Fringe Benefits Tax Regulations 1992

Statutory Rules 1992 No. 130 as amended

made under the

Fringe Benefits Tax Assessment Act 1986

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Page

Contents

1	Name of Regulations [*see* Note 1]	3
2	Commencement [*see* Note 1]	3
3	Definitions	3
3A	Car parking benefits — excluded car parking facilities	3
3B	Excluded fringe benefits (Act s 5E)	4
3C	Excluded fringe benefit for 1999–2000 (Act s 5E)	7
3D	Excluded fringe benefit — Defence Force (Act s 5E)	7
3E	Excluded fringe benefit — police (Act s 5E)	8
6	Approved worker entitlement funds (Act s 58PB)	10
11	Order where no administration of deceased employer's estate	10
12	Variation of notional tax amount of employers	10
13	Expenses of person required to attend before Commissioner	10
13A	Eligible car parking expense payment benefit	11
14	Supplementary car rate	12
18	Preferred address for service	12
19	Change or withdrawal of preferred address for service	12
19A	Requirement to maintain a preferred address for service	13
20	Substitute preferred address for service	13
21	Failure to notify change of address	14
22	Service of documents	14
23	Commissioner's signature	15
24	Repeal of the former Fringe Benefits Tax Regulations	15
Schedule 1	**Forms**	16
Form 2	Order under subsection 98 (5) of the *Fringe Benefits Tax Assessment Act 1986*	16
Schedule 2	**Scale of expenses**	17
Schedule 3	**Prescribed approved worker entitlement funds**	18
Notes		20

Federal Register of Legislative Instruments F2006C00236

1 Name of Regulations [*see* Note 1]

These Regulations are the *Fringe Benefits Tax Regulations 1992*.

2 Commencement [*see* Note 1]

Regulations 3 and 15 are taken to have commenced on 1 July 1986.

3 Definitions

In these Regulations, unless the contrary intention appears:

branch of the Australian Taxation Office means a place of business of the Commissioner or a Deputy Commissioner:

(a) which is open to the public; or

(b) part of which is open to the public.

effective, in relation to an address, means that the person to whom the address relates will receive documents delivered to the address.

member of the Defence force means a member of the Defence Force to whom the *Defence Force Discipline Act 1982* applies.

preferred address for service has the meaning given by regulation 18.

return means a return mentioned in section 68 or 69 of the Act.

the Act means the *Fringe Benefits Tax Assessment Act 1986*.

3A Car parking benefits — excluded car parking facilities

(1) For the purposes of paragraph 39A (h) of the Act, the provision of parking facilities for a car during a period referred to in section 39A of the Act is taken to be excluded from that section if:

(a) the parking facilities are provided to an employee who:

(i) is entitled under the law of a State or Territory to the use of a disabled persons' car parking space; and

Federal Register of Legislative Instruments F2006C00236

(ii) is the driver of, or is a passenger in, the car; and

(b) a valid disabled persons' car parking permit is displayed on the car.

(2) In this regulation:

disabled persons' car parking space means a car parking space:

(a) in a public car parking area; and

(b) designated for the exclusive use of disabled persons.

disabled persons' car parking permit means a permit, label or other document:

(a) issued by the appropriate authority in a State or Territory; and

(b) authorising the parking of a car in a disabled persons' car parking space.

3B Excluded fringe benefits (Act s 5E)

(1) For the purposes of paragraph 5E (3) (i) of the Act, this regulation applies, in relation to the year of tax starting on 1 April 1999 and each later year of tax, to an excluded fringe benefit described in a following subregulation.

(2) A fringe benefit is an excluded fringe benefit if:

(a) the benefit is a payment to a person who provides an emergency or other essential health care service outside Australia; and

(b) the payment is for the provision of an emergency or other essential health care service to an employee or an associate of an employee; and

(c) the employee, or associate, to whom the service was provided is an Australian citizen or a permanent resident of Australia; and

(d) the employee's place of employment is outside Australia when the service was provided; and

(e) a medicare benefit is not payable in respect of the service.

Federal Register of Legislative Instruments F2006C00236

(3) A fringe benefit is an excluded fringe benefit if:

(a) the benefit is reimbursement of a payment by an employee, or an associate of an employee, for the cost of an emergency or other essential health care service provided to the employee or associate outside Australia; and

(b) the employee, or associate, to whom the service was provided is an Australian citizen or a permanent resident of Australia; and

(c) the employee's place of employment is outside Australia when the service was provided; and

(d) a medicare benefit is not payable in respect of the service.

(4) A fringe benefit that is a payment of a Commonwealth overseas living allowance is an excluded fringe benefit to the extent that the payment includes any of the following amounts:

(a) the cost of living adjustment;

(b) the post adjustment;

(c) the child supplement;

(d) the child reunion supplement;

(e) 50% of the general adjustment.

(5) Each of the following benefits provided to a member of the Defence Force who is a resident of Australia, or an external Territory, is an excluded fringe benefit:

(a) a housing fringe benefit;

(b) a fringe benefit, to the extent that it relates to an accommodation expense in the form of rental assistance;

(c) if the member is serving in Australia away from where his or her dependants are located — a fringe benefit to the extent that it is for travel for reunion with those dependants at their place of residence;

(d) a fringe benefit to the extent that it is assistance to the member:

(i) in accordance with the Defence Instructions (General) mentioned in subsection 9A (2) of the *Defence Act 1903*, as in force at the commencement of this regulation; and

(ii) in relation to support for families with special needs;

Federal Register of Legislative Instruments F2006C00236

(e) if the member has a child who is in a critical year of schooling away from where the member is serving — a fringe benefit to the extent that it is assistance for:

(i) education in that year of schooling in accordance with a determination under section 58B of the *Defence Act 1903*, as in force at the commencement of this regulation; or

(ii) travel by the child for reunion with the member, or other dependants of the member, where the member is serving;

(f) a fringe benefit to the extent that it is removal and travel assistance:

(i) as a result of the breakdown of the member's marriage; and

(ii) if the member's spouse is not a member of the Defence Force — for the spouse and his or her accompanying dependants; and

(iii) paid in accordance with the Defence Manual of Salaries and Conditions for the Permanent Forces, Instruction 1908, Removal and Travel Assistance for Non-Service Spouses on Breakdown of Marriage, as in force at the commencement of this regulation;

(g) a fringe benefit to the extent that it is child tuition assistance for a child of the member if:

(i) the member is directed to change residence by the Department of Defence; and

(ii) the child must be enrolled in a different school because of the direction.

(5A) The application of a car, by an employee, for travel between the employee's place of residence and a place where the employee is required to carry out the employee's duties is an excluded fringe benefit if:

(a) the car is described in subsection 7 (2A) of the Act; and

(b) the application of the car to a private use is taken to constitute a benefit within the meaning of subsection 7 (1) of the Act.

Federal Register of Legislative Instruments F2006C00236

Note Subsection 7 (2A) of the Act describes cars that are used by an ambulance service, a firefighting service or a police service, and that are marked and fitted for those uses.

(6) In this regulation:

Commonwealth overseas living allowance means a payment by the Commonwealth or a Commonwealth authority, or Commonwealth company, within the meaning of the *Commonwealth Authorities and Companies Act 1997* to compensate an employee for the additional living expenses of employment outside Australia.

dependant, of a member of the Defence Force, has the meaning given by clause 14.5 of the Defence Determination 2000/1, Conditions of Service, as in force at the commencement of this regulation.

medicare benefit has the meaning given by the *Health Insurance Act 1973*.

3C Excluded fringe benefit for 1999–2000 (Act s 5E)

For paragraph 5E (3) (i) of the Act, a housing benefit mentioned in subsection 140 (1A) of the Act is, in relation to the year of tax starting on 1 April 1999, an excluded fringe benefit.

3D Excluded fringe benefit — Defence Force (Act s 5E)

(1) For paragraph 5E (3) (i) of the Act, a fringe benefit provided, in the circumstances described in subregulation (2), to a member of the Defence Force who is a resident of Australia or an external Territory is an excluded fringe benefit in relation to the year of tax starting on 1 April 2000 and each later year of tax.

(2) A fringe benefit to the extent that it is assistance for the removal or storage of the household effects of the member is an excluded fringe benefit if:

(a) the member is directed to change residence by the Department of Defence; and

(b) the removal or storage arises from the direction.

Federal Register of Legislative Instruments F2006C00236

(3) In this regulation:

household effects has the meaning given in paragraph 58B (2) (a) of the Act.

3E Excluded fringe benefit — police (Act s 5E)

(1) For paragraph 5E (3) (i) of the Act, a fringe benefit provided:

(a) to a member of a police force or police service of the Commonwealth, a State or Territory; and

(b) in the circumstances described in an item in the following table;

is an excluded fringe benefit in relation to the years of tax mentioned in the item.

Item	Fringe benefit	Years of tax
1	A fringe benefit for the application of a car, by a member, for travel between the member's place of residence and a place where the member is required to carry out the member's duties, if: (a) the car is used by the employer of the member; and (b) the member has the car at or near the member's place of residence to enable the member to respond to an event involving the possible commission of a crime or a possible threat to public safety; and (c) the car is fitted with: (i) a police radio, or a radio for use with the member's duties; and (ii) concealed or portable warning lights; and (iii) concealed or portable sirens; and (d) the application of the car to a private use is taken to constitute a benefit within the meaning of subsection 7 (1) of the Act.	The year of tax starting on 1 April 2004 Each subsequent year of tax

Federal Register of Legislative Instruments F2006C00236

2	A fringe benefit, to the extent that it is assistance for the removal or storage of the household effects of a member who is a resident of Australia or an external Territory, is an excluded fringe benefit if: (a) the member is directed to change residence by the police force or service that provides the benefit; and (b) the removal or storage arises from the direction.	The year of tax starting on 1 April 2002 Each subsequent year of tax
3	A housing fringe benefit provided to a member in relation to housing: (a) that is attached to or adjacent to a police station that is being used for that purpose; and (b) in which the member resides.	The year of tax starting on 1 April 2004 Each subsequent year of tax
4	An expense payment fringe benefit that is: (a) housing rent connected with a unit of accommodation; and (b) provided to a member whose usual place of residence is at least 100 kilometres from an eligible urban area with a census population of not less than 130 000.	The year of tax starting on 1 April 2004 Each subsequent year of tax
5	A fringe benefit that is costs incidental to the purchase of a new dwelling that: (a) occurs because the member is required to change his or her usual place of residence in order to perform the duties of his or her employment; and (b) is made within 4 years after commencing duties after the change.	The year of tax starting on 1 April 2004 Each subsequent year of tax

(2) In subregulation (1):

census population has the meaning given by subsection 140 (3) of the Act.

Federal Register of Legislative Instruments F2006C00236

eligible urban area has the meaning given by section 140 of the Act.

household effects has the meaning given in paragraph 58B (2) (a) of the Act.

Note Regulation 3B sets out other excluded fringe benefit arrangements that may be available relating to members of a police force or service.

6 Approved worker entitlement funds (Act s 58PB)

For paragraph 58PB (2) (a) of the Act, the funds mentioned in Schedule 3 are prescribed.

11 Order where no administration of deceased employer's estate

An order given by the Commissioner under subsection 98 (5) of the Act must be in accordance with Form 2 in Schedule 1.

12 Variation of notional tax amount of employers

(1) The notional tax amount of an employer ascertained under paragraph 110 (1) (b) of the Act for the year of tax beginning on 1 April 1992 is varied by applying the formula:

$$NT = \frac{AT \times 48.25}{47}$$

where:

NT is the notional tax amount of the employer in respect of the year of tax beginning on 1 April 1992.

AT is the amount equal to the fringe benefits tax assessed in respect of the employer for the year of tax beginning on 1 April 1991.

(2) For the purposes of subsection 110 (2) of the Act, the prescribed date is 1 April 1992.

13 Expenses of person required to attend before Commissioner

(1) Subject to subregulation (2), a person attending before the Commissioner, or before an officer authorised by the

Federal Register of Legislative Instruments F2006C00236

Commissioner, in compliance with a notice under subsection 128 (1) of the Act must be paid expenses in accordance with the scale set out in Schedule 2.

(2) Expenses are not payable under these Regulations for an attendance by a person to answer questions, or produce documents, relating to the business or affairs of an employer if the person is:

(a) the employer; or

(b) a current employee of the employer; or

(c) a representative of the employer.

13A Eligible car parking expense payment benefit

(1) For the purposes of subparagraph (c) (v) of the definition of ***eligible car parking expense payment benefit*** in subsection 136 (1) of the Act, the provision of parking facilities for a car during a period referred to in that definition is taken to be excluded from that definition if:

(a) the parking facilities are provided to an employee who:

(i) is entitled under the law of a State or Territory to the use of a disabled persons' car parking space; and

(ii) is the driver of, or is a passenger in, the car; and

(b) a valid disabled persons' car parking permit is displayed on the car.

(2) In this regulation:

disabled persons' car parking space means a car parking space:

(a) in a public car parking area; and

(b) designated for the exclusive use of disabled persons.

disabled persons' car parking permit means a permit, label or other document:

(a) issued by the appropriate authority in a State or Territory; and

(b) authorising the parking of a car in a disabled persons' car parking space.

Federal Register of Legislative Instruments F2006C00236

14 Supplementary car rate

For the purposes of the definition of supplementary car rate in subsection 136 (1) of the Act, the rate of 0.63 of a cent per kilometre travelled is prescribed.

18 Preferred address for service

(1) An address in Australia used by or associated with a person is a ***preferred address for service*** of the person if:

(a) it is of one of the following kinds of address:

(i) a physical address;

(ii) a postal address;

(iii) an electronic address; and

Note 1 An address may be both a physical address and a postal address (eg. a street address).

Note 2 The following are examples of an electronic address:

(a) an e-mail address;

(b) a secure website that the person can access to obtain a document.

(b) the person has given it to the Commissioner as an address for the service of documents by the Commissioner under the Act or these Regulations; and

(c) the designation of the address or other circumstances indicate that the person wishes the address to be used by the Commissioner in preference to other addresses of the person, whether generally or in specific circumstances.

(2) The designation of an address in a form or correspondence as an 'address for service', a 'preferred address', an 'address for correspondence' or similar term satisfies paragraph (1) (c).

19 Change or withdrawal of preferred address for service

(1) An employer may change or withdraw a preferred address for service only by giving the Commissioner notice in accordance with this regulation.

(2) The notice must state whether or not the former address is still effective.

Federal Register of Legislative Instruments F2006C00236

(3) The notice must be given to the Commissioner in one of the following ways:

(a) orally, including by telephone;

(b) in writing, including electronically;

(c) any other way approved by the Commissioner in writing.

(4) If the employer is required to maintain a preferred address for service under the Act or these Regulations, the employer may withdraw a preferred address for service only if another effective preferred address for service that is a postal address remains.

(5) If the employer is required to maintain a preferred address for service under the Act or these Regulations, and a preferred address for service becomes ineffective, the employer must change or withdraw the ineffective address within 28 days.

Penalty: 5 penalty units.

(6) An offence against subregulation (5) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

19A Requirement to maintain a preferred address for service

(1) An employer must maintain a preferred address for service during a financial year in which the employer provides a taxable fringe benefit.

(2) For subregulation 19 (5), if a preferred address for service becomes ineffective in a financial year at a time when the employer has not provided any taxable fringe benefit, the address is taken to become ineffective on the day when the first taxable fringe benefit is provided.

20 Substitute preferred address for service

(1) This regulation applies if:

(a) a person has not given the Commissioner a preferred address for service; or

Federal Register of Legislative Instruments F2006C00236

(b) the Commissioner is satisfied that none of a person's preferred addresses for service is effective.

(2) If the Commissioner has a record of another address relating to the person (whether or not a physical address), and it appears to the Commissioner that it is likely that the address is effective, the Commissioner may treat that address as the person's preferred address for service for all purposes under the Act and these Regulations.

21 Failure to notify change of address

An employer whose preferred address for service is no longer effective, and who has not changed or withdrawn the address under regulation 19, may not plead the fact that the address was not effective as a defence in any proceedings instituted against the employer under the Act or these Regulations.

22 Service of documents

(1) The Commissioner may serve a document on a person for the purposes of the Act and these Regulations by:

(a) if the person has given a preferred address for service that is a physical address — leaving a copy of the document at that address; or

(b) if the person has given a preferred address for service that is a postal address — posting a copy of the document to that address; or

(c) if the person has given a preferred address for service that is an electronic address — delivering an electronic copy of the document to that address.

(2) This regulation does not affect the operation of any other law of the Commonwealth, or any law of a State or Territory, that deals with the service of documents.

Note For an example of another law that deals with the service of documents, see sections 28A and 29 of the *Acts Interpretation Act 1901*.

Federal Register of Legislative Instruments F2006C00236

23 Commissioner's signature

(1) A document under the Act that purports to be signed by the authority of the Commissioner is as effective for all purposes as if it had been signed personally by the Commissioner.

(2) A document required by the Act to be signed by the Commissioner, a Second Commissioner or a Deputy Commissioner is taken to have been so signed if it bears:

(a) the written, printed or stamped name; or

(b) a facsimile of the signature;

of the person who is the Commissioner, a Second Commissioner or a Deputy Commissioner, as the case may be, when it is so required to be signed.

24 Repeal of the former Fringe Benefits Tax Regulations

Statutory Rules 1990 No. 68 and 1992 No. 76 are repealed.

Federal Register of Legislative Instruments F2006C00236

Schedule 1 Forms

(regulation 5)

Form 2 Order under subsection 98 (5) of the *Fringe Benefits Tax Assessment Act 1986*

(regulation 11)

Commonwealth of Australia

ORDER UNDER SUBSECTION 98 (5) OF THE *FRINGE BENEFITS TAX ASSESSMENT ACT 1986*

To of

WHEREAS

(a) *(Name and former address of deceased employer)* is a deceased employer within the meaning of section 98 of the *Fringe Benefits Tax Assessment Act 1986*; and

(b) a grant has not been made of probate of the will, or of letters of administration of the estate, of the deceased employer within 6 months after that person's death; and

(c) an assessment has been made under subsection 98 (2) of the *Fringe Benefits Tax Assessment Act 1986* of the fringe benefits taxable amount, or amounts, in respect of which tax was payable by the deceased employer; and

(d) the amount of tax payable on that amount, or those amounts, has been assessed at $; and

*(e) notice of the assessment has been published in accordance with subsection 98 (2) of that Act;

I, , under subsection 98 (5) of that Act, authorise you to levy $, the amount of the tax as so assessed, plus your costs, by distress and sale of any property of the deceased employer.

Dated 19

Commissioner of Taxation

**Omit if inapplicable*

Federal Register of Legislative Instruments F2006C00236

Schedule 2 Scale of expenses

(subregulation 13 (1))

1. A person attending to give evidence because of his or her professional, scientific or other special skill or knowledge — the amount provided in the High Court Rules for the expenses of witnesses possessing such skill or knowledge.

2. A person, not referred to in item 1, remunerated by wages, salary or fees — the amount provided in the High Court Rules for the expenses of witnesses so remunerated.

3. A person not referred to in items 1 and 2 — the amount provided in the High Court Rules for the expenses of witnesses generally.

4. A person attending to give expert evidence — the sum of:

(a) a reasonable amount for qualifying to give that evidence; and

(b) an amount allowed under item 1, 2 or 3.

5. A person referred to in item 1, 2 or 3 — a reasonable amount:

(a) for travel by the person to and from the place of attendance; and

(b) if the person is required to be absent overnight from his or her usual place of residence, for meals and accommodation.

Federal Register of Legislative Instruments F2006C00236

Schedule 3 Prescribed approved worker entitlement funds

(regulation 6)

Item	Name of Fund	Date of effect
1	The Alsynite Employees' Entitlement Trust	1 April 2005
2	AMCA ACT Industry Development Training and Redundancy Trust	1 April 2005
3	Australian Construction Industry Redundancy Trust	1 April 2003
4	The Austral Refrigeration Employees' Entitlement Trust	1 April 2005
5	BERT Fund No. 2	1 April 2003
6	Building Industry Redundancy Scheme Trust	1 April 2003
7	Contracting Industry Redundancy Trust (Queensland)	1 April 2003
8	Construction Industry Complying Portable Sick Leave Pay Scheme	1 April 2003
9	Electrical Industry Severance Scheme	1 April 2003
10	Ensham Production and Engineering Employees' Leave Entitlements Trust	1 April 2006
11	J&P Richardson Industries Group Employee Entitlement Trust	1 April 2003
12	KBAus Employees' Entitlement Trust (Knorr-Bremse Australia Pty Ltd)	1 April 2006
13	Mechanical and Electrical Redundancy Trust	1 April 2003
14	Metal and Engineering Construction and Contracting Industries Complying Portable Sick Leave Pay Scheme	1 April 2003
15	National Entitlement Security Trust	1 April 2003
16	The Port Kembla Coal Terminal Employees' Entitlements Trust	1 April 2005

Federal Register of Legislative Instruments F2006C00236

Item	Name of Fund	Date of effect
17	Redundancy and Employee Entitlements Fund	1 April 2006
18	Redundancy Payment Approved Worker Entitlement Fund 1	1 April 2003
19	Redundancy Payment Approved Worker Entitlement Fund 2	1 April 2003
20	Secure Employee Entitlements Trust	1 April 2003
21	Severance payment scheme — Electrical Contractors Association of Western Australia (Inc)	1 April 2003
22	Trust Employees' Entitlement Service	1 April 2004
23	Victorian Contract Cleaning Industry Portable Long Service Leave Fund	1 April 2003
24	WA Construction Industry Redundancy (No. 2) Fund	1 April 2003

Federal Register of Legislative Instruments F2006C00236

Notes to the *Fringe Benefits Tax Regulations 1992*

Note 1

The *Fringe Benefits Tax Regulations 1992* (in force under the *Fringe Benefits Tax Assessment Act 1986*) as shown in this compilation comprise Statutory Rules 1992 No. 130 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in *Gazette* or FRLI registration	Date of commencement	Application, saving or transitional provisions
1992 No. 130	27 May 1992	Rr. 3 and 15: 1 July 1986 Remainder: 27 May 1992	
1993 No. 105	3 June 1993	3 June 1993	—
1993 No. 148	29 June 1993	1 July 1993	—
1994 No. 196	16 June 1994	Rr. 4–7: 1 July 1992 Remainder: 16 June 1994	—
2000 No. 40	29 Mar 2000	29 Mar 2000	—
2000 No. 127	22 June 2000	22 June 2000	—
2000 No. 228	17 Aug 2000	17 Aug 2000	—
2000 No. 251	5 Sept 2000	5 Sept 2000	—
2001 No. 36	1 Mar 2001	1 Apr 2000	—
2001 No. 188	5 July 2001	1 Apr 2000	—
2001 No. 289	5 Oct 2001	5 Oct 2001	—
2001 No. 321	15 Oct 2001	15 Dec 2001	—
2002 No. 301	4 Dec 2002	4 Dec 2002	—
2003 No. 38	27 Mar 2003	27 Mar 2003	—
2004 No. 28	26 Feb 2004	1 Apr 2003	—
2004 No. 50	30 Mar 2004	1 Apr 2003	—

Table of Instruments

Year and number	Date of notification in *Gazette* or FRLI registration	Date of commencement	Application, saving or transitional provisions
2004 No. 51	30 Mar 2004	1 Apr 2003	—
2004 No. 347	8 Dec 2004	1 Apr 2004	—
2005 No. 44	29 Mar 2005 (*see* F2005L00727)	1 Apr 2005	—
2005 No. 173	26 July 2005 (*see* F2005L02000)	1 Apr 2005	—
2006 No. 103	9 May 2006 (*see* F2006L01441)	1 Apr 2006	—

Federal Register of Legislative Instruments F2006C00236

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 1	rs. 2000 No. 40
Heading to r. 3	rs. 2000 No. 40
R. 3	am. 2001 Nos. 36 and 289
R. 3A	ad. 1993 No. 148
R. 3B	ad. 2000 No. 40 am. 2000 No. 251; 2001 Nos. 36 and 188; 2004 No. 50; 2005 No. 44
R. 3C	ad. 2000 No. 127
Heading to r. 3D	rs. 2003 No. 38
R. 3D	ad. 2001 No. 36
R. 3E	ad. 2003 No. 38 rs. 2005 No. 44
Rr. 4	rep. 2001 No. 289
R. 5	rs. 1993 No. 105 rep. 2001 No. 289
R. 6	rep. 2001 No. 289 ad. 2004 No. 28 am. 2004 Nos. 51 and 347; 2005 No. 173 rs. 2006 No. 103
R. 7	rep. 2001 No. 289
Rr. 8–10	rep. 1994 No. 196
R. 11	am. 1993 No. 105
R. 13A	ad. 1993 No. 148
R. 15	rep. 1994 No. 196
Rr. 16, 17	rep. 2000 No. 228
R. 18	rs. 2001 No. 289
R. 19	rs. 2001 No. 289 am. 2001 No. 321
R. 19A	ad. 2001 No. 289 am. 2002 No. 301
R. 20	rs. 2001 No. 289
R. 21	rs. 2001 No. 289
R. 22	rs. 2001 No. 289
Schedule 1	
Schedule 1	am. 1993 No. 105
Form 1	1992 No. 130 rs. 1993 No. 105 rep. 2001 No. 289

Federal Register of Legislative Instruments F2006C00236

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Form 2	1992 No. 130
Schedule 3	
Schedule 3	ad. 2006 No. 103

Federal Register of Legislative Instruments F2006C00236