



**US Environmental Protection Agency  
Office of Enforcement and Compliance  
Assurance (OECA)**

**The Environmental Protection Agency's  
Interim Enforcement Response Policy to  
Resolve Violations Arising from the Use of  
Invalid 2010 and 2011 Biomass-Based Diesel  
Renewable Identification Numbers**

**March 2012**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

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**Background**

The EPA is implementing a streamlined approach to resolve violations arising only from the use of invalid 2010 and 2011 Biomass-Based Diesel Renewable Identification Numbers (RINs) to meet the Renewable Volume Obligation (RVO) established pursuant to 40 C.F.R. § 80.1427. The purpose of this approach is to notify obligated parties and renewable fuel exporters (parties) who used invalid RINs how to properly correct violations arising out of the use of those RINs and to provide a fair and efficient mechanism for the prompt resolution of a party's liability for those violations. We are taking this approach to resolving these cases to address the unique circumstances in this relatively new market. We stress here again that it is incumbent upon all parties to undertake due diligence to ascertain the validity of RINs to be used to meet an RVO under the Renewable Fuels Standard (RFS) Program. We expect that parties will prevent future violations, and intend to take a more aggressive approach to violations arising from the use of 2012 and later RINs.

This streamlined approach will apply to parties if 1) at the time they used the RINs, they had not yet learned that the RINs were invalid, and 2) they have implemented the remedial actions set forth below.

The EPA intends to notify the regulated community that it has alleged that RINs are invalid by posting information on its website when the agency has developed what it determines is sufficient proof to warrant a public allegation and determined that such notification will not unduly impair ongoing investigations. The fact that EPA has not made a public statement about the validity of particular RINs is not, and should not be taken to be, evidence that those RINs are valid. The decision to take enforcement action or to make public allegations about the validity of particular RINs involves fundamentally different issues than the decision to purchase or use RINs.

## **Violations Covered**

The EPA's streamlined settlement approach will use Administrative Settlement Agreements (ASAs) to resolve two potential categories of violations. First, the ASA will cover violations of 40 C.F.R. § 80.1460(c)(1) arising from the use of invalid RINs to show compliance with an RVO. For ease of reference, these are called *use violations*. Each gallon-RIN used to show compliance with an RVO constitutes a separate use violation.

The second category of violations covered by the ASA will apply only to parties that are not able to acquire sufficient RINs to meet their RVOs as a result of their use of invalid RINs. For purposes of the ASA, these are called *shortfall violations*. We expect any party that uses an invalid RIN to take all reasonable steps to avoid or reduce shortfall violations—that is, we expect these parties to acquire sufficient RINs to meet their RVO and comply with the deficit carryover provisions. The EPA recognizes, however, that some parties that used invalid RINs may not be able to obtain sufficient replacement RINs of the proper vintage by the compliance deadline. For these parties, the ASA would also cover violations of 40 C.F.R. § 80.1460(c)(1) and (f) based on their failure to acquire sufficient RINs to meet their RVO despite their ability to carry a deficit under 40 C.F.R. § 80.1427(b).

## **Elements of Streamlined Approach for Resolving Violations**

**Remedial Actions.** The EPA will use the streamlined approach only for a party that has implemented the following remedial actions. For use violations, a party must resubmit reports to remove the invalid RINs as required by 40 C.F.R. § 80.1431(b) within 30 days of the date that they learned that they used invalid RINs for compliance. For shortfall violations, a party must retire enough RINs to make up for the shortfall violations within 120 days of the date that they learned that they used invalid RINs. For the purposes of these remedial actions only, these retired RINs may be 2011 or 2012 biomass-based diesel RINs and must otherwise satisfy all the standards required of RINs that would be used to meet a 2012 biomass-based diesel RVO.

**Civil Penalties.** The ASA will require that the party pay a penalty of \$0.10 for each use violation, and \$0.20 for each shortfall violation that resulted from the use of invalid RINs. The total penalty arising from invalid RINs generated by any one renewable fuel producer or importer will be capped at \$250,000 for **any** use violation and \$250,000 for **any** shortfall violation. Furthermore, under this framework the maximum penalties that any party will have to pay for any and **all** use violations in connection with invalid 2010 and 2011 RINs will be capped at \$350,000, and the maximum penalty that any party will have to pay for any and **all** shortfall violations arising from all invalid 2010 and 2011 RINs will be capped at an additional \$350,000.

**RIN Integrity Report.** As a condition to resolving RIN use and shortfall violations under this streamlined approach, parties will be required to submit a RIN Integrity Report within one year of the date that the obligated party learned that it used invalid RINs. The report shall describe the methodology or system that the company has implemented or adopted at the time of the report to ensure that RINs it uses to satisfy its RVO are valid.

### **Timing and Implementation**

The EPA has sent ASAs that conform to the terms outlined above to parties with use violations related to RINs generated by Clean Green Fuels, LLC, and Absolute Fuels, LLC. For any additional violations arising from the use of invalid 2010 or 2011 RINs, parties that used the invalid RINs should implement remedial actions within the time frame set forth above. The EPA intends to address these violations in the manner outlined above. The timing for development of ASAs for the final resolution of any additional violations will be determined in the sole discretion of the EPA, but is likely to be in early 2013 (to reduce the transaction burdens on parties and the EPA). The EPA will be available to meet with parties that used invalid RINs prior to the final resolution of any additional violations. Failure to replace invalid RINs will not only remove a party from the ambit of this limited enforcement policy, it may prompt enforcement action.

Note: The policies and procedures set out in this document are intended solely for the guidance of government personnel. They are not intended and cannot be relied on to create substantive or procedural rights that are enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.