

existing waiver of preemption. After evaluating CARB's amendments, CARB's submissions, and the public comments, EPA confirms that California's regulatory amendments meet the three criteria that EPA uses to determine whether amendments by California are within the scope of previous waivers. First, EPA agrees with CARB that the greenhouse gas amendments do not undermine California's protectiveness determination from its previously waived greenhouse gas request. Second, EPA agrees with CARB that California's greenhouse gas amendments do not undermine EPA's prior determination regarding consistency with section 202(a) of the Act. Third, EPA agrees with CARB that California's greenhouse gas amendments do not present any new issues which would affect the previously issued waiver for California's greenhouse gas regulations. Therefore, I confirm that CARB's greenhouse gas amendments are within the scope of EPA's waiver of preemption for California's greenhouse gas regulations.

While EPA has confirmed that the amendments to California's greenhouse gas regulations are within the scope of EPA's prior waiver, we have also, in the alternative analyzed California's greenhouse gas regulations, as amended, under the criteria for a full waiver. Based on that analysis, we have determined that EPA could not deny a waiver of preemption for California's regulations, as amended. California has made a determination that its regulations as amended are at least as protective as the Federal GHG standards, and those opposing the waiver have not met the burden of demonstrating that any of the three statutory criteria for a denial under section 209(b)(1) have been met. Therefore, having given consideration to all the material submitted for this record, and other relevant information, I find that I cannot make the determinations required for a denial of a waiver pursuant to section 209(b) of the Act. I find that, even if California's revisions to its greenhouse gas standards were not within-the-scope of its earlier waiver, California's amended motor vehicle greenhouse gas emission regulations would receive a full waiver. Consequently, even if the amendments were not within the scope of the earlier waiver, I am, in the alternative, granting California a full waiver of preemption for its amended motor vehicle greenhouse gas regulations.

My decision will affect not only persons in California, but also manufacturers outside the State who must comply with California's

requirements in order to produce vehicles for sale in California. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by August 15, 2011. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

#### IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: June 8, 2011.

**Gina McCarthy**,  
Assistant Administrator for Air and Radiation.

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#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2011-0431, FRL-9318-5]

#### Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2014

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

**ACTION:** Notice of solicitation of applications and information on alternatives.

**SUMMARY:** EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2014. Critical use exemptions last only one year. All entities interested in obtaining a critical use exemption for 2014 must provide EPA with technical and economic information to support a

"critical use" claim and must do so by the deadline specified in this notice even if they have applied for an exemption in previous years. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

**DATES:** Applications for the 2014 critical use exemption must be postmarked on or before August 15, 2011.

**ADDRESSES:** EPA encourages users to submit their applications electronically to Jeremy Arling, Stratospheric Protection Division, at [arling.jeremy@epa.gov](mailto:arling.jeremy@epa.gov). If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to 202-343-2338 by the application deadline. Applications for the methyl bromide critical use exemption can also be submitted by U.S. mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by courier delivery to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St., NW., Room 1047E, Washington DC 20005.

#### FOR FURTHER INFORMATION CONTACT:

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

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

**Regulatory Information:** Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202-343-9055. E-mail: [arling.jeremy@epa.gov](mailto:arling.jeremy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

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

Entities interested in obtaining a critical use exemption must complete the application form available at <http://www.epa.gov/ozone/mb/cueinfo.html>. The application may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2014 and have evaluated alternatives and as a result of that evaluation, believe they have no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application).

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

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

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

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

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

1. PDF format and Microsoft Excel at EPA's Web site: <http://www.epa.gov/ozone/mb/cueinfo.html>;
2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1-800-296-1996;
3. PDF format and Microsoft Excel at Docket ID No. EPA-HQ-OAR-2011-0431. The docket can be accessed at the <http://www.regulations.gov> site. To obtain hard copies of docket materials, please e-mail the EPA Docket Center: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

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

To support the assertion that a specific use of methyl bromide is "critical," applicants must demonstrate that there are no technically and economically feasible alternatives available for that use. In 2011, the U.S. submitted an index of alternatives, which includes the current registration status of available and potential alternatives, to the Ozone Secretariat. That index is reproduced in Table 1 and can be accessed at <http://www.epa.gov/ozone/mb/alts.html>. Specifically, applications must include the following information for the U.S. to successfully defend its nominations for critical uses. The information requested below is included in the application form but we are highlighting specific areas that applicants must address.

*Commodities such as dried fruit and nuts:* Applicants must address potential pest losses, quality, timing changes and economic implications to producers when converting to alternatives such as: sulfuryl fluoride and phosphine. If relevant, the applicant should also include the costs to retrofit equipment or design and construct new fumigation chambers for these uses. Applicants must include information on the amount of methyl bromide and any other fumigants used as well as the amounts of commodity treated with each fumigant. Include information on the size of fumigation chambers where methyl bromide is used, the percent of commodity fumigated under tarps, the length of the harvest season, peak of the harvest season and duration, and volume of commodity treated daily at the harvest peak. The Agency must have a description of your future research

plans which includes the pest(s), chemical(s) or management practice(s) that you will be testing in the future to support this CUE. Also include information on what pest control practices organic producers are using for their commodity.

*Structures and Facilities (flour mills, rice mills, pet food):* Applicants must address potential pest losses, quality, timing changes and economic implications to producers when converting to alternatives such as: sulfuryl fluoride, micro-sanitation, and heat. If relevant, the applicant should include the costs to retrofit equipment for these pest control methods. List how many mills have been fumigated with methyl bromide over the last three years, rate, volume and target Concentration—Time (CT) of methyl bromide at each location, volume of each facility, number of fumigations per year, and date facility was constructed. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE. Also include information on what pest control practices organic producers are using for their facilities.

*Ham:* List how many facilities have been fumigated with methyl bromide over the last three years, rate, volume and target CT of methyl bromide at each location, volume of each facility, number of fumigations per year, and date facility was constructed. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

*Cucurbits, Eggplant, Pepper, and Tomato:* Applicants must address potential yield, quality, and timing changes or economic implications for growers and/or your region's production of these crops when converting to alternatives such as: iodomethane plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and dimethyl disulfide (DMDS) and any fumigationless system (if data are available). If relevant, the applicant should include the costs to retrofit equipment for these uses. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

*Strawberry Fruit:* Applicants must address potential yield, quality, and timing changes, or economic implications for growers when converting to alternatives such as:

iodomethane plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and any fumigationless system (if data are available). If relevant, the applicant should include the costs to retrofit equipment for these uses. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

*Nursery stock, Orchard Replant, Ornamentals, and Strawberry Nursery:* Applicants must address potential yield, quality, and timing changes, or economic implications for growers and your region's production of these crops when converting to alternatives such as: iodomethane plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and dimethyl disulfide (if registered in your state), and steam. If relevant the applicant should include the costs to retrofit equipment for these uses. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

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

Critical use exemptions are valid for only one year and do not renew automatically. Users desiring to obtain an exemption for 2014 must apply to EPA. Because of the latest changes in registrations, costs, and economic aspects for producing critical use crops and commodities, all applicants will be required to fill out the application form completely.

#### *F. What if I submit an incomplete application?*

EPA will not accept any applications postmarked after August 15, 2011. If the application is postmarked by the deadline but is incomplete or missing any data elements, EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. If the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call an applicant for further clarification of an application, even if it is complete.

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

You may assert a business confidentiality claim covering part or all

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

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the "Worksheet 6: Application Summary" page of the application any information that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Please note, claiming business confidentiality may delay EPA's ability to review your application.

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

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

In October 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, methyl bromide production and consumption were phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol.

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production or consumption allowances prior to 2005 is not confined to critical uses under EPA's phaseout regulations; however, other restrictions may apply.

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

The Montreal Protocol provides that the Parties may exempt "the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses" (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses."

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

(a) That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

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

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to

evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination. \* \* \* Non-Article 5 Parties [e.g., developed countries, including the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. \* \* \*

EPA has defined "critical use" in its regulations at 40 CFR 82.3 in a manner similar to Decision IX/6 paragraph (a).

*C. What is the timing for applications for the 2014 control period?*

There is both a domestic and international component to the critical use exemption process. The following outline projects a timeline for the process for the 2014 critical use exemption.

June 14, 2011: Solicit applications for the methyl bromide critical use exemption for 2014.

August 15, 2011: Deadline for submitting critical use exemption applications to EPA.

Fall 2011: U.S. Government (through EPA, Department of State, U.S. Department of Agriculture, and other interested Federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2012: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2012: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) reviews Parties' nominations for critical use exemptions.

Mid 2012: Parties consider TEAP/MBTOC recommendations.

November 2012: Parties decide whether to authorize critical use exemptions for methyl bromide for production and consumption in 2014.

Mid 2013: If the Parties authorize critical uses, EPA publishes proposed rule for allocating critical use allowances in the U.S. for 2014.

Late 2013: EPA publishes final rule allocating critical use allowances in the U.S. for 2014.

January 1, 2014: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2014 control period.

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

Dated: June 6, 2011.

**Elizabeth Craig,**  
Acting Director, Office of Atmospheric Programs.

[FR Doc. 2011–14571 Filed 6–13–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0503; FRL–9318–9]

### Human Studies Review Board Advisory Committee

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

**ACTION:** Request for Nominations to the Human Studies Review Board (HSRB) Advisory Committee.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates with expertise in bioethics and toxicology to be considered for appointment to its Human Studies Review Board (HSRB) advisory committee. Vacancies are anticipated to be filled by September 1, 2011. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

**Background:** On February 6, 2006, the Agency published a final rule for the protection of human subjects in research (71 FR 24 6138) that called for creating a new, independent human studies review board (*i.e.*, HSRB). The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 § 9 (Pub. L. 92–463). Each year the HSRB experiences membership terms expiring, therefore needs candidates for consideration as replacement members. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor. General information concerning the HSRB, including its charter, current membership, and activities can be found on the EPA Web site at <http://www.epa.gov/osa/hsrb/>.

HSRB members serve as special government employees or regular government employees. Members are appointed by the EPA Administrator for either two or three year terms with the possibility of reappointment to additional terms, with a maximum of six years of service. The HSRB usually meets four times a year and the typical workload for HSRB members is approximately 40 to 50 hours per meeting, including the time spent at the

meeting. Responsibilities of HSRB members include reviewing extensive background materials prior to meetings of the Board, preparing draft responses to Agency charge questions, attending Board meetings, participating in the discussion and deliberations at these meetings, drafting assigned sections of meeting reports, and helping to finalize Board reports. EPA compensates special government employees for their time and provides reimbursement for travel and other incidental expenses associated with official government business. Currently, EPA is seeking nominations for individuals with expertise in bioethics and toxicology. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The qualifications of nominees for membership on the HSRB will be assessed in terms of the specific expertise sought for the HSRB. Qualified nominees who agree to be considered further will be included in a "Short List." The Short List of nominees' names and biographical sketches will be posted for 14 calendar days for public comment on the HSRB Web site: <http://www.epa.gov/osa/hsrb/index.htm>. The public will be encouraged to provide additional information about the nominees that EPA should consider. At the completion of the comment period, EPA will select new Board members from the Short List. Candidates not selected for HSRB membership at this time may be considered for HSRB membership as vacancies arise in the future or for service as consultants to the HSRB. The Agency estimates that the names of Short List candidates will be posted in July 2011. However, please be advised that this is an approximate time frame and the date is subject to change. If you have any questions concerning posting of Short List candidates on the HSRB Web site, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Members of the HSRB are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, each nominee will be asked to submit confidential financial information that shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The information provided is strictly confidential and will not be disclosed to the public. Before a candidate is considered further for