

Supplemental Appropriations Act (Public Law 105-277, October 21, 1998) (section 604(d)(5) of the Clean Air Act).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of ozone-depleting substances, as required under the Protocol and CAA, are accomplished through the Allowance Program.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. For methyl bromide, 1991 was the baseline year used to establish the ceiling and assign company-specific production and import rights. Production or import rights are called "allowances." Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, save for a few exemptions. For methyl bromide, the remaining schedule for the phaseout of production and consumption allowances is as follows: 50 percent reduction of baseline beginning January 29, 2001, 70 percent reduction of baseline beginning January 1, 2003, and a 100 percent reduction of baseline beginning January 1, 2005, with narrow exemptions for critical uses and emergencies, as well as for quarantine and preshipment uses.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports—exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their

phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in Groups of class I controlled substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

II. What Is the Background for Today's Action?

EPA published an interim final rule in the **Federal Register** on July 19, 2001 (66 FR 37752) to provide methyl bromide users in the United States with an exemption to the phaseout of methyl bromide for quarantine and preshipment applications. The interim final rule solicited public comment on a number of issues related to EPA's implementation of the Quarantine and Preshipment Exemption. Today's action responds to public comment and finalizes the specifications for the exemption.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas, which is used as a broad-spectrum pesticide. Methyl bromide is used in the United States 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 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 the following sites of the World Wide Web: <http://www.epa.gov/ozone/mbr/> and <http://www.teap.org> or by contacting the Stratospheric Ozone Protection Hotline at 1-800-296-1996.

IV. What Are Examples of Quarantine and Preshipment Uses of Methyl Bromide?

An example of a quarantine application of methyl bromide is the fumigation of a commodity, such as rice and spices, which are subject to infestation by a specific and officially recognized quarantine pest, such as the khapra beetle (*Trogoderma granarium* Everts) when the fumigation is conducted before transport of the commodity to meet official quarantine requirements (see discussion in part VI

below). The purpose of quarantine fumigation is to prevent the introduction of specific quarantine pest(s) into a defined geographical area, such as an importing country. An example of a preshipment use of methyl bromide is the application to wheat immediately before shipment (see discussion in part VI below) because of official phytosanitary requirements of the destination country.

In 1998, the Methyl Bromide Technical Options Committee (MBTOC), a sub-group under the independent advisory body of the Technical and Economic Assessment Panel (TEAP) to the Montreal Protocol, published an assessment that gives further details about uses of methyl bromide and possible alternatives and substitutes for controlling pests. The MBTOC and TEAP assessments can be found on the web at http://www.teap.org/html/methyl_bromide_reports.html and <http://www.teap.org/>.

V. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Use in Quarantine and Preshipment Applications?

In Article 2H of the Montreal Protocol, which establishes the phaseout schedule for methyl bromide for developed countries, paragraph 6 states that, "[t]he calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications." EPA notes that paragraph 6, of Article 2H indicates that the exemption is to exclude from the U.S.'s calculation of methyl bromide consumption and production the amounts used by the U.S. for quarantine and preshipment applications. In addition, Article 7 requires each Party to report on, "the annual amount used for quarantine and preshipment applications." Beyond the critical uses allowed in Article 2H, Paragraph 5, quarantine and preshipment uses are the only exemptions explicitly allowed for under the Montreal Protocol.

In 1998 Congress added several provisions to the Clean Air Act regarding methyl bromide including a provision title "Sanitation and Food Protection," which is related to the Protocol exemption for quarantine and preshipment. This provision, which was codified as section 604(d)(5) of the CAA, was added by section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277). Section 604(d)(5) says, "To the extent consistent with the Montreal Protocol's quarantine and