

scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### IV. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *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. 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. The rule does not involve or affect Indian Tribes in any way.

##### *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. 4321 *et seq.*).

##### *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. 3501 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that 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.*). The State submittal, which is the subject of this rule, is 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 rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of 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.
- 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 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 was not considered a major rule.

##### *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 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.

##### **List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 2009.

**Richard M. Holbrook,**

*Acting Director, Western Region.*

[FR Doc. 2010-2765 Filed 2-8-10; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 950**

[SATS No: WY-038-FOR; Docket ID: OSM-2009-0012]

#### **Wyoming Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the “Wyoming program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Wyoming proposes numerous revisions and additions to rules concerning revegetation and cropland success standards, normal husbandry practices, shrub reclamation standards, fish and wildlife enhancement measures, cultural and historic resources, prime farmland, siltation structures and impoundments, and operator information. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t. March 11, 2010. If requested, we will hold a public hearing on the amendment on March 8, 2010. We will accept requests to speak until 4 p.m., m.s.t. on February 24, 2010.

**ADDRESSES:** You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. This proposed rule has been assigned Docket ID: OSM–2009–0012. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions. You can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the “III. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at <http://www.regulations.gov>, you may review copies of the Wyoming program, this

amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM’s Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Denver, Colorado 82601–1018, 307/261–06547, [JFleischman@osmre.gov](mailto:JFleischman@osmre.gov).

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, 307/777–7046, [jcorra.state.wy.us](mailto:jcorra.state.wy.us).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Telephone: (307) 261–6547. Internet: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Wyoming Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Wyoming 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 conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming’s program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

**II. Description of the Proposed Amendment**

By letter dated October 15, 2009, Wyoming sent us a proposed amendment to its approved regulatory program [Administrative Record Docket

ID No. OSM–2009–0012]. Wyoming sent the amendment in response to: Portions of a February 21, 1990, letter that we sent to Wyoming in accordance with 30 CFR 732.17(c); previous OSM disapprovals at 30 CFR 950.12(a)(6) and (7); and, required program amendments at 30 CFR 950.16(f), (l), (m), (p), and (u). The amendment also includes changes made at Wyoming’s own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Wyoming proposes to amend Chapters 1, 2, 4, 5, and Appendix A of the Land Quality Division (LQD) Coal Rules and Regulations (R&R) to address required program amendments and other deficiencies identified by OSM. The proposed changes are intended to clarify baseline vegetation requirements and revegetation reclamation plan requirements, clarify revegetation success standards and codify normal husbandry practices, reorganize and clarify species diversity and shrub density requirements, and revise and add definitions supporting those proposed changes. Wyoming also proposes rule changes to address several miscellaneous deficiencies.

Specifically, Appendix A of the LQD R&R contains rules on vegetation sampling methods and reclamation success standards for shrubs on reclaimed lands. In August of 2006, OSM published new rules that no longer required sampling and statistical methods to be included in the rules of the regulatory authority. Consequently, much of Appendix A was no longer required and Wyoming proposes to delete Appendix A entirely and relocate portions thereof into Chapters 1, 2, and 4. Wyoming’s proposed changes to Chapter 1 contain definitions that were relocated from deleted Appendix A. The proposed changes include new and revised definitions intended to clarify current or proposed rules and/or sampling methods in support of proposed changes in Chapters 2 and 4. The proposed changes include: New definitions for “Regulatory categories;” new definitions related to normal “Husbandry practices;” revisions to the rules on “Reference areas;” revision to the “Eligible land” definition; revision to the “Pastureland” definition; and addition of the “Species lacking creditable value” definition. Wyoming also proposes to substantially reorganize the structure of Chapter 2 to revise Section 1 (General Requirements) and divide Section 2 (Application Content Requirements) into five new sections including Adjudication Requirements; Vegetation Baseline Requirements;

General Baseline Requirements; Mine Plan; and Reclamation Plan.

Similarly, Wyoming proposes to substantially reorganize the structure of Chapter 4 Section 2(d) into two new subsections with subsection (i) containing general revegetation performance standards and most of the current Section 2(d) rules, and adding rules dealing with normal husbandry practices. Subsection (ii) contains Revegetation Success Standards listed by post-mine land use categories and includes new rules for Fish and Wildlife Habitat; Postmining Wetlands; Developed Water Resource; Recreational; and a new provision within the current land use rule for Special Success Standards. Wyoming also proposes to combine the standards for grazingland and pastureland into a single section and proposes new Chapter 4 Appendix 4A, which describes the different shrub standard options, and is relocated from deleted Appendix A. Lastly, Wyoming proposes changes to its rules in Chapters 2, 4, and 5 regarding cultural and historic resources, prime farmland, siltation structures and impoundments, and operator information.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

#### *Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see DATES*) or sent to an address other than those listed above (*see ADDRESSES*) will be included in the docket for this rulemaking and considered.

#### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 24, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### IV. Procedural Determinations

#### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

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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.

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#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of \$100 million.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- 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 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 was not considered a major rule.

#### *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 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.

#### **List of Subjects in 30 CFR Part 950**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 2009.

**James F. Fulton,**

*Acting Regional Director, Western Region.*

[FR Doc. 2010-2781 Filed 2-8-10; 8:45 am]

**BILLING CODE 4310-05-P**

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

[DoD-2008-HA-0029; 0720-AB22]

#### **32 CFR Part 199**

#### **Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Reconsideration and request for comments.

**SUMMARY:** This is notification of an additional opportunity to comment on the final rule of March 17, 2009, implementing provisions of section 703 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008. This statute extended pharmaceutical Federal Ceiling Prices (FCPs) to TRICARE Retail Pharmacy Program prescriptions. The Department of Defense (DoD) issued a final rule on March 17, 2009, implementing the law. On November 30, 2009, the U.S. District Court for the District of Columbia "ordered that the final rule is remanded without vacatur for the Defense Department to consider in its discretion whether to readopt the current iteration of the rule or adopt another approach to implement 10 U.S.C. 1074g(f)." As part of DoD's reconsideration, DoD solicits public comments on the implementation of the statute, DoD's resulting regulations, and the matters addressed for DoD's consideration in the Court's Memorandum Opinion.

**DATES:** Written comments received at the address indicated below by March 11, 2010 will be considered and addressed in the final rule.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this FR document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Rear Admiral Thomas McGinnis, Chief, Pharmacy Operations Directorate, TRICARE Management Activity, telephone (703) 681-2890.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Section 703 of NDAA-08 enacted 10 U.S.C. 1074g(f). It provides that with respect to any prescription filled on or after the date of enactment (January 28, 2008), the TRICARE Retail Pharmacy Program shall be treated as an element of DoD for purposes of the procurement of drugs by Federal agencies under 38 U.S.C. 8126 to the extent necessary to ensure pharmaceuticals paid for by DoD that are provided by network retail pharmacies to TRICARE beneficiaries are subject to FCPs. This section 8126 established FCPs for covered drugs (requiring a minimum 24 percent discount) procured by DoD and three other agencies from manufacturers. The NDAA required implementing regulations.

DoD issued a proposed rule July 25, 2008 (73 FR 43394-97). It featured voluntary agreements with manufacturers, tied to preferred Uniform Formulary status, to pay DoD refunds for drugs entered into the normal commercial chain of transactions that end up as prescriptions given to TRICARE beneficiaries and paid for by DoD, the refund amount being the portion of the price of the drug sold by the manufacturer that exceeds the FCPs. The proposed rule also