

would be to limit the production and import of methyl bromide to only those cases where no other “technologically and economically feasible alternatives exist.” Through time, it is likely that the use of methyl bromide will be less and less necessary for quarantine and preshipment applications. When technically and economically feasible alternatives to methyl bromide are available, a process will be devised that will allow the U.S. to limit the use of this ozone-depleting substance while taking into account the need to protect international trade. In the years beyond the methyl bromide production and consumption phaseout, there will continue to be an exemption for quarantine and preshipment applications but there may no longer be price pressures for moving away from these quarantine and preshipment applications of methyl bromide. Therefore, the Parties to the Protocol emphasize the importance of reviewing quarantine and preshipment applications and identifying when technically and economically feasible alternatives exist, and removing these applications from the exemption.

EPA offered several options for implementing such a review process in the interim final rule. The Agency received 5 comments related to this issue. All commenters asserted that the option to eliminate the Quarantine and Preshipment Exemption after the phaseout and ask users to apply for critical-use exemptions where no technically or economically feasible alternatives exist offered by EPA in the interim final rule was contrary to the provisions of the Montreal Protocol and could not be pursued without an amendment to the agreement. Given the request by the Parties for a future contraction of the Quarantine and Preshipment Exemption, EPA does not agree that the Protocol prohibits such a course of action. However, the Agency agrees that this option may impose the burden of completing a Critical Use Exemption Application on users where it may not be necessary. Thus, with this action, EPA sets forth its intent to meet the Parties’ request for a domestic review process for quarantine and preshipment applications of methyl bromide by establishing a procedure for excluding specific quarantine and preshipment applications from the exemption when EPA determines by notice and comment rulemaking that alternatives are in significant international use for the specific applications. In undertaking the process of notice and comment rulemaking, EPA will consult with USDA/APHIS

regarding alternatives that are efficacious for quarantine and preshipment and are in significant international use for specific quarantine and preshipment applications. Such a notice and comment rulemaking process will allow U.S. users of methyl bromide for quarantine and preshipment applications to make the case that although alternative(s) are in significant international use, the specific circumstances of their U.S. applications are unique (e.g., the alternatives are not feasible or commercially available in the U.S.) and continue to warrant the use of methyl bromide.

EPA considered relying on market prices to guide methyl bromide use as an alternative to the formal review process described above. However, the Agency was unable to gather adequate information to determine whether the price of methyl bromide would be sufficiently likely to provide an incentive for the development and use of alternatives. Without adequate economic analysis, the Agency is unable to rely on market forces to meet the U.S.’s international commitment.

IX. What Are the Steps To Conform the U.S. Methyl Bromide Phaseout Schedule and Exemptions to the Montreal Protocol and Amended Clean Air Act?

During stakeholder meetings, and in the proposed and final rules that established the 25 percent reduction in methyl bromide baseline allowances beginning in 1999 (64 FR 9290, 64 FR 29240), EPA described its intention to follow with separate rulemakings that would include the additional phaseout steps for methyl bromide and establish additional exemptions in accordance with the Protocol and the CAA. The rule establishing the remaining reduction and phaseout schedule for methyl bromide was published November 28, 2000 (65 FR 70795). The reduction and phaseout schedule is listed above at the end of part I.

After the phaseout on January 1, 2005, critical-use exemptions are permitted under the Montreal Protocol and the Clean Air Act when nominated by the United States and approved by the Parties. In addition, an emergency use exemption of no more than 20 metric tonnes is available after the phaseout on January 1, 2005. In 2001, EPA initiated stakeholder meetings to develop a process for an emergency use exemption and for critical use exemptions, which is designed to ensure that the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. On May 10, 2002 EPA published a **Federal**

Register document (67 FR 31798) asking for people to submit Critical Use Exemption Applications. At this time no final decision has been published regarding what uses will be exempted as “critical.” Sometime in advance of 2005, EPA will establish a process for an emergency use exemption through notice and comment rulemaking.

X. Administrative Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with the applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternatives if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule imposes no enforceable duty on any