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Protection of Stratospheric Ozone: The 2006 Critical Use Exemption From the Phaseout of Methyl Bromide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7990–1]

RIN 2060–AN18

Protection of Stratospheric Ozone: The 2006 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing an exemption to the phaseout of methyl bromide production and import for 2006 critical uses. Specifically, EPA is proposing uses that will qualify for the 2006 critical use exemption, and the amount of methyl bromide that may be produced, imported, or made available from stocks for those uses in 2006. EPA's action is taken under the authority of the Clean Air Act and reflects recent consensus Decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) at the 16th Meeting of the Parties (MOP) and the 2nd Extraordinary Meeting of the Parties (ExMOP). EPA is seeking comment on both the list of critical uses, and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Written comments on this proposed rule must be received on or before November 28, 2005, except as otherwise noted in this paragraph. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on November 7, 2005. If a hearing is requested it will be held on November 14, 2005. If a hearing is held, any party may submit follow-up comments in the form of rebuttal or supplementary information, but such comments must be received on or before December 12, 2005. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing. Whether or not a hearing is held, if data relevant to the critical use exemption level is received on or before November 28, 2005, any party may submit follow-up comments regarding such data, but such comments must be received on or before December 12, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in Edocket (RME) ID No. OAR–2005–0122, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
3. E-mail: *A-and-R-docket@epa.gov.*
4. Fax: (202) 343–2337, attn: Marta Montoro.
5. Mail: ''OAR–2005–0122'', Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
6. Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to OAR–2005–0122. 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.epa.gov/edocket,* 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are ''anonymous access'' systems, 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 EDOCKET or 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.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Marta Montoro by telephone at (202) 343–9321, or by e-mail at *mebr.allocation@epa.gov* or by mail at Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act restrictions on the consumption, production and on the use of methyl bromide (class I, Group VI controlled substance) for critical uses during the calendar year of 2006. Under the Clean Air Act, methyl bromide consumption and production was phased out on January 1, 2005 apart from allowable exemptions, namely the critical use exemption and the quarantine and pre-shipment exemption. With today's action, EPA is proposing and seeking comment on the uses that will qualify for the 2006 critical use exemption, as well as specific amounts of methyl bromide that may be produced, imported, or made available from stocks for proposed critical uses in 2006.

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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:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide, *e.g.* farmers of vegetable crops, fruits and seedlings; and owners of stored food commodities and structures such as grain mills and processors, Government and non-government researchers.

The above table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is aware could potentially be regulated by this proposed action. To determine whether your facility, company, business, or organization is regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR 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 CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Electronic Air Docket ID No. OAR–2005–0122. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA West, 1301 Constitution Ave. 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, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. EPA prefers that you use the electronic EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments and access the index listing of the contents of the official public docket. To locate the docket on EPA's docket Web site, select ''search,'' then key in the appropriate docket identification number, in this case OAR–2005–0122.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, will not be included in the official public docket and will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

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

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone depleting substances can be found at 40 CFR part 82 subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). 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 new regulations to implement this legislation and has made several amendments to the regulations since that time.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide 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 on the phaseout schedule for methyl bromide 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).

The phaseout schedule for methyl bromide production and consumption was revised in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751) with an interim final rule and with a final rule (68 FR 238) on January 2, 2003. 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.unep.org/ozone* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, 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. Because of this status, a restricted use pesticide is subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this rule 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 today's 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.

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?

Methyl bromide was added to the Protocol as an ozone depleting substance in 1992 through the Copenhagen amendment to the Protocol. The Parties authorize critical use exemptions through their Decisions.

The 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 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur (58 FR 65018). This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAA 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 CAA 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.'' EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol to freeze the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting of the Parties on Copenhagen.

At their 1995 meeting, 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 the CAA of 1990 language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. 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 exemptions for critical uses. 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. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule in the **Federal Register** 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 available stocks and new production or import to meet approved critical uses. Today, EPA is proposing the uses that will qualify as approved critical uses in 2006 and the amount of the 2006 critical use exemption.

Today's proposed action reflects Decision XVI/2, taken at the Parties' Sixteenth Meeting in November 2004; and Decision Ex.II/I, taken at the Second Extraordinary Meeting of the Parties in July 2005. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decision IX/6, which sets forth criteria for review of proposed critical uses; Decision XVI/2, which approved a portion of the 2006 nominated amounts and critical-use

categories; and Decision Ex.II/I, which approved another portion of the 2006 nominated amounts for critical-use categories. For a discussion of the relationship between the relevant provisions of the CAA and Article 2H of the Protocol, and the extent to which EPA takes into account Decisions of the Parties that interpret Article 2H, refer to the December 23, 2004 FR notice (69 FR 76984–76985). Briefly, EPA regards Decisions IX/6, XVI/2, and Decision Ex.II/1 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. In today's action, EPA is following the terms of these Decisions. This will ensure consistency with the Montreal Protocol and satisfy the requirements of Section 604(d)(6) and Section 614(b) of the Clean Air Act.

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed as follows: ''for the agreed critical-use categories for 2006, set forth in section IIA to the annex to the present decision for each Party, to permit, subject to the conditions set forth in decision Ex.I/4, to the extent those conditions are applicable, the levels of production and consumption for 2006 set forth in section IIB to the annex to the present decision which are necessary to satisfy critical uses, with the understanding that additional levels of production and consumption and categories of uses may be approved by the Meeting of the Parties to the Montreal Protocol in accordance with decision IX/6.'' Section IIA of the Annex to Decision XVI/2 lists the following critical use categories for the U.S.: Cucurbits—field; dried fruit and nuts; forest nursery seedlings; nursery stock—fruit trees, raspberries, roses; strawberry runners; turfgrass; dry commodities cocoa beans; dry commodities/structures; eggplant field; mills and processors; peppers field; strawberry fruit field; tomato field; and orchard replant with a total agreed critical-use level of 6,897,680 kilograms, which is equivalent to 27% of the U.S. 1991 methyl bromide consumption baseline.

In Decision Ex.II/1, taken in July 2005, the Parties to the Protocol agreed as follows: ''for the agreed critical uses for 2006, set forth in table A of the annex to the present decision, to permit, subject to the conditions set forth in the present decision and in decision Ex. I/4, to the extent those conditions are applicable, the supplementary levels of production and consumption for 2006 set forth in table B of the annex to the present decision which are necessary to satisfy critical uses, with the understanding that additional levels and categories of uses may be approved by the Seventeenth Meeting of the Parties in accordance with decision IX/6.'' Table A of the Annex to Decision Ex.II/1 lists the following critical use categories for the U.S.: Ornamentals; dry-cured ham; dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant—field, for research only; mills and processors; peppers—field; strawberry fruit—field; tomato—field with a total agreed critical-use level of 1,117,003 kilograms, which is equivalent to 5% of the U.S. 1991 methyl bromide consumption baseline. When combined, the agreed critical-use levels for 2006 from Decision XVI/2 and from Decision Ex.II/1 total 8,074,683 kilograms, which is equivalent to 32% of the U.S. 1991 methyl bromide consumption baseline. Based, in part, on the applications underlying the U.S. 2006 nomination, the extensive review of those applications culminating in the preparation of that nomination, and the Decisions noted above, EPA is proposing to modify Columns B and C of Appendix L to 40 CFR part 82, subpart A to reflect agreed critical-use categories, locations of use, and limiting critical conditions applicable for the 2006 control period.

The question of whether, and to what extent, EPA should adjust the total critical use level agreed by the Parties for 2006 is addressed in Section E below. The question of what amount of the total should come from new production or import, and what amount should come from pre-phaseout inventories, is addressed in Section F below. For the reasons given in those sections, and based, in part, on the applications underlying the U.S. 2006 nomination, the extensive review of those applications culminating in the preparation of that nomination, and the Decisions noted above, EPA is proposing to modify the table in 40 CFR 82.8 to reflect the amount of methyl bromide that may be produced or imported, and sold from pre-phaseout inventories, for the 2006 control period.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants as to the availability of an application process for a critical use exemption to the methyl bromide phaseout. On May 23, 2005, the Agency published a notice in the **Federal Register** (68 FR 24737) announcing the deadline to apply, and directing applicants to announcements posted on EPA's methyl bromide Web site at *http://www.epa.gov/ozone/mbr.* Applicants were told they may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (*i.e.,* specific conditions which establish a critical need for methyl bromide). This process has been repeated on an annual basis since then. The critical use exemption is designed to meet the needs of methyl bromide users who do not have technically and economically feasible alternatives available to them.

The criteria for the exemption are delineated in Decision IX/6 of the Parties to the Protocol. 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.''

In response to the yearly requests for critical use exemption applications published in the **Federal Register**, applicants have provided information supporting their position that they have no technically and economically feasible alternatives to methyl bromide available to them. Applicants for the exemption have submitted information on their use of methyl bromide, on research into the use of alternatives to methyl bromide, on efforts to minimize use of methyl bromide and efforts to reduce emissions and on the specific technical and economic research results of testing alternatives to methyl bromide.

EPA's December 23, 2004, regulation describing the operational framework for the critical use exemption (69 FR 76982) established the majority of critical uses for the 2005 calendar. Today's action proposes exemptions for 2006 reflecting information that the U.S. Government submitted to the Protocol's Ozone Secretariat in its annual Nomination submission in February 2004, as approved by the Parties in July 2005. For each exemption period, EPA provides an opportunity such as this for comment on the amounts of methyl bromide that may be supplied under the critical use exemption and the end uses that may obtain this critical use methyl bromide.

The domestic review process is discussed in detail in a memo titled

''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' on EDOCKET OAR–2005–0122. Briefly, the U.S. Government reviews applications using the criteria in Decision IX/6 and creates a package for submission to the Ozone Secretariat of the Protocol (the ''critical use nomination'' or CUN). The CUNs of various countries are then reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to the Parties. These bodies make recommendations to the Parties regarding the nominations.

On February 7, 2004, the U.S. Government submitted the second U.S. Nomination for a Critical Use Exemption for Methyl Bromide to the Ozone Secretariat of the United Nations Environment Programme. This second nomination contained a supplemental request for critical methyl bromide for 2005 and the initial request for 2006. In June 2004, MBTOC sent questions to the U.S. Government concerning technical and economic issues in the nomination. The U.S. Government's response was transmitted on August 12, 2004. The U.S. submitted a revised request in conjunction with ''The U.S. Nomination for Critical Uses for Methyl Bromide in 2007 and Beyond.'' This revised request was for an additional amount of 622,053 kilograms of methyl bromide for a total of 2,844,985 kilograms of methyl bromide for the year 2006. This revised request was included in the U.S. rebuttal to MBTOC's recommendation issued in its October 2004 report. These documents, together with reports by the advisory bodies noted above, can be accessed on EDOCKET OAR–2005–0122.

B. How Does This Proposed Rulemaking Relate to Previous Rulemakings Regarding the Critical Use Exemption?

On December 23, 2004, EPA published in the **Federal Register** a Final Rule entitled, ''Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide'' (the ''Framework Rule'') (69 FR 76982). That rule established the framework for the critical use exemption in the U.S, including trading provisions and recordkeeping and reporting obligations.

The Framework Rule defines the terms ''critical use allowances'' (CUAs) and ''critical stock allowances'' (CSAs) at 40 CFR 82.3. Each allowance represents the right to produce or import, or to sell from inventory, respectively, one kilogram of methyl bromide to an approved critical use. For example, a distributor with 100 CSAs may sell 100 kilograms of stockpiled pre-phaseout methyl bromide to an approved critical use. Today's action proposes the uses that will qualify as approved critical uses for 2006 and the amount of CUAs and CSAs to be allocated for those uses. In the future, EPA will continue to undertake rulemakings that address both the approved critical uses and the amounts of methyl bromide to be allocated for critical uses in specific exemption periods.

On August 30, 2005, EPA published a direct final rule and concurrent proposal relating to supplemental critical use exemptions for 2005 (70 FR 51270). These recent notices in the **Federal Register** would establish three (3) additional uses as qualifying for the critical use exemption and permit access to critical use methyl bromide for those uses in 2005. These notices would also allocate additional CSAs for supplementary amounts of critical use methyl bromide in 2005. The additional allocations for 2005 would supplement the CUAs and CSAs previously allocated for 2005 in the **Federal Register** on December 23, 2004 (69 FR 76982). In today's proposed action, the Agency is proposing: (1) To establish the list of uses that qualify for the critical use exemption in 2006; and (2) to specify the amounts of methyl bromide that may be produced or imported, or supplied from pre-phaseout inventories, for those uses in 2006. EPA seeks comment on the proposed 2006 critical uses and the amount of methyl bromide the Agency has determined to be necessary to satisfy those uses. For detailed technical and economic information on the critical uses and the U.S. Government's justifications for why there is a critical need for exempted methyl bromide, the Agency refers commenters to the E-Docket where the U.S. nominations and additional information in the form of responses to MBTOC are available. The 2004 U.S. nomination can be found at EDOCKET OAR–2003–0017 and EDOCKET OAR–2005–0122. These are the technical documents which are the basis for the Parties' authorization of critical uses and permitted exempt production and import and which form part of the basis for this rulemaking. Reports by the Protocol's advisory bodies, the MBTOC and TEAP, as well as questions to the U.S. from MBTOC, are also available in EDOCKET OAR–2005–0122.

C. What Are the Proposed Critical Uses?

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed as follows: ''for the agreed critical-use categories for 2006, set forth in section IIA to the annex to the present decision for each Party, to permit, subject to the conditions set forth in decision Ex.I/4, to the extent those conditions are applicable, the levels of production and consumption for 2006 set forth in section IIB to the annex to the present decision which are necessary to satisfy critical uses, with the understanding that additional levels of production and consumption and categories of uses may be approved by the Meeting of the Parties to the Montreal Protocol in accordance with decision IX/6.'' Section IIA of the Annex to Decision XVI/2 lists the following critical use categories for the U.S.: Cucurbits—field; dried fruit and nuts; forest nursery seedlings; nursery stock—fruit trees, raspberries, roses; strawberry runners; turfgrass; dry commodities cocoa beans; dry commodities/structures; eggplant field; mills and processors; peppers field; strawberry fruit field; tomato field; and orchard replant with a total agreed critical-use level of 6,897,680 kilograms, which is equivalent to 27% of the U.S. 1991 methyl bromide consumption baseline.

In Decision Ex.II/1, taken in July 2005, the Parties to the Protocol agreed as follows: ''for the agreed critical uses for 2006, set forth in table A of the annex to the present decision, to permit, subject to the conditions set forth in the present decision and in decision Ex. I/4, to the extent those conditions are applicable, the supplementary levels of production and consumption for 2006 set forth in table B of the annex to the present decision which are necessary to satisfy critical uses, with the understanding that additional levels and categories of uses may be approved by the Seventeenth Meeting of the Parties in accordance with decision IX/6.'' Table A of the Annex to Decision Ex.II/1 lists the following critical use categories for the U.S.: Ornamentals; dry-cured ham; dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant—field, for research only; mills and processors; peppers—field; strawberry fruit—field; tomato—field with a total agreed critical-use level of 1,117,003 kilograms, which is equivalent to 5% of the U.S. 1991 methyl bromide consumption baseline. When combined, the agreed critical-use levels for 2006 from Decision XVI/2 and from Decision

Ex.II/1 total 8,074,683 kilograms, which is equivalent to 32% of the U.S. 1991 methyl bromide consumption baseline. Based, in part, on the applications underlying the U.S. 2006 nomination, the extensive review of those applications culminating in the preparation of that nomination, and the Decisions noted above, EPA is proposing to modify Columns B and C of Appendix L to 40 CFR part 82, subpart A to reflect agreed critical-use categories.

Under the December 23, 2004, Framework Rule (69 FR 76982), an approved critical user may obtain access to exempted production/import and limited inventories of pre-phaseout methyl bromide stocks, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses.

As set out in the Framework Rule, an approved critical user is a self-identified entity who meets the following requirements:

(1) For the applicable control period, applied to EPA for a critical use exemption or is a member of a consortium that applied to EPA for a critical use exemption for a use and location of use that was included in the U.S. nomination, authorized by a Decision of the Parties to the Montreal Protocol, and then finally determined by EPA in a notice-and-comment rulemaking to be an approved critical use, and

(2) Has an area in the applicable location of use that requires methyl bromide fumigation because the person reasonably expects that the area will be subject to a limiting critical condition (LCC) during the applicable control period.

Using these criteria, an approved critical user could be a tomato farmer in Florida whose farm is over karst topography but would not include a tomato farmer in Oklahoma even if he too has a farm over karst topography because no exemption application was filed on behalf of Oklahoma tomato farmers. Similarly, a Florida tomato farmer who did not have a field with karst topography, or one of the other limiting critical conditions specified in this rule, would not be an approved critical user because the circumstance of the use is not an approved critical use.

A ''limiting critical condition'' is the basis on which the critical need for methyl bromide is demonstrated and authorized. It is defined as ''the regulatory, technical, and economic circumstances * * * that establish conditions of critical use of methyl bromide in a fumigation area.'' 40 CFR 82.3. The limiting critical condition placed on a use category reflects certain regulatory, technical, or economic factors that either prohibit the use of alternatives or represent the lack of a technically or economically feasible alternative for that use or circumstance. For example, EPA may determine that a critical use exemption for tomatoes is only necessary for areas of tomato production in karst topography even if the EPA received applications for all of U.S. fresh market tomato production. In this example, not all tomato growers would be eligible to acquire exempted critical use methyl bromide. Only those growers with production in an area with the limiting critical condition of karst topography would have access to the methyl bromide under the critical use exemption. Another example is as follows: EPA received applications for exemptions for all U.S. grain milling companies that are members of the North American Milling Association (NAMA). The Parties authorized the exemption because grain milling companies have a critical need for methyl bromide because the alternatives can not be used, in part, due to corrosivity to electronic equipment. Thus, one of the limiting critical conditions for this critical use category is the presence of sensitive electronic equipment subject to corrosivity from fumigation with the alternative. All grain mills that are members of NAMA that have sensitive electronic equipment would be eligible to acquire and use critical use methyl bromide.

EPA is proposing the critical uses for the year 2006 as well as the conditions that make these uses ''critical'' based on EPA's assessment of the technical and economic feasibility of alternatives and the potential for a significant market disruption if methyl bromide were not available for the uses proposed for 2006. This proposal is based on the information submitted by CUE applicants, as well as public and proprietary data sources. The CUE applications (except to the extent claimed confidential), the U.S. nomination, the questions and answers between the MBTOC and the U.S. Government about the nomination, and procedural memos are all available on EDOCKET OAR–2005–0122. Data submitted by the CUE applicants served as a basis for the nomination. EPA and other government experts also sought data from multiple other sources, including but not limited to the National Agricultural Statistics Service of the U.S. Department of Agriculture, the State of California Department of Pesticide Regulation, and proprietary agricultural databases available to EPA. All of the CUE applications underwent a rigorous review by highly qualified technical experts. A detailed explanation of the nomination process, including the criteria used by expert reviewers, is available in a memo titled ''2003 Nomination Process'' on EDOCKET OAR–2005–0122. The memo was originally written to describe the process leading to the 2005 critical use exemption rules, but is applicable generally to the process leading to today's action.

The U.S. Government, in developing the nomination, defined the limiting critical conditions for which exempted methyl bromide was being sought. The U.S. Government used the information referenced above to determine if (a) the lack of availability of methyl bromide for a particular use would result in significant market disruption, and (b) if there were any technically and economically feasible methyl bromide substitutes available to the user. The analysis was described in the U.S. nomination of critical uses. The nomination was then sent to the Parties to the Protocol, and the Parties used the information in the nomination and the report from the MBTOC, that was based in part on the iterative exchange of questions and answers with the U.S. Government, as the basis for the Decisions which authorized critical uses.

Based on the information described above, EPA determined that the uses in Table I, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2006. However, as discussed in Section E, some of the circumstances for some of the critical use categories have changed due to recent registrations of an alternative and therefore EPA is proposing a decrease in the total CUE level for 2006. EPA welcomes submissions of additional information regarding substitutes and alternatives for any of the uses in the Table I below. EPA wishes to note that while we may, in response to comments, reduce the quantities of critical use methyl bromide, or the types of critical uses, compared to what has been authorized by the Parties, EPA will not increase the quantities, or types, beyond those authorized by the Parties.

EPA proposes, based on the determination described in the U.S. nomination and its supporting documents, that users who are in a specific geographic location, identified below, or who are members of a specific industry consortium, identified below, or companies specifically identified below, are approved critical users

provided that such users are subject to the specified limiting critical condition.

EPA notes the reference to emission minimization techniques in paragraph 6 of Decision Ex.II/1 and urges the proposed users listed in Table I. below to use ''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.'' Users of methyl bromide should make every effort to decrease overall emissions of methyl bromide by implementing measures such as the ones listed in the previous sentence, to the extent consistent with state and local laws and regulations. In addition, research is being conducted on the potential to reduce rates and emissions using high-barrier films.

TABLE I.—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	With a reasonable expectation that moderate to severe soilborne fungal disease infestation, or moderate to severe disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes.
	(b) Southeastern U.S. except Georgia limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or to a lesser extent: fungal disease infestation and root knot nematodes; or with a need for methyl bromide for research purposes.
	(c) Georgia growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe fungal disease infestation, or to a lesser extent: root knot nematodes; or with a need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe disease infestation, or restrictions on alternatives due to karst geology; or with a need for methyl bromide for research purposes.
	(b) Georgia growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes.
	(c) Michigan growers	With a reasonable expectation that moderate to severe soilborne fungal disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes.
Forest Nursery Seedlings.	(a) growers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(b) International Paper with and its subsidiaries limited to growing locations in Arkansas, Alabama, Georgia, South Carolina and Texas.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(c) Public (government owned) seedling nurseries in the states of Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia and Wisconsin.	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe weed infestation including purple and yellow nutsedge infestation, or moderate to severe Canada thistle infestation, or moderate to severe nematodes, and to a lesser extent: fungal disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina and South Carolina.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe disease infestation, and to a lesser extent: nematodes and worms.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing in Washington and Oregon.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist of could occur without methyl bromide fumigation: moderate to severe yellow nutsedge infestation, or moderate to severe fungal disease infestation.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
	(f) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe disease infestation, moderate to severe Canada thistle infestation, moderate to severe nutsedge infestation, and to a lesser extent: nematodes.
	(g) Michigan herbaceous perennials growers.	With a reasonable expectation that one or more of the following limiting critical conditions already exist or could occur without methyl bromide fumigation: moderate to severe nematodes, moderate to severe fungal disease infestation, and to a lesser extent: yellow nutsedge and other weeds infestation.
Orchard Nursery Seedlings.	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative; or with a need for methyl bromide for research purposes.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative; or with a need for methyl bromide for research purposes.
	(c) California rose nurseries	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes.
	(b) North Carolina, Tennessee and Maryland growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot, or moderate to severe root-knot nematodes, or moderate to severe yellow and purple nutsedge infestation, and to a lesser extent: crown rot; or with a need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(b) California table and raisin grape growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(c) California walnut growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(d) California almond growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
Ornamentals	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe weed infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes.
Peppers	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root, collar, crown and root rots, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes.
	(d) Georgia growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes.
	(e) Michigan growers	With a reasonable expectation that moderate to severe fungal disease infestation would occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative; or with a need for methyl bromide for research purposes.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe disease infestation, or karst topography and to a lesser extent: carolina geranium or cut-leaf evening primrose infestation; or with a need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe black root and crown rot, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes.
Tomatoes	(a) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe fungal pathogens infestation; or with a need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less, or karst topography; or with a need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
	(c) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	For the production of industry certified pure sod; with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe bermudagrass, nutsedge and off-type perennial grass infestation, or moderate to severe, or moderate to severe white grub infestation; or with a need for methyl bromide for research purposes.
POST-HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	With a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation of beetles, weevils or moths, or older structures that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For today's rule, ''pet food'' refers to domestic dog and cat food).	With a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation or beetles, moths, or cockroaches, or older structures that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(c) Kraft Foods in the U.S.	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe beetle infestation, or older structures that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed foods, herbs, spices, and dried milk).	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe beetle or moth infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates and pistachios in California.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) 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; or with a need for methyl bromide for research purposes.
Dry Cured Pork Products.	(a) Members of the National Country Ham Association.	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermested beetle or ham mite infestation.
	(b) Members of the American Association of Meat Processors.	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermested beetle or ham mite infestation.
	(c) Nahunta Pork Center (North Carolina).	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermested beetle or ham mite infestation.

D. What Are the Uses That May Obtain Methyl Bromide for Research?

The categories listed in Section F above have been designated critical uses for 2006 in Decision XVI/2 and Decision Ex.II/1 of the Parties. The amount of methyl bromide approved for research purposes is included in the amount of methyl bromide approved by the Parties for the commodities for which ''research'' is indicated as a limiting critical condition in the table above. However, the Agency is not setting aside a specific quantity of methyl bromide to be associated with research activities. Methyl bromide is needed for research purposes including experiments that require methyl bromide as a control chemical with which to compare the trial alternatives' results. EPA is proposing that the following sectors be

allowed to use methyl bromide for research purposes: cucurbits, dried fruit and nuts, nursery stock, strawberry nurseries, turfgrass, eggplant, peppers, strawberry fruit, tomatoes, and orchard replant. These are the sectors that requested methyl bromide for research in their applications to EPA.

E. What Amount of Methyl Bromide Is Necessary for Critical Uses?

In this section, EPA proposes the amount of methyl bromide that may be produced or imported for critical uses in 2006, and the amount that may be sold for critical uses from pre-phaseout inventories. Section IIB of the Annex to Decision XVI/2 lists a ''permitted level of production and consumption'' for the United States in 2006 of 6,897,680 kilograms, which is equivalent to 27% of the 1991 baseline of 25,528,270 kilograms. Table B of the Annex to Decision Ex.II/1 lists a ''permitted level of production and consumption'' for the United States in 2006 of 760,585 kilograms, which is equivalent to 3% of the 1991 baseline. When combined, the permitted level of production and consumption from the two Decisions is 7,658,265 kilograms, which is equivalent to 30% of the 1991 baseline. Paragraph 2 of Decision Ex.II/1 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 difference between those levels by using quantities of methyl bromide available from existing stocks.'' The difference between the agreed critical-use exemption level of 8,074,683 and the permitted level of production and consumption of 7,658,265 kilograms is 416,418 kilograms, which is equivalent to 2% of the 1991 baseline. In accordance with paragraph 2 of Decision Ex.II/1, this amount would come from stocks. This is the minimum amount that would come from stocks under today's proposed action. A further elaboration of proposed amounts that would come from stocks and those that would come from new production or import in 2006 is found below in Sections F and H.

With this action, the Agency is proposing that the critical use levels of methyl bromide for 2006 be slightly less than the amount authorized by the Parties because of recent registrations of an alternative to methyl bromide. As noted above, the U.S. Government submitted the nomination for 2006 critical use exemptions on February 7, 2004. The information in the U.S. nomination reflected the most up-to-date information on alternatives to methyl bromide that was available at that time of submission to the Parties in February 2004. In addition, through an iterative process of questions and answers with the MBTOC, the U.S. Government was able to provide new information about the status of methyl bromide alternatives in the United States for the nominated sectors up until the time the MBTOC issued its final report in the weeks prior to the 2nd Extraordinary Meeting of the Parties in July 2005. Since the MBTOC's final review and report on the 2006 nomination there have been two new actions in the U.S. relevant to uses included in Decision XVI/2 and Decision Ex.II/1. The most recent action, on July 15, 2005, was the issuance of an EPA rule establishing new Federal tolerance levels for residues of sulfuryl fluoride in or on commodities in food processing facilities (70 FR 40899). On this same day, EPA issued a Federal registration for these new uses of sulfuryl fluoride. The Agency understands that as many as 45 States subsequently issued State registrations allowing the use of sulfuryl fluoride for these new uses. EPA is soliciting comments on the verification of State registrations. In addition, on May 18, 2005, the State of California registered sulfuryl fluoride for use in mills, warehouses, stationary transportation vehicles (railcars, trucks, etc.), temporary and permanent fumigation chambers, and storage structures containing commodities listed on the State-approved label (cereal and small grains, dried fruit, and nuts). The State of California has not approved the label issued by EPA on July 15, 2005. The Federal label permits sulfuryl fluoride use for a wide range of food commodities, such as dried fruits, tree nuts, cereals and small grains, and processed food products. Prior to these registration actions, sulfuryl fluoride was not considered as a technically and economically feasible alternative in the U.S. nomination. The Agency proposes to reflect these changes in the circumstances of the use sectors for which there is a newly registered alternative in determining the final amount of methyl bromide deemed to be critical for 2006.

In today's action, with these recent actions regarding sulfuryl fluoride described in the preceding paragraph, EPA is estimating that there will be a fifteen percent (15%) uptake of sulfuryl fluoride in the 2006 calendar year by these newly permitted uses which would mean that the post-harvest users would use sulfuryl fluoride instead of 15% of the amount of methyl bromide for which they were authorized by the Parties for critical use exemptions in 2006. Thus, today's action proposes to reduce the amount of critical use methyl bromide by fifteen percent for those specific uses for which sulfuryl fluoride is now a newly legal alternative for use. Specifically, this means a fifteen percent reduction in the amount of critical use methyl bromide for the newly registered uses in California, such as mills, dried fruit and nuts, as well as a fifteen percent reduction in the amount of critical use methyl bromide for the sectors in the U.S. nomination that include food processing facilities, such as mills and processors. For the affected post-harvest sectors, the reduction would be from an authorized amount of 707,746 kilograms to an amount of 601,584 kilograms, which would be a reduction of no more than 0.42% of baseline. The Agency is estimating that there will be a 15% uptake of sulfuryl fluoride in 2006 by the specific uses for which there are recent registrations based on information found in MBTOC reports regarding projected uptake of sulfuryl fluoride for uses where there were previous registrations, as well as on information in the U.S. Government's nomination for 2007 critical use exemptions. In the MBTOC report the uptake estimate was for 10% for the 2005 calendar year for uses for which sulfuryl fluoride was registered in early 2004 (not including the most recent registration in California or the new Federal registration for food processing facilities). In the U.S. nomination for 2007, the uptake estimate is for 25% by all registered sulfuryl fluoride uses. EPA's estimate of a 15% uptake of sulfuryl fluoride in the 2006 calendar year falls between MBTOC's uptake number for 2005 and the U.S. nomination's uptake number for 2007. EPA notes that the estimated rate of uptake for 2007 takes into consideration that there have been 18 months of trials and potential adoption by similar facilities since the first sulfuryl fluoride registration action early in 2004 for mills, cereals and small grains, and cereal and small grain processed products. The Agency believes that new agricultural techniques are first adopted at a relatively slow rate. As more people/companies test the new technology the rate of adoption gradually increases. Given the short period of time since the most recent new registrations and tolerances, EPA believes that the specific uses associated with those new registrations and tolerances are unlikely to achieve a 25% rate of adoption during 2006. The 25% estimated rate of adoption contained in the U.S.

nomination for 2007 applies to circumstances (uses and locations) where the registrations occurred three years previously—early in 2004. Thus, with today's action EPA is seeking comments on the estimate for a 15% uptake of sulfuryl fluoride for the 2006 control period for those uses associated with the recent registration and tolerance actions, which occurred mid-year in 2005.

The Agency seeks comments on the proposed uptake of sulfuryl fluoride as an alternative to methyl bromide during 2006 and the corresponding proposed reduction in the critical use level for 2006. EPA seeks detailed data regarding sulfuryl fluoride as an alternative to methyl bromide in the circumstances of the sectors nominated and authorized for 2006 and the proposed uptake of sulfuryl fluoride in those sectors during 2006. Relevant information may include whether products in a sector are intended for export, and whether importing countries have established approvals or tolerance levels for use of sulfuryl fluoride. A person submitting detailed data on sulfuryl fluoride as a methyl bromide alternative, or data on any other post-harvest alterative to methyl bromide, should include:

- Historic information on pest control efficacy of current fumigant (trap catch data if available).
- Size and building composition of facility.
- Data from a range of geographic conditions.
- Data on methyl bromide which will be used for comparison purposes.
- Temperature data inside and outside the facilities.
- Trap catch data from before treatment and 3-, 7- and 14-working days after treatment.
- Information on differences in ''down time'' (non-operating time) at facility for methyl bromide and alternative.
- Amount of methyl bromide and alternative used in treatment.
- Price to treat a typical facility (both chemical prices and fumigation set-up and take-down costs).

The Agency recognizes that the status of other alternatives to methyl bromide may have changed since the finalization of the May 2005 MBTOC report and there may be updated comparative information regarding alternatives and methyl bromide, as well as new data on emission minimization techniques that would allow a user to obtain the same results with smaller quantities of methyl bromide. With today's action, EPA is soliciting new information on alternatives to methyl bromide and emission minimization techniques. In particular, a person submitting detailed data on pre-plant alternatives should include:

- Historic information on pest control efficacy of current fumigant.
- Data from a range of geographic conditions.
- Data on methyl bromide which will be used for comparison purposes.
- Yield and quality data for the alternative as compared to methyl bromide.
- Pest control data.
- Price to treat an acre of a given crop.

EPA will review updated data on the use of sulfuryl fluoride as compared to methyl bromide, and any other new information on alternatives or emission minimization techniques submitted in response to this notice, before promulgating the final critical use exemption level for 2006. The total critical use amount will not exceed the amount agreed by the Parties to the Protocol for 2006.

If adequate quantitative information is submitted, EPA will conduct an analysis that is similar to that conducted in the development of the U.S. nomination in which EPA's Office of Pesticide Programs reviews the quantity of methyl bromide requested by each applicant and adjusts the amounts needed where alternatives are not technically or economically feasible. Since the review associated with the development of the U.S. nomination is two years prior to the relevant year of exemption there may be specific situations where the critical need may have changed. In individual cases where new, more relevant and verifiable information becomes available after submission of the U.S. nomination, an additional ''post-hoc'' review to evaluate the technical and economic feasibility of alternatives may be warranted.

When considering the suitability of making a post-hoc assessment EPA considers two issues: First, whether any reductions been made in the nominated amount that are approved at the Meetings of the Parties to the Montreal Protocol, and second, the quality and verification of new data to support a post-hoc review.

In the post-hoc review process the amount requested would once again be the starting point for all calculations. Each sector would be reviewed on an individual application basis. The first assessment would involve the subtraction process that adjusts for: Double-counting, growth, quarantine and preshipment use, and use rate differences. Adjustments for double-counting is the estimate measured in kilograms in situations where an applicant has made a request for a CUE while a consortium has also made a request on their behalf in the consortium application. Growth is an adjustment in kilograms for amounts greater than the historical amount used. Adjustments for quarantine and preshipment (QPS) are for the kilograms that would qualify as QPS usage, which is part of a separate exemption category under the Protocol. Use rate differences are adjustments in kilograms to the lower of the historic use rate or requested use rate.

The second part of the assessment would involve the percent adjustments. Use rate adjustment is the use rate in kilograms per 1000 cubic meters expressed as the lowest of either the historic use rate, requested use rate, or efficacious use rate as indicated by either: Research reports, usage under similar pest and environmental conditions, or MBTOC maximum use rates. Key pest adjustment is for those pests that are not adequately controlled by methyl bromide alternatives. Regulatory adjustment is for those areas where the alternatives have additional regulatory constraints on their use. Adoption of new fumigants or control measures is the percent of the requested volume where alternatives could be adopted to replace methyl bromide. Combined impacts adjustments are the percent of the requested area where alternatives cannot be used due to key pest, regulatory, and current status in adoption of new fumigants. In each case the total area impacted is the conjoined area that is impacted by any of the individual impacts. The effects are assumed to be independently distributed unless contrary evidence is available.

When reviewing the adoption of new fumigants or control measures, any information on the relative efficacy of the alternative is critical. Examples of relevant information consists of: Historic information on efficacy of the current fumigant (comparative efficacy data should include methyl bromide as a standard whenever possible), size and building composition of facility being treated, data from a range of geographic conditions, temperature data from inside and outside the treated facilities, pest population data from before and after the treatments, information on down time between methyl bromide and alternatives, amounts of methyl bromide or alternative used, and the price to treat a typical facility including chemical, fumigation set-up and take down costs.

The kilogram amount recommended is calculated by multiplying the final amount after all subtractions and

multiplying it by the combined impacts adjustment.

If adequate quantitative information is not submitted, EPA will review the 15 percent uptake estimate in light of all information that the Agency holds and any new information received before the development of the final rule regarding the basis for that estimate. As noted above, the proposed 15 percent uptake of sulfuryl fluoride in 2006 for the limited number of uses for which there are recent registrations would result in an approximate reduction of the level of critical use methyl bromide for 2006 by 0.42% of the U.S. 1991 consumption baseline level.

F. What Are the Sources of Critical Use Methyl Bromide?

As discussed above and in the Framework Rule (69 FR 76982), an approved critical user may obtain access to exempted production/import of methyl bromide and to 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. In Decision XVI/2 and Decision Ex.II/1 the Parties to the Protocol authorized agreed critical-use levels for 2006 of 8,074,683 kilograms, which is equivalent to 32% of the U.S. 1991 methyl bromide consumption baseline. As noted above, paragraph 2 of Decision Ex.II/1 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 difference between those levels by using quantities of methyl bromide available from existing stocks.'' The permitted level of production and consumption of critical use methyl bromide in Decision XVI/2 and Decision Ex.II/1 is 7,658,265 kilograms which is equivalent to 30% of the U.S. 1991 consumption baseline, making the amount to come from stocks equivalent to 2% of baseline.

In developing today's action, the Agency notes that Decision XVI/2 (para. 4) contains the following language, ''each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that such procedures take into account available stocks of banked or recycled methyl bromide,'' and Decision Ex.II/1 (para. 5) contains the following slightly different language, ''each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that such procedures take into account quantities of methyl bromide available from existing stocks.''

The language in these Decisions is similar to language in Decision Ex I/3, paragraph 5. In the December 23, 2004 **Federal Register** notice establishing the framework for critical use exemptions and the critical use level for 2005, EPA interpreted paragraph 5 of Decision Ex I/3 ''as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses'' (69 FR 76987). The December 23, 2004 final rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of critical stock allowances (CSAs) and a prohibition on sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that stocks were further taken into account through the trading provisions that allow critical use allowances to be converted into critical stock allowances. Under today's proposed action, no significant changes would be made to those provisions, which would remain part of the framework for the critical use exemption and which would continue to be in accordance with Decisions of the Parties. Bearing in mind the United States' ''renewed commitment'' as stated in Decision Ex II/1, EPA is proposing an additional action based on experience with the 2005 critical use exemption. EPA is proposing to adjust the portion of critical use methyl bromide to come from exempted production or import as compared to the portion to come from stocks. With today's action, the Agency is proposing that 6,823,707 kilograms of methyl bromide, which is equivalent to 27% percent of the 1991 consumption baseline, come from new production or import, and that 1,150,824 kilograms, which is equivalent to 5% of baseline, come from pre-phaseout methyl bromide inventories. The percentage of methyl bromide proposed to come from pre-phaseout inventories is the same as the percentage that was to come from pre-phaseout inventories in the 2005 control period. To date, it does not appear that critical users have had difficulty in obtaining methyl bromide from stocks during the 2005 control period. Drawing on this experience, EPA is proposing to grant CSAs equivalent to 5% of baseline for the 2006 control period, on the assumption that users will continue to be able to access this level of stocks during 2006. There is some uncertainty in this determination, however, given that we have not come to the end of the control period, and because we anticipate that stock levels will be lower in 2006. In part because of this, EPA is proposing a safeguard to ensure that critical needs will be met should the assumption that users will be able to access this amount of stocks prove to be incorrect. EPA seeks comments on the proposed fractional portion of the 8,074,683 kilograms authorized for critical uses in 2006 that would come from pre-phaseout inventories of methyl bromide.

In developing today's proposal of the percentage that would come from new production or import as compared to the percentage that would come from pre-phaseout inventories of methyl bromide for the 2006 control period, the Agency recognizes there is still market uncertainty regarding the availability of stocks for critical uses and therefore proposes a petition process that would allow real-time responses to market conditions. The Agency is proposing a petition mechanism that will allow a critical user to demonstrate his or her inability to acquire sufficient methyl bromide from stocks. Upon receipt of a petition that meets the information criteria discussed below, EPA would review the petition and consider converting a limited number of CSAs to CUAs (up to the 30% limit agreed by the Parties to the Protocol in Decision XVI/2 and Ex.II/1). EPA believes that this petition process is warranted given the uncertainty in projecting the amount of pre-phaseout inventories that may be available for critical uses. Thus, the proposed petition process would provide an important safety mechanism for critical users.

Information To Be Submitted in Petition

EPA proposes that if you are an approved critical user who has attempted unsuccessfully to obtain methyl bromide from at least two CSA holders, you may request additional production or import of methyl bromide by submitting the following information to EPA: (a) Your name and address; (b) name of contact person and phone and fax number(s), and e-mail address; (c) the name of the organization/consortium that submitted an application for a critical use exemption and of which you are a member, (d) description of use, location and limiting critical condition qualifying for critical use methyl bromide; (e) quantity (in kilograms) of methyl bromide needed for the relevant control period and the amount acquired to date; (f) documentation or phone logs of unsuccessful attempts to place an order for a specific quantity of critical use methyl bromide with at least two

entities listed in 82.8; (g) the name, address and contract information for the distributor and the producer/importer who will be part of the adjustment transaction (converting CSAs to CUAs); (h) a letter from the distributor confirming that they hold CSAs for which they do not hold, and cannot obtain, a corresponding quantity of pre-phaseout inventories of methyl bromide; agreeing to the transfer, with EPA approval, of a specified quantity of their CSAs to an identified producer/importer for conversion to CUAs, on the condition that the producer/importer offer the distributor an opportunity to purchase a quantity of critical use methyl bromide equivalent to that produced or imported through the expenditure of the resulting CUAs; and confirming that the distributor will offer the petitioner, in turn, an opportunity to purchase the same quantity of critical use methyl bromide for critical uses; (i) a letter from the identified producer/importer agreeing to the receipt of the CSAs transferred by the distributor, requesting EPA approval to convert the CSAs to CUAs, and confirming that they will offer the distributor an opportunity to purchase a quantity of critical use methyl bromide equivalent to that produced or imported with the CUAs resulting from the transaction. The offset established in the framework rule (69 FR 76982) for trades from CUAs to CSAs would not apply to a petition for converting CUAs to CSAs. The companies involved in a petition should indicate what information they are claiming as Confidential Business Information. Information claimed as confidential will be treated in accordance with EPA's regulations on confidential business information at 40 CFR part 2 subpart B. EPA will notify petitioners of deficiencies and give them an opportunity to provide information needed to fully complete the petition. However, if petitioners do not respond to EPA's requests for additional information within 15 working days of the request and the petition remains incomplete, the petition will not be considered. A statement from a distributor that they cannot obtain stockpiled methyl bromide in a quantity corresponding to the number of CSAs they hold could be supported by on letters from local or regional suppliers indicating that stockpiled methyl bromide is unavailable.

EPA is proposing that the petitioner submit documentation for an adjustment transaction that includes a letter from a distributor certifying that they hold CSAs but do not hold corresponding supplies of pre-phaseout methyl bromide and are unable to obtain such pre-phaseout material, and that the distributor is willing to have these CSAs converted to CUAs, if authorized, in a transaction with a producer/importer. The Agency is proposing a review and authorization of the petition request to ensure there is a need for an adjustment between the amount of critical use methyl bromide from new production/import as compared with the amount from pre-phaseout inventories. In addition, the Agency must ensure that the total aggregate amount of new production/import does not exceed the limit agreed to by the Parties to the Protocol in Decision XVI/2 and Decision Ex.II/1.

EPA seeks comment on the petition requirements outlined above and has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval to collect this data. For additional information, please see Section VI.B, ''Paperwork Reduction Act.''

Deadline for Petitioning

EPA is proposing that petitions would be due no later than October 1st of the relevant control period. EPA is proposing that the period for petitioning end October 1st to allow sufficient time for the Agency's petition review and to assure the final authorization leaves enough time for the commercial transaction to occur within the control period to address concerns about the availability of critical use methyl bromide. EPA believes it is important to establish a fixed end-point for submission of petitions to give the petitions due consideration and ensure that total production and import for critical uses does not exceed the level agreed by the Parties to the Montreal Protocol for the control period. Because most of the information needed to support a petition should be readily available, EPA believes that the first three quarters of the calendar year (control period) should be sufficient time for petitioners to assess the market availability of critical use methyl bromide and collect and compile supporting documentation. Although EPA may request additional information from petitioners after the deadline of October 1st, the Agency will not consider petitions filed after these dates.

Length of Agency Review of Petitions

EPA is proposing a 30-working-day review period for petitions. If more information is needed, EPA will contact the applicant and specify the necessary information. EPA will consider the merits of each individual petition and industry-wide data on the availability and viability of alternatives. EPA retains the right to deny a petition based on information received regarding, *inter alia*, fraud, misrepresentation, inconsistency with Articles and Decisions under the Montreal Protocol, inconsistency with the CAA Amendments of 1990, or other reasons related to human health and the environment.

Notification of Petitioners

EPA will issue a letter to the petitioner, copying the distributor and producer/importer, stating whether the Agency is granting or denying the petition. Denial letters will state the reason for the denial. Within ten working working days after receipt of the denial letter, the petitioner may file a one-time appeal, with supporting reasons. EPA may affirm the denial or grant the petition based on the information provided by petitioner or other available evidence. If no appeal is taken by the tenth working day after receipt of the denial letter, the denial will be final on that day.

G. What Are the Critical Use Allowance Allocations?

EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for 2006 in the amount of 6,823,707 kilograms as shown in Table II. below. With today's action, EPA is proposing to allocate critical use allowances (CUAs) to producers and importers of methyl bromide on a pro-rata basis based on their 1991 consumption baseline levels. 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, consistent with the Framework Rule, are not bankable from one year to the next. Today's proposal for allocating the following number of pre-plant and post-harvest critical use allowances (CUAs) to the entities listed below would be 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).

As discussed in section V.(E) of the preamble to the Framework Rule (69 FR 76990), EPA issues CUAs once a year except in the instance where the Parties authorize supplemental CUEs. EPA may amend allocations in a subsequent rulemaking to allocate supplemental methyl bromide for 2006.

TABLE II.—ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2006 Critical use allowances for pre-plant uses* (kilograms)	2006 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp	3,831,117	315,974
Albemarle Corp	1,575,415	129,934
Ameribrom, Inc	870,292	129,934
TriCal, Inc	26,971	2,224
Total	6,303,796	519,910

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

EPA seeks comment on the total levels of exempted production/import for critical uses in 2006.

Paragraph four of Decision Ex. I/3, taken at the 1st Extraordinary Meeting of the Parties, stated ''that Parties should endeavor to allocate the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel as listed in annex II A to the report of the First Extraordinary Meeting of the Parties.'' Similarly, paragraph four of Decision Ex. II/1 states, ''that Parties that have an agreed critical use shall endeavor to license, permit, authorize or allocate the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel to the specific categories of use shown in table A of the annex to the present decision.'' In accordance with Decision Ex. I/3, paragraph four, and consistent with the more recent Decision, the Agency endeavored to allocate directly on a sector-by-sector basis by analyzing and proposing this option, among others, in August of 2004. In the final Framework Rule, the Agency made a reasoned decision as to the economic, environmental and practical effects of implementing the various proposed approaches, after considering public comment. In the August 25, 2004 Allocation Framework proposed rulemaking (69 FR 52366), EPA solicited comment on both universal and sector-based allocation of critical use allowances, as well as more flexible methods for determining allocations. After comments were received, it was determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that there would be significant administrative and practical difficulties associated with a sector-specific approach. EPA is not aware of any factors that would alter the analysis performed during the development of the Framework rule but seeks comment on today's proposal to allocate CUAs in the same two groupings (pre-plant and post-harvest) as was done for 2005 control period.

In developing the Framework Rule and allocating CUAs for 2005, EPA examined the economic, environmental and administrative effects of various allocation options over the projected life of the CUE exemption program. The Agency found that a universal approach would offer equal environmental protection, at less cost and with easier implementation compared to the other options, such as sector-specific allocation method. The Agency adopted a modified universal approach, separating pre-plant from post-harvest uses in order to address concerns raised by smaller, less frequent and end-of-year uses.

In addition, although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. As described in the August 25, 2004 notice of proposed rulemaking and accompanying regulatory impact analysis (E-Docket OAR–2003–0230), the Agency believes that under the Universal system, as divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP and incorporated into the Parties' Decision. EPA will continue to monitor sectoral use. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent historic use data under the current methyl bromide phaseout market. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current uses are taking place in a marketplace where all methyl bromide uses in the pre-plant and post-harvest markets compete for a lump sum. A market-based lump sum system will likely operate to mirror a sector-specific allocation over time. For the reasons stated above, EPA is not proposing to change the approach adopted in the Framework Rule for the allocation of CUAs. However, in making today's proposal, EPA endeavors to seek comments on a sector-specific allocation that would reflect groupings in the U.S. nomination that were subsequently recommended by the Technology and Economic Assessment Panel for 2006.

H. What Are the Critical Stock Allowance Allocations?

EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the control period of 2006 in the amount of 1,150,824 kilograms.

In the Framework Rule, EPA restricted access to stocks for approved critical users as a condition of obtaining new production and import (69 FR 76987–76988). EPA is not planning to change this aspect of the critical use exemption framework through today's proposed action. Decision Ex. II/1 established two distinct levels: A critical-use exemption level and a permitted level of production and consumption. It further indicates that the difference between the two levels is to be made up ''by using quantities of methyl bromide available from existing stocks.'' The higher critical-use exemption level would have no meaning if critical users were allowed continued access to pre-phaseout inventories once the combination of new production or import and sale of pre-phaseout inventories for critical uses reached that level. Therefore, despite the absence in Decision XVI/2 or Decision Ex. II/1 of the explicit use prohibition that appeared in Decision Ex. I/3, paragraph 3, EPA continues to view the previously promulgated stock restrictions as an appropriate means of ensuring that total critical use does not

exceed the level agreed to by the Parties. The Agency also believes that the restriction on access to stocks for critical users is an expression of the United States' ''renewed commitment'' to take stocks into account and that there is a likely environmental benefit to the establishment of an upper limit because it will increase the price of methyl bromide and thereby encourage the transition to alternatives in the long run.

EPA currently possesses information on existing stocks of methyl bromide that has been claimed as confidential. With regard to data for 2003, EPA has determined that the aggregate stock information is not confidential business information and may be disclosed but is currently withholding that information due to the filing of complaints by affected businesses seeking to enjoin the Agency from its release (40 CFR 2.205). EPA will continue to follow its own regulations with respect to the treatment of this information.

TABLE III.—ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company
Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corp.
Harvey Fertilizer & Gas
Helena Chemical Co.
Hendrix & Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
TOTAL—1,150,824 kilograms

I. Clarifications to the Framework Rule

EPA is proposing to clarify language in the Framework Rule regarding consecutive use of non-critical use methyl bromide and critical use methyl bromide. Under 82.13(dd), an approved critical user who purchases a quantity of critical use methyl bromide is required to certify, in part: ''I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period'' unless certain exceptions apply. This certification, by itself, would not preclude the user from using the critical-use methyl bromide for a treatment chamber, facility, or field that he or she had fumigated earlier that year with non-critical use methyl bromide purchased during an earlier control period. However, the prohibition at 82.4(p)(2)(vi) states: ''No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of appendix L) in the same control period'' unless certain exceptions apply. That prohibition does not distinguish between non-critical use methyl bromide purchased during the current control period and carryover amounts purchased during earlier control periods. Most purchases will be used in the same control period in which they are bought. However, some amounts may be bought in one control period and used in a following control period, particularly when the purchase occurs close to the end of the calendar year.

In the previous **Federal Register** notice concerning the supplemental allocation for 2005, EPA proposed to change 82.4(p)(2)(vi) so that end users who had been using non-critical use methyl bromide during the first part of 2005 would not be prevented from using critical use methyl bromide on the same field or structure for the same use if they became approved critical users as a result of that supplemental rulemaking. The proposed change would also prevent adverse consequences for end users if the main allocation rule for a particular calendar year were delayed. In that instance, end users who were designated as approved critical users by the supplemental rule would not be penalized for having used non-critical use methyl bromide prior to the effective date of the rule making a supplemental allocation.

EPA is proposing to reconcile the language in 82.4(p)(2)(vi) and 82.13(dd). EPA's preferred approach is to change the language of the certification to omit the word ''purchased'' from the sentence that begins ''I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period * * *''. This approach would put the focus on actions taken during the current control period and would provide greater clarity and simplicity by eliminating the date of purchase of non-critical use methyl bromide as an issue. The change proposed in the **Federal Register** notice for the 2005 supplemental rule would provide a safeguard in the event of an administrative delay. Because that change is still pending, EPA is also considering a change to the language of the prohibition, using the current certification language as a model. Under this alternative approach, 82.4(p)(2)(vi) would read: ''No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide, purchased during the same control period, for the same use (as defined in Columns A and B of appendix L) in the same control period'' unless certain exceptions apply. This alternative approach would employ the point of sale to the end user as a proxy for actual use, following the example of provisions in the Framework Rule that address the purchase of critical use methyl bromide. EPA is requesting comment on these and other ways to reconcile these two provisions.

J. Proposed Supplementary Critical Use Exemptions for 2006

On January 31, 2005, the U.S. Government submitted a supplemental nomination for critical use exemptions for 2006 that is equivalent to 0.02% of the 1991 U.S. baseline. The supplemental nomination for 7,070 kilograms for California dried beans was considered ''unable to assess'' by the MBTOC in their May 2005 report because of a need for clarification about the label for phosphine and the principal pest, the cowpea weevil. This supplemental nomination for 2006 will be considered by the Parties to the Protocol at their 17th Meeting in Dakar, Senegal in December 2005. The U.S. submitted additional information in August 2005 to the MBTOC responding to various questions on critical use nominations. The response included a clarification of the status of the phosphine label with regards to its use for dried beans. The MBTOC will issue another report in the fall of 2005 before the 17th Meeting. The Parties are unlikely to approve more than the amount nominated by the U.S. in this supplemental request. In anticipation of action on this supplemental nomination in December 2005, EPA is proposing to include this quantity in the critical use levels for 2006, subject to the estimate of a 15% uptake of sulfuryl fluoride due to the recent California registration. If

the Parties reach a decision that a lesser amount is appropriate, EPA will adjust the quantity accordingly in the final rule. This proposed inclusion would very slightly increase the actual amount of critical use methyl bromide allocated, without a noticeable change in the overall percentages discussed in today's action.

VI. Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory Planning and Review

Under Executive Order No. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the 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 or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has notified EPA that it considers this a ''significant regulatory action'' under Executive Order No. 12866 and EPA has submitted it to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2179.04.

The ICR pertains only to the petitioning requirements described in Section V.F. The information collection under this rule is authorized under Sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

The petition requirements included in this rule are intended, in part, to:

(1) 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;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act (CAA) for reporting and monitoring;

(3) 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 the CAA.

Critical users would only need to submit the information if they were otherwise unable to obtain methyl bromide. Section V.F contains a list of the data elements required for the petition process.

Collection activity	Number of respondents	Total number of responses	Hours per response	Total hours
Familiarization with Petition Process by end users	2,000	20	1	20
Submission of Data to EPA (Petitioner)	20	20	3	60
Submission of Letter to EPA Documenting Lack of Inventory (Distributor)	30	3	.25	.75
Submission of Letter to EPA Accepting Conversion of CSAs to CUAs (Producer/Importer)	4	2	.25	.5
Report to EPA Documenting Expended Allowances (Producer/Importer)	4	2	.25	.5
Total Burden Hours			4.75	81.75

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; search data sources; complete and review the 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 in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under E-Docket OAR–2005–0122. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 27, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by November 28, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

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 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 (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 that 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.	0171—Berry Crops	$0.75 million.
	1113—Fruit and Nut Tree Farming	0172—Grapes.	
	1114—Greenhouse, Nursery, and Floriculture Production.	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.	
Storage Uses			$6 million.
	115114—Postharvest Crop activities (except Cotton Ginning).	2041—Flour and Other Grain Mill Products.	
	311211—Flour Milling	2044—Rice Milling	$21.5 million.
	311212—Rice Milling	4221—Farm Product Warehousing and Storage.	
	493110—General Warehousing and Storage.	4225—General Warehousing and Storage.	
Distributors and Applicators	493130—Farm Product Warehousing and Storage.	0721—Crop Planting, Cultivation, and Protection.	$6 million.
Producers and Importers	115112—Soil Preparation, Planting and Cultivating.		500 employees.
	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA received requests from a comparable number of entities for the 2006 control period. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between ¼ to ⅓ of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under Section 202, 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, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop

a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. Today's action seeks comments on proposals made in accordance with obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as requirements set forth by Congress in Section 604(d)(6) of the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under Section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under Section 204.

E. Executive Order No. 13132: Federalism

Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order No. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct control costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct control costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order No. 13132. Today's 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 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 rule from State and local officials.

F. Executive Order No. 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order No. 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 proposed rule does not have tribal implications, as specified in Executive Order No. 13175. Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this proposed rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order No. 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 proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order No. 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order No. 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. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law. No. 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 is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to

identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 82

Environmental protection; Environmental treaty; Montreal Protocol on Substances that Deplete the Ozone Layer; Ozone depletion; Methyl bromide; Chemicals; Exports, Imports, Production, Reporting and recordkeeping requirements.

Dated: October 21, 2005.

Stephen L. Johnson,

Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

2. Section 82.8 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

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

* * * * *

(c) * * *

(1) Allocated critical use allowances granted for specified control period.

Company	2006 Critical use allowances for pre-plant* (kilograms)	2006 Critical uses allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp	3,831,117	315,974
Albemarle Corp	1,575,415	129,934
Ameribrom, Inc	870,292	129,934
TriCal, Inc	26,971	2,224
Total	6,303,796	519,910

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

(2) Allocated critical stock allowances granted for specified control period.

Company
Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corp.
Harvey Fertilizer & Gas
Helena Chemical Co.
Hendrix & Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
TOTAL—1,150,824 kilograms

3. Section 82.13 is amended by revising paragraph (dd) and adding paragraph (ee) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(dd) Every approved critical user purchasing an amount of critical use methyl bromide or purchasing fumigation services with critical use methyl bromide must, for each request, identify the use as a critical use and certify being an approved critical users. The approved critical user certification will state, in part: I certify, under penalty of law, ''I am an approved critical user and I will use this quantity of methyl bromide for an approved critical use. My action conforms to the requirements associated with the critical use exemption published in 40 CFR part 82. I am aware that any agricultural commodity within a treatment chamber, facility or field I fumigate with critical use methyl bromide cannot subsequently or concurrently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS exemption or a treatment for a different use (*e.g.*, a different crop or commodity). I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment for a different use (*e.g.*, a different crop or commodity), unless a local township limit now prevents me from using methyl bromide alternatives or I have now become an approved critical user as a result of rulemaking.'' The certification will also indicate that type of critical use methyl bromide purchased, the acreage/square footage treated and will be signed and dated by the approved critical user.

(ee) Petition Process for Critical Use Methyl Bromide.

(1) By October 1 of the relevant control period, an approved critical user may petition the Director of the Office of Atmospheric Programs to convert a quantity of critical stock allowances held by an identified distributor to critical use allowances to be expended by an identified producer/importer. The approved critical user, or a consortium acting on the user's behalf, must submit the following information. The entities that provide information to be included in a petition should indicate what information they are claiming as confidential business information. Information claimed as confidential will be treated in accordance with EPA's regulations on confidential business information at 40 CFR part 2, subpart B.

(i) Name and address;

(ii) Name of contact person and phone and fax number(s), and e-mail address;

(iii) The name of the organization/consortium that submitted an application for a critical use exemption and of which the approved critical user is a member;

(iv) Description of use, location and limiting critical condition qualifying for critical use methyl bromide;

(v) Quantity (in kilograms) of methyl bromide needed for the relevant control period and the amount acquired to date;

(vi) Documentation or phone logs of unsuccessful attempts to place an order for a specific quantity of critical use

methyl bromide with at least two entities listed in 82.8;

(vii) The name, address and contact information for the distributor and the producer/importer who will be part of the adjustment transaction (converting critical stock allowances (CSAs) to critical use allowances (CUAs));

(viii) A letter from the distributor confirming that they hold critical stock allowances (CSAs) for which they do not hold, and cannot obtain, a corresponding quantity of pre-phaseout inventories of methyl bromide; agreeing to the transfer, with EPA approval, of a specified quantity of their critical stock allowances (CSAs) to an identified producer/importer for conversion to critical use allowances (CUAs), on the condition that the producer/importer offer the distributor an opportunity to purchase a quantity of critical use methyl bromide equivalent to that produced or imported through the expenditure of the resulting critical use allowances (CUAs); and confirming that the distributor will offer the petitioner, in turn, an opportunity to purchase the same quantity of critical use methyl bromide for critical uses;

(ix) A letter from the identified producer/importer agreeing to the receipt of the critical stock allowances (CSAs) transferred by the distributor, requesting EPA approval to convert the critical stock allowances (CSAs) to critical use allowances (CUAs), and confirming that they will offer the distributor an opportunity to purchase a quantity of critical use methyl bromide equivalent to that produced or imported with the critical use allowances (CUAs) resulting from the transaction.

(2) If the Director of the Office of Atmospheric Programs notifies the petitioner of deficiencies in the submitted information, the petitioner will have 15 working days to submit the missing information. If the petitioner does not submit the missing information within the 15 working days, the Director of the Office of Atmospheric Programs will not further consider the petition.

(3) Within 30 working days of receipt of a fully complete petition, the Director of the Office of Atmospheric Programs will issue a letter to the petitioner, and copies to the distributor and producer/importer identified as being involved in the transaction, either granting or denying the petition. The Director of the Office of Atmospheric Programs will consider the information received in accordance with paragraph (ee)(1) of this section and other available information such as the availability and technical and economic feasibility of stockpiles and the industry-wide progress on implementing alternatives. The Director of the Office of Atmospheric Programs may deny a petition, make a determination to deny, in full or in part, a petition to convert a quantity of critical stock allowances (CSAs) to critical use allowances (CUAs) for one or more of the following reasons:

(i) The need for the quantity of methyl bromide in the petition can be supplied from existing stocks held by other distributors, or from critical use methyl bromide produced or imported with critical use allowances (CUAs) held by other distributors;

(ii) The need for the quantity of methyl bromide in the petition can be met by an alternative to methyl bromide due to changed circumstances in the situation of the approved critical use category;

(iii) There is evidence of fraud or misrepresentation;

(iv) Approval of the petition would be inconsistent with U.S. commitments and obligations under the provisions of the Montreal Protocol or (including Decisions agreed by the Parties);

(v) Approval of the petition would be inconsistent with the Clean Air Act;

(vi) Granting the petition may reasonably be expected to endanger human health or the environment.

(4) Within 10 working days of receipt of a letter (the ''denial letter'') from the Director of the Office of Atmospheric Programs denying, in full or in part, the petition to convert a quantity of critical stock allowances (CSAs) to critical use allowances (CUAs), the petitioner may submit a one-time appeal with elaborated information. Within 10 working days, the Director of the Office of Atmospheric Programs may affirm the denial or determination to deny the petition to convert a quantity of critical stock allowances (CSAs) to critical use allowances (CUAs) or make a determination to grant the petition to convert a quantity of critical stock allowances (CSAs) to critical use allowances (CUAs) in light of the information evidence submitted with the appeal and other available information. If no appeal is submitted by the tenth day after receipt of the denial letter notice outlining a determination by the Director of the Office of Atmospheric Programs to deny or grant a petition, the denial will be final on that day.

* * * * *

4. Appendix L is revised to read as follows:

Appendix L to Part 82 Subpart A—Approved Critical Uses, and Limiting Critical Conditions for Those Uses for the 2006 Control Period

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	With a reasonable expectation that moderate to severe soilborne fungal disease infestation, or moderate to severe disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes.
	(b) Southeastern U.S. except Georgia limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or to a lesser extent: fungal disease infestation and root knot nematodes; or with a need for methyl bromide for research purposes.
	(c) Georgia growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe fungal disease infestation, or to a lesser extent: root knot nematodes; or with a need for methyl bromide for research purposes.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
Eggplant	(a) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe disease infestation, or restrictions on alternatives due to karst geology; or with a need for methyl bromide for research purposes.
	(b) Georgia growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes.
	(c) Michigan growers	With a reasonable expectation that moderate to severe soilborne fungal disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes.
Forest Nursery Seedlings.	(a) Growers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Arkansas, Alabama, Georgia, South Carolina and Texas.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(c) Public (government owned) seedling nurseries in the states of Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia and Wisconsin.	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe weed infestation including purple and yellow nutsedge infestation, or moderate to severe Canada thistle infestation, or moderate to severe nematodes, and to a lesser extent: fungal disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina and South Carolina.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe disease infestation, and to a lesser extent: nematodes and worms.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing in Washington and Oregon.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist of could occur without methyl bromide fumigation: moderate to severe yellow nutsedge infestation, or moderate to severe fungal disease infestation.
	(f) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe disease infestation, moderate to severe Canada thistle infestation, moderate to severe nutsedge infestation, and to a lesser extent: nematodes.
	(g) Michigan herbaceous perennials growers.	With a reasonable expectation that one or more of the following limiting critical conditions already exist or could occur without methyl bromide fumigation: moderate to severe nematodes, moderate to severe fungal disease infestation, and to a lesser extent: yellow nutsedge and other weeds infestation.
Orchard Nursery Seedlings.	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, medium to heavy clay soils, or a prohibition of the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(c) California rose nurseries	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Strawberry Nurseries	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
	(b) North Carolina, Tennessee and Maryland growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot, or moderate to severe root-knot nematodes, or moderate to severe yellow and purple nutsedge infestation, and to a lesser extent: crown rot; or with a need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(b) California table and raisin grape growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(c) California walnut growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(d) California almond growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
Ornamentals	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe weed infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes.
Peppers	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root, collar, crown and root rots, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes.
	(d) Georgia growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
	(e) Michigan growers	With a reasonable expectation that moderate to severe fungal disease infestation would occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative; or with a need for methyl bromide for research purposes.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe disease infestation, or karst topography and to a lesser extent: carolina geranium or cut-leaf evening primrose infestation; or with a need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe black root and crown rot, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes.
Tomatoes	(a) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe fungal pathogens infestation; or with a need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less, or karst topography; or with a need for methyl bromide for research purposes.
	(c) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	For the production of industry certified pure sod; with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe bermudagrass, nutsedge and off-type perennial grass infestation, or moderate to severe, or moderate to severe white grub infestation; or with a need for methyl bromide for research purposes.
POST-HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	With a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation of beetles, weevils or moths, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For today's rule, "pet food" refers to domestic dog and cat food).	With a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation or beetles, moths, or cockroaches, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(c) Kraft Foods in the U.S.	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe beetle infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk).	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe beetle or moth infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates and pistachios in California.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) 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; or with a need for methyl bromide for research purposes.
Dry Cured Pork Products.	(a) Members of the National Country Ham Association.	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermested beetle or ham mite infestation.
	(b) Members of the American Association of Meat Processors.	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermested beetle or ham mite infestation.
	(c) Nahunta Pork Center (North Carolina).	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermested beetle or ham mite infestation.

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