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## 2009 Methyl Bromide Allocation Rule Published

Environmental Protection Agency Administrator Lisa Jackson signed the final rule allowing production, importation and consumption for Critical Uses exempted under the US Clean Air Act during the 2009 Control Period. The Federal Register Notice announcing the final rule was signed on Friday, April 25<sup>th</sup> and posted to EPA's Ozone Depletion website located at [www.epa.gov/ozone/strathome.html](http://www.epa.gov/ozone/strathome.html). The rule puts into place the requirements and restrictions associated with the uses of methyl bromide approved by the Parties to the Montreal Protocol in Decision XIX/9 in Montreal in 2007 and revised at the 20<sup>th</sup> Meeting of the Parties in Doha in 2008. Manufacturers and users of methyl bromide have been functioning under a No Action letter from EPA enforcement since January 1, 2009 as a result of no final rule being in place. This action by the Agency will put the final rule into place before that No Action letter expires the first of May.

The only major difference in the final rule from the proposed rule is the slight increase in the amounts of new production and imports allowed under the rule (Table 1). This was one of the major issues raised by the user group comments in response to the proposed rule. EPA in its final rule acknowledged the impact of the shortage of 1,3-Dichloropropene (Telone<sup>®</sup>, Dow AgroSciences), the revised levels of Available Stocks based on the manufacturer and distributors survey, and the lack of adoption of alternatives at the rate previously estimated by the international community. While we appreciate the increase, the revised likely amounts will not prevent significant shortages as the fumigation season moves forward.

<b>TABLE 1: 2009 METHYL BROMIDE CRITICAL USE: APPROVED QUANTITIES</b>						
	<b>Production/Imports</b>		<b>Available Stocks</b>		<b>Total Quantity</b>	
	<b>metric tonnes</b>	<b>% 1991 baseline</b>	<b>metric tonnes</b>	<b>% 1991 baseline</b>	<b>metric tonnes</b>	<b>% 1991 baseline</b>
<b>Montreal Protocol: Decision XIX/9</b>	3,961.974	15.5	306.334	1.2	4,261.974	16.7
<b>Proposed Allocation Rule: Clean Air Act (Nov 2008)</b>	1,617.921	6.3	2,576.987	10.1	4,194.908	16.4
<b>Final Allocation Rule: Clean Air Act (April 2009)</b>	2,275.715	8.9	1,919.193	7.5	4,194.908	16.4

As in previous Control Periods, the total amount of methyl bromide approved for critical uses is split between Critical Use Allowances (CUAs) and Critical Stocks Allowances (CSAs). These quantities are proportionally divided among the commercial entities identified in the rule. The specific quantities of new production and importation allowance (CUAs) are split among four companies: Great Lakes Chemical Corp. (A Chemtura Company), Albemarle Corporation, ICL-IP America (formerly Ameribrom), and TriCal, Inc. The amounts of new material allowed under the CUA allowance are designated for either pre-plant or post-harvest use. The CSAs are not so designated and can be used for any approved Critical Use Exemption (CUE) site. This rule has fewer identified holders of stocks that would

be available under the CSA process. The information regarding the distribution of these allowances is shown in Table 2.

<b>TABLE 2: CRITICAL USE ALLOWANCE AND CRITICAL STOCK ALLOWANCE DISTRIBUTIONS</b>		
<b>Critical Use Allowances</b>		
Company	2009 CUA Allowance Pre-plant Uses (mt)	2009 CUA Allowance Post Harvest Uses (mt)
Great Lakes Chemical Corp	1,249.703	133.249
Albemarle Corp	513.906	54.795
ICL-IP America	283.995	30.281
TriCal, Inc.	8.843	0.943
<b>Total CUA's</b>	<b>2,056.448</b>	<b>219.267</b>
<b>Critical Stocks Allowance</b>		
Albemarle	Hy Yield Bromine	Royster-Clarke, Inc.
Bill Clarke Pest Control, Inc.	ICL-IP America	TriCal, Inc
Burnside Services, Inc	Industrial Fumigation Company	Trident Agricultural Products
Cardinal Professional Products	Pacific Ag	UAP Southeast (NC)
Chemtura Corp	Pest Fog Sales Corp	UAP Southeast (SC)
Degesch America, Inc	ProSource One	Univar
Helena Chemical Co.	Reddick Fumigants	Western Fumigation
Hendrix & Dail		
		<b>Total Quantity CSAs: 1,919.193</b>

While there are no sector-specific allocations required in the rule, the narrative accompanying publication identified several specific conditions and areas of concern that relate to individual areas of the country. The Limiting Critical Condition necessary to be able to certify Critical Use in Florida (FFVA Crop Petitions) were identified as follows:

- Eggplant
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  - Moderate to severe yellow or purple nutsedge infestation
  - Moderate to severe soilborne disease infestation
  - Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
  - A need for methyl bromide for research purposes
- Peppers
-
  - Moderate to severe yellow or purple nutsedge infestation
  - Moderate to severe soilborne disease infestation
  - Moderate to severe nematode infestation
  - Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
  - A need for methyl bromide for research purposes
- Strawberry Fruit
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  - Moderate to severe yellow or purple nutsedge infestation
  - Moderate to severe soilborne disease infestation
  - Moderate to severe nematode infestation
  - Carolina Geranium or cut-leaf evening primrose infestation
  - Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation
  - A need for methyl bromide for research purposes

Tomatoes	-	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation Moderate to severe nematode infestation Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation A need for methyl bromide for research purposes
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Growers are reminded that they must certify their use meets one of these limiting conditions.

FFVA's comments on the proposed rule expressed a strong concern over the Agency's estimated level of available stocks and the strong likelihood that under the Agency's proposal, there would be a significant shortage of methyl bromide during the production and fumigation season. The Agency declined to significantly increase new production allowances to alleviate our concerns on this issue. The Agency's rationale for not increasing these amounts was that the small number of holders of critical stocks allowances served the major markets for methyl bromide and even though they are few in number this should not impact the ability to supply customers in different regions. The allegation that reserves were being held to supply non-CUE markets by the distribution chain and are not available to qualified CUE needs was discussed in the Rule. The Agency does not believe that increasing production is a legitimate way to deal with this and that the sales decisions at the distribution level are not the result of regulatory constraints from the Agency. The Agency did note that in 2010 all non-CUE use would be removed from labels as a final result of the reregistration eligibility decisions.

Stocks availability has been an issue with the Agency since the initiation of the CUE process in 2005. Commenters have long maintained that the Agency has overstated the amounts of stock available resulting in reduced amounts of new production or imports. The Methyl Bromide Industry Panel (MBIP) initiated a detailed survey of stocks being held in the distribution chain in mid-December 2008. The results of that survey indicated a reduction in available stocks of over 650 metric tonnes from those estimated by the model used with earlier allocation rules. The rate of use of pre-phaseout inventory of methyl bromide for non-CUE sites initially declined from 2005 to 2006 but appear to be on the increase for 2007 and 2008. This trend would support our contention that additional material may be needed to meet approved CUE uses.

Another factor influencing the levels approved for new production is the Agency's acknowledgement of the need for a certain amount of methyl bromide to be in the channels of trade both as a result of the unique distribution characteristic of this fumigant as well as the fact that a catastrophic supply chain failure could occur at the single manufacturing facility for this product in the US. The impacted grower communities have joined with the MBIP to suggest that a larger reserve is necessary than that projected by EPA. The critical supply chain factor proposed by the Agency is 55% of annual methyl bromide production. This is not a static number but will vary depending on the quantities approved at the international level each year. The amount deemed necessary for this role during 2009 is 2,352.013 mt. For purposes of determining the amount of new production, this amount is subtracted from the total available stocks to establish the amount of stocks deemed to be available for CSA use. The calculation table for 2009 that the Agency used to establish the CUAs and CSAs during the 2009 control period can be found in the Federal Register Notice announcing this final rule. The basic formula is Total Amount Authorized (4,261.975 mt) – Critical Stocks Allowance (1,919.193 mt) – Carryover of CUE material in 2007 (44.895 mt) – Amounts used for Research (22.171 mt) = New Production (2,275.715 mt).

As can be seen in Table 3, the amount of methyl bromide approved has declined in quantity and in the amount of new production allowed each year.

Control Period	Production/Imports		Available Stocks		Total Quantity	
	metric tonnes	% 1991 baseline	metric tonnes	% 1991 baseline	metric tonnes	% 1991 baseline
2005	7,659.000	30.00	1,893.879	7.20	9,552.879	37.42
2006	6,823.707	26.73	1,258.046	4.93	8,081.753	31.66
2007	4,316.055	16.90	1,914.600	7.50	6,230.655	24.40
2008	4595.040	18.00	760.309	2.98	5,355.349	20.98
2009	2,275.715	8.91	1,919.193	7.51	4,194.908	16.42

Going forward the amounts approved at the international level for 2010 is at 12.67 % of the 1991 baseline (3,233.456 mt). It is anticipated that if this trend continues the EPA Allocation Rule will reflect further reductions in this quantity.

**Recommendations:**

If your production depends upon soil fumigation, FFVA strongly recommends that you make arrangements for supplies of your preferred fumigant as soon as possible. This is true not only for methyl bromide but alternatives as well. The pressure on the supply chain is going to be tremendous and it is anticipated that many, if not all, fumigant users will **NOT** be able to obtain exactly what they would like to utilize. It is recommended that all fumigant users begin to look at alternative solutions as this situation will only be getting more difficult as we move into future Control Periods. Please be aware that the pending finalization of the Registration Eligibility Decisions will lead to modifications and additional management strategies for all fumigants in the future as well.

For additional information or specific guidance relative to the 2009 Control Period please call FFVA.