



## White House Reviewing Proposed Regulations On Reinstated Superfund Excise Taxes

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The U.S. Department of Treasury has sent [proposed regulations](#) to the Office of Management and Budget's Office of Information and Regulatory Affairs for review regarding Superfund excise taxes on certain chemicals and the hazardous substances that were reinstated in late 2021 by the Infrastructure Investment and Jobs Act. The Treasury Department and the White House have not released information on the specific matters addressed by these proposed regulations.

The original Superfund excise taxes expired in 1995. They were reinstated effective July 1, 2022, and are set to expire Dec. 31, 2032. The reinstatement of the Superfund excise taxes has created a challenging and confusing landscape that puts taxpayers at risk of falling short of their obligations, triggering unnecessary penalties, and facing legal enforcement.

Two separate Superfund chemical excise taxes were resurrected in 2021: a tax on the sale or use of "taxable chemicals" under Section 4661 of the Internal Revenue Code and a tax on the sale or use of imported "taxable substances" under Section 4671.

**Taxable Chemicals:** This tax is imposed on any manufacturer, producer, or importer of taxable chemicals in the United States at rates ranging from \$0.48 to \$9.74 per ton. The list of 42 Taxable Chemicals and corresponding rates [can be found under IRC Section 4661\(b\)](#). There are some exceptions

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set forth in Section 4661. Additionally, there are specific considerations for butane and methane that may require tax payments by users further down on the supply chain than for other chemicals. While most chemicals on the list are taxable upon the first sale or use by a manufacturer or importer, butane and methane become taxable upon the first use other than as a fuel, which may be lower in the supply chain.

**Taxable Substances:** This tax is imposed on any importer selling or using Taxable Substances in the United States. The list of [151 Taxable Substances](#) includes the original list of 50 chemicals found under IRC Section 4672(a)(3) and an additional 101 chemicals published by the IRS in Internal Revenue Notice 2021-66 and included as part of [Internal Revenue Bulletin: 2021-52](#). The IRS has the authority to update the list of taxable substances and petitions were recently submitted to the IRS regarding [polyoxymethylene](#) and [polyphenylene sulfide](#).

On Aug. 16, 2022, the Inflation Reduction Act (IRA) reinstated a third excise tax, the Hazardous Substance Superfund Financing Tax Rate on Crude Oil and Petroleum Products. The specified tax rate is 16.4 cents per barrel, almost twice the earlier rate of 9.7 cents. The tax on crude oil received at a U.S. refinery is to be paid by the refinery operator, and the tax on petroleum products imported into the U.S. for consumption, use, or warehousing is to be paid by the importer. This tax became effective (again) on Jan. 1, 2023, and will be adjusted for inflation starting in 2024.

Superfund excise taxes are reported on a quarterly basis on IRS Form 720, Quarterly Federal Excise Tax. Additionally, Form 6627, Environmental Taxes, which was used to report the Superfund excise taxes when the taxes were last in effect, is being used again to report the taxes owed. Form 720 and its associated instructions have been updated effective March 2023 to account for reinstatement of the Petroleum Superfund Tax by the IRA. Form 6627, which was last updated in July 2022 to account for the reinstated Superfund excise tax on chemicals and hazardous substances, must be filed alongside Form 720 on a quarterly basis. Taxpayers with a quarterly Superfund excise tax liability greater than \$2,500 are also required to make semi-monthly tax deposits.

Temporary relief from penalties for failure to deposit Superfund chemical taxes for the third and fourth calendar quarters 2022 and the first calendar quarter of 2023 is provided for in Internal Revenue Bulletin 2022-15.

Taxpayers and tax advisers have been clamoring for further guidance since the Superfund excise taxes were reinstated in 2021. Some areas of concern and topics on which further detail and specificity is needed include:

- Clarification of some key definitional issues regarding manufacturers, producers and importers
- Additional explanation of which uses, derivations, mixtures and by-products of chemicals and hazardous substances are taxable, nontaxable, or qualify for specific exemptions
- More in-depth analysis and explanation of the default tax values assigned to 121 of the 151 designated taxable substances, and better guidance on calculating the tax rates for the 30 of the 151 hazardous substances for which there are no default values
- Better understanding of when different components of supply chains

will have the primary tax liability

- Further guidance on how to treat taxable chemicals and hazardous substances that are also taxable petroleum products

Overall, the Treasury Department and the IRS need to refine and simplify the interpretations, procedures and methodology applied to the Superfund excise taxes to provide clear and concise guidance and assure that taxpayers are treated fairly and consistently. Hopefully, these long-awaited regulations will be a meaningful step in that direction.