

allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

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: production + imports – exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical’s phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the class I controlled ozone-depleting substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

III. What Is Methyl Bromide?

Methyl bromide is an odorless and colorless gas used in the U.S. and throughout the world as a fumigant. Methyl bromide, which is toxic to living things, is used in many different situations to control a variety of pests, such as insects, weeds, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide, as well as information on the basis for listing methyl bromide as a class I substance, can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Updated information on methyl bromide can be found at the following sites of the World Wide Web: <http://www.epa.gov/ozone/mbr/> and <http://www.teap.org> or by contacting the Stratospheric Ozone Protection Hotline at 1-800-296-1996.

IV. What Is the Regulatory Background Relating Specifically to Methyl Bromide?

The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country’s level of methyl bromide

production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993, listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in § 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). Consistent with the CAA requirements for newly listed class I ozone-depleting substances, this rule established a 2001 phaseout for methyl bromide. In the rule published in the **Federal Register** on December 30, 1993 (58 FR 69235), we established baseline methyl bromide production and consumption allowances for specific companies in § 82.5 and § 82.6.

At their 1997 meeting, the Parties agreed to establish the phaseout schedule for methyl bromide in industrialized countries. The U.S. Congress followed by amending the CAA (in Oct. 1998) to direct EPA to promulgate regulations reflecting the Protocol phaseout date of 2005, with interim phasedown steps in 1999, 2001, and 2003. EPA promulgated a regulation that was published in the **Federal Register** on June 1, 1999 (64 FR 29240), instituting the initial interim reduction of 25 percent in the production and import¹ of methyl bromide for the 1999 and 2000 control periods. In a subsequent rule, published in the **Federal Register** on November 28, 2000 (65 FR 70795), EPA implemented reductions in the production and consumption of methyl bromide for 2001 and beyond, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; and, beginning January 1, 2005, the complete phaseout of methyl bromide.

V. What Is the Ban on Trade of Methyl Bromide With non-Parties to the Protocol?

With today’s action EPA is proposing to prohibit the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Protocol. EPA is banning trade in methyl bromide with non-Parties to the Copenhagen Amendments to the

Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments. Article 4, paragraph 1 *qua* of the Protocol bans the import of methyl bromide (Annex E substances) from any country not a Party to the Protocol amendments creating control obligations for methyl bromide (Copenhagen Amendments). Later refinements made to the methyl bromide phaseout schedule were in the form of adjustments, not amendments, and any Party that has ratified the Copenhagen Amendments is subject to those adjustments. Article 4, paragraph 2 *qua* of the Protocol bans exports of methyl bromide to any Party that has not ratified the Copenhagen Amendments to the Protocol. These bans were added as part of the 1997 Montreal Amendments to the Protocol. Section 614 of the CAA states, “This title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this title shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.” Pursuant to section 614, today’s action fulfills the U.S. obligation to implement the methyl bromide trade ban provisions of the Montreal Protocol.

Current regulations (60 FR 24970; 40 CFR 82.4(l)(2)) prohibit the import and export of certain class I controlled substances from or to foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (e.g., the London Amendments). These bans on imports from and exports to non-Parties to amendment packages reflect an agreed strategy by the Parties to the Montreal Protocol to encourage ratification of each successive amendment package to the Protocol and to ensure that controlled ozone-depleting substances are not provided to countries that have not agreed to control measures.

A list of Parties that have ratified the Montreal Protocol and that have ratified successive amendments to the Protocol is published with today’s action in appendix C. For the purposes of today’s

¹ The formula for “consumption” is production + import – export. Because “consumption” encompasses “production and import”, production and import controls also have the effect of controlling consumption.