ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7434–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this rulemaking, EPA is taking final action to amend the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). Today's amendments incorporate an exemption permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and required by changes in Title VI of the CAA. Specifically, EPA is creating an exemption from the consumption and production phaseout for quantities of Class I, Group VI controlled substances (methyl bromide) that are used for quarantine and preshipment.

DATES: This rule is effective January 1, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–24. The Docket is located at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

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

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

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION 000000CONTACT** section.

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

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

Today's action amends the existing EPA regulations published under Title VI of the CAA that govern the production and consumption of ozone-depleting substances. Today's action establishes an exemption from the methyl bromide production and import reduction and phaseout schedule for quantities to be used for quarantine and preshipment applications. Today's amendments are intended to implement requirements of the Protocol and the CAA, including amendments to Title VI as created by Section 764 of the 1999 Omnibus Consolidated and Emergency

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

Supplemental Appropriations Act (Public Law 105–277, October 21, 1998) (section 604(d)(5) of the Clean Air Act).

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

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

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

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

II. What Is the Background for Today's Action?

EPA published an interim final rule in the **Federal Register** on July 19, 2001 (66 FR 37752) to provide methyl bromide users in the United States with an exemption to the phaseout of methyl bromide for quarantine and preshipment applications. The interim final rule solicited public comment on a number of issues related to EPA's implementation of the Quarantine and Preshipment Exemption. Today's action responds to public comment and finalizes the specifications for the exemption.

III. What Is Methyl Bromide?

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

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

An example of a quarantine application of methyl bromide is the fumigation of a commodity, such as rice and spices, which are subject to infestation by a specific and officially recognized quarantine pest, such as the khapra beetle (Trogoderma granarium Everts) when the fumigation is conducted before transport of the commodity to meet official quarantine requirements (see discussion in part VI below). The purpose of quarantine fumigation is to prevent the introduction of specific quarantine pest(s) into a defined geographical area, such as an importing country. An example of a preshipment use of methyl bromide is the application to wheat immediately before shipment (see discussion in part VI below) because of official phytosanitary requirements of the destination country.

In 1998, the Methyl Bromide Technical Options Committee (MBTOC), a sub-group under the independent advisory body of the Technical and Economic Assessment Panel (TEAP) to the Montreal Protocol, published an assessment that gives further details about uses of methyl bromide and possible alternatives and substitutes for controlling pests. The MBTOC and TEAP assessments can be found on the web at *http://www.teap.org/html/methyl—bromide—reports.html* and *http://www.teap.org/*.

V. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Use in Quarantine and Preshipment Applications?

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

In 1998 Congress added several provisions to the Clean Air Act regarding methyl bromide including a provision title ''Sanitation and Food Protection,'' which is related to the Protocol exemption for quarantine and preshipment. This provision, which was codified as section 604(d)(5) of the CAA, was added by section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). Section 604(d)(5) says, ''To the extent consistent with the Montreal Protocol's quarantine and

preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State or local sanitation or food protection standard.'' Prior to Congressional passage of section 604(d)(5), the CAA did not provide authority for creating such an exemption to the methyl bromide phaseout schedule. In today's final regulation, EPA is implementing the express language provided in Article 2H, paragraph 6, of the Protocol under the authority provided by section 604(d)(5) of the CAA. EPA is also acting in a manner consistent with, and to fulfill the obligations of, section 614(b) of the CAA. Section 614(b) of the CAA states that, ''[t]his title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of a conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.''

EPA's interim final rule related to the process for exempting quarantine and preshipment applications of methyl bromide, published in the **Federal Register** on July 19, 2001 (66 FR 37752), defined quarantine and preshipment applications as agreed by the Parties to the Montreal Protocol in Decisions VII/5 and XI/12, respectively. EPA received ten comments regarding our decision to adhere to the language of the Parties' Decisions. All commenters stated that Decisions of the Parties do not have the same force of law as the Protocol itself, its amendments, or adjustments adopted by the Parties and, as such, EPA is not bound to their language. The comments submitted to EPA in response to the interim final rule echo a legal memorandum submitted to EPA by the legal counsel of the Methyl Bromide Industry Panel at a July 1999 meeting. A more detailed discussion of the arguments made in this memorandum can be found in the interim final rule published in the **Federal Register** on July 19, 2001 (66 FR 37752).

EPA responded directly to the legal memorandum submitted by the Methyl Bromide Industry Panel in the interim final rule. EPA has reconsidered the issue as it was raised by the comments submitted in response to the interim final rule and has concluded that its approach reflects widely accepted principles of customary international law. The provisions of the Vienna Convention on the Law of Treaties (VCLT), 8 International Legal Materials 679 (1969), that concern treaty interpretation generally reflect customary international law. Paragraph 1 of Article 31 of the VCLT provides that a treaty ''shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'' Paragraph 3 of Article 31 of the VCLT states, ''[t]here shall be taken into account, together with any context: * * * (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.'' Decisions VI/11, VII/5, XI/12 and XI/13 constitute subsequent consensus agreements among the Parties to the Montreal Protocol (including the United States) regarding the interpretation and application of the quarantine and preshipment provision of Article 2H. Therefore it is appropriate for EPA, when determining what is consistent with the ''Montreal Protocol's quarantine and preshipment provisions,'' to take into account the Decisions of the Parties.

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

Precedents within the current regulations (40 CFR part 82) demonstrate that the United States has routinely considered Decisions that clarify and interpret obligations under the Montreal Protocol to be authoritative and that such Decisions of the Parties are currently implemented through regulations under the CAA. Examples of such regulatory implementation of Decisions of the Parties include the current U.S. definitions of ''controlled substance'' (based on Decision IV/12) and ''essential use''. Additional examples of how U.S. regulations incorporate Decisions by the Parties to the Protocol can be found in the preamble of the interim final rule published in the **Federal Register** on July 19, 2001 (66 FR 37752) and in 40 CFR part 82, subpart A.

VI. What Are the Definitions of Quarantine and Preshipment Applications?

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

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

EPA adopted the above definition of preshipment applications in the interim final rule and received nine related comments. All of the commenters raised the concern that the 21-day limitation on treatments to qualify as a preshipment application is unduly restrictive and arbitrary. One commenter stated that the time restriction is unrelated to the purpose of the preshipment exemption and that so long as a treatment is done to meet the official non-quarantine requirements of

the importing or exporting country it ought to qualify as a preshipment application.

EPA believes that the incorporation of a time restriction within the definition of preshipment application is necessary to meet the purpose of this exemption as intended by the Parties to the Montreal Protocol. The preshipment exemption applies to treatments of commodities near the time of export to meet the official non-quarantine requirements of the exporting or importing country. Eliminating the time requirement would invite misuse of the exemption. With no established time window, the argument could be made that a pre-plant soil application of methyl bromide qualifies as a preshipment application because the crop being cultivated would eventually be exported from U.S. soil. By imposing a time restriction, Decision XI/12 of the Parties demonstrates that their intent was not to imbue the preshipment exemption with a lifecycle-wide scope. The 21-day restriction was agreed upon by the Parties (based on the advice of global experts) as a reasonable time limitation for the preshipment exemption. EPA has received no comment indicating that another time limitation would be better justified and meet the intent of the Parties in implementing the preshipment exemption.

In addition to the above, the definition of quarantine applications is qualified by the scope of the exemption as stated in the CAA. As passed by Congress, the CAA specifically applies the quarantine and preshipment exemption to quantities of methyl bromide used to ''fumigate commodities entering or leaving the United States or any State (or political subdivision thereof)* * *''(CAA section 504(d)(5)). This language makes clear Congress's intent to apply the exemption only where there is the transport of goods from one distinct locality to another, and thus to prevent the potential for the geographic spread of pests. As a result, today's action adds the following sentence to the definition of quarantine applications: ''This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).'' Section III.D. further discusses the uses of methyl bromide that are excluded from today's exemption for quarantine applications.

With today's final action, EPA is defining quarantine applications and preshipment applications as follows:

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

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

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

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

The interim final rule interpreted ''quarantine applications'' as including interstate and inter-county treatments required to control quarantine pests. This interpretation is consistent with the Technical and Economic Assessment Panel's (TEAP) recommendation that the Parties of the Protocol interpret Decision VII/5 to include officially required treatments for intra-country trade within the territory of the Party and reconciles the language of the Montreal Protocol with section 604(d)(5) of the CAA on Sanitation and Food Protection, which refers to international, Federal, state and local requirements.

In recognizing official state, county, tribal, and local quarantine requirements, EPA's final rulemaking interprets the definition of quarantine applications such that an intra-country quarantine treatment required by state, county, tribal, or local plant, animal, environmental, or health government authorities constitutes an official control. Today's action adds parenthetically that ''national'' is meant to include state, tribal or local authorities for purposes of the definition of quarantine applications.

In contrast to the definition of quarantine applications, which accommodates intra-country trade, the Protocol definition of preshipment applications is specific to trade between countries because of the phrase ''applications within 21 days prior to export.'' This distinction was noted in the interim final rule and EPA received no comment. Therefore, for the purposes of today's final action, the exemption for preshipment applications remains limited to the movement of goods from the U.S. to another country, and does not include movement of goods within the U.S.

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

The interim final rule noted, in agreement with the 1998 TEAP interim explanatory notes for the Parties, the focus within the definition of ''preshipment applications'' on applications to meet ''official requirements'' and not ''informal or purely contractual or commercial arrangements not required under official regulations'' (April 1998 TEAP Report, page 145). EPA is continuing to stress the importance of this limitation in the scope of the preshipment exemption. The definition of preshipment applications specifies that the phrase ''official requirements'' means, ''those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority.''

The interim final rule's definition of preshipment applications further qualifies the term ''official requirements'' as it relates to exporting countries to include only ''existing official requirements''. EPA interpreted this phrase to imply the need to establish a cutoff date. EPA asked for comment on four possible interpretations for the term ''existing official requirements of the exporting country''. The options listed were to exempt applications pursuant to official

preshipment requirements of the exporting country that were: (1) In effect prior to the date the Parties to the Protocol adopted Decision XI/12, which was December 3, 1999, (2) in effect at the time the interim final rule was published in the **Federal Register**, which was July 19, 2001, (3) in place at the time this final rule on the quarantine and preshipment exemption is published in the **Federal Register**, or (4) existing at the time of the methyl bromide application (since it would be an ''existing'' requirement of the exporting country upon going into effect).

EPA received eight comments related to the interpretation of ''existing official requirements.'' All commenters supported the fourth option, which is to exempt applications pursuant to official preshipment requirements of the exporting country that exist at the time of the methyl bromide application. Commenters noted that this interpretation recognizes the possibility of future outbreaks of new pests requiring official action. EPA notes the value to such flexibility within the rule and believes that this interpretation is consistent with the intended purpose of the exemption.

It should be noted that the qualifier ''existing'', as used within the preshipment application definition, applies only to the official requirement of the exporting country (the U.S.) and not to the preshipment requirements of importing countries. Thus, if an importing country were to establish a new official requirement for the preshipment application of methyl bromide, nothing in this rule would prevent a U.S. exporter from using methyl bromide to meet the new requirement of the importing country.

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

With today's final action EPA is establishing the following parameters for the quarantine exemption. For commodities imported to, exported from, and transported within the U.S., the exemption for quarantine applications will apply when: (1) Methyl bromide is identified within quarantine regulations as the unique treatment option for specific quarantine pests; (2) methyl bromide is identified within quarantine regulations as one among a list of treatment options for specific quarantine pests; and (3) methyl bromide is required for an emergency quarantine application. Under section 3, section 18, and section 24a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is notified of emergency quarantine applications of methyl bromide in accordance with specific requirements published under FIFRA. In addition to the above, for commodities being exported from the U.S. to a foreign nation, the exemption applies to quarantine applications when there is a broad performance-based quarantine requirement. In other words, the exemption applies when an importing country has quarantine regulations which broadly require U.S. exported commodities to be free of quarantine pests without specifying the types of treatments.

The above follows EPA's decision in the interim final rule. The Agency received 12 comments on the scope of the quarantine exemption. Every commenter said that the broadest possible option should be implemented by the Agency. EPA believes that the scope of the exemption described above is the broadest interpretation that it can reasonably adopt for each given type of commodity. For example, for imports, USDA/APHIS requirements are explicit regarding treatment options acceptable for the control of specific crop/pest combinations. EPA considered limiting the scope of the quarantine exemption to only those instances where APHIS lists methyl bromide as the only acceptable treatment option for a given pest. However, as many commenters noted, variations in climate, etc. can affect the level of efficacy of treatment options in different regions. Thus, EPA chose to adopt a broader definition of the quarantine exemption which applies to quantities of methyl bromide used to meet quarantine requirements where fumigation with methyl bromide is the listed, or one of the listed, treatment options.

While EPA believes that such an interpretation is sufficiently broad for the purposes of imported and domestically traded commodities given the applicable U.S. regulations, the Agency recognizes that some foreign countries lack such specificity within their quarantine regulations for imported commodities. EPA chose to create even greater flexibility within the quarantine exemption in order to accommodate the broad, performance-based quarantine requirements of these foreign trade partners.

D. How Does the Exemption for Quarantine Applications Apply to Commodities Issued ''Phytosanitary Certificates''?

Today's final action exempts methyl bromide in situations when a foreign country's regulations require a certification that U.S. commodities be exported free of quarantine pests. EPA understands that both USDA/APHIS and State agencies issue ''phytosanitary certificates'' that accompany U.S. commodities exported to foreign countries. These phytosanitary certificates are often required by importing foreign countries to ensure that U.S. exports are free of quarantine pests. To the extent that methyl bromide is used by a U.S. exporter to meet a foreign quarantine requirement, the phytosanitary certificates (PPQ Form 577, PPQ Form 578, and PPQ Form 579) issued by USDA/APHIS or an authorized State agency will be an additional means for EPA to cross-check quarantine applications of methyl bromide under today's exemption.

As was noted in the interim final rule, and for this final action, EPA is not exempting methyl bromide used for non-quarantine applications, even if the foreign country requires the U.S. exporter to obtain a phytosanitary certificate. Today's exemption applies to the use of methyl bromide to meet an official foreign quarantine requirement. If PPQ Forms or other types of certificates are issued for commodities meeting state or local quarantine requirements then methyl bromide used in these cases is considered exempt under today's action, provided that methyl bromide is one of the listed treatment options.

E. How Do the Definitions of Preshipment and Quarantine Applications Apply to Food Sanitation?

The language of the Clean Air Act related to the quarantine and preshipment exemption explicitly limits the exemption to quantities of methyl bromide used ''to fumigate commodities *entering or leaving* the United States or any State (or political division thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * *'' (emphasis added). By applying the quarantine and preshipment exemption only to quantities of methyl bromide used to fumigate commodities being transported from one geographical location to another, Congress imposed limitations on how the definitions of preshipment and quarantine applications apply to food sanitation.

As defined in today's action, preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product

authority. Methyl bromide used any time within 21 days prior to export of a commodity to meet ''official requirements'' related to food sanitation would qualify under the preshipment exemption. Any treatment performed outside of this 21 day window, by definition, does not qualify for the preshipment exemption.

The exemption of methyl bromide for quarantine applications, as defined by the interim final action, did not apply to preventative treatments to meet food sanitation standards. EPA received 4 comments about the interaction between food sanitation standards and the quarantine exemption. All commenters asserted that preventative treatments of commodities with methyl bromide to meet food sanitation requirements should qualify as ''quarantine applications'' because ''such standards are geared to preventing the dissemination of pests, although admittedly for human health and food sanitation purposes.''

EPA's final action is bound by the limitations imposed on the quarantine exemption by the definitions and determination of scope agreed upon by the Parties to the Montreal Protocol and adopted by Congress in the Clean Air Act. EPA understands that certain industries often use methyl bromide as a prophylactic treatment for periodic quality control fumigations associated with food sanitation. Stored commodities, such as dried fruits, nuts, and cocoa beans, as well as grain mills and pasta manufacturing facilities are often fumigated periodically with methyl bromide to prevent populations of pests, such as insects and rodents, from increasing to a point where they would adversely affect food quality. Such *in situ* population control measures do not qualify as quarantine applications since they are not performed on ''commodities entering or leaving the United States or any state (or political subdivision thereof) * * *''

Additionally, food sanitation requirements that are directed at controlling population levels of pests endemic to the region would not qualify under the definition of ''quarantine applications''. The quarantine definition, as established in today's final action, stresses that exempt applications of methyl bromide are ''to prevent the introduction, establishment and/or spread of quarantine pests (including diseases).'' Quarantine pests are defined as ''pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' Endemic pests are not quarantine pests.

The above limitations were noted in the interim final version of this rule. Likewise, the Agency noted in that publication its interest in comments related to prophylactic uses of methyl bromide to meet food sanitation standards in order to use this information in the Agency's development of the Critical Use Exemption to the phaseout of methyl bromide. Please see the discussion below (Section VIIIA) related to the Critical Use Exemption.

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

The use of methyl bromide to fumigate the soil for growing propagative material, such as strawberry rhizomes, differs from many quarantine applications of methyl bromide. The Agency sought comment on the use of methyl bromide for propagative materials and received a variety of information on relevant quarantine regulations, planting and fumigating practices, and propagative materials (other than strawberry rhizomes) that use methyl bromide to meet quarantine requirements.

With today's final action, the exemption for quarantine applications applies to methyl bromide used for growing propagative material if the methyl bromide is being used to grow propagative material to meet official quarantine requirements of the destination to which the propagative material will be transported. Although the interim final rule only cited strawberry rhizomes in the discussion of the exemption for propagative material, with today's action EPA wishes to clarify that the exemption also covers other propagative material, including tree seedlings, when the methyl bromide is used to meet an official quarantine requirement of the destination to which the propagative material will be transported.

EPA notes the following qualifiers in the application of the quarantine exemption to methyl bromide used to grow propagative material (also referred to as ''plants for planting''). First, as noted above (see discussion in part VI.C.), the Clean Air Act language specifies that the scope of the quarantine exemption is limited to use of methyl bromide for fumigation of goods for transport from one distinct locality to another. Thus, the exemption for propagative materials only applies for use with ''plants for planting'' that are to be transported (complete with rootstock) from one distinct locality to another. Second, today's action only exempts the use of methyl bromide for pre-plant fumigation of soil to meet official quarantine requirements specifying that the underground portions of the propagative material are to be free from quarantine pests. The purpose of such regulations is ensuring that quarantine pests are not spread to the region where the regulated rootstock will be replanted. This exemption does not apply to pre-plant soil treatment for commodities transported without their attached rootstock, or commodities transported for any purpose other than for replant.

Finally, with this action, EPA is only exempting quantities of methyl bromide used to grow propagative material to meet official quarantine requirements of the destination to which such material will be transported. If the material is transported to a destination that has no applicable official quarantine requirements, then the methyl bromide used does not qualify for this exemption. This is true even in an instance where a farmer legitimately justified using exempted methyl bromide to meet a quarantine requirement for propagative materials, yet due to economic or market conditions the farmer does not send the seedlings to the planned destination, and instead sends the seedlings to a region without relevant quarantine requirements. EPA recognizes that many of the propagative materials for which this exemption applies are planted far in advance of their trade and transplant and that farmers face some difficulty in accurately predicting their commodities' ultimate destination. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see discussion in part VIII.A. below).

The use of exempted methyl bromide to grow propagative material that the grower planned to ship to a destination with a propagative material quarantine requirement, but which the grower ultimately shipped to a destination without such a requirement, may raise compliance issues for the United States under the Protocol. Such quantities of methyl bromide would count against the U.S. cap for domestic methyl bromide consumption. The U.S. could exceed its control obligations under the Protocol if all U.S. production and consumption allowances for methyl bromide were expended in a particular control period (calendar year) and some methyl bromide in the same control period was mistakenly exempted for quarantine applications when, in fact, the propagative material was sent to a place without quarantine requirements. With this action, EPA is implementing the

following options for rectifying such discrepancies. The methyl bromide user found to be incorrectly using exempt quantities of methyl bromide for propagative uses as described above may choose either of the following options to rectify their actions. First, a methyl bromide user in the above situation may choose to buy an equivalent amount of production allowances for any ozone-depleting substance, on an ozone-depleting potential (ODP) weighted basis, and retire those allowances, thus rendering them unable to be expended for new production in accordance with subpart A of 40 CFR part 82. Alternatively, a person who uses exempted methyl bromide to meet a propagative material quarantine requirement, and who ultimately changes the material's destination to one without a quarantine requirement, can choose to destroy an amount of any ozone-depleting substance that is equivalent on an ODP-weighted basis to the amount of methyl bromide used. This approach differs from the first option, in that it requires the person to physically destroy an existing quantity of an ozone-depleting chemical rather than reduce the overall quantity produced in the future.

Those users of methyl bromide required to perform one of the compensatory measures described above to rectify a non-compliance situation must submit to EPA a letter of certification detailing the following information: (1) The quantity of exempt methyl bromide used on propagative materials that were shipped to a destination lacking a quarantine requirement; (2) the compensatory option chosen (see discussion above); (3) the ozone-depleting substance destroyed or the type of production allowance obtained; and (4) the quantity of ozone-depleting substance destroyed or production allowances retired. See the section above entitled **FOR FURTHER INFORMATION CONTACT** for submittal information.

Monitoring and compliance issues are a concern associated with the use of methyl bromide for pre-plant propagative material uses. EPA expressed a concern in the interim final rule about situations where propagative materials are grown in proximity to crops that do not qualify for quarantine and preshipment exemption. EPA believed that it would be difficult to ensure that exempted quantities of methyl bromide were being properly used. However, the Agency received input from 3 commenters that state that propagative material is rarely, if ever, grown in proximity to other crops, which alleviates the Agency's concern. The Agency will continue to monitor this possibility.

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

EPA understands that some users of methyl bromide may be testing and/or using ''on-ship'' fumigation of commodities while they are ''in-transit.'' With today's final action, EPA is interpreting the definition of quarantine application to apply to these quantities of methyl bromide used ''in-transit'' when the use is to meet an official U.S. quarantine requirement and is in accordance with other U.S. regulations for commodities being imported into the U.S., (see discussion in part VI.C. above for more information on what is considered an official quarantine requirement for an imported commodity) or for commodities moving from one location to another within the U.S. However, today's action does not exempt quantities of methyl bromide used outside of U.S. jurisdiction on U.S. exported commodities to meet the importing country's official quarantine requirements while the commodities are ''in-transit.'' Today's action, likewise, does not exempt quantities of methyl bromide used on U.S. exported commodities when they are being transshipped through a foreign country en route to the destination importing country. Finally, today's action does not exempt quantities of methyl bromide used to meet an importing country's requirements when a commodity is simply being transshipped through the U.S. from the exporting foreign country en route to the importing foreign country.

It should be noted that use of methyl bromide after a shipment leaves the Unites States is not an exempt preshipment application because the application did not occur ''within 21 days prior to export'' from the U.S., where the word ''export'' is interpreted to mean the departure of a commodity from the Unites States.

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

With this action, EPA is establishing a process to exempt methyl bromide used for quarantine and preshipment applications from the Allowance Program's control measures that phase out production and consumption of methyl bromide (described in Part I. Background above). Today's action exempts quantities of methyl bromide used for quarantine and preshipment applications from the production and consumption reduction steps between now and 2005, as well as beyond the final phaseout of production and consumption under the Montreal Protocol and Clean Air Act on January 1, 2005.

EPA is creating a recordkeeping and reporting process that is flexible enough to respond to demands arising when commodities need to be protected from infestations by quarantine pests and when commodities need to be treated immediately prior to shipment in accordance with official requirements. Such flexibility needs to be balanced with the U.S. Government's reporting requirements under the Montreal Protocol. Today's action includes a certification and reporting procedure under authority of the Clean Air Act (CAA) for exempted production and consumption of methyl bromide for quarantine and preshipment applications.

A. What Recordkeeping and Reporting Must Producers and Importers Perform?

Until the January 1, 2005 phaseout date for methyl bromide, U.S. companies will continue to hold production and consumption allowances, calculated as a percentage of their baseline production and consumption. After January 1, 2005, there will not be production allowances and consumption allowances for methyl bromide. The relationship between each company's baseline production allowance and baseline consumption allowances and the reduction steps in these allowances is in accordance with the control measures under the Montreal Protocol and the Clean Air Act as described in part I of today's rule and in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

Because quarantine and preshipment applications are exempted from the phaseout, the total quantities of methyl bromide produced and imported that are specifically designated for quarantine and preshipment will not be counted as net production or net import for the purposes of the Allowance Program. In order for EPA to ensure that qualifying quarantine and preshipment quantities of methyl bromide are being properly exempted from companies' total allowed production/import, the Agency must have a record of those exempted quantities.

Currently, § 82.13 requires producers and importers to submit quarterly reports to EPA with information on the gross quantity of methyl bromide produced or imported in that quarter. In that same report, producers and importers indicate the quantity specifically designated for transformation and for destruction and,

thus, exempted from the reduction steps and phaseout of methyl bromide. EPA subtracts these quantities for transformation and for destruction from the gross quantity reported to obtain the company's net production or import. The interim final rule required producers and importers to include the quantities of methyl bromide specifically designated for quarantine and preshipment applications on these same quarterly reports. Quantities of methyl bromide used for quarantine and preshipment applications are also subtracted from the gross quantity of production or import because of their exempted status and, thus, are not counted against a company's production and consumption allowances.

In addition to the reporting requirements outlined above, the interim final rule established the following recordkeeping requirements for producers and importers. Domestic purchasers (distributors or customers) must provide producers and importers with certifications that a designated quantity is being purchased solely for quarantine and preshipment applications (discussion of requirements for foreign purchasers appears below in part VII.D.) Certifications from distributors will attest that the material will be sold only for quarantine and preshipment applications, and certifications from applicators purchasing directly from a producer or importer will attest that the material will be used only for quarantine and preshipment applications.

While EPA received no comments on the specific recordkeeping and reporting procedures described in the interim final rule, several commenters submitted general feedback. All comments on this topic focused on the burden of recordkeeping and reporting and suggested that the creation of a FIFRA label specific to quarantine and preshipment would help to ease that burden. EPA recognizes the potential utility of a quarantine and preshipment specific FIFRA label (see full discussion below in part VII.E.). However, until such a label can be established, EPA must rely on another means of obtaining the information it needs to meet the U.S.'s reporting obligations under the Montreal Protocol and to ensure domestic compliance with the phasedown and phaseout schedule for production and import. The requirements created by the interim final rule were discussed with many industry representatives and represent one of the least burdensome options available. Thus, with this final action EPA is continuing the recordkeeping and reporting requirements for producers and importers established by the interim final rule and described in the above text.

B. Are Methyl Bromide Applicators Required To Report?

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

The applicator can obtain the certification form at EPA's Web site at *http://www.epa.gov/ozone/mbr* or from their methyl bromide distributor. The applicator must check the box indicating that the particular quantity being ordered is solely for quarantine and preshipment applications as defined on the form (see the definition above in Part VI) and will neither be sold nor used for any other purpose. The applicator must sign the form certifying, under penalty of law, that the quantity of methyl bromide purchased will be used solely for quarantine and preshipment applications in accordance with the definitions. The applicator must return the completed and signed form to the distributor. The distributor retains the certification form in order to compile data that they will submit to EPA on the quantity of methyl bromide sold under the exemption for quarantine and preshipment applications. The certification form ensures that quantities of methyl bromide produced or imported under the exemption for quarantine and preshipment applications are used only in accordance with the strict requirements of the exemption. It is important to note that the applicator will also be able to purchase non-exempt methyl bromide until the phaseout date for methyl bromide.

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

The requirements established by today's final action exactly match the requirements of the interim final rule. EPA received one comment related to these reporting requirements. The commenter raised the concern that requiring distributors to send and recover Certification Forms prior to every sale could cause supply delays and backlog of commodities needing fumigation at ports. EPA does not believe that the above requirements will cause such a backlog if efficiently managed. While the above protocol explicitly requires that distributors must receive completed Certification Forms prior to distributing the order of methyl bromide, there is flexibility regarding when distributors must provide the blank forms to their customers. In fact, a distributor may send a blank Certification Form to every applicator with instructions to make many copies of the blank form, so each applicator is ready to place immediate, ''rush'' orders for methyl bromide for quarantine and preshipment applications. However, in

situations when an applicator needs to have methyl bromide on-hand to fumigate a shipment hours after it arrives, EPA understands applicators strive to anticipate these busy seasons and accordingly place large orders well in advance. Under today's exemption, when an applicator places a large order in anticipation of future needs for methyl bromide for quarantine and preshipment applications, the applicator can and must submit the Certification Form for the quantity that will be stored to be used solely for quarantine and preshipment applications in the future.

C. Are Distributors Required To Report?

With today's action, EPA is requiring that a person who distributes methyl bromide to applicators (the distributor) compile all the information from applicator certifications (as described in part VII.B above) on a quarterly basis and submit the summary data to EPA. In administering other parts of the stratospheric ozone protection program over the past decade, regulated companies have often expressed an appreciation for the submission of smaller, quarterly reports, rather than one large, end-of-year report. EPA also believes that regular, quarterly tracking by distributors will increase the accuracy of reporting. Since EPA received no comments objecting to the submission of quarterly reports, we are requiring distributors to submit quarterly reports that summarize the total quantity of methyl bromide sold over a quarter to applicators who submitted certifications described in part VII.B above.

The collection of information on the quantity of methyl bromide sold and certified for quarantine and preshipment applications is needed so that the U.S. can respond to a recent amendment to the Protocol. The amendment, to which the Parties agreed at their Eleventh Meeting in Beijing in 1999, adds a provision to Article 7 (Reporting of Data), requiring Parties to submit information on the amounts of methyl bromide used for quarantine and preshipment applications. Reporting by the distributors will allow a comparison between the quantities of methyl bromide sold and certified for quarantine and preshipment applications with the amount of methyl bromide produced and imported for quarantine and preshipment applications, as reported in the producers'/importers' report as described in part VII.A above.

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

With today's action, producers and others that export methyl bromide must report the total quantity of methyl bromide explicitly exported to individual foreign countries for quarantine and preshipment applications on a quarterly basis. Under § 82.13, producers and exporters already distinguish other exempted quantities of methyl bromide explicitly exported for transformation or destruction. For each export of methyl bromide for quarantine and preshipment applications, as for exports for transformation or destruction, the exporter must obtain a certification from the foreign person (entity) importing the methyl bromide stating that the material will be used only for quarantine and preshipment applications. These certifications must be submitted with the quarterly reports. These certifications will then be shared with the appropriate foreign government officials in the importing country and the compiled data will be shared with UNEP advisory bodies to the Protocol. Certifications must accompany the reporting on quantities exported for quarantine and preshipment applications because of a concern that the U.S., as one of the largest worldwide producers of methyl bromide, could potentially contribute to the creation of a loophole for non-exempt uses of methyl bromide around the globe. EPA feels it will be important to closely monitor and track production of methyl bromide that is exported for quarantine and preshipment applications because these uses are exempt from Protocol control measures.

The above requirements are consistent with those created by the interim final rule. EPA received no comments related to this issue.

E. Will There Be a FIFRA Pesticide Label Change?

The interim final rule introduced the possibility of EPA's Office of Pesticide Programs developing, under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), a unique label for methyl bromide specifically designated for quarantine and preshipment use. The Agency received five comments in support of such an action. Commenters advocated that EPA replace the record keeping and reporting requirements established by the interim rule (and continued with today's action) with such a label in order to reduce the burden on users associated with the Quarantine and Preshipment Exemption.

EPA recognizes the potential burden reduction that creating a new QPS-specific FIFRA label could offer, however, the Agency also remains cognizant of the need to retain access to the information it needs to meet the U.S. government's own international reporting requirements as established by the Montreal Protocol. Thus, after the Office of Pesticide Programs finishes the process of making changes that create a new QPS-specific FIFRA label for methyl bromide, the Office of Air and Radiation will consider ways to simplify today's recordkeeping and reporting requirements but likely retain some of these requirements to ensure the accurate submission of data in accordance with U.S. obligations under the Montreal Protocol.

A registration/label change would designate individual cylinders of methyl bromide specifically for quarantine and preshipment applications and it would be illegal to use the material in these cylinders for other uses. Under an approved registration/label change there would be unique registration numbers for the new labels that would accompany each cylinder through the chain of commerce from producers or importers to the end-user (the applicator). As currently required under FIFRA, establishments would report total quantities of methyl bromide under this new quarantine and preshipment registration/label to EPA's Office of Pesticide Programs on an annual basis. Following a change in the FIFRA authorized registration/label, it would be possible for the Agency to reconcile the total quantity of methyl bromide certified to be solely for quarantine and preshipment applications under procedures described in parts VII.B and VII.C above, the total quantity of methyl bromide produced or imported for quarantine and preshipment applications under today's part VII.A above, and the annual FIFRA establishment reports on methyl bromide, which reference specific products by registration number.

EPA's Office of Pesticide Programs is continuing to work with the Methyl Bromide Industry Panel to develop a registration and label change for methyl bromide products. EPA reserves the ability to reevaluate the record keeping and reporting requirements established in today's action if and when such a label is created.

VIII. What Were Other Considerations and Situations on Which EPA Sought or Received Comment?

In the interim final rule, EPA sought comment on a number of possible variations on the exemption that were

not incorporated into the interim rule as it was published. The Agency received comment on some of these items, as well as on other topics for which comment was not expressly sought.

EPA recognizes that additional questions may arise regarding aspects of today's final action. If a person has a question about whether a certain aspect of today's final action applies to their situation, EPA is encouraging the submissions of written questions accompanied by a detailed description of how methyl bromide relates to the person's particular enterprise. The Agency will consider questions about whether aspects of today's final action apply in the context of EPA's regular process for issuing written determinations.

A. Methyl Bromide Is the Only Feasible Treatment Option

EPA received 31 comments in response to the interim final rule that addressed the lack of feasible alternatives available for specific uses of methyl bromide and the economic impact of the phaseout on sectors of the agricultural industry. In response to such comments, EPA notes that there is no ''critical need'' requirement associated with the Quarantine and Preshipment Exemption at this juncture. The exemption applies only to uses of methyl bromide that qualify as a quarantine or preshipment application, as defined by this final action, regardless of the availability of alternatives.

The Montreal Protocol and the CAA created two distinct exemptions to the methyl bromide phaseout: (1) The Quarantine and Preshipment Exemption, and (2) the Critical Use Exemption. The Critical Use Exemption was created by the Parties to the Protocol to address the possibility that substitutes and alternatives may not be available for all methyl bromide uses by the January 1, 2005 phaseout date. The term ''critical use'' is defined, in part, by the lack of technically or economically feasible alternatives. For more information about the Critical Use Exemption please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or visit *http://www.epa.gov/ozone/mbr/cueqa.html.*

B. Has the Agency Considered Definitions Under the International Plant Protection Convention (IPPC)?

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

Further, under the ISPMs adopted by the IPPC, the phrase ''regulated non-quarantine pests'' is defined as, ''a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contacting party.''

EPA sought comment in the interim final rule on this IPPC definition of ''official control'' and received 3 comments. All commenters stated that EPA ought to adopt the IPPC definition because it is broader than that adopted in the interim final rule.

In this final action, EPA is adopting the definition of ''official control'' found in the interim final rule and agreed upon by the Parties to the Montreal Protocol. The IPPC definition is broader, insofar as includes within its scope not only regulated quarantine pests but also regulated ''non-quarantine pests'', an addition not found in EPA's definition. However, IPPC defines the phrase ''non-quarantine pests'' as being applicable only to ''plants for planting''. [With this final action, EPA explicitly applies the quarantine exemption to use of methyl bromide for growing propagative material if it is being used to meet official quarantine requirements of the destination to which the propagative materials are being transported. However, the IPPC's definition is much narrower than the Protocol's, because the word ''official'' under the IPPC is limited only to national plant protection organization, and the Protocol's quarantine definition refers to ''plant, animal or environmental protection or health authority'' and the preshipment definition refers to ''national plant, animal, environmental, health or stored product authority''.

Additionally, in 1998, the TEAP explicitly laid out the differences between the IPPC's and the Montreal Protocol's definitions of ''official control'' for consideration by the Parties. The Parties rejected making any changes to the Protocol's definition of ''official control'' even when presented with the IPPC language (See discussion in section IV above). The Agency is acting in conformity with customary international law by adhering to the decision of the Parties on this matter.

C. What Action Is the Agency Taking Regarding Prophylactic Fumigation of U.S. Exports When the Fumigation Is Not Mandated by Import Regulations?

U.S. businesses sometimes use methyl bromide against non-quarantine pests for a commodity that is being exported because it is known that the importing country will treat with methyl bromide at the port of entry if the detected level of these non-quarantine pests during port-of-entry inspection exceeds that country's standards. Some U.S. exporters give their commodities a prophylactic treatment in the U.S. to prevent a much more damaging treatment in the receiving country that could occur if non-quarantine pests were found, possibly reducing the quality of the commodity. In cases where an official foreign Party requirement is specific to quarantine pests, or there is a general performance-based quarantine requirement, the use of methyl bromide under the exemption for quarantine applications would be appropriate. In addition, fumigation with methyl bromide to meet U.S. government or foreign non-quarantine requirements 21 days prior to export of the commodity would also be exempt under the definition of preshipment applications. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see section VII.A. above).

D. What Action is the Agency Taking Regarding the Exclusion of Specific Quarantine and Preshipment Applications From the Exemption at Some Future Time?

The Parties to the Protocol in Decision XI/13 request Parties to ''review their national plant, animal, environmental, health an stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist.'' The reason for a review process

would be to limit the production and import of methyl bromide to only those cases where no other ''technologically and economically feasible alternatives exist.'' Through time, it is likely that the use of methyl bromide will be less and less necessary for quarantine and preshipment applications. When technically and economically feasible alternatives to methyl bromide are available, a process will be devised that will allow the U.S. to limit the use of this ozone-depleting substance while taking into account the need to protect international trade. In the years beyond the methyl bromide production and consumption phaseout, there will continue to be an exemption for quarantine and preshipment applications but there may no longer be price pressures for moving away from these quarantine and preshipment applications of methyl bromide. Therefore, the Parties to the Protocol emphasize the importance of reviewing quarantine and preshipment applications and identifying when technically and economically feasible alternatives exist, and removing these applications from the exemption.

EPA offered several options for implementing such a review process in the interim final rule. The Agency received 5 comments related to this issue. All commenters asserted that the option to eliminate the Quarantine and Preshipment Exemption after the phaseout and ask users to apply for critical-use exemptions where no technically or economically feasible alternatives exist offered by EPA in the interim final rule was contrary to the provisions of the Montreal Protocol and could not be pursued without an amendment to the agreement. Given the request by the Parties for a future contraction of the Quarantine and Preshipment Exemption, EPA does not agree that the Protocol prohibits such a course of action. However, the Agency agrees that this option may impose the burden of completing a Critical Use Exemption Application on users where it may not be necessary. Thus, with this action, EPA sets forth its intent to meet the Parties' request for a domestic review process for quarantine and preshipment applications of methyl bromide by establishing a procedure for excluding specific quarantine and preshipment applications from the exemption when EPA determines by notice and comment rulemaking that alternatives are in significant international use for the specific applications. In undertaking the process of notice and comment rulemaking, EPA will consult with USDA/APHIS regarding alternatives that are efficacious for quarantine and preshipment and are in significant international use for specific quarantine and preshipment applications. Such a notice and comment rulemaking process will allow U.S. users of methyl bromide for quarantine and preshipment applications to make the case that although alternative(s) are in significant international use, the specific circumstances of their U.S. applications are unique (*e.g.*, the alternatives are not feasible or commercially available in the U.S.) and continue to warrant the use of methyl bromide.

EPA considered relying on market prices to guide methyl bromide use as an alternative to the formal review process described above. However, the Agency was unable to gather adequate information to determine whether the price of methyl bromide would be sufficiently likely to provide an incentive for the development and use of alternatives. Without adequate economic analysis, the Agency is unable to rely on market forces to meet the U.S.'s international commitment.

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

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

After the phaseout on January 1, 2005, critical-use exemptions are permitted under the Montreal Protocol and the Clean Air Act when nominated by the United States and approved by the Parties. In addition, an emergency use exemption of no more than 20 metric tonnes is available after the phaseout on January 1, 2005. In 2001, EPA initiated stakeholder meetings to develop a process for an emergency use exemption and for critical use exemptions, which is designed to ensure that the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. On May 10, 2002 EPA published a **Federal Register** document (67 FR 31798) asking for people to submit Critical Use Exemption Applications. At this time no final decision has been published regarding what uses will be exempted as ''critical.'' Sometime in advance of 2005, EPA will establish a process for an emergency use exemption through notice and comment rulemaking.

X. Administrative Requirements

A. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule imposes no enforceable duty on any

State, local, or tribal government. The recordkeeping and reporting requirements are the only mandates imposed on those members of the private sector that choose to take advantage of the exemption to the methyl bromide phaseout established by this rulemaking, which EPA calculated to be under $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

B. Regulatory Flexibility Analysis

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

Type of enterprise	NAICS Code	Size standard (number of employees)	Size standard (millions of dollars)
Pesticide and Other Agricultural Chemical Manufacturing	32532	500	.....
Support Activities for Agriculture and Forestry	115	.....	$6.0
Exterminating and Pest Control Services	56171	.....	$6.0

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that although some small percentage of distributors may be small entities and many of the applicators are too, that all entities regulated by today's action receive a benefit through the exemption, which allows them to continue to obtain quantities of methyl bromide outside of the reduction schedule and phaseout controls. We estimate that these benefits are equal to approximately 7 to 10% of the U.S. baseline of methyl bromide, annually, or about 1,787 to 2,552 metric tonnes, which at current prices for methyl bromide of approximately $3.00/pound would be equal to an estimated annual benefit of $12 to $17 million. The costs of this exemption arise from the limited recordkeeping and reporting requirements which are estimated to be less than $53 thousand per year for the entire industry that uses methyl bromide for quarantine and preshipment applications.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA held several stakeholder meetings to explore options for establishing a reasonable record keeping and reporting system that would allow the Agency to monitor and collect information for the U.S. reporting obligations to the Montreal Protocol. One option considered would have asked for certifications from applicators to be submitted to producers or importers prior to exempted production or import. This and other options were not only administratively too burdensome, but would also be too disruptive of normal commerce. In today's action, for each level in the methyl bromide market chain, the Agency chose the least burdensome method for collecting the minimum amount of information that would allow the U.S. to accurately fulfill its Protocol reporting requirements.

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

D. Applicability of Executive Order 13045 (Children's Health Protection)

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements a specific exemption set forth by Congress in section 604(d)(5) of the Clean Air Act.

E. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule for three years under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* The OMB control number is 2060–0170.

In relation to the expected benefits of today's exemption from the phaseout schedule for methyl bromide, this action is maintaining the additional reporting and record keeping requirements required in the interim final rule. This action requires reporting by distributors of methyl bromide regarding the total quantity sold that is certified to be solely for quarantine and preshipment applications. This action also requires applicators of methyl bromide to certify that specified quantities purchased will be used solely for quarantine and preshipment applications. Producers and importers of methyl bromide must include additional information in existing quarterly reports. As in the interim final rule, producers that export and third-party exporters must submit additional information regarding quantities of methyl bromide exported for quarantine and preshipment applications. Today's action also maintains the record keeping requirements of the interim final rule associated with the reporting listed above and for commodity owners or shippers who must formally request methyl bromide use citing the official control or official requirement for the quarantine and preshipment application.

EPA is making the reporting forms associated with this rule available electronically, as a first step. In addition, EPA is working to make it possible for people to complete the forms electronically with special guidance on a ''file naming protocol.'' EPA wants to create this ''file naming protocol'' so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. For example, the company, Acme Ltd., might complete the third-quarter importer's report electronically and save the document with the name 3Q—ImpR—Acme and send it, by email, to EPA. The Agency believes guidance on a ''file naming protocol'' will ease the process for electronically filing, searching and identifying forms for both the Agency and companies, and be especially helpful if a question arises about information in a specific form. EPA will strive to have forms available that can be completed electronically by the regulatory deadline for submission of the first-quarter reports (30 days after the end of the quarter in 2003), and will make every effort to have them available no later than for submission of second-quarter reports. Concurrent with the process for making it possible to electronically complete forms for submission by email, EPA is pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. If EPA deems that it is feasible and efficient to create a secure Web-based database for direct electronic reporting, then EPA will work to bring such a system online by 2004.

The information collection under this action is designed to implement the exemption in paragraph 6 under article 2H of the Montreal Protocol for quantities of methyl bromide used for quarantine and preshipment applications as well as the exemption under 604(d)(5) of the CAA. The information collection under this rule is authorized under section 603(b) and 603(d) of the CAA. This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614. The reporting requirements included in this rule are intended to: (1) Allow exempted production and import for a specific exemption and the consequent tracking of that production and import; (2) respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies; (3) satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7; (4) fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 for reporting and monitoring; and (5) provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in section 603(d) of Title VI of the CAA.

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

The information collection requirements for this action have an estimated reporting burden averaging 1.38 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information. The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of reports.

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

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

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producers & Importers Report	4	4	16	1	16
Exporters Report	2	4	8	8	64
Applicator Certification	15	6	90	0.5	45
Distributor Report	15	4	60	4	240
Commodity Owner, Shipper or Agent Record keeping	500	10	500	1	500
Total burden hrs					865

F. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. There is no enforceable mandate imposed on tribal governments within this regulation. Thus, Executive Order 13175 does not apply to this rule.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

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

XI. Congressional Review

A. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating that rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective January 1, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: December 23, 2002.

Christine Todd Whitman,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

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

§ 82.3 Definitions.

As used in this subpart, the term:

Applicator means the person who applies methyl bromide.

* * * * *

Commodity Owner, Shipper or their Agent means the person requesting that an applicator use methyl bromide for quarantine or preshipment applications.

* * * * *

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

* * * * *

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

* * * * *

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

* * * * *

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

redesignating (k) as (k)(1) and republishing the text, and adding (k)(2) as follows:

§ 82.4 Prohibitions.

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

(2) Effective January 1, 2003, production of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (a)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

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

(2) Effective January 1, 2003, production and import of class I, Group VI controlled substances is not subject to the prohibitions in paragraph(c)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

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

(2) Notwithstanding paragraph (k)(1) of this section, effective January 1, 2003, for class I, Group VI controlled substances, consumption allowances are not required to import quantities solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

4. Section 82.13 is amended by:

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

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

c. Revising paragraph (h),

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

The revisions and additions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

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

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

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

(3) * * *

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

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

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

* * * * *

(g) * * *

(1) * * *

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

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

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

* * * * *

(4) * * *

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

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

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

(h) Reporting Requirements—Exporters.

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

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

(ii) The exporter's Employee Identification Number;

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

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

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

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

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

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

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

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

(ii) The exporter's Employee Identification Number;

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

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

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

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

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

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, the destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this subpart.

* * * * *

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

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

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

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

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

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

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

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

VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and preshipment applications as defined in this subpart.

(cc) Every commodity owner, shipper or their agent requesting an applicator to use a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this subpart and citing the regulatory requirement that justifies the use of the class I, Group VI controlled substance in accordance with definitions in this subpart. The record must include the following statement: ''I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements.''

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