



Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002

Statutory Rules 2002 No. 115 as amended

made under the

Fisheries Management Act 1991

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Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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Regulation 1

Part 1 Introduction**1 Name of Regulations** [see Note 1]

These Regulations are the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*.

2 Commencement [see Note 1]

These Regulations commence on gazettal.

3 Interpretation

(1) In these Regulations:

Act means the *Fisheries Management Act 1991*.

IRCS, for a nominated boat, means the International Telecommunications Union Radio/Call Sign.

Management Plan means the *Heard Island and McDonald Islands Fishery Management Plan 2002*.

nominated surveyor means a marine surveyor nominated by AFMA to conduct a safety assessment.

office hours means the hours between 9 am and 4 pm on a day that is not a Saturday, Sunday, public holiday or bank holiday in Canberra.

safety assessment means an assessment conducted under Division 5.3.

(2) An expression used in these Regulations and in the Management Plan has the same meaning in these Regulations as it has in the Management Plan.

Note The following terms are defined in section 3 of the Management Plan:

- area of the fishery
- CCAMLR
- eligible boat
- fishery
- holder
- ICVMS

Regulation 3

- identification code
- nominated boat
- observer
- owner
- statutory fishing right.

Regulation 8

Part 4 Use of certain gear**8 Mesh size of trawl nets**

- (1) The holder of a statutory fishing right may use a trawl net to fish for Patagonian toothfish (*Dissostichus eleginoides*) or mackerel icefish (*Champsocephalus gunnari*) only if:
- (a) the trawl net has a mesh size of at least:
 - (i) for Patagonian toothfish — 120 millimetres at every part of the net; or
 - (ii) for mackerel icefish — 90 millimetres at every part of the net; or
 - (b) the holder is acting in accordance with a scientific permit granted to the holder.

Penalty: 25 penalty units.

Note See section 33 of the Act about the grant of a scientific permit and section 15 of the Management Plan about using a boat in the area of the fishery for scientific research.

- (2) In this regulation:
- mesh size**, for a net, means the mesh size of the net measured in accordance with the method described in Articles 1 to 6 (inclusive) of CCAMLR Conservation Measure 22-01 (1986), set out in Schedule 1.
- (3) An offence against subregulation (1) is an offence of strict liability.

9 Size of fishing gear

- (1) The holder of a statutory fishing right must not use either of the following for fishing in the area of the fishery:
- (a) a bobbin that is less than 520 millimetres in diameter;
 - (b) a rock hopper rubber disc that is less than 400 millimetres in diameter.

Penalty: 25 penalty units.

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- (2) An offence against subregulation (1) is an offence of strict liability.

10 Net monitor cables

- (1) The holder of a statutory fishing right must not use a net monitor cable when the holder's nominated boat is in the area of the fishery.

Penalty: 25 penalty units.

- (2) In this regulation:

net monitor cable means a cable used to link the nominated boat to a monitor attached to a part of the net.

- (3) An offence against subregulation (1) is an offence of strict liability.

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Part 5 Requirements for observers

Division 5.2 Data collection officers

15 Appointment of data collection officer

- (1) The holder of a statutory fishing right may appoint a data collection officer as an observer on board the holder's nominated boat.
- (2) The holder must not appoint a data collection officer:
 - (a) without AFMA's written permission; or
 - (b) who is not accredited by AFMA; or
 - (c) who is not employed by an agency on the Register of Accredited Agencies kept by AFMA.

Penalty: 25 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

16 Data collection officer's duties

- (1) A data collection officer appointed under subregulation 15 (1) must give any information he or she collects on the nominated boat to AFMA or AFMA's agent.

Penalty: 25 penalty units.

- (2) The holder who appointed the data collection officer:
 - (a) must not direct the duties of the data collection officer; and
 - (b) must ensure that the data collection officer has no other duties on the nominated boat relating to crewing or manning the boat; and
 - (c) must ensure that the data collection officer works in cooperation with other observers on board the boat.

Penalty: 25 penalty units.

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- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

17 Payment of data collection officer

- (1) The holder of a statutory fishing right who appoints a data collection officer under subregulation 15 (1) must pay the agency by whom the data collection officer is employed a fixed daily sum that:
- (a) is not subject to the amount of fish caught; and
 - (b) does not include the payment of a bonus; and
 - (c) is not paid directly to the data collection officer.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Division 5.3 Safety assessment

18 Meaning of *relevant boat*

For this Division, a boat is a *relevant boat* if:

- (a) the holder of a statutory fishing right intends to apply to AFMA to have the boat registered as a nominated boat; and
- (b) the holder has asked AFMA to arrange for a nominated surveyor to conduct a safety assessment of the boat.

19 Nominated surveyor's inspection

- (1) The holder of a statutory fishing right for a relevant boat must, on request by the nominated surveyor for the boat, allow the nominated surveyor to inspect:
- (a) all safety and lifesaving equipment on board the boat; and
 - (b) all areas of the boat that are proposed to be used by an observer, including:
 - (i) accommodation; and
 - (ii) bathing and meal areas; and

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- (iii) any deck area, including the gantries, where the observer may need to carry out his or her duties.
- (2) The holder must, on request by the nominated surveyor, allow the nominated surveyor to inspect the following documents relating to the boat:
 - (a) statutory and classification society certificates;
 - (b) the ship's log;
 - (c) the muster list;
 - (d) all certificates for lifesaving, safety equipment and medical outfit.

20 Declaration by owner or operator

- (1) The owner or operator of a relevant boat must, on request by the nominated surveyor for the boat:
 - (a) make a written declaration that:
 - (i) the boat satisfies the survey requirements of:
 - (A) a certificate of survey for a fishing vessel (USL Code Class 3A) issued under the *Navigation Act 1912* by AMSA; or
 - (B) any of the following classification societies:
 - (I) American Bureau of Shipping;
 - (II) Bureau Veritas;
 - (III) Det Norske Veritas;
 - (IV) Germanischer Lloyd;
 - (V) Lloyd's Register of Shipping;
 - (VI) Nippon Kaiji Kyokai; and
 - (ii) each officer has a valid certificate of competency; and
 - (b) allow the nominated surveyor to inspect the declaration.
- (2) In this regulation:
AMSA means the Australian Maritime Safety Authority established under subsection 5 (1) of the *Australian Maritime Safety Authority Act 1990*.

Part 6 Boat and fishing gear marking requirements

21 Identification of International Telecommunications Union Radio/Call Sign (IRCS)

- (1) The holder of a statutory fishing right must ensure that, when the holder's nominated boat is in the area of the fishery, the boat's IRCS is displayed in accordance with subregulations (2) and (3).

Penalty: 25 penalty units.

- (2) The IRCS must be shown on the boat's deck and each side of the hull.
- (3) The characters of the IRCS:
- (a) must be in block form; and
 - (b) must be:
 - (i) white on a black background; or
 - (ii) black on a white background; and
 - (c) on the hull, must be:
 - (i) at least 1 metre high; and
 - (ii) of a width that is proportionate to the height; and
 - (iii) for adjacent letters with sloping sides (for example, **A** and **V**) — separated by a space of at least 10 centimetres and no more than 12.5 centimetres; and
 - (iv) for any other characters — separated by a space of no more than 16.6 centimetres; and
 - (d) on the deck, must be:
 - (i) at least 30 centimetres high; and
 - (ii) of a width that is proportionate to the height; and
 - (iii) for adjacent letters with sloping sides (for example, **A** and **V**) — separated by a space of at least 3 centimetres and no more than 3.75 centimetres; and
 - (iv) for any other characters — separated by a space of no more than 5 centimetres.

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- (4) This regulation applies in addition to Part 5 of the *Fisheries Management Regulations 1992*.
- (5) An offence against subregulation (1) is an offence of strict liability.

22 Identification of marker buoys

- (1) The holder of a statutory fishing right must ensure that, when the holder's nominated boat is in the area of the fishery, a marker buoy or similar object that belongs to the boat, and is used to indicate the location of fixed or set fishing gear, is clearly marked with the boat's IRCS.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Part 7 Contingency arrangements in certain events

Division 7.1 Contingency arrangements — breakdown of meal plant

23 Application of Division

This Division applies to the holder of a statutory fishing right if, while in the area of the fishery:

- (a) the meal plant on the holder's nominated boat breaks down; and
- (b) it is not practicable to retain all offal and bycatch on board the boat.

24 Mechanical breakdown of meal plant

- (1) For subsection 28 (4) of the Management Plan, the holder must, immediately after a mechanical breakdown of the meal plant:
 - (a) tell the observers on board the nominated boat that the meal plant has broken down; and
 - (b) stop fishing; and
 - (c) if there is catch on board the nominated boat to be processed:
 - (i) move the boat at least 5 nautical miles from the fishing area; and
 - (ii) process the remainder of the catch; and
 - (iii) discharge all waste.

Penalty: 25 penalty units.

Note If it is necessary to discharge offal, AFMA recommends that the offal:

- (a) be discharged whole rather than macerated; and
- (b) not be discharged during trawling and shooting; and

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(c) be discharged at night.

If it is not practicable to discharge offal at night, or to avoid discharging offal during trawling or shooting, the holder may discharge the offal in whole, from the side of the boat and at any speed.

- (2) Within 48 hours after the breakdown of the meal plant, the holder:
- (a) must repair the meal plant and give AFMA a report on the breakdown and repair in accordance with regulation 25; or
 - (b) must give AFMA a report on the breakdown in accordance with regulation 25 and seek AFMA's approval to adopt the contingency arrangements set out in subregulation 26 (1).

Penalty: 25 penalty units.

- (3) If the breakdown of the meal plant occurs after office hours, the holder must notify the AFMA Duty Officer about the breakdown by telephone on:
0419 205 329.

Penalty: 25 penalty units.

- (4) In this regulation:
- fishing area***, for a nominated boat, means the area in which the nominated boat has undertaken fishing activities in the 120 hours before the breakdown of the boat's meal plant.
- (5) An offence against subregulation (1), (2) or (3) is an offence of strict liability.

25 Report to AFMA

- (1) For subregulation 24 (2), the holder of a statutory fishing right must include the following information in a report to AFMA:
- (a) the date, time, location and activity of the nominated boat when the breakdown occurred;
 - (b) the exact circumstances of the breakdown;
 - (c) the actions taken when the breakdown occurred, including:
 - (i) how soon fishing stopped after the breakdown; and
 - (ii) the approximate amount of fish processed; and
 - (iii) the location of the discharge of offal (if any);

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- (d) if the meal plant has been repaired, the time when the meal plant was repaired and the time when fishing resumed;
 - (e) if the meal plant is being repaired when the report is sent to AFMA, the estimated time needed to complete the repairs;
 - (f) if repairs to the meal plant must be carried out in port, the estimated date of return to port.
- (2) The holder:
- (a) must address the report to the Manager, Sub-Antarctic Fisheries, Australian Fisheries Management Authority; and
 - (b) must send the report:
 - (i) by fax to:
612 6272 5784; or
 - (ii) by e-mail to:
himie@afma.gov.au.
- (3) As soon as practicable after receiving the report, AFMA must tell the holder:
- (a) that AFMA has received the report; and
 - (b) whether AFMA agrees to the holder adopting the contingency arrangements set out in subregulation 26 (1).

26 Contingency arrangements for breakdown of meal plant

- (1) For paragraph 24 (2) (b), the following contingency arrangements apply:
- (a) offal must not be discharged when:
 - (i) fishing gear is in the water; or
 - (ii) the nominated boat is in the territorial waters of the Territory of Heard Island and McDonald Islands;
 - (b) at least once a day and at different times, the observer must observe the offal discharge and record:
 - (i) the date, location, weather and sea conditions during the observation; and
 - (ii) the approximate amount of offal discharged during the observation; and
 - (iii) the behaviour of the discharge; and

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- (iv) the location and activity of the nominated boat during the discharge; and
 - (v) the interaction of seabirds and marine mammals with the discharge;
 - (c) the observer must try to collect random samples of the offal discharge for analysis.
 - (2) If the holder cannot comply with the contingency arrangements in subregulation (1), the holder:
 - (a) must stop fishing in the area of the fishery; and
 - (b) must stow all fishing gear;
until after the meal plant is repaired.
- Penalty: 25 penalty units.
- (3) An offence against subregulation (2) is an offence of strict liability.

27 When contingency arrangements do not apply

- (1) If AFMA notifies the holder or master of the nominated boat that it is satisfied, on reasonable grounds, that the holder or master was aware, before leaving port, that the meal plant was not, or was likely not to be, working:
 - (a) the contingency arrangements in subregulation 26 (1) do not apply; and
 - (b) the boat must return to port.
 - (2) The holder or master of the boat must return the boat to port if he or she receives a notice under subregulation (1).
- Penalty: 25 penalty units.
- (3) An offence against subregulation (2) is an offence of strict liability.

**Division 7.2 Contingency arrangements —
disposal of fish meal**

28 Application of Division

This Division applies to the holder of a statutory fishing right if, while the nominated boat is in the area of the fishery:

- (a) a batch of fish meal on the holder's nominated boat contains more than 10.5% moisture; or
- (b) the holder reasonably believes that there is a risk that the batch will spontaneously ignite.

29 Disposal of fish meal

(1) For subsection 28 (5) of the Management Plan, the holder:

- (a) must tell the observers on board the nominated boat of the intention to discharge a batch of fish meal from the boat; and
- (b) must ensure that, when the batch is being discharged, at least 1 of the observers monitors the discharge; and
- (c) must ensure that the observer records, in writing in the observer's report to AFMA:
 - (i) the date, time and location of the discharge; and
 - (ii) the weather and sea conditions at the time of the discharge; and
 - (iii) the amount of fish meal discharged; and
 - (iv) the reason for the discharge, including the temperature or moisture content of the fish meal; and
 - (v) the behaviour of the discharge; and
 - (vi) any interactions of birds or marine mammals with the fish meal.

Penalty: 25 penalty units.

(2) The holder:

- (a) must give AFMA written notice about the discharge of the fish meal within 48 hours after the discharge occurs; and
- (b) must address the notice to the Manager, Sub-Antarctic Fisheries, Australian Fisheries Management Authority; and
- (c) must send the notice:
 - (i) by fax to:
612 6272 5784; or

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(ii) by e-mail to:

himie@afma.gov.au.

Penalty: 25 penalty units.

(3) An offence against subregulation (1) or (2) is an offence of strict liability.

Part 8 Inspection requirements

30 CCAMLR inspections

- (1) The holder of a statutory fishing right must allow a CCAMLR inspector to board the holder's nominated boat, and conduct an inspection, in accordance with the CCAMLR System of Inspection.

Penalty: 25 penalty units.

- (2) Within 48 hours after an inspection is conducted, the holder must give AFMA a report on the inspection in accordance with regulation 32.

Penalty: 25 penalty units.

- (3) In this regulation:

CCAMLR inspector means an inspector who is on the register of certified inspectors maintained by CCAMLR under the CCAMLR System of Inspection.

CCAMLR System of Inspection means the system described in the document called 'Text of the CCAMLR System of Inspection', as adopted by CCAMLR and in force at the commencement of this regulation.

- (4) An offence against subregulation (1) or (2) is an offence of strict liability.

31 Inspections when in port

- (1) The holder of a statutory fishing right must, on request by a person, allow the person to inspect the holder's nominated boat if:

- (a) the boat is anchored or moored at a port in a State or Territory of Australia, or at a port in another country; and
- (b) the person is authorised to inspect the boat under a law of the State, Territory or country.

Penalty: 25 penalty units.

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- (2) If an inspection is conducted:
- (a) at a port in a country other than Australia; and
 - (b) by a person who is authorised to do so under a law of that country relating to fisheries;
- the holder must, within 48 hours after the inspection, give AFMA a report on the inspection in accordance with regulation 32.
- Penalty: 25 penalty units.
- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

32 Report on inspection

- (1) For subregulations 30 (2) and 31 (2), a report on an inspection of a nominated boat:
- (a) must include the following details:
 - (i) the nominated boat's name;
 - (ii) the date and time of the inspection;
 - (iii) the location of the boat when the inspection was conducted;
 - (iv) the nationality of the inspector; and
 - (b) must be:
 - (i) addressed to the AFMA Monitoring Section; and
 - (ii) sent by e-mail to:
himie@afma.gov.au.

Part 9 Packaging and unloading requirements

33 Packaging and labelling of fish

- (1) The holder of a statutory fishing right must ensure that:
 - (a) all fish taken under the right are packaged according to:
 - (i) species; and
 - (ii) the size grade of the fish, as assessed by the holder; and
 - (iii) the form of the fish after processing; and
 - (b) each package is clearly labelled with the species, size grade and the form after processing of the fish it contains.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

34 Unloading of fish — notice requirements

- (1) The holder of a statutory fishing right must ensure that, at least 72 hours before the holder's nominated boat arrives at a port or other place to unload fish, written notice in accordance with subregulation (2) is given to:
 - (a) AFMA; and
 - (b) if the port or place is within the territorial waters of a country other than Australia — the authorities in that country that are responsible for supervising the unloading of the fish.

Penalty: 25 penalty units.

- (2) For subregulation (1), the notice:
 - (a) must include the following details:
 - (i) the nominated boat's name;
 - (ii) the nominated boat's distinguishing symbol;

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- (iii) an estimate of the whole weight of each species of fish on board the boat;
 - (iv) the name of the port, or other place, at which the fish are to be unloaded;
 - (v) the estimated date and time that the boat will arrive at the port or place;
 - (vi) the estimated date and time that unloading is to commence at the port or place; and
- (b) when given to AFMA, must be:
- (i) addressed to AFMA Compliance; and
 - (ii) either:
 - (A) sent by fax to:
612 6272 5784; or
 - (B) sent by e-mail to:
monitoring@afma.gov.au.

Note The contact details for the authorities that are responsible for supervising the unloading of fish in countries other than Australia are available from AFMA on request.

- (3) In this regulation:
- distinguishing symbol***, for a nominated boat, means the symbol issued to the boat by AFMA or a relevant State authority.
- whole weight*** means the weight of a whole fish before any processing (other than washing, sorting, packing or freezing) has occurred.
- (4) An offence against subregulation (1) is an offence of strict liability.

Schedule 1 CCAMLR Conservation Measure 22-01 (1986): Regulation on mesh size measurement

(subregulation 8 (2))

Article 1 Description of gauges

1. Gauges to be used for determining mesh sizes shall be 2 mm thick, flat, of durable material and capable of retaining their shape. They shall have either a series of 2 parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They shall have a hole at the narrowest extremity.
2. Each gauge shall be inscribed on its face with the width in millimetres both on the parallel-sided section, if any, and on the tapering section. In the case of the latter the width shall be inscribed every 1 mm interval and the indication of the width shall appear at regular intervals.

Article 2 Use of the Gauge

1. The net shall be stretched in the direction of the long diagonal of the meshes.
2. A gauge as described in Article 1 shall be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.
3. The gauge shall be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

Article 3 Selection of Meshes to be Measured

1. Meshes to be measured shall form a series of 20 consecutive meshes chosen in the direction of the long axis of the net.
2. Meshes less than 50 cm from lacings, ropes or codline shall not be measured. This distance shall be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. Nor shall any mesh be measured which has been mended or broken or has attachments to the net fixed at that mesh.
3. By way of derogation from paragraph 1, the meshes to be measured need not be consecutive if the application of paragraph 2 prevents it.
4. Nets shall be measured only when wet and unfrozen.

Article 4 Measurement of Each Mesh

The size of each mesh shall be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with Article 2.

Article 5 Determination of the Mesh Size of the Net

1. The mesh size of the net shall be the arithmetical mean in millimetres of the measurements of the total number of meshes selected and measured as provided for in Articles 3 and 4, the arithmetical mean being rounded up to the next millimetre.
2. The total number of meshes to be measured is provided for in Article 6.

Article 6 Sequence of Inspection Procedure

1. The inspector shall measure one series of 20 meshes, selected in accordance with Article 3, inserting the gauge manually without using a weight or dynamometer. The mesh size of the net shall then be determined in accordance with Article 5. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with Article 3 shall

be measured. The mesh size shall then be recalculated in accordance with Article 5, taking into account the 60 meshes already measured. Without prejudice to paragraph 2, this shall be the mesh size of the net.

2. If the captain of the vessel contests the mesh size determined in accordance with paragraph 1, such measurement will not be considered for the determination of the mesh size and the net shall be remeasured. A weight or dynamometer attached to the gauge shall be used for remeasurement. The choice of weight or dynamometer shall be at the discretion of the inspector. The weight shall be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge. The accuracy of the weight or dynamometer shall be certified by the appropriate national authority. For nets of a mesh size of 35 mm or less as determined in accordance with paragraph 1, a force of 19.61 newtons (equivalent to a mass of 2 kilograms) shall be applied and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kilograms). For the purposes of determining the mesh size in accordance with Article 5 when using a weight or dynamometer, one series of 20 meshes only shall be measured.

Table of Instruments

Notes to the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*

Note 1

The *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* (in force under the *Fisheries Management Act 1991*) as shown in this compilation comprise Statutory Rules 2002 No. 115 amended as indicated in the Tables below.

Table of Instruments

Year and number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
2002 No. 115	14 June 2002	14 June 2002	
2005 No. 91	26 May 2005 (see F2005L01149)	27 May 2005	—
2011 No. 135	3 Aug 2011 (see F2011L01592)	4 Aug 2011	—

Table of Amendments

Table of Amendments

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

Provision affected	How affected
Part 1	
Heading to Part 1	ad. 2005 No. 91
R. 3	rs. 2005 No. 91 am. 2011 No. 135
Part 2	ad. 2005 No. 91 rep. 2011 No. 135
R. 4	rs. 2005 No. 91 rep. 2011 No. 135
R. 5	rs. 2005 No. 91 rep. 2011 No. 135
R. 6	rs. 2005 No. 91 rep. 2011 No. 135
Part 3	ad. 2005 No. 91 rep. 2011 No. 135
R. 7	ad. 2005 No. 91 rep. 2011 No. 135
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R. 10	ad. 2005 No. 91
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Part 5	ad. 2005 No. 91
Div. 5.1 of Part 5	rep. 2011 No. 135
R. 11	ad. 2005 No. 91 rep. 2011 No. 135
R. 12	ad. 2005 No. 91 rep. 2011 No. 135
R. 13	ad. 2005 No. 91 rep. 2011 No. 135
R. 14	ad. 2005 No. 91 rep. 2011 No. 135
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R. 15	ad. 2005 No. 91
R. 16	ad. 2005 No. 91
R. 17	ad. 2005 No. 91
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R. 18	ad. 2005 No. 91

Table of Amendments

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

Provision affected	How affected
R. 19	ad. 2005 No. 91
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Part 6	
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R. 34	ad. 2005 No. 91
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Schedule 1	ad. 2005 No. 91