

Testimony of Robert B. Flagg
Senior Director, American Chemistry Council
Public Hearing on Proposed Regulations
“Superfund Chemical Taxes”
[REG-105954-22]
Internal Revenue Service
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Good morning. My name is Robert Flagg and I am a senior director at the American Chemistry Council or ACC for short. Thank you for the opportunity to testify at this hearing. In addition to other responsibilities, I manage ACC’s Tax Policy Committee, several members of which are testifying later this morning. The reinstatement of the Superfund Tax on Chemicals, or SCT for short, had a profound and unique impact on members of the ACC.

ACC’s 190 members apply the science of chemistry to make innovative products, technologies, and services that make people’s lives better, healthier and safer. Our industry supports a vast supply chain. With \$639 billion worth of shipments in 2022, we account for 11% of the world’s chemical production and provide more than a half a million high paying

jobs. The US chemical industry is one of the world's largest exporters at \$179 billion, accounting for 10% of all US goods exports. We maintain a large and growing trade surplus of \$24 billion. We are a leader in capital investment, with \$26 billion in new spending as well as over \$13 billion in domestic R&D investment in 2022.

ACC opposed the reinstatement of the SCT given its adverse impact on chemical supply chains and markets and the strong likelihood of higher costs for consumers.

ACC has provided feedback on the implementation of SCT through several comment letters. My testimony today will focus on a few of the substantive issues ACC would like to see modified through the final rules. I refer you to ACC prior comment letters and the testimony of Dow Inc., Air Liquide Americas, and LyondellBasell, for the full suite of issues ACC members are struggling with. These include several procedural issues such as clarifications needed around certifications and documentation, the highly burdensome requirement that ACC members

will have to soon pay this tax on a semi-monthly basis, and the need to for Treasury and IRS to publish the tax rate on some thirty taxable substances for which it has to date not done. The industry and global trade in chemicals were much smaller and more centralized back in 1995. Given the diversity and complexity of today's chemical markets and supply chains, these rules must be clarified.

I wanted to raise three issues:

The first issue is the coordination between the SCT and later reinstated tax imposed on petroleum products. Several ACC members are concerned that in certain instances it seems possible that a substance—Benzene for example-- is taxed under both regimes. This double taxation cannot be what was intended. We ask that final rules provide coordination rules between these two regimes.

Second, the proposed rule states that it was “congressional intent that the Superfund tax on chemicals apply only once to a given quantity of

taxable chemicals.” However, the proposed rule then goes on to define manufacturers of taxable chemicals to include recyclers, thus subjecting them to the SCT. Treasury and the IRS should rethink this definition as it causes the double taxation the proposed rules also decry as inconsistent with congressional intent.

Third, even though out of line with modern reality, the statutory exceptions that were included in the old SCT-- that were reinstated without change-- are important. This includes the fuel exception and the fertilizer exception. We think an error was made in the proposed rules in that they suggest that there can only be a tax-free sale if 100% of the taxable chemicals used in the substance would have been exempt.

Rather than tax the entire substance, the final regulations should only impose the tax on the non-exempt taxable chemical(s).

Specific to the fuel exception greater certainty must be provided in the final rules. This includes confirming that the fuel exemption applies when methane (a taxable chemical) is isolated from natural gas and used

in hydrogen that is ultimately used for fuel production. In addition, as detailed in our comment letter filed earlier this year, clarity is required on the taxation of ammonia, given the critical role it plays in the transportation of hydrogen. You will be hearing details later from William Donohue of Air Liquide Americas, on this topic.

In addition to those I just addressed, ACC supports the testimony and positions taken by many other stakeholders here today, particularly those of William Donohue from Air Liquide Americas, Gus Makris from Dow Inc., and Jared Gurley from LyondellBasell.

Thank you again for the opportunity to provide testimony to the proposed regulations. We, along with all stakeholders, seek prompt certainty as to how the Superfund Tax on Chemicals will be applied. We welcome any questions and are available for follow-up meetings. Thank you.