

following options for rectifying such discrepancies. The methyl bromide user found to be incorrectly using exempt quantities of methyl bromide for propagative uses as described above may choose either of the following options to rectify their actions. First, a methyl bromide user in the above situation may choose to buy an equivalent amount of production allowances for any ozone-depleting substance, on an ozone-depleting potential (ODP) weighted basis, and retire those allowances, thus rendering them unable to be expended for new production in accordance with subpart A of 40 CFR part 82. Alternatively, a person who uses exempted methyl bromide to meet a propagative material quarantine requirement, and who ultimately changes the material's destination to one without a quarantine requirement, can choose to destroy an amount of any ozone-depleting substance that is equivalent on an ODP-weighted basis to the amount of methyl bromide used. This approach differs from the first option, in that it requires the person to physically destroy an existing quantity of an ozone-depleting chemical rather than reduce the overall quantity produced in the future.

Those users of methyl bromide required to perform one of the compensatory measures described above to rectify a non-compliance situation must submit to EPA a letter of certification detailing the following information: (1) The quantity of exempt methyl bromide used on propagative materials that were shipped to a destination lacking a quarantine requirement; (2) the compensatory option chosen (see discussion above); (3) the ozone-depleting substance destroyed or the type of production allowance obtained; and (4) the quantity of ozone-depleting substance destroyed or production allowances retired. See the section above entitled **FOR FURTHER INFORMATION CONTACT** for submittal information.

Monitoring and compliance issues are a concern associated with the use of methyl bromide for pre-plant propagative material uses. EPA expressed a concern in the interim final rule about situations where propagative materials are grown in proximity to crops that do not qualify for quarantine and preshipment exemption. EPA believed that it would be difficult to ensure that exempted quantities of methyl bromide were being properly used. However, the Agency received input from 3 commenters that state that propagative material is rarely, if ever, grown in proximity to other crops, which alleviates the Agency's concern.

The Agency will continue to monitor this possibility.

G. How Do These Definitions Apply to In-Transit Applications?

EPA understands that some users of methyl bromide may be testing and/or using "on-ship" fumigation of commodities while they are "in-transit." With today's final action, EPA is interpreting the definition of quarantine application to apply to these quantities of methyl bromide used "in-transit" when the use is to meet an official U.S. quarantine requirement and is in accordance with other U.S. regulations for commodities being imported into the U.S., (see discussion in part VI.C. above for more information on what is considered an official quarantine requirement for an imported commodity) or for commodities moving from one location to another within the U.S. However, today's action does not exempt quantities of methyl bromide used outside of U.S. jurisdiction on U.S. exported commodities to meet the importing country's official quarantine requirements while the commodities are "in-transit." Today's action, likewise, does not exempt quantities of methyl bromide used on U.S. exported commodities when they are being transshipped through a foreign country en route to the destination importing country. Finally, today's action does not exempt quantities of methyl bromide used to meet an importing country's requirements when a commodity is simply being transshipped through the U.S. from the exporting foreign country en route to the importing foreign country.

It should be noted that use of methyl bromide after a shipment leaves the United States is not an exempt preshipment application because the application did not occur "within 21 days prior to export" from the U.S., where the word "export" is interpreted to mean the departure of a commodity from the United States.

VII. What Is the Process for Exempting Methyl Bromide for Use in Quarantine and Preshipment Applications?

With this action, EPA is establishing a process to exempt methyl bromide used for quarantine and preshipment applications from the Allowance Program's control measures that phase out production and consumption of methyl bromide (described in Part I. Background above). Today's action exempts quantities of methyl bromide used for quarantine and preshipment applications from the production and consumption reduction steps between now and 2005, as well as beyond the

final phaseout of production and consumption under the Montreal Protocol and Clean Air Act on January 1, 2005.

EPA is creating a recordkeeping and reporting process that is flexible enough to respond to demands arising when commodities need to be protected from infestations by quarantine pests and when commodities need to be treated immediately prior to shipment in accordance with official requirements. Such flexibility needs to be balanced with the U.S. Government's reporting requirements under the Montreal Protocol. Today's action includes a certification and reporting procedure under authority of the Clean Air Act (CAA) for exempted production and consumption of methyl bromide for quarantine and preshipment applications.

A. What Recordkeeping and Reporting Must Producers and Importers Perform?

Until the January 1, 2005 phaseout date for methyl bromide, U.S. companies will continue to hold production and consumption allowances, calculated as a percentage of their baseline production and consumption. After January 1, 2005, there will not be production allowances and consumption allowances for methyl bromide. The relationship between each company's baseline production allowance and baseline consumption allowances and the reduction steps in these allowances is in accordance with the control measures under the Montreal Protocol and the Clean Air Act as described in part I of today's rule and in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

Because quarantine and preshipment applications are exempted from the phaseout, the total quantities of methyl bromide produced and imported that are specifically designated for quarantine and preshipment will not be counted as net production or net import for the purposes of the Allowance Program. In order for EPA to ensure that qualifying quarantine and preshipment quantities of methyl bromide are being properly exempted from companies' total allowed production/import, the Agency must have a record of those exempted quantities.

Currently, § 82.13 requires producers and importers to submit quarterly reports to EPA with information on the gross quantity of methyl bromide produced or imported in that quarter. In that same report, producers and importers indicate the quantity specifically designated for transformation and for destruction and,