

§ 4.1392

agreed to bear the expense of this service.

(1) When the determination is made independently of a decision on an application for a permit or for a permit boundary revision, a request for review shall be filed within 30 days of receipt of the determination by a person who has received a copy of it by certified mail or overnight delivery service. The request for review shall be filed within 30 days of the date of publication of the determination in a newspaper of general circulation or in the FEDERAL REGISTER, whichever is later, by any person who has not received a copy of it by certified mail or overnight delivery service.

(2) When the determination is made in conjunction with a decision on an application for a permit or for a permit boundary revision, the request for review must be filed in accordance with § 4.1362.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of the right to review and the request shall be dismissed.

[56 FR 2145, Jan. 22, 1991, as amended at 67 FR 4368, Jan. 30, 2002; 67 FR 61512, Oct. 1, 2002]

§ 4.1392 Contents of request; amendment of request; responses.

(a) The request for review:

(1) Must include:

(i) A clear statement of the reasons for appeal;

(ii) A request for specific relief;

(iii) A copy of the decision appealed from; and

(iv) Any other relevant information; and

(2) May not exceed 30 pages, excluding exhibits, declarations, and other attachments, unless the Board orders otherwise upon motion for good cause shown.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

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(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the Board.

(d) An interested party may file an answer, motion, or statement as described in paragraph (b) of this section in response to an amended request for review as follows:

(1) If the request for review is amended as a matter of right, the answer, motion, or statement must be filed within the longer of the following periods:

(i) The time remaining for response to the original request for review; or

(ii) Ten days after receipt of the amended request for review; and

(2) If the Board grants a motion to amend a request for review, the answer, motion, or statement must be filed within the time set by the Board in its order granting the motion.

(e) The filing of a reply is discouraged. However, a person who filed a request for review may file a reply that:

(1) Is limited to the issues raised in an answer or motion;

(2) Does not exceed 20 pages, excluding exhibits, declarations, and other attachments, unless the Board orders otherwise upon motion for good cause shown; and

(3) Is filed within:

(i) Fifteen days after service of the answer or motion under paragraph (b) or (d)(1) of this section; or

(ii) The time set by the Board in its order under paragraph (d)(2) of this section.

[52 FR 39530, Oct. 22, 1987, as amended at 75 FR 64670, Oct. 20, 2010]

§ 4.1393 Status of decision pending administrative review.

43 CFR 4.21(a) applies to determinations of the Office of Surface Mining under 30 U.S.C. 1272(e).

§ 4.1394 Burden of proof.

(a) If the person who requested the determination is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the