

Federal Register. Under section 604(b) of the CAA, unless otherwise stated, the phaseout date for Class I substances is January 1, 2000. However, pursuant to section 602(d), EPA may establish a later phaseout date for a newly listed substance if the section 604(b) date is unattainable. Because the January 1, 2000 phaseout date is in the past, it is unattainable. Therefore, EPA is establishing a later phaseout date linked to the publication date of the final rule.

Today's effective date takes into consideration that the Beijing Amendments entered-into-force under the Protocol on February 25, 2002, for Parties that have ratified the amendment package. The U.S. Senate gave their advice and consent to the ratification of the Beijing Amendment package on October 9, 2002, but the U.S. must still officially deposit its instrument of ratification with the United Nations. Ninety days following the date the U.S. officially deposits the instrument of ratification for the Beijing Amendment package, the U.S. assumes obligations to comply with the provisions of the Beijing Amendment. Thus, EPA needs to have put in place (prior to the deposit of the instrument of ratification) final regulatory programs that will implement and ensure U.S. compliance with the provisions of the Beijing Amendment package.

1. Listing CBM and Controls

Today's action creates a new Group (Group VIII) of class I substances, places CBM in this new Group, and assigns CBM an ODP of 0.12. Today's action establishes a full ban on CBM production and import. This ban does not apply to the production or import of CBM that is subsequently transformed or destroyed, or to imports of transhipments or heels (see section I). There are no interim phasedown levels; that is, production and import are unrestricted until 30 days after publication of this rule.

Today's action does not allow production for the "basic domestic needs" of Article 5 countries for reasons described in section III B of the NPRM (67 FR 65916, 10/29/02).

If there is a need for CBM for laboratory and analytical uses after the phaseout, a framework exists to allow the inclusion of CBM in the production and import exemption for laboratory and analytical uses, described in greater detail in section IV.B.3 of this Preamble.

2. Ban on Trade with Non-Parties

Today's action also prohibits CBM import from and export to a foreign state that is not a Party to the 1999 Beijing Amendments to the Protocol. In

accordance with previously established provisions under the Protocol, current EPA regulations (60 FR 24970; 40 CFR 82.4(l)) prohibit certain class I controlled substances from export to or import from foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (e.g., the London Amendments). With today's action, EPA is adding a new subparagraph, § 82.4(l)(5) regarding a CBM trade ban that will become effective 30 days after the date of publication of today's rule in the **Federal Register**.

A list of Parties that have ratified the Montreal Protocol and successive amendments to the Protocol is published as Annex 1 in appendix C to subpart A with today's final action. For the purposes of the trade ban in today's action, companies should refer to appendix C to subpart A of part 82 to identify nations that have not yet ratified the Beijing Amendments. CBM imports from or exports to these nations that have not ratified the Beijing Amendments are prohibited. EPA will publish notices on a periodic basis to update this list (appendix C) to reflect when Parties ratify the Montreal Protocol and its amendments. For additional information on countries that have ratified the Protocol and its amendments, visit the website of the United Nations Environment Program (UNEP) Ozone Secretariat at www.unep.org/ozone/ and look for the "Status of Ratification."

3. Laboratory Essential Use Exemption

Article 21 of the Montreal Protocol allows for the possibility of "essential use" exemptions from the phaseout established for CBM. The Parties have set up a framework for exempting phased out ozone-depleting substances for laboratory and analytical uses under the context of the essential use exemption. EPA has also provided a *de minimis* exemption for essential laboratory uses of class I ODSs. The criteria identifying exempt applications are specified in appendix G to 40 CFR part 82, subpart A.

The existing framework for exempting laboratory and analytical uses is found in the criteria listed in appendix G of subpart A of 40 CFR part 82. Entities wishing to use the exemption for laboratory and analytical uses for CBM should refer to this criteria, which include purity standards, containment requirements, and recycling and disposal requirements for the substance. No prior approval is needed to use the exemption for continued production and import of CBM, as long as the criteria listed in appendix G of subpart

A of 40 CFR part 82 are met and the recordkeeping and reporting requirements specified in 40 CFR 82.13 (v) to (z) of subpart A, which are summarized later in this Preamble, are followed. For further information about the essential use exemption, you may refer to the NPRM (67 FR 65916, 10/29/02).

On February 11, 2002, EPA extended the exemption for laboratory and analytical uses through the year 2005, while eliminating the following uses, consistent with Decision XI/15: (a) Testing of oil, grease and total petroleum hydrocarbons in water; (b) Testing of tar in road-paving materials; and (c) Forensic finger-printing (67 FR 6352). However, it should be noted that the Parties to the Montreal Protocol have not extended the global laboratory and analytical essential-use exemption indefinitely. This issue is further discussed at 66 FR 14767 (3/13/01).

4. Process Agents

Controlled substances produced or imported as process agents are listed in table A of Decision X/14 of the Meetings of the Parties to the Montreal Protocol. Parties may propose additions to the list of controlled substances designated as process agents by sending a detailed proposal to the Ozone Secretariat, which will forward them to the Technology and Economic Assessment Panel (TEAP). The Panel will then investigate the proposed change and make a recommendation to the Parties whether or not the proposed use should be added to the list by decision of the Parties.

In advance of publication of the NPRM (67 FR 65916, 10/29/02), EPA received a letter from one stakeholder requesting that their use of CBM as a solvent in the process of producing a polymer additive be considered a process agent use. Based on information in this letter, EPA determined this company's use of CBM to be exempt from restrictions on controlled substances in 40 CFR part 82, subpart A. EPA submitted a request to the Parties to the Protocol to add this use of CBM to the list of process agents in Table A of Decision X/14 and to change the emissions limit for the United States in Table B to reflect this addition. The TEAP considered this U.S. request regarding the process agent use of CBM and recommended to the Parties its inclusion in Table A of Decision X/14. The Parties are expected to act on the U.S. request during their meeting in the fall of 2003.