and parallel to the shoreline to lat. 34°30′26″ N, long. 77°15′55″ W; to lat. 34°33′01″ N, long. 77°18′59″ W; to lat. 34°36′06″ N, long. 77°26′07″ W; to lat. 34°38′13″ N, long. 77°25′59″ W; to lat. 34°40′21″ N, long. 77°22′11″ W; to lat. 34°40′01″ N, long. 77°21′59″ W; to lat. 34°39′11″ N, long. 77°20′49″ W; to lat. 34°44′51″ N, long. 77°14′39″ W; to lat. 34°49′31″ N, long. 77°09′59″ W; to the point of beginning.

Designated altitudes. 18,000 feet MSL to 23,000 feet MSL.

Time of designation. Intermittent, 0600–0000 local time Monday–Friday, other times by NOTAM.

Controlling agency. Marine Corps Air Station Cherry Point CERAP.

Using agency. USMC, Commanding Officer, U.S. Marine Corps Air Station Cherry Point, NC.

R–5306H Cherry Point, NC [New]

Boundaries. Beginning at lat. 34°51′01″ N, long. 77°05′29″ W; to lat. 34°42′01″ N, long. 76°54′44″ W; to lat. 34°41′51″ N, long. 76°56′19″ W; to lat. 34°37′36″ N, long. 76°56′19″ W; thence southwest 3 NM from and parallel to the shoreline to lat. 34°30′26″ N, long. 77°15′55″ W; to lat. 34°33′01″ N, long. 77°18′59″ W; to lat. 34°36′06″ N, long. 77°26′07″ W; to lat. 34°38′13″ N, long. 77°25′59″ W; to lat. 34°40′21″ N, long. 77°22′11″ W; to lat. 34°40′01″ N, long. 77°21′59″ W; to lat. 34°39′11″ N, long. 77°20′49″ W; to lat. 34°44′51″ N, long. 77°14′39″ W; to lat. 34°49′31″ N, long. 77°09′59″ W; to the point of beginning.

Designated altitudes. 23,001 feet MSL to 27,000 feet MSL.

Time of designation. Intermittent, by NOTAM 4 hours in advance, 0001–1230 local time May 1–October 31.

Controlling agency. FAA, Washington ARTCC.

Using agency. USMC, Commanding Officer, U.S. Marine Corps Air Station Cherry Point, NC.

* * * * *

Issued in Washington, DC, on March 23, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations Group.

[FR Doc. 2023–06415 Filed 3–28–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[REG–105954–22]

RIN 1545–BQ40

Superfund Chemical Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise taxes imposed on certain chemicals and certain imported substances, effective July 1, 2022. Such taxes are known as the Superfund chemical taxes. The excise tax on taxable chemicals is imposed on the sale or use of taxable chemicals by manufacturers, producers, and importers of such chemicals. The excise tax on taxable substances is imposed on the sale or use of taxable substances by importers of such taxable substances. The proposed regulations affect manufacturers, producers, and importers that sell or use taxable chemicals and importers that sell or use taxable substances.

DATES: Written or electronic comments and requests for a public hearing must be received by May 30, 2023. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–105954–22) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–105954–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie Bland or Amanda Dunlap at (202) 317–6855 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, Vivian Hayes by phone at (202) 317–5177 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed regulations under sections 4661, 4662, 4671, and 4672 of the Internal Revenue Code (Code) to amend the Environmental Tax Regulations (26 CFR part 52). Section 4661(a) imposes an excise tax on the sale or use of ''taxable chemicals'' by manufacturers, producers, or importers (section 4661 tax), and section 4662 provides definitions and special rules for applying the section 4661 tax. Section 4671(a) imposes an excise tax on the sale or use of ''taxable substances'' by importers (section 4671 tax), and section 4672 provides definitions and special rules for applying the section 4671 tax. The section 4661 tax and the section 4671 tax are collectively referred to as the ''Superfund chemical taxes'' because these excise taxes fund the Hazardous Substance Response Trust Fund established by section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96–510, 94 Stat. 2767 (1980), informally referred to as ''Superfund.''

The Superfund chemical taxes previously expired on December 31, 1995, but were reinstated with certain modifications, effective July 1, 2022, through December 31, 2031, by section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58, 135 Stat. 429 (November 15, 2021). The proposed regulations provide guidance on the application of the reinstated Superfund chemical taxes. As explained later in this Background section, the Treasury Department and the IRS have issued additional guidance on topics related to the reinstated Superfund chemical taxes that are not covered by the proposed regulations.

II. Section 4661 Tax on Taxable Chemicals

A. In General

The section 4661 tax was enacted as part of CERCLA to impose an excise tax on the sale or use of any taxable chemical by the manufacturer, producer, or importer of the taxable chemical. While section 4661(a) imposes tax on the sale of any taxable chemical, section 4662(c)(1) treats the use of a taxable chemical as a sale of the taxable chemical.

Section 4661(b) provides a table of 42 chemicals and the per-ton tax rate for each chemical. As reinstated by the IIJA, the per-ton tax rate for each of the 42 taxable chemicals in the table under section 4661(b) is double the per-ton tax rate previously imposed by section 4661 as in effect at the end of 1995.

The IIJA also amends section 4661(c), effective July 1, 2022, to provide that no section 4661 tax will be imposed after December 31, 2031.

B. Definition of Taxable Chemical and Other Terms

Under section 4662(a)(1), any chemical listed in the table under section 4661(b) is a ''taxable chemical'' if it is manufactured or produced in the

United States or entered into the United States for consumption, use, or warehousing. Section 4662(a) also provides definitions of the terms ''United States,'' ''importer,'' and ''ton,'' as well as a rule that clarifies how the per-ton section 4661 tax is imposed on fractional parts of a ton.

C. Statutory Exceptions and Special Rules

Section 4662(b) provides exceptions from the definition of taxable chemical and special rules that apply to the section 4661 tax.

The following exceptions to the section 4661 tax provided by section 4662(b)(1) through (b)(4) were first enacted as part of CERCLA. Section 4662(b)(1) provides that methane or butane is treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, and that the person so using the fuel is treated as the manufacturer. Under section 4662(b)(2), generally no section 4661 tax is imposed on nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia if used as a qualified fertilizer substance. Section 4662(b)(3) provides that no section 4661 tax is imposed in the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment. Finally, section 4662(b)(4) provides that the term taxable chemical does not include any substance to the extent derived from coal.

In addition to modifying the exceptions for methane and butane in section 4662(b)(1) and qualified fertilizer substances in section 4662(b)(2), section 1019 of the Tax Reform Act of 1984, enacted as Division A of the Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494, 1022 (July 18, 1984), added section 4662(b)(5) (providing generally that no section 4661 tax is imposed on several specified taxable chemicals used as a qualified fuel substance) and section 4662(b)(6) (providing generally that no section 4661 tax is imposed on several specified taxable chemicals by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to the section 4661 tax).

The Superfund Revenue Act of 1986 (Superfund Revenue Act), enacted as Title V of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, 100 Stat. 1613, 1760 (October 17, 1986), added the exceptions and special rules in section 4662(b)(7) through (10). Section 4662(b)(7) provides that except in the case of a substance imported into the United States or exported from the United States, the term xylene does not include any separated isomer of xylene. Section 4662(b)(8) generally provides that no section 4661 tax is imposed on any chromium, cobalt, or nickel that is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process), and section 4662(b)(9) provides generally that no tax is imposed on certain taxable chemicals used as a qualified animal feed substance. Section 4662(b)(10) provides an exception from tax for sales of organic taxable chemicals while those chemicals are part of an intermediate hydrocarbon stream and imposes a registration requirement on both parties to the sale.

The Superfund Revenue Act also added section 4662(c)(2) to the Code, which provides a special rule exempting certain inventory exchanges of taxable chemicals from the section 4661 tax and imposes a registration requirement on both parties to the exchange to qualify for the exemption.

D. Credits and Refunds

Enacted as part of CERCLA, section 4662(d)(1) through (3) provides rules authorizing the Secretary of the Treasury or her delegate (Secretary) to provide regulations regarding credits and refunds of the section 4661 tax for (i) the use of a taxable chemical in the manufacture of another substance that is a taxable chemical, (ii) the use of certain taxable chemicals in the production of fertilizer, and (iii) the use of certain taxable chemicals as qualified fuel. Section 4662(d)(4), which was added by the Superfund Revenue Act, authorizes the Secretary to provide regulations regarding credits and refunds of the section 4661 tax for the use of certain taxable chemicals in the production of animal feed.

E. Export Exemption

The Superfund Revenue Act added section 4662(e) to the Code to provide an exemption for the exportation of taxable chemicals. Section 4662(e)(1)(A) allows for the tax-free sale of taxable chemicals for export. Section 4662(e)(1)(B) imposes a proof of export requirement and provides that rules similar to the rules of section 4221(b) (relating to tax-free sales for purposes of the manufacturers excise taxes codified in chapter 32 of the Code (chapter 32)) are to apply.

Section 4662(e)(2)(A) provides a mechanism for a credit or refund of the section 4661 tax paid on a taxable chemical, or on a taxable chemical that is used in the production of a taxable substance, that is exported. Section 4662(e)(2)(B) establishes conditions to allowance for a credit or refund under such circumstances.

Section 2001 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647, 102 Stat. 3342, 3593 (November 10, 1988), redesignated section 4662(e)(3) as section 4662(e)(4) and added a new section 4662(e)(3), which requires the Secretary to provide, by regulation, the circumstances under which a credit or refund may be allowed or made directly to the party that exported a taxable chemical or taxable substance. Section 4662(e)(4), as redesignated by TAMRA, requires the Secretary to issue regulations to carry out the purposes of section 4662(e).

III. Section 4671 Tax on Taxable Substances

A. In General

The section 4671 tax is imposed on any taxable substance sold or used by the importer thereof. The tax was added to the Code by section 515 of the Superfund Revenue Act. The term ''taxable substance'' is defined by section 4672(a), which is described in part III.B. of this Background section.

Section 4671(b) provides rules regarding how the amount of section 4671 tax is calculated. Section 4671(b)(1) provides that the amount of section 4671 tax is the amount of section 4661 tax that would have been imposed on the taxable chemicals used as materials in the manufacture or production of the taxable substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. If the importer does not furnish to the Secretary sufficient information to determine under section 4671(b)(1) the amount of section 4671 tax imposed on any taxable substance, section 4671(b)(2), as reinstated by the IIJA, provides that the amount of section 4671 tax imposed is 10 percent (instead of 5 percent as originally enacted) of the appraised value of the substance as of the time the taxable substance was entered into the United States for consumption, use, or warehousing. Section 4671(b)(3) provides that the Secretary may prescribe an amount of section 4671 tax for each taxable substance that will apply in lieu of the tax specified in section 4671(b)(2), equal to the amount of section 4671 tax that would be imposed with respect to a taxable substance if such substance were produced using the predominant

method of production of such substance.

Section 4671(c) provides that no section 4671 tax is imposed on the sale or use of any substance if tax is imposed on such sale or use under section 4611 (imposing an excise tax on crude oil received at a United States refinery and on imported petroleum products entered into the United States for consumption, use, or warehousing). Section 4671(c) further provides that no section 4671 tax is imposed on the sale or use of any substance if such sale or use was subject to the section 4661 tax.

Section 4671(d) generally provides that rules similar to certain rules in section 4662(b) and (d) relating to exemptions for using substances as certain fuels or in the production of fertilizer or animal feed will apply with respect to taxable substances. Section 4671(d)(1) provides that rules similar to section 4662(b)(2), (5), and (9) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed) apply with respect to taxable substances. Section 4671(d)(2) provides that rules similar to section 4662(d)(2), (3), and (4) (relating to credit or refund of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed) apply with respect to taxable substances.

Section 4671(e), as amended by the IIJA effective July 1, 2022, provides that no section 4671 tax will be imposed after December 31, 2031.

B. List of Taxable Substances

For purposes of the section 4671 tax, section 4672(a)(1) provides that the term ''taxable substance'' means any substance that, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary.

Section 4672(a) provides an initial list of taxable substances and mechanisms for adding substances to and removing substances from such list. There are two ways that a substance can be listed as a taxable substance. The first way a substance can be listed as a taxable substance, provided by section 4672(a)(2)(A), is if the substance is included in the initial list of taxable substances under section 4672(a)(3), as enacted by the Superfund Revenue Act. The second way, provided by section 4672(a)(2)(B) as amended by the IIJA, effective July 1, 2022, is if the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency (EPA) and the Commissioner of U.S. Customs and Border Protection (CBP), that taxable chemicals constitute more than 20 percent of the weight or more than 20 percent of the value of the materials used to produce such substance, determined on the basis of the predominant method of production (more than 20-percent weight or value test). The last sentence of section 4672(a)(2) provides that if an importer or exporter of any substance requests that the Secretary determine whether such substance should be listed as a taxable substance under section 4672(a)(1) or be removed from such listing, the Secretary must make such determination within 180 days after the date the request was filed. *See* Rev. Proc. 2022–26 (2022–29 I.R.B. 90) for the exclusive process for making such requests. Further, section 4672(a)(4) provides that the Secretary must add to the list of taxable substances under section 4672(a)(3) those substances that meet the more than 20-percent weight or value test, and that the Secretary may remove from the list only substances that meet neither of such tests. The complete list of taxable substances under section 4672(a) is referred to in this preamble as the ''Taxable Substances List.'' The IRS will maintain the Taxable Substances List at *https://www.irs.gov/businesses/small-businesses-self-employed/superfund-chemical-excise-taxes.*

Section 4672(b)(1) and (2) provides additional definitions applicable to sections 4671 and 4672. Section 4672(b)(1) provides that the term ''importer'' means the person entering the taxable substance for consumption, use, or warehousing. Section 4672(b)(2) provides that the terms ''taxable chemical'' and ''United States'' have the respective meanings given such terms by section 4662(a).

IV. Procedural Rules

The Superfund chemical taxes are codified in chapter 38 of the Code (chapter 38), which pertains to environmental excise taxes.

The procedural regulations governing chapter 38 taxes are contained in 26 CFR part 40 (Excise Tax Procedural Regulations). *See* 26 CFR 52.0–1 and 40.0–1(a). Chapter 38 taxes are reported on Form 6627, *Environmental Taxes,* which is required to be attached to Form 720, *Quarterly Federal Excise Tax Return* (Form 720 return). *See* §§ 40.0–1(a) and 40.6011(a)–1(a)(1) of the Excise Tax Procedural Regulations.

The procedural regulations in part 40 also provide that each business unit that has, or is required to have, a separate employer identification number (EIN) is treated as a separate person. *See* § 40.0–1(d). Therefore, business units (for example, a parent corporation and a subsidiary corporation, a partner and the partner's partnership, or the various members of a consolidated group), each of which has, or is required to have, a different EIN, are separate persons for purposes of filing quarterly Form 720 returns, quarterly payments of excise tax, semimonthly deposits of excise tax, and registration for certain excise tax activities.

V. Recent Published Guidance Related to the Superfund Chemical Taxes

A. Notice 2021–66 (Preliminary Guidance and Request for Comments)

Notice 2021–66 (2021–52 I.R.B. 901) provided guidance related to the Superfund chemical taxes, including the initial list of taxable substances as required by section 80201(c)(3) of the IIJA, guidance on registration requirements, and guidance on the procedural rules that apply to the Superfund chemical taxes. Notice 2021–66 also requested comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance.

The comments can be accessed via the Federal Rulemaking Portal at *https://www.regulations.gov* (type IRS–2021–0018 or Notice 2021–66 in the search field on the *regulations.gov* homepage to find the comments).

B. Notice 2022–15 (Deposit Penalty Relief)

Under § 40.6302(c)–1, taxpayers must make semimonthly deposits of the Superfund chemical excise taxes. Section 40.0–1(c) provides that a semimonthly period is the first fifteen (15) days of a calendar month or the portion of a calendar month following the 15th day of the month.

One commenter to Notice 2021–66 (commenter) requested deposit penalty relief. After considering the comment, the Treasury Department and the IRS issued Notice 2022–15 (2022–18 I.R.B. 1043) to provide transitional relief for the third and fourth calendar quarters of 2022, and the first calendar quarter of 2023, regarding the failure to deposit penalty imposed by section 6656 of the Code for failures to deposit Superfund chemical taxes through March 31, 2023, provided certain requirements are met.

C. Revenue Procedure 2022–26 (Exclusive Process for Requesting Modifications to the Taxable Substances List)

Notice 89–61 (1989–1 C.B. 717), as modified by Notice 95–39 (1995–1 C.B. 312), provided the previous process by which importers and exporters could request to add a substance to or remove a substance from the Taxable Substances List. Several commenters

requested that the Treasury Department and the IRS provide an updated procedure by which importers and exporters may petition to add a substance to or remove a substance from the Taxable Substances List. Those commenters also requested that any new guidance provide notice of requests for modifications to the Taxable Substances List and an opportunity for public comment.

Rev. Proc. 2022–26 sets forth the exclusive process by which importers, exporters, and interested persons may petition to add a substance to or remove a substance from the Taxable Substances List. The process set forth in Rev Proc. 2022–26 provides for public notice of any petition and the opportunity for public comment.

Explanation of Provisions

I. General Rules Regarding the Section 4661 Tax

Proposed § 52.4661–1 sets forth general rules regarding the section 4661 tax, including rules regarding the imposition of tax, the attachment of tax, the persons liable for tax, the amount of tax, and the calculation of the amount of tax.

A. Attachment of Tax

1. General Rule; Foreign Manufacturers

Proposed § 52.4661–1(c)(1) clarifies that the section 4661 tax attaches to the first sale or use of a taxable chemical by the manufacturer, producer, or importer. This is consistent with Congressional intent that the tax apply only once to a given quantity of a taxable chemical. *See* S. Rep. No. 96–848, 96th Cong., 2d Sess. 21 (1980) (''A number of provisions are included in the fee system to assure an equitable fee which avoids unintended economic impacts, including: a provision which allows only one fee collection on any given quantity.'').

Proposed § 52.4661–1(c)(2) clarifies that in situations involving a foreign manufacturer, the section 4661 tax does not attach to the foreign manufacturer's sale of a substance listed in the table under section 4661(b) to the importer because the substance is not a taxable chemical at the time of such sale; rather, tax attaches to the importer's first sale or use of the taxable chemical. This rule is consistent with section 4661(a) and the definition of the term ''taxable chemical'' in section 4662(a)(1). It is also consistent with the overall statutory scheme of excise taxes and relevant case law. *See, e.g., Indian Motorcycle Co.* v. *United States,* 283 U.S. 570 (1931) (excise tax is not imposed on the importation of a taxable motorcycle, but rather on the first sale by the importer).

2. Dilution of Chemical Mixtures

Proposed § 52.4661–1(c)(1) clarifies that in the case of chemical mixtures containing one or more chemicals with respect to which tax was paid (tax-paid chemicals), no section 4661 tax attaches when the chemical mixture is diluted with a solvent to change the concentration of the chemical mixture, provided the solvent is not a taxable chemical. The proposed regulations take this approach because the section 4661 tax has already been paid on the taxable chemicals in the chemical mixture, and the taxable chemicals in the chemical mixture do not lose their identity during the dilution process.

3. Chemical Mixtures and Chemical Compounds

A chemical mixture is generally any substance composed of two or more physically-combined components that are not chemically bonded. Chemical mixtures include solutions, suspensions, and alloys. If a taxable chemical is a component of a chemical mixture, the taxable chemical remains a taxable chemical while it is part of the chemical mixture.

In contrast, a chemical compound is generally any substance composed of identical molecules, each of which consists of two or more atoms of the same or different elements held together by chemical bonds. A taxable chemical used to produce a chemical compound does not retain its individual properties.

With regard to domestically-produced chemical mixtures, the manufacture or production of a chemical mixture is a ''use'' of the taxable chemicals in the chemical mixture under proposed § 52.4662–1(c)(15), and the section 4661 tax attaches at the time of such use. However, the ''use'' definition does not capture any taxable chemicals found in imported chemical mixtures. Therefore, the taxable chemicals found in an imported chemical mixture could completely escape the section 4661 tax unless the importer engages in a manufacturing process of separating the taxable chemicals in the mixture (such a process would make the importer the manufacturer of the taxable chemicals in the mixture) and then sells or uses those taxable chemicals. This would give foreign manufacturers of chemical mixtures a competitive advantage over domestic manufacturers of the same chemical mixtures.

To address this disparity, proposed § 52.4661–1(c)(3) provides that when a taxable chemical is part of an imported chemical mixture that is not a taxable substance (as defined in section 4672(a)(1) and proposed § 52.4672–1(b)(8)), tax attaches to the first sale or use of the chemical mixture by the importer. Further, proposed § 52.4661–1(f)(2) includes a rule regarding the calculation of the amount of tax with regard to chemical mixtures. More specifically, under proposed § 52.4661–1(f)(2)(ii), when a taxable chemical is part of an imported chemical mixture that is not a taxable substance, as defined in section 4672(a)(1) and proposed § 52.4672–1(b)(8), tax is imposed on the actual weight of any taxable chemicals in the chemical mixture at the time the importer first sells or uses the chemical mixture. These rules ensure that foreign and domestic manufacturers of chemical mixtures are treated the same for purposes of the section 4661 tax. The approach is supported by the fact that a taxable chemical in a chemical mixture is assumed to retain its chemical identity while part of the chemical mixture. There is also support for this position in case law. *See Murphy Oil USA, Inc.* v. *United States,* 81 F. Supp. 2d 942 (W.D. Ark. 1999) (section 4661 tax is imposed on the taxable chemicals in a chemical mixture).

As with chemical mixtures, the domestic manufacture or production of a chemical compound with one or more taxable chemicals is a taxable use of the taxable chemicals. Therefore, the domestic manufacturer or producer of the chemical compound is liable for the section 4661 tax. However, because a taxable chemical used to produce a chemical compound does not retain its chemical identity, the Treasury Department and the IRS lack the authority under sections 4661 and 4662 to tax the taxable chemicals used in the production of imported chemical compounds. This creates an advantage for foreign manufacturers of chemical compounds that are produced with taxable chemicals but that are not taxable substances, as defined in section 4672(a) and proposed § 52.4672–1(b)(8). The Treasury Department and the IRS request comments on possible ways to mitigate the disadvantage to domestic manufacturers within the constraints of the statutory scheme.

4. Ores and Metals

Several taxable chemicals, including nickel, cobalt, chromium, and phosphorus, are produced from ores. In addition, one taxable chemical, chromite, is an ore. The production of a taxable chemical from ore requires mining the ore to extract the ore from the earth, and an extraction, smelting, or

other process to remove or refine the taxable chemical from the ore.

Proposed § 52.4661–1(c)(4)(i) provides, generally, that in the case of ores, the section 4661 tax attaches to the first sale or use of the taxable chemical by the manufacturer, producer, or importer after extraction of the taxable chemical from the ore, and the person that extracts the taxable chemical from the ore is the manufacturer of the taxable chemical. Proposed § 52.4661–1(c)(4)(i) further provides that the term ''extraction of a taxable chemical from the ore'' means the first process in the United States that a person uses to separate the taxable chemical from the ore.

As noted earlier, chromite is both a taxable chemical and an ore; therefore, it is treated differently from taxable chemicals that are produced from ores. Proposed § 52.4661–1(c)(4)(ii) provides that in the case of chromite, the section 4661 tax attaches to the first sale or use of chromite by the manufacturer, producer, or importer after the chromite is mined. Under the proposed regulations, the tax treatment of taxable chemicals that are metals under section 4661 is generally addressed by the rule regarding ores. The Treasury Department and the IRS request comments on whether an additional or alternative rule for metals would be appropriate or warranted.

B. Procedural Rules; Definition of Person

Proposed § 52.4661–1(d) notes that the procedural rules in 26 CFR part 40 apply to the section 4661 tax. Proposed § 52.4661–1(d) further notes that each business unit that has, or is required to have, a separate EIN is treated as a separate person for purposes of filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and applying for the registration required under section 4662(b)(10)(C) and (c)(2)(B). *See* § 40.0–1(d). Proposed § 52.4671–1(d) is a similar provision related to the section 4671 tax.

C. Calculation of the Amount of Tax

1. Measurement and Documentation Regarding Tonnage

Proposed § 52.4661–1(f) provides rules regarding how to calculate the amount of section 4661 tax. As noted earlier, the section 4661 tax applies at a specified rate per ton.

One commenter requested flexibility in how to measure and document tonnage, but did not elaborate on what type of information is generally available in the industry that could potentially be used as a metric for measuring tonnage, on whether different sectors of the industry might require different options for measuring tonnage, or on the degree of specificity that could be attained by using a metric other than the actual weight. The Treasury Department and the IRS lack sufficient information about possible ways to measure tonnage, other than by using the actual weight of the taxable chemical. The Treasury Department and the IRS are also concerned that a broad rule, such as one that would allow any reasonable method of measurement, could artificially reduce the tax base. For these reasons, proposed § 52.4661–1(f)(2)(i) provides that for purposes of calculating the amount of section 4661 tax, the weight of a taxable chemical, measured in tons, is the actual weight of the taxable chemical at the time of sale or use by the manufacturer, producer, or importer.

The Treasury Department and the IRS request comments on any other appropriate methods that could be used to measure tonnage, with specificity and without artificially reducing the tax base. The Treasury Department and the IRS also request comments on the types of documentation available in the industry that could be used as records to support a weight measurement.

2. Conversion Required for Volumetric Measurements

A taxable chemical may be measured in volumetric units. Because the section 4661 tax is imposed at a rate per ton, any volumetric units must be converted to weight units in order to calculate the amount of section 4661 tax. Proposed § 52.4661–1(f)(2)(iii) requires that any volumetric measurement of a taxable chemical be converted to a weight measurement and provides a formula for volume-to-weight conversions.

II. Definitions Relating to Sections 4661 and 4662

As noted earlier, sections 4661 and 4662(c)(1) impose a tax on the sale or use of a taxable chemical by the manufacturer, producer, or importer. Several commenters requested that the Treasury Department and the IRS provide definitions of the terms ''manufacturer,'' ''importer,'' ''sale,'' and ''use.'' The definitions in proposed § 52.4662–1 include those definitions requested by commenters, as well as others that are necessary to provide clarity with regard to the application of sections 4661 and 4662.

A. Taxable Chemical

As discussed in section II of the Background section, section 4662(a)(1) generally defines the term ''taxable chemical'' as any substance (A) that is listed in the table under section 4661(b), and (B) that is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing. The table under section 4661(b) includes only the name of each taxable chemical. The taxable chemicals listed in the table under section 4661(b) include metals, metalloids, minerals, and an ore (chromite).

The proposed regulations clarify that a substance is a taxable chemical only if it satisfies both prongs of the definition of ''taxable chemical'' in section 4662(a)(1). In addition, the proposed regulations provide that, except as provided in section 4662(b), a substance is listed in the table under section 4661(b) if it has the same name and molecular formula as a substance listed in the table under section 4661(b). The proposed regulations further provide that all isomeric forms of a substance listed in the table under section 4661(b) are treated as having the same name and molecular formula of the substance. Therefore, except as provided in section 4662(b)(7) with respect to xylene, an isomer of a substance listed in the table under section 4661(b) is a substance listed in the table under section 4661(b).

B. Importer

Section 4662(a)(3) defines the term ''importer'' as the person entering the taxable chemical for consumption, use, or warehousing. The proposed regulations clarify that if the person entering the taxable chemical for consumption, use, or warehousing is merely acting as an agent or a customs broker for another person, then the agent or customs broker is not the importer, and the importer is the first person in the United States to sell or use the taxable chemical after entry of the taxable chemical for consumption, use, or warehousing. The proposed regulations also address how to identify the importer with regard to sales that involve drop shipping a taxable chemical when the party shipping the taxable chemical is outside the United States.

C. Manufacturer

Neither section 4661 nor section 4662 defines the term ''manufacturer.'' Proposed § 52.4662–1(c)(6)(i) defines the term ''manufacturer'' as any person that produces a taxable chemical from new or raw material, feedstocks, or other substances, or from scrap, salvage, waste, or recycled substances. Further, under the proposed regulations, a

manufacturer includes any person that produces a taxable chemical from the mining process, or extracts, isolates, separates, or otherwise removes a taxable chemical from an ore or from another substance. A manufacturer also includes any person that produces a taxable chemical by processing or manipulating a substance, such as through the oxidation process. The term manufacturer does not include a person that dilutes a chemical mixture comprised of one or more tax-paid chemicals with a solvent that is not a taxable chemical.

One commenter requested that recyclers be excluded from the definition of the term ''manufacturer.'' Section 4662(b)(8)(A) provides that no section 4661 tax is imposed on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process). The explicit reference to recycling activities in section 4662(b)(8)(A), combined with the absence of a general exception for recycling activities in sections 4661 and 4662, suggest that Congress did not intend to exclude persons engaged in recycling activities from the definition of the term ''manufacturer.'' Accordingly, the proposed regulations do not adopt this suggestion.

Proposed § 52.4662–1(c)(6)(ii) addresses contract manufacturing. More specifically, proposed § 52.4662–1(c)(6)(ii) provides that if a person manufactures or produces a taxable chemical for a second person, pursuant to a contract, order, or agreement and in accordance with the second person's specifications, or if a person manufactures or produces a taxable chemical for a second person from materials owned by the second person, the second person (and not the first person) is treated as the manufacturer of the taxable chemical manufactured or produced by the first person.

D. Sale

Neither section 4661 nor section 4662 defines the term ''sale.'' Proposed § 52.4662–1(c)(8) defines the term ''sale'' as the transfer of title or substantial incidents of ownership (whether or not delivery to, or payment by, the purchaser has been made) in a taxable chemical for a consideration, which may include, but is not limited to, money, services, or property.

One commenter requested an exclusion from the definition of the term ''sale'' for sales of intermediate hydrocarbon streams and inventory exchanges if both parties to the sale or exchange are taxable chemical registrants. Section 4662(b)(10) and (c)(2) provide exceptions to the section 4661 tax in the scenarios described by the commenter when both parties are registered; therefore, there is no need for a carve out from the definition of the term ''sale.''

E. Ton

Section 4662(a)(4) defines the term ''ton'' to mean 2,000 pounds, which is a short ton. Proposed § 52.4662–1(c)(13) follows the statutory definition.

F. Use

Neither section 4661 nor section 4662 defines the term ''use.'' Proposed § 52.4662–1(c)(15) defines the term ''use'' broadly. More specifically, proposed § 52.4662–1(c)(15) provides that a taxable chemical is used when it is consumed, when it functions as a catalyst, when its chemical composition changes, when it is used in the manufacture or production of a chemical mixture or other substance (including by mixing or combining the taxable chemical with other substances), or when it is put into service in a trade or business for the production of income. The loss or destruction of a taxable chemical through spillage, fire, natural degradation, or other casualty is not a use. The mere manufacture or production of a taxable chemical is not a use of that chemical.

The legislative history of CERCLA notes that in determining how industrial fees should be levied, Congress ''moved away from imposing fees on wastes and hazardous end-products, and instead approved a system which imposes fees on the relatively few basic building blocks used to make all hazardous products and wastes.'' S. Rep. No. 96–848, 96th Cong., 2d Sess. 19 (1980) (quoted language from the Committee Report by the Senate Environment and Public Works Committee on an early draft of S.1480). The legislative history further notes that tax is to be imposed ''at an early step in the industrial chain of production, distribution, consumption, and disposal.'' *Id.* at 20. The definition of ''use'' in the proposed regulations is consistent with the legislative history.

III. Special Rules and Exceptions Relating to the Section 4661 Tax

Section 4662(b) provides a number of exceptions and special rules that apply to the section 4661 tax. Some of the provisions in section 4662(b) provide exceptions to the definition of ''taxable chemical''; other provisions provide general exceptions to the section 4661 tax.

A. Methane or Butane Used as Fuel

Methane and butane are included in the list of taxable chemicals in section 4661(b). Section 4662(b)(1) provides that methane or butane is treated as a taxable chemical only if it is used otherwise than as a fuel or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel. In such cases, the person so using the methane or butane is treated as the manufacturer.

The section 4662(b)(1) rule impacts the timing of the imposition of the section 4661 tax. Unlike other chemicals included in the list of taxable chemicals in section 4661(b) that are taxable chemicals at the time of manufacture, production, or importation, the status of methane or butane as a taxable chemical cannot be determined until the time of use. As a result, it is possible that methane or butane will never become a taxable chemical and no section 4661 tax will attach. It is also possible that there will be intervening sales of methane or butane before the section 4661 tax is imposed.

Proposed § 52.4662–2(a)(2) provides that methane or butane is used otherwise than as a fuel when it is used other than in the production of energy. Proposed § 52.4662–2(a)(2) further provides that methane or butane is used as a fuel when it is used in the production of energy. It also provides examples of when methane or butane is used as a fuel. The rule in the proposed regulations regarding use as a fuel is consistent with existing guidance in other areas of excise tax. *See* section 2(f) of Notice 2006–92 (2006–43 I.R.B. 774) (providing guidance on use as a fuel relating to excise tax on alternative fuel mixtures).

B. Qualified Fertilizer, Fuel, and Animal Feed Substances

Section 4662(b)(2), (5), and (9) provide exceptions to the section 4661 tax for certain taxable chemicals that are qualified fertilizer, fuel, or animal feed substances. Proposed § 52.4662–2(b) provides rules regarding the exception for qualified fertilizer substances. Proposed § 52.4662–2(e) provides rules regarding the exception for qualified fuel substances. Proposed § 52.4662–2(f) provides rules regarding the exception for qualified animal feed substances.

One commenter highlighted the need for guidance on tax-free sales under the fertilizer exception and requested clarification on whether tax-free sales are limited to one intervening sale. That commenter also requested guidance on how to make claims for credit and refund. Another commenter requested

that the Treasury Department and the IRS provide model certificates for tax-free sales. The proposed regulations address those issues. Proposed § 52.4662–2(h) provides rules regarding tax-free sales under section 4662(b)(2), (5), and (9) and clarifies that the exception is available for multiple intervening sales. The provisions in proposed § 52.4662–2(h) are similar to tax-free sale rules in other areas of excise tax and include a model exemption certificate. To lessen the burden on taxpayers, proposed § 52.4662–2(h) allows for a ''blanket'' exemption certificate that may be used for a period of up to one (1) year.

C. Sulfuric Acid Produced as a Byproduct of Air Pollution Control Equipment

Section 4662(b)(3) provides that no section 4661 tax is imposed on sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment. The statute does not define the term ''air pollution control equipment'' for purposes of this exception. Further, the statute is silent with regard to whether the exception applies to sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment located outside the United States.

Proposed § 52.4662–2(c) defines the term ''air pollution control equipment'' as any equipment used to comply with the Clean Air Act, including any amendments thereto, as codified in 42 U.S.C. chapter 85, or any similar provision under state law. This definition effectively limits the exception to domestically-produced sulfuric acid. The Treasury Department and the IRS request comments on the definition of ''air pollution control equipment'' in proposed § 52.4662–2(c). To the extent commenters believe the definition should be modified, the Treasury Department and the IRS request comments on the type of documentation that is available to demonstrate to the IRS that sulfuric acid produced outside the United States was, in fact, produced solely as a byproduct of and on the same site as air pollution control equipment.

D. Taxable Chemicals Produced From Coal

Section 4662(b)(4) provides that the term ''taxable chemical'' does not include any substance derived from coal. Proposed § 52.4662–2(d) defines the term ''coal'' as bituminous coal, subbituminous coal, anthracite, and lignite.

E. Intermediate Hydrocarbon Streams

Section 4662(b)(10)(A) provides that no section 4661 tax is imposed on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals. Section 4662(b)(10)(B) provides that if any organic taxable chemical on which no section 4661 tax was previously imposed by reason of section 4662(b)(10)(A) is isolated, extracted, or otherwise removed from, or ceases to be part of (collectively, isolation), an intermediate hydrocarbon stream, such isolation is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated.

1. Definition of ''Organic Taxable Chemical''

Section 4662(b)(10)(D) defines ''organic taxable chemical'' as any taxable chemical that is an organic substance. At the most basic level, an organic substance is a substance that contains carbon and hydrogen atoms.

The organic substances that are listed in the table under section 4661(b) are acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene. *See* H.R. Rep. No. 99–962, 99th Cong., 2d Sess., at 328 n. 6 (1986). However, neither the statute nor the legislative history addresses the interplay between section 4662(b)(1) and (10) with regard to methane and butane. Although methane and butane are organic substances that are listed in the table in section 4661(b), they are treated as taxable chemicals only when used otherwise than as a fuel or otherwise than in the production of any motor fuel, diesel fuel, aviation fuel, or jet fuel. *See* section 4662(b)(1) and proposed § 52.4662–2(a). Therefore, methane and butane are not organic taxable chemicals at the time of isolation from an intermediate hydrocarbon stream. *See* section 4662(b)(1) and proposed § 52.4662–2(a) and (g). Proposed § 52.4662–2(g)(2)(i) clarifies that no section 4661 tax is imposed on methane or butane at the time the methane or butane is isolated from an intermediate hydrocarbon stream and includes an example to illustrate this rule.

2. Multi-Step Isolation Process

The rule in section 4661(b)(10) is clear with regard to organic taxable chemicals isolated from an intermediate hydrocarbon stream as part of a single-step isolation process. However, neither the statute nor the legislative history addresses what happens when isolation is a multi-step process.

In *Murphy Oil USA, Inc.* v. *United States,* 81 F. Supp. 2d 942 (W.D. Ark. 1999), the court considered the applicability of section 4662(b)(10) to a multi-step process of isolating propylene from a C3/C4 hydrocarbon stream. The court held that the splitting process designed to isolate and extract the propylene content from the C3/C4 stream as refinery-grade propylene was the point of isolation, even though the resulting refinery-grade propylene was a mixture of propylene and propane that could have been further processed into a purer grade of propylene. The court further held that because the weight of the propylene in the refinery-grade propylene could be determined with specificity, the section 4661 tax was imposed only on the weight of the propylene in the refinery-grade propylene.

Proposed § 52.4662–2(g)(3)(ii) follows the holding in the *Murphy Oil* case and clarifies that when the isolation of an organic taxable chemical from an intermediate hydrocarbon stream is a multi-step process, the first process that a person uses to isolate, extract, or otherwise remove the organic taxable chemical from the intermediate hydrocarbon stream (even if the organic taxable chemical is, at that time, still mixed with other substances and further processing is possible, but not required) is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated. Proposed § 52.4662–2(g)(3)(ii) further clarifies that if the organic taxable chemical is part of a chemical mixture at the time of isolation, the section 4661 tax is imposed on the weight of the entire chemical mixture, unless the person causing the isolation can establish, with specificity, the weight of the organic taxable chemical or chemicals contained in the chemical mixture.

IV. Credits and Refunds of the Section 4661 Tax

Section 4662(d) provides a mechanism for a credit or refund of the section 4661 tax with regard to certain specified uses of taxable chemicals. Multiple commenters requested that the Treasury Department and the IRS provide guidance on claims for credit and refund. One commenter requested specific guidance on the use of invoices to support credit and refund claims.

Proposed § 52.4662–4 provides rules regarding claims for credit and refund under section 4662(d). The provisions in proposed § 52.4662–4 explain the general rules, conditions to allowance,

and supporting information required for claims for credit and refund. Proposed § 52.4662–4 also includes a model certificate to support a claim for credit or refund. The approach taken in the proposed regulations is consistent with other areas of excise tax law.

V. Exports

Section 4662(e)(1)(A) provides that no section 4661 tax is imposed on the sale by the manufacturer or producer of any taxable chemical for export or for resale by the purchaser to a second purchaser for export. Section 4662(e)(1)(B) provides that rules similar to section 4221(b) (relating to exports exempt from manufacturers excise taxes codified in chapter 32) apply. Proposed § 52.4662–5(b) provides rules regarding how to effectuate tax-free sales for export under section 4662(e)(1). The rules in proposed § 52.4662–5(b) are based on the rules in § 48.4221–3 of the Manufacturers and Retailers Excise Tax Regulations, and include a model exemption certificate and a model statement of export.

Section 4662(e)(2) provides the general rule for claims for credit or refund of the section 4661 tax in the case of taxable chemicals that are exported, and taxable chemicals used as materials in the manufacture or production of a substance that is a taxable substance (that is, it is listed on the Taxable Substances List) at the time of export. Proposed § 52.4662–5(c) provides rules regarding claims for credit or refund under section 4662(e)(2).

Several commenters expressed concern about not being able to make credit or refund claims for taxable chemicals used in the manufacture of substances that meet the more than 20-percent weight or value test but have not yet been added to the Taxable Substances List. The requirement that a substance be on the Taxable Substance List at the time of export in order to make a claim for credit or refund is statutory. *See* section 4662(e)(2). The Treasury Department and the IRS request comments on possible ways to mitigate the impact of the express statutory language in section 4662(e)(2).

Section 4662(e)(3) provides a mechanism for an exporter to make claims for credit or refund. Proposed § 52.4662–5(d) provides rules regarding claims for credit or refund under section 4662(e)(3).

VI. General Rules Regarding the Section 4671 Tax

General rules regarding the section 4671 tax are set forth in proposed § 52.4671–1, including rules regarding the imposition of tax, the persons liable for tax, the attachment of tax, the amount of tax, and the calculation of the amount of tax. Proposed § 52.4671–2 provides rules regarding tax-free sales under section 4671(d)(1) and claims for credit and refund under section 4671(d)(2).

VII. Definitions Relating to Sections 4671

Proposed § 52.4672–1 provides definitions applicable to sections 4671 and 4672. To the extent there is overlap, the definitions in proposed § 52.4672–1 with respect to the section 4671 tax track the definitions in section § 52.4662–1 with respect to the section 4661 tax.

VIII. Predominant Method of Production

Sections 4671(b)(3) and 4672(a)(2) use the term ''predominant method of production.'' However, the term is undefined by statute. The legislative history is limited and provides only that with regard to the determination of substances on the Taxable Substances List, the determination is to be made ''on the basis of the predominant method of production (with respect to imported derivatives) using stoichiometric material consumption assuming a 100-percent yield.'' Conf. Rep. 962, 99th Cong., 2d Sess. (1987), 1987–1 C.B. 383, 386–7.

Proposed § 52.4672–1(b)(4) defines the term ''predominant method of production'' to mean the method used to produce the greatest number of tons of a particular substance worldwide, relative to the total number of tons of the substance produced worldwide. The definition uses worldwide production as the metric because the term ''predominant method of production'' applies only in the context of the section 4671 tax, which is imposed on imported substances.

The Treasury Department and the IRS request comments on the predominant method of production, or any other relevant information (such as the weight or value of the taxable chemicals used in the manufacture or production of the taxable substance), for the following taxable substances that are included in the statutory list in section 4672(a)(3): ferronickel; formaldehyde; hydrogen peroxide; methanol; nickel powders; nickel waste and scrap; polystyrene resins and copolymers; styrene-butadiene, snpf; synthetic rubber, not containing fillers; unwrought nickel; vinyl resins; vinyl resins, nspf; and wrought nickel rods and wires.

IX. Tax-Free Sales Under Section 4671(d)(1)

Section 4671(d)(1) provides that rules similar to those in section 4662(b)(2), (5), and (9) apply with respect to taxable substances used or sold for use as described in such rules. Proposed § 52.4671–2(b) provides rules regarding how to effectuate tax-free sales under section 4671(d)(1); the rules are similar to those in proposed § 52.4662–2(h).

X. Credits and Refunds Under Section 4671(d)(2)

Section 4671(d)(2) provides that rules similar to section 4662(d)(2), (3), and (4) apply with respect to taxable substances used or sold for use as described in such rules. Proposed § 52.4671–2(c) provides rules regarding claims for credit or refund under section 4671(d)(2); the rules are similar to those in proposed § 52.4662–4.

XI. Types of Substances Eligible for Addition to the Taxable Substances List

When the Superfund chemical taxes were previously in effect, Notice 89–61 provided a determination process by which importers and exporters of substances could request modifications to the Taxable Substances List pursuant to the flush language of section 4672(a)(2). Notice 89–61 provided that textile fibers, yarns, and staple, and fabricated products that are molded, formed, woven, or otherwise finished into end-use products were ineligible for addition to the Taxable Substances List. Notice 95–39 modified Notice 89–61 to allow polymers extruded in fiber form to be added to the Taxable Substances List.

Proposed § 52.4672–1(b) incorporates the rules from Notice 89–61 and Notice 95–39 regarding the types of substances that may be added to the Taxable Substances List if they otherwise meet the more than 20-percent weight or value test. These rules were also incorporated into the definition of the term ''substance'' in section 3.10 of Rev. Proc. 2022–26.

XII. Other Issues

A. Sales Between Certain Registrants

Two commenters requested that the Treasury Department and the IRS adopt a practice with respect to sales of taxable chemicals that is similar to what is in place for ''S'' registrants for fuel transactions. One commenter suggested an expansion of ''G'' registration and an allowance of tax-free sales among all ''G'' registrants.

In the fuel excise tax area, section 4081 of the Code establishes the bulk transfer system and the ability for ''S''

registrants to make tax-free sales of taxable fuel. More specifically, section 4081(a)(1)(B)(i) expressly exempts certain removals and entries of taxable fuel within the bulk transfer system and imposes registration requirements. There is no such statutory directive with regard to the Superfund chemical taxes, and such an approach would be inconsistent with the statutory text and legislative history of the section 4661 tax. Therefore, the proposed regulations do not adopt this suggestion.

B. Modifications to the Taxable Substances List

Several commenters requested the addition of substances to or the removal of substances from the Taxable Substances List. Such comments are not considered requests to add to or remove from the Taxable Substances List and will not be processed. All requests to add substances to or remove substances from the Taxable Substances List must be submitted in accordance with the procedures set forth in Rev. Proc. 2022–26, which provides the exclusive process by which importers, exporters, and other interested persons may petition to add a substance to or remove a substance from the Taxable Substances List.

C. Delayed Implementation of Superfund Chemical Taxes

Multiple commenters requested that the Treasury Department and the IRS delay implementation of the Superfund chemical taxes until January 1, 2023. The IIJA reinstates the Superfund chemical taxes as of July 1, 2022. The Treasury Department and the IRS do not have the authority to modify the effective date of the Superfund chemical taxes, which is statutory. Accordingly, the Superfund chemical taxes are effective July 1, 2022, as required by law.

D. Harmonized Tariff Schedule (HTS) and Chemical Abstract Service (CAS) Numbers

Several commenters requested that the Treasury Department and the IRS provide HTS and CAS numbers for all taxable chemicals and taxable substances to ensure uniform identification by stakeholders and the IRS.

The U.S. International Trade Commission maintains and publishes HTS numbers. The Chemical Abstract Service maintains CAS numbers. CAS is a division of the American Chemical Society, a non-profit organization that holds a congressional charter under title 36, United States Code. The Treasury Department and the IRS are considering the request to provide HTS and CAS numbers and how those numbers can be verified with the appropriate experts. The Treasury Department and the IRS request comments on the degree of specificity that would be required for HTS and CAS numbers. Specifically, the Treasury Department and the IRS request comments on the appropriate number of decimal places for the HTS and CAS numbers that would be used to identify taxable chemicals and taxable substances.

Effect on Other Documents

The following notices of determination that were issued pursuant to Notice 89–61 are revoked: 55 FR 24023–01 (June 13, 1990); 55 FR 24023–02 (June 13, 1990); 55 FR 25768–02 (June 22, 1990); 55 FR 25770–01 (June 22, 1990); 56 FR 47985–01 (Sept. 23, 1991); 56 FR 47986–01 (Sept. 23, 1991); 56 FR 47986–02 (Sept. 23, 1991); 56 FR 47987–01 (Sept. 23, 1991); 57 FR 10947–03 (Mar. 31, 1992); 58 FR 66068–01, (Dec. 17, 1993); 58 FR 66069–01 (Dec. 17, 1993); 58 FR 66069–02 (Dec. 17, 1993); 58 FR 66071–01 (Dec. 17, 1993); 58 FR 67439–01 (Dec. 21, 1993); 59 FR 11827–01 (Mar. 14, 1994; 59 FR 11828–01 (Mar. 14, 1994); 59 FR 11831–01 (Mar. 14, 1994); 59 FR 13036–02 (Mar. 18, 1994); 59 FR 13037–01 (Mar. 18, 1994); 59 FR 13038–01 (Mar. 18, 1994); 59 FR 13039–01 (Mar. 18, 1994); 59 FR 14446–01 (Mar. 28, 1994); 59 FR 14447–01, (Mar. 28, 1994); 59 FR 27652–02 (May 27, 1994); 59 FR 27653–01 (May 27, 1994);, 59 FR 27653–02 (May 27, 1994); 59 FR 31297–03 (June 17, 1994); 59 FR 31298–01 (June 17, 1994); 59 FR 31299–01 (June 17, 1994); 59 FR 35170–02 (July 8, 1994); 59 FR 35171–01 (July 8, 1994); 59 FR 35171–02 (July 8, 1994); 59 FR 37131–01 (July 20, 1994); 59 FR 45322–01 (Sept. 1, 1994); 59 FR 51663–03, (Oct. 12, 1994); 59 FR 52028–01 (Oct. 13, 1994); 60 FR 10142–03 (Feb. 23, 1995); 60 FR 19112–02 (Apr. 14, 1995); 60 FR 19113–01 (Apr. 14, 1995); 60 FR 26478–02 (May 17, 1995); 60 FR 27594–01 (May 24, 1995); 60 FR 36458–01 (July 17, 1995); 60 FR 36459–01 (July 17, 1995); 60 FR 54100–01 (Oct. 19, 1995); 60 FR 54101–01 (Oct. 19, 1995); 61 FR 13919–03 (Mar. 28, 1996); 62 FR 10310–01 (Mar. 6, 1997); 65 FR 46046–01 (July 26, 2000); 72 FR 62730–01 (Nov. 6, 2007).

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed regulations have been designated by the Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. Background

As noted earlier, CERCLA, known colloquially as ''Superfund,'' was enacted, in part, to create a hazardous substance cleanup program. Section 221 of CERCLA established the ''Hazardous Substance Response Trust Fund,'' which was funded, in part, by the Superfund chemical taxes. The Superfund chemical taxes expired on December 31, 1995.

Effective July 1, 2022, section 80201 of the IIJA reinstates the Superfund chemical taxes with certain modifications. Pursuant to section 80201(c)(3) of the IIJA, Notice 2021–66 provided initial guidance related to the Superfund chemical taxes.

B. Need for Proposed Regulations

The proposed regulations generally provide structure and clarity for the implementation of the Superfund chemical taxes as reinstated by IIJA. However, the Treasury Department and the IRS determined that there remained outstanding issues requiring clarification that should be subject to notice and comment. In addition to clarifying statutory rules in sections 4661 and 4671 regarding the Superfund chemical tax procedural rules and computation of tax, these proposed regulations provide definitions that track the statutory language and otherwise borrow from existing excise tax rules, including regulations relating to ozone-depleting chemicals and manufacturers excise taxes. The proposed regulations provide procedural guidance regarding tax-free sales of certain taxable chemicals and

taxable substances. Finally, the proposed regulations provide procedures for taxpayers to claim credits and refunds of Superfund chemical taxes paid with respect to taxable chemicals or taxable substances sold for use or used for certain purposes.

C. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulation relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of this regulation.

D. Affected Entities

The Superfund chemical taxes are excise taxes imposed on any manufacturer, producer, or importer that sells or uses taxable chemicals or taxable substances. The taxes are reported on excise tax forms, separate from corporate or individual income tax forms. The Superfund chemical taxes are expected to be paid by industrial chemical companies, which include various manufacturing, refining, and wholesaler firms. The extent to which the cost of the Superfund chemical taxes will be passed down to the eventual consumers of products containing the taxable chemicals or taxable substances is variable across a wide array of products.

After the expiration of the Superfund chemical taxes on December 31, 1995, the number of quarterly excise tax filers fell by approximately 5,500 taxpayers. This number is a reasonable estimate of the number of Superfund chemical tax filers in 1995, as the Superfund chemical taxes were the only excise taxes to have expired at that time and the Superfund petroleum tax filers would still be paying the Oil Spill Liability excise taxes, and therefore had not stopped filing quarterly excise forms. However, the make-up of the chemical and manufacturing industries is expected to have changed since the previous imposition of the Superfund chemical taxes. In addition, section 80201(c)(1) of the IIJA modifies the method under section 4672(a)(2)(B) of the Code for determining whether a substance is a taxable substance by lowering the required percentage of taxable chemicals used to produce the substance from 50 percent to 20 percent of the weight (or the value) of the materials used to produce such substance. Given the changes in the application of the Superfund chemical taxes, the Treasury Department and the IRS do not have readily available data to quantify the impact of the excise taxes. The Treasury Department and the IRS invite comments, especially data sets or analyses, on the number of affected taxpayers.

E. Economic Analysis of the Proposed Regulations

The proposed regulations provide certainty and consistency in the application of Superfund chemical taxes by providing definitions and clarifications regarding the statutes' terms and rules. In addition, the proposed regulations provide model certificates and examples for the taxpayer to follow. An economically efficient tax system generally aims to treat income and expense derived from similar economic decisions consistently across taxpayers and activities in order to reduce incentives for individuals and businesses to make choices based on tax rather than market incentives. In the absence of the guidance provided in these proposed regulations, taxpayers would bear the burden of interpreting the statute and the chances that different taxpayers might interpret the statute differently would be exacerbated. For example, two similarly-situated taxpayers might interpret the statutory provisions pertaining to the calculation of tax differently or reach different conclusions regarding eligibility for exemptions from the Superfund chemical taxes. Thus, lack of certainty may lead to very different tax liabilities for taxpayers undertaking similar activities. The Treasury Department and the IRS invite comments, especially data sets or analyses, of the impact of the proposed regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''Paperwork Reduction Act'') requires that a federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

Overview

The collections of information in these proposed regulations are in: Proposed §§ 52.4662–2(g)(5) (notification certificate for intermediate hydrocarbon streams under section 4662(b)(10)); 52.4662–2(h)(2) (exemption certificate for tax-free sales for fertilizer, motor fuel, and animal feed substances under section 4662(b)); 52.4662–3(c) (notification certificate for inventory exchanges under section 4662(c)); 52.4662–4(a)(4) (supporting information required for claims for credit and refund under section 4662(d)(1)); 52.4662–4(b)(3) (supporting information required for claims for credit and refund under section 4662(d)(2)); 52.4662–4(c)(3) (supporting information required for claims for credit and refund under section 4662(d)(3)); 52.4662–4(d)(3) (supporting information required for claims for credit and refund under section 4662(d)(4)); 52.4662–4(e)(2) (certificate to support claims for credit and refund under section 4662(d)); 52.4662–5(b)(5) (exemption certificate for tax-free sales for export under section 4662(e)(1)); 52.4662–5(c)(3) (supporting information required for claims for credit and refund under section 4662(e)(2)); 52.4662–5(d)(3) (supporting information required for claims for credit and refund by the exporter under section 4662(e)(3)); 52.4671–2(b)(3) (exemption certificate for tax-free sales for fertilizer, motor fuel, and animal feed substances under section 4672(d)(1)); 52.4671–2(c)(3) (supporting information required for claims for credit or refund under section 4671(d)(2)); and 52.4672–2(c)(4) (certificate to support claims for credit or refund under section 4671(d)(2)).

Estimated Burden

The IRS Taxpayer Burden Model cannot be used to calculate reporting burden not associated with economic activity, as is the case with the required reporting in these proposed regulations. Therefore, the IRS is providing off-model estimates of the burden associated with these proposed regulations. The estimated time to complete a notification certificate is 15 to 30 minutes. It is estimated that 100 to 1,000 taxpayers will complete a notification certificate. The estimated minimum burden imposed by the notification certificate is 25 hours (100 taxpayers × .25 hours), and the estimated maximum burden imposed is 250 hours (1,000 taxpayers × .25 hours). Using a monetization rate of $98.50 (2020 dollars), the total monetized burden for the notification certificate requirement is estimated to be between $2,462.50 (25 hours × $98.50) and $24,625 (250 hours × $98.50).

The time to complete a single exemption certificate to support a tax-free sale, a certificate to support a claim for credit or refund of tax, or a statement of export is estimated to be 30 to 60 minutes, and the IRS expects that between 6,000 and 30,000 taxpayers will submit one of these documents. The estimated minimum burden imposed by these reporting requirements is 3,000 hours (6,000 taxpayers × .5 hour) and the estimated maximum burden imposed is 30,000 hours (30,000 taxpayers × 1 hour). Using a monetization rate of $98.50 (2020

dollars), total monetized burden is estimated to be between $295,500 (3,000 hours × $98.50) and $2,955,000 (30,000 hours × $98.50).

The total estimated burden for these proposed regulations is between 3,025 hours (25 hours + 3,000 hours) and 30,250 hours (250 hours + 30,000 hours). The total monetized burden under these proposed regulations is estimated to be between $297,962.50 ($2,462.50 + $295,500) and $2,979,625 ($24,625 + $2,955,000).

The collections of information contained in this notice of proposed rulemaking have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507(d)) under control number 1545–2304. Written comments and recommendations for the proposed information collection can be submitted by visiting *https://www.reginfo.gov/public/do/PRAMain.* Information collection requests may be found by selecting ''Currently Under Review—Open for Public Comments'' or by using the search function. Comments on the information collections may also be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by May 30, 2023. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act.

The proposed regulations provide clarity for manufacturers, producers, and importers that sell or use taxable chemicals and for importers that sell or use taxable substances. The proposed regulations provide general rules related to the Superfund chemical taxes, including the attachment of tax, how to calculate the tax, the taxation of chemical mixtures, and supporting information required for credit or refund claims. The proposed regulations provide rules and model certificates for the statutory exceptions and special rules related to the section 4661 tax, such as for methane or butane used otherwise than as a fuel, qualified fertilizer, fuel, and animal feed substances, and tax-free sales for organic taxable chemicals are part of an intermediate hydrocarbon stream. The proposed regulations also provide rules and model certificates for the statutory exceptions to the section 4671 tax for qualified fertilizer, fuel, and animal feed substances. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for manufactures, producers, and importers and consistent application of the Superfund chemical taxes.

The Treasury Department and the IRS do not have readily available data to assess how many entities may be affected by the proposed regulations. Even if a substantial number of small entities are affected, the economic impact of these regulations on small entities is not likely to be significant. The proposed regulations provide taxpayers with definitional and computational guidance regarding the Superfund chemical taxes as well as rules and model certificates for statutory exceptions to the Superfund chemical taxes. As explained in the PRA section, the record keeping obligations imposed by these proposed regulations are certificates for the statutory exceptions to Superfund chemical taxes and credit and refund claims. It is estimated that between 6,000 and 30,000 taxpayers will prepare one of such certificates annually and it will take no more than one hour to complete.

Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS specifically invite comments from any party, particularly affected small entities, on the accuracy of this certification.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Proposed Applicability Dates

These proposed regulations are proposed to apply to sales or uses in calendar quarters beginning on or after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**. Taxpayers and their related parties, within the meaning of sections 267(b) and 707(b)(1) of the Code, may rely on the provisions of these proposed regulations prior to that date provided that they follow the proposed regulations in their entirety (as applicable) and in a consistent manner until the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *https://www.regulations.gov.*

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4 (2020–17 I.R.B. 1) provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Stephanie Bland

of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 52

Chemicals, Environmental protection, Excise taxes, Hazardous waste, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 52 is proposed to be amended as follows:

PART 52—ENVIRONMENTAL TAXES

■ **Paragraph 1.** The authority citation for part 52 is amended by adding entries for §§ 52.4661–1, 52.4662–1 through 52.4662–5, 52.4671–1, 52.4671–2, 52.4672–1, and 52.4672–2 in numerical order and revising the entry for § 52.4682–3 to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 52.4661–1 also issued under 26 U.S.C. 4661.

Section 52.4662–1 also issued under 26 U.S.C. 4662.

Section 52.4662–2 also issued under 26 U.S.C. 4662.

Section 52.4662–3 also issued under 26 U.S.C. 4662.

Section 52.4662–4 also issued under 26 U.S.C. 4662.

Section 52.4662–5 also issued under 26 U.S.C. 4662.

Section 52.4671–1 also issued under 26 U.S.C. 4671.

Section 52.4671–2 also issued under 26 U.S.C. 4671.

Section 52.4672–1 also issued under 26 U.S.C. 4672.

Section 52.4672–2 also issued under 26 U.S.C. 4672.

Section 52.4682–3 also issued under 26 U.S.C. 4682(c)(2).

* * * * *

■ **Par. 2.** Section 52.4661–1 is added to read as follows:

§ 52.4661–1 Imposition of tax.

(a) *In general.* Section 4661(a) of the Internal Revenue Code (Code) imposes an excise tax on any taxable chemical sold or used by the manufacturer, producer, or importer of the taxable chemical. *See* sections 4661(a)(1) and 4662(c)(1) of the Code.

(b) *Person liable for tax.* The manufacturer, producer, or importer of a taxable chemical is liable for the section 4661 tax.

(c) *Attachment of tax*—(1) *In general.* The section 4661 tax attaches when the manufacturer, producer, or importer of a taxable chemical first sells or uses the taxable chemical. No section 4661 tax attaches when the manufacturer, producer, or importer of a chemical mixture (as defined in § 52.4662–1(c)(1)) containing one or more tax-paid chemicals (as defined in § 52.4662–1(c)(12)), or a subsequent purchaser of such chemical mixture, dilutes the chemical mixture with a solvent to change the concentration of the tax-paid chemical or chemicals in the chemical mixture, provided the solvent is not a taxable chemical.

(2) *Foreign manufacturers.* No section 4661 tax attaches to a foreign manufacturer's sale of a substance listed in the table under section 4661(b) to an importer because the substance is not a taxable chemical at the time of sale. *See* section 4662(a)(1). Instead, the section 4661 tax attaches to the importer's first sale or use of the taxable chemical.

(3) *Taxable chemical that is part of an imported chemical mixture.* In the case of a taxable chemical that is part of an imported chemical mixture that is not a taxable substance (as defined in section 4672(a) and § 52.4672–1(b)(8)), the section 4661 tax attaches to the importer's first sale or use of the chemical mixture.

(4) *Ores*—(i) *In general.* In the case of a taxable chemical that is derived from an ore, neither the mining of the ore nor the extraction of the taxable chemical from the ore is a taxable event. Instead, the section 4661 tax attaches to the first sale or use of the taxable chemical by the manufacturer, producer, or importer after extraction of the taxable chemical from the ore, and the person that extracts the taxable chemical from the ore is the manufacturer of the taxable chemical. For purposes of this paragraph (c)(4)(i), the term *extraction of a taxable chemical from the ore* means the first process that a person uses in the United States to separate the taxable chemical from the ore. See paragraph (c)(4)(ii) of this section for the special rule regarding chromite.

(ii) *Chromite.* The mining of chromite, which is an ore, is not a taxable event. Instead, tax attaches to the first sale or use of chromite by the manufacturer, producer, or importer after the chromite is mined. For domestically-mined chromite, the person that mines the chromite is the manufacturer.

(d) *Procedural rules.* Part 40 of this chapter provides rules related to filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and other procedural rules. *See* §§ 52.0–1 and 40.0–1(a) of this chapter. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person for purposes of filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and the registration requirements under section 4662(b)(10)(C) and (c)(2)(B). *See* § 40.0–1(d) of this chapter.

(e) *Amount of tax.* The section 4661 tax is imposed as a rate per ton of taxable chemical sold or used by the manufacturer, producer, or importer. *See* section 4661(b) for the rate of tax per ton of each taxable chemical.

(f) *Calculation of tax*—(1) *Overview.* The section 4661 tax is calculated by multiplying the number of tons of the taxable chemical sold or used by the manufacturer, producer, or importer by the tax rate applicable to the taxable chemical under section 4661(b). In the case of a fraction of a ton, the tax is calculated by adding the number of whole tons (if any) and the number of fractional tons of the taxable chemical, and then multiplying the sum of those numbers by the tax rate applicable to the taxable chemical. *See* section 4662(a)(5).

(2) *Determination of weight*—(i) *In general.* The weight of a taxable chemical is the actual weight of the taxable chemical at the time of sale or use by the manufacturer, producer, or importer, measured in tons.

(ii) *Imported chemical mixtures.* In the case of a taxable chemical that is part of an imported chemical mixture that is not a taxable substance, the section 4661 tax is imposed on the actual weight of each taxable chemical in the chemical mixture at the time of sale or use of the chemical mixture by the importer. If there are multiple taxable chemicals in the chemical mixture, the amount of tax is calculated separately for each taxable chemical in the chemical mixture.

(iii) *Conversion required for volumetric measurements.* Any volumetric measurement of a taxable chemical must be converted to a weight measurement. To calculate the weight (in pounds) of a taxable chemical from a volumetric measurement (in cubic feet), the volume of the taxable chemical (in cubic feet) is multiplied by the density of the taxable chemical (in pounds per cubic foot). To convert a volumetric measurement to a weight measurement for purposes of the section 4661 tax, the pressure and temperature used to determine density must be the same as the pressure and temperature used to determine volume.

(g) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1.* X, a foreign manufacturer of potassium hydroxide, sells 10 tons of potassium hydroxide to Y, a domestic corporation. Y enters the 10 tons of potassium hydroxide into the United States for consumption, use, or

warehousing, and then sells it to Z, a domestic corporation. Under these facts, Y is the importer of the potassium hydroxide. The section 4661 tax attaches when Y sells the potassium hydroxide to Z. Y is liable for the section 4661 tax. The section 4661 tax is calculated by multiplying 10 tons (the weight of the potassium hydroxide) by $0.44 (the rate of tax per ton of potassium hydroxide). The amount of section 4661 tax is $4.40.

(2) *Example 2.* X, a foreign corporation, sells nickel ore to Y, a domestic corporation. Y enters the nickel ore into the United States for consumption, use, or warehousing, and then extracts nickel from the ore. Y sells 10 tons of the nickel to Z, a domestic corporation. Z further processes the nickel to remove impurities and then uses the nickel to create an alloy. Under these facts, Y is the manufacturer of the nickel. The section 4661 tax attaches when Y sells the nickel to Z. Y is liable for the section 4661 tax. The section 4661 tax is calculated by multiplying 10 tons (the weight of the nickel) by $8.90 (the rate of tax per ton of nickel). The amount of section 4661 tax is $89.00.

(3) *Example 3.* X, a domestic producer of chromite, sells 3,500 pounds of chromite to Y, a domestic corporation. The section 4661 tax attaches when X sells the chromite to Y. X is liable for the section 4661 tax. The section 4661 tax is calculated by adding the number of whole and fractional tons of chromite (1 ton + .75 ton = 1.75 tons), and then multiplying 1.75 tons by $3.04 (the rate of tax per ton of chromite). The amount of section 4661 tax is $5.32.

(4) *Example 4.* X, an importer, enters 1.2 tons of a chemical mixture comprised of 98.3 percent sulfuric acid and 1.7 percent water for consumption, use, or warehousing. X sells the chemical mixture to Y, a domestic corporation. The section 4661 tax attaches when X sells the chemical mixture to Y. X is liable for the section 4661 tax. The section 4661 tax is calculated based on the weight of the sulfuric acid in the chemical mixture (98.3% × 1.2 tons = 1.18 tons), and then multiplying 1.18 tons by $0.52 (the rate of tax per ton of sulfuric acid). The amount of section 4661 tax is $0.61.

(5) *Example 5.* X, an importer, enters 1.2 tons of a chemical mixture comprised of 98.3 percent sulfuric acid and 1.7 percent water for consumption, use, or warehousing. X sells the chemical mixture to Y, a domestic corporation. Y adds water to the chemical mixture, resulting in a chemical mixture of 93 percent sulfuric acid and 7 percent water, and sells the chemical mixture to Z, a domestic corporation. The section 4661 tax attaches when X sells the chemical mixture to Y. X is liable for the section 4661 tax. The section 4661 tax is calculated based on the weight of the sulfuric acid in the chemical mixture (98.3% × 1.2 tons = 1.18 tons), and then multiplying 1.18 tons by $0.52 (the rate of tax per ton of sulfuric acid). The amount of section 4661 tax is $0.61. No additional section 4661 tax is imposed when Y dilutes the chemical mixture by adding water or when Y sells the diluted chemical mixture to Z.

(h) *Cross references*—(1) *Definitions.* For definitions that relate to sections 4661 and 4662, see section 4662(a) and § 52.4662–1.

(2) *Exceptions and special rules.* For exceptions and special rules applicable to the section 4661 tax, see section 4662(b) and § 52.4662–2.

(3) *Inventory exchanges.* For special rules related to inventory exchanges, see section 4662(c)(2) and § 52.4662–3.

(4) *Credit or refund of tax.* For rules related to credits and refunds of the section 4661 tax, see section 4662(d) and § 52.4662–4.

(5) *Exports.* For rules related to exports, see section 4662(e) and § 52.4662–5.

(i) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 3.** Section 52.4662–1 is added to read as follows:

§ 52.4662–1 Taxable chemical; other definitions.

(a) *Overview.* This section provides definitions for purposes of sections 4661 and 4662 of the Internal Revenue Code (Code), § 52.4661–1, this section, and §§ 52.4662–2 through 52.4662–5.

(b) *Taxable chemical*—(1) *In general.* (i) Except as provided in section 4662(b), the term *taxable chemical* means any substance that is:

(A) Listed in the table under section 4661(b); and

(B) Manufactured or produced in the United States, or entered into the United States for consumption, use, or warehousing. *See* section 4662(a)(1).

(ii) A substance is a taxable chemical only if it satisfies both paragraphs (b)(1)(i) and (ii) of this section. For rules regarding paragraph (b)(1)(i) of this section, see paragraph (b)(2) of this section. For the definition of *entered into the United States for consumption, use, or warehousing* as it relates to the second prong of the definition, see paragraph (c)(2) of this section.

(2) *Substances listed in the table under section 4661(b).* A substance is listed in the table under section 4661(b), and therefore satisfies paragraph (b)(1)(i) of this section, if it has the same name and molecular formula as a substance listed in the table under section 4661(b). All isomeric forms of a substance listed in the table under section 4661(b) are treated as having the same name and molecular formula of the substance. Therefore, except as provided in section 4662(b)(7) with respect to xylene, an isomer of a substance listed in the table under section 4661(b) is a substance listed in the table under section 4661(b). The physical state of a substance (that is, solid, liquid, or gas) is immaterial. See paragraph (b)(3) of this section for the name and the molecular formula, or chemical symbol, of each substance listed in the table under section 4661(b).

(3) *Molecular formulas and chemical symbols.* The following table provides the name and molecular formula or chemical symbol for each substance listed in the table under section 4661(b):

TABLE 1 TO PARAGRAPH (b)(3)

Name	Molecular formula or chemical symbol
Acetylene	C_2H_2
Benzene	C_6H_6
Butane	C_4H_{10}
Butylene	C_4H_8
Butadiene	C_4H_6
Ethylene	C_2H_4
Methane	CH_4
Naphthalene	$C_{10}H_8$
Propylene	C_3H_6
Toluene	C_7H_8
Xylene	C_8H_{10}
Ammonia	NH_3
Antimony	Sb
Antimony trioxide	SbO_3
Arsenic	As
Arsenic trioxide	AsO_3
Barium sulfide	BaS
Bromine	Br
Cadmium	Cd
Chlorine	Cl
Chromium	Cr
Chromite	$FeCr_2O_4$ and $MgCr_2O_4$
Potassium dichromate	$K_2Cr_2O_7$
Sodium dichromate	$NaCr_2O_7$
Cobalt	Co
Cupric sulfate	$CuSO_4$
Cupric oxide	CuO
Cuprous oxide	Cu_2O
Hydrochloric acid	HCl
Hydrogen fluoride	HF
Lead oxide	PbO
Mercury	Hg
Nickel	Ni
Phosphorus	P
Stannous chloride	$SnCl_2$
Stannic chloride	$SnCl_4$
Zinc chloride	$ZnCl_2$
Zinc sulfate	$ZnSO_4$
Potassium hydroxide	KOH
Sodium hydroxide	NaOH
Sulfuric acid	H_2SO_4

TABLE 1 TO PARAGRAPH (b)(3)—Continued

Name	Molecular formula or chemical symbol
Nitric acid	HNO_3

(4) *Special rule for ores.* Except for chromite, an ore is not a taxable chemical.

(5) *Special rule for methane and butane.* For rules regarding the treatment of methane and butane as taxable chemicals, see section 4662(b)(1) and § 52.4662–2(a).

(6) *Special rule for substances derived from coal.* For rules regarding the exclusion from the definition of taxable chemical for substances derived from coal, see section 4662(b)(4) and § 52.4662–2(d).

(7) *Special rule for xylene.* For a special rule regarding separated isomers of xylene, see section 4662(b)(7).

(8) *Example.* X, a domestic corporation, produces isobutylene in the United States. Isobutylene is an isomer of butylene and has the molecular formula C_4H_8. The isobutylene is a taxable chemical because it is a substance listed in the table under section 4661(b) as required by section 4662(a)(1)(A), and it is produced in the United States as required by section 4662(a)(1)(B).

(c) *Other definitions*—(1) *Chemical mixture.* The term *chemical mixture* means a substance composed of two or more physically-combined components that are not chemically bonded. Chemical mixtures include alloys, solutions, suspensions, and colloids.

(2) *Entry for consumption, use, or warehousing*—(i) *In general.* Except as otherwise provided in this paragraph (c)(2), the term *entry for consumption, use, or warehousing,* when used with respect to any goods, means:

(A) Brought into the customs territory of the United States (customs territory) if applicable customs law requires that the goods be entered into the customs territory for consumption, use, or warehousing;

(B) Admitted into a foreign trade zone for any purpose if like goods brought into the customs territory would be entered into the customs territory for consumption, use, or warehousing; or

(C) Imported into any other part of the United States for any purpose if like goods brought into the customs territory would be entered into the customs territory for consumption, use, or warehousing.

(ii) *Entry for transportation and exportation.* Goods entered into a customs territory for transportation and exportation are not goods entered into the customs territory for consumption, use, or warehousing.

(iii) *Multiple entries.* In the case of multiple entries described in paragraph (c)(2)(i) of this section, only the first entry is taken into account.

(3) *Exportation.* The term *exportation* means the severance of a taxable chemical from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within a foreign country.

(4) *Exporter.* The term *exporter* means the person named as shipper or consignor in the export bill of lading.

(5) *Importer*—(i) *In general.* The term *importer* means the person entering the taxable chemical for consumption, use, or warehousing. *See* section 4662(a)(3). If the person entering the taxable chemical for consumption, use, or warehousing is merely acting as an agent or a customs broker for another person, then the agent or customs broker is not the importer and the importer is the first person in the United States to sell or use the taxable chemical after entry of the taxable chemical for consumption, use, or warehousing.

(ii) *Drop ship businesses.* If a drop ship business in the United States purchases or otherwise arranges for a person outside the United States to ship a chemical listed in the table under section 4661(b) directly to a purchaser in the United States, the drop ship business is the importer of the chemical. If a drop ship business outside the United States purchases or otherwise arranges for a person outside the United States to ship a chemical listed in the table under section 4661(b) directly to a purchaser in the United States, the purchaser in the United States is the importer of the chemical. For purposes of this paragraph (c)(5)(ii), the term *drop ship business* means a person that sells the chemical or arranges for purchasers to purchase the chemical, and uses a third party to fill the order by shipping the chemical directly to the purchaser. The determination of whether a person is a drop ship business is made on a sale-by-sale basis.

(6) *Manufacturer*—(i) *In general.* The term *manufacturer* includes a producer. A manufacturer is any person that produces a taxable chemical from new or raw material, feedstocks, or other substances, or from scrap, salvage, waste, or recycled substances. A manufacturer includes any person that produces a taxable chemical from the mining process, or extracts, isolates, separates, or otherwise removes a taxable chemical from an ore or from another substance. A manufacturer also includes any person that produces a taxable chemical by processing or manipulating a substance, such as through the oxidation process. The term *manufacturer* does not include a person that dilutes a chemical mixture comprised of one or more tax-paid chemicals with a solvent that is not a taxable chemical.

(ii) *Contract manufacturing.* If a person manufactures or produces a taxable chemical for a second person, pursuant to a contract, order, or agreement and in accordance with the second person's specifications, or if a person manufactures or produces a taxable chemical for a second person from materials owned by the second person, the second person is treated as the manufacturer of the taxable chemical manufactured by the first person.

(7) *Molecular formula.* The term *molecular formula* means a chemical formula that shows the number and kinds of atoms in the substance.

(8) *Sale.* The term *sale* means the transfer of title or substantial incidents of ownership (whether or not delivery to, or payment by, the purchaser has been made) in a taxable chemical for a consideration, which may include, but is not limited to, money, services, or property.

(9) *Section 4661 tax.* The term *section 4661 tax* means the excise tax imposed by section 4661(a) of the Code on any taxable chemical sold or used by the manufacturer, producer, or importer of the taxable chemical.

(10) *Taxable substance.* The term *taxable substance* has the meaning given to such term by section 4671(a) of the Code and § 52.4672–1(b)(8).

(11) *Taxable chemical registrant.* The term *taxable chemical registrant* means a person that is registered by the Internal Revenue Service (IRS) under Activity Letter ''G.'' A person may apply for ''G'' registration by completing Form 637, *Application for Registration for Certain Excise Tax Activities,* and submitting the completed form to the IRS.

(12) *Tax-paid chemical.* The term *tax-paid chemical* means a taxable chemical on which the section 4661 tax has been paid.

(13) *Ton.* The term *ton* means 2,000 pounds. In the case of any taxable chemical measured by volume, the term *ton* means the amount of such taxable chemical, in cubic feet, that is the equivalent of 2,000 pounds on a molecular weight basis. *See* section 4662(a)(4) and § 52.4661–1(f)(2)(iii).

(14) *United States.* The term *United States* has the meaning given to such

term by section 4612(a)(4) of the Code. *See* section 4662(a)(2).

(15) *Use.* Except as otherwise provided in section 4662 and § 52.4662–2, a taxable chemical is used when it is consumed, when it functions as a catalyst, when its chemical composition changes, when it is used in the manufacture or production of a chemical mixture or other substance (including by mixing or combining the taxable chemical with other substances), or when it is put into service in a trade or business for the production of income. The loss or destruction of a taxable chemical through spillage, fire, natural degradation, or other casualty is not a use of the chemical. The mere manufacture or production of a taxable chemical is not a use of that chemical.

(d) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 4.** Section 52.4662–2 is added to read as follows:

§ 52.4662–2 Exceptions and special rules.

(a) *Methane or butane used as a fuel*—(1) *In general.* Methane or butane is treated as a taxable chemical only if it is used otherwise than as a fuel, or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel. Any person using methane or butane otherwise than as a fuel, or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, is treated as the manufacturer of the methane or butane and the tax imposed by section 4661(a) of the Code attaches at the time such person so uses the methane or butane. *See* section 4662(b)(1) of the Code. See section 4662(b)(10) and paragraph (g) of this section regarding the exception for hydrocarbon streams containing mixtures of organic taxable chemicals.

(2) *Use otherwise than as a fuel.* Methane or butane is used otherwise than as a fuel when it is used other than in the production of energy. For example, methane or butane is used otherwise than as a fuel when it is used as a coolant. Conversely, methane or butane is used as a fuel when it is consumed in the production of energy. For example, methane or butane is used as a fuel when it is consumed in an internal combustion engine to power a vehicle, when it is consumed in an engine to power an aircraft, or when it is consumed in a furnace, cooking appliance, or lighter to produce heat.

(3) *Examples.* The following examples illustrate the rules in paragraph (a)(2) of this section.

(i) *Example 1.* X, a domestic corporation, produces methane in the United States and uses it to fire the furnaces at X's refinery. The methane is not treated as a taxable chemical because it is used as a fuel by X.

(ii) *Example 2.* X, a domestic corporation, produces methane in the United States and sells it to Y, a domestic corporation. Y uses the methane in the production of antifreeze. The methane is not treated as a taxable chemical until Y uses the methane in the production of antifreeze. Y is treated as the manufacturer of the methane and the section 4661 tax attaches at the time Y uses the methane in the production of antifreeze. Y is liable for the section 4661 tax.

(b) *Substances used in the production of fertilizer*—(1) *In general.* No section 4661 tax is imposed in the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (collectively, fertilizer chemicals, or individually, fertilizer chemical) that is a qualified fertilizer substance. *See* section 4662(b)(2)(A). Although taxable chemicals other than fertilizer chemicals may be qualified fertilizer substances, the section 4662(b)(2) exception does not apply to such other taxable chemicals. For example, zinc sulfate used by the manufacturer to produce a qualified fertilizer substance does not qualify for the exception in section 4662(b)(2).

(2) *Definitions*—(i) *Qualified fertilizer substance.* Under section 4662(b)(2)(B), the term *qualified fertilizer substance* means:

(A) Any substance used by the manufacturer, producer, or importer in a qualified fertilizer use;

(B) Any substance sold for use by any purchaser in a qualified fertilizer use; or

(C) Any substance sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(ii) *Qualified fertilizer use.* The term *qualified fertilizer use* means any use in the manufacture or production of fertilizer or for direct application as a fertilizer. *See* section 4662(b)(2)(C). The term *qualified fertilizer use* includes the act of putting fertilizer on crops or croplands.

(iii) *Fertilizer.* The term *fertilizer* means a substance used to improve the growth of plants. The term *fertilizer* does not include pesticides, insecticides, herbicides or fungicides.

(3) *Taxation of nonqualified sale or use.* If no section 4661 tax was imposed on the sale or use of fertilizer chemicals by reason of the exception in section 4662(b)(2), the first person that sells or uses any such chemical other than as a qualified fertilizer substance is treated as the manufacturer of such chemical. *See* section 4662(b)(2)(D). When a fertilizer chemical is sold or used to produce both a qualified fertilizer substance and a substance that is not a qualified fertilizer substance (derivative substance), the section 4661 tax is imposed on the fertilizer chemical used to produce the derivative substance at the time the manufacturer, producer, or importer sells or uses the fertilizer chemical. The amount of the section 4661 tax is calculated based on the weight of the fertilizer chemical sold or used to produce the derivative substance.

(4) *Tax-free sales.* See paragraph (h) of this section for rules related to tax-free sales.

(5) *Credit or refund of tax.* See section 4662(d)(2) and § 52.4662–4(b) for rules related to credits and refunds of the section 4661 tax.

(c) *Sulfuric acid produced as a byproduct of air pollution control.* No section 4661 tax is imposed on sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment. *See* section 4662(b)(3). As used in section 4662(b)(3), the term *air pollution control equipment* means any equipment used to comply with the Clean Air Act, including any amendments thereto, as codified in 42 U.S.C. chapter 85, or any similar provision under state law.

(d) *Substances derived from coal*—(1) *In general.* Under section 4662(b)(4), the term *taxable chemical* does not include any substance to the extent derived from coal. As used in section 4662(b)(4), the term *coal* means bituminous coal, subbituminous coal, anthracite, and lignite. A substance is not derived from coal merely because coal served as a source of energy in the production of the substance.

(2) *Example.* X, a domestic corporation, uses a high-temperature carbonization process to convert coal to coke and coal tar. X then cracks the coal tar to produce naphthalene. The naphthalene is derived from coal and the exception in section 4662(b)(4) applies. Therefore, the naphthalene is not a taxable chemical.

(e) *Substances used in the production of motor fuel*—(1) *In general.* No section 4661 tax is imposed in the case of acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, or xylene (collectively, fuel chemicals, or individually, a fuel chemical) that is a qualified fuel substance. *See* section 4662(b)(5)(A). Although taxable chemicals other than fuel chemicals may be qualified fuel substances, the section 4662(b)(5)

exception does not apply to such other taxable chemicals.

(2) *Definitions*—(i) *Qualified fuel substance.* Under section 4662(b)(5)(B), the term *qualified fuel substance* means:

(A) Any substance used by the manufacturer, producer, or importer thereof in a qualified fuel use;

(B) Any substance sold for use by any purchaser in a qualified fuel use; or

(C) Any substance sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(ii) *Qualified fuel use.* A *qualified fuel use* means any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or any use of a fuel chemical as such a fuel. *See* section 4662(b)(5)(C).

(3) *Taxation of nonqualified sale or use.* If no section 4661 tax was imposed on the sale or use of a fuel chemical by reason of the exception in section 4662(b)(5), the first person that sells or uses such fuel chemical other than as a qualified fuel substance is treated as the manufacturer of such fuel chemical. *See* section 4662(b)(5)(E). When a fuel chemical is sold or used to produce both a qualified fuel substance and a substance that is not a qualified fuel substance (derivative substance), the section 4661 tax is imposed on the fuel chemical sold or used as the derivative substance at the time the manufacturer, producer, or importer sells or uses the fuel chemical. The amount of the section 4661 tax is calculated based on the weight of the fuel chemical sold or used to produce the derivative substance.

(4) *Tax-free sales.* See paragraph (h) of this section for rules related to tax-free sales.

(5) *Credit or refund of tax.* See section 4662(d)(3) and § 52.4662–4(c) for rules related to credits and refunds of the section 4661 tax.

(f) *Substances used in the production of animal feed*—(1) *In general.* No section 4661 tax is imposed in the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (each, an animal feed chemical, and collectively, animal feed chemicals) that is a qualified animal feed substance. *See* section 4662(b)(9). Although taxable chemicals other than animal feed chemicals may be qualified animal feed substances, the section 4662(b)(9) exception does not apply to such other taxable chemicals.

(2) *Definitions*—(i) *Qualified animal feed substance.* Under section 4662(b)(9)(B), the term *qualified animal feed substance* means:

(A) Any substance used by the manufacturer, producer, or importer in a qualified animal feed use;

(B) Any substance sold for use by any purchaser in a qualified animal feed use; or

(C) Any substance sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(ii) *Qualified animal feed use.* The term *qualified animal feed use* means any use in the manufacture or production of animal feed, animal feed supplements, or ingredients used in animal feed or animal feed supplements. *See* section 4662(b)(9)(C).

(3) *Taxation of nonqualified sale or use.* If no section 4661 tax was imposed on the sale or use of animal feed chemicals by reason of the exception in section 4662(b)(9), the first person that sells or uses any such chemical other than as a qualified animal feed substance is treated as the manufacturer of the chemical. *See* section 4662(b)(9)(D). When an animal feed chemical is sold or used to produce both a qualified animal feed substance and a substance that is not a qualified animal feed substance (derivative substance), the section 4661 tax is imposed on the animal feed chemical sold or used to produce the derivative substance at the time the manufacturer, producer, or importer sells or uses the animal feed chemical. The amount of the section 4661 tax is calculated based on the weight of the animal feed chemical sold or used to produce the derivative substance.

(4) *Tax-free sales.* See paragraph (h) of this section for rules related to tax-free sales.

(5) *Credit or refund of tax.* See section 4662(d)(4) and § 52.4662–4(d) for rules related to credits and refunds of the section 4661 tax.

(g) *Hydrocarbon streams containing mixtures of organic taxable chemicals*—(1) *In general.* No section 4661 tax is imposed on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals, if the requirements in paragraph (g)(4) of this section are satisfied. *See* section 4662(b)(10)(A). For purposes of section 4662(b)(10), the term *intermediate hydrocarbon stream* means a mixture of organic chemicals that requires further distillation or processing to manufacture or produce a taxable chemical.

(2) *Organic taxable chemical*—(i) *In general.* For purposes of section 4662(b)(10), the term *organic taxable chemical* means any taxable chemical that is an organic substance. *See* section 4662(b)(10)(D). The organic substances that are listed in the table in section 4661(b) are acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene. However, only acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene are organic taxable chemicals (provided they also satisfy the requirements of section 4662(a)(1)(B)). Although methane and butane are organic substances that are listed in the table in section 4661(b), they are treated as organic taxable chemicals only when used otherwise than as a fuel or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (provided they also satisfy the requirements of section 4662(a)(1)(B)). *See* section 4662(b)(1) and paragraph (a) of this section. Therefore, methane and butane are not organic taxable chemicals at the time of isolation from an intermediate hydrocarbon stream. *See* section 4662(b)(1) and paragraph (a) of this section. As a result, no section 4661 tax is imposed on methane or butane at the time of isolation from an intermediate hydrocarbon stream.

(ii) *Example.* X, a domestic corporation, is a refiner of petroleum products. X uses a fluid catalytic cracking process to crack gas oil and the fluid catalyst into other chemicals, including liquefied petroleum gas (LPG). X next uses a fractioning process to separate a stream of C3/C4 (which contains propane, propylene, butane, and other chemicals) from the other chemical components of LPG. After fractionation, X uses a splitting process to separate the butane from the other chemicals contained in the C3/C4 stream. X sells the butane to Y, a domestic corporation, which blends the butane into gasoline. In this scenario, no section 4661 tax is imposed when X isolates the butane through the splitting process, because the butane is not an organic taxable chemical at the time the splitting process occurs. Further, no section 4661 tax is imposed on X's sale of the butane to Y because the butane is not a taxable chemical at the time of the sale. Additionally, no section 4661 tax is imposed on Y's use of the butane because Y does not use the butane otherwise than as a fuel or otherwise than in the manufacture or production of any motor fuel, diesel fuel, aviation fuel or jet fuel.

(3) *Isolation of organic taxable chemical from intermediate hydrocarbon stream*—(i) *One-step isolation process.* If any organic taxable chemical on which no section 4661 tax was previously imposed by reason of section 4662(b)(10)(A) is isolated, extracted, or otherwise removed from, or ceases to be part of (collectively,

isolation), an intermediate hydrocarbon stream, such isolation is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated. *See* 4662(b)(10)(B).

(ii) *Multi-step isolation process.* When the isolation of an organic taxable chemical from an intermediate hydrocarbon stream is a multi-step process, the first process that a person uses to isolate, extract, or otherwise remove the organic taxable chemical from the intermediate hydrocarbon stream (even if the organic taxable chemical is, at that time, still mixed with other substances and further processing is possible, but not required) is treated as a use by the person causing the isolation, and such person is treated as the manufacturer of the organic taxable chemical so isolated. If the taxable chemical is part of a chemical mixture at the time of isolation, the section 4661 tax is imposed on the weight of the entire chemical mixture, unless the person causing the isolation can establish, with specificity, the weight of the taxable chemical contained in the chemical mixture.

(iii) *Example.* X, a domestic corporation, is a refiner of petroleum products. X uses a fluid catalytic cracking process to crack gas oil and the fluid catalyst into lighter chemicals, including liquefied petroleum gas (LPG). X next uses a fractioning process to separate a stream of C3/C4 (which contains propane, propylene, butane, and other chemicals) from the other chemical components of LPG. After fractionation, X uses a splitting process to separate the propylene from the other chemicals contained in the C3/C4 stream, resulting in a propane and propylene mixture commonly referred to as refinery grade propylene. X sells the refinery grade propylene to Y, a domestic corporation, which further refines the refinery grade propylene to remove most of the propane and other contaminants. In this scenario, X's splitting process is a use of the propylene by X, and X is treated as the manufacturer of the propylene. Therefore, X is liable for the section 4661 tax. If X can establish, with specificity, the weight of the propylene in the mixture, the amount of the section 4661 tax is calculated based only on the weight of the propylene in the mixture. If X cannot establish, with specificity, the weight of the propylene in the mixture, the amount of the section 4661 tax is calculated based on the weight of the mixture.

(4) *Requirements.* The exception in section 4662(b)(10) applies only if, at the time of the sale of any intermediate hydrocarbon stream containing one or more or organic taxable chemicals, all of the following requirements are satisfied:

(i) Both parties are taxable chemical registrants;

(ii) The seller has an unexpired notification certificate from the purchaser; and

(iii) The seller has no reason to believe that any information in the notification certificate is false.

(5) *Notification certificate*—(i) *Overview.* The certificate to be provided by the purchaser of an intermediate hydrocarbon stream to the seller consists of a statement that is signed under penalties of perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate in paragraph (g)(5)(ii) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes or the purchaser informs the seller that the certificate is no longer accurate. The certificate expires on the earlier of the date the purchaser provides a new certificate or the date the purchaser is notified by the Internal Revenue Service (IRS) that the purchaser's registration has been revoked or suspended.

(ii) *Model certificate.*

Notification Certificate of Taxable Chemical Registrant

_____

_____

_____

Name, address, and employer identification number of person receiving certificate

The undersigned taxable chemical registrant (Registrant) hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service (IRS) under activity letter ''G'' with registration number ____, and that Registrant's registration has not been revoked or suspended by the IRS.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Registrant

_____

Employer identification number

_____

Address of Registrant

(iii) *Use of letter of registration as notification certificate prohibited.* A copy of the letter of registration issued to a taxable chemical registrant by the IRS is not a notification certificate described in paragraph (g)(5) of this section and cannot be used as a substitute for a notification certificate.

(h) *Tax-free sales of taxable chemicals*—(1) *In general.* To make a tax-free sale pursuant to section 4662(b)(2), (5), or (9), the manufacturer, producer, or importer (or, in the case of resales, the reseller) of the taxable chemical must obtain an unexpired exemption certificate from the purchaser, in the form prescribed in paragraph (h)(2) of this section, prior to or at the time of sale, and the manufacturer, producer, importer, or reseller must have no reason to believe that any information in the certificate regarding the use of the taxable chemical is false. If the manufacturer, producer, importer, or reseller does not obtain an unexpired exemption certificate by the time of the sale, or if the manufacturer, producer, importer, or reseller has reason to believe that any information in the certificate regarding the use of the taxable chemical is false, the manufacturer, producer, importer, or reseller is liable for the section 4661 tax. However, if the purchaser subsequently uses the taxable chemical in the manner described in section 4662(b)(2), (5), or (9), the purchaser may file a claim for credit or refund pursuant to section 4662(d) and § 52.4662–4.

(2) *Exemption certificate*—(i) *Overview.* The exemption certificate consists of a statement that is signed under penalties of perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate in paragraph (h)(2)(ii) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes. The certificate expires no later than one year from the effective date specified in the certificate. The certificate may be included as part of any business records normally used to document a sale. The IRS may withdraw the right of a purchaser of taxable chemicals to provide a certificate under this section if the purchaser uses the taxable chemicals to which a certificate relates other than as stated in the certificate.

(ii) *Model certificate.*

Exemption Certificate

(To support tax-free sales of taxable chemicals under section 4662(b) of the Internal Revenue Code (Code).)

Name, address, and employer identification number of seller

Name of purchaser (Purchaser) certifies the following under penalties of perjury:

The sale(s) to which this certificate applies are for (mark below):

_____ Sold for use by Purchaser as described in section 4662(b)(2) (qualified fertilizer use), section 4662(b)(5) (qualified fuel use), or section 4662(b)(9) (qualified animal feed use) of the Code

_____ Sold for resale by Purchaser for use, or resale for ultimate use, in a qualified use

The taxable chemical to which this certificate applies will be used (mark below):

_____ Qualified fertilizer use

_____ Qualified fuel use

_____ Qualified animal feed use

Name of taxable chemical(s) to be purchased by Purchaser

This certificate applies to:

1. Percentage of purchaser's purchases _____ between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____; or

2. A single purchase invoice or delivery ticket number _____.

If Purchaser sells or uses the taxable chemical to which this certificate relates for a nonqualified sale or use, Purchaser will be treated as the manufacturer of the taxable chemical and will be liable for the tax imposed by section 4661(a) of the Code.

Purchaser will provide a new certificate to the seller if any information in this certificate changes.

Purchaser understands that Purchaser may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Purchaser

Signature and date signed

(i) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 5.** Section 52.4662–3 is added to read as follows:

§ 52.4662–3 Inventory exchanges.

(a) *In general.* Except as otherwise provided in section 4662(c)(2) of the Internal Revenue Code (Code), in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person, the exchange is not treated as a sale, and the other person is treated as the manufacturer, producer, or importer of the chemical, if the requirements in paragraph (b) of this section are satisfied. *See* section 4662(c)(2). For purposes of section 4662(c), the term *inventory exchange* means any exchange in which two persons exchange property that is, in the hands of each person, property described in section 1221(a)(1) of the Code. *See* section 4662(c)(2)(C).

(b) *Requirements.* The section 4662(c) exception applies only if, at the time of the exchange, all of the following requirements are satisfied:

(1) Both parties are taxable chemical registrants;

(2) The manufacturer, producer, or importer has an unexpired notification certificate from the person receiving the taxable chemical; and

(3) The manufacturer, producer, or importer has no reason to believe that any information in the notification certificate is false.

(c) *Notification certificate*—(1) *Overview.* The certificate to be provided by the person receiving the taxable chemical consists of a statement that is signed under penalties of perjury by someone with authority to bind the person receiving the taxable chemical, is in substantially the same form as the model certificate provided in paragraph (c)(2) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes or if the person receiving the taxable chemical informs the manufacturer, producer, or importer that the certificate is no longer accurate. The certificate expires on the earlier of the date the person provides a new certificate or the date the person is notified by the Internal Revenue Service (IRS) that the person's registration has been revoked or suspended.

(2) *Model certificate.*

Notification Certificate of Taxable Chemical Registrant

Name, address, and employer identification number of person receiving certificate

The undersigned taxable chemical registrant (Registrant) hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service (IRS) under activity letter ''G'' with registration number _____, and that Registrant's registration has not been revoked or suspended by the IRS.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of Registrant

Employer identification number

Address of Registrant

(3) *Use of letter of registration as notification certificate prohibited.* A copy of the letter of registration issued to a taxable chemical registrant by the IRS is not a notification certificate described in paragraph (c) of this section and cannot be used as a substitute for a notification certificate.

(d) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 6.** Section 52.4662–4 is added to read as follows:

§ 52.4662–4 Credit or refund of tax under section 4662(d).

(a) *Tax-paid chemicals used to make taxable chemicals*—(1) *In general.* Any section 4661 tax paid by the manufacturer, producer, or importer (initial manufacturer) with respect to a tax-paid chemical that is subsequently used by any person (subsequent manufacturer) in the manufacture or production of any other substance that

is a taxable chemical (subsequent taxable chemical) will be allowed as a credit or refund to the subsequent manufacturer in the same manner as if it were an overpayment of the section 4661 tax. *See* section 4662(d)(1) of the Code. The subsequent manufacturer may file a claim for credit or refund (without interest) for the amount of the overpayment, provided the conditions to allowance set forth in paragraph (a)(3) of this section are satisfied. See paragraph (a)(4) of this section for the supporting information that a subsequent manufacturer must include with a claim for credit or refund. The subsequent manufacturer's claim for credit or refund of the overpayment cannot exceed the amount of section 4661 tax imposed on the subsequent taxable chemical, or that would have been imposed but for the application of section 4662(b) or (e) of the Code. *See* section 4662(d)(1).

(2) *Allocation required in certain situations.* If a subsequent manufacturer uses a tax-paid chemical to manufacture or produce multiple subsequent taxable chemicals, a subsequent taxable chemical and another substance, or one or more subsequent taxable chemicals and one or more other substances, the subsequent manufacturer must allocate the overpayment of the section 4661 tax paid on the tax-paid chemical (first tax) among all subsequent taxable chemicals and other substances manufactured or produced with the tax-paid chemical and apply the allocation to the claim for credit or refund. The subsequent manufacturer must calculate the amount of the first tax to be allocated to each subsequent taxable chemical and other substance by multiplying the amount of the first tax by a fraction, the numerator of which is the weight (in tons) of the portion of the tax-paid chemical the subsequent manufacturer used to manufacture or produce the subsequent taxable chemical or other substance, and the denominator of which is the total weight (in tons) of the tax-paid chemical for which the subsequent manufacturer has a certificate described in paragraph (e) of this section. The subsequent manufacturer's claim for credit or refund of an overpayment cannot exceed the amount of section 4661 tax imposed on the subsequent taxable chemical to which the claim relates, or that would have been imposed but for the application of section 4662(b) or (e) of the Code. See paragraph (a)(4) of this section for the supporting information regarding the allocation that a subsequent manufacturer must include with a claim for credit or refund. See paragraph (a)(5) of this section for examples that illustrate the allocation rule.

(3) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax is allowed under section 4662(d)(1) and this paragraph (a) only if:

(i) The first tax was paid to the Internal Revenue Service (IRS) and not credited or refunded;

(ii) After payment of the first tax, the subsequent manufacturer used the tax-paid chemical to manufacture or produce a subsequent taxable chemical, multiple subsequent taxable chemicals, a subsequent taxable chemical and another substance, or one or more subsequent taxable chemicals and one or more other substances;

(iii) The subsequent manufacturer sold or used the subsequent taxable chemical for which a credit or refund is sought and section 4661 tax was imposed (or would have been imposed but for section 4662(b) or (e)) on such sale or use;

(iv) The subsequent manufacturer has filed a timely claim for credit or refund that contains the supporting information required under paragraph (a)(4) of this section; and

(v) The subsequent manufacturer has a certificate, in the form prescribed in paragraph (e) of this section, from the initial manufacturer.

(4) *Supporting information required.* A subsequent manufacturer's claim for credit or refund with respect to the subsequent manufacturer's use of a tax-paid chemical to manufacture or produce a subsequent taxable chemical, multiple subsequent taxable chemicals, a subsequent taxable chemical and another substance, or one or more subsequent taxable chemicals and one or more other substances, must include the following information:

(i) The name of the tax-paid chemical, the total number of tons of the tax-paid chemical purchased from the initial manufacturer, producer, or importer, and the total number of tons of the tax-paid chemical used to manufacture or produce each subsequent taxable chemical or other substance during the period covered by the claim;

(ii) The name of each subsequent taxable chemical or other substance and the total number of tons of each subsequent taxable chemical or other substance so manufactured or produced during the period covered by the claim;

(iii) The amount of section 4661 tax paid with respect to the tax-paid chemical and the amount of section 4661 tax imposed (or that would have been imposed but for section 4662(b) or (e)) on the sale or use of each subsequent taxable chemical manufactured or produced with the tax-paid chemical;

(iv) If allocation is required, the amount of the first tax allocated to each subsequent taxable chemical to which the claim relates, and the allocation calculation; and

(v) The certificate described in paragraph (e) of this section, or a copy of such certificate.

(5) *Examples.* The following examples illustrate the allocation rule in paragraph (a)(2) of this section.

(i) *Example 1*—(A) *Facts.* X, a domestic manufacturer, sells 5 tons of Taxable Chemical 1 to Y, a domestic corporation. Section 4661 tax is imposed on X's sale of Taxable Chemical 1 at a rate of $8.90 per ton. X pays the section 4661 tax in the amount of $44.50. Y uses 3 tons of Taxable Chemical 1 to produce 4 tons of Taxable Chemical 2. Y uses 2 tons of Taxable Chemical 1 to produce 3 tons of Taxable Chemical 3. Y then sells the 4 tons of Taxable Chemical 2 and 3 tons of Taxable Chemical 3, to Z, a domestic corporation. Section 4661 tax is imposed on Y's sale of Taxable Chemical 2 at a rate of $9.74 per ton, for a tax of $38.96. Section 4661 tax is imposed on Y's sale of Taxable Chemical 3 at a rate of $5.40 per ton, for a tax of $16.20. The total amount of section 4661 tax imposed on Y's sales of Taxable Chemical 2 and Taxable Chemical 3 is $55.16. Y files a claim for refund of the section 4661 tax X paid with respect to Taxable Chemical 1 (first tax).

(B) *Analysis.* Y must allocate the first tax between Taxable Chemical 2 and Taxable Chemical 3 as follows: 3/5 ($26.70) to Taxable Chemical 2, and 2/5 ($17.80) to Taxable Chemical 3. The section 4661 tax imposed on Y's sale of Taxable Chemical 2 to Z ($38.96), exceeds the amount of the first tax allocated to Taxable Chemical 2 ($26.70). Therefore, Y's claim for refund with respect to Taxable Chemical 2 is limited to $26.70, the amount of the first tax allocated to Taxable Chemical 2. The section 4661 tax imposed on Y's sale of Taxable Chemical 3 to Z ($16.20), is less than the amount of the first tax allocated to Taxable Chemical 3 ($17.80). Therefore, Y's claim for refund with respect to Taxable Chemical 3 is limited to $16.20, the amount of section 4661 tax imposed on Taxable Chemical 3. Y's total claim for refund is limited to $42.90 ($26.70 + $16.20) due to the required allocation.

(ii) *Example 2*—(A) *Facts.* X, a domestic manufacturer, sells 3 tons of Taxable Chemical 1 to Y, a domestic corporation. Section 4661 tax is imposed on X's sale of Taxable

Chemical 1 at a rate of $9.74 per ton. X pays the tax in the amount of $29.22. Y uses 2 tons of Taxable Chemical 1 to produce 3 tons of Taxable Chemical 2. Y uses 1 ton of Taxable Chemical 1 to produce 2 tons of another substance. Y then sells 3 tons of Taxable Chemical 2 to Z, a domestic corporation. Tax is imposed on Y's sale of Taxable Chemical 2 at a rate of $5.40 per ton, for a tax of $16.20. Y files a claim for refund of the first tax paid with respect to Taxable Chemical 1 (first tax).

(B) *Analysis.* Y must allocate the first tax between Taxable Chemical 2 and the other substance as follows: ⅔ ($19.48) to Taxable Chemical 2, and ⅓ ($9.74) to the other substance. Y may claim a refund of the first tax in the amount of $16.20 (the full amount of tax imposed on Y's sale of Taxable Chemical 2 to Z), because the tax imposed on Taxable Chemical 2 does not exceed the amount of the first tax that was allocated to Taxable Chemical 2.

(b) *Use as a fertilizer*—(1) *In general.* Any section 4661 tax paid that exceeds the amount of section 4661 tax determined with regard to section 4662(b)(2) with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (each, a fertilizer chemical) that any person uses as a qualified fertilizer substance will be allowed as a credit or refund (without interest) to the person using the fertilizer chemical as a qualified fertilizer substance in the same manner as if it were an overpayment of section 4661 tax. *See* section 4662(d)(2). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (b)(2) of this section are satisfied. See paragraph (b)(3) of this section for the supporting information that must be included with a claim for credit or refund pursuant to section 4662(d)(2).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid fertilizer chemical that is used as a qualified fertilizer substance is allowed under section 4662(d)(2) and this section only if:

(i) A section 4661 tax with respect to the fertilizer chemical was paid to the IRS and not credited or refunded;

(ii) After payment of the section 4661 tax, a person used the fertilizer chemical as a qualified fertilizer substance;

(iii) The person using the fertilizer chemical as a qualified fertilizer substance has filed a timely claim for credit or refund that includes the information required under paragraph (b)(3) of this section; and

(iv) The person using the fertilizer chemical as a qualified fertilizer substance has a certificate, in the form prescribed in paragraph (e) of this section, from the person that paid the section 4661 tax.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid fertilizer chemical used as a qualified fertilizer substance must include the following information:

(i) The name of the tax-paid fertilizer chemical to which the claim relates and the total number of tons of the tax-paid fertilizer chemical used as a qualified fertilizer substance during the period covered by the claim;

(ii) The manner in which the claimant used the qualified fertilizer substance;

(iii) The amount of section 4661 tax paid with respect to the tax-paid fertilizer chemical; and

(iv) The certificate described in paragraph (e) of this section, or a copy of such certificate, that relates to the tax-paid fertilizer chemical for which the claim is being made.

(c) *Use as qualified fuel*—(1) *In general.* Any section 4661 tax paid that exceeds the amount of section 4661 tax determined with regard to section 4662(b)(5) with respect to acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, or xylene (collectively, fuel chemicals, or individually, a fuel chemical) that any person uses as a qualified fuel substance will be allowed as a credit or refund (without interest) to the person using the fuel chemical as a qualified fuel substance in the same manner as if it were an overpayment of section 4661 tax. *See* section 4662(d)(3). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (c)(2) of this section are satisfied. See paragraph (c)(3) of this section for the supporting information that must be included in a claim for credit or refund pursuant to section 4662(d)(3).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid fuel chemical that is used as a qualified fuel substance is allowed under section 4662(d)(3) and this section only if:

(i) A section 4661 tax with respect to the fuel chemical was paid to the IRS and not credited or refunded;

(ii) After payment of the section 4661 tax, a person used the fuel chemical as a qualified fuel substance;

(iii) The person using the fuel chemical as a qualified fuel substance has filed a timely claim for credit or refund that includes the supporting information required under paragraph (c)(3) of this section; and

(iv) The person using the fuel chemical as a qualified fuel substance has a certificate, in the form prescribed in paragraph (e) of this section, from the person that paid the section 4661 tax.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid fuel chemical used as a qualified fuel substance must include the following information:

(i) The name of the fuel chemical to which the claim relates and the total number of tons of the tax-paid fuel chemical used as a qualified fuel substance during the period covered by the claim;

(ii) The manner in which the claimant used the qualified fuel substance;

(iii) The amount of section 4661 tax paid with respect to the fuel chemical; and

(iv) The certificate described in paragraph (e) of this section, or a copy of such certificate, that relates to the tax-paid fuel chemical for which the claim is being made.

(d) *Use in the production of animal feed*—(1) *In general.* Any section 4661 tax paid that exceeds the amount of tax determined with regard to section 4662(b)(9) with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia (each, an animal feed chemical) that any person uses as a qualified animal feed substance will be allowed as a credit or refund (without interest) to the person using the animal feed chemical as a qualified animal feed substance in the same manner as if it were an overpayment of section 4661 tax. *See* section 4662(d)(4). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (d)(2) of this section are satisfied. See paragraph (d)(3) of this section for the supporting information that must be included in a claim for credit or refund pursuant to section 4662(d)(4).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid animal feed chemical that is used as a qualified animal feed substance is allowed under section 4662(d)(4) and this section only if:

(i) A section 4661 tax with respect to the animal feed chemical was paid to the IRS and not credited or refunded;

(ii) After payment of the section 4661 tax, a person used the animal feed chemical as a qualified animal feed substance;

(iii) The person using the animal feed chemical as a qualified animal feed substance has filed a timely claim for credit or refund that includes the supporting information required under paragraph (d)(3) of this section; and

(iv) The person using the animal feed chemical as a qualified animal feed substance has a certificate, in the form prescribed in paragraph (e) of this section, from the person that paid the section 4661 tax.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid animal feed chemical used as a qualified animal feed substance must include the following information:

(i) The name of the animal feed chemical to which the claim relates and the total number of tons of the tax-paid animal feed chemical used as a qualified animal feed substance during the period covered by the claim;

(ii) The manner in which the claimant used the qualified animal feed substance;

(iii) The amount of section 4661 tax paid with respect to the animal feed chemical; and

(iv) A certificate described in paragraph (e) of this section, or a copy of such certificate, that relates to the tax-paid animal feed chemical for which the claim is being made.

(e) *Certificate*—(1) *Overview.* The certificate to be provided with any claim for credit or refund under paragraphs (a) through (d) of this section consists of a statement that is signed under penalties of perjury by a person with authority to bind the person that paid the section 4661 tax, is in substantially the same form as the model certificate provided in paragraph (e)(2) of this section, and contains all of the information necessary to complete the model certificate.

(2) *Model certificate.*

Certificate To Support a Claim for Credit or Refund

(To support claims for credit or refund under section 4662(d) of the Internal Revenue Code (Code).)

_____

_____

_____

Name, address, and employer identification number of person that paid the tax imposed by section 4661 of the Code (section 4661 tax)

The undersigned taxpayer hereby certifies the following under penalties of perjury:

The undersigned taxpayer reported and paid the section 4661 tax on the following taxable chemicals (include lot numbers (if applicable), quantities (in tons), and dates of sale or use):

_____

_____

_____

Amount of section 4661 tax the undersigned taxpayer paid with respect to the taxable chemicals listed above:

_____

Tax quarter(s) during which tax payment(s) was made: _____

The undersigned taxpayer has not received a credit or a refund, and will not claim a credit or a refund, with regard to the tax paid on the taxable chemical(s) to which this certificate relates.

The undersigned taxpayer understands that it may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

The undersigned taxpayer understands that the fraudulent use of this certificate may subject the undersigned taxpayer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

(f) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after the [date of publication of final regulations in the **Federal Register**].

■ **Par. 7.** Section 52.4662–5 is added to read as follows:

§ 52.4662–5 Exports.

(a) *Overview.* Section 4662(e) of the Internal Revenue Code (Code) provides rules regarding taxable chemicals that are exported. Paragraph (b) of this section provides the circumstances under which a manufacturer or producer may make a tax-free sale for export. Paragraph (c) of this section provides the circumstances under which a credit or refund (without interest) of the section 4661 tax is allowed to the person that paid the section 4661 tax. Paragraph (d) of this section provides the circumstances under which a credit or refund (without interest) of the section 4661 tax is allowed to the exporter.

(b) *Tax-free sales for export*—(1) *In general.* A manufacturer or producer of a taxable chemical may sell a taxable chemical tax free under section 4662(e)(1) only if the person that purchases the taxable chemical from the manufacturer or producer (first purchaser) intends to export the taxable chemical or resell it to a second purchaser that intends to export the taxable chemical. A manufacturer or producer may not sell a taxable chemical tax free to a first purchaser for resale to a second purchaser if the second purchaser does not intend to export the taxable chemical itself but instead plans to sell it to a third purchaser that will resell the taxable chemical or export it. See paragraph (b)(5)(i) of this section for the proof required when the manufacturer or producer is the exporter. See paragraph (b)(5)(ii) of this section for the proof required when the manufacturer or producer is not the exporter.

(2) *Exported taxable chemical returned to the United States.* If a taxable chemical is sold tax free by the manufacturer or producer pursuant to section 4662(e)(1) and paragraph (b) of this section and the taxable chemical is subsequently returned to the United States, the importer of the taxable chemical is liable for the section 4661 tax when the importer sells or uses the taxable chemical.

(3) *Sale or resale to a purchaser located outside the United States.* To make a tax-free sale of a taxable chemical for export to a first purchaser that is located outside the United States, the manufacturer or producer must obtain from the first purchaser, at the earlier of the time title to the taxable chemical passes to the first purchaser or the time of shipment, either:

(i) A written order or contract of sale that states the manufacturer or producer will ship the taxable chemical to a location outside the United States; or

(ii) Where shipment is to be made to a location within the United States, a statement from the first purchaser showing:

(A) That the first purchaser is purchasing the taxable chemical to fill existing or future orders for shipment to a location outside the United States, or for resale to a second purchaser that is engaged in the business of exporting and that will export the taxable chemical; and

(B) That such taxable chemical will be shipped to a location outside the United States prior to any resale except for export.

(4) *Cessation of exemption.* The exemption provided in section 4662(e)(1) and paragraph (b) of this section will cease to apply on the first day following the close of the 6-month period that begins on the date the manufacturer or producer sold the taxable chemical to the first purchaser, or the date the manufacturer or producer shipped the taxable chemical

to the first purchaser, whichever is earlier, unless the manufacturer or producer receives proof of export, in the form prescribed by paragraph (b)(5) of this section, within such 6-month period. If, on the first day following the close of such 6-month period, the manufacturer or producer has not received proof of export, in the form prescribed by paragraph (b)(5) of this section, the manufacturer or producer is liable for the tax and tax attaches at that time.

(5) *Proof of export*—(i) *Proof required when the manufacturer or producer is the exporter.* The following constitutes proof of export when the manufacturer or producer is the exporter:

(A) A copy of the export bill of lading issued by the delivering carrier;

(B) A certificate by the agent or representative of the export carrier showing actual exportation of the taxable chemical;

(C) A certificate of landing signed by a customs officer of the foreign country to which the taxable chemical is exported;

(D) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the taxable chemical; or

(E) Where a department or agency of the United States government is unable to furnish any one of the foregoing types of proof of exportation, a statement or certification on department or agency letterhead, executed by an authorized person, that the taxable chemicals have been exported.

(ii) *Statement of export required when manufacturer or producer is not the exporter*—(A) *In general.* If the manufacturer or producer of a taxable chemical is not the exporter of the taxable chemical, the manufacturer or producer must have in its possession a statement from the first purchaser stating that the taxable chemical was, in fact, exported by the first purchaser, or was resold to a second purchaser that exported the taxable chemical. The manufacturer or producer must receive such statement of export no later than the close of the 6-month period that begins on the earlier of the date the manufacturer or producer sold the taxable chemical to the first purchaser, or the date the manufacturer or producer shipped the taxable chemical to the first purchaser. The statement of export consists of a statement that is signed under penalties of perjury by a person with authority to bind the first purchaser, is in substantially the same form as the model statement of export in paragraph (b)(5)(ii)(B) of this section, and contains all the information necessary to complete the model statement. The statement of export must be included as part of the manufacturer or producer's business records.

(B) *Model statement of export.*

Statement of Export

(To support tax-free sales of taxable chemicals under section 4662(e)(1)(B) of the Internal Revenue Code (Code).)

_____

Name of Purchaser (Purchaser) certifies the following under penalties of perjury:

Name of taxable chemical(s) purchased by Purchaser:

_____

_____

_____

Purchaser purchased the taxable chemical(s) specified above tax free on _____ (purchase date). The taxable chemicals were thereafter exported.

Purchaser has in its possession proof of export with respect to the taxable chemicals identified in this statement. The proof of export is:

_____

_____

Purchaser will retain the business records needed to document the export of the taxable chemical(s) to which this statement applies and will make such records available to the Internal Revenue Service.

Purchaser has not previously executed a statement with respect to the taxable chemical(s) identified in this certificate.

Purchaser understands that Purchaser may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

Purchaser understands that the fraudulent use of this statement may subject Purchaser and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Purchaser

_____

Signature and date signed

(c) *Credit or refund*—(1) *In general.* The person that paid the section 4661 tax with respect to a taxable chemical is allowed a credit or refund (without interest) if:

(i) Such chemical was exported by any person; or

(ii) Such chemical was used as material in the manufacture or production of a substance that was exported by any person and, at the time of export, was a taxable substance (as defined in section 4672(a) of the Code and § 52.4672–1(b)(8)). *See* section 4662(e)(2)(A).

(2) *Conditions to allowance of claim for credit or refund.* A claim for credit or refund of section 4661 tax with respect to a tax-paid chemical that is exported (or with respect to a tax-paid chemical that is used as material in the manufacture or production of a substance that is a taxable substance at the time of export) is allowed under section 4662(e)(2) and paragraph (c) of this section only if the person that paid the section 4661 tax establishes that:

(i) The person has repaid or agreed to repay the amount of the section 4661 tax to the person that exported the tax-paid chemical (or the taxable substance manufactured or produced with the tax-paid chemical); or

(ii) The person has obtained the written consent of the exporter to the allowance of the credit or the making of the refund; and

(iii) The person provides the supporting information described in paragraph (c)(3) of this section.

(3) *Supporting information required.* Each claim for credit or refund with respect to a tax-paid chemical that is exported (or with respect to a tax-paid chemical that is used as material in the manufacture or production of a substance that is a taxable substance at the time of export) must include the following information:

(i) The name of the tax-paid chemical to which the claim relates and the total number of tons of the tax-paid chemical exported during the period covered by the claim (in the case of a tax-paid chemical used to manufacture or produce a taxable substance, the claim must also include the name of each taxable substance and the number of tons of each taxable substance exported during the period covered by the claim);

(ii) The amount of section 4661 tax paid with respect to the tax-paid chemical (in the case of a taxable substance, the amount of section 4661 tax paid with respect to each tax-paid chemical used in the manufacture or production of the substance); and

(iii) Proof of export of the taxable chemical (or the taxable substance) in the form prescribed by paragraph (b)(5) of this section.

(d) *Credit or refund directly to exporter*—(1) *In general.* The exporter is allowed a credit or refund (without interest), provided the conditions to allowance in paragraph (d)(2) of this

section are satisfied. *See* section 4662(e)(3).

(2) *Conditions to allowance.* Any section 4661 tax paid on a taxable chemical (or on any taxable chemical used as material in the manufacture or production of a taxable substance) may be credited or refunded (without interest) to the exporter pursuant to section 4662(e)(3) and paragraph (d) of this section only if:

(i) The person that paid the section 4661 tax waives the right to claim a credit or refund of the section 4661 tax; and

(ii) The exporter provides the supporting information described in paragraph (d)(3) of this section.

(3) *Supporting information required.* Each claim for credit or refund by the exporter must include the following information:

(i) The name of the tax-paid chemical to which the claim relates and the total number of tons of the tax-paid chemical exported during the period covered by the claim (or in the case of a taxable substance, the name of the taxable substance to which the claim relates, the name of each tax-paid chemical used as material in the manufacture or production of the taxable substance, and the total number of tons of each tax-paid chemical used as material in the manufacture or production of the taxable substance that was exported during the period covered by the claim);

(ii) Proof of export of the tax-paid chemical (or the taxable substance) in the form prescribed by paragraph (b)(5) of this section; and

(iii) A statement, signed under penalties of perjury by the person that paid the section 4661 tax, providing:

(A) That the person that paid the tax waives the right to claim a credit or refund of the section 4661 tax;

(B) The amount of section 4661 tax the person paid on the sale of the taxable chemical (or on the sale or use of each taxable chemical used to manufacture or produce the taxable substance); and

(C) The date the person paid the section 4661 tax.

(e) *Applicability date.* This section applies to sales or uses in calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 8.** Section 52.4671–1 is added to read as follows:

§ 52.4671–1 Imposition of tax.

(a) *In general.* Section 4671(a) of the Internal Revenue Code (Code) imposes an excise tax on any taxable substance sold or used by the importer of the taxable substance.

(b) *Person liable for tax.* The importer of a taxable substance is the person liable for the section 4671 tax.

(c) *Attachment of tax.* The section 4671 tax attaches at the time the importer first sells or uses the taxable substance.

(d) *Procedural rules.* Part 40 of this chapter provides rules related to filing excise tax returns, making semimonthly deposits of excise tax, making payments of excise tax, and other procedural rules. *See* §§ 52.0–1 and 40.0–1(a) of this chapter. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person for purposes of filing excise tax returns, making semimonthly deposits of excise tax, and making payments of excise tax. *See* § 40.0–1(d) of this chapter.

(e) *Amount of tax*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the amount of section 4671 tax with respect to any taxable substance is the amount of section 4661 tax that would have been imposed on the taxable chemicals used as materials in the manufacture or production of the taxable substance if the taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. *See* section 4671(b)(1).

(2) *Special rules.* If the importer does not furnish sufficient information to the Secretary of the Treasury or her delegate (Secretary) to determine the amount of section 4671 tax imposed on any taxable substance, the amount of section 4671 tax is 10 percent of the appraised value of the taxable substance at the time the substance was entered into the United States for consumption, use, or warehousing. *See* section 4671(b)(2). Alternatively, the Secretary may prescribe a tax rate for any taxable substance in lieu of the amount prescribed in section 4671(b)(2). The tax rate prescribed by the Secretary equals the amount of section 4671 tax that would have been imposed if the taxable substance were produced using the predominant method of production of such substance using a stoichiometric material consumption equation that assumes a 100-percent yield. *See* section 4671(b)(3). Importers of taxable substances are not required to use the rate or rates prescribed by the Secretary and may instead calculate the amount of section 4671 tax pursuant to section 4671(b)(1) and § 52.4671–1(e)(1).

(3) *Example.* An importer sells a substance that is a taxable substance listed in section 4672(a)(3). The taxable chemical, acetylene, constitutes, by weight, 19 percent of the materials used to produce the taxable substance. Section 4671 tax attaches at the time of the importer's sale of the taxable substance. The Secretary has prescribed a tax rate for the taxable substance pursuant to section 4671(b)(3). The importer may calculate the amount of section 4671 tax pursuant to section 4671(b)(1), or use the rate prescribed by the Secretary to calculate the amount of section 4671 tax imposed on the importer's sale of the taxable substance.

(f) *Exemption for substances taxed under sections 4611 and 4661.* No section 4671 tax is imposed on the importer's sale or use of any taxable substance if tax is imposed on such sale or use under section 4611 or 4661 of the Code. *See* section 4671(c).

(g) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 9.** Section 52.4671–2 is added to read as follows:

§ 52.4671–2 Certain fertilizer, fuel, and animal feed uses.

(a) *In general.* Section 4671(d) of the Internal Revenue Code (Code) provides that rules similar to section 4662(b)(2) of the Code (pertaining to fertilizer), section 4662(b)(5) (pertaining to motor fuel), and section 4662(b)(9) (pertaining to animal feed) apply with respect to taxable substances used or sold for use as described in section 4662(b)(2), (5), and (9).

(b) *Tax-free sales*—(1) *In general.* No section 4671 tax is imposed on a taxable substance used or sold for use as described in section 4662(b)(2), (5), or (9), if all taxable chemicals used as materials in the manufacture or production of such substance would have been exempt under section 4662(b)(2), (5), or (9) if such taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. To make a tax-free sale of a taxable substance pursuant to section 4671(d)(1), the importer (or, in the case of resales, the reseller) of the taxable substance must obtain an unexpired exemption certificate from the purchaser, in the form prescribed in paragraph (b)(3) of this section, prior to or at the time of sale, and the importer or reseller must have no reason to believe that any information in the certificate regarding the use of the taxable substance is false. If the importer or reseller does not obtain an unexpired exemption certificate by the time of the sale, or if the importer or reseller has reason to believe that any information in the certificate regarding the use of the substance is false, the importer or reseller is liable for the full

amount of the section 4671 tax. However, if the purchaser subsequently uses the taxable substance as described in section 4662(b)(2), (5), or (9), the purchaser may file a claim for credit or refund pursuant to section 4671(d)(2) and paragraph (c) of this section.

(2) *Tax-free sales not available in certain situations.* The provisions of paragraph (b)(1) of this section apply only if all taxable chemicals used as materials in the manufacture or production of a taxable substance would have been exempt under section 4662(b)(2), (5), or (9) if such taxable chemicals had been sold in the United States for use in the manufacture or production of the taxable substance. Section 4671 tax is imposed on a taxable substance used or sold for use if the taxable chemicals used as materials in the manufacture or production of such taxable substance consist of one or more taxable chemicals that would have been exempt under section 4662(b)(2), (5), or (9), and one or more taxable chemicals that would not have been exempt under section 4662(b)(2), (5), or (9). If the purchaser subsequently uses the taxable substance as described in section 4662(b)(2), (5), or (9), the purchaser may file a claim for credit or refund of the section 4671 tax paid on the taxable chemicals that would have been exempt under section 4662(b)(2), (5), or (9) pursuant to section 4671(d)(2) and paragraph (c) of this section and were used as materials in the manufacture or production of the taxable substance.

(3) *Exemption certificate*—(i) *Overview.* The exemption certificate consists of a statement that is signed under penalties of perjury by a person with authority to bind the purchaser, is in substantially the same form as the model certificate in paragraph (b)(3)(ii) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the certificate changes. The certificate expires no later than one year from the effective date specified in the certificate. The certificate may be included as part of any business records normally used to document a sale. The Internal Revenue Service (IRS) may withdraw the right of a purchaser of a taxable substance to provide a certificate under this section if the purchaser uses the taxable substance to which a certificate relates other than as stated in the certificate.

(ii) *Model certificate.*

Exemption Certificate

(To support tax-free sales of taxable substances under section 4671(d)(1) of the Internal Revenue Code (Code).)

_____

_____

_____

Name, address, and employer identification number of seller

_____

Name of Purchaser (Purchaser) certifies the following under penalties of perjury:

The sale(s) to which this certificate applies are for (mark below):

_____ Sold for use by Purchaser as described in section 4662(b)(2) (qualified fertilizer use), section 4662(b)(5) (qualified fuel use), or section 4662(b)(9) (qualified animal feed use) of the Code

_____ Sold for resale by Purchaser for use, or resale for ultimate use, in a qualified use

The taxable substance(s) to which this certificate applies will be used (mark below):

_____ Qualified fertilizer use

_____ Qualified fuel use

_____ Qualified animal feed use

_____

_____

Name of taxable substance(s) to be purchased by Purchaser

This certificate applies to:

1. Percentage of Purchaser's purchases _____ between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____; or

2. A single purchase invoice or delivery ticket number _____.

If Purchaser sells or uses the taxable substance to which this certificate relates for a nonqualified sale or use, Purchaser will be treated as the importer of the taxable substance and will be liable for the tax imposed by section 4671.

Purchaser will provide a new certificate to the seller if any information in this certificate changes.

Purchaser understands that Purchaser may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Purchaser

_____

Signature and date signed

(c) *Credits and refunds*—(1) *In general.* If any section 4671 tax was paid with respect to a taxable substance used or sold for use as described in section 4662(b)(2), (5), or (9), the portion of the tax attributable to any taxable chemical used as material in the manufacture or production of such substance that would have been exempt under section 4662(b)(2), (5), or (9) if the taxable chemical had been sold in the United States will be allowed as a credit or refund (without interest) to the person using the substance in the same manner as if it were an overpayment of section 4671 tax. *See* sections 4671(d)(2) and 4662(d). Such person may file a claim for credit or refund of the amount of the overpayment, provided the conditions to allowance set forth in paragraph (c)(2) of this section are satisfied. See paragraph (c)(3) of this section for the supporting information that must be included in a claim for credit or refund pursuant to section 4671(d)(2).

(2) *Conditions to allowance of a claim for credit or refund.* A claim for credit or refund of section 4671 tax is allowed under section 4671(d)(2) and this section only if:

(i) A section 4671 tax was paid to the Internal Revenue Service and not credited or refunded;

(ii) After the imposition of section 4671 tax, a person used the taxable substance as described in section 4662(b)(2), (5), or (9);

(iii) The person using the taxable substance has filed a timely claim for credit or refund that includes the information required under paragraph (c)(3) of this section; and

(iv) The person using the taxable substance has a certificate, in the form prescribed in paragraph (c)(4) of this section, from the person that paid the section 4671 tax. The claimant must have a separate certificate for each taxable substance to which the claim relates.

(3) *Supporting information required.* Each claim for credit or refund must include the following information:

(i) The name of the taxable substance to which the claim relates and the total number of tons of the taxable substance used as described in section 4662(b)(2), (5), or (9) during the period covered by the claim;

(ii) The name of any taxable chemicals used as material in the manufacture or production of the taxable substance that would have been exempt under section 4662(b)(2), (5), or (9) if the taxable chemicals had been sold in the United States;

(iii) The type of qualified use (fertilizer, fuel, or animal feed);

(iv) The total amount of section 4671 tax paid on the taxable substance under section 4671(a);

(v) If the amount of section 4671 tax was calculated pursuant to section 4671(b)(1) and § 52.4671–1(e)(1), the rate of tax and conversion factors for any taxable chemicals used as material in the manufacture or production of the taxable substance that would have been exempt under section 4662(b)(2), (5), or (9) if the taxable chemicals had been sold in the United States; and

(vi) A certificate described in paragraph (c)(4) of this section, or a copy of such certificate, that relates to the taxable substance for which the claim is being made.

(4) *Certificate*—(i) *Overview.* The certificate to be provided with regard to claims for credit or refund under this section consists of a statement that is signed under penalties of perjury by a person with authority to bind the person that paid the section 4671 tax, is in substantially the same form as the model certificate provided in paragraph (c)(4)(ii) of this section, and contains all of the information necessary to complete the model certificate.

(ii) *Model certificate.*

Certificate To Support a Claim for Credit or Refund

(To support claims for credit or refund under section 4671(d)(2) of the Internal Revenue Code (Code).)

_____

_____

_____

Name, address, and employer identification number of person that paid the tax imposed by section 4671 of the Code (section 4671 tax)

The undersigned taxpayer hereby certifies the following under penalties of perjury:

The undersigned taxpayer reported and paid the section 4671 tax on the following taxable substance (include lot numbers (if applicable) and the date(s) of sale or use):

_____

Number of tons of the taxable substance on which tax was paid:

_____

Name of any taxable chemicals used as material in the manufacture or production of the taxable substance:

_____

_____

_____

Total amount of section 4671 tax the undersigned taxpayer paid with respect to the taxable substance listed above:

_____

Rate of tax for the taxable substance listed above (complete only if the amount of tax was calculated pursuant to section 4671(b)(1)):

_____

Conversion factor for each taxable chemical listed above (complete only if the amount of tax was calculated pursuant to section 4671(b)(1)):

_____

Tax quarter(s) during which tax payment was made:

_____

The undersigned taxpayer has not received a credit or a refund, and will not claim a credit or a refund, with regard to the tax paid on the taxable substance to which this certificate relates.

The undersigned taxpayer understands that it may be liable for the penalty under section 6701 of the Code (relating to aiding and abetting an understatement of tax liability) if this is an erroneous certification.

The undersigned taxpayer understands that the fraudulent use of this certificate may subject the undersigned taxpayer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

(d) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 10.** Section 52.4672–1 is added to read as follows:

§ 52.4672–1 Definitions.

(a) *Overview.* This section provides definitions for purposes of sections 4671 and 4672 of the Internal Revenue Code (Code), §§ 52.4671–1 and 52.4671–2, this section, and § 52.4672–2.

(b) *Definitions*—(1) *Conversion factor.* The term *conversion factor* means the ratio of the weight of an individual taxable chemical used in the production of a substance to the total weight of the substance.

(2) *Entry for consumption, use, or warehousing.* The term *entry for consumption, use, or warehousing* has the meaning given such term by § 52.4662–1(c)(2).

(3) *Importer*—(i) *In general.* The term *importer* means the person entering the taxable substance for consumption, use, or warehousing. *See* section 4662(a)(3). If the person entering the taxable substance for consumption, use, or warehousing is merely acting as an agent or a customs broker for another person, then the agent or customs broker is not the importer and the importer is the first person in the United States to sell or use the taxable substance after entry of the taxable substance for consumption, use, or warehousing.

(ii) *Drop ship businesses.* If a drop ship business in the United States purchases or otherwise arranges for a person outside the United States to ship a taxable substance directly to a purchaser in the United States, the drop ship business is the importer of the taxable substance. If a drop ship business outside the United States purchases or otherwise arranges for a person outside the United States to ship a taxable substance directly to a purchaser in the United States, the purchaser in the United States is the importer of the taxable substance. With regard to any sale of a taxable substance, the term *drop ship business* means a person that sells the taxable substance or arranges for purchasers to purchase the taxable substance, and uses a third party to fill orders by shipping the taxable substance directly to the purchaser. The determination of whether a person is a drop ship business is made on a sale-by-sale basis.

(4) *Predominant method of production.* The term *predominant method of production* means the method used to produce the greatest number of tons of a particular substance worldwide, relative to the total number of tons of the substance produced worldwide.

(5) *Sale.* The term *sale* means the transfer of title or substantial incidents of ownership (whether or not delivery to, or payment by, the purchaser has been made) in a taxable substance for a consideration, which may include, but is not limited to, money, services, or property.

(6) *Section 4671 tax.* The term *section 4671 tax* means the excise tax imposed by section 4671(a) of the Code on any taxable substance sold or used by the importer of the taxable substance.

(7) *Taxable chemical.* The term *taxable chemical* has the meaning given such term by section 4662(a)(1) of the Code and section § 52.4662–1(b).

(8) *Taxable substance.* The term *taxable substance* means any substance, which at the time of sale or use by the importer, is listed in section 4672(a)(3) or has been added to the list of taxable substances pursuant to section 4672(a)(2) or (4). The term does not include any substance that the Secretary of the Treasury or her delegate has removed from the list of taxable

substances through the process described in section 4672(a)(2) or (4). A substance that satisfies the weight or value test, but that is not listed in section 4672(a)(3) and has not been added to the list of taxable substances pursuant to section 4672(a)(2) or (4), is not a taxable substance.

(9) *Use.* A taxable substance is used when it is consumed, when it functions as a catalyst, when its chemical composition changes, when it is used in the manufacture or production of another substance (including by mixing or combining the taxable substance with other substances), or when it is put into service in a trade or business for the production of income. The loss or destruction of a taxable substance through spillage, fire, natural degradation, or other casualty is not a use. The mere manufacture or production of a taxable substance is not a use of that taxable substance.

(10) *United States.* The term *United States* has the meaning given such term by section 4612(a)(4) of the Code. *See* sections 4672(b)(2) and 4662(a)(2).

(11) *Weight or value test.* The term *weight or value test* means the test under section 4672(a)(2)(B) for determining whether taxable chemicals constitute more than 20 percent of the weight or more than 20 percent of the value of the materials used to produce a substance, based on the predominant method of production.

(c) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

■ **Par. 11.** Section 52.4672–2 is added to read as follows:

§ 52.4672–2 List of taxable substances.

(a) *Overview.* Section 4672(a)(3) of the Internal Revenue Code (Code) provides the initial list of taxable substances. Section 4672(a)(2) and (4) provides mechanisms by which substances may be added to or removed from the list. Therefore, the list of taxable substances is subject to change. The Internal Revenue Service (IRS) will maintain the current list of taxable substances at *https://www.irs.gov/businesses/small-businesses-self-employed/superfund-chemical-excise-taxes.*

(b) *Requests to modify the list of taxable substances*—(1) *In general.* An importer or exporter of any substance, or a person other than an importer or exporter (interested person), may petition to add a substance to or remove a substance from the list of taxable substances. *See* section 4672(a)(2). The procedures governing the exclusive process by which importers, exporters, and interested persons may request modifications to the list of taxable substances are provided in guidance published in the Internal Revenue Bulletin. *See* § 601.601(d) of this chapter.

(2) *Synthetic organic substances.* A synthetic organic substance is eligible for addition to the list of taxable substances through the process described in paragraph (b)(1) of this section unless such substance is a textile fiber (other than a polymer in extruded fiber form), yarn, or staple, or a fabricated product that is molded, formed, woven, or otherwise finished into an end-use product. However, such substance may be added to the list of taxable substances only if it meets the weight or value test.

(3) *Inorganic substances.* An inorganic substance is eligible for addition to the list of taxable substances through the process described in paragraph (b)(1) of this section unless it is a fabricated product that is molded, formed, or otherwise finished into an end-use product. However, such substance may be added to the list of taxable substances only if it meets the weight or value test.

(c) *Applicability date.* This section applies to calendar quarters beginning on or after [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0004; Notice No. 223]

RIN 1513–AC97

Proposed Establishment of the Contra Costa Viticultural Area and Modification of the San Francisco Bay and Central Coast Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 167,146-acre ''Contra Costa'' American viticultural area (AVA) in Contra Costa County, California. Only the westernmost portion of the proposed AVA would lie in the established San Francisco Bay and Central Coast AVAs. To avoid this partial overlap, TTB proposes to expand the boundary of the established San Francisco Bay and Central Coast AVAs to entirely encompass the proposed Contra Costa AVA. The proposed expansions would add approximately 109,955 acres to each of the established AVAs. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before May 30, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, its supporting materials, and any comments TTB receives on the proposal within Docket No. TTB–2023–0004, as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Department Order 120–01, dated