

country designated by the Secretary of State as a place where living conditions are extremely difficult, notably unhealthy, or where excessive physical hardships exist and for which a post differential of 15 percent or more would be provided under section 5925(b) of Title 5 of the U.S. Code to any officer or employee of the U.S. government present at that place. Corp N has a policy of paying its employees a \$65 premium per day for each day worked in countries so designated. The \$65 premium per day does not exceed the maximum amount that the U.S. government would pay its officers or employees stationed in Country Y. Because A performed services in Country Y for 30 days, she earned additional compensation of \$1,950. The \$1,950 is considered a hazardous duty or hardship pay fringe benefit and is sourced under paragraphs (b)(2)(ii)(B) and (D)(5) of this section based on the location of the hazardous or hardship duty zone, Country Y. Accordingly, A included the amount of the hazardous duty or hardship pay fringe benefit (\$1,950) in her gross income as income from sources without the United States.

*Example 5.* (i) During 2006 and 2007, Corp P, a domestic corporation, employed four United States citizens, E, F, G, and H to work in its manufacturing plant in Country V. As part of his or her compensation package, each employee arranged for local transportation unrelated to Corp P's business needs. None of the local transportation fringe benefit is excluded from the employee's gross income as a qualified transportation fringe benefit under section 132(a)(5) and (f).

(ii) Under the terms of the compensation package that E negotiated with Corp P, Corp P permitted E to use an automobile owned by Corp P. In addition, Corp P agreed to reimburse E for all expenses incurred by E in maintaining and operating the automobile, including gas and parking. Provided that the local transportation fringe benefit meets the requirements of paragraph (b)(2)(ii)(D)(3) of this section, E's compensation with respect to the fair rental value of the automobile and reimbursement for the expenses E incurred is sourced under paragraphs (b)(2)(ii)(B) and (D)(3) of this section based on E's principal place of work in Country V. Thus, the local transportation fringe benefit will be included in E's gross income as income from sources without the United States.

(iii) Under the terms of the compensation package that F negotiated with Corp P, Corp P let F use an automobile owned by Corp P. However, Corp P did not agree to reimburse F for any expenses incurred by F in maintaining and operating the automobile. Provided that the local transportation fringe benefit meets the requirements of paragraph (b)(2)(ii)(D)(3) of this section, F's compensation with respect to the fair rental value of the automobile is sourced under paragraphs (b)(2)(ii)(B) and (D)(3) of this section based on F's principal place of work in Country V. Thus, the local transportation fringe benefit will be included in F's gross income as income from sources without the United States.

(iv) Under the terms of the compensation package that G negotiated with Corp P, Corp P agreed to reimburse G for the purchase

price of an automobile that G purchased in Country V. Corp P did not agree to reimburse G for any expenses incurred by G in maintaining and operating the automobile. Because the cost to purchase an automobile is not a local transportation fringe benefit as defined in paragraph (b)(2)(ii)(D)(3) of this section, the source of the compensation to G will be determined pursuant to paragraph (b)(2)(ii)(A) or (C) of this section.

(v) Under the terms of the compensation package that H negotiated with Corp P, Corp P agreed to reimburse H for the expenses that H incurred in maintaining and operating an automobile, including gas and parking, which H purchased in Country V. Provided that the local transportation fringe benefit meets the requirements of paragraph (b)(2)(ii)(D)(3) of this section, H's compensation with respect to the reimbursement for the expenses H incurred is sourced under paragraphs (b)(2)(ii)(B) and (D)(3) of this section based on H's principal place of work in Country V. Thus, the local transportation fringe benefit will be included in H's gross income as income from sources without the United States.

*Example 6.* (i) On January 1, 2006, Company Q compensates employee J with a grant of options to which section 421 does not apply that do not have a readily ascertainable fair market value when granted. The stock options permit J to purchase 100 shares of Company Q stock for \$5 per share. The stock options do not become exercisable unless and until J performs services for Company Q (or a related company) for 5 years. J works for Company Q for the 5 years required by the stock option grant. In years 2006–08, J performs all of his services for Company Q within the United States. In 2009, J performs 1/2 of his services for Company Q within the United States and 1/2 of his services for Company Q without the United States. In year 2010, J performs his services entirely without the United States. On December 31, 2012, J exercises the options when the stock is worth \$10 per share. J recognizes \$500 in taxable compensation (( $\$10 - \$5$ )  $\times$  100) in 2012.

(ii) Under the facts and circumstances, the applicable period is the 5-year period between the date of grant (January 1, 2006) and the date the stock options become exercisable (December 31, 2010). On the date the stock options become exercisable, J performs all services necessary to obtain the compensation from Company Q. Accordingly, the services performed after the date the stock options become exercisable are not taken into account in sourcing the compensation from the stock options. Therefore, pursuant to paragraph (b)(2)(ii)(A), since J performs 3 1/2 years of services for Company Q within the United States and 1 1/2 years of services for Company Q without the United States during the 5-year period, 7/10 of the \$500 of compensation (or \$350) recognized in 2012 is income from sources within the United States and the remaining 3/10 of the compensation (or \$150) is income from sources without the United States.

\* \* \* \* \*

(d) *Effective date.* \* \* \* Paragraph (b) and the first sentence of paragraph (a)(1)

of this section apply to taxable years beginning on or after July 14, 2005.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry for § 1.861–4 in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.861–4 .....	1545–1900
* * * * *	* * * * *

**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: July 5, 2005.

**Eric Solomon,**  
*Acting Deputy Assistant Secretary for Tax Policy.*  
[FR Doc. 05–13681 Filed 7–13–05; 8:45 am]  
**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 9213]

**RIN 1545–AV01**

**Return of Property in Certain Cases**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations that amend regulations under section 6343 of the Internal Revenue Code (Code) relating to the return of property in certain cases. The regulations reflect changes made to section 6343 of the Code by the Taxpayer Bill of Rights 2. The regulations also reflect changes affecting levies enacted by the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect taxpayers seeking the return of levied property from the Internal Revenue Service (IRS).

**DATES:** *Effective Date:* These regulations are effective July 14, 2005.

*Applicability Date:* For dates of applicability, see § 301.6343-3(k).

**FOR FURTHER INFORMATION CONTACT:** Kevin B. Connelly, (202) 622-3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the return of property under section 6343 of the Code. Section 501(b) of the Taxpayer Bill of Rights 2 (TBOR2), Public Law 104-168 (110 Stat. 1452), amended section 6343 to authorize the IRS to return levied property in certain cases. The purpose of this provision is, to the extent possible, to return the taxpayer to the position the taxpayer would have been in had the levy not been issued. No interest shall be paid with respect to property returned to the taxpayer under this provision. These final regulations reflect the amendments made by section 501(b) of TBOR2.

These regulations also reflect amendments made by the Internal Revenue Service Restructuring and Reform Act (RRA 1998), Public Law 105-206 (112 Stat. 685), which added new sections 6331(i) and (j) to the Code to provide that no levy may be made during the pendency of proceedings for refund of divisible taxes or prior to completion of an investigation of the status of property that is to be sold under section 6335. RRA 1998 also added section 6331(k) to the Code, which provides that no levy may be made during the period an offer-in-compromise or an installment agreement is pending or in effect. In addition, RRA 1998 added section 6330, which provides in certain circumstances for notice and an opportunity for a hearing before a levy can be made.

**Explanation of Provisions**

On February 14, 2001, a notice of proposed rulemaking (REG-101520-97) reflecting these changes was published in the **Federal Register** (66 FR 10249). No written comments were received in response to the notice of proposed rulemaking and no public hearing was requested, scheduled or held. These final regulations adopt the provisions of the notice of proposed rulemaking without change.

*Comments on the Proposed Regulation*

None.

*Modifications of Proposed Regulation*

None.

**Special Analyses**

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection Bankruptcy & Summons Division, CC:PA:CBS, IRS.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 301 is amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

*Authority:* 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 301.6343-3 is added to read as follows:

**§ 301.6343-3 Return of property in certain cases.**

(a) *In general.* If money has been levied upon and applied toward the taxpayer's liability, or property has been levied upon and sold, and the receipts have been applied toward the taxpayer's liability, or property has been levied upon and purchased by the United States and the United States still possesses the property, and the Commissioner determines that any of the conditions in paragraph (c) of this section exist, the Commissioner may return—

- (1) An amount of money equal to the amount of money levied upon;
- (2) An amount of money equal to the amount of money received by the

United States from a sale of the property; or

(3) The specific property levied upon and purchased by the United States.

(b) *Return of levied upon property in possession of the Internal Revenue Service (IRS) pending sale under section 6335.* Other than as provided in § 301.6343-1(b) or in paragraph (d) of this section, the Commissioner, in his or her discretion, may return levied upon property that is in the possession of the United States pending sale under section 6335.

(c) *Conditions authorizing the return of property.* The Commissioner may return property upon determining that one of the following conditions exist:

(1) *Premature or not in accordance with administrative procedures.* The levy was premature or otherwise not in accordance with the administrative procedures of the Secretary.

(2) *Installment agreement.* Subsequent to the levy, the taxpayer enters into an agreement under section 6159 to satisfy the liability for which the levy was made by means of installment payments. If, however, the agreement specifically provides that already levied upon property will not be returned under section 6343(d), the Commissioner may not grant a request for return of property under this paragraph (c)(2).

(3) *Facilitate collection.* The return of property will facilitate the collection of the tax liability for which the levy was made.

(4) *Best interests of the United States and the taxpayer—(i) In general.* The taxpayer or the National Taxpayer Advocate (or his or her delegate) has consented to the return of property, and the return of property would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate (or his or her delegate), and in the best interest of the United States, as determined by the Commissioner.

(ii) *Best interest of the taxpayer.* The National Taxpayer Advocate (or his or her delegate) generally will determine whether the return of property is in the best interest of the taxpayer. If, however, a taxpayer requests the Commissioner to return property and has not specifically requested the National Taxpayer Advocate (or his or her delegate) to determine the taxpayer's best interest, a finding by the Commissioner that the return of property is in the best interest of the taxpayer will be sufficient to support the return of property. Only the National Taxpayer Advocate (or his or her delegate) may determine that a return of property is not in the best interest of the taxpayer.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (c):

*Example 1.* A owes \$1,000 in Federal income taxes. The IRS levies on a broker with respect to a money market account belonging to the taxpayer and receives payment from the broker which it applies to the taxpayer's outstanding liability. However, the IRS failed to follow procedure provided by the Internal Revenue Manual (but not required by statute) with regard to managerial approval prior to the making of the levy. The Commissioner may return an amount of money equal to the amount of money the IRS levied upon and applied toward the taxpayer's tax liability.

*Example 2.* B owes \$1,000 in Federal income taxes. The IRS levies on a bank with respect to a savings account belonging to the taxpayer and receives funds from the bank, which it applies to the taxpayer's liability. Subsequent to the levy, B enters into an installment agreement, under which B will pay timely installments to satisfy the entire liability. The installment agreement does not by its terms preclude the return of levied upon property. The revenue officer verifies that B is financially capable of paying the entire liability, including accruals, in the agreed-upon installment payments. The Commissioner may return an amount of money equal to the amount of money levied upon and applied toward the taxpayer's liability.

*Example 3.* C owns a house that is deteriorating and in unsalable condition. C is in the process of renovating the house for sale when the IRS levies upon C's bank account for the payment of a \$20,000 outstanding Federal tax liability and receives funds in the amount of \$3,000, which it applies toward C's liability. A notice of federal tax lien is the only lien encumbering the house. C requests that an amount of money equal to the amount seized from the bank account be returned so that C can complete the renovations on the house. Without the funds, C will be unable to complete the renovations and sell the house. Upon examination, the Commissioner determines that the IRS will be able to collect the entire tax liability if C's house is restored to salable condition. If the National Taxpayer Advocate, or the Commissioner in lieu of the National Taxpayer Advocate, determines that the return of the seized money is in the taxpayer's best interest, the Commissioner may return an amount of money equal to the amount seized from the bank account, in the best interest of the taxpayer and the United States.

(d) *Best Interests of the United States and the taxpayer to release levy and return of property where levy made in violation of law—(1) In general.* If the IRS makes a levy in violation of the law, it is in the best interests of the United States and the taxpayer to release the levy and the IRS will return to the taxpayer any property obtained pursuant to the levy. For example, the IRS will release the levy and return the taxpayer's property if the levy was made—

(i) Without giving the requisite thirty-day notice of the right to a hearing under section 6330;

(ii) During the pendency of a proceeding for refund of divisible tax in violation of section 6331(i);

(iii) Before investigation of the status of levied upon property in violation of section 6331(j);

(iv) During the pendency of an offer-in-compromise in violation of section 6331(k)(1); or

(v) During the period an offer to enter into an installment agreement is pending (or for 30 days following the rejection of an offer, or, if the rejection is timely appealed, during the period that the appeal is pending) or during the period an installment agreement is in effect (or during the 30 days following a termination or, if a timely appeal of termination is filed, during the period the appeal is pending) in violation of section 6331(k)(2).

(2) *Property may not be credited to outstanding liability without the taxpayer's permission.* When the release of a levy and the return of property are required under this paragraph (d), the property or the proceeds from the sale of the property received by the IRS pursuant to the levy must be returned to the taxpayer unless the taxpayer requests otherwise. The property or proceeds of sale may not be credited to any outstanding tax liability of the taxpayer, including the one with respect to which the IRS made the levy, without the written permission of the taxpayer.

(e) *Time of return.* Levied upon property in possession of the IRS (other than money) may be returned under paragraphs (c) and (d) of this section at any time. An amount of money equal to the amount of money levied upon or received from a sale of property may be returned at any time before the expiration of 9 months from the date of the levy. When a request for the return of money filed in accordance with paragraph (h) of this section is filed before the expiration of the 9-month period, or a determination to return an amount of money is made before the expiration of the 9-month period, the money may be returned within a reasonable period of time after the expiration of the 9-month period if additional time is necessary for investigation or processing.

(f) *Purchase by the United States.* For purposes of paragraph (a)(2) of this section, if property is declared purchased by the United States at a sale pursuant to section 6335(e)(1)(C), the United States will be treated as having received an amount of money equal to the minimum price determined by the Commissioner before the sale.

(g) *Determinations by the Commissioner.* The Commissioner must determine whether any of the conditions authorizing the return of property exists if a taxpayer submits a request for the return of property in accordance with paragraph (h) of this section. The Commissioner also may make this determination independently. If the Commissioner determines that conditions authorizing the return of property are not present, the Commissioner may not authorize the return of property. If the Commissioner determines that conditions authorizing the return of property are present, the Commissioner may (but is not required to, unless the reason for the return of property is that the levy was made in violation of law and is governed by paragraph (d) of this section) authorize the return of property. If the Commissioner decides independently to return property under paragraph (c)(4) of this section based on the best interests of the taxpayer and the United States, the taxpayer or the National Taxpayer Advocate (or his or her delegate) must consent to the return of property.

(h) *Procedures for request for the return of property—(1) Manner.* A request for the return of property must be made in writing to the address on the levy form.

(2) *Form.* The written request must include the following information—

(i) The name, current address, and taxpayer identification number of the person requesting the return of money (or property purchased by the United States);

(ii) A description of the property levied upon;

(iii) The date of the levy; and

(iv) A statement of the grounds upon which the return of money is being requested (or property purchased by the United States).

(i) *No interest.* No interest will be paid on any money returned under this section.

(j) *Administrative collection upon default.* If the Commissioner returns property under this section, and the taxpayer fails to pay the previously assessed liability for which the levy was made on the returned property, the Commissioner may administratively collect the liability. Collection may include levying again on the returned property as long as statutory and administrative requirements are followed.

(k) *Effective date.* This section is applicable on July 14, 2005.

Approved: June 30, 2005.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 05-13801 Filed 7-13-05; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 63**

[OAR-2003-0185; FRL-7938-5]

RIN 2060-AE46

**National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amendments.

**SUMMARY:** EPA is amending the national emission standards for hazardous air pollutants (NESHAP) for primary copper smelting to correct the monitoring requirements for control systems other than baghouses and venturi wet scrubbers.

**DATES:** Effective July 14, 2005.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. OAR-2003-0185. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR-2003-0185, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Fruh, Emission Standards Division (C439-02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-2837, e-mail address: [fruh.steve@epa.gov](mailto:fruh.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry .....	331411	Primary copper smelters.
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1441 of the NESHAP for primary copper smelting. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). A copy of the final amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

**I. Background**

We promulgated the NESHAP for primary copper smelting (40 CFR 63, subpart QQQ) on June 12, 2002 (68 FR 40478). The final rule establishes emissions limitations and work practice

standards for primary copper smelters that use batch copper converters and are a major source of hazardous air pollutant (HAP) emissions. We received a petition (included in the docket for today's final amendments) asking us to review the requirements for specific operating parameters that must be monitored when an owner or operator uses a control device other than a baghouse (fabric filter) or a venturi wet scrubber to comply with the rule. Upon review of the monitoring requirements in subpart QQQ, we discovered an error in the regulatory language for the final rule that references the operating parameters to be monitored when a control device other than a baghouse or a venturi wet scrubber is used.

If an owner or operator of a primary copper smelter elects to use a control device other than a baghouse or venturi wet scrubber for an emissions source subject to a particulate emissions limit under the final rule (*e.g.*, use an electrostatic precipitator), the rule requires that the owner or operator continuously monitor and record appropriate operating parameters for the type of control device used to demonstrate compliance with the applicable emissions standard. In such cases, the final rule does not specify the individual operating parameters that

must be monitored. Instead, the owner or operator is required to select specific operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance. During the initial performance test that the owner or operator conducts to demonstrate compliance with the applicable emissions standard, operating limits for each of the selected operating parameters are established on a site-specific basis using the actual operating values for the control device recorded while the performance test is conducted. Continuous compliance with the emissions standard is demonstrated by maintaining the selected operating parameters within the operating limits established during the performance test.

Under the monitoring requirements for control devices other than baghouses or venturi wet scrubbers in 40 CFR 63.1452(d) and 40 CFR 63.1453(e), language referencing the operating parameters for venturi wet scrubbers (*i.e.*, hourly average pressure drop and water flow) was incorrectly included in these paragraphs. In place of the reference to venturi wet scrubbers, the rule language in 40 CFR 63.1452(d) and 40 CFR 63.1453(e) should implement