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Air and Radiation Docket and Information Center  
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Attn: Electronic Submission

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**Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes**

Midwest AgEnergy Group, LLC (MAG) is the owner and operator of Blue Flint Ethanol and Dakota Spirit AgEnergy, which are producers of renewable fuels. We submit the following comments in response to the Federal Register notice FRL-9996-53-OAR requesting further comments on the 2020 and 2021 renewable fuel standard volume obligations.

We believe strongly in the mission of the Energy Independence and Security Act (EISA) to diminish reliance on foreign oil sources, to reduce greenhouse gasses, develop rural economies, and offer consumers renewable fuel choices. To accomplish these goals EPA must, to the extent practical, adhere to the volumes of fuel envisioned by Congress. Unfortunately, the way EPA is now performing calculation of percentage standards effectively removes all Small Refinery Exemption (SRE) gallons from the previous year's total renewable volume.

Retroactive waivers awarded by EPA have recently exempted 13.42 billion gallons of gasoline and diesel from the 2017 Renewable Fuel Standard. Setting a percentage standard for 2020 renewable content is a pointless exercise if the EPA intends to subsequently walk back the prescribed volume in future years. If EPA policy is to grant waivers to small refineries upon request, they must estimate and insert waived volumes when setting the percentage standard for upcoming years. There is a clearly defined process for including estimated SRE gallons and incorporating them into the percentage standards that EPA is choosing not to follow. When proposing RVO in this manner, EPA does not appear to be following an equitable rulemaking process, but rather usurping Congress's authority and directly changing law.

### **Calculation of Percentage Standards-**

In determining the calculation for Percentage Standards the EPA is required by 40 CFR 80.1405 to specify 14 variable factors which go into the percentage standard calculation. These include **required volumes** such as volumes of renewable fuels required to be blended and **projected volumes** which include best estimates of gasoline and diesel demand for states and territories included in the RFS. One of the projected volumes EPA must consider is the projected volume of gasoline and diesel exempt from the standard due to small refinery waivers ( $GE_i$  and  $DE_i$  in overall renewable fuel percentage standard equation below).

$$\text{Std}_{RF,i} = 100 * \frac{RFV_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

EPA has retroactively awarded significantly more waivers over the last two years, likely as a result of policy changes around granting SRE's. Thus far in 2019 EPA has granted 31 SRE waivers for 2018 compliance year or approximately 1.43 billion RINs that were originally thought to be needed for compliance have now been exempted from 2018 RVO. Similarly, in 2018 EPA retroactively waived 1.82 billion RINs for SRE in the 2017 compliance year. Yet inexplicably—in the 2020 proposed percentage standard **EPA utilizes a value of 0 for “Projected Volume” of gasoline and diesel for exempt small refineries.** How can estimating there will be zero gallons waived through SRE in 2020 be considered a realistic estimation? It should be easy for EPA to project a volume of waivers based on previous allowances mentioned above. In fact- almost all of the values in the denominator of the equation above are projected volumes. How is it possible that EPA is unable to provide estimate on only the SRE values?

Assuming the waiver value to be zero effectively decreases the overall volume of renewable fuels promulgated under the RVO. Over the past three years 4.04 billion RINs have not been needed for compliance and thus come on to the open RIN market because a waiver retroactively removed their needed use. Logically this removes incentive for parties to invest in technology required to get to higher renewable fuel blending levels.

**It is critical that EPA follow the law and incorporate an estimated volume from SRE waivers when setting the RVO for this rulemaking.** CAA section 211(o)(3)(B)(i), states that EPA “shall determine and publish...the renewable fuel obligation that ensures that the requirements of’ the RFS program are met.” The rule clearly indicates in 40 CFR 80.1405 EPA should be projecting the small refinery waiver volumes and using it when determining the overall percentage standards. Failure to include such volumes is not consistent with the intent of the RFS and does not follow the law as written.

To remain credible and relevant, EPA must return to being an organization ruled by science and law. EPA must use the best available data for projecting the volumes of gasoline, diesel, as well as volumes exempt from the standard because of SRE's. We simply ask the EPA to obey the law.

Sincerely,

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