

Frequently Asked Questions About the Methyl Bromide Critical Use Exemption (CUE) Process (*the beginning chapter*)

July 19, 2002

The U.S. Environmental Protection Agency (EPA/the Agency) and the U.S. Department of Agriculture (USDA) have prepared the following Questions and Answers document to address concerns raised by prospective applicants for methyl bromide critical use exemptions. In preparing this document, both Agencies hope to provide additional guidance to the applicant community, address specific issues that have been raised, and encourage an ongoing dialogue between government agencies and the methyl bromide user community throughout this process. As the need arises or as EPA learns new information about how the CUE process will operate in the international context, EPA and USDA will update this document. This document, as well as other information regarding the phase-out of methyl bromide and the CUE program and process, can be found on EPA's websites at: <http://www.epa.gov/pesticides/> ([under the Consumer Alerts heading](#)) and <http://www.epa.gov/ozone/mbr/cueqa.html>. [Stakeholders/applicants can also contact EPA with CUE questions and/or requests for assistance with applications by email at: \[methyl.bromide@epa.gov\]\(mailto:methyl.bromide@epa.gov\) and by telephone via EPA's MeBr CUE voice-mail message line at: 703-308-7519.](#)

1. How does the Methyl Bromide (MeBr) Critical Use Exemption (CUE) program compare with the Section 18 program?

The methyl bromide critical use exemption program and the FIFRA Section 18 emergency exemption program are very similar, but differ in important ways. First, the similarities. Both programs provide a mechanism for growers to legally use a pesticide that cannot otherwise be used. That is, both programs provide EPA with a means to grant exceptions to a general rule. Both programs assume that there are cases where it is appropriate to grant such exceptions. Both programs require applications or petitions to be filed with EPA presenting the case for being granted an exception. Finally, both programs ask for technical and economic data on alternatives available to the user community so that EPA can assess whether the desired use of the pesticide is really important. The basic elements of the CUE application are similar to those required as part of a section 18 exemption request. In fact, EPA developed the methyl bromide CUE application using the guidance EPA provides to states for submitting section 18 emergency exemption requests as a model.

But there are a number of important distinctions between the two programs. First, the decisionmaking process and the parties involved differ significantly. EPA is the final decisionmaker for Section 18 exemption requests. EPA officials base these decisions on petitions filed by States representing grower needs in the states. CUEs must be agreed to by an international panel of governmental representatives from countries throughout the world (the Parties to the Montreal Protocol) based on applications filed with USEPA by growers and/or consortia of growers. In the CUE process, the U.S. government nominates uses for "approval" on behalf of U.S. interests and must defend the nominations and effectively persuade the international committee (the Technology and Economic Assessment Panel or TEAP and the Methyl Bromide Technical Option Committee or MBTOC, which make recommendations to the Parties) that there is in fact a critical need. The U.S. government decides what to nominate based on the review of application materials by USEPA, USDA and the State Department. **Under Section 18 of FIFRA, the Administrator must determine that "emergency conditions exist." Under the CUE program the applicants must demonstrate that there are no technically and economically feasible alternatives, that associated use and emissions from Methyl Bromide are minimized, and that there have been and will be past and future efforts to find alternatives.** Because the criteria differ and because an international panel must review and consent to the U.S. nominations, the information needed by the U.S. government to "make the case" is more detailed than what is typically submitted under the Section 18 program.

In short, in order to defend the U.S. nomination at an international level, EPA is requesting sufficient information to help U.S. representative present a solid justification for the U.S. nomination decisions.

2. Will EPA allow an organization to submit a single application addressing all methyl bromide needs in their state?

Yes. An organization may provide a single application to EPA. However, the information in an application will ultimately be used by the U.S. government to convince other countries that a critical need for methyl bromide will exist beyond January 1, 2005. The U.S. must address the list of alternatives identified by the Montreal Protocol's expert body, the Methyl Bromide Technical Options Committee. The list of alternatives is organized by categories of use, often by crop. The directions from the Montreal Protocol ask for an explanation of why each alternative pertinent to a specific use is not technically and economically feasible. The index to the list of alternatives – by use category – can be found on the EPA website at <http://www.epa.gov/spdpublic/mbr/queqa.html>.

If an organization believes that it can provide sufficient justification as to why conditions for all crops within a state are similar, it could submit a state-wide application for all crops – if the application addresses all the relevant alternatives. Organizations may find it difficult to do this and may find it easier to submit separate applications for each crop grown in the state or separate applications based on local regions. For example, a potential alternative to methyl bromide may not be available state-wide for a particular reason (e.g., telone use is restricted in areas with karst terrain). However, this same alternative could still be available in other parts of a state. An organization may, as a result, not be able to easily make a case that all areas of the state experience similar technical or economic limitations to the adoption of alternatives.

3. How flexible will EPA be in its review of the CUE applications? Will an application be rejected if every question is not answered?

EPA will not summarily reject applications for trivial, or even substantial, omissions. EPA will work with affected applicants to find flexible ways to address the information needs requested in the application. EPA's goal is to receive a robust application in the most efficient manner. EPA is holding workshops and forming Application Assistance Teams to provide individualized attention to people and groups that ask for and need help. EPA does not envision "rejecting" applications on the basis of missing information. We do envision personalized follow-up in cases where, despite all efforts to provide needed information, necessary information is still missing. Telephone calls and e-mails will be made by EPA staff to fill gaps in submitted applications. In addition, some organizations may find that a narrative may help present arguments more effectively than quantitative information.

EPA welcomes the submission of both narrative and quantitative information. The application requests very specific information to evaluate economic and technical feasibility issues associated with the adoption of alternatives. EPA realizes, however, that organizations may not have all of the requested information or that this information may not be in a form that fits easily into the CUE application format. EPA encourages applicants to submit the most complete application possible. EPA will contact individual applicants if the Agency's review indicates the need for additional information or clarification.

1. What is the role of USDA in the CUE review process?

USDA is committed to playing an important role in the CUE review process. As a partner at the Federal level, USDA will be part of the multi-agency team that develops and prepares the U.S. nomination to be sent to the Montreal Protocol Parties. During the application phase, an important role for USDA will be to assist users in accessing available research on alternatives to methyl bromide. Another role USDA will play is in initiating communication with grower groups, especially those that may not have been active in the CUE process previously.

USDA will participate with EPA in the review of each CUE application submitted for consideration. USDA's review will particularly focus on the economic impact and technical feasibility of alternatives. In order to

lessen the burden on applicants, USDA will also play a role in reviewing and evaluating the list of non-chemical alternatives identified by the Methyl Bromide Technical Options Committee to determine those methods that would not be suitable in U.S. agriculture. In such situations, applicants would not need to address that specific alternative in preparing their CUE application. USDA and EPA will work in a partnership to review these applications and will jointly present their recommendations to the interagency panel to be led by the U.S. Department of State that will ultimately submit the U.S. CUE nomination. USDA will also work with EPA staff on the various application assistance teams that are being formed to provide individualized attention to those organizations that request additional support from the Federal government during the application phase of the CUE process.

2. What role are the state lead agencies playing in the methyl bromide CUE process?

State agencies are playing varying roles in the CUE process. The role of the state may differ depending on the resources available to the state to participate in the process. EPA believes the states play an important role in communicating information about the program to users at a local level. In addition, states play an important role in providing information back to Federal partners.

Some states may conduct a pre-submission screening of CUE applications from their states. Others may also serve as consultants to Federal partners in evaluating the merits of particular applications or providing information on local conditions, for example regulatory constraints affecting the adoption of alternatives. States may also possess important technical information on the use of methyl bromide and other production practices and will provide this information to EPA as part of the CUE review process.

3. What does EPA mean by the terms “typical farmer” and “representative user”?

EPA wants to make the application process as easy as possible while not compromising the critical need the U.S. government has to be able to put forth the best possible argument for critical uses in the international arena. Instead of providing detailed information about each operation represented in an application, the Agency has asked applicants to group themselves based on like conditions. Providing basic size, climate and soil information about the average or typical operation in the application will help EPA better understand the specific constraints a particular group or applicant is facing.

A group may find that it is alike in most regards but that there may be differences among the users that necessitate filling out one or two worksheets differently. If this happens, simply fill out the worksheet one time for each set of conditions and make a note of it. Please contact the Agency with any questions or requests for assistance. Applicants can contact EPA by telephone via the Methyl Bromide CUE message-line/voice-mailbox at 703-308-7519 or via e-mail at methyl.bromide@epa.gov.

4. Because the CUE application appears to be designed for a pre-plant methyl bromide user, how should other users interpret and complete it?

If one of the spreadsheets doesn't fit the way an applicant tracks information, feel free to revise the application and make a note of the changes. EPA's Office of Pesticide Programs is available to provide advice and guidance. Some applicants may track methyl bromide use by calendar year, and others by growing cycle. Report the data in a way that is consistent with an applicant's recordkeeping. Applicants may also want to consult the Handbook on Critical Use Nominations for Methyl Bromide, which is available at the following website: <http://www.epa.gov/ozone/mbr/cueqa.html> because it provides useful guidance on tailoring information responsive to the critical use criteria to different uses.

Applicants who believe that the CUE application does not address their specific needs should complete as much of the CUE application as possible. EPA will be available for consultations and will assist applicants for other

methyl bromide uses (e.g., post-harvest fumigation) on how to best present their case. As good models for using the current application are developed, the Agency will provide these examples to all potentially affected applicants.

5. **In completing the CUE application, how should applicants address potential methyl bromide alternatives currently pending a registration decision by EPA?**

When preparing applications, applicants must address both the chemical and non-chemical alternatives on the MBTOC list of methyl bromide alternatives. For the chemical alternatives, EPA has edited this list to reflect only those chemicals registered for use in the United States. EPA and USDA are currently working to identify which of the non-chemical alternatives are not suitable for U.S. agriculture. Regarding the chemical alternatives, EPA is requiring that applicants address only those chemical alternatives registered for use in the United States at the time the applicant submits the CUE application. Even in situations where EPA registers a new methyl bromide alternative during the intervening period between submission of the CUE application and submission of the U.S. nomination to the Montreal Protocol Parties, the U.S. nomination will include a statement that the alternative has only recently become available for use in the United States and that users will likely not have widespread knowledge of how to most effectively use the new compound in their production practices. It is EPA's experience that growers/users typically need several years to learn how to most effectively use newly-registered compounds in their production systems. The technical and economic feasibility of any newly-available alternative, however, would need to be addressed in subsequent CUE requests.

6. **How much assistance will EPA provide users in applying for a CUE?**

Please feel free to contact us at any time throughout the application. EPA wants to develop a dialogue with each applicant. The Agency will strive to meet as often as it takes to work together through the process. Because different applicants are likely to encounter different challenges, the June/July workshops have been designed to provide individualized attention. Throughout the workshops, the Agency is noting common questions and will post answers on our website at <http://www.epa.gov/spdpublic/mbr/cueqa.html>. The Agency is also forming teams to work even more closely with particularly challenging situations.

7. **Why is EPA asking for so much information in the CUE application? Is the Agency trying to make the application difficult because it doesn't want any users to get methyl bromide?**

EPA is only asking for the information that was agreed by the Parties to the Montreal Protocol to be necessary to substantiate requests for critical use exemptions. Thus, this information will be necessary for the U.S. government to defend nominations at an international level. As the major user of methyl bromide worldwide, the U.S. request will likely be heavily scrutinized by the Montreal Protocol Parties. EPA wants to be prepared to justify requests internationally and believes that the information requested will be necessary in this regard. The Agency recognizes that there may be instances where research results and data for sections of the application will not be available. For example, many research studies have only tested the efficacy of alternatives without collecting data on the costs compared to methyl bromide. In such cases, the U.S. will need to rely on the best anecdotal information available.

8. **What are other countries requiring of applicants requesting a methyl bromide CUE?**

Some context is important. Most other countries use less methyl bromide, and thus may not request as much methyl bromide as the U.S. Thus, the U.S. nomination will receive some scrutiny. EPA has only seen the application for one other country – Australia. In actuality, the Australian government is asking for the same information requested in the U.S. application. The major difference between the U.S. and Australian application is that Australian applicants may respond with a detailed narrative and the U.S. asks for tables to be completed. While the U.S. application does not state this specifically, narrative information is acceptable, provided that the

information provided helps the applicant make the best case possible for the use of methyl bromide post-phaseout. However, given the large number of U.S. methyl bromide users, the Agency encourages the completion of tables to assure the most complete and accurate review of what is expected to be a large volume of technically detailed information.

9. **Must I apply this year for the Critical Use Exemption for 2005, or can I apply in 2003?**

EPA anticipates going through the same type of application process in 2003, for an exemption that would also begin in 2005. An applicant can wait to apply in 2003 for exemption in 2005, however, the applicant needs to understand that the U.S. will not receive word from the Parties as to whether the exemption is granted until the last few months of 2004, right before the 2005 phaseout date.

10. **Because I'm uncertain about whether my use qualifies now, or will qualify in the future, for the Quarantine and Preshipment exemption, do I need to submit a CUE application?**

The rulemaking governing the Quarantine and Preshipment Exemption will likely not be finalized until after the 2002 application process for CUE closes. The Agency recognizes the importance of a continued supply of methyl bromide for those users without technically or economically feasible alternatives. Therefore, users unsure of whether a use will be exempt under the final Quarantine and Preshipment regulation should consider submitting a CUE application.

11. **What role will the U.S. Department of Agriculture's APHIS play in the Quarantine and Preshipment (QPS) Exemption to the methyl bromide phaseout?**

USDA's Animal and Plant Health Inspection Service (APHIS) will be involved both in the rule-making process and in the implementation of the QPS Exemption. As was the case prior to the issuance of the EPA's existing Interim Final Rule, USDA representatives will play a major role in shaping the actual final rule-making, which we expect to issue within the next several months. USDA and EPA will collaborate in developing the final rule.