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May 28, 2026

Secretary Scott Bessent
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Re: Notice 2026-23
Priority Guidance Plan for 2026-2027

Dear Secretary Bessent:

The American Chemistry Council (ACC) respectfully submits the following comments in response to Notice 2026-23, Public Recommendations Invited on Items to be Included on the 2026-2027 Priority Guidance Plan, published on March 23, 2026 (the Notice).

ACC, based in Washington, D.C., represents the leading companies engaged in the business of chemistry. ACC member companies apply the science of chemistry to create and manufacture innovative products that make people's lives better, healthier, and safer. A complete listing of our member companies can be found at our website www.americanchemistry.com. The industry supports a quarter of U.S. gross domestic product (GDP) and creates more than half a million skilled, good-paying American jobs.

ACC member companies are engaged in the full range of chemical production and refining activities, from the creation of chemicals from raw organic and inorganic matter to advanced chemical recycling. Our members own and operate the largest chemical manufacturing facilities in the United States and look forward to expanding facilities in the United States.

On February 19, 2025, President Trump issued Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (EO 14219. 90 FR 10583). EO 14219 requires agency heads to identify and report regulations that meet at least one of seven classes of regulations, including "regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition" and "regulations that impose significant costs upon private parties that are not outweighed by the public benefits". The Notice requests stakeholders to identify guidance that conflicts with the metrics outlined in EO 14219.

Under this direction, ACC requests that Treasury and the IRS include the following items on the 2026-2027 Priority Guidance Plan:

Section 385 Final Regulation. In Notice 2017-38, President Trump's Treasury identified eight regulations that imposed an undue financial burden on U.S. taxpayers or added undue complexity to federal tax laws. The final Section 385 regulations were included on the list. Treasury withdrew the

documentation regulations.[1] However, Treasury did not modify the regulations that treat certain debt instruments as per se equity, regardless of the intent of the taxpayer (the Per Se Recast Rules). The Per Se Recast Rules are comprised of two categories: the general rules and the funding rule. The general rules automatically recast certain debt instruments as equity (e.g., the issuance of a note to a foreign parent). The funding rule deems certain loans to have an irrebuttable bad intent if the funding occurs within 72 months (36 months in the future and 36 months prior to the date of the funding). Some stakeholders recommended modifying the final regulations to an intent-based test, as opposed to a series of per se rules.

The Section 385 regulations are superfluous after the Tax Cuts and Jobs Act (TCJA), the One Big Beautiful Bill (OB3), and the implementation of the Global Anti-Base Erosion Model Rules (Pillar Two). The TCJA created new additional limitations on debt, including the base erosion and profit shifting tax (BEAT, or Section 59A), revised and strengthened Section 163(j), and anti-hybrid provisions under Section 267A. Congress also reduced the corporate rate, which lead to the virtual elimination of inversions. The Section 385 regulations were part of a package of regulations designed to stop a wave of inversions. Pillar Two further removed base erosion incentives through the adoption of a 15% per country minimum tax based on modified financial statement income. These changes, as well as the increase of tax rates abroad, made the United States an attractive investment location. In light of these changes, foreign corporations are considering onshoring to the United States.

The Per Se Recast Rules under Treas. Reg. § 1.385-3 and § 1.385-4 continue to place an undue financial burden on U.S. taxpayers and present further undue complexity. Taxpayers are required to continuously track fundings to determine whether an instrument is debt or equity. In the case of a cash pool, there could be daily sweeps, each creating a funding that must be tracked. As a result, the Per Se Recast Rules interfere with the normal business operations of a multinational business. Additionally, under the *Loper Bright* test, the Per Se Recast Rule does not reflect the best reading of Section 385, which requires Treasury to set forth factors in determining whether an instrument is debt or equity.[2] Accordingly, Treasury should withdraw Treas. Reg. § 1.385-3 and §1. 385-4.

Research Credit Regulations. Under Section 41(b)(2)(A)(ii), a taxpayer's qualified research expenses include "any amount paid or incurred for supplies used in the conduct of qualified research." "Supplies" are defined by Section 41(b)(2)(C) as "any tangible property other than—(i) land or improvements to land, and (ii) property of a character subject to the allowance for depreciation."

In conducting research and development, ACC member companies typically incur significant expenses for supplies used in the conduct of qualified research to develop new and improved products and processes, including raw materials and other tangible, non-depreciable property. These raw materials and other tangible, non-depreciable property that are used in qualified research are often of the same type that ACC member companies use outside of qualified research for ordinary production activities. Stated differently, such supplies are often not specifically acquired by ACC member companies for use in qualified research but are undisputedly "used in the conduct of" qualified research as specified by Section 41(b)(2)(A)(ii).

The IRS interprets Treas. Reg. § 1.41-2(b)(1) to exclude the cost of raw materials and other tangible, non-depreciable property that otherwise meet the statutory definition of supplies as "indirect research

[1] Former Treas. Reg. § 1.385-2.
[2] *Loper Bright Enterprises v. Raimondo,* 144 S. Ct. 2244 (2024).

expenditures."[3] Such a regulatory exclusion is not supported by the statute's text – which does not distinguish between direct and indirect research expenditures so long as the supplies are used in qualified research– and cannot be reconciled with the statute's "single, best meaning" as mandated by *Loper Bright*. Accordingly, the Treas. Reg. § 1.41-2(b)(1) "indirect research expenditures" exclusion should be removed from the regulations.

Foreign Tax Credit Regulations. On January 4, 2022, Treasury published final foreign tax credit regulations. These regulations were controversial for several reasons, such as they denied foreign tax credits for taxes that were previously creditable under the prior long-standing final regulations. Additionally, the final foreign tax credit regulations added new requirements for creditability that required businesses to understand and analyze the local law to see if the local law complied with the new regulatory requirements. These regulations created significant complexity and cost for taxpayers.

The prior administration addressed some of the concerns raised by stakeholders by providing limited relief in proposed regulations. On August 7, 2023, Treasury and the IRS provided further temporary relief to taxpayers in Notice 2023-55. Treasury and the IRS further extended the relief in Notice 2023-80. Essentially, the transitional relief in Notice 2023-55 was extended until the revision of the 2022 final regulations.

The 2022 final regulations should be reconsidered and revised per EO 14219 because of the additional compliance cost and loss of otherwise previously creditable foreign taxes.

Section 48D, the Advanced Manufacturing Investment Tax Credit. Treasury issued final regulations implementing Section 48D on October 23, 2024, during the final months of the prior administration. In so doing, the prior administration adopted an improperly narrow view as to eligibility of the credit that excludes vital elements of the domestic semiconductor supply chain. Specifically, Treasury concluded that facilities that manufacture "consumable materials, chemicals, or gases" do not meet the definition of "semiconductor manufacturing equipment." This conclusion runs contrary to the purpose of the statute and Congress' goals underlying the law and as such should be identified for modification under EO 14219.

Section 45Z, the Clean Fuel Production Credit. Notwithstanding the availability of the credit for fuels sold after January 1, 2025, Treasury has not yet issued final regulations under Section 45Z. While the recent issuance of proposed regulations on February 4, 2026, was a welcome development, Treasury must prioritize finalizing these regulations after stakeholder comment. In particular, as identified in ACC's comment letter, final regulations must reconsider the proposed definition of "allowable," thereby removing unwarranted barriers on the availability of Section 45Z consistent with congressional intent. In addition, greater flexibility must be provided on the choice of GREET model, the limitation on negative emissions rates beyond statutory requirements should be stricken, and Treasury should confirm taxpayers can take advantage of Section 45Z and 45Q when the carbon capture equipment operates independently from the Section 45Z facility and does not contribute to the lifecycle GHG emissions of the fuel.

Section 45Q, the Credit for Carbon Oxide Sequestration. The Section 45Q regulations should be updated to expressly confirm two critical principles necessary to ensure the administrability, scalability, and continued deployment of carbon capture, utilization, and storage ("CCUS") projects in the United

[3] *See* Opening Brief for Respondent, *J.G. Boswell Co. v. Comm'r*, United States Tax Court Docket No. 2408-19 (Mar. 9, 2026), *available at* https://dawson.ustaxcourt.gov/case-detail/2408-19; *see also* Answering Brief for Respondent, *J.G. Boswell* (Apr. 23, 2026), *available at* https://dawson.ustaxcourt.gov/case-detail/2408-19.

States: (1) that carbon oxide is fungible, and (2) that, because of such fungibility, taxpayers are permitted to account for volumes of carbon oxide qualifying for the Section 45Q credit, and transported within a physically connected system, by allocating such qualified volumes to eligible sites, provided that the total volumes of qualifying carbon oxide captured and transported equals the total qualified volumes verified at the point of ultimate disposition.

Additionally, the Section 45Q regulations should clarify what is needed under Section 45Q(f)(3)(A)(ii), as interpreted by Rev. Rul. 2021-13, for when a taxpayer is considered to own a component of carbon capture equipment in order to claim the Section 45Q credit. Providing clarity on this point will promote consistent compliance and reduce uncertainty for taxpayers and the government alike.

Foreign Bank Account Reporting (FinCEN Notice 2011-1, et seq.). The Foreign Bank Account Reporting (FBAR) final regulations require individuals with signatory authority over a financial account to report such accounts on an annual basis. The filing obligation is on the person with the signatory authority, although the employer frequently assists the employee to ensure compliance. The final regulations exempt reporting of foreign accounts where an individual has signatory authority and the entity with the foreign account has a class of equity securities or American depository receipts that are traded on any national exchange.[4] Unfortunately, the exception does not apply to a foreign bank account for a domestic or foreign subsidiary of the entity traded on a national exchange.

Since 2011, FinCEN has issued annual notices to extend the filing date for those with signatory authority of a financial account of a domestic or foreign subsidiary (subsidiary accounts). For 14 years, employers have kept lists of accounts and those with signatory authority in the event FBAR is required for such accounts. These regulations impose significant costs upon private parties that are not outweighed by the public benefits. It is highly unlikely a publicly traded business is engaging in the types of activities FinCEN is interested in preventing. A corporation or other business whose equity is traded on a domestic exchange is audited by external accountants, which provides another level of scrutiny to ensure foreign accounts are not used for illegal activities.

The compliance costs related to subsidiary accounts are significant for both employees and employers. Employees are ultimately subject to reporting and need to have sufficient information to report on accounts for 14 years. Employers who want to help their current and former employees need to retain information on accounts that may be closed. A large multinational business may need to retain information on thousands of accounts and employees, including former employees. This is an expensive activity that is not outweighed by the public benefits and therefore should be subject to EO 14219. The FBAR regulations should be modified to exempt those who have signatory authority for a subsidiary account.

The U.S. Model Income Tax Convention (US Model Treaty). In 2016, the Obama Administration released the US Model Treaty. The US Model Treaty is the opening bid in negotiations with potential treaty partners. As of the date of this letter, Treasury has not released a technical description that would address the provisions added since the prior update of the US Model Treaty.

ACC recommends Treasury review and update the US Model Treaty. ACC also recommends Treasury release a technical description of the revised US Model Treaty so affected parties can understand the intent

[4] 31 CFR § 1010.350(f)(2) for a list of all exceptions for signatory authority.

of a treaty article. Notice and comment would provide an opportunity for stakeholders to comment on the more controversial and challenging articles.

Thank you for your time and attention to the above matters. ACC greatly appreciates the opportunity to provide input on the 2026-2027 Priority Guidance Plan.

Very truly yours,

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American Chemistry Council