

**Comment Period**

On August 23, 2011, the EPA published in the **Federal Register** the proposed rule, "Oil and Natural Gas Sector: New Source Performance Standards and National Emission standards for Hazardous Air pollutants Review." In that notice, the EPA announced that all comments must be received by October 24, 2011. The EPA conducted three public hearings on this proposed rule, the last of which was held on September 29, 2011, in Arlington, Texas. See 76 FR 53371, August 26, 2011. Under section 307(d) of the CAA, the EPA must keep the record open for thirty days after completion of the hearings to provide an opportunity for submission of rebuttal and supplementary information. Accordingly, the public comment period will end on October 31, 2011, rather than on October 24, 2011, as originally published.

The EPA has also received numerous requests for extending the public comment period for this proposed rule. This notice only corrects the public comment period pursuant to section 307(d) of the CAA. This notice does not address the pending requests being considered for extending the public comment period.

**How can I get copies of this document and other related information?**

The EPA has established the official public docket No. EPA-HQ-OAR-2010-0505. The EPA has also developed Web sites for the proposed rulemaking at the addresses given above.

Dated: October 14, 2011.

**Gina McCarthy,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 2011-27237 Filed 10-19-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 82**

[EPA-HQ-OAR-2009-0277; FRL-9481-9]

RIN 2060-AQ83

**Protection of Stratospheric Ozone: The 2012 Critical Use Exemption From the Phaseout of Methyl Bromide**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing uses that qualify for the 2012 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 2012. 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 Twenty-Second 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 November 21, 2011. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on October 25, 2011. If a hearing is requested it will be held on November 4, 2011 and comments will be due to the agency December 5, 2011. 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-2009-0277, 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](mailto:a-and-r-Docket@epa.gov).

- *Fax:* (202) 566-9744.

- *Phone:* (202) 566-1742.

- *U.S. Mail:* Docket EPA-HQ-OAR-2009-0277, U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery or Courier:* Docket EPA-HQ-OAR-2009-0277, EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. 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-2009-0277. 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 <http://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](mailto:arling.jeremy@epa.gov) or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at <http://www.epa.gov/ozone/mbr> for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:** This 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 2012. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and reshipment (QPS) exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2012

critical use exemption as well as specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory (also referred to as “stocks” or “inventory”) for proposed critical uses in 2012.

## Table of Contents

- I. General Information
  - A. Regulated Entities
  - B. What should I consider when preparing my comments?
- II. What is methyl bromide?
- III. What is the background to the phaseout regulations for ozone-depleting substances?
- 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?
- V. What is the critical use exemption process?
  - A. Background of the Process
  - B. How does this proposed rule relate to previous critical use exemption rules?
  - C. Proposed Critical Uses
  - D. Proposed Critical Use Amounts
    - 1. Approach for Determining Critical Stock Allowances
    - 2. Approach for Determining New Production and Import Allowances
    - 3. Summary of Calculations
  - E. The Criteria in Decisions IX/6 and Ex. I/4
  - F. Emissions Minimization
  - G. Critical Use Allowance Allocations
  - H. Critical Stock Allowance Allocations
  - I. Stocks of Methyl Bromide
- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. General Information

### A. 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; and users of methyl bromide that applied for the 2012 critical use exemption including farmers of vegetable crops, fruits and nursery stock and owners of stored food commodities and structures such as grain mills and processors. This rulemaking does not affect applications for future control periods.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this 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.

### B. 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes 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.

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 was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at <http://www.epa.gov/ozone/mbr>.

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The provisions in this 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 regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances

that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The 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 U.S. 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. The Parties also established a phaseout date of 2015 for Article 5 countries.

#### **IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?**

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

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the control periods from 2006 to 2011. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2012 and the

amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action on critical uses for 2012 reflects Decision XXII/6, taken at the Twenty-Second Meeting of the Parties in November 2010. 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 on critical uses for 2012, EPA is honoring commitments made by the United States in the Montreal Protocol context.

#### **V. What is the critical use exemption process?**

##### *A. Background of the Process*

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

In response to EPA's request for critical use exemption applications published in the **Federal Register** on May 20, 2009 (74 FR 23705), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and 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 has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the agency is proposing to exempt for critical uses and the uses that the agency is proposing as approved critical uses.

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

On January 22, 2010, the U.S. Government (USG) submitted the eighth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for

2012 critical uses. In February 2010, MBOC sent questions to the USG concerning technical and economic issues in the 2012 nomination. The USG transmitted responses to MBOC in March, 2010. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect 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 framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), 74 FR 19878 (calendar year 2009), 75 FR 23167 (calendar year 2010), 76 FR 23769 (calendar year 2011 proposal).

Today's action proposes to utilize the existing regulatory framework to determine critical uses for 2012 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. 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. A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

The critical uses that EPA is proposing to approve as 2012 critical uses are the uses included in the USG's eighth CUN and authorized by the Parties in Decision XXII/6. EPA is utilizing the existing regulatory framework for critical uses. This

framework is discussed in Section V.D.1 of the preamble.

#### *C. Proposed Critical Uses*

In Decision XXII/6, taken in November 2010, the Parties to the Protocol agreed "to permit, for the agreed critical-use categories for 2012 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 in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2012 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 XXII/6 for the United States:

- Commodities.
- National Pest Management Association food processing structures.
- Mills and processors.
- Dried cured pork.
- Cucurbits.
- Eggplant—field.
- Forest nursery seedlings.
- Nursery stock—fruits, nuts, flowers.
- Orchard replants.
- Ornamentals.
- Peppers—field.
- Strawberry—field.
- Strawberry runners.
- Tomatoes—field.
- Sweet potato slips.

The Decision XXII/6 critical use levels for 2012 total 1,022,826 kilograms (kg), which is equivalent to 4.0% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses in Table D of Decision XXII/6 is 922,826 kg (3.6% of baseline), minus available stocks.

EPA is proposing a total critical use exemption in 2012 of 1,022,826 kg (4.0% of baseline) with new production or import of methyl bromide for critical uses up to 759,744 kg (3.0% of baseline), and with up to 263,082 kg (1.0% of baseline) coming from pre-phaseout inventory (*i.e.*, stocks).

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and seeks information regarding any changes to the registration (including cancellation or new registrations), use, or efficacy of alternatives that have transpired after the 2012 U.S. nomination was written. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic

feasibility” change. Comments on the technical data contained in the nomination or new information could potentially alter the agency’s analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties.

EPA is also proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXII/6. The agency is amending the table of critical uses based in part on the technical analysis contained in the 2012 U.S. nomination that assesses data submitted by applicants to the CUE program. First, EPA is proposing to remove from the list of approved critical uses those uses that did not submit applications and therefore were not included in the U.S. nomination. These uses are International Paper and Weyerhaeuser Company in the forest nursery seedlings sector and beans in the commodities sector. The Parties have not authorized them as critical uses for 2012 and EPA proposes not to list these uses as critical for this control period.

Second, EPA is proposing to remove North Carolina and Tennessee strawberry nurseries. Growers in this sector applied for a critical use in 2012. The U.S. did not submit a nomination to UNEP for this use because EPA’s technical review found that there are alternatives to methyl bromide for Southeast strawberry nurseries. The Parties have not authorized them as critical uses for 2012 and EPA proposes not to list these uses as critical for this control period.

Third, EPA is proposing to reduce the number of allowable uses for the National Pest Management Association’s (NPMA) post harvest fumigations. Past critical uses for NPMA included “processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.” MBTOC found that the nomination for food processing facilities was inadequately justified and recommended only cheese storage facilities for consideration by the Parties as a critical use. MBTOC’s comments can be found in the May 2010 TEAP Progress Report in the docket to this rule. EPA is proposing to modify the NPMA critical use to include only “Members of the National Pest

Management Association treating cheese storage facilities.” EPA seeks comment on these proposed changes to Appendix L.

EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The “local township limits prohibiting 1,3-dichloropropene” are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, “pet food” under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, “rapid fumigation” for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

#### *D. Proposed Critical Use Amounts*

Table C of the annex to Decision XXII/6 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorized critical use for 2012 is 1,022,826 kg, which is equivalent to 4.0% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of new production or import authorized by the Parties is 922,826 kg (3.6% of baseline) as set forth in Table D of the annex to Decision XXII/6. The difference between the total authorized amount and the authorized amount of new production is 100,000 kg (0.4% of baseline). This difference is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory on critical uses.

EPA is proposing to allocate 759,744 kg (3.0% of baseline) of new production and import of methyl bromide for critical uses for 2012. EPA is also proposing to allocate 263,082 kg (1.0% of baseline) in the form of Critical Stock Allowances for sale of pre-phaseout inventory for critical uses in 2012. 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 pre-phaseout inventory for critical uses. The sub-sections below explain EPA’s reasons for proposing the above critical use amounts for 2012.

##### **1. Approach for Determining Critical Stock Allowances**

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (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 CSA provisions for calendar year 2012.

In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties. In each of the CUE allocation rules from 2006 through 2010, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For 2006, 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). In the 2009 rule, EPA added to the minimum amount (1.2% of baseline) an additional amount (6.3% of baseline) for a total of 1,919,193 CSAs (7.5% of baseline). In the 2010 rule, EPA added to the minimum amount (1.8% of baseline) an additional amount (2.2% of baseline) for a total of 1,028,108 CSAs (4.0% of baseline). After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import 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 the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year’s overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to “permit” a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not

require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency “may” create an exemption for critical uses, providing EPA with substantial discretion. When determining the CSA amount for a year, EPA considers what portion of existing stocks is “available” for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXII/6 states that “production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks.” In addition, earlier decisions refer to the use of “quantities of methyl bromide from stocks that the Party has recognized to be available.” Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXII/6 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 CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA’s discretion under this provision.

EPA employs the concept of “available stocks” in determining whether to allocate additional CSAs beyond the minimum stock amount stipulated by the Parties. In response to stakeholder questions about how EPA derived its CSA amounts, the 2008 CUE rule established a refined approach for determining the amount of existing methyl bromide stocks that is “available” for critical uses. The approach uses a tool called the Supply Chain Factor (SCF). The SCF is EPA’s technical estimate of the amount of methyl bromide inventory that would be adequate to meet the need for critical use methyl bromide after an unforeseen domestic production failure. The SCF recognizes the benefit of allowing the private sector to maintain a buffer in case of a major supply disruption. However, the SCF is not intended to set aside or physically separate stocks as an inventory reserve.

## 2. Calculation of Available Pre-Phaseout Inventory

For 2012, EPA proposes to calculate the amount of “available” stocks as follows, using the formula adopted in the 2008 CUE rule:  $AS_{2012} = ES_{2011} -$

$D_{2011} - SCF_{2012}$ , where  $AS_{2012}$  is the available stocks on January 1, 2012;  $ES_{2011}$  is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2011;  $D_{2011}$  is the estimated drawdown of existing stocks during calendar year 2011; and  $SCF_{2012}$  is the supply chain factor for 2012. Using this formula, EPA calculates that there will be 263,082 kg of pre-phaseout stocks of methyl bromide “available” on January 1, 2012.

*Existing Stocks.* In the above formula, “ $ES_{2011}$ ” is methyl bromide that was produced before the January 1, 2005, phaseout date but is still held by domestic producers, distributors, and third-party applicators as of January 1, 2011.  $ES_{2011}$  does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. Nor does it 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. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Similarly, EPA considers inventory methyl bromide to be available to all users, including users in California and the Southeastern United States. These assumptions are discussed in the 2009 CUE rule (74 FR 19887).

*Estimated Drawdown.* In past CUE rules, EPA either estimated the drawdown of existing stocks using a simple linear fit estimation of inventory data from all available years or used actual reported end of year data if available. A linear estimate would project that no methyl bromide would remain in inventory on January 1, 2012. EPA does not believe this estimate to be accurate because it does not consider that the use of inventory on critical uses is limited by the allocation of CSAs. A better estimate of drawdown would instead add the estimated amount of CSAs that will be expended in 2011 plus the estimated amount of methyl bromide that will be used in 2011 for non-critical uses.

The first element of EPA’s proposed drawdown estimate is the amount of inventory that will be used in 2011 on critical uses. This can be no more than the number of CSAs EPA allocates in the final 2011 CUE Rule. For purposes of this estimate, we are assuming the number of CSAs allocated in the final 2011 CUE Rule will be the same as the number EPA has proposed, which is 482,333 kg. As discussed in the Technical Support Document, on

average only 58% of the CSAs allocated for a control period are reported as sold in that control period. Based on this historical pattern, EPA believes that not all of the CSAs will actually be expended in 2011 either. To estimate the number of expended CSAs in 2011, EPA conservatively assumes that 70% of the CSAs allocated for 2011 will be sold. This amount is greater than any year’s use of CSA allocations. Thus, EPA estimates that 337,633 kg of inventory will be sold for critical uses in 2011.

The second element in the drawdown estimate is the amount of methyl bromide used on non-critical uses in 2011. Under the recent reregistration decision for methyl bromide, seven non-critical uses remain on the pre-plant methyl bromide labels. These non-critical uses can continue to use methyl bromide but are restricted to pre-phaseout inventory. The uses are canberries, fresh market tomatoes grown in California, fresh market peppers grown in California, Vidalia onions grown in Georgia, ginger grown in Hawaii, soils on golf courses and athletic/recreational fields for resurfacing/replanting of turf, and tobacco seedling trays. See 76 FR 7200. Collectively they are referred to as “Group II uses.” EPA proposes to estimate the amount of inventory that will be sold to these Group II uses in 2011 by averaging the amounts sold in 2006–2010 for all non-critical uses. There is no clear trend in the pattern of usage which is why EPA is proposing to simply take an average. EPA is not including 2005 because it does not have data for that year. These data are contained in EPA’s annual Accounting Frameworks submitted to UNEP and are available in the docket. The average use of pre-phaseout inventory on all non-critical uses over the last five years is 773 MT. EPA believes that this estimate is conservative because it includes the use of inventory for all non-critical uses, not just for Group II uses. Therefore, EPA proposes to adopt this average as its estimate of non-critical use in 2011.

Therefore, EPA proposes to estimate the potential drawdown of inventory in 2011 as (1) The projected sum of the use of CSAs for 2011 and (2) the estimate for Group II uses for 2011. Using this method, EPA projects that the pre-phaseout methyl bromide inventory will be drawn down by 1,110,633 kg (337,633 + 773,000) during 2011. This would result in a pre-phaseout inventory declining from 1,802,715 kg on January 1, 2011, to 692,082 kg on January 1, 2012. EPA welcomes comment on this proposed method of calculating inventory drawdown. If EPA receives actual end-of-year reported data

on inventory levels before this rule is finalized, EPA may substitute that data for this estimate.

*Supply Chain Factor.* The SCF 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. As described in the 2008 CUE Rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S. in the event of a major supply disruption. Consistent with the regulatory framework used in previous CUE allocation rules, the SCF for 2012 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the U.S. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 42% of annual critical use methyl bromide demand. EPA, therefore, estimates that the peak 15-week shortfall in 2012 could be 429 MT.

As EPA stated in previous CUE Rules, the SCF is not a "reserve" or "strategic inventory" of methyl bromide but is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. Its use in the equation above demonstrates that 263,082 kg are available to be allocated. Further general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118) and further detail about the analysis used to derive the value for the 2012 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

Using the following formula  $AS_{2012} = ES_{2011} - D_{2011} - SCF_{2012}$ , EPA estimates that there will be 263,082 kg of pre-phaseout stocks of methyl bromide "available" on January 1, 2012. ( $263,082 = 1,802,715 - 1,110,633 - 429,000$ ). Therefore, EPA proposes to allocate 263,082 kg as Critical Stock Allowances for 2012.

## 2. Approach for Determining New Production and Import Allowances

For the 2012 control period, EPA is proposing to apply the existing

framework established in the Framework Rule. Under this approach, the amount of new production would equal the total amount authorized by the Parties to the Montreal Protocol in Decision XXII/6, minus the CSA amount detailed above, minus any reductions for carryover and the uptake of alternatives. Applying this established approach, EPA is proposing to exempt limited amounts of new production and imports of methyl bromide for critical uses in 2012 in the amount of 759,744 kg (3.0% of baseline). EPA is taking comment on this approach.

*Carryover Material.* The Parties in paragraph 6 of Decision XXII/6 "urge parties operating under a critical-use exemption to put in place an effective system to discourage the accumulation of methyl bromide produced under the exemption." As discussed in the Framework Rule, EPA does not permit the building of stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this "carryover" from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing stocks (which applies to pre-phaseout material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

Unlike past control periods, all critical use methyl bromide that companies reported to be produced or imported in 2010 was sold to end users. The information reported to EPA is that 1,954,610 kg of critical use methyl bromide was produced or imported. A slightly higher amount than the amount produced or imported was actually sold to end-users in 2010. This additional amount was from distributors selling amounts that were carried over from the 2009 control period. Using the existing framework, EPA is proposing to apply the carryover deduction of 0 kg to the new production amount. EPA's calculation of the amount of carryover at the end of 2010 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6 for calculating column L of the U.S. Accounting

Framework. Past U.S. Accounting Frameworks, including the one for 2010, are available in the public docket for this rulemaking.

*Uptake of Alternatives.* EPA also is proposing to continue considering new data about alternatives that were not available at the time the U.S. Government submitted its CUN to the Parties and adjust the allocation for new production accordingly. Two alternatives not considered in the 2012 CUN, which was submitted to UNEP in January 2010, may potentially be used in 2012. In July 2010, EPA registered Dimethyl Disulfide (DMDS) to control nematodes, weeds, and pathogens in tomatoes, peppers, eggplants, curcubits, strawberries, ornamentals and forest nursery seedlings, and onions. Currently, 12 states have registered DMDS for use in that state. Neither California nor Florida has yet to register DMDS. EPA anticipates uptake during 2012 to be minimal as the primary states with critical uses have not yet registered the alternative. In addition, once registered, growers are likely to experiment on only a limited number of acres.

Second, California registered Iodomethane in December of 2010. EPA is unable to estimate uptake of Iodomethane in California during 2012 due to uncertainties created by the California label, specifically impacts of larger buffer zones and the lack of efficacy studies at the California label's lower use rates. In addition to the state registration, County Agricultural Commissioners must permit each iodomethane application that occurs within their jurisdiction.

While EPA is not proposing a specific amount of reduction to account for the uptake of these alternatives, EPA will consider new data received during the comment period. If the registration status of either of these alternatives changes, EPA is proposing to estimate and account for that uptake in the final rule. EPA is not proposing to take any other reductions for alternatives because the 2012 CUN properly applied transition rates for all other alternatives. The TEAP report of October 2010 included reductions in its recommendations for critical use categories based on the transition rates in the 2012 CUN. The TEAP's recommendations were then considered in the Parties' 2012 authorization amounts, as listed in Decision XXII/6. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2012 critical use amounts. EPA continues to gather information about methyl bromide alternatives

through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

In addition, EPA is taking comment on an issue raised in the proposed 2011 CUE rule. In that rulemaking, EPA proposed a critical-use allowance allocation of 1,500,000 kg for 2011, given that regulated entities had been acting in good faith on statements made by the Agency in No Action Assurance letters that producers and importers could assume the allocation would be at least that much. While the total allocation was not affected, the amount of new production was 128,382 kg more than what EPA would have proposed for 2011 had the CSA and CUA amounts been based on the “available stocks”

calculation using end of year inventory data. It also means that the critical stock allocation was 128,382 kg less than the amount of “available stocks.” EPA stated in the 2011 proposed rule that the Agency could reduce critical-use allowances for new production and import in the 2012 allocation rule to account for this difference.

EPA is taking comment on an alternative approach in which EPA would allocate 631,362 kg (2.5% of baseline) of CUAs for 2012. This amount is 128,382 kg less than the proposed CUA amount. The CSA amount could remain either at 263,082 kg or be increased to 391,464 kg to reflect the lower CSA allocation in 2011. The total allocation for 2012 would be 894,444 kg or 1,022,826 kg depending on how many CSAs are issued under this alternative. While EPA is taking comment on this alternative, EPA is not

proposing it as the lead approach because the number of CUAs in the 2011 rule did not exceed the Parties’ production authorization for 2011 and the total CUE amount for 2011 was unaffected. EPA does not believe the 2011 allocation will result in carryover; however, if it does, EPA will follow its standard practice, discussed in prior CUE notices, of subtracting the carryover amount from the CUA amount in a subsequent year. In addition, any effects that the 2011 CSA allocation had on the amount of pre-phaseout inventory used in 2011 is captured in the “available stocks” analysis contained in this rule.

3. 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
<b>Step 1: Calculate supply chain factor:</b>	
U.S. authorization for 2012 in Decision XXII/6 .....	1,022,826
– Reduction for uptake of alternatives .....	0
= One year’s CUE need .....	1,022,826
× Percentage of year’s production to recover from production failure .....	42%
<b>= Supply Chain Factor .....</b>	<b>429,000</b>
<b>Step 2: Calculate available stocks:</b>	
Existing pre-phaseout inventory on January 1, 2011 .....	1,802,715
– Drawdown of inventory for critical uses .....	337,633
– Drawdown of inventory for non-critical uses .....	773,000
– Supply Chain Factor (Step 1) .....	429,000
<b>= Available stocks = Critical Stock Allowance .....</b>	<b>263,082</b>
<b>Step 3: Calculate new production:</b>	
Total U.S. authorization for 2012 .....	1,022,826
– Critical Stock Allowance (Step 2) .....	263,082
– Carryover .....	0
– Uptake of alternatives .....	0
<b>= New production/import = Critical Use Allowance .....</b>	<b>759,744</b>

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

Paragraphs 2 and 5 of Decision XXII/6 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 2012 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 solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The 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 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, updated in October 2009, as well as 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.

There continues to be a need for methyl bromide for research purposes. 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. As in past CUE rules, EPA is proposing to allocate CSAs rather than CUAs for any amounts authorized specifically for research purposes. Also as in past years, EPA is proposing to retain research on the crops shown in the table in Appendix L to subpart A as a critical use of methyl bromide. The USG recently submitted a supplemental nomination for 2,576 kg for research activities in 2012. Because the supplemental nomination was submitted this year, the Parties have not yet taken a decision authorizing an amount. The Parties are expected to take a decision at their upcoming Meeting of the Parties in November 2011. Therefore, EPA is proposing to increase the final CSA allocation by up to 2,576 kg after consideration of the action taken by the Parties in November and comments received on this proposed rule regarding research needs.

EPA encourages methyl bromide suppliers to sell inventory to researchers and encourages researchers to purchase inventory for research purposes. As discussed in the 2010 CUE rule, research is a key element of the critical use process. Therefore, researchers may continue to use newly produced methyl bromide, as well as pre-phaseout inventory purchased through the expenditure of CSAs, for field, post-harvest, and emission minimization studies requiring the use of methyl bromide. EPA is taking comment on this proposal to increase the CSA amount as described above for research.

#### F. Emissions Minimization

Previous decisions have stated that Parties shall request critical users to employ emission minimization techniques such as virtually impermeable films, barrier film

technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. Through the recent Reregistration Eligibility Decision (RED) for methyl bromide, the agency requires that methyl bromide applications be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also encourages the use of high-barrier tarps, such as virtually impermeable film (VIF), by providing credits that applicators can use to minimize their buffer zones. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the USG reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed. Emissions minimization efforts should not be limited to pre-plant fumigations. While the RED addresses emissions minimization only in the context of pre-plant fumigation, EPA also urges users to reduce emissions from structures and port facilities through the use of recapture technologies.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences 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 emissions could be reduced further.

#### G. Critical Use Allowance Allocations

EPA is proposing to allocate 2012 critical use allowances for new production or import of methyl bromide up to the amount of 759,744 kg (3.0% of baseline) as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). EPA is seeking comment on the total levels and allocations of exempted new production or import for pre-plant and post-harvest critical uses in 2012. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The proposed CUA allocation is subject to the trading provisions at 40

CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

Paragraph 3 of Decision XXII/6 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 prior Decisions authorizing critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions, but continues to welcome comments on this issue.

#### H. Critical Stock Allowance Allocations

A preambular paragraph to Decision XXII/6 states "that parties should reduce their stocks of methyl bromide retained for employment in critical-use exemptions to a minimum in as short a time period as possible." EPA notes that the U.S. Government is not retaining pre-phaseout inventory for any particular purpose. Pre-phaseout inventory is held by private companies who may sell to any use that meets the labeling under FIFRA. However, EPA believes that its practice of encouraging the use of inventory by allocating CSAs equivalent to all "available stocks" is consistent with this statement by the Parties. EPA is proposing to allocate CSAs for the 2012 control period in the amount of 263,082 kg (1.0% of baseline). This amount is greater than the difference between the total U.S. CUE amount approved by the Parties and the permitted level of U.S. production and consumption. For 2012, that difference is 100,000 kg (0.4% of baseline).

EPA's proposed allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In

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

*I. Stocks of Methyl Bromide*

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing to change these provisions.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2011 is 1,802,715 kg. As in prior years, the Agency will continue to closely monitor CUA and CSA data. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. 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.

As explained in the 2008 CUE Rule, the agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. 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 2011 is available in the docket for this rulemaking.

**VI. Statutory and Executive Order Reviews**

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

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this proposal is a "significant regulatory action." This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The

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

*C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production .....	1112—Vegetable and Melon farming. 1113—Fruit and Nut Tree Farming. 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops .....  0172—Grapes.  0173—Tree Nuts.  0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	\$0.75 million.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Storage Uses .....	115114—Postharvest Crop activities (except Cotton Ginning).	.....	\$7 million.
	311211—Flour Milling .....	2041—Flour and Other Grain Mill Products.	500 employees.
	311212—Rice Milling .....	2044—Rice Milling .....	500 employees.
	493110—General Warehousing and Storage.	4225—General Warehousing and Storage.	\$25.5 million.
Distributors and Applicators .....	493130—Farm Product Warehousing and Storage.	4221—Farm Product Warehousing and Storage.	\$25.5 million.
	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	\$7 million.
Producers and Importers .....	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this 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 would exempt methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately \$22 million to \$31 million on an annual basis (using a 3% or 7% discount rate respectively). These reduced costs are dramatic owing to the high value of methyl bromide for crop production and agriculture related activities. We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

#### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action would provide an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

#### E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

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

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

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

EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This 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: October 13, 2011.

**Lisa P. Jackson,**  
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 as follows:
  - a. by revising the table in paragraph (c)(1);
  - b. by revising paragraph (c)(2) including the table.

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

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

Company	2012 Critical use allowances for pre-plant uses* (kilograms)	2012 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp., A Chemtura Company .....	425,197	36,499
Albemarle Corp .....	174,851	15,009
ICL–IP America .....	96,626	8,294
TriCal, Inc .....	3,009	258
<b>Total** .....</b>	<b>699,683</b>	<b>60,061</b>

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

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

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2012 on a pro-rata basis in relation to the inventory held by each.

**Company**

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

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

Univar  
Western Fumigation  
Total—263,082 kilograms

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

**Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2012 Control Period**

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 and Maryland ..... (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 soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant .....	(a) Florida growers .....  (b) Georgia growers .....	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
Forest Nursery Seedlings ....	(a) Southern Forest Nursery Management Cooperative (Growers in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia). (b) Northeastern Forest and Conservation Nursery Association (Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin). (c) Michigan Seedling Growers .....	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Nursery Stock (Fruit, Nut, Flower).	(a) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. (b) California rose nurseries .....	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant .....	California stone fruit, table and raisin 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 .....  (b) Florida growers .....	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
Peppers .....	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.  (b) Florida growers .....	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.

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
<p>Strawberry Fruit .....</p> <p>Strawberry Nurseries .....</p> <p>Sweet Potato Slips .....</p> <p>Tomatoes .....</p>	<p>(c) Georgia growers .....</p> <p>(a) California growers .....</p> <p>(b) Florida growers .....</p> <p>(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.</p> <p>California growers .....</p> <p>(a) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.</p> <p>(b) Maryland growers .....</p>	<p>Moderate to severe yellow or purple nutsedge infestation.</p> <p>Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.</p> <p>Moderate to severe southern blight infestation, crown or root rot.</p> <p>Restrictions on alternatives due to karst topographical features.</p> <p>Moderate to severe black root rot or crown rot.</p> <p>Moderate to severe yellow or purple nutsedge infestation.</p> <p>Moderate to severe nematode infestation.</p> <p>Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative.</p> <p>Moderate to severe yellow or purple nutsedge infestation.</p> <p>Moderate to severe nematode infestation.</p> <p>Moderate to severe soilborne disease infestation.</p> <p>Carolina geranium or cut-leaf evening primrose infestation.</p> <p>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.</p> <p>Moderate to severe yellow or purple nutsedge infestation.</p> <p>Moderate to severe nematode infestation.</p> <p>Moderate to severe black root and crown rot.</p> <p>Moderate to severe soilborne disease infestation.</p> <p>Moderate to severe yellow or purple nutsedge infestation.</p> <p>Moderate to severe nematode infestation.</p> <p>Local township limits prohibiting 1,3-dichloropropene.</p> <p>Moderate to severe yellow or purple nutsedge infestation.</p> <p>Moderate to severe soilborne disease infestation.</p> <p>Moderate to severe nematode infestation.</p> <p>Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.</p> <p>Moderate to severe fungal pathogen infestation.</p>
<b>POST-HARVEST USES</b>		
<p>Food Processing .....</p> <p>Commodities .....</p> <p>Dry Cured Pork Products .....</p>	<p>(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.</p> <p>(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.</p> <p>(c) Members of the North American Millers' Association in the U.S.</p> <p>(d) Members of the National Pest Management Association treating cheese storage facilities.</p> <p>California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California.</p> <p>Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.</p>	<p>Moderate to severe beetle, weevil, or moth infestation.</p> <p>Presence of sensitive electronic equipment subject to corrosion.</p> <p>Time to transition to an alternative.</p> <p>Moderate to severe beetle, moth, or cockroach infestation.</p> <p>Presence of sensitive electronic equipment subject to corrosion.</p> <p>Time to transition to an alternative.</p> <p>Moderate to severe beetle infestation.</p> <p>Presence of sensitive electronic equipment subject to corrosion.</p> <p>Time to transition to an alternative.</p> <p>Mite infestation.</p> <p>Rapid fumigation required to meet a critical market window, such as during the holiday season.</p> <p>Red legged ham beetle infestation.</p> <p>Cheese/ham skipper infestation.</p> <p>Dermested beetle infestation.</p> <p>Ham mite infestation</p>

[FR Doc. 2011-27186 Filed 10-19-11; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

RIN 0648-AY73

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) for review, approval, and implementation by NMFS. The Comprehensive ACL Amendment amends the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region, the Golden Crab Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery off the Atlantic States, and the Pelagic Sargassum Habitat of the South Atlantic Region. The Comprehensive ACL Amendment proposes actions to specify annual catch limits (ACLs), allowable biological catch (ABC), ABC control rules, and accountability measures (AMs) for species in the FMPs for Snapper-Grouper, Dolphin and Wahoo, Golden Crab, and Sargassum. The Comprehensive ACL Amendment proposes to specify ABC, and describe the current terminology and measures in place in the Sargassum FMP that are consistent with an ACL and AMs. For Sargassum, this amendment would not specifically set an ACL because there is currently a commercial quota in place which functions as an ACL, and there are commercial closure provisions in the event the quota is met or projected to be met which functions as an AM. Sector allocations, annual catch targets (ACTs), and management measures are also proposed for species in the Snapper-Grouper and Dolphin and Wahoo FMPs. In addition, the Comprehensive ACL Amendment proposes actions to the snapper-grouper fishery management unit (FMU), including the removal of some species, designation of ecosystem component

(EC) species, and the development of species groups.

**DATES:** Written comments must be received on or before December 19, 2011.

**ADDRESSES:** You may submit comments on the amendment identified by “NOAA-NMFS-2011-0087” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on “submit a comment,” then enter “NOAA-NMFS-2011-0087” in the keyword search and click on “search”. To view posted comments during the comment period, enter “NOAA-NMFS-2011-0087” in the keyword search and click on “search”. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, telephone: 727-824-5305, or e-mail: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or

amendment is available for review and comment.

The four FMPs being revised by the Comprehensive ACL Amendment were prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

**Background**

The 2006 revisions to the Magnuson-Stevens Act require that in 2011, for fish stocks determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve optimum yield (OY) within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

**Actions Contained in the Amendment***Golden Crab FMP*

The Comprehensive ACL Amendment proposes to specify an ABC, an ABC control rule, an ACL, and an AM for golden crab.

*Dolphin and Wahoo FMP*

The Comprehensive ACL Amendment proposes to specify ABCs, ABC control rules, ACLs, and AMs for dolphin and wahoo. Sector allocations, ACTs for dolphin and wahoo, and management measures for dolphin are also proposed.

*Snapper-Grouper FMP*

The Comprehensive ACL Amendment proposes to identify snapper-grouper species that do not need Federal management and can therefore be removed from the Snapper-Grouper FMP; designate selected snapper-grouper species as EC species; and establish species groups for selected snapper-grouper species for more effective management. The Comprehensive ACL Amendment would establish ABC control rules, ACLs for the commercial and recreational sectors, and ACTs (recreational sector only) for individual species and species groups. Additionally, the Comprehensive ACL Amendment would define the allocation of black grouper, mutton snapper, and yellowtail snapper across the jurisdictional boundary between the Gulf of Mexico Fishery Management Council (Gulf Council) and the South