

§ 9239.2-4

§ 9239.2-4 Filing of charges or complaints.

All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper State Director. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

§ 9239.2-5 Settlement and free passage over public lands not to be obstructed.

Section 3 of the Act of February 25, 1885 (23 Stat. 322; 43 U.S.C. 1063), provides that no person by force, threats, intimidation, or by any fencing or enclosing or any other unlawful means shall prevent or obstruct or shall combine or confederate with others to prevent or obstruct any person from peaceably entering upon or establishing a settlement or residence upon any tract of public land subject to settlement or entry under the public land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands.

§ 9239.3 Grazing, Alaska.

(a) *Reindeer.* (1) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in subpart 4132 of this chapter, is unlawful and is prohibited.

(2) Any person who willfully violates any of the rules and regulations in subpart 4132 of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$500.

(b) *Livestock.* (1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Tres-

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

passers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 4131.2-7 (g) and (h) of this chapter. Under section 2 of the Act, any person who willfully grazes livestock on public lands without authority, shall, upon conviction, be punished by a fine of not more than \$500.

(2) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer he will close the case. If satisfactory showing is not made within the time allowed, the violation alleged in the notice will be deemed to have been willful.

(3) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damage to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the foregoing values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if susceptible to proof by reasonably available and reliable data; otherwise, a minimum charge of \$2 per animal unit month for trespass not clearly willful will be made. Where the trespasses are repeated and/or willful, a minimum charge of \$4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations found

Bureau of Land Management, Interior

§ 9239.5-3

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).

(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