

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and Regulations.
(Also Part I, §§ 4672; 52.0-1.)

Rev. Proc. 2022-26

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedures for requesting a determination under § 4672(a)(2) of the Internal Revenue Code (Code) that a substance be added to or removed from the list of taxable substances under § 4672(a) of the Code. The sale or use of any such taxable substances by importers of such substances is subject to the excise tax imposed by § 4671(a) of the Code, subject to certain exceptions. Unless otherwise stated, all section references in this revenue procedure are to the Code.

SECTION 2. BACKGROUND

.01 Overview. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510, 94 Stat. 2767 (1980), informally referred to 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 tax imposed by § 4661(a) on sales or uses of taxable chemicals (enacted by § 211 of CERCLA) and the tax imposed by § 4671(a) on sales or uses of imported taxable substances that use one or more taxable chemicals in their manufacture or production (enacted by § 515 of the

Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613 (1986)), collectively, referred to as the “Superfund chemical taxes.” The Superfund chemical taxes previously expired on December 31, 1995. As explained in section 2.04 of this revenue procedure, the Superfund chemical taxes have been reinstated, effective July 1, 2022, with several modifications.

.02 Tax on taxable chemicals. Section 4661(a) imposes a tax on any taxable chemical sold or used by the manufacturer, producer, or importer. See also § 4662(c)(1). Section 4661(b) provides a list of taxable chemicals and the amount of tax imposed by § 4661(a) on those chemicals. Section 4662 provides definitions and special rules applicable to the § 4661 tax, including definitions of the terms “taxable chemical” and “United States.”

.03 Tax on taxable substances.

(1) Overview. Section 4671(a) imposes a tax on any taxable substance sold or used by the importer. Section 4671(b) generally provides that the amount of tax imposed by § 4671(a) with respect to any taxable substance is equal to the amount of tax that would have been imposed by § 4661 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. Section 4672, in part, provides definitions for purposes of the tax imposed by § 4671(a). As described in section 2.03(2) of this revenue procedure, § 4672(a) defines the term “taxable substance.” Section 4672(b)(1) defines the term “importer” as 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 § 4662(a).

(2) List of taxable substances. Section 4672(a)(1) generally provides that the term “taxable substance” means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary of the Treasury or her delegate (Secretary). Section 4672(a)(2) provides that a substance “shall be listed” under § 4672(a)(1) if (A) the substance is contained in the statutory list of taxable substances under § 4672(a)(3), or (B) 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 a specified percent of the weight (or more than a specified percent of the value) of the materials used to produce such substance (determined on the basis of the predominant method of production). For purposes of the tax imposed by § 4671(a) as previously in effect before January 1, 1996, the specified percent required to be met by either the weight or value test of § 4672(a)(2)(B) was 50 percent.

(3) Addition or removal of listed taxable substances. The last sentence of § 4672(a)(2) provides that if an importer or exporter of any substance requests that the Secretary determine that such substance be added to or removed from the list of taxable substances under § 4672(a)(1), the Secretary must make that determination within 180 days after the date the request was filed. Similarly, § 4672(a)(4) provides that the Secretary “shall add to the list” under § 4672(a)(3) substances that meet either the weight or value tests of § 4672(a)(2)(B) and that the Secretary “may remove from such list only substances which meet neither of such tests.” For purposes of the tax

imposed by § 4671(a) as previously in effect before January 1, 1996, Notice 89-61, 1989-1 C.B. 717, as modified by Notice 95-39, 1995-1 C.B. 312, and suspended by Notice 2021-66, 2021-52 I.R.B. 901, prescribed the former process for certain persons to request that certain substances be added to or removed from the list of taxable substances under § 4672(a).

.04 Reinstatement of Superfund chemical taxes. Effective July 1, 2022, § 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021) reinstates the Superfund chemical taxes with several modifications, including adjustments to the applicable rates of tax. Specifically, § 4672(a)(2)(B), as modified by § 80201(c)(1) of the IIJA, provides that a substance is listed under § 4672(a)(1) if the Secretary determines, in consultation with the EPA Administrator and the CBP Commissioner, 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). In this regard, § 80201(c)(2) of the IIJA provides that except as otherwise determined by the Secretary, any substance that was determined to be a taxable substance by reason of § 4672(a)(2) prior to November 15, 2021 (that is, the date of enactment of the IIJA), “shall continue to be treated as a taxable substance for purposes of such section after such date.” As required by § 80201(c)(3) of the IIJA, Notice 2021-66 was published to provide the initial list of taxable substances under § 4672(a). Section 4 of Notice 2021-66 provides that the initial list of taxable substances required to be published by § 80201(c)(3) of the IIJA includes the taxable substances listed in § 4672(a)(3) and the 101 taxable substances listed in the notice,

based on the presumption in § 80201(c)(2) of the IJJA and other considerations, such as determinations regarding taxable substances made pursuant to the process described in Notice 89-61 prior to November 15, 2021, and the reduction of the weight and value thresholds in § 4672(a)(2)(B) made by § 80201(c)(1) of the IJJA. Therefore, as of the date of publication of this revenue procedure, the list of taxable substances under § 4672(a) consists of the statutory list of 50 taxable substances in § 4672(a)(3), and the list of 101 additional taxable substances listed in section 4 of Notice 2021-66. The Secretary will add substances to or remove substances from the list of taxable substances under § 4672(a) in accordance with § 4672(a)(2) and (4). Substances may be added to or removed from the list of taxable substances under § 4672(a) through the determination process described in this revenue procedure.

SECTION 3. DEFINITIONS

The following definitions apply for purposes of this revenue procedure:

.01 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.

.02 Exporter. The term “exporter” means the person named as shipper or consignor in the export bill of lading.

.03 Harmonized Tariff Schedule of the United States number. The term “Harmonized Tariff Schedule of the United States (HTSUS) number” means the 10-digit tariff number within the HTSUS used to determine customs duties to be paid on all merchandise imported into the United States and its statistical annotation. Additional information on HTSUS numbers is available at:

[https://www.usitc.gov/harmonized tariff information](https://www.usitc.gov/harmonized_tariff_information).

.04 Importer. The term “importer” means the person entering the taxable substance for consumption, use, or warehousing.

.05 List. The term “List” means the list of taxable substances under § 4672(a). Unless the Secretary determines under § 4672(a)(2) or (4) that the taxable substance is removed from the List, every taxable substance described in section 3.12 of this revenue procedure is on the List.

.06 Material. The term “material” means a chemical component used in the predominant method of production of the substance. The term “material” may include a taxable chemical.

.07 Molecular formula. The term “molecular formula” means a chemical formula that shows the number and kinds of atoms in the substance.

.08 Schedule B number. The term “Schedule B number” is a 10-digit international export code used to classify goods for export to another country. Schedule B numbers are administered by the United States Census Bureau. Additional information on Schedule B numbers is available at: <https://www.census.gov/newsroom/blogs/global-reach/2017/12/finding-your-schedule-b-number.html>.

.09 Structural formula. The term “structural formula” means a chemical formula that provides a graphic representation of how the atoms are arranged and bonded in the smallest unit of the substance.

.10 Substance. The term “substance” means the chemical substance to which the petition described in sections 5 and 6 of this revenue procedure relates. For synthetic organic chemical substances, the term “substance” does not include 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. For inorganic chemical substances, the term “substance” does not include fabricated products that are molded, formed, or otherwise finished into end-use products.

.11 Taxable chemical. The term “taxable chemical” means a chemical listed under § 4661(b).

.12 Taxable substance. Except as provided in this section 3.12, the term “taxable substance” means—

(1) any substance that is one of the 50 taxable substances in the list under § 4672(a)(3),

(2) any substance that is one of the 101 taxable substances listed in section 4 of Notice 2021-66, and

(3) any substance that the Secretary has determined under § 4672(a)(2) or (4) to add to the List described in section 3.05 of this revenue procedure.

The term “taxable substance” does not include any substance that the Secretary has removed from the List pursuant to § 4672(a)(2) or (4).

.13 United States. The term “United States” has the meaning given such term by § 4612(a)(4) by reason of §§ 4662(a)(2) and 4672(b)(2).

.14 Value. The term “value” means the average market price, during the preceding twelve months, of each material in the stoichiometric material consumption equation describing the production of the substance.

SECTION 4. REQUESTS FOR MODIFICATIONS TO THE LIST OF TAXABLE SUBSTANCES UNDER § 4672(a)

.01 Importers, exporters, and interested persons. An importer or exporter of any substance, or a person other than an importer or exporter of such substance (interested person), may request to add such substance to the List or remove such substance from the List by submitting a petition to the IRS in accordance with the procedures described in sections 5 and 6 of this revenue procedure. Any requests to modify the List that were submitted prior to publication of this revenue procedure or in response to the request for comments in Notice 2021-66 do not meet the requirements of sections 5 and 6 of this revenue procedure. Such requests will not be processed and must be submitted in accordance with the procedures described in sections 5 and 6 of this revenue procedure.

.02 Threshold requirements. An importer, exporter, or interested person may submit a petition to add a substance to the List if such person determines that taxable chemicals constitute more than 20 percent of the weight or value of the materials used to produce such substance, determined on the basis of the predominant method of production. An importer, exporter, or interested person may submit a petition to remove a substance from the List if such person determines that taxable chemicals constitute 20 percent or less of the weight and 20 percent or less of the value of the materials used to produce such substance, determined on the basis of the predominant method of production.

.03 Separate petitions required. An importer, exporter, or interested person must submit a separate petition for each substance that the person seeks to have added to or removed from the List.

.04 Publication of information in the Federal Register. The determination process described in this revenue procedure is a public process that is designed to provide the public with notice of any proposed modifications to the List and the opportunity to comment on those proposed modifications. Petitioners are strongly discouraged from submitting confidential business information or trade secrets, because the determination process is a public process. As described in sections 9.02 and 10.04 of this revenue procedure, information petitioner submits relating to the petition, including the petitioner's name, will be published in the Federal Register as part of the notice and comment process.

SECTION 5. HOW TO SUBMIT PETITIONS

.01 Overview. An importer, exporter, or interested person (each, a petitioner) may submit a petition using electronic facsimile, email, or certified mail as described below. Petitioners are encouraged to submit petitions by electronic facsimile.

.02 When a petition is considered filed. A submitted petition is considered "filed" for purposes of the 180-day determination period set forth in § 4672(a)(2) only when it is accepted by the IRS. The filing date of a submitted petition is the date of the acknowledgement letter from the IRS accepting the submitted petition, as described in section 5.03 of this revenue procedure. The IRS will accept a submitted petition only if the petition includes all of the information required in section 6 of this revenue procedure.

.03 Acknowledgement of petition's receipt. The IRS will acknowledge receipt of a submitted petition by letter. Any petition received before July 1, 2022, will be deemed received on July 1, 2022. The IRS will acknowledge receipt of a submitted petition by

letter regardless of whether the petition is submitted by electronic facsimile, email, or certified mail. The acknowledgement letter will indicate whether the IRS has accepted the submitted petition, or whether the IRS has rejected the submitted petition due to incomplete or insufficient information. If the IRS accepts the submitted petition, the filing date of the submitted petition is the date of the acknowledgment letter accepting the petition. If the IRS rejects the submitted petition, the petitioner may submit a new petition with the required additional information. The filing date is the date of the acknowledgment letter accepting the new petition.

.04 Submission by electronic facsimile. A petitioner may submit a petition by electronic facsimile to the following number: (855) 578-0543. Petitioners and their representatives are encouraged to use a secure electronic facsimile service for submitting petitions. When compiling the petition for submission, petitioners should provide clear titles for the documents and number all pages. If the submission is over 10MB or over 50 pages, petitioners should break it into smaller components, number the components sequentially, and indicate the total number of components (such as “1 of 4,” “2 of 4,” “3 of 4,” and “4 of 4”). Petitioners should use a cover sheet when submitting the petition by electronic facsimile. The cover sheet should provide the petitioner’s contact information, state that the electronic facsimile contains a determination request under Revenue Procedure 2022-26, and provide the total number of pages of the electronic facsimile.

.05 Submission by email

(1) Overview. Until further notice, a petitioner may submit a petition by emailing the petition to: sbse.excise.policy@irs.gov. There are more risks associated with

submitting information by email than by electronic facsimile, such as the possibility that sensitive taxpayer information could be intercepted. Accordingly, the IRS encourages petitioners to use a secure electronic facsimile service for submitting petitions. As an alternative, section 5.05(2) of this revenue procedure provides procedures for using encrypted email attachments for submitting a petition.

(2) Submission using encrypted email attachments. Petitioners using encrypted email attachments may choose to use a compression utility compatible with SecureZIP (note that many open-source utilities are not compatible with SecureZIP), Adobe Acrobat Pro password encryption, or Microsoft Office 2016/365 Protect Document to encrypt and send password-protected files. Because these programs do not encrypt the subject line or body of an email or the file name of the attachment, all sensitive information should be included only in the encrypted attachment. These programs require that a sender create a password for the recipient to use to decrypt the attachments. The password should never be sent in the same email as the encrypted attachment. Instead, it should be provided to the IRS in a separate email with a subject line that makes it easy to connect the password to the email with the encrypted attachment. When compiling the petition package for submission, the petitioner should provide clear titles for the documents and file names. The petitioner should also encrypt the files or enable the encryption utility on the email system before generating the email. If the submission is over 5 MB or over 50 pages, the petitioner should break it into smaller components that do not exceed 5 MB each, number the components sequentially, and indicate the total number of components (such as “1 of 4,” “2 of 4,” “3 of 4,” and “4 of 4”). Petitioners should refer to www.IRS.gov/UsingEmail for additional

information about encrypting files and sending documents to the IRS by email.

Petitioners should use strong passwords for encrypting files (at least twelve characters, including a mix of upper- and lower-case letters, numbers, and special characters).

.06 Submission by certified mail. A petitioner may submit a petition by certified mail, return receipt requested to:

Director SB/SE Exam, Specialty Policy
Internal Revenue Service
SE:S:E:HQ:SEP
c/o Specialty Exam Policy, Tech Advisor
5000 Ellin Rd., Mail Stop C3-255
Office C2-156
Lanham, MD 20784

SECTION 6. WHAT MUST BE INCLUDED IN THE PETITION

.01 Required information for all petitions. Except as specifically provided in this section 6.01, the IRS will accept a submitted petition only if the petition includes all of the following information:

(1) A statement identifying whether the petitioner is an importer or exporter of the substance, or an interested person.

(2) The name, address, taxpayer identification number (TIN) of the petitioner; if someone is filing the petition on behalf of the petitioner, the name of the person filing the petition and that person's relationship to the petitioner. An interested person submitting a petition is not required to provide a TIN.

(3) A Form 2848, *Power of Attorney and Declaration of Representative*, if the petition is submitted by the petitioner's authorized representative.

(4) The name of the substance.

(5) A description of the substance and its use.

(6) The molecular formula of the substance, the structural formula of the substance, and the physical form of the substance, as determined by the physical state of the substance (gas, liquid, solid).

(7) The HTSUS number and the Schedule B number of the substance; the Chemical Abstract Service Registry (CAS) number of the substance, if applicable. In connection with the HTSUS number of the substance, the petitioner should also indicate whether the imported substance is in forms or packings for retail sale at entry; however, the information regarding forms and packings is not required and a petition will not be rejected if this information is not included.

(8) The name of the production process that the petitioner has identified as the predominant method of production of the substance.

(9) The data supporting the petitioner's position that the production process identified as the predominant method of production of the substance is, in fact, the predominant method of production.

(10) An explanation of the production process identified as the predominant method of production of the substance that emphasizes the overall chemical reaction used to process the underlying taxable chemical or chemicals into the substance. The petitioner must include a brief description of all reaction pathways for materials used in the predominant method of production that are derived from a taxable chemical, as shown in the example in section 7.02 of this revenue procedure.

(11) The names, HTSUS numbers, Schedule B numbers, and CAS numbers (to the extent CAS numbers are applicable), of all taxable chemicals used as materials in

the production of the substance, based on the process identified as the predominant method of production of the substance.

(12) The molecular formula and the structural formula for each material used in the production of the substance, based on the process identified as predominant method of production of the substance.

(13) The stoichiometric material consumption equation based on the process identified as the predominant method of production of the substance, assuming a 100-percent yield. The equation must include all materials that are consumed in the process.

(14) The conversion factor for each taxable chemical used to produce the substance, based on the process identified as the predominant method of production of the substance. Petitioner must use the stoichiometric material consumption equation to determine the conversion factor(s). If the request is to add a substance to the List, the petitioner must show that taxable chemicals constitute over 20 percent of the weight or the value of the materials used to produce the substance. If the request is to remove a substance from the List, the petitioner must show that the substance meets neither the weight nor the value test described in § 4672(a)(2)(B).

(15) If the substance is a mixture, the percent composition by weight of each component in the mixture, including solvents, stabilizers, and additives, as well as a description of each component's function in the mixture.

(16) Any tariff classification rulings the petitioner has received from CBP under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177) with regard to the substance. If a petitioner has submitted a tariff classification ruling request under the

provisions of 19 C.F.R. 177 for the substance, the petitioner must so indicate, and include that ruling request's identification number in the petition. To the extent the petitioner is aware of any tariff classification rulings that classify the same or a substantially similar substance for which a petitioner seeks a determination, the petitioner should include such ruling in the petition; however, this information is not required and a petition will not be rejected if this information is not included.¹

(17) A statement identifying the extent to which any information included in the petition, other than the information described in section 9.02 and 10.04 of this revenue procedure, is confidential business information that should not be published as part of the Notice of Filing or Notice of Determination. As noted in section 4.04 of this revenue procedure, petitioners are strongly discouraged from submitting confidential business information because of the public nature of the determination process. A determination to add or remove a substance from the List will not be based on confidential business information.

(18) A statement, signed under penalties of perjury, that the petitioner has examined the petition and to the best of petitioner's knowledge and belief, the information in the petition is true, correct, and complete.

.02 Additional information for petitions based on value. For petitions based on value, the following additional information is required:

¹ Such rulings may be researched on the Customs Rulings Online Search Service at <https://rulings.cbp.gov/home>. Pursuant to 19 CFR 177.1(c), any person who, as an importer or exporter of merchandise, has a direct and demonstrable interest in the classification question presented in the ruling request, or their authorized agent, may request a binding Customs ruling at <https://erulings.cbp.gov/s/>.

(1) The per-unit value of each taxable chemical used in the production of the substance, based on the predominant method of production.

(2) The total value of all materials used in the production of the substance, based on the per-unit value of each material used in the predominant method of production. The units of measurement must be the same as those used in section 6.02(1) of this revenue procedure.

.03 Optional summary of information for Notice of Filing. As part of any submission, a petitioner may include a separate document that specifically identifies or summarizes the information from the petition that should be included in the Notice of Filing described in section 9.02 of this revenue procedure.

SECTION 7. STOICHIOMETRIC MATERIAL CONSUMPTION EQUATION EXPLANATION AND EXAMPLE

.01 Overview. Section 6.01(13) of this revenue procedure requires the petitioner to include the stoichiometric material consumption equation for the substance, based on the process identified as the predominant method of production of the substance. The petitioner must determine the stoichiometric material consumption equation by examining the established chemical process. Some of the materials used in the predominant method of production may be derived from one or more taxable chemicals. If so, such materials must be examined stoichiometrically to capture all taxable chemicals used to produce the substance. In such instances, the established chemical process must be further expanded to include individual chemical reactions/processes that may be required to produce the substance from the taxable chemical or chemicals. The final stoichiometric material consumption equation is produced by summing any individual reactions of taxable chemicals.

.02 Example. The following is an example that satisfies the requirements of section 6.01(13) of this revenue procedure. This example is for illustrative purposes only. In addition, this example assumes that the syngas used to produce the methanol was not derived from coal. See § 4662(b)(4).

Substance: Dimethyl terephthalate

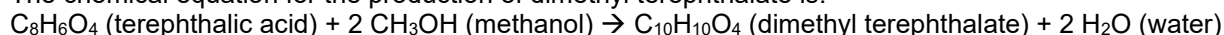
HTSUS item number of substance: 2917.37.00.00

CAS number of substance: 120-61-6

Schedule B number of substance: 2917.37.0000

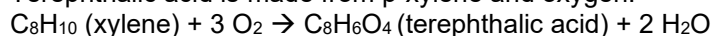
Predominant method of production: Dimethyl terephthalate is produced by the esterification of terephthalic acid with methanol. Terephthalic acid is made from p-xylene (an isomer of xylene) and oxygen. Methanol is made from syngas. Hydrogen for the syngas is made from methane via the steam methane reforming process.

The chemical equation for the production of dimethyl terephthalate is:

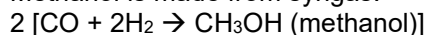


Derived taxable chemicals:

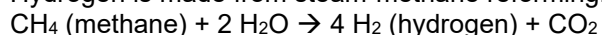
Terephthalic acid is made from p-xylene and oxygen:



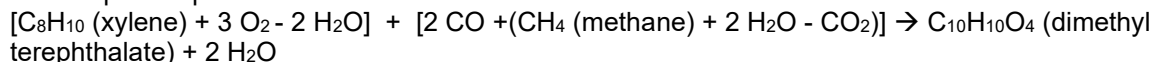
Methanol is made from syngas:



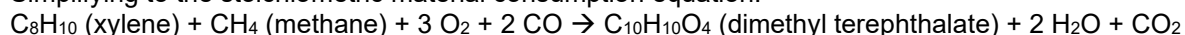
Hydrogen is made from steam-methane reforming:



Xylene and methane are taxable chemicals. Therefore, the derived stoichiometric material consumption equation is:



Simplifying to the stoichiometric material consumption equation:



SECTION 8. CONVERSION FACTOR EXPLANATION AND EXAMPLE

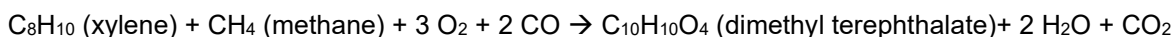
.01 Overview. When submitting a petition to the IRS, the petitioner must identify the predominant method of production of the substance. The petitioner must also provide the stoichiometric material consumption equation for the substance, based on the process identified as the predominant method of production, as shown in section 7.02 of

this revenue procedure. In addition, the petitioner must use the stoichiometric material consumption equation to determine the conversion factor for each taxable chemical used to produce the substance. The conversion factors are used to determine whether taxable chemicals constitute more than 20 percent, by weight, of the materials used in the production of the substance, based on the predominant method of production. If the taxable chemicals used in the production of the substance meet the 20 percent weight (or value) threshold, the conversion factors may be used to determine the tax rate of the substance.

.02 Percent composition of taxable chemicals in a substance. The petitioner must use consistent weight units and should note the units in the petition (the example in section 8.03 of this revenue procedure uses grams). The petitioner must add the weights of all the taxable chemicals used to produce the substance (the Tax Weight). The petitioner must also add the weights of all materials, including taxable chemicals, used to produce the substance (the Total Weight). If the ratio of Tax Weight to Total Weight multiplied by 100 percent $((\text{Tax Weight}/\text{Total Weight}) \times 100\%)$ is greater than 20 percent, the substance meets the weight threshold for a taxable substance set forth in § 4672(a)(2)(B).

.03 Example. The following is an example that satisfies the requirements of section 6.01(14) of this revenue procedure. This example is for illustrative purposes only.

Stoichiometric material consumption equation for dimethyl terephthalate:



Stoichiometric material consumption equation used to determine the weight (in grams) of materials used to produce dimethyl terephthalate:

C_8H_{10} (xylene) + CH_4 (methane)	+	$3 \text{ O}_2 + 2 \text{ CO}$	→	$\text{C}_{10}\text{H}_{10}\text{O}_4$	+	$2 \text{ H}_2\text{O} + \text{CO}_2$
106.16 g + 16.06 g = 122.22 g		96.00 g + 56.02 g = 152.02 g		194.19 g		

Total Weight = 122.22 g + 152.02 g = 274.24 g

Percent of dimethyl terephthalate produced with taxable chemicals:

$$(122.22 \text{ g Tax Weight}) / (274.24 \text{ g Total Weight}) \times 100\% = 44.57\%$$

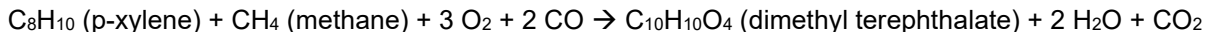
Conversion factors of taxable chemicals: The weight of an individual taxable chemical used in the stoichiometric material consumption equation is divided by the weight of the substance. This ratio is a multiplier, i.e. a *conversion factor*, that is used for each taxable chemical used in the predominant method of production of the substance to determine an overall tax rate for the substance.

For example:

If: Taxable chemical A + Taxable chemical B → Substance X

Then: A conversion factor = (Chemical Weight A) / (Chemical Weight X)

B conversion factor = (Chemical Weight B) / (Chemical Weight X)



Both p-xylene and methane are taxable chemicals.

Conversion factor p-xylene: (106.16 g p-xylene) / (194.19 g dimethyl terephthalate) = 0.55

Conversion factor methane: (16.06 g methane) / (194.19 g dimethyl terephthalate) = 0.08

In summary, dimethyl terephthalate should be added to the list of taxable substances and p-xylene and methane are the taxable chemicals used to produce dimethyl terephthalate.

Percent Composition Taxable	44.57 %
Conversion factor for p-xylene	0.55
Conversion factor for methane	0.08

The tax rate for dimethyl terephthalate is calculated as follows: [(\$9.74 rate of tax for p-xylene) x 0.55] + [(\$6.88 rate of tax for methane) x 0.08]

Total tax rate for dimethyl terephthalate = \$5.91 per ton

SECTION 9. PUBLIC NOTICE, COMMENTS, REQUESTS FOR A PUBLIC HEARING

.01 Notice of Filing. After a submitted petition has been filed, the IRS will publish a “Notice of Filing” in the Federal Register on www.federalregister.gov and on www.regulations.gov. The Notice of Filing will summarize the petition and request comments.

.02 Information included in Notice of Filing. The Notice of Filing will be based upon the information provided by the petitioner in the filed petition and will include all of the following information:

- (1) The name of the substance that is the subject of the petition.
- (2) The name of the petitioner and whether the petitioner is an importer of the substance, an exporter of the substance, or an interested party.
- (3) The HTSUS number and the Schedule B number of the substance, and the CAS number of the substance, if applicable.
- (4) The filing date of the petition.
- (5) A brief description of the petition.
- (6) The process identified in the petition as the predominant method of production of the substance.
- (7) The stoichiometric material consumption equation for the substance, based on the process identified as the predominant method of production of the substance.
- (8) In the case of a petition to add a substance to the List, the rate of tax for the substance, based upon the conversion factors of the taxable chemicals used in the production of the substance, as provided by the petitioner.

(9) The public docket on www.regulations.gov for the Notice of Filing and other information needed for submitting comments.

.03 Written comments. As part of the determination process, the Secretary will consider all written comments submitted within 60 days of the date the Notice of Filing is published in the Federal Register on www.federalregister.gov, provided the comments are submitted in accordance with the comment submission instructions contained in the Notice of Filing. All commenters are strongly encouraged to submit public comments electronically via the Federal Rulemaking Portal at www.regulations.gov in accordance with the instructions for submitting comments contained in the Notice of Filing. The Treasury Department and the IRS will publish any comment submitted in response to the Notice of Filing to the public docket for the Notice of Filing on www.regulations.gov.

.04 Public hearing. Any person submitting a written comment in response to the Notice of Filing may include a request for a public hearing in such person's written comment. If a public hearing is scheduled, notice of the time and place of the hearing will be published in the Federal Register.

SECTION 10. DETERMINATIONS

.01 Actions prior to making determination. The Secretary will make a determination under § 4672(a)(2) or (4) on a filed petition only after each of the following has occurred:

- (1) Publication of the Notice of Filing.
- (2) Consideration of all written comments received in response to the Notice of Filing.
- (3) A public hearing, if held.
- (4) Consultation with the EPA Administrator and the CBP Commissioner.

.02 Petition by importer or exporter. In the case of a petition submitted by an importer or exporter of a substance, the Secretary will make a determination within 180 days after the date the petition is filed. The 180-day determination period may be extended by agreement between the petitioner and the IRS.

.03 Petition by interested person. The 180-day determination period does not apply to petitions submitted by interested persons.

.04 Notice of Determination. When the Secretary makes a determination on a petition, the IRS will publish a “Notice of Determination” in the Federal Register. The Notice of Determination will include the following information:

- (1) The name of the petitioner.
- (2) The Secretary’s determination regarding whether to add the substance to the List or remove the substance from the List.
- (3) The HTSUS number and the Schedule B number of the substance, and the CAS number of the substance, if applicable.
- (4) The predominant method of production of the substance.
- (5) A synopsis of the reasons for the determination.
- (6) The date of the determination.
- (7) The effective date for any modification to the List.
- (8) In the case of substances added to the List, the rate of tax prescribed by the Secretary for the substance, based upon conversion factors and the predominant method of production of the substance.

SECTION 11. EFFECTIVE DATE FOR MODIFICATIONS TO THE LIST

.01 In general. The date the Secretary's determination is filed with the Federal Register is not the same date that a substance is added to or removed from the List. Determinations made during a calendar quarter will be effective and reflected in the List as of the first day of the second quarter following the quarter in which the determination is made. Therefore, importers that will be liable for the tax imposed by § 4671(a) on the sale or use of taxable substances added to the List, and persons that will no longer be eligible to claim a credit or refund of the tax imposed by § 4661(a) paid on taxable chemicals used in the manufacture, for export, of substances removed from the List, will have a minimum of 90 days' notice of the changes. Because the tax imposed by § 4671(a) is reported on a quarterly basis on Form 6627, *Environmental Taxes*, which is attached to Form 720, *Quarterly Federal Excise Tax Return*, the effective dates of modifications to the List align with the beginning of a calendar quarter. Thus, the effective date of any modification to the List will be as follows:

<u>Determinations made between</u>	<u>Effective date²</u>
July 1 and September 30	January 1
October 1 and December 31	April 1
January 1 and March 31	July 1
April 1 and June 30	October 1

² The Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. See § 7805(b)(8).

.02 Retroactive effect of determinations for purposes of refund claims under § 4662(e); protective claims for refund of § 4661(a) tax paid.

(1) If the Secretary makes a determination to add a substance to the List and that substance is exported, for purposes of claims for refund, that substance is deemed to have been added to the List as of the date the petition was filed. As a result, a person that paid the § 4661(a) tax to the IRS on taxable chemicals used in the production of a substance that was exported on or after the filing date of the petition may be entitled to a refund, if a determination is ultimately made to add the substance to the List. A refund is available to the person that paid the tax if the person establishes that it has repaid or agreed to repay the amount of the tax to the exporter of the taxable substance or has obtained the written consent of the exporter to the making of the refund. See § 4662(e)(2). Under certain circumstances, the exporter of the taxable substance may claim the refund if the person that paid the tax waives its claim to the amount of the refund. See § 4662(e)(3).

(2) Taxpayers are reminded of the need to file a claim for refund of tax within the applicable period of limitations, even if a determination to add a substance to the List has not yet been made. Under § 6511, a claim for refund of an overpayment of tax for which a return is required must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. A person that paid the § 4661(a) tax to the IRS on the taxable chemicals used as materials in the production of the substance may file a protective claim for refund of the tax while the petition is pending.

(3) Refunds of tax related to a substance for which a petition is pending are available only for exports made on or after the filing date of the pending petition and only if a determination is ultimately made to add the substance to the List. In addition, a refund of tax is available only if the claim is filed within the statutory period of limitations.

(4) In order to expedite processing, claims for refund should be filed on Schedule 6 (Form 8849), *Other Claims*. If the claim is filed while the petition is pending, the claimant should write "PROTECTIVE REFUND CLAIM-EXPORT OF SUBSTANCE FOR WHICH A PETITION IS PENDING" across the top of the claim form to alert the IRS Service Center of the nature of the claim.

.03 Petitions filed between July 1, 2022, and December 31, 2022. The Treasury Department and the IRS recognize the short time frame between publication of this revenue procedure and reinstatement of the Superfund chemical taxes. If certain substances are listed as taxable substances under § 4672(a) at the time of export, then § 4662(e) allows the taxpayer or exporter to claim a credit or refund of the tax paid under § 4661(a) with respect to the taxable chemicals used in the production of the exported substance. In consideration of this issue, the Treasury Department and the IRS have determined that for purposes of section 11.02 of this revenue procedure, it is in the interest of sound tax administration to deem any submitted petition by an importer or exporter that is accepted by the IRS between July 1, 2022, and December 31, 2022, as filed on July 1, 2022. However, for purposes of the time frame within which the Secretary must make a determination, a petition submitted by an importer or exporter will be considered filed on the date it is accepted by the IRS as described in section 5.02 of this revenue procedure.

SECTION 12. EFFECT ON OTHER DOCUMENTS

.01 Notice 89-61, as modified by Notice 95-39 and suspended by Notice 2021-66, and Notice 95-39, are superseded.

.02 The following notices that were issued pursuant to Notice 89-61 are revoked:
Notice 90-47, 1990-2 C.B. 338; Notice 90-48, 1990-2 C.B. 338; Notice 90-50, 1990-2 C.B. 340; Notice 90-51, 1990-2 C.B. 342; Notice 91-31, 1991-2 C.B. 631; Notice 91-32, 1991-2 C.B. 631; Notice 91-33, 1991-2 C.B. 632; Notice 91-34, 1991-2 C.B. 632; Notice 92-11, 1992-1 C.B. 500; Notice 94-7, 1994-1 C.B. 332; Notice 94-8, 1994-1 C.B. 333; Notice 94-9, 1994-1 C.B. 334; Notice 94-10, 1994-1 C.B. 334; Notice 94-11, 1994-1 C.B. 335; Notice 94-29, 1994-1 C.B. 344; Notice 94-30, 1994-1 C.B. 345; Notice 94-31, 1994-1 C.B. 345; Notice 94-32, 1994-1 C.B. 346; Notice 94-33, 1994-1 C.B. 346; Notice 94-34, 1994-1 C.B. 347; Notice 94-35, 1994-1 C.B. 348; Notice 94-44, 1994-1 C.B. 355; Notice 94-45, 1994-1 C.B. 355; Notice 94-64, 1994-1 C.B. 374; Notice 94-65, 1994-1 C.B. 375; Notice 94-66, 1994-1 C.B. 375; Notice 94-74, 1994-2 C.B. 554; Notice 94-75, 1994-2 C.B. 554; Notice 94-76, 1994-2 C.B. 555; Notice 94-80, 1994-2 C.B. 557; Notice 94-81, 1994-2 C.B. 557; Notice 94-82, 1994-2 C.B. 558; Notice 94-83, 1994-2 C.B. 558; Notice 94-92, 1994-2 C.B. 562; Notice 94-98, 1994-2 C.B. 566; Notice 94-99, 1994-2 C.B. 566; Notice 95-12, 1995-1 C.B. 295; Notice 95-27, 1995-1 C.B. 306; Notice 95-29, 1995-1 C.B. 307; Notice 95-38, 1995-1 C.B. 312; Notice 95-40, 1995-1 C.B. 312; Notice 95-43, 1995-2 C.B. 328; Notice 95-44, 1995-2 C.B. 330; Notice 95-58, 1995-2 C.B. 337; Notice 95-59, 1995-2 C.B. 338; Notice 96-28, 1996-1 C.B. 376; Notice 97-22, 1997-1 C.B. 408; and Notice 2000-54, 2000-2 C.B. 356.

.03 The substance of the notices revoked by section 12.02 of this revenue procedure was often published concurrently in the Federal Register in the form of a determination. The determinations published in the Federal Register may no longer be relied upon.

SECTION 13. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been submitted to the Office of Management and Budget for review under OMB control number 1545-2304 in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collections of information in this revenue procedure are in sections 5 and 6 of this revenue procedure. This information is necessary and will be used to determine whether a substance should be added to or removed from the list of taxable substances under § 4672(a). The collections of information are required for an importer, exporter, or interested person to obtain a determination regarding whether a substance is subject to tax under § 4671(a).

SECTION 14. DRAFTING INFORMATION

The principal authors of this revenue procedure are Stephanie Bland and Amanda Dunlap of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For legal questions regarding this revenue procedure, contact Elisabeth Shellan or Camille Edwards Bennehoff at (202) 317-6855 (not a toll-free number). For questions regarding submitting a petition, please contact Alan Anderson at (503) 265-3736 (not a toll-free number).