

§ 9239.5

within §4131.0-3 *et seq.* of this chapter in the amount of \$2,000 or less may be accepted by the authorized officer. Offers for settlement in excess of \$2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for consumed forage and damage involved until finally accepted by the authorized officer or the State Director, and in no event will it relieve the violator of criminal liability. No lease or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

[35 FR 9800, June 13, 1970. Redesignated at 43 FR 29076, July 5, 1978]

§ 9239.5 Minerals.

§ 9239.5-1 Ores.

(a) For ores trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) Measure of damages is the same as in the case of coal. *Benson Mining and Smelting Co. v. Alta Mining and Smelting Co.* (145 U.S. 428, 36 L. ed. 762; *Durant Mining Co. v. Percy Consolidated Mining Co.* (93 Fed. 166)).

§ 9239.5-2 Oil.

For oil trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) *Innocent trespass.* Value of oil taken, less amount of expense incurred in taking the same.

(b) *Willful trespass.* Value of the oil taken without credit or deduction for the expense incurred by the wrongdoers in getting it. *Mason v. United States* (273 Fed. 135).

§ 9239.5-3 Coal.

(a) *Determination of payment in coal trespass.* For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) For innocent trespass, payment must be made for the value of the coal in place before severance. *United States v. Homestake Mining Company* (117 Fed. 481).

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(2) For willful trespass, payment must be made for the full value of the coal at the time of conversion without deduction for labor bestowed or expense incurred in removing and marketing the coal. *Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company* (203 Fed. 795). The mining of coal in trespass is presumed to be willful, in the absence of persuasive evidence of the innocence and good faith of the trespasser. *United States v. Ute Coal and Coke Company* (158 Fed. 20).

(b) *Coal mined when there is no lease in effect.* Any mining of coal which is not pursuant to a coal lease in effect at the time of the mining shall constitute a trespass, and the coal so mined must be paid for on a trespass basis.

(c) *Coal mined by successful bidder at public sale.* The successful bidder at public sale for a coal leasing unit does not acquire any right to mine coal until he has complied with all the formalities required by the regulations, including the furnishing of a bond, and a lease has been issued to him. Coal mined by such applicant prior to the date of the issuance of a lease is in trespass and must be paid for on a trespass basis.

(d) *Coal permit, lease, or license not to issue until trespass account settled.* No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until the trespass account is settled.

(e) *Right of surface owner to mine coal for domestic use.* The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or under the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

(f) *Penalties for unauthorized exploration for coal.* (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under subpart 3507 of this chapter shall be subject to a fine of not more than \$1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such

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violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to part 4 of this chapter.

[35 FR 9800, June 13, 1970, as amended at 41 FR 36023, Aug. 26, 1976; 42 FR 4460, Jan. 25, 1977]

§ 9239.6 Materials.

§ 9239.6-1 Turpentine.

For turpentine trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) *Innocent trespass.* Value of the gum and injury done to the trees. *United States v. Taylor* (35 Fed. 484).

(b) *Willful trespass.* Value of the product manufactured from the crude turpentine by the settler, or any person into whose possession same may have passed, without credit for labor bestowed on the turpentine by the wrongdoer. *Union Naval Stores Co. v. United States* (240 U.S. 284, 60 L. ed. 644).

§ 9239.7 Right-of-way.

§ 9239.7-1 Public lands.

The filing of an application under part 2800, 2810, or 2880, of this chapter does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided by the definition of "Casual use" in § 2801.5(b) and by §§ 2804.29 and 2884.25 of this chapter, until written authorization has been issued by the authorized officer. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in subpart 2808 and §§ 2812.1-3 and 2888.10 of this chapter. No new permit, license, authorization, or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespasser files a bond conditioned upon payment of the amount of

damages determined to be due the United States; or

(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or as to the extent of his liability and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

[54 FR 25855, June 20, 1989, as amended at 70 FR 21090, Apr. 22, 2005]

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