

equivalent performance standards in subchapter B of this chapter, shall be modified or reconstructed to meet the performance and design standard of subchapter K of this chapter pursuant to a compliance plan approved by the regulatory authority only as part of the permit application as required in 30 CFR 780.12 or 784.12 and according to the findings required by 30 CFR 773.15;

(iv) An existing structure which does not meet the performance standards of subchapter B of this chapter and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of subchapter K prior to issuance of the permit.

(2) The exemptions provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section shall not apply to—

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

(f)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the date on which a State program is approved or a Federal program implemented, shall either file a notice of intention to explore or obtain approval of the regulatory authority, as required by 30 CFR part 772.

(2) Coal exploration performance standards in 30 CFR part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface 2 months after approval of a State program or implementation of a Federal program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15316, Mar. 13, 1979, as amended at 44 FR 77446, Dec. 31, 1979; 48 FR 6935, Feb. 16, 1983; 48 FR 44391, Sept. 28, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984; 54 FR 13822, Apr. 5, 1989]

EFFECTIVE DATE NOTE: A document published at 44 FR 67942, Nov. 27, 1979, temporarily suspended §701.11(d) (1) and (2), which were redesignated as paragraphs (e) (1) and (2) at 49 FR 38477, Sept. 28, 1984, insofar as it may be read to retain discretion in the regu-

latory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 773.15.

## PART 702—EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

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AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended.

SOURCE: 54 FR 52120, Dec. 20, 1989, unless otherwise noted.

### § 702.1 Scope.

This part implements the exemption contained in section 701(28) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$  percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

### § 702.5 Definitions.

As used in this part, the following terms have the meaning specified, except where otherwise indicated:

(a) *Cumulative measurement period* means the period of time over which both cumulative production and cumulative revenue are measured.

(1) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or