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**Temporary Guidance for Corporate  
Affiliate Groups that Include Obligated  
Parties on How to Calculate the  
RIN Holding Secondary Threshold  
from the Period of April 1, 2021  
through March 31, 2022**

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Compliance Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency

## Introduction

This document provides guidance on how to calculate secondary RIN holding thresholds as specified in 40 CFR 80.1435(b) using the alternative gasoline and diesel production provisions under §80.1435(d). This guidance applies to corporate affiliate groups with obligated parties as defined in §80.1401 and all other parties required to calculate RIN holdings under §80.1435.

If an obligated party has fully complied with the 2020 renewable volume obligation (RVO) on the calendar day the secondary threshold calculation is performed, the obligated party must use the equations at §80.1435(b) instead of the equations outlined in this document.

This guidance is divided into four sections. The first section provides background. The second through fourth sections address how the holdings-to-obligation percentage (HTOP) and conventional RVO values are determined as the 2019, 2020, and 2021 annual RVO compliance deadlines effectuate.<sup>1</sup> Specifically, the second section covers equations for use during April 1, 2021 through December 31, 2021. The third section covers equations for use during January 1, 2022 through January 31, 2022. The fourth section covers equations for use during February 1, 2022 through March 31, 2022. For the period before April 1, 2021 and after March 31, 2022, the equations at §80.1435(b) must be used without modification.

## Background

The Environmental Protection Agency (EPA) changed the Renewable Fuels Standard (RFS) annual compliance and attest engagement reporting deadlines for obligated parties for the 2019, 2020, and 2021 compliance periods as part of the Extension of 2019 and 2020 Renewable Fuel Standard Compliance and Attest Engagement Reporting Deadlines Final Rule (“RFS Compliance Date Extension Rule”).<sup>2</sup> During the rulemaking process, we received public comments suggesting that EPA should address situations where obligated parties may have to report exceeding the RIN holding reporting thresholds as a result of EPA extending the annual compliance deadlines.<sup>3</sup> Commenters explained that by extending the 2020 compliance deadline, some obligated parties would exceed the secondary threshold due to these obligated parties holding multiple years’ worth of separated D6 RINs that are not explicitly accounted for in the equations at §80.1435(b)(2). To address this issue, Commenters suggested that EPA modify the regulations or utilize enforcement discretion to address these concerns. For reasons discussed in the RFS Compliance Date Extension Rule Response to Comments document, we did not finalize changes to the regulations in the RFS Compliance Date Extension Rule.<sup>4</sup> This guidance is intended to help address the situation raised by Commenters.

We believe that the regulations at §80.1435(d) provide flexibility for obligated parties to use alternative gasoline and diesel product volumes in the secondary threshold equations at

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<sup>1</sup> HTOP and conventional RVO equations are described at 80.1435(b)(2).

<sup>2</sup> See 86 FR 17073 (April 1, 2021).

<sup>3</sup> See “RFS Compliance Date Extension: Response to Comments” pages 36-37 available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1011KW1.pdf>.

<sup>4</sup> Ibid.

§80.1435(b)(2) for situations where the compliance deadlines are extended as long as all the requirements of §80.1435(d) are met. The regulations at §80.1435(d)(1) allow parties to “have a reasonable basis for using the alternative production numbers (*e.g.*, selling or acquiring a refinery or a shutdown of a refinery).” Given that we are permitting some obligated parties to hold several years’ worth of separated D6 RINs, we believe it reasonable for such parties to take into account multiple years’ worth of gasoline and diesel fuel production when calculating their secondary thresholds when EPA extends the annual RVO compliance deadline(s). The intent of the RIN holding reporting thresholds is to have parties report to EPA cases where a party (or group of parties) holds a sufficiently large sum of separated D6 RINs (as checked by the primary threshold) which they would not typically hold in order to comply with their RVO (as checked by the secondary threshold).

However, due to the fact that some obligated parties may need to use as many as four different years’ gasoline and diesel production volumes in the secondary holding threshold calculations, we are providing guidance regarding which years’ production volumes must be used in the secondary threshold equations. Furthermore, due to the sequencing of 2019 (for small refineries), 2020, and 2021 RVO compliance deadlines, we believe it is important to specify how various year’s gasoline and diesel production volumes should be input into the secondary threshold equations. We believe such guidance is necessary to help ensure consistency and assure conformance with the RIN holding threshold reporting requirements. This guidance will also help attest auditors determine whether parties calculated secondary RIN holdings correctly under §80.1464(a)(4).

### **Equations for April 1, 2021 through December 31, 2021**

For the period of April 1, 2021 through December 31, 2021 parties subject to this guidance must use Equation (1) to calculate daily HTOP and Equation (2) to calculate the 2019 plus 2020 conventional RVO.

$$\text{Equation (1): } \text{HTOP}_d = \{(\sum \text{D6RIN}_d)_a / [(\sum \text{CNV\_RVO}_{2019+2020})_a + (\sum \text{CNV\_DEF}_{2019})_a]\} * 100$$

Where:

$\text{HTOP}_d$  = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day  $d$  relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period  $i-1$ , in percent.

$d$  = A given calendar day.

$a$  = Individual corporate affiliate in a corporate affiliate group.

$(\sum \text{D6RIN}_d)_a$  = Sum of the number of separated D6 RINs each individual corporate affiliate  $a$  holds on calendar day  $d$ , in RIN gallons.

$(\Sigma \text{CNV\_RVO})_{2019+2020}$  = Sum of the conventional RVOs for each individual corporate affiliate a for the 2019 and 2020 compliance periods as calculated in Equation (2) of this document, in RIN-gallons.

$(\Sigma \text{CNV\_DEF}_{2019})_a$  = Sum of the conventional deficits for each individual corporate affiliate a as calculated in §80.1435(b)(2)(iv) for the 2019 compliance period, in RIN-gallons.

*Equation (2):*  $\text{CNV\_RVO}_{2019+2020} = \{[\text{RFStd}_{\text{RF},2020} * (\text{GV}_{2019} + \text{GV}_{2020} + \text{DV}_{2019} + \text{DV}_{2020})] - [\text{RFStd}_{\text{AB},2020} * (\text{GV}_{2019} + \text{GV}_{2020} + \text{DV}_{2019} + \text{DV}_{2020})]\} + \text{ERVORF},2020$

Where:

$\text{CNV\_RVO}_{2019+2020}$  = The conventional RVO for an individual corporate affiliate for the 2019 and 2020 compliance periods without deficits, in RIN-gallons.

$\text{RFStd}_{\text{RF},2020}$  = The standard for renewable fuel for the 2020 compliance period pursuant to §80.1405(a)(11)(iv), in percent.

$\text{RFStd}_{\text{AB},2020}$  = The standard for advanced biofuel for the 2020 compliance period pursuant to §80.1405(a)(11)(iii), in percent.

$\text{GV}_{2019}$  = The non-renewable gasoline volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2019 compliance period, in gallons.

$\text{DV}_{2019}$  = The non-renewable diesel volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2019 compliance period, in gallons.

$\text{GV}_{2020}$  = The non-renewable gasoline volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2020 compliance period, in gallons.

$\text{DV}_{2020}$  = The non-renewable diesel volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2020 compliance period, in gallons.

$\text{ERVORF},2020$  = The sum of all renewable volume obligations from exporting renewable fuels, as calculated under §80.1430, by an obligated party for the 2020 compliance period, in RIN-gallons.

For Equations (1) and (2), we believe that the 2019 gasoline and diesel production is a more reasonable approximation of 2021 gasoline and diesel production due to decreased production in 2020 as a result of the Covid-19 pandemic. Parties should also use the 2019 conventional deficits since those obligated parties would not have established a 2020 conventional deficit. Parties should use 2020 RVOs incurred from exporting renewable fuel as that value will be known and those RVOs should have already been satisfied under §80.1430 independent of the extended compliance deadlines.

## Equations for January 1, 2022 through January 31, 2022

For the period of January 1, 2022 through January 31, 2022 parties subject to this guidance must use Equation (3) to calculate daily HTOP and Equation (4) to calculate the 2020 plus 2021 conventional RVO.

$$\text{Equation (3): } \text{HTOP}_d = [(\Sigma \text{D6RIN}_d)_a / \{[(\Sigma \text{CNV\_RVO}_{2020+2021})_a + (2 * (\Sigma \text{CNV\_DEF}_{2019}))_a] * 1.25\}] * 100$$

Where:

$\text{HTOP}_d$  = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period i-1, in percent.

d = A given calendar day.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma \text{D6RIN}_d)_a$  = Sum of the number of separated D6 RINs each individual corporate affiliate a holds on calendar day d, in RIN gallons.

$(\Sigma \text{CNV\_RVO})_{2020+2021}$  = Sum of the conventional RVOs for each individual corporate affiliate a for the 2020 and 2021 compliance periods as calculated in Equation (4) of this document, in RIN-gallons.

$(\Sigma \text{CNV\_DEF}_{2019})_a$  = Sum of the conventional deficits for each individual corporate affiliate a as calculated in §80.1435(b)(2)(iv) for the 2019 compliance period, in RIN-gallons.

$$\text{Equation (4): } \text{CNV\_RVO}_{2020+2021} = \{[(\text{RFStd}_{\text{RF},2020} * (\text{GV}_{2020} + \text{DV}_{2020})) + (\text{RFStd}_{\text{RF},2021} * (\text{GV}_{2021} + \text{DV}_{2021}))] - [(\text{RFStd}_{\text{AB},2020} * (\text{GV}_{2020} + \text{DV}_{2020})) + (\text{RFStd}_{\text{AB},2021} * (\text{GV}_{2021} + \text{DV}_{2021}))]\} + \text{ERV}_{\text{RF},2021}$$

Where:

$\text{CNV\_RVO}_{2020+2021}$  = The conventional RVO for an individual corporate affiliate for the 2020 and 2021 compliance periods without deficits, in RIN-gallons.

$\text{RFStd}_{\text{RF},2020}$  = The standard for renewable fuel for the 2020 compliance period pursuant to §80.1405(a)(11)(iv), in percent.

$\text{RFStd}_{\text{AB},2020}$  = The standard for advanced biofuel for the 2020 compliance period pursuant to §80.1405(a)(11)(iii), in percent.

$\text{RFStd}_{\text{RF},2021}$  = The standard for renewable fuel for the 2020 compliance period pursuant to §80.1405, in percent.

$\text{RFStd}_{\text{AB},2021}$  = The standard for advanced biofuel for the 2020 compliance period pursuant to §80.1405, in percent.

GV<sub>2020</sub> = The non-renewable gasoline volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2020 compliance period, in gallons.

DV<sub>2020</sub> = The non-renewable diesel volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2020 compliance period, in gallons.

GV<sub>2021</sub> = The non-renewable gasoline volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2021 compliance period, in gallons.

DV<sub>2021</sub> = The non-renewable diesel volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2021 compliance period, in gallons.

ERVORF,2021 = The sum of all renewable volume obligations from exporting renewable fuels, as calculated under §80.1430, by an obligated party for the 2021 compliance period, in RIN-gallons.

For Equations (3) and (4), we expect obligated parties to use the 2020 and the 2021 gasoline and diesel production volumes as those volumes should be known when performing HTOP calculations for the period of January 1, 2022 through January 31, 2022. Similarly, for RVOs incurred from exporting renewable fuel, parties should use the 2021 exporter RVOs as those will be known as well. For equation (3), parties must use twice the 2019 conventional deficits as those parties would not have established the 2020 conventional deficit during this period but should account for the fact that a corporate affiliate group may have two years' worth of deficits across the group.

### **Equations for February 1, 2022 through March 31, 2022**

For the period of February 1, 2022 through March 31, 2022 parties subject to this guidance must use Equation (5) to calculate daily HTOP and Equation (6) to calculate the 2021 conventional RVO.

$$\text{Equation (5)} \quad \text{HTOP}_d = [(\sum \text{D6RIN}_d)_a / \{(\sum \text{CNV\_RVO}_{2021})_a + (\sum \text{CNV\_DEF}_{2021})_a + (\sum \text{CNV\_DEF}_{2020})_a\} * 1.25] * 100$$

Where:

HTOP<sub>d</sub> = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period i-1, in percent.

d = A given calendar day.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$  = Sum of the number of separated D6 RINs each individual corporate affiliate a holds on calendar day d, in RIN gallons.

$(\Sigma CNV\_RVO)_{2021}$  = The conventional RVOs for each individual corporate affiliate a for the 2021 compliance period as calculated in Equation (6) of this document, in RIN-gallons.

$(\Sigma CNV\_DEF_{2021})_a$  = Sum of the conventional deficits for each individual corporate affiliate a as calculated in §80.1435(b)(2)(iv) for the 2021 compliance period, in RIN-gallons.

$(\Sigma CNV\_DEF_{2020})_a$  = Sum of the conventional deficits for each individual corporate affiliate a as calculated in §80.1435(b)(2)(iv) for the 2020 compliance period, in RIN-gallons.

*Equation (6)*  $CNV\_RVO_{2021} = \{[RFStd_{RF,2021} * (GV_{2021} + DV_{2021})] - [RFStd_{AB,2021} * (GV_{2021} + DV_{2021})]\} + ERVOR_{F,2021}$

Where:

$CNV\_RVO_{2021}$  = The conventional RVO for an individual corporate affiliate for the 2021 compliance period without deficits, in RIN-gallons.

$RFStd_{RF,2021}$  = The standard for renewable fuel for the 2020 compliance period pursuant to §80.1405, in percent.

$RFStd_{AB,2021}$  = The standard for advanced biofuel for the 2020 compliance period pursuant to §80.1405, in percent.

$GV_{2021}$  = The non-renewable gasoline volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2021 compliance period, in gallons.

$DV_{2021}$  = The non-renewable diesel volume, determined in accordance with §80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for the 2021 compliance period, in gallons.

$ERVOR_{F,2021}$  = The sum of all renewable volume obligations from exporting renewable fuels, as calculated under §80.1430, by an obligated party for the 2021 compliance period, in RIN-gallons.

Note that Equations (5) and (6) match the regulatorily specified equations at §80.1435(b)(2)(i) and (iii) respectively. For clarity, we are specifying which compliance periods that go into the terms of the equations. After March 31, 2022, parties must use the equations at §80.1435(b) as specified.