

constraints that may impede their transition away from HCFC-141b by January 1, 2003. To address these concerns and any unforeseen need for HCFC-141b, two commenters recommended that EPA allow any entity to petition the Agency for HCFC-141b allowances beyond January 1, 2003. EPA could then, on a case-by-case basis, evaluate the petitioner's assertions that no viable alternatives are available to meet the needs of that specific petitioner. With today's action, EPA agrees with comments indicating there may be legitimate needs for limited HCFC-141b production and import beyond January 1, 2003 for non-space/defense applications. Therefore, EPA is expanding the petition process to also include any HCFC-141b formulator who can identify technical constraints in transitioning from HCFC-141b to alternatives. In § 82.3, EPA is defining formulator as an entity that distributes a class II chemical(s) or blends of a class II chemical(s) to persons who use the chemical(s) for a specific application identified in a petition for HCFC 141-b exemption allowances. Further, in order to reflect the expansion of the petition process, EPA is using the term "HCFC-141b exemption allowance" in the final rule in lieu of "space vehicle/defense allowance." EPA is adding a definition of "HCFC-141b exemption allowance" to § 82.3.

Although EPA is creating a process to allow any HCFC-141b formulator to petition for production or import allowances for HCFC-141b beyond January 1, 2003, the Agency believes that there will be a small number of petitioners with legitimate claims that there are no technically viable and commercially available alternatives to HCFC-141b beyond January 1, 2003. EPA believes that some petitioners in the following categories are most likely to meet the criteria established in today's rulemaking:

- A U.S. agency, department or instrumentality, or related entities involved in space vehicle endeavors;
- U.S. military departments for defense uses such as cleaning of oxygen equipment and aircraft parts; and
- Some formulators that produce polyurethane foam systems for use in insulating spray and pour foam applications.

Each individual petitioner must provide a clear and specific justification for needing access to HCFC-141b production or import beyond January 1, 2003. The Agency will accept and review annual submissions of petitions which will provide up-to-date information on HCFC-141b needs. As described in more detail below, the

petitioner must provide adequate documentation to prove that alternatives are not technically viable, and that stockpiled HCFC-141b is not technically or commercially available (for example, taking into consideration undue costs for storage and transportation) to meet their transitional needs.

2. Definition of "Space Vehicle"

Several commenters asked EPA to define "space vehicle" in order to clearly establish what is covered under "space vehicle endeavors". These commenters asked the Agency to adopt an existing definition established at 40 CFR 63.742 for the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program. That definition, which was established specifically for the NESHAP for Aerospace Manufacturing and Rework Facilities, is:

Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with tests, transport, and storage, which through contamination can compromise the space vehicle performance.

To establish a consistent definition, EPA agrees with the proposed language and has included it with other definitions in § 82.3 of this final rule. However, because this definition encompasses a broad spectrum of equipment and/or applications, EPA would like to emphasize that HCFC-141b exemption allowances will only be granted for particular uses where HCFC-141b alternatives have not been developed to meet the technical demands of the specific space vehicle application (e.g., foam blowing agent for thermal protection system needs of space vehicles designed to travel beyond the limit of the earth's atmosphere). As discussed in more detail below, the technical constraints of the specific application must be described in detail in the petition.

3. Definition of "Formulator"

In § 82.3, EPA has also defined "formulator" so that it is clear who may petition the Agency for HCFC-141b exemption allowances beyond January 1, 2003. A "formulator" is an entity that distributes a class II controlled substance(s) or blends of a class II controlled substance(s) to persons who use the controlled substance(s) for a specific application identified in the formulator's petition for HCFC-141b exemption allowances. In all the HCFC-141b uses EPA is aware of, the

formulator is responsible for meeting the testing and code requirements as opposed to the end user. Therefore, in order to reduce the burden of petitioning, EPA designed the process so the end user does not apply for the exemption allowance. The petitioners should either be the intermediary who blends the HCFC-141b and sells it to an end user or in cases where the end use application employs just the HCFC-141b directly, the petitioner should be the chemical manufacturer. Formulators include system houses who produce polyurethane foam systems for use in spray and pour foam applications. A foam system typically consists of two transfer pumps that deliver the ingredients (polyisocyanate from one side and a mixture including the blowing agent and stabilizers from the other side) to a metering/mixing device which allows the components to be delivered in the appropriate proportions. The components are then sent to a mixing gun and dispensed as foam directly to a surface such as a roof or tank. Spray foam is a polyurethane or polyisocyanurate cellular plastic which is applied as an atomized liquid or froth directly onto a substrate using commercial spray foam equipment specifically designed for this purpose. This liquid or froth begins to react, rise, and form its cellular structure in place on the substrate in typically less than 1–2 seconds after it is applied. Spray foam is generally used as a thermal insulation, floatation aid or air infiltration barrier.

Spray and pour foam applications account for approximately 20% of the HCFC-141b used in 2001. The spray foam sector of the polyurethane industry is a diverse sector that involves an array of applications including: Roofing, building envelope insulation, agriculture tanks, pipes and vessels, marine and original equipment manufacture (OEM). The pour foam sector of the polyurethane industry is also a diverse sector that involves an array of applications including: Commercial refrigeration (such as walk-in coolers but not consumer refrigeration), doors (such as entry doors or garage doors), refrigerated transport, picnic coolers, vending machines, commercial and residential architectural panels, tank and pipe insulation, marine flotation foams, floral foam, and taxidermy foams.

Because formulators produce polyurethane systems for a wide array of applications, EPA would like to emphasize that HCFC-141b exemption allowances will only be granted where a petitioner can demonstrate that stockpiled quantities of HCFC-141b