protection provided to human health or the environment. The rule merely allows extensions to performance test deadlines in rare force majeure events.

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

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. New test methods are not being proposed in this rulemaking, but EPA is allowing for extensions of the regulatory deadlines by which owners or operators are required to conduct performance tests when a force majeure is about to occur, occurs, or has occurred which prevents owners or operators from testing within the regulatory deadline. Therefore, NTTAA does not apply.

List of Subjects in 40 CFR Part 65

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 17, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–16835 Filed 8–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2006–1016; FRL–8461–2]

RIN 2060–A030

Protection of Stratospheric Ozone: The 2008 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an exemption to the phaseout of methyl bromide to meet the needs of 2008 critical uses. Specifically, EPA is proposing uses that qualify for the 2008 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing stocks for those uses in 2008. EPA is taking action under the authority of the Clean Air Act to reflect recent consensus decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) at the 18th Meeting of the Parties (MOP). EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by September 26, 2007. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on September 4, 2007. If a hearing is requested it will be held on September 11, 2007 and comments will be due to the Agency October 11, 2007. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *http://www.epa.gov/ozone*. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–1016, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket # EPA–HQ–OAR–2006–1016, Air and Radiation Docket at 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 Docket ID No. EPA–HQ–OAR–2006–1016. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Aaron Levy by telephone at (202) 343–9215, or by e-mail at *levy.aaron@epa.gov* or by mail at Aaron Levy, 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 *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

(CAA) restrictions on the consumption, production, and use of methyl bromide (a class I, Group VI controlled substance) for critical uses during calendar year 2008. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005 apart from allowable exemptions, namely the critical use exemption and the quarantine and pre-shipment exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2008 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from stocks for proposed critical uses in 2008.

Table of Contents

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, owners of stored food commodities and structures such as grain mills and processors, and agricultural 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 Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

B. What Should I Consider When Preparing My Comments?

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

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

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

II. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule 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). Information on methyl bromide can be found at *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. Restricted use pesticides are subject to certain Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

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

The 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 Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen amendment to the Protocol. 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 of 25,528,270 kilograms, and, in 40 CFR 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 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' 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 in 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 CAAA 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.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide 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. The amendment that specifically addresses the critical use exemption appears at Section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. EPA again amended the revised phaseout 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 on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule titled ''Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide'' (the ''Framework 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 stocks and new production or import to meet the needs of approved critical uses. EPA then promulgated a second rule that added additional uses to the exemption program for 2005 and allocated additional stock allowances (70 FR 73604). EPA published a final rule on February 6, 2006, to exempt production and import of methyl bromide for 2006 critical uses and indicated which uses met the criteria for the exemption program for that year (71 FR 5985). EPA published another final rule on December 14, 2006, to exempt production and import of methyl bromide for critical uses in 2007 and indicated which uses met the criteria for critical uses for that year (71 FR 75386). Under authority of section 604(d)(6) of the CAA, EPA is proposing in this

action the uses that will qualify as approved critical uses in 2008 and the amount of methyl bromide required to satisfy those uses.

This proposed action reflects Decision XVIII/13, taken at the Eighteenth Meeting of the Parties in October 2006. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA*, (464 F.3d 1, D.C. Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants of the process for obtaining a critical use exemption to the methyl bromide phaseout. On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that 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 that establish a critical need for methyl bromide). EPA has repeated this process annually since then. The critical use exemption is designed to permit production and import of methyl bromide for uses that do not have technically and economically feasible alternatives.

The criteria for the exemption initially appeared 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.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3.

In response to the yearly requests for critical use exemption applications published in the **Federal Register**, applicants have provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants further submit data on their use of methyl bromide, on research programs into the use of alternatives to methyl bromide, and on efforts to minimize use and emissions of methyl bromide.

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

For more information on the domestic review process and methodology employed by the Office of Pesticide Programs, please refer to a detailed memo titled *''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America''* available on the docket for this rulemaking. While the particulars of the data continue to evolve and clerical matters are further streamlined, the technical review itself has remained the same since the inception of the exemption program.

On January 24, 2006, the U.S. Government (USG) submitted the fourth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the United Nations Environment Programme. This fourth nomination contained the request for 2008 critical uses. In March 2006, MBTOC sent questions to the USG concerning technical and economic issues in the nomination. In April 2006 the USG transmitted responses to MBTOC's requests for clarification. The USG received MBTOC's second-round of questions in June 2006, and sent responses to MBTOC in August 2006. These documents, together with reports by the advisory bodies noted above, can be accessed in the public docket for this rulemaking. The determination in this proposed rule reflects the analysis contained in those documents.

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

The December 23, 2004 Framework Rule (69 FR 76982) established the operational framework for the critical use exemption program in the U.S., including trading provisions and recordkeeping and reporting obligations. The Framework Rule defined the terms ''critical use allowances'' (CUAs) and ''critical stock allowances'' (CSAs) at 40 CFR 82.3. Today's action proposes the uses that will qualify as critical uses for 2008 and the amounts of CUAs and CSAs to be allocated for those uses. The uses that EPA is proposing to qualify as 2008 critical uses are the uses which USG included in the fourth CUN, and which were approved by the Parties in Decision XVIII/13. In this action, EPA is also proposing to refine its approach for determining the amount of CSAs to allocate in 2008 and each year thereafter. EPA discusses this proposal in detail in Section V.D. of this preamble.

C. Proposed Critical Uses

In Decision XVIII/13, taken in October 2006, the Parties to the Protocol agreed as follows: ''For the agreed critical-use categories for 2008, set forth in table C of the annex to the present decision for each Party to permit, subject to the conditions set forth in the present decision and decision Ex. I/4, to the extent that those conditions are applicable, the levels of production and consumption for 2008 set forth in table

D of the annex to the present decision which are necessary to satisfy critical uses * * *.''

The following uses are those set forth in table C of the annex to Decision XVIII/13: Commodities, Cocoa beans (NPMA [1] subset), NPMA food processing structures (cocoa beans removed), Mills and processors, Smokehouse ham, Cucurbits—field, Eggplant—field, Forest nursery, Nursery stock—fruit, nut, flower, Orchard replant, Ornamentals, Peppers—field, Strawberry—field, Strawberry runners, Tomatoes—field, Sweet potato slips. The agreed critical-use levels for 2008 total 5,355,946 kilograms (kg), which is equivalent to 21.0% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. However, the maximum amount of allowable new production and import as set forth in table D of Decision XVIII/13 is 4,595,040 kg (18.0% of baseline). For the reasons described in Section V.D. of this preamble, EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for 2008 up to the amount of 3,101,076 kg (12.2% of baseline), with 1,715,438 kg (6.7% of baseline) coming from stocks. To clarify, while the Parties require only 760,906 kg of stockpile consumption if the entire U.S. allotment is utilized, EPA is proposing consumption of 1,715,438 kg of stockpiles for critical uses.

In this proposed rule, EPA is proposing to modify Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to reflect the agreed critical-use categories identified in Decision XVIII/13 for the 2008 control period (calendar year). The Agency is proposing to amend the table of critical uses based, in part, on the technical analysis contained in the 2008 U.S. nomination that assesses data submitted by applicants to the critical use exemption program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA is seeking comment on the technical analysis (which is provided in the docket) and seeks information regarding changes to the registration or use of alternatives that may have transpired after the 2008 U.S. nomination was written. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption. EPA notes that while we may, in response to comments, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties, we do not intend to increase the quantities or add new uses in the final rule beyond those authorized by the Parties. Therefore, if there has been a change in registration of an alternative that results in that alternative no longer being available to a particular use, EPA does not intend to add uses or amounts of methyl bromide to the critical use exemption program beyond those identified here. Under such circumstances, the user should apply to EPA, requesting that the U.S. nominate its use for a critical use exemption in the future. Based on the information described above, EPA is proposing that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2008.

TABLE I.—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Pre-Plant Uses:		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.

[1] NPMA stands for National Pest Management Association.

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—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Forest Nursery Seedlings.	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
	(g) Michigan herbaceous perennials growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Orchard Nursery Seedlings.	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California rose nurseries	Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Presence of medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached.

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—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(b) California table and raisin grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California wine grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California walnut growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(e) California almond growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
Peppers	(b) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. A need for methyl bromide for research purposes.
	(c) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(d) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(e) Michigan growers	Moderate to severe soilborne disease infestation. 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—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. Time to transition to an alternative. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation a need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot. A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematodes. Restrictions on alternatives due to karst topographical features, and in Florida, soils not supporting seepage irrigation. 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.	Moderate to severe infestation of beetles, weevils or moths. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (For this proposed rule, ''pet food'' refers to domestic dog and cat food).	Moderate to severe infestation of beetles, moths, or cockroaches. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S	Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.

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—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs and spices, dried milk and cheese processing facilities).	Moderate to severe beetle or moth infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California.	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. A need for methyl bromide for research purposes.
Dry Cured Pork Products.	(a) Members of the National Country Ham Association	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(b) Members of the American Association of Meat Processors.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(c) Nahunta Pork Center (North Carolina)	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(d) Gwaltney and Smithfield Inc	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

EPA is proposing to amend the table in 40 CFR part 82, subpart A, Appendix L, as reflected above. Specifically, EPA is adding six references and deleting four references in column B. The changes are as follows: Adding Mississippi to the approved locations for cucurbit growers because that location was included in the approved Southeast Cucurbit Consortium application for 2008; removing Florida from the approved forest seedling locations because a 2008 application for that location was not submitted to EPA; removing Maryland from the approved strawberry nursery locations because a 2008 application for that location was not submitted to EPA; removing California from the approved locations for pepper growers because the United States Government did not reflect this location in its 2008 Critical Use Nomination; adding Mississippi to the approved locations for pepper growers because that location was included in the approved Southeast Pepper Consortium application for 2008; adding Mississippi and Missouri to the approved locations for strawberry fruit growers because those locations were included in the approved Southeastern Strawberry Consortium application for 2008; adding California sweet potato slip growers to reflect the authorization of that use in Decision XVIII/13; adding Mississippi to the approved locations for tomato growers because that location was included in the approved Southeastern Tomato Consortium application for 2008; removing turfgrass because that use was not agreed to by the Parties in Decision XVIII/13; adding Gwaltney and Smithfield Inc. to the approved entities for dry cured pork products because their application was approved for 2008.

The categories listed in Table I above have been designated critical uses for 2008 in Decision XVIII/13 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 purposes'' is indicated as a limiting critical condition in the table above. As explained in Section V.D.5., EPA is allowing sale of 15,491 kg of methyl bromide from existing stocks for research purposes.

In accordance with the recommendations in Table 9 of the TEAP's September 2006 Final Report titled ''Evaluations of 2006 Critical Use Nominations for Methyl Bromide and Related Matters,'' available on the docket for this rulemaking, EPA is proposing that the following sectors be allowed to use critical use methyl bromide for research purposes: Commodities, cucurbits (field), eggplant (field), nursery stock (fruit, nut, flower), ornamentals, peppers (field), strawberry (field), strawberry runners, and tomatoes (field). In their applications to EPA, these sectors identified research programs that require the use of methyl bromide.

D. Proposed Critical Use Amounts

Section V.C. of this preamble explains that Table C of the annex to Decision XVIII/13 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the authorized critical use amounts for 2008 total 5,355,946 kilograms (kg), which is equivalent to 21.0% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg as defined at 40 CFR 82.3. However, the maximum amount of authorized new production or import as set forth in Table D of the annex to Decision XVIII/13 is 4,595,040 kg (18.0% of baseline).

EPA is proposing to exempt limited amounts of new production and import of methyl bromide for critical uses for 2008 up to the amount of 3,101,076 kg (12.2% of baseline) as shown in Table II. EPA is also proposing to allow sale of 1,715,438 kg (6.7% of baseline) of existing inventories for critical uses in 2008. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from stocks for critical uses. The subsections below explain EPA's reasons and refined approach for proposing the above critical use amounts for 2008.

1. Background of Proposed Critical Use Amounts

The Framework Rule and subsequent CUE rules each took note of language regarding stocks of methyl bromide in relevant decisions of the Parties. In developing this proposed action, the Agency notes that paragraph six of Decision XVIII/13 contains the following language: ''That 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 available stocks of banked or recycled methyl bromide, in particular, the criterion laid down in paragraph 1(b)(ii) of decision IX/6.'' Language calling on Parties to address stocks also appears in prior Decisions related to the critical use exemption.

In the Framework Rule, which established the architecture of the CUE program and set out the exempted levels of critical use for 2005, EPA interpreted paragraph 5 of Decision Ex. I/3, which is similar to Decision XVIII/13(6), ''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). Consistent with that interpretation, The Framework Rule (69 FR 52366) established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that stocks were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these basic CSA provisions for calendar year 2008.

In the August 25, 2004 Proposed Framework Rule (69 FR 52366), EPA proposed to adjust the authorized level of new production and consumption for critical uses by the amount of ''available'' stocks. The methodology for determining the amount of ''available'' stocks considered exports, methyl bromide for feedstock uses, and the need for a buffer in case of catastrophic events. However, EPA did not adopt the proposed methodology for determining available stocks in the final Framework Rule. Instead, EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties (Total Authorized CUE Amount—Authorized New Production and Import).

In the 2006 CUE Rule, published February 6, 2006 (71 FR 5997), EPA applied the approach described in the Framework Rule by allocating as CSAs the difference between the total authorized CUE amount and the amount of new production and import authorized by the Parties (2.0% of baseline), as well as the small supplemental allocation in Decision XVII/9 (0.4% of baseline). EPA also issued CSAs allowing additional amounts of existing stocks to be sold for critical uses (roughly 3.0% of baseline). In the 2006 CUE Rule EPA issued a total of 1,136,008 CSAs, equivalent to 5.0% of baseline. Similarly, in the 2007 CUE Rule, EPA issued a number of CSAs that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import (6.2% of baseline), but also an additional amount (1.3% of baseline) for a total of 1,915,600 CSAs (7.5% of baseline). By allocating additional CSAs, EPA adjusted the portion of CUE methyl bromide to come from new production and import as compared to the proportion to come from stocks so that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

EPA viewed the additional CSA amounts as an appropriate exercise of its discretion. EPA reasoned that the Agency was not required to allocate the full amount of authorized new production and consumption. The Parties agreed to ''permit'' a particular level of production and consumption; they did not—and could not—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to exempt the full amount permitted by the Parties. Section 604(d)(6) of the Clean Air Act (CAA) does not require EPA to exempt any amount of production and consumption for critical uses, but instead specifies that the Agency ''may'' exempt amounts for production, importation, and consumption, thus providing EPA with substantial discretion in creating critical use exemptions.

In the July 6, 2006 Proposed 2007 CUE Rule (71 FR 38325), EPA sought comment on ''whether, in the critical use exemption context, it would be appropriate to adjust the level of new production and import with the goal of maintaining a stockpile of some specified duration * * * and on how many months of methyl bromide inventory would be appropriate, in order to maintain non-disruptive management of this chemical in the supply chain'' (71 FR 38339). In the Final 2007 CUE Rule, EPA noted that ''the Parties have not taken a decision on an appropriate amount of inventory for reserve. Nor has EPA reached any conclusion regarding what amount might be appropriate. Given this uncertainty, and the continuing decline in inventory levels, EPA is exercising caution in this year's CSA allocation. EPA will consider various approaches to this issue in the future based on the data received during this notice and comment rulemaking process and other information obtained by the Agency'' (71 FR 75399).

Data on the aggregate amount of methyl bromide held in inventory at the end of calendar years 2003, 2004, 2005, and 2006 is available in the public docket for this rulemaking. Using this aggregated inventory data, and other data gathered by EPA, the Agency estimates that on January 1, 2008 the aggregate inventory will be less than one-year's supply of critical use methyl bromide.

The benefits of pre-phaseout methyl bromide inventories for critical uses were discussed at the 18th Meeting of the Parties (MOP). The Parties did not take a decision at the 18th MOP on whether it would be appropriate to allow some specific amount of pre-phaseout stocks to remain in inventory, or what amount that might be. Instead, they left the matter for future discussion, and left open the possibility that a decision related to the issue might be taken at the 19th Meeting of the Parties in September 2007. EPA notes, however, that in another instance—namely the Essential Use Exemption process for CFC inhalers—the Parties have allowed companies to maintain working stocks up to one year's supply. As explained in the ''FDA determination letter'' available on the public docket for this rulemaking, FDA bases its determination of the amount of CFC production that is necessary for medical devices ''on an estimate of the

quantity of CFCs that would allow manufacturers to maintain as much as a 12-month stockpile.'' However, neither FDA nor EPA maintains a CFC reserve on behalf of any essential use manufacturer, or guarantees that a certain amount of CFCs will always be held in inventory.

Similarly, in this action, EPA is not proposing to maintain a reserve of methyl bromide for critical uses, or to guarantee that a certain amount of methyl bromide would always be held in inventory. EPA is, however, proposing to calculate the amount of existing methyl bromide stocks that is available for critical uses in 2008, and to consider this amount in the Agency's determination of how much sale of existing stocks and how much production and importation to allow for critical uses in 2008. Section V.D.2. describes EPA's proposed method to calculate the amount of existing stocks that is available for critical use in 2008. Section V.D.3. explains how EPA proposes to apply the calculated amount of available stocks in the Agency's critical use amount determinations.

The proposed methods for determining the critical use amounts, described in Section V.D.2. and V.D.3. of this preamble, refine the Agency's approach for determining how much critical use methyl bromide may be produced and imported and how much may be sold to critical users from existing inventories in a given year. EPA proposes to use these refinements in 2008 and, as feasible and appropriate, each year thereafter. Through data collection and experience, EPA has gained information about the CUE program that the Agency did not have when the program began. The pre-phaseout inventory has gradually declined to the point where, for the first time, EPA estimates that at the start of next year (2008) inventory will represent less than a one-year supply of critical use methyl bromide. The proposed approach for determining CUE production and import levels addresses the decline in methyl bromide inventories by considering in a more transparent manner the amount of existing stocks that is available for critical uses. As described below, the proposed approach establishes a clear and repeatable process for the Agency to make allocations that reflect a reasonable estimate of the amount of inventory available in a future control period based on data collected from earlier control periods. Thus, while EPA does not view refinements to its approach as legally required, EPA does view them as an appropriate discretionary action for the reasons given here. EPA seeks comment on the refined approach for determining critical use methyl bromide levels, which is described in detail in Sections V.D.2. and V.D.3. of this preamble, and also in a Technical Support Document available on the public docket for this rulemaking (EPA–HQ–OAR–2006–1016).

2. Calculation of Available Stocks

In this action, EPA is proposing to adjust the authorized level of new production and consumption for critical uses to account for the amount of existing stocks that is ''available'' for critical uses. This section explains how EPA proposes to calculate the amount of existing stocks that is available for critical uses in 2008. As described in more detail in Section V.D.3. of this preamble, EPA proposes to allow sale of the amount of existing inventory that the Agency has determined to be available for critical uses by issuing an equivalent number of critical stock allowances (CSAs), on a one-CSA-per-one-kilogram-of-methyl-bromide basis. EPA wants to be clear that in this action the Agency is not proposing to create a methyl bromide reserve or strategic inventory of any kind, or to guarantee that a certain amount of methyl bromide would always be held in inventory. Furthermore, in this action EPA is not proposing to add any new restrictions on sales of methyl bromide inventories.

The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks as discussed in the Proposed Framework Rule. Most recently, Decision XVIII/13(4) states, ''That a Party with a critical use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, in Decisions XVIII/13, XVII/9, Ex. II/1, XVI/2, Ex. I/3 and IX/6 the Parties recognized that not all existing stocks may be available to meet critical needs. Section 604(d)(6) of the Clean Air Act does not require that EPA adjust the amount of new production and import to reflect the availability of stocks: However, making such an adjustment is a reasonable exercise of EPA's discretion under this provision. Section 604(d)(6) provides that, ''to the extent consistent with the Montreal Protocol'' EPA ''may'' exempt production, importation, and consumption of methyl bromide for critical uses, thus providing the Agency substantial discretion to determine whether, and to what extent, production and import is appropriate for critical uses.

One commenter disagreed with EPA's interpretation in the Proposed Framework Rule that the Agency has the authority, as recognized by the Parties in Decision Ex. I/3 and similar Decisions, to ''assess how much methyl bromide is available from existing inventories'' (69 FR 52373). According to the commenter, EPA was making a ''false distinction'' between the terms ''available'' stocks and ''existing'' stocks of methyl bromide. The commenter submitted that the only difference between ''available'' and ''existing'' is the deduction to reflect developing country needs. The commenter based this argument on the language in Decision IX/6(1)(b)(ii), which states the condition that methyl bromide ''is not *available* in sufficient quality and quantity from *existing* stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide.'' Thus, the commenter argued that Dec. Ex.I/3 does not create a new meaning for ''available'' that encompasses more deductions than for the developing country needs.

EPA disagrees with the commenter's broad application of the language in Decision IX/6(1)(b)(ii). EPA believes that in Dec. IX/6(1)(b)(ii) the Parties were stressing the importance of developing countries' needs, and not precluding the consideration of other factors in each individual Party's determination of available stocks of methyl bromide. Dec. IX/6(1)(b)(ii) says * * * ''*also* bearing in mind developing countries'' need,'' it does not say ''*only* bearing in mind * * *'' Furthermore, EPA underscores Dec. XVIII/13(4) and similar decisions which use the phrasing, ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' EPA believes that in that Decision, and in similar language in other decisions, the Parties acknowledged that individual Parties have the discretion to determine their level of available stocks. For these reasons, EPA believes it is acting consistently with the relevant decisions. In addition, given the substantial discretion afforded by Congress under section 604(d)(6) of the Clean Air Act, EPA believes it has the authority to determine, through a notice and comment rulemaking process, what factors to include in the method for estimating the amount of existing stocks that is available.

Today's proposed approach is a logical extension of the approach used in EPA's 2006 and 2007 CUE allocation rules where EPA concluded that it was reasonable to adjust the proportion of

CUE methyl bromide to come from new production and import as compared to the proportion to come from stocks. Furthermore, it is appropriate for EPA to refine its approach in light of new information.

EPA is considering new information it has gathered about the availability of stocks for critical uses. That information is included in a Technical Support Document available in the docket for this rulemaking. EPA is proposing, and seeking comment on, the following approach to calculate the amount of existing stocks that is available for critical uses. EPA's proposed methodology for calculating the amount of available stocks can be expressed as follows: AS = ES − D − SCF, where AS = available stocks on January 1, 2008; ES = existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2007; D = estimated drawdown of existing stocks during calendar year 2007; and SCF = a supply chain factor, the calculation of which is described below and in more detail in the Technical Support Document. Using the above method, EPA calculates that 1,715,438 kg (6.7% of baseline) of existing pre-phaseout stocks of methyl bromide will be ''available'' for critical uses on January 1, 2008. EPA seeks comment on the amount of the pre-phaseout stock that it estimates will be available for critical uses on January 1, 2008.

In the above formula ''existing stocks'' refers to pre-phaseout inventory—*i.e.*, methyl bromide that was produced before January 1, 2005 that is still held by domestic producers, distributors and third-party applicators. January 1, 2005 was the phaseout date for production and import of methyl bromide in the United States. ES does not include critical use methyl bromide that was produced after January 1, 2005 and carried over into subsequent years. That ''carry-over'' amount is treated separately as described in Section V.D.4. of this preamble. For the reasons discussed in Section V.D.4., EPA deducts an amount equivalent to the carry-over amount from the amount of allowable new production for the control period in question. ES also does not include methyl bromide produced under the exemption for quarantine and preshipment (QPS), methyl bromide produced with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or methyl bromide produced for feedstock or transformation purposes. Such amounts have been removed from the calculation of the amount of ''available stocks'' for critical uses. Methyl bromide produced for QPS uses or for export to Article 5 countries may not be sold to domestic entities for critical uses. That methyl bromide, therefore, is separate from the CUE program.

To estimate the drawdown of existing stocks during 2007, the ''D'' term in the above method, EPA proposes to project the size of the pre-phaseout methyl bromide inventory on January 1, 2008 with a simple linear fit estimation using EPA data about the size of that inventory on January 1 of the years for which EPA has data: 2004, 2005, 2006, and 2007. Using a simple linear fit, EPA projects that the pre-phaseout methyl bromide inventory, which was 7,671,091 kg on January 1, 2007, will be drawn down by 3,224,351 kg during 2007. Therefore, EPA estimates that the size of the pre-phaseout inventory will be 4,447,740 kg on January 1, 2008. EPA's methodology for estimating the inventory drawdown is described in more detail in the Technical Support Document available on the public docket for this rulemaking.

EPA's proposed method for determining the amount of existing stocks that is available for critical uses includes a ''supply chain factor.'' The supply chain factor represents EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. For 2008, EPA proposes to use a supply chain factor equal to 2,731,211 kg in the Agency's calculation of the amount of available stocks. EPA wants to be very clear that in this action the Agency is not proposing to create a ''reserve'' or ''strategic inventory'' of any kind. The supply chain factor is merely a more transparent analytical tool that will foster greater understanding of the Agency's process in determining CSA amounts.

There is one active methyl bromide production facility in the United States. EPA estimates that following an unforeseen shutdown of that facility (*e.g.*, due to an explosion, fire, hurricane), it would take 6–12 months to restart production, but only 15 weeks for significant imports of methyl bromide to reach the U.S. As discussed in the Technical Support Document, EPA estimates that after 15 weeks, U.S. demand for critical use methyl bromide could be adequately supplied with imported material. In Decision XVIII/13, the Parties authorized 5,355,946 kg for U.S. critical uses in 2008. If supply is evenly distributed across each 15-week period of 2008, then a supply disruption would cause a 15-week shortfall of 1,544,984 kg (15 weeks/52 weeks * 5,355,946 kg). However, EPA data—collected pursuant to the reporting requirements at 40 CFR 82.13—shows that a disproportionate amount of critical use methyl bromide is produced in the first 15 weeks of each year. EPA's analysis in the Technical Support Document suggests that heavy production at the beginning of each year is related to peak demand during the spring planting season. Therefore, EPA estimates that a supply disruption at or near the beginning of 2008 would cause a supply shortfall greater than 1,544,984 kg.

EPA proposes a conservative estimate of the supply chain factor that considers a supply disruption during the estimated peak 15-week period of critical use supply. As explained in more detail in the Technical Support Document, EPA estimates that since the beginning of the CUE program on January 1, 2005, critical use methyl bromide production in the first 15 weeks of each year has accounted for 51.0% of annual critical use methyl bromide production. EPA, therefore, estimates that the peak 15-week shortfall in 2008 could be 2,731,211 kg (51.0% * 5,355,946 kg). For the reasons discussed above, EPA proposes to include a supply chain factor of 2,731,211 kg in its calculation of the amount of available stocks in 2008. EPA's analysis considers many factors including foreign production capacity, shipping container capacity, shipping logistics and market dynamics. EPA seeks comment on the proposed supply chain factor in its calculation of the amount of available stocks in 2008, and on its methods and reasoning for this proposal as described in the Technical Support Document.

This estimate of a 15 week supply disruption assumes that registrants of methyl bromide products have equal access to all sources of available methyl bromide. The Agency recognizes that not all registrants are allowed to access alternative sources of methyl bromide. Therefore, registrants may need to submit applications to amend their existing registrations to legally allow alternative sources of methyl bromide to be used in formulating methyl bromide end-use products. Because such applications may require the submission of product chemistry and acute toxicology data, registrants should plan accordingly, bearing in mind the registration requirements under FIFRA and the Pesticide Registration Improvement Act (PRIA). As it is uncertain how the amendment process would affect the estimate of supply disruption, EPA will use the 15 week

figure unless other information becomes available.

There are other limitations associated with EPA's 15 week supply disruption estimate, which are discussed in the Technical Support Document. One of these limitations is that under the reporting requirements at 40 CFR 82.13, EPA collects information about the amount of pre-phaseout inventory and which entities own it, but the Agency does not collect information about the characteristics of that inventory. These unknown characteristics, such as the purity of the pre-phaseout inventory, could affect users' ability to use this inventory to meet their critical needs. For example, inventory intended for pre-plant uses may be pre-mixed with chloropicrin in compressed gas cylinders and therefore could not be used for post-harvest fumigations that require pure methyl bromide. EPA seeks information about the characteristics of the pre-phaseout inventory, because that information could help EPA refine its proposed CSA allocation amount. For example, if EPA were to obtain verifiable information that none of the pre-phaseout inventory was of the necessary composition for post-harvest uses, the Agency might decide not to allocate CSAs for post-harvest sectors and could instead allocate that amount of CSAs as post-harvest CUAs.

EPA believes there is precedent for allowing a reasonable amount of a chemical that has been phased out to remain in the supply chain to meet the needs of exempted uses. For example, in the context of the essential use exemption, as explained in the ''FDA determination letter'' available on the public docket for this rulemaking, FDA bases its determination of the amount of CFC production that is necessary for medical devices ''on an estimate of the quantity of CFCs that would allow manufacturers to maintain as much as a 12-month stockpile.'' That action is consistent with Decision XVI/12(3), which specifies that ''Parties, when preparing essential use nominations for CFCs, should give due consideration to existing stocks, whether owned or agreed to be acquired from a metered-dose inhaler manufacturer, of banked or recycled controlled substances as described in paragraph 1(b) of decision IV/25, with the objective of maintaining no more than one year's operational supply.'' As stated previously, however, neither EPA nor FDA maintains a reserve on behalf of any essential use manufacturer, or guarantees that a certain amount of CFCs will always be held in inventory. Likewise, EPA is not proposing to maintain a reserve of methyl bromide for critical uses, or to guarantee that a certain amount of methyl bromide would always be held in inventory.

Given that today's proposal is to make methyl bromide available for critical uses in 2008, the small number of methyl bromide production facilities around the world, and the continued drawdown of existing methyl bromide inventories make a major supply disruption an important issue for Agency consideration. The fact that EPA is not aware of a major methyl bromide supply disruption does not mean that such a disruption is impossible or even improbable in the future.

The Technical Support Document discusses in detail the efficacy and limitations of importing methyl bromide from abroad in the event of a domestic production plant failure. In fact, EPA estimates that in the event of a plant production failure, importing methyl bromide from abroad is likely to be the fastest and most practical short-term way to replace the lost production. Therefore, issues such as foreign excess production capacity, shipping container capacity, shipping logistics, and market dynamics are the primary focus of EPA's analysis.

As explained above, EPA is not proposing to set aside, or physically separate, stocks as an inventory reserve. By including a supply chain factor in its calculation of available stocks EPA is considering the drawdown of stocks and allocating critical use amounts that reflect the size of the existing stockpile of pre-phaseout material. Under EPA's proposed approach, stocks of methyl bromide may be used to ''fill the distribution chain'' and simultaneously provide some buffer in case of a major supply disruption.

Exports were an important consideration in EPA's inclusion of the supply chain factor. The U.S. faces different circumstances from many other Parties because it is a methyl bromide producing country as well as a user country. In fact, historically the U.S. has been the world's largest supplier of methyl bromide. Since U.S. companies supply a significant portion of the world demand for methyl bromide, a supply disruption in the U.S. would not only affect U.S. users, but would probably affect users with agreed critical uses in developed countries as well as users in developing countries that have basic domestic needs for methyl bromide. Therefore, depending on how domestic suppliers manage their inventories, the supply chain factor could indirectly reduce the risks for entities in other countries which need methyl bromide.

As explained in the Technical Support Document, EPA did not directly consider domestic demand for methyl bromide for QPS uses in its estimation of the possible shortfall of methyl bromide supplies in the event of a major supply disruption. Congress provided separate grants of authority to EPA for the quarantine and preshipment exemption and the critical use exemption in CAA sections 604(d)(5) and 604(d)(6), respectively. Therefore, methyl bromide produced for QPS uses is regulated under a completely separate exemption program from the CUE. On January 2, 2003 EPA published the QPS Rule in the **Federal Register** (68 FR 2138), which established the framework and guidelines for regulating methyl bromide produced for uses that meet the definition of QPS uses, as defined in that rule and at 40 CFR 82.3. The QPS exemption program does not restrict the amount of methyl bromide that is newly produced and imported for QPS purposes. In addition, existing regulations allow manufacturers and distributors of QPS methyl bromide to manage stockpiles of QPS methyl bromide.

EPA is acting consistently with the Montreal Protocol by not including QPS methyl bromide in calculating consumption and inventory levels related to the phase-out of methyl bromide and the CUE. Article 2H(6) of the Protocol states that the 1991 baseline level of consumption and production ''shall not include the amounts used by the Party for quarantine and pre-shipment purposes.''

Similarly, EPA did not consider domestic demand for methyl bromide for feedstock and transformation purposes in its calculation of the supply chain factor. As with the QPS exemption, methyl bromide producers are allowed to responsibly manage inventories of feedstock methyl bromide. Therefore, EPA does not find compelling reasons to account for domestic demand for feedstock methyl bromide in the supply chain factor. In this action, EPA is not proposing to change or add restrictions on methyl bromide produced for feedstock and transformation purposes.

In the past, stakeholders have raised concerns about their ability to understand exactly how EPA derives CSA amounts. One of EPA's motivations for introducing the refined methodology, described above in this section, is to provide more clarity about how proposed amounts are derived, and to make EPA's calculations more transparent. For these reasons, EPA tried to make the terms in the proposed method for calculating available stocks

proposed in this preamble as clear and definitive as possible. Since the original proposed rule, EPA has gained significant experience and information pertaining to the CUE program, and the methyl bromide industry more generally. EPA is using its added knowledge to propose a more transparent and definitive method for calculating the amount of available stocks. Further detail about the factors in the method proposed in this preamble is provided in the Technical Support Document available on the public docket for this rulemaking.

3. Proposed Approach for Determining Critical Use Amounts

EPA estimates that, as of January 1, 2008, 1,715,438 kg of pre-phaseout inventory will meet the definition of ''available stocks'' as calculated using the approach described in Section V.D.2. of this preamble. Based on these calculated figures and the allocation approach described in this Section, and after making reductions for carry-over amounts as explained in Section V.D.4. of this preamble, EPA proposes to allocate critical use allowances (CUAs) permitting 3,101,076 kg of new methyl bromide production and import for critical uses in 2008, and to allow sale of 1,715,438 kg from existing stocks for critical uses by allocating an equivalent number of critical stock allowances (CSAs). EPA's proposed allocation amounts will result in CSAs that exceed the difference between the total critical use amount and the new production amount in the Parties' decision. As discussed above, this is similar to the approach taken in EPA's rules for the previous two years. EPA seeks comment on the amount of CUAs and CSAs that the Agency is proposing to distribute in 2008. EPA also seeks comment on the more refined allocation approach that the Agency is proposing to use in 2008 and beyond, as described below in this Section.

In this action, EPA is proposing to refine its allocation approach for 2008 and beyond. EPA proposes that in 2008 and in each year thereafter, when appropriate and feasible, it will allocate CSAs in an amount equal to the number of kilograms of available stocks on January 1 of the year in question, as estimated by EPA using the method described in Section V.D.2. of this preamble. As in past years, EPA intends to allocate a total number of CUAs such that the total number of CUAs and CSAs is not greater than the total critical use amount authorized by the Parties for the year in question. To account for carry-over amounts of methyl bromide, amounts for research purposes, or for other appropriate reasons, including updated information on alternatives, EPA may allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties for the year in question. As in previous CUE rules, if EPA does allow less than the total amount authorized by the Parties, the Agency will propose and seek comment on the reasons for, and amounts of, each reduction before finalizing any such reductions. In this action EPA is not proposing to create a methyl bromide reserve or strategic inventory of any kind, or to guarantee that a certain amount of methyl bromide would always be held in inventory. Furthermore, EPA is not proposing to add any restrictions on sales of methyl bromide inventories.

EPA recognizes that in a future CUE allocation rule proposal, the Agency could estimate, using the method described in Section V.D.2., that the amount of available stocks at the beginning of a future year is less than the difference between the total critical use amount authorized by the Parties and the amount of new production and imports authorized by the Parties for the year in question. This scenario can be described with the following inequality: Available Stocks < (Total CUE Amount Authorized—New Production and Imports Authorized). Under the refined approach described above, in such a case EPA would propose to allow the maximum amount of new production and imports authorized by the Parties, minus any reductions as described below. EPA would also allow critical users to access a limited amount of existing stocks by allocating a number of CSAs equal to the difference between the total CUE amount authorized by the Parties and the amount of new production and imports authorized for the year in question (CSA = Total CUE Amount Authorized—New Production and Imports Authorized), again minus any reductions as discussed here. EPA will continue to collect inventory data and make critical use allocations on an annual basis. Similarly, unless the Parties approve multi-year critical use exemptions, EPA proposes to calculate the amount of available stocks on an annual basis and to explain those calculations in the annual CUE allocation rulemaking process. To account for carry-over amounts of methyl bromide, amounts for research purposes, or for other appropriate reasons, including updated information on alternatives, EPA could allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties for the year in question. As in previous CUE rules, if EPA does allow less than the total amount authorized by the Parties, the Agency will propose and seek comment on the reasons for, and amounts of, each reduction before finalizing any such reductions.

Finally, for completeness, EPA recognizes that as a theoretical matter it could estimate, using the method described in Section V.D.2., that the amount of available stocks at the beginning of a future year is greater than the total critical use amount authorized by the Parties for the year in question. This scenario can be described with the following inequality: Available Stocks > Total CUE Amount Authorized. In that theoretical scenario, EPA would propose to allocate a number of CSAs that is equivalent to the total CUE amount authorized by the Parties for the year in question. However, EPA could still make reductions, such as for amounts of carry-over CUE material. Therefore, in the situation described by the above inequality, EPA would not allocate any CUAs for the year in question.

4. Treatment of Carry-Over Material

As described in the December 23, 2004 Framework Rule (69 FR 76997), EPA is not permitting entities to build stocks of methyl bromide produced or imported after January 1, 2005 under the critical use exemption. Under the current regulations, quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a calendar year must be reported to EPA the following year. These reporting requirements appear at Sections 82.13(f)(3), 82.13(g)(4), 82.13(h)(1), 82.13(bb)(2), and 82.13(cc)(2). EPA uses the reported information to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. An amount equivalent to this ''carry-over,'' whether pre-plant or post-harvest, is then deducted from the total level of allowable new production and import in the year following the year of the data report. For example, the amount of carry-over from 2005, which was reported in 2006, was deducted from the allowable amount of production or import for critical uses in 2007. As discussed in Section V.D.2., carry over material is not included in EPA's definition of existing stocks (ES) as it applies to the proposed formula for determining the amount of available stocks (AS). EPA is not including carry-over amounts as part of ES, because doing so could lead to a double-

counting of carry-over amounts, and thus a double reduction of critical use allowances (CUAs).

In 2007, 53 entities reported information to EPA under the reporting requirements at 40 CFR 82.13 about critical use methyl bromide production, imports, exports, sales and/or inventory holdings in 2006. 6,923,926 kg of critical use methyl bromide was acquired through production or import in 2006. The information reported to EPA indicates that 6,384,493 kg of critical use methyl bromide was exported or sold to end-users in 2006. EPA calculates that the carry-over amount at the end of 2006 was 539,433 kg, which is the difference between the reported amount of critical use methyl bromide acquired in 2006 and the reported amount of exports or sales of that material to end users in 2006 (6,923,926 kg − 6,384,493 kg = 539,433 kg). EPA's calculation of the amount of carry-over at the end of 2006 is consistent with the method used in the final 2007 CUE Rule, and with the method agreed to by the Parties in Decision XVI/6, which established the Accounting Framework for critical use methyl bromide, for calculating column L of the U.S. the Accounting Framework. The 2006 U.S. Accounting Framework is available in the public docket for this rulemaking. EPA seeks comment on its method for calculating the amount of carry-over critical use material at the end of each year. Commenters suggesting alternative methods for calculating the amount of carry-over material at the end of each year should be detailed and comprehensive; address what changes would be needed to the reporting requirements; and the degree of administrative burden that alternative practice might impose. EPA also seeks comment on ways to improve the completeness of data reporting by affected companies. It is important for stakeholders to recognize that the process for calculating the amount of carry-over CUE material each year relies on sales to end-user data reported to EPA by distributors and applicators. EPA specifically requests comment on whether requiring producers, importers, and distributors to report to the Agency the names of distributors and third-party applicators to whom they have sold critical-use methyl bromide would result in more complete reporting of sales to end-user data, and whether this would justify the additional burden of such requirements.

In previous CUE rules, EPA has used the approach described in the Framework Rule for implementing carry-over reductions. Consistent with that approach, EPA is proposing to reduce the total level of new production and import for critical uses by 539,432 kg to reflect the total level of carry-over material available at the end of 2006. After applying this reduction to the total volumes of allowable new production or import, EPA pro-rated CUAs to each company based on their 1991 baseline market share.

Chemtura Corporation has submitted a petition available on the public docket for this rulemaking that recommends alternative methods for apportioning carry-over reductions among CUA holders. Some of Chemtura's proposals would require increases to existing reporting requirements for producers, distributors or third-party applicators. EPA encourages interested parties to consult Chemtura's petition. EPA seeks comment on the recommendations in that petition, as well as any additional suggestions regarding the apportionment of carry-over among companies. Comments suggesting alternative methods for implementing carry-over reductions should be detailed and comprehensive; address what changes, if any, would be needed to the reporting requirements; and the degree of burden the alternative practice might impose.

5. Amounts for Research Purposes

Decision XVII/9(7) ''request[ed] Parties to endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development.'' Consistent with that Decision, in the 2007 CUE Rule, EPA reduced the amount of new production and import by 21,702 kilograms, which was the amount needed for research. Consistent with Decision XVII/9, EPA continued to encourage methyl bromide suppliers to sell inventory to researchers and encouraged researchers to purchase inventory.

Decision XVIII/15(1) authorizes ''the production and consumption of [methyl bromide] necessary to satisfy laboratory and analytical critical uses.'' Paragraph 2 of that decision states that methyl bromide produced under the exemption for laboratory and analytical uses may be used as a reference or standard; in laboratory toxicology studies; to compare the efficacy of methyl bromide and its alternatives inside a laboratory; and as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock. In a separate notice-and-comment rulemaking titled the ''Global Essential Laboratory and Analytical Use Exemption,'' EPA is proposing to implement the exemption authorized in Decision XVIII/15. More information about that rulemaking process is available on the docket for that rule (EPA–HQ–OAR–2007–0384).

There continues to be a need for methyl bromide for research purposes that do not meet the criteria for laboratory and analytical uses, as defined in Decision XVIII/15. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. The critical use sectors that were approved by the Parties to use methyl bromide for research purposes in 2008 are listed in Section V.C. and have ''research purposes'' listed in their limiting critical conditions in Table I of this preamble.

In this action, EPA is proposing to allow sale of 15,491 kg of existing stocks for research purposes in 2008 to account for the amount authorized for those purposes. EPA proposes to allow methyl bromide sale from stocks for exempted research purposes by expending CSAs. An explanation of what amounts of methyl bromide and of what sectors qualify for research purposes can be found in Section V.C. of this preamble. If EPA adopts this proposal it will continue to encourage methyl bromide suppliers to sell inventory to researchers and to encourage researchers to purchase inventory for research purposes. EPA seeks comment on its proposal to issue CSAs for sale of methyl bromide stocks for exempted research purposes.

6. Methyl Bromide Alternatives

In the 2006 CUE Rule (71 FR 5985) EPA allocated less methyl bromide for critical uses than was authorized by the Parties in order to account for the recent registration of sulfuryl fluoride. The allocation reductions in that rule reflected transition rates that were included for the first time in the 2007 U.S. Critical Use Nomination (CUN). In the 2007 CUE Rule, EPA explained why a similar reduction was made in that rule: ''The report of the Methyl Bromide Technical Options Committee (MBTOC) indicated that the MBTOC did not make any reductions in these [post-harvest] use categories for the uptake of sulfuryl fluoride in 2007 because the United States Government indicated that it would do so in its domestic allocation procedures. Therefore, EPA is reducing the total volume of critical use methyl bromide by 53,703 kilograms to reflect the continuing transition to sulfuryl fluoride'' (75 FR 75390).

The United States continues to make progress transitioning to alternatives to methyl bromide fumigation. Preliminary results of a study (forthcoming) indicate

that the cost of post-harvest cocoa fumigation with sulfuryl fluoride is not substantially greater than the cost of using methyl bromide for that fumigation. As a result the National Pest Management Association (NPMA) decided to withdraw its nomination request for critical use methyl bromide for cocoa for calendar year 2009 and not to seek critical use methyl bromide for cocoa at all in calendar year 2010.

NPMA, however, has expressed the need for some critical use methyl bromide for cocoa in 2008 as the sector transitions to sulfuryl fluoride. NPMA explained to EPA that some larger companies have already begun integrating sulfuryl fluoride into their operations. However, there are other companies that have not begun that transition. NPMA believes that those companies would be unprepared if EPA does not allow a portion of the 50,188 kg of critical use methyl bromide for cocoa approved by the Parties for 2008. Given the circumstances discussed above, EPA seeks comment on how much of the 50,188 kg of critical use methyl bromide approved by the Parties for cocoa for 2008 should be allowed by the Agency. Commenters on this topic should recommend specific amounts of critical use methyl bromide for cocoa in 2008, and provide detailed justifications for their recommendations.

Besides the issues regarding post-harvest cocoa fumigation discussed above, EPA is not proposing to make any other reductions in post-harvest or pre-plant critical use allowances to account for the uptake of sulfuryl fluoride, or any other pre-plant or post-harvest alternatives. In the 2008 CUN the Agency applied transition rates for all critical use sectors. The MBTOC report of September 2006 included reductions in its recommendations for critical use categories based on the transition rates in the 2008 CUN. MBTOC's recommendations were then considered in the Parties' 2008 authorization amounts, as listed in Decision XVIII/13. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2008 critical use amounts. Furthermore, the 2009 CUN, which represents the most recent analysis and the best available data for methyl bromide alternatives, does not conclude that transition rates should be increased for 2008.

As the 2009 CUN reflects, besides the post-harvest cocoa issue discussed above in this section, the United States Government has not found new information that supports changing the 2008 transition rates included in the 2008 CUN and applied by MBTOC. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. For example, in August 2006, under the authority of Section 114 of the Clean Air Act, EPA collected information from a group of millers and fumigators about their experiences with sulfuryl fluoride and methyl bromide.

EPA seeks comment on its proposal not to make further reductions in 2008 to account for the uptake of methyl bromide alternatives, because the Agency has already accounted for alternatives' transition rates. EPA continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

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

Paragraphs 2 and 6 of Decision XVIII/13 request parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2008 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the Agency is soliciting comments from the public on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption (CUE). The critical use nominations (CUNs) detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

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

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

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

F. Emissions Minimization

EPA notes for the regulated community the reference to emission minimization techniques in paragraph 8 of Decision XVIII/13, which states that Parties shall request critical users to employ ''emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible.'' In addition, EPA understands that research is being conducted on the potential to reduce rates and emissions using newly available high-barrier films and that these studies show promising results. Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide by implementing measures such as the ones listed above, to the extent consistent with state and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how further emission minimization could be achieved.

F. Critical Use Allowance Allocations

EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for

2008 up to the amount of 3,101,076 kg (12.2% of baseline) as shown in Table II below. EPA is seeking comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2008. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. This proposal for allocating the following number of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

TABLE II.—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2008 Critical use allowances for pre-plant uses * (kilograms)	2008 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp.—A Chemtura Company	1,691,276	193,248
Albemarle Corp	695,491	79,468
Ameribrom, Inc	384,343	43,916
TriCal, Inc	11,967	1,367
Total	** 2,783,078	** 317,998

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

Paragraph five of Decision XVIII/13 states ''that Parties shall endeavor to license, permit, authorize, or allocate quantities of critical use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in Decisions Ex. I/3(4), Ex. II/1(4) and VII/9(4) regarding 2005, 2006 and 2007 critical uses, respectively. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

In establishing the critical use exemption program, the Agency endeavored to allocate directly on a sector-by-sector basis by analyzing and proposing this option among others in the August 2004 Framework Rule notice (69 FR 52366). EPA solicited comment on both universal and sector-based allocation of critical use allowances. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA 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 a sector-specific approach would pose significant administrative and practical difficulties. 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. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent historic use data in the current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current use patterns take place in a market where all pre-plant and post-harvest methyl bromide uses compete for a lump sum supply of critical use material. Therefore, the Agency believes that under a system of universal allocations, divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP. These issues were addressed in the previous rule and EPA is not aware of any factors that would alter the analysis performed during the development of the Framework Rule. A summary of the options analysis conducted by EPA is available in the docket for this rulemaking.

EPA is not proposing to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an endeavor to address Decision XVIII/13(5), EPA will consider additional comment on the Agency's allocation of CUAs in the two groupings (pre-plant and post-harvest) that the Agency has employed in the past.

H. Critical Stock Allowance Allocations and Total Volumes of Critical Use Methyl Bromide

For the reasons described in Section V.D., EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the 2008 control period in the amount of 1,715,438 kilograms (kg) (6.7% of U.S. 1991 baseline). This proposed amount of CSA allowances is consistent with the proposed approach described in Section V.D.4. and in a Technical Support Document available on the public docket for this rulemaking (Docket ID#: EPA–HQ–OAR–2006–1016).

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

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

TABLE III.—ALLOCATION OF CRITICAL STOCK ALLOWANCES—Continued

Company
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—1,715,438 kilograms.

Several companies that receive very small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently retire their allowances. Some companies receive as few as 3 allowances which allow the holder to sell up to 3 kilograms of methyl bromide to critical uses. Due to the small allocation and because they typically do not sell critical use methyl bromide, they find the allocation of CSAs, and associated record-keeping and reporting requirements, to be unduly burdensome. In response to this concern, in the Proposed 2007 CUE rule EPA proposed to allow CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the Agency. EPA received no adverse comments. However, no CSA holders contacted EPA to take advantage of that voluntary opportunity.

For purposes of the 2008 CUE rule and beyond, EPA is again allowing CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the person indicated in the ''addresses'' section of this preamble during the comment period for this rulemaking. Such companies would not receive CSA allocations and would be excluded from future allocations. All allowances forfeited by companies through the written notification process will be reallocated to the remaining companies on a pro-rata basis. EPA strongly encourages CSA holders to take advantage of this voluntary opportunity to retire their CSA allocations in order to reduce their administrative burden.

I. Stocks of Methyl Bromide

As discussed above and in the December 23, 2004 Framework Rule, an approved critical user may obtain access to exempted production and 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. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In the Framework Rule EPA also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. Under this proposed action, no significant changes would be made to those provisions.

EPA believes that the refined approach proposed in Section V.D. of this preamble includes important measures that could reduce the risks of methyl bromide shortages for critical uses. For example, this transparent approach allows improved stakeholder comment regarding the amount of available stocks and resulting adjustments to the CUA amounts. However, as in prior years, the Agency will continue to closely monitor CUA and CSA data. Further, as stated in the final 2006 CUE rule, safety valves continue to exist. If an inventory shortage occurs, EPA may consider various options including, but not limited to, promulgating a final version of the petition process proposed on October 27, 2005 (70 FR 62030), taking into account comments received on that proposal; proposing a different administrative mechanism to serve the same purpose; or authorizing conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

With regard to information about stocks of methyl bromide, EPA has requested such information since late 2003. On December 11, 2003, EPA initially requested information on the amount of methyl bromide held in inventory from a group of five methyl bromide producers, importers, and distributors. The information submitted in response to that Section 114 request was subsequently requested under the Freedom of Information Act (''FOIA''). On August 26, 2004, EPA issued a final determination concerning the confidentiality of that information. In the determination, EPA found that aggregated data on the amount of methyl bromide that had been stockpiled and maintained in inventory in 2002 and 2003 by the group of five businesses (''5-business aggregate'') could not be withheld pursuant to any FOIA exemption. Part of the basis for EPA's determination was that entities' individual information could not be deduced from aggregate stockpile data, and therefore, the 5-business aggregate was not confidential.

Subsequent to the August 26, 2004 determination, two of the businesses whose information was included in the five-business aggregate filed suit to prevent EPA from releasing this information. *Ameribrom* v. *Leavitt et al.*, 2:04–cv–04393 (D.N.J.), was filed September 9, 2004 and *Hendrix and Dail* v. *Leavitt, et al.*, 04–CV–134 (E.D.N.C.), was filed September 14, 2004. However, both companies subsequently filed for voluntary dismissal.

In addition to 2002 and 2003 methyl bromide inventory data for the group of five entities, EPA has collected similar information for a broader group of entities for the years 2003, 2004, 2005 and now 2006. 2003 stockpile data for all entities that held stocks of methyl bromide for sale or for transfer was collected in accordance with a notice published on August 25, 2004 (69 FR 52403) titled ''Request for Information on Existing and Available Stocks of Methyl Bromide.'' 2004 stockpile data for all methyl bromide producers, importers, exporters, distributors, and applicators was collected pursuant to a Section 114 request dated April 15, 2005. 2005 and 2006 stockpile data for all methyl bromide producers, importers, distributors, and applicators was collected pursuant to a rule published on December 13, 2005 (70 FR 73604) that amended methyl bromide reporting requirements at 40 CFR 82.13 in a manner that enables EPA to calculate the aggregate stockpile for each calendar year. On September 7, 2006 the Agency released data on the aggregate amount of methyl bromide held in inventory at the end of calendar years 2003, 2004 and 2005.

On April 23, 2007 EPA sent letters to all entities which had reported holding methyl bromide inventory at the end of 2003, 2004, 2005, or 2006. The letters confirmed EPA's intention to treat the aggregate of the methyl bromide stockpile information reported to the Agency for calendar year 2006 in the same manner as similar aggregates calculated from information for the years 2003, 2004, and 2005. The letters explained that under EPA regulations at 40 CFR 2.204(d)(2), the aggregate of the methyl bromide stockpile information

for calendar year 2006 reported to the Agency under the requirements at 40 CFR 82.13 is clearly not eligible for confidential treatment. This determination was based in part on the great difficulty (due to the number of submitters) of ascertaining the size of any individual entity's methyl bromide stockpile from the information submitted under the reporting requirements at 40 CFR 82.13, as aggregated by the Agency. EPA did not receive any objections to releasing the aggregate information for 2006 and proceeded to release that information on May 14, 2007. The aggregate information for 2003, 2004, 2005, and 2006 is available in the docket for this rulemaking.

In this action, EPA is proposing to release the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of 2007, and each year thereafter. For the reasons given in the April 23, 2007 letters, which are available in the docket, this aggregate information is clearly not entitled to confidential treatment. EPA proposes to release the aggregate of this stockpile data in future years without first notifying entities by letter, as EPA has done in the past two years. EPA seeks comment on this proposal. If the Agency does not receive any comments opposing this proposal, the aggregate of methyl bromide stockpile data collected under the reporting requirements at 40 CFR 82.13 will not be treated as confidential information and may be released in future without further notice.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0564, and EPA ICR number 2179.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed 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, 1113—Fruit and Nut Tree Farming, 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops, 0172—Grapes, 0173—Tree Nuts, 0175—Deciduous Tree Fruits (except apple orchards and farms), 0179—Fruit and Tree Nuts, NEC, 0181—Ornamental Floriculture and Nursery Products, 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning), 311211—Flour Milling, 311212—Rice Milling, 493110—General Warehousing and Storage, 493130—Farm Product Warehousing and Storage.	2041—Flour and Other Grain Mill Products, 2044—Rice Milling, 4221—Farm Product Warehousing and Storage, 4225—General Warehousing and Storage.	$6.5 million. 500 employees. $23.5 million.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Distributors and Applicators	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$6.5 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule will only affect 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 and 2007 control periods. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule 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 and $30 million annually. We have therefore concluded that this proposed rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

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

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is deregulatory and does not impose any new requirements on any entities. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 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.''

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 13132. This proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This 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 13175 does not apply to this proposed rule.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This 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 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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.

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

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

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

List of Subjects in 40 CFR Part 82

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

Dated: August 17, 2007.

Stephen L. Johnson,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Company	2008 Critical use allowances for pre-plant uses* (kilograms)	2008 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp.—A Chemtura Company	1,691,276	193,248
Albemarle Corp	695,491	79,468
Ameribrom, Inc	384,343	43,916
TriCal, Inc	11,967	1,367
Total	2,783,078	317,998

*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. The following companies are allocated critical stock allowances for 2008 on a pro-rata basis in relation to the inventory held by each.

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—1,715,438 kilograms.

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

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2008 Control Period

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Pre-Plant Uses:		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings.	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(g) Michigan herbaceous perennials growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Orchard Nursery Seedlings.	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California rose nurseries	Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Presence of medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached.
	(b) California table and raisin grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California wine grape growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California walnut growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(e) California almond growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
Peppers	(b) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. A need for methyl bromide for research purposes.
	(c) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(d) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(e) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. Time to transition to an alternative. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation a need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot. A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions—that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematodes. Restrictions on alternatives due to karst topographical features, and in Florida, soils not supporting seepage irrigation. 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.	Moderate to severe infestation of beetles, weevils or moths. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (For this proposed rule, ''pet food'' refers to domestic dog and cat food).	Moderate to severe infestation of beetles, moths, or cockroaches. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S	Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. 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 food, herbs and spices, dried milk and cheese processing facilities).	Moderate to severe beetle or moth infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California.	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. A need for methyl bromide for research purposes.
Dry Cured Pork Products.	(a) Members of the National Country Ham Association	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(b) Members of the American Association of Meat Processors.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(c) Nahunta Pork Center (North Carolina)	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(d) Gwaltney and Smithfield Inc	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

[FR Doc. E7–16896 Filed 8–24–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2007–0720; FRL–8458–8]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Standard Auto Bumper Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a notice of intent to delete the Standard Auto Bumper Superfund Site (Site) located in Hialeah, Florida, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Florida, through the Florida Department of Environmental Protection (FDEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Standard Auto Bumper Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by September 26, 2007.

ADDRESSES: Submit your comments, identified by EPA–R04–SFUND–2007–0720, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: taylor.michael@epa.gov.*

3. *Fax:* (404) 562–8896.

4. *Mail:* EPA–R04–SFUND–2007–0720, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Michael Taylor, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Taylor, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8762, Electronic Mail: *taylor.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses:

1. John F. Kennedy Memorial Library, Hialeah Public Library, 190 West 49th Street, Hialeah, Florida 33012, Hours: Monday through Thursday–10 a.m. until 8:45 p.m., and Friday–Saturday–9:30 a.m. until 4:45 p.m.

2. U.S. EPA Record Center, Attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8862, Hours 8 a.m. to 4 p.m., Monday through Friday by appointment only.

Dated: August 13, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–16684 Filed 8–24–07; 8:45 am]
BILLING CODE 6560–50–P