

109TH CONGRESS  
1ST SESSION

# H. R. 1257

To amend the Clean Air Act to authorize critical use exemption amounts for methy bromide as identified by the United States State Department for the years 2006 and 2007, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2005

Mr. RADANOVICH (for himself, Mr. BLUNT, Mr. CARDOZA, Mr. WHITFIELD, Mr. SHIMKUS, Mr. HERGER, Mr. FOLEY, Mr. KINGSTON, Mr. ISSA, Mrs. EMERSON, Mr. BERRY, Mr. BISHOP of Georgia, Mr. SIMPSON, Mr. OTTER, Mr. DOOLITTLE, Mr. COSTA, Mr. POMBO, and Mr. JONES of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Clean Air Act to authorize critical use exemption amounts for methy bromide as identified by the United States State Department for the years 2006 and 2007, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

3       **SECTION 1. FINDINGS.**

4       Congress finds that—

5           (1) methyl bromide is a highly effective fumi-  
6           gant used to control insects, nematodes, weeds, and

1       pathogens in more than 100 crops in domestic agri-  
2       culture, in forest and ornamental nurseries, and in  
3       wood products;

4               (2) the United States Department of Agri-  
5       culture has spent well over \$100,000,000 attempting  
6       to find effective alternatives to methyl bromide yet  
7       there are still many domestic agriculture uses with  
8       no alternatives;

9               (3) the critical use exemption of the Montreal  
10      Protocol allows for the use of ozone depleting sub-  
11      stances beyond the phase-out date if there are no  
12      technically and economically feasible alternatives or  
13      substitutes available and the lack of such options  
14      would result in a significant market disruption;

15               (4) accordingly, in 2001, the United States En-  
16      vironmental Protection Agency and the United  
17      States Department of Agriculture began the process  
18      under the Montreal Protocol to document the  
19      amount of methyl bromide needed for critical uses in  
20      domestic agriculture;

21               (5) the United States Environmental Protection  
22      Agency assembled more than 45 Ph.D.s and other  
23      qualified reviewers with expertise in both biological  
24      and economic issues to review applications for meth-  
25      yl bromide critical use exemptions;

6 (7) as confirmed by the Parties to the Montreal  
7 Protocol in the “Report of the Sixteenth Meeting of  
8 the Parties to the Montreal Protocol on Substances  
9 that Deplete the Ozone Layer”, the concept of  
10 “availability” in the context of the critical use ex-  
11 emptions shall be primarily guided by the alter-  
12 native’s market presence in sufficient quantities and  
13 accessibility, taking into account, among other  
14 things, regulatory constraints;

15 (8) after extensive research and technical re-  
16 view, the United States State Department and the  
17 United States Environmental Protection Agency  
18 have concluded that the critical use methyl bromide  
19 that has been requested qualifies as “critical” since  
20 it has been determined that for each use the lack of  
21 availability of methyl bromide for that use would re-  
22 sult in a significant market disruption;

23 (9) after extensive research and technical re-  
24 view, the United States State Department and the  
25 United States Environmental Protection Agency

1 have concluded that there are no technically and eco-  
2 nomically feasible alternatives or substitutes avail-  
3 able that are acceptable from the standpoint of the  
4 environment and health and that are suitable to the  
5 crops and circumstances for the critical use methyl  
6 bromide that has been requested in the nomination;

7 (10) the conclusions of the United States State  
8 Department and the United States Environmental  
9 Protection Agency are consistent with the restate-  
10 ment adopted at the Sixteenth Meeting of the Par-  
11 ties to the Montreal Protocol of the criteria that  
12 should be used to approve critical use requests;

13 (11) the United States 2006 CUE request rep-  
14 resents approximately .4 percent of the ozone deple-  
15 tion potential from all ozone depleting substances in  
16 all countries when the Montreal Protocol was nego-  
17 tiated in 1987;

18 (12) therefore, given the statistically minor im-  
19 pact on the ozone layer and the lack of suitable fea-  
20 sible alternatives for all uses at this time, legislation  
21 is needed in order to ensure a reasonable transition  
22 for United States agriculture to the complete phase-  
23 out of methyl bromide, legislation is necessary to au-  
24 thorize the critical use exemption amounts identified  
25 by the State Department for the year 2006, as re-

1 reflected in the Report of the Sixteenth Meeting of the  
2 Parties to the Montreal Protocol on Substances that  
3 Deplete the Ozone Layer, Decision XVI/2, Critical  
4 Use Exemptions Annex, Section IIA, IIB, and Sec-  
5 tion III, and for the year 2007, as reflected in the  
6 Report of the First Extraordinary Meeting of the  
7 Parties to the Montreal Protocol on Substances that  
8 Deplete the Ozone Layer, Annex III.

9 SEC. 2. CRITICAL USE EXEMPTIONS FOR METHYL BRO-  
10 MIDE.

11       Section 604(d)(6) of the Clean Air Act (42 U.S.C.  
12 7671c(d)(6)) is amended by inserting the following at the  
13 end thereof: “For the year 2006, the United States critical  
14 use exemption shall be the sum of the amounts identified  
15 in Decision XVI/2, Annex (Critical Use Exemptions), Sec-  
16 tion IIA and Section III of the Parties to the Montreal  
17 Protocol as set forth in Table I and, for the year 2007,  
18 the amount identified in submissions of the United States  
19 State Department at the first Extraordinary Meeting of  
20 the Parties to the Montreal Protocol as set forth in Table  
21 I. The United States critical use exemptions for the years  
22 2006 and 2007 established by this section shall not be  
23 subject to the conflict provision of section 614(b) of this  
24 Act. The Administrator shall issue a final rule within 90  
25 days of the enactment of this sentence to authorize crit-

- 1 ical-use exemptions of the amounts listed in Table 1 below
- 2 and to allocate these amounts for critical-use exemptions
- 3 for each of the years 2006 and 2007.

**“Critical Use Exemptions**

<b>Critical Use Exemption 2006:</b>	<b>Critical Use Exemption 2007:</b>
The amount approved by the Parties to the Montreal Protocol (6897.68 tonnes) recorded in Decision XVI, Annex (Critical Use Exemptions), Section II A, and the amount approved in the interim by the Parties to the Montreal Protocol (2194.583 tonnes) recorded in the Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Critical Use Exemptions Annex, Section III, for a total of 9092.263 tonnes	The amount submitted for the year 2007 by the U.S. State Department at the first Extraordinary Meeting of the Parties to the Montreal Protocol (8425 tonnes) recorded in the Report of the First Extraordinary Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Annex III, Appendix I”.

