

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 April 2006

determining the quantities of methyl bromide permitted to be used for critical uses in the Community from 1 January to 31 December 2006 under Regulation (EC) No 2037/2000 on substances that deplete the ozone layer

(notified under document number C(2006) 1244)

(Only the Dutch, English, French, Italian, Polish, Portuguese and Spanish text is authentic)

(2006/350/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer⁽¹⁾, and in particular Article 3(2)(ii) thereof,

Whereas:

(1) Articles 3(2)(i)(d) and 4(2)(i)(d) of Regulation (EC) No 2037/2000 prohibit the production, import and placing on the market of methyl bromide for all uses after 31 December 2004 except, among others⁽²⁾, for critical uses in accordance with Article 3(2)(ii) and the criteria set out in Decision IX/6 of the Parties to the Montreal Protocol, together with any other relevant criteria agreed by the Parties. Exemptions for critical uses are intended to be limited derogations to allow a short period of time for the adoption of alternatives.

⁽¹⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Regulation (EC) No 29/2006 (OJ L 6, 11.1.2006, p. 27).

⁽²⁾ Other uses are for quarantine and pre-shipment, as feedstock and for laboratory and analytical uses.

(2) Decision IX/6 states that methyl bromide should qualify as 'critical' only if the applicant determines that the lack of availability of methyl bromide for that specific use would result in a significant market disruption; and that 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. Furthermore, the production and consumption, if any, of methyl bromide for critical uses should be permitted only if all technically and economically feasible steps have been taken to minimise the critical use and any associated emission of methyl bromide. An applicant should also demonstrate that an appropriate effort is being made to evaluate, commercialise and secure national regulatory approval of alternatives and substitutes; and that research programmes are in place to develop and deploy alternatives and substitutes.

(3) The Commission received 79 proposals for critical uses of methyl bromide from nine Member States including Belgium (44 070 kg), France (259 097 kg), Germany (19 450 kg), Ireland (1 250 kg), Italy (1 333 225 kg), Poland (45 900 kg), Portugal (50 000 kg), Spain (986 000 kg), the Netherlands (120 kg) and the United Kingdom (139 285 kg). A total of 2 878 397 kg was requested, comprising 2 690 275 kg (94 %) for pre-harvest uses and 188 140 kg (6 %) for post-harvest uses of methyl bromide. Germany subsequently informed the Commission that it had withdrawn all of its proposals as alternatives were now available.

- (4) The Commission applied the criteria contained within Decision IX/6 and Article 3(2)(ii) of Regulation (EC) No 2037/2000 in order to determine the amount of methyl bromide that is eligible to be licensed for critical uses in 2006. The Commission found that adequate alternatives were available in the Community and had become more prevalent in many Parties to the Montreal Protocol in the period since the critical use proposals were compiled by Member States. As a result, the Commission determined that 1 607 587 kg of methyl bromide can be used in 2006 to satisfy critical uses in each of the Member States that had requested the use of methyl bromide. This amount equates to 8,4 % of 1991 consumption of methyl bromide in the European Community and indicates that more than 91,6 % of the methyl bromide has been replaced by alternatives. The critical-use categories are similar to those defined in Section IIB in Decision XVI/2 ⁽¹⁾ and in Table A of Decision XVII/9 at the 17th Meeting of the Parties to the Montreal Protocol ⁽²⁾.
- (5) Article 3(2)(ii) requires the Commission to also determine which users may take advantage of the critical use exemption. As Article 17(2) requires Member States to define the minimum qualification requirements for personnel involved in the application of methyl bromide and, as fumigation is the only use, the Commission determined that methyl bromide fumigators are the only users proposed by the Member State and authorised by the Commission to use methyl bromide for critical uses. Fumigators are qualified to apply it safely, rather than for example farmers or mill owners that are generally not qualified to apply methyl bromide but who own properties on which it will be applied. In addition, Member States have put in place procedures to identify fumigators within their territory that are permitted to use methyl bromide for critical uses.
- (6) Decision IX/6 states that production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available from existing stocks of banked or recycled methyl bromide. Article 3(2)(ii) states that production and importation of methyl bromide shall be allowed only if no recycled or reclaimed methyl bromide is available from any of the Parties. In accordance with Decision IX/6 and Article 3(2)(ii), the Commission determined that 50 047 kg of stocks are available for critical uses.
- (7) Article 4(2)(ii) states that, subject to Article 4(4), the placing on the market and the use of methyl bromide by undertakings other than producers and importers shall be prohibited after 31 December 2005. Article 4(4) states that Article 4(2) shall not apply to the placing on the market and use of controlled substances if they are used to meet the licensed requests for critical uses of those users identified as laid down in Article 3(2).
- Therefore, in addition to producers and importers, fumigators that are registered by the Commission in 2006 would be allowed to place methyl bromide on the market, and to use it for critical uses, after 31 December 2005. A fumigator typically requests an importer for both the importation and supply of methyl bromide. Fumigators registered for critical uses by the Commission in 2005 would be permitted to carry over to 2006 any remaining methyl bromide that had not been used in 2005 (referred to as stocks). The European Commission has put in place licensing procedures to deduct such stocks of methyl bromide before any additional methyl bromide is imported or produced to meet the licensed requests for critical uses in 2006.
- (8) Three uses of methyl bromide in this Decision are categorised as 'biocidal' uses for which additional restrictions apply. Commission Regulation (EC) No 2032/2003 ⁽³⁾ records methyl bromide as a biocidal substance that cannot be placed on the market after 1 September 2006. The Commission may authorise a Member State to use methyl bromide after this date provided the Member State demonstrates compliance with the criteria for an 'essential use' under Article 4a of Regulation (EC) No 2032/2003. The quantities of methyl bromide for biocidal uses for which an 'essential use' authorisation pursuant to Regulation (EC) No 2032/2003 is required for any uses after 1 September 2006 are shown in Annexes I, IV and VIII of this Decision.
- (9) As critical uses of methyl bromide apply from 1 January 2006, and for the purpose of ensuring that interested companies and operators may benefit from the licensing system, it is appropriate that this present decision shall apply from that date.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18 of Regulation (EC) No 2037/2000,

⁽¹⁾ UNEP/OzL.Pro.16/17. Report of the 16th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, held 22 to 26 November 2004 in Prague, Czech Republic. www.unep.org/ozone/Meeting_Documents/mop/index.asp

⁽²⁾ UNEP/OzL.Pro.17/11. Report of the 17th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, held 12 to 16 December 2005 in Dakar, Senegal. www.unep.org/ozone/Meeting_Documents/mop/index.asp

⁽³⁾ OJ L 307, 24.11.2003, p. 1. Regulation as amended by Regulation (EC) No 1048/2005 (OJ L 178, 9.7.2005, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Kingdom of the Netherlands, the Republic of Poland and the United Kingdom of Great Britain and Northern Ireland shall be permitted to use a total of 1 607 587 kg of methyl bromide for critical uses from 1 January to 31 December 2006 for the specific quantities and categories of use described in Annexes I to VIII.

Article 2

The Kingdom of Belgium, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland shall not be permitted to use methyl bromide for biocidal uses from 1 September to 31 December 2006 unless an 'essential use' authorisation for the specific uses shown in Annexes I, IV and VIII is granted to the relevant Member State following the procedures described in Article 4a of Regulation (EC) No 2032/2003.

Article 3

Stocks declared available for critical uses by the competent authority of each Member State shall be deducted from the

amount that can be imported or produced to satisfy critical uses in that Member State.

Article 4

This Decision shall apply from 1 January 2006 and shall expire on 31 December 2006.

Article 5

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Kingdom of the Netherlands, the Republic of Poland, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 28 April 2006.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX I

The Kingdom of Belgium

(in kg)	
Categories of permitted critical uses	
Flour mills (17 mills)	2 752
Artefacts (Musea/SGS) (*)	307
Total	3 059

(*) Methyl bromide cannot be used from 1 September to 31 December 2006 unless an essential use authorisation is granted to Belgium for this biocidal use under Article 4a of Regulation (EC) No 2032/2003.

Stocks of methyl bromide available for critical uses in the Member State = 479 kg.

ANNEX II

The Kingdom of Spain

(in kg)	
Categories of permitted critical uses	
Strawberry runners (grown at high elevations)	230 000
Strawberry fruit (Huelva, protected)	180 000
Peppers (protected, in Murcia and south of Comunidad Valenciana)	50 000
Cut flowers (Cataluña, carnation, protected and open field)	15 000
Cut flowers (protected, in Cadiz and Sevilla)	39 000
Rice (post-harvest)	36 000
Total	550 000

Stocks of methyl bromide available for critical uses in the Member State = 41 797 kg.

ANNEX III

The French Republic

(in kg)

Categories of permitted critical uses	
Specialist sandy-soil carrots (grown in Brittany, harvested by hand and susceptible to <i>Fusarium solani</i> and <i>Rhizoctonia violacea</i>)	5 000
Cut flowers: ranunculus, anemone, paeonia and lily of the valley open-field	12 000
Strawberry runners	35 000
Forest nursery	1 500
Orchard replant	7 500
Nursery: orchard, raspberry	2 000
Mills	8 000
Chestnuts	1 800
Seeds sold by PLAN-SPG company	121
Total	72 921

Stocks of methyl bromide available for critical uses in the Member State = 973 kg.

ANNEX IV

The Italian Republic

(in kg)

Categories of permitted critical uses	
Tomato (protected)	495 000
Pepper (protected)	73 000
Melon (protected)	38 000
Eggplant (protected)	40 000
Strawberry fruit (protected)	75 000
Strawberry runners	60 000
Cut flowers (protected)	74 000
Mills and processors	55 000
Artefacts (*)	5 000
Total	915 000

(*) Methyl bromide cannot be used from 1 September to 31 December 2006 unless an essential use authorisation is granted to Italy for this biocidal use under Article 4a of Regulation (EC) No 2032/2003.

Stocks of methyl bromide available for critical uses in the Member State = 95 136 kg.

ANNEX V

Ireland

(in kg)

Categories of permitted critical uses	
Flour mills	888
Total	888

Stocks of methyl bromide available for critical uses in the Member State = 0 kg.

ANNEX VI

The Kingdom of the Netherlands

<i>(in kg)</i>	
Categories of permitted critical uses	
Postharvest disinfestations of strawberry runners	120
Total	120

Stocks of methyl bromide available for this critical use in the Member State = 0 kg.

ANNEX VII

The Republic of Poland

<i>(in kg)</i>	
Categories of permitted critical uses	
Medicinal herbs and dried mushrooms as dry commodities	2 700
Strawberry runners	28 000
Cocoa and coffee	1 836
Total	32 536

Stocks of methyl bromide available for critical uses in the Member State = 915,3 kg.

ANNEX VIII

The United Kingdom of Great Britain and Northern Ireland

(in kg)

Categories of permitted critical uses	
Strawberry fruit (protected and open field)	10 000
Ornamental tree production for control of <i>Verticillium</i> wilt	2 500
Raspberry	1 500
Flour and rice mills	7 900
Wheat, maize and rice buildings operated by Quaker Oats, Kelloggs, Weetabix Ltd, Ryecroft and EOM	6 098
Processing plants operated by Warehouse and Spice Grinding Facility (Pataks Foods Ltd); and processing plants associated with herbs and spices operated by British Pepper and Spice Ltd, Lion Foods, and East Anglian Food Ingredients	1 591
Dried commodities (nuts, dried fruit, rice, beans, cereal grains, edible seeds) for Whitworths Ltd	900
Mill, associated biscuit food processing, finished product and storage areas operated by Ryvita Company Ltd (Dorset)	839
Structures — facilities and equipment, processing and storage operated by Whitworths Ltd	450
Occasionally infested spice products (including papadoms) processed by McCormick (UK) Ltd, British Pepper and Spice Ltd, East Anglian Food Ingredients and Pataks Foods Ltd	37
Specialised cheese stores (*)	1 248
Total	33 063

(*) Methyl bromide cannot be used from 1 September to 31 December 2006 unless an essential use authorisation is granted to the United Kingdom for this biocidal use under Article 4a of Regulation (EC) No 2032/2003.

Stocks of methyl bromide available for critical uses in the Member State = 5 227 kg.