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Internal Revenue Service
CC:PA:LPD:PR (Notice 2023-06)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal: http://www.regulations.gov

Subject: bp America Inc. Technical Comments on Notice 2023-06

Office of Associate Chief Counsel:

Pursuant to the request for comments on provisions contained in § 40B of the Internal Revenue Code ("Code") as enacted in the Inflation Reduction Act of 2022, we are providing comments pursuant to Section 8 of IRS Notice 2023-06.

bp is committed to the US. In the US, bp employs 13,000 people and supports about 245,000 jobs. Since 2005, bp has invested more than $140 billion in the US and in 2021 alone, our operations contributed about $60 billion to the US economy. We have a larger economic footprint in the US than anywhere else in the world.

bp seeks to provide the world with secure, affordable and lower carbon energy. Our ambition is to be a net zero company by 2050 or sooner, and to help the world get to net zero. The Environmental Protection Agency ("EPA") reported in 2022 that commercial airplanes and large business jets contributed 10 percent of US transportation emissions. The International Air Transport Association estimates that using sustainable aviation fuels ("SAF") and carbon offsetting can reduce emissions by up to 80 percent. bp believes SAF plays a critical role in helping to achieve net zero.

Section 8.01 General comments.

The Treasury Department and the IRS request comments on whether any issues related to the SAF credit provided in this notice require clarification or additional guidance. The IRS anticipates issuing additional guidance on the SAF credit.

Section 3.02(3) discusses "SAF co-processed qualified mixture." We generally support the IRS's interpretation in this section but offer a few technical clarifications.

First, the IRS rightly speaks of "sustainable sources" in paragraph 2 of this section, but more narrowly speaks about "derived from biomass" in paragraph 5. Biomass is certainly one likely source of Fischer Tropsch (FT) hydrocarbons, but other sustainable sources like municipal solid waste are also possible.

Second, while current ASTM International regulations limit co-processing to five percent as noted in paragraph 2, work is underway to expand these limits to significantly higher percentages of sustainable feedstocks. We encourage the IRS to clarify that the tax credit will allow higher percentages if and when ASTM updates these specifications.

Section 8.02 Comments on specific questions.

(1) Section 40B(e)(2) provides that "any similar methodology, which satisfies the criteria under §211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)), as in effect on the date of enactment of this section" may be used to determine the reduction in lifecycle greenhouse gas emissions. What methods exist that could qualify as a "similar methodology"? Do the lifecycle emissions values that have been developed by the Environmental Protection Agency for the Renewable Fuel Standard qualify as a "similar methodology"? Does the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model developed by the Argonne National Laboratory qualify as a "similar methodology"?

We believe the lifecycle emissions values developed by the EPA for the Renewable Fuel Standard ("RFS") would qualify as a "similar methodology" but at the current time there are few analytical results from EPA which would be useful for § 40B. Additionally, much of the foundational analysis is now a decade old and has not been updated with new developments in lifecycle modelling.

We believe the lifecycle emissions modelling in the Argonne GREET model, as well as the California Air Resources Board variation of the GREET model, would qualify as a "similar methodology" for § 40B. These two methodologies notably use different assumptions for land use

modelling, so it will be important for the IRS to provide clear guidance on the inputs to the model.

While it is practical to begin with CORSIA results as proposed in this guidance document, we support the adoption of the Argonne GREET model for § 40B as soon as practicable (and for purposes of the clean fuel production credit under § 45Z beginning in 2025) as we previously commented in our letter to the IRS regarding Notice 2022-58:

> The GREET model meets the criteria of § 211(o)(1)(H) of the Clean Air Act and is one of the main models used in establishing CORSIA emission rates. Further, GREET is a model which can be updated to consider new fuel production processes and feedstocks as they emerge, while CORSIA is more of a static analysis that will be updated on an occasional basis. Finally, keeping aviation and non-aviation fuels evaluated on the same basis will help avoid unintended dislocations in value and simplify the administration of the rule. As such, we believe utilizing GREET to establish emissions rates for sustainable aviation fuel is the best approach.[1]

Additionally, we encourage the IRS to utilize indirect accounting (aka mass balancing) to allow low carbon inputs such as renewable natural gas, green/blue hydrogen, green power, etc. to be utilized to lower pathway carbon intensities.

(2) Section 40B(f)(2)(A)(ii) (concerning general requirements, supply chain traceability requirements, and information requirements established under CORSIA) provides that in the case of any methodology established under § 40B(e)(2) (concerning any similar methodology, which satisfies the criteria § 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H))), requirements similar to the requirements described in § 40B(e)(1) apply. What CORSIA requirements are needed to ensure supply chain traceability of information related to lifecycle greenhouse gas emissions and what unrelated party or parties are qualified to demonstrate compliance?

For fuels to qualify under § 40B(e)(1), the CORSIA methodology should be adopted in its entirety in order to deliver the expected results and provide assurance to market participants that the fuel certified under the CORSIA scheme can be utilized to meet compliance obligations in this scheme. This will make the fuel more desirable by airline buyers.

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[1] bp America Inc. Comment Letter on Notice 2022-58. https://www.regulations.gov/comment/IRS-2022-0029-0040

For fuels to qualify under § 40B(e)(2) for GHG measurement, there is a potential that a fuel producer might still choose to submit the fuel to the GREET methodology to meet the requirements of § 40B(f)(2)(A)(ii), and this should be allowed. For fuels not using CORSIA, we believe that the California GREET implementation is a potential model for how to adopt GREET and include traceability and audit requirements. Both CORSIA and the California Air Resources Board maintain lists of parties qualified to demonstrate compliance, and we recommend that the IRS should accept those same parties. (See question 6 for links to currently approved parties.)

(3) Are any SAF co-processed qualified mixtures currently being produced in the United States? Are any SAF FT hydrocarbons currently being produced in the United States?

We are aware of SAF FT hydrocarbons being produced by Fulcrum near Reno, Nevada. We do not believe these have yet been co-processed to produce a SAF co-processed qualified mixture but believe that will occur in the near future.

(4) With respect to the registration requirements under § 4101, this notice treats the person who produces a SAF co-processed qualified mixture as a sustainable aviation producer. Is it more appropriate to treat the producer of the SAF FT hydrocarbons as the sustainable aviation fuel producer?

We support treating the co-processor as the entity who produces a SAF co-processed qualified mixture as proposed in the notice. Because FT hydrocarbons generally yield a mixture of products when co-processed (often including SAF, renewable diesel, renewable naphtha, and other products) which may vary by co-processing unit and operating conditions, it is sensible to establish the volume of SAF co-processed qualified mixture at the co-processing location.

(5) What types of verification exist to show what portion of a SAF co-processed qualified mixture is attributable to FT hydrocarbons versus petroleum? Are carbon dating or mass balancing appropriate types of verification?

We support ^{14}C dating as an option to verify biogenic content in co-processed material alongside that of mass balancing. The selection of the quantification option should be dependent on the refinery co-process technology being deployed, as there is enough industry data available to recognize that one size does not fit all when it comes to applying an appropriate test methodology.

Taking the above approach would be consistent with the EPA options available under RFS2, 40 CFR 80 Sub part M, where both ^{14}C and mass balancing methodologies are permitted. bp supports refinery co-processors being given the opportunity to provide supporting evidence of their chosen method's applicability and having the flexibility to adopt the most appropriate test method for the co-processing application being employed.

(6) What entities are capable of providing the certifications required by section 40B(d)(1)(D) (relating to a lifecycle greenhouse gas emissions reduction percentage of at least 50 percent) and (f)(2)(A) (concerning general requirements, supply chain traceability requirements, and information requirements established under CORSIA or a similar methodology under the Clean Air Act) with respect to SAF co-processed qualified mixtures?

Only the organizations recognized by the International Civil Air Association ("ICAO") as CORSIA SCS (Sustainability Certification Scheme) should be allowed to provide the CORSIA certification[2]. In case the IRS also adopts GREET as a similar methodology under § 40B(e)(2), California Air Resource Board accredited verification bodies[3] or any similar verification process established at the federal level should be used.

(7) Section 40B(c)(4) requires that the transfer of the qualified mixture into an aircraft occur in the United States. What types of verification exist to show that the qualified mixture is transferred to the fuel tank of an aircraft in the United States?

We encourage the IRS to broadly interpret this test of qualified mixtures, recognizing the practicalities of the aviation fuel supply chain where there is necessarily comingling of physical product in airport tanks and sometimes upstream pipelines and terminals. We believe that taxpayers who can demonstrate the physical and contractual chain from the initial mixture to an end consumer of aviation fuel in the United States are meeting congressional intent. Contrarily, any attempt to export, sell to customers outside the United States, or take regulatory credit for blending or selling the same mixture outside the United States would disqualify the taxpayer from claiming the credit.

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[2] https://www.icao.int/environmental-protection/CORSIA/Documents/ICAO%20document%2004%20-%20Approved%20SCSs.pdf

[3] https://ww2.arb.ca.gov/sites/default/files/2022-11/List%20of%20Accredited%20Verification%20Bodies%20as%20of%2011-4-2022%20-%20%20UPDATED.xlsx or https://ww2.arb.ca.gov/lcfs-verification

Conclusion

We appreciate the opportunity to submit comments and welcome the opportunity to meet with the IRS and Treasury to discuss these issues further as proposed and final rules are promulgated. Please reach out to Craig Boals or Rob Guido at craig.boals@bp.com and robert.guido@bp.com to discuss.

Respectfully submitted,

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