ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2006–1016; FRL–8510–8]

RIN 2060–A030

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing an exemption to the phaseout of methyl bromide to meet the needs of 2008 critical uses. Specifically, EPA is authorizing uses that qualify for the 2008 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 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 at the 18th Meeting of the Parties.

DATES: This rule is effective on December 28, 2007.

ADDRESSES: EPA has established a docket for this action identified under Docket ID No. EPA–HQ–OAR–2006–1016. All documents in the docket are listed on the *http://www.regulations.gov* site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available only through *http://www.regulations.gov* or in hard copy. To obtain copies of materials in hard copy, please call the EPA Docket Center at (202) 564–1744 between the hours of 8:30 a.m.–4:30 p.m. E.S.T., Monday–Friday, excluding legal holidays, to schedule an appointment. The EPA Docket Center's Public Reading Room address is EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION 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 *http://www.epa.gov/ozone/strathome.html* for further information about EPA's stratospheric ozone protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This final 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 authorizing 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 pre-phaseout inventory for critical uses in 2008.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on December 28, 2007. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule grants an exemption from the phaseout of methyl bromide.

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I. General Information

Regulated Entities

Entities potentially regulated by this 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 and 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 action. This table lists the types of entities that EPA is aware could potentially be regulated by this action. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

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.ozone.unep.org* 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 authorities. 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 final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that are affected by provisions of this action 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 final rule 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 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 to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level of 25,528,270 kilograms, and, in 40 CFR 82.7, EPA also set 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 Fourth Meeting of the Parties (MOP) in 1992 in Copenhagen, Denmark.

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

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

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide 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 supplemental rule on December 13, 2005 that added critical 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, this action lists the uses that qualify as approved critical uses in 2008 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This action reflects Decision XVIII/13, taken at the Eighteenth Meeting of the Parties in October 2006. In accordance with Article 2H(5) of the Montreal Protocol, 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 (see Section V.E. of this preamble). The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this final 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 from 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 annual requests for critical use exemption applications published in the **Federal Register**, applicants provide data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also 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 a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination, 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 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 administrative 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 UNEP. 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 final rule reflects the analysis contained in those documents.

B. How Does This Final 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 authorizes the uses that will qualify as critical uses for 2008 and the amounts of CUAs and CSAs that will be allocated for those uses. The uses that EPA is authorizing as 2008 critical uses are the uses which the USG included in the fourth CUN, and which were approved by the Parties in Decision XVIII/13. In this action, EPA is also refining its approach for determining the amount of CSAs to allocate in 2008 and each year thereafter. EPA discusses the refined approach in detail in Section V.D. of this preamble.

C. 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, and 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 allowing up to 3,083,763 kg (12.1% of baseline) of new production or import of methyl bromide for critical uses for 2008, with 1,729,689 kg (6.8% of baseline) coming from stocks. To clarify, while the Parties require only 760,906 kg of stockpile use if the entire U.S. allotment is utilized, EPA is allowing use of 1,729,689 kg of pre-phaseout inventory for critical uses and reducing allowable production accordingly.

In this final rule, EPA is amending columns B and C of Appendix L to 40 CFR art 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 amending 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 sought comment on the analysis contained in the 2008 nomination and, in particular, any information regarding changes to the registration or use of alternatives that may have transpired after the 2008 nomination was submitted. The Agency stated that 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. Based on Decision XIII/13 and the 2008 U.S. CUN, EPA is determining 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, 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.

[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
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.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in 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.

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) 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.

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) 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.
	(c) Michigan herbaceous perennials growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Peppers	(a) 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.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(d) 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.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, 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. 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 rule, ''pet food'' refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S.	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. 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 treating cocoa beans in storage and associated spaces and equipment and processed food, cheese, herbs, spices and spaces and equipment in associated processing facilities.	Moderate to severe beetle or moth infestation. 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, and dates (in Riverside county only) 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 of Smithfield Ltd	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

The National Pest Management Association (NPMA) requested that the language in Column B of Table I describing the NPMA be changed to ''Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment and processed food, cheese, dried milk, herbs, spices and spaces and equipment in associated processing facilities.'' EPA has incorporated this revised language describing the NPMA because it clarifies that commodities will be fumigated as part of space fumigations, as indicated in NPMA's application.

Dow Agrosciences LLC (Dow) commented that sulfuryl fluoride (ProFume) can replace methyl bromide for all post-harvest uses during the 2008 control period. Dow also states that some post-harvest use limiting critical conditions are no longer relevant and should be removed. The commenter noted that sulfuryl fluoride has superseded phosphine and heat as the preferred alternative in post-harvest use categories. The commenter requested removal of the following limiting critical conditions:

- Time to transition to an alternative
- Older structures that cannot be properly sealed
- Presence of sensitive electronic equipment subject to corrosion by phosphine
- Rapid fumigation

First, EPA addresses the transition rate and overall feasibility of sulfuryl fluoride for post-harvest sectors in Section V.D.6. of this preamble. Second, EPA agrees that the inability to properly seal older structures in preparation for fumigation should not be the sole condition for granting critical use exemption status to food processing facilities. The 2008 CUN does not state that the inability to seal older structures is a basis for methyl bromide need. Therefore, EPA agrees and has removed this limiting critical condition from the rule text.

Third, as discussed in the 2008 CUN, research is still ongoing regarding the efficacy of sulfuryl fluoride for the post-harvest critical uses listed in Table I, and EPA must ensure that post-harvest sectors have sufficient time to validate and adopt the new technology. Therefore, the presence of sensitive electronic equipment remains a proper limiting critical condition for critical use applications that would otherwise use phosphine, which corrodes electronic equipment.

Finally, regarding the rapid fumigation limiting critical condition for certain post-harvest sectors, the United States Department of Agriculture (USDA) Agriculture Research Service (ARS) is currently conducting research on the efficacy and practicality of using alternative fumigants, including sulfuryl fluoride, to control post-harvest pests of durable commodities such as nuts and dried fruit. While acknowledging that sulfuryl fluoride appears to have the potential to provide effective and rapid vacuum fumigation of nuts and dried fruit, the Agency must ensure that the tree nut and dried fruit industry has sufficient time to validate and adopt the new technology. Therefore, rapid fumigation remains a valid limiting critical condition for the sectors where it is listed in Table I.

Dow commented that EPA should remove or modify some of the pre-plant limiting critical conditions in the final rule. The commenter stated that with the availability of 1,3-Dichloropropene (1,3-D) as a nematicide, ''nematode infestations'' should not qualify as a limiting critical condition. The 2008 CUN explained that methyl bromide is the only option to effectively control the target pests, including nematodes, found in the Southeastern U.S. where pest pressures commonly exist at moderate to severe levels. EPA responds in more detail in the Response to Comments document for this action.

At the public hearing for this action the Florida Golf Course Superintendents Association and a researcher from Florida University argued that the golf and turf industry should qualify for critical use methyl bromide. EPA responds to these comments in a Response to Comments document available on the docket for this rulemaking.

EPA is finalizing the proposed changes amending the table in 40 CFR Part 82, subpart A, Appendix L, as reflected above. EPA is adding six references and deleting four references in column B, changing the description of one critical use in column B, and removing one limiting critical condition from five post-harvest sectors in column C. Specifically, 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 CUN; 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 turf grass 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; changing the description of members of the National Pest Management Association (NPMA) as requested by NPMA; and deleting the limiting critical condition ''older structures that can not be properly sealed to use an alternative to methyl bromide'' for post-harvest sectors.

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. of this preamble, EPA is allowing sale of 15,491 kg of methyl bromide from existing stocks for research purposes, and adjusting new production accordingly.

In accordance with the recommendations in Table 9 of the TEAP's September 2006 Final Report entitled ''Evaluations of 2006 Critical Use Nominations for Methyl Bromide and Related Matters,'' available on the docket for this rulemaking, EPA is allowing the following sectors 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. 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 (Parties). When added together, the critical use amounts authorized by the Parties for the U.S. in 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 limit on 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). The difference between allowable new production and import and the total critical use amount is to be made up from pre-phaseout inventory that was produced before January 1, 2005. EPA further discusses the breakout between new production or import and stocks in sections V.D.1–3. of this preamble.

EPA is establishing the following reductions to the amount of newly produced or imported methyl bromide authorized in Decision XVIII/13 to satisfy critical uses:

(a) Reductions to account for the amount of available stocks;

(b) Reductions to account for unused critical use methyl bromide at the end of 2006;

(c) Reductions to account for methyl bromide for research purposes that EPA encourages researchers to purchase from available stocks;

(d) Reductions to accommodate uptake of sulfuryl fluoride for post-harvest cocoa bean fumigation in 2008; and

(e) Reduction to accommodate a certain amount of transition to the recently registered fumigant iodomethane for some pre-plant uses.

After accounting for the reductions listed above, in this action EPA is issuing 3,083,763 kg of critical use allowances (CUAs), which allow limited amounts of new production and import of methyl bromide for 2008 critical uses up to the amount of 3,083,763 kg (12.1% of baseline) as shown in Table II. EPA is also issuing 1,729,689 kg of critical stock allowances (CSAs), which allow sales of 1,729,689 kg (6.8% of baseline) from existing pre-phaseout inventories for critical uses in 2008. Sections V.H. and V.I. of this preamble provide definitions for the terms CUA and CSA. EPA explains each of the reductions listed above in subsequent sections of this preamble.

EPA received five comments that object to the Agency's proposed reductions and state that EPA should grant the full amount of new production allowed by the Parties to the Montreal Protocol in Decision XVIII/13.

EPA received one comment from Chemtura Corporation (Chemtura) asserting that EPA ''arbitrarily'' reduces the amount of production authorized by the Parties and ''never deigns to explain how amounts for production previously determined to be critical are deemed no longer to be critical.'' At the public hearing for this action three commenters argued that the methyl bromide allocations have been reduced at each stage of the review process and do not need to be further reduced by the Agency in this rulemaking. When the USG prepares a critical use nomination, it is making a determination as to the level of critical need. It is not making a determination that a particular portion of that need should be met from new

production as compared to stocks. The Parties' Decisions contain a determination as to the level of critical need as well as a maximum amount of that total need that may be met from new production. The Parties' Decisions do not specify a minimum amount that must be met from new production. It is not accurate to state, as the commenter does, that a particular production amount is itself ''critical.'' As explained elsewhere in this preamble, EPA is adjusting the amount of new production to take into account stocks that it has determined to be available.

Fumigation Service and Supply, Inc. (FSS) commented that the Copenhagen Amendment was signed by the U.S. to phase out methyl bromide 14 years ago, and stated that this time period should have been adequate for all users of methyl bromide to switch to alternative fumigation methods. The commenter stated that EPA's proposed allocations will penalize companies that have already phased out methyl bromide. The Natural Resources Defense Council (NRDC) requested that EPA reduce the 2008 CUE allocations by at least 1,275,000 kg and by larger amounts in 2009 due to advancements in using sulfuryl fluoride and iodomethane. The comments on EPA's proposed allocation amounts are addressed in subsequent sections of this preamble and in the Response to Comments document available on the docket for this action.

1. Background of Critical Use Amounts

The Framework Rule (69 FR 76982) and subsequent CUE rules each took note of language regarding stocks of methyl bromide in relevant decisions of the Parties. In developing this action, the Agency noted 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 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. In developing this final rule, EPA did not propose changes to these basic CSA provisions.

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, the Final Framework Rule did not adopt the proposed methodology for determining available stocks. 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 5985), 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 kg as 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).

EPA viewed the allocation of 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, import, 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).

The benefits of pre-phaseout methyl bromide inventories for critical uses were discussed at the 18th and 19th Meetings of the Parties (MOPs). The Parties did not take a decision at the 18th or 19th 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. However, at the 19th MOP, the Parties did recognize that it is appropriate to adjust new production and import levels to account for the amount of ''available stocks.'' In Table D of the Annex to Decision XIX/9, the Parties authorized new production and consumption for critical uses in the United States during 2009 of 3,961,974 kg, ''minus available stocks.''

In the proposed rule, EPA noted that in another instance—essential use exemption process for the use of chlorofluorocarbons in the manufacture of metered-dose inhalers—the Parties have allowed companies to maintain

working stocks of 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 developing this action, EPA did not propose 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 did, however, propose 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 import to allow for critical uses in 2008. Section V.D.2. of the proposed rule described EPA's proposed method to calculate the amount of stocks available for critical uses in 2008. Section V.D.3. of the proposed rule explained how EPA proposed to adjust new production and import levels to account for the Agency's calculation of the amount of available stocks.

In the proposed rule, EPA explained that through data collection and experience, EPA has gained information about the CUE program that the Agency did not have when the program began. For example, data on the aggregate amount of methyl bromide held in inventory at the end of calendar years 2003, 2004, 2005, and 2006 is now available in the public docket for this rulemaking. The pre-phaseout inventory has gradually declined to the point where, for the first time, EPA estimates that at the start of the 2008 control period the pre-phaseout inventory will represent less than a one-year supply of critical use methyl bromide. EPA explained that the proposed approach is intended as a clear and repeatable process for the Agency to make responsible 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.

2. Calculation of Available Stocks

In developing this action, EPA proposed a formula to calculate the amount of available stocks in 2008, 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 was described in the proposed rule and in the Technical Support Document (TSD) available on the public docket for this rulemaking. Using the methodology described in the proposed rule, EPA proposed that ES = 7,671,091 kg; D = 3,224,351 kg; and SCF = 2,731,211 kg. EPA proposed that 1,715,438 kg (6.7% of baseline) of pre-phaseout methyl bromide stocks will be available for critical uses in 2008. The Agency sought comments on its proposed methodology.

The Methyl Bromide Industry Panel (MBIP) correctly noticed in its comments that EPA made a mathematical error in its calculation of available stocks in the proposed rule. Even though EPA listed existing stocks as 7,671,091 kg, which is the correct value, the Agency used the value 7,671,000 kg in its calculation. As a result, EPA proposed 1,715,438 kg of available stocks in 2008, when EPA intended to proposed available stocks of 1,715,529 kg. In other words, EPA underestimated available stocks by 91 kg. EPA has corrected its calculations in this final rule.

The North American Millers' Association (NAMA) commented that the mechanisms for reporting pre-phaseout inventory and usage are imprecise, and therefore the Agency's calculations of inventory levels are likely inaccurate. The commenter did not explain why it stated that the mechanisms for reporting stocks and usage are imprecise, and EPA has not found any specific reason to question the accuracy of its aggregate pre-phaseout inventory data.

EPA received seven comments supporting the creation of a supply chain factor (SCF), but these comments asserted that the 15-week SCF suggested for use in the event of a supply disruption is inadequate and recommended a one-year supply instead. The commenters may have misunderstood the assumption in the TSD, which explains EPA's analysis of how large the SCF should be, that it would take up to 15 weeks for adequate amounts of methyl bromide imports to reach the U.S. if there is a domestic production failure. Because the Agency proposed an SCF that would provide insurance against a production failure during the peak production season (i.e. the beginning of the calendar year), the Agency's proposed SCF is actually equivalent to about 51% of the 5,355,946 kg authorized for U.S. critical uses in 2008, or roughly a six-month supply if demand were constant throughout the year. The commenters provide a number of reasons why they recommend a larger supply buffer, and EPA responds to those comments below.

Chemtura stated that EPA's proposed SCF is inappropriate because it conflicts with the USG's position at the 19th Meeting of the Parties (MOP) to the Montreal Protocol in Montreal, Canada, where the commenter asserted the USG delegation requested a six month reserve for critical uses. NRDC commented that the Parties rejected the U.S. proposal to allow maintenance of a half-year supply chain reserve at the 19th Meeting of the Parties. EPA disagrees with Chemtura's characterization of the events at the September 2007 MOP, and with Chemtura's assertion because a negotiating position does not constitute a factual basis for a rulemaking, or a specific policy or technical finding of the USG. Furthermore, as explained in the proposed rule (72 FR 48966), EPA's proposed SCF provides a technical basis for calculating available stocks that is consistent with the Montreal Protocol, and therefore clearly within EPA's authority under Section 604(d)(6) of the Clean Air Act. EPA also disagrees with NRDC's assertion, because the Parties neither adopted nor rejected the creation of such a reserve. More information about the 2007 MOP is provided in the Report of the Nineteenth MOP, available on the docket for this action.

Chemtura and MBIP quoted the technical limitations discussed in the TSD and stated that these limitations render the final calculation invalid. The Agency does not agree that any of the acknowledged technical limitations individually, or taken together, invalidate either the proposed SCF or EPA's calculation of available pre-phaseout inventory. EPA's proposed SCF should be considered within the context of the United States' renewed commitment in paragraph six of Decision Ex.II/1, which was restated in Decision XVIII/13, to ensure that the criteria in Decision IX/6(1), which is explained above, are applied when allowing the use of methyl bromide. One of the primary ways that EPA met this commitment in previous years was to consider the aggregate quantity of existing stocks, and to reduce authorized new production levels to encourage a more rapid drawdown of existing stocks than required by the Parties. EPA's consideration of stocks in

determining the appropriate production level is partially responsible for steadily shrinking the volume of pre-phaseout inventory to less than half of its 2003 amount, and the Agency projects that aggregate stocks will represent less than a one year supply of critical use methyl bromide at the beginning of 2008. With existing inventories declining significantly, EPA asked, at what point should the Agency stop facilitating a more rapid inventory drawdown? To answer this question, and to enhance the transparency and uniformity of future CUE allocation rules, EPA proposed to estimate the level of aggregate inventory that would be necessary to respond to a scenario in which all methyl bromide production in the U.S. is abruptly halted during peak production season. The Agency did not conduct a statistical or probability analysis of the likelihood of this scenario. EPA chose this scenario because in the U.S. methyl bromide, unlike most commercial chemicals, is produced at only one facility. Therefore, a scenario in which this facility completely ceases production is of special concern. In estimating the amount of methyl bromide that would be necessary in such a scenario, EPA considered the effect of such a production failure during the peak production season. EPA chose this conservative approach partly in recognition that there could be other contingencies that might affect critical users' ability to obtain methyl bromide.

Five commenters raised examples of other events that could occur, and argued that the SCF should account for all of these contingencies happening together. EPA notes that the probability that all of these contingencies occurring together is lower than the probability that any of them will occur individually. In addition, many of the possible events described by the commenters would have an uncertain effect not easily quantified. The scenario that EPA used as a basis for the size of the proposed SCF is straightforward and allows for quantification. In general, EPA relies on private entities to take prudent steps to protect themselves against various contingencies. The inclusion of the SCF in the calculation of available stocks provides suppliers an opportunity to maintain a buffer, but is not designed to guarantee the availability of pre-phaseout inventory in all conceivable circumstances.

NRDC and Dow stated that EPA has no basis for assuming a catastrophic loss at the U.S. methyl bromide production plant, as no such event has ever occurred at this location. In addition, they found unlikely EPA's assumption of such an event happening right after the first of the year. First, EPA points out—as it did in the proposed rule—that the methyl bromide industry is unlike many others because there is only one active production facility in the United States. EPA recognizes that a catastrophic loss is unlikely, but this does not obviate the need to plan for such a scenario. While EPA expects private entities to take prudent steps to protect themselves, EPA does not wish to render them incapable of maintaining a reasonable supply buffer. In developing the TSD, the Agency estimated that significant imports could arrive in up to 15 weeks. Depending on what season the production failure occurred, EPA estimated that the lost production would be within the range of 11–51% of the 2008 demand for 2008 critical use methyl bromide. EPA proposed the conservative value, an SCF equivalent to 51% of the 2008 need for critical use methyl bromide, in part to account for a wider range of other supply disruption scenarios that could occur.

Below, EPA reiterates the technical limitations of the TSD, and explains why each limitation does not render the final estimate invalid, as a number of the commenters contended.

The TSD stated that, ''pre-2005 inventory is held by multiple companies, and the sale of that inventory is governed by market forces. Hence, in the event of a production failure, the stockpile could be purchased by any user (i.e., critical use/non-critical use, quarantine and preshipment, feedstock, or foreign users). Most likely, the stockpile would go to the user willing to pay the highest price in time of short-term global shortage. Second, there may also be existing contract agreements that must be honored. As a result, there is no guarantee that the existing pre-2005 inventory of methyl bromide will flow towards U.S. critical uses in the case of a production failure.'' Quarantine and preshipment (QPS) refers to the exemption from the phaseout of methyl bromide for quarantine and preshipment applications as defined in the January 2, 2003, QPS Final Rule (68 FR 238) and at 40 CFR 82.3. EPA believes that methyl bromide for QPS, feedstock, and exempted Article 5 country (developing country) uses would not have to be supplied from pre-phaseout inventory after a supply disruption, because, as explained in the proposed rule, existing regulations allow manufacturers and distributors to manage inventories of methyl bromide designated for those purposes (72 FR 48968).

There is precedent in the CUE program for allowing methyl bromide distributors to respond to market forces. In the Proposed Framework Rule, EPA explained that, ''The issuance of critical stock allowances (CSAs) does not obligate holders to make these quantities available to critical uses if they choose for practical or business reasons not to sell or distribute stocks to critical uses. However, EPA believes that these firms will respond to market conditions'' (69 FR 52376). Similarly, EPA's consideration of a SCF in its calculation of available stocks does not obligate suppliers to sell their stocks to critical users following a supply disruption. EPA is unable to predict exactly how stocks would be used after a disruption. All things considered, EPA does not believe that the possibility that some inventory would be consumed by non-critical users after a supply disruption should invalidate or alter the size of the proposed SCF.

The TSD also stated that, ''it is not clear that a contingency plan exists amongst the various methyl bromide producers as to how to respond to a major supply disruption. Thus, the reallocation of shipping containers to import methyl bromide into the United States may not occur smoothly over the first weeks or months while the various manufacturers, shippers, and customers sort out their arrangements.'' Similarly, two commenters expressed concern that importing the methyl bromide necessary to meet U.S. demand would take far longer than 15 weeks due to inflexibilities in the methyl bromide shipping system. Chemtura stated that ''adjusting distribution patterns to accommodate a sudden shift in worldwide demand and supply, as would occur with the loss of U.S. production, would require an extensive, ad hoc redesign of this distribution system with very little, if any, lead time.''

The possibility that methyl bromide distributors have not conducted emergency response planning does not invalidate the SCF estimate described in the TSD. Methyl bromide distribution is the responsibility of the methyl bromide industry and not EPA. EPA's role is to allow producers and distributors to satisfy critical needs for methyl bromide, not to guarantee that they will do so. The Agency carefully considered physical shipping constraints that dictate how rapidly methyl bromide distribution patterns can shift, including ISO container capacity, the length and timing of shipping routes, and the volume of methyl bromide that could be shipped internationally to maintain the global distribution system following a

U.S. production failure. However, for the reasons expressed above, the TSD does not assume that distributors would need long periods of time to redesign their distribution patterns in order to respond. Furthermore, since each shipping route would take weeks to complete, the TSD assumed that industry would have ample planning time to re-route containers as necessary.

Finally, the TSD stated that, ''characteristics such as the purity of the pre-2005 inventory of methyl bromide could affect users' ability to use this inventory to meet their needs for methyl bromide; however, these characteristics are not known. For example, some of the methyl bromide held in 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 fumigation.'' Similarly, EPA received comments from The Industrial Fumigant Company (IFC) and MBIP that expressed concern about the availability of stocks of methyl bromide free of chloropicrin for the post-harvest sector. MBIP stated that chloropicrin is premixed in ''virtually the entire'' U.S. inventory of existing stocks. IFC was especially concerned about the possible need for emergency fumigation treatments, which would require pure methyl bromide.

EPA's current reporting requirements do not request information about all of the characteristics, or composition, of the existing stockpile. Just prior to publishing the proposed rule, the Agency received anecdotal information suggesting that a large percentage of the existing stockpile is mixed with chloropicrin, and therefore unsuitable for post-harvest uses. EPA has also heard conflicting reports stating that a substantial portion of the existing stockpile is pure methyl bromide. The Agency is currently considering options to obtain more information about the existing stockpile, including but not limited to, requesting information from holders of pre-phaseout inventory using information-gathering authority under section 114 of the Clean Air Act. Because the CUA amount in today's final rule is less than the production amount authorized by the Parties, EPA may consider allowing the conversion of some CSAs to CUAs in appropriate circumstances. The Agency also notes that if pre-phaseout inventory contains very small amounts of pure methyl bromide, then allowing for a larger supply buffer composed of that inventory would not remedy the commenters' concerns.

Chemtura commented that EPA needs to acknowledge methyl bromide's role as a tool in responding to catastrophic events such as a need to provide widespread re-fumigation after a natural disaster, and that methyl bromide has security as well as economic importance. EPA agrees with the commenter and acknowledges methyl bromide's role in responding to the situations described by the commenter. Methyl bromide's role in responding to such challenges as those listed by the commenter is one of the reasons EPA proposed a SCF in its analysis of available stocks, and based its estimate of the SCF on conservative assumptions.

Four commenters stated that the SCF should be a one-year supply because of the global ramifications that the supply disruption from the U.S.'s one plant could have. EPA agrees that a severe critical use methyl bromide shortage in the U.S. could have important global ramifications. That is one reason EPA considered international factors in its SCF analysis. For example, after close scrutiny, EPA estimated that foreign production capacity is capable of meeting global demands for methyl bromide. While the commenters did not provide a specific basis for why a one-year supply would be most appropriate, EPA responds to some of their other concerns below and in the Response to Comments document on the docket for this rulemaking.

Four commenters raised concerns about the ability of the Israeli plant, which could supply critical use methyl bromide to the U.S. after a domestic production failure, to divert methyl bromide to the U.S., especially in light of conflicts occurring in the Middle East. The commenters did not provide specific information about the likelihood or consequences of the Israeli supply disruption that they mentioned. The TSD required a determination about which contingencies to use as the basis for the analysis. Contingencies that were too speculative or whose effects could not be readily quantified were not included in the analysis. However, EPA adopted a conservative approach in recognition that its analysis could not address all possible contingencies. One of the commenters stated that the U.S. would not be sacrificing environmental goals by maintaining a one-year SCF because stockpiled methyl bromide that is not in use can do no harm to the environment. EPA notes that using existing methyl bromide can displace the need for new production, with corresponding environmental benefits.

MBIP and Chemtura both asserted that importing methyl bromide to meet U.S. demand would take longer than the 15 weeks EPA estimates. MBIP claimed that the current capacity of specialized ISO containers, which are used to ship methyl bromide overseas, is inadequate to maintain global distribution following a supply disruption. MBIP stated, ''Assuming round trip times of 45 days for shipments from Israel to Europe and 90 days for all other trips, the current worldwide fleet of ISO containers would need to immediately grow by more than 35% to establish and maintain the global distribution system for methyl bromide within the 15-week period estimated by EPA.'' In their public comments Chemtura stated, ''To assist the Agency further in understanding the logistical challenges raised by a shut-down of U.S. production, Chemtura is submitting, as business-confidential exhibits, two diagrams showing its estimates of the current global distribution map, and how the distribution map would change if U.S. production were suddenly disrupted.''

EPA disagrees with MBIP's claim that the current fleet of ISO containers would be unable to maintain the global distribution system for methyl bromide within the 15-week period estimated by the Agency. The conclusions described in the TSD are based, in part, on a detailed analysis of the capacity of the existing ISO container fleet, and other shipping logistics. EPA could not reconcile the differences between the Agency's estimate and MBIP's estimate, because MBIP did not provide details about how it concluded that the existing fleet of containers would be inadequate.

After close analysis, EPA found a number of points of disagreement with the assumptions in Chemtura's confidential submission. In general, these disagreements are related to concerns that Chemtura raised in its public comments, which EPA addresses in this preamble. For confidentiality reasons, the Agency is unable to elaborate on how Chemtura's submission conflicts with the analysis explained in the TSD. The Agency closely analyzed Chemtura's confidential submissions and did not find a specific reason therein to revise the TSD, or the size of the proposed SCF. EPA's detailed response to Chemtura's confidential comments has been placed on a confidential section of the docket because it includes information claimed as confidential business information.

MBIP raised several concerns about the amount of time it would take for foreign methyl bromide producers—specifically Israel Chemicals Ltd. (ICL)—to ramp-up production after a U.S. production failure. MBIP stated that increasing foreign production would take longer than EPA estimated because: Methyl bromide manufacturers

typically plan production several months in advance; foreign producers may have to wait for government approval before increasing their production; and an immediate increase in methyl bromide production may not be possible due to limited storage capacity.

In the analysis underpinning the TSD, EPA built in a certain amount of time—starting when U.S. production fails—for foreign producers to make arrangements and adjustments to their production schedules before they would need to ramp-up production. EPA considered the ability of foreign producers to ramp-up production, including gaining access to raw materials and storage capacity. Foreign producers could increase production and exports to the United States without approval from the Parties to the Montreal Protocol, so long as entities holding CUA allowances are willing to expend their CUAs to import that material. MBIP did not provide specific information about how the concerns it raised should change the analysis contained in the TSD, or whether there are steps that foreign producers could take in advance as contingency measures that could alleviate these concerns. EPA responds to these comments in more detail in the Response to Comments document on the docket for this action.

MBIP noted that ''significant regulatory challenges could hamper companies' ability to obtain a sufficient supply of chloropicrin for methyl bromide formulations'' and that ''if quantities of chloropicrin had to be exported from the U.S. to Israel, several CWC [Chemical Weapons Convention] regulatory requirements would be triggered.'' While it is true that the export of chloropicrin to Israel would involve certain export certificates, it is not clear that quantities of chloropicrin would need to be exported from the U.S. to Israel.

According to preliminary Form R reports from the 2006 Toxic Release Inventory (TRI), as well as past reports from 2005, methyl bromide/chloropicrin products are currently formulated at five or more facilities around the United States (EPA has placed information collected from the TRI on the docket for this action). Thus, at least for the products sold by these distributors to U.S. critical users, chloropicrin would not be required to be exported to Israel for formulation. The commenter did not provide specific information about the likelihood that the CWC, or other regulatory measures, would impede the supply of methyl bromide products to U.S. critical users, or whether advance planning could help resolve potential difficulties.

MBIP commented that the distribution system for methyl bromide in the U.S. is complex and that imports would not reach all repackaging locations in the same time period. The commenter stated that 500,000 kilograms of methyl bromide must remain in the system (a minimum of 3,231 metric tons of pre-phaseout stocks) to keep the domestic distribution system functional. EPA specifically accounted for this concern in the proposed SCF analysis. The SCF would replace lost production for 15 weeks until imports arrive. Assuming these imports are all shipped to the location where methyl bromide is currently produced in the U.S., imported methyl bromide could be expected to reach repackaging locations in the same amount of time as it would if there were no production failure. EPA recognizes that the timely distribution of pre-phaseout stocks after a domestic production failure would depend upon business decisions made by suppliers. However, the proposed SCF is large enough to give suppliers the opportunity to provide uninterrupted distribution in the analyzed scenario.

In its comments, MBIP stated: ''EPA does not consider regulatory obstacles that may delay the availability of alternate supply * * * In addition, formulations of methyl bromide are regulated by EPA as pesticides under FIFRA. As such, suppliers of these products must maintain registrations with EPA. Under FIFRA, the source of methyl bromide used in the products must be identified to EPA and detailed information about the manufacturing process must be submitted. In addition, the labels for all products must bear a special number that denotes the pesticide producing establishment where the product is formulated. If production is shifted to another location, the source information, manufacturing process data, and labels for all affected products would have to be updated before the products could be imported or distributed in the U.S. For example, if the methyl bromide that is sourced from Israel is made using a different manufacturing process than those on file with EPA, U.S. registrants may need to notify EPA of the change in the formulation process that is on file or even file an amendment to that process.''

Pesticide registration information is highly confidential, but critical sales data shows that imported methyl bromide is registered for some critical uses in the U.S. EPA does not obligate producers to register their products for all U.S. critical uses, but the Agency believes that firms will respond to market conditions, and undertake appropriate emergency response planning. A firm's decision about whether to register its product for critical uses is similar to business planning decisions under the established critical stock allowance policy noted above; in which EPA let firms respond to market conditions, instead of requiring them to sell methyl bromide to critical users (69 FR 52376). The Agency believes that the added transparency of the SCF approach will help companies respond to market conditions more rapidly and appropriately.

NRDC and Dow objected to the proposal to create an SCF and believe the methyl bromide in question should be used to reduce or eliminate the need for new production and import allocations for 2008. The Agency explained the reasons for proposing an SCF in the proposed rule. EPA responds to the commenters' specific concerns below and in the Response to Comments document.

NRDC stated that the SCF will be equivalent to existing stockpiles and will be easy to get and use by those with restricted use pesticide licenses. NRDC also stated that stocks will not be maintained for the purpose of the SCF—the stocks intended for the SCF that remain unallocated for CUEs can be freely used by non-critical users. The commenter is correct that this supply buffer would be composed of methyl bromide produced before the January 1, 2005, phaseout. The commenter is also correct that non-critical users are not barred from purchasing pre-phaseout methyl bromide inventory. In the Final Framework Rule, EPA explained its rationale and authority for allowing non-critical users to access pre-phaseout inventory (69 FR 76988). EPA is not revisiting that issue in this rulemaking.

The Agency does not believe that the fact that producers and distributors may sell pre-phaseout inventory to non-critical users invalidates the proposed SCF, or EPA's proposed estimation of the amount of available stocks in 2008. The commenter is speculating about what suppliers would do given the opportunity to maintain a buffer, which is something that has not yet been tested. Information on pre-phaseout inventory drawdown during 2008 will inform EPA's future CUE rulemakings.

While EPA did not propose to require that distributors keep the SCF amount as a supply buffer for critical users, Section V.D.3. of the proposed rule laid out an approach in which the Agency would stop drawing down stocks faster

than the minimum agreed by the Parties, if EPA determines that available stocks will be less than the SCF amount. By considering a SCF in its analysis of the amount of stocks that are available for critical uses, EPA is giving producers and distributors the opportunity to provide a reasonable supply buffer to satisfy critical needs.

At the public hearing for this action the California Strawberry Commission (CSC) and Ameribrom Inc. commented that the private companies that own pre-phaseout inventory have no obligation to sell it. Ameribrom commented that the SCF needs to be held by manufacturers and importers because distributors, who own a large portion of the pre-phaseout inventory, do not distribute the methyl bromide when it is needed. EPA notes that the supply of pre-phaseout inventories to critical users is based upon private business decisions that the Agency does not control and responds to these comments in more detail in the Response to Comments document available on the docket for this action.

Dow stated that the SCF should be based on what it called ''the actual 2008 methyl bromide demand (4,816,514 kg) as determined by the U.S. Government and as proposed in the rule,'' rather than the amount approved by the Parties (5,355,946 kg). The commenter stated that an SCF calculated based upon a methyl bromide volume that exceeds the critical need for 2008 renders the SCF value and basis for the calculation nonsensical. Dow concluded that this simple recalculation would reduce overall new production in 2008 by more than 250,000 kg.

It appears that the Dow's figure for ''actual methyl bromide demand'' is derived by subtracting the proposed 539,432 kg carryover amount (72 FR 48969), from the critical use amount agreed to by the Parties (5,355,946 kg). As discussed in Section V.D.4. of this preamble, EPA reduces new production to account for carryover critical use material in order to prevent companies from building inventories of newly produced critical use methyl bromide. EPA reduces new production amounts to account for carryover, but in doing so the Agency is not reopening the issue of the overall amount of total critical need. EPA expects that critical users will satisfy the remainder of their critical needs by using the critical use methyl bromide that was unused in previous control periods. Therefore, the SCF is only affected by reductions to account for the feasibility of alternatives. Accordingly, for the reasons explained in Section V.D.6. of this preamble, EPA is reducing the total 2008 CUE by 27,769 kg to account for the increased uptake of sulfuryl fluoride and iodomethane in 2008. The Agency has re-calculated the SCF by applying a revised 2008 critical use demand of 5,328,177 kg. This adjustment reduces the SCF by 14,160 kg.

To clarify, EPA proposed that the SCF should represent about 51% of the total critical need in 2008. In the proposed rule, the Agency assumed that the total critical need in 2008 would be 5,355,946 kg, as agreed to by the Parties in Decision XVIII/13. Therefore, EPA proposed an SCF of 2,731,211 kg (5,355,946 kg * 50.994% = 2,731,211 kg). As explained in Section V.D.6. of this preamble, EPA now estimates that the total critical need in 2008 will be 27,769 kg less than the Parties authorized in Decision XVIII/13, because EPA is making further reductions to account for the uptake of sulfuryl fluoride for cocoa bean fumigation, and for the newly registered fumigant iodomethane. Therefore, in this final rule EPA estimates that the total critical need in 2008 will be 5,328,177 kg. Accordingly, EPA now calculates an SCF of 2,717,051 kg (5,328,177 kg * 50.944% = 2,717,051 kg).

Dow commented that the SCF is counterproductive to the phase-out of methyl bromide and offers disincentives to companies to invest in alternatives. EPA recognizes that a very large methyl bromide inventory could have the counterproductive effects that the commenter mentioned. In response to this concern, EPA has encouraged a faster draw down of the pre-phaseout inventory than the minimum agreed by the Parties. The Agency has also explained the rigorous technical review process for critical uses both domestically and internationally. Companies should be aware that as soon as technically and economically feasible methyl bromide alternatives are available for particular uses, critical use exemptions will be reduced accordingly. Because the SCF is a percentage of the current year's estimated critical need, companies should also consider that, all things being equal, the SCF will change in accordance with critical use exemption levels.

NRDC objected to the SCF because Congress and the Parties did not intend for EPA to designate stocks as ''unavailable.'' EPA did not propose to designate any amount of pre-phaseout inventory, or any specific holdings, as ''unavailable.'' EPA proposed to recognize the amount of existing stocks that is available. As discussed above and in the proposed rule, in paragraph 4 of Decision XVIII/13, and similar Decisions, the Parties indicated that each individual Party has discretion to recognize the amount of existing stocks that is available for critical uses. Most recently, Table D of the Annex to Decision XIX/9 explicitly indicates that for the 2009 control period the United States will reduce authorized new production levels to account for the amount of available stocks. Thus, EPA's proposed approach is consistent with the practice under the Montreal Protocol. It is also an appropriate exercise of the discretion granted by Congress under Section 604(d)(6) of the Clean Air Act.

NRDC stated that no chemical company keeps more than a two- or three-month supply of a chemical, yet the SCF is nearly a four-month supply. The commenter provided no evidence for its assertion that no chemical company keeps more than a two- to three-month supply of a chemical. Furthermore, the methyl bromide industry is unusual because there is only one production facility in the United States and in fact in the Western Hemisphere. The proposed rule estimated that the SCF for 2008 should be 2,731,211 kg, or roughly a six-month supply of critical use methyl bromide if demand were constant throughout the year.

NRDC commented that methyl bromide users can make temporary adjustments at a manageable cost in the event of a supply disruption, such as using alternatives or shifting fumigation schedules. EPA agrees that depending on when a supply disruption occurs, it is possible that a limited number of entities might be able to delay scheduled fumigations. It is also possible that some non-critical users might need to access the pre-phaseout inventory for security or other emergency purposes. We do not know whether these effects would occur or to what extent they would offset each other. Such speculation does not change the validity of EPA's estimate that 2,717,051 kg is a reasonable SCF for 2008. EPA disagrees with the commenter's assertion that critical users could readily switch to alternatives following a supply disruption. By definition, and as confirmed by several rounds of expert review, entities that qualify for critical use methyl bromide do not have access to technically and economically feasible alternatives.

In this final rule, EPA is adopting the proposed formula for calculating the amount of stocks available for critical uses in 2008, expressed as follows: $AS_{2008} = ES_{2007} - D_{2007} - SCF_{2008}$, where AS_{2008} = available stocks on January 1,

2008; ES_{2007} = existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2007; D_{2007} = estimated drawdown of existing stocks during calendar year 2007; and SCF_{2008} = a supply chain factor for 2008, the calculation of which was described in the proposed rule and in the TSD available on the public docket for this rulemaking. Using the methodology described in the proposed rule, correcting for mathematical errors explained above, and reducing 2008 critical needs by 27,769 kg to account for the uptake of sulfuryl fluoride and iodomethane explained below in Section V.D.6., EPA finds that ES_{2007} = 7,671,091 kg; D_{2007} = 3,224,351 kg; and SCF_{2008} = 2,717,051 kg. Therefore, EPA calculates that 1,729,689 kg (6.8% of baseline) of pre-phaseout methyl bromide stocks will be available for critical uses in 2008.

EPA believes 1,729,689 kg is a reasonable estimate of the amount of stocks that should be considered available for critical uses in 2008, especially given the U.S. role as one of the world's largest suppliers to meet global methyl bromide needs. EPA also believes the methodology used to make this estimate is consistent with the relevant Decisions of the Parties, including Decision IX/6, and the Clean Air Act. EPA has determined that the approach finalized in this action is the most efficient and reasonable way to balance the goals of satisfying critical needs for methyl bromide and also facilitating the transition to ozone-safe alternatives. Finally, as discussed above and in the Response to Comments document, EPA considered all of the comments received and did not find a specific reason to change its proposed refined approach for calculating the amount of available stocks.

3. Adjusting New Production and Import Amounts To Account for Available Stocks

In developing this action, EPA proposed to refine its allocation approach to account for the amount of stocks available for critical uses in 2008, and each year thereafter as appropriate and feasible. EPA proposed to allocate critical stock allowances (CSAs) in 2008 in an amount equal to the quantity of pre-phaseout inventory ''available'' for critical uses in 2008, as estimated by EPA using the formula described above. In the proposed rule, EPA calculated that there would be 1,715,438 kg of available inventory in 2008. Therefore, EPA proposed to allow the sale of 1,715,438 kg from existing stocks for critical uses in 2008 by allocating an equivalent number of CSAs. As in past years, EPA proposed to adjust the critical use allowance (CUA) amounts accordingly, so that the total number of CUAs and CSAs is not greater than the total critical use amount authorized by the Parties. In the proposed rule, EPA noted that to account for carryover amounts of methyl bromide, amounts for research purposes or 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 2008. EPA also proposed a method for adjusting new production and import to account for the amount of available stocks in future years if the amount of available stocks is less than the amount of stocks the Parties authorize for critical uses for the year in question. EPA sought comments on its proposed approach for adjusting new production and import amounts to account for the amount of stocks available for critical uses.

EPA received six comments that expressed concern about the proposed level of CSAs for 2008. The commenters noted that the proposed amount of methyl bromide to come from pre-phaseout inventory is greater than the amount agreed to by the Parties in Decision XVIII/13. The proposed rule and Section V.D.1. of this preamble explain that in previous years EPA has determined that more critical use methyl bromide should come from stocks than the minimum levels agreed to by the Parties, and that EPA understands those actions to be in compliance with the Montreal Protocol, and within the Agency's authority established in Section 604(d)(6) of the Clean Air Act. Furthermore, the inclusion of a SCF in EPA's determination of the amount of available stocks should relieve some of the commenters' concerns.

MBIP commented that EPA's proposal to use pre-phaseout inventory for critical uses jeopardizes the U.S.'s ability to address a catastrophic supply disruption. The proposed rule and Section V.D.2. of this preamble explain that by including a SCF in its calculation of available stocks, EPA is allowing for the maintenance of a supply buffer that could help to satisfy critical needs in the event of an emergency, such as a major supply disruption.

The Florida Fruit and Vegetable Association (FFVA) stated that EPA should develop and make available to CUE holders a timely and accurate accounting system for use during the control period for both new production and CSAs. The commenter contended that this accounting system would be important as stockpiles decrease and would allow the Agency flexibility to shift from CSAs to new production during the control period if necessary. The commenter stated that without this flexibility the Agency should authorize the total quantity approved for the 2008 control period as new production with the understanding that the portion of material not used as a result of the use of pre-phaseout stocks during 2008 would be deducted from future authorizations. If EPA understands correctly, the commenter is concerned that at some point existing stocks will not be able to satisfy all of the CSAs issued by EPA for a given control period, and that if this happens during a control period, EPA should convert CSAs to CUAs. The Agency believes that the proposed approach for determining CUA and CSA amounts, which accounts for the amount of available stocks, is a major step towards decreasing the probability that EPA would issue more CSAs than existing stocks are able to satisfy in a given control period. Currently, EPA collects annual data about critical sales of new production and pre-phaseout inventory. EPA agrees with the commenter that collecting this data more often, quarterly for example, could have certain benefits related to monitoring pre-phaseout inventory information. As the commenter stated, more timely data could help EPA determine more rapidly if it would be appropriate to allow the conversion of some CSAs to CUAs. However, by increasing the frequency of reporting, the commenter's proposal would impose a substantial administrative burden upon the regulated community, especially upon small distributors. Considering the approach that EPA is finalizing in this rule, which should decrease the likelihood of impractically large CSA allocations, the Agency does not believe the benefits of the commenter's proposal would justify the additional costs it would impose.

In this rule, EPA is adopting the proposed approach for adjusting allowable new production and import levels to account for the amount of available stocks. As discussed above, this approach is consistent with the relevant Decisions of the Parties, especially Table D of the Annex to Decision XIX/9, which for 2009 explicitly authorizes for the United States a certain amount of new production and import ''minus available stocks.'' After considering all of the comments received, EPA believes that

this is the most reasonable, efficient, and transparent way for the Agency to continue to facilitate responsible management of pre-phaseout inventory. Therefore, with this action the Agency is allowing 1,729,689 kg of methyl bromide to be supplied from pre-phaseout inventory for critical uses in 2008 by issuing an equivalent number of CSAs, and adjusting the amount of CUAs accordingly.

To clarify, the critical use amounts authorized by the Parties in Decision XVIII/13 for 2008 total 5,355,946 kg. 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. This means that while the Parties require only 760,906 kg of stockpile consumption if the entire U.S. allotment is utilized, EPA is allowing 1,729,689 kg of 2008 critical use needs to be met from pre-phaseout inventory. Thus, to account for the amount of available stocks, EPA is allocating 968,783 kg of extra pre-phaseout inventory consumption for critical uses in 2008. As in past years, EPA proposed to adjust the amount of CUAs accordingly, so that the sum of CUAs and CSAs is not greater than the total amount authorized by the Parties. After accounting for the additional reductions discussed below for unused critical use methyl bromide at the end of 2006, increased uptake of sulfuryl fluoride for post-harvest cocoa bean fumigation in 2008, transition to the recently registered fumigant iodomethane, and reductions to encourage research amounts to be supplied from pre-phaseout inventory, EPA is allowing 3,083,763 kg of new production and import for critical uses in 2008.

In developing this action, EPA proposed to adjust new production and import to account for the amount of available stocks in future years if the amount of available stocks is less than the amount of stocks the Parties authorize for critical uses for the year in question (72 FR 48969). EPA did not receive any comments on how it proposed to account for available stocks if the amount of available stocks is less than the amount of stocks the Parties authorize for critical uses for the year in question. If that scenario arises, EPA may adopt the approach it described in the proposed rule after a notice and comment rulemaking process. EPA estimates that there will be sufficient pre-phaseout inventory at the beginning of the 2009 control period to satisfy the amount of 2009 inventory drawdown (300,000 kg) for critical uses authorized by the Parties in Decision XIX/19.

4. Treatment of Carryover 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 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 §§ 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 that was produced or imported under the critical use exemption, but not exported or sold to end-users in that year. An amount equivalent to this ''carryover,'' 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 carryover from 2005, which was reported in 2006, was deducted from the allowable amount of production or import for critical uses in 2007. In developing this action, EPA proposed to treat carryover the same way for 2008.

As discussed in Section V.D.2., carryover critical use material is not included in EPA's definition of existing stocks as it applies to the proposed formula for determining the amount of available stocks. EPA is not including carryover amounts as part of existing stocks, because doing so could lead to a double-counting of carryover amounts, and thus a double reduction of CUAs. The definition of existing stocks specifically refers to pre-phaseout inventory, not material produced or imported under the critical use exemption.

In developing this action, EPA explained that in February 2007 the Agency, received reports about critical use methyl bromide production, imports, exports, sales and/or inventory holdings in 2006 under the requirements at 40 CFR 82.13. The information reported to EPA indicated that 6,923,926 kg of critical use methyl bromide was acquired through production or import in 2006, and 6,384,493 kg of critical use methyl bromide was exported or sold to end-users in 2006. EPA proposed to calculate the amount of carryover at the end of 2006 with the method used in column L of the U.S. Accounting Framework for critical uses of methyl bromide. The Agency calculated that the carryover amount at the end of 2006 was 539,433 kg, which was the difference between the reported amount of critical use methyl bromide acquired (*i.e.* produced or imported) in 2006 and the reported amount used (*i.e.* sold to end users in 2006) (6,923,926 kg − 6,384,493 kg = 539,433 kg). On March 16, 2007, in the 2006 U.S. Accounting Framework for critical uses of methyl bromide, which is available on the docket for this action, the Agency officially reported 539 metric tons of carryover from 2006 to the UNEP Ozone Secretariat.

In the proposed rule, EPA brought attention to a petition submitted by Chemtura that proposed changes to: (1) The Agency's established method for calculating carryover; (2) the distribution of subsequent CUA reductions; and (3) the existing recordkeeping and reporting requirements. The Agency made Chemtura's petition available on the public docket, and specifically sought detailed comments on Chemtura's proposals. EPA asked that comments suggesting alternative methods for calculating the amount of carryover material at the end of each year be detailed and comprehensive; address what changes would be needed to the reporting requirements; and discuss the degree of administrative burden that alternative methods might impose. The Agency also sought comment on ways to improve the completeness of data reporting by affected companies. EPA emphasized that the process for calculating the amount of carryover CUE material each year relies on data regarding sales to end users as reported to EPA by distributors and applicators. The Agency specifically requested comment on whether requiring producers, importers, and distributors to report the names of distributors and third-party applicators to which they have sold critical-use methyl bromide would result in more complete reporting, and whether this would justify the additional burden of such requirements.

Chemtura's petition asserted that ''EPA must adjust its methodology for calculating carry over.'' EPA disagrees for two fundamental reasons: the Agency's established methodology is a simple and accurate way to calculate the carryover amount each year; and adjusting the established method could create international confusion about U.S. reporting, which could jeopardize international authorizations of new production to satisfy the critical needs of U.S. agriculture. EPA expands on these points below.

Six commenters supported Chemtura's request that EPA revise its carryover calculation procedures to consider a broader range of information

sources when determining the carryover amount from a given control period. The commenters suggested that EPA calculate the carryover as the sum of all critical use methyl bromide that companies report as being held in inventory. In its comments, Chemtura recognizes that this approach would not fully address the problem of incomplete reporting, and suggests that a conservative margin for error could be achieved by calculating the average carryover for all reported sales and applying the average to any remaining unreported volume. If EPA understands correctly, the commenters are requesting an ''inventory approach'' to calculate the carryover amount, in which EPA would calculate carryover as the sum of critical use methyl bromide inventory reported in section 2.6 of the annual Sales of Critical Use Methyl Bromide to End Users Reports (''sales reports''), a sample of which is posted on the docket for this rulemaking. EPA understands that the commenter believes the inventory method would result in a lower carryover amount and would be more accurate. However, EPA does not believe the inventory method would be as accurate as the established ''sales method'' that the Agency uses to report carryover amounts internationally.

For 2006, the inventory method would rely on data reported in section 2.6 of the annual sales report forms. In collaboration with major methyl bromide producers and distributors, the reporting forms were updated and posted on EPA's Web site in 2006. EPA posted instructional materials online with the updated forms, and held compliance assistance meetings to teach stakeholders how to use the new forms, including a session at the Methyl Bromide Alternatives Outreach (MBAO) conference in Orlando in November 2006 and a similar session at the MBAO conference in San Diego in October 2007. If the sales reports are completely and accurately filled out, section 2.6 is calculated with information from sections 2.4A, 2.4B, 2.2, and 2.5. For companies that hold critical use methyl bromide for other companies, the information reported in section 2.7 is an important cross-check of the information reported in section 2.6. However, EPA reviewed the data in sections 2.4 through 2.7 of the 2006 sales reports, and found several instances of blank, incomplete or apparently misreported information in those sections. EPA made efforts to contact distributors that filed reports with significant inconsistencies, and many of the reports were subsequently corrected. However, some of the data points remain blank or questionable. On the other hand, there were far fewer instances of blank or apparent misreporting in section 2.2 of the sales report, which lists sales to end users by critical use sector. Most importantly, all instances of blank or apparently misreported sales in section 2.2 were corrected after EPA staff contacted the corresponding reporting entities. Given EPA's concerns about the data in sections 2.4 through 2.7 and the Agency's reservations about changing the carryover calculation method, EPA has decided to retain the proposed approach in this final rule.

Six commenters asserted that the critical use material calculated as carryover for 2006 is actually unaccounted sales rather than inventory held at the end of the year, and contend that EPA has evidence that this is the case. As discussed further below, the commenters claimed to have evidence that 2006 sales remain unreported, but did not produce official sales reports to support their claim.

MBIP stated that EPA should have been aware of underreporting of critical use sales and that EPA's data set for calculating the carryover set was deficient. MBIP claimed that information it received in response to its Freedom of Information Action (FOIA) request of May 2007 clearly showed that some companies filed reports in 2005 and not in 2006. Nonetheless, MBIP contended, EPA had mistakenly assumed that 100 percent of the unreported sales of critical use methyl bromide are held in inventory. In response, EPA points out that it made every reasonable effort to contact entities that reported in 2005 and not 2006. Although EPA contacted these entities, some of them still have not reported 2006 sales for critical uses. Whether every entity that sold critical use methyl bromide in 2005 did so in 2006 remains an open question. EPA has made it clear to MBIP that it would consider late submissions of official sales reports from 2006, but MBIP has been unable to produce suitable evidence of the unreported sales that they insist took place during 2006. With this final rule EPA is making a final determination of the 2006 carryover amount.

At the public hearing for this action, Ameribrom Inc. said that 80 percent of the 539 metric tons (MT) that EPA calculated as carryover is actually methyl bromide that was sold to critical users but not reported. The commenter also said that many small distributors do not understand the reporting requirements, and some are incapable of complying with them. The commenter did not provide specific, verifiable information to support the claim that 80 percent of the carryover is actually unreported sales. Therefore, EPA will not change its proposed approach as a result of Ameribrom's claims. The Agency is concerned with Ameribrom's statement that some small distributors did not file required reports. EPA continues to educate stakeholders about critical use exemption reporting requirements through outreach programs. For example, EPA posts instructional material on its Web site, holds informational sessions about reporting at the annual Methyl Bromide Alternatives Outreach Conference, and provides staff contacts to assist with reporting requirements. Most recently, EPA provided a letter template to members of MBIP, including Ameribrom, that explains the importance of full reporting, provides information about how to acquire official reporting forms, and a contact person to answer questions. EPA encouraged MBIP's members to customize the letter and send it to all of their customers.

MBIP stated that an independent auditor found that approximately 20 methyl bromide suppliers failed to provide EPA with sales reports, which accounted for approximately 80 percent of the calculated carryover. However, MBIP did not provide the names of these suppliers, so EPA could not confirm the veracity of MBIP's claim. Thus, as EPA explains above, the Agency is unwilling to revise its methodology for determining the previously calculated 2006 carryover amount, which was reported internationally on March 16, 2007. EPA has taken a number of steps to work with MBIP and other stakeholders to encourage full reporting. Full reporting is in everyone's interest, and the Agency will continue to work with industry in outreach and educational programs toward that end.

Chemtura asserted that many of the companies that routinely filed required reports were the entities most likely to be holding critical use methyl bromide inventory—manufacturers and distributors, and that that EPA's contention that ''carryover increased while allocations and stocks have plummeted'' is not credible. Similarly, EPA MBIP commented that it performed an audit that revealed that non-reporting entities were mostly smaller entities that were unlikely to hold any inventory. Six commenters requested that EPA rigorously enforce compliance with the supplier reporting requirements at 40 CFR 82.13. EPA received comments from Chemtura and MBIP that stated

that the proposed rule's explanation of how the carryover is calculated is the first such explanation given by EPA in any CUE rule promulgated to date. MBIP stated that this was their first opportunity to comment on EPA's method of calculation. EPA received a comment from Chemtura that expressed the view that EPA lacks authority to reduce the 2008 CUE amount based on carryover from a previous year. EPA responds to all of these comments in the Response to Comment document available on the docket for this action.

In this final rule, EPA is not adjusting the established methodology for calculating the amount of carryover critical use methyl bromide, because doing so could create international confusion about U.S. reporting, which could jeopardize international authorizations of new production to satisfy the critical needs of U.S. agriculture. The United States has important commitments to report information about methyl bromide for critical uses. In December 2004 the Parties agreed to Decision XVI/6, which adopted an accounting framework for critical uses of methyl bromide. Each Party with critical needs submits an accounting framework annually. The U.S. submitted its first Accounting Framework for 2005 critical uses on May 19, 2006. The U.S. subsequently revised the accounting framework agreed to by the Parties slightly because the amount of pre-phaseout inventory was being treated as confidential.

For 2005 and 2006, EPA calculated the carryover amount using the method described in the proposed rule, and reported the result internationally in the U.S. Accounting Framework for critical uses of methyl bromide. The Parties expect EPA to reduce new production, when appropriate, by the amount of carryover CUE material. A post-hoc revision of the methodology for the U.S. Accounting Framework could create international confusion, and, as discussed in this preamble, there is not a compelling reason to change EPA's method at this time. Therefore, EPA has determined that any revision of the previously reported 2006 carryover amount must be based upon new data, not a new method for manipulating old data.

In this final rule, EPA is continuing its practice of not permitting entities to build stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. In the proposed rule, EPA explained that the Agency received official sales reports under the requirements at 40 CFR 82.13 showing that 6,923,926 kg of critical use methyl bromide was acquired through production or import in 2006. The proposed rule stated that the information reported to EPA also indicated that 6,384,493 kg of critical use methyl bromide was sold to end-users in 2006. EPA calculated that the carryover amount at the end of 2006 was 539,433 kg, which is the difference between the amount acquired and the amount sold, and proposed to reduce 2008 CUA allocations accordingly. However, EPA received five official 2006 sales reports after the submission deadline, which was 45 days after December 31, 2006. The late sales reports were not counted in the proposed rule, or the 2006 U.S. Accounting Framework. These late reports show that an additional 40,199 kg of critical use methyl bromide was sold to end users in 2006. As a result, EPA's official records now show that 6,424,692 kg of methyl bromide was sold to end users in 2006. Therefore, in accordance with EPA's proposed method for calculating carryover amounts, EPA calculates that the 2006 carryover amount was 499,234 kg of critical use methyl bromide. This amount was calculated as follows: 6,923,926 kg—6,424,692 kg = 499,234 kg. To account for carryover of critical use methyl bromide, EPA is reducing the level of new production and import for critical uses by 499,234 kg.

a. Reporting Requirements To Calculate Carryover Amounts

In developing this action, EPA specifically requested comment on whether requiring producers, importers, and distributors to report the names of distributors and third-party applicators to which they have sold critical-use methyl bromide would provide valuable information to EPA, and encourage complete reporting of sales to end-user data. EPA sought comment on whether this would justify the additional burden of such requirements (72 FR 48970).

EPA received six comments that supported a petition submitted by Chemtura to augment the current reporting and recordkeeping process to prevent underreporting of methyl bromide use. The commenters proposed that EPA modify its reporting system in a manner that would allow the Agency to identify non-reporting companies and the amount of critical use sales attributable to each company. EPA could achieve this, the commenters asserted, by requiring each entity in the supply chain—from the manufacturer to the company that sells to the end user—to report the name of the entity that purchased the critical use methyl bromide and how much material it purchased.

EPA does not agree that it should require information that would allow the Agency to quantify the amount of critical use sales attributable to each non-reporting company. Instead of imposing additional burden on entities that do report in order to obtain information about non-reporters, a more straightforward and practical approach is to encourage full reporting. EPA, though, believes it would be beneficial to acquire the names of all distributors and third-party applicators with critical use exemption reporting requirements under 40 CFR 82.13. Collecting the names of these entities will facilitate Agency follow-up with non-reporters, allowing collection of necessary information in a more targeted manner than collecting detailed information from all entities. In early 2008 EPA will use its information gathering authority under section 114 of the Clean Air Act to ask all entities that sell critical use methyl bromide to report the names of all non-end user entities (i.e. producers, importers, distributors and third-party applicators) to which they sold critical use methyl bromide during the 2007 control period.

Chemtura commented that EPA's reliance on full and accurate reporting by the regulated community is unreasonable, because the existing reporting system does not provide EPA with any way to verify whether all entities that should file reports have done so. NRDC commented that EPA should require producers, importers, distributors and third-party applicators to report the names of distributors and third-party applicators to which they have sold any methyl bromide, including pre-2005 stocks, in order to get accurate data to track amounts sold for all purposes (including non-critical uses). The commenter stated that the costs of such reporting would be minimal and would be justified by the benefits of better tracking of CAA and Protocol compliance. EPA responds to these comments in the Response to Comment document available on the docket for this action.

b. Apportionment of Carryover Reductions Among Producers

In previous CUE rules, EPA used the approach described in the Framework Rule for applying reductions in CUA amounts equal to the amount of carryover CUE material from a previous year. EPA's practice to date has been to apply this reduction to the total volumes of allowable new production or import, and then to pro-rate CUA allocations to each company based on its 1991 baseline market share. In

developing this action, EPA proposed to use the same approach for 2008.

In the proposed rule, EPA explained that Chemtura's petition recommended alternative methods for apportioning carryover reductions among CUA holders. EPA encouraged interested parties to comment on the recommendations in Chemtura's petition and provide any additional suggestions regarding the apportionment of carryover among companies.

Chemtura's petition requested that EPA apportion carryover amounts proportional to the producers' responsibility for the carryover originating in their own supply chain. The petition further stated that EPA's process for apportioning carryover reductions among producers is arbitrary, capricious, unfair, and perpetuates poor stewardship. In its comments Chemtura acknowledged that EPA does not currently collect information that would allow the Agency to reduce CUAs on the basis of carryover originating in each producer's supply chain. As discussed below in more detail, EPA believes that acquiring credible data of this nature would impose extra burden on the regulated community without producing any discernible environmental benefit. The extra reporting that Chemtura proposed could redistribute the proportional allocation of CUAs among producers, but it would not affect the overall amount of critical use methyl bromide available to critical users, and therefore, would not help EPA achieve the primary goal of the critical use exemption program: to satisfy critical needs for methyl bromide. A better solution that does not impose extra burden on the regulated community is to continue to strengthen outreach and educational programs that facilitate full reporting under existing requirements.

Chemtura commented that CUE reductions to account for carryover are distributed among the four methyl bromide producers based on a proportional basis according to their 1991 consumption baselines. The commenter stated that an equal allocation of the carryover would be fairer and that using the 1991 data is now inconsistent with the available supply chain information and would maximize future distortions in the critical use market. EPA notes that Chemtura has not objected to EPA's framework for distributing CUAs to producers based on their 1991 market share, under which Chemtura receives over 60 percent of the new production allowances each year. The Proposed Framework Rule stated that, ''Allocating CUAs based on each company's 1991 baseline allowances (on a pro-rata basis) is a better reflection of market share than simply dividing the number of allowances by the total number of entities, and would be less burdensome than conducting a detailed historical market share analysis on a [sic] an annual basis. Using the 1991 historic baseline method for distributing CUAs is consistent with how EPA has allocated methyl bromide production and consumption allowances for the past decade under the methyl bromide phaseout'' (69 FR 52376). EPA believes the arguments in the Proposed Framework Rule still apply. Using the 1991 market shares, which have become the company-specific baselines for CUA allocations, provides the best available estimation of how much carryover is attributable to each company's supply chain. A more detailed method of estimation would involve additional burden for respondents.

Chemtura's petition recommended a ''fault-based'' system for allocating CUA reductions to account for carryover amounts. Chemtura stated that in order to support the fault-based carryover allocation process, EPA could modify the reporting requirements established at 40 CFR 82.13 to require that importers, producers, distributors, and third-party applicators list the producer of any critical use methyl bromide they acquired during the year. In its comments, Chemtura asserted that, ''Identifying the producer of origin for any given sale or distributor should be a simple task, as each of the four producers supplies downstream customers with methyl bromide products under different pesticide registrations, labels, and product names. Thus, regardless of how many intermediary distributors a methyl bromide product may have passed through before reaching the end user, that entity can identify the producer by a review of the label or sales invoice.''

Whether or not producer of origin reporting would be a ''simple task,'' it would add to the regulatory burden currently borne by entities in the distribution chain. Preliminary estimates, using as a guideline EPA's previous estimates under Paperwork Reduction Act (PRA) requirements, a guideline, suggest that the burden imposed by producer of origin reporting could require 150 respondent hours per year, depending on how much EPA follow-up is necessary to perform standard data quality assurance procedures. EPA does not believe the ''fault-based'' system, or the extra reporting burden it requires, would provide any discernible environmental benefit, or help to satisfy critical needs for methyl bromide. Therefore, while the Agency may continue to analyze Chemtura's proposed reporting additions as part of the renewal process for its information collection request (ICR) under PRA, in this final rule the Agency is not implementing Chemtura's ''fault-based'' system or the additional reporting that it would require.

Chemtura's petition asserted that, ''The opt-out system proposed [in the petition] provides an appropriate method for apportioning carryover penalties.'' Chemtura's proposed ''opt-out'' system would allow producers to voluntarily submit supply chain data in exchange for EPA's removal of the individual producer from the ''default penalty pool.'' In its comments on the proposed rule, Chemtura asserted that Ameribrom had acknowledged responsibility for the majority of the 2008 carryover. Chemtura also commented that ''EPA has received ample notice of the flaws in the framework.'' Chemtura further commented that any material that stays in the distribution system past the end of a control period should be considered part of the SCF rather than carryover, and that no carryover should be subtracted from CUEs in 2008 and beyond. EPA responds to these comments in the Response to Comment document available on the docket for this rulemaking.

In this action, EPA is reducing the total level of new production and import—i.e., the total number of CUAs issued—for 2008 by 499,234 kg to reflect the total level of carryover material available at the end of 2006. EPA will continue to consider the level of available stocks, and may consider adjusting carryover policies, through a notice and comment rulemaking process, if available stocks become very scarce. However, considering the current amount of available pre-phaseout inventory, in this action it is best to maintain the existing framework for responding to carryover.

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, and encouraged methyl bromide suppliers to sell inventory to researchers and encouraged researchers to purchase inventory.

Decision XVIII/15(1) authorized ''the production and consumption of [methyl bromide] necessary to satisfy laboratory and analytical critical uses.'' Paragraph 2 of that decision stated 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 implementing the exemption authorized in Decision XVIII/15 (72 FR 52332). More information about that rulemaking process is available on the docket for that rule (EPA–HQ–OAR–2007–0384).

In the proposed CUE rule for 2008, EPA stated that 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. In the proposed rule, EPA listed the critical use sectors that were approved by the Parties to use methyl bromide for research purposes in 2008 in Section V.C. and with the phrase ''research purposes'' listed in their limiting critical conditions in Table I of this preamble.

In developing this action, EPA proposed 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 proposed to allow the sale of methyl bromide 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. The Agency proposed to continue to encourage methyl bromide suppliers to sell pre-phaseout inventory to researchers and to encourage researchers to purchase pre-phaseout inventory for research purposes. EPA sought comment on its proposal to issue CSAs for sale of pre-phaseout methyl bromide for exempted research purposes.

MBIP objected to EPA's proposal to issue CSAs for sale of pre-phaseout inventory for exempted research purposes. The commenter stated that existing stocks of pre-2005 inventory are too low to warrant further drawdown for research purposes and that new production should be increased by 15,491 kilograms to account for research needs. The Agency disagrees, and proposed a detailed analysis of the amount of available stocks, explained further in Section V.D.2. of this preamble, which found more than 1,700,000 kg of pre-phaseout inventory available for critical uses. Therefore, EPA is reducing new production by 15,491 kg, and encouraging researchers to procure methyl bromide from pre-phaseout inventory.

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 Federal 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. 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).

In developing today's action, EPA referenced preliminary results of a study by Dr. Brian D. Adam of Oklahoma State University, which the Agency is making available on the public docket for this rulemaking. The proposed rule stated that Dr. Adam's study indicates 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. The proposed rule explained that in response to the study results, the National Pest Management Association (NPMA) withdrew its nomination request for critical use methyl bromide for 2009 cocoa fumigations, and informed EPA that it does not intend to seek critical use methyl bromide for 2010 cocoa fumigations. EPA reiterated NPMA's stated need for some critical use methyl bromide for cocoa in 2008 as the sector transitions to sulfuryl fluoride, and explained the situation further. EPA sought comment on how much of the 53,188 kg of critical use methyl bromide approved by the Parties for cocoa for 2008 should be allowed by the Agency. EPA asked that comments on this topic recommend specific amounts of critical use methyl bromide for cocoa in 2008, and provide detailed justifications for their recommendations.

EPA received a comment from NPMA that recognized that the Oklahoma State University study showed that the cost of using sulfuryl fluoride to treat post-harvest cocoa was not substantially greater than the cost of using methyl bromide. However, NPMA's comment stated that smaller companies in the industry needed time to transition to sulfuryl fluoride. This transition includes the completion of a manufacturer's stewardship program as well as customer education about non-methyl bromide treatment. Additionally, while most states in which cocoa is processed have a special 24(C) label to allow for higher Concentration and Time (CT) dosage allocations for use of sulfuryl fluoride on cocoa, New York has not approved this label. Therefore, NPMA requested that at least 75 percent of the 53,188 kg of critical use methyl bromide approved by the Parties be allocated for 2008. NPMA stated that its application for 2009 had been withdrawn, as the transition to sulfuryl fluoride should be complete by that time.

In their 2008 CUE application, NPMA requested 79,950 kg for 2008 critical uses. In developing the 2008 critical use nomination, the USG reduced NPMA's original request to account for growth, because EPA's framework does not allow critical users to increase their critical need based on expansion of their operations (FR 69 76996). USG also reduced NPMA's request to account for a reduction in the use rate of methyl bromide from 24 kg/1,000 m^3 to 20 kg/1,000 m^3. USG made a further reduction to account for a transition rate of 16.8% per year to sulfuryl fluoride. After accounting for these factors, USG nominated a total of 53,255 kg for cocoa bean fumigation in 2008, and the Parties approved 53,188 kg in Decision XVIII/13. In light of new information about the economic feasibility of sulfuryl fluoride for post-harvest cocoa fumigation, in this action EPA is approving less critical use methyl bromide for cocoa fumigation than the Parties authorized.

The Agency appreciates that NPMA voluntarily came forward and agreed to a more rapid transition to methyl bromide alternatives for cocoa fumigation. With this final rule, EPA is approving 39,891 kg of critical use methyl bromide for this sector, or 75 percent of the amount agreed to by the Parties in Dec. XVIIII/13. Therefore, EPA is reducing the total amount authorized for 2008 critical uses by 13,297 kg to account for increased

uptake of sulfuryl fluoride for cocoa fumigation.

NRDC stated that EPA recently approved the use of iodomethane (methyl iodide) for field uses, which will reduce the need for methyl bromide CUE allocations. The commenter stated that iodomethane is a drop-in substitute for methyl bromide and that while it is more costly per kilogram, less of it is require to achieve the same efficacy. The commenter also stated that while iodomethane poses direct toxicity issues, the toxicity issues associated with methyl bromide are worse.

Chemtura requested that EPA assess the technical and economic feasibility of iodomethane for no fewer than two years before factoring its availability into future CUE decisions. The commenter stated that the controversial nature of the registration combined with the proximity of the registration to the close of the comment period on the CUE rule provided reason to delay considering this alternative when allocating CUEs. The commenter also noted that iodomethane was not yet registered in California because of safety questions and that there was anecdotal evidence of efficacy problems with the chemical. The commenter stated that at least two growing seasons are necessary to review and assess viability.

In the proposed rule EPA sought ''information regarding changes to the registration or use of alternatives that may have transpired after the 2008 U.S. nomination was written.'' The Agency stated that, ''Such information has the potential to alter * * *. EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption.'' In this final rule, EPA is following through with that statement, and reducing pre-plant critical use amounts to account for new information about the uptake of iodomethane.

After considering new information about iodomethane, EPA estimates that in 2008 iodomethane will be a technically and economically feasible alternative for a limited amount of pre-plant applications. Iodomethane has been registered at the federal level for the period of October 1, 2007 to October 1, 2008 for the following crops: Strawberry, Pepper, Tomato, Ornamentals, Nurseries, Trees and Vines. The pesticide registration process in the U.S. involves multiple layers of regulatory review, and State registrations are required before a pesticide can be applied. As of December 11, 2007, the last day that EPA could reasonably consider information for this rulemaking, iodomethane had been registered in the following states that are included in Column B of Table I as locations that qualify to use pre-plant critical use methyl bromide for certain uses in 2008: Georgia, Michigan, Missouri, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee and Virginia. Therefore, EPA expects that iodomethane will be a legal fumigant option in 2008 for some growers that qualify for critical use methyl bromide.

To estimate the amount of iodomethane that will be a technically and economically feasible methyl bromide alternative in 2008, EPA considered a number of factors. The Agency considered that iodomethane is currently registered for 10 of 12 months during 2008, that iodomethane is expected to cost more than methyl bromide, and that there are restrictions on the use of iodomethane such as the imposition of buffers, that do not apply to methyl bromide use. The Agency's analysis, described in a memo on the docket for this action, estimates that iodomethane can feasibly replace 14,472 kg of methyl bromide in 2008. Therefore, in this action EPA is reducing the total amount of pre-plant critical use methyl bromide in 2008 by 14,472 kg to account for the uptake of iodomethane in 2008.

Besides the issues regarding post-harvest cocoa fumigation, and the newly registered pre-plant fumigant iodomethane, EPA is not making any additional reductions in critical use allowances to account for the uptake of alternatives. In developing this action, the Agency explained that in the 2008 CUN that USG 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, EPA explained that transition rates, which account for the uptake of alternatives, have already been applied for authorized 2008 critical use amounts. Furthermore, the Agency stated that the 2009 CUN, which represented the most recent analysis and the best available data for methyl bromide alternatives, did not conclude that transition rates should be increased for 2008. In developing this action, EPA sought comment on its proposal not to make further reductions in 2008 to account for the uptake of methyl bromide alternatives.

FSS stated that post harvest application requests by NPMA, Pet Food Institute, and Rice Millers are for applications for which methyl bromide is not necessary. FSS and Dow stated that methyl bromide allocations for these applications should therefore be significantly reduced or eliminated. Dow stated that nearly half of the 220 flour mills in the U.S. are fumigated with sulfuryl fluoride. Dow also stated that the transition rates for alternatives used by EPA may apply to farm applications, but Dow claimed these transition rates are too low for structural applications. Additionally, Dow and FSS asserted that sulfuryl fluoride has proved successful even after multiple applications with no return to methyl bromide, and that fumigation failures can happen with all materials, including methyl bromide. The Agency responds to these comments in a separate Response to Comments document available on the docket for this action.

MBIP noted that some fumigation companies need more time to transition to sulfuryl fluoride, including the purchase of new equipment and training in its use. Specifically, MBIP argued that allowing CUEs for cocoa in 2008 would enable a smoother transition to sulfuryl fluoride and would help to guarantee methyl bromide availability to guard against unforeseen problems with the transition.

EPA received extensive comments from Dow objecting to EPA's assessment of the label restriction on 1,3-D product use near karst topographical features in Florida. EPA responds to these comments in detail in the Response to Comments document available on the docket for this action.

As discussed above, in this action, EPA is reducing the proposed critical use amount for post-harvest cocoa fumigation by 13,297 kg. EPA is also reducing the proposed critical use amount for pre-plant fumigation by 14,472 kg to account for new information about the fumigant iodomethane. EPA is not reducing any of the other proposed critical use amounts for 2008 to account for the transition to alternatives, because uptake of alternatives was already considered in the 2008 U.S. CUN, adopted by MBTOC, and reflected in the 2008 CUE authorization amounts that EPA is finalizing with this action. The most recent information that EPA received does not support further reductions.

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

Paragraphs 2 and 6 of Decision XVIII/13 requested 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 one of Decision IX/6 appears in sections V.A., V.C., V.D., and V.G. of this preamble. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which referred to the use of available stocks of methyl bromide, is addressed in sections V.D., V.F., and V.G. 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 were evaluated in other documents as well. For example, the U.S. 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

In the proposed rule, EPA noted for the regulated community the reference to emission minimization techniques in paragraph 8 of Decision XVIII/13, which stated that Parties shall request critical users to employ ''emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible.'' 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 using measures such as the ones listed above, to the extent consistent with State and local laws and regulations. In the proposed rule, the Agency encouraged researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments and to provide such information with their critical use applications. In addition, the Agency welcomed comments on the implementation of emissions minimization techniques and whether and how further emissions minimization could be achieved.

At the public hearing for this action the CSC expressed its opinion that EPA should create a regulatory incentive for emissions reduction. NRDC commented that the most effective way to achieve further emission minimization is to require the use of emissions minimization techniques such as virtually impermeable films (VIF), barrier films, and deep shank injection. NRDC noted that these techniques offer the concurrent benefit of reducing the amount of methyl bromide needed for fumigations. EPA believes that reducing supply through the phaseout provides incentives for use minimization and therefore limits emissions. Other points discussed by this commenter can be found in the Response to Comments document on the docket for this action.

At the public hearing for this action, West Coast Tomato stated that VIF keeps methyl bromide in the soil longer where it is metabolized rather than escaping into the atmosphere. The commenter suggested that methyl bromide that is used in this way should not be decreased since it is not reaching the ozone layer. EPA has not fully reviewed the research that the commenter is referring to. In compiling annual critical use nominations, USG considers the feasibility of VIF, and other less permeable tarps, because the use of these technologies can reduce required dosage rates and the critical need for methyl bromide to treat certain crops. The commenter may be proposing a different type of exemption for methyl bromide use that does not result in emissions to the stratosphere, but this would require a change in the Montreal Protocol, which is outside the scope of the present rulemaking. Until EPA fully reviews the research that the commenter refers to, it would be inappropriate for the Agency to respond further.

G. Critical Use Allowance Allocations

A critical use allowance (CUA) is a privilege granted by EPA, using its authority under Section 604(d)(6) of the Clean Air Act, that enables the holder to produce or import one kilogram of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The allocation of 2008 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).

In the August 27, 2007, proposed rule, EPA proposed 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 sought comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2008. For the reasons discussed in Section V.D. of this preamble, EPA is adjusting the proposed CUA amounts to account for late sales reports that decrease the calculated 2006 carryover amount and to account for the uptake of alternatives. Therefore, the total critical use exemption amount for 2008 is 4,813,452 kg (18.9% of baseline), with 3,083,763 kg (12.1% of baseline) of critical use allowances allowing new production or import, and the remaining amount, 1,729,689 kg (6.8% of baseline), available through critical stock allowances (CSAs) that allow critical users to access pre-phaseout methyl bromide. EPA is continuing to calculate company-specific CUA allocations on the basis of the 1991 baseline consumption share of the companies listed in Table II. The updated calculation spreadsheet is available on Docket ID No. EPA–HQ–OAR–2006–1016. Therefore, the CUAs are allocated as follows:

TABLE II.—ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2008 Critical use allowances for pre-plant uses* (kilograms)	2008 Critical use allowances for post-harvest uses* (kilograms)
Chemtura Corp.	1,687,407	186,595
Albemarle Corp.	693,900	76,732
Ameribrom, Inc.	383,464	42,404
TriCal, Inc.	11,940	1,320
Total	2,776,711	307,052

* For production or import of class I, Group VI controlled substances exclusively for the pre-plant or post-harvest uses specified in Appendix L to this subpart.

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 called 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 were based on data submitted by the U.S. which in turn were based on recent historic use data in the current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties were 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 Framework Rule and EPA is not aware of any factors that would alter the analysis performed during the development of previous CUE allocation rules. A summary of the options analysis conducted by EPA is available in the docket for this rulemaking.

In developing this action, EPA did not propose to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an effort to address Decision XVIII/13(5), EPA sought 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. NPMA and Chemtura commented that the universal system is working well and believe the concept of the pre-plant/post-harvest allocations is simple and easy for stakeholders to understand. The commenters also noted that the system has not disrupted the supply chain and has been easy for distributors to implement, and discouraged the Agency from switching to a sector-by-sector allocation system.

FFVA and a representative of the walnut, prune and fig industry commented that the geographical distribution of methyl bromide has created shortfalls resulting in the inability of individual growers to access or afford material to fumigate their fields in accordance with their production schedules. FFVA indicated that this was particularly noticeable during the 2005 and 2006 fall fumigation periods. The other commenter stated that the universal system has not worked well for the above reasons, but believes that a sector-by-sector allocation system would be equally flawed due to insufficient allocations in certain sectors and unequal holdings of pre-phaseout inventory.

CSC stated that EPA should explore a hybrid between a regional and a lump-sum allocation system. Specifically, the commenter suggested that EPA consider creating several large regional areas (such as the EPA regions) that combine all of the sectors within each region to create a regional lump-sum. The commenter further stated that the methyl bromide users who most frequently face difficulty obtaining methyl bromide are small, minority growers. The commenter argued that the allocation of methyl bromide creates a harm that is disproportionately distributed. The commenter's primary concern does not appear to be human health and environmental effects on minority or low-income populations. Instead, the commenter appears to believe that EPA's current allocation system causes economic harm for these populations, because they have difficulty satisfying their critical needs for methyl bromide.

This final rule creates an exemption to the phaseout of methyl bromide. The overall impact of this action is deregulatory, and has an economic benefit for growers with critical needs for methyl bromide. EPA responds further to this comment in the Response to Comment document for this action.

EPA agrees with the comments that supported the existing allocation system. EPA considered sector-specific, and other allocation approaches in the proposed Framework Rule, and decided that the existing universal allocation system with pre-plant and post-harvest allowances was the most effective and least burdensome system. The Framework Rule did not establish a regional approach, as one commenter suggested. EPA may consider such an approach for future CUE rules. EPA does not believe it would be appropriate to finalize such an approach without giving other interested parties an opportunity for comment. EPA responds to these comments further in the

Response to Comments document available on the docket for this action.

H. Critical Stock Allowance Allocations and the Confidentiality of Information About the Aggregate Methyl Bromide Inventory

Each critical stock allowance (CSA) is equivalent to one kilogram 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 (69 FR 76990). CSAs are not used to produce or import methyl bromide but are rights that enable the holder to sell pre-phaseout inventories of methyl bromide for use in approved critical uses. A CSA is expended when the entity selling methyl bromide sells the material, or fumigation services with the material, to an approved critical user who certifies that the material is for an approved critical use. Thus, the movement of pre-phaseout inventories or methyl bromide along the supply chain does not require expenditure of a CSA.

In developing this action, EPA proposed 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 kg (6.8% of U.S. 1991 baseline). EPA's proposal was based on the proposed approach for accounting for available stocks of methyl bromide, which is described in Section V.D. of this preamble. For the reasons discussed in Section V.D., in this action EPA is allocating 1,729,689 kg of CSAs to the entities listed in Table III below. The amounts are apportioned to each entity in proportion to inventory held by each on January 1, 2007.

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.

In developing this action, EPA explained that several companies that receive small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently relinquish their allowances. Due to the small CSA allocation and because they typically do not sell critical use methyl bromide, they find the allocation of CSAs, and associated recordkeeping 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. In the 2008 proposed rule EPA again gave CSA holders the opportunity, on a voluntary basis, to permanently relinquish their allowances through written notification to the Agency. EPA explained that companies voluntarily relinquishing their allowances would not receive CSA allocations and would be excluded from future allocations, and that all allowances forfeited by companies would be reallocated to the remaining companies on a pro-rata basis.

Seven companies contacted EPA during the comment period for this action and volunteered to relinquish their CSAs. The companies that contacted the Agency were: Blair Soil Fumigation, Dodson Brothers, Carolina Eastern Inc., Harvey Fertilizer & Gas, J.C. Ehrlich Co., Southern States Cooperative Inc., and Vanguard Fumigation Co. With this final rule, EPA is honoring their requests and removing these seven companies from Table III below. Additionally, EPA will not issue CSAs to these seven companies in future control periods. EPA has reallocated their CSAs to the remaining companies on a pro-rata basis.

TABLE III.—ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company
Albemarle.
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products.
Chemtura Corp.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail.
Hy Yield Bromine.
Industrial Fumigation Company.
Pacific Ag.
Pest Fog Sales Corp.
Prosource One.
Reddick Fumigants.
Royster-Clark, Inc.
Trical Inc.
Trident Agricultural Products.
UAP Southeast (NC).
UAP Southeast (SC).
Univar.
Western Fumigation.
Total—1,729,689 kilograms.

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. The Framework Rule also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. Under this action, no significant changes are being made to those provisions.

NRDC commented that EPA should dedicate all pre-phaseout stocks of methyl bromide to CUEs. The Agency notes that it has responded to similar comments in the Final Framework Rule (69 FR 76988), the Final 2007 CUE Rule (71 FR 75400), and in response to NRDC's late submission of supplemental comments on the Proposed 2007 CUE Rule. EPA is not revisiting this issue in this rulemaking.

The proposed rule explained in detail how EPA acquired information about pre-phaseout inventory for 2003 and after, and how EPA had applied its regulations on treatment of information claimed as confidential. In the proposed rule, EPA noted that it did not receive any objections to releasing the aggregate stocks information for calendar year 2006. To simplify the process of releasing future aggregate stocks information, EPA proposed 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 a letter that EPA sent on April 23, 2007, which is available in the docket, to all entities which had reported holding pre-phaseout inventory at the end of 2003, 2004, 2005, or 2006, this aggregate information is clearly not entitled to

confidential treatment. EPA proposed 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 sought comment on this proposal. In the proposed rule, the Agency stated that if it did not receive any comments opposing its proposal, the aggregate of methyl bromide stockpile data collected under the reporting requirements at 40 CFR 82.13 would not be treated as confidential information and could be released in future without additional notice to the competitors.

In its comments MBIP did not object to EPA's proposal to release aggregate stockpile data in future years at this time. MBIP stated that they reserve the right to object in the future should the number of competitors in the industry dwindle to two or fewer in order to protect confidentiality. Therefore, because EPA received no comments objecting to its proposal at the present time, for as long as there are a sufficient number of competitors in the industry, 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. However, if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and would not release the aggregate without 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 is a ''significant regulatory action,'' because it raises novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. 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 rulemaking does not impose any additional information collection burden. 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 Regulatory Flexibility Act (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 action on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural production ...	1112—Vegetable and Melon farming ..... 1113—Fruit and Nut Tree Farming ..... 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops ..... 0172—Grapes ..... 0173—Tree Nuts ..... 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC ..... 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
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.
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 action 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 submitted critical use applications, either individually or as members of consortia, for a critical use exemption for the 2005 control period. EPA received requests from a comparable number of entities for the 2006, 2007, and 2008 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 final 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 final 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 final 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 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 final 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 final 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 final 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 final rule does not have tribal implications, as specified in Executive Order 13175. This final rule does not significantly or uniquely affect the communities of Indian tribal governments. The final rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 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 final 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 final 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 final rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, EPA has concluded that this final rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any stratospheric ozone depletion that results from this final 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 in the U.S.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 28, 2007.

List of Subjects in 40 CFR part 82

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

Dated: December 19, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, 40 CFR Part 82 is 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)
Chemtura Corp.	1,687,407	186,595
Albemarle Corp.	693,900	76,732
Ameribrom, Inc.	383,464	42,404
TriCal, Inc.	11,940	1,320
Total	2,776,711	307,052

*For production or import of class I, Group VI controlled substance exclusively for the pre-plant or post-harvest uses specified in Appendix L of 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.
Burnside Services, Inc.
Cardinal Professional Products.
Chemtura Corp.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail.
Hy Yield Bromine.
Industrial Fumigation Company.
Pacific Ag.
Pest Fog Sales Corp.
Prosource One.
Reddick Fumigants.
Royster-Clark, Inc.
Trical Inc.
Trident Agricultural Products.
UAP Southeast (NC).
UAP Southeast (SC).
Univar.
Western Fumigation.
Total—1,729,689 kilograms.

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

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

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) 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.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in 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.

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 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.
	(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.

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) 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.
	(c) Michigan herbaceous perennials growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Peppers	(a) 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.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(d) 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.

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
	(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.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, 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. 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 rule, ''pet food'' refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Bakeries in the U.S.	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. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(e) Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment and processed food, cheese, herbs, spices and spaces and equipment in associated processing facilities.	Moderate to severe beetle or moth infestation. 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, and dates (in Riverside county only) 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.

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
	(c) Nahunta Pork Center (North Carolina)	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.
	(d) Gwaltney of Smithfield Ltd.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

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