



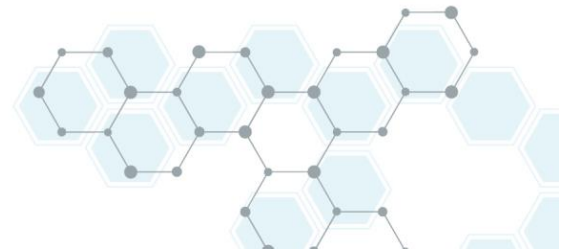
National Association of  
Chemical Distributors

## Resurrection of the Superfund Tax

*\*NACD has prepared this issue summary for informational purposes only and is not legal advice. If you have concerns regarding your liability, possible exemptions, or compliance requirements related to this tax, please consult with a tax attorney.*

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4201 Wilson Blvd, Suite 0515  
Arlington VA, 22203  
(P) 703.527.6223 (F) 703.527.7747  
[nacd.com](http://nacd.com)



# Resurrection of the Superfund Tax

On November 15, 2021, Congress resurrected the tax on 42 taxable chemicals and 151 taxable substances through the Infrastructure Investment and Jobs Act (IIJA). NACD has prepared a summary of the new law and published regulations with links to additional resources for informational purposes only. If you have concerns regarding your liability, possible exemptions, or compliance requirements related to this tax, please consult with your tax attorney.

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## What is the Superfund Tax?

In 1980, Congress passed the [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#), which established a program to protect public health and the environment by managing the cleanup of contaminated sites and by responding to nationally significant environmental emergencies. Through CERCLA, a federal trust fund or “Superfund” was created to finance the cleanup of uncontrolled or abandoned waste sites, accidents, spills, or other emergency releases of pollutants into the environment. CERCLA also gave the U.S. Environmental Protection Agency (EPA) the power to seek out parties that were deemed responsible for any release and assure their cooperation in paying their share of cleanup costs. EPA is reimbursed for its cleanup efforts through the Superfund when potential responsible parties cannot be identified or located.

The Superfund was primarily financed through three taxes: a petroleum tax, chemical tax, and a corporate income tax. All three of these taxes expired in 1996.

## What Did the Infrastructure Investment and Jobs Act Do to the Chemical Tax?

On November 15, 2021, Congress resurrected the tax on [42 taxable chemicals](#) through the [Infrastructure Investment and Jobs Act \(IIJA\)](#). In addition to resurrecting the tax, the IIJA: doubled the tax rates per ton on taxable chemicals, which will range from \$0.48 per ton to \$9.74 per ton; lowered the taxable substance threshold from 50% (by weight or value) to 20% (by weight or value); and increased the default tax rate from 5% to 10% for taxable substances.

Title 26 of the U.S. Code contains an [original list](#) of 50 taxable substances. The IIJA also directed the Internal Revenue Service (IRS) to update the taxable substances list. The IRS issued a preliminary list of an additional [101 taxable substances](#).

## Why is This Important to My Company Now?

If your company is subject to the tax, you need to know that the tax will go into effect **July 1, 2022**, and is applicable through **December 31, 2031**. The tax must be paid quarterly; and taxes must be filed and paid in full for the first quarter, which ends October 31, 2022. The taxes must be reported using IRS [Form 6627, Environmental Taxes](#), which is attached to [Form 720, Quarterly Federal Excise Tax Return](#). As of the writing of this summary, the IRS has not updated the forms to include the superfund taxes on either form.

Per the IRS, semimonthly deposits of excise taxes are required, so as the Superfund taxes are effective July 1, 2022, the first deposit covering the first 15 days of July 2022 is due **July 29, 2022**.

- Each taxpayer must make deposits of tax for each semimonthly period in which the tax liability is incurred.
- A semimonthly period is the first 15 days of a calendar month or the portion of the calendar month following the 15th day of the month.
- The tax deposit for each semimonthly period must not be less than 95% of the amount of net tax liability incurred during the semimonthly period *unless a deposit safe harbor applies*.



Under normal circumstances, a person liable for any superfund chemical taxes would be ineligible to use the deposit safe harbor to calculate semimonthly deposits of superfund chemical taxes until the first calendar quarter of 2023. This is because the deposit safe harbor rules require a second preceding calendar quarter (look-back quarter) in which the same taxes are imposed to determine deposit amounts in the current quarter. For purposes of the deposit safe harbor for the superfund tax, the third calendar quarter of 2022 is the look-back quarter for the semimonthly periods during the first calendar quarter of 2023.

But the IRS issued [temporary relief](#) from failure to deposit penalties for the last two quarters of 2022 and the first quarter of 2023 and will not withdraw a taxpayer's right to use the deposit safe harbor rules of the Excise Tax Procedural Regulations for failure to make required deposits of Superfund chemical taxes *if certain requirements are met*.

To take advantage of the penalty relief and retain their right to use the deposit of the safe harbor, the taxpayer must meet the reasonable cause standard.

The reasonable cause standard as outlined in Section 3 of the [IRS's Notice 22-15](#) is:

- i) the taxpayer makes timely deposits of applicable Superfund chemical taxes, even if the deposit amounts are computed incorrectly, and
- ii) the amount of any underpayment of the applicable Superfund chemical taxes for each calendar quarter is paid in full by the due date for filing the Form 720 return for that quarter.

## What is the Safe Harbor Rule?

The [safe harbor rule](#) applies separately to deposits under the [regular method](#) and the alternative method. Those paying the reinstated superfund taxes must use the regular method. The regular method [applies](#) to all taxes on Form 720, Part I, except for communications and air transportation. [The superfund tax is an environmental tax which is listed under [Part I of Form 720](#).] Taxpayers are considered to have met the semimonthly deposit requirement if the deposit for each semimonthly period in the current quarter is at least 1/6 (16.67%) of the net tax liability reported for the lookback quarter.

For the semimonthly period for which the additional deposit is required (September 1-11 and 16-26), the additional deposit must be at least 11/90 (12.23%) of the net tax liability reported for the lookback quarter. Also, the total deposit for that semimonthly period must be at least 1/6 (16.67%) of the net tax liability reported for the lookback quarter.

For the safe harbor rule to apply, you must pay any underpayment for the current quarter by the due date of the return and check the box on line 5 of Form 720. If any due date for filing a return falls on a Saturday, Sunday, or legal holiday, you may file the return on the next business day. The [filing schedule](#) is outlined below.



| Quarter Covered   | Due By     |
|-------------------|------------|
| Jan., Feb., Mar.  | April 30   |
| Apr., May, June   | July 31    |
| July, Aug., Sept. | October 31 |
| Oct., Nov., Dec.  | January 31 |

## To What Does the Tax Apply?

- 42 specified taxable chemicals sold by a manufacturer, producer, or importer.
- Taxable substances sold or used by an importer.

## Who is Considered an Importer?

- The person entering the taxable chemical or taxable substance for consumption, use, or warehousing into the U.S.

## How Will the IRS Measure the Tax?

- The law measures the taxable chemical or taxable substance as a rate per U.S. ton (or 2,000 lbs.).

## What is a Taxable Chemical vs. a Taxable Substance?

- A taxable chemical is a chemical that is [1] listed on [the statute](#) and [2] is manufactured in the U.S. or imported to the U.S. for consumption, use, or warehousing.
- A taxable substance is a product that is [1] imported to the U.S. and [2] either is [listed](#) or it is determined that 20% or more (by weight or value) of a taxable chemical is used to produce the substance.
  - o Importers or exporters may petition the IRS to modify the list of taxable substances by adding or removing a substance.
  - o The IRS will update the taxable substance list as needed.

## Are There Exceptions?

Yes, the law provides [certain exceptions](#):

1. Methane or butane when it is used as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel.
2. Nitric acid, sulfuric acid, ammonia, or methane when used to produce ammonia, when used to produce fertilizer or animal feed.
3. Sulfuric acid produced as a byproduct of air pollution control.
4. Substances derived from coal.



5. Acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene when used in the production of motor fuel.
6. Barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, when the substance has a transitory presence during refining processes.
7. Separated isomers of xylene, except in the case of any substance imported into or exported from the U.S.
8. Recycled chromium, cobalt, and nickel.
9. Any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream. *\*Registration required*
10. Taxable chemicals when a part of an inventory exchange with another person. *\*Registration required*  
Exports of taxable chemicals. *\*Proof of export required*

## How Do I Know What the Tax Rate Is for a Taxable Substance?

The tax rate is calculated based on the weight or value of the taxable chemicals used in the manufacture of the taxable substance. The tax rate will vary from substance to substance based on its composition.

**Example:** Chems4U imports 10-tons of Substance A and 50% of the material used to produce Substance A was Chromite. Chromite is a taxable chemical, whose tax rate is \$3.04 per ton. This means Substance A's composition contains at least 20% of a taxable chemical and therefore meets the threshold set by the IIJA and is considered a taxable substance. In this instance, 50% of the tax rate for Chromite or \$1.52 per ton, will be applied to the 10-tons of Substance A. Chems4U will pay \$15.20 in Superfund taxes for their shipment of Substance A.

**NOTE:** The [IRS has the authority](#) to state what the tax rate is going to be for each substance or how it will determine the tax rate on each substance based on its calculations or the information it obtains about the chemical composition. The burden is on the importer to provide information to the IRS on the composition of the substance so the IRS can determine the tax rate. If there is not enough information, the substance would be subject to a default rate of 10% of the value of the substance. In this case, it is possible for the importer to pay more in taxes when the 10% default rate is applied, compared to the rate they would have received had they provided adequate information on the substance's composition.

## What is the Economic Impact of These Taxes on the Chemical Industry?

NACD's economist estimates that overall, the additional cost to purchasers due to the renewed Superfund tax will total nearly \$814.4 million. Higher prices will result in approximately 1.6 tons of reduced chemical sales. Wholesalers will see an increase in prices as a result of the tax, not only because it is being passed on to them but also because their costs would rise accordingly, i.e., inventory carrying costs would be higher, insurance costs would be higher, and in many cases



shipping costs would also increase. Specifically chemical distributors can expect to see an overall cost increase of \$231 million, resulting in a 2.4% reduction in sales for the entire market and a loss of nearly 1,200 full-time employees.

## Has the IRS Issued any Guidance?

On December 14, 2021, the IRS published high-level guidance in [Notice 2021-66](#). The notice included the IRS's preliminary list of the 101 additional taxable substances, definition of certain terms, suspension of outdated notices, and directions for interim registration procedures.

On April 15, 2022, the IRS issued [Notice 2022-15](#), which provides taxpayers relief from failure to pay penalties. The IRS recognized the short timeframe between the reinstatement of the Superfund tax and the due date of the first deposit, the unavailability of the deposit safe harbor in 2022, the possible difficulties of computing the correct tax amount for the third quarter of 2022, and the number of new taxpayers as the justifications for the delay. The notice specifically provides relief for the third and fourth quarters of 2022, and the first quarter of 2023, from the failure to deposit penalties imposed by the Superfund. Additionally, it states that during the first three quarters of 2023, the IRS will not withdraw a taxpayer's right to use the deposit safe harbor rules of the Excise Tax Procedural Regulations for failure to make required deposits of Superfund chemical taxes if certain requirements are met.

## Questions?

Contact [Analisa Puzzanghero](#), NACD Senior Manager of Regulatory Affairs, [Doug Leigh](#), NACD Senior Director of Legislative Affairs, or [Brian Callahan](#), NACD Senior Director of Legislative Affairs.

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## Resources

### NACD

- NACD Webinar Superfund Tax Reinstatement - What Does This Mean for Chemical Manufacturers/Importers and Distributors?
  - o [Webinar Recording](#)
  - o [Webinar Slides](#)

### Internal Revenue Service

- [Notice 2021-66 \(Initial List of Taxable Substances\)](#)
- [Notice 2022-15 \(Temporary Relief from Penalties for Failure to Deposit\)](#)
- [Instructions for Form 720](#)

### Other

- [Bergeson & Campbell PC Regulatory Developments - Reinstated Superfund Excise Tax Imposed on Certain Chemical Substances](#)
- [Mayer Brown Legal Update on Chemical Superfund Reinstatement](#)
- [Holland & Knight Alert on Revitalization on Superfund Tax](#)





## Tables

### IIJA List of Taxable Chemicals and Tax Rate

| “In the case of:           | The tax is the following amount per ton: |
|----------------------------|--|
| Acetylene .....            | \$9.74                                   |
| Benzene .....              | 9.74                                     |
| Butane .....               | 9.74                                     |
| Butylene .....             | 9.74                                     |
| Butadiene .....            | 9.74                                     |
| Ethylene .....             | 9.74                                     |
| Methane .....              | 6.88                                     |
| Napthalene .....           | 9.74                                     |
| Propylene .....            | 9.74                                     |
| Toluene .....              | 9.74                                     |
| Xylene .....               | 9.74                                     |
| Ammonia .....              | 5.28                                     |
| Antimony .....             | 8.90                                     |
| Antimony trioxide .....    | 7.50                                     |
| Arsenic .....              | 8.90                                     |
| Arsenic trioxide .....     | 6.82                                     |
| Barium sulfide .....       | 4.60                                     |
| Bromine .....              | 8.90                                     |
| Cadmium .....              | 8.90                                     |
| Chlorine .....             | 5.40                                     |
| Chromium .....             | 8.90                                     |
| Chromite .....             | 3.04                                     |
| Potassium dichromate ..... | 3.38                                     |
| Sodium dichromate .....    | 3.74                                     |
| Cobalt .....               | 8.90                                     |
| Cupric sulfate .....       | 3.74                                     |
| Cupric oxide .....         | 7.18                                     |
| Cuprous oxide .....        | 7.94                                     |
| Hydrochloric acid .....    | 0.58                                     |
| Hydrogen fluoride .....    | 8.46                                     |
| Lead oxide .....           | 8.28                                     |
| Mercury .....              | 8.90                                     |
| Nickel .....               | 8.90                                     |
| Phosphorus .....           | 8.90                                     |
| Stannous chloride .....    | 5.70                                     |
| Stannic chloride .....     | 4.24                                     |
| Zinc chloride .....        | 4.44                                     |
| Zinc sulfate .....         | 3.80                                     |
| Potassium hydroxide .....  | 0.44                                     |
| Sodium hydroxide .....     | 0.56                                     |
| Sulfuric acid .....        | 0.52                                     |
| Nitric acid .....          | 0.48.”.                                  |

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Original Taxable Substances Listed in 26 U.S.C. Section 4672(a)(3)

**(3) Initial list of taxable substances**

|  |                                     |
|--|-------------------------------------|
| Cumene                                   | Methylene chloride                  |
| Styrene                                  | Polypropylene                       |
| Ammonium nitrate                         | Propylene glycol                    |
| Nickel oxide                             | Formaldehyde                        |
| Isopropyl alcohol                        | Acetone                             |
| Ethylene glycol                          | Acrylonitrile                       |
| Vinyl chloride                           | Methanol                            |
| Polyethylene resins, total               | Propylene oxide                     |
| Polybutadiene                            | Polypropylene resins                |
| Styrene-butadiene, latex                 | Ethylene oxide                      |
| Styrene-butadiene, snpf                  | Ethylene dichloride                 |
| Synthetic rubber, not containing fillers | Cyclohexane                         |
| Urea                                     | Isophthalic acid                    |
| Ferronickel                              | Maleic anhydride                    |
| Ferrochromium nov 3 pct                  | Phthalic anhydride                  |
| Ferrochrome ov 3 pct. carbon             | Ethyl methyl ketone                 |
| Unwrought nickel                         | Chloroform                          |
| Nickel waste and scrap                   | Carbon tetrachloride                |
| Wrought nickel rods and wire             | Chromic acid                        |
| Nickel powders                           | Hydrogen peroxide                   |
| Phenolic resins                          | Polystyrene homopolymer resins      |
| Polyvinylchloride resins                 | Melamine                            |
| Polystyrene resins and copolymers        | Acrylic and methacrylic acid resins |
| Ethyl alcohol for nonbeverage use        | Vinyl resins                        |
| Ethylbenzene                             | Vinyl resins, NSPF.                 |



## IRS Initial List of Taxable Substances Under Section 4672(a)

1. 1,4 butanediol
2. 1,3-butylene glycol
3. 1,5,9-cyclododecatriene
4. 2-ethyl hexanol
5. 2-ethylhexyl acrylate
6. 2,2,4-trimethyl-1,3-pentanediol diisobutyrate
7. 2,2,4-trimethyl-1,3-pentanediol monoisobutyrate
8. acetic acid
9. acetylene black
10. adipic acid
11. adiponitrile
12. allyl chloride
13. alpha-methylstyrene
14. aniline
15. benzaldehyde
16. benzoic acid
17. bisphenol-A
18. butanol
19. butyl acrylate
20. butyl benzyl phthalate
21. chlorinated polyethylene
22. cyclododecanol
23. decabromodiphenyl oxide
24. di-2 ethyl hexyl phthalate
25. di-n-hexyl adipate
26. diethanolamine
27. diglycidyl ether of bisphenol-A
28. diisopropanolamine
29. dimethyl terephthalate
30. dimethyl-2, 6-naphthalene dicarboxylate
31. diphenyl oxide
32. diphenylamine
33. epichlorohydrin
34. ethyl acetate
35. ethyl acrylate
36. ethyl chloride
37. ethylene dibromide
38. ethylenebistetraabromophthalimide
39. formic acid
40. glycerine
41. hexabromocyclododecane
42. hexamethylenediamine
43. isobutyl acetate
44. isopropyl acetate
45. linear alpha olefins
46. methyl acrylate
47. methyl chloroform



48. methyl isobutyl ketone
49. methyl methacrylate
50. monochlorobenzene
51. monoethanolamine
52. monoisopropanolamine
53. normal butyl acetate
54. normal propyl acetate
55. nylon 6/6
56. ortho-dichlorobenzene
57. ortho-nitrochlorobenzene
58. paraformaldehyde
59. para-dichlorobenzene
60. para-nitrochlorobenzene
61. para-nitrophenol
62. pentaerythritol
63. perchloroethylene
64. phenol
65. phosphorous pentasulfide
66. phosphorous trichloride
67. poly 1,4 butyleneterephthalate
68. poly (69/31 ethylene/cyclohexylenedimethylene terephthalate)
69. poly (96.5/3.5 ethylene/cyclohexylenedimethylene terephthalate)
70. poly (98.5/1.5 ethylene/cyclohexylenedimethylene terephthalate)
71. poly(ethyleneoxy)glycerol
72. poly(propylene)glycol
73. poly(propylene/ethylene)glycol
74. poly(propyleneoxy)glycerol
75. poly(propyleneoxy)sucrose
76. poly(propyleneoxy/ethyleneoxy)benzenediamine
77. poly(propyleneoxy/ethyleneoxy)diamine
78. poly(propyleneoxy/ethyleneoxy)glycerol
79. poly(propyleneoxy/ethyleneoxy)sucrose
80. polyalphaolefins
81. polybutene
82. polybutylene
83. polybutylene/ethylene
84. polycarbonate
85. polyethylene terephthalate pellets
86. propanol
87. sodium nitriolotriacetate monohydrate
88. synthetic linear fatty alcohols
89. synthetic linear fatty alcohol ethoxylates
90. terephthalic acid
91. tetrabromobisphenol-A
92. tetrachlorophthalic anhydride
93. tetrahydrofuran
94. texanol benzyl phthalate
95. toluene diisocyanate



96. toluenediamine
97. trichloroethylene
98. triethanolamine
99. triisopropanolamine
100. trimethylolpropane
101. vinyl acetate

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