

Layer ("Montreal Protocol" or "Protocol") was signed by the United States and ratified on April 4, 1988. The Protocol establishes controls on the production and consumption of ozone depleting chemicals.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports - exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA).

The Clean Air Act Amendments of 1990 direct the EPA to issue regulations to implement the provisions of the Protocol within the United States. Accordingly, EPA developed a scheme of production and consumption controls relative to substances addressed by the Protocol. The current regulatory requirements of the Stratospheric Ozone Protection Program implement the provisions of the Protocol and the Clean Air Act (CAA) by limiting the production and consumption of ozone-depleting substances. These regulatory requirements are codified at subpart A to part 82 of Volume 40 of the Code of Federal Regulations (40 CFR part 82, subpart A). As the control measures of the Protocol have been amended or adjusted, and in consideration of other factors, subpart A has also been amended. For example, following the amendments to the Protocol made at the Fourth Meeting of the Parties in Copenhagen in 1992, a number of changes to the control provisions of subpart A to 40 CFR part 82 were made, including an accelerated phaseout of ODS production and consumption. EPA published a final regulation in December of 1993, implementing the United States' obligation under the Copenhagen amendments (58 FR 65018). Other regulations amending Subpart A include those published on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (64 FR 53290).

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed (40 CFR 82.4(b)). They also allow limited manufacture if the substances are (1) exported to countries

operating under Article 5 of the Protocol or (2) produced for essential uses as authorized by the Protocol and the regulations.

Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and 40 CFR part 82, subpart A, (3) imported for destruction or transformation only, or (4) a transshipment (*i.e.*, from one foreign country through the U.S., to another foreign country) or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4(d), 82.13(g)(2)).

II. What Chemicals Are Addressed by Today's Action and How Are They Used?

Today's action will affect only one chemical, chlorobromomethane (CBM).¹ CBM is a chemical compound found in trace quantities in the atmosphere with both natural and man-made sources. The Parties to the Montreal Protocol designated the ozone-depleting potential of CBM as 0.12. This value is consistent with an examination of scientific investigations on this topic, which concluded that an appropriate range for the ODP of CBM is 0.07–0.15 (See 64 FR 22985, 4/18/99).

The uses of CBM are described in the NPRM published in the **Federal Register** on October 29, 2002 (67 FR 65916).

III. What Are the Elements of the International Agreement To Regulate CBM?

The NPRM (67 FR 65916, 10/29/02) discussed the Parties' preliminary consideration of CBM as an ozone depleting substance as well as the provisions adopted at the Parties' meeting in Beijing in 1999.

IV. What Are the New U.S. Requirements Imposed by Today's Action?

A. Legal Authority

Several provisions of the CAA provide the legal authority for today's action. Section 602(a) provides EPA with the general authority to list Class I substances. Section 602(a) requires EPA to add to the list of Class I substances those substances that it finds cause or contribute significantly to harmful effects on the stratospheric

¹ The terms chlorobromomethane and bromochloromethane are synonymous. They both refer to the chemical, CH₂BrCl. Both terms can be found in industry, scientific, and regulatory documents.

ozone layer. Section 602(a) also requires the listing of new substances, pursuant to subsection 602(c), that have an ozone-depleting potential of 0.2 or greater.

Section 602(c) requires that the Administrator place newly added Class I substances, to the extent consistent with the Montreal Protocol, either into an existing Group or a new Group. Whenever EPA adds a substance to the Class I list, EPA is also required by section 602(e) to assign a numerical value representing the substance's ozone-depleting potential (ODP). Section 602(e) requires this ODP numerical value to be consistent with the Montreal Protocol if such ODP is specified by the Montreal Protocol.

Those substances listed as a Class I (or Class II) substance are then subject to the monitoring and reporting requirements as set forth and implemented under section 603. Section 603(b) requires that on a quarterly basis, or other such basis as EPA may prescribe, a report be filed with EPA regarding the amount of substance(s) produced, imported, and exported during the preceding reporting period.

Section 604 sets forth the general phase-out schedule of Class I substances and exceptions to the phase-out. Section 604(a) requires EPA to promulgate regulations implementing the phase-out schedule for Class I substances set forth in the CAA. The section 604 phaseout date for most Class I substances is January 1, 2000; however, under section 602(d), EPA may establish a later phaseout date for a newly listed substance if the section 604 phaseout date is unattainable, considering when the substance is listed.

Section 614(b) requires that Title VI of the CAA be "construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, * * *, and shall not be construed, interpreted, or applied to abrogate the responsibilities of the United States to implement fully the provisions of the Montreal Protocol." Section 614(b) requires that in the case of any conflict "between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." Thus, today's actions list CBM and put in place the phaseout controls consistent with the Montreal Protocol.

B. Specific Elements of Today's Action

EPA received no comments in response to the actions proposed in the NPRM (67 FR 65916, 10/29/02). Therefore, EPA is finalizing these actions as they were proposed.

The effective date for all of today's actions will be 30 days from the date of publication of today's rule in the