

H-9232-1 - REALTY TRESPASS ABATEMENT

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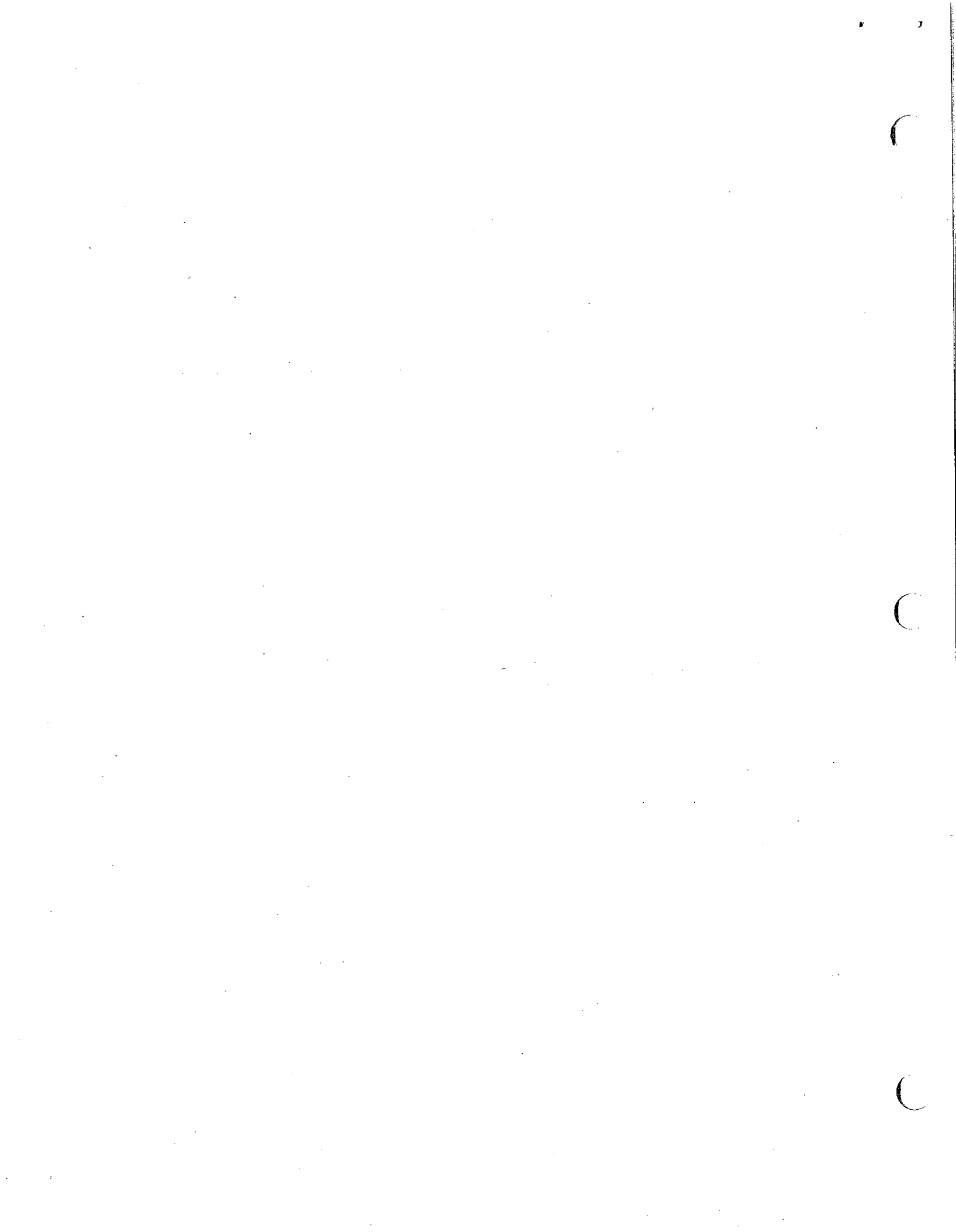
Foreword

Realty trespass abatement as used in this Handbook includes all aspects of trespass prevention, detection, and resolution. Realty trespass abatement is not an end in itself. The real aim of the procedures outlined in this Handbook is proper legal use and management of the lands and resources under the Bureau's jurisdiction. While this Handbook seeks to give an overall view of trespass abatement from initiation of Bureau action to case closure, it should not be relied on as the final authoritative word. Particular situations may arise which are not completely treated herein. In such cases, field personnel and managers should seek the advice of appropriate Bureau specialists and/or Field or Regional Solicitors through channels established by State Directors. The user of this Handbook is also encouraged to make appropriate notations in his personal copy of the Handbook to keep it current.

The Introduction to this Handbook summarizes information important to Bureau managers charged with realty trespass abatement on the public lands.

State Directors are encouraged to issue realty trespass prevention, detection, and resolution guidance to supplement this Handbook.

NOTE: Illustrations in the Handbook should be modified to fit the circumstances of each trespass situation.



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Introduction/Management Summary

This section summarizes key elements of the Handbook for ready reference by Bureau managers charged with realty trespass abatement on the public lands.

Realty trespass is defined as unauthorized use, occupancy, or development of the public lands for any purpose where authorization must be obtained under regulations at Title 43 CFR 2800 or 2920. This definition is derived from section 303(g) of the Federal Land Policy and Management Act (FLPMA) which states: "The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary . . . , or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited."

Bureau managers are responsible for carrying out an effective realty trespass abatement program and for providing subordinate personnel with guidance and training to carry out proficiently the Bureau's realty trespass abatement program in their area of responsibility.

Realty trespass abatement includes all aspects of trespass prevention, detection, and resolution. Long-term realty trespass abatement may be accomplished under financial, information, or resource planning and management options available to managers.

Realty trespass prevention requires a public that is knowledgeable of the public lands and resources and conditions for authorized use of the public lands. Prevention is best achieved through the work of Bureau information specialists and shared knowledge of all Bureau personnel in formal and informal public contacts. Public awareness and support is essential to successful trespass prevention.

Realty trespass detection requires that all field personnel be alert to possible unauthorized activities on the public lands and aware of procedures for reporting such activities to appropriate Bureau personnel for action. Detection may also involve reports by the public, data of other agencies, and inventory or survey to identify or confirm suspected trespass.

Realty trespass recordation provides a reliable data base in the Bureau's Automated Lands and Minerals Record System (ALMRS) on which the magnitude of public land trespass may be accurately and consistently portrayed to Congress as a budget justification for realty trespass abatement. Once appropriated by Congress, cost targets are allocated to the States on the basis of ALMRS data (i.e., those States with the greatest number of documented trespass and highest record of resolution receive the greatest share of any budget increases).

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Resolution of realty trespass and trespass liability are accomplished under the Bureau's realty trespass regulations and the Federal Claims Collection Act (FCCA) of 1966.

The Bureau's realty trespass regulations, in general, provide that anyone determined by the authorized officer to be in trespass on the public lands shall be notified of such trespass and shall be liable to the United States for:

1. The administrative costs incurred by the United States as a consequence of such trespass.
2. The fair market value rental of the lands (i.e., land rent) or the charge for road use, amortization and maintenance, for the current year and past years of trespass.
3. Rehabilitating and stabilizing the land or costs incurred by the United States in rehabilitating and stabilizing the land.

If a realty trespass is willful, repeated or not resolved in a timely manner, the trespasser may also be subject to trespass penalties of:

1. An amount equal to twice the fair market value rental of the land or twice the charges for road use, amortization and maintenance, for nonwillful trespass.
2. An amount equal to three times the fair market value rental of the land or three times the charges for road use, amortization and maintenance, for knowing and willful trespass.

Under the Bureau's realty trespass regulations the Bureau may also:

1. Deny a land use authorization to a trespasser.
2. Refuse to sell public land to a trespasser.
3. Refuse to enter into an exchange of lands with a trespasser.

Also, a knowing and willful trespasser may be required to appear before a designated U.S. magistrate and may be subject to a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both.

NOTE: Consult the appropriate regulations in Chapter I. Realty Trespass Regulations or at Title 43 CFR Parts 2800, 2810, 1880, 2920 and subparts 9239 and 9262 for specific guidance.

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The FLPMA at section 102(a)(9) states the policy that ". . . the United States receive fair market value of the use of the public lands and their resources" This policy is implemented by various provisions of the FLPMA which require fair market value for the use of public lands and resources. Thus, a realty trespass is the basis for a liability claim by the United States against a trespasser under the FLPMA and the Bureau's realty trespass regulations for money owed the United States as a consequence of the trespass.

Liability claims of the United States for money which has been determined to be owed the United States by any person, organization, or entity, are governed by the FCCA. The Federal Claims Collection Standards (Standards), which implement the FCCA, provide the Bureau authority for initiation of collection action against a trespasser for a liability claim arising as a consequence of the trespass. BUREAU DEBT COLLECTION PROCEDURES IMPLEMENT THE STANDARDS. The Standards also provide management with several actions that may expedite trespass liability settlement. These include possible referral of delinquent debts to the following:

1. The Internal Revenue Service (IRS) as earned income or as an offset against income tax refunds.
2. The Agricultural Stabilization and Conservation Service (ASCS) for offset of trespass liability claims against ASCS program payments.
3. A debt collection contractor for collection action.
4. Consumer credit agencies.

Thus, the Bureau's realty trespass regulations and the Standards provide managers with strong, previously unavailable, tools for realty trespass resolution and negotiation of trespass liability claims. In negotiations, managers should, as an aid to timely trespass resolution, advise trespassers of the application of the regulations and Standards to public land trespass.

Realty trespass resolution is accomplished under one or more of four options available to Bureau managers. The options are explained below.

1. Informal administrative resolution involves a process of meeting with the trespasser and arriving at an amicable settlement of the trespass and trespass liability. This process works best with a cooperative trespasser. Keep all contact on an informal basis. An informal letter and/or a Notice of Trespass is used in this informal process as necessary.
2. Formal administrative resolution procedures are appropriate when an uncooperative trespasser is involved or informal resolution has failed. The formal process is initiated with a Trespass Decision and bill for payment of trespass liability. The Trespass Decision may be appealed to the Interior Board of Land Appeals (IBLA). Additional formal actions under the Bureau's debt collection procedures include payment demand letters, referral for debt collection, etc.

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3. Civil court action for resolution of realty trespass and trespass liability may be required when formal administrative resolution is unsuccessful and the trespasser clearly has the ability to pay the trespass liability, the Bureau has the evidence to support its case; trespass liability is significant, or successful court action would serve notice on other trespassers that resistance to resolution is not likely to succeed. The appropriate Solicitor should review the Bureau's case prior to initiation of court action.

4. Criminal prosecution of knowing and willful trespassers may be warranted when the trespasser is uncooperative, the act is a repeat offense, the Bureau has the necessary evidence, or the nature of the trespass is such that fines and/or imprisonment are warranted. Bureau law enforcement personnel and field or regional solicitors should be consulted on the merit of initiating criminal action.

Additional managerial information in the Handbook is summarized as follows:

1. Field investigation of trespass may be hazardous to employees if criminal activities or hazardous materials are suspected. It may be advisable to have law enforcement personnel accompany the field investigator in a preliminary investigation.

2. Impoundment or disposal of real or personal property placed on the public lands in trespass requires careful handling to protect Bureau personnel from liability suits alleging improper handling or disposal of valuable, or allegedly valuable, property of the trespasser.

3. The circumstances of each realty trespass situation must be thoroughly investigated and actions documented. The ability of the Bureau to prove its case will depend on these early stages of trespass resolution actions.

4. Mining claim occupants may have valid rights afforded by the 1872 Mining Law and the Multiple Surface Use Act of 1955. To avoid violation of these rights, resolution of mining claim occupancy trespass should be a coordinated effort of lands and minerals personnel. Resolution may be achieved under BLM Manual 3893 - Residential Occupancy on Mining Claims, or procedures in this Handbook.

5. Realty trespass regulations hold the trespasser liable for monetary recovery by the Bureau. Informal negotiations to determine the recovery due the Bureau may provide some latitude in negotiations where the Bureau's claims are disputed by the trespasser and the facts are not available to substantiate the Bureau's claims. When the Bureau's claim is firm and a bill for monetary recovery is issued to the trespasser, the Bureau is locked into collection procedures established by the Service Center, (SC-615).

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6. Administrative costs associated with a trespasser's financial liability and recovered in trespass resolution are available for use by the Bureau. Recovery of these funds may offset the actual cost to the Bureau for realty trespass abatement. Funds available to the Bureau include recovered administrative costs as well as costs for rehabilitation/stabilization of damaged land. These recovered funds are deposited to Account 14X5017 in subactivities 5310 (O&C Lands) or 5320 (PD Lands).

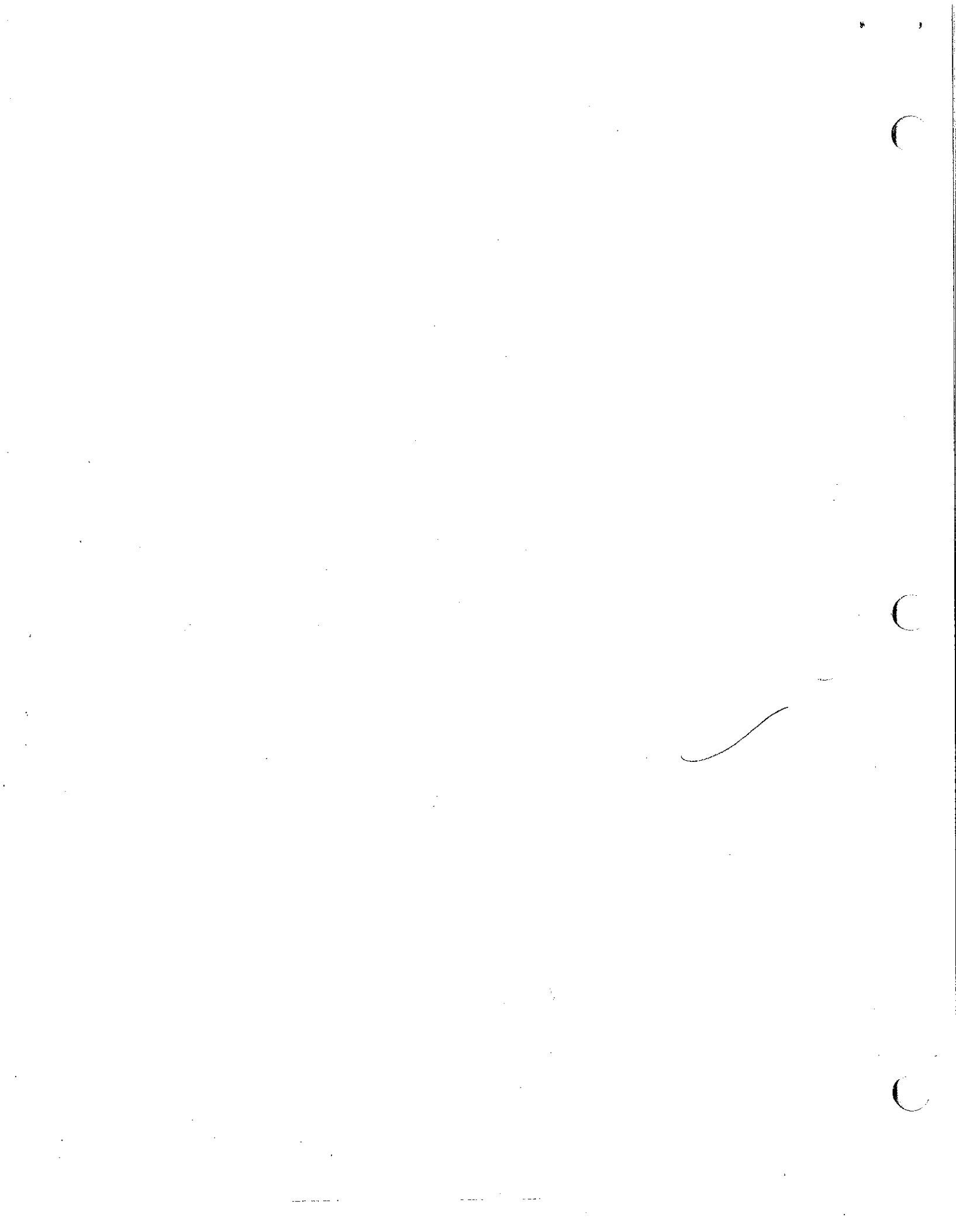
7. State Directors have delegated authority to compromise or write-off trespass liability claims under certain conditions. Compromise and write-off actions are coordinated with the SC Branch of General Accounting, SC-615.

8. The Statute of Limitations does not constrain the Bureau from administrative collection of land rent liability for all previous years that proof of the trespass activity is available. In a legal action, however, the recovery period may be limited to 6 years if the defendant debtor pleads the Statute of Limitations.

9. Cooperation and coordination with State and local government entities as well as private individuals and special interest groups should be promoted to build understanding about the Bureau's realty trespass abatement program and the negative effects of trespass in terms of cost, loss of resources, and interference with legitimate uses of public lands.

10. Trespass abatement should be coordinated on a Statewide basis, by District and Area, and with adjoining States to ensure that all Field Offices are working in a coordinated manner.

11. Managers have many sources of assistance and advice available in trespass resolution. Resolution should be a coordinated effort which utilizes all available expertise. DON'T GO IT ALONE!



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Chapter I - Realty Trespass Regulations.

Realty trespass regulations collectively include Title 43 CFR Parts 2800, 2810, 2880, 2920, 9230 (Section 9239.7). and 9260 (Subpart 9262). The regulations provide administrative, civil, and criminal authority for action on unauthorized use, occupancy, or development of public lands where authorization must be obtained under Title V or Section 302(b) of the Federal Land Policy and Management Act (FLPMA), the act of August 28, 1937 (43 U.S.C. §1181a and §1181b), or Section 28 of the Mineral Leasing Act of 1920 as amended. Criminal liability for realty trespass (i.e., knowing and willful trespass) is derived from the authority of Sections 303(a) through (g) of FLPMA and implemented through the regulations at Title 43 CFR Subpart 9262.

A. Realty Trespass Regulatory Relationships.

The Title 43 CFR Group 2800 and Part 2920 regulations are similar although minor differences occur. These reflect the time periods in which each was written and not a conscious effort to differentiate the regulations. Realty trespass regulations at Title 43 CFR Subpart 9262 apply equally to the Title 43 CFR Group 2800 and Part 2920 regulations.

B. Regulation Need, Use, and Implementation Guidance.

Supplemental regulatory information published with the Bureau's realty trespass regulations defined the need for regulations and guidance on use and implementation of the regulations. Portions of the regulatory information paraphrased herein may be useful in explaining the basis of the regulations to trespassers, interest groups, the public, and public land users.

NOTE: Title 43 CFR Part 2920 (trespass regulations) became effective on January 28, 1988. Title 43 CFR Group 2800 (trespass regulations) became effective on July 20, 1989. Prior to these dates there was no effective regulatory control of realty trespass activities on the public lands.

1. Need for Realty Trespass Regulations. Trespass on the public lands for various realty activities requiring authorization through a right-of-way, temporary use permit, road use fee, lease, permit or easement has been a long-standing problem. Trespass activities have resulted in financial loss to the United States because of the loss of rental fees, road use amortization and maintenance fees, and damage to the public land resources from misuse, abuse, fire, theft, vandalism, and negligence. The Bureau of Land Management has tried to resolve cases involving unauthorized use of the public lands, most of which are unintentional, by working with the individual and negotiating an amicable solution. In most circumstances, this has resolved the problem, but there are instances where it does not work, particularly where the trespass was knowingly and willfully committed. In these instances, a procedure is needed to allow the United States to obtain payment for the use of the land and, where appropriate, to impose civil and/or criminal penalties against those trespassing on the public lands.

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Chapter I

2. Use of Realty Trespass Regulations.

a. The regulations provide procedures for use by the Bureau of Land Management in carrying out its responsibility to protect the public lands, improvements, and resources from unauthorized use, occupancy or development. The procedures will be equally applicable to all entities, regardless of size, found making an unauthorized use, occupancy, or development of the public lands, improvements, or resources.

b. The regulations provide procedures for dealing with unauthorized use, occupancy or development of the public lands for uses and facilities that require rights-of-way, leases, permits, or easements for agricultural, industrial, residential, or commercial purposes. The regulations do not apply to authorizations under Revised Statute 2477 or 2339.

c. The provisions of the regulations are applicable only to activities which are required to be authorized under Title 43 CFR Parts 2800, 2810, 2880, and 2920 and do not apply to other types of unauthorized use such as grazing trespass, mineral trespass or timber trespass.

d. In those instances where law enforcement action is required for the prevention or abatement of an unauthorized use or development, such action will be aggressively pursued by the Bureau. When appropriate, the Bureau will cooperate with Federal, State, and local law enforcement agencies.

3. Implementation of Realty Trespass Regulations.

a. Before resorting to the civil or criminal procedures provided by the regulations, the Bureau of Land Management will first attempt to reach an amicable solution for nonwillful and nonrepeated cases unless, in unusual and limited circumstances, the nature and severity of the unauthorized use would result in damage to the public lands and resources that would be unacceptable without an attempt to obtain legal redress.

b. In those instances where unauthorized use, occupancy, or development of the public lands and improvements is verified, the Bureau of Land Management will consider authorizing the use, occupancy, or development provided it conforms to Bureau plans, programs, policies and objectives and is in compliance with State and local requirements. In certain situations, residential occupants may be eligible for a nonassignable life-time lease under the provisions of 43 CFR Part 2920 if the occupant acknowledges that the lands being occupied are owned by the United States and the site is sole residence of the occupant.

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Chapter I

NOTE: Termination of the occupancy may be expedited if the real property is conveyed to the United States at the death of the occupant(s). Such conveyance should be documented in the land use authorization as well as the nonassignable nature of the authorization.

C. Regulatory Definitions.

This section contains only definition of terms relating to realty trespass. Refer to the appropriate regulations for a complete definition of terms relating to realty actions under Title 43 CFR Parts 2800 and 2920.

1. Realty Trespass Definitions at Title 43 CFR Part 2800.

a. "(u) 'Trespass' means any use, occupancy or development of the public lands or their resources without authorization where authorization is required to do so from the United States, or exceeds such authorization, or which causes unnecessary or undue degradation of the land or resources."

b. "(v) 'Willful trespass' means the voluntary or conscious performance of an act constituting a trespass as defined at §2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal."

c. "(w) 'Nonwillful trespass' means a trespass, as defined at §2801.3(a) of this title, committed by mistake or inadvertence."

d. "(x) 'Unnecessary or undue degradation' means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner and takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in paragraphs 2800.0-5(v) through (w), depending upon the circumstances."

e. "(y) 'Written demand' means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested, or personally served."

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f. "(z) 'Road use, authorization and maintenance charges' means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees."

2. Realty Trespass Definitions at Title 43 CFR Part 2920. Knowing and willful is defined in these regulations as: ". . . a violation is 'knowingly and willfully' committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required. The term does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal."

D. Realty Trespass Regulations at Title 43 CFR Parts 2800, 2810 and 2880.

The regulations at Title 43 CFR 2800, 2810, and 2880 provide procedures for obtaining use authorizations in the form of a right-of-way or use permit for construction, operation, maintenance, and termination of transportation and other systems or facilities. Compensation for the authorizations is based on fair market rental for uses conforming to Bureau plans, policy, objectives, and resource management programs. The trespass abatement and resolution portion of these regulations is as follows:

1. Section 2801.3 Unauthorized Use, Occupancy, or Development. The regulations at this section are as follow:

"(a) Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of this part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, shall constitute a trespass as defined in Section 2800.0-5."

"(b) Anyone determined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the United States for:

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"(1) Reimbursement of all costs incurred by the United States in the investigation and the termination of such trespass;

"(2) The rental value of the lands as provided for in §2803.1-2 of this title, for the current year and past years of trespass, or where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM; and

"(3) Rehabilitating and stabilizing any lands that were harmed by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

"(c) In addition to the provisions of subsection (b) of this section, the following penalties shall be assessed by the authorized officer:

"(1) For all nonwillful trespass which is not resolved within 30 days of receipt of a written demand under paragraph (b) of this section--an amount equal to the rental value and for roads, an amount equal to the charges for road use, amortization or maintenance which have accrued since the inception of the trespass;

"(2) For repeated nonwillful or for willful trespass--an amount equal to 2 times the rental value and for roads, an amount equal to 2 times the charges for road use, amortization and maintenance which have accrued since the inception of the trespass.

"(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category I application as provided for at §2808.3-1 of this title for nonwillful trespass or less than 3 times this value for repeated nonwillful or knowing and willful trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

"(e) Failure to satisfy the requirements of §2801.3(b) of this title shall result in the denial of any right-of-way, temporary land use, road use application or other lands use request but not yet granted under these parts until there has been compliance with the provisions of §9239.7-1 of this title.

"(f) Any person adversely affected by a decision of the authorized officer issued under this section may appeal that decision under the provisions of Part 4 of this title.

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"(g) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of §2801.3(a) of this title may be tried before a United States magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and §9262.1 of this title."

2. Section 2812.1-3 Unauthorized Use, Occupancy or Development.

These regulations relate to the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C) tram roads as follows: "Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C) lands (as is defined in 43 CFR 2812.0-5(e)), for tram roads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at §2801.3, Part 2800 of this title."

3. Section 2881.3 Unauthorized Use, Occupancy or Development.

The regulations at this section state:

"Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this Part, and that has not been so authorized or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation is prohibited and shall constitute a trespass as defined in Section 2800.0-5. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at §2801.3, Part 2800 of this title."

E. Realty Trespass Regulations at Title 43 CFR Part 2920.

The regulations at Title 43 CFR Part 2920 provide procedures for obtaining a land use authorization in the form of a lease, permit, or easement to use the public lands for agricultural, industrial, residential, or commercial purposes. The authorizations are based on a determination of the fair market rental value of the land and are issued only for those uses that are legal and conform to Bureau plans, policy, objectives, and management programs. The trespass portion of these regulations is as follows:

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Section 2920.1-2 Unauthorized use.

"(a) Any use, occupancy, or development of the public lands, other than casual use as defined in §2920.0-5(k) of this title, without authorization under the procedures in §2920.1-1 of this title shall be considered a trespass. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified of such trespass and shall be liable to the United States for:

"(1) The administrative costs incurred by the United States as a consequence of such trespass; and

"(2) The fair market value rental of the lands for the current year and past years of trespass; and

"(3) Rehabilitating and stabilizing the lands that were the subject of such trespass, or if the person determined to be in trespass does not rehabilitate and stabilize the lands determined to be in trespass within the period set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

"(b) In addition, the following penalties may be assessed by the authorized officer for a trespass not timely resolved under paragraph (a) of this section and where the trespass is determined to be:

"(1) Nonwillful, twice the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years; or

"(2) Knowing and willful, three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years.

"(c) For any person found to be in trespass on the public lands under this section, the authorized officer may take action under §2920.9-3 of this title to terminate, revoke, or cancel any land use authorization issued to such person under this Part.

"(d) Failure to satisfy the liability and penalty requirements imposed under this section for unauthorized use of the public lands may result in denial of:

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"(1) A use authorization under this Part; and

"(2) A request to purchase or exchange public lands filed under Subparts 2711 and 2201 of this title.

"(e) Any person who knowingly and willfully violates the regulations in this Part by using the public lands without the authorization required by this part, in addition to the civil penalties provided for in this part, may be subject to a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both under Subpart 9262 of this title.

"(f) Any person adversely affected by a decision issued under this section, may appeal that decision under the provisions of Part 4 of this Title."

F. Realty Trespass Regulations at Title 43 CFR Section 9239.7.

These regulations currently apply to 43 CFR Group 2800. They have been revised to read:

Section 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 at §2800.0-5(m), §2802.1(d), and §2882.1 until written authorization has been issued by the authorized officer and received by the applicant. 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 §2801.3, §2812.1-3, and §2881.3 of this Title. No new permit, license, 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 judgement in favor of the United States."

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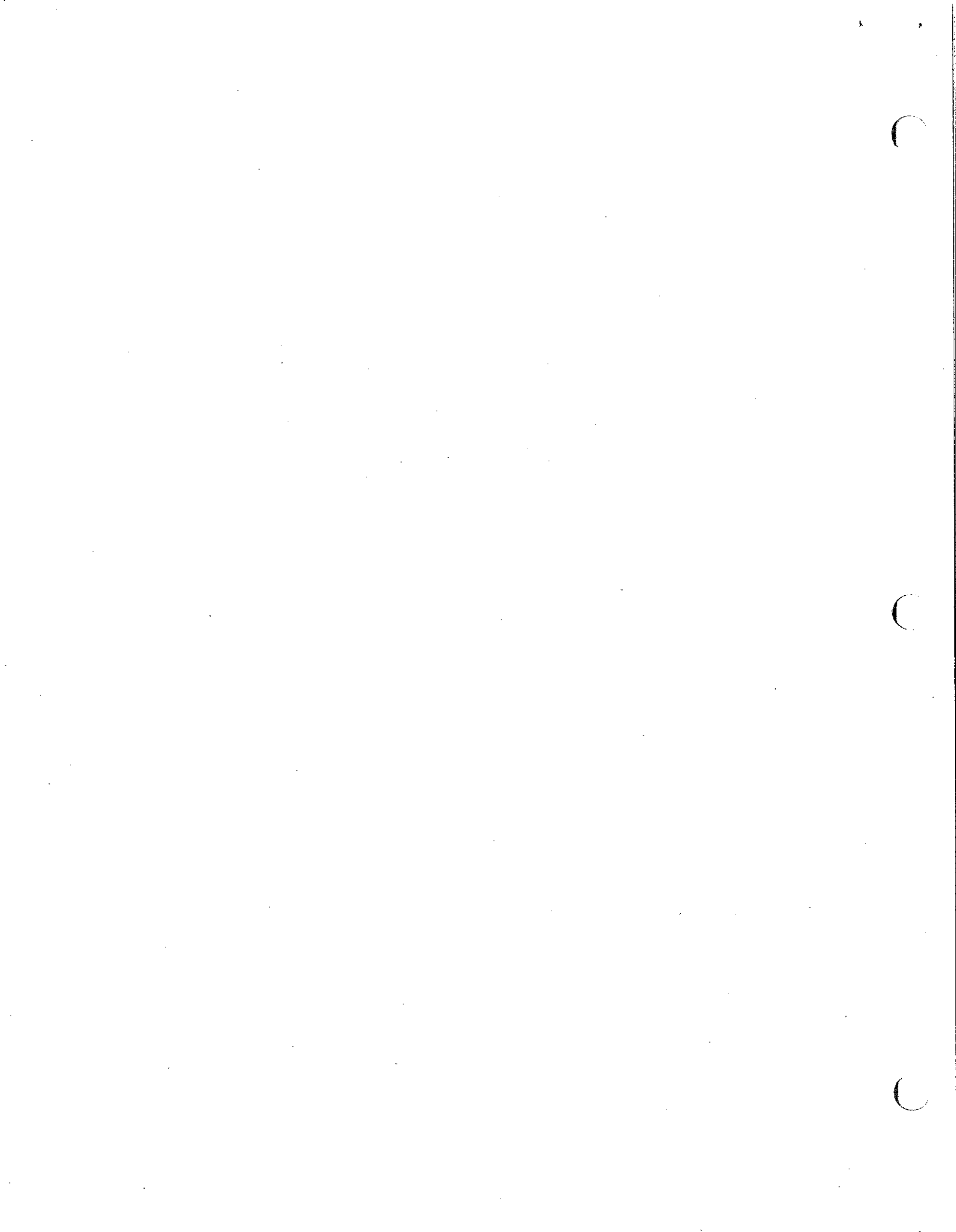
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G. Realty Trespass Regulations at Title 43 CFR Subpart 9262.

The criminal citation provisions of realty trespass regulations are derived from Section 303(a) of the FLPMA. The regulatory provisions are as follow:

"9262.1 Penalties for unauthorized use, occupancy, or development of public lands.

"Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)) any person who knowingly and willfully violates the provisions of §2801.3, §2812.1-3, §2881.3 or §2920.1-2 (a) of this title, by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both."



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Chapter II. Employee Responsibility, Authority, Protection, and Liability

Each employee of the Bureau has certain responsibilities and authorities as a Federal official. When employees operate within the scope of their authority as Federal employees, they are afforded a level of protection by the United States from bodily harm and liability. However, if employees exceed their authority in trespass abatement efforts, they may be subject to legal action initiated by the other party. In cases where employees have clearly exceeded their authority, the employee may not be represented by the United States in the legal action.

A. Employee Responsibilities.

Employees of the Department of the Interior (Department) are required to carry out the policies and programs of the Department and to work to ensure the success of programs (Title 43 CFR Subtitle A). As related to realty trespass abatement these include:

1. All Bureau Employees.

a. Knowing how to report, and reporting, incidents of trespass or suspected trespass observed during the performance of assigned duties or functions. For the purpose of reporting incidents of trespass, employees shall record all occupancy, use, and development as if it is unauthorized, pending a determination that the use, occupancy, or development has been authorized by the Bureau (DM 600.4.1).

b. Reporting trespass or alleged trespass without regard to their immediate area of expertise or effect on their assigned program activity (e.g., range management personnel report suspected realty trespass and lands personnel report suspected grazing trespass, etc.).

c. Being familiar with the location of the public lands and authorized uses on the lands in order to recognize unauthorized activities.

d. Being familiar with realty trespass regulations in Chapter I. Realty Trespass Regulations, or at Title 43 CFR Group 2800, Part 2920, and Subpart 9262, categories of realty trespass, and consequences of violation of the regulations (i.e., administrative, civil, and criminal penalties).

e. Emphasizing trespass abatement through contacts with local officials, operators, opinion makers, local press, and the public.

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2. Lands and Realty Personnel.

a. Appropriate documentation and recordation of all reported realty trespass (see Chapter III. Realty Trespass Categories and Trespass Recordation, and Chapter IV. Realty Trespass Case Investigation, Documentation and Processing).

b. Preliminary trespass investigation and determination of trespass liability.

NOTE: When criminal activities are suspected or there is reason to doubt a trespasser's reaction to an on-the-ground investigation of suspected trespass, the initial investigation should be conducted by or with the assistance of Bureau law enforcement personnel.

c. Preparation of case files and records.

d. Case processing, staff assistance, technical support, and recommending a course of action for trespass resolution.

3. Authorized Officer (AO).

a. Carrying out an effective trespass abatement program.

b. Initiating trespass abatement actions.

c. Negotiating with trespassers on an informal basis to effect administrative resolution of the trespass whenever possible.

d. Initiating formal administrative resolution action when informal administrative negotiations are unsuccessful.

e. Recommending administrative resolution action or civil court action to the State Director.

f. Periodic training of employees in realty trespass detection, prevention, and resolution to increase employee awareness and proficiency in realty trespass abatement.

B. Employee Authorities. Bureau employees have authority to carry out the policies and programs of the Department. Bureau Special Agents and Law Enforcement Rangers have been delegated law enforcement authority that exceeds the authority of other employees. As related to realty trespass abatement, these law enforcement authorities are:

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1. Criminal Investigation. Criminal investigation of knowing and willful trespass and enforcement action is limited to Bureau law enforcement personnel.

2. Citation Authority. Issuance of citations under Title 43 CFR Subpart 9262 for knowing and willful trespass is limited to Bureau law enforcement personnel.

3. Criminal Action. Recommendation of criminal action to the United States (U.S.) Attorney's Office (coordinated through the State Director).

C. Employee Protection. Bureau employees are protected in the following instances:

1. Threat or Injury. Section 1114, Title 18 U.S.C., covers any officer or employee assigned to duty in the field service of the Bureau. The U.S. Attorney may prosecute if, while exercising his responsibility as a Federal official, an employee is forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with by a trespasser.

2. Personal Damage Suits. The U.S. Attorney may defend Bureau personnel in personal damage suits. The plaintiff must prove that the employee acted knowing that he lacked authority for the action and the action was clearly unreasonable. If the plaintiff prevails, the employee may be liable for court costs and damages.

D. Employee Liability.

1. Due Process. Certain administrative and legal rights must be provided the alleged trespasser to assure due process pursuant to laws and regulations.

2. Employee Actions. An employee may be considered as acting within the scope of Bureau employment when performing delegated duties and following and documenting proper procedures if it is necessary to destroy or impound private property located on public lands in trespass. These include:

a. Actions relating to destruction or impoundment of abandoned private property must be thoroughly documented.

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b. No Bureau employee may intentionally injure, destroy, or impound abandoned property in connection with Bureau employment without, at a minimum, the written approval of the AO in whose area the property is located. (Law enforcement personnel can, of course, take emergency action necessary in criminal cases.)

3. Personal Liability. Employees who destroy, damage, or impound abandoned private property with knowledge of and without following proper procedures may be held personally liable to the owner of the property and may be considered to have acted outside the scope of their employment.

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Chapter III. Realty Trespass Categories and Trespass Recordation

Realty trespass categories are limited to three in section 303(g) of the Federal Land Policy and Management Act (FLPMA), in the realty trespass regulations and in this Handbook. Realty trespass is recorded, tracked and case closure documented in the Automated Lands and Minerals Records System (ALMRS) on the basis of the categories discussed in Section C. Realty Trespass Categories.

A. Realty Authorization Regulations.

These include the regulations at Title 43 CFR Parts 2800, 2810, 2880, and 2920 under which use, occupancy or development of the public lands for various specified purposes must be authorized.

NOTE: The decision as to whether or not to authorize the use, occupancy or development of the public lands is discretionary with the AO.

B. Realty Trespass.

Realty trespass is a violation of the Bureau's realty authorization regulations and collectively includes the categories of unauthorized use, occupancy, or development of any portion of the public lands or resources for any purpose that must be authorized under the Bureau's realty authorization regulations. Realty trespass also includes unnecessary or undue degradation, as well as use of lands or resources in excess of those authorized or use occurring outside the area of an approved authorization.

NOTE: Some development and use may be authorized on valid mining claims, oil and gas leases, etc., under the authority of the Mineral Leasing Act, the 1872 Mining Law, etc.

C. Realty Trespass Categories.

1. Unauthorized Use. Unauthorized use is an activity that does not appreciably alter the physical character of the public land or vegetative resource. Unauthorized use includes but is not limited to:

- a. Abandonment of property, trash, refuse, and litter.
- b. Filming where set construction is not involved.
- c. Harvest of hay or seed (native or introduced grass, forbs, and shrubs).
- d. Storage of sand and gravel, machinery, irrigation equipment, waste rock, farm implements or products (hay, grain, beets, potatoes, etc.), or construction materials (lumber, posts, metal sheeting, etc.).

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- e. Establishment of honey bee or leafcutter bee colonies.
- f. Dumping of construction, agricultural, processing plant, or hazardous wastes.
- g. Use of existing roads/trails for purposes which require a use fee or right-of-way.
- h. Livestock feeding, enclosures, locked gates, fences, etc., when not regulated by Title 43 CFR 4140.

Where surface disturbance (clearing, blading, digging, scalping, etc.) is involved, the above activities are considered unauthorized development as described in C.3. Unauthorized Development.

2. Unauthorized Occupancy. Unauthorized occupancy is an activity which results in full or part-time human occupancy or use. Unauthorized occupancy includes but is not limited to:

- a. The construction, placement, occupancy or assertion of ownership of a facility or structure (cabin, house, natural shelter, trailer, etc.) on the public lands for trade, commerce, manufacture, employment, residence, or recreational purposes.
- b. Mining claim occupancy when the occupancy is not reasonably incident to the mining operation.
- c. Residences, whether primary, secondary, or recreational residences.
- d. Business facilities.
- e. Occupancy of natural shelters, etc.

3. Unauthorized Development. Unauthorized development is an activity that physically alters the character of the public lands or vegetative resources. Unauthorized development includes but is not limited to:

- a. Cultivation.
- b. Construction of storage facilities (graineries, silage pits, barns, hay sheds, etc.).

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- c. Resource development projects (wells, catchments, dikes, dams, fences, corrals, feedlots, etc.).
- d. Construction of irrigation facilities (ditches, water lines, reservoirs, pump plants, etc.).
- e. Construction of pipelines (gas, oil, water, slurry, etc.).
- f. Construction or installation of utility lines/cables and communication repeater or relay facilities.
- g. Road and trail construction/realignment.
- h. Construction of advertising displays.
- i. Any other activity which requires the physical alteration of the land surface for development purposes.

D. Multi-Trespass.

Multi-trespass results when several trespass activities such as a road, powerline, waterline, irrigation ditch, fence, hay stack, residence, littering, agricultural, etc., occur on a given land area or involve the same person or company. In these situations, the trespasses may be considered as either one trespass in a single case file and recorded under the major type of trespass, or the trespasses may be separated into multiple case files and recorded as several types of trespass. The decision may be based upon such factors as ease of settlement, timeframe in which different types of trespass may be settled, or proximity of one trespass type to another, etc.

E. Trespass Recordation.

Recordation of all suspected realty trespasses in ALMRS is one of the most important means available to the Bureau in obtaining the resources necessary to gain control of unauthorized realty activities on the public lands. Data derived from ALMRS provide the program base, i.e., magnitude of trespass, upon which requests for funding of realty trespass prevention, detection, and resolution can be justified. ALMRS provides the data for State funding allocations for realty trespass and provides a means of tracking trends and managing the Bureau's realty trespass abatement program. In many instances ALMRS data also will assist in preparation of standard reports. Additionally, ALMRS recordation has made some previously required realty input to trespass reports unnecessary.

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1. Initial Recordation. Upon receipt of an Initial Report of Unauthorized Use (Form 9230-10), serialize the case and record the trespass in ALMRS. Verification consists of checking the Master Title Plats (MTP) and other office records to determine if: (1) the location of the suspected activity is public land and (2) the suspected activity is not authorized. (See Chapter IV. Realty Trespass Case Investigation, Documentation and Processing.)

2. Trespass Use Codes. ALMRS Use Codes permit refinement of each of the three trespass categories into more specific types of trespass activities. Through the appropriate use codes, the broad category of unauthorized development, for example, may be specifically identified as agricultural, pipeline, road or other specific unauthorized development.

3. Title 43 CFR Group 2800 Trespass Recordation. Specific case types for Title 43 CFR 2800 trespass have been developed to integrate with the existing Data Element Dictionary (DED). Case types include roads, railroads, powerlines, communication sites, telephone and telegraph lines and facilities, water facilities, pipelines and facilities, including oil and gas, and produced water disposal facilities. While case types are specific, use codes provide a generic division of the rights-of-way program and provide additional reporting capabilities. There are only three use codes for rights-of-way: oil and gas related, other energy, and nonenergy.

4. Title 43 CFR Part 2920 Trespass Recordation. Case types for Title 43 CFR 2920 trespass have been developed in ALMRS to integrate with the existing DED for permits, leases, and easements. Case types include unauthorized use, unauthorized development, and unauthorized occupancy. While the case types are general, use codes provide a specific definition of the trespass case types (e.g., apiaries, filming, mining, commercial, and residential occupancy, etc.).

5. Recordation Procedures for Criminal Trespass. Procedures for recordation of criminal trespass are to be determined by the Law Enforcement and Resource Protection Operations staff at the Washington or State Office levels. Where criminal violation is suspected, contact the District or Area Ranger or the State Office Special Agent-in-Charge for procedural guidance.

F. Trespass Reports.

1. Form 1681-6. Progress reports are sent to the Service Center (SC), on a regular schedule. This report contains units of accomplishment that are entered into the Bureau's Financial Management System (FMS) for cost and workload analyses. Currently, it is necessary to use Form 1681-6 to manually perform this function.

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2. ALMRS Generated Trespass Reports. ALMRS provides data that are used by the Bureau to determine budget allocations to the States and Districts for trespass abatement. Information for statistical reports and congressional inquiry responses is also derived from ALMRS. Reports obtained from ALMRS on a regular basis in the realty trespass program are as follows:

a. Serial Register Page Report (S03). This report allows the user to request serial register pages for all trespass cases as needed to document the case file and, if agricultural trespass is involved, to inform the Agricultural Stabilization and Conservation Service (ASCS) of the trespass.

b. Case Management Audit Report (M11). This report provides data for analyzing trespass workload, statistical information, and documentation of cases by category. Data selections may be by case type and action code, disposition, or use code, with or without timeframes. This report also provides basic information for responses to congressional inquiries, statistical reports, etc. This audit report also may be used to determine units of accomplishment for the Progress Report (Form 1681-6).

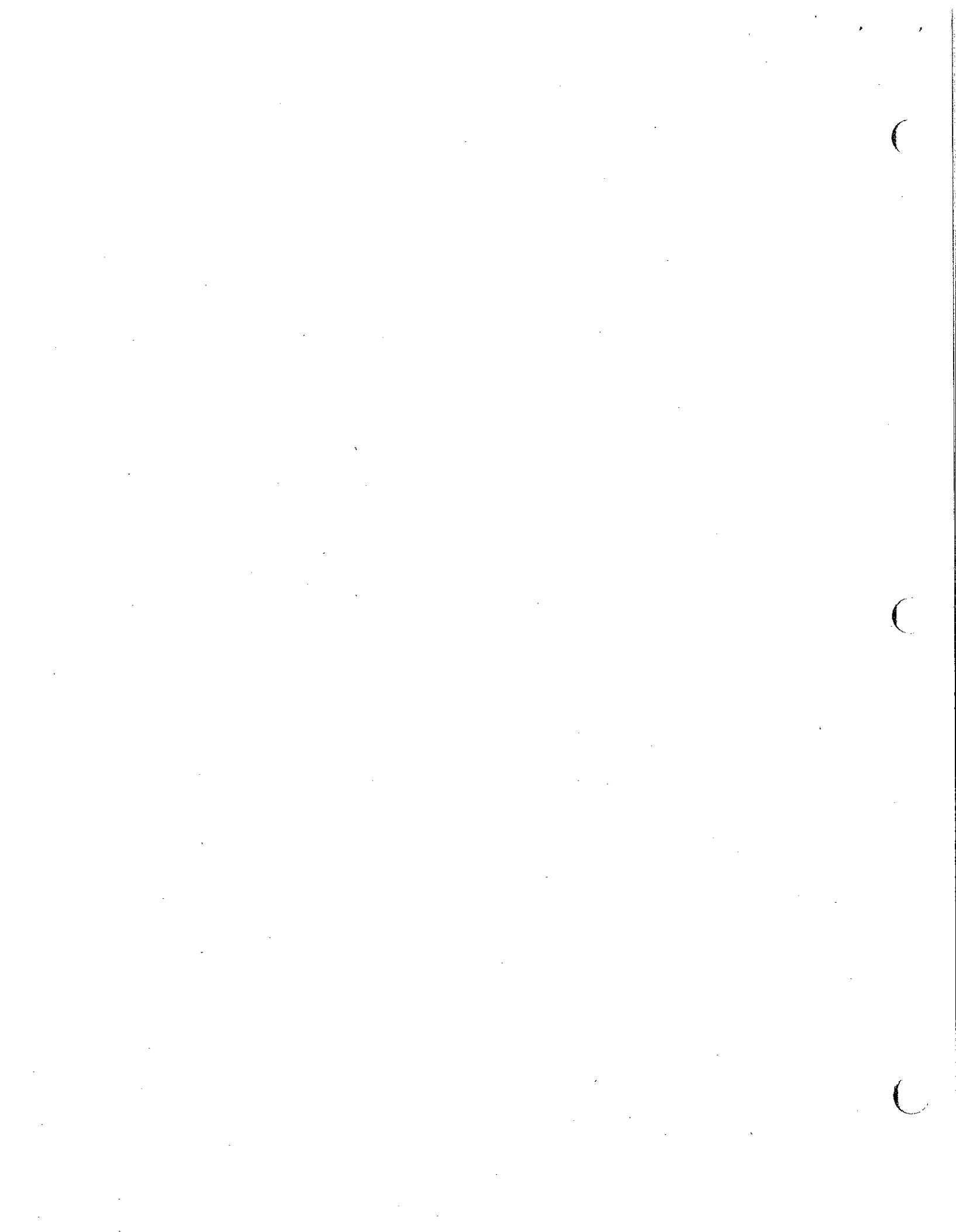
c. Cases Pending and Authorized Report (M03). This report aggregates the number of trespass cases and trespass acres, with or without timeframes, and can be used to analyze pending workloads for justification and allocation of budget.

d. Cases Aging Report (M02). This report provides a compilation of the number of trespass actions pending (Bureauwide, by State, District, etc.) and the length of time, in months, they have been pending. This report can be used in conjunction with the M03 report to analyze pending workloads and the effectiveness of budget allocations.

e. CR User's Guide. A full listing of other ALMRS reports is contained in the CR User's Guide.

3. Unused Realty Reports/Records. ALMRS recordation of realty trespass has rendered several trespass reports unnecessary for reporting realty trespass. Data from these reports/records can now be derived, as necessary, from ALMRS. FIELD OFFICES WILL NO LONGER BE REQUIRED TO COMPLETE THE REALTY RELATED PORTIONS OF THE REPORTS AND TRESPASS RECORDS LISTED BELOW.

- a. Trespass Register (Form 9230-8).
- b. Trespass Record (Form 9230-18).
- c. Triannual Trespass Report (Form 9230-17).



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Chapter IV. Realty Trespass Case Investigation, Documentation, and Processing.

The investigation and documentation of a realty trespass case begins with discovery and recordation of suspected unauthorized use, occupancy, or development of the public lands. Accurate and complete investigation and documentation of the trespass facts are essential to successful case processing and trespass resolution. Any given trespass may be subject to judicial or Interior Board of Land Appeals (IBLA) review in which BLM employees may be required to testify; therefore, it is essential that a complete and factual record be established and maintained. The purpose of investigation is to determine what happened and who is responsible; whereas, documentation provides a written record of the trespass facts. Case processing involves all Bureau action steps from discovery to case closure.

A. Initial Report.

This is the essential first step in realty trespass resolution. On receipt of an Initial Report of Unauthorized Use (Form 9230-10), the investigator must determine if the activity in question is on public lands and, if so, whether or not it has been authorized under the Bureau's realty authorization regulations or other Bureau authorization. If it is determined that the activity is on public lands and is unauthorized, a case file is established and the case is serialized and recorded in AIMRS.

NOTE: Suspected trespass, for the purposes of this Handbook, is defined as those cases where an Initial Report of Unauthorized Use has been prepared and public land status confirmed with available status data (i.e., Master Title Plats (MTP), maps, aerial photographs, etc.).

B. Investigation.

Trespass investigation involves field examination and information collection from all sources as necessary to complete the trespass record. DURING THE INVESTIGATION, DO NOT ACCUSE ANYONE OF TRESPASS! Trespass investigation strives to answer these questions: who, what, why, where, when, and how much? The investigation is documented in a Trespass Investigation Report (Form 9230-24) and attachments as necessary. Investigation should proceed as follows:

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1. Trepass Confirmation, "Where?". A field investigation should be conducted to confirm the trespass and to verify the location, land status, and nature of the trespass with:

a. Dated photographs showing the lands in trespass and the nature and condition of the trespass. Take sufficient photographs to document the trespass area and activities.

b. Sketch maps showing location of the trespass, structures, identifying features, and identification of public lands, found corners, section lines, etc.

c. Measurements as necessary to show size of trespass, location of improvements, etc.

d. Unofficial survey maps and notes as used to identify boundary lines, etc.

NOTE: Requests for cadastral surveys should be kept to a minimum but may be necessary in the case of legal challenge, lost or obliterated corners, etc.

2. Trepass Category, "What?" The investigation should determine the category of the unauthorized activity (i.e., unauthorized use, occupancy, or development) and all unauthorized activities that have taken or are taking place. Document the category (i.e., case type) by commodity code in ALMRS. IF KNOWING AND WILLFUL (CRIMINAL) TRESPASS ACTIVITIES ARE SUSPECTED, OR THE INVESTIGATOR'S SAFETY COULD BE JEOPARDIZED, SUSPEND THE INVESTIGATION AND REQUEST ASSISTANCE FROM BUREAU LAW ENFORCEMENT PERSONNEL. The "what?" of trespass investigation includes:

a. The nature of the trespass, regulatory violations, crops being grown, permanent or temporary improvements (building, structures, trailers), abandoned property, condition of property, etc. Document with sketch maps, notes, and photos as appropriate.

b. Photographs, notes, sketches, etc., fully documented as to the date taken or made, location(s), photograph direction, and individual responsible for the documentation.

c. Identification of unauthorized real or personal property that may require impoundment or destruction (see Chapter VI. Unauthorized Real and Personal Property).

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3. Initial Trespass, "When?" The investigator should establish, whenever possible, when the initial trespass occurred. This may be accomplished by:

- a. Reviewing aerial photos of the area taken over time.
- b. Interviewing adjoining landowners, authorized users, and the suspected trespasser, if possible.
- c. Checking records of Agricultural Stabilization and Conservation Service (ASCS), utility companies, lumber yards, or construction contractors.

4. Intent of Trespass, "Why?" This step should seek to establish the intent of the trespass and whether criminal trespass or civil trespass action is advisable or whether the trespass was accidental or inadvertent and may be resolved by the Bureau administratively. The investigation should focus on:

- a. Whether the trespasser knew, or had reason to know, that what he was doing was unauthorized or contrary to law or regulation.
- b. Whether the trespasser had reason to believe that he had title to the land (i.e., warranty deed, quit claim deed, etc.).
- c. Whether the trespasser had knowledge of the location of the public lands and authorized uses (e.g., livestock operator, large landowner, long-time resident, land posted or fenced, etc.).
- d. Whether the trespass could be accidental or based on misinformation available, or provided, to the trespasser.
- e. Whether a prudent individual, operating on the information available to the trespasser, would arrive at the same conclusions as the trespasser.
- f. Whether knowing and willful activities are evident. If so, contact the appropriate Bureau law enforcement personnel.

5. Identity of Trespasser, "Who?" The identity of the trespasser may be known by adjoining landowners or identified by various means. These include:

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a. Interviews, including the person reporting the trespass, adjacent owners, and the trespasser, if appropriate. Obtain signed written statements if possible. If not, document the interview(s) with memos to the file.

NOTE: If the trespass is reported by the trespasser, delay interviews until after the basic facts of the trespass are known.

b. Vehicle registration plates and serial numbers of equipment and vehicles may be helpful in determining the person responsible for the trespass.

c. ASCS records or farm subsidy payments.

d. Additional guidance in locating debtors (i.e., trespassers) as contained in Appendix 1, Title 4 CFR, Chapter II, Federal Claims Collection Standards (Standards).

NOTE: Close the case if the trespass is inactive and the trespasser cannot be located after a diligent search. Document the case file (see Statement of Diligent Search and Inquiry, Illustration 18).

6. Trespass Liability, "How much?" This step of the investigation process establishes a trespasser's liability for land rent, administrative costs, and rehabilitation/stabilization costs as provided in the Bureau's realty trespass regulations. (See Chapter I. Realty Trespass Regulations.) Data gathered during the investigation may include:

a. Measurements to determine the area on which trespass liability claims are based.

b. Crops being grown, average yield, customary farm rent system in locale, whether trespass base acres received subsidy payments which attach to the land or whether ASCS subsidy payments were paid on Federal land.

c. Estimates of rehabilitation/stabilization needs and costs and recommended treatment.

d. Investigation information on when, what, and why, to fully calculate the trespasser's liability and intent of trespass (i.e., whether trespass or criminal penalties are warranted).

e. Appraisal of rental values.

f. Estimated cost of impoundment or destruction of unauthorized real or personal property.

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C. Documentation.

Information documenting the facts of a realty trespass is placed in the trespass case file. Organize the case file data in chronological order on the right side of the jacket with the most recent information on top. Place accounting advices and bills on the left side of the jacket. The Reimbursable Project Log (Form 1323-1) is attached to the outside of the jacket for recording of administrative costs associated with the case.

NOTE: Administrative cost accounting begins with the completion of an Initial Report of Unauthorized Use and includes all costs associated with investigation, documentation, and case processing (i.e., case closure).

Documentation in the case file should include:

1. Initial Report of Unauthorized Use. (Form 9230-10).
2. Trespass Investigation Report. (Form 9230-24). Appropriate attachments to the report (dated and identified) include:
 - a. Field notes, sketch maps, photographs, measurements, crops, etc.
 - b. Interviews conducted in conjunction with the trespass investigation (i.e., county agents, utility companies, etc.).
3. Recordation. Copy of the computer generated serial register page.
4. Reimbursable Project Log. Form 1323-1 documenting the administrative costs of case processing (see Chapter VII. Settlement of Realty Trespass Liability for guidance on administrative cost). It is extremely important that this log is maintained accurately since administrative costs assessed by the Bureau are subject to review by the trespasser and may be subject to judicial and IBLA review.
5. Land Status and Location Data. Document Bureau jurisdiction with Master Title Plats, survey notes, location maps, aerial photos, as appropriate.
6. Meetings, Communications, and Interviews. Include in the case file:
 - a. Notes from meetings with the trespasser as to why the trespass occurred, offers of settlement, attitude of the trespasser (cooperative v. uncooperative), the Bureau's position on settlement, etc.

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- b. Correspondence concerning the trespass.
- c. Records and notes of interviews and telephone conversations.

7. Real and Personal Property Actions. When unauthorized real and/or personal property is involved, the documentation required in Chapter VI. Unauthorized Real and Personal Property, is included in the case file.

8. Letters - Notice of Trespass and Trespass Decision. Document informal resolution actions including Notice of Trespass (Illustration 2 or 3) and the initiation of formal administrative resolution procedures, Trespass Decision (Illustration 4 or 5), if informal administrative resolution action has not been successful or is not deemed appropriate.

9. Collection Efforts. Copies of bills (Form 1370-1), demand letters, bonds, etc.

10. Surface Use Determination Report. Prepared by Mineral Examiner for mining claim occupancy not reasonably incident to mining (see Bureau Manual Sections 3060 and 3893).

11. Right-of-Appeal. A copy of the trespasser's notice of appeal of adverse formal decision of the Bureau concerning the trespass to IBIA under Title 43 CFR Part 4.

12. Diligent Search and Inquiry. Document efforts to locate trespassers (Illustration 18).

D. Case Processing.

Each realty trespass case requires certain actions (i.e., processing steps) from initiation to case closure. Each action should be fully explained and documented in the case file in chronological order. The following is a description of the general processing steps for a typical realty trespass case and the identification of Bureau specialists or managers normally responsible for each.

| <u>Responsible Office/Official</u> | <u>Step</u> | <u>Action</u> |
|--|-------------|--|
| All Employees | 1. | Record who made discovery, address, telephone number, what was observed, who is suspected, etc., on Form 9230-10, and attach written statements as necessary. Preserve private citizen confidentiality as appropriate. |

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| <u>Responsible Office/Official</u> | <u>Step</u> | <u>Action</u> |
|--|-------------|---|
| Realty Personnel | 2. | Completes initial trespass documentation, record in Automated Lands and Minerals Records System (ALMRS) and establish case file. |
| | 3. | Forwards case file to AO with brief report. If criminal activity is suspected (knowing and willful trespass) forward through AO to the Special Agent in Charge (SAC). If criminal, SAC will handle with District or Area Office assistance as requested. |
| | 4. | If not criminal, assigns employee to investigate case (i.e., responsible employee). |
| Authorized Officer | 5. | Prepares maps; checks MTP, etc., to verify that the suspected trespass is on public land. |
| Responsible Employee | 6. | Obtains additional information from person reporting trespass. Gets written statement if necessary or possible. |
| | 7. | Visits trespass area. Takes pictures, measurements and makes detailed notes. Completes Trespass Investigation Report (Form 9230-24) Requests survey and/or enforcement personnel if necessary. If no trespass, makes written report for file and closes case. Updates ALMRS and reports unit of accomplishment (Form 1681-6). |
| | 8. | Interviews witnesses or other interested parties. Prepares written statements and obtains signatures from interviewees and otherwise documents the trespasser's identity. |
| | 9. | Identifies the trespasser if possible. If identity of trespasser cannot be confirmed, completes Statement of Diligent Search and Inquiry (Illustration 18) and arranges for rehabilitation/stabilization of the trespass area. Closes case, updates ALMRS, and reports unit of accomplishment (Form 1681-6). |

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| <u>Responsible Office/Official</u> | <u>Step</u> | <u>Action</u> |
|------------------------------------|-------------|--|
| Authorized Officer | 10. | Determines preferred resolution option. (See Chapter V. <u>Realty Trespass Resolution</u>). |
| Responsible Employee | 11. | Estimates trespass liability. Calculates current and past years' land rent liability (on the basis of fair market rent), resource damages, rehabilitation/stabilization costs, and administrative costs. (See Chapter VII. <u>Settlement of Realty Trespass Liability</u> .) |
| Authorized Officer | 12. | Advises trespasser by letter (Illustration 1) of the trespass and requests a meeting. DO NOT BILL OR REVEAL THE ESTIMATE OF TRESPASS LIABILITY. If no response, may send Notice of Trespass (Illustration 2 or 3). |
| | 13. | Begins negotiations. AO may negotiate informally to resolve the trespass and recover trespass liability and avoid formal administrative or civil resolution and collection processes. (See Chapter V. Section C. <u>Trespass Resolution Options</u> .) If trespasser is clearly uncooperative or unwilling to informally resolve the trespass, go to step 15. |
| | 14. | If the trespasser presents new factual data, and/or makes settlement offer, AO evaluates offer and any additional information presented. If acceptable, and resolution action is still at the informal level, simultaneously accepts payment and issues bill (paid) for the amount agreed upon. Payment should include administrative and rehabilitation/stabilization costs as appropriate. Documents the case file to indicate that settlement is based on a reasoned judgment on the part of the Bureau. Closes case and updates ALMRS. |
| | 15. | If unable to agree on trespass liability, notes case file and sends notice of trespass letter (Illustration 2 or 3). |

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| <u>Responsible Office/Official</u> | <u>Step</u> | <u>Action</u> |
|--|-------------|---|
| Authorized Officer | 16. | If payment of liability results, accepts payment, closes case and notes ALMRS. If no response, or negative response, sends Trespass Decision (Illustration 4) or Trespass Decision/Notice to Remove (Illustration 5) and bill for collection of trespass liability including administrative and rehabilitation/stabilization costs (Form 1370-1). <u>NOTE:</u> Assessment of trespass penalties should be considered at this point (i.e., land rent liability times two or three). |
| | 17. | If Trespass Decision (Illustration 4) or Trespass Decision/Notice to Remove (Illustration 5) results in appeal to IBLA, suspends action on case until IBLA issues a decision. If no IBLA appeal and no payment of liability, sends appropriate demand letters (Illustrations 8, 9, and 10). <u>NOTE:</u> Once a bill and three demand letters are sent, without payment, the Bureau is locked into formal administrative collection procedures established by the Service Center (SC-615). |
| | 18. | If payment is received in full, arranges for rehabilitation/stabilization or authorization, closes case, notes ALMRS, and reports unit of accomplishment (Form 1681-6). |
| | 19. | If no reply to the third demand letter and bill is not paid or a compromise offer is not received, sends file to SC-615 through the State Office with recommendation to write-off, demand full payment or initiate civil action. (Illustrations 11, 12, and 15.) <u>NOTE:</u> Prior to sending the case file to the SC, compromise offers may be accepted by the State Director with concurrence of the appropriate Field or Regional Solicitor. (Illustrations 12 and 15). |

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| <u>Responsible Office/Official</u> | <u>Step</u> | <u>Action</u> |
|--|-------------|---|
| SC-615 | 20. | Turn claim over to collection agency. Agency works the claim for 6 months. If unsuccessful, agency returns claim to the SC with recommendation for write-off, compromise or civil action. The SC-615 works with the Denver Regional Solicitor in recommending final resolution action. |
| State Office | 21. | After SC-615 action, the case file is returned to the State Director with SC/Solicitor recommendation (i.e., civil action, compromise or write-off). If recommendation is acceptable, implements; if not acceptable, consults with Solicitor to arrive at an acceptable resolution. Returns case to originating office. |
| Originating Office | 22. | Notes ALMRS, closes case, and reports as unit of accomplishment. Monitors following closure to insure satisfactory rehabilitation or stabilization, payment of liability, penalties, compliance, etc. |

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Chapter V. Realty Trespass Resolution.

A trespass is resolved when the unauthorized activity is terminated, settlement of trespass liabilities are agreed to by the Bureau and the trespasser or established by court order, liabilities have been paid, improvements removed, the land rehabilitated and stabilized, and the case closed. A trespass is also resolved when the trespasser cannot be identified, improvements are removed, land rehabilitated and stabilized, and the case closed. The Bureau has several options available for resolving trespass. This chapter provides information which may be used in selecting a course of action for resolution of individual realty trespass cases.

A. Trespasser Intent.

Intent plays a major role in the determination of the course of action taken to resolve a trespass (i.e., administrative, civil, or criminal). Intent affects the extent of the trespasser's liability for the trespass action. However, where a willful trespasser cooperates with the Bureau to expedite resolution of the trespass action administratively, additional trespass or criminal penalties as provided in the realty trespass regulations may not be warranted. As the proof of the willful or nonwillful intent of the trespasser in committing the unauthorized act must be made from data derived from investigation of the trespass, it is mandatory that investigations be carefully conducted and pertinent facts documented in the case file. This is especially true if civil court action or criminal prosecution of the trespasser is contemplated (see Chapter IV. Realty Trespass Case Investigation, Documentation, and Processing).

B. Trespass Liability and Penalties.

All trespassers, regardless of their intent or their attitude regarding trespass resolution (i.e., cooperative or uncooperative), are fully responsible for the trespass liabilities set forth in the Bureau's realty trespass regulations including: land rent (i.e., for current and past years of trespass calculated on the basis of fair market rental value for the use of the public lands), administrative costs incurred by the Bureau as a consequence of the trespass, and cost of, or rehabilitation/stabilization of, the lands used in trespass. Additionally, where a nonwillful trespass is not resolved in a timely manner, a penalty equal to the fair market rental value of the land may be imposed making the total an amount that is twice the land rent liability. The penalty for knowing and willful or repeated trespass is twice the fair market rental value of the land making the total an amount that is three times the land rent liability.

NOTE: The number of past years for which penalties may be assessed is limited in the Title 43 CFR §2920.1-2 regulations but not in the Title 43 CFR 2800 regulations. A criminal penalty up to \$1,000 and/or imprisonment of up to 1 year (or both) may also be imposed for knowing and willful trespass under both cited regulations.

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C. Trespass Resolution Options.

There are four specific options available to the Bureau for realty trespass resolution. They are (1) informal administrative resolution, (2) formal administrative resolution, (3) civil court action, and (4) criminal prosecution. If resolution is initiated at the informal administrative level and resolution efforts fail, formal administrative resolution actions may be initiated, followed by civil court action if formal administrative efforts fail and the trespasser has not appealed to the Interior Board of Land Appeals (IBLA) (see Section E. Appeal Procedures). Failure to win a civil action will bar criminal prosecution for the same action because of the higher level of proof required for successful criminal prosecution. Successful criminal prosecution will not bar civil action for recovery of the trespasser's liability arising from the trespass. However, the courts do not look favorably on criminal prosecution for the purpose of securing a conviction in order to condition probation upon payment of a civil debt (i.e., trespass liability).

1. Informal Administrative Resolution. Realty trespass may be resolved administratively on an informal basis. Resolution action may be initiated with an informal letter (Illustration 1) or may progress to the issuance of a Notice of Trespass (Illustration 2 or 3). Informal resolution involves an agreed upon settlement of the trespass and trespass liability by the Bureau and the trespasser without resorting to legal action or formal administrative procedures (e.g., formal trespass decision, billings, demand letters, etc). Informal resolution is the recommended course of action unless circumstances warrant more stringent measures. The goal is timely resolution of the trespass. Informal administrative resolution may be successful when:

- a. The trespasser is willing to cooperate with the Bureau in the timely resolution of the trespass.
- b. The trespass is clearly unintentional, accidental, a minor infraction of the Bureau's regulations, or a technical violation.
- c. The trespass is minor in terms of size and impact and informal resolution would serve the best interests of all parties involved.
- d. The evidence does not exist or is not available to prove the full extent of the trespass liability in terms of previous use, time, and size (i.e., the Bureau cannot prove the full amount due the United States as a consequence of the trespass).

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e. Acceptance of trespass liability payment and closing the case can be substantiated as a "reasoned judgment" on the part of the Bureau. Document the case file accordingly.

NOTE: Acceptance of a negotiated trespass liability payment based on a reasoned judgement is subject to the write-off and compromise procedures and dollar limits specified in Section B, Chapter VII. Settlement of Trespass Liability.

f. The Bureau's trespass abatement policy in terms of deterrence and securing compliance (both present and future) would be adequately served by informal resolution.

g. A suspected trespass cannot be confirmed as an actual trespass or the trespasser cannot be identified. Close the case and monitor the area.

2. Formal Administrative Resolution. Formal administrative resolution procedures must be initiated when informal resolution is unsuccessful, the trespasser is clearly uncooperative, or for other reason including where the benefits of enforced collection of trespass liability will demonstrate to other trespassers in the area that resistance to liability payment is not likely to succeed. Formal administrative resolution actions are subject to appeal to IBLA and are initiated with a formal trespass decision (Illustrations 4 or 5) and a bill (Form 1370-1) for payment of trespass liability. (Section E, Appeal Procedures, provides further guidance on formal administrative resolution actions and IBLA appeal procedures.) Formal administrative resolution actions (e.g., collection of trespass liability) may also include appropriate demand letters and referral to the Internal Revenue Service (IRS), debt collection contractors, and consumer credit agencies when the liability is not paid or not paid in full. (Illustrations 8, 9, 10, 11, 12 and 15.) Formal administrative procedures may be necessary when:

a. The trespasser is clearly uncooperative.

b. The trespasser disputes the Bureau's trespass liability claim and the Bureau has evidence to substantiate its claim.

c. The size and nature of the trespass cannot be excused as unintentional even though the Bureau cannot prove knowing and willful intent.

d. Formal collection action would enhance the Bureau's trespass abatement program in terms of deterrence and resolution of other public land trespass in the area.

e. The trespass cannot be proven as knowing and willful trespass.

f. The Bureau has expended significant sums of money (administrative costs) as a consequence of the trespass, and enforced collection action is necessary for full recovery.

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g. The trespasser has been positively identified, and evidence exists to support the identification.

h. Offers to settle trespass liability, if any, by the trespasser cannot be justified as reasonable.

NOTE: It is extremely important that trespass liability be accurately calculated prior to formal billing and represents the minimum amount that the Bureau will accept in satisfaction of the trespasser's liability. Later downward adjustments, after billing, involve claim compromise or write-off. (See Chapter VII. Settlement of Trespass Liability.)

3. Resolution via Civil Court Action. Civil court action may be initiated where formal administrative resolution has been unproductive. Court action may also be initiated where successful outcome and follow-up publicity would assist the Bureau in eliminating other trespass in a geographic region and deterring trespass in the future. Civil actions are reviewed for adequacy by the appropriate Solicitor and initiated by the U.S. Attorney in U.S. district courts. U.S. Magistrates, if designated, may hear pretrial matters. Upon consent of the parties, a designated U.S. Magistrate may conduct all proceedings in a civil matter and order the entry of judgment in the case. A U.S. magistrate's jurisdiction to hear a civil case depends on designation to do so from a U.S. district court judge. Whether prosecution will be brought in a given case is determined by the U.S. Attorney. Finally, the U.S. Government can pursue both civil and criminal remedies concurrently for the same offense. The fact that a trespasser is convicted of knowing and willful trespass does not preclude the Bureau from recovering monetary liability and court costs from the trespasser due to the unauthorized activity. Circumstances that may merit civil action on the part of the Bureau to resolve a trespass and trespass liability include, but are not limited to, the following:

a. The Bureau has cause to believe that rehabilitation/stabilization of the lands in trespass would not be accomplished without a court order.

b. Attempts at informal and formal administrative resolution have been unsuccessful.

c. The Bureau has adequate evidence (i.e., a preponderance of evidence) to substantiate its case.

d. Criminal trespass cannot be substantiated (i.e., proof beyond a reasonable doubt).

e. The Bureau's trespass abatement program in terms of prevention, deterrence, and resolution would be enhanced by successful civil court action.

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f. Termination and/or eviction are required to resolve the trespass and a court order is required for these actions.

g. Personal and/or real property is involved in the trespass and a court order will assist in legally removing and/or disposing of the involved property.

h. The trespasser's liability for the trespass is significant and successful court action and monetary recovery would serve as a deterrent to present and future trespass.

i. Circumstances are such that the Bureau cannot accept a trespasser's liability settlement offer (if any) within the requirements of its debt collection procedures.

4. Resolution via Criminal Prosecution. As a practical matter, criminal prosecution will result in quicker resolution of trespass than civil action because of the Constitutional requirement for a speedy trial for criminal offenses. Successful criminal prosecution may not, however, result in recovery of trespass liability. However, a criminal case does not bar the Bureau from recovery action under civil law. Criminal action requires proof of knowing and willful trespass beyond a reasonable doubt whereas civil action requires a preponderance of evidence. Citations for criminal trespass may be issued by Bureau law enforcement personnel under Title 43 CFR §9262.1. When criminal prosecution or citation are contemplated, the appropriate Bureau law enforcement personnel must be involved in the decision process and initiate the appropriate criminal action. Input from Bureau law enforcement personnel will help to keep criminal resolution a viable option since premature administrative or civil action could jeopardize criminal prosecution. Situations where criminal citation or prosecution may be appropriate include those listed below:

a. The trespass is clearly knowing and willful.

b. Successful prosecution would serve as a warning and deterrent to other criminal trespassers.

c. The Bureau has probable cause to believe that a trespass of a criminal nature has occurred.

d. Fines and/or imprisonment of the trespasser is warranted and will serve to prevent and deter present and future criminal trespass.

e. The trespass is continuing, or repeated, after appropriate notification of the illegal nature of the act.

NOTE: Injunctive relief may be required where the trespass activities are resulting in unnecessary or undue degradation of the public land and resources (see Section F, Injunctions).

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D. Cancellation or Revocation of Use Authorizations.

Under Title 4 CFR (Appendix 1, §102.6), agencies seeking collection of liability claims (i.e., trespass liability) are instructed to ". . . give serious consideration to the suspension of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim and the debtor will be so advised." As an aid to resolving trespass claims, consideration may be given to cancellation of contract negotiations, leases, permits (including grazing), or other Bureau authorizations that are held by a trespasser.

E. Appeal Procedures.

Any person adversely affected by a decision to resolve a realty trespass (e.g., termination, eviction, settlement of liability, etc.) may appeal that decision to the IBLA under the provisions of 43 CFR Part 4. In order to preserve a trespasser's right of due process and the Bureau's options for resolution, including addition of penalties, the following procedure should be closely adhered to in cases where formal administrative resolution procedures are required.

1. Trespass Notice. Issue a letter notice of trespass. These notices (Illustrations 1, 2 and 3) are interlocutory and, therefore, are not subject to IBLA appeal during the compliance period. Following the compliance period the Bureau, based on lack of response or evidence and information provided by the trespasser, may:

- a. Reconsider the validity of the trespass.
- b. Adjust the rent liability based on information provided by the trespasser (i.e., area, duration of trespass, etc.).
- c. Accept payment of trespass liability.
- d. Decide whether trespass penalties are warranted (i.e., one or two times rent liability).
- e. Close the case for lack of evidence.

2. Trespass Decision. If following the compliance period and evaluation of any information or evidence provided by the trespasser the trespass remains unresolved, a trespass decision (Illustration 4 or 5) is issued. The decision must include a bill for trespass liability (i.e., rent, administrative and rehabilitation/stabilization costs), and trespass penalties, if warranted. The decision must also inform the trespasser of the right of appeal to IBLA. At the end of the appeal period, if the trespasser has not appealed to IBLA and has not made payment in the amount of the bill for collection, issue Demand Letter No. 1. (See Section L., Chapter VII. Settlement of Realty Trespass Liability).

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3. Right of Appeal. Notification of a trespasser's right of appeal to IBLA is mandatory. The standard appeal paragraph to be used to notify trespassers of appeal rights is as follows:

"Within 30 days of receipt of this decision, you have the right of appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals. The appellant has the burden of showing that the decision appealed from is in error."

4. Effect of Appeal. When an appeal has been filed, IBLA has exclusive jurisdiction over the matter and BLM can take no action on the case.

5. Civil Action. If a trespasser does not appeal to IBLA and does not respond to liability collection action (i.e., three demand letters and collection by a debt collection contractor), civil action may be appropriate.

6. Criminal Action. Criminal prosecution actions are not subject to IBLA appeal.

F. Injunctions.

Injunctions cannot be used to resolve realty trespass. Injunctions will not be issued by the courts to restrain a trespasser merely because he is a trespasser; there must be irreparable harm occurring or of immediate threat. If a situation arises where lands administered by the Bureau are being subjected to, or threatened with, resource damage from trespass of such a nature as to require preventive action by the Bureau, the facts of the case should be presented to the appropriate Regional or Field Solicitor for advice as to whether injunctive relief should be sought. Injunctive relief will restrain a trespasser from continuing a trespass or initiating an action that would constitute trespass. It will not satisfy the trespasser's liability for trespass. Injunctions are not required to restrain a criminal trespass. Bureau law enforcement personnel have the authority to arrest or otherwise restrain a criminal trespasser. Normally, an injunction should be sought for the following reasons:

1. Existing Trespass. A trespass is continued after service of a notice of trespass letter (Illustrations 1, 2, and 3) or a trespass decision (Illustrations 4 and 5) and irreparable resource damage is occurring or life or property is threatened.

2. Expected Trespass. A trespass is anticipated in spite of warnings issued to the persons involved that their action would cause irreparable harm and would constitute trespass on the public lands.

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G. Statute of Limitations.

Title 28 U.S.C. §2415 provides: "That an action to recover damages resulting from trespass on lands of the United States . . . may be brought within six years after the right of action accrues . . ." As used in the statute, "damages" means court awarded money to compensate for an actual loss or to punish and/or deter future trespass. Under the Bureau's realty trespass regulations, compensation for damages may include: land rent liability and trespass penalties (both calculated on the basis of fair market rental value of the land), administrative costs, and rehabilitation/stabilization costs. The Bureau's "right of action" under the statute pertains to the right to remedy and relief (i.e., termination and recovery of damages) from trespass through judicial procedure. This right of action occurs each day a trespass is continuing and does not necessarily rely on the date the trespass was initiated for purposes of calculating the 6-year limitation on initiating the Bureau's right of action. In the recovery of money damages for trespass, there are situations which must be considered prior to writing off trespass liability by invoking the Statute of Limitations. These include:

1. Effect on Administrative Recovery. The Statute of Limitations is a defense which an alleged trespasser can only invoke in civil court. The Statute of Limitations does not bar the Bureau from informal or formal administrative action for collection of money owed the United States for all years, or portions thereof, where the trespass can be substantiated. Also, the Federal Land Policy and Management Act (FLPMA) requires that the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute [§102(a),(9)]. THUS, THE BUREAU IS REQUIRED BY THE FLPMA, AND ITS REALTY TRESPASS REGULATIONS, TO RECOVER FAIR MARKET VALUE FOR ALL YEARS OF TRESPASS, UNLESS THE BUREAU IS LIMITED BY THE COURT IN A CIVIL ACTION TO RECOVERY UNDER THE STATUTE OF LIMITATIONS.

2. Right-of-Action. The trespass activities covered by the Bureau's realty trespass regulations normally are continuous over time. Therefore, each ensuing day that a trespass continues reestablishes the Bureau's right of action under the Statute of Limitations to recover money damages resulting from trespass. However, on a 10-year continuous trespass on which the Bureau initiates its right of action at the end of the 10-year period, the Bureau may be limited by the courts to recovery of money damages for only the last 6 years of trespass.

3. Computation of Limitation Period. Title 28 U.S.C. §2416 provides that for the purpose of computing statute limitation periods, time may be excluded from the limitation period for those periods in which ". . . facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act . . ." Thus, the Bureau's "right-of-action" on a trespass that has gone undetected (for good cause) for a number of years may not be constrained by the 6-year Statute of Limitations.

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H. Land Use Authorization/Title Transfer.

The Authorized Officer (AO) may consider legalizing a trespass activity under a land use authorization or title transfer (i.e., sale, exchange, color of title, etc.) under the following circumstances.

1. Liability Settlement. Liability for previous unauthorized use, occupancy, or development of the land has been or is being settled to the satisfaction of the AO.

2. Conformance. The activity to be legalized conforms to Bureau plans, programs, policies, and management objectives for the land and land in the vicinity.

3. Compliance. The use, occupancy, or development to be legalized is in, or can be brought into, compliance with Federal, State, and local planning and zoning as well as applicable laws.

4. Temporary Authorization. The AO may issue a short-term land use authorization to:

a. Prevent undue economic loss (e.g., crop harvest).

b. Authorize continued use while the trespasser is settling liability for the trespass.

c. Arrive at a decision to either terminate the trespass or legalize it under long-term authorization or title transfer.

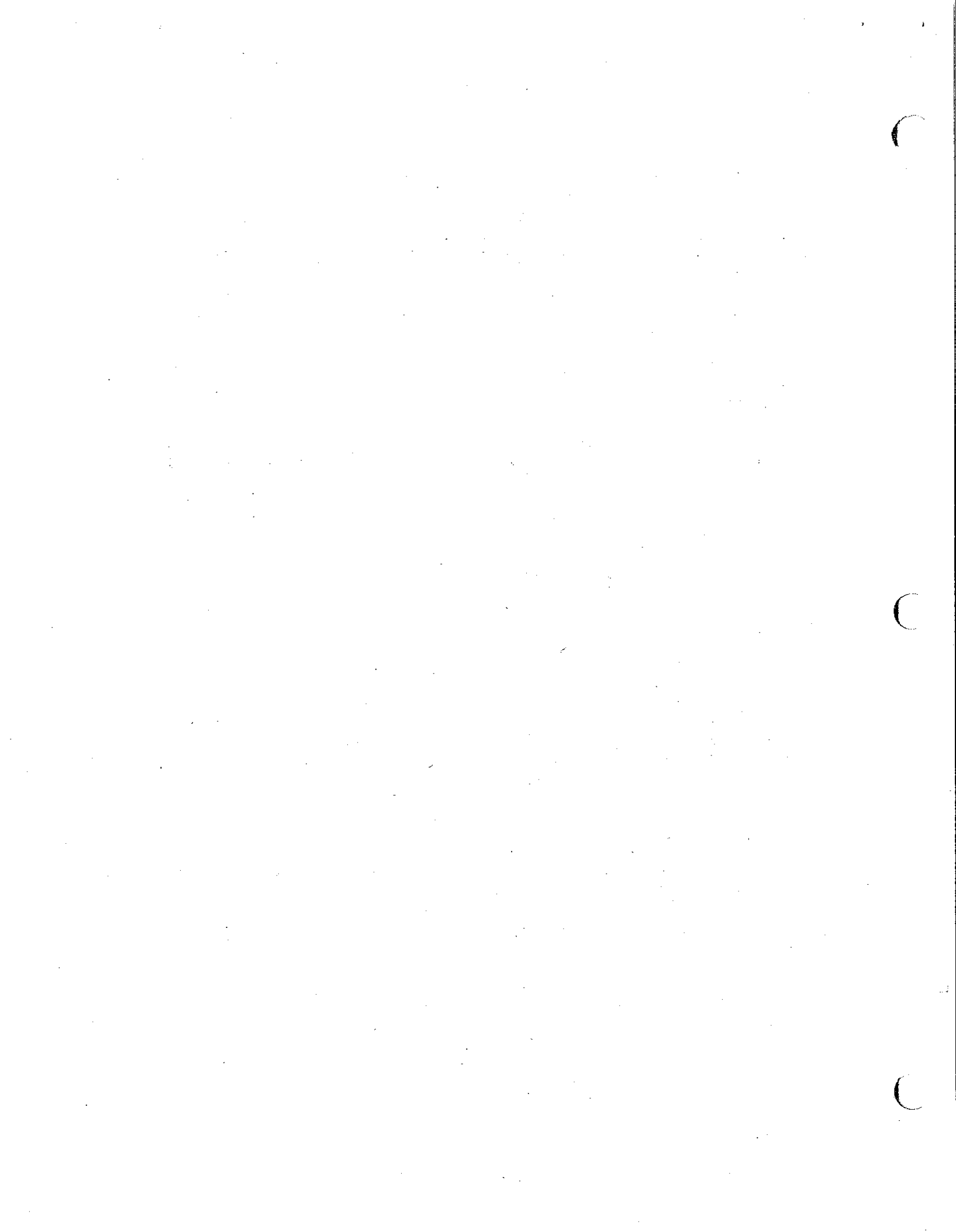
5. Residential Occupancy. In certain situations residential trespass occupants may be eligible for a nonassignable term or life-time lease under the provisions of Title 43 CFR Part 2920 if one or more of the following conditions is met:

a. The dwelling is the sole residence of the occupant and relocation would create an economic hardship.

b. The occupant acknowledges (in writing) the nonassignable nature of the authorization.

c. The dwelling is in, or can be brought into, compliance with State and local requirements for residential occupancy.

d. The occupancy resulted from misinformation available to the occupant (e.g., survey error), was unintentional, and/or was not known to be on public land.



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Chapter VI. Unauthorized Real and Personal Property.

It is extremely important that proper procedures be followed to protect the interest of the United States and Bureau employees in the handling of unauthorized real or personal property to be disposed of or removed from the public lands. Bureau Manual Sections 1527 and 1533 provide guidance on the possession, removal, care, or disposal of unauthorized real and personal property before and after title or ownership vests to the United States. Trespass cases involving real and personal property are processed in accordance with the general procedures in this Handbook and the specific guidance in this Chapter.

A. Real Property.

Unauthorized real property (for purposes of this chapter) consists of structures, improvements, and facilities more or less attached to the land. Typically these consist of shacks, cabins, corrals, fences, shelters, etc., of little or no useable, historic, or commercial value. Occasionally unauthorized real property with significant commercial value may be discovered on the public lands. Where this occurs the cause may be traced to erroneous information concerning property lines and land ownership. Such trespass normally falls into the category of nonwillful trespass under the Bureau's realty trespass regulations. Real property does not lend itself to impoundment and is normally removed or destroyed on site, after title vests to the United States. Where appropriate to the circumstances of the trespass, continued use of the unauthorized real property may be authorized following settlement of trespass liability.

1. Personal Notice. If the real property owner or occupant, if any, are known, personally notify (Illustrations 1 and 3) and attempt to effect informal administrative resolution of the trespass including removal of the property, rehabilitation/ stabilization of the site, and recovery of liability for administrative costs and previous use (see Section C. 1, Chapter V, Informal Administrative Resolution). Negotiate a use authorization if appropriate (see Section H, Chapter V, Land Use Authorization/Title Transfer). If informal resolution efforts are unsuccessful:

a. Serve a formal Trespass Decision/Notice to Remove (Illustration 5) on the trespasser by certified mail, return receipt requested, or personal service (service by Bureau law enforcement personnel is recommended). Document the service in the case file (Illustration 17).

b. If the owner responds in an appropriate manner settle the trespass liability and close the case.

c. The property owner may relinquish the real property (and associated personal property) to the United States (see Section D. Relinquishment). Document the relinquishment in the case file (Illustration 16).

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d. If the owner fails to respond, remove, relinquish, or reimburse the Bureau for removal of the unauthorized property follow the guidance in Section E. Failure to Remove, F. Possession by the United States, and G. Destruction and Removal.

2. Legal Notice. If the real property owner is unknown:

a. Securely attach the Legal Notice (Illustration 6) to the unauthorized property in a conspicuous location. Provide protection of the notice from the weather as appropriate. Maintain the posted notice concurrent with the removal period specified in the notice.

b. Photograph the property to clearly show the posted notice. A minimum of two photographs are necessary; a close-up to show the notice in detail and a second to clearly identify the property and the posted notice. Include recognizable physical features of the land in the photos if possible.

c. Post copies of the Legal Notice at appropriate locations in the nearest post office, county courthouse, and local Bureau office.

d. Publish the Legal Notice in a local newspaper having general circulation in the vicinity.

e. Periodically examine the posted notices, and re-post if vandalized, damaged, or removed.

f. If there is no response to the Legal Notice, proceed to Section E. Failure to Remove.

B. Personal Property.

Unauthorized personal property (for purposes of this Chapter) includes machinery, trailers, vehicles, irrigation and mining equipment, construction debris and other worthless, discarded personal items such as household trash, appliances, etc., that collectively can be classified as litter, garbage or rubbish. Other personal property items may consist of rocks, rubble, and vegetative materials removed from private land and deposited on public land. These items are usually dumped with the full knowledge that the owner does not own the land or have the right to deposit the unwanted, discarded items on the land. **THUS, THE ACTION USUALLY CONSTITUTES KNOWING AND WILLFULL TRESPASS.**

On occasion unauthorized personal property of value (i.e. vehicles, camping equipment, etc.) may be abandoned on the public lands. Since there may be valid mitigating reasons for abandonment (i.e., sickness, breakdown, weather, etc.), such abandonment may be treated as NONWILLFUL TRESPASS unless willful intent can be substantiated. Personal property items may not lend themselves to posting and where valuable items are involved immediate impoundment may be necessary to protect the property.

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1. Vehicles. In certain States the local Sheriff's Office or the State Police are authorized to effect impoundment or disposal of abandoned trailers and vehicles. Consult with Bureau law enforcement personnel for guidance or assistance.

2. Property With No Value - Ownership Established. In some cases the identity and culpability of persons disposing of worthless personal property on the public lands can be identified by witnesses, addresses, or serial numbers on the discarded items. Where the personal property clearly has no value (i.e. trash, rubble, garbage, etc.) and the individual responsible has been positively identified:

a. Immediately serve a Notice to Cease and Desist (Illustration 3) on the trespasser by certified mail, return receipt requested, or personal service (service by Bureau law enforcement personnel is recommended). Include copies of the appropriate realty trespass regulations with the notice (normally Title 43 CFR §2920 1-2 and §9262.1). Document the service in the case file (Illustration 17).

b. If no response to the Notice to Cease and Desist is received, a Trespass Decision/Notice to Remove (Illustration 5) may be issued or Bureau law enforcement personnel may serve a citation to appear before a United States magistrate as provided in Title 43 CFR §9262.1.

NOTE: Notification of the trespasser by Notice to Cease and Desist prior to citation is recommended since the notice establishes the trespasser's liability for rental penalty and administrative and rehabilitation/stabilization costs incurred by the Bureau. These costs may not be directly recovered under Title 43 CFR §9262.1.

3. Property With No Value - Ownership Not Established. When unauthorized dumping and discarding of worthless items takes place on one site over a period of time, numerous trespassers may be involved and responsibility may be difficult to establish. In these situations:

- a. Post the site (sign) as government property.
- b. Monitor the site for evidence as to persons responsible.
- c. As funds permit, or as volunteers are available, rehabilitate/stabilize (clean-up) the site.
- d. Monitor to prevent, or detect, renewed violations.

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4. Valuable Property - Owner Known. Notify the personal property owner by informal letter (i.e. certified mail, return receipt requested) explaining that the property must be removed from the public lands or, if the Bureau has removed the property, where the property may be reclaimed. Allow a reasonable time for the owner to remove, or reclaim, the property considering the nature and value of the property, location of the owner, weather, accessibility of the site and other mitigating factors. The removal/claim period will usually not exceed 30 days. If the property is not claimed or removed:

NOTE: If the property is readily movable, except vehicles, and could be subject to theft or vandalism, obtain permission and remove the property for safekeeping (see Section B. Personal Property, and G. Destruction and Removal).

a. Serve a Trespass Decision/Notice to Remove on the property owner (Illustration 5) by certified mail, return receipt requested, or personal service. Document the service in the case file (Illustration 17).

b. If the property owner fails to respond satisfactorily or to file an appeal, the United States may take possession (see Section F. Possession by the United States).

c. If the property is unusable or the expense of its care and the handling is so great that its retention is clearly not economical, treat it as scrap/junk and dispose of it in accordance with Section G. Destruction and Removal. Case files must be maintained for 3 years from the date of disposing of such property.

d. If the property warrants impoundment, and the time of possession exceeds 30 days from the date of notification, title vests in the United States. However, the property may revert to the owner when a proper claim is filed by the owner prior to transfer for official use or sale of the property (see Bureau Manual Section 1527 - Disposal).

e. If the property is unclaimed and usable by the Bureau it may be added to the Bureau's inventory by entering it on a Receiving Report (Form DI-102) or it may be entered on an Available Property Report (Form 1520-34) for disposal action. Refer to Bureau Manual Section 1527 - Disposal, for specific guidance.

5. Valuable Property - Owner Unknown. If the owner of abandoned personal property is unknown:

a. If valuable personal property is readily removable (i.e. subject to theft), get approval to remove (see Section G. Destruction and Removal). If removed to a Bureau facility for safekeeping or allowed to remain on the public lands, proceed as follows.

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- b. Photograph the item(s) for identification and valuation purposes.
- c. Post the Legal Notice (Illustration 6) on the property (if appropriate) and photograph. Also post copies of the Legal Notice in one or more local county courthouses, post offices, local Bureau office, or other public places as appropriate. Document the posting in the case file.
- d. Publish the Legal Notice in a local newspaper having general circulation in the vicinity.
- e. Maintain the posting concurrently with the publication and removal period specified in the Legal Notice.
- f. If the legal notice evokes no response and other attempts to locate the owner are unsuccessful, complete affidavit of diligent search (Illustration 18) and place in case file. Take possession and dispose of as in Section B. Personal Property.

C. Documentation.

All real or personal property associated with unauthorized use, occupancy, or development should be photographed and inventoried to document and support Bureau and employee actions to remove, take possession, or otherwise dispose of the property. Other documentation includes postings, notices, correspondence, certification, diligent search, etc. All actions, inventory, photographs, etc., should be placed in the case file.

1. Inventory. Note the condition of each item or structure and its estimated value. A broken, useless piece of furniture, for example, with no commercial value would not be regarded as an item of value. Nor would a shack, shed, etc., constructed of tin, discarded lumber, or other improvised building materials. Note items or structures of historic or cultural value.

2. Photographs. Photograph the property and structures, etc., to support value judgments and decisions to remove or destroy. Photograph posted notices as appropriate. Mount, date, and describe all photos as appropriate.

D. Relinquishment.

The owner of unauthorized real and/or personal property may relinquish said property to the United States (Illustration 16). Acceptance of relinquished property may be appropriate when:

1. Satisfactory Settlement. The owner has satisfied all trespass liability including cost of removing the relinquished property and site rehabilitation/stabilization.

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2. Site Rehabilitation/Stabilization. Relinquishment will expedite removal and disposal of unauthorized/unwanted real property and site rehabilitation/stabilization of the public lands.

3. Mitigating Factors. The trespasser clearly does not have the ability (financial, age, equipment, etc.) to effect removal/disposal of the unwanted property. Document the case file to support acceptance of the relinquished property as a "reasoned judgment" on the part of the Bureau.

4. Valuable Property. The property has commercial or historic value or is useable by the Bureau.

E. Failure to Remove.

Failure of the trespasser to remove real or personal property after due notice may result in one or more of the following actions:

1. United States Possession. Title may vest to the United States (see Section F. Possession by the United States).

2. Penalty. When the trespass is repeated, willful or not resolved in a timely manner, a penalty of 2 times fair market value rent may be assessed in addition to rental liability making the total an amount equal to 3 times the rental liability.

3. Citation. After proper notification, and failure to act, a trespass is held to be knowingly and willfully committed. A citation under Title 43 CFR §9262.1 may be served requiring an appearance before a designated United States magistrate.

4. Court Action. The Bureau, with Solicitor's concurrence, may seek U.S. Attorney assistance in resolution of the trespass through the civil or criminal courts as appropriate.

F. Possession by the United States.

Upon relinquishment or expiration of the removal period specified in the appropriate notices, the property may be considered abandoned for purposes of possession by the United States (see Bureau Manual Sections 1527 and 1533). Post the property as Property of the United States (Illustration 7). The property may revert to the owner when a proper claim is filed by the owner prior to disposal, sale or transfer for official use.

1. Disposal. Property with no value, or little value, or property where the expense of its care and handling is so great that its retention is clearly not economical may be destroyed or sold (see Section G. Destruction and Removal). Photograph as appropriate to support value judgments.

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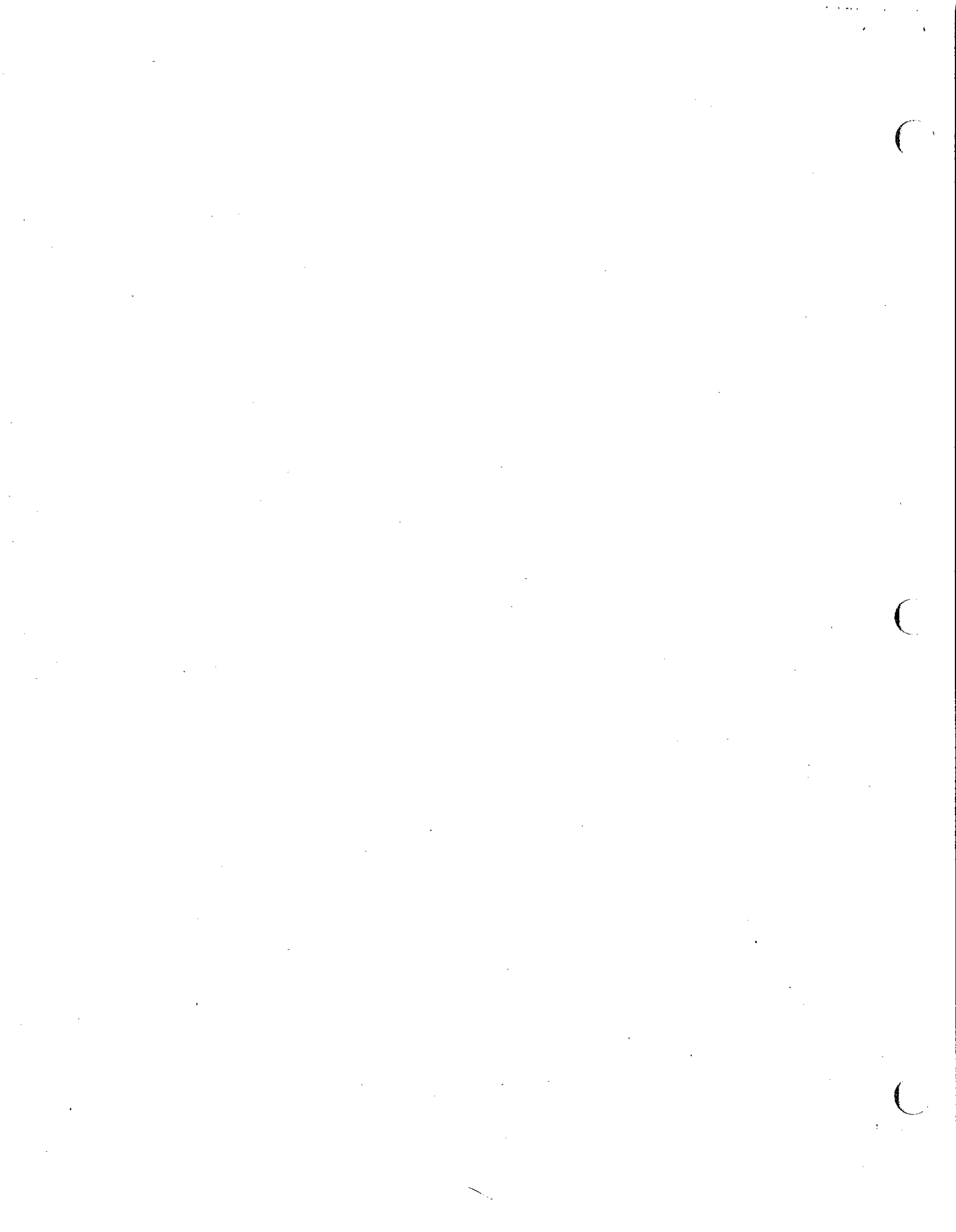
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2. Sale. Proceeds from sale are retained in a suspense account for a period of 3 years from the date title vests in the United States in order that a former owner, upon filing a proper claim, may claim this amount, less the actual costs for the care and handling. Costs incurred by the Bureau as a consequence of the trespass and trespass liability penalties may be offset by the sale proceeds if the owner agrees in writing.

3. Official Use. Useable personal and real property may be added to the Bureau's inventory. For example a cabin or structure with historic significance may merit retention for interpretative value. Evaluate all items recovered through trespass abatement actions for potential utility.

G. Destruction and Removal.

Obtain written approval from the AO prior to destruction, removal, or sale of unclaimed, or relinquished real or personal property to verify that proper procedures have been followed. Document the case file accordingly.



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Chapter VII. Settlement of Realty Trespass Liability.

The Federal Land Policy and Management Act (FLPMA) at section 102(a)(9) states the policy that ". . . the United States receive fair market value of the use of the public lands and their resources" The FLPMA's implementing regulations at Title 43 CFR 2920, 2800, 2810 and 2880 (i.e., realty trespass regulations) establish liability for use of public lands without appropriate authorization. Thus, a realty trespass establishes a liability claim by the United States against a trespasser under FLPMA and the Bureau's realty trespass regulations for money owed the United States as a consequence of the trespass. Liability claims by the United States for money that has been determined to be owed to the United States from any person, organization, or entity are governed by the Federal Claims Collection Act of 1966, as amended and supplemented. The Federal Claims Collection Standards (Standards) of the General Accounting Office and of the Department of Justice (DOJ) [Title 4 CFR, Chapter II (January 1, 1986 ed.)], which implement the Federal Claims Collection Act, provide the Bureau authority for initiation of collection action against a trespasser for a claim arising as a consequence of the trespass. Bureau debt collection procedures implement the Standards.

NOTE: The Bureau will not accept property or performance of services in lieu of full cash settlement of trespass liability.

A. Trespass Liability.

Trespass liability includes land rent liability, all costs of trespass resolution, (i.e., administrative costs), restitution for damage to the land or resource(s) and rehabilitation/stabilization costs. This Chapter provides information on calculating trespasser liability. It also provides guidance on alternative methods of determining land rent liability (calculated on the basis of fair market rental value), negotiations, trespass penalties, bonding, rehabilitation/stabilization, general billing procedures, and referral to the Service Center (SC) for collection action.

1. Satisfactory Settlement. Settlement of trespass liability is met when the appropriate following steps are accomplished.

a. Payment of all monetary liabilities is made or a promissory note for payment is executed and approved.

b. Rehabilitation/stabilization is successfully accomplished by the trespasser or payment or performance bond received to cover Bureau costs for rehabilitation/stabilization.

c. Buildings, structures, personal property, etc., are removed voluntarily or by the Bureau under impoundment and disposal proceedings (see Chapter VI. Unauthorized Real and Personal Property) or authorized by permit, lease, right-of-way, etc.

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2. Other Settlement. Trespass liability may also be settled in the following ways:

- a. Liabilities are compromised, the amount paid, and the case closed.
- b. The case is referred to DOJ for resolution.
- c. Court-ordered settlement has resolved trespass liabilities.

B. Authority to Compromise or Write-off Trespass Liability Claims.

State Directors have delegated authority to accept compromise trespass liability settlement offers for claims up to \$20,000, exclusive of interest. Acceptance of compromise settlement offers must be based on concurrence of Field or Regional Solicitors (Illustration 14). State Directors may write off (i.e., suspend collection action) uncollectible trespass liability claims up to \$600 without Solicitor concurrence. Write-offs in the amounts of \$601 up to \$20,000 need the concurrence of Field or Regional Solicitors (Illustration 12). The effect of compromise and write-off is as follows.

NOTE: Write-off amounts and concurrence levels may increase over time. Check with the Service Center, Branch of General Accounting (SC-615), for current write-off and concurrence levels as well as write-off procedures.

1. Compromise. Compromise differs from write-off in that it extinguishes the trespasser's liability for the unpaid portion of the debt. The amount accepted is a compromise between full liability payment to the Bureau and a reduced payment by the trespasser. Accordingly, collection action terminates with the acceptance of the compromise by the Bureau and payment of the reduced amount by the trespasser. However, the difference between full payment and the compromise settlement may be reported by SC-615 as earned income to the Internal Revenue Service (IRS) if the compromise involves extinguishing a legitimate debt. However, if there is real doubt as to the Bureau's ability to prove the full amount of trespass liability due, a compromise offer may be accepted and difference not reported to the IRS (Illustration 15). Trespass liabilities are normally compromised after referral, through SC-615, to a debt collection contractor (Illustration 11) and a subsequent recommendation by SC-615 to the State Director for compromise. When a compromise offer is accepted and paid, the trespass case is closed.

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2. Write-off. Collection activity is not terminated with write-off of a trespasser's liability, nor is the liability for the debt extinguished by a write-off. Writing off a debt is the accounting recognition that a debt is unlikely to be collected. Debts are normally written off only after referral, through SC-615, to a debt collection contractor and a subsequent recommendation to the State Director by the SC-615. When a trespasser's liability has been written off and the public land vacated, the case may be closed even though collection action has been suspended. Notify SC-615 of the write-off (Illustration 12). Monitor the trespass area to prevent reoccurrence of the trespass.

NOTE: When a claim, exclusive of interest, penalties and administrative costs, exceeds \$20,000 the authority to compromise the claim, suspend or terminate collection action rests solely with the DOJ.

C. Standards for Collection, Compromise, and Write-Off of Trespass Liability Claims.

The Standards and their application to trespass claims are interpreted, and instructions issued, by the Washington Office (WO) Division of Finance through SC-615. A brief discussion of the Standards is presented herein for the information of the Handbook user. Specific questions on implementation should be directed to the District or State Office Accounts Clerk or SC-615. The Standards are provided in their entirety in Appendix 1. Sections of the Standards herein summarized are referenced in parentheses. Refer to the specific section in Appendix 1 for the precise regulatory language.

1. Referral of Trespass Liability Claims to Field or Regional Solicitors and the Department of Justice.

a. Any trespass in which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of a trespasser, or any other party having liability in the trespass action, must be referred to the Field or Regional Solicitor for possible litigation (§101.3). They, in turn may refer the case to the DOJ.

b. When a claim against a trespasser, exclusive of interest, penalties and administrative costs, exceeds \$20,000, the decision to accept a compromise offer, suspend or terminate collection action rests solely with the DOJ (§103.1 and §104.1).

c. Any claim over \$600 on which aggressive collection action has been taken by the Bureau and which cannot be compromised or terminated, must be referred promptly to the Field or Regional Solicitor. If referred by the Solicitor to the DOJ, the Bureau must refrain from having any contact with the trespasser. The trespasser should be directed to the appropriate DOJ office (§105.1).

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d. Claims against trespassers of less than \$600, exclusive of interest, penalties and administrative costs, are not referred to the DOJ (through the Field or Regional Solicitor) unless referral is important to a significant enforcement policy or the trespasser clearly has the ability to pay the claim (§105.4).

2. Administrative Actions to Settle Trespass Liability Claims. The following are actions the Bureau may initiate to resolve liability claims as prescribed by the Standards. Also see Chapter V. Realty Trespass Resolution.

a. The Bureau should attempt to reach a mutually acceptable agreement with a trespasser prior to initiation of formal claim collection procedures. Such agreement should be discussed in personal interviews (§102.7 and §102.12). Document the settlement agreement in the case file (Illustration 13).

b. The Bureau shall add interest and administrative costs of collection to claims arising from public land trespass. Before assessing these charges (costs), the Bureau must send by certified mail, return receipt requested, or hand-deliver with service, a written notice to the trespasser explaining the charges and requirements for payment. (See Illustrations 4, 5, 8, 9 and 10). Such notice must be dated and mailed, return receipt requested, or hand-delivered, with service, on the same day, (§102.13).

c. Appropriate written demands for payment (Illustrations 8, 9 and 10) may be made upon a trespasser in terms which inform the trespasser of the consequences of failure to cooperate. Demand letters should be mailed, return receipt requested, or hand-delivered, with service, on the same day that they are actually dated (§102.2). Document personal service in the case file (Illustration 17).

d. The Bureau is required to give serious consideration to suspension or revocation of licenses or other privileges authorized by the Bureau to a trespasser for any inexcusable, prolonged, or repeated failure to pay a claim arising from the trespass (§102.9).

e. Whenever feasible, trespass liability payments should be collected in full, in one lump sum. However, if the trespasser is financially unable to pay the Bureau's claim in one lump sum, payment may be accepted by promissory note (Form 1372-1) or in regular installments, under certain conditions (§102.11).

f. The Bureau has the authority to contract with collection agencies for collection of trespass claims (§102.6).

g. Delinquent trespass claims may be reported to consumer credit agencies (§102.5).

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h. All administrative collection action shall be documented and the basis for compromise or for write-off (i.e., termination or suspension of collection action) explained in detail (Illustrations 12 and 15). Such documentation shall be retained in the trespass case file (§102.17).

3. Compromise of Trespass Liability Claims. The Bureau may consider a compromise of a trespass liability claim under the following criteria of the Standards. (See Illustration 15 for sample write off of trespass liability resulting from a compromise offer.)

a. A trespass claim may be compromised (reduced) if the Bureau cannot collect the full amount because of the trespasser's inability to pay or refusal to pay the claim in full and the Bureau is unable to collect in full within a reasonable time by enforced collection proceedings. Factors that may be considered in determining a trespasser's ability to pay include, but are not limited to, age, health, present and potential income, assets, and inheritance prospects, etc. (§103.2).

b. A trespass claim may be compromised if there is real doubt concerning the Bureau's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. Factors that may be considered include court costs if the Bureau loses the case, availability of witnesses, evidence, and probability of full or partial recovery (§103.3).

c. A trespass claim may be compromised if the cost of collection does not justify the enforced collection of the full amount. The amount accepted may reflect a discount for the probable administrative and litigative costs of collection and time involved in collection. However, the cost of collection does not necessarily mean that a claim should be compromised. Enforced collection may demonstrate to other trespassers that resistance to payment is not likely to succeed (§103.4).

d. Land rent liability, rehabilitation/stabilization and administrative costs incurred by the Bureau may be compromised if the Bureau's policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of a compromise offer. Accidental or technical trespass may be dealt with less severely than willful and substantial trespass (§103.5).

e. When two or more trespassers are jointly and severally liable to the Bureau for costs arising from the same trespass, collection action will not be withheld against one until the other(s) pay their proportionate share. Care should be taken that a compromise agreement does not release the Bureau's claim against the remaining parties (§103.6).

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f. If the Bureau has a firm written offer of compromise, which is substantial in amount, and the Bureau is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim through the Field or Regional Solicitor to the DOJ. The DOJ may act upon the offer or return it to the Bureau with instructions or advice (§103.8).

4. Suspension or Termination of Trespass Liability Claims. The Bureau may suspend or terminate collection activity on a trespass liability claim under various criteria of Part 104 of the Standards. Suspension is a temporary measure, whereas termination permits the Bureau to close the trespass case. Criteria in the Standards for both suspension and termination are very similar. The following generally relate to both suspension or termination of claims under the Standards. Specific criteria for each may be determined by referring to Part 104 in Appendix 1.

a. The Bureau cannot collect a significant sum from the trespasser because of age, lack of assets, etc. [§104.3(a)].

b. The Bureau has identified, but is unable to locate the trespasser. Suggested sources of assistance in locating trespassers include telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the IRS, employers, relatives, credit agency skip locate reports, and credit bureaus [§104.2(a) and §104.3(b)]. Bureau law enforcement personnel may be helpful in locating trespassers.

c. Collection action should be terminated on a trespass liability claim when it is likely that the cost of further collection action will exceed the amount recoverable [§104.3(c)].

NOTE: The Bureau's realty trespass regulations provide for recovery of administrative costs, including cost of collection. Therefore, the cost of collection should not exceed the amount recovered; however, there will be situations where the trespasser may not have sufficient assets to cover his trespass liability (i.e., land rent, administrative costs, restoration/rehabilitation costs, etc.). In these situations, the Bureau may terminate collection actions since the cost of recovery would exceed the amount that can be recovered. The rationale for termination should be well documented as a reasoned judgment on the part of the Bureau.

d. Collection action on a trespass liability claim should be terminated immediately whenever it is determined that the claim is legally without merit [§104.3(d)].

e. Collection action should be terminated when it is determined that the evidence necessary to prove the trespass cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary liability payment are unsuccessful [§104.3(e)].

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D. Negotiation of Realty Trespass Liability Claims.

When the trespass investigation and documentation are complete and before a notice of trespass letter or a trespass decision and bill for trespass liability is sent, a meeting with the trespasser is recommended. The meeting time and place may be established by an informal letter (Illustration 1), telephone, or direct contact. The purpose of the meeting is to inform the trespasser of the Bureau's information concerning the trespass activity (i.e., suspected trespass), regulatory provisions for trespass resolution, and trespass liability claim collection procedures. The meeting should also be directed toward gathering new information from the trespasser and refining existing Bureau information. Factual, proven data are not subject to negotiation, but many items such as acreage, year-to-year use, type and value of improvements, crops, production units, prices received, etc., can vary and the trespasser should be given the opportunity to present information on his behalf prior to any demands for settlement. The tone of the meeting should be cordial, while attempting to effect an informal administrative resolution of the trespass. In the meeting (negotiations) avoid threats, but explain the following to the trespasser.

1. Administrative Costs. Liability for costs incurred by the Bureau as a consequence of the trespass and how these costs can increase if settlement is delayed.

2. Land Rent Liability. Liability for the current and past years of trespass (based on the fair market value rental of the land) and the regulatory provision for trespass penalties if the trespass is not resolved in a timely manner. Land rent liability may be doubled for nonwillful or tripled for repeated or knowing and willful trespass, as a penalty, where warranted (See Section I. Trespass Penalties).

3. Resolution Options. The options available to the Bureau for trespass resolution action if informal procedures break down, i.e., formal administrative action, civil court action, and criminal prosecution for willful trespass. (See Chapter V. Realty Trespass Resolution.)

4. Referral. The Bureau's formal administrative resolution process (i.e., debt collection procedures) including billing, demand letters, and referral of delinquent accounts to debt collection contractors, the IRS, and consumer credit agencies.

5. Administrative Offset. The Bureau may collect the trespass liability by administrative offset against IRS tax refunds or farm subsidy payments of the ASCS. (See Section L. 5. Collection by Administrative Offset.)

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6. Reports to IRS. Debts owed to the United States (i.e., trespass liability) and not paid, are income to the debtor (i.e., trespasser) and may be reported as income earned to the IRS. Also explain that the difference between an accepted compromise and the Bureau's bill for payment in full may also be reported to the IRS as earned income. Trespass liability may also be reported to IRS as addition to income.

7. Doing Business with Trespassers. The Standards suggest that the Bureau consider cancellation of any use authorization held by the trespasser if trespass liability is not paid and that, under the Bureau's realty trespass regulations, a land use authorization may be denied or canceled and sale or exchange of lands denied if the trespass is not resolved.

8. Fines and/or Imprisonment. The Bureau has the authority to bring the trespasser before a U.S. magistrate (for a trespass knowingly and willfully committed) and the magistrate may impose a fine (in addition to trespass liability) of up to \$1,000 and imprisonment of not more than 12 months, or both.

NOTE: If the meeting(s) result in mutual agreement on trespass resolution, complete a Trespass Settlement Agreement (Illustration 13).

E. Administrative Cost - Liability and Calculation.

The trespasser's liability is for the actual costs incurred by the Bureau (United States) in resolving the trespass (i.e., salary and benefits, travel, materials, equipment and facilities, and utility costs). These costs begin with the confirmation of trespass and are categorized according to labor costs, operation costs, and indirect administrative costs. The definitions of each and the calculations for determining the total administrative costs are provided in Chapter II of the Annual Work Plan (AWP) Handbook (H-1681-1). Administrative costs assessed to individual trespassers may be subject to various levels of administrative and judicial review; therefore, it is extremely important that all costs and collections are properly deposited and documented. Form 1323-1 (Reimbursable Project Log) must be used to track these costs. Administrative costs and the log cover the period from case file establishment to the point the Bureau no longer controls the resolution action. Administrative costs are calculated according to the following formula:

| | | | | | | |
|-------------|------|-----------------|------|----------|---|----------------|
| Total | | Total | | Indirect | | Total |
| | Plus | | Plus | | = | Administrative |
| Labor Costs | | Operation Costs | | Cost | | Cost |

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1. Labor Costs. When determining Bureau labor costs to resolve a realty trespass calculate the full cost of personnel salaries and benefits, including the cost of leave. Leave costs are a legitimate Bureau incurred labor cost. Although there are three common methods available to calculate full labor costs in the AWP Handbook (H-1681-1, Chapter II), the hourly rate method will be sufficient to calculate liability for most realty trespasses. Hourly rate is calculated as follows: From the GS/WG salary schedules, use the hourly rate for the proper grade level and step of the employee(s) who work on the trespass. Then determine the number of hours spent in performing the work. Remember, this is direct time and must be adjusted to account for leave surcharge because leave has not been included in the hourly calculations. This method also requires an adjustment to add employee benefits. The formula for total labor costs using this method is:

| Hourly Rate | x | Benefit Adjustment | x | Hours | x | Leave Surcharge Adjustment | = | Total Labor |
|-----------------|---|-----------------------|---|-------|---|-------------------------------|---|----------------|
| <u>Example:</u> | | | | | | | | |
| \$14.76 | x | 1.20* | x | 200 | x | 1.18* | = | \$4,180 |

*Current rates are provided by the WO, Division of Budget.

2. Operation Costs. In addition to full labor costs, operation costs incurred as a consequence of the trespass must be calculated. All direct costs such as travel, appraisals, transportation, and contracts must be included. Equipment purchase costs should not be included in the calculation unless the equipment purchase is necessary to resolve the specific trespass case.

3. Indirect Administrative Costs. After the labor costs and direct operation costs have been calculated, add the Bureauwide indirect cost rate. This rate covers the Bureau's cost of providing administrative support services (including those which cannot be identified as a direct cost) incurred as a consequence of the trespass. This rate is calculated and provided to Field Offices each year by the Bureau's WO Division of Finance. As with leave costs, these are legitimate administrative costs attributable to each trespass resolution action. The total administrative cost is arrived at by multiplying the sum of the total labor costs and operation costs by one plus the indirect cost rate.

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4. Administrative Cost Documentation. The Interior Board of Land Appeals (IBLA) has upheld the Bureau's recovery of administrative costs for trespass settlement in Henry Deaton, 101 IBLA 177, February 17, 1988. However, in this decision the IBLA closely examined the fairness of the administrative costs claimed by the Bureau. Therefore, it is very important that a record of administrative costs (e.g., Form 1323-1, Reimbursable Project Log) specific to each trespass be maintained. This record will also be valuable in the future for the development of administrative cost recovery schedules specific to realty trespass abatement.

F. Deposit and Use of Administrative Costs.

Administrative costs received in trespass liability settlements are deposited to account 14X5017, Service Charges, Deposits, and Forfeitures within subactivity 5310 (O&C Lands) or 5320 (PD Lands). These collections are available to the Bureau to offset the administrative costs of trespass resolution consistent with their availability in the Financial Management System (FMS). The ongoing costs of trespass resolution, however, are appropriately charged to the subactivity program area in which the trespass occurs as recorded in the Reimbursable Project Log (Form 1323-1). Amounts collected for administrative costs should relate directly to the cost of resolving a specific trespass.

G. Recovery of Land Rent Liability.

The United States is entitled to recover land rent for the current and all past years, and portions thereof, for which the unauthorized activities can be substantiated. There are several methods that may be used to determine land rent liability for realty trespass. Whatever method is used, the values should reflect the value in the local market for similar lands for the same or similar purposes as the trespassed public lands. In each case, exercise judgment in the method used for determining the amount of land rent due. Land rent liability may be determined or calculated on the basis of the following:

1. Rent or Fee Schedules. Schedules that reduce the Bureau administrative cost of land rent liability determination may be developed. For example, if the schedule(s) will give a reasonable estimate of market rent in the area and a more precise determination would require unreasonable amounts of time and money that would be passed on to the trespasser as administrative costs, fee schedules are acceptable, unless the trespasser objects.

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2. Appraisal. The standard method of determining fair market rental value for Bureau purposes is through an appraisal. Appraisals are conducted in accordance with the BLM Manual 9310 - Real Property Appraisal. The value of improvements to, or on, the public lands is not included in the appraisal of market rent unless the improvements are owned by the United States and their value/use is a legitimate appraisal consideration. It should not be assumed that appraisals are always required to determine land rent liability. In fact, appraisals should only be considered if no other value determination method is satisfactory for the specific situation or if the trespasser insists on an appraisal. THE COST OF APPRAISAL IS AN ADMINISTRATIVE COST THAT IS PASSED ON TO THE TRESPASSER. The potential of this added cost should be explained to the trespasser at the negotiation stage. Appraisals should be requested if there is a strong likelihood for litigation.

3. Agricultural Cropshare. Rental liability for unauthorized agricultural development may be based upon a share of income realized from crop production. The landlord's share is normally one-third of the NET income. However, since the rent is based on unauthorized cropping, in which the United States is an unwilling landlord, the trespasser shall not be given credit for expenses relating to crop production (i.e., seed, fertilizer, land improvement, etc.). Therefore, the landlord's share due the United States shall normally be one-third of the GROSS value of crops produced. Also, land rent liability should reflect the average gross value of crops produced in the area, over the years of trespass, without reduction for years of crop failure or poor farm management. If reliable information on actual yields is unavailable, crop yield and crop value may be determined by using county averages contained in annual State agricultural reports as well as information from county extension agents and the Agriculture Stabilization and Conservation Service (ASCS). Application of the cropshare method of determining value may require a local market comparison since cropshare agreements may vary from area to area. Where local market cropshare agreements are different than the one-third landlord's share, rent liability may be calculated on the basis of the local agreements.

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4. Agricultural Land Rent. Farmers Home Administration (FHA) and private banks are a good source for farm rental information. However, much of their information is confidential and should be used only to support information that is verifiable and available to anyone involved. For dryland farming, the particular State agency administering State land leases may be the best source for lease/rent comparison. State lands normally are the most similar to public lands in terms of improvements, tax status, legal liability, and public use. In some States, counties have developed a system for classifying and rating farm lands according to their agricultural productivity potential and value in relation to crops produced. Where this or similar systems occur, the land rent liability may reflect the county method of determining fair market rental value. Under this method the land is rated for its highest agricultural productivity potential (e.g., grain, alfalfa, row crops). A per-acre value is then put on the land based on that potential. This rate is charged no matter what crop is raised and simplifies the establishment of fair market rental values for multi-year trespass situations where crop rotation may occur. A simple method of determining a rental value uses crop acres times yield times crop price times rate of return. The return rate used is the Current Value of Funds Rate (CVFR) which is the 5-year rate used in calculating interest charges for outstanding debts or claims owed the U.S. Government. This rate is published in the Federal Register before October 31 each year and is used for the subsequent calendar year.

Example: Alfalfa Hay, 1988 CVFR.

$3 \text{ (acres)} \times 5 \text{ (tons/ac)} \times \$55 \text{ (price/ton)} \times 0.085 \text{ (CVFR)} = \70

This gives total rental, not per acre value.

5. Rights-of-Way Rent. Fair market value rental penalties for unauthorized linear rights-of-way are computed in accordance with the schedule in Title 43 CFR Part 2803.1-2, unless the exception applies. Fair market rental values for unauthorized site rights-of-way (e.g., communication sites) are determined through standard appraisal procedures.

6. Occupancy Rent. Residential, commercial, and/or industrial trespass rental liability may be determined by appraisal, established fee schedules, or rental rates common in the area.

NOTE: The cost of making an appraisal is an administrative cost charged to the trespasser.

7. Road Use-Maintenance Fees. When Bureau roads are used for commercial purposes (e.g., log hauling, leasable mineral development, etc.) under a Road Use-Maintenance Agreement, the agreements normally allow for nonexclusive use and include a fee, or a service, to provide for road improvement and/or maintenance. For violations (i.e., trespass) when this type agreement is involved, rental liability should be commensurate with the fee schedules common to the appropriate use plus any other costs deemed appropriate.

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H. Deposit of Rental Liability Collections and Trespass Penalties.

Realty trespass rental liability funds and trespass penalties are deposited to account 141099, Fines, Penalties, and Forfeitures. THESE FUNDS ARE NOT AVAILABLE TO THE BUREAU.

I. Trespass Penalties.

When a trespass is willful, repeated or not resolved in a timely manner, a trespass penalty may be assessed in addition to the trespassers land rent liability. If the trespass is nonwillful, a penalty equal to the fair market rental rate may be added making the total amount twice the land rent liability. If the trespass is knowing and willful, a penalty equal to twice the rental liability may be added making the total amount three times the land rent liability.

NOTE: THE REALTY TRESPASS REGULATIONS AT TITLE 43 CFR PART 2920 LIMIT THE TIME A TRESPASS PENALTY MAY BE ADDED TO 6 YEARS. There are no time limitations in the other realty trespass regulations and trespass penalties under these regulations should be assessed for the entire period that the trespass can be substantiated.

J. Rehabilitation/Stabilization of Trespass Lands.

Rehabilitation/stabilization liability includes all costs associated with restoring the trespass lands to their previous condition (i.e., landform and vegetative cover) or stabilizing the land to allow natural recovery to occur. Rehabilitation/stabilization liability also includes all costs associated with planning for and monitoring restoration/stabilization results.

1. Rehabilitation/Stabilization Plan. A rehabilitation/stabilization plan should be prepared for each site where rehabilitation/stabilization at the expense of the trespasser is appropriate. The plan should provide for monitoring and accounting of monies provided by the trespasser for rehabilitation/stabilization. The plan may cover nothing more than removal of litter using one individual and vehicle. It may, however, be a major document requiring extensive environmental considerations (EA/EIS), especially if hazardous materials or waste is involved. The timeframe covered by the plan is important. Long-term monitoring may be required where revegetation, stabilization, and long-term health hazards are involved. The plan should define satisfactory rehabilitation/stabilization in terms of when a trespasser may be released from rehabilitation/stabilization liability.

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2. Substance Removal. When realty trespass involves dumping of residential, commercial, or industrial waste, violation of local, county, or State laws or ordinances may also have occurred (see Chapter VI. B. Personal Property and Chapter VIII. A. 8. State and Local Law Enforcement Officials). Requiring the removal of the dumped materials may be sufficient. In some cases, however, toxic, flammable, or other health or safety endangering materials may be present which require extensive cleanup and sanitizing measures. There may be a need to keep the public away from the contaminated area, as well as surrounding areas. Long-term monitoring of the site and off site areas may be necessary. When land has been rendered useless or cannot be rehabilitated, the penalty (requested in a legal action) should be no less than the fair market value of the land for the time period over which the unauthorized activity can be substantiated as well as the time in the future that the land is rendered useless. Where criminal intent can be established, a fine and/or imprisonment under Title 43 CFR Subpart 9262 may also be appropriate. Refer hazardous waste trespass matters to the Hazardous Waste Coordinator and Bureau law enforcement personnel.

3. Rehabilitation/Stabilization by the Trespasser. The trespasser may perform the rehabilitation/stabilization requirements instead of paying such costs if it is determined by the Authorized Officer (AO) to be to the advantage of the U.S. Government. Consideration by the AO will include the difficulty and extent of rehabilitation needs, financial and technical capability of the trespasser to accomplish the job, equipment and manpower availability, and overall reliability of the trespasser. These considerations should be measured against the Bureau's ability to accomplish the same job within personnel, time, and budget constraints. A performance bond for the amount of the rehabilitation/stabilization cost estimate is required if the AO determines the trespasser may do the work (see the discussion of performance bonds at Items 5. Surety Bonds, and 6. Personal Bonds, of this Section). The mere act of initially performing rehabilitation/stabilization work (e.g., seeding or planting) does not necessarily fulfill the trespasser's rehabilitation/stabilization liability. Several treatments may be required before success is achieved and an acceptable vegetative stand is established. The case file is not closed nor is the trespasser relieved of rehabilitation/stabilization liability until successful rehabilitation/stabilization has been achieved.

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4. Rehabilitation/Stabilization by the Bureau. The trespasser may, at the option of the AO, provide the Bureau with the funds necessary for rehabilitation/stabilization of the public lands damaged as a consequence of the trespass. The decision to accept rehabilitation/stabilization funds, and thereby, the responsibility for successful rehabilitation/stabilization, must be carefully weighed. The disadvantage of this option is that the Bureau absolves the trespasser of liability for rehabilitation/stabilization of the damaged lands. Advantages may include cost effectiveness or savings which may be utilized on other public lands or the Bureau may have expertise in rehabilitation (i.e., archaeological, cultural, endangered species, etc.) that are required for successful rehabilitation/stabilization (see Section K. Deposit and Use of Rehabilitation/Stablization Funds).

5. Surety Bonds. A surety bond consists of a promise to the United States by the holder (trespasser) and a guarantee by the surety corporation that the surety will correct any failure by the holder to meet his obligations (i.e., under a rehabilitation/stabilization plan) or pay the United States the amount of the bond. For all Federal bonds, the surety corporation must be approved by the Department of the Treasury as an acceptable surety. The acceptance of the surety bond by the AO on behalf of the United States completes the cycle. The bond is a three-way contract between the holder, the surety, and the United States that can be enforced should the holder fail to complete the rehabilitation/stabilization, or provide rehabilitation/ stabilization funds to the Bureau, as required. The money paid by the holder to obtain the surety's entry into the arrangement is normally called the premium and is solely a matter between the holder and the surety.

6. Personal Bonds. With a personal bond, the holder (trespasser) may furnish cash to the United States to ensure adherence to rehabilitation/ stabilization requirements. A personal bond can also be a deposit of a treasury bond or note (book entry deposit). This latter form of personal bond allows the holder to collect interest on the notes or bonds during the time required to complete obligations to the United States. Personal bond limitations are as follow:

a. The only acceptable forms of security for personal bonds are cash and book entry deposits. Certified or cashier's checks, negotiable bonds, notes issued by the United States, Certificates of Deposit, U.S. Savings Bonds, and notes of bonds issued by State or local governments or private companies are not acceptable forms of security. These instruments cannot be transferred to the Federal Reserve System and therefore would need to be physically stored in a Bureau facility. Fire, theft, and loss all pose unacceptable risks. THEREFORE, THE AO WILL NOT ACCEPT THESE INSTRUMENTS AS PERSONAL BONDS.

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b. Book entry deposits must be accompanied by a Power of Attorney authorizing the Secretary to collect the proceeds in the event the holder fails to adhere to the requirements covered by the bond. Under procedures of the Department of the Treasury, the notes or bonds are in a book entry form on deposit in the Federal Reserve System and no actual handling of the securities by the Bureau is involved. A charge is assessed by the Federal Reserve System for security safekeeping and transfer services. This charge is paid by the holder. Book entry deposits are acceptable as personal bonds.

K. Deposit and Use of Rehabilitation/Stabilization Funds.

Money received by the Bureau for rehabilitation/stabilization of lands damaged as a result of trespass settlement or bond forfeiture are deposited to account 14X5017, Service Charges, Deposits and Forfeitures within the subactivity 5310 (O&C Lands) or 5320 (PD Lands). THE MONIES RECEIVED ARE AVAILABLE FOR IN-STATE REHABILITATION AND STABILIZATION WORK ON THE LANDS DAMAGED BY THE TRESPASS. Reimbursable Projects, upon approval, allow charging costs to subactivity 5320 or 5310 within the approved limits. Cost accounting is accomplished by using individual project codes for specific rehabilitation projects. If there are funds in excess to those needed for repair of the trespass area, these monies may be used to repair or protect other damaged public lands.

L. Liability Collection.

Liability billing procedures are found in Bureau Manual Section 1371, collections in 1372, and delinquent accounts in 1375. The following is provided for the general information of this Handbook user. Refer to the Accounts Clerk and referenced Manuals for specific guidance.

1. Request for Payment. When total trespass liability (administrative costs, land rent, restitution for land or resources used or damaged, rehabilitation/stabilization costs) has been determined and informal administrative resolution is unsuccessful, a trespass decision (Illustration 4 or 5) and request for payment is made (Form 1371-22). (See Chapter V, Section E. Appeal Procedures). This request should be made only when the AO has completed all negotiations and liability values are firm. Consult with the District or State Office Accounts Clerk for payment procedures.

2. Settlement Offer. After initiation of formal administrative action, the AO can accept offers of settlement for full liability only. If the trespasser offers to pay the full amount of liability, acceptance is by the AO. All payments should be held until cleared (if by check) before closing the case file. If there are unmet liabilities and a third demand letter (Illustration 16) is ignored, the claim is referred to SC-615, through the State Director, for collection action (Illustration 11).

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3. Promissory Notes. In cases where the trespasser is willing to meet full liability, but is not able to pay the obligation in full, a promissory note, not to exceed 3 years, may be executed (Form 1372-1). The note may provide for a single payment or payment in installments. When payment schedules are not met, reissue the third demand letter. If the debt remains unpaid, send a case file summary (Illustration 11) to SC-615 for action (i.e., referral to a collection agency, the Denver Regional Solicitor, and/or the IRS).

4. Delinquent Accounts. Prior to referring delinquent trespass claims to SC-615 the following sequence of events must be accomplished by the Accounts Clerk in the originating office:

a. Demand Letters.

(1) Issue the first Demand Letter 31 days from the receipt (service of the Trespass Decision) of the original bill (Illustration 8).

(2) If payment has not been received within 15 days of the issuance of Demand Letter No. 1, issue the second Demand Letter (Illustration 9).

(3) If payment has not been received within 15 days of the issuance of Demand Letter No. 2, then issue a final Demand Letter (Illustration 10). This final demand letter is signed by the State Director or delegated official.

b. Referral for Collection. If debt is still outstanding after the third demand letter (91 days from the receipt (service of the Trespass Decision) of the original bill), the delinquent account file is forwarded to SC-615 (Illustration 11 or 12) for appropriate collection action (i.e., possible referral to a Debt Collection Contractor, the Denver Regional Solicitor for litigation, or the IRS).

5. Collection by Administrative Offset. Collection of trespass liability claims by administrative offset may be accomplished under regulations of the IRS and the ASCS. Recovery under the IRS regulations is offset against income tax refunds. Under the ASCS regulations, offset is against agricultural payment programs such as the Conservation Reserve Program. Collection by administrative offset is handled by the Service Center Debt Collection Coordinator (SC-615). Action to collect trespass liability by administrative offset is initiated by State Directors through the Service Center. The essential requirements to be met in administrative offset are:

a. A statement that the Bureau has, before requesting offset, first attempted to collect trespass liability and that all collection resources available to it have been exhausted.

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b. The specific debtors' names, address, and the county in which the offset should be taken (ASCS offset), a brief statement as to the basis for the debt, and the appropriate claim number used to identify the debt.

c. The amount of the debt set forth separately as to principal and interest. Interest, if any, shall be computed to a date shown on the offset request. If interest continues to accrue after this date, the annual rate of interest and the amount of interest accruing on a daily basis shall be provided.

d. Certification that the debtor owes the debt and that the Bureau has complied with the administrative offset requirements of the Debt Collection Act (31 U.S.C. 3716) and the Federal Claims Collection Standards (4 CFR Part 102).

e. Whether or not the debtors, for whom offset is requested, have filed for bankruptcy. If so, the Bureau MUST enclose with its offset request a copy of the bankruptcy court order relieving the Bureau from the automatic stay provisions of the bankruptcy code.

NOTE: The cited statute and regulations require that an Agency, before collection by offset, provide a debtor with a written notice that provides: The nature and amount of the debt and the Agency's intention to collect by offset; an opportunity to inspect and copy Agency records pertaining to the debt; an opportunity to obtain review within the Agency of the determination of indebtedness; and an opportunity to enter into a written agreement with the Agency to repay the debt.

6. Compromise Offers and Liability Write-Off. Any offer less than the amount identified in the demand letter is a compromise offer and must be settled under procedures established by SC-615. Under these procedures State Directors at certain authorized levels may either accept compromise offers or write off liabilities (Illustrations 12 and 15). The District Accounts Clerk and/or SC-615 must be consulted for established settlement procedures. Also see Section B, Item 1. Compromise, and 2. Write-off.

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Chapter VIII - Assistance in Realty Trespass Abatement and Coordination of Abatement Actions.

Bureau realty personnel and Authorized Officers (AO) have access to various Bureau specialists and legal and law enforcement personnel who can provide direct assistance in trespass abatement. Additionally, some public and private entities may provide indirect assistance in deterring, preventing, and resolving realty trespass and trespass liability. Coordination with, and utilization of, these various resources will enable the Bureau to establish an effective realty trespass abatement program. This chapter provides information on assistance that may be available in realty trespass abatement and coordination of realty trespass abatement efforts.

NOTE: In most cases State Directors or the Service Center have established formal contact procedures with many of the individuals and entities discussed herein. These procedures should be adhered to at all times.

A. Legal and Law Enforcement Assistance.

1. Special Agent-in-Charge and Special Agents. The Special Agent-in-Charge (SAC), located at the State Office, is responsible for the overall law enforcement program within that respective State. Depending on the program size, the law enforcement staff may consist of additional Special Agents and District and Area Rangers. One of the major responsibilities of Special Agents is to investigate known or suspected violations of law that pertain to the management, occupancy, development, and use of the public lands and protection of natural resources. In order to accomplish this the SAC and Special Agents are authorized by law to exercise "police powers." This means they have the authority to carry firearms and have the powers of arrest, search, and seizure. Bureau Special Agents can participate in trespass abatement actions in various ways, including those listed below:

a. Review realty trespass situations prior to formal trespass notice to determine the following:

- If sufficient evidence exists.
- If criminal action is warranted.

b. Conduct investigations relative to trespass.

c. Assist District and Area personnel with trespass investigations.

d. Offer advice and support concerning the following:

- Trespass investigations.
- Collection and protection of evidence.
- Willful or innocent intent of trespass (i.e., criminal or civil).
- Options to pursue in trespass resolution.

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2. Law Enforcement Rangers. The Bureau Law Enforcement Rangers are the uniformed division of the Bureau's law enforcement program. They have identical law enforcement authority as the Special Agents and can perform the same actions as those listed above. However, they are utilized differently than Special Agents to assist in accomplishing the overall objective of the Bureau's law enforcement and resource protection program. By design, these uniformed Rangers provide high visibility on the public lands through constant patrol in marked vehicles. Their overall purpose is to protect the public lands and natural resources through deterrence. Rangers can assist in realty trespass abatement actions in the following manner:

a. Provide personal service of letters, notices of trespass, trespass decisions, etc.

b. Provide security for District and Area personnel during trespass investigation or contact with trespassers.

3. Field or Regional Solicitor. The Field or Regional Solicitor's Office may provide assistance in realty trespass abatement in the following ways:

a. Concur in State Director decisions to compromise or write off trespass liability claims (Illustrations 12 and 15).

b. Review information relating to a realty trespass case and advise on the legal sufficiency of the Bureau's case.

c. Represent the Bureau before the Interior Board of Land Appeals (IBLA) and Hearing Examiners of the Office of Hearings and Appeals.

d. Provide advice on appropriate action by the Bureau when appeal of a trespass action is before the IBLA.

e. Advise on injunctive action to restrain a trespasser or prevent expected trespass.

f. Serve as primary contact with the U.S. Attorney on civil trespass cases of the Bureau. Assists the U.S. Attorney if a Bureau trespass case goes to court.

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4. U.S. Attorney/Assistant U.S. Attorney. The U.S. Attorney's Office, Department of Justice, must be associated with any action, criminal or civil, involving the Federal court system. The U.S. Attorney prosecutes criminal violations for the U.S. Government. Civil actions initiated by the Bureau, through the Solicitor, are prosecuted in Federal court by the U.S. Attorney. The Office of the U.S. Attorney may also defend the United States or its employees from civil or criminal complaints filed by other parties. The U.S. Attorney also has the responsibility to review for legal sufficiency any criminal investigations conducted by other Federal agencies; represent the Bureau in civil and criminal matters in U.S. district court, determine the type of case (civil or criminal) the Government will initiate and makes the decision as to whether or not a trespasser will be prosecuted by the United States.

5. U.S. Magistrate. The U.S. magistrate is a Federal judicial officer. In the Federal court system, magistrates may conduct many of the preliminary or pretrial proceedings in both civil and criminal cases. Magistrates will try most criminal trespass violations according to regulations promulgated under Section 303(a) of the FLPMA. If arrest, search, or seizure warrants are needed to conduct criminal investigations, they are normally secured through the U.S. magistrate. Bureau Special Agents and Law Enforcement Rangers may appear before U.S. magistrates acting on behalf of the U.S. Attorney.

6. U.S. District Court. Normally, the U.S. district court will try the civil complaints filed with the district court on behalf of, or against, the United States. The U.S. district court judge will also try the more serious criminal violations resulting from criminal investigations conducted by Bureau Special Agents. Upon request of the defendant, misdemeanor violations also can be heard by the U.S. district court judge.

7. U.S. Parole and Probation Officers. These officials may also become involved with realty trespass abatement. If the Bureau initiates criminal action and the defendant is convicted, normally a pre-sentence investigation will be conducted by the parole and probation officer. During the course of that investigation, key BLM personnel may be contacted concerning the trespass or other violation. Their input may become part of the presentence investigation which is the basis for recommending an appropriate sentence to the court.

8. State and Local Law Enforcement Officials. Various State and local law enforcement officials may become involved in trespass abatement actions. It is appropriate to involve those officials as cooperative or participating parties in resolving trespass that violates State or local law or permitting or authorizing authority. These same officials can be valuable sources of information in investigations of trespass cases and also can be utilized as witnesses where appropriate.

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B. Indirect Trespass Abatement Assistance.

The Bureau has assistance available which, while not directly related to realty trespass on the public lands, can aid in the prevention and deterrence of trespass and the settlement of trespass liability claims. This assistance derives from the Federal Debt Collection Act and implementing Standards (see Appendix 1). Any trespass liability claim that is not properly resolved may be referred to tax, credit, or collection entities under the Standards and the Bureau's debt collection procedures. The potential of such referral should help prevent new trespass, deter existing trespass, and expedite resolution of trespass liability claims. The possibility of such referral should be well publicized in the local area of trespass occurrence and explained to trespassers in the early stages of trespass resolution negotiations. The referral entities and actions on unpaid trespass liability claims are discussed below:

1. Internal Revenue Service (IRS). Any unpaid trespass liability claim of the Bureau may be reported to the IRS as possible additions to the trespasser's income for Federal income tax reporting and payment purposes. Also the difference between the Bureau's trespass liability claim and compromise offer of the trespasser accepted by the Bureau may be reported by the Service Center (SC-615) to the IRS as earned income. Where these monies (additions to income) are not reported by the trespasser to the IRS, the trespasser may be subject to income tax penalties. Further, the Bureau may ask the IRS to recover trespass liability by offset against any income tax refunds due the trespasser. Requests for offset are initiated by the State Director through SC 615. (See Chapter VII. Settlement of Realty Trespass Liability)

2. Agricultural Stabilization and Conservation Service (ASCS). The ASCS may assist the Bureau in the settlement of trespass Liability claims by offset of the amount of the claim against any ASCS program payments being received by the trespasser. The program payments to be offset need not be directly related to the land in trespass. The primary criteria are that the trespasser is receiving ASCS payments and is financially liable to the Bureau for public land trespass. (See Chapter VII. Settlement of Realty Trespass Liability.)

3. Debt Collection Contractors. A trespass liability claim which remains unpaid after three required demand letters is referred to SC-615. The SC may refer this claim to a debt collection contractor who has 6 months to attempt to collect the debt.

4. Consumer Credit Agencies. Any uncollected realty trespass liability claim may be reported to consumer credit agencies. This unpaid liability may adversely affect a trespasser's credit rating.

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C. Coordination of Trespass Abatement Actions.

Whenever civil or criminal action to resolve a trespass is considered, close coordination with the Bureau's law enforcement personnel and legal counsel is mandatory. In criminal cases, the SAC will coordinate actions with the State Director. In civil actions, direct contact with Field and Regional Solicitors may be limited to the State Director and delegated officials. In all instances, the State Director or other authorized official must be informed prior to initiating civil or criminal action on the part of the Bureau. Coordination with minerals personnel is mandatory in the resolution of mining claim occupancy trespass. Collection action on trespass liability claims is initiated by Bureau Accounts Clerks. Other Bureau specialists should be consulted as appropriate to each individual trespass case. Key coordination points are listed below:

1. Accounts Clerk. Close coordination must be maintained with State and District Office Account Clerks for current procedures and guidance on billing and collection of realty trespass claims. The Accounts Clerk initiates trespass claim collection action (billing and demand letters) and may request guidance on specific billing/collection action from the Bureau's Debt Collection Coordinator, Branch of General Accounting, SC-615.

2. Minerals Examiners. Bureau Manual Section 3893 provides guidance on determining when residential occupancy is not a valid mining activity and the occupancy is "not reasonably incident to" mining. Mineral examiners make the "reasonably incident to" determinations. Where residential occupancy is not reasonably incident to mining, the occupancy constitutes trespass. Resolution of mining claim occupancy trespass must be a coordinated effort by Lands and Minerals personnel. The trespass may be resolved under procedures contained in Manual Section 3893 or in this Handbook. The goal should be prompt and efficient resolution of the trespass and restitution to the United States for past use and occupancy.

3. Range, Forestry, and Minerals Specialists. The use, destruction, or disposition of mineral and vegetative materials, including timber, without appropriate authorization, also constitutes trespass. Where unauthorized activities involve such resources, coordinate resolution efforts accordingly. The value and damages for mineral and vegetative materials used, destroyed, or disposed of will be recovered under trespass regulations appropriate to the unauthorized vegetative or mineral use, destruction, or disposal (e.g., timber, minerals, etc).

H-9232-1 - REALTY TRESPASS ABATEMENT

Chapter VIII

4. Cultural and Historic Resource Specialists. If historic, cultural, or archeologic resources are damaged or destroyed as a consequence of a realty trespass, alert the appropriate Bureau Cultural Resource Specialist and/or Bureau law enforcement personnel. Penalties may be assessed under the Archaeological Resources Protection Act of 1979 or Section 106 of the National Historical Preservation Act of 1966.

H-9232-1 - REALTY TRESPASS ABATEMENT

Chapter IX. Planning for Realty Trespass Prevention, Detection, and Resolution.

Realty trespass prevention may be initiated through the Bureau Planning System (BPS), Annual Work Plan (AWP), and State, District, or Area Public Affairs Plans (PAP's). Planned actions for realty trespass detection and resolution are identified through the BPS or in the AWP. Trespass prevention relies on a fully informed public and Bureau personnel to spread the word. Trespass prevention may be facilitated through actions included in PAP's although some preventive measures may be prescribed through the BPS or in the AWP. Detection relies on knowledge of the location and authorized use of public lands and an alert staff to detect unauthorized activities. Resolution of realty trespass may be accomplished through termination of the trespass, authorization of the activity under realty authorization regulations, or arrangements for the trespasser to acquire the public lands on which the trespass has occurred through sale or exchange. Decisions for long-term land use authorizations and public land disposal (i.e., sale or exchange) must be made through the BPS. Such decisions cannot be implemented until after the trespass itself has been resolved. Plans and planned actions that may be taken to prevent, detect, and resolve realty trespass are as follow:

A. Statewide Realty Trespass Prevention, Detection, and Resolution Plans.

In 1987 each State, based on recommendations of the Inspector General, was directed to prepare and implement Statewide plans for realty trespass prevention, detection, and resolution. Data from these plans should be incorporated into AWP's, Resource Management Plans (RMP's), or PAP updates as appropriate. Plan implementation is achieved through the AWP process.

B. Maintenance of Statewide Realty Trespass Prevention, Detection, and Resolution Plans.

Statewide plans for realty trespass prevention, detection, and resolution must be maintained and updated as new realty trespass information becomes available. However, those plans do not replace formal established Bureau planning processes. As data from the Statewide plans are incorporated into the AWP, RMP, or PAP, the Statewide plans may be phased out.

H-9232-1 - REALTY TRESPASS ABATEMENT

Chapter IX

C. Bureau Planning System.

1. Pre-Planning. Realty trespass must always be evaluated to determine whether or not it is a planning issue. This evaluation must take place for all new planning starts or plan amendments.

2. Planning Scope. Districts where realty trespass is not a major problem may only need to evaluate realty trespass as a management concern in the lands planning element of the RMP process. Where realty trespass activities are not under control, it may be an issue and actions may be defined in the RMP to address the trespass problem. Implementation of RMP decisions may require activity plans for realty trespass prevention, detection, and resolution.

D. Planning Considerations. The following are suggested actions for realty trespass prevention, detection, and resolution that should be evaluated as input to the AWP, RMP, or PAP as appropriate.

1. Trespass Prevention. Planned actions to prevent realty trespass may include these steps:

- a. Signing or fencing of public land boundaries.
- b. Brochures to inform the public of prohibitions against realty trespass and requirements for authorized use of the public lands. Distribution may include Bureau Offices, courthouses, post offices, and other appropriate public places.
- c. Establishment and posting of surveillance maps in Bureau offices and establishment of scheduled patrol by Bureau personnel.
- d. Cadastral survey of boundaries of trespass problem areas.
- e. Preparation of topographic maps, aerial photos, or orthophotoquads showing common private/public land boundaries for distribution to adjacent owners.
- f. Media releases to publicize successful trespass resolution efforts.
- g. Dissemination of realty trespass information to the public, District Advisory Boards, users and operators, etc. Provide information on the public costs of trespass, requirements for use authorizations, the Bureau's desire to work with trespassers, etc.

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Chapter IX

h. Inclusion of a summary of realty authorization and mining claim occupancy regulations (trespass and authorized use) with grazing bills, right-of-way grants, land use authorizations, approved plans of operations for mining claims, etc. Make summaries available to the public in District and Area Offices.

2. Trespass Detection.

a. Plan for a systematic inventory to identify realty trespass activities. Utilize orthophotoquads, aerial flights and photography, remote sensing, field investigation, staff knowledge, ASCS data, and other data as available.

b. Concentrate inventory/detection efforts on areas particularly susceptible to trespass, such as private/public land areas with common boundaries, springs and streams, productive soils, developing rural subdivisions, areas of mineral activity, inactive and abandoned buildings, etc.

c. Inventory on a logical geographic or township, range and section basis. Areas with a history of low realty trespass activities may be excluded.

d. Record all areas of suspected trespass on planning map overlays.

3. Trespass Resolution. Trespass may be resolved by terminating the use, settling of trespass liability and legalizing the use under a land use authorization or transferring the land in trespass from public ownership. Termination of the trespass may be accomplished by informal or formal administrative action, by citation under Title 43 CFR 9262, or by civil or criminal action in the courts (see Chapter V. Realty Trespass Resolution). By regulation, a land use authorization or disposal of public lands (i.e., sale or exchange) may not be accomplished until the trespass is resolved. In practice, the trespass liability may be resolved and authorized use or land disposal action processed concurrently. Planned actions for trespass resolution may include:

a. Termination.

(1) When the trespass violates State or local law(s), it may be appropriate to plan for the involvement of State or local law enforcement officials in the termination action.

(2) Plan immediate posting, restoration, and rehabilitation of trespass sites to discourage new or repeat trespass.

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Chapter IX

(3) Plan for the involvement of Bureau law enforcement personnel in trespasses which are, or may be, criminal in nature.

(4) Plan a course of action for termination(s) prior to initiating termination/eviction actions. This may include contacting local news media, Congressional staffs, local government officials, etc.

b. Use Authorizations. Unauthorized use, occupancy, and development may be legalized, following resolution of the trespass, under a land use authorization if the use is consistent with or does not conflict with Bureau plans and management programs. (Also see Section H, Chapter V. Realty Trespass Resolution.) Consistency determinations of use authorizations are made through, and documented in, the RMP or Activity Plans. Trespass liability must be satisfactorily resolved prior to authorizing use. Consideration of use authorizations may include:

(1) Short-term land use authorizations may be granted on an interim basis, following liability payment, to provide the Bureau time to arrive at a decision, through the RMP process, to terminate, authorize, or dispose of the lands in trespass.

(2) In certain situations, residential occupants may be eligible for a nonassignable life time lease under the provisions of Title 43 CFR §2920.1 if the occupant acknowledges in writing that the lands being occupied are owned by the United States and the site is the sole residence of the occupant.

(3) Where the authorized use is short-term and the use is the same or similar to the trespass use, the authorization action will qualify for a categorical exclusion under the National Environmental Policy Act (516 DM 6, Appendix 5).

(4) Where a significant number of post trespass, short-term authorizations are anticipated, the Bureau's intention to consider authorization of the trespass activities should be included in the draft RMP/EIS for public comment. The RMP should stress "consider" and avoid making a commitment to authorize.

(5) Short-term authorizations via Minimum Impact Permits, under Title 43 CFR §2920.2-2, may be used to legalize trespasses in the absence of specific plans, if the legalized activity will not cause appreciable damage or adversely impact the land.

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c. Land Disposal. Decisions on sale or exchange of public lands on which a trespass has been resolved must be made through the Bureau Planning System. If a parcel of land found to be in trespass has not been identified for disposal in the applicable land use plan, then a plan amendment is required in order to proceed with a disposal action. (See Title 43 CFR Subparts 2711 and 2201 as well as appropriate Manual sections for guidance on sales, color-of-title, and exchanges.)

E. Planning for Site Rehabilitation/Stabilization.

Rehabilitation/stabilization of lands following termination of a trespass could involve removal of buildings and structures and in some cases significant earth movement. (Also see Section J, Chapter VII. Settlement of Realty Trespass Liability.) The following should be considered as part of the NEPA process prior to the initiation of rehabilitation/stabilization efforts:

1. Historic Resources. In some instances buildings or structures with potential historic significance may remain after a trespass is resolved. The historic significance of such buildings and structures should be evaluated by appropriate Bureau personnel prior to removal or destruction. (Also see Chapter VI. Unauthorized Real and Personal Property.) Planned actions for protection, rehabilitation/stabilization, and interpretation of historic buildings or structures acquired by the Bureau may be developed in the RMP.

2. Cultural Resources. In some cases rehabilitation/stabilization could adversely affect cultural resources on or adjacent to the trespass site. Cultural clearance by appropriate Bureau specialists is advisable in areas of known cultural resource values.

3. Threatened and Endangered Species. Rehabilitation/stabilization impacts on known habitats of threatened and endangered plant and animal species should be evaluated and rehabilitation/stabilization directed to enhance species recovery whenever possible.

4. Modification of Landforms. Where rehabilitation/stabilization involves removal of artificial landforms (e.g., dikes, earthen dams, etc.), the relocation and distribution of the earth must be properly "engineered" to avoid adverse physical and environmental effects at the new location and on plant and animal species (e.g., plugged water channels, erosion, gullies, etc.).

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Chapter IX

F. Plan Maintenance and Utilization.

1. Review. Review planned trespass prevention, detection, and resolution actions at least annually to assure that current Bureau policy, procedures, and realty trespass abatement directives are being followed.

2. Coordination.

a. Coordinate plans on a Statewide basis, by District, and with adjoining States to assure that all Field Offices are working in a coordinated effort to detect, prevent, and resolve realty trespass.

b. Coordinate plan implementation and maintenance efforts with other affected subactivities.

H-9232-1 - REALTY TRESPASS ABATEMENT

Glossary of Terms

-A-

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

administrative costs: all costs incurred by the Bureau as a consequence of a realty trespass. Administrative costs include labor, operation, and indirect administrative costs.

administrative resolution: the resolution of a realty trespass utilizing informal or formal administrative procedures available to the Bureau without resorting to civil or criminal resolution procedures.

-C-

civil resolution: resolution of a trespass in the civil court. Civil resolution is initiated when administrative resolution efforts are unsuccessful.

civil trespass: any realty trespass where knowing and willful trespass cannot be substantiated. Civil trespass may be resolved administratively on an informal or formal basis; or, by civil court action.

criminal penalty: a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, that may be imposed upon persons convicted of knowing and willful trespass. A trespass penalty may also be applied.

criminal resolution: prosecution in criminal court. Criminal prosecution is initiated where the nature or severity of the trespass warrants criminal action. Successful criminal prosecution may result in a fine up to \$1,000 and imprisonment up to one year, or both.

-D-

damages: includes trespass liability, trespass penalties and any court ordered monetary award to punish or deter future trespass--a legal term.

-F-

formal administrative resolution: settlement of trespass and trespass liability under formal administrative procedures available to the Bureau (i.e., termination, debt collection, citation, and other manualized or regulatory processes).

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-I-

informal administrative resolution: settlement of trespass and trespass liability without resorting to formal procedures available to the Bureau (i.e., formal administrative resolution).

-K-

knowing and willful trespass: violation of the Bureau's realty trespass regulations committed deliberately, not accidentally, repeatedly, or with prior knowledge or intent.

-L-

land rent liability: the fair market rental value of public lands used in trespass (also land rent or rental liability). Land rent is calculated on the basis of the current and past years, or portions thereof, that the public lands were used in trespass.

land use authorization: authorization by lease, permit, easement, or right-of-way grant for non-Bureau use of the public lands as provided in Title 43 CFR Part 2800, 2810, 2880 or 2920.

liability: see trespass liability.

liability compromise: an agreed upon settlement of a trespass liability claim for less than the Bureau's total liability claim against a realty trespasser.

liability write-off: suspension or termination of trespass liability claim collection action, generally in recognition that the collection of the claim is unlikely. Write-off does not extinguish a trespasser's liability.

-N-

nonwillful trespass: unintentional or unknowing violation of the Bureau's realty trespass regulations or violation where knowing and willful intent cannot be substantiated.

-P-

penalty: see trespass penalty and/or criminal penalty.

-R-

realty authorization regulations: the regulations at Title 43 CFR Parts 2800, 2810, 2880, and 2920 under which use, occupancy, or development of the public lands for various specified purposes may be authorized.

H-9232-1 - REALTY TRESPASS ABATEMENT

realty trespass: the use, occupancy or development of the public lands or resources without a valid land use authorization issued under 43 CFR Parts 2800, 2810, 2880, or 2920. Also includes use of additional lands or resources not specifically authorized in a valid land use authorization and unnecessary and undue degradation of lands in a valid land use authorization.

realty trespass abatement: all actions to prevent, detect, and resolve realty trespass on the public lands.

realty trespass activities: use, occupancy, or development of the public lands without authorization and where the use, occupancy, or development could be authorized under the Bureau's realty authorization regulations (also realty trespass).

realty trespass regulations: the Bureau's realty trespass regulations collectively include the regulations at 43 CFR Parts 2800, 2810, 2880, 2920, and subparts 9239 and 9262.

reasoned judgement: a decision, based on documented facts, that would be arrived at by a majority of knowledgeable individuals when presented with the same factual information.

rehabilitation/stabilization costs: all costs of returning lands damaged as a consequence of the trespass to their original productive capability; or, measures designed to halt damage to the land in order to permit natural processes to restore the land to its condition prior to the trespass activity.

-S-

Standards: the Federal Claim Collection Standards (Title 4 CFR, Chapter II) which implement the Federal Claims Collection Act of 1966.

suspected trespass: any realty activity where public land status is reasonably confirmed, the activity requires use authorization, and the use authorization has not been confirmed.

-T-

term or life time lease: authorization via a lease for a fixed time period or the life time of the holder(s).

timely manner: prompt efficient resolution of a trespass without unnecessary delaying actions on the part of the trespasser.

title transfer: change in land status accomplished by sale, exchange, color of title, etc.

H-9232-1 - REALTY TRESPASS ABATEMENT

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 constitutes a written demand. Trespass decisions may be appealed to the Interior Board of Land Appeals. Administrative actions following a trespass decision may include appropriate demand letters and referral to the Bureau's Debt Collection Coordinator.

trespass detection: includes public land inventory utilizing available information, field examination, aerial photography, orthophoto quads, etc., to locate and identify trespass on the public lands.

trespass liability: includes land rent, administrative costs incurred as a consequence of trespass and responsibility for rehabilitation/stabilization of public land altered as a consequence of trespass activities (also liability).

trespass liability claim: a monetary debt (i.e., liability claim) incurred as a consequence of realty trespass on the public lands. Trespass liability claims are collected under the authority of the Federal Claims Collection Act and its implementing Standards.

trespass notice: a notice that the Bureau has initiated trespass proceedings against a trespasser. Trespass notices provide a compliance period and are not appealable to the Interior Board of Land Appeals (see trespass decision).

trespass penalty: two or three times land rent liability (also penalty). Trespass penalties may be imposed for a trespass which is not resolved in a timely manner. For nonwillful trespass the penalty is equal to the land rent liability making the total an amount that is twice the land rent liability. For knowing and willful trespass a penalty equal to two times the land rent liability may be imposed making the total an amount that is three times the land rent liability.

trespass prevention: those actions designed to inform the public of the requirements for legal use, occupancy, or development of the public lands. Trespass prevention seeks to eliminate potential trespass prior to its establishment.

trespass recordation: the documentation of a suspected realty trespass in the Bureau's Automated Land and Minerals Record System.

trespass resolution: includes termination or legalization of the trespass activity and settlement of trespass liability incurred by a trespasser.

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.

H-9232-1 - REALTY TRESPASS ABATEMENT

trespass termination: may include termination of the unauthorized activity or legalizing the activity under an appropriate land use authorization or title transfer.

-U-

unauthorized activities: use, occupancy, or development of the public lands without authorization under the Bureau's realty authorization regulations (also realty trespass).

unauthorized occupancy: those activities which result in full or part time human occupancy of the public lands. Unauthorized occupancy may include occupancy of natural shelters, placement or construction of dwellings, cabins, and other structures or vehicles on the public lands for trade, commercial, manufacture, residential, or recreational purposes (includes mining claim occupancy when the occupancy is not reasonably incident to mining).

unauthorized use: those activities that do not appreciably alter the physical character of the land or resources. Unauthorized use includes: abandonment of property, trash, refuse, litter, and filming where set construction is not involved; harvest of hay and seed (native or introduced); storage of machinery, sand and gravel, farm implements and products, fences, corrals, etc., on the public lands.

unauthorized development: those activities that physically alter the character of the public lands. Unauthorized development includes cultivation, resource development (wells, catchments, dams, etc.,) irrigation, and other land alteration for development purposes.

unnecessary or undue degradation: surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner and takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity.

-W-

written demand: a request in writing for payment and/or rehabilitation/stabilization in the form of a billing delivered by certified mail, return receipt requested, or personally served (also see trespass decision).

C

C

C

H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Letter - Informal Administrative Resolution

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Billings Resource Area
810 E. Main Street
Billings, Montana 59105

In Reply Refer To:
9232 (Case Number)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Lynn Blizzard
P.O. Box 0070
Billings, Montana 59105

Dear Ms. Blizzard:

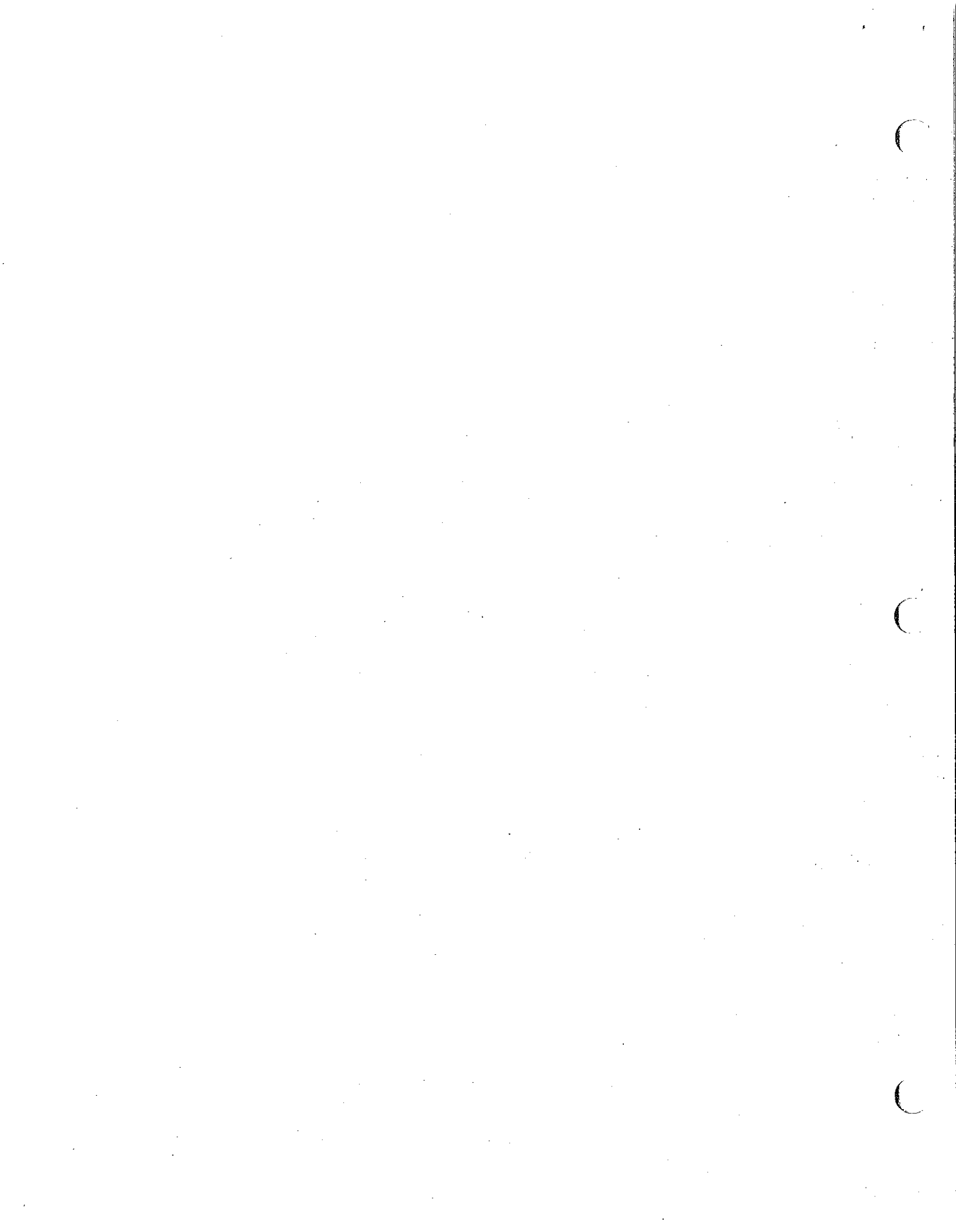
A recent examination of the public land located near (describe the area using local landmarks) indicates that you may be using public land without authorization. It appears that you are (describe unauthorized activity). This activity is unauthorized and is in violation of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) and Title 43 CFR §2920.1-2.^{1/}

I would appreciate meeting with you to discuss this situation. Please let me know within (no.) days of receipt of this letter when you can meet with me. If you have any questions concerning this letter, please contact (name) in this office at (phone number). I am confident we can work together in arriving at an agreeable solution in this matter. Thank you.

Sincerely,

(Area Manager)

^{1/} For right-of-way trespass cite Title 43 CFR Part 2800 and FLPMA or Title 43 CFR Part 2880 and the Mineral Leasing Act as appropriate.



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Letter - Notice of Trespass

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Folsom Resource Area
 63 Natoma Street
 Folsom, California 95630-2679

In Reply Refer To:
 9232 (Case Number)

NOTICE OF TRESPASS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OR

PERSONAL SERVICE 1/

Mr. Fred Hixon
 6130 Holbrook Road
 Ione, California 95640

Dear Mr. Hixon:

The United States of America, through the Bureau of Land Management, has instituted trespass proceedings against you for unauthorized use of public lands pursuant to Title 43 CFR §2920.1-2 under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). 2/

(Describe the trespass activity)

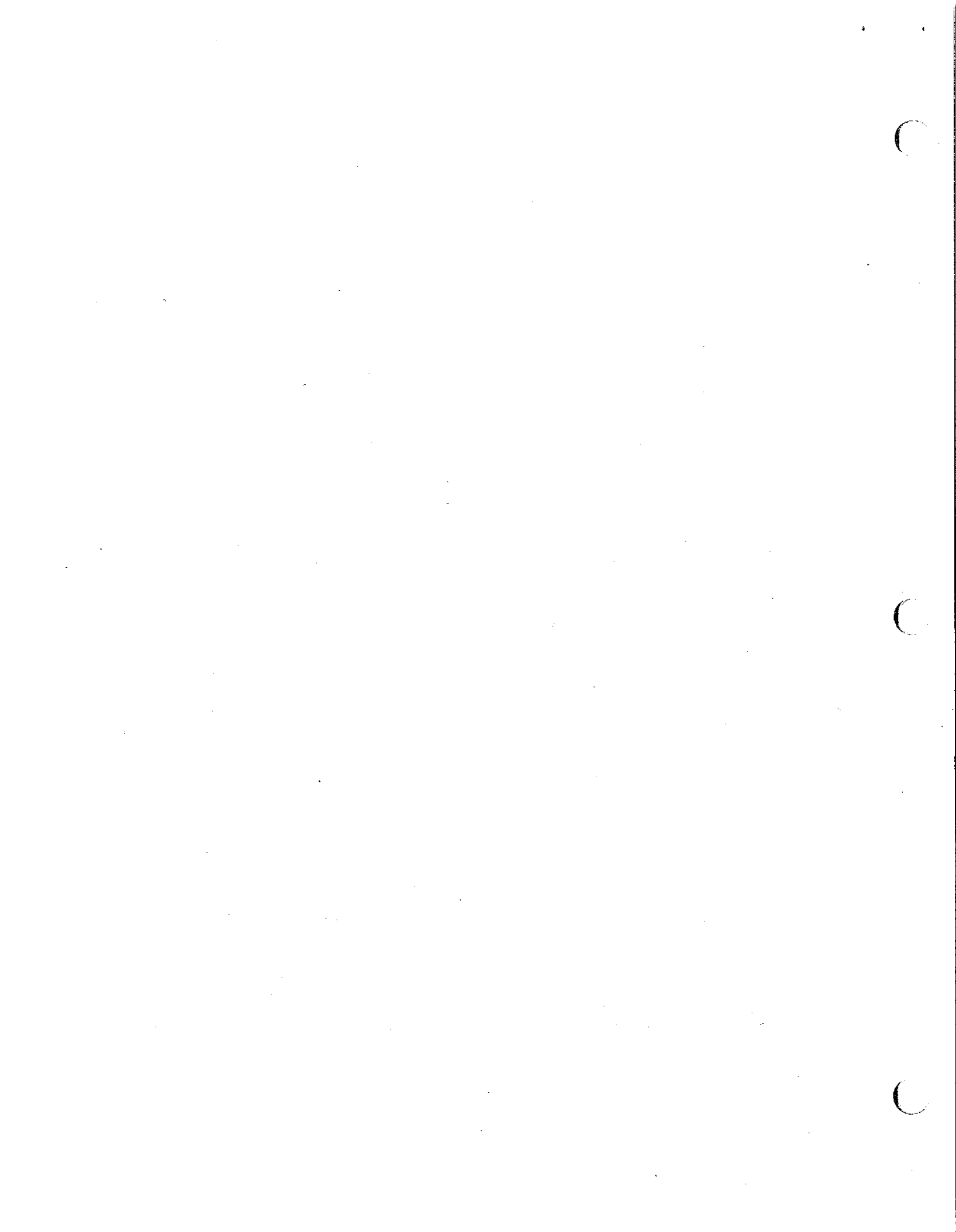
If you have evidence or information which tends to show you are not a trespasser as we have alleged, you are allowed (no.) days from receipt of this notice to present such evidence or information at the Bureau of Land Management office at (address) . Failure to respond to this notice in a timely manner may result in trespass penalties and a citation for your appearance before a designated United States magistrate who may impose a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, under Title 43 CFR §9262.1.

Dated this _____ day of _____, 19_____.

 (Name and title of authorized officer)

1/ If by personal service, complete Certificate of Service, Illustration 17.

2/ For right-of-way trespass cite 43 CFR Part 2800 and FLPMA or 43 CFR Part 2880 and the Mineral Leasing Act as appropriate.



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Letter-Notice to Cease and Desist

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Folsom Resource Area
63 Natoma Street
Folsom, California 95630-2679

In Reply Refer To:
9232 (Case Number)

NOTICE TO CEASE AND DESIST

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
OR
PERSONAL SERVICE^{1/}

Mr. Fred Hixon
6130 Holbrook Road
Ione, California 95640

Dear Mr. Hixon:

You are hereby notified that the Bureau of Land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you (maybe, have, or are) (violated, violating) the law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you: Fred Hixon

Have: (Describe trespass act such as: discarded personal property items consisting of household trash, litter, appliances, and construction refuse on the public lands described herein.)

Are in violation of: The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

And are in violation of the following regulations: Title 43 CFR §2920.1-2 and §9262.1 (copies attached).

On the following described land: (describe by legal subdivision, or if unsurveyed by concise reference to natural or manmade features):

As a consequence of this act you are liable for fair market value rent of the public lands, rehabilitation/stabilization of the lands damaged by your act, and administrative costs incurred by the Bureau as a consequence of your act.

1/ If by Personal Service, complete Certificate of Service, Illustration 17.

H-9232-1 - REALTY TRESPASS ABATEMENT

If allegations we have made are correct you must permanently cease and desist from the violations charged. You are allowed (no.) days to arrange settlement of trespass liability, or to present evidence to show that you are not a trespasser as we have alleged, at (address of District or Area Office).

Failure to comply with this notice and resolve your trespass liability may result in trespass penalties and a citation for your appearance before a designated United States magistrate who may impose a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, under Title 43 CFR §9262.1.

Sincerely,

(Name and title of authorized officer)

H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Letter - Formal Trespass Decision

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Address)

In Reply Refer To:
9232 (Case Number)

TRESPASS DECISION(Date)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OR

PERSONAL SERVICE 1/

Mr. Fred Hixon
6130 Holbrook Road
Ione, California 95640

Dear Mr. Hixon:

On (date of letter - Notice of Trespass) you were advised, by certified mail, that the United States of America, through the Bureau of Land Management, had instituted trespass proceedings against you for the unauthorized use of public land pursuant to Title 43 CFR §2920.1-2 under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) 2/

The purpose of our letter was to provide you time in which to make restitution for your trespass [payment of your trespass liability] or provide information or evidence to assist in the equitable adjudication of the Bureau's trespass claim against you. (Based on your response we have determined your trespass liability to date) or (Based on your failure to comply or respond we have determined your trespass liability, including a trespass penalty, to date) or (Appropriate Statement of trespasser's response and Bureau action following the letter notice of trespass) . Your liability is summarized on the enclosed bill.

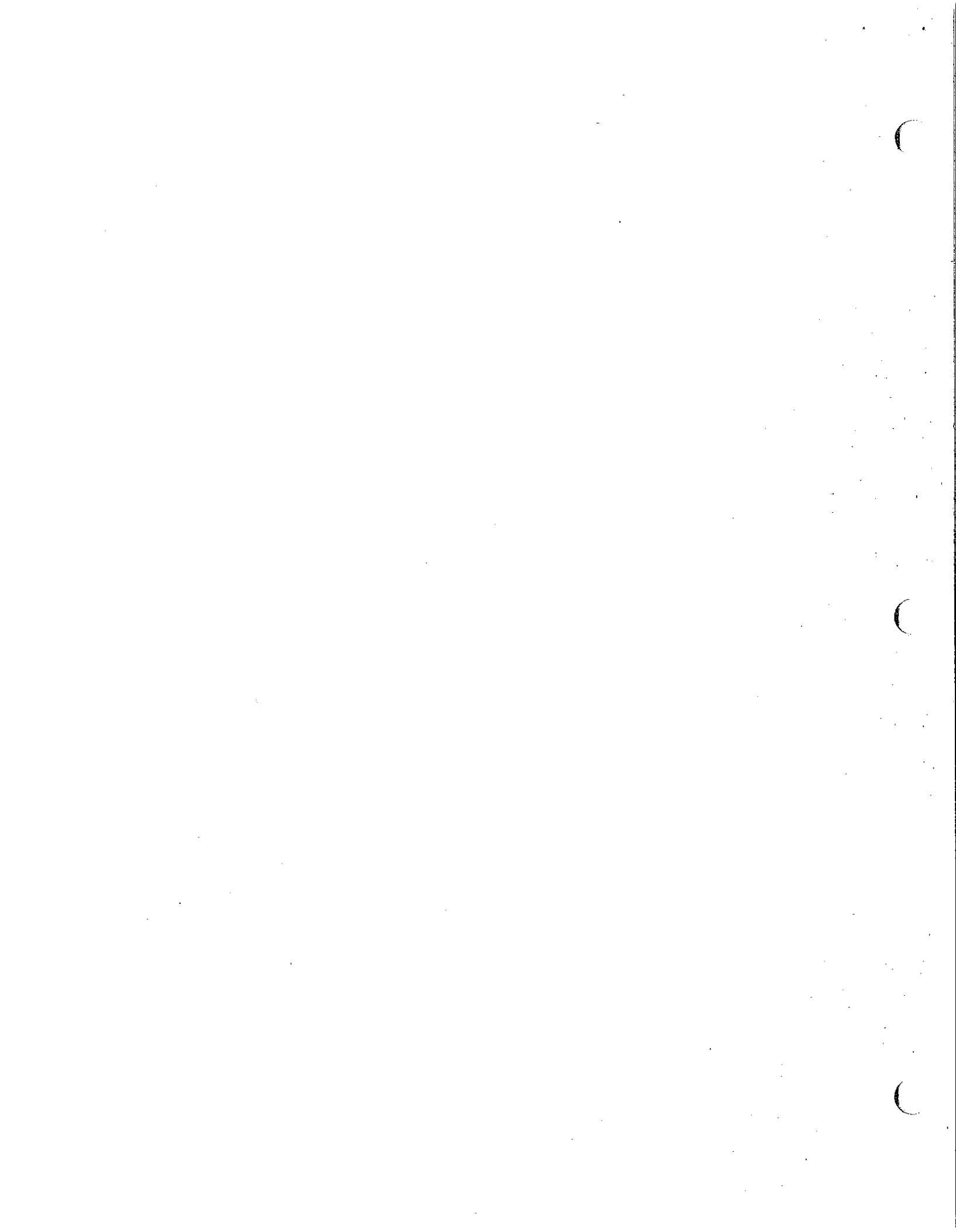
Within 30 days of receipt of this decision, you have the right of appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals. The appellant has the burden of showing that the decision appealed from is in error.

Dated this _____ day of _____, 19_____.

Enclosures

(Name and title of authorized officer)

- 1/ If by personal service, complete Certificate of Service, Illustration 17.
2/ For right-of-way trespass cite 43 CFR Part 2800 and FLPMA or 43 CFR Part 2880 and the Mineral Leasing Act as appropriate.



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Letter - Formal Trespass Decision/Notice to Remove

TRESPASS DECISION/NOTICE TO REMOVE

Sample Letter - Formal Trespass Decision

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Folsom Resource Area
63 Natoma Street
Folsom, California 95630-2679

In Reply Refer To:
9232 (Case Number)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OR

PERSONAL SERVICE 1/

Mr. Fred Hixon
6130 Holbrook Road
Ione, California 95640

Dear Mr. Hixon:

On (date of letter - Notice of Trespass) you were advised, by certified mail, that the United States of America, through the Bureau of Land Management, had initiated trespass proceedings against you pursuant to Title 43 CFR §2920.1-2 under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) 2/ for certain unauthorized property generally described as (one 12' X 18' wood frame cabin, outbuildings, and personal property in the cabin and outbuildings) which our investigation discloses that you own located on the following described lands under the jurisdiction of the Bureau of Land Management:

(Land Description)

WHEREAS, the existence of said property upon said lands constitutes unlawful trespass for which you are liable in the amount shown on the enclosed bill.

NOW, THEREFORE, PLEASE TAKE NOTICE that all said trespass liability is required to be paid and said property is hereby required to be removed on or prior to (date) 3/, and, in the absence of such payment and removal by such time, the United States, in order to prevent further trespass upon said land, will without further or any additional notice of any kind whatsoever and without liability, take possession, destroy, or remove said property at your expense.

1/ If by personal service, complete Certificate of Service, Illustration 17.

2/ For right-of-way trespass cite 43 CFR Part 2800 and FLPMA or 43 CFR Part 2880 and the Mineral Leasing Act as appropriate.

3/ Correlate the date with the 30 day appeal period as appropriate.

H-9232-1 - REALTY TRESPASS ABATEMENT

Also, the United States will take possession of and remove any personal property of value that may be found on the premises, and the land, by the removal date given in this notice, and will store said personal property, all at the owner's expense, at (name and address of District Office or other storage facility) . Such property may be claimed within 30 days after removal, upon payment of trespass liability including expenses as may accrue. Failure to claim said property within the specified time will constitute abandonment and said property shall become the property of the United States.

Failure to remove said property and resolve your trespass liability by the removal date may result in trespass penalties and a citation for your appearance before a designated United States magistrate who may impose fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, under Title 43 CFR §9262.1.

Within 30 days of receipt of this decision, you have the right of appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals. The appellant has the burden of showing that the decision appealed from is in error.

Dated this _____ day of _____, 19_____.

(Name and title of authorized officer)

Enclosures

H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Legal Notice

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Billings Resource Area
 810 E. Main Street
 Billings, Montana 59105

9232 (Case Number)

LEGAL NOTICE

TO WHOM IT MAY CONCERN:

The United States of America, through the Bureau of Land Management, (name) District Office, (address) , has instituted trespass proceedings pursuant to Title 43 CFR §2920.1-2 under the authority of the Federal Land Policy and Management Act ^{1/} against certain unauthorized property generally described as (one 12' x 18' wood frame cabin, outbuildings, and personal property in the cabin and outbuildings) located on the following described lands under the jurisdiction of the Bureau of Land Management:

(Description of Land)

WHEREAS, the existence of said property upon said lands constitutes unlawful trespass and interferes with the proper and efficient administration and management of said lands, and in addition thereto establishes liability to the United States for the unauthorized use and occupancy of said lands.

NOW, THEREFORE, PLEASE TAKE NOTICE that all said property is hereby required to be removed from said land on or prior to (Date) , and, in the absence of such removal by such time, the United States, in order to eliminate public hazard and prevent further trespass upon said land, will without further or any additional notice of any kind whatsoever and without liability take possession, destroy, or remove said property at the owner's expense.

The United States will also take possession of and remove any personal property of value that may be found on the premises, and the land, by the removal date given in this notice, and will store said personal property, all at the owner's expense, at (name and address of District Office and/or other storage place) . Such property may be claimed within 30 days after removal, upon payment of trespass liability including storage expenses as may accrue. Failure to claim said property within the specified time will constitute abandonment, and said property shall become the property of the United States.

1/ For right-of-way trespass cite Title 43 CFR Part 2800 and FLPMA or Title 43 CFR Part 2880 and the Mineral Leasing Act as appropriate.

H-9232-1 - REALTY TRESPASS ABATEMENT

Failure to remove said property by the removal date and resolve trespass liability may result in trespass penalties and a citation for the owners appearance before a designated United States magistrate who may impose a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, under Title 43 CFR §9262.1.

Dated this _____ day of _____ 19 ____.

(Name and title of authorized officer)

H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Warning Notice - Property of the United States

9232 (Case Number)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Office address)

PROPERTY OF THE UNITED STATES

THIS PROPERTY IS ON PUBLIC LAND AND IN THE POSSESSION OF THE UNITED STATES. ALL PERSONS ARE PROHIBITED UNDER PENALTY OF THE LAW FROM USING, MOLESTING, DESTROYING, OR REMOVING THIS PROPERTY, EXCEPT BY ORDER OF THE UNITED STATES. ALL VIOLATORS WILL BE PROSECUTED TO THE FULL EXTENT OF THEIR CIVIL OR CRIMINAL LIABILITY.

WARNING

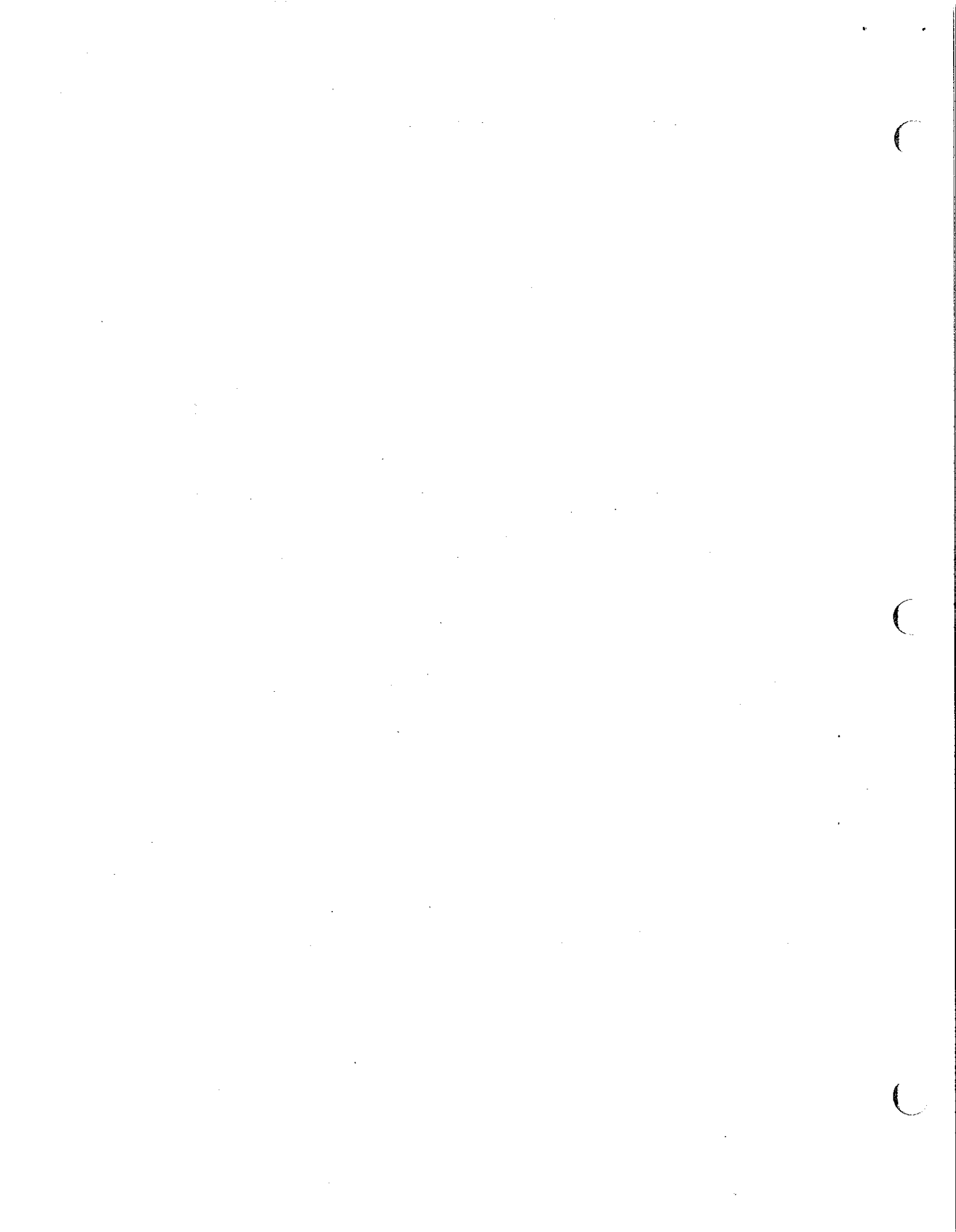
DO NOT DESTROY THIS NOTICE. THE LAW PRESCRIBES PUNISHMENT FOR ANY PERSON REMOVING OR DEFACING THIS NOTICE.

SECRETARY OF THE INTERIOR

By:

(Name and title of authorized officer)

(Date)



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Demand Letter No. 1

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 (Office address)

In Reply Refer To:
 9232 (Case Number)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
 OR
 PERSONAL SERVICE 1/

 (Date)

Mr. John Doe
 123 Main Street
 Anywhere, USA 20000

Dear Mr. Doe:

Payment has not been received on our Bill for Collection (number) , in the amount of \$ (amount) . This bill, issued for trespass liability incurred as a consequence of trespass upon the public lands of the United States, has now become delinquent.

As indicated in our original bill, additional charges have been incurred due to your failure to pay on time. The amount of your indebtedness, as of (date) , is as follows:

| | | |
|--|----|---|
| Principal: | \$ | . |
| Interest at (no.) % per year: | \$ | . |
| Administrative Handling Charge (at \$5 per billing notice): | \$ | . |
| Administrative Penalty at (no.) % per year <u>2/</u> : | \$ | . |
| Total Now Due: | \$ | . |

Interest at the above indicated rate will continue to accrue for each day until this bill is paid. For each additional billing necessitated by your failure to remit payment, a \$5 administrative handling charge will be added.

If you have any questions concerning this bill, please contact (name) in this office at (phone number) .

Sincerely,

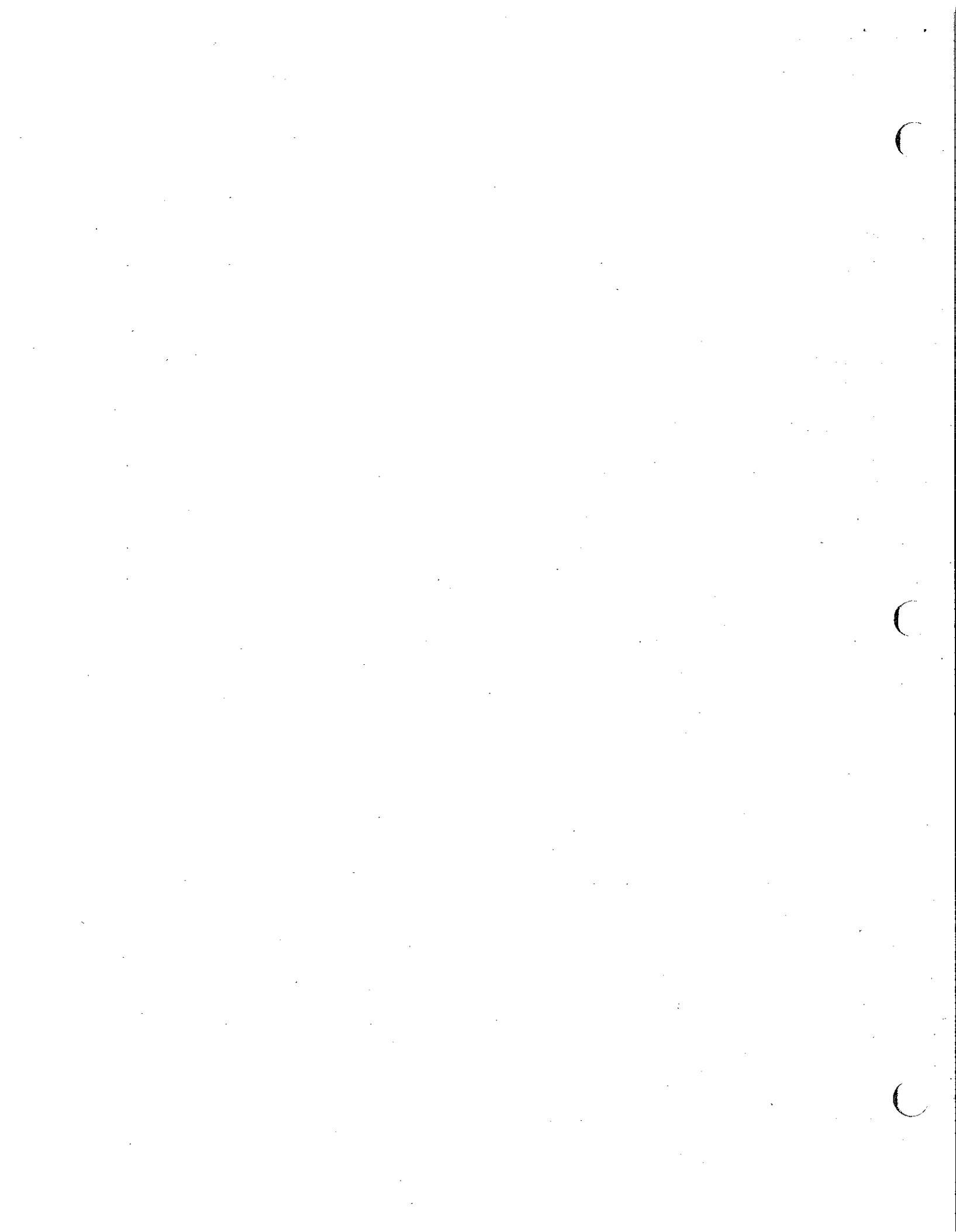
Enclosure: 3/

 (Name and title of authorized officer)

1/ If by personal service, complete Certificate of Service, Illustration 17

2/ Add this line and current percentage rate only if the bill is more than 90 days delinquent.

3/ Enclose a copy of Notice of Actions in Event of Delinquency (back of Form 1371-22).



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Demand Letter No. 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Office address)

In Reply Refer To:
9232 (Case Number)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
OR
PERSONAL SERVICE 1/

(Date)

John Doe
123 Main Street
Anywhere, USA 20000

Dear Mr. Doe:

On (date) this office (personally served or sent you a letter by Certified Mail) requesting that you either pay our Bill for Collection (number) , or advise us if you had any questions regarding your liability.

Since we have not heard from you, we assume you acknowledge this liability and have allowed it to become even further delinquent. Interest will continue to accrue until payment is received.

The amount of your indebtedness as of (date) is as follows:

| | | |
|--|----|---|
| Principal: | \$ | . |
| Interest at (no.) % per year: | \$ | . |
| Administrative Handling Charge (at \$5 per billing notice): | \$ | . |
| Administrative Penalty at (no.) % per year <u>2/</u> : | \$ | . |
| Total Now Due | \$ | . |

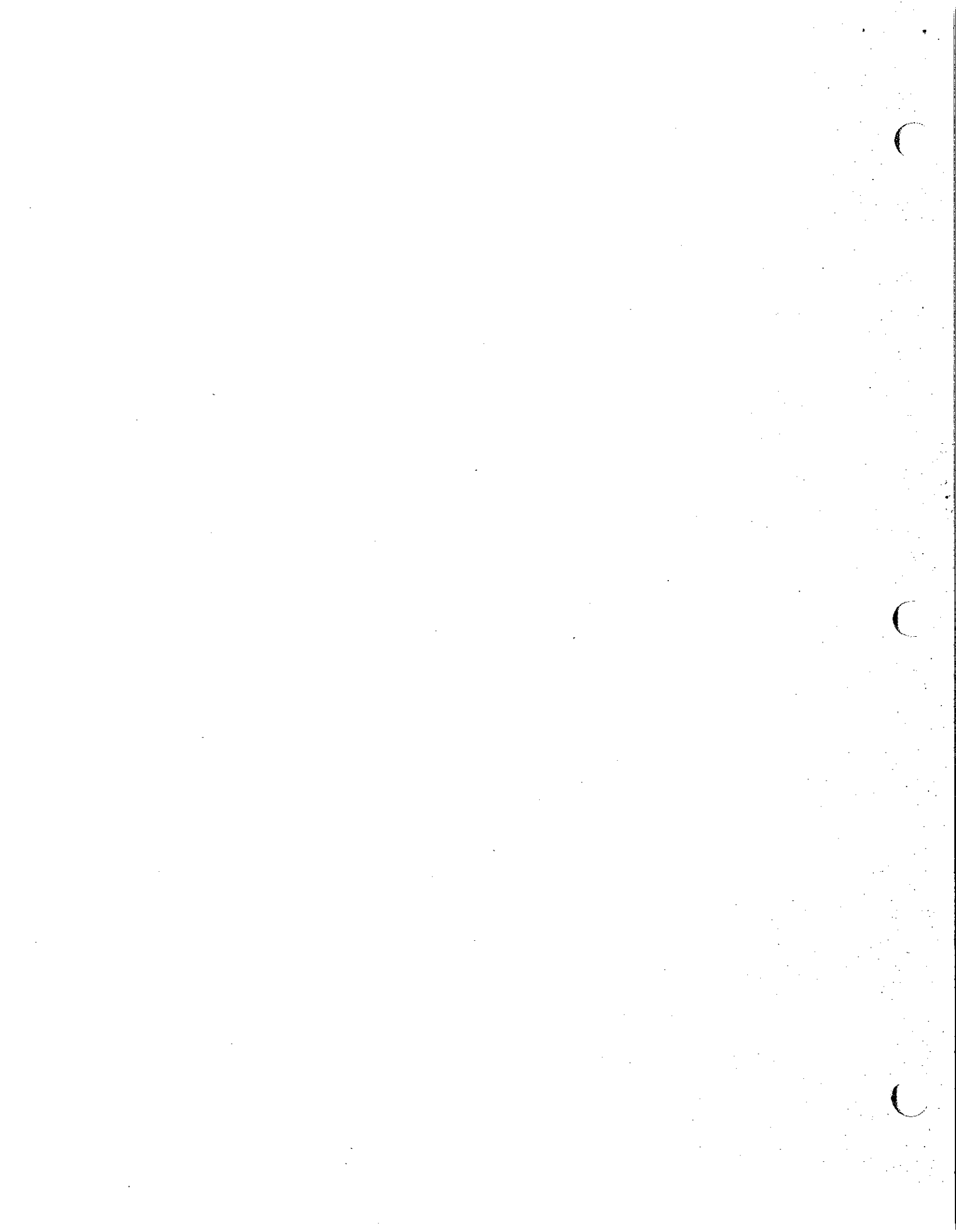
If you have any questions concerning this bill, please contact (name) in this office at (phone number) .

Sincerely,

(Name and title of authorized officer)

Enclosure: 3/

- 1/ If by personal service, complete Certificate of Service, Illustration 17.
- 2/ Add this line and current percentage rate only if the bill is more than 90 days delinquent.
- 3/ Enclose a copy of Notice of Actions in Event of Delinquency (back of Form 1371-22).



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Demand Letter No. 3

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 (Office Address)

In Reply Refer To:
 9232 (Case Number)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
 OR
 PERSONAL SERVICE 1/

 (Date)

Mr. John Doe
 123 Main Street
 Anywhere, USA 20000

Dear Mr. Doe:

Our records indicate that payment has not been received on our Bill for Collection (number) . This bill is now seriously past due. If payment is not received within 30 days of the date of this notice, this account will be referred to a debt collection agency and to a credit reporting agency (credit bureau).

In accordance with Department of Interior collection procedures, this account may also be referred to legal counsel for legal action and to the Internal Revenue Service for inclusion as income to you, as well as possible refund off-set. Assessment of interest and penalty charges will continue to accrue until the debt is liquidated.

The amount of your indebtedness as of (date) is as follows:

| | | |
|--|----|---|
| Principal: | \$ | . |
| Interest at % per year: | \$ | . |
| Administrative Handling Charge (at \$5 per billing notice): | \$ | . |
| Administrative Penalty at (no.) % per year: | \$ | . |
| Total Now Due: | \$ | . |

If you have any questions concerning this bill, please contact (name) in this office at (phone number) .

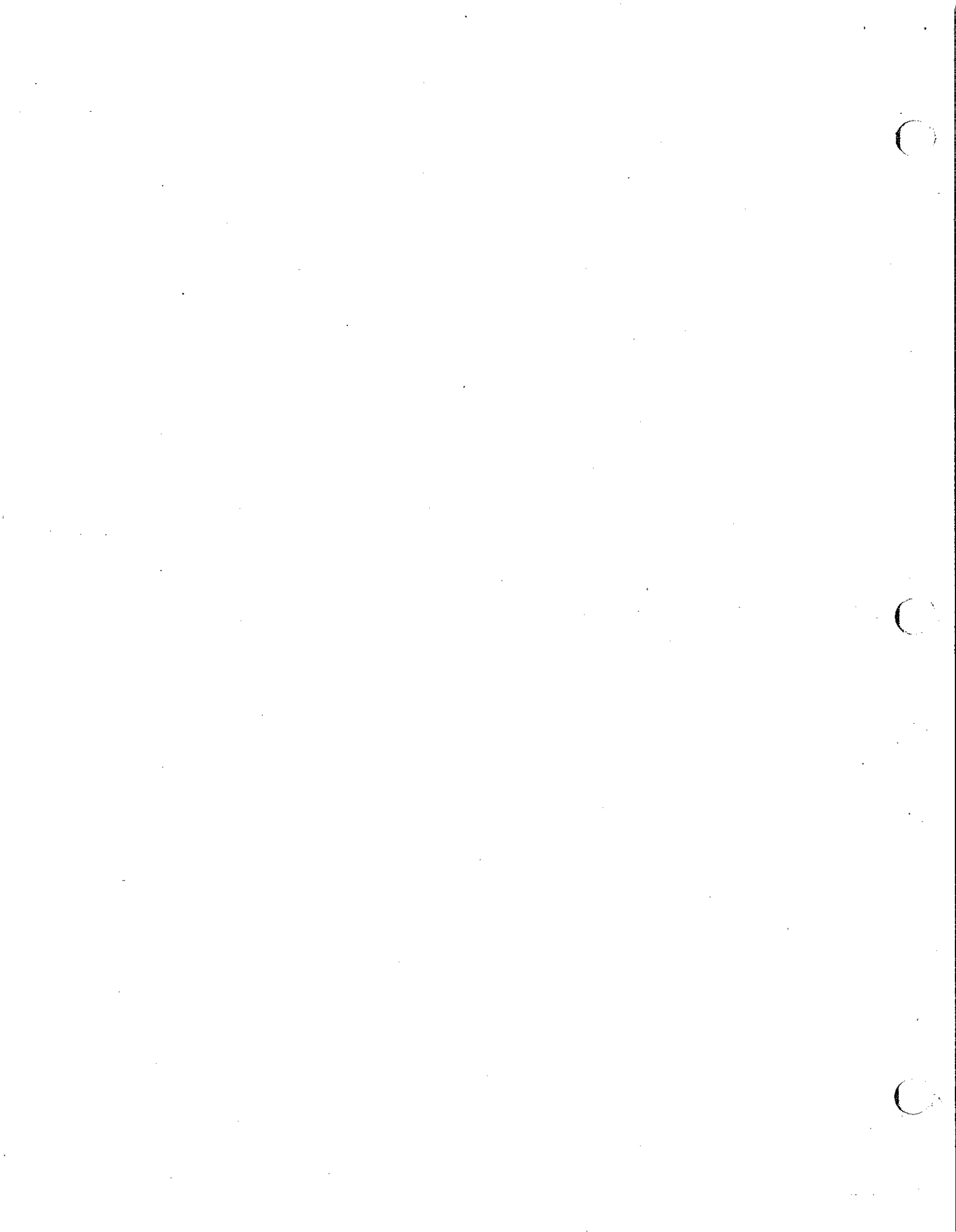
Sincerely,

 (State Director)

Enclosure: 2/

1/ If by personal service, complete Certificate of Service, Illustration 17.

2/ Enclose a copy of Notice of Actions in Event of Delinquency. (back of Form 1371-22).



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Memorandum - Case File Summary-Delinquent Account

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 (Office address)

In Reply Refer To:
 9232 (Case Number)

MEMORANDUM

To: Service Center Director (SC-615)

From: State Director,

Subject: Case File Summary of Final Bill

All delinquent account procedures have been executed for this case. The case file is being transmitted for referral to a Debt Collection Agency.

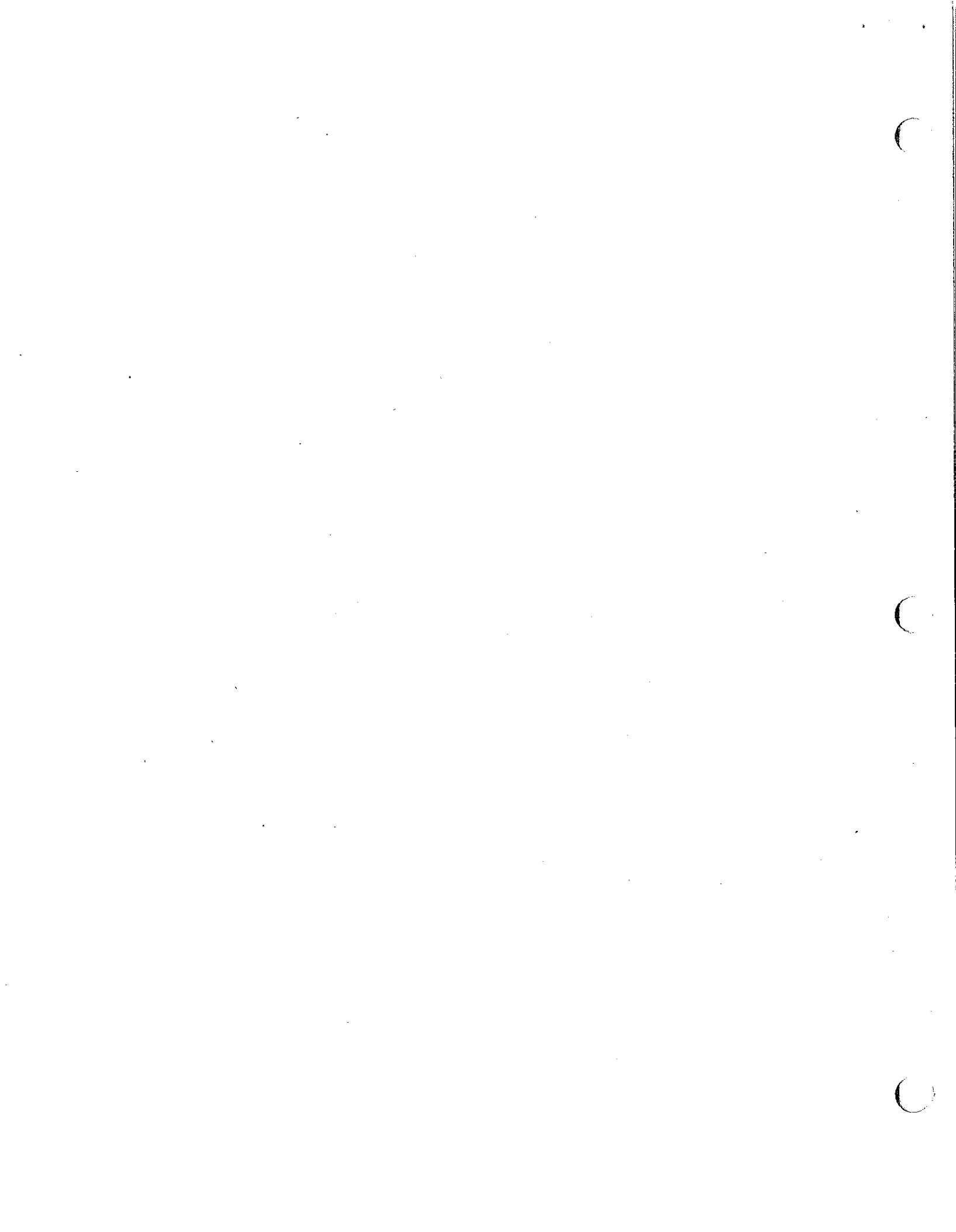
CASE FILE SUMMARY OF FINAL BILL

| | |
|----------------|-----------------------------|
| Date: _____ | Referring Office Code _____ |
| Debtor _____ | Contact in Office _____ |
| Name: _____ | Phone No. (FTS) _____ |
| Address: _____ | Bill Number _____ |
| _____ | |

Bill for Collection No. _____ is summarized as follows:

| | |
|--|----------|
| Principal Balance: | \$ _____ |
| Interest at _____ % per Year: | \$ _____ |
| Administrative Handling Charges: (at \$5 per billing notice) | \$ _____ |
| Administrative Penalty Charges @ ___ % per year (if more than 90 days delinquent): | \$ _____ |
| Total Due: | \$ _____ |

Attachment: Case File



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Memorandum - Uncollectible Claim/Referral Recommendation

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Office address)

In Reply Refer To:
9232 (Case Number)

MEMORANDUM

To: Service Center Director (SC-615)
From: State Director,
Subject: Write-off of Uncollectible Trespass Liability Claim

The following claim has been written off by a Journal Voucher (Form 1370-39).

JV No. _____ Dated _____ (copy attached):
Amount \$ _____ Bill for Collection No. _____

This claim has been written off for the following reason:

We recommend that this write-off amount be referred to a credit reporting agency and to the Internal Revenue Service. Attached for your use is a completed cover sheet for write-offs (Form 1370-45).

(To be completed by Field or Regional Solicitor for amounts of \$601 to \$2,500. The Solicitor must approve amounts of \$2,501 to \$20,000.)

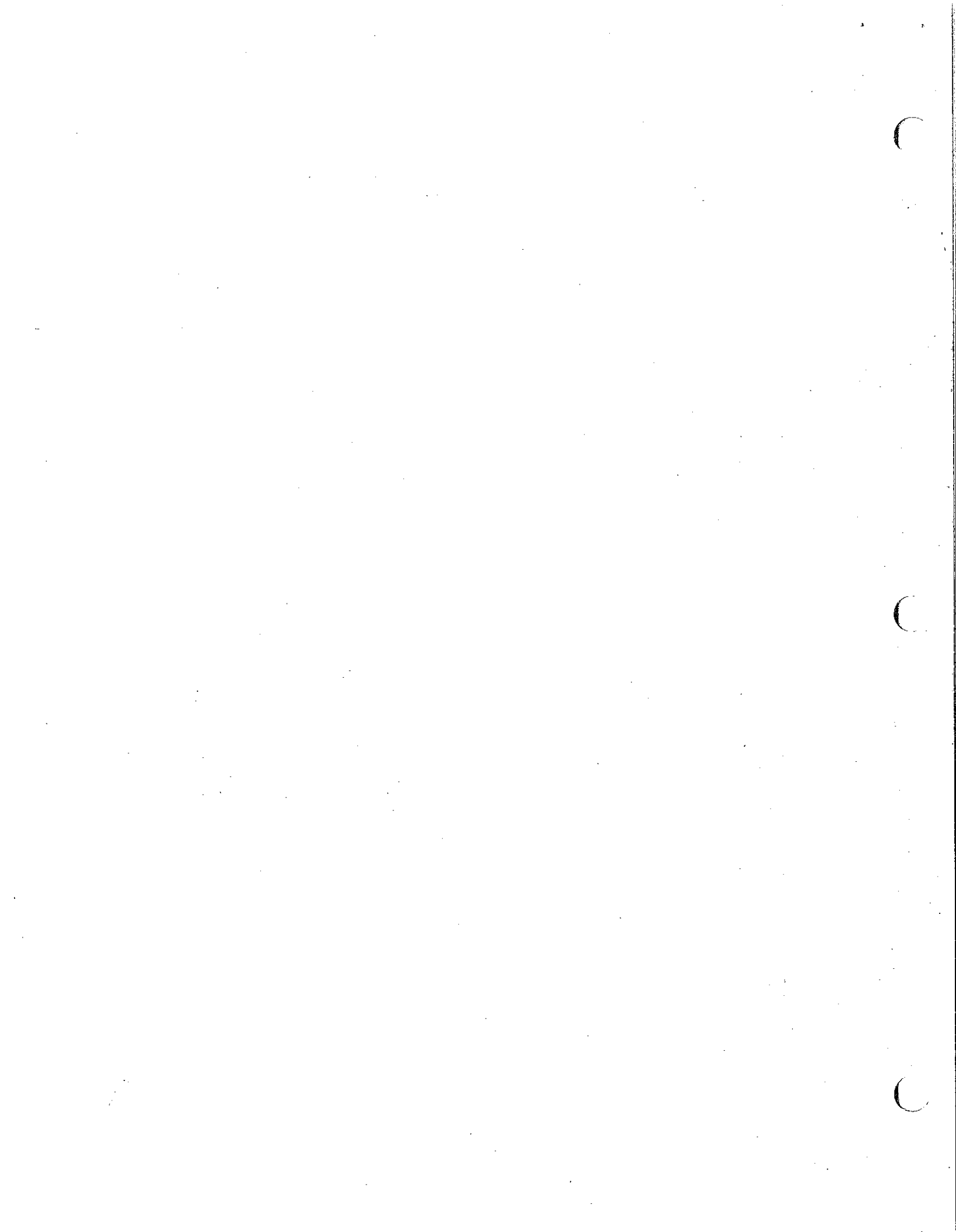
This write-off action meets the Standards for suspending or terminating claims contained in 4 CFR Part 104.

(Solicitor)

(Date)

Attachments

cc: DM



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Trespass Settlement Agreement

9232 (Case Number)

AGREEMENT

I hereby agree to the following terms to resolve trespass liability on the described public lands.

I. Legal Description:

II. Settlement: \$ _____ (Land rent, administrative costs, and rehabilitation/stabilization.)

- a. Payment in full, receipt of which is hereby acknowledged. Personal check no. _____
- b. Promissory Note: completed Form 1372-1 attached.

III. Resolution:

- a. Termination.
- b. Authorization by permit.
- c. Other (specify).

IV. Rehabilitation/Stabilization:

- a. I agree to rehabilitate and/or stabilize the described land in accordance with the attached rehabilitation plan. Bond in the amount of \$ _____ will be provided to ensure compliance.
- b. Settlement in II above, includes funding for the necessary rehabilitation/stabilization by the Bureau of Land Management.

V. Further action required of the undersigned: (permit application, exchange proposal, etc.) explain.

(Name, Please Print)

(Signature)

(Address)

(Date)

(City, State, Zip Code)

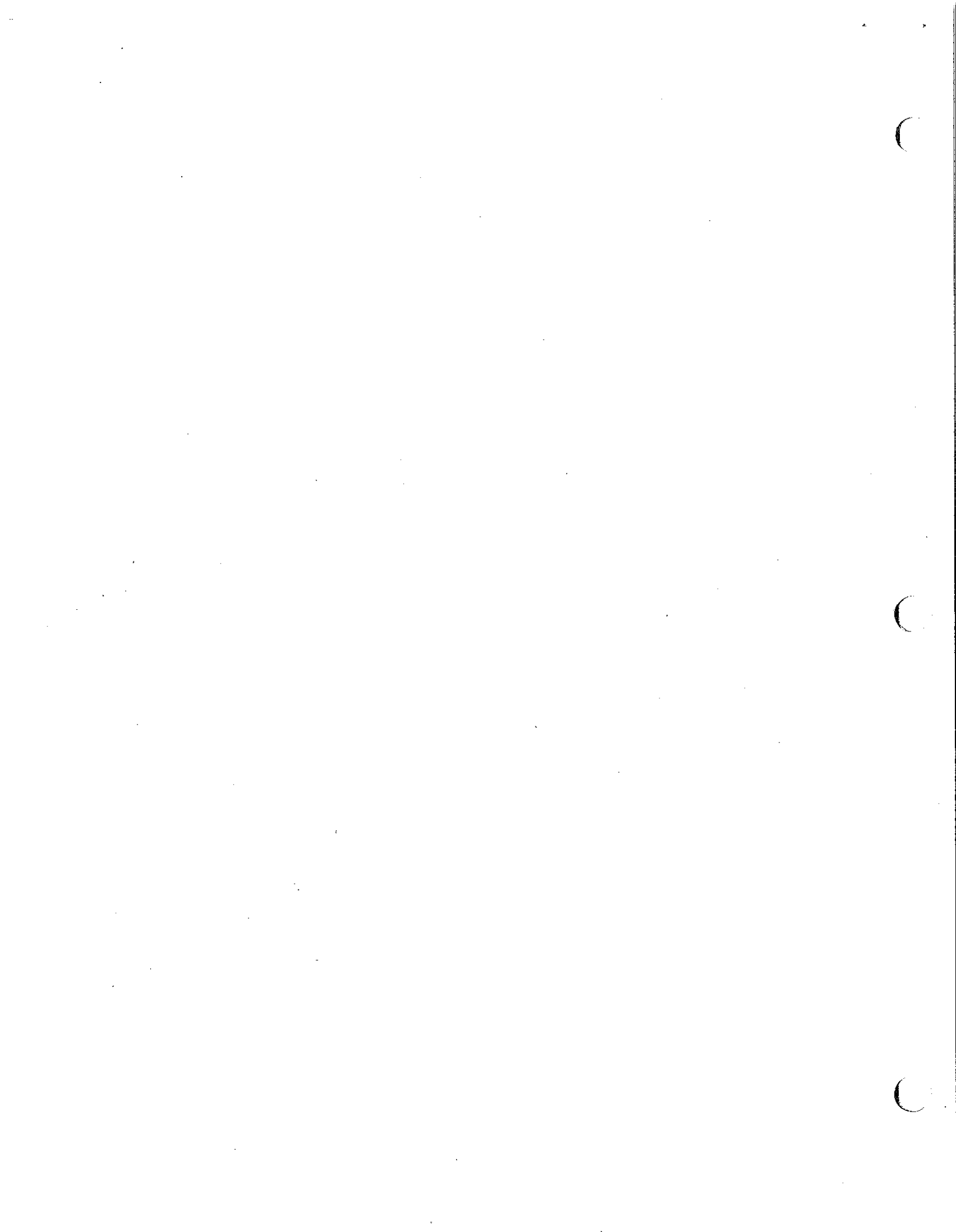
(Name and title of authorized officer)

Attachments:

Promissory Note (Form 1372-1).

Rehabilitation Plan.

Rel. 9-300
8/14/89



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Sample Liability Compromise Offer

9232 (Case Number)

TRESPASS SETTLEMENT OFFER

(To be completed by offeror)

I hereby submit a compromise offer of \$ _____ to
settle _____ Trespass No. _____ which was
originally assessed at \$ _____

By signing below, I agree that deposit by the United States into a holding (suspense) account of the money offered will not constitute a release, satisfaction, or discharge of trespass liability unless and until the offer has been accepted by the proper authority. I understand that if the offer is rejected, a refund will be issued to me by Government check.

(Name, Please Print)

(Signature)

(Address)

(City, State, Zip Code)

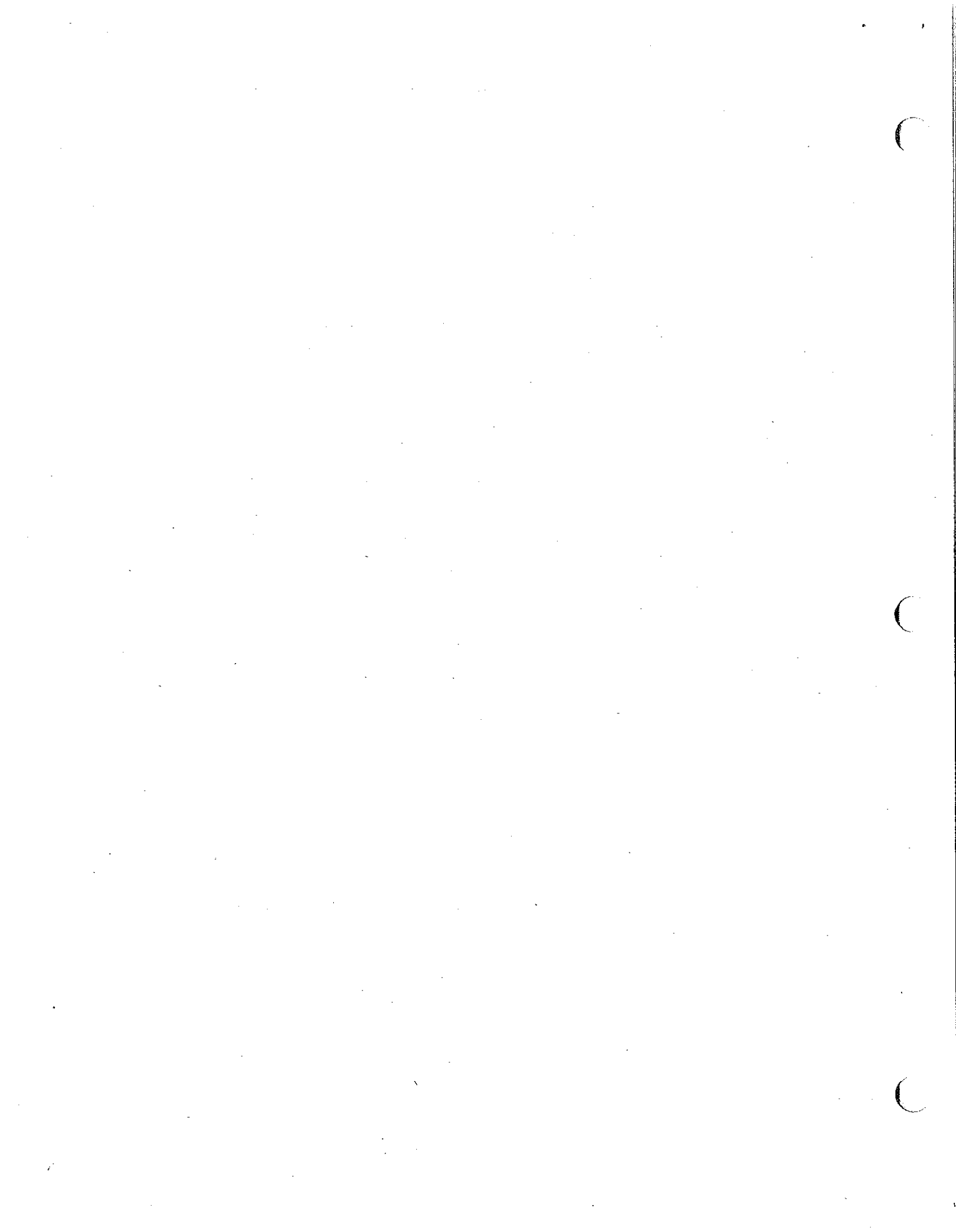
(Date)

(To be completed by Field or Regional Solicitor)

Per BLM Manual 1372.33A3b, I hereby advise that trespass liability will not be discharged by depositing the above specified remittance.

(Solicitor)

(Date)



H-9232-1 - REALTY TRESPASS ABATEMENT

Sample Memorandum - Write-Off Based on Compromise Offer

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Office address)

In Reply Refer To:
9232 (Case Number)

MEMORANDUM

To: Service Center Director (SC-615)
From: State Director,
Subject: Write-off Of Debt Due To Compromise Offer

The following debt balance has been written off by a Collection Data Sheet (Form 1370-35) dated _____ (copy attached):

Amount \$ _____ Bill for Collection No. _____
(write off amount) (Form 1371-22)

The amount to be written off is the difference between the Bill for Collection and the accepted compromise offer of settlement.

The Bill for Collection amount has been negotiated, adjusted, and compromised because there is real doubt as to the Government's ability to prove its case in court for the full amount claimed. Therefore, we recommend that this write-off amount (be or not be) reported to the Internal Revenue Service. Attached for your use is a completed cover sheet for write-offs (Form 1370-45).

(To be completed by Field or Regional Solicitor for amounts to \$20,000.)

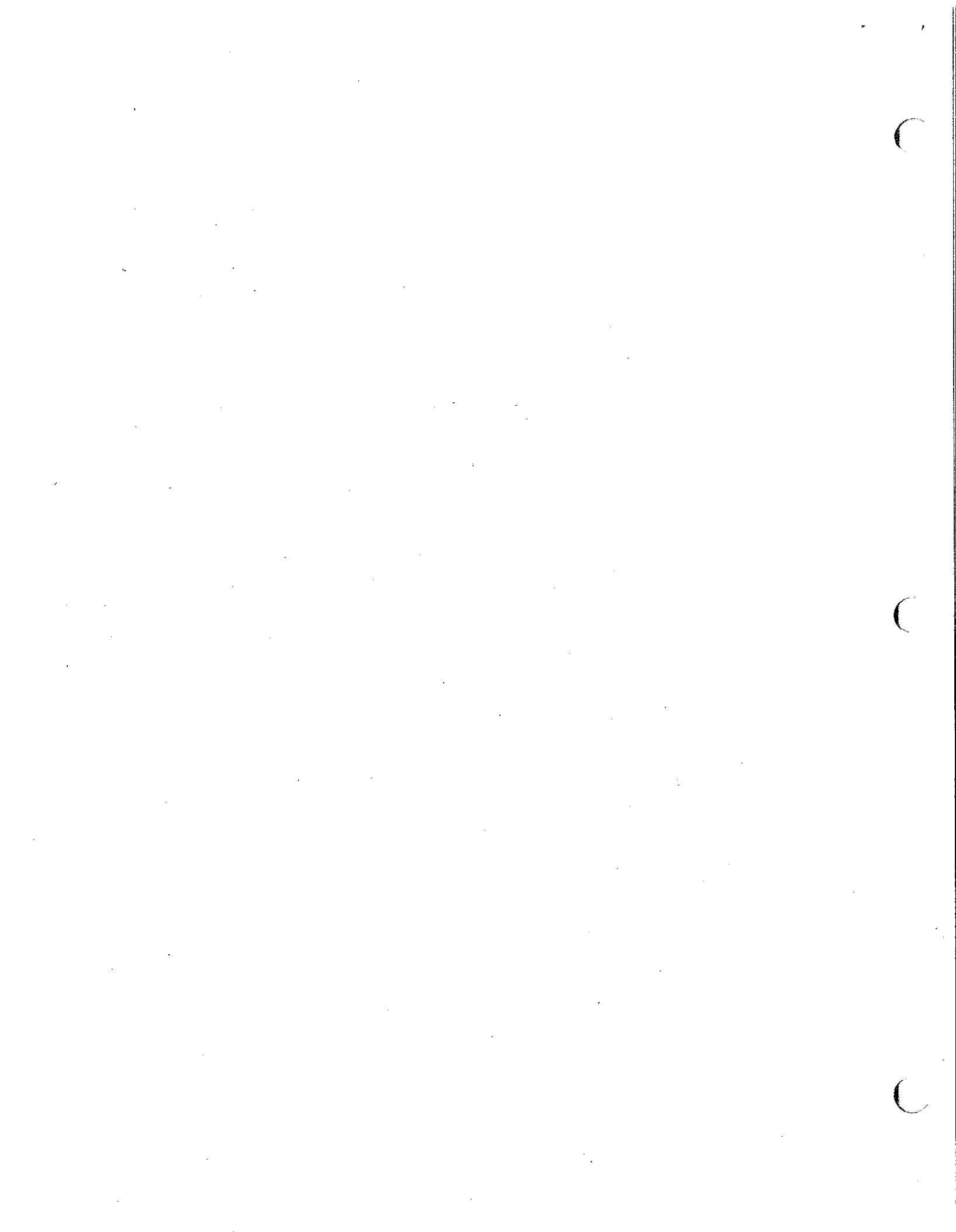
This write-off action meets the Standards for compromise of claims contained in 4 CFR Part 103.

(Solicitor)

(Date)

Attachments

cc: DM



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Sample Statement of Relinquishment

9232 (Case Number)

RELINQUISHMENT

This is to advise you that I (we) _____

(Names(s) of Persons Executing Relinquishment)

have no further interest in the property located on the following described public land:

(land description)

The property which I (we) wish to relinquish is generally described as follows:

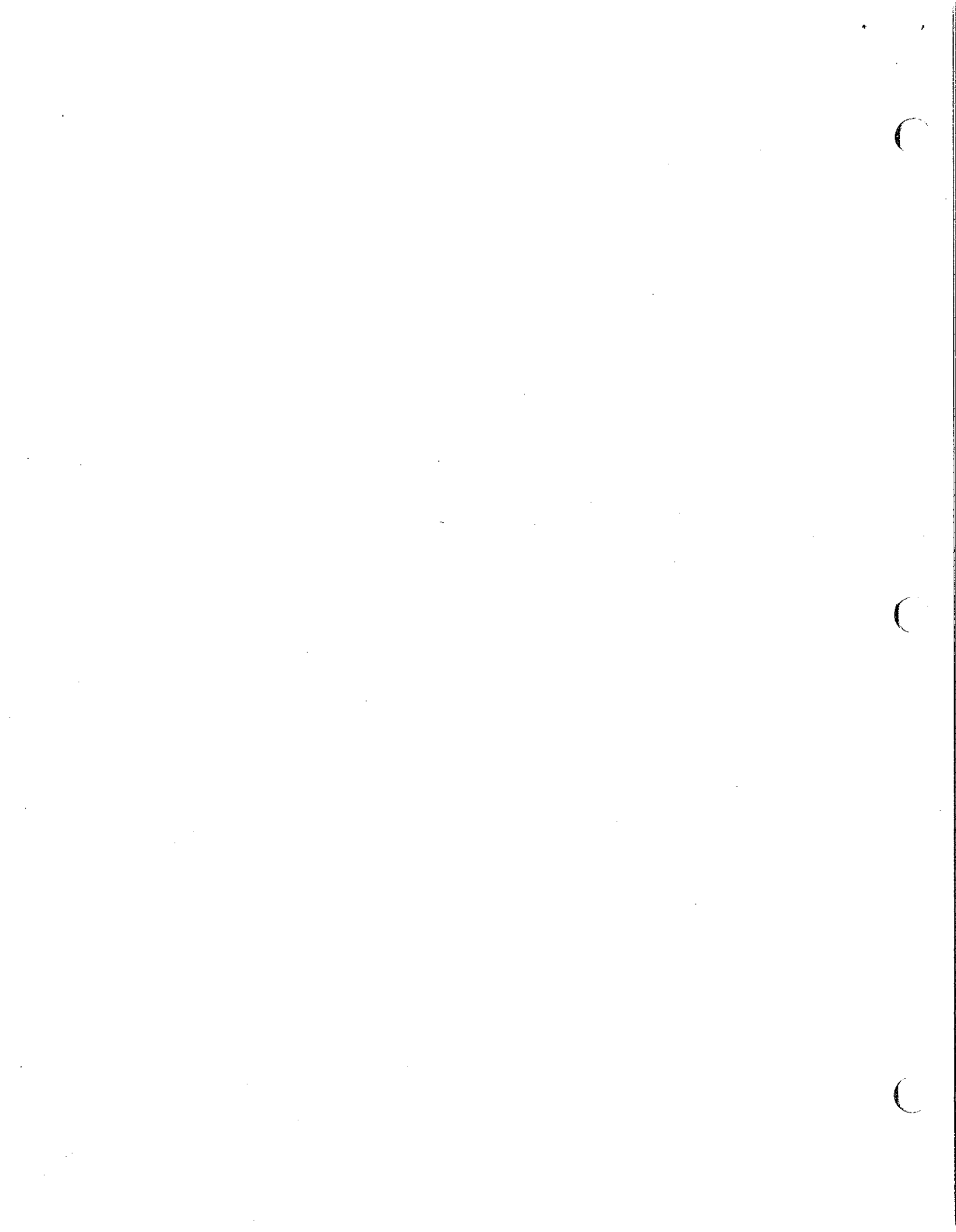
(Description of property: e.g. one 12' x 18' wood frame cabin, outbuildings, and personal property in the cabin and outbuildings.)

By this document, all my (our) right, title, or interest in and to the above described property on the above described land, is hereby quitclaimed and relinquished to the United States by the undersigned, and disposition may be made in any manner that is in the interest of the United States, free and clear of any liability for damages accruing to the disposal of said property.

I (we) understand that this relinquishment does not satisfy any trespass liability incurred as a consequence of placing the relinquished property on public lands administered by the Bureau of Land Management.

Date: _____

(Name)



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Sample Certificate of Personal Service

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Office address)

9232 (Case Number)

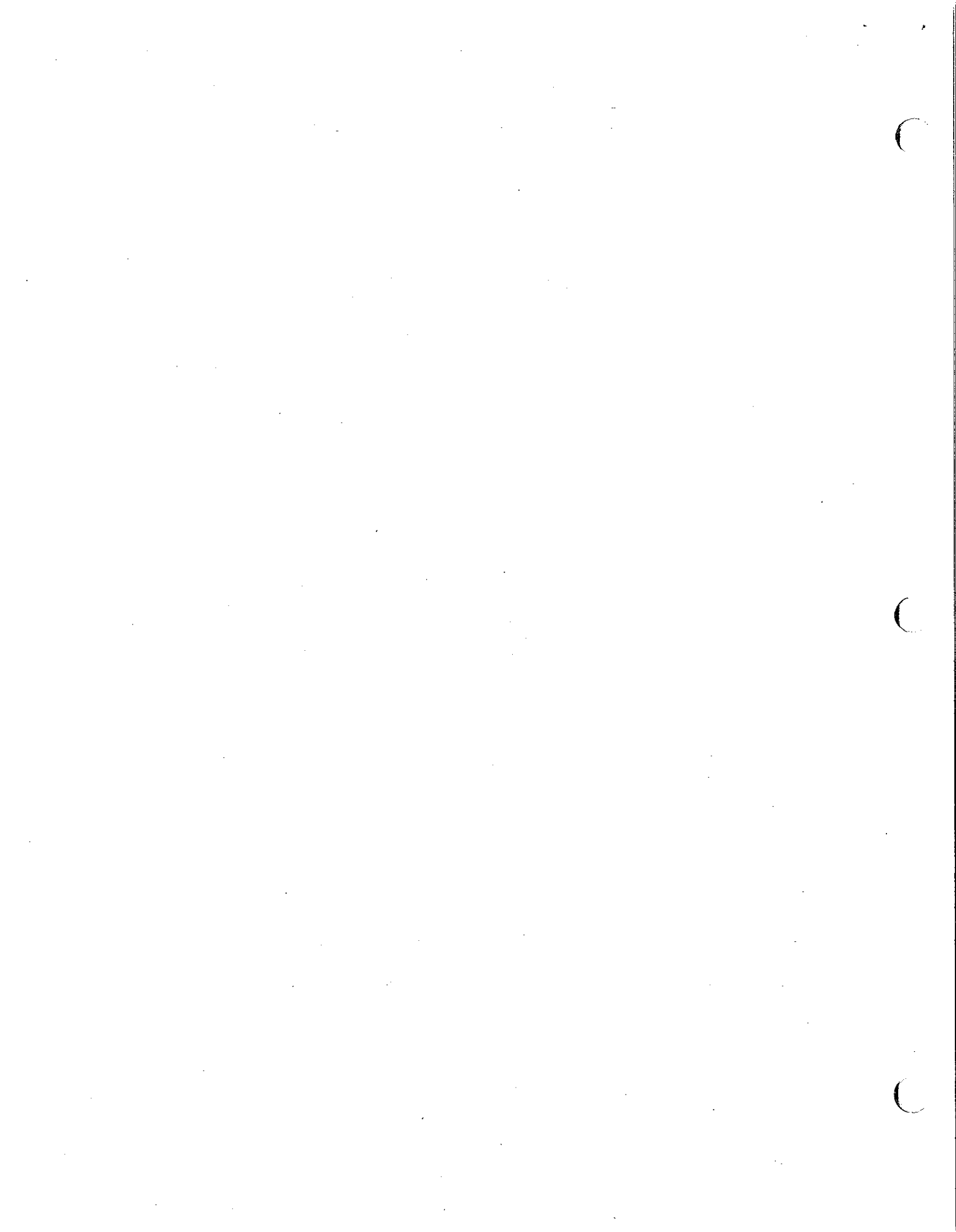
CERTIFICATE OF PERSONAL SERVICE

I, _____, CERTIFY that on
the _____ day of _____,
19 _____, I served written notice on _____, of
(address) _____,

the party's address of record, by a true copy of the within notice by
Personal Service.

(Signature)

(Title)



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Sample
Statement Of Diligent Search & Inquiry

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(Office address)

9232 (Case Number)

STATEMENT OF DILIGENT SEARCH AND INQUIRY

I, _____, an employee of the Bureau of Land Management,
(District Office and State), certify that I began a diligent search and
inquiry on (date) to locate the owner of the following property:

(Describe Property)

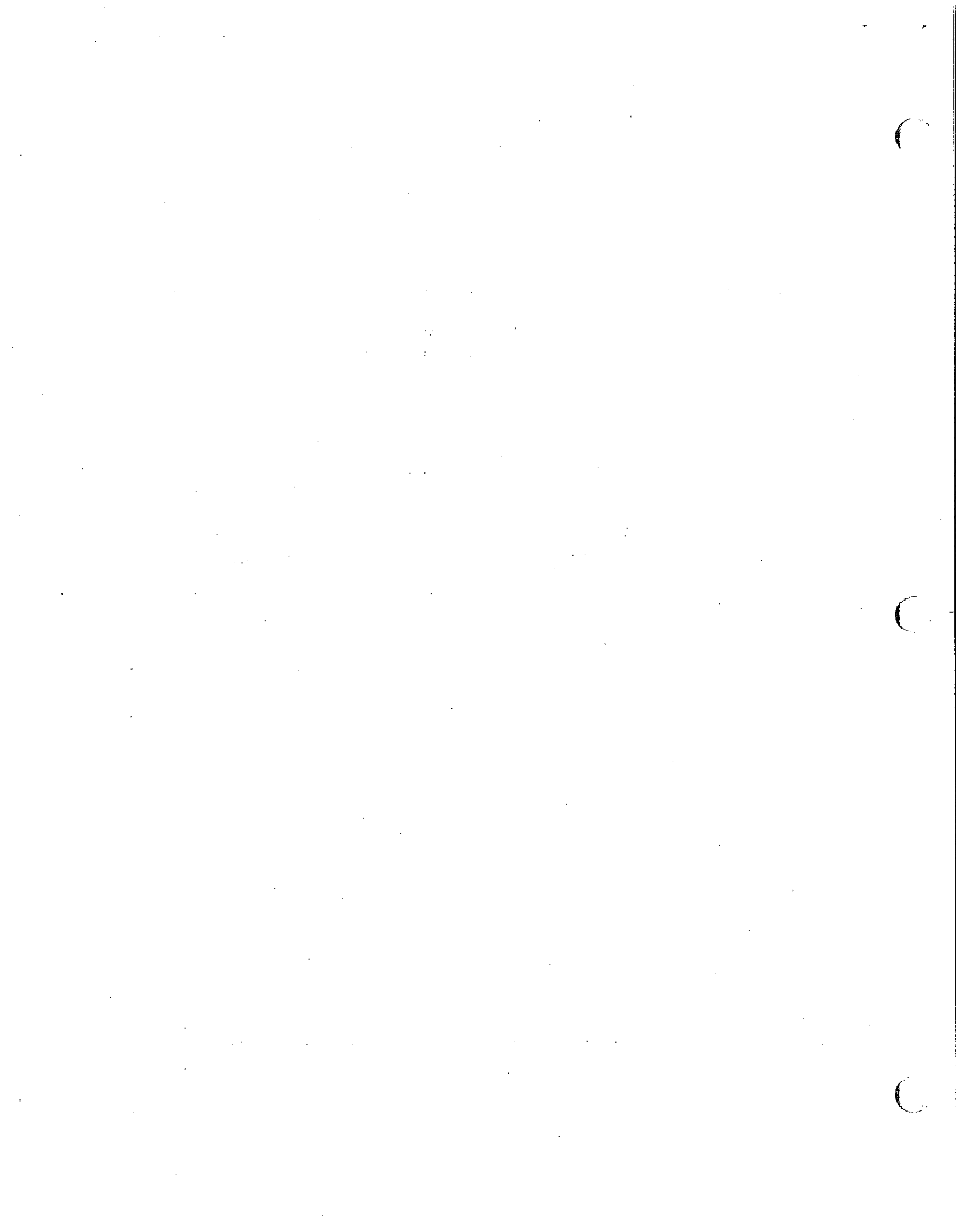
Located on public land in:

(Legal Description)

I was unable to locate the property owner after diligent search and inquiry
which I completed on (date)

(Signature)

(Date)



H-9232-1 - REALTY TRESPASS ABATEMENT

CHAPTER II—FEDERAL CLAIMS COLLECTION
STANDARDS (GENERAL ACCOUNTING
OFFICE—DEPARTMENT OF JUSTICE)

| <i>Part</i> | | <i>Page</i> |
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| 102 | Standards for the administrative collection of claims..... | 83 |
| 103 | Standards for the compromise of claims..... | 92 |
| 104 | Standards for suspending or terminating collec- tion action | 94 |
| 105 | Referrals to Department of Justice or GAO..... | 97 |

H-9232 REALTY TRESPASS ABATEMENT

§ 101.1

4 CFR Ch. II (1-1-86 Edition)

PART 101—SCOPE OF STANDARDS

Sec.

- 101.1 Prescription of standards.
- 101.2 Definitions.
- 101.3 Antitrust, fraud, tax, and interagency claims excluded.
- 101.4 Compromise, waiver, or disposition under other statutes not precluded.
- 101.5 Conversion claims.
- 101.6 Subdivision of claims not authorized.
- 101.7 Required administrative proceedings.
- 101.8 Omissions not a defense.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8896, Mar. 9, 1984, unless otherwise noted.

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2), prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims as defined by 31 U.S.C. 3701(b), by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to 31 U.S.C. 3711(e)(1) will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

§ 101.2 Definitions.

(a) *Claim and debt.* For the purposes of these standards, the terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

(b) A debt is considered "delinquent" if it has not been paid by the date specified in the agency's initial written notification (§ 102.2 of this chapter) or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that

date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.

(c) As used in this chapter, "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

(d) In this chapter, words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class.

§ 101.3 Antitrust, fraud, tax, and interagency claims excluded.

(a) The standards in this chapter relating to compromise, suspension, and termination of collection action (Parts 103 and 104) do not apply to any claim based in whole or in part on conduct in violation of the antitrust laws, or to any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim. Only the Department of Justice has authority to compromise, suspend, or terminate collection action on such claims. The standards in this chapter relating to the administrative collection of claims (Part 102) do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim of any of the types described in the first sentence of this paragraph, the agency involved should refer the matter promptly to the Department of Justice. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the regulations in this chapter.

(b) Tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

(c) This chapter does not apply to claims between Federal agencies. Federal agencies should attempt to resolve

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Federal Claims Collection Standards**§ 101.8**

interagency claims by negotiation. If the claim cannot be resolved by the agencies involved, it should be referred to the General Accounting Office.

§ 101.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes and implementing regulations other than Subchapter II of Chapter 37 of Title 31 of the United States Code and these Standards, providing for the collection, compromise, termination of collection action, or waiver in whole or in part of such a claim. See, for example, the Federal Medical Care Recovery Act, 78 Stat. 593, 42 U.S.C. 2651 et seq., and applicable regulations, 28 CFR 43.1 et seq. In such cases, the laws and regulations which are specifically applicable to claims collection activities of a particular agency take precedence over this chapter. Except as provided in § 102.19 of this chapter (Exemptions), the standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by collection, compromise, or termination of collection action (other than by waiver pursuant to other statutory authority) where neither the specific statute nor its implementing regulations establish standards governing such matters.

§ 101.5 Conversion claims.

The instructions contained in this chapter are directed primarily at the recovery of money on behalf of the United States and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of the property or the payment of its value.

§ 101.6 Subdivision of claims not authorized.

Claims may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's li-

ability arising from a particular transaction or contract shall be considered a single claim in determining whether the claim is one of less than \$20,000, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 103.1 of this chapter) or suspension or termination of collection action (§ 104.1 of this chapter).

§ 101.7 Required administrative proceedings.

Nothing contained in this chapter is intended to require an agency to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 101.8 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

- 102.1 Aggressive agency collection action.
- 102.2 Demand for payment.
- 102.3 Collection by administrative offset.
- 102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
- 102.5 Use of consumer reporting agencies.
- 102.6 Contracting for collection services.
- 102.7 Personal interview with debtor.
- 102.8 Contact with debtor's employing agency.
- 102.9 Suspension or revocation of license or eligibility.
- 102.10 Liquidation of collateral.
- 102.11 Collection in installments.
- 102.12 Exploration of compromise.
- 102.13 Interest, penalties, and administrative costs.
- 102.14 Analysis of costs.
- 102.15 Documentation of administrative collection action.
- 102.16 Automation.
- 102.17 Prevention of overpayments, delinquencies, and defaults.
- 102.18 Use and disclosure of mailing addresses.
- 102.19 Exemptions.

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§ 102.1

4 CFR Ch. II (1-1-86 Edition)

Sec.

102.20 Additional administrative collection action.

AUTHORITY: Subchapter II of Chapter 37 of Title 31, U. S. C. .

SOURCE: 49 FR 8897, Mar. 9, 1984, unless otherwise noted.

§ 102.1 Aggressive agency collection action.

(a) Each Federal agency shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, that agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency, or to perform collection actions which should have been undertaken by any other agency in accordance with the standards set forth in this chapter.

(b) All agencies are expected to cooperate with one another in their debt collection activities.

§ 102.2 Demand for payment.

(a) Appropriate written demands shall be made promptly upon a debtor of the United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this

chapter, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of: (1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the agency; (2) the applicable standards for assessing interest, penalties, and administrative costs (§ 102.13); and (3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered. Agencies should exercise care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. Apart from this, there is no prescribed format for the demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(c) As appropriate to the circumstances, agencies may consider including, either in the initial demand letter or in subsequent letters, such items as the agency's willingness to discuss alternative methods of payment, policies with respect to use of consumer reporting agencies (§ 102.5) and collection services (§ 102.6), the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) Agencies should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(e) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, an agency determines to pursue offset, then the procedures specified in §§ 102.3, 102.4, or 5 U.S.C. 5514, as applicable, should be followed. The availability of funds for offset and the agency's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its

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intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§ 102.3, 102.4, or 5 U.S.C. 5514.

§ 102.3 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these standards and implementing regulations established by each agency on all claims which are liquidated or certain in amount in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) For purposes of this section, the term "administrative offset" has the meaning provided in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies should consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset in every instance in which there is an available source of funds. Agencies may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Except as provided in § 101.4, this paragraph or § 102.4, the standards in this paragraph shall apply to the collection of debts by administrative offset under 31 U.S.C. 3716, some other statutory authority, or the common law.

(1) Agencies shall prescribe regulations for the exercise of administrative offset.

(2) Agency regulations required by paragraph (b)(1) of this section shall establish procedures for providing a debtor, before the offset is made, with appropriate procedural rights. Except as otherwise required by law, those regulations shall provide for: Written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt. Agency regulations shall also establish procedures for making requests for offset to other agencies holding funds payable to the debtor, and for processing requests for offset that are received from other agencies.

(i) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(ii) In cases where the procedural requirements specified in paragraph (b)(2) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance, the agency is not required to duplicate those requirements before taking administrative offset.

(3) Agencies may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect

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such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) Agencies are not authorized by 31 U.S.C. 3716 to use administrative offset with respect to: (i) Debts owed by any State or local Government; (ii) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (iii) any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(5) Agencies may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (b)(2) of this section if: (i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and (ii) the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(c) Type of hearing or review: (1) For purposes of this section, whenever an agency is required to afford a debtor with a hearing or review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when: (i) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (ii) the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or

veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the agency should always carefully document all significant matters discussed at the hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency shall nevertheless accord the debtor a "paper hearing," that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(d) Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including use of the Army Holdup List. Generally, agencies should not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable provisions of these standards or the offset would be otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with.

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(g) When collecting multiple debts by administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, agencies may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, an agency shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The requesting agency has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The requesting agency has complied with the requirements of § 102.3 of this part, including any required hearing or review.

(c) Once an agency decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a

year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the requesting agency collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the agency shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the requesting agency's determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

§ 102.5 Use of consumer reporting agencies.

(a) Agencies shall develop and implement procedures for reporting delinquent debts to consumer reporting agencies. For purposes of this section, the term "consumer reporting agency" has the meaning provided in 31 U.S.C. 3701(a)(3).

(b) In developing procedures under paragraph (a) of this section, agencies must have due regard for compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a. However, consumer reporting agencies themselves are not subject to the Privacy Act.

(c) Agency procedures developed under paragraph (a) of this section shall be consistent with the requirements of 31 U.S.C. 3711(f) and § 102.3(c) of this part.

§ 102.6 Contracting for collection services.

(a) All agencies have authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation (§ 105.1) must be retained by the agency;

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(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to paragraphs (a) (1), (2), and (3) of § 105.2 of this chapter upon returning an account to the creditor agency for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) An agency may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) An agency may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) An agency may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance in its appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, agencies must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

§ 102.7 Personal interview with debtor.

Agencies will undertake personal interviews with their debtors when-

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ever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

§ 102.8 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 102.9 Suspension or revocation of license or eligibility.

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance should give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim, and the debtor should be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans should give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time, and the debtor should be so advised. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

§ 102.10 Liquidation of collateral.

An agency holding security or collateral which may be liquidated and the proceeds applied on debts due it

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through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. The agency should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA-70a, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, agencies should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

§ 102.11 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by § 102.13 of this part, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. Agencies which agree to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than \$50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. An agency holding an unsecured claim for

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 102.12 Exploration of compromise.

Agencies may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 103 of this chapter.

§ 102.13 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (h) and (i) of this section, agencies shall assess interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, an agency must mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning the charges. (See § 102.2 of this part.)

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(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an agency uses an "advance billing" procedure—that is, if it mails a bill before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Agencies should exercise care to insure that the notices required by this section are dated and mailed or hand-delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. An agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) An agency shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt,—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 101.2(b) of this chapter. Calculation of administrative

costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) An agency shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 101.2(b) of this chapter for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) An agency shall waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. An agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, an agency may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in Part 103 of this chapter relating to the compromise of claims (without regard to the amount of the debt), or if the agency determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised only in accordance with regulations issued by the agency identifying the standards and appropriate circumstances for waiver. Examples of situations which agencies may consider including in their interest waiver regulations are: (1) Waiver of interest pending consideration of a request for reconsideration, administrative review,

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or waiver of the underlying debt under a permissive statute, and (2) waiver of interest where the agency has accepted an installment plan under § 102.11 of this Part, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is large enough in relation to the size of the installments that the debtor can reasonably afford to pay that the debt will never be repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 104.2(c)(1) of this chapter.

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply: (i) To debts owed by any State or local government; (ii) to debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982; (iii) to debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or (iv) to debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) However, agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 102.14 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program,

evaluating the feasibility and cost effectiveness of contracting for debt collection services under § 102.6, and determining appropriate charges for administrative costs under § 102.13(d).

§ 102.15 Documentation of administrative collection action.

All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation shall be retained in the appropriate claims file.

§ 102.16 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

§ 102.17 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed.

§ 102.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this chapter, an agency may send a written request to the Secretary of the Treasury (or designee) in order to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) An agency may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors, in order to facilitate the collection or compromise of debts under this chapter, except that a mailing address may be disclosed to a consumer reporting agency only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) Each agency shall ensure, by appropriate regulations and contract administration, that the agency and its agents, including consumer reporting agencies and collection service contractors, comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

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§ 102.19 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982, such as administrative offset (§§ 102.3 and 102.4), use of consumer reporting agencies (§ 102.5), contracting for collection services (§ 102.6), and interest and related charges (§ 102.13), do not apply to debts arising under or payments made under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States. However, these remedies and procedures may still be authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in the preceding paragraph unless the debt "arose under" those laws.

§ 102.20 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

- 103.1 Scope and application.
- 103.2 Inability to pay.
- 103.3 Litigative probabilities.
- 103.4 Cost of collecting claim.
- 103.5 Enforcement policy.
- 103.6 Joint and several liability.
- 103.7 Compromise for a combination of reasons.
- 103.8 Further review of compromise offers.
- 103.9 Restrictions.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8902, Mar. 9, 1984, unless otherwise noted.

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§ 103.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of claims pursuant to 31 U.S.C. 3711. The head of an agency may exercise such compromise authority with respect to claims for money or property arising out of the activities of that agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed \$20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation. Agency heads, including the Comptroller General, may designate officials within their respective agencies to exercise the authorities referred to in this section.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds \$20,000, the authority to accept the compromise rests solely with the Department of Justice. The agency should evaluate the offer, using the factors set forth in this part. If the agency then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See 4 CFR 105.2(b). Claims for which the gross amount is over \$100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530. Claims for which the gross original amount is \$100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. Justice Department approval is not required if the agency wishes to reject the compromise offer.

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Federal Claims Collection Standards**§ 103.4****§ 103.2 Inability to pay.**

(a) A claim may be compromised pursuant to this Part if the Government cannot collect the full amount because of: (1) The debtor's inability to pay the full amount within a reasonable time, or (2) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings.

(b) In determining the debtor's inability to pay, the following factors, among others, may be considered:

- (1) Age and health of the debtor;
- (2) Present and potential income;
- (3) Inheritance prospects;
- (4) The possibility that assets have been concealed or improperly transferred by the debtor; and
- (5) The availability of assets or income which may be realized by enforced collection proceedings.

(c) The agency should give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 102.11 of this chapter, in every case in which this is possible.

(e) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual

debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses. Forms such as Department of Justice Form OBD-500 or OBD-500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as seems required.

§ 103.3 Litigative probabilities.

A claim may be compromised pursuant to this Part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a *bona fide* dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

§ 103.4 Cost of collecting claim.

A claim may be compromised pursuant to this part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the

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positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

§ 103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

§ 103.6 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 103.7 Compromise for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

4 CFR Ch. II (1-1-86 Edition)**§ 103.8 Further review of compromise offers.**

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION**Sec.**

- 104.1 Scope and application.
- 104.2 Suspension of collection activity.
- 104.3 Termination of collection activity.
- 104.4 Transfer of claims.

AUTHORITY: 31 U.S.C. 3711(a)(3).

SOURCE: 49 FR 8903, Mar. 9, 1984, unless otherwise noted.

§ 104.1 Scope and application.

(a) The standards set forth in this part apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed \$20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. The head of an agency (or designee) may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of that agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with re-

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spect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds \$20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency thinks suspension or termination may be appropriate, it should evaluate the matter, using the factors set forth in this part. If the agency then concludes that suspension or termination is appropriate, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See 4 CFR § 105.2(b). The referral should specify the reasons for the agency's recommendation. If the agency decides not to suspend or terminate collection action on the claim, Justice Department approval is not required. If an agency determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

§ 104.2 Suspension of collection activity.

(a) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and registration records; state and local governmental agencies; the Internal Revenue Service (§ 102.18 of this chapter); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limita-

tions, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(b) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running anew; or

(2) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review.* (1) If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano v. Yamasaki*, 422 U.S. 682 (1979)), then collection action must be suspended until either: (i) The agency has considered the request for waiver/review, or (ii) the applicable time limit for making the waiver/review request, as prescribed in the agency's regulations, has expired and the debtor, upon proper notice, has not made such a request.

(2) If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/review request (for example, 5 U.S.C.

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5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted, or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(3) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request in the event the agency acts favorably on it, collection action should ordinarily be suspended, without regard to the factors specified in paragraph (c)(2) of this section, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection.

§ 104.3 Termination of collection activity.

The head of an agency (or designee) may terminate collection activity and consider the agency's file on the claim closed under the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(b) *Inability to locate debtor.* Collection action may be terminated on a

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claim when the debtor cannot be located, and either: (1) There is no security remaining to be liquidated, or (2) the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(c) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(e) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

§ 104.4 Transfer of claims.

When an agency has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

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PART 105—REFERRALS TO
DEPARTMENT OF JUSTICE OR GAO

Sec.

- 105.1 Prompt referral.
- 105.2 Claims collection litigation report.
- 105.3 Preservation of evidence.
- 105.4 Minimum amount of referrals to Department of Justice.
- 105.5 Preliminary referrals to GAO.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8904, Mar. 9, 1984, unless otherwise noted.

§ 105.1 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over \$100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530. Claims for which the gross original amount is \$100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this chapter, and in any event, well within the period for bringing a timely suit against the debtor. Ordinarily, referrals should be made within one year of the agency's final determination of the fact and the amount of the debt.

(b) Claims arising from audit exceptions taken by the General Accounting Office to payments made by agencies must be referred to the General Accounting Office for review and approval prior to referral to the Department of Justice for litigation, unless the agency concerned has been granted an exception by the General Accounting Office.

(c) When the merits of the Government's claim, the amount owed on the claim, or the propriety of acceptance

of a proposed compromise, suspension, or termination are in doubt, the agency concerned should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, the referring agency shall refrain from having any contact with the debtor and shall direct the debtor to GAO or the Department of Justice, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the Department of Justice, as appropriate, shall be immediately notified by the referring agency of any payments which are received from the debtor subsequent to referral of a claim under this section.

§ 105.2 Claims collection litigation report.

(a) Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by the General Accounting Office on January 20, 1983, shall be used with all referrals of administratively uncollectible claims made pursuant to § 105.1. As required by the CCLR, the following information shall be included.

(1) *Report of prior collection actions.* A checklist or brief summary of the actions previously taken to collect or compromise the claim will be forwarded with the claim upon its referral. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

(2) *Current address of debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may

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be made shall be provided. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government, shall be included.

(i) Such credit data may take the form of: (A) A commercial credit report; (B) an agency investigative report showing the debtor's assets, liabilities, income, and expenses; (C) the individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or (D) an audited balance sheet of a corporate debtor.

(ii) Such credit data may be omitted if: (A) A surety bond is available in an amount sufficient to satisfy the claim in full; (B) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full; (C) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment; (D) the debtor is in bankruptcy or receivership; (E) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or (F) the nature of the debtor is such that credit data is not normally avail-

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able or cannot reasonably be obtained, for example, a unit of State or local government.

(b) Agencies shall also use the CCLR when referring claims to the Department of Justice in order to obtain the approval of that Department with respect to compromise, suspension, or termination, as required by §§ 103.1(b) and 104.1(b).

§ 105.3 Preservation of evidence.

Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or to the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

§ 105.4 Minimum amount of referrals to Department of Justice.

Agencies will not refer claims of less than \$600, exclusive of interest, penalties, and administrative costs, for litigation unless: (a) Referral is important to a significant enforcement policy, or (b) the debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

§ 105.5 Preliminary referrals to GAO.

Preliminary referrals of claims to the General Accounting Office, as required by § 105.1(b) and (c), will be in accordance with instructions, including monetary limitations, contained in the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the provisions of §§ 105.2 and 105.3 of this part.