

the importing or exporting country it ought to qualify as a preshipment application.

EPA believes that the incorporation of a time restriction within the definition of preshipment application is necessary to meet the purpose of this exemption as intended by the Parties to the Montreal Protocol. The preshipment exemption applies to treatments of commodities near the time of export to meet the official non-quarantine requirements of the exporting or importing country. Eliminating the time requirement would invite misuse of the exemption. With no established time window, the argument could be made that a pre-plant soil application of methyl bromide qualifies as a preshipment application because the crop being cultivated would eventually be exported from U.S. soil. By imposing a time restriction, Decision XI/12 of the Parties demonstrates that their intent was not to imbue the preshipment exemption with a lifecycle-wide scope. The 21-day restriction was agreed upon by the Parties (based on the advice of global experts) as a reasonable time limitation for the preshipment exemption. EPA has received no comment indicating that another time limitation would be better justified and meet the intent of the Parties in implementing the preshipment exemption.

In addition to the above, the definition of quarantine applications is qualified by the scope of the exemption as stated in the CAA. As passed by Congress, the CAA specifically applies the quarantine and preshipment exemption to quantities of methyl bromide used to "fumigate commodities entering or leaving the United States or any State (or political subdivision thereof)\* \* \*(CAA section 504(d)(5)). This language makes clear Congress's intent to apply the exemption only where there is the transport of goods from one distinct locality to another, and thus to prevent the potential for the geographic spread of pests. As a result, today's action adds the following sentence to the definition of quarantine applications: "This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof)." Section III.D. further discusses the uses of methyl bromide that are excluded from today's exemption for quarantine applications.

With today's final action, EPA is defining quarantine applications and preshipment applications as follows:

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the

introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

As specified in the above definitions, a quarantine application of methyl bromide must be "performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection, or health authority." In addition, as delineated in the above definition, quarantine applications must be directed at quarantine pests. Today's definition of preshipment applications is limited to applications "to meet the official requirements of the importing country or existing official requirements of the exporting country." The definition of preshipment applications specifies that the phrase "official requirements" means "those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority."

#### *A. Are There Clarifications Regarding Trade Within the U.S.?*

The interim final rule interpreted "quarantine applications" as including interstate and inter-county treatments required to control quarantine pests. This interpretation is consistent with the Technical and Economic Assessment Panel's (TEAP) recommendation that the Parties of the Protocol interpret Decision VII/5 to include officially required treatments for intra-country trade within the territory of the Party and reconciles the language of the Montreal Protocol with section 604(d)(5) of the CAA on Sanitation and Food Protection, which

refers to international, Federal, state and local requirements.

In recognizing official state, county, tribal, and local quarantine requirements, EPA's final rulemaking interprets the definition of quarantine applications such that an intra-country quarantine treatment required by state, county, tribal, or local plant, animal, environmental, or health government authorities constitutes an official control. Today's action adds parenthetically that "national" is meant to include state, tribal or local authorities for purposes of the definition of quarantine applications.

In contrast to the definition of quarantine applications, which accommodates intra-country trade, the Protocol definition of preshipment applications is specific to trade between countries because of the phrase "applications within 21 days prior to export." This distinction was noted in the interim final rule and EPA received no comment. Therefore, for the purposes of today's final action, the exemption for preshipment applications remains limited to the movement of goods from the U.S. to another country, and does not include movement of goods within the U.S.

#### *B. Are There Additional Qualifiers Associated With the Definition of Preshipment Applications?*

The interim final rule noted, in agreement with the 1998 TEAP interim explanatory notes for the Parties, the focus within the definition of "preshipment applications" on applications to meet "official requirements" and not "informal or purely contractual or commercial arrangements not required under official regulations" (April 1998 TEAP Report, page 145). EPA is continuing to stress the importance of this limitation in the scope of the preshipment exemption. The definition of preshipment applications specifies that the phrase "official requirements" means, "those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority."

The interim final rule's definition of preshipment applications further qualifies the term "official requirements" as it relates to exporting countries to include only "existing official requirements". EPA interpreted this phrase to imply the need to establish a cutoff date. EPA asked for comment on four possible interpretations for the term "existing official requirements of the exporting country". The options listed were to exempt applications pursuant to official