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The U.S. Environmental Protection Agency Issues Final Renewable Fuel Standards for 2013 and Further Reduces Cellulosic Biofuel Volume

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On August 6, 2013, the U.S. Environmental Protection Agency (the “EPA”) issued its much delayed renewable fuel percentage standards for 2013, which should have been issued in November of 2012. Under Section 211(o) of the Clean Air Act, each November the EPA is required to set annual renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and renewable fuel for the following year. Despite this delay, the EPA has determined that the renewable fuel standards will apply to all gasoline and diesel produced in 2013, including that produced prior to the effective date of the final rule. However, the EPA has extended the date by which compliance with the 2013 standards must be demonstrated to June 30, 2014.

The renewable fuel standards are expressed as volume percentages and are used by each refiner, blender or importer to determine its renewable fuel volume obligations. The EPA sets the applicable percentages so that if each regulated party meets the percentages, and if projections of gasoline and diesel use for the year are accurate, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel and advanced biofuel used will meet the required volumes on a nationwide basis. Thus, to set the renewable fuel percentage standards, the EPA must first specify the required volumes for each fuel type.

In January 2013, the EPA proposed to increase the required volumes of advanced biofuel, cellulosic biofuel and total renewable fuel to levels above

those set forth in the 2012 standards. The proposed standards for advanced biofuel and total renewable fuel were equivalent to the standards set in the Clean Air Act. However, as has always been the case, the proposed standard for cellulosic biofuel was much lower than the standard set by the Clean Air Act, which, for 2013, is 1 billion gallons ethanol-equivalent. The EPA previously set the 2013 standard for biomass-based biofuel (mostly biodiesel) at 1.28 billion gallons, which is equivalent to 1.92 billion gallons ethanol-equivalent of biodiesel and counts towards the total advanced biofuel standard.

In the final rule, the EPA retained the proposed volumes for advanced biofuel and total renewable fuel, as well as the previously set volume for biomass-based diesel, but significantly reduced the volume for cellulosic biofuel, taking the required volume from 14 million gallons to 6 million gallons. The 2012, proposed 2013 and final 2013 required volumes and final 2013 percentage standards are set forth below. All volumes are ethanol-equivalent, except biomass-based biofuel, which is actual.

Fuel Type	2012 Volume	Proposed 2013 Volume	Final 2013 Volume	Final 2013 Percentage
Advanced Biofuel	2.0 billion gallons	2.75 billion gallons	2.75 billion gallons	1.62%
Cellulosic Biofuel	8.65 million gallons	14 million gallons	6 million gallons	0.004%
Biomass-Based Biofuel	1.0 billion gallons	1.28 billion gallons	1.28 billion gallons	1.13%
Total Renewable Fuel	15.2 billion gallons	16.55 billion gallons	16.55 billion gallons	9.74%

The Clean Air Act requires that the EPA base the standard for cellulosic biofuel on the projected volume of cellulosic biofuel to be produced during the year. On January 25, 2013, the D.C. Circuit vacated the EPA's 2012 standard for cellulosic biofuel. The court found that the EPA's projection of the volume of cellulosic biofuels to be produced in 2012 was not neutral, but was tilted in favor of promoting growth in the cellulosic biofuel industry. The final rule revised the 2012 renewable fuel standards to eliminate the applicable standard for cellulosic biofuel.

In addition, when the EPA sets the applicable volume for cellulosic biofuel below the volume specified in the Clean Air Act, the EPA is required to offer waiver credits that can be purchased in lieu of acquiring cellulosic biofuel Renewable Identification numbers ("RINs") to obligated parties. These waiver credits cannot be traded or banked for future use, nor can they be used to meet either the advanced biofuel standard or the total renewable fuel standard. For the 2013 compliance period, the EPA has determined that cellulosic biofuel waiver credits can be purchased at a price of \$0.42

per credit.

The EPA believes that the cellulosic biofuel industry is transitioning from research and development and pilot scale to commercial scale facilities. However, less than 1 million gallons of cellulosic biofuel were produced in 2012, and the aggregate capacity of the four cellulosic biofuel plants expected to begin production by early 2014 is only 49 million gallons. Therefore, for at least several more years cellulosic biofuel production is likely to remain well below the 2013 goal of 1 billion gallons set by the Clean Air Act.

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