

Those stock contractors who move their bulls interstate only between Class Free States will realize a cost savings of about \$25 to \$30 per animal per year (*i.e.*, the cost of a brucellosis test and associated veterinary fees). Thus, a stock contractor with 20 bulls will see a savings of about \$500 to \$600 per year in testing expenses.

While stock contractors are not specifically categorized in the Small Business Administration's (SBA) table of small business size standards, they could be considered under either Subsector 112 of that table (Animal Production), which has a small entity threshold of \$750,000, or Subsector 711 (Performing Arts, Spectator Sports and Related Industries), which has a small entity threshold of \$6 million in annual sales. According to the National Agricultural Statistics Service, over 99 percent of all operations raising cattle and calves (\$750,000 threshold) are small entities, while large operations account for less than 1 percent. Therefore, it is likely that most, if not all, stock contractors would be considered small entities under SBA size standards.

Given that the savings per animal in foregone testing costs (\$25 to \$30) can be expected to make up only a small percentage of the total expenses associated with maintaining a rodeo bull (*e.g.*, feed and routine veterinary care), the economic impact of this rule is expected to be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCellosIS

1. The authority citation for part 78 is revised to read as follows:

Authority: 7 U.S.C. 8303–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. Section 78.14 is amended by revising paragraph (a)(1) to read as follows:

§ 78.14 Rodeo bulls.

(a) * * *

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement: *Provided, however*, That the official test is not required for a bull that is moved only between Class Free States;

* * * * *

Done in Washington, DC, this 19th day of November 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29753 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–57; Amendment 39–12938; AD 2002–22–12]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–22–12, applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses, that was published in the **Federal Register** on November 8, 2002 (67 FR 68024). An engine model referenced in the Applicability paragraph in the regulatory information is incorrect. This document corrects that reference. In all

other respects, the original document remains the same.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc. 02–28113 applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses, was published in the **Federal Register** on November 8, 2002 (67 FR 68024). The following correction is needed:

§ 39.13 [Corrected]

On page 68025, in the Regulatory Information, third column, third paragraph, thirteenth line, “General Electric CF6–80C and CFM–56 series, * * *” is corrected to read “CF6–80C and CFM56–5C, * * *.”

Issued in Burlington, MA, on November 14, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29673 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9023]

RIN 1545–BA39

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these final regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent and do not possess the required

individual taxpayer identification number.

DATES: *Effective Date:* These regulations are effective November 22, 2002.

Applicability Date: For dates of applicability, see §§ 1.1441-6(h)(1) and 301.6109-1(g)(3).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2002, the IRS and Treasury published a notice of proposed rulemaking by cross reference to temporary regulations (REG-159079-01) in the **Federal Register** (67 FR 2387), and temporary regulations in TD 8977 (67 FR 2327), under section 1441 and conforming changes to the regulations under section 6109 of the Internal Revenue Code (Code). Written comments and requests for a public hearing were solicited. Several comments were received and are discussed below. No public hearing was requested. After consideration of all the comments, the proposed and temporary regulations under sections 1441 and 6109 are adopted as final regulations with no changes.

Summary of Public Comments and Explanation of Revisions

A. § 1.1441-6(c) Exemption From Requirement To Furnish a Taxpayer Identifying Number

Section 1.1441-6(c) provides an exemption from the requirement to furnish a taxpayer identifying number (TIN) for certain types of income.

One commentator suggested that a foreign individual receiving a distribution of a death benefit from a U.S. retirement plan should be allowed to claim treaty benefits without obtaining an individual taxpayer identifying number (ITIN).

This comment is not directly related to these proposed regulations. Exemptions from the requirement to furnish a TIN were addressed in final regulations promulgated under section 1441 (TD 8734; 1997-2 C.B. 109). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441-6(c).

B. § 1.1441-1(e)(4)(ii)(B)(1) Indefinite Validity of a Withholding Certificate Provided Certain Conditions Are Met

Under § 1.1441-1(e)(4)(ii)(A), a Form W-8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," generally will expire either at the end of the third calendar

year following the date the certificate was signed or when a change in circumstances occurs that makes any information on the Form W-8BEN incorrect, whichever is earlier. Section 1.1441-1(e)(4)(ii)(B)(1) permits a Form W-8BEN to remain valid indefinitely, provided the withholding agent reports at least one payment annually and the certificate contains a TIN.

One commentator requested that a Form W-8BEN remain valid indefinitely without regard to the requirement that it contain a TIN. The commentator also proposed that a Form W-8BEN remain valid indefinitely, even if the withholding agent reports no annual payments to the beneficial owner.

This comment is not directly related to these proposed regulations. The period of validity of a beneficial owner's withholding certificate was addressed in final regulations promulgated under section 1441 (TD 8734). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441-1(e)(4)(ii)(B)(1). The IRS and Treasury continue to believe that it is important for taxpayers to re-certify status periodically when no payments are reported because withholding agents would be unaware of any change in the taxpayer's status.

C. § 1.1441-6(h)(2)(i) Special Acceptance Agent Requirement

The proposed regulations provide that a withholding agent, who is also an acceptance agent, may enter into an agreement with the IRS that permits the acceptance agent to request an ITIN on an expedited basis because of the circumstances of payment or the unexpected nature of payments required to be made by the payor (special acceptance agent agreement). One commentator requested that certifying acceptance agents, as described in Rev. Proc. 96-52 (1996-2 C.B. 372), be permitted to utilize the expedited process, described in § 1.1441-6(h)(2), without entering into a special acceptance agent agreement with the IRS.

The commentator's suggestion was not adopted. The purpose of entering into a special acceptance agent agreement with the IRS is to provide notice to the IRS that the acceptance agent is seeking to utilize the expedited process and to have the acceptance agent agree to follow the special procedures necessary to complete that process. In contrast, a certifying acceptance agent agreement permits the acceptance agent to review and certify the applicant's ability to qualify for an ITIN. Because the purpose and scope of

a certifying acceptance agent agreement differ from the purpose and scope of the special acceptance agent agreement, a separate agreement permitting the use of the expedited process must be entered into between the acceptance agent and the IRS.

D. § 1.1441-6(h)(2)(ii) Unexpected Payment Requirement

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the proposed regulations provide a limited exception to the requirement that a foreign individual provide a TIN to the withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. One commentator requested that the IRS should eliminate the unexpected payment requirement of § 1.1441-6(h)(2)(ii) and permit the use of the expedited process by any foreign individual regardless of whether the payor or payee knows of the impending payment.

The commentator's suggestion was not adopted. The expedited process has been initiated in limited circumstances in order to lessen the administrative burden on foreign individuals receiving unexpected payments. Although the IRS is continuing to consider increasing the availability of this expedited process in the future, the particular administrative issue addressed in these regulations generally does not exist with respect to expected payments. Thus, there is not a compelling reason to extend the expedited process at this time.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities; therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were 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 Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.1441-0 is amended by redesignating the entries for paragraph (g) of § 1.1441-6 as paragraph (h) and revising the entry for newly designated paragraph (h), and adding new entries for paragraphs (g) through (g)(5) to read as follows:

§ 1.1441-0 Outline of regulations provisions for section 1441.

* * * * *

(g) Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits.

- (1) General rule.
- (2) Special rule.
- (3) Requirement that an ITIN be requested during the first business day following payment.
- (4) Definition of unexpected payment.
- (5) Examples.
- (h) Effective dates.

* * * * *

Par. 3. Section 1.1441-1 is amended by adding paragraph (b)(7)(i)(D) to read as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

- (b) * * *
- (7) * * *
- (i) * * *

(D) The withholding agent has complied with the provisions of § 1.1441-6(c) or (g).

* * * * *

§ 1.1441-1T [Removed]

Par. 4. Section 1.1441-1T is removed.

Par. 5. Section 1.1441-6 is amended as follows:

1. The fifth sentence of paragraph (b)(1) is amended by removing the

language “and § 1.1441-6T(h)” and adding “and § 1.1441-6(g)” in its place.

2. Paragraph (g) is redesignated as paragraph (h) and new paragraph (g) is added.

3. Newly designated paragraph (h) section heading is revised.

4. Newly designated paragraph (h)(1) is revised.

5. Newly designated paragraph (h)(2) is amended by removing the language “(g)(2)” and adding “(h)(2)” in its place each place it appears in the third and fourth sentences.

The addition and revisions read as follows:

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits—(1) General rule.* Except as provided in paragraph (c) or (g)(2) of this section, for purposes of paragraph (b)(1) of this section, a withholding agent may not rely on a beneficial owner withholding certificate, described in paragraph (b)(1) of this section, that does not include the beneficial owner’s taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of paragraph (b)(1) of this section, a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner’s TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109-1(d)(3)(iv) of this chapter (the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS) because the IRS is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (g)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W-7 “Application for IRS Individual Taxpayer Identification Number”) that complies with the requirements of § 301.6109-1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109-1(d)(3)(iv)(A)(4) of this chapter, to the IRS during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (g)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the United States has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the United States for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins \$5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W-7, including the required certification, for G, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the \$5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday

afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the \$5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the United States has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the United States. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P \$5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W-7, including the required certification, for P, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay \$5000 to P without withholding U.S. tax based on the treaty exemption.

(h) *Effective dates*—(1) *General rule.* This section applies to payments made after December 31, 2000, except for paragraph (g) of this section which applies to payments made after December 31, 2001.

* * * * *

Section 1.1441-6T [Removed]

Par. 6. Section 1.1441-6T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority for part 301 continues to read in part as follows:

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

Par. 8. In § 301.6109-1, paragraph (g)(3) is revised to read as follows:

§ 301.6109-1 Identifying numbers.

* * * * *

(g) * * *

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

* * * * *

§ 301.6109-1T [Removed]

Par. 9. Section 301.6109-1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 13, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02-29494 Filed 11-21-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans-02-022]

RIN 2115-AA97

Safety Zone; Lower Mississippi River, Miles 87.2 to 91.2, Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

the Lower Mississippi River beginning at mile 87.2 and ending at mile 91.2, above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the cruise ship (C/S) CONQUEST beneath the Entergy Corporation power cable located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or his designated representative.

DATES: This rule is effective from 4:30 a.m. on November 12, 2002 until 8 p.m. on March 2, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans-02-022] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, Louisiana, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Matthew Dooris, Marine Safety Office New Orleans, at (504) 589-4251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST under the Entergy Corporation power cable, Lower Mississippi River, mile marker 89.2, above Head of Passes, New Orleans, Louisiana.

Background and Purpose

The Captain of the Port New Orleans is establishing a temporary safety zone on the Lower Mississippi River beginning at mile 87.2 and ending at mile 91.2, above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential