real property held by them as tenants by the entirety. The property is sold in 1998 for $300,000. *A* receives $225,000 and *B* receives $75,000 of the sales proceeds. The termination results in a gift of $15,000 by *A* to *B*, computed as follows:

$$\frac{\$200{,}000\ \text{(consideration furnished by A)}}{\$250{,}000\ \text{(total consideration furnished by both spouses)}} \times \$300{,}000\ \text{(proceeds of termination)} = \$240{,}000\ \text{(Proceeds of termination attributable to A.)}$$

$240,000 − $225,000 (proceeds received by *A*)=$15,000 gift by *A* to *B*.

Example 2. In 1986, *A* purchased real property for $300,000 and took title in the names of *A* and *B*, *A*'s spouse, as joint tenants. Under section 2511 and § 25.2511–1(h)(1) of the regulations, *A* was treated as making a gift of one-half of the value of the property ($150,000) to *B*. In 1995, the real property is sold for $400,000 and *B* receives the entire proceeds of sale. For purposes of determining the amount of the gift on termination of the tenancy under the principles of section 2515 and the regulations thereunder, the amount treated as a gift to *B* on creation of the tenancy under section 2511 is treated as *B*'s contribution towards the purchase of the property. Accordingly, the termination of the tenancy results in a gift of $200,000 from *A* to *B* determined as follows:

$$\frac{\$150{,}000\ \text{(consideration furnished by A)}}{\$300{,}000\ \text{(total consideration deemed furnished by both spouses)}} \times \$400{,}000\ \text{(proceeds of termination)} = \$200{,}000\ \text{(Proceeds of termination attributable to A.)}$$

$200,000 − 0 (proceeds received by *A*)=$200,000 gift by *A* to *B*.

(c) *Tenancies by the entirety in personal property where one spouse is not a United States citizen*—(1) *In general.* In the case of the creation (either by one spouse alone or by both spouses where at least one of the spouses is not a United States citizen) of a joint interest in personal property with right of survivorship, or additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise, the retained interest of each spouse, solely for purposes of determining whether there has been a gift by the donor to the spouse who is not a citizen of the United States at the time of the gift, is treated as one-half of the value of the joint interest. See section 2523(i) and §§ 25.2523(i)–1 and 25.2503–2(f) as to certain of the tax consequences that may result upon creation and termination of the tenancy.

(2) *Exception.* The rule provided in paragraph (c)(1) of this section does not apply with respect to any joint interest in property if the fair market value of the interest in property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses. In these cases, actuarial principles may need to be resorted to in determining the gift tax consequences of the transaction.

§ 25.2523(i)–3 Effective date.

The provisions of §§ 25.2523(i)–1 and 25.2523(i)–2 are effective in the case of gifts made after August 22, 1995.

Par. 14. In § 25.2702–1, paragraph (c)(8) is added to read as follows:

§ 25.2702–1 Special valuation rules in the case of transfers of interests in trust.

* * * * *

(c) * * *

(8) *Transfer or assignment to a Qualified Domestic Trust.* A transfer or assignment (as described in section 2056(d)(2)(B)) by a noncitizen surviving spouse of property to a Qualified Domestic Trust under the circumstances described in § 20.2056A–4(b) of this chapter, where the surviving spouse retains an interest in the transferred property that is not a qualified interest and the transfer is not described in sections 2702(a)(3)(A)(ii) or 2702(c)(4).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 15. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. Section 602.101(c) is amended by adding entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056A–3	1545–1360
20.2056A–4	1545–1360
20.2056A–10	1545–1360
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19867 Filed 8–21–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 20 and 602

[TD 8613]

RIN 1545–AS67

Requirements to Ensure Collection of Section 2056A Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOTs) described in section 2056A(a). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective August 22, 1995.

These regulations apply to estates of decedents dying after March 7, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1443.

For further information concerning this collection of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains amendments to the Estate Tax Regulations (26 CFR part 20) under section 2056A of the Internal Revenue Code of 1986 (Code). Section 2056A was added by section 5033 of the Technical and Miscellaneous Revenue Act of 1988. These temporary regulations provide additional requirements that must be satisfied in order for a trust to qualify as a QDOT. The requirements are necessary to ensure the collection of the section 2056A estate tax that is imposed upon any distribution of principal from the QDOT, upon the death of the surviving spouse, or if the trust ceases to qualify as a QDOT.

Explanation of Provisions

Section 2056A(a)(2) authorizes the Secretary to promulgate regulations that will ensure the collection of the estate tax imposed under section 2056A(b). In accordance with this grant of regulatory authority, a notice of proposed rulemaking was published in the **Federal Register** (58 FR 305), on January 5, 1993. The Service received written comments on the proposed regulations and, on April 2, 1993, held a public hearing on the regulations. After consideration of all written and oral comments received, it was determined to issue these regulations as temporary and proposed regulations in order to obtain additional public comment with respect to the additional requirements necessary to ensure collection of the section 2056A estate tax in view of the significant number of changes made from the text of the proposed regulations. The remainder of the proposed regulations under section 2056A have been adopted as final regulations in TD 8612.

Under § 20.2056A–2(d)(1) of the proposed regulations, if the fair market value of the assets of the QDOT at the death of the decedent exceeds $2 million, the trust instrument must require that: (1) At least one trustee be a bank as defined in section 581 or (2) the trustee furnish a bond or security to the IRS in an amount equal to 65 percent of the fair market value of the trust corpus, determined as of the date of the decedent's death. The proposed regulations further provide that if the fair market value of the QDOT assets at the date of the decedent's death is $2 million or less, the QDOT need not meet the ''bank'' or ''bond'' requirement if, as an alternative, the trust instrument expressly provides that no more than 35 percent of the fair market value of the trust assets, determined annually, may be invested in real property that is not located in the United States.

Numerous comments were received regarding these additional regulatory requirements for qualification as a QDOT. Several commentators suggested that requiring the estate to post a bond or appoint a bank as trustee in all cases where trust assets exceed $2 million imposed a burden on these trusts that was expensive and unnecessary. These commentators indicated that the Service's interest in ensuring collection of the section 2056A estate tax would be adequately protected, regardless of the value of the QDOT assets, if either a bank is acting as a trustee, the estate posts a bond, or the trust instrument prohibits investment in foreign real property in excess of the permissible limits. Thus, in the view of these commentators, a trust consisting entirely of liquid assets, regardless of value, would require no special security mechanisms to ensure collection of the section 2056A estate tax (inasmuch as the QDOT would not own any foreign real property). These recommendations have not been adopted.

The temporary regulations generally retain the framework contained in the proposed regulations. The legislative history underlying the enactment of section 2056A expresses Congress' concerns regarding the ability to collect the section 2056A estate tax and contains a clear directive to require appropriate security mechanisms to ensure collection. H.R. Rep. No. 795, 100th Cong. 2d Sess. 592 (July 26, 1988). Thus, the provisions in the proposed regulations requiring a surety arrangement or a bank trustee if the trust is sufficiently large, or contains significant foreign real property, have been retained, because it is believed that these requirements best effectuate the Congressional mandate. With respect to such QDOTs, collection of the section 2056A estate tax can not be adequately assured in the absence of special security measures. Further, it is believed that the $2 million threshold for imposing additional security requirements equitably balances the interests of the Government with the financial constraints of smaller QDOTs.

However, many revisions have been made in the temporary regulations that are intended to provide flexibility and guidance and to alleviate any undue burden attributable to the special security requirements.

In response to comments that the bank trustee provision contained in § 20.2056A–2(d)(1)(i)(A) of the proposed regulations (requiring a bank described in section 581 to act as the U.S. Trustee) discriminates against foreign banks, the temporary regulations provide that a United States branch of a foreign bank may satisfy the bank trustee requirement, provided that the trust instrument names at least one United States Trustee to serve as co-trustee of the QDOT at all times during the administration of the QDOT.

Another commentator suggested that an individual attorney be authorized to act as the U.S. Trustee in lieu of a United States bank in order to satisfy the ''bank trustee'' requirement. The comment reflects a historical practice in certain localities of an attorney serving as professional trustee of substantial trusts with the backing of the financial resources of the attorney's law firm. This alternative proposal is not incorporated in the temporary regulations. Under the procedures provided in § 20.2056A–2T(d)(4), the IRS is considering whether an arrangement may qualify as an alternate security arrangement where an attorney (or firm) actively engaged in the administration of estates and trusts acts as trustee and has individually, and with the other members of the attorney's firm, sufficient assets under management. During the period prior to the publication of guidance in the Internal Revenue Bulletin regarding alternate plans or arrangements, the IRS will accept letter ruling requests as to suitable alternate arrangements.

Section 20.2056A–2(d)(2) of the proposed regulations provides that if the U.S. Trustee is an individual United States citizen, the individual must have a tax home, as defined in section 911(d)(3), in the United States. Comments have been received suggesting that this requirement should be deleted since many attorneys, executives, and other individuals that would be willing to serve as the U.S. Trustee are resident abroad in the conduct of their business. This change has not been made. In order to assure collection of the section 2056A estate tax, the U.S. Trustee must be subject to United States judicial process at all times during the administration of the trust.

The sections of the proposed regulations discussing security arrangements with respect to QDOTs in excess of $2 million have been

substantially modified in the temporary regulations. As noted above, the proposed regulations provided for the posting of a bond as an alternative to employing a bank as the QDOT U.S. Trustee. However, it was recognized that in certain situations, because of statutory restrictions and logistical concerns with monitoring cancellation of the surety arrangement, other security arrangements might be more desirable.

Accordingly, to address these concerns § 20.2056A–2T(d)(1)(i)(C) specifically authorizes letters of credit, in lieu of providing a bank trustee or bond, as a permissible security arrangement. The letter of credit may be issued by a bank described in section 581 or a U.S. branch of a foreign bank. Alternatively, the letter of credit may be issued by a foreign bank and confirmed by a bank described in section 581. Section 20.2056A–2T(d)(1)(i) (B) and (C) contain specific guidelines outlining the terms of the bond and letter of credit required, and provide a sample format for each. In general, the bond or letter of credit must be for a term of at least one year and must be automatically renewable at the expiration of the term, on an annual basis thereafter, unless the IRS is notified at least 60 days prior to the expiration of the term (including periods of automatic renewals) that the security will not be renewed. The IRS will treat the notice of failure to renew as a taxable event and draw on the instrument, unless an alternative form of security is substituted.

Further, under the temporary regulations, if the bond or letter of credit security arrangement is used, the QDOT must provide that if the IRS draws on the bond or letter of credit, neither the U.S. Trustee nor any other person will seek a return of the funds until after April 15th of the following calendar year, the date the Form 706QDT reporting a taxable event would ordinarily be due. This requirement is intended to ensure that the IRS will be able to retain any funds drawn upon since, after the due date of the return, the IRS would have the ability to make a jeopardy assessment under section 6861, if appropriate. The IRS is contemplating the development of internal procedures whereby the taxpayer may request review of the IRS's decision to draw upon the bond or letter of credit. In addition, prior to drawing on the bond or letter of credit, the IRS will make every effort to contact the parties to verify that the action is appropriate under the circumstances.

In addition, if the bond or letter of credit security arrangement is employed, and if it is finally determined that the fair market value of the QDOT assets is in excess of the value as originally reported on the return, then the U.S. Trustee is accorded a reasonable period of time to increase the bond or letter of credit to the requisite amount. However, § 20.2056A–2T(d)(1)(i)(D) provides that if the QDOT assets are undervalued by 50 percent or more, the marital deduction will be disallowed unless a good faith reasonable cause standard is satisfied. This provision ensures that the QDOT will be adequately secured and discourages egregious undervaluations of the QDOT assets. A similar rule is provided in § 20.2056A–2T(d)(1)(ii) with respect to the $2 million threshold for providing additional security arrangements.

Comments were received suggesting that, for purposes of determining the $2 million threshold under § 20.2056A–2(d)(1) of the proposed regulations, the value of the surviving spouse's residence should be excluded. It has also been suggested that the surviving spouse's residence be excluded from both the bond and the foreign real property requirements of the regulations. It is recognized that if a significant portion of the trust value consists of the surviving spouse's principal residence, an asset that will normally generate no income, the costs associated with the posting of the bond, providing a letter of credit or employing an institutional trustee to manage the trust's assets may be burdensome. However, in cases involving any real property, regardless of use, situated outside the United States, a significant collection risk is presented in the absence of the additional security measures required under the regulations.

Accordingly, § 20.2056A–2T(d)(1)(iii) provides that the value (measured at the decedent's death) attributable to the surviving spouse's principal residence (within the meaning of section 1034) wherever situated (and related furnishings), up to an aggregate value of $600,000, may be excluded for purposes of determining if the $2 million threshold is exceeded. In addition, the temporary regulations provide that the value of the principal residence (and related furnishings), wherever situated, up to an aggregate value of $600,000, may be excluded for purposes of determining the amount of the bond or letter of credit (if required). However, the value of the principal residence (and related furnishings) will continue to be included in determining, with respect to QDOTs of less than $2 million, whether the 35 percent foreign real property threshold under § 20.2056A–2T(d)(1)(ii) has been exceeded.

Under § 20.2056A–2T(d)(1)(iii), the term *related furnishings* includes standard furniture and commonly included items such as appliances, fixtures, decorative items, and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class, are not included within the meaning of this term. Further, the principal residence exclusion ceases to apply if the property ceases to be used as a principal residence, or the residence is sold and the ''adjusted sales price'' (as defined in section 1034(b)(1)) is not reinvested within twelve months thereafter in another principal residence. If the principal residence exclusion applies, the U.S. Trustee must file an annual statement as provided in § 20.2056A–2T(d)(3). Upon cessation of qualification for the exclusion, the U.S. Trustee must, within 120 days thereafter, bring the trust into full compliance with § 20.2056A–2T(d)(1) (i) or (ii), whichever is applicable (determined as if the principal residence exclusion had not been applicable to the estate).

Section 20.2056A–2T(d)(1)(ii) clarifies that the $2 million threshold is determined without regard to any indebtedness with respect to the assets comprising the QDOT. It is not necessary to know at the time a QDOT agreement is executed whether the QDOT will exceed the $2 million threshold or whether the QDOT will be $2 million or less and thus eligible to meet the 35 percent foreign real property requirement. A QDOT agreement will satisfy the requirements of the temporary regulations by stating the regulations' requirements in the alternative and leaving the determination as to which requirements apply to the particular QDOT to be determined at the date of death (or the alternate valuation date, if applicable).

In response to comments, the look-through rule contained in § 20.2056A–2(d)(1)(ii)(B) of the proposed regulations has been revised to apply only to trusts with less than $2 million in assets that seek QDOT qualification by satisfying the 35 percent foreign real property requirement, (as opposed to posting a bond or providing a letter of credit, or utilizing a bank trustee). The look-through rule will not apply if an alternative security arrangement is provided.

A comment was made that the look-through rule should only apply when a QDOT that owns stock in a corporation with 15 or fewer shareholders, or an interest in a partnership with 15 or fewer partners, has a controlling interest

in the entity. This suggestion has not been adopted. The regulation focuses on the number of shareholders or partners in the entity because the fewer the number of shareholders or partners, the more likely that the entity may be a family holding company created for the purpose of avoiding the QDOT security rules. The control that the QDOT may be able to exert over the entity is not the primary concern. However, a *de minimis* rule is adopted to avoid application of the look-through rule under certain circumstances. Accordingly, the temporary regulations provide that the look-through rule only applies if the QDOT owns (including interests that it is deemed to own) more than 20% of the voting interest or value in the corporation or more than a 20% capital interest in the partnership.

Comments were received that the anti-abuse rule contained in § 20.2056A–2(d)(1)(iii) of the proposed regulations was overly broad. It has been determined that the breadth of the rule is necessary to ensure collection of the tax and, therefore, the rule as proposed is not modified.

Comments have been received recommending elimination of the rule under § 20.2056A–2(d)(3) of the proposed regulations, requiring that personal property and written evidence of intangible personal property must be physically located in the United States at all times during the term of the QDOT. These comments noted that domestic brokerage companies often provide for custody of foreign securities outside of the United States to facilitate sale of the securities. This practice would make it difficult, if not impossible, for QDOTs to comply with the intangible personal property rule. In light of these comments, the requirement that tangible and intangible personal property be located in the United States has been deleted from the temporary regulations.

Section 20.2056A–2(d)(4) of the proposed regulations requires the U.S. Trustee to file an annual statement with the IRS providing certain information and summarizing the assets held by the QDOT and the fair market value of each asset. Comments were received recommending that the annual statement requirement should not apply if the bank or bond requirement is satisfied. Additionally, the commentators recommended that annual filing should be required only if the QDOT holds foreign real property.

After fully considering these comments, it was determined that modifications to the annual reporting requirement were warranted. Under § 20.2056A–2T(d)(3), the annual statement is required to be filed only in cases where: (1) The QDOT directly (before application of the look-through rule) owns foreign real property (unless the bank, bond, or letter of credit security requirement is met); (2) the principal residence exclusion applies, regardless of the situs of the residence or whether the bank, bond, or letter of credit requirement is met; or (3) after applying the look-through rule (as limited in application by the temporary regulations), the QDOT is treated as owning any foreign real property. Additional rules apply if the principal residence exclusion ceases to apply or the residence is sold. In addition, the temporary regulations have been modified to provide that the annual statement is to be filed with the Form 706–QDT rather than with the Form 1041 as provided in the proposed regulations. This change was necessary because not all QDOTs are required to file Form 1041.

Comments have also been received recommending that the IRS provide specific examples of acceptable alternate arrangements and situations justifying a waiver under § 20.2056A–2(d)(5) of the proposed regulations. The IRS intends to provide guidance to be published in the Internal Revenue Bulletin on this subject. As noted above, until such guidance is published, the IRS will accept requests for letter rulings on acceptable alternate arrangements.

In general, these regulations are effective with respect to estates of decedents dying after the date that is 180 days after the date these regulations are published in the **Federal Register**. In order for a trust subject to these regulations to qualify as a QDOT, the trust must contain the governing instrument requirements of § 20.2056A–2T(d)(1) (i) and (ii) at the time of death, or be reformed, pursuant to the terms of the governing instrument, or judicially under section 2056(d)(5). However, in response to comments, special transitional rules in the case of incompetency and in the case of certain irrevocable trusts have been added pursuant to which a trust is deemed to meet the governing instrument requirements of § 20.2056A–2T(d)(1) (i) and (ii) even though such requirements are not contained in the governing instrument, providing certain requirements are met.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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) 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 Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Susan Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 602 are amended as follows:

PART 20—ESTATE TAXES; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2056A–2T is added to read as follows:

§ 20.2056A–2T Requirements for qualified domestic trust (temporary).

(a) through (c) [Reserved] For further guidance see § 20.2056A–2 (a) through (c).

(d) *Additional requirements to ensure collection of the section 2056A estate tax*—(1) *Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1)*—(i) *QDOTs with assets in excess of $2 million.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, exceeds $2 million as of the date of the decedent's death or, if applicable, the alternate valuation date

(adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must meet the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section at all times during the term of the QDOT. The QDOT may alternate between any of the arrangements provided in paragraphs (d)(1)(i) (A), (B), and (C) of this section provided that, at any given time, at least one of the arrangements is in effect.

(A) *Bank Trustee.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must require that during the entire term of the QDOT, at least one U.S. Trustee be a bank, as defined in section 581. Alternatively, the trust instrument must, except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, require that during the entire term of the QDOT, at least one trustee be a United States branch of a foreign bank, provided that the trust instrument must also require that, during the entire term of the QDOT, a U.S. Trustee act as a trustee with such foreign bank trustee.

(B) *Bond.* Except as otherwise provided in paragraph (d)(6)(ii) or (iii) of this section, the trust instrument must require that the U.S. Trustee furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust assets (without regard to any indebtedness thereon) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iii) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee shall have a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the bond accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the bond must remain in effect until the termination of the trust and the payment of any tax liability finally determined to be due under section 2056A(b).

(*1*) *Requirements with respect to the bond.* The bond must be with a satisfactory surety, as prescribed under section 7101 and § 301.7101–1 of this chapter (Regulations on Procedure and Administration), and shall be subject to Internal Revenue Service review as may be prescribed by the Commissioner. The bond may not be cancelled. The bond must be for a term of at least one year and must be automatically renewable at the end of such term, on an annual basis thereafter, unless notice of failure to renew is received by the IRS at least 60 days prior to the end of the term, including periods of automatic extensions. Any notice of failure to renew must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [specify Street Address, City, State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate and Gift Tax Examination Group, Assistant Commissioner (International), CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Service will not draw on the bond if, within 30 days of receipt of the notice of failure to renew, the U.S. Trustee notifies the Service (at the same address to which notice of failure to renew is to be sent) that an alternate arrangement under paragraphs (d)(1)(i)(A), (B), or (C) of this section has been secured and that such arrangement will take effect immediately prior to or upon expiration of the bond.

(*2*) *Form of bond.* The bond must be in the following form (or in a form that is the same as the following form in all material respects), or in such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

Bond in Favor of the Internal Revenue Service To Secure Payment of Section 2056A Estate Tax Imposed Under Section 2056A(b) of the Internal Revenue Code.

KNOW ALL PERSONS BY THESE PRESENTS, That the undersigned, _____, the SURETY, and _____, the PRINCIPAL, are irrevocably held and firmly bound to pay the Internal Revenue Service upon written demand that amount of any tax up to *$[amount determined under paragraph (d)(1)(i)(B) of this section],* imposed under section 2056A(b)(1) of the Internal Revenue Code (including penalties and interest on said tax) determined by the Internal Revenue Service to be payable with respect to the principal as trustee for: *[Identify trust and governing instrument, name and address of trustee],* a qualified domestic trust as defined in section 2056A(a) of the Internal Revenue Code, for the payment of which the said Principal and said Surety, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Internal Revenue Service may demand payment under this bond at any time if the Internal Revenue Service in its sole discretion determines that a taxable event with respect to the trust has occurred; the trust no longer qualifies as a qualified domestic trust as described in section 2056A(a) of the Internal Revenue Code and the regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) has been made. Demand by the Internal Revenue Service for payment may be made whether or not the tax and tax return (Form 706–QDT) with respect to the taxable event is due at the time of such demand, or an assessment has been made by the Internal Revenue Service with respect to such tax.

NOW THEREFORE, The condition of this obligation is such that it shall not be cancelled and, if payment of all tax liability finally determined to be imposed under section 2056A(b) is made, then this obligation shall be null and void; otherwise, this obligation is to remain in full force and effect for one year from its effective date and is to be automatically renewable on an annual basis unless, at least 60 days prior to the expiration date, including periods of automatic renewals, the surety notifies the Internal Revenue Service by Registered or Certified Mail, return receipt requested, of such failure to renew. Receipt of such notice of failure to renew may be considered a taxable event unless an alternate security arrangement is obtained by the trustee prior to the date of expiration and the Trustee notifies the Internal Revenue Service of such alternate security arrangement. The surety shall remain liable for all taxable events occurring prior to the date of expiration. All notices required under this instrument should be sent to District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, Street Address, City, State, Zip Code. (In the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States, all notices should be sent to Estate and Gift Tax Examination Group, Assistant Commissioner (International), CP:IN:D:C:EX:HQ:1114, Washington, DC 20024).

This bond shall be effective as of _____.

Principal _____

Date _____

Surety _____

Date _____

(*3*) *Additional governing instrument requirements.* The trust instrument must also provide that in the event the Internal Revenue Service draws on the bond, in accordance with its terms, neither the U.S. Trustee nor any other

person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the bond is drawn upon. After such date, any such remittance will be treated as a deposit and will be returned (without interest) upon request of the U.S. Trustee, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*4*) *Procedure.* The bond is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the bond is granted under § 301.9100 of this chapter. The U.S. Trustee must provide a written statement with the bond that provides a list of the assets that will be used to fund the QDOT and the respective values of such assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iii) of this section are claimed.

(C) *Letter of credit.* Except as otherwise provided in paragraph (d)(6)(ii) or (iii) of this section, the trust instrument must require that the U.S. Trustee furnish an irrevocable letter of credit issued by a bank, as defined in section 581, issued by a United States branch of a foreign bank, or issued by a foreign bank and confirmed by a bank as defined in section 581, in an amount equal to 65 percent of the fair market value of the trust assets (without regard to any indebtedness thereon) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iii) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee shall have a reasonable period of time (not exceeding 60 days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the letter of credit accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4)of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the letter of credit must remain in effect until the termination of the trust and the payment of any tax liability finally determined to be due under section 2056A(b).

(*1*) *Requirements with respect to letter of credit.* The letter of credit shall be irrevocable and provide for sight payment. The letter of credit must be for a term of at least one year and must be automatically renewable at the end of such term, at least on an annual basis, unless notice of failure to renew is received by the Internal Revenue Service at least sixty days prior to the end of the term, including periods of automatic renewals. If the letter of credit is issued by the U.S. branch of a foreign bank and such U.S. branch is closing, the branch (or foreign bank) must notify the Internal Revenue Service of such closure and the notice of closure must be received at least 60 days prior to the date of closure. Any notice of failure to renew or closure of a U.S. branch of a foreign bank must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, (*specify location*) District Office, Estate and Gift Tax Examination Group, [Street Address, City State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate and Gift Tax Examination Group, Assistant Commissioner (International), CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the letter of credit if, within 30 days of receipt of the notice of failure to renew or closure of the U.S. branch of a foreign bank, the U.S. Trustee notifies the Service (at the same address to which notice is to be sent) that an alternate arrangement under paragraph(d)(1)(i) (A), (B), or (C) of this section has been secured and that such arrangement will take effect immediately prior to or upon expiration of the letter of credit or closure of the U.S. branch of the foreign bank.

(*2*) *Form of letter of credit.* The letter of credit shall be made in the following form (or in a form that is the same as the following form in all material respects), or such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service
Attention: District Director, *[specify location]* District Office Estate and Gift Tax Examination Group [Street Address, City, State, ZIP Code]
[Or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,
To: Estate and Gift Tax Examination Group, Assistant Commissioner (International) CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby establish our irrevocable Letter of Credit No. _____in your favor for drawings up to U.S. § [*Applicant should provide bank with amount which Applicant determined under paragraph (d)(1)(i)(C)*] effective immediately. This Letter of Credit is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____ at said office.

For information and reference only, we are informed that this Letter of Credit relates to [*Applicant should provide bank with the identity of qualified domestic trust and governing instrument*], and the name, address, and identifying number of the trustee is [*Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any*].

Drawings on this Letter of Credit are available upon presentation of the following documents:

1. Your draft drawn at sight on us bearing our Letter of Credit No. _____; and

2. Your signed statement as follows:

The amount of the accompanying draft is payable under [*identify bank*] irrevocable Letter of Credit No. _____ pursuant to section 2056A of the Internal Revenue Code and the regulations promulgated thereunder, because the Internal Revenue Service in its sole discretion has determined that a ''taxable event'' with respect to the trust has occurred; e.g., the trust no longer qualifies as a qualified domestic trust as described in section 2056A of the Internal Revenue Code and regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) of the Internal Revenue Code has been made.

Except as expressly stated herein, this undertaking is not subject to any agreement, requirement or qualification. The obligation of [*Name of Issuing Bank*] under this Letter of Credit is the individual obligation of [*Name of Issuing Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we send to you notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your address indicated above, that we elect not to consider this Letter of Credit renewed for any

such additional period. Upon receipt of such notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

In the case of a letter of credit issued by a U.S. branch of a foreign bank the following language must be added]. It is a further condition of this Letter of Credit that if the U.S. branch of [*name of foreign bank*] is to be closed, that at least sixty days prior to such closing, we send you notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your address indicated above, that this branch will be closing. Such notice will specify the actual date of closing. Upon receipt of such notice, you may draw hereunder on or before the date of closure, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Letter of Credit renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

Except as stated herein, this Letter of Credit cannot be modified or revoked without your consent.

Authorized Signature _____

Date _____

(*3*) *Form of confirmation.* If the requirements of this paragraph (d)(1)(i)(C) are satisfied by the issuance of a letter of credit by a foreign bank confirmed by a bank as defined in section 581, the confirmation shall be made in the following form (or in a form that is the same as the following form in all material respects), or such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin:

[Issue Date]

To: Internal Revenue Service
Attention: District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group [State Address, City, State, ZIP Code]

[or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate and Gift Tax Examination Group, Assistant Commissioner (International) CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby confirm the enclosed irrevocable Letter of Credit No. _____, and amendments thereto, if any, in your favor by _____ [Issuing Bank] for drawings up to U.S. $_____ [same amount as in initial Letter of Credit] effective immediately. This confirmation is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____ at said office.

For information and reference only, we are informed that this Confirmation relates to [Applicant should provide bank with the identity of qualified domestic trust and governing instrument], and the name, address, and identifying number of the trustee is [Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any].

We hereby undertake to honor your sight draft(s) drawn as specified in the Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [*Name of Confirming Bank*] under this Confirmation is the individual obligation of [*Name of Confirming Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Confirmation that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least sixty days prior to any expiration date, we send to you notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your address indicated above, that we elect not to consider this Confirmation renewed for any such additional period. Upon receipt of such notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Confirmation renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Confirmation is drawn against within 30 days after the resumption of business.

Except as stated herein, this Confirmation cannot be modified or revoked without your consent.

Authorized Signature _____

Date _____

(*4*) *Additional governing instrument requirements.* The trust instrument must also provide that in the event that the Internal Revenue Service draws on the letter of credit (or confirmation) in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the letter of credit (or confirmation) is drawn upon. After such date, any such remittance will be treated as a deposit and will be returned (without interest) upon request of the U.S. Trustee after the date specified above, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*5*) *Procedure.* The letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the letter of credit is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective values of such assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iii) of this section are claimed.

(D) *Disallowance of marital deduction in case of substantial undervaluation of QDOT property in certain situations.* (*1*) If either—

(*i*) The bond or letter of credit security arrangement under paragraph (d)(1)(i)(B) or (C) of this section is chosen by the U.S. Trustee; or

(*ii*) The QDOT property as originally reported on the decedent's estate tax return is valued at $2 million or less but, as finally determined for federal estate tax purposes, the QDOT property is determined to be in excess of $2 million, then the marital deduction will be disallowed in its entirety for failure to comply with the requirements of section 2056A if the value of the QDOT property reported on the estate tax return is 50 percent or less of the amount finally determined to be the correct value of such property for federal estate tax purposes.

(*2*) The preceding sentence shall not apply if—

(*i*) There was reasonable cause for such undervaluation; and

(*ii*) The fiduciary of the estate acted in good faith with respect to such undervaluation. For this purpose, § 1.6664–4(b) of this chapter applies, to the extent applicable, with respect to the facts and circumstances to be taken into account in making this determination.

(ii) *QDOTs with assets of $2 million or less.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally

determined for federal estate tax purposes, is $2 million or less as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must require that no more than 35 percent of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust (or on the last day of the calendar year if the QDOT does not have a taxable year), may consist of real property located outside of the United States, or the trust must meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. See paragraph (d)(1)(ii)(D) of this section for special rules in the case of principal distributions from a QDOT and fluctuations in the value of the foreign real property held by a QDOT due to changes in value of foreign currency. See paragraph (d)(1)(iii) of this section for a special rule for principal residences. If the fair market value, as originally reported on the decedent's estate tax return, of the assets passing or deemed to have passed to the QDOT (determined without reduction for any indebtedness with respect to the assets) is $2 million or less, but the fair market value of the assets as finally determined for federal estate tax purposes is more than $2 million, the U.S. Trustee shall have a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. However, see paragraph (d)(1)(i)(D) of this section in the case of a substantial undervaluation of QDOT assets.

(A) *Multiple QDOTs.* For purposes of this paragraph (d)(1)(ii), if more than one QDOT is established for the benefit of the surviving spouse, the fair market value of all the QDOTs are aggregated in determining whether the $2 million threshold under this paragraph (d)(1)(ii) is exceeded.

(B) *Look-through rule.* For purposes of determining whether no more than 35 percent of the fair market value of the QDOT assets consists of foreign real property, if the QDOT owns more than 20% of the voting stock or value in a corporation with 15 or fewer shareholders, or more than 20% of the capital interest of a partnership with 15 or fewer partners, then all assets owned by the corporation or partnership are deemed to be owned directly by the QDOT to the extent of the QDOT's pro rata share of the assets of that corporation or partnership. In the case of a partnership, the QDOT partner's pro rata share shall be based on the greater of its interest in the capital or profits of the partnership. For purposes of this paragraph, all stock in the corporation, or interests in the partnership, as the case may be, owned by or held for the benefit of the surviving spouse, or any members of the surviving spouse's family (within the meaning of section 267(c)(4)), are treated as owned by the QDOT solely for purposes of determining the number of partners or shareholders in the entity and the QDOT's percentage voting interest or value in the corporation or capital interest in the partnership, but not for the purpose of determining the QDOT's pro rata share of the assets of the entity.

(C) *Interests in other entities.* Interests owned by the QDOT in other entities (such as an interest in a trust) are accorded treatment consistent with that described in paragraph (d)(1)(ii)(B) of this section.

(D) *Special rule for foreign real property.* For purposes of this paragraph (d)(1)(ii), if, on the last day of any taxable year during the term of the QDOT (or the last day of the calendar year if the QDOT does not have a taxable year), the value of foreign real property owned by the QDOT exceeds 35 percent of the fair market value of the trust assets due to distributions of QDOT principal during that year or because of fluctuations in the value of the foreign currency in the jurisdiction where the real estate is located, the QDOT will not be treated as failing to meet the requirements of paragraph (d)(1) of this section and, therefore, will not cease to be a QDOT within the meaning of § 20.2056A–5(b)(3) if, by the end of the taxable year (or the last day of the calendar year if the QDOT does not have a taxable year) of the QDOT immediately following the year in which the 35 percent limit was exceeded, the value of the foreign real property held by the QDOT does not exceed 35 percent of the fair market value of the trust assets or, alternatively, the QDOT meets the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section on or before the close of that succeeding year.

(iii) *Special rules for principal residence and related personal effects*—(A) *Two million dollar threshold.* For purposes of determining whether the $2 million threshold under paragraphs (d)(1) (i) and (ii) of this section has been exceeded, the executor of the estate may elect to exclude up to $600,000 in value attributable to real property wherever situated (and related furnishings) owned directly by the QDOT that is used by the surviving spouse as the spouse's principal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election is made by attaching a written statement claiming the exclusion to the estate tax return on which the QDOT election is made.

(B) *Security requirement.* For purposes of determining the amount of the bond or letter of credit required in cases where paragraph (d)(1)(i) (B) or (C) of this section applies, the executor of the estate may elect to exclude, during the term of the QDOT, up to $600,000 in value attributable to real property, wherever situated (and related furnishings) owned directly by the QDOT that is used by the surviving spouse as the spouse's principal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion.

(C) *Foreign real property limitation.* The special rules of this paragraph (d)(1)(iii) do not apply for purposes of determining whether more than 35 percent of the QDOT assets consist of foreign real property under paragraph (d)(1)(ii) of this section.

(D) *Principal residence.* For purposes of this paragraph (d)(1)(iii), the term *principal residence* has the same meaning as prescribed in section 1034 and the regulations thereunder. A principal residence may include appurtenant structures used by the surviving spouse for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

(E) *Related furnishings.* The term *related furnishings* means furniture and commonly included items such as appliances, fixtures, decorative items and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class are not within the meaning of this term.

(F) *Annual statement.* If one or both of the exclusions provided in paragraph (d)(1)(iii) (A) or (B) of this section are elected by the executor of the estate, the U.S. Trustee must file the statement required under paragraph (d)(3) of this section at the time and in the manner provided in paragraph (d)(3) of this section. In addition, an annual statement must be filed by the U.S. Trustee under the circumstances

described in paragraphs (d)(3)(iii) (C) and (D) of this section.

(G) *Cessation of use.* Except as provided in this paragraph (d)(1)(iii)(G), if the residence ceases to be used as the principal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusions provided in paragraph (d)(1)(iii) (A) and (B) of this section will cease to apply. However, in the case of such a sale, the exclusions will continue to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(b)(1)) is used to purchase a new principal residence for the spouse. If less than the amount of the adjusted sales price is so reinvested, then the amount of the exclusions initially claimed by the QDOT are reduced proportionately based on the amount of excess adjusted sales price not so reinvested compared to the entire adjusted sales price. If the QDOT ceases to qualify for all or any portion of the initially claimed exclusions, paragraph (d)(1)(i) of this section, if applicable (determined as if the portion of the exclusions disallowed had not been initially claimed by the QDOT), must be complied with no later than 120 days after the effective date of the cessation. The Internal Revenue Service may provide in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) for appropriate exceptions to the cessation of use rule contained in this paragraph (d)(1)(iii) where the principal residence of a surviving spouse is substituted for another principal residence, when both residences are held in a QDOT.

(iv) *Anti-abuse rule.* Regardless of whether the QDOT designates a bank as the U.S. Trustee under paragraph (d)(1)(i)(A) of this section (or otherwise complies with paragraph (d)(1)(i)(A) of this section by naming a foreign bank with a United States branch as a trustee to serve with the U.S. Trustee), complies with paragraph (d)(1)(i) (B) or (C) of this section, or is subject to and complies with the foreign real property requirements of paragraph (d)(1)(ii) of this section, the trust immediately ceases to qualify as a QDOT if the trust utilizes any device or arrangement that has, as a principal purpose, the avoidance of liability for the estate tax imposed under section 2056A(b)(1), or the prevention of the collection of the tax. For example, the trust may become subject to this paragraph (d)(1)(iv) if the U.S. Trustee that is selected is a domestic corporation established with insubstantial capitalization by the surviving spouse or members of the spouse's family.

(2) *Individual trustees.* If the U.S. Trustee is an individual United States citizen, the individual must have a tax home (as defined in section 911(d)(3)) in the United States.

(3) *Annual reporting requirements*—(i) *In general.* The U.S. Trustee must file a written statement described in paragraph (d)(3)(iii) of this section, if the QDOT satisfies any one of the following criteria for the applicable reporting years—

(A) The QDOT directly owns any foreign real property on the last day of its taxable year (or the last day of the calendar year if it has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1)(i) (A), (B), or (C) of this section by employing a bank as trustee or providing security; or

(B) The principal residence exclusion under paragraph (d)(1)(iii) of this section applies during the taxable year (or during the calendar year if the QDOT has no taxable year); or

(C) The principal residence previously subject to the exclusion under paragraph (d)(1)(iii) of this section is sold, or that principal residence ceases to be used as a principal residence, during the taxable year (or during the calendar year if the QDOT does not have a taxable year); or

(D) After the application of the look-through rule contained in paragraph (d)(1)(ii)(B) of this section, the QDOT is treated as owning any foreign real property on the last day of the taxable year (or the last day of the calendar year if the QDOT has no taxable year).

(ii) *Time and manner of filing.* The written statement, containing the information described in paragraph (d)(3)(iii) of this section, is to be filed for the taxable year of the QDOT (calendar year if the QDOT does not have a taxable year) for which any of the events or conditions requiring the filing of a statement under paragraph (d)(3)(i) of this section have occurred or have been satisfied. The written statement is to be submitted to the Internal Revenue Service by filing a Form 706–QDT, with the statement attached, no later than April 15th of the calendar year following the calendar year in which or with which the taxable year of the QDOT ends (or by April 15th of the following year if the QDOT has no taxable year), unless an extension of time is obtained under § 20.2056A–11(a). The Form 706–QDT, with attached statement, must be filed regardless of whether the Form 706–QDT is otherwise required to be filed under the provisions of this chapter. Failure to file timely the statement may subject the QDOT to the rules of paragraph (d)(1)(iv) of this section.

(iii) *Contents of statement.* The written statement must contain the following information—

(A) The name, address, and taxpayer identification number, if any, of the U.S. Trustee and the QDOT; and

(B) A list summarizing the assets held by the QDOT, together with the fair market value of each listed QDOT asset, determined as of the last day of the taxable year (December 31 if the QDOT does not have a taxable year) for which the written statement is filed. If the look-through rule contained in paragraph (d)(1)(ii)(B) of this section applies, then the partnership, corporation, trust or other entity must be identified and the QDOT's pro rata share of the foreign real property and other assets owned by that entity must be listed on the statement as if directly owned by the QDOT; and

(C) If a principal residence previously subject to the exclusion under paragraph (d)(1)(iii) of this section is sold during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the statement must provide the date of sale, the adjusted sales price (as defined in section 1034(b)(1)), the extent to which the amount of the adjusted sales price has been or will be used to purchase a new principal residence and, if not timely reinvested, the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable; and

(D) If the principal residence ceases to be used as a principal residence by the surviving spouse during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the written statement must describe the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable.

(4) *Request for alternate arrangement or waiver.* If the Commissioner provides guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) pursuant to which a testator, executor, or the U.S. Trustee may adopt an alternate plan or arrangement to assure collection of the section 2056A estate tax, and if such an alternate plan or arrangement is adopted in accordance with such published guidance, then the QDOT will be treated, subject to paragraph (d)(1)(iv) of this section, as meeting the requirements of paragraph (d)(1) of this section. Until such guidance is published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), taxpayers may submit a request for a private letter ruling for the

approval of an alternate plan or arrangement proposed to be adopted to assure collection of the section 2056A estate tax in lieu of the requirements prescribed in this paragraph (d)(4).

(5) *Adjustment of dollar threshold and exclusion.* The Commissioner may increase or decrease the dollar amounts referred to in paragraph (d)(1) (i), (ii) or (iii) of this section in accordance with guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(6) *Effective date and special rules.* (i) This paragraph (d) is effective for estates of decedents dying after March 7, 1996.

(ii) *Special rule in the case of incompetency.* A revocable trust or a trust created under the terms of a will is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that such requirements are not contained in the governing instrument, if the trust instrument (or will) was executed on or before November 20, 1995, and—

(A) The testator or settlor dies after March 7, 1996;

(B) The testator or settlor is, on November 20, 1995, and at all times thereafter, under a legal disability to amend the will or trust instrument;

(C) The will or trust instrument does not provide the executor or the U.S. Trustee with a power to amend the instrument in order to meet the requirements of section 2056A; and

(D) The U.S. Trustee provides a written statement with the federal estate tax return (Form 706 or 706NA) that the trust is being administered (or will be administered) so as to be in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

(iii) *Special rule in the case of certain irrevocable trusts.* An irrevocable trust is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that such requirements are not contained in the governing instrument if the trust was executed on or before November 20, 1995, and:

(A) The settlor dies after March 7, 1996;

(B) The trust instrument does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A; and

(C) The U.S. Trustee provides a written statement with the decedent's federal estate tax return (Form 706 or 706NA) that the trust is being administered in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

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. Section 602.101(c) is amended by adding the entry ''20.2056A–2T(d)—1545–1443'' in numerical order in the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19866 Filed 8–21–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

48 CFR Part 219

Defense Federal Acquisition Regulation Supplement; Evaluation Preference for Small Disadvantaged Business Concerns

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement to state that the evaluation preference for small disadvantaged business concerns shall not be used in acquisitions for long distance telecommunications services.

EFFECTIVE DATE: August 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131. Please cite DFARS Case 95–D008.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** at 60 FR 22035 on May 4, 1995. Fourteen comments from eleven respondents were received as a result of the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from the individual listed herein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 is amended as follows:

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 219.7001 is amended by revising paragraphs (b) (3) and (4) and adding (b)(5) to read as follows:

219.7001 Applicability.

* * * * *

(b) * * *

(3) Are set-aside for small businesses;

(4) Are for commissary or exchange resale; or

(5) Are for long distance telecommunications services.

[FR Doc. 95–20741 Filed 8–21–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 081595A]

Pacific Halibut Fisheries; Area 2A Non-Treaty Commercial Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes inseason actions pursuant to IPHC regulations approved by the U.S. Government to