opportunity to retire their CSA allocations by providing written notification to the Agency during the comment period for this rulemaking.

I. Stocks of Methyl Bromide

As discussed above and in the December 23, 2004, Framework Rule, an approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. Under this proposed action, no changes would be made to those provisions.

EPA believes that the refined approach for calculating available stocks that was finalized in the 2008 CUE Rule reduces the risks of methyl bromide shortages for critical uses. However, as in prior years, the Agency will continue to closely monitor CUA and CSA data.

Further, as stated in the final 2006 CUE rule, safety valves continue to exist. If an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2008 is 6,458 MT. EPA estimates that the aggregate inventory on January 1, 2009, will be approximately 4,929 MT. As explained in detail in the 2008 CUE final rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2007 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action proposes a ''significant regulatory action.'' This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not propose to change any of those existing requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0482 and 2060–0564. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed 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 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes. 0173—Tree Nuts 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning). 311211—Flour Milling 311212—Rice Milling 493110—General Warehousing and Storage 493130—Farm Product Warehousing and Storage.	 2041—Flour and Other Grain Mill Products. 2044—Rice Milling. 4225—General Warehousing and Storage 4221—Farm Product Warehousing and Storage.	$6.5 million. $23.5 million. 500 employees.
Distributors and Applicators.	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$6.5 million.
Producers and Importers.	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule will only affect 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. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period.

EPA now estimates there to be 2,000 end users of critical use methyl bromide. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide 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 and $30 million annually. We have therefore concluded that this proposed 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 to State, local, and tribal governments, in the aggregate, or to 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 if 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 the 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.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is deregulatory and does not impose any new requirements on any entities. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

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.'' The phrase ''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 proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed 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 proposed rule.

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

Executive Order 13175, titled ''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 proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

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

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

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law

104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

List of Subjects in 40 CFR Part 82

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

Dated: November 21, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Company	2009 Critical use allowances for pre-plant uses * (kilograms)	2009 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	888,477	94,733
Albemarle Corp.	365,362	38,956
Ameribrom, Inc.	201,907	21,528
TriCal, Inc.	6,287	670
Total [3]	1,462,032	155,888

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2009 on a pro-rata basis in relation to the inventory held by each.

Company		
Albemarle	Hendrix & Dail	Royster-Clark, Inc.
Ameribrom, Inc.	Hy Yield Bromine	Trical Inc.
Bill Clark Pest Control, Inc.	Industrial Fumigation Company	Trident. Agricultural. Products.
Burnside Services, Inc	Pacific Ag	UAP Southeast (NC).
Cardinal Professional Products	Pest Fog Sales Corp.	UAP Southeast (SC).
Chemtura Corp	Prosource One	Univar.
Degesch America, Inc	Reddick Fumigants	Western Fumigation.
Helena Chemical Co.		
Total—2,576,987 kilograms		

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

Appendix L to Part 82 Subpart A—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2009 Control Period

[3] Due to rounding, numbers do not add exactly.

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions That exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	PRE-PLANT USES	
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan.	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation.. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation Moderate to severe nutsedge infestation Moderate to severe nematode infestation
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit, table and raising grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation Moderate to severe soilborne disease infestation . Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes
	(b) Florida growers	Moderate to severe weed infestation.

Column A	Column B	Column C
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical.
		features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes.
	(c) Michigan herbaceous perennial growers.	Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe yellow nutsedge and other weed infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe pythium root, collar, crown and root rots.
		A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical.
		features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.
		Moderate to severe southern blight infestation, crown or root rot.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes.
	(d) Michigan growers	Moderate to severe soilborne disease infestation.
		A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
		Time to transition to an alternative.
		A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Carolina geranium or cut-leaf evening primrose infestation.
		Restrictions on alternatives due to karst topographical.
		features and soils not supporting seepage irrigation.
		A need for methyl bromide for research purposes
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation
		Moderate to severe black root and crown rot
		A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers.	Moderate to severe black root rot.
		Moderate to severe root-knot nematode infestation.
		Moderate to severe yellow and purple nutsedge infestation.
		A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation.
		Moderate to severe fungal pathogen infestation.
		A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
		A need for methyl bromide for research purposes.
	(c) Maryland growers	High water tables and proximity to environmentally sensitive estuaries which limit use of 1–3D;
		Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation.
		Presence of sensitive electronic equipment subject to corrosion.

Column A	Column B	Column C
		Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S.	Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(e) Members of the National Pest Management Association treating facilities, spaces, and equipment associated with processed food, cheese, herbs, spices.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season. Export to countries which do not allow the use of sulfuryl fluoride. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc..	Red legged ham beetle infestation Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

[FR Doc. E8–28328 Filed 11–26–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA–2006–26173, Notice No. 2]

RIN 2130–AB82

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 9, 2008 (73 FR 52496), FRA proposed revisions to its regulations governing railroad accident/incident recording and reporting. This document announces a public hearing to provide interested parties the opportunity to comment on the NPRM and announces a thirty (30) day extension of the comment period, which closed November 10, 2008, to commence on the date of the public hearing. This extension provides interested parties the opportunity to comment on the NPRM and to respond to matters that arise at the public hearing related to the NPRM.

DATES: (1) *Public Hearing:* A public hearing will be held on the date and at the location listed below to provide interested parties the opportunity to comment on the proposed revisions contained in the NPRM. A thirty (30) day extension of the comment period will commence on the date of the hearing. The date of the public hearing is as follows:

Thursday, December 18, 2008, at 8:30 a.m. in Washington, DC.

(2) *Extension of Comment Period:* The comment period will reopen Thursday, December 18, 2008 and written comments must be received by Friday, January 16, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: (1) *Public Hearing:* The public hearing will be held at the following location:

Washington, DC: Four Points by Sheraton, 1201 K Street, NW., Washington, DC 20005.

(2) *Extension of Comment Period:* Comments related to Docket No. FRA–2006–26173, may be submitted by any of the following methods:

1. *Web site:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the Web site's online instructions for submitting comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

4. *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

(3) *Public Hearing Participants:* Written notification of intent to participate in the public hearing and copies of oral statements must be submitted to the FRA Docket Clerk at FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590 or faxed to (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey, SE., Washington, DC 20590 (telephone 202–493–1331); or Gahan Christenson, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey, SE., Washington, DC 20590 (telephone 202–493–1381).

SUPPLEMENTARY INFORMATION: FRA has received written comments submitted by interested parties related to various parts of the NPRM and a written request for a hearing on the NPRM. The purpose of the public hearing is to permit the exchange of information and concerns regarding FRA's proposed amendments. The public hearing is meant to allow interested parties to fully develop and articulate the issues and concerns they have with the NPRM so that these concerns can be fully addressed in any final rule that is developed. Interested parties are invited to present oral statements and proffer evidence at the hearing. The hearing will be informal and will be conducted by a