

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 401

RIN 0563-AB54

#### General Crop Insurance Regulations; Cranberry Endorsement; Correction

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final regulation which was published Monday, February 10, 1997 (62 FR 5903-5907). The regulation pertains to the insurance of cranberries.

**EFFECTIVE DATE:** March 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured, include the current cranberry endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current cranberry endorsement to the 1997 and prior crop years.

##### Need For Correction

As published, the final regulation contained an error which may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication on February 10, 1997 of the final regulation at 62 FR 5903-5907 is corrected as follows:

On page 5905, in the second column, the heading for part 401 is corrected to read: PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

Signed in Washington DC on March 17, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97-7389 Filed 3-24-97; 8:45 am]

BILLING CODE 3410-FA-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 622

[Docket No. 961108316-7051-02; I.D. 101796C]

RIN 0648-AI47

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 14

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 14 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule prohibits the use or possession of fish traps in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) beginning February 8, 2007; prohibits the use or possession of fish traps west of 85°30' W. long.; modifies the procedure for retrieval of fish traps when a breakdown prevents a vessel with a trap endorsement from retrieving its traps; modifies the restrictions on transfer of fish trap endorsements and reef fish permits; prohibits the harvest or possession of Nassau grouper in or from

the EEZ of the Gulf; and clarifies the authority of the Regional Administrator, Southeast Region, NMFS (RA), to reopen a prematurely closed fishery. In addition, NMFS extends the current prohibition on the possession of dynamite on board a permitted vessel to those vessels permitted in the South Atlantic golden crab fishery. The intended effects of this rule are to conserve and manage the reef fish resources of the Gulf and enhance enforceability of the regulations. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of a new collection-of-information requirement contained in this rule.

**EFFECTIVE DATES:** April 24, 1997, except that the amendments to § 622.4 are effective March 25, 1997.

**ADDRESSES:** Requests for copies of the final regulatory flexibility analysis (FRFA) should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Dr. N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirement contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Council developed Amendment 14 to address various problems in the reef fish fishery, primarily those associated with the fish trap fishery and the expiration of a moratorium on the issuance of additional fish trap endorsements to reef fish permits on February 7, 1997. The rationale for the management measures in Amendment 14, and the additional regulatory changes proposed by NMFS, are contained in the preamble of the proposed rule (61 FR 59852, November

25, 1996) and are not repeated here. After considering the public comment received on the amendment and the proposed rule, NMFS approved all of the amendment measures on January 22, 1997. NMFS is issuing this final rule to implement those approved measures.

### Comments and Responses

The notice of availability for Amendment 14 was published on October 23, 1996 (61 FR 55128) and written public comments on the amendment were requested through December 23, 1996. The proposed rule requested written public comments on the rule through January 9, 1997. Comments were received from five entities on Amendment 14 and/or the proposed rule, summarized as follows.

*Comments:* An individual, the Florida Marine Fisheries Commission (FMFC), and a coral reef conservation organization provided substantive and detailed comments on various issues associated with the fish trap ban. These comments suggest that the current fish trap regulations cannot be effectively enforced and thereby contribute to continuing and undesirable fishing mortality of reef fish (i.e., through illegal and undetected use of fish traps, as well as through ghost-fishing by lost traps). The FMFC and the conservation organization commented that continued use of fish traps in Federal waters off Florida during the 10-year "phaseout" period will contribute to bycatch problems, user group conflicts, and illegal trap use in State waters. The FMFC preferred a ban on the use of traps after 2 years, but supported the 10-year phaseout compared to the status quo (i.e., unlimited availability of fish trap endorsements for permitted reef fish vessels after expiration of the current moratorium on trap endorsements on February 7, 1997). The conservation organization also supported Amendment 14, but recommended a 10-percent reduction in the number of fish traps each year during the 10-year phaseout period. The individual also commented that fish traps should be immediately banned off Florida.

Another individual (the fourth commenter) commented that a phaseout of fish traps in less than 10 years would be more logical, but did not provide additional rationale in support of the comment. A seafood company owner (the fifth commenter) provided editorial comments on the text of the proposed rule.

*Response:* NMFS acknowledges the support for Amendment 14 indicated by comments by the FMFC and the conservation organization. NMFS

supports the 10-year phaseout leading to a prohibition of fish traps. This support is based on concerns that the current fish trap regulations cannot be effectively enforced and thereby contribute to continued fishing mortality by illegal and undetected fish traps, as well as by lost traps (i.e., through ghost-fishing). NMFS approved the 10-year phaseout leading to a prohibition of fish traps as a fair and satisfactory means of addressing the fishery problems of enforcement and biological impacts associated with using trap gear for reef fish.

Enforcement of regulations regarding the use of fish traps during the 10-year phaseout period should be improved by implementation of the prohibition on the use or possession of fish traps west of Cape San Blas, FL, and by the revised procedure for fish trap retrieval in the event of a vessel breakdown. These two measures should significantly address the commenters' concerns about the continuing illegal use of traps in State waters.

After considering alternative time periods for elimination of trap gear in the reef fish fishery, including an immediate ban, as well as time periods longer and shorter than 10 years, the Council selected the 10-year phaseout period as the most reasonable compromise between persons who supported an indefinite continuation of fish trapping and fish trap opponents who supported an immediate ban on the gear. NMFS concurs with the Council's selection.

A 10-percent reduction in the number of fish traps each year, as suggested by the conservation organization, was not one of the alternatives explicitly considered and evaluated by the Council in Amendment 14. To undertake this approach in phasing out trap gear would require that the Council propose the appropriate management measure under another FMP amendment and that such measure be reviewed, approved, and implemented by NMFS under provisions of the Magnuson-Stevens Act.

### Changes From the Proposed Rule

NMFS is adding to this final rule corrections of the scientific names for red porgy in Tables 3 and 4 and saucereye porgy in Table 4 of Appendix A to part 622. Otherwise, the proposed rule is adopted as final without substantive change.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register**

to the Assistant Administrator for Fisheries, NOAA.

### Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA), pursuant to the requirements of the Regulatory Flexibility Act (RFA), that described the expected significant economic effects on a substantial number of the small business entities engaged in harvesting the reef fish resources in the Gulf of Mexico. During the public comment periods on the amendment and the proposed rule, no public comments were received that addressed specifically the analysis or conclusions of the IRFA; no additional information was received that would change the analysis or conclusions of the IRFA regarding the impacts on small business entities. Accordingly, the FRFA is based on the IRFA without substantive change. Copies of the FRFA are available (see **ADDRESSES**). A summary of the FRFA follows.

Amendment 14 and this final rule are needed to address five problems in the fishery. The first problem resulted from the expiration of a 3-year moratorium on the issuance of new fish trap endorsements on February 7, 1997. New regulatory action following this moratorium expiration is required to ensure that the fish trap fishery continues to be managed and that specific restrictions are established regarding the transfer of fish trap endorsements within the fishery. A continuing management program is essential for addressing the concerns of the Council and NMFS regarding the effects of the serious enforcement problems within the trap fishery for reef fish. A second problem is the potential for an uncontrolled expansion of the use of fish traps. Geographical limitations on the gear are needed to prevent an uncontrolled expansion of the range of the fishery and associated enforcement problems. A third problem is that, prior to Amendment 14, the FMP did not provide the NMFS Regional Administrator, Southeast Region, NMFS (Regional Administrator) with the authority to reopen and subsequently close a prematurely closed commercial fishery (i.e., a fishery that has not actually filled its quota on the initial closure date); this resulted in the loss of harvestable fish to commercial fishermen. A fourth problem is that the FMP allowed a reef fish permit transfer only when the owner of the vessel whose permit is being transferred had met the income qualification for the

permit. This prevented an operator, whose earned income qualified for the permit, from acquiring the permit for which he/she has qualified when he/she buys the vessel. A fifth problem is the reported decline in the abundance of the Nassau grouper resource in the EEZ of the Gulf of Mexico. This species is overutilized, is a candidate for protection under the Endangered Species Act, and its harvest and possession is prohibited in Florida's waters and in the South Atlantic and Caribbean EEZ. Allowing continuing harvest of Nassau grouper in the Gulf of Mexico EEZ could contribute to a further decline of this species. The objectives of Amendment 14 and this final rule are to: (1) Provide for control of the fish trap fishery after termination of the moratorium on trap fishery participants that expired on February 7, 1997; (2) provide the management flexibility to reopen and subsequently close a fishery that has been prematurely closed; (3) provide some flexibility in the transfer of fish trap endorsements during the trap fishery phaseout period; and (4) provide for protection of Nassau grouper throughout its range.

Limited public comments were received by NMFS on Amendment 14 and its proposed rule. These comments generally supported the phaseout or elimination of the trap fishery for reef fish in the EEZ because of enforcement problems, potential adverse biological impacts of the fishery, and possible effects of encouraging illegal trap fishing in State waters. Commenters advocated different time periods for the elimination of traps ranging from an immediate ban to an incremental reduction in the number of traps each year over the 10-year period. No changes were made in this final rule over the proposed rule as a result of these public comments. A summary of the comments and NMFS' responses is provided in the supplementary information for this rule (see "Comments and Responses").

Approximately 1,400 reef fish harvesting firms have reef fish permits. The average fishing firm operates with a vessel that is 38 ft (11.6 m) long, has a current estimated resale value of \$52,817, provides \$52,000 in annual gross sales of reef fish and other species, and produces an annual net income of \$12,000. All of the harvesting firms affected by the rule are classified as small business entities. The following measures directly apply to all of the firms holding a reef fish permit (including fish trappers): Modification of the restrictions on transfer of reef fish permits; allowance for transfer of fish

trap endorsements during the first 2 years of the phaseout period; prohibition on the harvest or possession of Nassau grouper in or from the EEZ; and provision of authority for the Regional Administrator to reopen a prematurely closed fishery. The predicted socioeconomic effects of these measures are not considered significant under the RFA (i.e., as a result of these measures, no more than 20 percent of affected entities will incur revenue decreases greater than 5 percent; compliance costs will not increase total costs of production by more than 5 percent, nor will they represent a significant portion of capital available to small entities; disproportionate effects on capital costs of compliance should not occur since all participants in the reef fish fishery, including the 92 in the fish trap sector, are small business entities; and no entity will be forced to cease business operations).

The following management measures apply directly only to the 92 firms that comprise the fish trap component of the reef fish fishery (i.e., those that hold fish trap endorsements): A prohibition on the use or possession of fish traps in the EEZ beginning February 8, 2007; a prohibition of the use or possession of fish traps west of Cape San Blas, FL; and a modified procedure for retrieval of fish traps. These measures are projected to have a significant economic impact on a substantial number of small entities. All of the 92 firms within this sector should experience more than a 5-percent reduction in annual gross income when fish trapping is prohibited. With such prohibition, all current value of traps will be lost because the traps have no value for other purposes. Available data indicate that the average fish trapper fishes 53 traps. Given an estimated cost of \$48.50 per trap (adjusted for depreciation), the average fish trapper would lose an estimated minimum of \$2,570.50, or 12.7 percent, of the annual cost of fish trapping (salvage value) in the year when the traps are prohibited. It is estimated that 11 to 13 of the 92 firms, or 12 to 14 percent of the firms, would be forced out of business by the fish trap phaseout.

This rule contains a new collection-of-information requirement. When a permitted vessel with a trap endorsement is unable to retrieve its own traps, the owner or operator must notify the nearest NMFS Office of Enforcement and obtain authorization for another vessel to retrieve the traps. This rule continues in effect previously approved collection-of-information requirements associated with the fish trap permit endorsement system.

The Council considered numerous management alternatives that would address the enforcement problems with and biological impacts of the fish trap fishery. These alternatives included periods for the phaseout or elimination of trap gear in the reef fish fishery both shorter and longer than its proposed 10-year period. Also, the Council considered a permanent fish trap license limitation system involving varying numbers of participants. The Council proposed the 10-year phaseout approach for eliminating trap gear, and NMFS approved it, as an effective means of resolving the issues of enforcement and biological effects in the fishery while spreading out the adverse economic impacts on trap fishermen over a reasonable time period. The 10-year period should minimize short-term costs to trap fishermen by allowing continuing use of the gear while still providing ample time for them to switch to other gear, fisheries, or activities. The Council proposed the additional provision that fish trap endorsements be fully transferable for the first 2 years of the phaseout period as a means of minimizing adverse economic impacts on current trap fishery participants who could receive economic benefits by selling their fish trap endorsements. The Council considered various alternatives regarding liberalized transfer provisions for trap endorsements for the remaining 8 years of the phaseout period, but concluded that such measures would undermine its objective of reducing the number of trap fishery participants.

The Council considered several options regarding area restrictions on trap use (in addition to the current prohibition on traps within a Gulf-wide "stressed area" in the nearshore waters of the Gulf EEZ). The Council concluded that expansion of the fish trap fishery beyond its current geographical scope is inconsistent with the intent of its proposed phaseout of trap gear in the reef fish fishery. The Council's proposed prohibition on the use of traps west of Cape San Blas, FL, would limit the trap fishery to that area where the fishery currently occurs and thereby prevent any increase in enforcement problems. The Council rejected alternatives regarding area restrictions (except for the status quo) as eliminating traps from some areas where they are currently used. This would have differentially impacted certain trap fishermen who would have to travel farther to reach areas open to fishing. The result would be reduced efficiency of fishing operations for certain fishermen, but no overall decrease in trap fishing effort. Also, some of the rejected alternatives regarding area



the first sentence; paragraphs (m) and (n); and paragraph (p)(3)(i), the last, parenthetical sentence are revised to read as follows:

**§ 622.4 Permits and fees.**

- (a) \* \* \*
- (2) \* \* \*

(v) *Gulf reef fish.* \* \* \* See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(g) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, or in paragraph (p) of this section for a red snapper endorsement. \* \* \*

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* The provisions of this paragraph (m) are applicable through December 31, 2000.

(1) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (m)(2) through (5) of this section, and are subject to the requirement for timely renewal in paragraph (m)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer the permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for Gulf reef fish for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may transfer the

permit to the income qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RD with an application for the changed permit.

(6) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(n) *Endorsements for fish traps in the Gulf.* The provisions of this paragraph (n) are applicable through February 7, 2007. After February 7, 2007, no fish trap endorsements are valid.

(1) Only those fish trap endorsements that are valid on February 7, 1997, may be renewed. Such endorsements are subject to the restrictions on transfer in paragraphs (n)(2) and (3) of this section and are subject to the requirement for timely renewal in paragraph (n)(5) of this section.

(2) Through February 7, 1999, a fish trap endorsement may be transferred only to a vessel that has a commercial permit for reef fish.

(3) After February 7, 1999, a fish trap endorsement is not transferable except as follows:

(i) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity.

(ii) A fish trap endorsement is transferable upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) When a change of ownership of a vessel with a fish trap endorsement is directly related to the disability or death of the owner, the RD may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new

owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Paragraphs (m)(3) and (4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

(iv) A fish trap endorsement may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD, from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for the vessel with the reported landings.

(4) The owner of a vessel that is to receive a transferred endorsement must return the originals of the endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RD with an application for a fish trap endorsement for his or her vessel.

(5) A fish trap endorsement that is not renewed or that is revoked will not be reissued. Such endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(i) \* \* \* (Paragraphs (m)(3) and (4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

5. In § 622.31, in paragraph (a), the reference to "§ 622.4" is revised to read "§ 622.4 or § 622.17" and paragraph (c) is revised to read as follows:

**§ 622.31 Prohibited gear and methods.**

(c) *Fish traps.* (1) A fish trap may not be used in the South Atlantic EEZ.

(2) A fish trap may not be used or possessed in the Gulf EEZ west of 85°30' W. long. and, after February 7, 2007, may not be used or possessed in the Gulf EEZ.

(3) A fish trap used other than where authorized in paragraph (c)(1) or (2) of this section may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

6. In § 622.32, paragraph (b)(2)(iii) is revised to read as follows:

**§ 622.32 Prohibited and limited harvest species.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Red drum and Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

\* \* \* \* \*

**§ 622.37 [Amended]**

7. In § 622.37(d)(4), the word "Nassau," is removed.

8. In § 622.40, paragraph (a)(2) is revised to read as follows:

**§ 622.40 Limitations on traps and pots.**

(a) \* \* \*

(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel with the fish trap endorsement to fish such trap. If such vessel has a breakdown that prevents it from retrieving its traps, the owner or operator must immediately notify the nearest NMFS Office of Enforcement and must obtain authorization for another vessel to retrieve and land its traps. The request for such authorization must include the requested effective period for the retrieval and landing, the persons and vessel to be authorized to retrieve the traps, and the point of landing of the traps. Such authorization will be specific as to the effective period, authorized persons and vessel, and point of landing. Such authorization is valid solely for the removal of fish traps from the EEZ and for harvest of fish incidental to such removal.

\* \* \* \* \*

9. In § 622.42, paragraph (a)(3) is revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(3) Shallow-water groupers, that is, all groupers other than deep-water groupers, jewfish, and Nassau grouper, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

\* \* \* \* \*

**§ 622.43 [Amended]**

10. In § 622.43(b)(1), the words "bartered, traded, or" are removed.

11. In § 622.48, paragraph (d)(1) is revised to read as follows:

**§ 622.48 Adjustment of management measures.**

\* \* \* \* \*

(d) \* \* \*

(1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, reopening of a fishery prematurely closed, and quotas.

\* \* \* \* \*

**Appendix A to Part 622 [Amended]**

12. In Table 3, under the family Sparidae—Porgies, the scientific name for Red porgy is revised to read "*Pagrus pagrus*" and in Table 4, under the family Sparidae—Porgies, the scientific names of Saucereye porgy and Red porgy are revised to read "*Calamus calamus*" and "*Pagrus pagrus*", respectively.

[FR Doc. 97-7528 Filed 3-24-97; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

[TD 8715]

RIN 1545-AT98

**Substantiation of Business Expenses for Travel, Entertainment, Gifts and Listed Property**

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

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains amendments to temporary regulations relating to the requirement that business expenses for travel, entertainment, gifts, or listed property be substantiated by documentary evidence (such as a receipt). The regulations affect persons making or receiving reimbursements for travel, entertainment, gifts, or listed property. The text of these temporary regulations also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** These temporary regulations are effective March 25, 1997.

**Applicability:** These temporary regulations are applicable to expenses paid or incurred after September 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Crisalli at (202) 622-4920 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

These regulations are being issued without prior notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-0771. Responses to this collection of information are required for a taxpayer to deduct certain business expenses or to substantiate certain reimbursements of business expenses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background and Explanation of Provisions**

*Receipt Threshold*

Section 274(d) disallows a trade or business deduction under section 162 for any traveling (including meals and lodging), entertainment, gift, or listed property expense, unless the taxpayer substantiates the elements of the expense by adequate records or by sufficient evidence. Under § 1.274-5T(c) of the temporary Income Tax Regulations, a taxpayer must maintain two types of records to satisfy the "adequate records" requirement: (1) a summary of expenses (account book, diary, log, statement of expense, trip sheets, or other similar record), sometimes called an expense account or expense voucher, and (2) documentary evidence (such as receipts or paid bills). Together, these records must establish the elements of amount, time, place, and business purpose (and for gifts and entertainment, business relationship of