



## OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

May 17, 2024

TRANSMITTED VIA EMAIL  
RETURN RECEIPT REQUESTED

Chris Peel  
CEO, Rheem Manufacturing Company  
1100 Abernathy Rd NE #1700  
Atlanta, GA 30328  
[corporate.office@rheem.com](mailto:corporate.office@rheem.com)  
ATTN: Jeremey Lindsey (Jeremy.Lindsey@Rheem.com)

Re: Clean Air Act Information Request for Rheem Manufacturing Company

Dear Mr. Chris Peel:

The United States Environmental Protection Agency (EPA) hereby requires Rheem Manufacturing Company to provide certain information, pursuant to its authority under Section 114 of the Clean Air Act (CAA), 42 U.S.C. § 7414, to determine its compliance with the CAA and the Greenhouse Gas Reporting Program regulations set forth at 40 C.F.R. Part 98, Subparts A and OO.

Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of the EPA is authorized to require any person who is subject to the CAA (including certain importers or exporters) to provide certain information, including information to evaluate that person's compliance with the CAA, 42 U.S.C. § 7401 et seq., and the regulations promulgated thereunder, establish and maintain records, make reports, install and use monitors, sample emissions (in accord with the procedures and methods that the Administrator shall prescribe) and provide such other information as may reasonably be required for the purpose of, among other things, determining whether any person is in violation of the CAA. This authority has been delegated to the undersigned official. You are hereby required, pursuant to section 114(a) of the CAA, to provide responses to Requests 1 – 14 (Information Request), by no later than **June 10, 2024**.

Instructions and definitions are provided in Enclosure 1 and the information requested is specified in Enclosure 2.

You are required to attach a properly executed Statement of Certification (see Enclosure 3) with your response to this Information Request. The statement must be signed and dated. You are under an obligation to preserve all Documents requested in this letter until you receive further instructions from the EPA.

Failure to provide the required information is a violation of the Act and may result in one or more of the following actions: 1) issuance of an administrative penalty order pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d); 2) issuance of an order requiring compliance with this Information Request pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a); 3) initiation of a civil action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or 4) initiation of any other action authorized under the Act. In addition, knowingly providing false information in response to this Information Request may be actionable under Section 113(c) of the Act, 42 U.S.C. § 7413(c), and 18 U.S.C. §§ 1001 and 1341. The information you provide may be used by the EPA in administrative, civil, and/or criminal proceedings.

Under Section 114(c) of the CAA, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, you may assert a business confidentiality claim on any information you provide in response to this Information Request, in accord with the Confidentiality of Business Information (“CBI”) regulations, 40 C.F.R. Part 2, Subpart B. However, no CBI claim may be made with respect to emission data, as defined at 40 C.F.R. § 2.301(a)(2), or to information required to be reported under 40 C.F.R. Part 98 where the Agency has already made a confidentiality determination or emission data determination<sup>1</sup> under 40 C.F.R. § 2.301(d). You must specify the page, paragraph, and sentence or line and numeral when identifying the information subject to your CBI claim. Enclosure 4 of this Information Request specifies the assertion and substantiation requirements for business confidentiality claims. The EPA may, without further notice, provide the public with any information not subject to a CBI claim. See 40 C.F.R. § 2.203(a), 41 Fed. Reg. 36,907.

This information collection is exempt from the Paperwork Reduction Act under 44 U.S.C. § 3518(c)(1)(B). Without making a determination that your business or organization is a small business, the EPA is providing you with this Small Business Resources Information Sheet which provides important information that may assist small businesses in identifying and complying with environmental requirements: <https://www.epa.gov/compliance/small-business-resources-information-sheet>.

Please submit the requested information electronically to Elfego Felix, U.S. Environmental Protection Agency, at [Felix.Elfego@epa.gov](mailto:Felix.Elfego@epa.gov). Please note that the EPA server will not allow attachments over 20 MB and will not accept documents saved in a .zip file. Alternatively, Rheem Manufacturing Company may want to provide documents in response to this Information Request through a secure file sharing site. Please let us know your preference for electronic document submittal.


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<sup>1</sup> See 76 Fed. Reg. 30782 (May 26, 2011), 76 Fed. Reg. 73886 (Nov. 29, 2011), 81 Fed. Reg. 89188 (Dec. 9, 2016), 77 Fed. Reg. 48072 (Aug. 13, 2012), 78 Fed. Reg. 71904 (Nov. 29, 2013).

If you have questions regarding this Information Request, please contact Elfego Felix by email or phone at 202-604-7217. Alternatively, legal counsel for Rheem Manufacturing Company may contact Justin Valentino, Attorney-Advisor, at [Valentino.Justin@epa.gov](mailto:Valentino.Justin@epa.gov) or (202) 564-3224.

Sincerely,

**MARK  
PALERMO**

 Digitally signed by MARK  
PALERMO  
Date: 2024.05.17 12:12:15  
-04'00'

Mark J. Palermo, Chief  
Vehicle and Engine Enforcement Branch  
Air Enforcement Division  
United States Environmental Protection Agency

Enclosures: 1) Instructions and Definitions  
2) Information Request  
3) Statement of Certification  
4) Confidential Business Information Assertion

Cc (by email): Amelie Isin, HFC Enforcement Team Lead  
Jared Crittenden, Rheem Legal Counsel  
([Jared.Crittenden@Rheem.com](mailto:Jared.Crittenden@Rheem.com))

## **ENCLOSURE 1**

### **A. Instructions**

1. This Information Request is a continuing request. You are required to submit all such material within 10 calendar days of discovery in the event you learn that you possess responsive information not yet produced, or if you gain possession, custody, or control of responsive information after initially responding to this information request.
2. Where you have previously submitted information to the EPA that is also the subject of these requests, re-submit the information in accordance with these Instructions. Identify the information that was previously provided, the date on which it was provided, how the information was provided (*e.g.*, electronically, fax, mail), and the person or office at the EPA to whom it was provided.
3. Provide a separate narrative response to each request and subpart set forth in the Information Request. Provide copies of all Documents supporting your responses to this Information Request. If you have no responsive information or Documents pertaining to a particular request, submit an affirmative statement and explanation.
4. Precede each answer with the number of the request to which it corresponds and at the end of each answer identify the Person(s) (including name, title, and a description of job duties) who provided information that was used or considered in responding to that request, as well as each Person (including name, title, and a description of job duties) who was consulted in the preparation of that response.
5. Indicate on each Document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a Document is responsive to more than one request, this must be so indicated and only one copy of the Document needs to be provided.
6. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis for the number provided (*e.g.*, estimated, measured or engineering judgment).
7. Where Documents or information necessary for a response are neither in Your possession nor available to You, indicate in Your response why such Documents or information are not available or in Your possession and identify any source that either possesses or is likely to possess such Documents or information.
8. Narrative Documents should be provided in searchable electronic Portable Document Format (PDF) or in Word.
9. Documents scanned from paper should be produced in legible copies.

10. For electronically stored information, including but not limited to computer files or disks, produced in response to this Information Request:
  - a. Provide detailed instructions sufficient to enable the federal government to access and retrieve the data contained in each such file or disk.
  - b. If you maintain responsive information in a commercially available software format for spreadsheets, presentations, photographs, etc. (e.g., Microsoft Excel), then:
    - i. Files should be delivered in their unlocked native format.
    - ii. Native files should be collected using a method that preserves all of the files' metadata, folder location and generates a "hash" value for verification that an exact copy of the file was collected.
    - iii. Files should be organized on the media in folders by component and custodian.
  - c. If you maintain responsive information in an enterprise database or archiving system, the system must be made available to the government for inspection including any manuals, field lists, data dictionaries, indices, etc. for the government to use to formulate methods for identifying and extracting responsive information into a usable form. Information identified as responsive within the system must be extracted in a forensically sound manner and provided with documentation of the procedures used to identify and extract the responsive information from the system.
  - d. Do not de-duplicate the production without prior notice to and consultation with the EPA.
  - e. Ensure that all submissions of electronic data are free of computer viruses and that all passwords protecting files or media are removed or provided with the media.

**B. Definitions**

All terms used in this Information Request, whether capitalized or lower case, will have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. § 7401 et seq., its regulations, including 40 C.F.R. Part 98, or in this Enclosure 1, in which case the aforementioned definitions shall prevail.

*Affiliate* or *Affiliated* is used to indicate a relationship to a specified person, and means any person that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by or is under common ownership or control with such person.

*Rheem Manufacturing Company* means You and includes any predecessors, successors, parent corporation, subsidiaries, assignees, joint ventures, whether wholly or partially owned, or other

business affiliations.

*Consolidated Net Worth* means,

- a. with respect to any corporation, limited liability company, limited company or other similar entity, all shareholders' equity in such Person and its subsidiaries, determined on a consolidated basis in accordance with Generally Accepted Accounting Principle (GAAP) or International Financial Reporting Standards (IFRS), as applicable (including the value of all assets properly classified as intangible assets under GAAP or IFRS), as set forth on such Person's most recently available consolidated balance sheet (which shall be as of a date not more than one hundred eighty (180) days prior to the date of determination);
- b. with respect to any limited partnership that is a private equity fund, venture capital fund or similar entity, (i) the aggregate partners' equity in such Person, determined in accordance with GAAP or IFRS, as applicable, plus (ii) the aggregate amount of all unfunded or uncalled capital commitments of the partners in such Person (including in the form of shareholder loan commitments to such Person) determined in accordance with such Person's limited partnership agreement or equivalent constituent documents that can be called upon to satisfy obligations of such Person, in each case, determined as of the most recently ended calendar quarter; or
- c. with respect to any individual, the (i) aggregate fair market value of all of the assets owned by such individual (including the value of any assets held jointly or in common with any other Person) minus (ii) the aggregate liabilities of such individual, as of the most recently available date.

*Control* means (i) the ownership of fifty percent (50%) or more of the direct or indirect equity interest in another Person, or (ii) the power, whether by contract, equity ownership or otherwise, to direct or cause the direction of the policies or management of another Person.

*Document* and the plural form thereof means all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The term "Document" shall include, but are not limited to: any receipts; invoices; shipping records; purchase orders; purchase records; books; pamphlets; periodicals; memoranda (including those of telephone or oral conversations); contracts; correspondence; agreements; applications; financial records; security instruments; disbursements; checks; bank statements; time records; accounting or financial records; notes; diaries; logs; facsimiles (faxes); telegrams or cables prepared, drafted, received or sent; electronic mail (emails), whether drafted, received, or sent; tapes; transcripts; recordings; minutes and notes of meetings; directives; work papers; charts; drawings; prints; flow sheets; photographs; infrared camera recordings; film; computer printouts; x-ray photographs; advertisements; catalogs; data; sampling reports, plans, protocols, reports, analyses; or any handwritten, recorded, transcribed punched, taped, filmed, or graphic matter, however produced or reproduced, in Your possession, custody, or control or to which You have or have had access.

*Person* or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local or any agency of the government of a foreign country), or any other entity, and includes Rheem Manufacturing Company.

*Software* means any tangible or non-tangible machine-readable code, information, or instructions.

*We, us, and our* means the delegate of the Administrator of the Environmental Protection Agency.

*You and/or Your* means Rheem Manufacturing Company and all its agents, servants, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, contractors, and others who are in possession, custody, or control (actual or constructive) of relevant information that is otherwise available to You, or may have obtained information for or on Your behalf.

## ENCLOSURE 2

### Information Request

You are hereby required, in accord with Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to provide the following information by no later than **June 10, 2024**. For each of questions 1 through 7, provide the requested information from January 1, 2021 through the date of response.

1. State whether Rheem Manufacturing Company is an owner and operator of a facility or a supplier subject to 40 C.F.R. Part 98, and if so, list all applicable subparts of the regulation.
2. List all entities affiliated with Rheem Manufacturing Company that are subject to 40 C.F.R. Part 98 and list all applicable subparts of the regulation.
3. Provide an organizational chart showing the relationship of Rheem Manufacturing Company to all affiliates, including any percentage ownerships.
4. Provide a copy of Rheem Manufacturing Company's or any affiliates' certificate of good standing, articles of incorporation, by-laws, and partnership or membership agreements, as applicable.
5. Provide a list of all Persons that have a direct or indirect economic interest in Rheem Manufacturing Company (other than (i) owners of publicly traded securities and (ii) limited partners in managed fund entities).
6. Provide a list of the ultimate parent entity or parent entities that has the right to control, directly or indirectly, Rheem Manufacturing Company. Control is defined in Enclosure 1.
7. Provide the Consolidated Net Worth of (i) Rheem Manufacturing Company; and (ii) its ultimate parent.
8. State, yes or no, whether Rheem Manufacturing Company submitted reports, pursuant to 40 C.F.R. § 98.3, to the EPA for each year from 2021 through 2022, and provide, in an organized electronic spreadsheet, the date of submission of any reports to the EPA. Provide a copy of any such reports to the EPA.
9. State, yes or no, whether Rheem Manufacturing Company submitted certifications, pursuant to 40 C.F.R. § 98.4, to the EPA for each year from 2021 through 2022, and provide, in the organized electronic spreadsheet, the date of submission of any certifications to the EPA and the name and title of each person signing such certifications. Provide a copy of any such certifications to the EPA.
10. For each year from 2021 through 2022, provide, in an organized electronic spreadsheet, your greenhouse gas quantities (total by chemical) (a) imported and (b) exported, each calculated in

accordance with the methodology provided in 40 C.F.R. § 98.2(f), and each reported in metric tons and in CO<sub>2</sub>e in accord with 40 C.F.R. § 98.3(c).

11. For each year from 2021 through 2022, provide, in an organized electronic spreadsheet, your greenhouse gas quantities (by chemical) (a) imported, and (b) exported, each calculated in accordance with the methodology provided in 40 C.F.R. § 98.413 (as applicable), and each reported in metric tons in accordance with 40 C.F.R. §§ 98.3(c) and 98.416 (data reporting requirements) as they would be required to be reported in an annual report.
12. Provide a copy of all 40 C.F.R. § 98.3(g)(5) GHG Monitoring Plans.

**ENCLOSURE 3**

**Statement of Certification**

I certify that I am fully authorized by Rheem Manufacturing Company to provide the above information on its behalf to EPA. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations pursuant to Section 113(c)(2) of the Clean Air Act, and 18 U.S.C. §§ 1001 and 1341.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## ENCLOSURE 4

### **Confidential Business Information**

An entity may assert a business confidentiality claim covering some portion of the information you provide in response to this Information Request for any business information you believe may be entitled to confidential treatment under Section 114(c) of the CAA, 42 U.S.C. § 7414(c); Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4); and 40 C.F.R. Part 2, Subpart B. Under section 114(c) of the CAA, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Exemption 4 under FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential[.]” 5 U.S.C. § 552(b)(4). Under 40 C.F.R. Part 2, Subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

However, your business confidentiality claims are limited by any confidentiality or emission data determinations the Agency has made through rulemaking for information required to be reported to the Agency under Part 98. In accordance with 40 C.F.R. §2.301(d), the general CBI rules at 40 C.F.R. §§ 2.201 through 2.215 do not apply to any information found to be emission data or not otherwise entitled to confidential treatment through rulemaking. *See* 76 Fed. Reg. 30782 (May 26, 2011), 76 Fed. Reg. 73886 (Nov. 29, 2011), 81 Fed. Reg. 89188 (Dec. 9, 2016), 77 Fed. Reg. 48072 (Aug. 13, 2012), 78 Fed. Reg. 71904 (Nov. 29, 2013). If you claim any information already determined to be emission data or not otherwise entitled to confidential treatment through rulemaking, the information may be released without further notice to you in accordance with 40 C.F.R. § 2.301(d).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in section 114(c) of the CAA, 42 U.S.C. § 7414(c), 40 C.F.R. Part 2, Subpart B, and Exemption 4 under FOIA. **If a business confidentiality claim does not accompany the information submitted to EPA, then EPA may make the information available to the public without further notice to you. *See* 40 C.F.R. § 2.203; 41 Fed. Reg. 36,907. .**

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this Information Request. Allegedly confidential portions of otherwise non-confidential information should be clearly identified and may be submitted separately to facilitate identification and handling by the EPA. Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying the information subject to your claim. Where your claim does not include all information on a page, please place brackets around, or otherwise designate, the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains information which EPA determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied.

All confidentiality claims are subject to EPA verification. If EPA reviews your CBI claim(s), EPA may send notice to your business and ask you to submit additional information to substantiate the CBI claim(s). See 40 C.F.R. § 2.204(e).

In making its final confidentiality determination, the EPA will consider the relevant substantive criteria in its CBI regulations, under 40 C.F.R. § 2.208(a)-(d), as well as the *U.S. Supreme Court's decision in Food Marketing Institute v. Argus Leader Media (Argus)*, 139 S. Ct. 2356 (2019), which evaluated the definition of "confidential" as used in Exemption 4 under FOIA. In the *Argus* decision, the Court held that at least where "[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Argus*, 139 S. Ct. at 2366. The definition of "trade secret" under FOIA is limited to "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a "direct relationship" between the information at issue and the production process. *Id.*

For each item or class of information that you claim as CBI, please answer the following questions, giving as much detail as possible. EPA will use your responses to these questions to determine whether the information has been shown to be entitled to confidential treatment:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you've specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. Is there any other explanation you deem relevant to the EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

By submitting this information, you are consenting to a limited release of any confidential business information to EPA interns and contractors pursuant to 40 C.F.R. § 2.209(f). The EPA's interns and contractors are required to sign confidentiality agreements as a requirement of their participation in EPA related matters.