



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

**Second Interim Enforcement Response Policy-
Violations Arising from the Use of Invalid
2012 and 2013 Renewable Identification
Numbers**

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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

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Second Interim Enforcement Response Policy - Violations Arising from the Use of Invalid Renewable Identification Numbers

Background

On March 14, 2012, the EPA published an Interim Enforcement Response Policy to Resolve Violations Arising from the Use of Invalid 2010 and 2011 Biomass-Based Diesel Renewable Identification Numbers (IERP). The purpose of the IERP was to implement a fair and efficient approach to resolve violations arising from the use of invalid 2010 and 2011 Biomass-Based Diesel Renewable Identification Numbers (RINs), and 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.

As we noted in the IERP, under the existing Renewable Fuels Standard (RFS) Program it is incumbent upon all parties who transfer and use RINs to undertake due diligence to ascertain the validity of RINs. The regulated community has informed EPA that they have made significant efforts since we published the IERP to ascertain the validity of RINs that they have purchased and used for compliance. The regulated community has also informed the EPA that it would be more efficient for the agency to implement a regulatory mechanism to provide a structured way to assure that RINs entering commerce are valid, and have requested that the EPA provide an affirmative defense for parties who transfer or use invalid RINs that are generated under this new program.

On January 31, 2013, the EPA issued a Notice of Proposed Rulemaking (NPRM) that proposed amendments to the RFS regulations. The NPRM set forth minimum requirements for a voluntary program to implement structured quality assurance plans (QAPs), and proposed to create an affirmative defense against civil liability arising from the transfer and use of invalid RINs that were verified under a QAP. In order to encourage the development and use of QAPs as soon as possible, the NPRM includes a proposal to allow parties to retrospectively verify RINs that are generated in 2013. Under this proposal, parties who use RINs verified prior to the effective date of the regulations may assert an affirmative defense when the rule becomes final, if certain conditions are met. Establishing the affirmative defense would preclude imposition of civil

penalties for transfer or use of the covered invalid RINs. This Second Interim Enforcement Response Policy (Second IERP) is intended to encourage early implementation of independent third party QAPs.

Enforcement Response – Invalid 2012 RINs

The EPA's March 14, 2012 IERP only addressed violations arising from the use of invalid 2010 and 2011 Biomass-Based Diesel RINs. The original IERP stated that the EPA expects parties to undertake due diligence to ascertain the validity of RINs used to meet an RVO and to prevent future violations. Although the original IERP indicated that the EPA intended to take a more aggressive enforcement response to violations arising from the use of invalid 2012 RINs, we have reconsidered this approach in light of the proposed amendments to the RFS regulations and the significant efforts undertaken by the regulated community to implement quality assurance programs. Accordingly, the EPA intends to apply the streamlined approach, penalty caps and conditions as set forth in the March 14, 2012 IERP to violations of the RFS regulations arising from the use of invalid 2012 Biomass-Based Diesel RINs.

Enforcement Response – Invalid 2013 RINs

The proposed amendments to the RFS regulations will not go into effect until the EPA reviews comments submitted in response to the NPRM and issues a final rule. The NPRM explained that parties who transfer or use 2013 RINs verified prior to publication of the final rule using the criteria proposed in the NPRM may assert that verification as an element of an affirmative defense after the rule becomes final if the QAP used to verify those RINs meets the requirements in the final regulations. In view of the NPRM proposal for a retrospective affirmative defense for parties who transfer or use invalid RINs that were verified by a QAP, EPA generally does not intend to initiate enforcement actions during the 2013 calendar year against parties who transfer or use invalid 2013 RINs verified prior to publication of the final rule, provided that the following conditions are met and any party required to take the remedial actions set out below has timely done so.

Conditions:

1. The party transferring or using the RIN did not have a financial interest in the company that generated the invalid RIN;
2. The invalid RIN was verified by an independent third party QAP that meets the criteria proposed in the NPRM;
3. The RIN owner did not know or have reason to know that the RINs were invalid at the time of transfer or use for compliance;
4. The QAP auditor or RIN owner informs the Agency within 30 calendar days of discovery that the RINs were invalidly generated; and
5. Any RIN owner who used an invalid RIN to meet its RVO has implemented the remedial actions set forth below.

Remedial Actions:

The Agency expects to issue the final rulemaking well in advance of the 2013 compliance date of February 28, 2014. Therefore, we anticipate that most obligated parties will not retire 2013 RINs for compliance until after the effective date of the final rule. If for any reason an obligated party violates 40 C.F.R. § 80.1460(c)(1) by using invalid 2013 RINs to show compliance with its RVO prior to the effective date of the rule, the party must resubmit reports to remove the invalid RINs as required by 40 C.F.R. § 80.1431(b) within 30 calendar days of discovery that the RINs used for compliance are invalid.

For violations of 40 C.F.R. § 80.1460(c)(1) and (f) based on a failure to acquire sufficient RINs to meet an RVO as a result of the use of invalid RINs, a party must retire enough 2013 RINs to make up for the shortfall violations within 120 calendar days of the date that it learned that it had used invalid RINs. We expect any party who uses an invalid RIN to take all reasonable steps to avoid or reduce shortfall violations.

Failure to remove and replace invalid RINs will not only remove a party from the ambit of this limited enforcement policy, it may prompt enforcement action.

Timing and implementation:

This Second IERP is effective immediately, and will remain in effect until the EPA promulgates a final rule implementing structured QAPs or February 28, 2014, whichever is sooner.

The EPA intends to continue to notify the regulated community that it has alleged that RINs are invalid by posting information on this 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 any specific 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.

Note: The 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 the Policy and to change it at any time without public notice.