



## U.S. Citizenship and Immigration Services

# Draft Memorandum for Comment



USCIS seeks your input on the draft memoranda listed below. These memoranda are drafts of proposed or revised guidance to USCIS Field Offices and Service Centers. They are not intended as guidance for the general public, nor are they intended to create binding legal requirements on the public. Until issued in final form, the draft memoranda do not constitute agency policy in any way or for any purpose.

- [Guidance on Uniform Denial Language Pertaining to Appeals to the Board of Immigration Appeals; Revisions to Adjudicator's Field Manual \(AFM\) Chapter 10.7\(b\) \(AFM Update AD-10-25\)](#) (Final date for comments: June 21, 2010)

Each memorandum is available for comment for ten business days after posting. The final date for comments is after each link.

**Comment Process:** Please email all comments to [opefeedback@uscis.dhs.gov](mailto:opefeedback@uscis.dhs.gov). Please put the title of the relevant memorandum in the subject line of your message. The most helpful comments will refer to a specific portion of the memorandum, explain the reason for any recommended change, and include data, information, or authority that support the recommendation. USCIS may distribute any comments received (including any personal information and contact information) on its public website or to those who request copies. By providing comments, you consent to their use and consideration by USCIS, and you acknowledge that your comments may become public. USCIS cannot guarantee that it will acknowledge or respond to any comments submitted.

**Background and Additional Legal Information:** Final field guidance documents have previously been available for public review on USCIS's website ([www.uscis.gov](http://www.uscis.gov)) as part of the Adjudicator's Field Manual (AFM). In a new effort to promote transparency and consistency in USCIS operations, the Agency will now periodically post drafts of new or revised draft memoranda for public comment to assist USCIS in improving immigration services. Some memoranda will not be posted, e.g., those containing information that is law enforcement sensitive, confidential, or otherwise protected from disclosure under the Freedom of Information Act. USCIS is not required to solicit public comment on the draft memoranda under the Administrative Procedure Act, nor does this informal comment process replace any statutory or other legal requirement for public comment on agency action.

**DRAFT FOR COMMENT ONLY**

Posted: 06-07-2010

Comment Period Ends: 06-21-2010

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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
and Immigration  
Services

**PM-602-XXXX**

## Policy Memorandum

SUBJECT: Guidance on Uniform Denial Language Pertaining to Appeals to the Board of Immigration Appeals

Revisions to *Adjudicator's Field Manual* (AFM) Chapter 10.7(b) (AFM Update AD10-25)

**Purpose**

This Policy Memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers on uniform denial language pertaining to appeals to the Board of Immigration Appeals (BIA).

**Scope**

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

**Authorities**

Title 8, Code of Federal Regulations 1003.1(b)(5) places appellate jurisdiction of certain petitions with the BIA. Guidelines for filing such appeals are outlined in 8 CFR 1003.3.

**Background**

The AFM already contains guidance to the effect that the proper time for filing an appeal must be included in denials; however, this update is being issued in order to standardize denial language pertaining to appeals.

**Policy**

This update is being issued in order to standardize denial language pertaining to appeals. Adjudicators are directed to comply with the following guidance subject to any specialized guidance from Headquarters.

**Implementation**

The AFM is updated as follows:

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Comment Period Ends: 06-xx-2010  
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1. In Chapter 10.7(b), “Elements for a Formal Decision,” the current NOTE 1 is replaced with the following:

**NOTE 1:**

Subject to any specialized guidance from headquarters, denial notices for petitions appealable to the BIA should include the following language:

If you disagree with this decision, you may appeal it by filing a completed Form EOIR-29, *Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer*. Although the appeal will be decided by the Board of Immigration Appeals (BIA), you must send the Form EOIR-29 and all required documents, including the appropriate filing fee, to the [INSERT NAME OF DENYING OFFICE HERE] at the following address: [INSERT ADDRESS HERE]. The Form EOIR-29 must be received within 30 days from the date of this decision notice. The decision is final if your appeal is not filed within the time allowed.

If you wish to be represented on appeal, your attorney or accredited representative must submit Form EOIR-27 with Form EOIR-29.

If you or your attorney wishes to file a brief in support of your appeal, the brief must be received by the USCIS office where you filed your appeal either accompanying your appeal or no later than 30 days from the date of filing your appeal. After 30 days from the date of filing your appeal, your appeal will be sent for further processing, and any brief regarding your appeal will no longer be accepted by the USCIS office.

For more information about filing requirements for appeals to the BIA, please see 8 CFR 1003.3 and the Board of Immigration Appeals Practice Manual available at [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir).

Revocation notices for petitions appealable to the BIA should include the exact same language. Although 8 CFR 205.2 provides for only 15 days for revocation appeals, the BIA applies the standard 30-day appeal timeframe for both denials and revocations, pursuant to 8 CFR 1003.3(a)(2).

Decisions in New York *Stokes* cases should omit the third paragraph of the above denial language. Once an interview transcript is provided, petitioner should be afforded 30 days in which to file a brief.

2. Also in Chapter 10.7(b), “Elements for a Formal Decision,” the current NOTE 2 is re-designated as NOTE 3 and the following is inserted as the new NOTE 2:

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Posted: 06-xx-2010

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The final denial and final revocation notice must reflect the correct number of days in which the petitioner or self-petitioner has to appeal the decision when it is appealable to the AAO. For standard denials, a petitioner or self-petitioner has 30 days to appeal the decision. For revocations of petitions pursuant to 8 CFR 205.2 (i.e., revocations on notice) a petitioner or self-petitioner has only 15 days to appeal the decision.

3. The AFM **Transmittal Memoranda** button is revised by adding, in numerical order, a new entry to read:

AD 10-25 [INSERT APPROVAL DATE]	Chapter 10.7(b)	Provides guidance on uniform denial language pertaining to appeals to the Board of Immigration Appeals (BIA).
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**Use**

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to Vinay Singla (Field Operations Directorate) or Heather Evelyn (Service Center Operations Directorate).