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EPA to Hold Second Round of Meetings Over Amendments to the Renewable Fuel Standard to Address RIN Fraud

The Environmental Protection Agency (“EPA”) will hold another round of meetings with industry in early November to discuss contemplated changes to the way in which it enforces the use of fraudulently generated renewable fuel credits (Renewable Identification Numbers or “RINs”) and obtain feedback on a planned RIN verification program under the Renewable Fuel Standard (“RFS”). The RFS requires gasoline and diesel refiners and importers to purchase RINs representing volumes of renewable fuel to offset the production of petroleum-based transportation fuel. Over the past year, EPA has fined gasoline and diesel fuel refiners and importers millions of dollars for using RINs that were fraudulently generated by companies that did not actually produce any renewable fuel. EPA also required refiners and importers who used invalid RINs to replace them with new valid RINs, costing the refined products industry more than \$200 million.

EPA is now considering revising the way it enforces the use of invalid RINs. Specifically, the agency is considering establishing a RIN validation program whereby EPA-approved third-parties would verify renewable fuel producers’ compliance with RIN-generation procedures. Refiners and importers of gasoline and diesel who use RINs generated by verified renewable fuel producers that turn out to be invalid would not be fined or required to replace such RINs. Instead, EPA would pursue the RIN generator and verifying company for fines and RIN replacement in such instances.

In late July and early August, EPA held an initial round of meetings with gasoline and diesel refiners and importers as well as renewable fuel producers and RIN traders to discuss these changes. Following these meetings, EPA sent a letter to Congress in which the Agency stated it hoped to publish draft amendments to the RFS by the end of 2012. The purpose of the next round of meetings in November will be to discuss the current status of the amendments and to obtain feedback from both the renewable fuel and refined products industries on a draft quality assurance plan to verify renewable fuel production that EPA is considering.

Sutherland Asbill & Brennan’s Energy and Environmental Practice Group has more than 30 years of experience in working with EPA and industry on rulemakings and amendments that impact the regulation of refined petroleum products as well as substantial experience representing companies in EPA enforcement proceedings for alleged violations of the Renewable Fuel Standard based on possible use of invalid RINs.



If you have any questions regarding this Legal Alert, please feel free to contact any of the attorneys listed below.

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