

Manual (1987), will be treated as property of a like class for transfers of property made by taxpayers on or before May 19, 2005.

\* \* \* \* \*

(d) *Effective date.* Except as otherwise provided in this paragraph (d), this section applies to exchanges occurring on or after April 11, 1991. Paragraphs (b)(3) through (b)(6), *Example 3* and *Example 4* of paragraph (b)(7), and paragraph (b)(8) of this section apply to transfers of property made by taxpayers on or after August 12, 2004. However, taxpayers may apply paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) of this section to transfers of property made by taxpayers on or after January 1, 1997, in taxable years for which the period of limitation for filing a claim for refund or credit under section 6511 has not expired.

**§ 1.1031(a)-2T [Removed]**

■ **Par. 3.** Section 1.1031(a)-2T is removed.

**§ 1.1031(j)-1 [Amended]**

■ **Par. 4.** Section 1.1031(j)-1(d) is amended by removing the language “(SIC Code 3531)” in *Example 3(ii)(C)* and *Example 5(i)* and adding “(NAICS code 333120)” in its place.

Approved: May 12, 2005.

**Cono R. Namorato,**

*Acting Deputy Commissioner for Services and Enforcement.*

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 05-9960 Filed 5-18-05; 8:45 am]

BILLING CODE 4830-01-P

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 913**

[Docket No. IL-104-FOR]

**Illinois Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposed revisions to its regulations and statutes

regarding the Surface Mining Advisory Council, citation references, typographical errors, procedures for relocating or closing public roads, and subsidence control. Illinois intends to revise its program to provide additional safeguards and to clarify ambiguities.

**DATES:** *Effective Date:* May 19, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. Telephone: (317) 226-6700. E-mail: *IFOMAIL@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Illinois Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Illinois Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, 913.16, and 913.17.

**II. Submission of the Amendment**

By letter dated December 10, 2004 (Administrative Record No. IL-5086), the Illinois Department of Natural Resources, Office of Mines and Minerals (Department) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The Department sent the amendment at its own initiative. The Department proposed to amend its regulations at 62 Illinois Administrative Code (IAC) parts 1700, 1761, 1762, 1772, and 1773 and its statutes at 225 Illinois Compiled Statutes (ILCS) 720/1.04.

We announced receipt of the proposed amendment in the February 8, 2005, **Federal Register** (70 FR 6602). In

the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 10, 2005. We did not receive any public comments.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

*A. Minor Revisions to Illinois' Regulations*

Illinois proposed minor reference, wording, recodification, and typographical changes to the following previously-approved regulations:

1. 62 IAC 1700.17 Administration

In subsection (a), Illinois proposed to change its reference to SMCRA by changing it from “the Surface Mining Control and Reclamation Act of 1977” to “the Federal Act (30 USCA § 1201 *et seq.*)” Illinois proposed to update a citation reference, because of a previous recodification of statutes, by changing the citation from “(Ill. Rev. Stat. 1985, ch. 127, pars. 1 *et seq.*)” to “[20 ILCS 5].” Also, Illinois proposed to make various minor wording changes to clarify the general duties and powers of the Department. In subsections (a) through (d), because of a previous recodification of statutes, Illinois proposed to update citation references by changing the citations from “(Ill. Rev. Stat. 1985, ch. 96 ½, par. 7909)” to “[225 ILCS 720/9].”

2. 62 IAC 1761.16 Submission and Processing of Requests for Valid Existing Rights Determinations

Illinois proposed to correct two typographical errors in subsection (b)(3) by changing a reference from “subsection (b)(1)” to “subsection (b)(2)” and by changing a reference from “subsection (b)(2)” to “subsection (b)(1).”

3. 62 IAC 1762.15 Exploration on Lands Designated as Unsuited for Surface Coal Mining Operations

Illinois proposed to correct two references by changing one reference from “this Part” to “62 Ill. Adm. Code 1761 through 1764” and by changing the other reference from “this Part, any approved State or Federal program, and other applicable requirements” to “62 Ill. Adm. Code 1700 through 1850 and other applicable requirements.”

4. 62 IAC 1772.12 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

Illinois proposed to correct a typographical error at subsection (b)(14) by changing its reference from "62 Ill. Adm. Code 176.11" to "62 Ill. Adm. Code 1761.11."

Because these changes are minor, we find that they will not make Illinois' regulations less effective than the corresponding Federal regulations at 30 CFR part 700, 761.16, 762.15, and 772.12, respectively.

*B. Surface Mining Advisory Council*

1. 225 ILCS 720 Advisory Council on Reclamation

On June 1, 1980, the Illinois General Assembly added Section 1.04 to 225 ILCS 720 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) to create the Surface Mining Advisory Council (Council). The Council was to act as an advisory body to the Director of the Illinois Department of Natural Resources (IDNR) and to the Office of Mines and Minerals, Land Reclamation Division (LRD) on matters of mining and reclamation as they relate to State rules. The Department had to submit proposed State rules to the Council for review and recommendations. The Council had to review SMCRA, the Federal regulations, and the proposed State rules before making its recommendations. Also, the Council requested comments from affected persons and the public before making its recommendations. The recommendations of the Council had no binding effect on the IDNR or the LRD. The advice, findings, and recommendations of the Council had to be made public in a semi-annual report published by the Department. In Public Act 93-0168, the Illinois General Assembly amended the State Act by repealing 225 ILCS 720/1.04, effective July 10, 2003.

There is no direct requirement in SMCRA for an advisory council of this type. Today, members of the public may directly provide comments to the Department on proposed amendments because on September 1, 1983, the Illinois Secretary of State promulgated regulations at 1 IAC part 100 and 1 IAC 100.400. The regulation at 1 IAC part 100 requires the publication of proposed State rules in the Illinois Register and 1 IAC 100.400 requires a 45-day public notice period. During the public notice period, interested persons may submit comments and request a public hearing on the proposed rules. Based on the above, we find that Illinois has adequate procedures in place to receive

comments and recommendations directly from the public. Therefore, the repeal of 225 ILCS 720/1.04 will not make the Illinois State Act less stringent than SMCRA, and we are approving it.

2. 62 IAC 1700.18 Advisory Council on Reclamation

Illinois' regulation at 62 IAC 1700.18 implemented the statutory requirements at 225 ILCS 720/1.04. Illinois proposed to delete this regulation to reflect the repeal of 225 ILCS 720/1.04.

There is no Federal counterpart regulation and based on the discussion in finding B.1, we find that the deletion of 62 IAC 1700.18 will not make the Illinois regulations less effective than the Federal regulations, and we are approving it.

*C. 62 IAC Part 1761 Areas Designated by Act of Congress*

1. 62 IAC 1761.11 Areas Where Mining Is Prohibited or Limited

At subsection (e)(1), concerning the need for a written waiver in order to mine within 300 feet of an occupied dwelling, Illinois proposed to add a citation reference to its regulation at 62 IAC 1761.15. Illinois' regulation at 62 IAC 1761.15 contains the procedures for waiving the prohibition on surface coal mining operations within the 300-foot buffer zone of an occupied dwelling. Illinois proposed to add the reference at 62 IAC 1761.11(e) to clarify where procedures for the waiver are located.

The counterpart Federal regulation at 30 CFR 761.11(e)(1) contains a similar reference to the Federal counterpart to 62 IAC 1761.15. Therefore, we find that Illinois' proposed change is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 761.11(e)(1), and we are approving it.

2. 62 IAC 1761.14 Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road

a. Illinois proposed to amend subsection (b) by adding new paragraph (1). The new paragraph requires the applicant to submit a request with an application for a new permit, a significant revision of a permit, an insignificant revision of a permit, or an incidental boundary revision, as applicable, if the applicant does not have valid existing rights and is proposing to conduct mining operations within 100 feet measured horizontally of the outside right-of-way line of any public road or if the applicant is proposing to relocate or close any public

road. Illinois also proposed to redesignate existing paragraphs (1) through (4) as paragraphs (2) through (5).

The Department has always required applicants to submit a request to conduct mining within 100 feet of the outside right-of-way line of a public road or to close or relocate a public road in conjunction with a permit or revision application. The counterpart Federal regulation at 30 CFR 761.14(b) does not contain this requirement. However, many State and Federal programs have a similar requirement either through written policy documents or in their permit and revision application forms. Therefore, we find that Illinois' proposal to codify this requirement does not make its regulation at 62 IAC 1761.14(b) less effective than the counterpart Federal regulation, and we are approving it.

b. In the last sentence of newly redesignated subsection (b)(3), Illinois proposed to change a citation reference from "subsection (b)(2)" to "subsection (b)(3)."

This change was necessary because existing "paragraph (2)" was redesignated as "paragraph (3)." We find that this change will not make Illinois' regulation at 62 IAC 1761.14 less effective than the corresponding Federal regulation at 30 CFR 761.14, and we are approving it.

c. In the introductory paragraph of newly redesignated subsection (b)(5), Illinois proposed to remove the requirement for a written finding within 30 days after completion of a hearing, or after the end of the public comment period if no hearing is held, as to whether or not the interest of the affected public and landowners will be protected from the proposed mining operations within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road. Illinois also added the requirements that the determination and written finding may be based on information submitted in writing and that a road may not be relocated or closed unless the Department determines that the interest of the affected public and landowners will be protected.

At redesignated subsection (b)(5), Illinois proposed to add provisions at paragraphs (5)(i) and (ii) to provide the time frames for making a written finding for requests to mine within 100 feet of the outside right-of-way line of a public road and for relocation or closure of a public road. If the proposal is contained in an application for a new permit or a significant revision under 62 IAC 1774.13(b)(3), the written finding must

be issued concurrently with the permit decision under 62 IAC 1773.15(a). If the proposal is contained in an application for an insignificant revision under 62 IAC 1774.13(b) or an incidental boundary revision under 62 IAC 1774.13(d), the written finding must be issued concurrently with the decision to issue or deny the revision.

Because of its requirement that activities within 100 feet of a public road or to relocate or close a public road must be included in a permit or revision application, Illinois considered it impractical to have one decision deadline for a portion of an application that is different than the deadline for making a decision on the application as a whole. Illinois' proposed changes establish the same decision deadline for activities within 100 feet of a public road and relocation or closure of a public road as for the application as a whole. The counterpart Federal regulation at 30 CFR 761.14(c) requires a written finding within 30 days after a public hearing or within 30 days after the end of the public comment period as to whether the interests of the public and affected landowners will be protected. The Federal regulation at 30 CFR 761.14(c) provides that the regulatory authority, or a public road authority that the regulatory authority designates, will publish notice of the public comment period and opportunity to request a public hearing on the road activities and make the determination and written finding that the interests of the public and affected landowners will be protected.

At previously approved, redesignated subsection (b)(2), Illinois requires an applicant to obtain any necessary approvals from State or local government public road authorities. These approvals must be included with the applicant's request for the subject road activities in the applicable permit or revision application. Under redesignated subsection (b)(3), the applicant must publish a public notice and offer an opportunity for a public hearing for proposals to conduct surface coal mining operations within 100 feet of the outside right-of-way line of a public road and to relocate or close a public road. In lieu of providing the public notice and opportunity for a public hearing for new permit and significant revision applications under 62 IAC 1761.14(b)(3), the applicant may provide it under 62 IAC 1773.13(a)(1)(E). Illinois will make the determination and written finding that the interests of the public and affected landowners will be protected based on information received at the public hearing or submitted in writing as a

result of the public notice and opportunity for a hearing that the applicant must publish under redesignated subsection (b)(3) or 62 IAC 1773.13(a)(1)(E).

Both the State procedures and time frames and the Federal procedures and time frames assure that the public will have input into the required determination and written finding for mining within 100 feet of a public road and for relocating or closing a public road. Considering the additional requirements in the Illinois regulation at 62 IAC 1761.14(b), we find that the proposed procedures and time frames for making a written finding as to whether the interests of the public and affected landowners will be protected is no less effective than the requirements of the counterpart Federal regulation at 30 CFR 761.14.

Although not specifically stated, the counterpart Federal regulation also indicates that the determination and written finding may be based on information submitted in writing. Therefore, the new requirement at subsection (b)(5) that the determination and written finding may be based on information submitted in writing is no less effective than the counterpart Federal regulation. Based on our findings above, we are approving Illinois' proposed changes at 62 IAC 1761.14(b).

#### *D. 62 IAC 1773.15 Review of Permit Applications*

At subsection (c)(3), the Department cannot approve an application for a permit or significant revision unless it finds that the proposed permit area is not (1) within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations or (2) within an area designated as unsuitable for mining. At the introductory paragraph of subsection (c)(3), Illinois proposed to remove the language "or the proposed shadow area for a planned subsidence operation."

The State regulation as revised is substantively the same as the counterpart Federal regulation at 30 CFR 773.15(c). The Federal regulation provides that the regulatory authority cannot approve an application for a permit or significant revision unless it finds that the proposed permit area is not (1) within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations or (2) within an area designated as unsuitable for mining. Also, the Federal regulation at 30 CFR

761.200 provides in part that subsidence due to underground coal mining is not prohibited in areas that are protected from mining operations under section 522(e) of the Act. Therefore, Illinois' proposal to remove the requirement that such a finding be made for the proposed shadow area for a planned subsidence operation does not make 62 IAC 1773.15(c)(3) less effective than the counterpart Federal regulation, and we are approving it.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment, but did not receive any.

##### *Federal Agency Comments*

On December 29, 2004, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL-5087). We did not receive any comments.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On December 29, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IL-5087). EPA did not respond to our request.

##### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 29, 2004, we requested comments on Illinois' amendment (Administrative Record No. IL-5087), but neither responded to our request.

#### **V. OSM's Decision**

Based on the above discussion, we approve the amendment Illinois sent us on December 10, 2004.

We approve the regulations proposed by Illinois with the provision that they

be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 913, which codify decisions concerning the Illinois program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based upon the fact that the provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory

programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Illinois program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Illinois program has no effect on Federally-recognized Indian tribes.

### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use

of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior certifies that a portion of the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural or editorial in nature and are not expected to have a substantive effect on the regulated industry.

**List of Subjects in 30 CFR Part 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 12, 2005.  
**Charles E. Sandberg,**  
*Regional Director, Mid-Continent Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

**PART 913—ILLINOIS**

■ 1. The authority citation for part 913 continues to read as follows:

*Authority:* 30 U.S.C. 1201 *et seq.*

■ 2. Section 913.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 913.15 Approval of Illinois regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
December 10, 2004	May 19, 2005	225 ILCS 720/1.04; 62 IAC 1700.17, 1700.18; 1761.11(e)(1), 1761.14(b), 1761.16(b)(3); 1762.15; 1772.12(b)(14); 1773.15(c)(3).

[FR Doc. 05-10013 Filed 5-18-05; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

**31 CFR Part 10**

[TD 9201]

RIN 1545-BA70

**Regulations Governing Practice Before the Internal Revenue Service**

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations revising the regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who practice before the Internal Revenue Service. These regulations clarify the standards for covered opinions.

**DATES:** *Effective Date:* These regulations are effective May 19, 2005.

*Applicability Date:* For dates of applicability, see § 10.35(g).

**FOR FURTHER INFORMATION CONTACT:** Heather L. Dostaler at (202) 622-4940, or Brinton T. Warren at (202) 622-7800 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate practice before the Treasury Department. The Secretary has published the regulations in Circular 230 (31 CFR part 10). On December 20, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 75839) final regulations (Final Regulations) applicable to written advice that is rendered after June 20, 2005. Since publication of the Final Regulations, Treasury and the IRS have received a number of comments highlighting areas where the language of the Final Regulations might have consequences inconsistent with their intent. Upon consideration of those comments, the Treasury Department and the IRS have made revisions to the Final Regulations, as described below, to clarify the language of the Final Regulations.

**Explanation of Provisions**

*Written Advice Issued After a Tax Return Is Filed*

Commentators have expressed concern that advice given after a tax return is filed, in particular advice given in the context of an IRS examination or litigation, might constitute a covered opinion within the meaning of the Final Regulations. In response to this concern, the definition of *excluded advice* in

§ 10.35 is expanded to include written advice prepared for and provided to a taxpayer, solely for use by that taxpayer, after the taxpayer has filed a tax return reflecting the tax benefits of the transaction described in or referred to in the written advice. This exclusion does not apply if the practitioner knows or has reason to know that the taxpayer will rely upon the written advice to take a position on a return (including an amended return that claims tax benefits not reported on the original return) filed after the date on which the advice is provided to the taxpayer.

*Advice Provided by Taxpayer’s In-House Counsel*

Commentators have also expressed concern that written advice provided by in-house counsel to the employer for purposes of determining the employer’s tax liability could constitute a covered opinion and that the concept of a covered opinion in that context raises numerous issues. In response to these concerns, the definition of *excluded advice* in § 10.35 is expanded to include advice provided to an employer by a practitioner in that practitioner’s capacity as an employee of that employer solely for purposes of determining the tax liability of the employer. Written advice provided by in-house counsel that falls within the revised definition of *excluded advice* will continue to be subject to the