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Grandfathered Baselines in the RFS Program Aren't What They Use to Be

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Several of the various fuel regulations include exceptions for activities that occurred before the regulations were first proposed. This concept was introduced to avoid penalizing an ongoing operation for the changing landscape. The renewable fuel program includes a grandfathering clause that allows a biofuel plant that operated (or was in the process of being built) before December 19, 2007, to continue to produce biofuel up to its baseline volume (and generate RINs) even if the biofuel greenhouse gas (GHG) reduction versus petroleum fuel is less than the required 20%. In addition, the regulations require all biofuel plants (not just grandfathered plants) to register a baseline production volume, based on either a permit limit or some demonstrated production capability. A non-grandfathered biofuel plant, although it has a baseline, is not limited in RIN production by its baseline.

Older ethanol plant designs are almost exclusively the only plants that have a meaningful baseline. Plants that have a grandfathered baseline can only generate RINs above the baseline volume, if the production process is modified to meet the minimum GHG reduction of 20%.

The regulations allow operating above the grandfathered baseline and still generating RINs if criteria in § 80.1426 Table 1 and Table 2 are satisfied. The criteria includes a limit on distiller's grains drying and use of advanced technologies. These combinations offered a total of 58

TM&C Services in Fuel Regulations

TM&C provides a full range of services in its fuels regulatory practice. Some of these services are listed below:

- Preparing, reviewing and submitting fuels reports, including CDX submissions.

- Facility audits for compliance with fuels programs.
- Interaction with EPA to pose fuels related questions.
- Industry specialist assistance for required gasoline attestations.
- Industry specialist assistance for in-line blending audits.
- Assistance in setting up a fuels compliance group/program.
- Personnel reviews of compliance related groups.
- Compliance status reviews and recommendations .
- Negotiations/ consultation during EPA enforcement actions.
- 3rd Party Engineering reviews.
- Due diligence reviews of facilities and companies in RFS RINs Program.

possible process codes that could be used in conjunction with a corn starch feedstock and non cellulosic ethanol.

In recent developments, producers with grandfathered baselines have demonstrated that ethanol produced at their facility actually meets the 20% GHG reduction, and therefore, RIN generation should not be limited by their baseline. EPA has agreed with these demonstrations and has approved RIN generation above the baseline.

Absolute Energy and Dakota Spirit are two early petitioners that have been approved to produce and generate RINs above their grandfathered baseline. The Dakota Spirit Process is unique in that it involves imported steam derived from an offsite combined heat and power system. The Absolute Energy Process is based simply on natural gas and electricity energy savings compared to the EPA's calculated usage in the "typical" older ethanol production facility. Many ethanol producers are finding that they can fulfill the Absolute Energy Process and are submitting petitions. There is specific guidance on the petition process at both the EPA website and the regulations § 80.14016; however, the key piece is an efficient process that uses no more than 26,000 BTUs of natural gas per gallon of ethanol produced and no more than 1,900 BTU equivalents of grid electricity per gallon of ethanol produced (the "Absolute Energy Process").

Other ethanol producers are finding that if they petition under the "Absolute Energy Process," the EPA evaluation time can be quicker since the modeling has already been done. Two plants, the Valero Welcome and Hankinson Renewable Energy LLC, have been approved under the "Absolute Energy Process" and others are awaiting EPA approval.

The EPA just published the final renewable fuel standards for 2013, so we will be issuing a special Focus on Fuels article next week to discuss the implications of the standards.

2013 Renewable Fuel Standards

	Final (issued August)	Proposed (issued January)
Cellulosic biofuel	0.004%	0.008%
Biomass-based diesel	1.13%	1.12%
Advanced biofuel	1.62%	1.60%
Renewable fuel	9.74%	9.63%