

§ 702.12

day period until the regulatory authority makes an administrative decision on such application.

(c) Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by § 702.12(g), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination. (1) No later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(3) If the regulatory authority fails to provide an applicant with the determination as specified in paragraph (e)(1) of this section, an applicant who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

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(2) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a determination under paragraph (e) of this section.

§ 702.12 Contents of application for exemption.

An application for exemption shall include at a minimum:

(a) The name and address of the applicant;

(b) A list of the minerals sought to be extracted;

(c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(f) The basis for all annual production, revenue, and fair market value estimates;

(g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

(h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the regulatory authority (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);

(j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted

for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(k) A map of appropriate scale which clearly identifies the mining area;

(l) A general description of mining and mineral processing activities for the mining area;

(m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) Any relevant documents the operator has received from the regulatory authority documenting its exemption from the requirements of the Act;

(2) The cumulative production of the coal and other minerals from the mining area; and

(3) Estimated tonnages of stockpiled coal and other minerals; and

(p) Any other information pertinent to the qualification of the operation as exempt.

§ 702.13 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(b) The regulatory authority may keep information submitted to the regulatory authority under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential

and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this part.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

§ 702.14 Requirements for exemption.

(a) Activities are exempt from the requirements of the Act if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16 $\frac{2}{3}$ percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

(1) Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end