

Supporting Statement  
Internal Revenue Service

Rev. Proc. 2022-26, Superfund; Imported Substances; Procedures for Filing a Petition  
REG-105954-22 – Excise Tax imposed on certain chemicals and imported substances  
OMB # 1545-2304

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429, reinstates, effective July 1, 2022, the excise taxes imposed on certain chemicals and chemical substances by sections 4661 and 4671 of the Internal Revenue Code (IRC).

Section 4672(a)(2) provides that a substance is added to the list of taxable substances if the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of U.S. Customs and Border Protection, that the substance meets certain criteria. Section 4672(a)(2) provides that, in the case of a request from an importer or exporter for such a determination, the Secretary shall make such determination within 180 days of the request being filed.

Revenue Procedure 2022-26, as modified by Revenue Procedure 2023-20<sup>1</sup>, prescribes the process by which importers, exporters, and interested parties may file a petition that requests to add a chemical substance to or remove a chemical substance from the list of taxable substances.

Sections 4662(b)(10)(C) and 4662(c)(2)(B) of the IRC require taxpayers to register with the IRS in order to engage in certain transactions tax-free, and to share that registration information with the other party to the transaction at the time prescribed by the Secretary. Taxpayers apply for registration with the IRS by completing Form 637<sup>2</sup>, Application for Registration for Certain Excise Tax Activities.

In the case of the sales described in section 4662(b)(10) and the inventory exchanges described in section 4662(c)(2), the regulation requires the buyer or receiver to share its registration information with the other party by means of a Notification Certificate of Taxable Chemical Registrant. This third-party disclosure is required so the sellers can determine the purchaser's registration status, *i.e. current, revoked, or suspended*.

Section 4662(d) of the IRC requires the Secretary to prescribe rules for the use-based claims for credit or refund, which are provided in that subsection. Section 4662(e)(4) of the IRC requires the Secretary to prescribe regulations necessary to carry out the purposes of section 4662(e), which provides for tax-free sales for export, as well as claims for credit or refund based on the exportation of tax-paid taxable chemicals.

---

<sup>1</sup> Revenue Procedure 2023-20 modified the timeframes from Revenue Procedure 2022-26.

<sup>2</sup> Form 637 is approved by the Office of Management and Budget under 1545-1835.

In the case of tax-free sales based on use, the regulations entails that the buyer provide the seller a certificate, in substantially the same form as the example provided in the regulations, to certify that the taxable chemicals will be used for a purpose that falls under an exception in section 4662(b).

In the case of tax-free sales for export where the first or second purchaser is the exporter, the taxpayer (manufacturer) must obtain from the first purchaser at the time of the sale a statement that the first purchaser is buying the taxable chemical for shipment to a location outside the United States, or for resale to a second purchaser that is in the export business and will export the taxable chemical. Additionally, within six months, the taxpayer must receive 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 chemical. The statement of export must be signed under penalties of perjury and is in substantially the same form as the model statement of export provided in the regulations.

In the case of use-based claims for credit or refund by an entity other than the taxpayer, the claimant must include a certificate, signed by the taxpayer, in substantially the same form as the model certificate provided in the regulations. The certificate must be signed by the taxpayer under penalties of perjury and include how much tax was paid with respect to the taxable chemicals and the taxpayer's certification that it has not claimed a credit or refund and will not do so.

In the case of export-based claims for credit or refund by an entity other than the taxpayer, the claimant must provide a statement, signed under penalties of perjury, that includes the date and amount of tax paid and certification that the taxpayer will not seek a credit or refund.

Claimants are required to attach the relevant certificate or statement to their excise tax return.

Model Certificates:

- § 52.4662-2(g)(5) (notification certificate for intermediate hydrocarbon streams);
- § 52.4662-2(h)(2) (exemption certificate for tax-free sales for fertilizer, motor fuel, and animal feed substances under section 4662(b));
- § 52.4662-2(c) (notification certificate for inventory exchanges);
- § 52.4662-4(a)(4) (supporting information required for claims of credit or refund under section 4662(d)(1));
- § 52.4662-4(b)(3) (supporting information required for claims of credit or refund under section 4662(d)(2));
- § 52.4662-4(c)(3) (supporting information required for claims for credit or refund under section 4662(d)(3));
- § 52.4662-4(d)(3) (supporting information required for claims for credit or refund under section 4662(d)(4));
- § 52.4662-4(e)(2) (certificate to support a claim for credit or 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 or refund under section 4662(e)(2));
- § 52.4662-5(d)(3) (supporting information required for claims for credit or 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 of credit or refund under section 4671(d)(2)); and
- § 52.4672-2(c)(4) (certificate to support a claim for credit or refund under section 4671(d)(2))

## 2. USE OF DATA

Under section 4672(a) of the IRC, importers and exporters of chemical substances may request a determination of whether a particular substance should be added to or removed from the list of taxable substances in section 4672(a)(3) of the IRC. The collection of information requested in Revenue Procedure 2022-26 will enable the Secretary of Treasury to respond to these requests for a determination, in consultation with the Environmental Protection Agency and the United States Customs and Border Protection, as required by section 4672(a)(2)(B) of the IRC.

The certificates or statements required for a person other than the taxpayer to submit a claim for credit or refund will be used by the IRS to verify that a claim has not already been paid with regard to the same chemicals and substances.

## 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Petitioners may submit petitions by postal mail, efax, or email. The email option is available until further notice.

The certificate or statement required for a claim for credit or refund by a person other than the taxpayer will be attached to an excise tax return, Form 720<sup>3</sup>, or a Form 8849<sup>4</sup> claim, when requesting a refund or credit. The other model certificates are recordkeeping requirements only.

## 4. EFFORTS TO IDENTIFY DUPLICATION

The IRS will publish a "Notice of Filing" in the Federal Register when it receives a petition. The Notice of Filing will summarize the petition and request comments. Once the Secretary of the Treasury makes a final determination, the IRS will publish the determination in the Federal Register. This public process alleviates duplication because

---

<sup>3</sup> Form 720 is approved by the Office of Management and Budget under 1545-0023.

<sup>4</sup> Form 8849 is approved by the Office of Management and Budget under 1545-1420.

determinations are applicable to all importers that sell or use taxable substances and to all taxpayers that might claim a credit or refund with regard to exported taxable substances.

The verification of the tax claims is unique to the IRS and not duplicated elsewhere within the Federal government.

In the case of tax-free sales based on use, providing certificates to support tax-free sales at the time of sale will eliminate the need for other documentation of the transactions to which the certificates apply.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There is no burden on small businesses or other small entities due to the inapplicability of the authorizing statute to this type of entity.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

The petition process is an "as-needed" process. Since the process is not mandated, a "less frequent collection" policy is not applicable. If the IRS cannot collect this information, the Secretary of the Treasury will not be able to establish a process for importers and exporters to submit requests for modifications to the list of taxable substances under section 4672(a)(3) of the IRC. As a result, the Secretary of the Treasury will likely not be able to comply with the statutory mandate in section 4672(a)(2) of the IRC. This would have a negative impact on taxpayers because they may make refund claims for exported substances under section 4662(e)(2)(A)(ii)(II) of the Code only if the substances are on the list of taxable substances at the time of export.

In the case of tax-free sales based on use, the certificate that the buyer must provide to the seller certifies that the buyer will use the purchased chemicals for an exempt purpose. The model certificate for such buyer certification also states that if, after the tax-free sale, the buyer uses the chemical for a non-qualified sale or use, the buyer will be treated as the manufacturer of the chemical and subject to tax. The certificates provide a guardrail against undocumented tax-free sales. Also, upon audit, such certificates allow for the assignment of liability and other consequences stemming from a non-qualified use of the chemical after the tax-free sale on the basis of a qualified use.

In the case of tax-free sales for export, the requirement that the manufacturer or importer obtain proof of export within six months of the sale provides some protection against fraud. If there was no such requirement, chemicals could be sold for export based on the first purchaser's certificate at the time of sale (of intent to export or to sell to a second purchaser in the business of exporting who will export the goods) with no accountability for either party if the goods are not exported in fact.

In the case of claims for credit or refund by persons other than the taxpayer, the coordination between the taxpayer and claimant is necessary to avoid paying two claims with respect to the same chemicals.

1. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

2. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Proposed regulations (REG-105954-22) published March 29, 2023, at 88 FR 18446, requested public comments and recommendations on the information collections. Any comments received on the information collections will be addressed within the Final Rule submission.

3. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

There are no assurances of confidentiality. The determination process prescribed by the revenue procedure is a public process because the determinations apply to the entire chemical industry – not just the petitioner. The revenue procedure explains that certain information from each petition will be published in the Federal Register. The revenue procedure also cautions petitioners not to submit any confidential business information as part of the petition process. The IRS will not release any information regarding the petitioner other than what is described in the revenue procedure.

The certificates to be exchanged between parties to effectuate the tax-free sales are not submitted to the IRS and will only be reviewed under audit. Certificates that support claims for credit or refunds and other supporting information required to support claims for credit or refund are attached to tax returns. Generally, tax returns and related information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

The revenue procedure requires all petitioners (importers, exporters, and interested parties) to provide the petitioner's name. The revenue procedure also requires petitioners that are submitting petitions as importers or exporters to provide a taxpayer identification number (TIN). This information is required to verify whether the petitioner is an importer or

exporter of chemical substances. If an importer or exporter of chemical substances wishes to submit a petition but does not wish to provide a TIN, the importer or exporter may submit a petition as an interested party. There is no negative impact to doing so, except that the 180-day statutory deadline for processing petitions will not apply.

The revenue procedure also includes a public determination process that involves publication of certain information in the Federal Register. The only personally identifiable information that will be made publicly available is the petitioner’s name.

For the reporting of the certificates, a privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Excise Files Information Retrieval System (EFIRS)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 22.060-Automated Non-Master File (ANMF); IRS 24.046-Customer Account Data Engine (CADE) Business Master File (BMF); IRS 34.037-IRS Audit Trail and Security Records System; IRS 42.002-Excise Compliance Programs; IRS-42.008-Audit Information Management System (AIMS). The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

## 12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate is as follows:

<b>Authority</b>	<b>Description</b>	<b># of Respondents</b>	<b>#Responses per Respondent</b>	<b>Annual Responses</b>	<b>Hours per Response</b>	<b>Total Burden</b>
IRC 4672(a)(2)	Petitions	1,000	1	1,000	75	75,000
IRC 4662	Registration Certificates	1,000	1	1,000	0.25	250
IRC 4662	Exemption Certificates	1,000	30	30,000	1	30,000
<b>Totals</b>		<b>3,000</b>				<b>105,250</b>

We estimate that there will be 1,000 respondents annually. Given the scientific nature of the required information, we expect that nearly all of the petitions and certificates will be completed by in-house staff in the chemical industry or by third-party consultants who are specialists in chemical industry regulatory issues. As a result, the average burden per petition under this revenue procedure is estimated to be 76.25 hours per response.

We used the Bureau of Labor Statistics (BLS) median wage rate of \$50.75 per hour for a Chemical Engineers<sup>5</sup> as an equivalent to the rate for a chemical industry regulatory

<sup>5</sup> [Chemical Engineers : Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/occupational-outlook-handbook/) last modified date by BLS: Thursday, September 8, 2022

consultant. Using a benefit multiplier of 1.592, this gives us a fully-loaded wage rate of \$80.79. Therefore, the total monetized burden impact of this revenue procedure is estimated to be \$8,503,148= \$80.79 x 105,250.

### 13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, the IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

### 14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government as the reporting requirements are narrative statements that taxpayers attach to their returns. Therefore, there is no printing, copying, or distribution costs incurred by the IRS. There is no annualized cost to the federal government for the third-party disclosures and recordkeeping requirements. The government costs do not include any activities such as taxpayer assistance and enforcement.

### 15. REASONS FOR CHANGE IN BURDEN

This submission is to revise the OMB approval to include the third-party disclosure and recordkeeping requirements for the registration certificate and model certificates.

### 16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

The IRS will publish a "Notice of Filing" of each petition in the Federal Register. The Notice of Filing will summarize the petition and request comments. Once the Secretary of the Treasury makes a final determination, the IRS will publish a "Notice of Determination" in the Federal Register.

There are no plans for tabulation, statistical analysis, and publication of the certificates.

### 1. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that collections sunset as of the expiration date. Taxpayers are not likely to be aware that the IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

### 2. EXCEPTION TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement for this collection.

