

February 17, 2023

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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. 2004

RE: Comments to Notice 2023-06, 2023-2 I.R.B. 328

To Whom It May Concern:

The Small Advanced Biofuel Refiners (“SABR”) Coalition is a coalition of biodiesel stakeholders that have invested in building out America’s first advanced biofuel. It includes stakeholders from every link in the value chain from feedstock growers to biodiesel producers, distributors, retailers, and consumers, as well as infrastructure and products and services suppliers. These stakeholders, mostly small businesses, have invested heavily in the capacity to produce biodiesel and have a significant interest in the guidance with respect to the sustainable aviation fuel (“SAF”) credit of Section 40B of the Internal Revenue Code,¹ as enacted by Section 13203 of Public Law 117-169, 136 Stat. 1818 (Aug. 16, 2022) (commonly known as the “*Inflation Reduction Act of 2022*”). Please see the comments submitted by SABR one week ago to the latest Renewable Fuels Standard (“RFS”) rulemaking that describes in more detail the Coalition’s goals and membership.²

The United States Benefits from a Robust Biodiesel Marketplace

Today’s “biomass-based diesel” market has developed due to policy decisions made by the Environmental Protection Agency (“EPA”) under the RFS program, but the implementation of the Inflation Reduction Act will significantly impact this industry.

In response to the RFS program, the biodiesel industry built a significant production and distribution system using a diverse array of feedstocks, providing green jobs and green fuel from small businesses located in rural and disadvantaged communities throughout the United States. Under the RFS program, biodiesel use grew from 300 million gallons in 2010 to 2.3 billion gallons in 2016, with the U.S. biodiesel industry making substantial investments throughout the supply chain and spurring innovation along the way.

In addition to providing energy security and jobs across the United States, biodiesel is proven to provide significant health, safety, environmental, and performance benefits compared to diesel fuel, renewable diesel, and SAF. Biodiesel is 11% oxygen, which is what makes it burn

¹ All section references are to the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

² <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0427-0813>

cleaner reducing virtually every regulated emission compared to diesel fuel, renewable diesel, and SAF.³ The oxygen in biodiesel blended into diesel fuel is especially effective at reducing diesel particulate matter and other harmful compounds such as polycyclic aromatic hydrocarbons (PAHs).⁴ SAF and renewable diesel are chemically identical to petroleum-based jet fuel and diesel fuel respectively, and those fuels do not contain oxygen or the clean burning characteristics of biodiesel.

Other than lifecycle carbon benefits stemming from renewable feedstock, SAF and renewable diesel provide no additional emissions reductions compared to jet fuel and diesel fuel. Because biodiesel is an oxygenated fuel it has a better emissions/health/safety profile than renewable diesel or SAF. Biodiesel blends improve the performance benefits of the nation's diesel fuel supply. Biodiesel has been shown to reduce maintenance costs for diesel particulate filters (DPF's). Because of the oxygenation, biodiesel triggers the DPF's regeneration event at cooler temperatures reducing maintenance and replacement costs. Also, biodiesel's natural lubricity extends the life of the fuel injection system in a diesel engine. Because of the more efficient combustion from the oxygen, B20 has been shown to provide the same MPG and horsepower as diesel fuel and renewable diesel, even though it has slightly less BTUs.

The U.S. biodiesel industry has been able to withstand numerous market distortions and threats to its existence. Today, current federal and state policies have inadvertently diverted incentives away from small businesses to a handful of large petroleum refiners who are leveraging them to convert petroleum refineries to renewable diesel production out west all aimed for a single state. These refinery conversions are taking offline billions of gallons of refinery capacity and replacing them with relatively smaller amounts of renewable diesel. Due to the operation of the RFS program, which largely defines the biomass-based diesel market, new gallons of renewable diesel and SAF that come online largely just replace biodiesel. As such, the renewable diesel/SAF refinery conversions have done virtually nothing except reduce the nation's total refining capacity. The petroleum refiners know that the cannibalization is occurring and are counting on it to make their projects work.⁵ The Administration has said that a shortage of domestic refinery capacity is driving the current high inflation and they will do anything in their power to increase refining capacity in the near term.⁶ The inflationary refinery capacity limitation is especially felt in the heavy duty sector that ships the freight that drives the economy. The biodiesel industry has existing surplus low-carbon refining capacity that it can deploy immediately. But policy signals are incenting petroleum refiners to take conventional refining capacity offline to convert to renewable diesel and SAF, which in turn is taking offline more

³ "Assessment of Health Benefits of Using Biodiesel as a Transportation Fuel", Trinity Consultants, March 2021. Study concludes that biodiesel reduces cancer risk, asthma, premature deaths, lost workdays, and provides high-paying green jobs to disadvantaged communities.

⁴ Sciencedirect.com. "Recent Studies on Soot Modeling for Diesel Combustion" 2015 Omidvarborn, Kumara, Kim

⁵ Letter from SABR Coalition to EPA, dated Nov. 14, 2022, at 2, *available at* <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0427-0428>.

⁶ Armando Garcia, *Biden sends letter to oil refiners blasting high profits amid record gas prices – He said oil company profit margins are the highest ever recorded*, ABC News, June 15, 2022, <https://abcnews.go.com/Politics/biden-sends-letter-oil-refiners-blasting-high-profits/story?id=85410420>.

biodiesel capacity, driving up fuel prices and inflation, and leading to record profits for petroleum refiners.⁷

The Implementation of the SAF Credit Threatens the Long-Term Viability of the Biodiesel Industry

Biodiesel, renewable diesel, and SAF all compete for a finite number of required gallons in the advanced biofuel category of the RFS program. These realities have created a zero-sum game for these three fuels. Biodiesel is America's first advanced biofuel and created an entire industry from scratch to respond to the goals of the RFS. Emissions from motor vehicles are a significant contributor to this Country's GHG emissions, particularly from the medium- and heavy-duty sector.⁸ *Biodiesel is the lowest cost, lowest carbon liquid fuel for the heavy-duty sector.* It is among the most cost-effective means of reducing GHG emissions from this sector.

SAF, on the other hand, is a very expensive fuel to produce and is not used in ground transportation. Likewise, biodiesel is not used in aviation markets. EPA is currently forcing biodiesel to compete with SAF for a set number of gallons in the same RFS category despite this vastly different tax and energy policy treatment and the fact that the fuels serve completely different markets. These fuels don't "compete" in the marketplace through customer choice, price, and performance; they only compete in the artificial policy realm where they are given very different energy and tax policy treatments. One of the core objectives of the RFS is to reduce carbon from transportation fuels at the lowest cost to society. But this artificial policy-driven competition between biodiesel and SAF in different markets with different policy treatment is not leading to more efficient, lower cost carbon reduction. On the contrary, biodiesel is the lower cost, lower carbon, cleaner-burning fuel. When it is cannibalized by higher cost, higher carbon fuels because of advantaged policy treatment of those fuels, less carbon is reduced at a higher cost to consumers and taxpayers. New gallons of SAF and renewable diesel only reduce carbon if they displace petroleum, not when they simply cannibalize existing volumes of lower carbon, lower cost, oxygenated biodiesel.

Cannibalization of hundreds of small biodiesel businesses by a handful of massive petroleum refiner SAF producers also creates environmental justice and anti-trust concerns.

The biodiesel displacement by SAF denies numerous communities the health benefits of biodiesel that are not provided by SAF. It also denies these communities access to green fuel and high-paying green jobs. Many of the displaced biodiesel refineries will be in rural and disadvantaged communities. Using taxpayer dollars to displace hundreds of small businesses across the country by a handful of mega-refineries to produce fuel for mostly a single state (California) is bad policy. And the policy will inadvertently and inevitably result in anti-competitive, anti-consumer outcomes that are likely to result in less competition and higher fuel prices – outcomes the IRA was intended to mitigate not exacerbate. We urge the IRS to carefully

⁷ Office of Governor Gavin Newsom, *Big Oil Made Record 2022 Profits While Fleecing California Families*, Jan. 31, 2023, <https://www.gov.ca.gov/2023/01/31/big-oil-made-record-2022-profits-while-fleecing-california-families/>.

⁸ See EPA, *Fast Facts on Transportation Greenhouse Gas Emissions*, <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions> (last updated July 14, 2022).

consider environmental justice and anti-trust implications when developing the SAF credit guidance and subsequent implementation of the program.

Congress Prescribes that Future Biodiesel LCA Does not Require Consideration of Indirect Emissions

The IRA statute states that future LCA determinations for biodiesel and other *non-aviation fuels* (specifically excluding aviation fuel from this directive) shall use the Greenhouse gases, Regulated Emissions, and Energy use in Transportation (“GREET”) model developed by Argonne National Laboratory.⁹ Congress is well-aware that the GREET model does not itself incorporate indirect emissions, including emissions from indirect land use change (“ILUC”), to determine lifecycle GHG emissions of biofuels. As America’s first advanced biofuel, the body of data demonstrating biodiesel’s carbon and other emissions is vast and robust. Other advanced biofuels have not had the same level of scrutiny and do not have the same body of data to support their benefits. Congress recognized this in the IRA and prescribed that future GHG determinations for biodiesel shall be determined by the GREET model and therefore do not need to consider indirect emissions.

The SAF production process is similar to, though ultimately less efficient than, the renewable diesel production process.¹⁰ The same amount of feedstock will yield fewer gallons of SAF than renewable diesel. And the same feedstock will yield significantly fewer gallons of renewable diesel than biodiesel. The production of SAF also requires more energy inputs than the production of biodiesel. The cost of saving one kilogram of carbon dioxide (“CO₂”) is higher for SAF than it is for biodiesel. Every gallon of SAF delivers lower CO₂ savings than every gallon of biodiesel; the displacement of one megajoule (MJ) of fossil jet fuel removes less CO₂ than the displacement of one MJ of fossil *diesel*.¹¹

A tax incentive scheme that assigns greater value to alternative fuels that have more favorable lifecycle GHG emissions outcomes is an effective way to achieve carbon reduction. The IRA’s incentives for SAF are misaligned with these principles in that it provides for a higher tax credit for SAF than for biodiesel, even when SAF’s emissions benefits are inferior to biodiesel.

Conclusion

SABR urges the IRS to consider in the development of its guidance the concerns presented regarding the preferential treatment of SAF to the transportation fuels that rely on the same feedstocks and compete for the same finite required volumes of advanced biofuel in the RFS. We have serious concerns that without mitigation, these feedstocks will migrate toward the production of SAF at the expense of the emissions savings occurring today in heavy duty vehicles utilizing biodiesel. The whole intention of the SAF credit is to reduce carbon emissions.

⁹ SEC. 45Z. Clean Fuel Production Credit

¹⁰ SAF requires more processing than renewable diesel due to the lower freezing point. This requires greater hydrogen input for SAF compared to renewable diesel, which in turn requires more natural gas usage.

¹¹ The baseline lifecycle emissions value for fossil jet fuel is 89 gCO₂/MJ under California’s LCFS program. The emissions factor for fossil diesel fuel is 97 gCO₂/MJ.

When a new gallon of SAF displaces an existing gallon of lower cost lower carbon biodiesel rather than a gallon of petroleum diesel, the result is a carbon and cost increase. In fact, taxpayer dollars will be diverted away from hundreds of small businesses and to a handful of petroleum refineries who are using those dollars to rack up record profits. Those taxpayer dollars will be used to take needed conventional and renewable refinery capacity offline, which has led to higher fuel prices and is currently the biggest driver of inflation according to the Administration. Without careful consideration of implementation of these policies, the *Inflation Reduction Act* will ironically spend taxpayer dollars to increase both carbon and inflation.

Thank you for the opportunity to provide these comments. We look forward to working with you on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Jobe". The signature is fluid and cursive, with the first name "Joe" and last name "Jobe" clearly distinguishable.

Joe Jobe, CEO
Small Advanced Biofuel Refiner (SABR) Coalition