



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office

P.O. Box 2965

Portland, Oregon 97208



In Reply Refer to:

5400/5003 (OR-931) P

August 25, 2008

EMS TRANSMISSION 08/28/2008

Instruction Memorandum No. OR-2008-084

Expires: 9/30/2009

To: All District Managers
Attn: Forestry Leads, Planning Leads, and Planning & Environmental Coordinators

From: State Director, Oregon/Washington

Subject: Timber Sale Decisions, Protests, and Appeals

Program Area: Forest Management Program

Purpose: To provide direction and information on timber sale decisions and administrative review procedures, including protest and appeal. To clarify Oregon/Washington (OR/WA) Bureau of Land Management (BLM) policy for discretionary full force and effect implementation of forest management decisions for timber sales.

Policy/Action: This Instruction Memorandum (IM) formally updates and clarifies OR/WA State Office (OSO) guidance on timber sale decisions and protest and appeal procedures in order to provide greater consistency and coordination in approach amongst field offices, districts, and the OSO. Attachment 1 to this IM outlines current OSO policy and procedures for decisions to offer advertised timber sales issued under authorities found in 43 Code of Federal Regulations (CFR) Subpart 5003 – Administrative Remedies and 43 CFR Part 4 – Department Hearings and Appeals Procedures. The procedures are standardized and should be followed in order to establish a consistent process among the districts. The non-regulatory timeframes for completing the steps in the process serve, for the most part, as goals rather than deadlines. Circumstances such as litigation may create additional constraints on the district and OSO ability to achieve the desired timeframes.

In cases with unusual circumstances, contact the OSO Branch of Forest Resources and Special Status Species (OR-931) for additional input. Although this document has been reviewed by the Office of the Regional Solicitor and OSO program leads, it should be used in conjunction with, not in place of, existing federal regulations and BLM manuals and policies.

Language provided as attachments is intended to be required unless specific circumstances dictate any modification. In that case, consult with the OSO Forest Management Advisor regarding necessary changes.

Timeframe: Effective upon receipt.

Budget Impact: The direction described in this memorandum clarifies and updates practices and workloads that already exist. No impacts to budget are anticipated through implementation of direction contained herein. For budget tracking purposes, time spent responding to administrative appeals and court litigation should generally be coded to the litigation project code LITU (see Annual Work Plan General Advices – Litigation Section for current list of codes). Time spent on protest responses is not coded to LITU.

Background: Local communities continue to show a strong interest in the management of forest lands in the Pacific Northwest. For the OR/WA BLM, this translates into high level of public participation in our National Environmental Policy Act of 1969 (NEPA) process for forestry-related projects as well as subsequent administrative review of timber sale decisions. Correspondingly, workload associated with responding to protests, appeals, and litigation has become a significant part of the Forest Management Program. Over time the complexity and frequency of protests, appeals, and litigation have increased, requiring regular communication between the OSO and district staff. The development of consistent and defensible documents which support our timber sale decisions is an important and proactive component of how BLM makes timely and complete responses to protests and appeals.

Prompt protest and appeal response is of paramount concern due to legal consideration governing timeliness of contract award for timber sales. However, accuracy and thoroughness of the protest and appeal responses are the bases of BLM's defense, and they should be given due consideration. Districts should strive to award the contract 90 days from the sale auction date to maintain the expectation that the high bidder will be held to his/her bid. Notify OR-931 if it appears likely that award will not occur within 150 days.

Manual/Handbook Sections Affected: Oregon/Washington Timber Sale Handbook H-5430-1, H-5440-1, and H-5450-1.

Coordination: These policies have been coordinated and reviewed by district Forestry Leads, the OSO, and the Office of the Regional Solicitor.

Contact: OSO Forest Management Advisor (OR-931), Anita Bilbao, (503) 808-6081.

Districts with Unions are reminded to notify their unions of this Instruction Memorandum and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
James G. Kenna
Associate State Director

Authenticated by
Paj Shua Cha
Records Section

13 Attachments

- 1- [Timber Sale Procedures: Administrative Remedies and Department Hearings and Appeals Procedures as per 43 CFR Subpart 5003 and 43 CFR Part 4](#) (8pp)
- 2 - [Language for Newspaper Advertisement of a Forest Management Decision](#) (1p)
- 3 - [Language for Protest Procedures in the Decision Rationale](#) (1p)
- 4- [Overlay of Standard Administrative Review Timeframe with 90-day Bid Acceptance Period](#) (1p)
- 5- [Language Acknowledging Doctrine of Administrative Finality](#) (1p)
- 6- [Language for Protest Acknowledgement for High Bidders](#) (1p)
- 7- [Language for Appeal Procedures](#) (1p)
- 8- [Language for Protest Decision Regarding Full Force and Effect](#) (1p)
- 9- [Language for Award of Contract in the IBLA Transmittal Notice of Appeal](#) (1p)
- 10- [Sample IBLA Case File Index](#) (1p)
- 11- [Language for Attestation Letter](#) (1p)
- 12 - [Schematic of Timber Sale Decision and Protest Procedures](#) (1p)
- 13 - [Schematic of Timber Sale Appeal Procedures](#) (1p)

Distribution

OR-933

WO-270

Office of the Regional Solicitor, Portland, OR (Roger Nesbit, Brian Perron)