

EPA will consider other available information such as the availability and technical and economic feasibility of stockpiles and the industry-wide progress on implementing alternatives when deciding whether to grant exemptions.

Although EPA is expanding the petition process beyond space vehicle/defense petitioners, the Agency believes that the items listed above will provide the information EPA needs to make individual decisions on granting additional HCFC-141b to petitioners taking into account their specific application. To avoid an overly burdensome process, EPA is not requiring this information to be submitted in any specific format nor does EPA expect petitioners to generate new information. The Agency published the rule establishing the January 1, 2003, phaseout date in 1993. Thus, HCFC-141b users should be able to demonstrate that they have been engaged for some time in the process of sourcing, testing and implementing alternatives in anticipation of the phaseout. Because of the many years that have elapsed since the phaseout date was established, the information needed to address the items above should be readily available.

In order to support the quantity of HCFC-141b requested, petitioners should submit information on historical purchasing. EPA is not establishing a strict method of determining historical use. EPA will accept documentation demonstrating the petitioner's HCFC-141b use covering 3 years or more. For example, petitioners may submit existing copies of purchasing receipts or company records to support their petition request. This information will allow EPA to determine whether the total amount of HCFC-141b requested after 2003 is reasonable. If the amount requested differs significantly from the amount historically purchased, petitioners should provide a detailed explanation for the discrepancy.

A description of the markets and applications being served by use of HCFC-141b should include a description of where the chemical is used (*i.e.*, foam blowing agent, solvent) and why it provides benefits in the specific application. Petitioners will also have to provide technical descriptions of processes in which HCFC-141b is being used. For example, if a petitioner is requesting HCFC-141b for a polyurethane foam system, the petitioner must identify whether it is a spray or pour foam process and the application (*e.g.*, roofing, tank and pipe insulation). If a petitioner is requesting HCFC-141b for multiple processes and

applications, the petitioner must identify the amount of HCFC-141b that is being requested for each process and application. EPA believes this information is necessary to assess the technical needs and demands of specific processes and applications. For example, EPA may approve a petitioner's request for HCFC-141b to be used in spray roofing applications, but deny the same petitioner's request for HCFC-141b in a non-insulating pour foam application.

In order for EPA to assess the merits of each petition, petitioners will need a technical description of why alternatives and substitutes are not sufficient to eliminate the use of HCFC-141b. Petitioners should indicate what technical constraints have prevented them from obtaining or implementing their preferred alternative. For example, if building or fire codes have not yet been met with existing products petitioners should provide evidence of tests demonstrating that these standards can not be met using alternatives. Petitioners must also explain why stockpiled, recovered or recycled quantities are not feasible (*e.g.*, technical or economic constraints) or are unavailable. Petitioners should provide evidence supporting this explanation. For example, technical constraints could include unavailability of HCFC-141b stockpiles that meet quality specifications because of contamination. Economic constraints could include unavailability of HCFC-141b stockpiles at prices that would not put an undue financial hardship on the petitioner. Evidence that stockpiled HCFC-141b is simply unavailable could consist of letters from suppliers indicating that stockpiled HCFC-141b is unavailable or phone logs of inquiries made on the availability of stockpiled HCFC-141b (including the person contacted and the date of the conversation).

In order for EPA to project potential future needs and assess the progress of each company in implementing alternatives, petitioners must estimate the number of control periods over which they will continue to need HCFC-141b. The estimate must be based on a detailed description of past investigations into possible alternatives and substitutes and a timeline of future efforts and activities to research and test alternatives. The detailed description of the efforts made by each petitioner to acquire, test, and implement alternatives is a critical item required in each petition. Petitioners must submit a list of alternatives considered, purchased or sampled along with the dates purchased and copies of receipts

verifying that information. The petitioner must also submit a summary of their in-house development program, including summaries of all relevant test results and their significance to the petitioner's subsequent decision-making and selection of a preferred alternative(s). Full supporting test data and relevant certificates must be made available on request. This includes in-house tests (*e.g.*, preliminary burn tests for foam applications) and final product tests conducted by accredited organizations such as Underwriter's Laboratory or Factory Mutual in order to determine whether products meet applicable codes. If a petitioner has made good faith efforts to test and implement their preferred alternatives and they can demonstrate that they are not yet in a position to transition away from HCFC-141b for legitimate reasons (*e.g.*, no access to stockpiles), EPA will likely approve their request for additional HCFC-141b. If a petitioner cannot demonstrate that past efforts have been made to pursue and implement alternatives, EPA will likely deny the petition.

10. Deadline for Submitting Petitions

A person seeking an exemption for the production and import of HCFC-141b under § 82.15 would need to submit a petition for the exemption under § 82.18. Although EPA proposed that petitions would be due on July 1, 2002, this date is no longer appropriate due to the timing of publication of this final rule. Although several space vehicle/defense commenters suggested that EPA allow petitioners to submit petitions up to six months after the date of final publication of this rule, that would no longer provide sufficient time for EPA to receive and review petitions and grant exemptions in light of the January 1, 2003, phaseout date for HCFC-141b. Therefore, EPA has decided to accept petitions for the 2003 control period for up to 90 days after the date of publication of this rule although petitions received within the first 30 days will be given primary consideration for an exemption. EPA believes it is important to establish a fixed date for submission of petitions in order to process petitions in a timely manner while giving the petitions due consideration and ensuring that EPA meets requirements established under the Montreal Protocol. Those who submit after 30 days, but before 90 days, are more at risk of denial on the grounds that additional allocations would jeopardize compliance with the limits established under the Montreal Protocol. Because most of the information needed to support a