

Surface Mining Reclamation and Enforcement, Interior

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(1) The provision of the Act containing the mandatory act or duty allegedly not performed;

(2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

§ 700.14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office of the State or Federal regulatory authority having jurisdiction over the area involved.

(b) Other records or documents in the possession of the Office may be requested under 43 CFR part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 700.15 Computation of time.

(a) Except as otherwise provided, computation of time under this chapter is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the regulatory authority is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

PART 701—PERMANENT REGULATORY PROGRAM

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

SOURCE: 44 FR 15316, Mar. 13, 1979, unless otherwise noted.

EDITORIAL NOTE: At 82 FR 54929, Nov. 17, 2017, as required by the Congressional Review Act and Public Law 115-5, the Office of Surface Mining Reclamation and Enforcement removed all amendments to part 701 made effective on Jan. 19, 2017, at 81 FR 93319-93323, Dec. 20, 2016.

§ 701.1 Scope.

(a) This part provides general introductory material for the permanent regulatory program required by the Act.

(b) The following regulations apply to the permanent regulatory program:

(1) Subchapter C on State program application, approval, withdrawal, and grants, and Federal program implementation;

(2) Subchapter D on surface coal mining and reclamation operations on Federal lands;

(3) Subchapter E on surface coal mining and reclamation operations on Indian lands.

(4) Subchapter F on criteria for designating lands unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation by the regulatory authority; *Provided*, That, part 761 is applicable during the initial regulatory program under subchapter B of this chapter and 30 CFR part 211¹ and that part 769 and other parts incorporated therein are applicable to the initial Federal lands program under 30 CFR part 211;

(5) Subchapter G on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, including the small operator assistance program, requirements for special categories of these operations, and requirements for coal exploration;

(6) Subchapter J on public liability insurance and performance bonds or other assurances of performance for surface coal mining and reclamation operations;

¹EDITORIAL NOTE: 30 CFR part 211 was redesignated as 43 CFR part 3480 at 48 FR 41589, Sept. 16, 1983.

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(7) Subchapter K on performance standards which apply to coal exploration, surface coal mining and reclamation operations, and special categories of these operations;

(8) Subchapter L on inspection and enforcement responsibilities and civil penalties; and

(9) Subchapter M on the training, examination, and certification of blasters.

[44 FR 15316, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 44 FR 77445, Dec. 31, 1979; 49 FR 38477, Sept. 28, 1984]

§ 701.2 Objective.

The regulations in this part give—

(a) A general overview of the regulatory program to be implemented by the State or Federal regulatory authority;

(b) The applicability of that program to coal exploration and surface coal mining and reclamation operations; and

(c) The definitions that apply to the regulation of coal exploration and surface coal mining and reclamation operations.

§ 701.3 Authority.

The Secretary is required by section 501(b) of the Act to promulgate regulations which establish the permanent regulatory program; by section 523 of the Act to promulgate regulations which establish the Federal lands programs; and is authorized by section 710 of the Act to promulgate regulations which establish a Federal program for Indian lands.

[49 FR 38477, Sept. 28, 1984]

§ 701.4 Responsibility.

(a) A State regulatory authority shall assume primary responsibility for regulation of coal exploration and surface coal mining and reclamation operations during the permanent regulatory program upon submission to and approval by the Secretary of a State program meeting all applicable requirements of the Act and this chapter. After approval of the State program, the State regulatory authority has responsibility for review of and decisions on permits and bonding for surface coal mining and reclamation operations, ap-

proval of coal exploration which substantially disturbs the natural land surface and removes more than 250 tons of coal from the earth in any one location, inspection of coal exploration and surface coal mining and reclamation operations for compliance with the Act, this chapter, the State program, permits and exploration approvals, and for enforcement of the State program.

(b) While a State regulatory program is in effect, the Office's responsibility includes, but is not limited to—

(1) Evaluating the administration of the State program through such means as periodic inspections of coal exploration and surface coal mining and reclamation operations in the State and review of exploration approvals, permits, inspection reports, and other documents required to be made available to the Office;

(2) Referring to the State regulatory authority information which creates reasonable belief that a person is in violation of the Act, this chapter, the State regulatory program, a permit condition, or coal exploration approval condition, and initiating an inspection when authorized by the Act or this chapter;

(3) Issuing notices of violation when a State regulatory authority fails to take appropriate action to cause a violation to be corrected; and

(4) Issuing cessation orders, including imposing affirmative obligations, when a condition, practice, or violation exists which creates an imminent danger to the health or safety of the public, or is causing or could reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) The Office shall implement a Federal program in a State, if that State does not have an approved State program by June 3, 1980. The Office shall not implement a Federal program in a State for a period of up to 1 year following that date if the State's failure to have an approved program by that date is due to an injunction imposed by a court of competent jurisdiction.

(d) Under a Federal program, the Office shall be the regulatory authority for all coal exploration and surface coal mining and reclamation operations in that State and shall perform

the functions that a State regulatory authority would perform under an approved State program.

(e) During the period in which a State program is in effect, the Office shall assume responsibility for enforcing permit conditions, issuing new or revised permits, and issuing necessary notices and orders, when required by 30 CFR part 733.

(f) The Secretary shall substitute a Federal program under 30 CFR part 736 for an approved State program, when required by 30 CFR part 733.

(g) The Secretary shall have the responsibility for administration of the Federal lands program. The Director and other Federal authorities shall have the responsibilities under a Federal lands program as are provided for under subchapter D of this chapter. In addition, State regulatory authorities shall have responsibilities to administer the Federal lands program as provided for under cooperative agreements approved by the Secretary in accordance with 30 CFR part 745.

(h) The Secretary shall have the responsibility for the administration of the Federal program for Indian lands, as provided for under subchapter E of this chapter. The Director and other Federal authorities have the responsibilities under the Indian lands program as are provided for under subchapter E of this chapter.

[44 FR 15316, Mar. 13, 1979, as amended at 49 FR 38477, Sept. 28, 1984]

§ 701.5 Definitions.

As used in this chapter, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

Adjacent area means the area outside the permit area where a resource or re-

sources, determined according to the context in which *adjacent area* is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

Administratively complete application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

Affected area means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

Agricultural activities means, with respect to alluvial valley floors, the use

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of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

Alluvial valley floors means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

Applicant means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

Applicant/Violator System or *AVS* means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act.

Application means the documents and other information filed with the regulatory authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads,

closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the regulatory authority has determined that they comply with 30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133.

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Arid and semiarid area means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and the Ione fields in California are in arid and semiarid areas.

Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction

practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 30 CFR parts 816 and 817. Within the constraints of the permanent program, the regulatory authority shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

Coal exploration means the field gathering of:

(a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

Coal mine waste means coal processing waste and underground development waste.

Coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

Coal preparation plant means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

Coal processing waste means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement

and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

Complete and accurate application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance.

Control or controller, when used in parts 773, 774, and 778 of this chapter, refers to or means—

(a) A permittee of a surface coal mining operation;

(b) An operator of a surface coal mining operation; or

(c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Cumulative impact area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond releases of:

(a) The proposed operation,

(b) all existing operations,

(c) any operation for which a permit application has been submitted to the regulatory authority, and

(d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as *disturbed* until reclamation is complete and the performance bond or other assurance of performance required by

subchapter J of this chapter is released.

Diversion means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

Downslope means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

Drinking, domestic or residential water supply means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Essential hydrologic functions means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

Excess spoil means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with §§ 816.102(d) and 817.102(d) of this chapter in non-steep slope areas shall not be considered excess spoil.

Existing structure means a structure or facility used in connection with or to facilitate surface coal mining and

reclamation operations for which construction begins prior to the approval of a State program or implementation of a Federal program or Federal lands program, whichever occurs first.

Farming means, with respect to alluvial valley floors, the primary use of those areas for the cultivation, cropping or harvesting of plants which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition, harvesting does not include the grazing of livestock.

Federal program means a program established by the Secretary pursuant to section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with the Act and this chapter.

(a) *Complete Federal program* means a program established by the Secretary pursuant to section 504 of the Act before June 3, 1980, or upon the complete withdrawal of a State program after June 3, 1980, by which the Director regulates all coal exploration and surface coal mining and reclamation operations.

(b) *Partial Federal program* means a program established by the Secretary pursuant to sections 102, 201 and 504 of the Act upon the partial withdrawal of a State program, by which the Director may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations.

Flood irrigation means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

Gravity discharge means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

Ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Half-shrub means a perennial plant with a woody base whose annually produced stems die back each year.

Head-of-hollow fill means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

Higher or better uses means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

Highwall remnant means that portion of highwall that remains after backfilling and grading of a remaining permit area.

Historically used for cropland means

(a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface

coal mining and reclamation operations;

(b) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

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Impounding structure means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

Impoundments means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

In situ processes means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

Intermittent stream means—

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Irreparable damage to the environment means any damage to the environment, in violation of the Act, the regulatory program, or this chapter, that cannot be corrected by actions of the applicant.

Knowing or *knowingly* means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the regulatory authority.

(a) *Cropland*. Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small

grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) *Pastureland or land occasionally cut for hay*. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) *Grazingland*. Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) *Forestry*. Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(e) *Residential*. Land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(f) *Industrial/Commercial*. Land used for—

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) *Recreation*. Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) *Fish and wildlife habitat*. Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) *Developed water resources*. Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) *Undeveloped land or no current use or land management*. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Lands eligible for reining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

Material damage, in the context of §§ 784.20 and 817.121 of this chapter, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

Materially damage the quantity or quality of water means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.

MSHA means the Mine Safety and Health Administration.

Moist bulk density means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity ($\frac{1}{2}$ bar moisture tension). Weight is determined after drying the soil at 105 °C.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

Non-commercial building means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 761.5 of this chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

Occupied residential dwelling and structures related thereto means, for purposes of §§ 784.20 and 817.121, any building or

other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

Operator means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

Other treatment facilities mean any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(b) To comply with all applicable State and Federal water-quality laws and regulations.

Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Own, owner, or ownership, as used in parts 773, 774, and 778 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

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Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include *intermittent stream* or *ephemeral stream*.

Performance bond means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, a State, Federal or Federal lands program, and the requirements of the permit and reclamation plan.

Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the regulatory authority and other appropriate State and Federal agencies.

Permanent impoundment means an impoundment which is approved by the regulatory authority and, if required, by other State and Federal agencies for retention as part of the postmining land use.

Permit means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the State regulatory authority under a cooperative agreement or by OSM where there is no cooperative agreement.

Permit area means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area.

Permittee means a person holding or required by the Act or this chapter to hold a permit to conduct surface coal mining and reclamation operations issued by a State regulatory authority pursuant to a State program, by the

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Director pursuant to a Federal program, by the Director pursuant to a Federal lands program, or, where a cooperative agreement pursuant to section 523 of the Act has been executed, by the Director and the State regulatory authority.

Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, *precipitation event* also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR part 657 (FEDERAL REGISTER Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

Rangeland means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Reasonably available spoil means spoil and suitable coal mine waste material generated by the remaining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Reclamation means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the regulatory authority.

Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the regulatory authority. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

Remining means conducting surface coal mining and reclamation operations which affect previously mined areas.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

Replacement of water supply means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

Road means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

Sedimentation pond means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time

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that would be set under section 521(a)(3) of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are—

(a) *A horizon*. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) *E horizon*. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(c) *B horizon*. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) *C horizon*. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as in-

corporated by reference in 30 CFR 785.17(c)(1).

Special bituminous coal mines means those mines in existence on January 1, 1972, or mines adjoining or having a common boundary with those mines for which development began after August 3, 1977, that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(a) Surface mining takes place on a relatively limited site for an extended period of time. The surface opening of the excavation is at least the full size of the excavation and has a continuous border.

(b) Excavation of the mine pit follows a coal seam that inclines 15° or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operation.

(c) The amount of material removed from the pit is large in comparison to the surface area disturbed.

(d) There is no practicable alternative to the deep open-pit method of mining the coal.

(e) There is no practicable way to reclaim the land as required in subchapter K.

Spoil means overburden that has been removed during surface coal mining operations.

Stabilize means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

State program means a program established by a State and approved by the Secretary pursuant to section 503 of the Act to regulate surface coal mining and reclamation operations on non-Indian and non-Federal lands within that State, according to the requirements of the Act and this chapter. If a cooperative agreement under part 745 has been entered into, a State program may apply to Federal lands, in accordance with the terms of the cooperative agreement.

Steep slope means any slope of more than 20° or such lesser slope as may be designated by the regulatory authority

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after consideration of soil, climate, and other characteristics of a region or State.

Subirrigation means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

Substantially disturb means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR part 136).

Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the regulatory authority to remain after reclamation as part of the approved postmining land use.

Temporary impoundment means an impoundment used during surface coal mining and reclamation operations, but not approved by the regulatory authority to remain as part of the approved postmining land use.

Topsoil means the A and E soil horizon layers of the four master soil horizons.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Transfer, assignment, or sale of permit rights means a change of a permittee.

Unanticipated event or condition, as used in § 773.13 of this chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for re-mining and was not contemplated by the applicable permit.

Underground development waste means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

Underground mining activities means a combination of—

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

Undeveloped rangeland means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

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Upland areas means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

Valley fill means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

Violation, when used in the context of the permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act and related regulations, means—

(1) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program—

(i) A notice of violation under §843.12 of this chapter.

(ii) A cessation order under §843.11 of this chapter.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under part 845 or 846 of this chapter.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under part 870 of this chapter.

(v) A notice of bond forfeiture under §800.50 of this chapter when—

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under §800.50(d)(1) of this chapter,

the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under §800.11(e) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

Violation, failure or refusal, for purposes of parts 724 and 846 of this chapter, means—

(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

Violation notice means any written notification from a regulatory authority or other governmental entity, as specified in the definition of *violation* in this section.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

Willful or *willfully* means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted—

(1) Intentionally, voluntarily, or consciously; and

(2) With intentional disregard or plain indifference to legal requirements.

[44 FR 15316, Mar. 13, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §701.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

EFFECTIVE DATE NOTE: In §701.5, the definition of *Affected area*, insofar as it excludes roads which are included in the definition of

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Surface coal mining operations, was suspended at 51 FR 41960, Nov. 20, 1986.

§ 701.11 Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. However, under conditions specified in 30 CFR 773.4(b) of this chapter, a person may continue operations under a previously issued permit after 8 months from the date of approval of a State program or implementation of a Federal program.

(b) Any person who conducts surface coal mining operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to part 740 of this chapter. However, under conditions specified in § 740.13(a)(3) of this chapter, a person may continue such operations under a mining plan previously approved pursuant to 43 CFR part 3480 or a permit issued by the State under the interim State program after 8 months after the date of approval of a State program or implementation of a Federal program.

(c) Any person who conducts surface coal mining operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to part 750 of this chapter. However, a person who is authorized to conduct surface coal mining operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

(1) An application for a permit to conduct those operations has been made to the Director within two months after the effective date of the Federal program for Indian lands and the initial administrative decision on that application has not been issued; and

(2) Those operations are conducted in compliance with all terms and condi-

tions of the existing authorization to mine, the requirements of the Act, 25 CFR part 216, and the requirements of all applicable mineral agreements, leases or licenses.

(d) The requirements of subchapter K of this chapter shall be effective and shall apply to each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

(e)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of subchapter K of this chapter, except that—

(i) An existing structure which meets the performance standards of subchapter K of this chapter but does not meet the design requirements of subchapter K of this chapter may be exempted from meeting those design requirements by the regulatory authority. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(ii) If the performance standard of subchapter B of this chapter is at least as stringent as the comparable performance standard of subchapter K of this chapter, an existing structure which meets the performance standards of subchapter B of this chapter may be exempted by the regulatory authority from meeting the design requirements of subchapter K of this chapter. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(iii) An existing structure which meets a performance standard of subchapter B of this chapter which is less stringent than the comparable performance standards of subchapter K of this chapter or which does not meet a performance standard of subchapter K of this chapter, for which there was no

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; 65 FR 79663, Dec. 19, 2000]

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 regulatory 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

Sec.

702.1 Scope.

702.5 Definitions.

702.10 Information collection.

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702.15 Conditions of exemption and right of inspection and entry.

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702.17 Revocation and enforcement.

702.18 Reporting requirements.

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