Conference Rooms C and D, 61 Forsyth Street SW., Atlanta, GA 30303–8960; telephone (800) 241–1754. For the Atlanta, GA, hearing, visitors must go through the metal detector, sign in with the security desk, be accompanied by an employee, and will need to show photo identification to enter the building.

The three public hearings will convene at 9 a.m. and continue until 8 p.m. (local time). EPA will make every effort to accommodate all speakers that arrive and register before 8 p.m. A lunch break is scheduled from 12:30 p.m. until 2 p.m. and a dinner break is scheduled from 5 p.m. until 6:30 p.m. during the hearings. The EPA Web Site for the rulemaking, which includes the proposal and information about the public hearings, can be found at: *http://www.epa.gov/airquality/powerplanttoxics/actions.html.*

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Garrett, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (D243–01), Research Triangle Park, NC 27711, telephone (919) 541–7966, fax number (919) 541–5450, *e-mail address: garrett.pamela@epa.gov* (preferred method for registering), no later than 2 business days prior to each public hearing. The last day to register will be close-of-business Thursday, May 19, 2011, for the Chicago, IL, and Philadelphia, PA, hearings, and Monday, May 23, 2011, for the Atlanta, GA, hearing. If using e-mail, please provide the following information: Time you wish to speak (morning, afternoon, evening), name, affiliation, address, e-mail address, and telephone and fax numbers.

Questions concerning the May 3, 2011, proposed rule should be addressed to Mr. William Maxwell, U.S. EPA, Office of Air Quality Planning and Standards, Energy Strategies Group, (D243–01), Research Triangle Park, N.C. 27711, telephone number (919) 541–5430, e-mail at *maxwell.bill@epa.gov* for the NESHAP and Mr. Christian Fellner, U.S. EPA, Office of Air Quality Planning and Standards, Energy Strategies Group, (D243–01), Research Triangle Park, N.C. 27711, telephone number (919) 541–4003, e-mail at *fellner.christian@epa.gov* for the NSPS.

Public hearing: The proposal for which EPA is holding the public hearings was published in the **Federal Register** on May 3, 2011 and is available at: *http://www.epa.gov/airquality/powerplanttoxics/actions.html* or *http://www.epa.gov/ttn/atw/utility/utilitypg.html* and also in the docket identified below. The public hearings will provide interested parties the opportunity to present oral comments regarding EPA's proposed NESHAP standards, including data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Garrett if they will need specific equipment, or if there are other special needs related to providing comments at the hearings. EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail or CD) or in hard copy form.

The hearing schedules, including lists of speakers, will be posted on EPA's Web Sites *http://www.epa.gov/airquality/powerplanttoxics/actions.html* or *http://www.epa.gov/ttn/atw/utility/utilitypg.html.* Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule.

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

The EPA has established a docket for the proposed rule "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" under No. EPA–HQ–OAR–2011–0044 (NSPS action) or Docket ID No. EPA–HQ–OAR–2009–0234 (NESHAP action) (available at *http://www.regulations.gov*).

List of Subjects in 40 CFR Parts 60 and 63

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

Dated: April 25, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–10283 Filed 4–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0321; FRL–9300–3]

RIN 2060–AP92

Protection of Stratospheric Ozone: The 2011 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing uses that qualify for the 2011 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2011. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-First Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by May 31, 2011. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on May 3, 2011. If a hearing is requested it will be held on May 13, 2011 and comments will be due to the Agency June 13, 2011. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *http://www.epa.gov/ozone/strathome.html.* Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0321, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket EPA–HQ–OAR–2008–0321, Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* Docket EPA–HQ–OAR–2008–0321, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0321. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2011. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2011 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2011.

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I. General Information

A. Regulated Entities

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

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

B. What should I consider when preparing my comments?

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

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

• Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date, and page number).

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

II. What is methyl bromide?

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

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

III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under Sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with Section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances."

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

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

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

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") that established the

framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the control periods from 2006 to 2010. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2011 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action on critical uses for 2011 reflects Decision XXI/11, taken at the Twenty-First Meeting of the Parties in November 2009. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule on critical uses for 2011, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What is the critical use exemption process?

A. Background of the Process

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

In response to EPA's request for critical use exemption applications published in the **Federal Register** on May 2, 2008 (73 FR 24282), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency is proposing to exempt for critical uses and the uses that the Agency is proposing as approved critical uses.

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

On January 23, 2009, the U.S. Government (USG) submitted the seventh *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2011 critical uses. In February 2009, MBTOC sent two sets of questions to the USG concerning technical and economic issues in the 2011 nomination, one for post-harvest uses and one for pre-plant uses. The USG transmitted responses to MBTOC on April 10, 2009. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

B. How does this proposed rule relate to previous critical use exemption rules?

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

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

Today's action proposes to utilize the existing regulatory framework to determine critical uses for 2011 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. A CSA is the right granted through 40

CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

The critical uses that EPA is proposing to approve as 2011 critical uses are the uses included in the USG's seventh CUN and authorized by the Parties in Decision XXI/11. EPA is utilizing the existing regulatory framework for critical uses. This framework is discussed in Section V.D.1 of the preamble.

C. Proposed Critical Uses

In Decision XXI/11, taken in November 2009, the Parties to the Protocol agreed "to permit, for the agreed critical use categories for 2011 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2011 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *"

The following uses are those set forth in table C of the annex to Decision XXI/11 for the United States:

- Commodities
- NPMA food processing structures (cocoa beans removed) [1]
- Mills and processors
- Dried cured pork
- Cucurbits
- Eggplant—field
- Forest nursery seedlings
- Nursery stock—fruit, nut, flower
- Orchard replant
- Ornamentals
- Peppers—field
- Strawberries—field
- Strawberry runners
- Tomatoes—field
- Sweet potato slips

The Decision XXI/11 critical use levels for 2011 total 2,055,200 kilograms (kg), which is equivalent to 8.1% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses in Table D of Decision XXI/11 is 1,855,200 kg (7.3% of baseline), minus available stocks.

EPA is proposing a total critical use exemption in 2011 of 1,982,333 kg (7.8% of baseline) with new production or import of methyl bromide for critical uses up to 1,500,000 kg (5.9% of baseline), and with up to 482,333 kg (1.9% of baseline) coming from pre-phaseout inventory (*i.e.,* stocks).

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and seeks information regarding changes to the registration or use of alternatives that have transpired after the 2011 U.S. nomination was written. Specifically, California has recently registered Iodomethane and EPA has recently registered DMDS. EPA is unable to estimate uptake of Iodomethane in California due to uncertainties created by the California label, specifically impacts of larger buffer zones and the lack of efficacy studies at the California label's lower use rates. Second, each state must register DMDS before that alternative may be used in that state. None of the states where critical use methyl bromide is used have registered DMDS, though EPA anticipates that states will likely do so. While EPA is not proposing a specific amount of reduction to account for the uptake of these alternatives, EPA will consider new data received during the comment period. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic feasibility" change. Comments on the technical data contained in the nomination or new information could potentially alter the Agency's analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The Agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the Agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties.

EPA is also proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXI/11. The Agency is amending the table of critical uses based in part on the technical analysis contained in the 2011 U.S. nomination that assesses data submitted by applicants to the CUE program. EPA is proposing to remove ornamental growers in New York. MBTOC did not recommend this use for 2011, concluding that alternatives are available for replacing methyl bromide use in *Anemone coronaria.* The Parties did not authorize this use. EPA agrees with the Parties' conclusion, and proposes not to list this use as critical for 2011. Second, EPA is proposing to remove Michigan cucurbit growers, Michigan eggplant growers, Michigan ornamental growers (specifically, herbaceous perennial growers), Michigan tomato growers, Michigan pepper growers, and members of the Western Raspberry Nursery Consortium operating in Washington State. These users did not submit applications and were not part of the CUN. The Parties have not authorized them as critical uses for 2011, and EPA proposes not to list this use as critical for this control period. EPA seeks comment on these proposed changes to Appendix L.

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

D. Proposed Critical Use Amounts

Table C of the annex to Decision XXI/11 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorized critical use for 2010 is 2,055,200 kg, which is equivalent to 8.1% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of authorized new production or import authorized by the Parties is 1,855,200 kg (7.3% of baseline) as set forth in Table D of the annex to Decision XXI/11. The difference between the total authorized amount and the authorized amount of new production is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory. This difference is 200,000 kg (0.8% of baseline). EPA is proposing to allocate 482,333 kg (1.9% of baseline) of existing pre-phaseout inventory for critical uses in 2011. EPA is also proposing to exempt limited amounts of new production and import of methyl bromide for critical uses for 2011 in the amount of 1,500,000 kg (5.9% of baseline).

EPA has calculated the proposed allocation amounts differently than in past CUE allocation rulemakings. Initially, EPA used the "available stocks" methodology to calculate the allocation amounts for new production/import and stocks. As described in previous CUE allocation rules, one of

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods.

the inputs to this methodology is the previous year's inventory drawdown. Consistent with past practice, EPA prepared an estimate of the pre-phaseout inventory on December 31, 2010.

Due to the timing of the 2011 CUE rulemaking, EPA issued a No Action Assurance letter December 22, 2010, to allow Critical Use Allowance holders to continue producing and importing methyl bromide beyond December 31, 2010, in the absence of allowances, subject to certain conditions. The amounts authorized in the December 22, 2010, letter, and a subsequent clarification letter dated January 13, 2011, were based on the estimates of the 2010 inventory drawdown. Specifically, EPA clarified that producers and importers "may assume that the allocations for production and import will equal at least 1,500 MT." Following the development of the No Action Assurance letter, companies submitted end of year reports to EPA detailing how much pre-phaseout inventory they held on December 31, 2010. These data show that the amount of pre-phaseout inventory is larger than the estimated amounts that formed the basis of the No Action Assurance letter. If EPA were to use these data in the existing methodology for calculating "available stocks," this would result in more "available stocks" and fewer allowances for new production or import as compared to the December 2010–January 2011 estimates. However, because regulated entities have been acting on the estimate developed for the No Action Assurance letter in good faith, EPA believes it would be inappropriate to propose less than the amount provided for in the No Action Assurance letter, as clarified by the January 2011 letter. Therefore, EPA is proposing to allocate 1,500,000 kg for new production and import. EPA is also proposing a critical stock allowance allocation of 482,333 kg. Together the total allocation equals 1,982,333 kg. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from pre-phaseout inventory for critical uses. In addition, EPA is taking comment on how to account for the fact that the proposed critical-use allowance allocation of 1,500,000 kg is greater than what would be allocated if it were based on the "available stocks" calculation using end of year inventory data. One possibility is that EPA could reduce critical-use allowances for new production and import in the 2012 allocation rule. More information on the available stocks calculation and the estimate that preceded it is available in the docket for this rulemaking.

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

Paragraphs 2 and 6 of Decision XXI/11 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2011 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the Agency solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

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

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

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

As discussed in the 2010 CUE Rule, EPA is no longer making an additional reduction to new production to account for approved research amounts. In the 2011 CUN, as in the 2010 CUN, the USG did not nominate a separate, additional amount specifically for research purposes; thus, EPA is not proposing to adjust the production level to subtract this amount. The nomination was again broad enough to cover both research and non-research uses. As discussed in the 2010 CUE rule, research is a key element of the critical use process. EPA therefore is retaining research on the critical use crops shown in the table in Appendix L to subpart A as a critical use of methyl bromide. Therefore, researchers may continue to use newly produced methyl bromide, as well as pre-phaseout inventory purchased through the expenditure of CSAs, for field studies requiring the use of methyl bromide.

F. Emissions Minimization

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

through the use of recapture technologies.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is proposing to allocate 2011 critical use allowances for new production or import of methyl bromide up to the amount of 1,500,000 kg (5.9% of baseline) as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). EPA is seeking comment on the total levels and allocations of exempted new production or import for pre-plant and post-harvest critical uses in 2011. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The proposed CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

Paragraph three of Decision XXI/11 states "that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision." This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

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

H. Critical Stock Allowance Allocations

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (CSAs) and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these basic CSA provisions.

Previous decisions further addressed pre-phaseout inventory of methyl bromide. For example, Decision XX/5 states "that a Party with a critical use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available." In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties. In each of the subsequent CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2010 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to "permit" a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level, or any level, of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency "may" create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is "available" for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that "production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks." Previous decisions refer to use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXI/11 further reinforces this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

EPA is proposing to allocate CSAs to the entities shown in the proposed table for the 2011 control period in the amount of 482,333 kg (1.9% of baseline). EPA proposes to update the table by incorporating information from recent mergers. Therefore, EPA proposes to list a single entry for Royster Clark, UAP Southeast (NC), and UAP Southeast (SC) called Crop Production Services. The CSA allocation for Crop Production Services would be the sum of the three allocations that would have gone to Royster Clark and the two UAP Southeast entities.

EPA's proposed allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding

company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

I. Stocks of Methyl Bromide

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

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2010 was 3,062,674 kg. The Agency continues to closely monitor CUA and CSA data. End of year reporting shows that the inventory at the beginning of 2011 was 1,802,705 kg. Given this amount, EPA believes there is sufficient inventory to allocate 482,333 kg as critical stock allowances. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

As explained in the 2008 CUE Rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2009 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon Farming 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes. 0173—Tree Nuts. 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning).		$7 million.
	311211—Flour Milling	2041—Flour and Other Grain Mill Products.	500 employees.

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

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2008 down to 2,000 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would exempt methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is expected to primarily affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

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

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

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

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

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

I. National Technology Transfer and Advancement Act

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

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

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

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

List of Subjects in 40 CFR Part 82

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

Dated: April 22, 2011.

Lisa P. Jackson,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

2. Section 82.8 is amended as follows:

a. By revising the table in paragraph (c)(1);

b. By revising paragraph (c)(2) including the table.

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

* * * * *

(c) * * *

(1) * * *

Company	2011 Critical use allowances for pre-plant uses (kilograms)	2011 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	839,966	71,584
Albemarle Corp	345,413	29,437
ICL–IP America	190,883	12,267
TriCal, Inc	5,943	507
Total **	1,382,206	117,794

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

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

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2011 on a pro-rata basis in relation to the inventory held by each.

Company
Albemarle.
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products.
Chemtura Corp.
Crop Production Services.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail.
Hy Yield Products.
ICL-IP America.
Industrial Fumigant Company.
Pacific Ag Supplies Inc.
Pest Fog Sales Corp.
Prosource One.
Reddick Fumigants.
Trical Inc.
Trident Agricultural Products.
Univar.
Western Fumigation.
Total—482,333 kilograms.

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

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2011 Control Period

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

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

Column A	Column B	Column C
Dry Cured Pork Products	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0062; 92210–1117–0000–B4]

RIN 1018–AW85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the October 21, 2009, proposed designation of revised critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (shrew) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of revised critical habitat for the shrew and an amended required determinations section of the proposed rule. We are reopening the comment period for an additional 60 days to allow all interested parties an opportunity to comment simultaneously on the proposed revised critical habitat designation, the associated DEA, and the amended required determinations section. We also announce a public hearing; the public is invited to review and comment on the proposed revised critical habitat designation at the public hearing or in writing. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written Comments:* We will consider comments received on or before June 27, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

Public Hearing: We will hold the public hearing on June 8, 2011. The first hearing session will start at 1 p.m. Pacific Time with doors opening at 12:30, and the second session at 6 p.m. with doors opening at 5:30.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2009–0062, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2009–0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Public Hearing: We will hold the public hearing at the Doubletree Hotel, 3100 Camino Del Rio Court, Bakersfield, California.

We will post all comments and the public hearing transcript on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone (916) 414–6600; or by facsimile (916) 414–6713. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of revised critical habitat for the Buena Vista Lake shrew that we published in the **Federal Register** on October 21, 2009 (74 FR 53999), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Buena Vista Lake shrew, including the locations of any additional populations of this species that would help us further refine boundaries of critical habitat;

(b) The amount and distribution of Buena Vista Lake shrew habitat, including areas that provide habitat for the shrew that we did not discuss in the proposed revised critical habitat rule;

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation, and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species, and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the