

available to pay their fair share of forest management deductions, as if the trespass products had been harvested under a normal harvest operation. As drafted in 25 U.S.C. 3106, civil penalties is broadly defined to include among other things the recovery of compensatory damages, restoration costs and enforcement costs. As such, gross proceeds (amount recovered as compensatory damages, less restoration costs and enforcement costs) should remain subject to applicable forest management deductions. Restoration costs and enforcement costs are clearly not the proceeds from sale. § 163.29 of the rule has been revised to reflect this fact.

104. *Comment:* Procedures on concurrent civil jurisdiction and administrative appeals in § 163.29(j) of the proposed rule are confusing and cumbersome.

Response: The comment references the confusion from a possible dual remedy when pursuing trespass civil damages in federal or tribal court and an administrative appeal under 25 CFR part 2 as provided for in §§ 163.29 (f) and (g) of the proposed rule. We agree that the provisions of the proposed rule are cumbersome in this regard and have revised § 163.29 of the rule so that the administrative appeal remedy in 25 CFR part 2 only applies to seizure of trespass products still situated on an Indian reservation, where the seizure is initiated by federal officials. The revision provides that the remedy for challenging a federal seizure of trespass Indian products situated on an Indian reservation is exclusively within agency jurisdiction to ensure that a judicial proceeding could not proceed until completion of the 25 CFR part 2 process. The revision does not allow a tribal seizure through concurrent jurisdiction to be challenged separately through 25 CFR part 2. The revision provides that seizure of trespass forest products off-reservation is contingent upon other legal authority and that seizure of property or equipment used in trespass on Indian land is similarly restricted.

In recognition of this request for clarification of concurrent jurisdiction, the three categories of seizure have been expanded in the revision of § 163.29 to provide for dual federal and tribal procedures.

The comment further addresses the confusion inherent in the proposed regulation regarding concurrent trespass jurisdiction between the Bureau and tribes, and suggests redrafting to clarify. § 163.29 of the rule has been revised to clarify the interrelationship of the tribes and United States as to implementing concurrent jurisdiction, and the noted

confusion has been eliminated. The intent of the revision is to implement Congress' grant of concurrent jurisdiction to qualifying tribes to pursue Indian trespass matters. At the suggestion of the commentator, the revision clarified that a tribe's exercise of the new, concurrent jurisdiction created through the National Indian Forest Resources Management Act and these regulations in no way affects any existing tribal authority to prosecute trespass matters. The revision provides that in cases where the Secretary defers to a tribe's exercise of its concurrent jurisdiction, the tribe rather than the United States would pursue and prosecute any tribal court litigation. In such cases, the United States would not appear as counsel, although BIA witnesses would be involved as appropriate. Tribal officials would not be acting on behalf of the United States, but on behalf of their separate jurisdiction granted by the National Indian Forest Resources Management Act. The revision adds further clarification consistent with these comments providing for discretionary United States' prosecution of Indian trespass matters in tribal courts in non-deferral situations. Also, seizure remedies in § 163.29 were revised to separate federal action from concurrent tribal action.

105. *Comment:* § 163.29 of the proposed rule should provide guidance on how to deal with trespass forest products located in different settings at time of trespass detection.

Response: Traditional judicial remedies are very different for dealing with trespass forest products located in different settings (e.g. in the woods, at a mill or buying station or after products have been converted and sold) at time of trespass detection. § 163.29 of the rule has been revised to provide more specific guidance on how to deal with trespass forest products located in different settings.

106. *Comment:* The provision of § 163.29(a)(1) of the proposed rule which applies the measure of damages in tribal law before applying state law is inconsistent with § 163.29(a)(2) of the proposed rule. Both should provide for the same priority of applicable law.

Response: § 163.29 of the rule has been revised to give tribal law precedence over state law so that provisions for applicable law for cases in tribal court and in Federal court are consistent.

107. *Comment:* What does the term "enforce" in the first sentence of § 163.29(f) of the proposed rule reference?

Response: The term "enforce" references the clarifying phrase "against trespass" in § 163.29 of the rule.

108. *Comment:* § 163.29(h) of the proposed rule seems to make the tribe responsible for the Bureau's regulations. Is this possible?

Response: § 163.29 of the rule allows either a tribe or the United States to assume control over enforcement/prosecution of a trespass.

163.31 Insect and Disease Control

109. *Comment:* Does § 163.31(a) of the rule require that the Secretary consult with the tribe to initiate insect and disease control measures on an allotment?

Response: § 163.31(a) of the rule requires that tribes be consulted in cases where control measures would be initiated on allotments within the reservation boundary.

163.32 Forest Development

110. *Comment:* Modify the first sentence in § 163.32 of the rule to state that both tribes and the Secretary may undertake activities to improve the productivity of commercial Indian forest land.

Response: The rule has not been revised because the wording of § 163.32 allows either the Secretary or the tribe to perform forest land management activities called for by the forest development program.

111. *Comment:* § 163.32 of the rule should be modified to emphasize that forest development activities can be applied to both timberland and woodland.

Response: The rule has not been revised because § 163.32 states that forest development pertains to forest land management activities undertaken on commercial Indian forest land. Since the definition of Indian forest land includes woodland, no change to emphasize applicability to woodland is needed.

112. *Comment:* § 163.32 of the rule should emphasize that forest land management activities undertaken in the forest development program be designed to improve sustained production of forest products on forest lands.

Response: The first sentence of § 163.32 has been revised to emphasize that forest development activities should be undertaken to improve the sustainable productivity of commercial Indian forest land.

113. *Comment:* The last sentence of § 163.32 of the rule should be modified to include environmental and ecological impact analyses as determinants in