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Dated: July 9, 2010.

**Gina McCarthy,**

*Assistant Administrator, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2010-0280; FRL-9173-9]

### Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2013

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of solicitation of applications and information on alternatives.

**SUMMARY:** EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2013. Critical use exemptions last only one year. All entities interested in obtaining a critical use exemption for 2013 must provide EPA with technical and economic information to support a "critical use" claim and must do so by the deadline specified in this notice even if they have applied for an exemption in a previous year. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives. The U.S. critical use exemption program has cushioned the U.S. transition in an important way. Thus far, EPA has allocated critical use methyl bromide through rulemaking for each of the six years (2005-2010) since the U.S. phaseout, and plans to do so for another four years (2011-2014). Critical use nominations must be approved each year at the international level by the Parties to the Montreal Protocol, and the U.S. is one of five remaining developed countries requesting such exemptions; several of these countries have announced final dates for all or part of their requests in the years between now and 2015, the year that developing countries are required to phase out methyl bromide. While EPA with this notice is seeking applications for 2013 and will likely request applications for 2014, EPA believes it is appropriate at this time to consider a year in which the Agency will stop requesting applications for critical use exemptions. EPA will seek comment on this issue in the proposed rule for the 2011 critical use exemption.

**DATES:** Applications for the 2013 critical use exemption must be postmarked on or before September 13, 2010.

**ADDRESSES:** EPA encourages users to submit their applications electronically to Jeremy Arling, Stratospheric Protection Division, at [arling.jeremy@epa.gov](mailto:arling.jeremy@epa.gov). If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to 202-343-9055 by the application deadline. Applications for the methyl bromide critical use exemption can also be submitted by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave, NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St., NW., Room 1047E, Washington, DC 20005.

#### FOR FURTHER INFORMATION CONTACT:

*General Information:* U.S. EPA Stratospheric Ozone Information Hotline, 1-800-296-1996; also <http://www.epa.gov/ozone/mbr>.

*Technical Information:* Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703-308-8136. *E-mail:* [chism.bill@epa.gov](mailto:chism.bill@epa.gov).

*Regulatory Information:* Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202-343-9055. *E-mail:* [arling.jeremy@epa.gov](mailto:arling.jeremy@epa.gov).

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#### I. What do I need to know to respond to this request for applications?

*A. Who can respond to this request for information?*

Entities interested in obtaining a critical use exemption must complete the application form available at <http://www.epa.gov/ozone/mbr>. The application may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2013 and have evaluated alternatives and as a result of that evaluation, believe they have no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below).

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g., technical and/or economic feasibility research).

*B. Who can I contact to find out whether a consortium is submitting an application for my methyl bromide use?*

You should contact your local, state, regional, or national commodity association to find out whether it plans to submit an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the state's agriculture or environmental protection agency) to receive information about its involvement in the process. If your state agency has chosen to participate, EPA recommends that you first submit your application to the state agency, which will then forward applications to EPA. The National Pesticide Information Center Web site identifies the lead pesticide agency in each state (<http://npic.orst.edu/state1.htm>).

*C. How do I obtain an application form for the methyl bromide critical use exemption?*

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA's Web site: <http://www.epa.gov/ozone/mbr/cueinfo.html>;

2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1-800-296-1996;

3. Hard-copy format at DOCKET ID No. EPA-HQ-OAR-2010-0280. The docket can be accessed at the <http://www.regulations.gov> site. To obtain copies of materials in hard copy, please e-mail the EPA Docket Center: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

*D. Which alternatives must applicants address when applying for a critical use exemption?*

To support the assertion that a specific use of methyl bromide is "critical," applicants are expected to demonstrate that there are no technically and economically feasible alternatives available for that use. The Parties to the Montreal Protocol have developed an "International Index" of methyl bromide alternatives, which lists chemical and non-chemical alternatives by crop. In 2009, the United States submitted an index of alternatives, which includes the current registration status of available and potential alternatives, that is available on the Ozone Secretariat Web site: [http://ozone.unep.org/Exemption\\_Information/Critical\\_use\\_nominations\\_for\\_methyl\\_bromide/methyl\\_bromide\\_Submissions/USA-Alternatives-Ex4-1-2008.pdf](http://ozone.unep.org/Exemption_Information/Critical_use_nominations_for_methyl_bromide/methyl_bromide_Submissions/USA-Alternatives-Ex4-1-2008.pdf).

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop or use within the "U.S. Index" of Methyl Bromide Alternatives.

*E. What portions of the applications will be considered confidential business information?*

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company

confidential." You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2 subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA receives it, EPA may make it available to the public without further notice.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the "Worksheet Six: Application Summary" page of the application any information that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Please note, claiming business confidentiality may delay EPA's ability to review your application.

*F. What if I submit an incomplete application?*

EPA will not accept any applications postmarked after September 13, 2010. If the application is postmarked by the deadline but is incomplete or missing any data elements, EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. If the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call an applicant for further clarification of an application, even if it is complete.

All consortia or users who did not apply to EPA for the 2009 control period (calendar year 2009) must submit an entire completed application with all Worksheets.

*G. What if I applied for a critical use exemption in a previous year?*

Critical use exemptions are valid for only one year and do not renew automatically. Users desiring to obtain an exemption for 2013 must apply to EPA. However, if a user group submitted a complete application to EPA in 2009, the user is only required

to submit revised copies of the Worksheets listed below, though the entire application with all Worksheets must be on file with EPA. You must submit Worksheets 1, 2B, 2C, 2D, 4, 5, and 6 in full regardless of whether you submitted an application in 2009. You need only complete the remaining worksheets if any information has changed since 2009. If you submitted a critical use exemption application to EPA in 2002 through 2008 but did not submit an application in 2009, then you must submit all of the worksheets in the application again in their entirety.

## II. What is the legal authority for the critical use exemption?

*A. What is the Clean Air Act (CAA) authority for the critical use exemption?*

In October 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, methyl bromide production and consumption were phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol.

*B. What is the Montreal Protocol authority for the critical use exemption?*

The Montreal Protocol provides that the Parties may exempt "the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses" (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses."

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination and an exemption from the production and consumption phaseout:

(a) 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 health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination. \* \* \* Non-Article 5 Parties [e.g., developed countries, including the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. \* \* \*

EPA has defined "critical use" in its regulations at 40 CFR 82.3 in a manner similar to Decision IX/6 paragraph (a).

### III. How will the U.S. implement the critical use exemption in 2013 and beyond?

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production or consumption allowances prior to 2005 is not confined to critical uses under EPA's phaseout regulations; however, other restrictions may apply.

#### A. What is the timing for applications for the 2013 control period?

There is both a domestic and international component to the critical use exemption process. The following outline projects a timeline for the process for the 2013 critical use exemption.

*July 15, 2010:* Solicit applications for the methyl bromide critical use exemption for 2013.

*September 13, 2010:* Deadline for submitting critical use exemption applications to EPA.

*Fall 2010:* U.S. Government (through EPA, Department of State, U.S.

Department of Agriculture, and other interested Federal agencies) prepares U.S. Critical Use Nomination package.

*January 24, 2011:* Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

*Early 2011:* Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) reviews Parties' nominations for critical use exemptions.

*Mid 2011:* Parties consider TEAP/MBTOC recommendations.

*November 2011:* Parties decide whether to authorize critical use exemptions for methyl bromide for production and consumption in 2013.

*Mid 2012:* EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2013.

*Late 2012:* EPA publishes final rule allocating critical use exemptions in the U.S. for 2013.

*January 1, 2013:* Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2013 control period.

#### B. How might EPA implement the critical use exemption after the 2013 control period?

U.S. consumption of methyl bromide in the U.S. has declined significantly over the last 20 years. Production and import was phased out in 2005 in the U.S. and all other developed countries under the Montreal Protocol. Since then, consumption by developed country Parties has been subject to limited annual exceptions for critical uses, which have declined steadily from year to year. In 1991, the baseline year, the U.S. consumption was approximately 25,500 metric tons of methyl bromide. In 2010, the amount authorized for critical uses declined to approximately 3,000 metric tons; for 2012, the U.S. nominated only approximately 1,200 metric tons. This transition from methyl bromide—formerly one of the most commonly used pesticides in the U.S.—to ozone-safe alternatives has been a remarkable achievement for U.S. agriculture.

The critical use exemption program has, thus far, provided U.S. manufacturers and growers six additional years (2005–2010) beyond the January 1, 2005, phaseout date to develop and market alternatives and implement practices that reduce the need for fumigants in general. The Parties have already approved a U.S. critical use amount for 2011, and the U.S. submitted a nomination for 2012 this January. EPA expects that the U.S. will submit a nomination for 2013 based on applications received in response to

this notice. However, the international context for consideration of critical use exemption requests from developed country Parties is an important consideration for the program's future, since annual approval by the Parties is required for any additional production and consumption of otherwise banned ozone depleting substances. In 2006, there were 20 countries with approved CUEs. In 2010, that number has decreased to five: the United States, Australia, Canada, Israel, and Japan. Israel has announced that 2011 will be its last year of CUE methyl bromide use and Japan has indicated that 2013 will be the last year for which it will seek a critical use exemption authorization for soil fumigation. Australia and Canada each use only 1 percent of CUE MeBr.

Further, developing countries face their own phaseout deadline for methyl bromide under the Montreal Protocol in 2015. While the Protocol contains a provision allowing the Parties to permit critical use exemptions for developing countries, the extent to which developing countries will request such exemptions is not yet known. By 2008, the last year for which data are available, developing countries had already reduced methyl bromide consumption for soil and post-harvest uses by 66% relative to their baselines. Furthermore, of the 86 developing countries that have baselines, only 34 continued to use methyl bromide as of 2008.

Given this international context and that the critical use exemption process for a particular control period takes three years, as shown in the schedule in Section III.A above, EPA believes it is appropriate at this time to consider a year in which the U.S. Government will stop requesting applications for critical use exemptions. EPA is not making a final decision at this time whether to accept applications for subsequent control periods. EPA will seek comment on this issue in the proposed rule for the 2011 critical use exemption.

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

Dated: July 1, 2010.

**Gina McCarthy,**

*Assistant Administrator, Office of Air and Radiation.*

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**DATE AND TIME:** Wednesday, July 14, 2010, at 10 a.m.