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109TH CONGRESS
1ST SESSION

# H. R. 1257

To amend the Clean Air Act to authorize critical use exemption amounts for methy bromide as identified by the United States State Department for the years 2006 and 2007, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2005

Mr. RADANOVICH (for himself, Mr. BLUNT, Mr. CARDOZA, Mr. WHITFIELD, Mr. SHIMKUS, Mr. HERGER, Mr. FOLEY, Mr. KINGSTON, Mr. ISSA, Mrs. EMERSON, Mr. BERRY, Mr. BISHOP of Georgia, Mr. SIMPSON, Mr. OTTER, Mr. DOOLITTLE, Mr. COSTA, Mr. POMBO, and Mr. JONES of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

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# A BILL

To amend the Clean Air Act to authorize critical use exemption amounts for methy bromide as identified by the United States State Department for the years 2006 and 2007, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDINGS.**

Congress finds that—

(1) methyl bromide is a highly effective fumigant used to control insects, nematodes, weeds, and

pathogens in more than 100 crops in domestic agriculture, in forest and ornamental nurseries, and in wood products;

(2) the United States Department of Agriculture has spent well over $100,000,000 attempting to find effective alternatives to methyl bromide yet there are still many domestic agriculture uses with no alternatives;

(3) the critical use exemption of the Montreal Protocol allows for the use of ozone depleting substances beyond the phase-out date if there are no technically and economically feasible alternatives or substitutes available and the lack of such options would result in a significant market disruption;

(4) accordingly, in 2001, the United States Environmental Protection Agency and the United States Department of Agriculture began the process under the Montreal Protocol to document the amount of methyl bromide needed for critical uses in domestic agriculture;

(5) the United States Environmental Protection Agency assembled more than 45 Ph.D.s and other qualified reviewers with expertise in both biological and economic issues to review applications for methyl bromide critical use exemptions;

(6) rigorous review by the United States Environmental Protection Agency of the critical use applications reduced by 22 percent the amount of methyl bromide initially requested by agricultural sectors; and

(7) as confirmed by the Parties to the Montreal Protocol in the ''Report of the Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer'', the concept of ''availability'' in the context of the critical use exemptions shall be primarily guided by the alternative's market presence in sufficient quantities and accessibility, taking into account, among other things, regulatory constraints;

(8) after extensive research and technical review, the United States State Department and the United States Environmental Protection Agency have concluded that the critical use methyl bromide that has been requested qualifies as ''critical'' since it has been determined that for each use the lack of availability of methyl bromide for that use would result in a significant market disruption;

(9) after extensive research and technical review, the United States State Department and the United States Environmental Protection Agency

have concluded that there are no technically and economically feasible alternatives or substitutes available that are acceptable from the standpoint of the environment and health and that are suitable to the crops and circumstances for the critical use methyl bromide that has been requested in the nomination;

(10) the conclusions of the United States State Department and the United States Environmental Protection Agency are consistent with the restatement adopted at the Sixteenth Meeting of the Parties to the Montreal Protocol of the criteria that should be used to approve critical use requests;

(11) the United States 2006 CUE request represents approximately .4 percent of the ozone depletion potential from all ozone depleting substances in all countries when the Montreal Protocol was negotiated in 1987;

(12) therefore, given the statistically minor impact on the ozone layer and the lack of suitable feasible alternatives for all uses at this time, legislation is needed in order to ensure a reasonable transition for United States agriculture to the complete phaseout of methyl bromide, legislation is necessary to authorize the critical use exemption amounts identified by the State Department for the year 2006, as re-

flected in the Report of the Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Decision XVI/2, Critical Use Exemptions Annex, Section IIA, IIB, and Section III, and for the year 2007, as reflected in the Report of the First Extraordinary Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Annex III.

**SEC. 2. CRITICAL USE EXEMPTIONS FOR METHYL BROMIDE.**

Section 604(d)(6) of the Clean Air Act (42 U.S.C. 7671c(d)(6)) is amended by inserting the following at the end thereof: ''For the year 2006, the United States critical use exemption shall be the sum of the amounts identified in Decision XVI/2, Annex (Critical Use Exemptions), Section IIA and Section III of the Parties to the Montreal Protocol as set forth in Table I and, for the year 2007, the amount identified in submissions of the United States State Department at the first Extraordinary Meeting of the Parties to the Montreal Protocol as set forth in Table I. The United States critical use exemptions for the years 2006 and 2007 established by this section shall not be subject to the conflict provision of section 614(b) of this Act. The Administrator shall issue a final rule within 90 days of the enactment of this sentence to authorize crit-

ical-use exemptions of the amounts listed in Table 1 below and to allocate these amounts for critical-use exemptions for each of the years 2006 and 2007.

"**Critical Use Exemptions**

| **Critical Use Exemption 2006:** | **Critical Use Exemption 2007:** |
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| The amount approved by the Parties to the Montreal Protocol (6897.68 tonnes) recorded in Decision XVI, Annex (Critical Use Exemptions), Section IIA, and the amount approved in the interim by the Parties to the Montreal Protocol (2194.583 tonnes) recorded in the Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Critical Use Exemptions Annex, Section III, for a total of 9092.263 tonnes | The amount submitted for the year 2007 by the U.S. State Department at the first Extraordinary Meeting of the Parties to the Montreal Protocol (8425 tonnes) recorded in the Report of the First Extraordinary Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, Annex III, Appendix I)". |

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