

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Arizona State Office  
222 N. Central Avenue  
Phoenix, Arizona 85004**

**In Reply Refer to:**  
1823 (AZ-952PR) P

September 29, 2000

EMS TRANSMISSION: 10-3-00  
Instruction Memorandum No. AZ-2000-033  
Expires: 9/30/2001

To:	All Employees
From:	State Director
Subject:	Testimony of Employees

On July 28, 2000, a final rule was published in the Federal Register regarding new policies for testimony by employees and production of records in compliance with subpoenas. The purpose of this Instruction Memorandum is to provide employees with a copy of the new regulation and to clarify the procedures required for approval of such requests.

These types of requests are referred to as *Touhy* Requests (pronounced "Too-ee") throughout the new regulation. The affected Code of Federal Regulations is Title 43, Part 2, Subpart E, stating the procedures for responding to requests or subpoenas for:

- (1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employees official status;
- (2) Testimony by employees in Federal court civil proceedings in which the United States is not a party concerning information acquired while performing official duties or because of an employee's official status;
- (3) Testimony by employees in any judicial or administrative proceeding in which the United States, while not a party, has a direct and substantial interest; and
- (4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

BLM employees are frequently requested or subpoenaed to provide testimony or produce records in litigation. This can result in employees giving testimony or providing records, which diverts them from performing their duties. It can also, at times, create the appearance that the BLM is taking sides in private litigation. This revised regulation is intended to address this situation by generally prohibiting both voluntary appearances and compliance with subpoenas unless authorized by the Department. The new regulations spell out in detail what is required of a requester when submitting a

*Touhy* Request, what steps an employee must take when receiving a *Touhy* Request, and how the Department will process such requests.

The regulation does not apply to congressional proceedings or to Federal court civil proceedings in which the United States is a party. Further, this regulation does not apply to criminal cases before Federal, State and Tribal courts where BLM employees and records are involved; law enforcement personnel follow long established procedures for handling criminal cases. This regulation also does not apply to either Freedom of Information Act or Privacy Act requests. However, it is important to remember that a subpoena for records may require processing under either the Freedom of Information Act or the Privacy Act, if the records being requested are protected from release by either of these Acts.

To clarify § 2.82 (c) regarding the responsibilities of requesters, the written *Touhy* Request must be addressed to the State Director. This section of the regulation states that the request must be sent to “(1) The employee’s office address; (2) The official in charge of the employee’s bureau, division, office or agency; and (3) The appropriate unit of the Solicitor’s Office.” The Delegation of Authority for approving such requests remains with the State Director (who is the official identified by item (2) in the preceding sentence). Therefore, the most important part of this section is assuring that the request is made to the State Director. If necessary, the State Director’s office will forward copies to the employee’s office manager and to the Field Solicitor’s Office. Arizona BLM will not reject a *Touhy* Request because it was not mailed to all offices indicated in this section of the regulation; however, we will reject the request if it is not addressed to the State Director.

The *Touhy* Request must be approved by the State Director. It is not the intention of any portion of this regulation to supercede the existing Delegation of Authority. The authority for approving these types of requests remains with the State Director and cannot be re-delegated below that position.

A copy of the new regulation is attached. The entire Federal Register notice containing additional supplementary information can be viewed online by going to [www.gpo.ucop.edu/search/fedfld.html](http://www.gpo.ucop.edu/search/fedfld.html) then fill in the date of 7/28/2000, the page #46366, and the *words in title*: Testimony. If you have any questions, please contact Toni Klimek, State Records Administrator, at 602.417.9364.

Signed: Alvin L. Burch  
for Denise P. Meridith,  
State Director

Authenticated: Barbara Bleich  
Staff Assistant

Attachment  
1- 43 CFR, Part 2, Subpart E (6 pp.)