

authority. Methyl bromide used any time within 21 days prior to export of a commodity to meet "official requirements" related to food sanitation would qualify under the preshipment exemption. Any treatment performed outside of this 21 day window, by definition, does not qualify for the preshipment exemption.

The exemption of methyl bromide for quarantine applications, as defined by the interim final action, did not apply to preventative treatments to meet food sanitation standards. EPA received 4 comments about the interaction between food sanitation standards and the quarantine exemption. All commenters asserted that preventative treatments of commodities with methyl bromide to meet food sanitation requirements should qualify as "quarantine applications" because "such standards are geared to preventing the dissemination of pests, although admittedly for human health and food sanitation purposes."

EPA's final action is bound by the limitations imposed on the quarantine exemption by the definitions and determination of scope agreed upon by the Parties to the Montreal Protocol and adopted by Congress in the Clean Air Act. EPA understands that certain industries often use methyl bromide as a prophylactic treatment for periodic quality control fumigations associated with food sanitation. Stored commodities, such as dried fruits, nuts, and cocoa beans, as well as grain mills and pasta manufacturing facilities are often fumigated periodically with methyl bromide to prevent populations of pests, such as insects and rodents, from increasing to a point where they would adversely affect food quality. Such *in situ* population control measures do not qualify as quarantine applications since they are not performed on "commodities entering or leaving the United States or any state (or political subdivision thereof) * * *

Additionally, food sanitation requirements that are directed at controlling population levels of pests endemic to the region would not qualify under the definition of "quarantine applications". The quarantine definition, as established in today's final action, stresses that exempt applications of methyl bromide are "to prevent the introduction, establishment and/or spread of quarantine pests (including diseases)." Quarantine pests are defined as "pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." Endemic pests are not quarantine pests.

The above limitations were noted in the interim final version of this rule. Likewise, the Agency noted in that publication its interest in comments related to prophylactic uses of methyl bromide to meet food sanitation standards in order to use this information in the Agency's development of the Critical Use Exemption to the phaseout of methyl bromide. Please see the discussion below (Section VIII.A) related to the Critical Use Exemption.

F. How Do These Definitions Apply to "Propagative Material"?

The use of methyl bromide to fumigate the soil for growing propagative material, such as strawberry rhizomes, differs from many quarantine applications of methyl bromide. The Agency sought comment on the use of methyl bromide for propagative materials and received a variety of information on relevant quarantine regulations, planting and fumigating practices, and propagative materials (other than strawberry rhizomes) that use methyl bromide to meet quarantine requirements.

With today's final action, the exemption for quarantine applications applies to methyl bromide used for growing propagative material if the methyl bromide is being used to grow propagative material to meet official quarantine requirements of the destination to which the propagative material will be transported. Although the interim final rule only cited strawberry rhizomes in the discussion of the exemption for propagative material, with today's action EPA wishes to clarify that the exemption also covers other propagative material, including tree seedlings, when the methyl bromide is used to meet an official quarantine requirement of the destination to which the propagative material will be transported.

EPA notes the following qualifiers in the application of the quarantine exemption to methyl bromide used to grow propagative material (also referred to as "plants for planting"). First, as noted above (see discussion in part VI.C.), the Clean Air Act language specifies that the scope of the quarantine exemption is limited to use of methyl bromide for fumigation of goods for transport from one distinct locality to another. Thus, the exemption for propagative materials only applies for use with "plants for planting" that are to be transported (complete with rootstock) from one distinct locality to another. Second, today's action only exempts the use of methyl bromide for pre-plant fumigation of soil to meet

official quarantine requirements specifying that the underground portions of the propagative material are to be free from quarantine pests. The purpose of such regulations is ensuring that quarantine pests are not spread to the region where the regulated rootstock will be replanted. This exemption does not apply to pre-plant soil treatment for commodities transported without their attached rootstock, or commodities transported for any purpose other than for replant.

Finally, with this action, EPA is only exempting quantities of methyl bromide used to grow propagative material to meet official quarantine requirements of the destination to which such material will be transported. If the material is transported to a destination that has no applicable official quarantine requirements, then the methyl bromide used does not qualify for this exemption. This is true even in an instance where a farmer legitimately justified using exempted methyl bromide to meet a quarantine requirement for propagative materials, yet due to economic or market conditions the farmer does not send the seedlings to the planned destination, and instead sends the seedlings to a region without relevant quarantine requirements. EPA recognizes that many of the propagative materials for which this exemption applies are planted far in advance of their trade and transplant and that farmers face some difficulty in accurately predicting their commodities' ultimate destination. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see discussion in part VIII.A. below).

The use of exempted methyl bromide to grow propagative material that the grower planned to ship to a destination with a propagative material quarantine requirement, but which the grower ultimately shipped to a destination without such a requirement, may raise compliance issues for the United States under the Protocol. Such quantities of methyl bromide would count against the U.S. cap for domestic methyl bromide consumption. The U.S. could exceed its control obligations under the Protocol if all U.S. production and consumption allowances for methyl bromide were expended in a particular control period (calendar year) and some methyl bromide in the same control period was mistakenly exempted for quarantine applications when, in fact, the propagative material was sent to a place without quarantine requirements. With this action, EPA is implementing the