

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICANS FOR CLEAN ENERGY et al.,)	
)	
Petitioners,)	
)	
v.)	Case No. 16-1005
)	(and consolidated
ENVIRONMENTAL PROTECTION AGENCY and)	cases)
ANDREW R. WHEELER,)	
)	
Respondents.)	
)	

**REPLY IN SUPPORT OF MOTION OF RENEWABLE-FUELS
PETITIONERS TO ENFORCE THE MANDATE**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	1
I. THE MOTION IS PROPER.....	1
II. EPA’S DELAY IS UNREASONABLE	2
III. THE COURT SHOULD ORDER EPA TO ACT WITHIN A SHORT AND DEFINITE TIMEFRAME.....	5
IV. THE COURT SHOULD ORDER EPA TO ISSUE A CURATIVE OBLIGATION	7
CONCLUSION.....	11
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Americans for Clean Energy v. EPA</i> , 864 F.3d 691 (D.C. Cir. 2017).....	1, 4, 9, 11
<i>Atlantic City Electric Co. v. FERC</i> , 329 F.3d 856 (D.C. Cir. 2003).....	2
<i>City of Cleveland v. Federal Power Commission</i> , 561 F.2d 344 (D.C. Cir. 1977).....	2, 8
<i>Encino Motorcars, LLC v. Navarro</i> , 136 S. Ct. 2117 (2016).....	6
<i>International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW v. OSHA</i> , 976 F.2d 749 (D.C. Cir. 1992).....	2
<i>MCI Telecommunications Corp. v. FCC</i> , 580 F.2d 590 (D.C. Cir. 1978).....	9
<i>Office of Consumers' Counsel v. FERC</i> , 826 F.2d 1136 (D.C. Cir. 1987).....	2
<i>NLRB v. SW General, Inc.</i> , 137 S. Ct. 929 (2017).....	9
<i>WildEarth Guardians v. EPA</i> , 830 F.3d 529 (D.C. Cir. 2016).....	9
STATUTES, RULES, AND REGULATIONS	
42 U.S.C. § 7607.....	11
75 Fed. Reg. 14,670 (Mar. 26, 2010).....	6
78 Fed. Reg. 49,794 (Aug. 15, 2013).....	6
80 Fed. Reg. 77,420 (Dec. 14, 2015).....	6
85 Fed. Reg. 7016 (Feb. 6, 2020)	6, 10

DOCKET MATERIALS

EPA, <i>Carryover RIN Bank Calculations for 2019 Final Rule</i> (Nov. 7, 2018), EPA-HQ-OAR-2018-0167-1298.....	10
EPA, <i>Carryover RIN Bank Calculations for 2020 Final Rule</i> (Dec. 3, 2019), EPA-HQ-OAR-2019-0136-2052.....	10
EPA, <i>EPA Finalizes 2012 Renewable Fuel Standards</i> (Dec. 2011), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100DDBF.pdf	6

INTRODUCTION

More than three years ago, the Court invalidated EPA's 2016 general waiver under the Renewable Fuel Standard ("RFS") program. *Americans for Clean Energy v. EPA* ("ACE"), 864 F.3d 691 (D.C. Cir. 2017). Because EPA still has not acted on remand, movants have asked the Court to order EPA to issue an equivalent curative obligation with an effective date no more than six months after the order and a compliance-demonstration deadline three months later. EPA, the American Petroleum Institute ("API"), and the American Fuel & Petrochemical Manufacturers ("AFPM") oppose the motion on various meritless grounds. EPA has had plenty of time to act, and it must issue a curative obligation. At a minimum, the Court should order EPA to act on remand within a short and definite period, such as requiring that EPA issue a final action by November 30, 2021, with obligated parties' compliance due March 31, 2022.

ARGUMENT

I. THE MOTION IS PROPER

API contends (Opp.2) that the motion is "procedurally defective" because movants should instead have filed a mandamus petition in a new case. That is incorrect. Although parties have sometimes filed mandamus petitions to enforce a mandate, the Court has explained that "regardless of whether we remand 'the case' or 'the record,' the court retains a residual jurisdiction to enforce its mandate."

International Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. OSHA, 976 F.2d 749, 750 (D.C. Cir. 1992). Accordingly, the Court has considered and granted motions to compel compliance with the mandate. *See, e.g., Atlantic City Elec. Co. v. FERC*, 329 F.3d 856, 857 (D.C. Cir. 2003); *Office of Consumers' Counsel v. FERC*, 826 F.2d 1136, 1138 (D.C. Cir. 1987); *City of Cleveland v. Fed. Power Comm'n*, 561 F.2d 344, 348 (D.C. Cir. 1977).

No purpose would be served by dismissing merely to force the parties to refile their papers on a new docket. All agree this motion is governed by the mandamus standard (appropriately adjusted to the context). *See* Mot.10-13; *City of Cleveland*, 561 F.2d at 348 n.43. If the request's title matters, the Court should restyle it a *petition*, as EPA suggests (Opp.10).

II. EPA'S DELAY IS UNREASONABLE

EPA's attempts to defend its delay are meritless.

A. EPA claims (Opp.12, 15) that three-plus years' delay is reasonable because it has been giving "careful consideration" to "the myriad complexities involved in addressing the Court's mandate." These "complexities" are makeweight reflecting EPA's mistaken view (Opp.12) that its task on remand is not only to account for the Court's mandate but also to "mitigate any retroactive effects of issuing" a curative obligation and "reconcile these considerations with the realities of the renewable fuel market." EPA's true task is simple: restore the

2016 total requirement to the level it would have been absent the unlawful waiver. That could have been accomplished by now.

As movants explained, there is no warrant for a “retroactivity” analysis of a curative obligation because, given the Court’s order, EPA’s only authority is to correct its error. Obligated parties have no protected interest in avoiding a supposed “burden” that Congress intended them to bear and that this Court concluded EPA had unlawfully relieved. *See* Mot.20. Moreover, obligated parties will not suffer “hardship” because their overcompliance for 2016 has provided them ample carryover RINs to meet the curative obligation. Mot.14, 20.

EPA mentions (Opp.15) “the statutory ambiguity in how EPA should craft a remedy,” but it does not identify that ambiguity—there is none. *Cf.* Mot.15, 19. EPA also invokes (Opp.13) pandemic disruptions. But those did not begin until after EPA’s promised action in “early 2020”—and after about two and a half years had passed since the mandate. Moreover, any resulting “uncertainties” in the fuel markets (Opp.13) are irrelevant because the task is definite: correct the standard to reflect what it would have been absent the unlawful 500-million-gallon waiver.¹

B. EPA also asserts (Opp.16) that the statutory “goal to increase production insofar as 2016 is concerned has suffered no prejudice by the delay

¹ Additionally, because the standards are percentages of transportation fuel used, the amount of renewable fuel that must be used is automatically adjusted proportionally to account for fluctuations in transportation-fuel use. *See* Mot.3.

because the mandate issued when it was too late to affect the amount of renewable fuels produced in 2016.” But, as explained (Mot.13-14, 20-21), even though 2016 has passed, a curative obligation would further Congress’s goal of “forcing the market” to increase its renewable-fuel use over the course of the program. *ACE*, 864 F.3d at 710. EPA in effect seeks to insulate its annual rulemakings from meaningful judicial oversight, because the compliance period will always end before the Court reviews the rule.

Further, EPA’s assertion evinces the erroneous belief that the unlawful 2016 standard is still the baseline, despite the Court’s ruling. The statutory goal of increasing renewable-fuel use was undermined by EPA’s unlawful waiver, harming not merely movants by reducing their “profit” (EPA.Opp.16-17; AFPM.Opp.5), but all Americans by denying them the lower fuel prices, lower greenhouse-gas emissions, and greater energy independence that Congress sought to achieve, *ACE*, 864 F.3d at 696. Those harms *continue* because of EPA’s failure to issue a curative obligation.

The cases EPA cites (Opp.13-14) where the Court declined to find that a similarly long delay was unreasonable are inapposite because none involved the correction of annually compounding regulatory requirements. As explained (Mot.13-14), the structure of the RFS puts a premium on prompt correction—a point EPA disregards.

III. THE COURT SHOULD ORDER EPA TO ACT WITHIN A SHORT AND DEFINITE TIMEFRAME

Given the RFS's structure, the significant harms caused by delay, and the simplicity of the task, movants have asked (Mot.1 & n.2, 13-15) the Court to order EPA to issue a 500-million-gallon curative obligation with an effective date no more than six months after the Court's order and a compliance-demonstration deadline three months later. EPA's grounds for resisting this timetable fail, but in any event the Court should impose a short and definite timeframe in which EPA must act.

A. EPA tells (Opp.13) the Court that it "*plans* to address the remand in the context of promulgating an annual rule *if at all possible* ..., and *intends* to sign a final action by no later than November 30, 2021, which is the statutory deadline for the 2022 annual rule" (emphasis added). EPA's preferred timetable will likely lead to further excessive delay. Depending on when the Court resolves this motion, November 30, 2021, may provide more time than EPA reasonably needs. Again, simple solutions are readily available. And even if the issue were more complex, if EPA has been giving the issue "careful consideration" for three-plus years as it claims (Opp.12), it should be ready to act quickly when the Court rules. Given that EPA ordinarily completes its annual RFS rulemakings within six months of the proposal, six months should suffice for a far simpler rulemaking implementing a curative obligation.

EPA’s request to tie the action to the 2022 annual rule is similarly problematic. For one, it represents an unacknowledged reversal, because EPA proposed last year to address the remand through “a separate action” untethered to annual rulemakings. 85 Fed. Reg. 7016, 7019 (Feb. 6, 2020); *see Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (“agency must at least display awareness that it is changing position and show that there are good reasons for the new policy” (quotation cleaned)). For another, EPA cannot be trusted to meet the statutory deadline for the 2022 standards: EPA previously “anticipated” taking that separate action “in early 2020.” 85 Fed. Reg. at 7019. And since the current RFS program began in full in 2010, EPA has missed five annual deadlines by substantial margins—including for the 2021 standards, which EPA has not even proposed.² Tellingly, EPA packs its proposal to the Court with noncommittal language (“plans,” “if at all possible,” “intends”).

B. Because the compliance-demonstration deadline is the moment that the curative obligation will have effect, it too should not be left to EPA’s unfettered discretion, lest EPA put it off indefinitely. AFPM argues (Opp.9) that

² *See* 80 Fed. Reg. 77,420 (Dec. 14, 2015) (issuing standards for 2014 and 2015); 78 Fed. Reg. 49,794 (Aug. 15, 2013) (issuing standards for 2013); 75 Fed. Reg. 14,670 (Mar. 26, 2010) (issuing standards for 2010). For other years, EPA was late in issuing standards by less than one month. *See* 85 Fed. Reg. at 7069 (issuing standards for 2020 in December 2019); EPA, *EPA Finalizes 2012 Renewable Fuel Standards* at 1 (Dec. 2011) (issuing standards for 2012 in December 2011), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100DDBF.pdf>.

the usual compliance period is sixteen months, not three. AFPM is comparing apples and oranges. Sixteen months is the ordinary period between the statutory deadline for issuing annual standards and the deadline EPA sets for obligated parties to show compliance with those standards. But that period includes time for the industry to produce and use the required amounts of renewable fuel, which is unnecessary here; as explained, obligated parties would simply need to retire existing carryover RINs to meet the curative obligation. The only relevant period is the compliance *demonstration* period, which is ordinarily three months.

* * *

Consequently, even if the Court does not adopt the timetable initially proposed by movants, it should at least order EPA to act within a short and definite period. For example, the Court could order EPA to issue its final action on remand by November 30, 2021, with compliance due by March 31, 2022 (the next regular compliance-demonstration deadline). That would accommodate EPA's current preference to synchronize the curative obligation with an annual rulemaking while preventing EPA from further dragging its feet.

IV. THE COURT SHOULD ORDER EPA TO ISSUE A CURATIVE OBLIGATION

EPA contends (Opp.19-20) that movants “seek[] ... an improper preemptive policy instruction.” *See also* API.Opp.3-4. But movants are not asking the Court to resolve all issues relating to the implementation of a curative obligation (e.g.,

how to translate the curative volume into a percentage standard and whether the obligation would apply to 2016 obligated parties or current obligated parties, *see* AFPM.Opp.6-7). They simply ask the Court to remind EPA that it is “without power to do anything which is contrary to either the letter or spirit of the mandate construed in the light of the opinion,” *City of Cleveland*, 561 F.2d at 346; *see* Mot.17, and that the letter and spirit of *ACE* is that EPA must restore the unlawfully waived 500 million gallons to the volume requirements that EPA was supposed to ensure are met. This became necessary because EPA’s prior proposal to retain the original 2016 standard plainly reflects a misconception of the mandate. *See* Mot.8, 10-11, 16. And EPA doubles down in its opposition, asserting (Opp.20) that “the Court’s mandate begins and ends with prohibiting EPA from relying [o]n impermissible ‘demand-side’ factors to exercise the general waiver.” What EPA keeps ignoring is that the 2016 standard it issued was not its creation from whole cloth but rather was a reduction of a specific requirement that Congress imposed and commanded EPA to implement. Without the unlawful general-waiver reduction, that specific statutory requirement remains in effect and must be implemented. *See* Mot.17-18.

EPA argues (Opp.17) that on remand it could avoid a curative obligation by issuing a “general waiver on alternative grounds or taking some other action to lower volumes.” *See also* API.Opp.6-11; AFPM.Opp.2-3, 5, 7, 10-11. These

possibilities are irrelevant. The “necessary consequence” of vacatur and remand is “some kind of corrective EPA action.” *WildEarth Guardians v. EPA*, 830 F.3d 529, 535 (D.C. Cir. 2016). No party identifies a plausible ground for reissuing the inadequate-supply waiver. *Cf.* Mot.4. Thus, EPA’s duty is to restore the volume requirement to what it would have been but for the erroneous waiver. Any other type of waiver would be a separate agency action. Moreover, such an effort—a waiver EPA never thought necessary now issued for the purpose of rationalizing a decision to retain a standard that this Court held invalid—would be improper. *See MCI Telecomms. Corp. v. FCC*, 580 F.2d 590, 597 (D.C. Cir. 1978) (agency cannot “deliberately frustrate[]” mandate’s “intended effect”); *WildEarth*, 830 F.3d at 535 (agency cannot “reinstat[e] the preexisting ... rule[]”).

Nor are these “alternative” actions plausible. EPA has no power to “lower volumes” apart from the statutorily specified waivers, *see ACE*, 864 F.3d at 712; *NLRB v. SW General, Inc.*, 137 S. Ct. 929, 940 (2017), and no waiver power would be available on remand. EPA cannot invent new grounds for a severe-economic-harm general waiver or a larger cellulosic waiver four years after obligated parties exceeded their 2016 compliance obligations by 835 million RINs—more than

enough to cover the unlawful 500-million-gallon waiver.³ Moreover, increasing the original cellulosic waiver of the *advanced* standard—which EPA initially found sufficient—solely to avoid correcting EPA’s unlawful general waiver of the *total* standard, as API (Opp.6-9) and AFPM (Opp.11) propose, would plainly be an abuse of EPA’s discretion. Most absurd is AFPM’s assertion (Opp.5, 8) that on remand EPA “must reckon with the ethanol blendwall”—the very factor that *ACE* held EPA improperly considered in granting the unlawful 2016 waiver. 864 F.3d at 701, 709.

Citing *ACE*’s analysis of the standards EPA set for 2014 and 2015, EPA next argues (Opp.16-17) that it should account for how obligated parties might be “prejudiced by new standards” imposed “retroactively.” *See also* API.Opp.5-6; AFPM.Opp.7. But as explained (Mot.20-22), the curative obligation would be neither a new obligation nor a retroactive one, but rather would simply restore the requirement that Congress intended and that EPA unlawfully relieved, through a

³ It is irrelevant that the “size of the RIN bank fluctuates from year to year.” EPA.Opp.18. As noted (Mot.14 nn.5-6), obligated parties retired far more RINs for 2016 than needed to meet the standard without the unlawful waiver, and obligated parties have carried over at least that many excess RINs each year since. *See* EPA, *Carryover RIN Bank Calculations for 2019 Final Rule* at 2 (Nov. 7, 2018) [previously attached as Ex. I] (bank size for 2017 and 2018); EPA, *Carryover RIN Bank Calculations for 2020 Final Rule* at 3 (Dec. 3, 2019) [attached as Ex. J] (bank size for 2019); 85 Fed. Reg. at 7021 (expected bank size for 2020). So, the RINs unlawfully waived in 2016 are functionally still available.

future requirement affording obligated parties ample time to structure their conduct to achieve compliance.

ACE's approval of the 2014 and 2015 standards does not support EPA's position, either. *See also* API.Opp.10. There, the question was whether EPA erred in how it belatedly set the 2014 and 2015 standards in the first instance. *See* 864 F.3d at 718-719. Here, EPA's initial 2016 standard was held unlawful. As explained (Mot.22), EPA's position would allow it to nullify any judicial decision finding that EPA had unlawfully reduced an RFS standard. Nothing in *ACE*'s treatment of the 2014 and 2015 standards suggests that the Court intended to terminate its power of judicial review and grant EPA unfettered control, contrary to Congress's decision to invest the Court with the power to review EPA's RFS actions. 42 U.S.C. §7607(b)(1). Indeed, the reallocation of powers between the judicial and executive branches implied by EPA's position would extend far beyond EPA's RFS actions, affording agencies the power generally to disregard judicial decisions holding that a prior regulatory requirement they set was unlawfully lenient, even where the error could be corrected through future agency action.

CONCLUSION

The Court should grant the motion. At a minimum, the Court should order EPA to issue final action on remand within a short and definite period.

Respectfully submitted,

/s/ Seth P. Waxman

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January 7, 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(C) because it contains 2,599 words, excluding the exempted portions, as provided in Fed. R. App. P. 32(f). As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.
2. This motion complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)-(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

/s/ Seth P. Waxman

Seth P. Waxman

CERTIFICATE OF SERVICE

I certify that on January 7, 2021, I filed the foregoing using the Court's case management electronic case filing system, which will automatically serve notice of the filing on registered users of that system.

/s/ Seth P. Waxman

Seth P. Waxman

EXHIBIT J

MEMORANDUM

Date: December 3, 2019

Subject: Carryover RIN Bank Calculations for 2020 Final Rule

From: Nick Parsons, Office of Transportation and Air Quality, U.S. Environmental Protection Agency

To: Docket No. EPA-HQ-OAR-2019-0136

I. Introduction

The purpose of this memorandum is to detail the carryover RIN bank calculations performed by EPA in the context of developing the 2020 RFS standards. While the actual number of 2019 carryover RINs available for use by obligated parties to use towards the 2020 RFS standards will not be known until after the 2019 RFS compliance date of March 31, 2020, we are able to estimate this value by using 2018 compliance data with the assumption that the carryover RIN bank will not significantly change from 2018 to 2019. Section II calculates the number of available 2018 carryover RINs for compliance with the 2019 RFS standards. Section III estimates the number of carryover RINs that may be available for compliance with the 2020 RFS standards. Appendix A summarizes EMTS data on RIN retirements and errors.

II. Number of Available 2018 Carryover RINs

In order to calculate the number of 2018 carryover RINs available for compliance with the 2019 standards, we began with the 2018 RFS compliance year data in Table II-1 below. From this data, we calculated that approximately 19.33 billion total RINs were retired for compliance in the 2018 compliance year.¹ Of this total, approximately 15.71 billion 2018 RINs and 3.62 billion 2017 carryover RINs were used.

¹ Includes RINs retired in the 2018 compliance year to satisfy 2017 compliance deficits.

Table II-1: RINs Retired by Obligated Parties and Exporters in the 2018 Compliance Year^a

RIN Type	RIN Year		Total
	2017	2018	
D3	24,776,563	259,163,594	283,940,157
D4	746,717,911	3,184,116,967	3,930,834,878
D5	9,626,037	162,614,139	172,240,176
D6	2,841,950,008	12,101,211,472	14,943,161,480
D7	481	1,689,327	1,689,808
Total	3,623,071,000	15,708,795,499	19,331,866,499

^a RINs include those retired by companies with an RVO as a gasoline/diesel importer or refiner, as well as RINs retired by companies with an RVO as renewable fuel exporters. Renewable fuel exporters include exporters of neat renewable fuel, as well as exporters of renewable fuel blended with other fuels (including, but not limited to, gasoline, diesel, heating oil, and jet fuel). See Appendix Table A-1 for more detailed data.

Next, we calculated the net number of RINs that were generated in 2018. To do this, we took the total number of RINs generated in 2018 and then removed any RINs that were generated in error, as well as any RINs that were retired for purposes other than satisfying an obligated party or exporter RVO (e.g., for spills, remedial actions, enforcement obligations, etc.). Using the data in Table II-2 below, we calculated that a net of approximately 19.31 billion RINs were generated in 2018.

Table II-2: 2018 Net RINs Generated^a

RIN Type	Total RINs Generated ^b	RIN Errors ^c	Other RIN Retirements ^d	Net RINs Generated ^e
D3	312,710,478	9,969	968,044	311,732,465
D4	3,881,363,667	12,802,611	48,061,840	3,820,499,216
D5	179,304,816	896,380	11,508	178,396,928
D6	15,190,284,688	9,303,655	184,605,647	14,996,375,386
D7	2,451,256	0	5,151	2,446,105
Total	19,566,114,905	23,012,615	233,652,190	19,309,450,100

^a Data current as of October 2019 and compiled from https://www.epa.gov/sites/production/files/2019-11/availablerins_oct2019.csv and https://www.epa.gov/sites/production/files/2019-11/retiretransaction_oct2019.csv.

^b The total number of RINs generated includes those RINs generated for exported fuel.

^c See Appendix Table A-2 for more detailed data.

^d See Appendix Table A-3 for more detailed data.

^e Net RINs Generated = Total RINs Generated – (RIN Errors + Other RIN Retirements).

To determine the total number of 2018 carryover RINs available for compliance with the 2019 standards, we then subtracted the number of 2018 RINs retired in the 2018 compliance year from the net number of 2018 RINs generated. We calculate that there are approximately 3.60 billion 2018 carryover RINs available, as shown below in Table II-3.

Table II-3: 2018 Carryover RINs

RIN Type	Net 2018 RINs Generated	2018 RINs Retired for Compliance	2018 Carryover RINs
D3	311,732,465	259,163,594	52,568,871
D4	3,820,499,216	3,184,116,967	636,382,249
D5	178,396,928	162,614,139	15,782,789
D6	14,996,375,386	12,101,211,472	2,895,163,914
D7	2,446,105	1,689,327	756,778
Total	19,309,450,100	15,708,795,499	3,600,654,601

Obligated parties are also able to carryforward a compliance deficit from one year to the next year,² increasing their renewable volume obligation (RVO) for 2019 and effectively decreasing the number of 2018 carryover RINs actually available. In order to account for this, we further reduced the number of available 2018 carryover RINs by subtracting out the 2018 compliance deficits, which have to be satisfied at the time of compliance with the 2019 standards.³ This calculation shows that there are effectively 3.48 billion 2018 carryover RINs available for compliance with the 2019 standards, as shown below in Table II-4.⁴

Table II-4: Net 2018 Carryover RINs

RFS Standard	RIN Type	2018 Carryover RINs	2018 Compliance Deficits^a	Net 2018 Carryover RINs
Cellulosic Biofuel	D3+D7	53,325,649	2,962,896	50,362,753
Biomass-Based Diesel	D4+D7	637,139,027	19,737,837	617,401,190
Advanced Biofuel	D3+D4+ D5+D7	705,490,687	28,957,783	676,532,904
Total Renewable Fuel	All D codes	3,600,654,601	124,781,439	3,475,873,162

^a Data current as of October 10, 2019, and compiled from Table 5 at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and>.

We then compared the number of 2018 carryover RINs for each category to the 2019 standards to see if the 20% carryover limit would impact the use of any 2018 carryover RINs in 2019.⁵ As shown in Table II-5, the 20% carryover limit is not constraining for any of the RFS standards. Thus, we expect that the total number of 2018 carryover RINs will be available to be used to satisfy an obligation in 2019.

² See 40 CFR 80.1427(b).

³ The compliance date for the 2019 RFS standards is March 31, 2020.

⁴ In other words, while there are an estimated 3.60 billion carryover RINs available in 2019, this sum is effectively reduced to 3.48 billion RINs in light of the volume of 2018 deficits carried forward to 2019. We note, moreover, that this number could change based on, for instance, obligated parties truing up their RVOs pursuant to the attest engagement required by 40 CFR 80.1464, enforcement actions, or EPA granting small refinery exemptions.

⁵ See 40 CFR 80.1427(a)(5). The 20% carryover limit applies to the compliance demonstration of individual obligated parties. Since parties can trade RINs, however, the 20% carryover limit likely would only constrain the market if the aggregate number of carryover RINs exceeds 20% of the nationally applicable renewable fuel volumes.

Table II-5: 2019 Carryover Limits

RFS Standard	Net 2018 Carryover RINs	2019 Volume Requirements (RINs)^a	Carryover RINs as % of Volume Requirement	Carryover RIN Use Limited by Cap?
Cellulosic Biofuel	50,362,753	418,000,000	12.0%	No
Biomass-Based Diesel	617,401,190	3,150,000,000	19.6%	No
Advanced Biofuel	676,532,904	4,920,000,000	13.8%	No
Total Renewable Fuel	3,475,873,162	19,920,000,000	17.4%	No

^a Standards reflect the volumes in Table I-1 of the 2019 final rule (see 83 FR 63704, Dec. 11, 2018).

III. Number of Available 2019 Carryover RINs

Given the uncertainty of the impact of compliance with the 2019 standards on the carryover RIN bank, we are unable to provide a quantitative analysis of the number of 2019 carryover RINs that may be available for compliance with the 2020 standards.⁶ However, if we assume that the uncertainties result in neither a net gain nor net loss of excess RINs, then the number of 2019 carryover RINs available to satisfy the 2020 standards would be the same as the number of 2018 carryover RINs available to comply with the 2019 standards. Thus, the 3.48 billion 2018 carryover RINs we estimated to be available in Section II would represent the number of 2019 carryover RINs that would be available for compliance with the 2020 standards, as shown below in Table III-1.⁷

Table III-1: Estimated 2019 Carryover RINs

RFS Standard	RIN Type	Estimated 2019 Carryover RINs
Cellulosic Biofuel	D3+D7	50,362,753
Biomass-Based Diesel	D4+D7	617,401,190
Advanced Biofuel	D3+D4+D5+D7	676,532,904
Total Renewable Fuel	All D codes	3,475,873,162

We then compared the estimated number of 2019 carryover RINs for each category to the 2020 standards to see if the 20% carryover limit would impact the use of any 2019 carryover RINs in 2020. As shown in Table III-2, the 20% carryover limit is not constraining for any of the RFS standards. Thus, in this scenario we expect that the total number of 2019 carryover RINs would be available to be used to satisfy an obligation in 2020.

⁶ Sources of uncertainty that could potentially increase the carryover RIN bank include new small refinery hardship exemptions and lower actual gasoline and diesel use than the projection used to derive the standards. Sources of uncertainty that could potentially decrease the carryover RIN bank include enforcement actions and higher actual gasoline and diesel use than the projection used to derive the standards.

⁷ The actual number of RINs generated in 2019 that will be available for use by obligated parties to use towards the 2020 standards will not be known until the 2019 RFS compliance date of March 31, 2020. Even after this date, however, this number could change based on, for instance, obligated parties truing up their RVOs pursuant to the attest engagement required by 40 CFR 80.1464, enforcement actions, or EPA granting small refinery exemptions.

Table III-2: 2020 Carryover Limits

RFS Standard	Estimated 2019 Carryover RINs	2020 Volume Requirements (RINs)	Carryover RINs as % of Volume Requirement	Carryover RIN Use Limited by Cap?
Cellulosic Biofuel	50,362,753	590,000,000	8.5%	No
Biomass-Based Diesel	617,401,190	3,645,000,000	16.9%	No
Advanced Biofuel	676,532,904	5,090,000,000	13.3%	No
Total Renewable Fuel	3,475,873,162	20,090,000,000	17.3%	No

Appendix A – EMTS RIN Data

Table A-1: RINs Retired by Importers, Refiners, and Exporters in the 2018 Compliance Year^a

RIN Type	Year	Importers	Refiners	Exporters	Total
D3	2017	1,142,850	23,633,713	0	24,776,563
	2018	6,312,039	252,851,555	0	259,163,594
D4	2017	18,150,424	696,850,510	31,716,977	746,717,911
	2018	86,951,008	2,883,849,971	213,315,988	3,184,116,967
D5	2017	100,514	9,525,523	0	9,626,037
	2018	2,425,370	160,130,110	58,659	162,614,139
D6	2017	75,201,907	2,690,601,043	76,147,058	2,841,950,008
	2018	327,624,295	11,398,289,693	375,297,484	12,101,211,472
D7	2017	481	0	0	481
	2018	121,299	1,568,028	0	1,689,327
Total		518,030,187	18,117,300,146	696,536,166	19,331,866,499

^a Data current as of October 10, 2019, and compiled from Table 3 at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and>.

Table A-2: 2018 RIN Errors^a

RIN Type	Import Volume Correction	Invalid RIN	Volume error correction	Total
D3	0	9,969	0	9,969
D4	84,383	11,019,757	1,698,471	12,802,611
D5	0	856,210	40,170	896,380
D6	0	5,821,496	3,482,159	9,303,655
D7	0	0	0	0
Total	84,383	17,707,432	5,220,800	23,012,615

^a Data current as of October 2019 and compiled from https://www.epa.gov/sites/production/files/2019-11/retiretransaction_oct2019.csv.

Table A-3: Other 2018 RIN Retirements^a

RIN Type	Reported spill	Contaminated or spoiled fuel	Renewable fuel used or designated to be used in any application that is not transportation fuel heating oil or jet fuel	Remedial action - Retirement pursuant to 80.1431(c)	Remedial Action - Retire for Compliance	Remediation of Invalid RIN Use for Compliance	Total
D3	0	0	0	251,839	716,205	0	968,044
D4	110	185,482	44,740,377	2,922,622	213,249	0	48,061,840
D5	0	0	0	76	3,634	7,798	11,508
D6	60,064	91,608	180,966,089	2,377,884	1,110,002	0	184,605,647
D7	0	0	0	0	5,151	0	5,151
Total	60,174	277,090	225,706,466	5,552,421	2,048,241	7,798	233,652,190

^a Data current as of October 2019 and compiled from https://www.epa.gov/sites/production/files/2019-11/retiretransaction_oct2019.csv.