

not incorporated into the interim rule as it was published. The Agency received comment on some of these items, as well as on other topics for which comment was not expressly sought.

EPA recognizes that additional questions may arise regarding aspects of today's final action. If a person has a question about whether a certain aspect of today's final action applies to their situation, EPA is encouraging the submissions of written questions accompanied by a detailed description of how methyl bromide relates to the person's particular enterprise. The Agency will consider questions about whether aspects of today's final action apply in the context of EPA's regular process for issuing written determinations.

A. Methyl Bromide Is the Only Feasible Treatment Option

EPA received 31 comments in response to the interim final rule that addressed the lack of feasible alternatives available for specific uses of methyl bromide and the economic impact of the phaseout on sectors of the agricultural industry. In response to such comments, EPA notes that there is no "critical need" requirement associated with the Quarantine and Preshipment Exemption at this juncture. The exemption applies only to uses of methyl bromide that qualify as a quarantine or preshipment application, as defined by this final action, regardless of the availability of alternatives.

The Montreal Protocol and the CAA created two distinct exemptions to the methyl bromide phaseout: (1) The Quarantine and Preshipment Exemption, and (2) the Critical Use Exemption. The Critical Use Exemption was created by the Parties to the Protocol to address the possibility that substitutes and alternatives may not be available for all methyl bromide uses by the January 1, 2005 phaseout date. The term "critical use" is defined, in part, by the lack of technically or economically feasible alternatives. For more information about the Critical Use Exemption please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or visit <http://www.epa.gov/ozone/mbr/cueqa.html>.

B. Has the Agency Considered Definitions Under the International Plant Protection Convention (IPPC)?

Under the International Standards for Phytosanitary Measures (ISPMs) adopted by members of the International Plant Protection Convention (IPPC) on April 22, 2001, the definition of "official

control" is different than the definition that was agreed to by the Parties to the Montreal Protocol and adopted by EPA in the interim final rule. The IPPC definition of the phrase "official control" is, "the active enforcement of mandatory phytosanitary regulations and the applications of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or the management of regulated non-quarantine pests." The IPPC glossary of phytosanitary terms defines "official" as "established, authorized or performed by a National plant protection Organization (NPPO)." In the United States, the NPPO is the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) Program.

Further, under the ISPMs adopted by the IPPC, the phrase "regulated non-quarantine pests" is defined as, "a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party."

EPA sought comment in the interim final rule on this IPPC definition of "official control" and received 3 comments. All commenters stated that EPA ought to adopt the IPPC definition because it is broader than that adopted in the interim final rule.

In this final action, EPA is adopting the definition of "official control" found in the interim final rule and agreed upon by the Parties to the Montreal Protocol. The IPPC definition is broader, insofar as includes within its scope not only regulated quarantine pests but also regulated "non-quarantine pests", an addition not found in EPA's definition. However, IPPC defines the phrase "non-quarantine pests" as being applicable only to "plants for planting". [With this final action, EPA explicitly applies the quarantine exemption to use of methyl bromide for growing propagative material if it is being used to meet official quarantine requirements of the destination to which the propagative materials are being transported. However, the IPPC's definition is much narrower than the Protocol's, because the word "official" under the IPPC is limited only to national plant protection organization, and the Protocol's quarantine definition refers to "plant, animal or environmental protection or health authority" and the preshipment definition refers to "national plant, animal, environmental, health or stored product authority".

Additionally, in 1998, the TEAP explicitly laid out the differences between the IPPC's and the Montreal Protocol's definitions of "official control" for consideration by the Parties. The Parties rejected making any changes to the Protocol's definition of "official control" even when presented with the IPPC language (See discussion in section IV above). The Agency is acting in conformity with customary international law by adhering to the decision of the Parties on this matter.

C. What Action Is the Agency Taking Regarding Prophylactic Fumigation of U.S. Exports When the Fumigation Is Not Mandated by Import Regulations?

U.S. businesses sometimes use methyl bromide against non-quarantine pests for a commodity that is being exported because it is known that the importing country will treat with methyl bromide at the port of entry if the detected level of these non-quarantine pests during port-of-entry inspection exceeds that country's standards. Some U.S. exporters give their commodities a prophylactic treatment in the U.S. to prevent a much more damaging treatment in the receiving country that could occur if non-quarantine pests were found, possibly reducing the quality of the commodity. In cases where an official foreign Party requirement is specific to quarantine pests, or there is a general performance-based quarantine requirement, the use of methyl bromide under the exemption for quarantine applications would be appropriate. In addition, fumigation with methyl bromide to meet U.S. government or foreign non-quarantine requirements 21 days prior to export of the commodity would also be exempt under the definition of preshipment applications. 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 section VII.A. above).

D. What Action is the Agency Taking Regarding the Exclusion of Specific Quarantine and Preshipment Applications From the Exemption at Some Future Time?

The Parties to the Protocol in Decision XI/13 request Parties to "review their national plant, animal, environmental, health and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist." The reason for a review process