144 square inches (929 sq. cm.), and 40 percent for area or areas of 144 square inches (929 sq. cm.) or greater.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

**Executive Order 12866**

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.)

**List of Subjects in 38 CFR Part 4**

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: October 3, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

## PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

2. Section 4.118 is amended by:

A. Adding three Notes immediately before diagnostic code 7800.

B. Revising diagnostic codes 7801 and 7802.

The addition and revision read as follows:

**§ 4.118 Schedule of ratings—skin.**

Notes to the Schedule of Ratings for Skin:

(1) For purposes of evaluating scars, scars located in two or more of the following locations are considered to be in widely separated areas of the body:

(a) The anterior surface of the left upper extremity.

(b) The anterior surface of the right upper extremity.

(c) The posterior surface of the left upper extremity.

(d) The posterior surface of the right upper extremity.

(e) The anterior surface of the left lower extremity.

(f) The anterior surface of the right lower extremity.

(g) The posterior surface of the left lower extremity.

(h) The posterior surface of the right lower extremity.

(i) The anterior surface of the trunk.

(j) The posterior surface of the trunk.

(k) The head, face, and neck.

(2) Assign a single evaluation for all superficial scars in each widely separated area of the body. Increase the evaluation for scar(s) in each widely separated area of the body by 10 percent if any of the scars in a given area meet the criteria for evaluation under at least two diagnostic codes (among 7802, 7803, or 7804).

(3) Assign a single evaluation for all deep scars in each widely separated area of the body.

* * * * *

7801 Scars, other than head, face, or neck, that are deep or that cause limited motion:

Area or areas of 144 square inches (929 sq. cm.) or greater—40

Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.)—30

Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.)—20

Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.)—10

**Note:** A deep scar is one associated with underlying soft tissue damage.

7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion:

Area or areas of 144 square inches (929 sq. cm.) or greater—10

**Note:** A superficial scar is one not associated with underlying soft tissue damage.

* * * * *

[FR Doc. 02–27408 Filed 10–28–02; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 82

**[FRL–7400–3]**

**RIN 2060–AJ27**

## Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** With this action, EPA is proposing to add chlorobromomethane (CBM) to the list of controlled substances subject to production and consumption controls in accordance with both the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and EPA's regulations under the Clean Air Act Amendments of 1990 (CAAA). Today's action proposes to create a new Group (Group VIII) of class I substances for CBM, and to designate the value of CBM's ''ozone depleting potential'' (ODP) as 0.12. In accordance with the Protocol, today's action proposes phasing out CBM production and consumption upon publication of the final rule with permitted exemptions. Today's action also proposes to restrict trade in CBM with countries who are not Parties to the Beijing Amendments to the Protocol.

**DATES:** Comments must be received in writing by November 29, 2002, unless a public hearing is requested. If a public hearing takes place, it will be scheduled for November 13, 2002, after which comments must be received on or before December 13, 2002. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on November 5, 2002. After that time, interested parties may call EPA's Stratospheric Ozone Protection Information Hotline at 1–800–296–1996 to inquire with regard to whether a hearing will be held, as well as the time and place of such a hearing.

**ADDRESSES:** Public comments and data specific to this action should be submitted in duplicate (two copies) to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XII, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460. If you plan to submit comments, please also notify Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania

Avenue, NW., Washington, DC 20460, (202) 564–3514.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A–92–13, Section XII. The docket is located in room M–1500, Waterside Mall (Ground Floor), at the above address. The materials may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548. The docket may charge a reasonable fee for copying docket materials.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

**FOR FURTHER INFORMATION CONTACT:** The Stratospheric Ozone Information Hotline at 1–800–296–1996, or Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–3514; *akhtar.jabeen@epa.gov.* Overnight or courier deliveries should be sent to the office location at 4th floor, 501 3rd Street, NW., Washington, DC, 20001. You may also visit the Ozone Depletion web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Ozone Protection regulations, the science of ozone depletion, and other topics.

**SUPPLEMENTARY INFORMATION:** This document concerns proposed amendments to the production and import controls for ozone-depleting substances (ODS). The proposed amendment concerns the addition of a new controlled substance, chlorobromomethane (CBM), to the list of substances already subject to controls related to production, import, export, destruction, transhipment, essential uses, and feedstock uses.

The regulated categories that may be affected by this proposed action include:

| Category | SIC | NAICS | Examples of potentially regulated entities |
|---|---|---|---|
| 1. Industrial organic chemicals, NEC | 2869 | 325199 | Producers, importers, or exporters of CBM. |
| 2. Pharmaceutical preparations | 2834 | 325412 | Transformers of CBM. |
| 3. Pesticides and agricultural chemicals, NEC | 2879 | 32532 | Transformers of CBM. |
| 4. Chemicals and allied products, NEC | 5169 | 42269 | Lab suppliers of CBM. |
| 5. Testing laboratories, except veterinary testing labs | 8734 | 54138 | Lab users of CBM. |
| 6. Medical and diagnostic laboratories | 8071 | 6215 | Lab users of CBM. |
| 7. Research and development in the physical, engineering and life sciences | 8731, 8733 | 54171 | Lab users of CBM. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., could be regulated by this proposed action, you should carefully examine the applicability criteria in § 82.1(b) of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Table of Contents**



## I. What Is the Scientific and Legal Background for Regulations To Phase Out Ozone-Depleting Substances?

International and national regulatory activities to phase out ozone-depleting substances (ODSs) arose from scientific findings linking ODSs with stratospheric ozone depletion. The stratospheric ozone layer protects the Earth from penetration of harmful ultraviolet (UV–B) radiation. Scientific evidence links the release of certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide, to the depletion of the stratospheric ozone layer. Ozone depletion harms human health and the environment through increased incidence of cataracts, certain skin cancers, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

In response to the body of evidence linking chlorofluorocarbons and other chlorinated and brominated compounds to ozone depletion, the international community reached agreement in 1987 on a landmark treaty. This treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer (''Montreal Protocol'' or ''Protocol'') was originally signed by 46 nations, including the United States. The Protocol establishes

controls on the production and consumption of ozone depleting chemicals. The Protocol has been amended and adjusted numerous times in the 15 years since its original signing, and 183 nations have now ratified the original Protocol (as of 1/24/02).

The Clean Air Act Amendments of 1990 direct the Environmental Protection Agency (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 the Protocol 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).

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). Furthermore, the objective that consumption shall not exceed zero, except for exempted uses (as is the ultimate objective under the Montreal Protocol and CAA for all ozone-depleting substances) is achieved through a ban on production and on import. Quantities of exports are not controlled as such (although trade in controlled substances with non-Parties to the Protocol is controlled for reasons explained in section IV.C.3. of this Preamble). Yet by setting production and import in the above equation equal to zero, any positive quantity of export in the above equation will result in a value for consumption which is less than zero. Under the regulatory program established by EPA to implement the Montreal Protocol, limited exceptions to the ban on the import of phased-out class I controlled substances 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 transhipment (*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 Proposed Action and How Are They Used?

Today's proposed 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. Research indicates that CBM has an atmospheric lifetime of ~0.21–0.25 $yr^{-1}$. The Parties to the Montreal Protocol designated the ODP 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).

Preliminary research indicates that the past and current major industrial applications of CBM have been in 4 main areas: in the fire protection sector, as an explosion suppression agent, as a solvent, and as a feedstock in the manufacture of other chemicals. Informal discussions with CBM producers indicate that the majority of CBM is produced for feedstock use. EPA seeks comment as to whether any other uses of CBM exist that have not been captured in the following subsections.

### *A. CBM as a Fire Extinguishing Agent*

Halogenated agent fire extinguishers were initially developed in the early 1900s and filled an important fire protection niche. Halogenated agent extinguishers were efficient on fires in materials where water or largely water solutions were ineffective, such as on fires involving electrical arcs and on fires involving volatile liquids.

Increasing concerns about short and long-term adverse health effects of CBM on the lungs, kidneys, skin, and liver led to the end of this agent's acceptability as a fire extinguishing agent for use in areas occupied by humans. In the 1960s, Underwriters' Laboratories, Inc. withdrew recognition of fire extinguishing agents with a toxicity classification exceeding a certain threshold. This action affected CBM, carbon tetrachloride and methyl bromide as fire extinguishing agents. In the early 1980s, the Occupational Safety and Health Administration (OSHA) banned the use of both carbon tetrachloride and CBM as fire extinguishing agents in areas where employees can be exposed to the agent or its side effects. OSHA does, however, permit the use of CBM as an explosion suppression agent in unoccupied spaces (29 CFR Part 1910, Subpart L, Appendix A (Section 160)).

Preliminary research by EPA also indicates that CBM was used in some military applications (*e.g.*, in aircraft fire protection). However, Department of Defense (DoD) officials indicate that no current requirements exist or are expected to exist for CBM, and that today's proposed action will not adversely affect DoD.

### *B. CBM as an Explosion Protection Agent*

CBM is an effective explosion protection agent. Explosions affect many industries such as plastics, forest products, powdered foods, waste disposal, grain, coal, chemical, petrochemical, food processing, brewing, and pharmaceutical. Explosions are broadly classified as deflagrations or detonations, depending upon the speed at which the combustion zone propagates. Five primary methods exist for controlling deflagrations: prevention, containment, venting, suppression, and isolation. CBM and other halon agents were used in explosion suppression systems. Such systems operate by detecting an explosion in its early stages and introducing a suppressant (*e.g.*, CBM) that prevents the combustion reaction from continuing.

EPA research indicates that one U.S. company historically manufactured explosion protection systems containing CBM. Manufacture and sale of such systems ended in the early 1990s. No significant imports of such systems into this country are known. It is estimated that several hundred such explosion protection systems are currently deployed among various facilities throughout the United States. An EPA regulation, published on April 28, 1999 (64 FR 22982), found CBM to be unacceptable as a substitute for Halon

[1] The terms chlorobromomethane and bromochloromethane are synonymous. They both refer to the chemical, $CH_2BrCl$. Both terms can be found in industry, scientific, and regulatory documents.

1301 in total flooding applications in the fire suppression and explosion protection sector. EPA published this rule under Section 612 of the CAAA, which authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. The program generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. In the April 1999 action, the SNAP program found that other alternative Halon 1301 replacement agents existed with zero or lower ozone-depleting potential than CBM.

*C. CBM as a Solvent*

CBM has been considered as a potentially promising cleaning agent, either alone or as a solvent blend. Under EPA's SNAP program, the Agency received an application requesting consideration of CBM as a substitute for CFC–113 and methyl chloroform in solvents cleaning of metals, electronics, and in precision cleaning.

In a regulation published on April 28, 1999 (noted above), EPA determined that CBM was unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning, electronics cleaning and precision cleaning because numerous other alternative substances exist with lower environmental risks (64 FR 22982). That regulation also established that CBM is unacceptable in aerosols (as a solvent) as a substitute for CFC–113, methyl chloroform, and HCFC 141b, and in adhesives, coatings, and inks (as a carrier solvent) as a substitute for CFC–113, methyl chloroform, and HCFC 141b.

*D. CBM as a Feedstock*

According to preliminary research by EPA, approximately 80% of CBM produced in the past has been used as a feedstock in the manufacture of pharmaceutical products, water treatment chemicals, and a biocide. Today's proposed action would not affect production or import (except for import from non-Party countries; see section IV.C.1.) of CBM when that CBM is subsequently transformed, as it is when it is used as a feedstock. ''Transform'' means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes (See 40 CFR 82.3). The definition of ''production'' of controlled substances in § 82.3 explicitly excludes ''the manufacture of a controlled substance that is subsequently transformed'' and therefore production controls will not apply to such manufacture. Also, § 82.4 (c) and (d) exclude controlled substances ''that are transformed or destroyed'' from the Class I import prohibition.

*E. Process Agents*

The Parties to the Protocol recognize that certain controlled ozone-depleting substances, because of their unique chemical and/or physical properties, can facilitate an intended chemical reaction and/or inhibit an unintended chemical reaction. The term ''process agent'' is used to refer to controlled substances in such applications. Controlled substances are typically used in chemical processes as process agents for at least two of the following unique chemical and/or physical properties: (1) Chemically inert during a chemical reaction; (2) physical properties (*e.g.*, boiling point, vapor pressure, specific solvency); (3) to act as a chain transfer agent; (4) to control the desired physical properties of a process (*e.g.*, molecular weight, viscosity); (5) to increase plant yield; (6) non-flammable/non-explosive; and (7) to minimize undesirable by-product formation. Source: Process Agents Task Force (PATF), 2001 (available at *http://www.teap.org/html/process_agents_reports.html*).

Formally, the term ''process agents'' under the Montreal Protocol means ''the use of controlled substances for the applications listed in table A'' of Decision X/14 of the Meetings of the Parties to the Montreal Protocol (Handbook for the International Treaties for the Protection of the Ozone Layer. Ozone Secretariat, UNEP, Nairobi, Kenya, p. 85. Available at *http://www.unep.org/ozone/Handbook2000.shtml).* Presently, four controlled substances are listed as process agents: carbon tetrachloride (CTC), CFC–11, CFC–12, and CFC–113. These are used in the manufacture of chlorine, polymers, chlorinated (intermediate) products, pharmaceuticals, and pesticides and other agricultural chemicals.

Controlled substances produced or imported as process agents (as listed in table A of Decision X/14) for use in plants and installations that were in operation before January 1, 1999, are not counted in the calculation of production and consumption of controlled substances from January 1, 2002, and thereafter. That is, production and import of controlled substances as process agents listed in table A of Decision X/14 are not subject to production and import restrictions under the Montreal Protocol. In the case of non-Article 5 Parties such as the U.S., the emissions of controlled substances in these processes must be reduced to insignificant levels as defined in table B of Decision X/14.

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.

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. EPA has approved this company's use of CBM as a process agent use and has submitted a request to the TEAP 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. EPA seeks comment as to whether any other applications of CBM exist that should be submitted for consideration as a process agent. Commenters should provide detailed information on the quantities of chemicals involved, the chemical process, and the products. EPA also seeks comment as to the anticipated impacts, if any, of this proposed rule on such potential process agent uses.

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

*A. Preliminary Discussions on Controlling CBM*

Interest in banning production of CBM was first raised in the Montreal Protocol forum in 1998. At the Tenth Meeting of the Parties to the Protocol in November, 1998, the suggestion was made that the Parties immediately ban CBM. CBM was recognized as a ''new'' and unregulated substance with a high ODP. In response to concern that CBM was being aggressively marketed to developing countries as an ''ozone-safe'' alternative solvent, and that unhindered global production of CBM could significantly harm or threaten the ozone layer, the Parties to the Montreal Protocol agreed at the Tenth Meeting to take measures to discourage its production and marketing. The 1999 Report of the Technology and Economic Assessment Panel included a recommendation for regulatory controls of CBM from the Solvents Technical Options Committee (STOC):

In view of the predicted quantities of CBM, if the market for this substance is developed

unhindered and the ODP, which is within the same range as HCFCs regulated under the Montreal Protocol, the STOC recommends that the Parties consider appropriate action to prevent or limit further depletion of the ozone layer due to this substance.'' [2]

It should be noted that there was reason to believe that a significant future market for CBM might exist in the absence of regulation. For example, industry had identified CBM as a potentially promising cleaning agent in the 1990s; and as mentioned above, EPA's SNAP program had received an application requesting consideration of CBM as a substitute for CFC–113 and methyl chloroform in solvents cleaning of metals, electronics, and in precision cleaning. Although EPA's 1999 regulation noted above (64 FR 22982) determined that CBM was unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning, electronics cleaning and precision cleaning, as well as unacceptable as a substitute for Halon 1301 in total flooding applications in the fire suppression and explosion protection sector, these restrictions do not control CBM use outside of the United States.

*B. The ''Beijing Amendments'' and Their Provisions Regarding CBM*

The Parties to the Protocol at the Eleventh Meeting (''Beijing Amendments'') agreed to list CBM as a controlled substance and establish its phaseout schedule. The specific terms of the Beijing Amendments can be found at *http://www.unep.org/ozone/Beijing-Amendment.shtml* and also in the Docket to this proposed rulemaking. The Parties agreed to add a new group of controlled substances to Annex C. This new group, Group III, consists of a single entry, chlorobromomethane, which was assigned an ODP of 0.12. Furthermore, the Parties agreed to add a new Article (''Article 2I: Bromochloromethane'') to the Protocol which specifies that as of January 1, 2002, the consumption and production of the controlled substance in Group III of Annex C shall not exceed zero, except for production or consumption necessary to satisfy uses that may be agreed by the Parties in the future to be essential.

The Protocol contains no exemptions from production controls for CBM to meet the ''basic domestic needs'' of ''Article 5'' parties as it does for many other groups of ODSs. For other ODSs, the Montreal Protocol allows Parties to exceed their level of baseline production to accommodate the ''basic domestic needs'' of Article 5 countries. Article 5 countries are defined by the Parties as developing countries whose annual calculated level of consumption of controlled substances falls below certain thresholds. The basis for allowances for Article 5 Parties has been described previously (52 FR 47496, 12/14/87). For certain ODSs, the Protocol allows excess production for Article 5 countries and EPA has accordingly provided for such excess production in its regulations (see 40 CFR Part 82, Subpart A, 82.9(a)). In contrast, when the control measures set forth in the Protocol do not provide for such excess production, no ''Article 5'' provision has been granted in EPA regulations. Because Article 2I of the Protocol, which specifies controls on CBM, does not include the provision for granting Article 5 allowances for CBM, such a provision will not be made with today's proposed action (see discussion in Section IV.C.5.a).

In addition to the control measures described above, the Beijing Amendments add to the Protocol a ban on import of CBM from, and export of CBM to, non-Parties to the Beijing Amendments. Under the terms of the Beijing Amendments, each Party is required to implement this trade ban on CBM within 1 year of the date of entry into force of the Amendments. In general, under the Montreal Protocol and its amendments, bans on imports from and exports to non-Parties 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.

Finally, as with most other groups of ODSs regulated under the Montreal Protocol, the phaseout of CBM production and consumption accommodates the future possibility of ''essential use'' allowances. At the Fourth Meeting of the Parties to the Protocol in Copenhagen (November 23–25, 1992), the Parties established criteria for determining ''essential uses'' that could be exempted from the phaseout of production and importation. These criteria and the nomination process are described in more detail in earlier **Federal Register** notices (64 FR 50084, 9/15/99).

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

*A. Legal Authority*

Several provisions of the CAA provide the legal authority for today's proposed 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 ozone layer. 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. As explained in Section III A of today's proposed action, EPA believes that CBM may cause or contribute significantly to the harmful effects on the stratospheric ozone layer. 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 CAAA 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

[2] April 1999 Report of the Technology and Economic Assessment Panel, Part V, 2.7.1.

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 proposed actions list CBM and put in place the phaseout controls consistent with the Montreal Protocol.

*B. Specific Elements of Today's Proposed Action*

1. Listing CBM and Controls

Today's proposed action would create a new Group (Group VIII) of class I substances, place CBM in this new Group, and assign CBM an ODP of 0.12. Today's proposed action would establish a full ban on CBM production and import. This ban would 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). No interim phasedown levels are proposed; that is, production and import are unrestricted until the effective date of the ban. It should be noted that EPA is not proposing baseline allowances for CBM and therefore will not at this time collect information on baseline production and consumption of CBM.

Today's action does not propose production for the ''basic domestic needs'' of Article 5 countries for reasons described in Section III B of this Preamble. After the total phaseout of CBM production and import, EPA anticipates that the Parties to the Protocol may authorize inclusion of CBM in the exemption for laboratory and analytical uses, described in greater detail in Section IV.B.2 of this Preamble. EPA is proposing reporting and recordkeeping requirements for persons who produce, import, destroy, transform, tranship, or export CBM, as well as for CBM authorized for essential uses. In addition, EPA is proposing that persons wishing to import used, recycled or reclaimed CBM must comply with the petition process described in 40 CFR 82.4(j) and 82.13(g)(2), (3) and (4).

EPA is proposing that the effective date for all of today's proposed actions would be 30 days from the date of publication of the final rule in the **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 obviously unattainable. Therefore, EPA is proposing to establish a later phaseout date linked to the publication date of the final rule.

Today's proposed 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.

2. Ban on Trade With Non-Parties

Today's action also proposes to prohibit 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 proposing adding a new subparagraph, § 82.4(l)(5) regarding a CBM trade ban that would become effective 30 days after the date of publication of the final rule in the **Federal Register**. However, in going forward with today's proposal, EPA wishes to note that it is also considering alternative dates for making the trade ban effective. EPA is also considering an effective date immediately upon publication of the final rule. This other approach is being considered because under the Protocol, the CBM trade ban will go into effect one year from entry-into-force of the Beijing Amendments. Since the Beijing Amendments entered-into-force on February 25, 2002, the effective date of the trade ban for those countries that have ratified the Amendments would be February 25, 2003. An effective date for the trade ban for the U.S. could therefore be on or after this 2003 date.

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 (including the trade ban on CBM).

A revised 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 proposed action. For the purposes of the trade ban proposed 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, although this list will likely change by the time a final rule is published. CBM imports from or exports to these nations that have not ratified the Beijing Amendments would be 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. Essential Use Exemptions

Article 2I of the Montreal Protocol allows for the possibility of ''essential use'' exemptions from the phaseout established for CBM. The Parties to the Protocol established a process in Decision IV/25 by which they can determine what uses of a controlled substance are considered ''essential uses.'' In contrast, the CAA delineates several specific exemptions under which uses of ODS may be considered to be exempt from the phaseout of ODSs. Thus, a use that is considered an ''essential use'' under the Protocol, taking into account more recent decisions under the Protocol, may or may not be specifically exempt from the phaseout under the CAA. Section 614 of the CAA dictates that the more stringent provision should prevail when there is a conflict with the Protocol. In some instances the CAA may contain the more stringent provision.

In 2001, EPA provided a *de minimis* exemption for essential laboratory uses of class I ODSs based on the criteria

listed in Appendix G of subpart A of 40 CFR part 82. Production and import of class I controlled substances for certain narrowly defined laboratory and analytical applications are exempt from the production and import phaseout (*See* 66 FR 14760 (3/13/01)). The criteria identifying exempt applications are specified in Appendix G to 40 CFR Part 82, Subpart A. Furthermore, the production and import of class I controlled substances for laboratory and analytical applications must be conducted in accordance with the recordkeeping and reporting requirements specified in 40 CFR 82.13(v) to (z) of Subpart A, which are summarized later in this Preamble.

On February 11, 2002, EPA extended this exemption through the year 2005, while eliminating the following uses, consistent with Decision XI/15: (1) 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. Recordkeeping and Reporting Requirements

If EPA designates CBM as a class I ODS, existing recordkeeping and reporting requirements in 40 CFR 82.13 will apply to production, importation, destruction, transformation, transhipments, export, or essential uses of CBM. Potentially affected parties are urged to consult the relevant regulatory paragraphs in 40 CFR Part 82.13, Subpart A. In addition, guidance and reporting forms for these requirements are available from EPA's Stratospheric Ozone Hotline ((800) 296–1996). Today's proposal to extend the existing recordkeeping and reporting requirements to CBM will not take effect until EPA's information collection request (ICR) has been finalized. This process is described in Section VII.E.

(a) Producers

EPA is proposing that entities that produce CBM, as for other class I controlled substances, would submit a report to the EPA Administrator within 120 days of publication of the final rule, describing in detail how daily production quantities are measured and recorded, including how fugitive losses are accounted for and the estimated percent efficiency of production process. These entities would also maintain detailed records pertaining to (i) The quantity of controlled substances produced at each facility and the purposes for which they are produced, used, and sold, with certain written verifications; (ii) quantities of other chemicals produced within each facility and quantities of inputs used in the production of controlled substances; and (iii) shipments of controlled substances produced at each facility. These entities would, in addition, submit a quarterly report identifying quarterly production amounts and amounts sold, transferred, or exported (and specifying amounts transformed or destroyed by the producer or recipient), with appropriate verifications; and a list of the essential-use (including laboratory essential use) allowance holders from whom orders were placed and the quantity of essential-use controlled substances requested and produced, with appropriate verifications. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(b) Importers

According to EPA's existing requirements for ODSs, a person may import a used class I controlled substance if they comply with the petition process described in 40 CFR 82.4(j) and 82.13(g)(2),(3) and (4). Under the Protocol and the CAA, the import of ''used controlled substances'' does not count against a country's obligation to completely phase out import. Therefore, EPA is proposing that with the listing of CBM as a class I controlled substance, an importer of used, recycled, or reclaimed CBM would become subject to the requirements specified in these sections. Specifically, importers of used, recycled, or reclaimed controlled substances and transshipments would need to fulfill the import petition process.

This process requires that for each individual shipment of greater than 150 lbs, at least 15 working days before the shipment leaves the foreign port of export, the importer must submit to EPA a petition including the identity and quantity of the controlled substance; information pertaining to the source, foreign owner, and exporter of the controlled substance, and information regarding the previous use and identity of foreign reclaimer; information on import port of entry, vessel, and dates of shipment; and the intended use of the controlled substance (40 CFR 82.13(g)(2) and (g)(3)).

EPA is also proposing that entities that import CBM, would also be subject to the standard recordkeeping and reporting requirements for importers of class I substances. These include the requirement to maintain detailed records of the quantity of each controlled substance, including information and documentation pertaining to the amounts that may be in mixtures, that are used, recycled or reclaimed, that are for use or sold for use in processing resulting in their transformation or destruction, and that are imported for essential uses; and including documentation and/or certification relating to port of entry, country from which the substance was imported, bill of lading, the U.S. customs entry form, and intended use of the imported substance. Such entities must also submit to EPA a quarterly report summarizing the records described above and including certifications regarding the intended use of controlled substances (*e.g.*, transformation, destruction, essential uses). In the case of imports of used (including recycled or reclaimed) controlled substances, or heels of controlled substances, bills of lading or invoices must be labeled, indicating that the controlled substance is used, recycled, reclaimed, or a heel, as appropriate. See 40 CFR Part 82, Subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

(c) Exporters

EPA is proposing that exporters of CBM, as for other class I controlled substances, would submit information within 45 days after the end of the control period, including the names and addresses of the exporter and the recipient of the exports, the type and quantity of the controlled substances exported, percentage which is used, recycled, or reclaimed, date/port of export, amount exported to Article 5 countries, and documentation or certification relating to purchaser's or importer's intent to transform or destroy the controlled substance. Exporters of class I controlled substances must also label, in the case of exports of used (including recycled or reclaimed) controlled substance, bills of lading or invoices, indicating that the controlled substance is used, recycled, or reclaimed. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(d) Destroyers

EPA is proposing that entities that destroy CBM, as with other class I controlled substances, would submit a one-time report stating the destruction unit's efficiency and the methods used to determine destruction efficiency and to record the volume destroyed. Changes to these methods must be

reported within 60 days of the change. The report must also include names of other regulations applicable to the destruction process. Such entities must also provide the producer or importer from whom they purchased or received the controlled substances with a verification that controlled substances will be used in processes that result in their destruction. Destroyers of class I controlled substances must also report the names and quantities of class I controlled substances destroyed for each control period within 45 days of the end of the control period. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(e) Transformers

EPA is proposing that entities that transform CBM, as for other class I controlled substances, would provide the producer or importer of the controlled substances the IRS certification that the controlled substances are to be used in processes resulting in their transformation, and report the names and quantities of class I controlled substances transformed for each control period within 45 days of the end of the control period. *See* 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(f) Transhipments, Heels, and Essential Uses

EPA is proposing that entities that bring back a container with a heel of CBM to the United States would report quarterly the amount brought into the United States, certifying that the residual amount in each shipment is less than 10% of the volume of the container and will remain in the container and be included in a future shipment, be recovered and transformed or destroyed, or be recovered for a non-emissive use. They would also have to report on the final disposition of each shipment within 45 days of the end of the control period. Entities that transship a controlled substance must maintain records that indicate that the controlled substance shipment originated in a foreign country destined for another foreign country, and does not enter interstate commerce with the United States. Entities that were allocated essential-use allowances and submitted an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(g) Laboratory Essential Uses

EPA is proposing that CBM to be used in laboratory applications be exempted from the ban in the same manner that all other Class I ODSs are exempted for laboratory uses. In addition, laboratory distributors who sell CBM under this exemption would be subject to the reporting requirements outlined in 40 CFR Part 82, Subpart A (§ 82.13). These reporting requirements are as follows: Laboratory distributors/suppliers must report quarterly the quantity received of each class I controlled substance from each producer or importer. Distributors must also keep on record certifications from customers who purchase CBM (or any Class I ODS) stating that the CBM will only be used in laboratory applications defined in 40 CFR Part 82, Subpart A (§ 82.13), Appendix G. (Laboratory customers purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing). Distributors must report quarterly the quantity of the controlled substance purchased by each laboratory customer. If the controlled substances are only sold as reference standards for calibrating laboratory analytical equipment, the distributor may write a letter to the EPA Administrator requesting permission to submit these reports annually rather than quarterly. See 40 CFR Part 82, Subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

## V. What Other Stratospheric Protection Regulations Will Relate to CBM Following Today's Proposed Action?

A regulation originally published on February 11, 1993 (58 FR 8136) and amended at 60 FR 4020 (January 19, 1995) establishes requirements pertaining to labeling of products containing or made with ozone-depleting substances. The text of that regulation (as well as Fact Sheets about it) can be found at the following Web site: *http://www.epa.gov/ozone/title6/labeling/labeling.html.* The labeling requirements apply to products manufactured with, containers of, and products containing specific ozone-depleting substances pursuant to section 611of the CAAA. Specifically, the regulations require products that are manufactured with a process using a class I substance; products containing a class I substance; and containers of a class I or class II (hydrochlorofluorocarbons (HCFCs)) substance or mixture to bear a ''clearly legible and conspicuous'' warning statement. Manufacturers, distributors, wholesalers, and retailers of products manufactured with, containers of, and products containing CBM would therefore be required to comply with the labeling requirements which would become applicable to CBM one year after its final listing as a class I ODS; See 40 CFR Part 82, Subpart E.

## VI. What Are the Supporting Analyses?

### *A. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed ban on production and import is expected to have minimal economic impact because production and import for feedstock uses (which represent the majority of current production and import uses) are exempt from the ban. Furthermore, CBM use has been largely curtailed by prior environmental and safety regulations in the fire protection, explosion suppression, and solvent sectors. Therefore the proposed ban of CBM is not expected to significantly affect the regulated community.

Based upon research and information available to EPA at this time, EPA understands that the regulated community directly impacted by today's proposed action is restricted in size. Potentially regulated entities include entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all of these entities, there would be new recordkeeping and reporting requirements imposed by today's proposed action, but these are estimated to be minimal (approximately a total for the industry of $200,000 per year; see VII.B. for explanation of this estimate).

Thus, today's proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that are expected to significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this proposed rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204.

*B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the Standard Industrial Classification (SIC) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

| Category | SIC Code | NAICS Code | SIC small business size standard (in number of employees or millions of dollars) |
|---|---|---|---|
| 1. Industrial organic chemicals, NEC | 2869 | 325199 | 1,000 |
| 2. Pharmaceutical preparations | 2834 | 325412 | 750 |
| 3. Pesticides and agricultural chemicals, NEC | 2879 | 32532 | 500 |
| 4. Chemicals and allied products, NEC | 5169 | 42269 | 100 |
| 5. Testing laboratories, except veterinary testing labs | 8734 | 54138 | $5.0 |
| 6. Medical and diagnostic laboratories | 8071 | 6215 | $5.0 |
| 7. Research and development in the physical, engineering and life sciences | 8731, 8733 | 54171 | $5.0 |

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

Briefly, the following entities may potentially be affected by this regulation: entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all these entities, there are new recordkeeping and reporting requirements imposed by today's proposed action. See the section entitled ''Paperwork Reduction Act.'' It is estimated that total recordkeeping and reporting requirements will cost approximately an industry-wide total of $200,000 for the universe of potentially regulated entities, consisting of approximately 130 companies.

In addition to recordkeeping and reporting requirements, today's proposed action bans the production and import of CBM. There are only 2 known producers of CBM in the United States. These are large, multinational corporations and not small entities. In addition, informal discussions with these producers indicate that virtually all of their CBM production is for customers who transform CBM; this production is not subject to the CBM phaseout implemented by today's proposed action. Regarding import, EPA records indicate that during the years 1995–1999 (the years for which data were available), 22 companies had imported CBM during one or more years. Of these, 16 had imported CBM in only one of the 5 years of record. Informal discussions with the primary importer (responsible for 77% of the imported CBM) indicate that 80-85% of their imports are for transformation. Thus, the impacts of today's proposed action on CBM importers will also be limited (providing that import is from countries that are Parties to or in compliance with the Beijing Amendments). EPA sent letters on February 28, 2001, and again on April 25, 2001, to all importers for which

addresses could be found, as well as others, notifying them of EPA's anticipated implementation of the 1999 Beijing Amendments to the Montreal Protocol, including the ban on production and import, and new recordkeeping and reporting requirements. To date, no adverse concern has been expressed by any small business recipient of the letter.

Today's proposed action also bans trade in CBM with countries which are not Parties to or in compliance with the Beijing Amendments to the Montreal Protocol. EPA believes that this provision of today's proposed rule will not significantly impact the regulated community because extremely limited demand is believed to exist for non-feedstock purposes, as explained in earlier sections of this Preamble, and because it is expected that demand for CBM for feedstock purposes could potentially be met by domestic production.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA notes that it has conducted outreach to consult with and notify the potentially affected community of today's proposed action.

*C. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this proposed regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

*D. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements an obligation of the United States to implement fully the provisions of the Montreal Protocol and is not directly based on health or safety risks.

*E. Paperwork Reduction Act*

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1432.22) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan @epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not enforceable until OMB has approved them.

As explained in EPA's ICR document, EPA's Office of Air and Radiation is revising the previously approved information collection by the same title.[3] Today's proposed action will impose new recordkeeping and reporting requirements associated with the production, import, export, recycling, destruction, transhipment, and feedstock use of CBM. Specifically, producers, importers, and exporters will be required to submit to EPA quarterly reports of the quantity of CBM in each of their transactions; they will also be required to report the quantity of CBM transformed or destroyed. Producers, importers, and exporters of CBM must also maintain records such as Customs entry forms, bills of lading, sales records, and canceled checks to support their quarterly reports. The quarterly reports may be faxed or mailed to EPA, where they will be handled as confidential business information. EPA will store the submitted information in a computerized database designed to track production, import, and export balances and transfer activities. EPA is currently exploring the possibility of having reports filled and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its ICR to indicate a change in burden hours. EPA will use the information to ensure that the U.S. maintains compliance with the Protocol requirements and to report annually to United Nations Environment Programme the U.S. activity in CBM. EPA will store the submitted information in a computer system designed to track production, import, and export balances and transfer activities. EPA estimates that the information collection will involve approximately 133 respondents: 2 producers, 2 exporters, 8 importers, 100 laboratory certifiers, 8 transformers and destroyers, 6 essential use allowance holders, 2 laboratory suppliers, and 5 laboratory suppliers (reference standards). The total annual industry burden and cost are estimated at 2,580 hours and $201,350, of which $3,000 are annual operating and maintenance (O&M) costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

[3] On March 5, 2001, the Office of Management and Budget (OMB) approved EPA's request for the extension of approval of this ICR. The request for extension was submitted by EPA on November 29, 2000. With that approval, OMB stated that it ''understands that EPA is in the process of developing several rules that would result in revisions to this collection * * * EPA will need to revise this collection as part of those rulemaking processes.'' This ICR revision is one such revision.

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 29, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by November 29, 2002.

*F. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule will not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Today's proposed rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

*G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's proposed rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by tribal governments or their communities. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

*H. The National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*I. Executive Order 13211 (Energy Effects)*

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355 (5/22/01)) because it is not a significant regulatory action under Executive Order 12866.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorobromomethane, Exports, Imports, Reporting and recordkeeping requirements, Halon, Ozone layer.

Dated: October 18, 2002.

**Christine Todd Whitman,**

*Administrator.*

For reasons set out in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

## Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by:

a. Adding in alphabetical order the definition of Beijing Amendments.

b. Revising the last sentence in the definition of Controlled substance.

The revision and addition read as follows:

**§ 82.3 Definitions.**

* * * * *

*Beijing Amendments* means the Montreal Protocol, as amended at the Eleventh Meeting of the Parties to the Montreal Protocol in Beijing in 1999.

* * * * *

*Controlled substance* * * * Class I substances are further divided into eight groups, Group I, Group II, Group III, Group IV, Group V, Group VI, Group VII, and Group VIII, as set forth in appendix A to this subpart.

* * * * *

3. Section 82.4 is amended by:

a. Revising the first sentence of paragraph (b),

b. Revising the first sentence of paragraph (d),

c. Adding paragraph (l)(5).

The revisions and addition read as follows:

**§ 82.4 Prohibitions.**

* * * * *

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN **Federal Register**], for any class I, Group VIII controlled substance, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, or the amount of unexpended Article 5 allowances as allocated under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN **Federal Register**] for any class I, Group VIII controlled substance, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(l) * * *

(5) Import or export any quantity of a controlled substance listed in Class I, Group VIII, in Appendix A to this subpart, from or to any foreign state not Party to the Beijing Amendments (as noted in Appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Beijing Amendments (as noted in Appendix C, Annex 2, to this subpart).

* * * * *

4. Section 82.13 is amended by:

a. Revising paragraph (a).

b. Revising paragraph (f)(1) introductory text.

The revisions read as follows:

**§ 82.13 Recordkeeping and reporting requirements.**

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

(f) * * *

(1) Within 120 days of May 10, 1995, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, and within 120 days of [PUBLICATION OF FINAL RULE] for class I, Group VIII controlled substances, every producer who has not already done so must submit to the Administrator a report describing:

* * * * *

5. Appendix A to Subpart A is amended by adding paragraph H. to read as follows:

**Appendix A to Subpart A of Part 82—Class 1 Controlled Substances**

| Class 1 controlled substances | ODP |
|---|---|
| * * * * * | |
| H. Group VIII: | |
| $CH_2BrCl$ (Chlorobromomethane) | 0.12 |

6. Appendix C to Subpart A is revised to read as follows:

**Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties To, The Protocol**

**Annex 1 to Appendix C of Subpart A—Parties to the Montreal Protocol (as of January 24, 2002)**

The check mark [√] means the particular country ratified the Protocol or the specific Amendment package. Amendment packages are identified by the name of the city where the amendment package was negotiated and agreed. Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.shtml.*

| Foreign state | Montreal protocol | London amend-ments | Copen-hagen amend-ments | Montreal amend-ments | Beijing amend-ments |
|---|---|---|---|---|---|
| Albania | ✔ | | | | |
| Algeria | ✔ | ✔ | ✔ | | |
| Angola | ✔ | | | | |
| Antigua and Barbuda | ✔ | ✔ | ✔ | ✔ | |
| Argentina | ✔ | ✔ | ✔ | ✔ | |
| Armenia | ✔ | | | | |
| Australia | ✔ | ✔ | ✔ | ✔ | |
| Austria | ✔ | ✔ | ✔ | ✔ | |
| Azerbaijan | ✔ | ✔ | ✔ | ✔ | |
| Bahamas | ✔ | ✔ | ✔ | | |
| Bahrain | ✔ | ✔ | ✔ | ✔ | |
| Bangladesh | ✔ | ✔ | ✔ | ✔ | |
| Barbados | ✔ | ✔ | ✔ | | |
| Belarus | ✔ | ✔ | | | |
| Belgium | ✔ | ✔ | ✔ | | |
| Belize | ✔ | ✔ | ✔ | | |
| Benin | ✔ | ✔ | ✔ | | |
| Bolivia | ✔ | ✔ | ✔ | ✔ | |
| Bosnia and Herzegovina | ✔ | | | | |
| Botswana | ✔ | ✔ | ✔ | | |
| Brazil | ✔ | ✔ | ✔ | | |
| Brunei Darussalam | ✔ | | | | |
| Bulgaria | ✔ | ✔ | ✔ | ✔ | |
| Burkina Faso | ✔ | ✔ | ✔ | | |

| Foreign state | Montreal protocol | London amend-ments | Copen-hagen amend-ments | Montreal amend-ments | Beijing amend-ments |
|---|---|---|---|---|---|
| Burundi | ✔ | ✔ | ✔ | ✔ | ✔ |
| Cambodia | ✔ | | | | |
| Cameroon | ✔ | ✔ | ✔ | | |
| Canada | ✔ | ✔ | ✔ | ✔ | ✔ |
| Cape Verde | ✔ | ✔ | ✔ | ✔ | |
| Central African Republic | ✔ | | | | |
| Chad | ✔ | ✔ | ✔ | ✔ | |
| Chile | ✔ | ✔ | ✔ | ✔ | ✔ |
| China | ✔ | ✔ | | | |
| Colombia | ✔ | ✔ | ✔ | | |
| Comoros | ✔ | ✔ | | | |
| Congo | ✔ | ✔ | ✔ | ✔ | ✔ |
| Congo, Democratic Republic of | ✔ | ✔ | ✔ | | |
| Costa Rica | ✔ | ✔ | ✔ | | |
| Cote d'Ivoire | ✔ | ✔ | | | |
| Croatia | ✔ | ✔ | ✔ | ✔ | |
| Cuba | ✔ | ✔ | ✔ | | |
| Cyprus | ✔ | ✔ | | | |
| Czech Republic | ✔ | ✔ | ✔ | ✔ | ✔ |
| Denmark | ✔ | ✔ | ✔ | | |
| Djibouti | ✔ | ✔ | ✔ | ✔ | |
| Dominica | ✔ | ✔ | | | |
| Dominican Republic | ✔ | ✔ | ✔ | | |
| Ecuador | ✔ | ✔ | ✔ | | |
| Egypt | ✔ | ✔ | ✔ | ✔ | |
| El Salvador | ✔ | ✔ | ✔ | ✔ | |
| Estonia | ✔ | ✔ | ✔ | | |
| Ethiopia | ✔ | | | | |
| European Community | ✔ | ✔ | ✔ | ✔ | |
| Federated States of Micronesia | ✔ | ✔ | ✔ | ✔ | ✔ |
| Fiji | ✔ | ✔ | ✔ | | |
| Finland | ✔ | ✔ | ✔ | ✔ | ✔ |
| France | ✔ | ✔ | ✔ | | |
| Gabon | ✔ | ✔ | ✔ | ✔ | ✔ |
| Gambia | ✔ | ✔ | | | |
| Georgia | ✔ | ✔ | ✔ | ✔ | |
| Germany | ✔ | ✔ | ✔ | ✔ | ✔ |
| Ghana | ✔ | ✔ | ✔ | | |
| Greece | ✔ | ✔ | ✔ | | |
| Grenada | ✔ | ✔ | ✔ | ✔ | |
| Guatemala | ✔ | ✔ | ✔ | ✔ | ✔ |
| Guinea | ✔ | ✔ | | | |
| Guyana | ✔ | ✔ | ✔ | ✔ | |
| Haiti | ✔ | ✔ | ✔ | ✔ | |
| Honduras | ✔ | ✔ | ✔ | | |
| Hungary | ✔ | ✔ | ✔ | ✔ | |
| Iceland | ✔ | ✔ | ✔ | ✔ | |
| India | ✔ | ✔ | | | |
| Indonesia | ✔ | ✔ | ✔ | | |
| Iran, Islamic | ✔ | ✔ | ✔ | ✔ | |
| Ireland | ✔ | ✔ | ✔ | | |
| Israel | ✔ | ✔ | ✔ | | |
| Italy | ✔ | ✔ | ✔ | ✔ | |
| Jamaica | ✔ | ✔ | ✔ | | |
| Japan | ✔ | ✔ | ✔ | | |
| Jordan | ✔ | ✔ | ✔ | ✔ | ✔ |
| Kazakhstan | ✔ | ✔ | | | |
| Kenya | ✔ | ✔ | ✔ | ✔ | |
| Kiribati | ✔ | | | | |
| Korea, Democratic People's Republic of | ✔ | ✔ | ✔ | ✔ | ✔ |
| Korea, Republic of | ✔ | ✔ | ✔ | ✔ | |
| Kuwait | ✔ | ✔ | ✔ | | |
| Kyrgyzstan | ✔ | | | | |
| Lao, People's Democratic Republic | ✔ | | | | |
| Latvia | ✔ | ✔ | ✔ | | |
| Lebanon | ✔ | ✔ | ✔ | ✔ | |
| Lesotho | ✔ | | | | |
| Liberia | ✔ | ✔ | ✔ | | |
| Libyan Arab Jamahiriya | ✔ | ✔ | | | |
| Liechtenstein | ✔ | ✔ | ✔ | | |
| Lithuania | ✔ | ✔ | ✔ | | |

| Foreign state | Montreal protocol | London amend-ments | Copen-hagen amend-ments | Montreal amend-ments | Beijing amend-ments |
|---|---|---|---|---|---|
| Luxembourg | ✔ | ✔ | ✔ | ✔ | ✔ |
| Madagascar | ✔ | ✔ | ✔ | ✔ | ✔ |
| Malawi | ✔ | ✔ | ✔ | | |
| Malaysia | ✔ | ✔ | ✔ | ✔ | ✔ |
| Maldives | ✔ | ✔ | ✔ | ✔ | |
| Mali | ✔ | ✔ | | | |
| Malta | ✔ | ✔ | | | |
| Marshall Islands | ✔ | ✔ | ✔ | | |
| Mauritania | ✔ | | | | |
| Mauritius | ✔ | ✔ | ✔ | | |
| Mexico | ✔ | ✔ | ✔ | | |
| Moldova | ✔ | ✔ | ✔ | | |
| Monaco | ✔ | ✔ | ✔ | ✔ | |
| Mongolia | ✔ | ✔ | ✔ | | |
| Morocco | ✔ | ✔ | ✔ | | |
| Mozambique | ✔ | ✔ | ✔ | | |
| Myanmar | ✔ | ✔ | | | |
| Namibia | ✔ | ✔ | | | |
| Nauru | ✔ | | | | |
| Nepal | ✔ | ✔ | | | |
| Netherlands | ✔ | ✔ | ✔ | ✔ | ✔ |
| New Zealand | ✔ | ✔ | ✔ | ✔ | ✔ |
| Nicaragua | ✔ | ✔ | ✔ | | |
| Niger | ✔ | ✔ | ✔ | ✔ | |
| Nigeria | ✔ | ✔ | ✔ | ✔ | |
| Norway | ✔ | ✔ | ✔ | ✔ | ✔ |
| Oman | ✔ | ✔ | ✔ | | |
| Pakistan | ✔ | ✔ | ✔ | | |
| Palau | ✔ | ✔ | ✔ | ✔ | ✔ |
| Panama | ✔ | ✔ | ✔ | ✔ | |
| Papua New Guinea | ✔ | ✔ | | | |
| Paraguay | ✔ | ✔ | ✔ | ✔ | |
| Peru | ✔ | ✔ | ✔ | | |
| Philippines | ✔ | ✔ | ✔ | | |
| Poland | ✔ | ✔ | ✔ | ✔ | |
| Portugal | ✔ | ✔ | ✔ | | |
| Qatar | ✔ | ✔ | ✔ | | |
| Romania | ✔ | ✔ | ✔ | ✔ | |
| Russian Federation | ✔ | ✔ | | | |
| Rwanda | ✔ | | | | |
| Saint Kitts & Nevis | ✔ | ✔ | ✔ | ✔ | |
| Saint Lucia | ✔ | ✔ | ✔ | ✔ | ✔ |
| Saint Vincent and the Grenadines | ✔ | ✔ | ✔ | | |
| Samoa | ✔ | ✔ | ✔ | ✔ | ✔ |
| Sao Tome and Principe | ✔ | ✔ | ✔ | ✔ | ✔ |
| Saudi Arabia | ✔ | ✔ | ✔ | | |
| Senegal | ✔ | ✔ | ✔ | ✔ | |
| Seychelles | ✔ | ✔ | ✔ | | |
| Sierra Leone | ✔ | ✔ | ✔ | ✔ | ✔ |
| Singapore | ✔ | ✔ | ✔ | ✔ | |
| Slovakia | ✔ | ✔ | ✔ | ✔ | |
| Slovenia | ✔ | ✔ | ✔ | ✔ | |
| Solomon Island | ✔ | ✔ | ✔ | ✔ | |
| Somalia | ✔ | ✔ | ✔ | ✔ | ✔ |
| South Africa | ✔ | ✔ | ✔ | | |
| Spain | ✔ | ✔ | ✔ | ✔ | |
| Sri Lanka | ✔ | ✔ | ✔ | ✔ | |
| Sudan | ✔ | ✔ | ✔ | | |
| Suriname | ✔ | | | | |
| Swaziland | ✔ | | | | |
| Sweden | ✔ | ✔ | ✔ | ✔ | |
| Switzerland | ✔ | ✔ | ✔ | | |
| Syrian Arab Republic | ✔ | ✔ | ✔ | ✔ | |
| Tajikistan | ✔ | ✔ | | | |
| Tanzania, United Republic of | ✔ | ✔ | | | |
| Thailand | ✔ | ✔ | ✔ | | |
| The Former Yugoslav Republic of Macedonia | ✔ | ✔ | ✔ | ✔ | |
| Togo | ✔ | ✔ | ✔ | ✔ | ✔ |
| Tonga | ✔ | | | | |
| Trinidad and Tobago | ✔ | ✔ | ✔ | ✔ | |
| Tunisia | ✔ | ✔ | ✔ | ✔ | |

| Foreign state | Montreal protocol | London amend-ments | Copen-hagen amend-ments | Montreal amend-ments | Beijing amend-ments |
|---|---|---|---|---|---|
| Turkey | ✔ | ✔ | ✔ | | |
| Turkmenistan | ✔ | ✔ | | | |
| Tuvalu | ✔ | ✔ | ✔ | ✔ | |
| Uganda | ✔ | ✔ | ✔ | ✔ | |
| Ukraine | ✔ | ✔ | | | |
| United Arab Emirates | ✔ | | | | |
| United Kingdom | ✔ | ✔ | ✔ | ✔ | ✔ |
| United States of America | ✔ | ✔ | ✔ | | |
| Uruguay | ✔ | ✔ | ✔ | ✔ | |
| Uzbekistan | ✔ | ✔ | ✔ | | |
| Vanuatu | ✔ | ✔ | ✔ | | |
| Venezuela | ✔ | ✔ | ✔ | | |
| Viet Nam | ✔ | ✔ | ✔ | | |
| Yemen | ✔ | ✔ | ✔ | ✔ | |
| Yugoslavia | ✔ | | | | |
| Zambia | ✔ | ✔ | | | |
| Zimbabwe | ✔ | ✔ | ✔ | | |

**Annex 2 to Appendix C of Subpart A—Nations Complying With, But Not Parties To, the Protocol [Reserved]**

7. Appendix F. to Subpart A. is amended by:

a. Removing entries F. and G.

b. Under A. Class I: by adding entries 6, 7, and 8.

The additions read as follows:

**Appendix F to Subpart A—Listing of Ozone Depleting Chemicals**

| Controlled Substance | ODP | AT L | CLP | BLP |
|---|---|---|---|---|
| A. Class I | | | | |
| * * * * * | | | | |
| 6. Group VI: | | | | |
| $CH_3Br$-Bromomethane (Methyl Bromide) | 0.7 | | [reserved]. | |
| 7. Group VII: | | | | |
| $CHFBr_2$- | 1.00 | | [reserved]. | |
| $CHF_2Br$-(HBFC–22B1) | 0.74 | | [reserved]. | |
| $CH_2FBr$ | 0.73 | | [reserved]. | |
| $C_2HFBr_4$ | 0.3–0.8 | | [reserved]. | |
| $C_2HF_2Br_3$ | 0.5–1.8 | | [reserved]. | |
| $C_2HF_3Br_2$ | 0.4–16 | | [reserved]. | |
| $C_2HF_4Br$ | 0.7–1.2 | | [reserved]. | |
| $C_2H_2FBr_3$ | 0.1–1.1 | | [reserved]. | |
| $C_2H_2F_2Br_2$ | 0.2–1.5 | | [reserved]. | |
| $C_2H_2F_3Br$ | 0.7–1.6 | | [reserved]. | |
| $C_2H_3FBr_2$ | 0.1–1.7 | | [reserved]. | |
| $C_2H_3F_2Br$ | 0.2–1.1 | | [reserved]. | |
| $C_2H_4FBr$ | 0.07–0.1 | | [reserved]. | |
| $C_3HFBr_6$ | 0.3–1.5 | | [reserved]. | |
| $C_3HF_2Br_5$ | 0.2–1.9 | | [reserved]. | |
| $C_3HF_3Br_4$ | 0.3–1.8 | | [reserved]. | |
| $C_3HF_4Br_3$ | 0.5–2.2 | | [reserved]. | |
| $C_3HF_5Br_2$ | 0.9–2.0 | | [reserved]. | |
| $C_3HF_6Br$ | 0.7–3.3 | | [reserved]. | |
| $C_3H_2FBr_5$ | 0.1–1.9 | | [reserved]. | |
| $C_3H_2F_2Br_4$ | 0.2–2.1 | | [reserved]. | |
| $C_3H_2F_3Br_3$ | 0.2–5.6 | | [reserved]. | |
| $C_3H_2F_4Br_2$ | 0.3–7.5 | | [reserved]. | |
| $C_3H_2F_5Br$ | 0.9–1.4 | | [reserved]. | |
| $C_3H_3FBR_4$ | 0.08–1.9 | | [reserved]. | |
| $C_3H_3F_2Br_3$ | 0.1–3.1 | | [reserved]. | |
| $C_3H_3F_3Br_2$ | 0.1–2.5 | | [reserved]. | |
| $C_3H_3F_4Br$ | 0.3–4.4 | | [reserved]. | |
| $C_3H_4FBr_3$ | 0.03–0.3 | | [reserved]. | |
| $C_3H_4F_2Br_2$ | 0.1–1.0 | | [reserved]. | |
| $C_3H_4F_3Br$ | 0.07–0.8 | | [reserved]. | |
| $C_3H_5FBr_2$ | 0.04–0.4 | | [reserved]. | |
| $C_3H_5F_2Br$ | 0.07–0.8 | | [reserved]. | |
| $C_3H_6FB$ | 0.02–0.7 | | [reserved]. | |
| 8. Group VIII: | | | | |
| $CH_2BrCl$ (Chlorobromomethane) | 0.12 | | [reserved]. | |

[FR Doc. 02–27340 Filed 10–28–02; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Washington Population of the Western Gray Squirrel as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the western gray squirrel (*Sciurus griseus griseus*) in Washington under the Endangered Species Act of 1973, as amended. After reviewing the petition and all available scientific and commercial information, we find that the petition presents substantial information indicating that there may be one or more distinct population segments (DPS) of western gray squirrels in Washington for which listing may be warranted. With the publication of this notice, we are initiating a status review of the western gray squirrel subspecies *Sciurus griseus griseus* in Washington. In addition to requesting information on the status of the western gray squirrel in Washington, we are requesting information on the subspecies rangewide for the purpose of determining if one or more of the Washington populations of this subspecies constitutes a DPS, or constitutes a significant portion of the range of the subspecies. We will prepare a 12-month finding on our determination.

**DATES:** The finding announced in this document was made on October 17, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by December 30, 2002.

**ADDRESSES:** Submit information, comments, or questions concerning this petition finding to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. The petition, supporting information, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Manager (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9518).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533(b)(3)(A)), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

On January 4, 2001, we received a petition dated December 29, 2000, from the Northwest Ecosystem Alliance, Bellingham, Washington, and the Tahoma Audubon Society, University Place, Washington. The petition and cover letter clearly identified itself as such and contained the names, addresses, and signatures of the petitioning organizations' representatives. Information relating to the taxonomy, the historic and present population status and trends, threats, and a discussion of the qualifications of the western gray squirrel (*Sciurus griseus griseus*) in Washington as a distinct vertebrate population segment (DPS) were included in the petition. The petition requested an emergency rule to list the Washington population(s) of the western gray squirrel as threatened or endangered under the Act or, as an alternative, the immediate emergency listing of just the southern Puget Sound population of western gray squirrels followed by a later consideration of the ''full Washington State distinct population segment under the standard processing requirements.'' The petition also requested the designation of critical habitat for the western gray squirrel in Washington, coincident with the listing.

In a letter dated March 9, 2001, we acknowledged receipt of the petition (Service, *in litt.,* 2001). We stated that we were unable to address the petition at that time because we were required to spend nearly all of our listing and critical habitat funding for fiscal year 2001 to comply with court orders and judicially approved settlement agreements. We also indicated in our letter that, from our initial review of the petition, there was no emergency situation for Washington population(s) of the western gray squirrel. The proposed construction of the Cross-Base Highway, identified by the petitioners as an imminent threat to the Puget Sound population, was not scheduled to be constructed for at least 5 years.

On May 6, 2002, we received a 60-day Notice of Intent to sue from the Northwest Ecosystem Alliance and Tahoma Audubon Society (plaintiffs) alleging we had violated the Act by failing to make a finding on whether the petition to list the Washington population(s) of the western gray squirrel presented substantial information indicating that listing may be warranted. On July 17, 2002, the plaintiffs filed a lawsuit in United States District Court for the District of Oregon to compel us to comply with the listing requirements of the Act. We are making this 90-day petition finding in accordance with the court's order in this case, *Northwest Ecosystem Alliance and Tahoma Audubon Society* v. *U.S. Fish and Wildlife Service, Badgely, Williams, and Norton,* No. CV 02–945 (D. OR.).

The western gray squirrel belongs to the mammalian order Rodentia, the suborder Sciurognathi, and the family Sciuridae. There are three subspecies of western gray squirrel: *Sciurus griseus griseus,* which ranges from central Washington to the western Sierra Nevada Range in central California; *Sciurus griseus anthonyi,* which ranges from the southern tip of the California Coast Range into south-central California; and *Sciurus griseus nigripes*, which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County (Hall 1981). *Sciurus griseus griseus* was described from a squirrel seen by Lewis and Clark at the Dalles in Wasco County, Oregon (Rodrick 1987).

The western gray squirrel is the largest native tree squirrel in the Pacific Northwest and is the only member of the genus *Sciurus* native to Washington. Two other members of the genus found in Washington are introduced species: the eastern gray squirrel (*Sciurus carolinensis*) and the fox squirrel (*Sciurus niger*) (Washington Department of Wildlife (WDW) 1993). Other common names applied to the western gray squirrel include the silver gray squirrel, California gray squirrel, Oregon gray squirrel, Columbian gray squirrel,