

commenters more time to properly address the complex legal and technical issues and provide more thorough comments that would aid in considering the E15 waiver.

Although EPA agrees that additional time for comments may be needed, this need must be balanced against the need to allow EPA ample time to review all relevant data and public submissions before the 270-day statutory decision deadline. EPA believes an additional 60 days would allow adequate time for these stakeholders and others to provide meaningful comment on the E15 waiver request. EPA does not anticipate any further extension of the comment period for this waiver request.

#### Extension of Comment Period

EPA has determined that extension of the comment period would aid in providing the public an adequate amount of time to respond to the complex legal and technical issues that result from possibly allowing E15 to be sold commercially. Accordingly, the public comment period for the E15 waiver to section 211(f) of the Act is extended until July 20, 2009. This action does not extend the 270-day statutory deadline of December 1, 2009, for the Administrator to grant or deny the E15 waiver request.

Dated: May 14, 2009.

**Elizabeth Craig,**

*Acting Assistant Administrator, Office of Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2009-0277; FRL-8904-6]

### Protection of Stratospheric Ozone: Request for Critical Use Exemption Applications for 2012

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Solicitation of Applications and Information on Alternatives.

**SUMMARY:** EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2012 and beyond. This exemption is an annual exemption and all entities interested in obtaining a critical use exemption must provide EPA with technical and economic information to support a "critical use" claim and must do so by the deadline specified in this notice even if they have previously applied for an exemption. Today's

notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

**DATES:** Applications for the critical use exemption must be postmarked on or before July 20, 2009. The response period reflects the clarifications and reduction of burden in the application.

**ADDRESSES:** Applications for the methyl bromide critical use exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St. NW., Room 1040, Washington DC 20005. EPA also encourages users to submit their applications electronically to Robert Burchard, Stratospheric Protection Division, at [burchard.robert@epa.gov](mailto:burchard.robert@epa.gov). If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to Robert Burchard at 202-343-2338 by the application deadline.

#### FOR FURTHER INFORMATION CONTACT:

**General Information:** U.S. EPA Stratospheric Ozone Information Hotline, 1-800-296-1996; also <http://www.epa.gov/ozone/mbr>.

**Technical Information:** Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703-308-8136. E-mail: [chism.bill@epa.gov](mailto:chism.bill@epa.gov).

**Economic Information:** Elisa Rim, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703-308-8123. E-mail: [rim.elisa@epa.gov](mailto:rim.elisa@epa.gov).

**Regulatory Information:** Robert Burchard, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202-343-9126. E-mail: [burchard.robert@epa.gov](mailto:burchard.robert@epa.gov).

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#### I. What do I need to know to respond to this request for applications?

##### A. Who can respond to this request for information?

Entities interested in obtaining a critical use exemption must complete the application form available at <http://www.epa.gov/ozone/mbr>. The application form may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2012 and believe there are no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below). Given that this is the eighth round of the critical use exemption process, EPA will take a skeptical view regarding supporting new nominations (meaning, specific applicants who have not previously been nominated by the U.S. Government for an exemption) unless the applicant demonstrates that an unforeseeable change in circumstances (e.g., withdrawal or significant change in registration status of an alternative) justifies the need.

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g., technical and/or economic feasibility research). The application form for the methyl bromide critical use exemption and other

information on research relevant to alternatives must be sent to the addresses specified above or e-mailed to the address specified above. The applicant's signature, which is required in order for EPA to process the application, is on Worksheet 1 of the application. Applicants submitting electronically must also fax a signed copy of Worksheet 1 to Robert Burchard at 202-343-2338 by the application deadline.

*B. Whom can I contact to find out whether a consortium is submitting an application for my methyl bromide use?*

You should contact your local, state, regional, or national commodity association to find out whether it plans to submit an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the state's agriculture or environmental protection agency) to receive information about its involvement in the process. If your state agency has chosen to participate, EPA recommends that you first submit your application to the state agency, which will then forward applications to EPA. The National Pesticide Information Center Web site identifies the lead pesticide agency in each state (<http://npic.orst.edu/state1.htm>).

*C. How do I obtain an application form for the methyl bromide critical use exemption?*

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA's Web site: <http://www.epa.gov/ozone/mbr/cueinfo.html>;

2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1-800-296-1996;

3. Hard-copy format at DOCKET ID No. EPA-HQ-OAR-2009-0277. The docket can be accessed at the <http://www.regulations.gov> site. To obtain copies of materials in hard copy, please e-mail the EPA Docket Center: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

*D. Which alternatives must applicants address when applying for a critical use exemption?*

To support the assertion that a specific use of methyl bromide is "critical," applicants are expected to demonstrate that there are no technically and economically feasible alternatives available for that use. The Parties to the Montreal Protocol have

developed an "International Index" of methyl bromide alternatives, which lists chemical and non-chemical alternatives by crop. In 2008, the United States submitted an index of alternatives, which includes the current registration status of available and potential alternatives, that is available on the Ozone Secretariat Web site: [http://ozone.unep.org/Exemption\\_Information/Critical\\_use\\_nominations\\_for\\_methyl\\_bromide/MeBr\\_Submissions/USA-Alternatives-Ex4-1-2008.pdf](http://ozone.unep.org/Exemption_Information/Critical_use_nominations_for_methyl_bromide/MeBr_Submissions/USA-Alternatives-Ex4-1-2008.pdf).

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop within the "U.S. Index" of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of "non-chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop in the "International Index."

*E. What portions of the applications will be considered confidential business information?*

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA receives it, EPA may make it available to the public without further notice.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the "Worksheet Six: Application Summary" page of the application any information

that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Applications that are not confidential business information will be placed in the Docket in their entirety. Please note, claiming business confidentiality may delay EPA's ability to review your application.

*F. Must I submit a "Notice of Intent to Apply"?*

A "Notice of Intent to Apply" is not required, but would facilitate the organization of the application review during the critical use exemption process. If EPA is aware of the consortia and the individuals who intend to submit applications 30 days before the application deadline, the technical experts will be better positioned to review the application. This Notice may be submitted to Robert Burchard via e-mail at [burchard.robert@epa.gov](mailto:burchard.robert@epa.gov) or via U.S. mail to U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, 1200 Pennsylvania Ave., NW., 6205J, Washington, DC 20460 or by courier to U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, 1310 L St., NW., Room 1040, Washington, DC 20005.

*G. What if I submit an incomplete application?*

EPA will not accept any applications postmarked after July 20, 2009. If the application is postmarked by the deadline but is incomplete or missing any data elements, EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. If the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call an applicant for further clarification of an application, even if it is complete.

All consortia or users who did not apply to EPA for the 2008 control period (calendar year) must submit an entire completed application with all Worksheets.

*H. What if I applied for a critical use exemption in a previous year?*

Users must apply to EPA for critical use exemptions on an annual basis. However, if a user group submitted a complete application to EPA in 2008, the user is only required to submit revised copies of the certain Worksheets listed below, though the entire

application with all Worksheets must be on file with EPA. You must submit Worksheets 1, 2B, 2C, 2D, 4, 5, and 6 in full regardless of whether you submitted an application in 2008. You need only complete the remaining worksheets if any information has changed since 2008. If you submitted a critical use exemption application to EPA in 2002, 2003, 2004, 2005, 2006, or 2007 but did not submit an application in 2008, then you must submit all of the worksheets in the application again in their entirety.

## II. What is the legal authority for the critical use exemption?

### A. What is the Clean Air Act (CAA) authority for the critical use exemption?

The October 1998 amendments to the Clean Air Act added sections 604(d)(6), 604(e)(3), and 604(h), requiring EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Under this schedule methyl bromide was phased out starting in 2005. 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.

### B. What is the Montreal Protocol authority for the critical use exemption?

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 such an exemption in recognition that alternatives might 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 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 programs are in place to develop and deploy alternatives and substitutes. \* \* \*

A Class I controlled substance that was produced or imported through the expenditure of allowances prior to its phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless otherwise precluded under separate regulations.

## III. How is the U.S. implementing the critical use exemption?

Under the provisions of both the CAA and the Montreal Protocol, the critical use exemption became available to approved users on January 1, 2005. There is both a domestic and international component to the critical use exemption process. The following outline projects a timeline for the process for the next three years.

May 20, 2009: Solicit applications for the methyl bromide critical use exemption for 2012.

July 20, 2009: Deadline for submitting critical use exemption applications to EPA.

Fall 2009: U.S. Government (through EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2010: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2010: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) reviews Parties' nominations for critical use exemptions.

Mid 2010: Parties consider TEAP/MBTOC recommendations.

November 2010: Parties authorize critical use exemptions for methyl bromide for production and consumption in 2012.

Mid 2011: EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2012.

Late 2011: EPA publishes final rule allocating critical use exemptions in the U.S. for 2012.

January 1, 2012: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2012 control period.

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: May 4, 2009.

**Brian J. McLean,**

*Director, Office of Atmospheric Programs.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–8908–4]

### Good Neighbor Environmental Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the states of Arizona, California, New Mexico and Texas; and tribal and private organizations to provide advice on environmental and infrastructure issues along the US/Mexico Border.

The purpose of the meeting is to discuss environment priorities in the border region and to form workgroups that will begin drafting the Board's next report. The meeting will include a planning session, a business meeting and a public comment session. A copy of the meeting agenda will be posted at <http://www.epa.gov/ocem/gneb>.

**DATES:** The Good Neighbor Environmental Board will hold an open meeting on Wednesday, June 10, from