

of the information in the application, you must submit a non-confidential version that EPA can circulate to technical reviewers and can place in the public docket for reference by other interested parties. Under no circumstances shall the applicants claim confidentiality for the "Worksheet Six: Application Summary" portion of the application. These application information summary sheets will be posted on the EPA Web site (www.epa.gov/ozone/mbr) and included in Air Docket No. OAR-A2000-24. Please note, providing CBI may delay the ability of EPA to review your application.

F. Must I Submit a "Notice of Intent To Apply?"

EPA requests that people who plan to submit an application send a "notice of intent to apply" to the location listed in **ADDRESSES** above. EPA asks that you submit the "notice of intent to apply" as soon as you decide if you will be applying in 2003, but no later than 30 days before the application deadline. The "notice of intent to apply" can be a simple letter (or an email in the form LASTNAME.FIRSTNAME@epa.gov to one of the people listed under the section **FOR FURTHER INFORMATION CONTACT**). The Agency is not requiring a "notice of intent to apply", but believes it will facilitate the organization of the application review process, and improve the U.S. government's ability to make arguments on behalf of sectors that demonstrate a critical need for methyl bromide.

G. What if I Submit an Incomplete Application?

If the EPA determines that an application is lacking sufficient information needed in order to be processed by the technical reviewers, applicants will be notified by telephone or in writing. If the required information is not submitted 30 days after the request, the application will not be processed. Reviewers may also call applicants for further elaboration about their application, even if it is complete.

H. What if I Already Applied in 2002?

The Parties to the Montreal Protocol will decide at the end of calendar year 2003 whether exemptions will be authorized for 2005 alone or for more than one year. If methyl bromide is only authorized by the Parties for 2005 alone, then EPA is requiring those who submitted applications in 2002 to provide updated data by filling out only those very limited portions of the application necessary to furnish any updated information to EPA. The data

required for updating applications will be noted is the following:

- Provide the 2002 price of methyl bromide (worksheet 2D-amount and price of methyl bromide alone);
- Provide quantity of methyl bromide used in 2002 (worksheet 2B regarding 2002 information);
- Address the technical and economic feasibility of using newly registered alternatives (provide information in worksheets 3A through 3C regarding alternatives newly registered/available since submission of application during 2002);
- Update research information about alternatives (update worksheet 4 as necessary, based on new studies);
- Update details in research plan to identify and test alternatives (follow new format and provide details in worksheet 4, as necessary); and
- Provide update on new techniques to minimize emissions (worksheet 4).

II. What Is the Legal Authority for the Critical Use Exemption?

A. What Is the Clean Air Act (CAA) Authority for Implementing the Critical Use Exemption to the Methyl Bromide Phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA sections 604(d)(6), 604(e)(3), and 604(h) (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105-277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

- 25% reduction (from 1991 baseline) in 1999;
- 50% reduction in 2001;
- 70% reduction in 2003;
- 100% reduction in 2005.

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240), and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005, "to the extent consistent with the Montreal Protocol" (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105-277, October 21, 1998)(section 604(d)(6) of the Clean Air Act).

B. What Is the Montreal Protocol Authority for Granting a Critical Use Exemption After the Methyl Bromide Phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses".

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination:

- (a) That a use of methyl bromide should qualify as "critical" only if the nominating Party [e.g. U.S.] determines that:
 - (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and
 - (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.
- (b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:
 - (i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;
 - (ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries need for methyl bromide;
 - (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * * Non-Article 5 Parties [e.g., the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. * * *

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports - exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless