DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[TD 9421]

RIN 1545–BE70

Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes

AGENCY: Internal Revenue Service (IRS), Department of the Treasury (Treasury).

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding the generation-skipping transfer (GST) tax consequences of the severance of a trust in a manner that is effective under state law, but that does not meet the requirements of a qualified severance under section 2642(a)(3) of the Internal Revenue Code (Code). These final regulations also provide guidance regarding the GST tax consequences of a qualified severance of a trust with an inclusion ratio between zero and one into more than two resulting trusts. These final regulations also provide special funding rules applicable to the non-pro rata division of certain assets between or among resulting trusts. The regulations will affect trusts that are subject to the GST tax.

DATES: *Effective Date:* The regulations are effective July 31, 2008.

Applicability Date: For dates of applicability, see § 26.2642–6(k)(1).

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 2642(a)(3) was added to the Code by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16 (115 Stat. 38 (2001). Under section 2642(a)(3), if a trust is divided into two or more trusts in a ''qualified severance,'' the separate trusts resulting from the severance (resulting trusts), which may have different inclusion ratios, will be recognized as separate trusts for GST tax purposes. (As used in this guidance, ''resulting trust'' has no relation to a resulting trust recognized under the common law of trusts and principles of equity.) Once the resulting trusts are recognized as separate trusts, the transferor's lifetime GST tax exemption may be allocated separately to either trust. In addition, whether or not a GST taxable event occurs is determined separately for each resulting trust.

On August 24, 2004, proposed regulations under section 2642(a)(3) regarding qualified severances were published in the **Federal Register** (REG–145987–03, 2004–39 IRB 519, 69 FR 51967). Final regulations were published on August 2, 2007 (TD 9348, 2007–37 IRB 563, 72 FR 42291). The Treasury Department and IRS determined that certain comments received in response to the proposed regulations, and certain additional rules under section 2642(a)(3), should be addressed in a separate notice of proposed rulemaking. On August 2, 2007, the **Federal Register** published a notice of proposed rulemaking (REG–128843–05, 2007–37 IRB 587, 72 FR 42340) addressing those comments and rules. The IRS received one submission containing several comments on the notice of proposed rulemaking. The comments contained in the submission are discussed below. No public hearing was requested or held.

Explanation of Provisions and Summary of Comments

Section 26.2642–6(d)(4) of the existing regulations provides that each of the trusts resulting from a qualified severance must be funded with a fraction or percentage of the original trust, and that the sum of those fractions or percentages must be one or one hundred percent, respectively. The existing regulations provide that this requirement may be satisfied by the funding of each resulting trust with that trust's fraction or percentage share of each asset held by the original trust (a pro rata division). Section 26.2642–6(d)(4) of the proposed regulations permits the funding of the resulting trusts on a non-pro rata basis, provided that a special funding rule is also satisfied. Specifically, this section of the proposed regulations provides that, if the assets of the original trust are divided between or among the resulting trusts on a non-pro rata basis, no discounts or other reductions from the value of the asset owned by the original trust, arising by reason of the division of the original trust's interest in the asset between or among the resulting trusts, are permitted for purposes of determining the amount used to fund each resulting trust. Instead, solely for funding purposes, each resulting trust's interest in the stock of a closely held corporation, partnership interest, or other asset must be valued by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fractional or percentage interest in that asset being distributed to that resulting trust. Thus, for purposes of the requirements of a qualified severance, regardless of whether the funding is done on a pro rata basis, the cumulative value of the resulting trusts equals the value of the original trust.

The commentators pointed out that funding pursuant to this rule would result in an allocation different from the allocation that would normally be obtained from funding based on the state law fair market value standard which would take the discounts into account. The commentators expressed concern that the resulting shift in beneficial interests between or among the resulting trusts could violate the trustee's fiduciary duty of impartiality under applicable state law. Further, the commentators pointed out that the proposed rule could be avoided through the post-severance purchase and sale of assets between resulting trusts at fair market value. The commentators recommended an alternative funding rule under which the value of the original trust would be calculated as the sum of the fair market value of the assets to be held by the resulting trusts.

This recommendation was not adopted in the final regulations. It is difficult to see how the fiduciary duty of impartiality is challenged more by this funding rule than by a pro rata division of each asset of the original trust. The funding rule in the proposed regulations was intended to facilitate the funding of the resulting trusts without the cost or need for review of appraisals of each severed interest, and thus to improve the administrability of the severance provisions. This funding rule produces a bright line test, the same result whether or not the trust assets are divided on a pro rata basis, and recognizes that in many circumstances, where a trust is severed for tax purposes into two identical trusts with the same or related beneficiaries, any closely held stock or partnership units divided between the two resulting trusts are likely to be sold as a unit without any actual reduction in value that may be reflected in the claimed discounts. Any use of post-severance sales between resulting trusts to avoid these funding rules may constitute mere steps in a pre-arranged transaction.

The commentators pointed out that the nonqualified severance illustrated in § 26.2642–6(j), *Example 3*, of the existing regulations will result in a taxable event for GST tax purposes (that is, a taxable termination or taxable distribution) if that severance occurs on or after the proposed regulations are adopted as final. This is because, under the proposed regulations, the severed trust is treated as a separate trust for GST tax purposes. Accordingly, cautionary language has been added to this example to the effect that a GST taxable event will result as a consequence of the severance.

It was determined that § 26.2642–6(j), *Example 12* of the proposed regulations addresses the same issue covered in *Example 8* of § 26.2654–1(a)(5). Therefore, *Example 12* has been removed from the final regulations and the examples have been renumbered accordingly.

As requested by the commentators, a new example, § 26.2642–6(j), *Example 13*, has been added to confirm that a trust resulting from a nonqualified severance may subsequently be severed in a qualified severance.

The commentators noted that the proposed regulations under § 26.2654–1(a)(1)(iii) address the treatment of severances resulting in separate trusts that are required under the terms of a trust instrument (mandatory severances) but that are neither severances otherwise recognized under section 2654 nor qualified severances under section 2642. The proposed regulations conclude that the separate shares or trusts resulting from such a severance, if recognized as separate trusts under state law, will be recognized as separate for GST tax purposes. The commentators questioned why the proposed changes to the regulations under section 2654 must address those severances that result in separate trusts when this issue is already addressed in § 26.2642–6(h) of the proposed regulations dealing with nonqualified severances. Section 26.2654–1(a)(1)(iii) was intended to address only mandatory severances that, as with the other types of severances covered by § 26.2654–1(a), are dictated by the terms of the trust. On the other hand, § 26.2642–6(h) addresses discretionary severances, that is, severances that are elective and within the discretion of the trustee. The severances described in § 26.2654–1 are governed by that section. Therefore, the proposed addition to this section has not been removed.

The proposed regulations under section 2654 state a general rule that separate shares or trusts resulting from a mandatory severance, that are recognized as separate trusts for GST tax purposes, will not be treated as separate trusts for purposes of filing income tax returns or calculating any other taxes. The comments noted that this statement should not apply to shares or trusts that are recognized as separate trusts under local law. Rather, this statement should apply only to separate shares created within a single trust that are not recognized under local law as separate trusts. The final regulations reflect this change.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) applies only to § 26.2642–6(d)(7)(iii) of these regulations. It is hereby certified that this provision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. This provision directly affects individuals, not entities. Because the remaining sections of these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Mayer R. Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Paragraph 1.** The authority citation for part 26 continues to read in part as follows:

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

■ **Par. 2.** In § 26.2600–1, the table of contents is amended by adding the entry for § 26.2642–6(h) to read as follows:

§ 26.2600–1 Table of contents.

* * * * *

§ 26.2642–6 Qualified severance.

* * * * *

(h) Treatment of trusts resulting from a severance that is not a qualified severance.

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■ **Par. 3.** Section 26.2642–6 is amended as follows:

■ 1. Paragraphs (d)(4) and (d)(7) are revised.

■ 2. Paragraph (h) is added.

■ 3. Paragraph (j) *Example 3* is revised.

■ 4. Paragraph (j) *Examples 6, 9, 12*, and *13* are added.

■ 5. Paragraph (k)(1) is revised.

The additions and revisions read as follows:

§ 26.2642–6 Qualified severance.

* * * * *

(d) * * *

(4) The single trust (original trust) is severed on a fractional basis, such that each new trust (resulting trust) is funded with a fraction or percentage of the original trust, and the sum of those fractions or percentages is one or one hundred percent, respectively. For this purpose, the fraction or percentage may be determined by means of a formula (for example, that fraction of the trust the numerator of which is equal to the transferor's unused GST tax exemption, and the denominator of which is the fair market value of the original trust's assets on the date of severance). The severance of a trust based on a pecuniary amount does not satisfy this requirement. For example, the severance of a trust is not a qualified severance if the trust is divided into two trusts, with one trust to be funded with $1,500,000 and the other trust to be funded with the balance of the original trust's assets. With respect to the particular assets to be distributed to each separate trust resulting from the severance, each such trust may be funded with the appropriate fraction or percentage (pro rata portion) of each asset held by the original trust. Alternatively, the assets may be divided among the resulting trusts on a non-pro rata basis, based on the fair market value of the assets on the date of severance. However, if a resulting trust is funded on a non-pro rata basis, each asset received by a resulting trust must be valued, solely for funding purposes, by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fraction or percentage of that asset received by that resulting trust. Thus, the assets must be valued without taking into account any discount or premium arising from the severance, for example, any valuation discounts that might arise because the resulting trust receives less than the entire interest

held by the original trust. See paragraph (j), *Example 6* of this section.

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(7)(i) In the case of a qualified severance occurring after GST tax exemption has been allocated to the trust (whether by an affirmative allocation, a deemed allocation, or an automatic allocation pursuant to the rules contained in section 2632), if the trust has an inclusion ratio as defined in § 26.2642–1 that is greater than zero and less than one, then either paragraph (d)(7)(ii) or (iii) of this section must be satisfied.

(ii) The trust is severed initially into only two resulting trusts. One resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction, as defined in § 26.2642–1(b) and (c), used to determine the inclusion ratio of the original trust immediately before the severance. The other resulting trust must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the preceding sentence. The trust receiving the fractional share equal to the applicable fraction shall have an inclusion ratio of zero, and the other trust shall have an inclusion ratio of one. If the applicable fraction with respect to the original trust is .50, then, with respect to the two equal trusts resulting from the severance, the trustee may designate which of the resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one. Each separate trust resulting from the severance then may be further divided in accordance with the rules of this section. See paragraph (j), *Example 7*, of this section.

(iii) The trust is severed initially into more than two resulting trusts. One or more of the resulting trusts in the aggregate must receive that fractional share of the total value of the original trust as of the date of severance that is equal to the applicable fraction used to determine the inclusion ratio of the original trust immediately before the severance. The trust or trusts receiving such fractional share shall have an inclusion ratio of zero, and each of the other resulting trust or trusts shall have an inclusion ratio of one. (If, however, two or more of the resulting trusts each receives the fractional share of the total value of the original trust equal to the applicable fraction, the trustee may designate which of those resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one.) The resulting trust or trusts with an inclusion ratio of one must receive in the aggregate that fractional share of the total value of the original trust as of the date of severance that is equal to the excess of one over the fractional share described in the second sentence of this paragraph. See paragraph (j), *Example 9*, of this section.

* * * * *

(h) *Treatment of trusts resulting from a severance that is not a qualified severance.* Trusts resulting from a severance (other than a severance recognized for GST tax purposes under § 26.2654–1) that does not meet the requirements of a qualified severance under paragraph (b) of this section will be treated, after the date of severance, as separate trusts for purposes of the GST tax, provided that the trusts resulting from such severance are recognized as separate trusts under applicable state law. The post-severance treatment of the resulting trusts as separate trusts for GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting trust, with no GST tax impact on any other trust resulting from that severance. Each trust resulting from a severance described in this paragraph (h), however, will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the severance. (See § 26.2654–1 for the inclusion ratio of each trust resulting from a severance described in that section.) Further, any trust resulting from a nonqualified severance may be severed subsequently, pursuant to a qualified severance described in this § 26.2642–6.

* * * * *

(j) * * *

Example 3. Severance based on actuarial value of beneficial interests. In 2004, T establishes Trust, an irrevocable trust providing that income is to be paid to T's child C during C's lifetime. Upon C's death, Trust is to terminate and the assets of Trust are to be paid to GC, C's child, if living, or, if GC is not then living, to GC's estate. T properly elects, under section 2632(c)(5), not to have the automatic allocation rules contained in section 2632(c) apply with respect to T's transfers to Trust, and T does not otherwise allocate GST tax exemption with respect to Trust. Thus, Trust has an inclusion ratio of one. In 2009, the trustee of Trust, pursuant to applicable state law, divides Trust into two separate trusts, Trust 1 for the benefit of C (and on C's death to C's estate), and Trust 2 for the benefit of GC (and on GC's death to GC's estate). The document severing Trust directs that Trust 1 is to be funded with an amount equal to the actuarial value of C's interest in Trust prior to the severance, determined under section 7520 of the Internal Revenue Code. Similarly, Trust 2 is to be funded with an amount equal to the actuarial value of GC's interest in Trust prior to the severance, determined under section 7520. Trust 1 and Trust 2 do not provide for the same succession of interests as provided under the terms of the original trust. Therefore, the severance is not a qualified severance. Furthermore, because the severance results in no non-skip person having an interest in Trust 2, Trust 2 constitutes a skip person under section 2613 and, therefore, the severance results in a taxable termination subject to GST tax.

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Example 6. Funding of severed trusts on a non-pro rata basis. (i) T's will establishes an irrevocable trust (Trust) for the benefit of T's descendants. As a result of the allocation of GST tax exemption, the applicable fraction with respect to Trust is .60 and Trust's inclusion ratio is .40 [1–.60]. Pursuant to authority granted under applicable state law, on August 1, 2008, the trustee executes a document severing Trust into two trusts, Trust 1 and Trust 2, each of which is identical to Trust. The instrument of severance provides that the severance is intended to qualify as a qualified severance within the meaning of section 2642(a)(3) and designates August 3, 2008, as the date of severance (within the meaning of paragraph (d)(3) of this section). The instrument further provides that Trust 1 and Trust 2 are to be funded on a non-pro rata basis with Trust 1 funded with assets having a fair market value on the date of severance equal to 40% of the value of Trust's assets on that date and Trust 2 funded with assets having a fair market value equal to 60% of the value of Trust's assets on that date. The fair market value of the assets used to fund each trust is to be determined in compliance with the requirements of paragraph (d)(4) of this section.

(ii) On August 3, 2008, the fair market value of the Trust assets totals $4,000,000, consisting of 52% of the outstanding common stock in Company, a closely-held corporation, valued at $3,000,000 and $1,000,000 in cash and marketable securities. Trustee proposes to divide the Company stock equally between Trust 1 and Trust 2, and thus transfer 26% of the Company stock to Trust 1 and 26% of the stock to Trust 2. In addition, the appropriate amount of cash and marketable securities will be distributed to each trust. In accordance with paragraph (d)(4) of this section, for funding purposes, the interest in the Company stock distributed to each trust is valued as a pro rata portion of the value of the 52% interest in Company held by Trust before severance, without taking into account, for example, any valuation discount that might otherwise apply in valuing the noncontrolling interest distributed to each resulting trust.

(iii) Accordingly, for funding purposes, each 26% interest in Company stock distributed to Trust 1 and Trust 2 is valued at $1,500,000 (.5 × $3,000,000). Therefore, Trust 1, which is to be funded with $1,600,000 (.40 × $4,000,000), receives $100,000 in cash and marketable securities valued as of August 3, 2008, in addition to the Company stock, and Trust 2, which is to be funded with $2,400,000 (.60 × $4,000,000), receives $900,000 in cash and marketable securities in addition to the Company stock. Therefore, the severance is a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied.

* * * * *

Example 9. Regulatory qualified severance. (i) In 2004, T establishes an inter vivos irrevocable trust (Trust) providing that trust income is to be paid annually in equal shares to T's children, A and B, for 10 years. Trust provides that the trustee has discretion to make additional distributions of principal to A and B during the 10-year term without adjustments to their shares of income or the trust remainder. If either (or both) dies prior to the expiration of the 10-year term, the deceased child's share of trust income is to be paid to the child's then living descendants, per stirpes, for the balance of the trust term. At the expiration of the 10-year term, the corpus is to be distributed equally to A and B; if A and B (or either or them) is not then living, then such decedent's share is to be distributed instead to such decedent's then living descendants, per stirpes. T allocates GST tax exemption to Trust such that Trust's applicable fraction is .25 and its inclusion ratio is .75.

(ii) In 2006, pursuant to applicable state law, the trustee severs the trust into three trusts: Trust 1, Trust 2, and Trust 3. The instrument severing Trust provides that Trust 1 is to receive 50% of Trust's assets, Trust 2 is to receive 25% of Trust's assets, and Trust 3 is to receive 25% of Trust's assets. All three resulting trusts are identical to Trust, except that each has different beneficiaries: A and A's issue are designated as the beneficiaries of Trust 1, and B and B's issue are designated as the beneficiaries of Trust 2 and Trust 3. The severance constitutes a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied. Trust 1 will have an inclusion ratio of 1. Because both Trust 2 and Trust 3 have each received the fractional share of Trust's assets equal to Trust's applicable fraction of .25, trustee designates that Trust 2 will have an inclusion ratio of one and that Trust 3 will have an inclusion ratio of zero.

* * * * *

Example 12. Other severance that does not meet the requirements of a qualified severance. (i) In 2004, T establishes an irrevocable inter vivos trust (Trust) providing that Trust income is to be paid to T's children, A and B, in equal shares for their joint lives. Upon the death of the first to die of A and B, all Trust income will be paid to the survivor of A and B. At the death of the survivor, the corpus is to be distributed in equal shares to T's grandchildren, W and X (with any then-deceased grandchild's share being paid in accordance with that grandchild's testamentary general power of appointment). W is A's child and X is B's child. T elects under section 2632(c)(5) not to have the automatic allocation rules contained in section 2632(c) apply with respect to T's transfers to Trust, but T allocates GST tax exemption to Trust resulting in Trust having an inclusion ratio of .30.

(ii) In 2009, the trustee of Trust, as permitted by applicable state law, divides Trust into two separate trusts, Trust 1 and Trust 2. Trust 1 provides that trust income is to be paid to A for life and, on A's death, the remainder is to be distributed to W (or pursuant to W's testamentary general power of appointment). Trust 2 provides that trust income is to be paid to B for life and, on B's death, the remainder is to be distributed to X (or pursuant to X's testamentary general power of appointment). Because Trust 1 and Trust 2 do not provide A and B with the contingent survivor income interests that were provided to A and B under the terms of Trust, Trust 1 and Trust 2 do not provide for the same succession of interests in the aggregate as provided by Trust. Therefore, the severance does not satisfy the requirements of this section and is not a qualified severance. Provided that Trust 1 and Trust 2 are recognized as separate trusts under applicable state law, Trust 1 and Trust 2 will be recognized as separate trusts for GST tax purposes pursuant to paragraph (h) of this section, prospectively from the date of the severance. However, Trust 1 and Trust 2 each have an inclusion ratio of .30 immediately after the severance, the same as the inclusion ratio of Trust prior to severance.

Example 13. Qualified severance following a non-qualified severance. Assume the same facts as in *Example 12*, except that, as of November 4, 2010, the trustee of Trust 1 severs Trust 1 into two trusts, Trust 3 and Trust 4, in accordance with applicable local law. The instrument severing Trust 1 provides that both resulting trusts have provisions identical to Trust 1. The terms of the instrument severing Trust 1 further provide that Trust 3 is to be funded on a pro rata basis with assets having a fair market value as of the date of severance equal to 70% of the value of Trust 1's assets on that date, and Trust 4 is to be funded with assets having a fair market value as of the date of severance equal to 30% of the value of Trust 1's assets on that date. The severance constitutes a qualified severance, provided that all other requirements of section 2642(a)(3) and this section are satisfied. Trust 3 will have an inclusion ratio of zero and Trust 4 will have an inclusion ratio of one.

(k) * * *

(1) *In general.* Except as otherwise provided in this paragraph (k), this section applies to severances occurring on or after August 2, 2007. Paragraph (d)(7)(iii), paragraph (h), and *Examples 9, 12* and *13* of paragraph (j) of this section apply to severances occurring on or after September 2, 2008.

■ **Par. 4.** Section 26.2654–1 is amended as follows:

■ 1. Paragraph (a)(1)(i) is revised.

■ 2. Paragraph (a)(1)(iii) is added.

■ 3. In paragraph (a)(5), *Example 8* is revised.

■ 4. Paragraph (d) is added.

The additions and revisions read as follows:

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) * * * (1) * * * (i) * * * If a single trust consists solely of substantially separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of Chapter 13. The phrase ''substantially separate and independent shares'' generally has the same meaning as provided in § 1.663(c)–3. However, except as provided in paragraph (a)(1)(iii) of this section, a portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. For purposes of this paragraph (a)(1), a trust is treated as created at the date of death of the grantor if the trust is includible in its entirety in the grantor's gross estate for Federal estate tax purposes. Further, except with respect to shares or trusts that are treated as separate trusts under local law, treatment of a single trust as separate trusts under this paragraph (a)(1) does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. See § 26.2642–6 and paragraph (b) of this section regarding the treatment, for purposes of Chapter 13, of separate trusts resulting from the discretionary severance of a single trust.

* * * * *

(iii) *Mandatory severances.* For purposes of this section, if the governing instrument of a trust requires the division or severance of a single trust into separate trusts upon the future occurrence of a particular event not within the discretion of the trustee or any other person, and if the trusts resulting from such a division or severance are recognized as separate trusts under applicable state law, then each resulting trust is treated as a separate trust for purposes of Chapter 13. For this purpose, the rules of paragraph (b)(1)(ii)(C) of this section apply with respect to the severance and funding of the trusts. Similarly, if the governing instrument requires the division of a single trust into separate shares under the circumstances described in this paragraph, each such share is treated as a separate trust for purposes of Chapter 13. The post-severance treatment of the resulting shares or trusts as separate trusts for

GST tax purposes generally permits the allocation of GST tax exemption, the making of various elections permitted for GST tax purposes, and the occurrence of a taxable distribution or termination with regard to a particular resulting share or trust, with no GST tax impact on any other trust or share resulting from that severance. The treatment of a single trust as separate trusts under this paragraph (a)(1), however, does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code, if those portions are not treated as separate trusts under local law. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise. Each separate share and each trust resulting from a mandatory division or severance described in this paragraph will have the same inclusion ratio immediately after the severance as that of the original trust immediately before the division or severance.

* * * * *

(5) * * *

Example 8. Subsequent mandatory division into separate trusts. T creates an irrevocable trust that provides the trustee with the discretionary power to distribute income or corpus to T's children and grandchildren. The trust provides that, when T's youngest child reaches age 21, the trust will be divided into separate shares, one share for each child of T. The income from a respective child's share will be paid to the child during the child's life, with the remainder passing on the child's death to such child's children (grandchildren of T). The separate shares that come into existence when the youngest child reaches age 21 will be recognized as of that date as separate trusts for purposes of Chapter 13. The inclusion ratio of the separate trusts will be identical to the inclusion ratio of the trust before the severance. Any allocation of GST tax exemption to the trust after T's youngest child reaches age 21 may be made to any one or more of the separate shares. The result would be the same if the trust instrument provided that the trust was to be divided into separate trusts when T's youngest child reached age 21, provided that the severance and funding of the separate trusts meets the requirements of this section.

* * * * *

(d) *Effective date.* Paragraph (a)(1)(i), paragraph (a)(1)(iii), and *Example 8* of paragraph (a)(5) apply to severances occurring on or after September 2, 2008.

Sherri L. Brown,

(Acting) Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury, (Tax Policy).

[FR Doc. E8–17503 Filed 7–30–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zones Charleston, Long Island Sound, Jacksonville, and Savannah.

SUMMARY: This document informs owners and operators of facilities located within Captain of the Port Zones Charleston, Long Island Sound, Jacksonville, and Savannah that they must implement access control procedures utilizing TWIC no later than December 1, 2008.

DATES: The compliance date for the TWIC regulations found in 33 CFR part 105 for Captain of the Port Zones Charleston, Long Island Sound, Jacksonville, and Savannah is December 1, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this document as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this Notice, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels, facilities, and outer continental shelf facilities, who have not otherwise been required to implement access control procedures utilizing TWIC, must implement those procedures, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e).

The Coast Guard will continue to announce rolling compliance dates, as provided in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zones Charleston, Long Island Sound, Jacksonville, and Savannah

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the