

7.1 Purpose. This chapter documents the policies, standards and responsibilities for protecting all forest resources on Indian lands from trespass.

7.2 Guidance. Handbooks, directives and other guides may be issued and revised to provide procedural guidance (see 53 IAM 1.3; also see the *Indian Forest Management Handbook, Volume 7*, titled, *Forest Trespass*, for detailed process and procedural guidance).

7.3 Scope. The directives contained in this chapter apply to all Federal agencies and programs participating in the management, accountability, or protection of Indian forest resources. Regardless of the means of program execution, the appropriate Federal official shall assure that the standards prescribed herein are met.

7.4 Policy. Forest resources on all Indian lands shall be protected from trespass. The policy of the Bureau of Indian Affairs is to:

- A. Proceed in every reasonable manner to detect all acts of trespass.
- B. Assure that acts of trespass are properly investigated, reported, payment demanded and, when appropriate, recommend prosecution to the proper authorities.
- C. Develop and maintain adequate records of each case.
- D. Furnish complete, immediate and vigorous support in handling trespass cases at all levels of the Bureau.
- E. Obtain suitable and sufficient training for Bureau and Tribal staff to carry out this policy.
- F. Issue and maintain detailed procedural guidelines in the form of handbooks for processing cases.
- G. Promote and support tribal concurrent civil jurisdiction as defined in 25 CFR §163.29(j).
- H. Obtain full recoverable damages when possible.

7.5 Characteristics of Civil Trespass Actions.

- A. Successful prosecution of a civil trespass case requires proof of Indian ownership of the premises and commission of the acts by the trespasser.
- B. The intent of civil prosecution is to recover damages suffered by the injured party.
- C. Damages may be recovered from the trespasser and/or the purchaser of forest products removed or damaged in trespass.
- D. Civil action is independent of criminal action and may be filed before, during or after prosecution for criminal acts of trespass.
- E. Civil prosecution is subject to applicable tribal, federal and state law as described in 25 CFR §163.29(a) (1) & (2).

7.6 Characteristics of the Criminal Trespass Actions.

A. Successful prosecution of a criminal trespass case requires proof beyond a reasonable doubt that the defendant(s) committed the criminal act(s) with which charged.

B. The intent of criminal prosecution is to punish the wrongdoer (trespasser) and act as a future deterrent for similar offenses. Any money receipts taken in fines or damages go to the U.S. Treasury, or can be applied towards restitution to the landowner as ordered by the court.

C. Criminal prosecution is subject to applicable federal, tribal and state statutes and ordinances. Public Law 83-280 (67 Stat. 588) states Regional Directors, where applicable, will issue special instructions to provide for compliance with state laws and regulations pertaining to trespass.

D. The criminal defendant can be apprehended in any state in which located and returned to the scene of the crime for prosecution.

7.7 Investigation. Initial investigation and formal investigation of civil damage claims will be undertaken by the BIA or by tribes with delegated authority in accordance with 25 CFR, §163.29(i), whereas criminal cases will be investigated by the FBI, BIA law enforcement, sheriff, or other local authorities depending on applicable federal, tribal and state statutes and ordinances. The office which begins the investigation should follow it through the final stages or until it is relieved in writing by the appropriate authority. Very few cases with low value in damages and costs are acceptable for civil prosecution by the U.S. Attorney. Such cases should be considered for prosecution in Tribal court under tribal concurrent civil jurisdiction.

7.8 Appeals. Any trespass decision by officials of the Bureau of Indian Affairs in which a person or persons may be adversely affected is appealable in accordance to 25 CFR, Part 2 - Appeals From Administrative Action.

7.9 Responsibilities. In addition to the responsibilities identified in 53 IAM 1.7, the following are directly associated with trespass:

A. Director, Bureau of Indian Affairs.

- (1) Develop national trespass policy and guidance for Indian forest resources.
- (2) Provide national trespass program direction, oversight and guidance.

B. Regional Director.

- (1) Develop regional forest trespass guidelines for program implementation.
- (2) Assure trespass policies and standards are met.
- (3) Refer trespass cases to Regional Solicitors Office involving compromise settlements or which may be of a criminal nature.
- (4) Authority to accept payment of damages in full in settlement of civil trespass cases. "Payment of damages in full" means payment of the maximum amount due under applicable law.
- (5) When requested, approves Indian tribe's concurrent civil jurisdiction to tribe when requirements of 25 CFR §163.29(j) are met.

(6) Rescinds Indian tribe's concurrent civil jurisdiction over trespass cases as defined 25 CFR §163.29(j)(3).

C. Agency Superintendent.

- (1) Responsible for detection and investigation of trespass of forest products.
- (2) Responsible for initial administrative actions as defined in 25 CFR §163.29 (a), (e) and (g).
- (3) Responsible for coordinating prosecution of trespass actions with tribes when tribal concurrent jurisdiction has been exercised.

D. Field Solicitor.

- (1) Provide legal guidance to Regional Director and Agency Superintendents on trespass cases.
- (2) May provide legal assistance in collecting damages and negotiating compromised trespass settlements.
- (3) May request initiation of civil and criminal litigation by the U.S Department of Justice.
- (4) Coordinates communication between U.S Department of Justice, Regional Directors, and Agency Superintendents in trespass litigation.

E. U. S. Department of Justice.

- (1) May prosecute civil and criminal trespass cases as requested by Regional Solicitor.
- (2) May settle referred cases in accordance with Department of Justice and Department of Interior regulations.

F. Tribal Government. Jointly responsible as described in 25 CFR §163.29(j)(2), for prosecution of civil trespass cases when concurrent civil jurisdiction has been exercised.