activities of its members and the industry.

ANLA's comments, which responded to each of the eleven FRN questions,[8] indicated that the Nursery Guides serve a useful purpose and should remain in effect in their current form. ANLA stated that it did not have any proposals for changing the Guides [9] and did not have any ''specific observations'' about what effects, if any, changes in relevant technology, economic conditions, or environmental conditions had on the Guides. ANLA observed that the Guides ''have been generally adopted and become part of routine business practice at least among legitimate and respectable industry firms'' and that the Nursery Guides ''provide a framework for addressing the bad actors.'' ANLA stated that its sense was that the Guides have imposed minimal costs on purchasers because they ''merely convey the performance standards that should be met'' when the industry engages in advertising and labeling that it otherwise conducts. Further, ANLA said that it did not believe the Guides have imposed any significant burdens on industry businesses.

Concerning FRN question 5 (how the 1994 amendments to Guide 6 regarding plants collected from the wild state have affected the nursery industry and purchasers), ANLA stated that the intent of the 1994 amendments—which it supported—was to protect consumers because wild-collected plants often suffer high mortality. It noted, however, if wild-collected plants have been established in the nursery for at least a growing season, the surviving plants regain vigor and thus the consumer is more assured of purchasing viable plants. ANLA opined that the Guide 6 ''nursery-propagated'' designation helps conservationists and consumers interested in preserving these wild populations because they may want to purchase only truly nursery-propagated and grown plants.

Sachau's comment related solely to wild-collected plants, and did not indicate that any changes needed to be made to the Guides. Sachau stated that no wild-collected plants should be sold by any U.S. nursery. Sachau indicated that such plants were usually collected on national taxpayer-owned land, and that taking plants from this land was ''stealing.'' Sachau stated that stealing plants from national land should be a criminal offense, and suggested specific fines to be imposed on anyone caught stealing from nationally-owned land. With regard to Sachau's comments, the Commission notes that Guide 6 refers only to plants ''lawfully'' collected from the wild state. Moreover, to the extent that it is not already a crime, the FTC does not have the authority to make collecting plants from the wild state on national lands a criminal offense.

In light of the comments received, and in the absence of any opposition to the Guides, the Commission concludes that there is a continuing need for the Nursery Guides. The comments provide evidence that the Guides serve a useful purpose, while imposing minimal costs on the industry, and the Commission has no evidence to the contrary. Accordingly, with the exception of correcting the misspelling of the word ''bulblets'' [10] in § 18.1(c)(9), the Commission has determined to retain the Nursery Guides in their current form.

IV. Conclusion

For the reasons described above, the Commission has determined to retain the current Nursery Guides.

List of Subjects in 16 CFR Part 18

Advertising, Nursery, Trade practices.

Text of Amendments

■ For the reason set forth in the preamble, 16 CFR part 18 is amended as follows:

PART 18—GUIDES FOR THE NURSERY INDUSTRY

■ 1. Section 18.1 is amended by revising paragraph (c)(9) to read as follows:

§ 18.1 Deception (general).

* * * * *

(c)(9) That bulblets are bulbs.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–52 Filed 1–8–07; 8:45 am]

BILLING CODE 6750–01–P

[8] Because ANLA did not provide substantive information in response to every question and some responses overlapped with others, this FRN does not discuss each question separately.

[9] In response to FRN question 9 (whether the Guides overlap or conflict with other federal, state or local laws or regulations), ANLA stated that it did not see any fundamental conflict. It indicated that the nursery industry recently worked with the National Institutes for Standards and Technology to develop industry guidelines for marketing plants sold in packages or in containers. ANLA stated that the ''Industry Guide to Marketing Container Plants'' (''Industry Guide'') ''was necessitated by the widespread use of marketing terminology (10-inch pot, 1 gallon pot) that was viewed as not conforming with weights and measures consumer labeling requirements.'' ANLA suggested that if the Commission decided to retain the Nursery Guides, it might want to reference the Industry Guide because it contains useful supplemental information. ANLA, however, did not propose any specific text or section of the Guides for this supplemental information. Because the Industry Guide addresses matters of state law, as opposed to compliance with the FTC Act or other laws enforced by the FTC, the Commission believes that it is potentially confusing to reference the Industry Guide in the Nursery Guides.

[10] ''Bulblets'' was incorrectly spelled ''bublets.''

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9309]

RIN 1545–BD40

Qualified Amended Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that state the rules relating to qualified amended returns by providing circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return. The IRS uses qualified amended returns to determine whether an underpayment exists that is potentially subject to the accuracy-related penalty on underpayments. Among other things, these final regulations provide that the period for filing a qualified amended return is terminated once the IRS has served a John Doe summons on a third party with respect to the taxpayer's tax liability. In addition, for taxpayers who have claimed tax benefits from undisclosed listed transactions, the regulations provide that the period for filing a qualified amended return is terminated once the IRS requests information related to the transaction that is required to be included on a list under section 6112 from any person who made a tax statement to or for the benefit of the taxpayer, or any person who gave material aid, assistance, or advice to the taxpayer. The regulations also provide that the date on which published guidance is issued announcing a settlement initiative for a listed transaction in which penalties, in whole or in part, are compromised or waived is an additional date by which a taxpayer must file a qualified amended return.

DATES: *Effective Date:* These regulations are effective January 9, 2007.

Applicability Dates: For dates of applicability, see § 1.6664–1(b)(3).

FOR FURTHER INFORMATION CONTACT: Laura Urich Daly, 202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains Final Regulations under 26 CFR part 1 relating to qualified amended returns. Temporary regulations (TD 9186) relating to qualified amended returns were published in the **Federal Register** (70 FR 10037) on March 2, 2005. A notice of proposed rulemaking (REG–122847–04) cross-referencing the temporary regulations was published in the **Federal Register** (70 FR 10062) for the same day. A correction (70 FR 36345) and a correcting amendment (70 FR 36344) to the regulations were published in the **Federal Register** on June 23, 2005, and a correction to the correction was published in the **Federal Register** (70 FR 43635) on July 28, 2005. No written or electronic comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. The proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Explanation of Revisions

The final regulations clarify the applicability date of the regulations. Under the Special Rules section, the sentence in the proposed and temporary regulations regarding disclosure pursuant to § 1.6011–4 was removed in these final regulations because it could be incorrectly interpreted to provide relief from the section 6707A penalty. These final regulations are not intended to have any effect upon the applicability of the section 6707A penalty. In addition, examples one, four, five, six, and seven in the proposed and temporary regulations were further clarified. Finally, example eight in the proposed and temporary regulations was removed as unnecessary.

No other substantive revisions were made to the proposed and temporary regulations or the corrections to those regulations. These final regulations do, however, include revisions to the table of contents to the regulations under section 6664.

Special Analyses

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

Drafting Information

The principal author of this regulation is Laura Urich Daly, Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6664–0 is amended by adding entries for §§ 1.6664–1(b)(3) and 1.6664–2(c)(3)(i), (ii) and (5), and revising the entry for § 1.6664–2(c)(4) to read as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–1 Accuracy-related and fraud penalties; definitions, effective date and special rules.

* * * * *

(b) * * *

(3) Qualified amended returns.

§ 1.6664–2 Underpayment.

* * * * *

(c) * * *

(3) * * *

(i) General rule.

(ii) Undisclosed listed transactions.

(4) Special rules.

(5) Examples.

* * * * *

■ **Par. 3.** Section 1.6664–1 is amended by:

■ 1. Revising the section heading.

■ 2. Adding paragraph (b)(3).

The revision and addition read as follows:

§ 1.6664–1 Accuracy-related and fraud penalties; definitions, effective date and special rules.

* * * * *

(b) * * *

(3) *Qualified amended returns.* Sections 1.6664–2(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D)(*2*), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664–2(c)(3)(i)(D)(*1*) and (c)(3)(ii)(B) and (C) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. The applicability date for § 1.6664–2(c)(3)(ii)(A) varies depending upon which event occurs under § 1.6664–2(c)(3)(i). For purposes of § 1.6664–2(c)(3)(ii)(A), the date described in § 1.6664–2(c)(3)(i)(D)(*1*) is applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. For purposes of § 1.6664–2(c)(3)(ii)(A), the dates described in § 1.6664–2(c)(3)(i)(A), (B), (C), (D)(*2*), and (E) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Section 1.6664–2(c)(1) through (c)(3), as contained in 26 CFR part 1 revised as of April 1, 2004 and as modified by Notice 2004–38, 2004–1 C.B. 949, applies with respect to returns and requests for administrative adjustment filed on or after April 30, 2004 and before March 2, 2005. Section 1.6664–2(c)(1) through (3), as contained in 26 CFR part 1 revised as of April 30, 2004, applies with respect to returns and requests for administrative adjustment filed before April 30, 2004.

§ 1.6664–1T [Removed]

■ **Par. 4.** Section 1.6664–1T is removed.

■ **Par. 5.** Section 1.6664–2(c) is revised to read as follows:

§ 1.6664–2 Underpayment.

* * * * *

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (a) of this section, the *amount shown as the tax by the taxpayer on his return* is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in paragraphs (b)(1), (2), and (3) of this section, except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The *amount shown as the tax by the taxpayer on his return* includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined*—(i) *General rule.* A *qualified amended return* is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(A) The date the taxpayer is first contacted by the Internal Revenue Service (IRS) concerning any examination (including a criminal investigation) with respect to the return;

(B) The date any person is first contacted by the IRS concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A);

(C) In the case of a pass-through item (as defined in § 1.6662–4(f)(5)), the date the pass-through entity (as defined in § 1.6662–4(f)(5)) is first contacted by the IRS in connection with an examination of the return to which the pass-through item relates;

(D)(*1*) The date on which the IRS serves a summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer claimed any tax benefit on the return directly or indirectly.

(*2*) The rule in paragraph (c)(3)(i)(D)(*1*) of this section applies to any return on which the taxpayer claimed a direct or indirect tax benefit from the type of activity that is the subject of the summons, regardless of whether the summons seeks the production of information for the taxable period covered by such return; and

(E) The date on which the Commissioner announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), a settlement initiative to compromise or waive penalties, in whole or in part, with respect to a listed transaction. This rule applies only to a taxpayer who participated in the listed transaction and for the taxable year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this paragraph or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

(ii) *Undisclosed listed transactions.* An *undisclosed listed transaction* is a transaction that is the same as, or substantially similar to, a listed transaction within the meaning of § 1.6011–4(b)(2) (regardless of whether § 1.6011–4 requires the taxpayer to disclose the transaction) and was neither previously disclosed by the taxpayer within the meaning of § 1.6011–4 or § 1.6011–4T, nor disclosed under Announcement 2002–2 (2002–1 C.B. 304), (see § 601.601(d)(2)(ii) of this chapter) by the deadline therein. In the case of an *undisclosed listed transaction* for which a taxpayer claims any direct or indirect tax benefits on its return (regardless of whether the transaction was a listed transaction at the time the return was filed), an amended return or request for administrative adjustment under section 6227 will not be a *qualified amended return* if filed on or after the earliest of—

(A) The dates described in paragraph (c)(3)(i) of this section;

(B) The date on which the IRS first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or

(C) The date on which the IRS requests, from any person who made a tax statement to or for the benefit of the taxpayer or from any person who gave the taxpayer material aid, assistance, or advice as described in section 6111(b)(1)(A)(i) with respect to the taxpayer, the information required to be included on a list under section 6112 relating to a transaction that was the same as, or substantially similar to, the undisclosed listed transaction, regardless of whether the taxpayer's information is required to be included on that list.

(4) *Special rules.* (i) A qualified amended return includes an amended return that is filed to disclose information pursuant to § 1.6662–3(c) or § 1.6662–4(e) and (f) even though it does not report any additional tax liability. See § 1.6662–3(c), § 1.6662–4(f), and § 1.6664–4(c) for rules relating to adequate disclosure.

(ii) The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(5) *Examples.* The following examples illustrate the provisions of paragraphs (c)(3) and (c)(4) of this section:

Example 1. T, an individual taxpayer, claimed tax benefits on its 2002 Federal income tax return from a transaction that is substantially similar to the transaction identified as a listed transaction in Notice 2002–65, 2002–2 C.B. 690 (Partnership Entity Straddle Tax Shelter). T did not disclose his participation in this transaction on a Form 8886, ''Reportable Transaction Disclosure Statement,'' as required by § 1.6011–4. On June 30, 2004, the IRS requested from P, T's material advisor, an investor list required to be maintained under section 6112. The section 6112 request, however, related to the type of transaction described in Notice 2003–81, 2003–2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts). T did not participate in (within the meaning of § 1.6011–4(c)) a transaction described in Notice 2003–81. T may file a qualified amended return relating to the transaction described in Notice 2002–65 because T did not claim a tax benefit with respect to the listed transaction described in Notice 2003–81, which is the subject of the section 6112 request.

Example 2. The facts are the same as in *Example 1,* except that T's 2002 Federal income tax return reflected T's participation in the transaction described in Notice 2003–81. As of June 30, 2004, T may not file a qualified amended return for the 2002 tax year.

Example 3. (i) Corporation X claimed tax benefits from a transaction on its 2002 Federal income tax return. In October 2004, the IRS and Treasury Department identified the transaction as a listed transaction. In December 2004, the IRS contacted P concerning an examination of P's liability under section 6707(a) (as in effect prior to the amendment to section 6707 by section 816 of the American Jobs Creation Act of 2004 (the Jobs Act), Public Law 108–357 (118 Stat. 1418)). P is the organizer of a section 6111 tax shelter (as in effect prior to the amendment to section 6111 by section 815 of the Jobs Act) who provided representations to X regarding tax benefits from the transaction, and the IRS has contacted P about the failure to register that transaction. Three days later, X filed an amended return.

(ii) X's amended return is not a qualified amended return, because X did not disclose the transaction before the IRS contacted P. X's amended return would have been a qualified amended return if it was submitted prior to the date on which the IRS contacted P.

Example 4. The facts are the same as in *Example 3* except that, instead of contacting P concerning an examination under section 6707(a), in December 2004, the IRS served P with a John Doe summons described in section 7609(f) relating to the tax liability of participants in the type of transaction for which X claimed tax benefits on its return. X cannot file a qualified amended return after the John Doe summons has been served regardless of when, or whether, the transaction becomes a listed transaction.

Example 5. On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Corporation Y complied with the summons, and identified, among others, Taxpayer B. On May 31, 2004, before the IRS first contacted Taxpayer B concerning an examination of Taxpayer B's Federal income tax return for the taxable year 2002, Taxpayer B filed an amended return for that taxable year, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons was served on Corporation Y.

Example 6. The facts are the same as in *Example 5.* Taxpayer B continued to maintain the offshore credit card account through 2003 and filed an original tax return for the 2003 taxable year claiming tax benefits attributable to the existence of the account. On March 21, 2005, Taxpayer B filed an amended return for the taxable year 2003, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons for 2001 and 2002 was served on Corporation Y, and the return reflects benefits from the type of activity that is the subject of the John Doe summons.

Example 7. (i) On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Taxpayer C did not have signature authority over any of Corporation Y's credit cards during either 2001 or 2002 and, therefore, was not a person described in the John Doe summons.

(ii) In 2003, Taxpayer C first acquired signature authority over a Corporation Y credit card issued by an offshore financial institution. Because Taxpayer C did not have signature authority during 2001 or 2002 over a Corporation Y credit card issued by an offshore financial institution, and was therefore not covered by the John Doe summons served on November 30, 2003, Taxpayer C's ability to file a qualified amended return for the 2003 taxable year is not limited by paragraph (c)(3)(i)(D) of this section.

* * * * *

§ 1.6664–2T [Removed]

■ **Par. 6.** Section 1.6664–2T is removed.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2006.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–22645 Filed 1–8–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–120]

RIN 1625–AA87

Security Zone; Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac River and Anacostia River in order to safeguard high-ranking public officials from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 8 a.m. on January 23, 2007, through 8 a.m. on January 24, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–120 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Waterways Management Division, at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Department of Homeland Security designated the January 23, 2007 State of the Union Address a National Special Security Event (NSSE). The Coast Guard is establishing this security zone to support the United States Secret Service, the designated lead Federal agency for an NSSE, in their efforts to coordinate security operations and establish a secure environment for this highly visible and publicized event. This temporary security zone of short duration is necessary to provide for the security of high-ranking United States officials and the public at large. Additionally, the publication of an NPRM is contrary to the public interest, as immediate action is required to address the ongoing threat to U.S. national interests.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to protect the public by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is contrary to public and national interests.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead Federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This