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(ii) The Office of General Counsel issues a final determination, based on the requirements of 5 U.S.C. 552(b)(4), stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by 40 CFR 2.204(e) and 2.205(b). If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment, the relevant agency official will notify the business in accordance with the procedures described in 40 CFR 2.205(f)(2).

[86 FR 55201, 55215, Oct. 5, 2021, as amended at 88 FR 46896, July 20, 2023]

**§ 84.33 Auditing of recordkeeping and reporting.**

(a) Any person producing, importing, exporting, reclaiming, or recycling for fire suppression a regulated substance, as well as any person receiving application-specific allowances, must arrange for annual third-party auditing of reports submitted to EPA except for persons receiving application-specific allowances for mission-critical military end uses.

(b) For producers, importers, and exporters, auditors must review the inputs the regulated entities used to develop quarterly and annual reports including:

(1) The amount of production and consumption allowances allocated;

(2) The amount, timing, and parties to allowance transfers, and the associated documentation and offset amount;

(3) Records documenting the amount of regulated substances imported, exported, produced, and destroyed, transformed, or sent to another entity for such purpose;

(4) Records documenting any application-specific allowances allocated or conferred from other companies, including the amounts of allowances conferred, regulated substances purchased and/or sold, the specific application for which the regulated substances were provided, and the names, telephone

numbers, and email addresses for contact persons for the recipient companies;

(5) The date and the port from which regulated substances were imported or exported;

(6) A copy of the bill of lading and the invoice indicating the quantity of regulated substances imported or exported;

(7) Relevant Harmonized Tariff Schedule codes;

(8) The number and type of railcars, ISO tanks, individual cylinders, drums, small cans, or other containers used to store and transport regulated substances;

(9) The inventory of regulated substances as of the end of the prior calendar year;

(10) A random sample (5 percent or 10, whichever is higher) of batch testing results;

(11) All other reports submitted to EPA under this subpart.

(c) For companies issued application-specific allowances by EPA, auditors must review the following:

(1) Records documenting the amount of application-specific allowances allocated;

(2) The amount, timing, and parties to allowance transfers, and the associated documentation and offset amount;

(3) Records documenting any application-specific allowances conferred to or from other companies, including the amounts of allowances conferred, regulated substances purchased, the specific application for which the regulated substances were provided, and the names, telephone numbers, and email addresses for contact persons for the recipient companies;

(4) Records documenting the total amount of regulated substances purchased for the application-specific end use, and the amount of regulated substances sold to another company for application-specific used;

(5) Inventory of regulated substances at the end of the calendar year; and

(6) All other reports submitted to EPA under this subpart.

(d) For reclaimers and fire suppressant recyclers, auditors must review the following:

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(1) The quantity of regulated substances received for reclamation or recycling;

(2) A random sample (5 percent or 10, whichever is higher) of records documenting the names and addresses of persons sending them material and the quantity of the material, measured in the combined mass of refrigerant and contaminants, by regulated substance to them;

(3) Records documenting the quantity of regulated substances reclaimed;

(4) All other reports submitted to EPA under this subpart.

(e) An auditor must meet the following requirements:

(1) The auditor must be a certified public accountant, or firm of such accountants, that is independent of the regulated person. Such an auditor must comply with the requirements for professional conduct, including the independence requirements, and the quality control requirements in 40 CFR 1090.1800(b)(1)(ii), as well as applicable rules of state boards of public accountancy. Such an auditor must also meet the requirements to perform an attestation engagement in 40 CFR 1090.1800(b)(1)(ii).

(2) The auditor must meet the independence requirements in paragraph (f) of this section.

(3) Any auditor suspended or debarred under 2 CFR part 1532 or 48 CFR part 9, subpart 9.4, is not qualified to perform attestation engagements under this section.

(f) All reports required under this paragraph must be signed and certified as meeting all the applicable requirements of this subpart by the independent third-party auditor. The auditor must:

(1) Attest that the information in the audit report is accurate;

(2) Attest that the company submitted all required reports to the Agency or specify which reports are missing and provide an assessment on whether missing reports should have been submitted; and

(3) Obtain a signed statement from a responsible corporate officer that all reports submitted to the EPA for the prior calendar year are complete and accurate.

(g) The following provisions apply to each audit performed under this section:

(1) The auditor must prepare a report identifying the applicable procedures specified in this section along with the auditor's corresponding findings for each procedure. The auditor must submit the report electronically to EPA by May 31 of the year following the compliance period.

(2) The auditor must identify any instances where compared values do not agree or where specified values do not meet applicable requirements under this part.

(3) Laboratory analysis refers to the original test result for each analysis of a product's properties.

(4) For a reclaimer that relies on a third-party laboratory for batch testing, the laboratory analysis consists of the results provided by the third-party laboratory.

(h) The independent third party, their contractors, subcontractors, and their organizations must be independent of the regulated party. All the criteria listed in paragraph (a) of this section must be met by each person involved in the specified activities in this section that the independent third party is hired to perform for a regulated party.

(1) *Employment criteria.* No person employed by an independent third party, including contractor and subcontractor personnel, who is involved in a specified activity performed by the independent third party under the provisions of this section, may be employed, currently or previously, by the regulated party for any duration within the 12 months preceding the date when the regulated party hired the independent third party to provide services under this section.

(2) *Financial criteria.* (i) The third-party's personnel, the third-party's organization, or any organization or individual that may be contracted or subcontracted by the third party must meet all the following requirements:

(A) Have received no more than one-quarter of their revenue from the regulated party during the year prior to the date of hire of the third party by the regulated party for any purpose.

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(B) Have no interest in the regulated party's business. Income received from the third party to perform specified activities under this section is excepted.

(C) Not receive compensation for any specified activity in this section that is dependent on the outcome of the specified activity.

(ii) The regulated party must be free from any interest in the third-party's business.

(iii) [Reserved]

(iv) Department of Defense data and reports for application-specific allowances for mission-critical military end uses shall be subject to internal Department of Defense monitoring and review for accuracy as prescribed by the Office of the Secretary of Defense. The results of this review shall be reported electronically to EPA by May 31 of the year following the compliance period.

[86 FR 55221, Oct. 5, 2021, as amended at 89 FR 73592, Sept. 11, 2024]

### § 84.35 Administrative consequences.

(a) The relevant agency official may retire, revoke, or withhold the allocation of allowances, or ban a company from receiving future allowance allocations, using the process outlined in paragraph (b) of this section. Applying an administrative consequence to retire, revoke, or withhold allocation of allowances does not, in any way, limit the ability of the United States to exercise any other authority to bring an enforcement action under any applicable law or regulation.

(b) The relevant agency official will provide a company notice if the Agency intends to retire, revoke, or withhold allocation of allowances, or ban the company from receiving future allowance allocations. The notice will specify the conduct leading to the administrative consequence and what the consequence will be. The relevant agency official will provide such notice no less than 30 days before the impending consequence.

(1) After the relevant agency official provides notice of an impending administrative consequence, the company for which such consequence is pending may not expend, transfer, or confer any allowances.

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(2) Any company receiving such a notification may provide information or data to EPA on why the administrative consequence should not be taken within 14 days of the date of the EPA's notice.

(3) If EPA does not receive a response within 14 days of the date of the Agency notice of impending administrative consequence, the administrative consequences will be effective on the date specified in the notice.

[86 FR 55221, Oct. 5, 2021]

### § 84.37 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at EPA and at the National Archives and Records Administration (NARA). Contact EPA at: U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC, 202-566-1742. For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html) or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov). The material also may be obtained from the following sources.

(a) Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2311 Wilson Boulevard, Suite 400, Arlington, VA 22201; phone: 703.524.8800; website: [www.ahrinet.org](http://www.ahrinet.org).

(1) 2008 Appendix C to AHRI Standard 700-2014, 2008 Appendix C for Analytical Procedures for AHRI Standard 700-2014—Normative, copyright 2008; into § 84.5(i).

(2) AHRI RTL OM December 2019, Refrigerant Testing Laboratory Certification Program Operations Manual, copyright 2019; IBR approved for § 84.3.

(3) AHRI General OM—January 2023, General Operations Manual, copyright 2022; IBR approved for § 84.3.

(b) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428; phone: 610.832.9500; email: [service@astm.org](mailto:service@astm.org); website: [www.astm.org](http://www.astm.org).

(1) ASTM D6064-11 (reapproved 2022), Standard Specification for HFC-227ea, 1,1,1,2,3,3,3-Heptafluoropropane