

9231 – FOREST PRODUCT TRESPASS

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Handbook

H-9231-1 – Forest Products Trespass Procedures Handbook

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.01 Purpose. This section sets forth the policies and administrative procedures for preventing, investigating and resolving forest product trespass of the public lands. This section relates only to the preventive, investigative and administrative procedures peculiar to the forest product trespass control program and therefore an employee using this section should also consult BLM Manual 9230 – Trespass for general trespass procedures.

.02 Objectives. The primary objective of this program is the prevention and elimination of forest products trespass on the public lands. A secondary objective is the collection of compensatory and/or punitive damages for any loss or injury suffered by the United States as a result of forest product trespass.

.03 Authority.

A. Departmental Manual (See DM 235.)

B. Federal Laws.

1. Federal Land Policy and Management Act of 1976, (43 U.S. C. 1701 et seq.)
2. Federal Claims Collection Act of 1966, as amended and supplemented (30 U.S.C. 1985).
3. Sustained Yield Act of August 28, 1937 (43 U.S.C. 1181a, 1181b).
4. Material Sales Act of July 31, 1947 (30 U.S.C. 601 et seq.).
5. Nonsale Disposals Act of June 3, 1878 (16 U.S.C. 604-606).
6. Nonsale Disposals Act of July 23, 1955.
7. Nonsale Disposals Act of May 14, 1998 (48 U.S.C. 423, as amended).
8. 18 U.S.C. 1985 and 1853

.04 Responsibility. See 9230.04)

.05 References.

A. BLM Manual 9230, Unauthorized Use and Trespass.

B. BLM Manual 5460, Sales Administration.

C. BLM Manual 5480, Contract Violation-Suspension-Cancellation; Settlement of Uncompleted Contracts.

.06 Policy. All Managers shall:

- A. Ensure that all appropriate uses of forest products on the public lands are properly authorized under the Acts listed in 9231.03, and that these actions do not cause undue degradation of the public lands.
- B. Identify all trespass; resolve the trespass, either administratively, civilly or criminally, in a prompt efficient manner; recover both administrative costs and trespass damages as a consequence of the trespass.

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- C. Ensure that undue or unnecessary degradation on the public lands as a result of activities (either authorized or unauthorized) are rehabilitated and/or stabilized at the expense of the trespasser.
- D. Request law enforcement actions against those trespasses where the flagrant nature and severity of the action is resulting in either: undue or unnecessary degradation of the public lands; a hazard to public safety; or, where the trespass is knowingly or willfully committed. Normally, as noted in the legislative history of FLPMA, trespass, as opposed to other criminal violations, will be resolved in an administrative manner before resorting to civil or criminal procedures for resolution.
- E. Assure that all trespass is recorded in the appropriate Bureau system.

.07 Files and Records Maintenance. Establish and maintain case files in accordance with BLM Manual Section 1274. See BLM records schedule for case file disposition.

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GLOSSARY OF TERMS

-A-

Abate: To reduce in amount, intensity; to put an end to or to suppress something (a nuisance).

Administrative Cost: All costs incurred by the BLM as a consequence of trespass. These costs include: labor, operation and administrative costs.

Administrative Resolution: The resolution of a trespass utilizing informal or formal administrative procedure available to the BLM without resorting to civil or criminal resolution procedures.

Authorized Officer: Any person authorized by law or by delegation of authority to or within the BLM to perform the duties described in this handbook.

-C-

Casual Use: Any short-term noncommercial activity which does not cause appreciable damage to the public lands, their resources or improvements, and which is not otherwise prohibited by closure of the lands to such activities and does not require a land use authorization.

Civil Resolution: Resolution of a trespass in the civil court by initiation of a lawsuit.

Civil Trespass: Any trespass where knowing and willful trespass cannot be substantiated.

Converter: The purchaser of trespass logs or other forest products, usually the sawmill owner or pole yard owner. Under the theory of law set forth in the case of *Woodenware v. U.S.* 106 U.S. 432 (1882), an innocent purchaser who purchases logs from a landowner for the value of the logs at the time of conversion, less the amount which he and the trespasser have added to their value. Likewise, an innocent purchaser who purchases logs from a willful trespasser is liable to the damaged landowner for the value of the logs at the time of purchase from the trespasser.

Criminal Penalty: Pursuant to FLPMA, a fine of not more than \$1,000 and/or imprisonment for a period of not more than 12 months. This penalty can be imposed by: issuance of a citation and subsequent forfeiture of collateral; or, a U.S. Magistrate or Federal Judge, upon conviction of a knowing and willful trespass. This definition does not preclude: a higher fine and/or term of imprisonment through use of other, non-FLMPA, statutes or authorities; inclusion of a court ordered trespass penalty; nor inclusion of other court ordered actions.

-D-

Damages: Includes trespass liability, trespass penalties and any court ordered monetary award to punish or deter future trespass.

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Department: The Department of the Interior.

-F-

Forest Product Trespass: As used in this section, the unauthorized damage, severance, or removal of timber or other forest products from the public lands.

Formal Administrative Resolution: Settlement of trespass and trespass liability under formal administrative procedures available to the BLM (i.e., termination, debt collection, and other manualized or regulatory processes).

-I-

Informal Administrative Resolution: Settlement of trespass and trespass liability without resorting to formal procedures available to the BLM.

-K-

Knowing and Willful: Violation of the BLM's land use authorization regulations committed deliberately (not accidentally) or repeatedly, or with prior knowledge or intent.

-L-

Land Use Authorization: Any authorization for non-BLM use of the public lands as provided in Title 43 Code of Federal Regulations parts 2070, 2090, 2800, 2900, 3045, 3100, 3200, 3400, 3500, 3600, 3700, 3800, 4100, 4200, 4300, 4700, 5400, 5500, 6220, 8100, 8560, 9210.

Law Enforcement Officer: A BLM special agent or ranger or a Federal, State or County official responsible for law enforcement in such official's area of responsibility.

-M-

MBF: Thousand board feet, usually determined using the Scribner log rule.

-N-

Nonwillful Trespass: Unintentional or unknowing violation of the BLM's land use authorization regulations or a violation where a knowing and willful intent cannot be substantiated.

-O-

Other Forest Products: Berries, nuts, flowers, moss, boughs, cones, bark, burls, shrubs, cactus, yucca, etc.

-P-

Person: A natural person, corporation, company, partnership, trust, fir, or association of persons.

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-R-

Resources: All animate and inanimate, natural and cultural values, features, objects, and property comprising the public land environment.

-S-

Secretary: Means the Secretary of the Interior.

Suspected Trespass: Any activity where public land status is reasonably confirmed, the activity requires use authorization, and the use authorization has not been confirmed.

-T-

Timber: Standing trees, downed trees, or logs which are capable of being measured in board feet. As used in most State trespass laws, it also means any tree, regardless of size.

Timely Manner: Prompt efficient resolution of a trespass without unnecessary delaying actions on the part of the trespasser nor the BLM.

Trespass Decision: initiation of formal action to administratively resolve a trespass. Trespass decisions are accompanied by a bill for collection of total trespass liability and constitute a written demand for payment. Trespass decisions are appealable to the Interior Board of Land Appeals, if not related to a forest product sale contract. Trespass decisions related to a sale contract are appealable under the Contract Disputes Act.

Trespass Detection: Includes public land inventory utilizing available information, field examination, aerial photography, orthophoto quads, etc., to locate and identify trespass on public lands. Ranger patrols and contract administration are included in this activity.

Trespass Liability: Includes any charges for use of the resources, administrative costs incurred as a consequence of trespass and responsibility for reclamation and/or stabilization of public land altered as a consequence of trespass activities.

Trespass Liability Claim: A monetary debt incurred as a consequence of trespass on the public lands. Trespass liability claims are collected under the authority of the Federal Claims Collection Act and its implementing Standards (Title 4 CFR, Chapter II).

Trespass Notice: A notice that the BLM has initiated trespass proceedings against a trespasser. Trespass notices provided a compliance period and are not appealable.

Trespass Prevention: Those actions designated to inform the public of the requirements for legal use, occupancy, or development of the public lands and resources. These actions are designed to eliminate potential trespass prior to its establishment.

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Trespass Recordation: The documentation of a suspected trespass in the appropriate BLM system.

Trespass Settlement: An agreed upon payment of trespass liability or termination of a trespass liability claim. Settlement may include payment in full, compromise, or write-off.

Trespass Termination: May include termination of the unauthorized activity or legalization of the activity under an appropriate regulation of the Secretary.

-U-

Unauthorized Activities: use, occupancy, or development of the public lands or resources without a land use authorization from the authorized officer.

Unauthorized Cutting or Removal: Cutting and/or removal of timber or other forest products without authorization from the authorized officer.

Undue or Unnecessary Degradation: The creation of a nuisance or surface disturbance greater than would normally result when the same or similar activity is being accomplished by a prudent person in an usual, customary and proficient manner on other resources and land uses, including those resources and uses outside the area of activity. Unnecessary burying or burning merchantable forest products, done in connection with mining or road construction to access a mining operation, would be considered undue or unnecessary degradation.

Unjust Enrichment: The benefits received by a person (usually the adjacent landowner) as a result of a timber trespass. An example of unjust enrichment is when landowner A sells his timber to logger B on a per MBF basis. If logger B trespasses on public lands and pays landowner A for BLM administered timber.