

preshipment requirements of the exporting country that were: (1) In effect prior to the date the Parties to the Protocol adopted Decision XI/12, which was December 3, 1999, (2) in effect at the time the interim final rule was published in the **Federal Register**, which was July 19, 2001, (3) in place at the time this final rule on the quarantine and preshipment exemption is published in the **Federal Register**, or (4) existing at the time of the methyl bromide application (since it would be an "existing" requirement of the exporting country upon going into effect).

EPA received eight comments related to the interpretation of "existing official requirements." All commenters supported the fourth option, which is to exempt applications pursuant to official preshipment requirements of the exporting country that exist at the time of the methyl bromide application. Commenters noted that this interpretation recognizes the possibility of future outbreaks of new pests requiring official action. EPA notes the value to such flexibility within the rule and believes that this interpretation is consistent with the intended purpose of the exemption.

It should be noted that the qualifier "existing", as used within the preshipment application definition, applies only to the official requirement of the exporting country (the U.S.) and not to the preshipment requirements of importing countries. Thus, if an importing country were to establish a new official requirement for the preshipment application of methyl bromide, nothing in this rule would prevent a U.S. exporter from using methyl bromide to meet the new requirement of the importing country.

C. Are There Additional Qualifiers Associated With the Definition of Quarantine Applications?

With today's final action EPA is establishing the following parameters for the quarantine exemption. For commodities imported to, exported from, and transported within the U.S., the exemption for quarantine applications will apply when: (1) Methyl bromide is identified within quarantine regulations as the unique treatment option for specific quarantine pests; (2) methyl bromide is identified within quarantine regulations as one among a list of treatment options for specific quarantine pests; and (3) methyl bromide is required for an emergency quarantine application. Under section 3, section 18, and section 24a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is

notified of emergency quarantine applications of methyl bromide in accordance with specific requirements published under FIFRA. In addition to the above, for commodities being exported from the U.S. to a foreign nation, the exemption applies to quarantine applications when there is a broad performance-based quarantine requirement. In other words, the exemption applies when an importing country has quarantine regulations which broadly require U.S. exported commodities to be free of quarantine pests without specifying the types of treatments.

The above follows EPA's decision in the interim final rule. The Agency received 12 comments on the scope of the quarantine exemption. Every commenter said that the broadest possible option should be implemented by the Agency. EPA believes that the scope of the exemption described above is the broadest interpretation that it can reasonably adopt for each given type of commodity. For example, for imports, USDA/APHIS requirements are explicit regarding treatment options acceptable for the control of specific crop/pest combinations. EPA considered limiting the scope of the quarantine exemption to only those instances where APHIS lists methyl bromide as the only acceptable treatment option for a given pest. However, as many commenters noted, variations in climate, etc. can affect the level of efficacy of treatment options in different regions. Thus, EPA chose to adopt a broader definition of the quarantine exemption which applies to quantities of methyl bromide used to meet quarantine requirements where fumigation with methyl bromide is the listed, or one of the listed, treatment options.

While EPA believes that such an interpretation is sufficiently broad for the purposes of imported and domestically traded commodities given the applicable U.S. regulations, the Agency recognizes that some foreign countries lack such specificity within their quarantine regulations for imported commodities. EPA chose to create even greater flexibility within the quarantine exemption in order to accommodate the broad, performance-based quarantine requirements of these foreign trade partners.

D. How Does the Exemption for Quarantine Applications Apply to Commodities Issued "Phytosanitary Certificates"?

Today's final action exempts methyl bromide in situations when a foreign country's regulations require a certification that U.S. commodities be

exported free of quarantine pests. EPA understands that both USDA/APHIS and State agencies issue "phytosanitary certificates" that accompany U.S. commodities exported to foreign countries. These phytosanitary certificates are often required by importing foreign countries to ensure that U.S. exports are free of quarantine pests. To the extent that methyl bromide is used by a U.S. exporter to meet a foreign quarantine requirement, the phytosanitary certificates (PPQ Form 577, PPQ Form 578, and PPQ Form 579) issued by USDA/APHIS or an authorized State agency will be an additional means for EPA to cross-check quarantine applications of methyl bromide under today's exemption.

As was noted in the interim final rule, and for this final action, EPA is not exempting methyl bromide used for non-quarantine applications, even if the foreign country requires the U.S. exporter to obtain a phytosanitary certificate. Today's exemption applies to the use of methyl bromide to meet an official foreign quarantine requirement. If PPQ Forms or other types of certificates are issued for commodities meeting state or local quarantine requirements then methyl bromide used in these cases is considered exempt under today's action, provided that methyl bromide is one of the listed treatment options.

E. How Do the Definitions of Preshipment and Quarantine Applications Apply to Food Sanitation?

The language of the Clean Air Act related to the quarantine and preshipment exemption explicitly limits the exemption to quantities of methyl bromide used "to fumigate commodities entering or leaving the United States or any State (or political division thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * *" (emphasis added). By applying the quarantine and preshipment exemption only to quantities of methyl bromide used to fumigate commodities being transported from one geographical location to another, Congress imposed limitations on how the definitions of preshipment and quarantine applications apply to food sanitation.

As defined in today's action, preshipment applications 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