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## EPA Issues Amendments to the Renewable Fuel Standard to Address RIN Fraud

Earlier today and in the wake of the fraudulent renewable fuel credit (known as “RINs”) scandal that has shaken both the renewable fuel and petroleum industries, the Environmental Protection Agency (EPA) released a number of amendments to the Renewable Fuel Standard (RFS). The RFS requires gasoline and diesel refiners, blenders 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 that used invalid RINs to replace them with new valid RINs, costing the refined products industry more than \$200 million.

In response to the industry pushback to EPA’s enforcement of this issue, EPA has proposed: (1) a voluntary quality assurance program for verifying the validity of RINs under the RFS that would provide for an affirmative defense for those that purchase invalid RINs; (2) modifications to the exporter provisions of the RFS program to ensure that an appropriate number and type of RINs are retired whenever renewable fuel is exported; and (3) new regulatory provisions to address RINs that become invalid downstream of a renewable fuel producer. Finally, EPA is issuing a second interim enforcement policy to address invalid RINs that have already been generated and may be currently trading in the market.

Arguably the most important part of this rulemaking is the quality assurance program whereby third-party auditors would verify renewable fuel producers’ compliance with RIN-generation procedures. Companies that purchase or retire RINs from producers that voluntarily elect to participate in the quality assurance program would benefit from an affirmative defense mechanism that would allow the company, other than the generator of an invalid RIN, to avoid civil liability for the transfer or use of invalid RINs for purposes of fulfilling RFS obligations. This mechanism would have no effect on any party’s potential criminal liability. The program would also create three new types of RINs: (1) RINs verified by a third-party auditor, who would be responsible for replacing the RINs in the event that they were invalidity generated; (2) RINs verified by a third-party auditor, where the refiner and importer of gasoline diesel that retired the RIN would remain liable for RIN replacement; and (3) unverified RINs, where the refiner and importer of gasoline and diesel that retired the RIN would remain liable for replacement.

Sutherland Asbill & Brennan LLP was very active in the stakeholder participation process during the development of this draft rulemaking, having met with EPA several times over the past six months. Our attorneys have 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 RFS based on possible use of invalid RINs.

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*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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