to the preparation or review of any financial report.

Dated: April 26, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010–10075 Filed 4–30–10; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2007–0993; FRL–9144–4]**

### Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On April 8, 2010 (75 FR 17868), EPA published a direct final rule approving New Mexico State Implementation Plan (SIP) revisions that addressed one element of the "good neighbor" provisions of the Clean Air Act (CAA) for the 1997 ozone standards and the 1997 $PM_{2.5}$ standards. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if EPA received adverse comments by May 10, 2010, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received timely adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on April 8, 2010 (75 FR 17894). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published on April 8, 2010 (75 FR 17868), is withdrawn as of May 3, 2010.

**FOR FURTHER INFORMATION CONTACT:** Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov.*

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

■ Accordingly, the amendments to 40 CFR 52.1620 published in the **Federal Register** on April 8, 2010 (75 FR 17868), which were to become effective on June 7, 2010, are withdrawn.

[FR Doc. 2010–10233 Filed 4–30–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

**[EPA–HQ–OAR–2009–0351; FRL–9144–5]**

**RIN 2060–AP62**

### Protection of Stratospheric Ozone: The 2010 Critical Use Exemption From the Phaseout of Methyl Bromide

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

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes uses of methyl bromide that qualify for the 2010 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2010. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twentieth Meeting of the Parties.

**DATES:** This rule is effective on May 3, 2010.

**ADDRESSES:** EPA has established a docket for this action identified under EPA–HQ–OAR–2009–0351. All documents in the docket are listed on the *http://www.regulations.gov* site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available only through *http://www.regulations.gov* or in hard copy. To obtain copies of materials in hard copy, please call the EPA Docket Center at (202) 564–1744 between the hours of 8:30 a.m.–4:30 p.m. E.S.T., Monday–Friday, excluding legal holidays, to schedule an appointment. The EPA Docket Center's Public Reading Room address is EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:** This final rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2010. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is authorizing the uses that qualify for the 2010 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or supplied from pre-phaseout inventory for critical uses in 2010.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 3, 2010. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule grants an exemption from the phaseout of methyl bromide.

### Table of Contents

## I. General Information

*Regulated Entities*

Entities potentially regulated by this action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; users of methyl bromide, *e.g.,* farmers of vegetable crops, fruits, and nursery stock; and owners of stored food commodities and structures such as grain mills and processors.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

## II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by provisions of this rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

## III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under Sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with Section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances."

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout

date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

**IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?**

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework to the 2006, 2007, 2008, and 2009 control periods. Under authority of section 604(d)(6) of the CAA, this action specifies the uses that will qualify as approved critical uses in 2010 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This action reflects Decision XX/5, taken at the Twentieth Meeting of the Parties in November 2008 and Decision XXI/11, taken at the Twenty First Meeting of the Parties in November 2009. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in *NRDC* v. *EPA* and available in the docket for this action. In this rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

**V. What is the critical use exemption process?**

*A. Background of the Process*

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). The criteria for the exemption initially appeared in Decision IX/6. In that Decision, the Parties agreed 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 public health and are suitable to the crops and circumstances of the nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on April 17, 2007 (72 FR 19197), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviewed the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviewed other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminated in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, reviewed the CUNs of the Parties and made recommendations to the Parties on the nominations. The Parties then took Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consulted with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provided an opportunity for public comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America," contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 24, 2008, the U.S. Government (USG) submitted the sixth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2010 critical uses. In February 2008, MBTOC sent questions to the USG concerning technical and economic issues in the 2010 nomination. The USG transmitted responses to MBTOC on

April 10, 2008. The USG provided additional written responses on April 16, 2009, to questions asked at MBTOC's meeting in Tel Aviv. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The determination in this final rule reflects the analysis contained in those documents.

*B. How does this rule relate to previous critical use exemption rules?*

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. *See* 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), and 74 FR 19878 (calendar year 2009).

Today's action authorizes specific critical uses for 2010 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

The critical uses authorized in this rule are the uses included in the USG's sixth CUN and authorized by the Parties in Decision XX/5 as well as the supplemental authorization in Decision XXI/11. EPA is utilizing the existing regulatory framework for critical uses. This framework is discussed in Section V.D.1 of the preamble. EPA proposed and took comment on a modification to the existing framework to ensure that the level of new production and import does not increase from one year to the next. EPA is not finalizing that modification to the existing framework in today's action because the end-of-year reported data shows that it would be unnecessary. This is discussed in more detail in Section V.D.3 of the preamble. EPA may consider that modification in future CUE rulemakings.

*C. Critical uses*

In Decision XX/5, taken in November 2008, the Parties to the Protocol agreed "to permit, for the agreed critical use categories for 2010 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2010 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *"

The following uses are those set forth in table C of the annex to Decision XX/5 for the United States:

- Commodities.
- NPMA food processing structures (cocoa beans removed).[1]
- Mills and processors.
- Dried cured pork.
- Cucurbits.
- Eggplant—field.
- Forest nursery seedlings.
- Nursery stock—fruit, nut, flower.
- Orchard replant.
- Ornamentals.
- Peppers—field.
- Strawberries—field.
- Strawberry runners.
- Tomatoes—field.
- Sweet potato slips.

The agreed U.S. critical use levels for 2010 total 3,235,474 kilograms (kg), which is equivalent to 12.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses is 2,765,474 kg. This is a combination of the level in Table D of Decision XX/5, which is 2,763,456 kg, and the level in Table B of Decision XXI/11, which is 2,018 kg. Similarly, the maximum amount for use on critical uses is 2,765,474 kg. This is equal to the level in Table C of Decision XX/5, which is 2,763,456 kg (10.8% of baseline), as well as an additional 2,018 kg authorized for 2010 in Table A of Decision XXI/11 for southeast strawberry nurseries. Both Decisions noted that these amounts were to account for available stocks.

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods.

EPA is allocating a total critical use exemption in 2010 of 2,983,883 kg (11.7% of baseline). This total amount is comprised of new production or import of methyl bromide for critical uses at up to 1,955,775 kg (7.7% of baseline), and pre-phaseout inventory (*i.e.,* stocks) for critical uses of up to 1,028,108 kg (4.0% of baseline). These values differ from the proposed rule for three reasons. First, the rate of inventory drawdown was less than EPA estimated, thus there are "available stocks" for 2010. Second, EPA has updated the total U.S. authorization, which is the starting point for the "available stocks" calculation, to include the 2,018 kg authorized in November 2010 in Decision XXI/11. Further information regarding this supplemental authorization appears in the Notice of Proposed Rulemaking (74 FR 61084). Third, following prior practice, EPA is subtracting the carryover amount from the authorized production amount. EPA has adjusted the carryover to reflect late sales reports.

This final rule modifies 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XX/5 and Decision XXI/11 for the 2010 control period. Additionally, the Agency is amending the table of critical uses based, in part, on the technical analysis contained in the 2010 U.S. nomination that assesses data submitted by applicants to the CUE program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA sought comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), as well as information regarding changes to the registration or use of alternatives that have transpired after the 2010 U.S. nomination was submitted. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE. EPA received comments with regard to sulfuryl fluoride and iodomethane. These comments did not provide any new data justifying changes to EPA's analysis. These comments are discussed in Section V.D.5 "Alternatives" of the preamble below. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic feasibility" change. For example, the adoption of methyl iodide in the southeast U.S

could transform the circumstances under which these analyses occur. Based on the information described above, EPA is determining that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2010:

TABLE I—APPROVED CRITICAL USES

| Approved critical uses<br><br>Column A | Approved critical user and location of use<br><br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br><br>Column C |
|---|---|---|
| | **PRE-PLANT USES** | |
| Cucurbits | (a) Growers in Delaware, Maryland, and Michigan | Moderate to severe soilborne disease infestation |
| | (b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe root knot nematode infestation. |
| Eggplant | (a) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (b) Georgia growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium collar, crown and root rot.<br>Moderate to severe southern blight infestation.<br>Restrictions on alternatives due to karst topographical features. |
| | (c) Michigan growers | Moderate to severe soilborne disease infestation. |
| Forest Nursery Seedlings | (a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation. |
| | (b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation. |
| | (c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin. | Moderate to severe weed infestation including purple and yellow nutsedge infestation.<br>Moderate to severe Canada thistle infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation. |
| | (d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode or worm infestation. |
| | (e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington. | Moderate to severe yellow nutsedge infestation.<br>Moderate to severe soilborne disease infestation. |
| | (f) Michigan growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe Canada thistle infestation.<br>Moderate to severe nutsedge infestation.<br>Moderate to severe nematode infestation. |
| Orchard Nursery Seedlings | (a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. | Moderate to severe nematode infestation.<br>Medium to heavy clay soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| | (b) California rose nurseries | Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Orchard Replant | (a) California stone fruit, table and raisin grape, wine grape, walnut, and almond growers. | Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Replanted orchard soils to prevent orchard replant disease.<br>Medium to heavy soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Ornamentals | (a) California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |

TABLE I—APPROVED CRITICAL USES—Continued

| Approved critical uses<br><br>Column A | Approved critical user and location of use<br><br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br><br>Column C |
|---|---|---|
| | (b) Florida growers | Moderate to severe weed infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Michigan herbaceous perennial growers | Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe yellow nutsedge and other weed infestation. |
| | (d) New York growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation. |
| Peppers | (a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium root, collar, crown and root rots. |
| | (b) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Georgia growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.<br>Moderate to severe southern blight infestation, crown or root rot.<br>Restrictions on alternatives due to karst topographical features. |
| | (d) Michigan growers | Moderate to severe soilborne disease infestation. |
| Strawberry Fruit | (a) California growers | Moderate to severe black root rot or crown rot.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene.<br>Time to transition to an alternative. |
| | (b) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Carolina geranium or cut-leaf evening primrose infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe black root and crown rot. |
| Strawberry Nurseries | (a) California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation. |
| | (b) North Carolina and Tennessee growers | Moderate to severe black root rot.<br>Moderate to severe root-knot nematode infestation.<br>Moderate to severe yellow and purple nutsedge infestation. |
| Sweet Potato Slips | (a) California growers | Local township limits prohibiting 1,3-dichloropropene. |
| Tomatoes | (a) Michigan growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe fungal pathogen infestation. |

TABLE I—APPROVED CRITICAL USES—Continued

| Approved critical uses<br><br>Column A | Approved critical user and location of use<br><br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br><br>Column C |
|---|---|---|
| | (b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation. |
| | (c) Maryland growers | Moderate to severe fungal pathogen infestation. |
| **POST-HARVEST USES** | | |
| Food Processing | (a) Rice millers in the U.S. who are members of the USA Rice Millers Association. | Moderate to severe beetle, weevil, or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. | Moderate to severe beetle, moth, or cockroach infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (c) Members of the North American Millers' Association in the U.S.. | Moderate to severe beetle infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.. | Moderate to severe beetle or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| Commodities | (a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California. | Rapid fumigation required to meet a critical market window, such as during the holiday season. |
| Dry Cured Pork Products | (a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.. | Red legged ham beetle infestation.<br>Cheese/ham skipper infestation.<br>Dermested beetle infestation.<br>Ham mite infestation. |

The critical uses and limiting critical conditions in Table I are modified from the 2009 CUE as follows. First, EPA is adding ornamental growers in New York that are subject to moderate to severe soilborne disease or nematode infestations. This reflects a new application submitted for the production of *Anemone coronaria* in greenhouses and approved as part of the U.S. nomination of ornamentals. Greenhouse-grown anemones in New York are facing a similar situation to other crops in this sector. EPA anticipates the usage of methyl bromide will be very limited, and has nominated only 272 kg for this use. Second, EPA is removing cucurbit growers and pepper growers in Mississippi. These two uses were not part of the CUN and therefore the Parties have not authorized them as critical uses for 2010. Third, EPA is removing bakeries, as they have also transitioned to methyl bromide alternatives and thus did not submit an application for the 2010 control period. Fourth, EPA is removing "export to countries which do not allow the use of sulfuryl fluoride" as a limiting critical condition for commodities. This limiting critical condition was established for the first time in the 2009 CUE rule as a few countries that import commodities treated with sulfuryl fluoride were still in the process of establishing maximum residue levels (MRLs) for sulfuryl fluoride. All countries to which the U.S. exports such commodities have now established MRLs. Therefore, EPA no longer believes this to be a limiting critical condition. EPA sought comment on these proposed changes to the critical uses and their limiting critical conditions. EPA received general support from two commenters to adjust the critical uses and limiting critical conditions in the manner described above. EPA also received one comment questioning some of the limiting critical conditions in Table I. This commenter has raised the same questions in past CUE rulemakings and EPA has responded to them in past rulemakings. EPA provides a copy of those responses in this rule's response to comments.

EPA also proposed to remove North Carolina and Tennessee strawberry nursery growers because the Parties had not authorized that use at the date of the Proposed Rule. Although the U.S. nominated this use for 2010, MBTOC did not recommend this use when it recommended the other critical uses for 2010. Iodomethane is registered for use on strawberry nurseries in these States and the MBTOC initially concluded that this substitute is a technologically and economically feasible methyl bromide alternative suitable to these crops and circumstances. In September 2009, MBTOC received the USG's supplemental request and agreed that time is required to conduct commercial scale up of iodomethane in this sector.

MBTOC recommended 2,018 kg for this use in 2010 and at the 21st MOP in November 2009, the Parties authorized this as a critical use. The Parties also increased the total authorization by 2,018 kg to meet this need. In this final rule, EPA is adding North Carolina and Tennessee strawberry nursery growers to the list of critical uses. EPA is increasing the CSA amount by 2,018 kg to account for this additional demand.

Consistent with the 2009 CUE Rule, EPA repeats the following clarifications made in previous years for ease of reference. The "local township limits prohibiting 1,3-dichloropropene" are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. "Pet food" under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, "rapid fumigation" for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

*D. Critical Use Amounts*

Section V.C. of this preamble explains that Table C of the annex to Decision XX/5 and Table B of Decision XXI/11 list critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the authorized critical use amounts for 2010 total 3,235,474 kilograms (kg), which is equivalent to 12.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of new production or import authorized by the Parties is 2,765,474 kg, as set forth in Table D of Decision XX/5 (2,763,456 kg) and Table B of Decision XXI/11 (2,018 kg), or 10.8% of baseline.

EPA proposed to exempt limited amounts of new production and import of methyl bromide for critical uses for 2010 in the amount of 2,275,715 kg (8.9% of baseline). EPA also proposed to allow sale of 690,464 kg (2.7% of baseline) of existing pre-phaseout inventory for critical uses in 2010. In this final rule, EPA is allocating fewer CUAs and more CSAs. EPA is allocating 1,955,775 kg (7.7% of baseline) for new production or import and up to 1,028,108 kg (4.0% of baseline) of pre-phaseout inventory (*i.e.,* stocks) to be used for critical uses. These values differ from the proposed rule for three reasons. First, as discussed below, the rate of inventory drawdown was less than EPA estimated. Thus there are "available stocks" for 2010. Second, EPA is adding 2,018 kg to the total U.S. authorized amount based on the decision taken at the 21st MOP. The total U.S. authorized amount is the starting point for the "available stocks" calculation. Third, following prior practice, EPA is subtracting the carryover amount from the authorized production amount. EPA has adjusted the carryover to reflect late sales reports. The sub-sections below respond to the comments and explain EPA's rationale for the critical use amounts for 2010.

1. Background of Critical Use Amounts

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (CSAs) and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA did not propose changes to these basic CSA provisions.

Paragraph 5 of Decision XX/5 further addresses pre-phaseout inventory of methyl bromide. The Decision states "that a Party with a critical use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available." In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties.

In the 2006, 2007, 2008, and 2009 CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For 2006, the difference in the Parties' decision between the total CUE amount and the amount of new production and import was 3.6% of baseline. In the 2007 rule, EPA added to the minimum amount (6.3% of baseline) an additional amount (1.2% of baseline) for a total of 1,914,600 CSAs (7.5% of baseline). In the 2008 rule, EPA added to the minimum amount (3.0% of baseline) an additional amount (3.8% of baseline) for a total of 1,729,689 CSAs (6.8% of baseline). In the 2009 rule, EPA added to the minimum amount (1.2% of baseline) an additional amount (6.3% of baseline) for a total of 1,919,193 CSAs (7.5% of baseline). After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2009 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to "permit" a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency "may" create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is "available" for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that "production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks." Decision XX/5, as well as earlier decisions, refers to use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decisions XX/5 and XXI/11 further reinforce this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

EPA has employed the concept of "available stocks" in determining whether to allocate additional CSAs

beyond the minimum stock amount stipulated by the Parties. In response to stakeholder questions about how EPA derived its CSA amounts, the 2008 CUE rule established a refined approach for determining the amount of existing methyl bromide stocks that is "available" for critical uses. The approach uses a tool called the supply chain factor (SCF). The SCF is EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet the need for critical use methyl bromide after an unforeseen domestic production failure. The SCF recognizes the benefit of allowing the private sector to maintain a buffer in case of a major supply disruption. However, the SCF is not intended to set aside or physically separate stocks as an inventory reserve.

2. Calculation of Available Pre-Phaseout Inventory

In this action, EPA is adjusting the authorized level of new production and consumption for critical uses to account for the amount of existing pre-phaseout inventory that is "available" for critical uses. EPA is calculating the amount of existing stocks that is available for critical uses in 2010 based on the SCF and formula introduced in the 2008 CUE final rule (72 FR 74118). EPA is allowing sales of the amount of existing pre-phaseout inventory that the Agency has determined to be available for critical uses by issuing an equivalent number of CSAs on a one-CSA-per-one-kilogram-of-methyl-bromide basis.

EPA calculates the amount of "available" stocks as follows, using the formula adopted in the 2008 CUE rule: $AS_{2010} = ES_{2009} - D_{2009} - SCF_{2010}$, where $AS_{2010}$ is the available stocks on January 1, 2010; $ES_{2009}$ is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2009; $D_{2009}$ is the drawdown or estimated drawdown of existing stocks during calendar year 2009; and $SCF_{2010}$ is the supply chain factor for 2010. In the proposed rule, EPA applied this formula using an estimated drawdown for calendar year 2009. EPA reached a preliminary conclusion that the calculated level of "available stocks" on January 1, 2010, would be a negative number. EPA proposed to add an additional step to its determination of the level of CSAs to be allocated in 2010 because simply taking the result of the available stocks calculation would have resulted in an increase in new production before pre-phaseout inventory was depleted. In today's action, EPA is not finalizing the modified approach contained in the proposed rule; however, EPA may consider that approach in a future action. EPA does not need to consider the modified approach further in this action because it has acquired end-of-year inventory data that result in a different conclusion regarding available stocks. As EPA did in the 2009 CUE Rule, EPA is using actual data rather than relying on the estimate in the proposed rule. Using the formula established in the 2008 CUE Rule and the actual inventory data, EPA calculates that there are 1,028,108 kg of "available stocks" in 2010. EPA is therefore allocating this amount as CSAs, following the approach adopted in the 2008 CUE Rule. This calculation and others used to determine the allocation of CUAs and CSAs can be found in the docket.

*Existing Stocks.* In the above formula, "$ES_{2009}$" refers to pre-phaseout inventory—methyl bromide that was produced before the January 1, 2005, phaseout date but is still held by domestic producers, distributors, and third-party applicators. It does not include material held by end users. $ES_{2009}$ also does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. Nor does it include methyl bromide produced (1) under the QPS exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Similarly, EPA considers pre-phaseout inventory to be accessible by all users, including those in California and the Southeastern United States.

One commenter disagrees that the entire existing inventory of pre-phaseout stocks is available to critical users. This commenter states that non-CUE users also use pre-phaseout inventory and that there are now a relatively small number of methyl bromide distributors in the U.S. EPA is aware that end users who are not approved critical users can and do access pre-phaseout inventory. As determined in the 2008 CUE Rule, EPA regards this material as "available" because it is owned by someone other than the end user. While a distributor might choose to sell methyl bromide to non-critical users to satisfy prior contracts or internal business decisions, this is not the result of any EPA regulatory constraint. Issues concerning supply of pre-phaseout inventory are addressed in the Response to Comment Document for the 2008 CUE Rule, which is included in the docket for this rulemaking.

*Supply Chain Factor.* The SCF represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. As described in the 2008 CUE rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S. in the event of a major supply disruption. Consistent with the regulatory framework used in the 2008 and 2009 rules, the SCF for 2010 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the U.S. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 63% of annual critical use methyl bromide demand for 2010. EPA, therefore, estimates that the peak 15-week shortfall in 2010 could be 2,036,000 kg (63% $\times$ 3,235,474 kg).

As EPA stated in the 2008 and 2009 CUE Rules, the SCF is not a "reserve" or "strategic inventory" of methyl bromide but is merely an analytical tool used to provide greater transparency. A general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118) and further detail about the analysis used to derive the value for 2010 is provided in the Technical Support Document in the public docket for this rulemaking.

Two commenters object to the use of a supply chain factor in determining an amount of "available stocks" that can be used by critical users. These commenters state that there is no basis for making this allowance for the supposed risk of a catastrophic loss of the methyl bromide production plant. One commenter also states that the calculation is overly conservative because it assumes a catastrophic loss when production is at the peak. The commenter also states that the calculation incorrectly assumes that growers have no alternative to methyl bromide in the event of such a loss. Finally, the commenter states that the purpose for such a reserve is undermined by the fact that EPA is not actually maintaining the inventory for

the event of a catastrophic loss but is instead allowing inventory to be used by non-critical users. EPA has addressed these comments in prior rulemakings; those responses are available in the docket for this rulemaking.

Two commenters also object to EPA's process of determining whether the inventory was "available" through use of the supply chain factor. These commenters request that EPA require that the inventory be exhausted before allowing any additional new production. EPA has addressed these comments in prior rulemakings; those responses are available in the docket for this rulemaking.

*Estimated Drawdown.* EPA proposed to estimate the drawdown of existing stocks (the $D_{2009}$ term in the above equation) by using a simple linear fit estimation of inventory data from all available years. In the 2009 Rule, EPA utilized end-of-year data and did not have to estimate the drawdown. Commenters on the 2009 CUE rule suggested additional forecasting techniques: Time series forecasting (extrapolating past behavior into the future) and change-point detection methods (change-point detection is the identification of abrupt changes in the generative parameters of sequential data—looking at data and calculating when it changes its slope). EPA did not propose to use these methods in the 2010 Rule because they would require more data than the six data points that EPA has on annual inventory levels. EPA welcomed comment on these techniques for forecasting future drawdown amounts. EPA also welcomed comment on whether the estimate should be limited to a statistical analysis of past inventory levels or whether EPA should collect additional data or consider other factors. EPA suggested in the 2010 proposed rule that it could collect actual data on stocks near the end of the calendar year through EPA's information gathering authority under section 114 of the Clean Air Act. Alternatively, EPA could revise the regulations to add a reporting requirement to facilitate the early collection of this information in future years. EPA did not receive any comments on these alternate methods for calculating the drawdown or additional reporting requirements.

In the final rule, EPA is not pursuing the alternative statistical methods of estimating drawdown discussed above because EPA has received end-of-year reporting data. As in the 2009 CUE Rule, EPA is using reported data and not relying on an estimate of drawdown. In addition, the labeling for methyl bromide is currently being revised through EPA's reregistration process under FIFRA section 4. While this does not affect the 2010 CUE rule, it will likely change methyl bromide use patterns and make previous years' drawdown data less predictive of future use. It may also make it easier to estimate the amount of pre-phaseout inventory that will be used in the future because the uses of inventory will be constrained. This may lessen the impetus for more frequent reporting, which was suggested by commenters. EPA is therefore not including provisions in this rule that would require inventory holders to report more frequently than they do now.

One commenter states that there appeared to be an error in EPA's estimate of the drawdown of inventory during 2009. The Technical Support Document for the 2008 and 2009 CUE Rules state that the 2007 inventory was 7,671,000 kg. This is in contrast to the Technical Support Document for the Proposed Rule which states that the inventory was 7,941,000 kg. EPA explained in the 2009 CUE rule that it corrected its assessment of the amount pre-phaseout inventory that was available on December 31, 2006, which EPA originally stated was 7,671,091 kg. EPA had received late data in 2007 that it did not incorporate into the total inventory level for the year. The corrected value for the amount of pre-phaseout inventory as of December 31, 2006, was 7,941,009 kg. EPA clarified this in the 2009 rule because a change in the inventory value affects any estimates used to calculate future drawdown. That change does not affect this or last year's allocations because they are based on reported data rather than estimates.

Using end-of-year data, EPA calculates that the pre-phaseout methyl bromide inventory, which was 4,271,226 kg on January 1, 2009, was drawn down by 1,207,118 kg during 2009. This results in a pre-phaseout inventory of 3,064,108 kg on January 1, 2010. The actual drawdown in 2009 was less than half of the rate estimated in the proposed rule (1,207 MT compared to 2,834 MT). The pre-phaseout inventory on December 31, 2009, is thus double what the Agency calculated in the proposed rule (3,064 MT compared to 1,437 MT).

3. Approach for Determining Critical Use Amounts

In the proposed rule, EPA calculated "available stocks" using the approach described in Section V.D.2 above. This resulted in a value less than zero, meaning that EPA estimated that in 2010 there would no longer be an amount of pre-phaseout inventory that meets EPA's definition of "available stocks." EPA recognized in the 2008 rule that the formula for calculating "available" stocks would in some future rulemaking yield a number less than the minimum effectively stipulated by the Parties (the difference between the total authorized critical use amount and the authorized amount of new production and imports). In the preambles to the 2008 and 2009 rules, EPA indicated that when that occurred, the Agency would issue CSAs equal to the minimum amount stipulated by the Parties.

In the proposed rule, EPA expressed the concern that if it were to follow the approach set forth in the 2008 rule, new production and import in 2010 could exceed the previous year's level. As explained in the proposed rule, this was an additional circumstance that EPA had not considered when the Agency previously outlined what future actions it might take. To ensure continued progress in reducing U.S. production and import of critical use methyl bromide, EPA proposed to limit 2010 CUAs (*i.e.,* production and import) to the same level as in 2009. EPA proposed to make up the remaining critical need by using its discretion to increase the CSA allocation proportionately. EPA proposed to allocate only the amount of CSAs necessary to make up the difference between the overall U.S. critical need and the CUA amount in the 2009 CUE rule. Three commenters support EPA's proposal not to increase new production from the 2009 levels while one commenter is opposed. The comment in opposition states that it was entirely foreseeable that the amount of new production may have to increase from one year to the next. Second, the commenter in opposition states that the proposed approach to limit new production fails to follow EPA's established procedure for determining CUAs and is therefore an abuse of discretion.

EPA is not finalizing the approach discussed in the proposed rule in today's action because, given the year-end inventory data, application of the existing framework will not increase the amount of new production compared to 2009. EPA is not deciding whether or not a policy limiting new production would be appropriate in some future year because the situation prompting its use no longer exists for this rule. EPA has recalculated "available stocks" using end-of-year inventory data rather than using an estimate of drawdown. The pre-phaseout inventory on December 31, 2009, is double what the Agency calculated in the proposed rule (3,064 MT compared to 1,437 MT). As a result,

EPA now calculates that 1,028,108 kg of pre-phaseout inventory would be "available stocks." In this final rule, EPA is applying its existing framework to determining CSAs and CUAs and is not finalizing the approach limiting new production that was discussed in the proposed rule. EPA may consider that approach in future CUE rulemakings.

EPA continues to recognize that at some date the inventory will be drawn down to the SCF level and then below the SCF even if EPA sets the CSA amount equal to the difference between the total authorized CUE amount and the authorized new production amount. The inventory is a finite resource: EPA has made clear in the framework rule in the context of discussing the carryover amount that it will not allow the inventory to increase. 69 FR 76977. With this action the Agency is allowing 1,028,108 kg of methyl bromide to be supplied from pre-phaseout inventory for critical uses in 2010 by issuing an equivalent number of CSAs, and adjusting the amount of CUAs accordingly. EPA calculates that there will be sufficient pre-phaseout inventory at the beginning of the 2011 control period to satisfy the amount of 2011 inventory drawdown (200,000 kg) for critical uses identified by the Parties in Decision XXI/11.

To summarize, the critical use amounts authorized by the Parties in Decisions XX/5 and XXI/11 for 2010 total 3,235,474 kg. The maximum amount of authorized new production or import as set forth in those two Decisions is 2,765,474 kg, "minus available stocks." Applying the "available stocks" approach finalized in the 2008 CUE Rule, EPA is expecting 1,028,108 kg of 2010 critical use needs to be met from pre-phaseout inventory and thus is issuing CSAs in that amount. As in past years, EPA is adjusting the amount of CUAs accordingly, so that the sum of CUAs and CSAs is not greater than the total amount authorized by the Parties. Under the existing framework, EPA's practice is to allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties as necessary to account for carry over amounts of methyl bromide, amounts for research purposes, or for other appropriate reasons, including updated information on alternatives. Each of these reductions is discussed below, but only the carry over value affects this year's allocation amount. As a result, EPA is allowing 1,955,775 kg of new production and import for critical uses in 2010. EPA has provided these calculations in Section V.D.6 below and in a document titled "CUE Calculation Spreadsheet" in the docket.

4. Treatment of Carryover Material

As discussed in the Framework Rule, EPA does not permit the building of stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this "carryover," whether pre-plant or post-harvest, from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing stocks (ES) (which applies to pre-phaseout material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

In 2009, companies reported that 3,036,130 kg of critical use methyl bromide were acquired through production or import in 2008. The information reported to EPA is that 2,784,539 kg of critical use methyl bromide were exported or sold to end-users in 2008. EPA calculates that the carryover amount at the end of 2008 was 251,591 kg, which is the difference between the reported amount of critical use methyl bromide acquired in 2008 and the reported amount of exports or sales of that material to end users in 2008 (3,036,130 − 2,784,539 = 251,591 kg). Using the existing framework, EPA is applying the carryover deduction to the new production amount as it has in all prior CUE rules. Therefore, EPA is reducing the amount of new production by 251,591 kg. EPA calculated the carryover amount in the proposed rule though it did not have a direct effect on the CUA numbers given the proposed approach to limit new production.

One commenter states that the carryover amount calculated by EPA is higher than the amount of unsold material. The commenter reiterates suggestions made in prior CUE rules to change the reporting system so that EPA could identify non-reporting companies or alternatively calculate carryover as the amount of methyl bromide companies report as held in inventory. EPA has responded to this comment in previous rules; EPA's responses are available in the docket. The commenter also requests that EPA pursue companies that it suspects are not reporting. EPA stated in the proposed rule that it has contacted companies that it suspects may have purchased or sold methyl bromide but had not submitted reporting forms. EPA received a few late reports totaling 15,686 kg. As a result EPA adjusted the carryover amount in this final rule.

EPA's calculation of the amount of carryover at the end of 2008 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6, which established the Accounting Framework for critical use methyl bromide, for calculating column L of the U.S. Accounting Framework. The 2008 U.S. Accounting Framework is available in the public docket for this rulemaking. EPA notes that the carryover value in the Accounting Framework is higher by 17 MT than the number contained in this final rule due to additional reports received after EPA provided the Accounting Framework to UNEP.

5. Methyl Bromide Alternatives

EPA considers new data regarding alternatives that were not available at the time the U.S. Government submitted its Critical Use Nomination (CUN) to the Parties, and adjusts the allocation for new production accordingly. For 2010, EPA is not making further reductions in post-harvest or pre-plant critical use allowances to reflect the transition to alternatives because the 2010 CUN applied transition rates for all critical use sectors. The TEAP report of October 2008 included reductions in its recommendations for critical use categories based on the transition rates in the 2010 CUN. The TEAP's recommendations were then considered in the Parties' 2010 authorization amounts, as listed in Decision XX/5. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2010 critical use amounts.

Furthermore, the 2012 CUN, which represents the most recent analysis and the best available data for methyl bromide alternatives, does not conclude that transition rates should be increased for 2010. As the 2012 CUN reflects, the United States Government has not found new information that supports changing the 2010 transition rates included in the 2010 CUN and applied by MBTOC. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means.

The 2010 CUN includes transition rates for iodomethane and there is no new information that would suggest changing those rates. Currently, iodomethane is registered for use in 47 States. California has not yet decided whether to register iodomethane for use in the State. EPA did not propose any adjustment based on iodomethane in its proposed rule. Two commenters suggest that EPA make additional reductions to the allocation to reflect the uptake of iodomethane. One commenter states that EPA underestimated the uptake of iodomethane in the 2008 and 2009 CUE rules and cites the amount of iodomethane sold each year and the size of the reduction to the allocations in the 2008 and 2009 rules. EPA calculated the uptake of iodomethane in the critical use nomination for 2010. EPA would revisit that calculation in this rule if new data on market penetration or State registrations warranted such action, as it did in the 2008 and 2009 CUE rules. The commenter fails to recognize that the Agency has already made a reduction in the nomination. EPA has accounted for all State registrations in the 2010 nomination and does not believe additional reductions are warranted.

EPA also stated in its proposed rule that it did not intend to make any adjustments to account for the reduced production of Telone in 2009. Dow AgroSciences commented that they were seeking to increasing production of Telone and intended to restore the availability of this material to full levels by the end of 2009. One commenter states that there may still be some lingering shortages. Another commenter states that even if the supply is not fully restored, growers can use iodomethane or methyl bromide stockpiles. EPA has received additional information on the production and availability of Telone from Dow AgroSciences, which the Agency has entered into the CBI portion of the docket, and based on that data does not believe that the shortage will continue into 2010.

EPA received a dozen comments from pest control companies and end users who use sulfuryl fluoride. These commenters relate their experiences using sulfuryl fluoride and expressed support for its further use in the post harvest sector. One commenter provided additional data in support of sulfuryl fluoride as an effective alternative to methyl bromide. EPA responds to the technical data in the response to comments. Two commenters state that sulfuryl fluoride has been demonstrated to be both effective and economical as a methyl bromide alternative in structural fumigations. These commenters state that EPA should therefore not authorize any structural applications as a critical use and reduce the allocation accordingly. The 2010 CUN reflected uptake of sulfuryl fluoride. As discussed above, EPA does not have economic data to support an increased transition rate or a reduction in the allocation. More information on the uptake of sulfuryl fluoride is found in the 2010 CUN and in the response to comments document.

EPA continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives. EPA has not received any new data that was not considered by the Parties that would lead it to change the transition rates for 2010. Therefore, the final rule does not make any adjustments to account for new information on the uptake of alternatives.

6. Summary of Calculations

The calculations described above for determining the level of new production and critical stock allowances is summarized in the table below:

| | Kilograms |
|---|---|
| Step 1: Calculate supply chain factor: | |
| U.S. authorization for 2010 in Decision XX/5 | 3,233,456 |
| U.S. authorization for 2010 in Decision XXI/11 | 2,018 |
| − Reduction for uptake of alternatives | 0 |
| = One year's CUE need | 3,235,474 |
| × Percentage of year's production to recover from production failure | 62.9% |
| = Supply Chain Factor | 2,036,000 |
| Step 2: Calculate available stocks: | |
| Existing pre-phaseout inventory on January 1, 2009 ("ES2009") | 4,271,226 |
| − Drawdown of inventory during 2009 ("D2009") | 1,207,118 |
| − Supply Chain Factor | 2,036,000 |
| = Available stocks ("AS2010") = Critical Stock Allowance | 1,028,108 |
| Step 3: Calculate carry over: | |
| Reported as produced/imported in 2008 | 3,036,130 |
| − Reported as sold in 2008 | 2,784,539 |
| = Carry over | 251,591 |
| Step 4: Calculate new production: | |
| Total U.S. authorization for 2010 (Decisions XX/5 and XXI/11) | 3,235,474 |
| − Critical Stock Allowance (Step 2) | 1,028,108 |
| − Carryover (Step 3) | 251,591 |
| − Uptake of alternatives | 0 |
| = New production = Critical Use Allowance | 1,955,775 |

*E. The Criteria in Decisions IX/6 and Ex. I/4*

Paragraphs 2 and 7 of Decision XX/5 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2010 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. The Agency solicited comments on the technical and economic basis for determining that the uses listed in the proposed rule meet the criteria of the critical use exemption (CUE). The critical use nominations (CUNs) detail how each critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.D., V.G., and

V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

The USG's approach to research changed slightly in the 2010 nomination. In previous years, while the nomination was broad enough to cover both research and non-research uses, the USG nominated a separate, additional amount specifically for research purposes. However, Decision XVII/9 requested that the Parties "endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development." Therefore, when allocating allowances in previous years, EPA subtracted that separate research amount from the Parties' authorized production level for the U.S. This in effect encouraged the use of stocks for research purposes. For 2010, the nomination was again broad enough to cover both research and non-research uses but the USG did not nominate a separate, additional amount specifically for research purposes. Thus, EPA did not propose to adjust the production level to subtract this amount.

One commenter objects to EPA encouraging researchers to use pre-phaseout inventory. They expressed concern that a further reduction in stocks will jeopardize growers' ability to endure a supply chain disruption and note that the higher cost and reduced availability of pre-phaseout inventory will harm research into alternatives if researchers are limited to pre-phaseout inventory. Instead, EPA should increase the level of new production that is dedicated for research purposes. EPA responds that unlike previous years, the nomination did not specifically dedicate an amount for research purposes, thus there is no specific amount by which EPA could increase new production. Second, because EPA is allowing research as a critical use, the Agency is not limiting researchers to inventory. Use of inventory methyl bromide for research could reduce the amounts available in case of a supply chain disruption but EPA does not anticipate the effect will be significant given the small amounts of methyl bromide used for research.

In this final rule, EPA has determined that research on the critical use crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. Research on critical use crops is fundamental to the critical use process. Decision IX/6, which sets forth the criteria for a "critical use" determination, requires ongoing research programs in order for a Party to receive critical uses:

> (b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if: (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 * * *

Though the USG did not request an additional amount for 2010, the nomination remains consistent with past nominations both in discussing how current research affects the use and uptake of alternatives as well as the USG's efforts to conduct research. The nomination states, "As noted in our previous nomination, the USG provides a great deal of funding and other support for agricultural research, and in particular, for research into alternatives for methyl bromide. This support takes the form of direct research conducted by the Agricultural Research Service (ARS) of USDA, through grants by ARS and CSREES, by IR–4, the national USDA-funded project that facilitates research needed to support registration of pesticides for specialty crop vegetables, fruits and ornamentals, through funding of conferences such as MBAO, and through the land grant university system." Consistent with past practice, EPA is not listing research as a separate entry in the table in Appendix L: however, research remains an aspect of the listed critical uses. The USG may or may not nominate additional amounts for research in future years. Also consistent with past rules, EPA continues to request that researchers use pre-phaseout inventory when possible.

*F. Emissions Minimization*

Decision XX/5, paragraph 11 states that Parties shall request critical users to employ "emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible." In the judgment of USG scientists, use of virtually impermeable film (VIF) tarps allows pest control with lower application rates while minimizing emissions. The quantity of methyl bromide nominated by the USG reflects the lower application rates necessary when using tarps.

Two commenters ask EPA to require emissions minimization techniques rather than simply encourage them. Rather than mandate emission reduction techniques, EPA will continue to work with the U.S. Department of Agriculture—Agricultural Research Service (USDA–ARS) to promote the techniques on a voluntary basis. As discussed above, the Federal government has invested substantial resources into best practices for methyl bromide use, including emission reduction practices. USDA–ARS has a national outreach effort to publicize the best practices. Also, EPA continues to work on the registration of promising methyl bromide alternatives.

Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The Agency continues to encourage researchers and users who are successfully utilizing such techniques to inform EPA of their experiences and for applicants to provide such information with their critical use applications. The Agency welcomes information on the implementation of emission minimization techniques and whether

and how further emissions could be reduced further.

*G. Critical Use Allowance Allocations*

EPA is allocating 2010 critical use allowances for new production or import of methyl bromide up to the amount of 1,955,775 kg (7.7% of baseline) as shown in Table III below. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The allocation of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

The CUAs are allocated as follows:

TABLE III—ALLOCATION OF CRITICAL USE ALLOWANCES

| Company | 2010 Critical use allowances for pre-plant uses * (kilograms) | 2010 Critical use allowances for post-harvest uses * (kilograms) |
|---|---|---|
| Great Lakes Chemical Corp. A Chemtura Company | 1,102,380 | 86,145 |
| Albemarle Corp. | 453,324 | 35,425 |
| ICL–IP America | 250,516 | 19,576 |
| TriCal, Inc. | 7,800 | 610 |
| Total ** | 1,814,020 | 141,755 |

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to 40 CFR part 82.
** Due to rounding, numbers may not add exactly.

Paragraph six of Decision XX/5 states "that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision." This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

One commenter states that EPA should allocate specifically to each of the Critical Use Categories as authorized by the Parties. The EPA's "lump sum" approach, the commenter asserts, does not guarantee that critical users have access to methyl bromide and it instead allows those with the greatest ability to pay to garner methyl bromide away from other users with approved critical needs. Furthermore, this commenter states that developers of methyl bromide alternatives need assurance that methyl bromide will eventually exit a particular use segment. Allowing an open market for methyl bromide allocation is an economic disincentive for anyone developing alternatives. At a minimum, this commenter supports distinguishing between pre-plant and post-harvest sectors as EPA currently does.

The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the Agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions. The commenters' concerns are addressed more specifically in the response to comment document.

*H. Critical Stock Allowance Allocations*

For the reasons discussed above, EPA is allocating critical stock allowances (CSAs) to the entities listed below in Table IV for the 2010 control period in the amount of 1,028,108 kg (4.0% of baseline). This amount reflects the application of the existing framework using end-of-year data rather than an estimate of drawdown rates. In addition, the calculation is based on a higher total U.S. authorization incorporating the additional 2,018 kg authorized by the parties in Decision XXI/11 which added North Carolina and Tennessee strawberry nursery growers to the list of critical uses.

EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

EPA received notice that Hy-Yield Bromine and its assets were transferred to a third party named Hy-Yield products, LLC, which is owned by Trinity Manufacturing, LLC. EPA is therefore not issuing critical stock allowances to Hy-Yield Bromine but rather to Hy-Yield Products in this and in subsequent rulemakings.

TABLE III—ALLOCATION OF CRITICAL STOCK ALLOWANCES

| Company |
|---|
| Albemarle |
| Bill Clark Pest Control, Inc. |
| Burnside Services, Inc. |
| Cardinal Professional Products |
| Chemtura Corp. |
| Degesch America, Inc. |
| Helena Chemical Co. |
| Hendrix & Dail |
| Hy-Yield Products, LLC |
| ICL–IP America |
| Industrial Fumigation Company |
| Pacific Ag |
| Pest Fog Sales Corp. |
| Prosource One |
| Reddick Fumigants |
| Royster-Clark, Inc. |
| Trical Inc. |
| Trident Agricultural Products |
| UAP Southeast (NC) |
| UAP Southeast (SC) |
| Univar |

TABLE III—ALLOCATION OF CRITICAL STOCK ALLOWANCES—Continued

| Company |
|---|
| Western Fumigation |
| TOTAL—1,028,108 kilograms |

*I. Stocks of Methyl Bromide*

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of authorized critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. EPA has retained these provisions for the 2010 control period.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2009 is 4,271,226 kg. EPA calculates using end-of-year data that the aggregate inventory on January 1, 2010, was 3,064,108 kg. As in prior years, the Agency will continue to closely monitor CUA and CSA data. Further, as stated in the final 2006 CUE rule, safety valves continue to exist. If an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses.

One commenter states that EPA should not allow non-critical users access to methyl bromide inventories. Any such action by EPA restricting non-critical users' access to stocks under the Clean Air Act would be discretionary. Nothing in the Protocol or the Clean Air Act mandates that EPA limit drawdown from inventory for such uses. Decision Ex I/3 of the Montreal Protocol, which informs Agency actions on methyl bromide, does not require that individual Parties (such as the U.S.) prohibit the use of stocks by users whose uses fall outside the categories of agreed-upon critical uses. Further detail on the issue of non-critical users' access to pre-phaseout inventory is available in previous CUE preambles and response to comments documents available in the docket. Though EPA is not using authorities under the Clean Air Act to restrict the use of pre-phaseout inventory, EPA is limiting the crops that will legally be able to use methyl bromide through the reregistration process under FIFRA. Users of methyl bromide must meet not only the requirements of the Clean Air Act, but also must comply with all requirements under FIFRA, including limits on the sale of products for pre-planting use for certain crops, and all directions for use on product labeling. EPA disagrees that inventory methyl bromide should not be allowed on any non-CUE crop. However, EPA has determined that the risks posed by the use of methyl bromide, both the acute and chronic toxicological effects as well as its ability to deplete the ozone layer, would be unacceptable without significant risk mitigation measures, including limiting its use to fewer crops.

As explained in the 2008 CUE final rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. The aggregate information for 2003 through 2009 is available in the docket for this rulemaking.

## VI. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not change any of those existing requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

| Category | NAICS code | SIC code | NAICS Small business size standard (in number of employees or millions of dollars) |
|---|---|---|---|
| Agricultural production .. | 1112—Vegetable and Melon farming .....<br>1113—Fruit and Nut Tree Farming .....<br>1114—Greenhouse, Nursery, and Floriculture Production. | 0171—Berry Crops .....<br>0172—Grapes.<br>0173—Tree Nuts .....<br>0175—Deciduous Tree Fruits (except apple orchards and farms).<br>0179—Fruit and Tree Nuts, NEC. | $0.75 million. |

| Category | NAICS code | SIC code | NAICS Small business size standard (in number of employees or millions of dollars) |
|---|---|---|---|
| | | 0181—Ornamental Floriculture and Nursery Products.<br>0831—Forest Nurseries and Gathering of Forest Products. | |
| Storage Uses | 115114—Postharvest Crop activities (except Cotton Ginning). | | $7 million. |
| | 311211—Flour Milling | 2041—Flour and Other Grain Mill Products | 500 employees. |
| | 311212—Rice Milling | 2044—Rice Milling | 500 employees. |
| | 493110—General Warehousing and Storage | 4225—General Warehousing and Storage | $25.5 million. |
| | 493130—Farm Product Warehousing and Storage. | 4221—Farm Product Warehousing and Storage. | $25.5 million. |
| Distributors and Applicators. | 115112—Soil Preparation, Planting and Cultivating. | 0721—Crop Planting, Cultivation, and Protection. | $7 million. |
| Producers and Importers. | 325320—Pesticide and Other Agricultural Chemical Manufacturing. | 2879—Pesticides and Agricultural Chemicals, NEC. | 500 employees. |

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA estimated in 2008 that this had declined to 2,000 end users of critical use methyl bromide. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action will confer a benefit to users of methyl bromide. We have therefore concluded that this rule will relieve regulatory burden for all small entities.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and does not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is expected to primarily affect producers, suppliers, importers, exporters, and users of methyl bromide. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian Tribal governments nor does it impose any enforceable duties on communities of Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not

likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this final rule. EPA believes, however, that this action affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this final rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 3, 2010.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: April 27, 2010.

**Lisa P. Jackson,**

*Administrator.*

■ For the reasons stated in the preamble, 40 CFR Part 82 is amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

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

■ 2. Section 82.8 is amended by revising paragraph (c)(1) table and paragraph (c)(2) to read as follows:

**§ 82.8 Grant of essential use allowances and critical use allowances.**

* * * * *

(c) * * *

(1) * * *

| Company | 2010 critical use allowances for pre-plant uses * (kilograms) | 2010 critical use allowances for post-harvest uses * (kilograms) |
|---|---|---|
| Great Lakes Chemical Corp., A Chemtura Company | 1,102,380 | 86,145 |
| Albemarle Corp | 453,324 | 35,425 |
| ICL–IP America | 250,516 | 19,576 |
| TriCal, Inc | 7,800 | 610 |
| Total ** | 1,814,020 | 141,755 |

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2010 on a pro-rata basis in relation to the inventory held by each.

| Company | Company | Company |
|---|---|---|
| Albemarle | Pacific Ag | Western Fumigation |
| Bill Clark Pest Control, Inc. | Pest Fog Sales Corp. | |
| Burnside Services, Inc. | Prosource One | TOTAL—1,028,108 kilograms |
| Cardinal Professional Products | Reddick Fumigants | |
| Chemtura Corp. | Royster-Clark, Inc. | |
| Degesch America, Inc. | Trical Inc. | |
| Helena Chemical Co. | Trident Agricultural Products | |
| Hendrix & Dail | UAP Southeast (NC) | |
| Hy-Yield Products, LLC | UAP Southeast (SC) | |
| ICL–IP America | Univar | |
| Industrial Fumigation Company | | |

■ 3. Appendix L to Subpart A is revised to read as follows:

**Appendix L to Part 82 Subpart A—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2010 Control Period**

| Approved critical uses<br><br>Column A | Approved critical user and location of use<br><br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br><br>Column C |
|---|---|---|
| | **PRE-PLANT USES** | |
| Cucurbits | (a) Growers in Delaware, Maryland, and Michigan | Moderate to severe soilborne disease infestation. |
| | (b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe root knot nematode infestation. |
| Eggplant | (a) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (b) Georgia growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium collar, crown and root rot.<br>Moderate to severe southern blight infestation.<br>Restrictions on alternatives due to karst topographical features. |
| | (c) Michigan growers | Moderate to severe soilborne disease infestation. |
| Forest Nursery Seedlings | (a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation. |
| | (b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation. |
| | (c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin. | Moderate to severe weed infestation including purple and yellow nutsedge infestation.<br>Moderate to severe Canada thistle infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation. |
| | (d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode or worm infestation. |
| | (e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington. | Moderate to severe yellow nutsedge infestation.<br>Moderate to severe soilborne disease infestation. |
| | (f) Michigan growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe Canada thistle infestation.<br>Moderate to severe nutsedge infestation.<br>Moderate to severe nematode infestation. |
| Orchard Nursery Seedlings | (a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. | Moderate to severe nematode infestation.<br>Medium to heavy clay soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| | (b) California rose nurseries | Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |

| Approved critical uses | Approved critical user and location of use | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation |
|---|---|---|
| Column A | Column B | Column C |
| Orchard Replant | (a) California stone fruit, table and raisin grape, wine grape, walnut, and almond growers. | Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Replanted orchard soils to prevent orchard replant disease.<br>Medium to heavy soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Ornamentals | (a) California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |
| | (b) Florida growers | Moderate to severe weed infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Michigan herbaceous perennial growers | Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe yellow nutsedge and other weed infestation. |
| | (d) New York growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation. |
| Peppers | (a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium root, collar, crown and root rots. |
| | (b) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Georgia growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.<br>Moderate to severe southern blight infestation, crown or root rot.<br>Restrictions on alternatives due to karst topographical features. |
| | (d) Michigan growers | Moderate to severe soilborne disease infestation. |
| Strawberry Fruit | (a) California growers | Moderate to severe black root rot or crown rot.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene.<br>Time to transition to an alternative. |
| | (b) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Carolina geranium or cut-leaf evening primrose infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe black root and crown rot. |
| Strawberry Nurseries | (a) California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation. |

| Approved critical uses | Approved critical user and location of use | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation |
|---|---|---|
| | (b) North Carolina and Tennessee growers | Moderate to severe black root rot.<br>Moderate to severe root-knot nematode infestation.<br>Moderate to severe yellow and purple nutsedge infestation. |
| Sweet Potato Slips | (a) California growers | Local township limits prohibiting 1,3-dichloropropene. |
| Tomatoes | (a) Michigan growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe fungal pathogen infestation. |
| | (b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation. |
| | (c) Maryland growers | Moderate to severe fungal pathogen infestation. |
| **POST-HARVEST USES** | | |
| Food Processing | (a) Rice millers in the U.S. who are members of the USA Rice Millers Association. | Moderate to severe beetle, weevil, or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. | Moderate to severe beetle, moth, or cockroach infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (c) Members of the North American Millers' Association in the U.S. | Moderate to severe beetle infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities. | Moderate to severe beetle or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| Commodities | (a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California. | Rapid fumigation required to meet a critical market window, such as during the holiday season. |
| Dry Cured Pork Products | (a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc. | Red legged ham beetle infestation.<br>Cheese/ham skipper infestation.<br>Dermested beetle infestation.<br>Ham mite infestation. |

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 100217094–0195–02]**

**RIN 0648–AY57**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule increases the commercial and recreational quotas for red snapper and closes the recreational red snapper component of the Gulf of Mexico (Gulf) reef fish fishery at 12:01 a.m., local time, July 24, 2010. The intended effect of this rule is to help