§ 710.12 Special exemption for small operators.

(a) As used in this section—
(1) Permittee means a person holding a permit under State law and to whom the permit was originally issued.
(2) Renewed permit means any extension of the original area of duration of a permit.
(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the performance standards of this chapter. The exemption shall not—
(1) Include the Special Performance Standard of §716.2(a)(1) of this chapter regarding the handling of spoil;
(2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;
(3) Include any general or special performance standard with which a permittee is required to comply by a State;
(4) Relieve the permittee of the general obligations imposed by §710.11(a) of this part regarding conditions or practices creating imminent danger or causing significant, imminent environmental harm; or
(5) Relieve the permittee of any obligations under State law, regulation or permit.
(c) A permittee is eligible for an exemption under this section—
(1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and
(2) If that permittee—
(i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or
(ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.
(iii) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.
(d) Application for an exemption under this section shall be submitted to the Director of the Office by March 1, 1978 with a copy to the State regulatory authority.
(e) The request for exemption shall be in the form of an affidavit under oath and shall include—
(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.
(2) The name, location, Mining Enforcement and Safety Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each
permit was issued or renewed and will expire.

(3) The date and method by which the permittee was created if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing—

(i) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(ii) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two weeks stating—

(i) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the Act;

(ii) The name and address of the permittee;

(iii) The location of the surface coal mining operations to which the exemption will apply; and

(iv) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(f) Production from the following operations shall be attributed to the permittee—

(1) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5-percent interest.

(3) All coal produced by persons who own more than 5 percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(4) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

(g) The Director shall grant the request for an exemption if, upon the basis of the request and any State regulatory authority or public comments, or any other information, he finds that—

(1) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(2) The exemption will not be inconsistent with State law, regulation or permit terms.

(h) Any person aggrieved by the decision of the Director under this section may appeal within 20 days from receipt of that decision to the Office of Hearings and Appeals under 43 CFR part 4. The Office of Hearings and Appeals and the Secretary shall have the authority to stay the exemption pending the outcome of the appeal.

(i) The exemption shall be effective on the date approved. It shall remain in effect until expiration or renewal of the State permit to which it applies, December 31, 1978, or until revoked, whichever is earlier.

(j) The Director shall revoke the exemption upon finding that the exempted operation has or will produce more than 100,000 tons of coal per year.