

§ 9239.0-8

43 CFR Ch. II (10-1-11 Edition)

§ 9239.0-8 Measure of damage.

The rule of damages to be applied in cases of timber or other vegetative resources, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of *Mason et al. v. United States* (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed, unless by Federal law a different rule is prescribed or authorized.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991]

§ 9239.0-9 Sale, lease, permit, or license to trespassers.

(a) For the purpose of this section, a trespasser is any person, partnership, association, or corporation responsible for the unlawful use of, or injury to, property of the United States.

(b) The authorized officer may refuse to sell to a trespasser timber or materials, or to issue to him a lease, permit, or license if, after a demand for payment has been served by certified or registered mail on the trespasser, a satisfactory arrangement for payment of the debt due the United States has not been made within reasonable time, and there is reason for the authorized officer to believe payment will not be made. Satisfactory arrangement shall be deemed to have been made by:

(1) Payment by the trespasser of the amount found to be due by the authorized officer, by a final judgment of a court, or pursuant to a compromise settlement accepted by the United States; or

(2) Execution by the trespasser of a promissory note or installment agreement, satisfactory to the authorized officer, so long as the agreed-upon payments are made on schedule; or

(3) Delivery by the trespasser of a bond guaranteeing payment to the United States of the amount found to be due by the authorized officer or by a court of competent jurisdiction; or

(4) Cancellation of the debt due the United States by a discharge in bankruptcy.

(c) Notwithstanding the provisions of paragraph (b) of this section, the authorized officer may sell to a trespasser

timber or materials or issue to him a lease, permit, or license for materials despite lack of a satisfactory arrangement for payment if such officer establishes in writing that:

(1) There is no other qualified bidder or no other qualified bidder will meet the high bid, and

(2) The sale, lease, permit, or license to the trespasser is necessary to protect substantial interests of the United States either by preventing deterioration of, or damage to, resources of the United States or by accepting an advantageous offer, and

(3) The timber management or other resource management program of the United States will not be adversely affected by the action.

§ 9239.1 Timber and other vegetative resources.

§ 9239.1-1 Unauthorized cutting, removal, or injury.

(a) All of the definitions in § 5400.0-5 of this title apply to this section.

(b) Commission of any of the acts listed in §§ 5462.2 and 5511.4 of this title constitutes a trespass.

[56 FR 10176, Mar. 11, 1991, as amended at 60 FR 50451, Sept. 29, 1995]

§ 9239.1-2 Penalty for trespass.

(a) In accordance with §§ 9239.0-7, 9239.0-8, and 9239.1-1 of this subpart, anyone responsible for a trespass act is liable to the United States in a civil action for damages and may be prosecuted under criminal law as provided in § 9265.6 of this chapter.

(b) The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5511.2 to 5511.2-6 of this chapter will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under title 18 U.S.C., or under State law.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991; 60 FR 50451, Sept. 29, 1995]

§ 9239.1-3 Measure of damages.

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum