



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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JAN 29 2013

IN REPLY REFER TO:

2804, 3185, 3266, 4160, 5003, 9662 (OR930) P

EMS TRANSMISSION 01/31/2013

Instruction Memorandum No. OR-2013-016

Expires: 9/30/2014

To: Deputy State Directors, Branch Chiefs, Program Leads, District Managers, Field Managers, and District Planning and Environmental Coordinators

From: State Director, Oregon/Washington

Subject: Accepted Method for Filing Appeals and Protests

Program Area: The policy in this information memorandum applies to appeals of decisions under 43 Code of Federal Regulations (CFR) Part 4 and written protests of Oregon/Washington Bureau of Land Management (OR/WA BLM) decisions.

Purpose: To implement a consistent approach for how different OR/WA BLM offices and programs receive (1) appeals of decisions to the Department of the Interior's Office of Hearings and Appeals (OHA) and/or Interior Board of Land Appeals (IBLA) and (2) written protests which are authorized to be filed under the BLM regulations in 43 CFR.

Policy/Action:

Appeals: Under the Department's regulations, an appeal of a BLM decision to the IBLA or OHA must be filed in the office of the deciding official. 43 CFR 4.411(a)(1) (appeals to IBLA); 43 CFR 4.470(a) (grazing appeals to OHA). The OR/WA BLM will only accept an appeal submitted on paper that is either delivered in person or mailed/postmarked on or before the last day of the appeal filing period. The OR/WA BLM does not accept appeals submitted by electronic means (e.g., email, facsimile, or social media).

To communicate the OR/WA BLM's requirements for filing an appeal, we are providing language to include in your decisions/notices of decision/proposed decisions where the administrative remedy procedure allows for an appeal. The following language should be inserted immediately after the boilerplate contained in all BLM decisions that explains appeal rights and procedures and how to petition for a stay of the BLM decision:

A notice of appeal and/or request for stay electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A notice of appeal and/or request for stay must be on paper.

Protests: The BLM regulations also allow for parties to protest various BLM decisions or proposed decisions. See, for example, 43 CFR 5000.3(b) (written protests of BLM timber decisions), 43 CFR 4160.2 (written and in-person protests of BLM proposed grazing decisions), etc. The OR/WA BLM has the same policy for written protests as is outlined above for appeals. Protests must be submitted to the appropriate BLM official on paper.¹

To communicate the OR/WA BLM's requirements for filing a written protest, we are providing language to include, as appropriate, in your decisions/notices of decision/proposed decisions where the administrative remedy procedure allows for protest. The following language should be inserted immediately after the boilerplate contained in all BLM decisions that explains written protest rights and procedures:

A written protest electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as a protest. A written protest must be on paper.

Timeframe: Effective immediately.

Budget Impact: None.

Background: Implementation decisions are subject to the administrative protest and appeal remedies set forth in the regulations that apply to each BLM resource management program. These administrative remedies for final implementation decisions usually take the form of appeals to the OHA or the IBLA. However, for certain proposed or non-final implementation decisions, including those affecting timber sales, oil and gas lease sales, land exchanges, and proposed grazing decisions, the regulations provide for an internal agency review (usually a protest to the authorized officer) which must be completed before the final implementation decision can be appealed.

On October 20, 2010, the Office of the Secretary issued a final rule amending existing procedural regulations governing appeals under 43 CFR Part 4 (see 75 Federal Register 64655, Vol. 75, No. 202). One section considered the electronic filing of appeals:

- *Section 4.411 Appeal; How Taken, Mandatory Time Limit:* The Office of the Secretary decided to leave it up to the BLM whether to accept notices of appeal filed by email or fax, based on the experience of the IBLA that some BLM offices accept electronic filing of notices of appeal while others may not. The Office of the Secretary communicated its intent to revisit the issue of electronic appeal filing in a future rule-making.

For written protests, the BLM regulations make it clear that “required documents” must be filed through personal delivery or by mailing, unless a more specific regulation specifies the mode of

¹ This policy does not apply to protests made “in person” under the grazing regulations (see 43 CFR 4160.2). When receiving a grazing protest made in person, the authorized officer prepares a record of the protest while the protestant is present and the protestant signifies that the record is a complete and accurate portrayal of the protest by signing the authorized officer's record of protest.

delivery. 43 CFR 1822.11. This definition necessarily excludes electronic filing such as email, fax, or social media. Thus, absent any specific regulation to the contrary, written protests that are filed with the OR/WA BLM must be filed by personal delivery or by mailing.

A decision to change current policy and accept documents by electronic means would affect many programs and regulatory processes in the BLM. While the OR/WA BLM agrees that receiving documents electronically may be easier or more efficient for the public or agency in some situations, the OR/WA BLM does not currently have a system in place in all OR/WA BLM district offices to adequately receive, process, and record electronically filed appeals or electronically filed, written protests. Therefore, the BLM maintains in effect current policies requiring appeals and written protests to be filed with the decision maker in hard copy on paper.

This policy does not apply to how individual OR/WA BLM offices accept comments, which are a means of public input for National Environmental Policy Act (NEPA) documents when undertaking environmental analysis to inform decision making.

Manual/Handbook Sections Affected: None, as this maintains existing policy, including application of language from the BLM's January 2008 NEPA Handbook H-1790-1. Program leads involved with the current revision of program handbooks should consider inclusion of this direction in updated versions.

Coordination: This policy was reviewed and coordinated with program leads in the Oregon State Office, Planning and Environmental Coordinators in the district offices, and Solicitors in the Office of the Regional Solicitor – Pacific Northwest Region. The policy was also shared with the Washington Office O&C Forester, Rangeland Specialist, and Senior Litigation Specialist (intent communicated to other state Litigation Coordinators). Finally, this policy was coordinated with the BLM's national Deputy State Director workgroup to avoid any unintended consequences from a national perspective.

Contact: For additional questions, please contact the appropriate State Office Program Lead, including but not limited to:

OR931	Forestry	Anita Bilbao	503-808-6081
OR932	Rangeland	Bob Hopper	503-808-6118
OR933	Planning	Maggie Langlas	503-808-6305
OR936	Lands/Rights-of-Way	Cathie Jensen	503-808-6310
OR936	Minerals/Energy	Chris DeWitt	503-808-6446

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 with assistance in this matter.

Signed by
Jerome E. Perez
State Director

Authenticated by
Rhondalyn J. Darnell
Records Section

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