



[3410-11P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 261 and 291

RIN 0596-AC95

Paleontological Resources Preservation

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule; request for comment.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to implement regulations under the Omnibus Public Land Management Act of 2009 paleontological resources preservation subtitle (the Act). This proposed rule would provide for the preservation, management, and protection of paleontological resources on Federal lands, and insure that these resources are available for current and future generations to enjoy as part of America's national heritage. The rule would address the management, collection, and curation of paleontological resources from Federal lands including management using scientific principles and expertise, collecting of resources with and without a permit, curation in an approved repository, maintaining confidentiality of specific locality data, and authorizing penalties for illegal collecting, sale, damaging, or otherwise altering or defacing paleontological resources.

DATES: Comments must be received in writing by **[FEDERAL REGISTER: Insert date 60 days from date of publication in the FEDERAL REGISTER.]**

ADDRESSES: Written comments concerning this notice should be addressed to USDA Forest Service, Michael Fracasso, M&GM, 740 Simms Street, Golden, CO 80401.

Comments may also be made by the electronic process available at the Federal e-Rulemaking portal at <http://www.regulations.gov>. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Office of Minerals and Geology Management, Forest Service, MGM, Room 500-RPC, 1601 N. Kent St., Arlington, Virginia between the hours of 8:30 a.m. and 4:30 p.m. Visitors are encouraged to call ahead to 703-605-4545 to facilitate entrance to the building.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0596-0082, the docket number, date, and page number of this issue of the Federal Register. Comments should be sent to the address listed in the above paragraph.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the proposed rule, please contact Michael Fracasso, Forest Service, at 303-275-5130, or mfracasso@fs.fed.us. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Rule

The Paleontological Resources Preservation subtitle of the Omnibus Public Land Management Act, 16 U.S.C. 470aaa to aaa-11 (the Act), requires the USDA and the U.S. Department of the Interior (DOI) to issue implementation regulations. In accordance with 16 U.S.C. 470aaa-1 of the Act, these regulations would serve to manage and protect paleontological resources on Federal land using scientific principles and expertise.

In FY 1999, the Interior Appropriations Subcommittee requested that the DOI, the Forest Service, and the Smithsonian Institution prepare a report on fossil resource management on public lands (see S. Rep. 105-227, at 60 (1998)). The request directed the agencies to analyze (1) the need for a unified Federal policy for the collection, storage, and preservation of fossils; (2) the need for standards that would maximize the availability of fossils for scientific study; and (3) the effectiveness of current methods for storing and preserving fossils collected from public lands. During the course of preparing the report, the agencies held a public meeting and gathered public input. The DOI report to Congress, “Assessment of Fossil Management of Federal and Indian Lands,” was published in May 2000. The Paleontological Resources Preservation Act (PRPA) was introduced in the 107th Congress after the report was released. The PRPA was modeled after the Archaeological Resources Protection Act (ARPA) and emphasized the recommendations and guiding principles in the May 2000 report. The legislation was re-introduced in subsequent Congresses through the 111th Congress when it was combined with other natural resources legislation in an omnibus bill that became law on March 30, 2009 (the Act).

The Act requires that implementation be coordinated between the Secretaries of Agriculture and Interior (Secretaries) (16 U.S.C. 470aaa-1). Accordingly, the USDA and the DOI formed an interagency coordination team (ICT) in April 2009 to draft the proposed regulations. Members of the ICT included program leads for paleontology, archaeology, and regulatory specialists from the Forest Service, DOI Bureau of Land Management (BLM), National Park Service (NPS), Bureau of Reclamation (BOR), and Fish and Wildlife Service (FWS).

Section by Section Explanation of the Proposed Rule

Part 291–Paleontological resources preservation

This part would contain regulations on the management, protection, and preservation of paleontological resources on Forest Service land using scientific principles and expertise, including the collection of paleontological resources with and without a permit, curation of paleontological resources in approved repositories, confidentiality of paleontological locality information, and criminal and civil penalties.

Section 291.1 Purpose

The proposed regulations would provide for the preservation, management, and protection of paleontological resources on Forest Service lands. Legislative history¹ of the Act demonstrates that it was enacted to preserve these resources for current and future generations because paleontological resources are nonrenewable and are an irreplaceable part of America’s natural heritage.

This section would clarify that the Secretary of Agriculture (Secretary) will manage and protect paleontological resources on Forest Service land using scientific principles and expertise. This section would clarify that science, rather than other values, will be the primary management tool for paleontological resources on Forest Service lands. The regulations would provide for the coordinated management of paleontological resources and promote research, public education, and public awareness.

¹ S. 2727: 148 Cong. Rec. S. 6708-6709 (2002) (Statement of Sen. Akaka); S. 546: S. Rep. 108-93 (2003); S. 263: S. Rep. 109-36 (2005); S. 320: 153 Cong. Rec. S. 691-693 (2007) (Statement of Sen. Akaka) and S. Rep. 110-18 (2007); H.R. 554: H. Rep. 110-670, Part 1; and S. 22: 155 Cong. Rec. S. 426 (2009) (Statement of Sen. Akaka).

Section 291.2 Authorities

Section 291.2 would cite the Paleontological Resources Preservation subtitle of the Omnibus Public Land Management Act (the Act) under which the proposed regulations are promulgated.

Section 291.3 Exceptions

Section 291.3 would address the scope of the regulations, based on 16 U.S.C. 470aaa-10 of the Act.

This section would state that the regulations would not invalidate, modify, or impose any additional restrictions or permitting requirements for activities permitted under the general mining laws, the mineral or geothermal leasing laws, laws providing for minerals materials disposal, or laws and authorities relating to reclamation and multiple uses of Federal land. The USDA would continue to use other applicable laws and regulations as the authority for such restrictions or requirements. The USDA would be authorized to cite the Act or these proposed regulations as needed for the protection of paleontological resources when planning, managing, regulating, or permitting various activities on the Forest Service lands covered by the Act.

Section 291.3(c) would state that Indian lands, as defined in these regulations, are exempt from the scope of the regulations.

Section 291.3(e) would state that the proposed regulations would not apply to, or require a permit for, casual collecting of a rock, mineral, or fossil that is not protected under the Act and the proposed regulations. Such rocks, minerals, and fossils are covered by other laws, regulations, and policies.

Section 291.3(f) would state that the proposed regulations would not affect any land other than Federal land or affect the lawful recovery, collection, or sale of paleontological resources from land other than Federal land. “Federal land” would be defined in the Act and the regulations as lands that are controlled or administered by the Secretary, except Indian land. In some circumstances, the Secretary may administer lands that are not owned by the United States. Such lands fall within the definition of Federal land within these regulations, and therefore, would be subject to the Act and these regulations.

Section 291.3(g) would state that members of the general public do not obtain any rights or privileges from the Act or the proposed regulations and cannot sue the U.S. Government to enforce its provisions.

Section 291.4 Preservation of existing authorities

Section 291.4 would be based on 16 U.S.C. § 470aaa-10(5) of the Act. This section would preserve the Forest Service’s existing legal and regulatory authorities for managing and protecting paleontological resources in addition to protecting such resources under the Act or the proposed regulations.

Section 291.5 Definitions

Section 291.5 would contain the definitions and terms as defined in the Act or used in these proposed regulations. This section would include six terms defined by 16 U.S.C. § 470aaa of the Act: *casual collecting*, *Federal land*, *Indian land*, *paleontological resource*, *Secretary*, and *State*. In addition, this section would define the terms *reasonable amount*, *common invertebrate and plant paleontological resources*, and *negligible disturbance*. 16 U.S.C. § 470aaa of the Act required the Secretary to define

those terms in the implementing regulations. Lastly, this section would define terms used in the proposed regulations that may not be broadly understood or that may be defined differently elsewhere, in order to clarify their meaning for these proposed regulations.

1. The term *Act* means Title VI, Subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. § 470aaa through 470aaa-11).

2. The term *associated records* would delineate the types of information that are required by 16 U.S.C. § 470aaa-4 of the Act to be deposited in an approved repository.

3. The term *authorized officer* means the person or persons to whom authority has been delegated by the Secretary to take action under the Act.

4. The term *casual collecting* would restate the definition contained in 16 U.S.C. § 470aaa of the Act. To be considered *casual collecting*, the activity would mean all of the following: collecting of a reasonable amount of common invertebrate or plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to the Earth's surface and other resources.

5. The term *collection*, as used in Sections 291.21 through 291.26 of the proposed regulations, would mean paleontological resources and any associated records resulting from excavation or removal from Federal lands under a permit.

6. The term *common invertebrate and plant paleontological resources* would clarify the types of paleontological resources that may be casually collected in accordance with the Act and the proposed regulations. The proposed definition would incorporate the plain meaning of common, which means plentiful and not rare or unique.

The proposed definition would also incorporate a geographical factor of wide-spread distribution, which means that the resource is distributed over a relatively large geographical area. The proposed definition would also clarify that not all invertebrate and plant paleontological resources are common; some are not common because of their context or other characteristics and, therefore, are not eligible for casual collection. The determination of whether invertebrate and plant fossils are common or not common will be made by the authorized officer using scientific principles and methods in accordance with section 291.9(c).

7. The term *consumptive analysis* would mean the alteration, removal, or destruction of a paleontological specimen, or parts thereof, from a collection for scientific research.

8. The terms *curatorial services* and *curation* would specify the minimal professional museum and archival standards employed in the long-term management and preservation of a collection.

9. The term *Federal land* would restate the definition contained in 16 U.S.C. § 470aaa of the Act, would mean land controlled by the Secretary except for Indian land as defined in 16 U.S.C. § 470aaa.

10. The term *fossil* would mean any remains, traces, or imprints of organisms that have been fossilized or preserved in or on the Earth's crust. In informal usage, the term *fossil* tends to be used interchangeably with the term *paleontological resource*. However, under 16 U.S.C. § 470aaa of the Act and these proposed regulations, a *fossil* may not necessarily be a *paleontological resource*. Remains, traces, or imprints of organisms (i.e., *fossils*) are only considered *paleontological resources* under the Act and the

proposed regulations if they are: (1) fossilized, (2) of paleontological interest, and (3) provide information about the history of life on earth. Therefore, paleontological resources are fossils that have paleontological interest and provide information about the history of life on earth. An example of a fossil that may not be a paleontological resource because it lacks paleontological interest and provides negligible information about the history of life on earth would be an isolated, unidentifiable fragment of an otherwise common invertebrate fossil that was eroded from its native geologic occurrence and subsequently found in a stream bed far from its point of origin.

11. The term *fossilized* as used in the definition of *paleontological resources* would mean preserved by natural processes, such as burial in accumulated sediments, preservation in ice or amber, replacement by minerals, or alteration by chemical processes such as permineralization whereby minerals are deposited in the pore spaces of the hard parts of an organism's remains. This definition would be adapted from the definition of fossilization in the American Geological Institute's Glossary of Geology (Fifth Edition, 2005, ISBN 0-922152-76-4).

12. The term *Indian land* would restate the definition contained in Section 16 U.S.C. § 470aaa of the Act.

13. The term *negligible disturbance* as used in the definition of *casual collecting* would clarify that casual collection of common invertebrate and plant fossils may only result in little or no change to the land surface and have minimal or no effect on other resources such as cultural resources and protected or endangered species. Disturbance caused by powered and/or large non-powered hand tools would exceed the "negligible" threshold and would no longer be casual collection.

14. The term *non-commercial personal use* as used in the definition of *casual collecting* would clarify the types of use allowed under casual collection, and would mean uses other than for purchase, sale, financial gain, or research. Common invertebrate and plant paleontological resources collected for research purposes is not personal use and would need to be authorized under a permit in accordance with Sections 291.13 through 291.20. Exchange of common invertebrate and plant paleontological resources among casual collectors would be permissible as long as such resources were collected in accordance with the Act and the proposed regulations.

15. The term *non-powered hand tools* as used in the definition of *casual collecting* would clarify the types of tools that can be used for the casual collecting of common invertebrate and plant paleontological resources, and would mean small tools that can be readily carried by hand, such as geologic hammers, trowels, or sieves, but not large tools such as full sized-shovels or pick axes. Larger tools are more likely to create disturbance that is greater than “negligible.” The tools must not be powered by a motor, engine, or other power source.

16. The proposed definition of the terms *paleontological locality*, *location*, and *site* would mean a geographic area where a paleontological resource is found. Localities, locations, and sites may be as small as a single point on the ground or as large as the area of an outcrop of a formation in which paleontological resources are found. The term *paleontological site* would be used interchangeably with *paleontological locality* or *location*. *Site* as used in the Act and these regulations does not mean an “archaeological site” as used in the Archaeological Resources Protection Act and its regulations.

17. The term *paleontological resource* would restate the definition contained in 16 U.S.C. 470aaa of the Act. All remains, traces, or imprints of organisms are *paleontological resources* when they are (1) fossilized, (2) of paleontological interest, and (3) provide information about the history of life on earth. The term *paleontological resources* as used in the Act and the proposed regulations would not include any materials associated with an archaeological resource as defined in the Archaeological Resources Protection Act or any cultural items as defined in the Native American Graves Protection and Repatriation Act.

18. The term *reasonable amount* as used in the definition of *casual collecting* would quantify the maximum amount of common invertebrate and plant paleontological resources that could be removed from Federal lands. A person may remove up to one gallon of material in volume or 25 pounds in weight, and up to five specimens of each type of fossil per calendar year. If the fossil specimens are contained within rock slabs, the reasonable amount would be limited to a slab that can be hand-carried by one person without the aid of mechanical devices. The authorized officer may modify the amount that is reasonable in order to preserve fossil-bearing locations that may be at risk of being depleted, thereby preserving paleontological resources in accordance with the Act.

19. The term *repository* would identify the types of facilities into which collected paleontological resources would be deposited as required by 16 U.S.C. § 470aaa-4 of the Act.

20. The term *repository agreement* would mean a formal written agreement between the authorized officer and an approved repository official containing the terms,

conditions, and standards by which the repository would agree to provide curatorial services for collections.

21. The term *repository official* would identify any officer, employee, or agent who is authorized by the repository to take certain actions on behalf of the repository, including the acceptance of collections and providing long-term curatorial services for collections.

22. The term *Secretary* as used in these proposed regulations and defined in 16 U.S.C. § 470aaa of the Act would mean the Secretary of Agriculture.

23. The term *State* would restate the definition contained in 16 U.S.C. § 470aaa of the Act.

Section 291.6 Confidentiality of Information – General

Paragraph 291.6(a) would implement the confidentiality provision contained at 16 U.S.C. § 470aaa -8 of the Act. This provision constitutes a statutory exemption from the disclosure requirements of 5 U.S.C. § 552 (Freedom of Information Act) and other laws. For example, information about the nature and specific location of paleontological resources on National Forest System lands in an inventory document, scientific report, repository records, National Environmental Policy Act documents, or interpretive information, or information contained in existing agency documents and records such as prior permits, may be withheld from disclosure or release to non-agency personnel, unless the authorized officer determines in writing that disclosure would (1) further the purposes of the Act and the proposed regulations, (2) not create risk of harm to or theft or destruction of the resource or the site containing the resource, and (3) be in accordance

with other applicable laws. This section would not limit the Forest Service's authority to release information concerning the general location of paleontological resources.

Paragraph 291.6(b) would clarify that certain sharing of information concerning the nature and specific location of a paleontological resource does not constitute a disclosure or a release of that information. The Forest Service may wish to share information with certain non-agency personnel for scientific, educational, or resource management purposes, without waiving the statutory exemption from disclosure provided by the Act. In such situations, the authorized officer may share this information only with recipients who sign a confidentiality agreement in which the recipient agrees not to share the information with anyone else.

Section 291.7 Public awareness and education

Section 291.7 would restate the provision in 16 U.S.C. § 470aaa-2 of the Act for establishing a public awareness and education program about the significance of paleontological resources on Federal lands.

Section 291.8 Area closures

Section 291.8 would implement 16 U.S.C. 470aaa-3(e) of the Act providing for restricting access to or closing areas to the collection of paleontological resources in order to protect paleontological or other resources or to provide for public safety. Closure of an area to non-collecting activities would continue to be authorized under separate authorities where appropriate.

Section 291.9 Determination of paleontological resources

Section 291.9 would only apply to National Forest System lands administered by the Forest Service. Because of the Forest Service's multiple use mandates, there may be situations where a determination of what is or is not a paleontological resource would be necessary to avoid resource or land-use conflicts such as under the 1897 Organic Act or the Multiple Use Sustained Yield Act.

Paragraph 291.9(a) would state that all paleontological resources from Forest Service administered lands are to be managed, protected, and preserved under the proposed regulations, unless a determination is made that they are not paleontological resources in accordance with paragraph 291.9(b).

Paragraphs 291.9(b) and 291.9(c) would provide the authorized officer with a process to determine whether certain fossils should or should not be managed as paleontological resources as defined under the Act or the proposed regulations. Not all fossils are paleontological resources, as explained earlier in this preamble in the discussion of paragraph 291.5 (10) of these proposed regulations. This determination would be based on scientific principles and methods, would be documented in writing, be prepared by a qualified paleontologist, and would provide the necessary framework to adhere to the savings provisions at 16 U.S.C. § 470aaa-10 while satisfying the mandate at 16 U.S.C. § 470aaa-1 that requires management using scientific principles and expertise. Such determinations may change over time as new information comes to light about the fossil. Fossils associated with an archaeological resource as defined in the Archaeological Resources Protection Act or any cultural items as defined in the Native

American Graves Protection and Repatriation Act are considered to be heritage resources and are not paleontological resources.

Paragraph 291.9(d) would affirm that mineral resources on National Forest System land, such as coal, oil, natural gas, and other economic minerals which are subject to the existing mining and mineral laws, are not paleontological resources. Petrified wood as defined at 30 U.S.C. 611 means “agatized, opalized, petrified, or silicified wood or any material formed by the replacement of wood by silica or other matter,” and is a mineral material. However, in accordance with paragraph 291.9(a), the authorized officer may determine that an occurrence of petrified wood is a paleontological resource and should be protected and preserved accordingly. Microfossils that occur on National Forest System lands, such as conodonts and invertebrates that are individually too small to be studied without a microscope, are not considered paleontological resources for the purposes of the Act. Vertebrate fossils, including microvertebrate fossils, are always considered paleontological resources. Geological and soil units, including, but not limited to, limestones, diatomite, chalk beds, and fossil soils (i.e. paleosols) that are intrinsically composed of fossil remains, but may be considered to be mineral materials or fossil soils, are not paleontological resources under the Act or the proposed regulations.

Section 291.10 Collecting

Section 291.10 would restate Section 16 U.S.C. § 470aaa-3(a)(1) and (2) of the Act, which directs that a paleontological resource may only be collected from lands administered by the Forest Service in accordance with a permit issued by the authorized officer under these proposed regulations, except for casual collecting.

Section 291.11 Casual collecting on National Forest System lands

Section 291.11 would restate 16 U.S.C. § 470aaa-3(a)(2) of the Act that allows for casual collecting without a permit on certain Federal lands. Casual collecting, as defined in Section 291.5, would be allowed on National Forest System lands where such collection is consistent with the laws governing the management of those lands and these proposed regulations. National Forest System lands would generally be considered open to casual collection unless otherwise closed to such casual collection as described in Section 291.12. Paragraphs 291.11(d) and (e) would state that the authorized officer can use the process in paragraph 291.9(c) to make a determination that certain invertebrate or plant fossils are not common, and therefore, cannot be casually collected and must be collected under a permit. Paragraph 291.11(d) would provide the authorized officer with the ability to protect invertebrate and plant fossils when they are not common.

Paragraph 291.11(e) would clarify that it is the responsibility of the collecting public to ensure that areas in which they are proposing to casually collect common invertebrate or plant fossils have not been closed to casual collection for reasons as described in Section 291.12. Information regarding area closures would generally be available from the local district office. Paragraph 291.11(f) would clarify that paleontological resources collected from Forest Service land in accordance with the casual collection provisions of Section 291.11 cannot be sold.

Section 291.12 National Forest System lands closed to casual collection

Paragraphs 291.12(a) and (b) would clarify that casual collecting is prohibited on National Forest System lands that are closed to casual collecting under these regulations, other statutes, Executive orders, regulations, and land use plans. In addition, paragraph

291.12(b) clarifies that NFS lands that were closed to casual collecting prior to the Act remain closed to casual collecting.

Section 291.13 Permits

Paragraph 291.13(a) would restate 16 U.S.C. § 470aaa-3(b)(1 through 4) of the Act which are the criteria for issuing permits for the collection of paleontological resources from Federal lands.

Paragraph 291.13(b) would clarify that issuance of a permit is within the discretion of the authorized officer.

At present, Forest Service permits for paleontological resource activities such as collection and resource inventory surveys are issued as special use authorizations. Current paleontological resource permitting practices do not preclude development of paleontology-specific use permits as authorized under the Act which would be issued and administered by the Forest Service Minerals and Geology Management program apart from the special uses program. Development of such a paleontology-specific permit to authorize collection of paleontological resources is associated with the proposed information collection which is described in this preamble in the section titled *Controlling Paperwork Burdens on the Public*.

Section 291.14 Application process

Section 291.14 would set forth the information that must be submitted by permit applicants to the authorized officer for the proposed collection of paleontological resources. The Forest Service may require additional information in order to support an application for a permit.

Section 291.15 Application qualifications and eligibility

Paragraph 291.15(a) would clarify what information is needed from an applicant to demonstrate, to the satisfaction of the authorized officer, that the applicant is qualified to carry out the proposed permitted activity. These qualifications are important to ensure that the collection would be carried out in a professional and responsible manner.

Paragraph 291.15(b) would clarify that the information submitted by an applicant must demonstrate that the proposed activity is eligible for a permit, in accordance with 16 U.S.C. § 470aaa-3(b)(2)-(4) of the Act.

Section 291.16 Terms and conditions

Paragraphs 291.16(a), (b) and (c) would restate 16 U.S.C. § 470aaa-3 (c)(1) through (3) of the Act in specifying requirements for the issuance of a permit for the collection of paleontological resources. The permittee would acknowledge that paleontological resources collected from Federal lands under a permit remain property of the United States; that the paleontological resources collected, along with associated records, would be preserved for the public in an approved repository to be made available for scientific research and public education; and that specific locality data would be kept confidential.

Paragraphs 291.16(d) through (r) would establish requirements to ensure that all permitted activities would comply with and further the purposes of the Act, the proposed regulations, any additional stipulations, and other Forest Service contract authorities and requirements.

Paragraph 291.16(r) would provide for the incorporation of additional permit stipulations, as may be appropriate, that were not otherwise listed in paragraphs 291.16(a)

through (q). Examples of such additional stipulations would include, but not be limited to, reclamation plans and posting of reclamation bonds. The addition of permit terms, conditions, or stipulations requiring a reclamation plan or bond, or both, to ensure reclamation of surface disturbance associated with paleontological resource collections would be at the discretion of the authorized officer under these regulations, and such requirements would be based on conditions specific to the authorized activity.

Section 291.17 Permit reports

Section 291.17 would list the information that will be necessary for permittees to include in the reports required under a permit to conduct paleontological activities. This information is required in order to address 16 U.S.C. § 470aaa-1 which states that the Secretary shall manage paleontological resources using scientific principles and expertise.

Section 291.18 Modification of permits

Section 291.18 would provide the framework for the modification of permits, in accordance with 16 U.S.C. § 470aaa-3(d) of the Act. Examples of a permittee's request for permit modification would include, but would not be limited to: changes to the persons listed on the permit, changes to the scope of work (including, but not limited to, geographic area, analysis or collecting techniques, or geologic strata), change of the designated approved repository, or changes to the permit timelines. Modification of a permit would be discretionary on the part of the authorized officer (see paragraph 291.13(b)). Notifications regarding modifications would be in writing.

Section 291.19 Suspension and revocation of permits

Paragraphs 291.19(a) and (b) would provide for the suspension or revocation of permits in accordance with 16 U.S.C. § 470aaa-3 (d)(1) and (2) of the Act. Suspensions would address a variety of management issues that may or may not be due to any fault of the permittee. For example, the authorized officer would be able to suspend a permit if conditions relating to other resources have changed. The authorized officer would also be able to suspend a permit for any violation of a term or condition of the permit, such as exceeding the approved scope of work.

A permit may also be suspended if permittee becomes ineligible to hold a permit. Examples of ineligibility include, but are not limited to, situations where the permittee is responsible for resource damage, if the approved repository is no longer available, or if the permittee provided false information to the authorized officer as part of the application for the permit.

A suspended permit may be revoked if the permittee fails to correct the reason(s) for the suspension in accordance with the notification by the authorized officer. Permits that are suspended for reasons other than the permittee's conduct (for example, resource management closures, wildfires, and so forth) will not be revoked. Such circumstances will result in continued permit suspension until the situation is corrected, or in some cases, the permit may be modified.

Section 291.20 Appeals

Section 291.20 would clarify that a permittee may appeal the denial or revocation of a permit in accordance with 36 C.F.R. Part 251. Procedures for appealing a permit revocation or denial are set forth in 36 C.F.R. Part 251.

Section 291.21 Curation of paleontological resources

Section 291.21 would clarify that paleontological resources from Federal lands collected under a permit issued under these regulations must be deposited in an approved repository. Collections made from Federal lands before the effective date of these regulations would be covered under the terms of the original collection permit or agreement. Such instruments remain in effect and the collections remain Federal property. Repositories are encouraged to work with the Forest Service to ensure that the care of pre-existing collections meet the minimum requirements of these regulations.

Section 291.22 Becoming an approved repository

Section 291.22 would state the requirements for becoming an approved repository. Paragraph 291.22(a) would state that the repository must meet the minimum standards in Section 291.23 and agree to certain terms and conditions. Paragraph 291.22(b) would state that the authorized officer and the repository official may enter into a formal curation agreement in accordance with Section 291.26. Paragraph 291.22 (c) would explain that the repository must agree to periodic inventories and inspections as described in Section 291.25. Paragraph 291.22(d) would clarify that the authorized officer in consultation with the repository official will make a determination of the content of the collection to be curated based on scientific principles and expertise. Paragraph 291.22(e) would explain that a repository that has been approved by one Federal agency may be considered approved by other Federal agencies. For example, a repository approved by the Forest Service may be considered approved by the Bureau of Land Management and vice versa.

Section 291.23 Minimum requirements of approval of a repository

Section 291.23 would state the minimum requirements that a repository must meet in order to be approved to provide long-term curatorial services for Federal paleontological collections. It is important to establish such requirements in these proposed regulations, rather than rely on standards contained in internal agency policy and guidance documents such as Department of the Interior Departmental Manual Part 411, in order to (1) promote consistency between the Departments, (2) eliminate subjectivity in approving repositories, and (3) provide sufficient information to repositories seeking to become approved under the Act and the proposed regulations.

Section 291.24 Standards for access and use of collections

Section 291.24 of the proposed regulations would provide repositories with consistent standards for access to and use of Federal collections in accordance with 16 U.S.C. § 470aaa-3(c)(2) of the Act, which states that paleontological resources will be preserved for the public in approved repositories and be made available for scientific research and public education. This section would also address loans and reproductions, which increase the use and accessibility of paleontological resources consistent with professional and educational practices.

Paragraph 291.24(f) would clarify when repositories must obtain approval from the authorized officer before allowing certain uses that may subject the specimens to damage. These uses would include reproductions and consumptive analysis of specimens. Reproductions would include molding and casting, computerized axial tomography (CAT) scans, and three-dimensional (3-D) rendering. Reproductions help expand use and accessibility of collections for exhibition, research, education, and

interpretation. Producing a mold and then a cast of a specimen will allow an exact duplicate upon which research and exhibition can take place without further damaging the original specimen. Paragraph 291.24(f)(2) would clarify that the approved repository may only allow consumptive analysis of specimens if the authorized officer, in consultation with an agency paleontologist, has determined that the potential gain in scientific or interpretive information outweighs the potential loss of the paleontological resource. Consumptive analysis would generally be limited to specimens that are not unique or fragile, or to a sample of specimens drawn from a larger collection of similar specimens.

Section 291.25 Conducting inspections and inventories of collections

Section 291.25 would clarify the responsibilities of the authorized officer and the repository for inspections and inventories of Federal paleontological collections as required by the Federal Property and Administrative Services Act (40 U.S.C. § 541 et seq) and its implementing regulations (41 CFR Parts 101 and 102) and guidance which require periodic inspections. The responsibilities of the repositories for the stewardship of Federal paleontological collections would be clarified by citing these authorities in the proposed regulations. It is important for repositories to know that after a Federal paleontological collection is placed in an approved repository, the authorized officer still retains the ultimate responsibility to ensure that the collection is adequately accounted for and maintained on behalf of the Federal government.

Section 291.26 Repository agreements

Paragraph 291.26(a) would clarify that the authorized officer may, on behalf of the agency, enter into agreements with approved repositories. Such agreements would define curation responsibilities of the approved repositories and promote consistency in collections management.

Paragraph 291.26(b) would specify the terms and conditions that would be included in a repository agreement, as appropriate. These terms and conditions would be consistent with those that are required for repository agreements for Federal archeological resource collections at 36 CFR Part 79, but have been modified to be relevant for paleontological collections. It is important to include these terms and conditions in the proposed regulations to ensure consistency between the Departments, to provide adequate notice to current and potential repositories, and to provide standard treatment of paleontological resources originating from lands controlled or administered by the agency.

Paragraph 291.26(b)(8) would protect the confidentiality of specific paleontological locality data in collections.

Section 291.27 Prohibited acts

Paragraph 291.27(a) would restate the prohibited acts contained in 16 U.S.C. § 470aaa-5(a) of the Act.

Paragraph 291.27(b) would implement the false labeling prohibition contained in 16 U.S.C. § 470aaa-5 (b) of the Act. The authorized officer would have discretion to consider whether false labeling was inadvertent in evaluating whether to seek penalties for instances of false labeling,

Section 291.28 Civil penalty

Section 291.28 would provide that a person who violates any prohibition contained in these proposed regulations or in a permit issued under these proposed regulations may be assessed a penalty by the authorized officer, after the person is given notice and opportunity for a hearing with respect to the violation. For purposes of these proposed regulations, each violation is considered a separate offense.

The civil penalty provisions in the proposed regulations were modeled after the civil penalty regulations promulgated pursuant to the Archaeological Resources Protection Act, 16 U.S.C. § 470aa-mm.

Section 291.29 Amount of civil penalty

Paragraph 291.29(a) would set forth the factors to be used by the authorized officer in determining the amount of the penalty, including the scientific or fair market value, whichever is greater, of the paleontological resource involved; the cost of response to and restoration and repair of the resource and the paleontological site involved; and other factors considered relevant by the authorized officer in the written response submitted under section 291.30. Paragraph 291.29(b) would also clarify that repeated violations could result in the doubling of the penalties. Such doubling may occur only after a conviction or an otherwise proven violation. Paragraph 291.29(c) would provide that the amount of any penalty assessed under this Section for any one violation would not exceed an amount equal to double the cost of response to and restoration and repair of resources and paleontological site damage plus double the scientific or fair market value of resources destroyed or not recovered, in accordance with 16 U.S.C. 470aaa-6(a)(3) and (a)(4) of the Act. This paragraph is intended to ensure that response costs may be

included in the determination of penalty amounts. Paragraph 291.29(d) would provide that scientific and fair market values and the cost of response to and restoration and repair of the resource and the paleontological site involved are to be determined as described under Sections 291.37, 291.38, and 291.39.

Section 291.30 Civil Penalty Process

16 U.S.C. 470aaa-6(a) of the Act requires that any person assessed a penalty under the Act be given notice and opportunity for a hearing with respect to the violation. Section 291.30 would describe the process by which a civil penalty notice of violation is served on the person or party believed to be subject to a civil penalty, and the deadline and options for the person or party served with the notice to respond. Paragraph 291.30(a) would describe the contents of the civil penalty notice of violation that would be served on the person believed to be subject to a civil penalty, including a statement of facts in regard to the violation, the legal citation of that part of the Act or regulations that was violated, the amount of the proposed penalty, and the notice of the right to a hearing or judicial relief of the final administrative decision. This paragraph would require delivery by certified mail (return receipt requested) of these documents, rather than personal delivery as allowed by other regulations, in order to simplify compliance with the timeline required by this section. Paragraph 291.30(b) would explain that the recipient of the notice of violation has 45 calendar days to respond in accordance with this section. Paragraph 291.30(c) would describe the procedures which the authorized officer would use to assess the final amount of the penalty. Paragraph 291.30(d) would describe the factors that the authorized officer may consider in offering to modify or remit a penalty. Paragraph 291.30 (e) would explain that after the authorized officer has

determined the final amount of the civil penalty, a written notice of the assessed amount would be served to the recipient of the notice of violation. The notice of assessment would be served by some type of verifiable delivery, such as by certified mail, return receipt requested. Paragraph 291.30(f) would explain the procedures of how the recipient of a notice of violation or a notice of assessment would file for a hearing. A request for a hearing must be in writing, must include a copy of the notice, and must be sent by certified mail, return receipt requested. The request for a hearing must be filed within 45 calendar days of the mailing of the notice and failure to file a request within the timeframe would be considered a waiver of the right to a hearing. Paragraph 291.30(g) would explain what constitutes the final administrative decision of the civil penalty amount. Under a notice of violation, the final administrative decision is when the recipient agrees to the amount of the proposed civil penalty. Under a notice of assessment, when a recipient has not requested a hearing within the 45 calendar day timeframe, the amount of the civil penalty in the notice of assessment is the final administrative decision. Under a notice of assessment, when a recipient has filed a timely request for a hearing, the decision resulting from the hearing is the final administrative decision. Paragraph 291.30(h) would explain that the person who has been assessed a civil penalty has 45 calendar days after the final administrative decision is issued to make the payment unless a timely request was filed with the U.S. District Court as provided in section 291.32. Paragraph 291.30(i) would explain that assessment of a civil penalty under this section is not deemed a waiver of the right for the Federal government to pursue other available legal or administrative remedies.

Section 291.31 Civil penalties hearing procedures

Title 16 U.S.C. 470aaa-6(c) of the Act requires that hearings for civil penalty proceedings be conducted in accordance with 5 U.S.C. 554 of the Administrative Procedures Act (APA). Section 291.31 describes the procedures by which civil penalty hearings shall be conducted.

Paragraph 291.31(a) would explain that the recipient of a notice of violation or assessment may file a written request for a hearing in the office specified in the notice. The recipient would need to enclose a copy of the notice with the request. The person requesting a hearing would be able to state their preference as to the place and date for a hearing, but any such requested locations must be situated within the United States and be reasonable to be considered. In all cases, the agency will retain discretion to decide the location of the hearing. Paragraph 291.31(b) would explain that upon receipt of the request for a hearing, the hearing office would assign an administrative law judge. Notification of the assignment of the judge would be given to all the parties involved, and from then on, all documentation for the proceedings must be filed with the administrative law judge and copies sent to the other party. Paragraph 291.31(c) would contain the procedures for appearances and practice before the administrative law judge. This paragraph would address the appearance by the respondent, that is, the recipient of the notice who has filed for a hearing, either in person, by representative, or by legal counsel. If the respondent or their representative fails to appear, the administrative law judge would determine if the failure to appear is without good cause. A failure to appear without good cause would be considered a waiver of the respondent's right to a hearing and the respondent's consent to the decision made at the hearing by the administrative

law judge. Paragraph 291.31(d) would provide the details of the administration and the outcome of the hearing. This paragraph would declare that the administrative law judge has the authority of law to preside over the parties and the proceeding and to make decisions in accordance with the APA. This paragraph would explain what constitutes the final record for the proceedings and for the decision made by the administrative law judge for the final assessment of the civil penalty, would declare that the administrative law judge's decision is the final administrative decision of the agency, and would be effective 30 calendar days after the date of the decision.

Section 291.32 Petition for judicial review; collection of unpaid assessments

16 U.S.C. 470aaa-6(b)(1) of the Act provides for petitions to the U.S. District Court for judicial review of decisions of a final assessment of civil penalties. Paragraph 291.32(a) would provide notice to the public about this right by restating the Act's provisions regarding judicial review of the final agency decision assessing a penalty under Sections 291.28 through 291.31, and describe the court's standard of review of the final agency decision. The respondent would have 30 calendar days from the date the agency decision was issued to file the petition. Paragraph 291.32(b) would clarify the provisions in 16 U.S.C. 470aaa-6(b)(2) of the Act that address the failure to pay a penalty assessed under sections 291.28 through 291.31. Failure to pay an assessed penalty within 30 calendar days of the issuance of the final agency decision would be considered a debt to the U.S. Government; the Secretary would be authorized to request the Attorney General to institute a civil action to collect the penalty, and the court would prohibit review of the validity, amount, and appropriateness of such penalty. If the Secretary does

not institute a civil action, the bureau would be able to recover the assessed penalties by using other available collection methods such as Treasury offset.

Section 291.33 Use of recovered amounts

Section 291.33 would implement the authority conveyed in 16 U.S.C. 470aaa-6(d) of the Act for the agencies to use collected penalties or restitution for certain purposes without further authorization or appropriations. The proposed regulation would allow the authorized officer to use collected penalties or restitution without further appropriation to protect, restore, or repair the paleontological resources and sites that were the subject of the action, and to protect, monitor, and study the resources and sites, and/or provide educational materials to the public about paleontological resources and sites, and/or provide for the payment of rewards. These categories are not listed in priority order.

Section 291.34 Criminal penalties

Paragraph 291.34(a) would restate the penalties provided for by 16 U.S.C. § 470aaa-5(c) of the Act. This section would not preclude the Forest Service from using other laws or regulations in addition to or in lieu of the Act as the basis for charging violators. Violations of the prohibitions in the Act and in the regulations would be subject to criminal as well as civil penalties.

Paragraph 291.34(b) would clarify that the determination of the values and the cost of response, restoration, and repair would be determined in accordance with Sections 291.37, 291.38, and 291.39.

Section 291.35 Multiple offenses

Section 291.35 would restate the penalties for multiple offenses provided for by 16 U.S.C. § 470aaa-5(d) of the Act. This section would clarify that in the case of a

second or subsequent violation by the same person, the amount of the penalty assessed may be doubled. Such doubling may occur only after a conviction or an otherwise proven violation.

Section 291.36 General exception

Section 291.36 would restate the exemption of 16 U.S.C. § 470aaa-5(e) of the Act for any person with respect to any paleontological resource which was in the lawful possession of such person prior to the date of enactment of the Act.

Section 291.37 Scientific or paleontological value

Section 291.37 would specify the factors and costs that may be considered in determining the scientific value of a paleontological resource, and would clarify that the terms *scientific value* as used in 16 U.S.C. 470aaa-6(a)(2) of the Act and *paleontological value* as used in 16 U.S.C. 470aaa-5(c) of the Act are the same value and are interchangeable for the purposes of these proposed regulations. Costs such as the preparation of a research design would be based on what it would have cost, prior to the violation, to conduct this research appropriately and in a way that would preserve the scientific and educational value of the paleontological resource. The calculation of this value using these types of costs would be the best method to reflect the loss of contextual information related to the stratigraphy and geology of the paleontological resource while it was still *in-situ*.

Section 291.38 Fair market or commercial value

Section 291.38 would specify the factors and costs to be included in determining the fair market value of a paleontological resource, and would clarify that the terms *fair market value* as used in 16 U.S.C. 470aaa-6(a)(2) of the Act and *commercial value* as

used in 16 U.S.C. 470aaa-5(c) of the Act are the same value and are interchangeable for the purposes of these proposed regulations. Fair market value of paleontological resources would be established through the standard professional methods of using comparable sales information, advertisements for comparable resources, appraisals, pricing of comparable resources, or other information, regardless of whether or not such information, advertisements, appraisals, or pricing would be from legal or illegal markets. For example, the information, advertisements, appraisals or pricing that would be used to establish fair market value could come from paleontological resources excavated legally or illegally from State, private, non-Federal lands, or from paleontological resources excavated illegally from Federal lands. In cases where there would be no comparable fair market value, the value of the paleontological resources would be determined by scientific value or the cost of response, restoration, and repair.

Section 291.39 Cost of Response, restoration and repair

Section 291.39 would clarify that, for purposes of these regulations, the cost of response, restoration, and repair of paleontological resources involved in a violation would be the sum of the costs incurred for response, investigation, assessment, emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair.

Section 291.40 Rewards

Section 291.40 would provide that rewards would be determined and paid at the discretion of the authorized officer (see 16 U.S.C. 470aaa-7(a)). This section does not preclude agencies using other authorities and fund sources such as State funds to offer rewards for information that may lead to a conviction or finding.

Section 291.41 Forfeiture

16 U.S.C. 470aaa-7(b) of the Act provides for the forfeiture of paleontological resources for violations under 16 U.S.C. 470aaa-5 or aaa-6 of the Act. However, the Act did not provide the procedures for conducting either the criminal or the civil forfeiture of these resources. Forfeiture regulations and proceedings are very complex; therefore, rather than developing new forfeiture regulations that are only applicable to paleontological resources, this section proposes to use agreements with other agencies to conduct forfeiture proceedings as required by Civil Asset Forfeiture Reform Act (18 U.S.C. 983) or other applicable forfeiture statutes.

Paragraph 291.41(a) would explain that all paleontological resources found in possession of a person with respect to a violation of Sections 291.28 through 291.36 of these proposed regulations would be subject to forfeiture proceedings in accordance with the Civil Asset Forfeiture Reform Act or other applicable forfeiture regulations. The Department would be authorized to enter into cooperative agreements with other agencies that have forfeiture regulations in place for the initiation of forfeiture actions.

Paragraph 291.41(b) would explain that the Federal government holds seized resources until the case is adjudicated, and would provide for the transfer of administration of seized paleontological resources. However, before paleontological resources seized in a criminal or civil case can be transferred administratively, the proceedings under paragraph 291.41(a) must be followed. Once the resources are deemed to be forfeited, their administration may be transferred to an institution in accordance with 16 U.S.C. 470aaa-7(c) of the Act. Such transfer would not mean that the

Federal government is transferring ownership; it would only be transferring administration of the resources.

Amendments to Title 36 Code of Federal Regulation Part 261--Prohibitions, Sections 261.2 (Definitions) and 261.9 (Property)

The definition of *paleontological resource* contained in Section 261.2 would be removed because it is inconsistent with the term *paleontological resource* as defined in 16 U.S.C. 470aaa of the Act and in Section 291.5 of the proposed regulations.

Paragraph 261.9(i) would be removed because it is inconsistent with 16 U.S.C. 470aaa–5 of the Act and Section 291.27(a)(3) of the proposed regulations, which prohibit the sale or purchase of paleontological resources from Federal land.

Regulatory Certifications

Regulatory Planning and Review

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of E.O. 12866. This proposed rule would not have an annual effect of \$100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. This proposed rule would not interfere with any action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this proposed rule is not subject to OMB review under E.O. 12866.

Proper Consideration of Small Entities

The proposed rule has also been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The proposed rule for Paleontological Resources Preservation will not have a significant economic impact on a substantial number of small entities as defined by E. O. 13272 and the SBREFA, based on the following considerations:

The proposed rule would not impose additional restrictions or permitting requirements, beyond what is already practiced or required under existing regulations, that would invalidate, modify, or adversely affect the ability to conduct current or future activities (for example, mining, timber harvesting, grazing, recreation) on NFS lands as permitted under applicable laws other than the Act. The proposed rule would prohibit collection of paleontological resources for commercial purposes; however, this prohibition is consistent with past and current agency practices (as guided by broad provisions in the Organic Administration Act of 1897 and the American Antiquities Act of 1906) on National Forests and Grasslands and is, therefore, not a new restriction. Special use authorization for commercial collection of paleontological resources is permitted under 36 CFR 261.9(i); however, the Agency is aware of only one special use permit in the past that involved sale of paleontological resources, and that permit was not renewed. The proposed rule includes removal of 36 CFR 261.9(i) as a conforming change necessitated by the Act, which does not allow the collection of paleontological resources for commercial purposes. Casual collection of paleontological resources, as

defined in the Act, by customers of some special use permit holders (for example, outfitters and guides) is currently allowed under specific conditions, and the proposed rule would continue to allow this activity as long as the activity is consistent with the conditions for casual collection as set forth in the proposed rule. The proposed rule would encourage scientific and educational use of paleontological resources by preserving the resources, promoting public awareness, and allowing for casual collection, thereby helping to maintain opportunities for small non-profit organizations to benefit from continued access to these resources on NFS lands. The proposed regulations provide for permitted collection of vertebrate and other paleontological resources not subject to the casual collection exemption, consistent with past Forest Service practices, thereby maintaining opportunities for organizations (for example, academic, paleontological resource assessment contractors) to collect paleontological resources for non-commercial research and paleontological resource assessment purposes.

It is not possible to specifically identify the population of small entities that may be involved with activities that may include casual collection of paleontological resources on NFS lands because there is no Forest Service special use code to track this activity.

The minimum requirements on small entities imposed by this proposed rule associated with authorization by permit to collect paleontological resources are necessary to protect the public interest and federal property, not administratively burdensome or costly to meet, and are within the capabilities of small entities to perform. The proposed rule would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. It does not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone

in the private sector. Under these circumstances, the Forest Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Based on the evidence presented above, a regulatory flexibility analysis is not required for this rule.

Environmental Impact

The Forest Service has determined that this proposed rule falls under the categorical exclusion provided in Forest Service regulations on National Environmental Policy Act procedures. Such procedures exclude from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions” 36 CFR 220.6(d)(2); 73 FR 43084 (July 24, 2008). This proposed rule outlines the programmatic implementation of the Act, and as such, has no direct effect on Forest Service decisions for land management activities.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Forest Service has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule would not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of that act is not required.

No Takings Implementations

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that this rule would

not pose the risk of a taking of constitutionally protected private property. It proposes to implement new regulations that would reflect the new statutory authority for managing, preserving, and protecting paleontological resources on Federal lands and that reflect prior policies, procedures, and practices for the collection and curation of paleontological resources on Federal land.

Federalism

The Forest Service has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and has determined that the proposed rule conforms with the federalism principles set out in this E.O. The proposed rule would not impose any compliance costs on the States other than those imposed by statute, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule would not apply to paleontological resources managed by States or local governments or State or local governmental entities. Therefore, the Forest Service has determined that no further assessment of federalism implications is necessary. Based on comments received on this proposed rule, the Forest Service will consider if any additional consultations will be needed with the State and local governments prior to adopting a final rule.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Forest Service has not identified any State or local laws or regulations that are in conflict with this proposed rule or that would impede full implementation of this proposed rule. Nevertheless, in the event that such a conflict was to be identified, the

proposed rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, no retroactive effect would be given to this rule, and the Forest Service would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Consultation and Coordination with Indian Tribal Governments

This proposed rule has been reviewed under Executive Order 13175 of November 6, 2000, Consultation and Coordination With Indian Tribal Governments. It has been determined that this proposed rule would not have Tribal implications as defined by E.O. 13175, and therefore, advance consultation with Tribes is not required. Nonetheless, Tribal consultation was initiated on March 7, 2011. Tribal consultation was accomplished through local and regional consultation processes in coordination with the Washington Office of the Forest Service. Input from three Tribes was received during the initial 120-day period. Consultation will continue during the 60-day public comment period.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the Forest Service is requesting an approval of a new information collection. Upon approval, this information will be incorporated into 0596-0082, Special Uses

Administration. The proposed information collection has been published at 77 FR 31298, May 25, 2012.

Title: Paleontological Resources Preservation

OMB Number: 0596-NEW.

Expiration Date of Approval: 3 years from approval date

Type of Request: New information collection

Abstract: The purpose of the Paleontological Resources Preservation proposed rule is to establish regulations to implement a paleontological resources preservation program on Forest Service lands in which paleontological resources are managed and protected using scientific principles and expertise, in accordance with the Act. The Act at 16 U.S.C. 470aaa-3 and 4 authorizes the Secretary to issue permits for the collection of paleontological resources from public lands and enter into agreements with approved repositories. The information required by this proposed rule is necessary to issue permits, enter into agreements, and identify the repository institutions which house and curate paleontological resources that are collected under permit and which remain Federal property. The information requirements will be used to help the Forest Service in the following areas:

- (1) To determine that the applicant is qualified and eligible to receive a permit under the proposed rule,
- (2) To determine if a proposal to collect paleontological resources meets the qualifications established in the law and regulations,
- (3) To evaluate the impacts of a proposal in order to comply with environmental laws,

(4) To describe and document the scientific and geological context from which paleontological resources were collected,

(5) To identify and inventory paleontological resources that have been collected, and

(6) To ensure that paleontological resources that have been collected, which remain Federal property, are properly curated in an approved repository.

Qualified paleontologists are the only entities eligible to be issued paleontological resource collection permits, and are, therefore, the only entities from which information will be collected.

The information would be collected from respondents in the form of a permit application, and a report on authorized activities following completion of the permitted project. Permit applications are anticipated to require an average of 5.5 hours to complete, and permit reports are anticipated to require an average of 13 hours to complete, based on a limited survey of current permit holders. The information collection required for a paleontological resource collection permit application and report of permitted activity under this proposed rule will be submitted to OMB as a new collection.

Estimated Number of Respondents: 50

Estimated Number of Responses Per Respondent: 2

Estimated Number of Total Annual Responses: 100

Estimated Total Annual Burden on Respondents: 925 hours

Comments: Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

List of Subjects

36 CFR Part 261

Law enforcement, National forests

36 CFR Part 291

Casual collecting, Collection, Confidentiality, Curation, Education, Fair market value, Fossil, Geology, Museums, National forests, Natural resources, Paleontological resources, Paleontology, Penalties, Permits, Prohibited acts, Prohibitions, Public awareness, Public education, Public lands, Recreation, Recreation areas, Reporting and recordkeeping requirements, Repository, Research, Scientific value.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 261 and part 291 of Title 36 of the Code of Federal Regulations as follows:

PART 261—PROHIBITIONS

1. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C., 472, 551, 620(f), 1133(c)--(d)(1),
1246(i).

§261.2 [Amended]

2. Remove the definition for *paleontological resource* in § 261.2.

§261.9 [Amended]

3. Remove current paragraph 261.9(i) and redesignate paragraph 261.9 (j) as
261.9(i)

4. Add part 291 to read as follows:

PART 291 – PALEONTOLOGICAL RESOURCES PRESERVATION

Sec.

291.1 Purpose.

291.2 Authorities.

291.3 Exceptions.

291.4 Preservation of existing authorities.

291.5 Definitions.

291.6 Confidentiality of Information – General.

291.7 Public awareness and education.

291.8 Area closures.

291.9 Determination of paleontological resources.

291.10 Collecting.

291.11 Casual collecting on National Forest System Lands.

- 291.12 National Forest System Lands closed to casual collection.
- 291.13 Permits.
- 291.14 Application process.
- 291.15 Application qualifications and eligibility.
- 291.16 Terms and conditions.
- 291.17 Content of paleontological reports and/or museum agreements.
- 291.18 Modification or cancellation of permits.
- 291.19 Suspension and revocation of permits.
- 291.20 Appeals.
- 291.21 Curation of paleontological resources.
- 291.22 Becoming an approved repository.
- 291.23 Minimum requirements of approval of a repository.
- 291.24 Standards for access and use of collections.
- 291.25 Conducting inspections and inventories of collections.
- 291.26 Repository agreements.
- 291.27 Prohibited acts.
- 291.28 Civil penalty.
- 291.29 Amount of civil penalty.
- 291.30 Civil penalty process.
- 291.31 Civil penalties hearing procedures.
- 291.32 Petition for judicial review; collection of unpaid assessments.
- 291.33 Use of recovered amounts.
- 291.34 Criminal penalties.

291.35 Multiple offenses.

291.36 General exception.

291.37 Scientific or paleontological value.

291.38 Fair market or commercial value.

291.39 Cost of response, restoration, and repair.

291.40 Rewards.

291.41 Forfeiture.

Authority: 16 U.S.C. § 470aaa through 16 U.S.C. § 470aaa-11

§ 291.1 Purpose.

(a) The regulations in this part implement provisions of the Paleontological Resources Preservation Act, 16 U.S.C. § 470aaa through 16 U.S.C. § 470aaa-11 (hereinafter referred to as the Act), which provides for the management and protection of paleontological resources on Federal lands and encourages the scientific, educational and where appropriate, the casual collection of these resources. Paleontological resources are nonrenewable, and are an accessible and irreplaceable part of America's natural heritage.

(b) The Secretary shall manage, protect, and preserve paleontological resources on Federal land using scientific principles and expertise. These regulations provide for coordinated management of paleontological resources and encourage scientific and educational use by promoting public awareness, providing for collection under permit, setting curation standards, establishing civil and criminal penalties, clarifying that paleontological resources cannot be collected from Federal lands for commercial purposes, and by allowing the casual collection of some of these resources on certain lands and under specific conditions.

(c) To the extent possible, the Secretary of Agriculture and the Secretary of the Interior will coordinate in the implementation of the Act.

§ 291.2 Authorities.

The regulations in this part are promulgated pursuant to the Omnibus Public Lands Act, Title VI, subtitle D on Paleontological Resources Preservation, 16 U.S.C. § 470aaa through 16 U.S.C. § 470aaa-11, which requires the Secretary to issue such regulations as are appropriate to carry out the Act.

§ 291.3 Exceptions.

The regulations in this part do not:

(a) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under the general mining laws, the mineral or geothermal leasing laws, laws providing for mineral materials disposal, or laws providing for the management or regulation of the activities authorized by the aforementioned laws including but not limited to the Federal Land Policy and Management Act (43 U.S.C. §§ 1701-1784), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1201-1358), and the Organic Administration Act (16 U.S.C. §§ 478, 482, 551);

(b) Invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under existing laws and authorities relating to reclamation and multiple uses of National Forest System lands;

(c) Apply to Indian lands;

(d) Apply to any materials associated with an archaeological resource (site), as defined in 16 U.S.C. 470, or any cultural items defined in 16 U.S.C. 30001.

(e) Apply to, or require a permit for, casual collecting of a rock, mineral, or invertebrate or plant fossil that is not protected under the Act;

(f) Affect any land other than National Forest System lands, or affect the lawful recovery, collection, or sale of paleontological resources from land other than National Forest System lands; or

(g) Create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this subtitle.

§ 291.4 Preservation of existing authorities.

The regulations in this part do not alter or diminish the authority of the Forest Service under any other law to manage, preserve, and protect paleontological resources on National Forest System lands in addition to the protection provided under the Act or this part.

§ 291.5 Definitions.

Act means Title VI, Subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. § 470aaa through § 470aaa-11).

Associated records means original records (or copies thereof) that document the efforts to locate, evaluate, record, study, preserve, or recover paleontological resources, including but not limited to paper and electronic documents such as:

(a) *Primary records* relating to the identification, evaluation, documentation, study, preservation, context, or recovery of a paleontological resource, regardless of format;

(b) *Public records* including, but not limited to, land status records, agency reports, publications, court documents, agreements; and

(c) *Administrative records and reports* generated by the permitting process and pertaining to the survey, excavation, or other study of the resource.

Authorized officer means the person or persons to whom authority has been delegated by the Secretary to take action under the Act.

Casual collecting means the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to the Earth's surface and other resources.

Common invertebrate and plant paleontological resources are invertebrate or plant fossils that are of ordinary occurrence and wide-spread distribution. Not all invertebrate and plant paleontological resources are common.

Collection means all paleontological resources resulting from excavation or removal from National Forest System lands as well as any associated records resulting from excavation or removal from Federal lands under a permit.

Consumptive analysis means the alteration, removal, or destruction of a paleontological specimen, or parts thereof, from a collection for scientific research.

Curatorial services and curation mean those activities pertinent to management and preservation of a collection over the long term according to professional museum and archival practices, including at a minimum:

- (a) Accessioning, cataloging, labeling, and inventorying a collection;
- (b) Identifying, evaluating, and documenting a collection;
- (c) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;
- (d) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;
- (e) Providing access and facilities to study a collection;
- (f) Handling, cleaning, sorting, and stabilizing a collection in such a manner as to preserve it, and
- (g) Lending a collection, or parts thereof, for scientific, educational or preservation purposes.

Federal land means land controlled or administered by the Secretary except for Indian land as defined in 16 U.S.C. § 470aaa

Fossil means any fossilized remains, traces, or imprints of organisms, preserved in or on the Earth's crust.

Fossilized means preserved by natural processes, including, but not limited to burial in accumulated sediments, preservation in ice or amber, or replacement by minerals, or alteration by chemical processes such as permineralization whereby minerals

are deposited in the pore spaces of the hard parts of an organism's remains, which may or may not alter the original organic content.

Indian land means land of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

National Forest System lands means those lands in a nationally significant system of federally owned units of forest, range, and related lands consisting of national forests, purchase units, national grasslands, land utilization project areas, experimental forest areas, experimental range areas, designated experimental areas, other land areas, water areas, and interests in lands that are administered by the Forest Service, U.S. Department of Agriculture, or designated for administration through the Forest Service.

Negligible disturbance means little or no change to the surface of the land and causing minimal or no effect on other resources. The authorized officer has discretion to determine what constitutes negligible disturbance.

Non-commercial personal use means uses other than for purchase, sale, financial gain, or research.

Non-powered hand tools mean small tools that do not use or are not operated by a motor, engine, or other power source. These tools are limited to small tools that can be easily carried by hand such as geologic hammers, trowels, or sieves, but not large tools such as full-sized shovels or pick axes.

Paleontological locality, location, and site mean a geographic area where a paleontological resource is found. Localities, locations, and sites may be relatively large or small.

Paleontological resource means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest, and that provide information about the history of life on earth. The term does not include (a) any materials associated with an archaeological resource (as defined in § 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or (b) any cultural item (as defined in § 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)).

Paleontological site is used interchangeably with paleontological locality or location, but is never intended to be synonymous with "archaeological site."

Reasonable amount means a maximum per calendar year of one gallon by volume or 25 pounds by weight, and generally includes not more than five specimens of any one fossil kind. For rock slabs containing fossils, the amount is limited to a slab that can be hand-carried by one person with minimal effort without the aid of mechanical devices. The authorized officer may modify the amount that is reasonable or establish a period of time for collection as needed on a case-by-case basis to preserve fossil-bearing locations.

Repository means a facility, such as a museum, paleontological research center, laboratory, or an educational or storage facility managed by a university, college, museum, other educational or scientific institution, or a Federal, State or local government agency that is capable of providing professional curatorial services on a long-term basis.

Repository agreement means a formal written agreement between the authorized officer and the repository official in which the parties agree on how the repository will provide curatorial services for collections.

Repository official means any officer, employee, or agent officially representing the repository that is providing curatorial services for a collection that is subject to this Part.

Secretary means the Secretary of Agriculture with respect to National Forest System lands controlled or administered by the Secretary of Agriculture.

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

§ 291.6 Confidentiality of Information – General.

(a) Information concerning the nature and specific location of a paleontological resource is exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. § 552), unless the authorized officer has made a written determination that disclosure would:

- (1) Further the purposes of the Act and this Part;
- (2) Not create risk of harm to or theft or destruction of the resource or the site containing the resource; and
- (3) Be in accordance with other applicable laws.

(b) Sharing Protected Information Does Not Constitute a Disclosure. The authorized officer may share information concerning the nature and specific location of a paleontological resource with non-agency personnel for scientific, educational, or resource management purposes, but only after the recipient of the information signs a confidentiality agreement in which the recipient agrees not to share the information with anyone not authorized to receive the information

§ 291.7 Public awareness and education.

The Chief of the Forest Service will establish a program to increase public awareness about the significance of paleontological resources on National Forest System lands.

§ 291.8 Area closures.

(a) In order to protect paleontological or other resources or to provide for public safety, the authorized officer may restrict access to or close areas to the collection of paleontological resources.

(b) The regulations in this part do not preclude the use of other authorities that provide for area closures.

§ 291.9 Determination of paleontological resources.

(a) All paleontological resources on National Forest System lands will be managed, protected, and preserved in accordance with the regulations in this Part unless the authorized officer determines that such resources are not paleontological resources in accordance with paragraph (b) of this section.

(b) Using scientific principles and expertise, the authorized officer may determine that certain paleontological resources do or do not meet the definition of “paleontological resource” as set forth in these regulations, and therefore, whether or not such resources are covered by the Act or this Part.

(c) Determinations as described above in paragraph (b) of this section are subject to the following conditions:

(1) A recommendation for determination must be in writing and be prepared by a paleontologist with demonstrated subject matter expertise in the specific group of paleontological resources under consideration.

(2) An agency paleontologist will review the basis for the determination and make a recommendation to the authorized officer concerning the determination.

(3) The authorized officer will make the final determination based upon the recommendation of an agency paleontologist and will ensure that the basis for the determination is documented, and that the determination is made available to the public.

(4) Any determination made pursuant to this section will in no way affect the authorized officer's obligations under the Act or other applicable laws or regulations to manage, protect, or preserve all paleontological resources.

(d) On National Forest System lands, the following are not paleontological resources for purposes of the Act or this part:

(1) Mineral resources, including coal, oil, natural gas, and other economic minerals that are subject to the existing mining and mineral laws;

(2) Petrified wood as defined at 30 U.S.C. 611 and managed under 36 CFR 228.62 unless determined under (b) of this subsection to be a paleontological resource;

(3) Microfossils, including conodonts and invertebrate fossils, but not including vertebrate fossils, that are individually too small to be studied without a microscope;

(4) Geological and soil units, including, but not limited to, limestones, diatomites, chalk beds, and fossil soils (i.e. paleosols).

§ 291.10 Collecting.

A paleontological resource may only be collected from National Forest System lands in accordance with the casual collecting provisions in §§ 291.11 and 291.12, or in accordance with a permit issued by the authorized officer as identified in § 291.13.

§ 291.11 Casual collecting on National Forest System lands.

(a) Casual collecting is allowed without a permit on National Forest System lands where such collection is consistent with the laws governing the management of those lands, the land management plans, and where the lands in question are not closed to casual collection.

(b) National Forest System lands are open to casual collection unless otherwise closed, as described in § 291.12.

(c) Research activities do not constitute casual collection, and therefore, research involving the collecting of common invertebrate and plant paleontological resources requires a permit.

(d) Using scientific principles and expertise, the authorized officer may determine that certain invertebrate and plant paleontological resources do or do not meet the definition of “common invertebrate and plant paleontological resources” as set forth in these regulations, and thus, whether such resources can be casually collected or must be collected under permit.

(e) Determinations as described above in paragraph (d) of this section are subject to the conditions as stated in § 291.9 (c) (1) through (4).

(f) It is the responsibility of the collecting public to ensure that they are casually collecting in an area that is open to casual collection, and that the materials they collect are subject to casual collection.

(g) Paleontological resources collected on Forest Service lands, including common invertebrate and plant paleontological resources subject to casual collecting, cannot be sold. Sale of these paleontological resources is a violation of 16 U.S.C. 470aaa-5(a)(3) of the Act and Paragraph 291.27(a)(3) of these regulations and may subject the violator to civil and criminal penalties.

§ 291.12 National Forest System lands closed to casual collection.

(a) Casual collecting is not allowed in

(1) National Monuments within the National Forest System; and

(2) Other National Forest System lands closed to casual collecting in accordance with this Part, other statues, executive orders, regulations, or land use plans.

(b) Existing closures of certain areas to casual collecting, authorized under separate authority, remain closed under these regulations.

§ 291.13 Permits.

(a) The authorized officer may issue a permit for the collection of a paleontological resource pursuant to an application if the authorized officer determines that:

(1) The applicant is qualified to carry out the permitted activity;

(2) The permitted activity is undertaken for the purpose of furthering paleontological knowledge;

(3) The permitted activity is consistent with any management plan applicable to the National Forest System lands concerned; and

(4) The proposed methods of collection will not threaten significant natural or cultural resources pursuant to 16 U.S.C. 470aaa Sec. 6304(b)(4)).

(5) Collected materials will not be sold or otherwise used for commercial purposes.

(b) Permits may be issued at the authorized officer's discretion to applicants that provide a complete application, as provided in § 291.14, and meet qualification and eligibility requirements in § 291.15.

§ 291.14 Application process.

Applicants for permits must provide the following records and information to the authorized officer in support of an application.

(a) The name, titles, academic or professional affiliations, and business contact information of the applicant and all persons who would be named on the permit;

(b) The applicant's current resume, curriculum vita, or other documents that support an applicant's qualifications;

(c) A detailed scope of work or research plan for the proposed activity. This must include maps, field methods, associated records, estimated time and duration of field season, proposed field party size, and specific information regarding storage, stabilization, and curatorial arrangements for collected specimens and data;

(d) Information regarding previous or currently held Federal paleontological permits including the issuing agency, permit number, and name of the authorized officer;

(e) Identification of a proposed repository for collected specimens, including written verification that the proposed repository agrees to receive the collection of paleontological resources and associated records and acknowledges that all costs will be borne by the applicant and/or approved repository, unless otherwise addressed in a separate written document; and

(f) Other records or information identified by the authorized officer as necessary to support an application for a permit.

§ 291.15 Application qualifications and eligibility.

(a) *Qualified Applicant.* The information submitted by applicants under § 291.14 must demonstrate qualifications for carrying out the proposed activities, as follows:

(1) The applicant has a graduate degree in paleontology or a related field of study with a major emphasis in paleontology from an accredited institution, or can demonstrate training and experience necessary to undertake the proposed activities; and

(2) The applicant has experience in collecting, analyzing, summarizing, and reporting paleontological data and experience in planning, equipping, staffing, organizing, and supervising field crews on projects similar to the type, nature and scope of work proposed in the application; and

(3) The applicant meets any additional qualifications required by the authorized officer.

(b) *Eligibility.* The information submitted by applicants under § 291.14 must demonstrate that the proposed work is eligible for a permit in accordance with § 291.13(a)(2-4).

§ 291.16 Terms and conditions.

The collection of paleontological resources pursuant to a permit must be conducted in accordance with the following terms and conditions:

(a) All paleontological resources that are collected from National Forest System lands under permit will remain the property of the United States.

(b) The collection will be preserved in an approved repository to be made available for scientific research and public education.

(c) Specific locality data will not be released by the permittee or repository unless authorized in accordance with Subpart A § 291.6 of this Part.

(d) The permittee recognizes that the area within the scope of the permit may be subject to other authorized uses.

(e) The permittee must conform to all applicable Federal, State, and local laws.

(f) The permittee must assume responsibility for all work conducted under the permit and the actions of all persons conducting this work.

(g) The permit cannot be transferred.

(h) The permittee cannot modify the permit without the approval of the authorized officer.

(i) The permittee must comply with all timelines established in the permit, and must request modification of the permit if those timelines cannot be met.

(j) The permittee or other persons named on the permit must be on site at all times when field work is in progress and will have a copy of the signed permit on hand.

(k) The permittee will comply with any vehicle or access restrictions, safety or environmental restrictions, or local safety conditions or restrictions.

(l) The permittee will report suspected resource damage or theft of paleontological or other resources to the authorized officer in a timely manner after learning of such damage or theft.

(m) The permittee will acknowledge the Forest Service in any report, publication, paper, news article, film, television program, or other media resulting from work performed under the permit.

(n) The permittee will comply with the timeline established in the permit for providing a complete list to the authorized officer of specimens collected and the current location of the specimens.

(o) The permittee will provide scheduled reports to the authorized officer within the timeline established in the permit

(p) The permittee will be responsible for all costs for the proposed activity, including fieldwork, preparation, identification, cataloging, and storage of collections, unless otherwise arranged through a specific agreement.

(q) The permittee will comply with the tasks required by the authorized officer, even in the event of permit expiration, suspension, or revocation.

(r) Additional stipulations, terms, and conditions as required by the authorized officer and/or the agency may be appended.

§ 291.17 Content of paleontological reports and/or museum agreements..

Permit reports must contain the following information as appropriate:

- (a) Permittee(s)' name, title, affiliation, and professional contact information;
- (b) Permit number;
- (c) Date of report;

- (d) Project name, number, or reference;
- (e) Description of project, methodology, or summary of research scope of work;
- (f) Dates of field work;
- (g) Name(s) of people who performed field work;
- (h) Description of work performed or accomplished and a summary of results and discoveries;
- (i) Summary of regional or local geology and/or paleontology including context, geography, stratigraphy, and geological unit;
- (j) Identification of potential impacts to paleontological resources by proposed land use action;
- (k) Mitigation recommendations to address potential paleontological resource impacts;
- (l) Relevant literature citations;
- (m) Relevant associated records, including anything that aids in explaining, clarifying, or understanding the findings;
- (n) Listing of collected paleontological resources, including field numbers and field identifications that are referenced to specific localities;
- (o) Repository name, identifying acronym, and address;
- (p) Repository official name, title, and contact information;
- (q) Approved repository accession and catalog number(s);
- (r) Assigned locality numbers;
- (s) Administrative area (State, county, ranger district, forest, and so forth);

(t) Map name, source, size, edition, projection, datum, and/or other mapping information;

(u) Geographic location, survey data, and/or related metadata;

(v) Paleontological taxa collected, observed, or in a repository;

(w) Resource identifications, condition, location, and quantity; and

(x) Recommendations or information for the approved repository regarding the condition or care of collected resources or associated records.

§ 291.18 Modification or cancellation of permits.

The authorized officer may modify a permit, consistent with applicable laws and policies, when:

(a) The authorized officer determines that there are management, administrative, or safety reasons to modify a permit; or

(b) A permittee requests a modification in writing.

§ 291.19 Suspension and revocation of permits.

(a) The authorized officer may suspend or revoke a permit issued under this section;

(1) For resource, safety or other management considerations; or

(2) When there is a violation of term or condition of a permit issued under this section.

(b) The permit shall be revoked if any person working under the authority of the permit is convicted of a violation under section 16 U.S.C. 470aaa Sec. 6306 or is assessed a civil penalty under 16 U.S.C. 470aaa Sec. 6307.

(c) Suspensions, modifications, and revocations shall be administered in accordance with the procedures set forth in 36 C.F.R. 251.

§ 291.20 Appeals.

A permittee may appeal the denial or revocation of a permit in accordance with 36 CFR 251. Pending the appeal, the decision of the authorized officer remains in effect unless determined otherwise in accordance with 36 C.F.R. Part 251 Subpart C.

§ 291.21 Curation of paleontological resources.

Collections from National Forest System lands made under a permit issued according to this Part will be deposited in an approved repository. The curation of paleontological resources collected from Federal land before the effective date of these regulations is covered under the terms of the original collection permit and /or agreement. Such collections remain Federal property unless otherwise transferred or disposed of in a Forest Service agreement.

§ 291.22 Becoming an approved repository.

(a) A repository identified during the permit application process in § 291.14 must be approved to receive collections by the authorized officer as follows:

- (1) A repository must meet the minimum requirements in § 291.23 in order to be approved.
- (2) A repository must agree in writing that collections:
 - (i) Remain the property of the Federal government,
 - (ii) Will be preserved for the public in accordance with § 291.24,
 - (iii) Will be made available for scientific research and public education, and

(iv) That specific locality data will not be released except in accordance with § 291.6.

(b) The authorized officer and the repository official may enter into a formal agreement that explains the responsibilities of the parties for the curation of the collection in accordance with § 291.26.

(c) The repository must agree in writing to periodic inventory and inspection of the collections as described in § 291.25.

(d) Prior to depositing the collection, the authorized officer in consultation with the repository official will determine the content of the collection to be curated based on scientific principles and expertise. A copy of the final catalog will be provided by the repository to the authorized officer.

(e) A repository approved by a Federal agency or bureau may be considered an approved repository by the Forest Service.

§ 291.23 Minimum requirements of approval of a repository.

The authorized officer will determine whether a facility should be an approved repository based on whether the repository has:

(a) The capability to provide adequate curatorial services as defined in Section 291.5;

(b) A scope of collections statement or similar policy that identifies paleontological resources as part of its scope of collections;

(c) A current collections management plan, including but not limited to policies for documentation, loans, and access; and

(d) Staff with primary responsibility for managing and preserving the collections that have training or experience in the curation of paleontological resources.

§ 291.24 Standards for access and use of collections.

(a) The repository will make collections available for scientific research and public education or as otherwise provided in a repository agreement.

(b) The repository may provide access to specific locality data and associated records when consistent with an approval under § 291.22 or an agreement under § 291.26.

(c) The repository may loan specimens after entering into a signed loan agreement with the borrowing institution. The loan agreement must specify the terms and conditions of the loan and that the repository is responsible for care and maintenance of the loaned specimens.

(d) The repository must maintain administrative records of all scientific and educational uses of the collection.

(e) The repository may charge reasonable fees to cover costs for access to and use of collections, including handling, packing, shipping, and insuring paleontological resources, photocopying associated records and other occasional costs not associated with ongoing curatorial services.

(f) The following uses of the collection will require written approval from the authorized officer unless specified in the approval in § 291.22 or an agreement under § 291.26:

(1) Prior to reproducing a paleontological resource, the repository will notify and obtain approval from the authorized officer. Reproductions include, but are not limited

to, molding and casting, computerized axial tomography (CAT) scans, and three-dimensional (3-D) rendering.

(2) The repository may only allow consumptive analysis of specimens if the authorized officer has determined, in consultation with an agency paleontologist, that the potential gain in scientific or interpretive information outweighs the potential loss of the paleontological resource and provides the repository with written authorization for such use.

§ 291.25 Conducting inspections and inventories of collections.

(a) The repository and the authorized officer must ensure that inspections and inventories of collections are in accordance with the Federal Property and Administrative Services Act (40 U.S.C. § 541 *et seq*), its implementing regulations (41 CFR Parts 101 and 102), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) The frequency and methods for conducting and documenting inspections and inventories will be appropriate to the nature and content of the collection.

(c) When two or more Federal agencies deposit collections in the same repository, they may enter into an interagency agreement consistent with the Single Audit Act (31 U.S.C. § 75) for inspections and inventories.

§ 291.26 Repository agreements.

(a) The authorized officer may enter into an agreement with Federal and non-Federal repositories regarding the curation of paleontological resources and their associated records.

(b) An agreement will contain the following, as appropriate, including but not limited to:

(1) A statement (updated as necessary) that identifies the collection or group of collections provided to the repository;

(2) A statement that identifies the Federal ownership and the agency that administers the collection;

(3) A statement of work to be performed by the repository;

(4) A statement of the responsibilities of the authorized officer and the repository official for the long-term care of the collection;

(5) A statement that collections are available for scientific and educational uses consistent with § 291.22;

(6) Any special procedures and restrictions for curatorial services and collection management, including loans;

(7) Provisions for consumptive analyses of paleontological specimens;

(8) Any special procedures and/or restrictions on the disclosure of specific locality data;

(9) A statement that all proceeds derived from any use of the collections will be used for their support;

(10) A statement that all exhibits, publications, and studies of Federal specimens will credit the agency that administers the collection;

(11) A statement that copies of any publications or reports resulting from study of the collection are to be provided to the agency;

(12) Specification of the frequency and methods for periodic inventories;

(13) A statement that accession, catalog, and inventory information will be made available to the authorized officer or their staff

(14) A statement that no employee of the repository will sell or financially encumber the collection;

(15) A statement that, in the event the repository can no longer provide care for a collection under the terms of the agreement, the repository official will notify the authorized officer in writing;

(16) A statement that the terminating party is responsible for the transfer of collections to another approved repository, including costs;

(17) The term of the repository agreement and procedures for modification, cancellation, suspension, extension, and termination of the agreement; and

(18) Any additional terms and conditions as needed.

§ 291.27 Prohibited acts.

(a) A person may not:

(1) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on National Forest System lands unless such activity is conducted in accordance with the Act and this Part;

(2) Exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from National Forest System lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Act and this Part; or

(3) Sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from National Forest System lands.

(b) A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from National Forest System lands.

§ 291.28 Civil penalty.

(a) A person who violates any prohibition contained in this Part or permit issued under this Part may be assessed a penalty by the authorized officer after the person is given notice and opportunity for a hearing with respect to the violation, as provided in § 291.30 and § 291.31.

(b) Each violation is considered a separate offense.

§ 291.29 Amount of civil penalty.

(a) The amount of such penalty assessed under § 291.28 shall be determined by taking into account:

(1) The scientific or fair market value, whichever is greater, of the paleontological resource involved, as determined by the authorized officer, and

(2) The cost of response to and restoration and repair of the resource and the paleontological site involved, and

(3) Any other factors under Subpart G §§ 291.37 through 39 considered relevant by the authorized officer in assessing the penalty.

(b) *Multiple Offenses.*

(1) In the case of subsequent or repeated violations by the same person, the amount of a penalty assessed under § 291.28(a) may be doubled.

(c) *Maximum Amount of Penalty.* The amount of any penalty assessed for any one violation shall not exceed an amount equal to double the cost of response to and restoration and repair of resources and paleontological site damage plus double the scientific or fair market value of resources destroyed or not recovered.

(d) Scientific and fair market values and the cost of response to and restoration and repair are determined as described in §§ 291.37 through 39.

§ 291.30 Civil Penalty process.

(a) *Notice of violation.* The authorized officer shall serve a notice of violation by certified mail (return receipt requested) or other type of verifiable delivery upon any person believed to be subject to a civil penalty. The authorized officer shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the section(s) of this Part or to a permit issued pursuant to this Part allegedly violated;

(3) The penalty proposed;

(4) Notification of the right to request a hearing in accordance with paragraph (f) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(b) *Response to notice of violation.* The person served with a notice of violation shall have 45 calendar days from the date of mailing in which to respond. During this time the person may:

(1) Accept the proposed penalty, either in writing or by payment. Acceptance of the proposed penalty will be deemed a waiver of the right to request a hearing as described in paragraph (f) in this section.

(2) Seek informal discussions with the authorized officer;

(3) File a written response. This written response must be filed with the authorized officer within 45 calendar days of the date of mailing of the notice of violation, and must be signed by the person served with the notice of violation. If the person is a corporation, the written response must be signed by an officer authorized to sign such documents. The written response will set forth in full the legal or factual basis for the requested relief.

(4) Request a hearing in accordance with paragraph (f) of this section.

(c) *Assessment of penalty.*

(1) The authorized officer shall assess a civil penalty upon completion of the 45 calendar day response period, informal discussions, or review of the written response, whichever is later.

(2) The authorized officer shall take into consideration all available information, including information provided under paragraph (b) of this section or furnished upon further request by the authorized officer.

(3) If the facts warrant a conclusion that no violation has occurred, the authorized officer shall notify the person served with the notice of violation that no violation has occurred and no penalty will be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the authorized officer shall determine a penalty amount in accordance with § 291.29.

(d) Penalty modification and remittance. The authorized officer may offer to modify or remit the penalty. Modification or remittance may be based upon any or all of the following factors:

(1) Agreement by the person being assessed a civil penalty to return to the authorized officer paleontological resources removed from National Forest System lands;

(2) Agreement by the person being assessed a civil penalty to assist the authorized officer in activity to preserve, restore, or otherwise contribute to the protection and study of paleontological resources on National Forest System lands;

(3) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this Part;

(4) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(5) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(e) Notice of assessment. The authorized officer shall serve a written notice of assessment upon the person served with a notice of violation. The notice of assessment establishes the penalty amount assessed by the authorized officer and is served by

certified mail (return receipt requested), or other type of verifiable delivery. The authorized officer shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(f) *Hearings.*

(1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (b)(1) of this section, the person served with a notice of assessment may file a written request for a hearing with the hearing office specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request for hearing by certified mail (return receipt requested), as specified in the notice of assessment.

(2) Failure to deliver a written request for a hearing within 45 calendar days of the date of mailing of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. § 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with §§ 291.28 through 33, and shall not be limited by the

amount assessed by the authorized officer under § 291.29(a) or any offer of mitigation or remission made by the authorized officer.

(g) *Final administrative decision.*

(1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (b)(1) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not requested a hearing within 45 calendar days of the date of mailing of the notice of assessment, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing, the decision resulting from the hearing shall constitute the final administrative decision.

(h) *Payment of penalty.* The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in § 291.32.

(i) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 291.31 Civil penalties hearing procedures.

(a) *Requests for hearings.* Any person wishing to request a hearing on a notice of assessment of civil penalty may file a written dated request for a hearing with the hearing office specified in the notice. The person shall enclose a copy of the notice of violation

and the notice of assessment. The request shall state the relief sought, the basis for challenging the facts used for assessing the penalty, and the person's preference as to the place and date for a hearing. A copy of the request shall be served upon the USDA Office of the General Counsel by certified mail, at the addresses specified in the notice of assessment. Hearings shall be conducted in accordance with 5 U.S.C. 554.

(b) *Commencement of hearing procedures.* Upon receipt of a request for a hearing, the hearing office shall assign an administrative law judge to the case. Notice of assignment shall be given promptly to the parties, and thereafter, all pleadings, papers, and other documents in the proceeding shall be filed directly with the administrative law judge, with copies served on the opposing party.

(c) *Appearance and practice.*

(1) The respondent may appear in person, by representative, or by counsel, and may participate fully in the proceedings. If respondent fails to appear and the administrative law judge determines such failure is without good cause, the administrative law judge may, in his/her discretion, determine that such failure shall constitute a waiver of the right to a hearing and consent to the making of a decision on the record made at the hearing.

(2) Departmental counsel shall represent the agency in the proceedings. Upon notice to the authorized officer of the assignment of an administrative law judge to the case, said counsel shall enter his/her appearance on behalf of the agency and shall file all petitions and correspondence exchanges by the agency and the respondent which shall become part of the hearing record. Thereafter, service upon the agency shall be made to Departmental counsel.

(d) *Hearing administration.*

(1) The administrative law judge shall have all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions in accordance with 5 U.S.C. 554-557.

(2) The transcript of testimony; the exhibits; and all papers, documents and requests filed in the proceedings shall constitute the record for decision. The administrative law judge shall render a written decision upon the record, which shall set forth his/her findings of fact and conclusions of law, and the reasons and basis therefore, and an assessment of a penalty, if any.

(3) The administrative law judge's decision shall become effective 30 calendar days from the date of this decision.

§ 291.32 Petition for judicial review; collection of unpaid assessments.

(a) *Judicial review.* Any person against whom a final administrative decision is issued assessing a penalty may file a petition for judicial review of the decision in the U. S. District Court for the District of Columbia or in the district in which the violation is alleged to have occurred within the 30 calendar day period beginning on the date the decision was issued. Upon notice of such filing, the Secretary shall promptly file such a certified copy of the record on which the decision was issued. The court shall hear the action on the record made before the Secretary and shall sustain the action if it is supported by substantial evidence on the record considered as a whole. Judicial review is limited by the requirement to exhaust administrative remedies under 7 U.S.C. 6912(e).

(b) *Failure to pay.* Failure to pay a penalty assessed is a debt to the U.S. Government. If any person fails to pay a penalty within 30 calendar days (i) after the

final administrative decision and the person has not filed a petition for judicial review of the decision in accordance with paragraph (a); or (ii) after a court in an action brought in § 291.32(a) has entered a final judgment upholding the assessment of the penalty, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which the person is found, resides, or transacts business, to collect the penalty (plus interest at currently prevailing rates from the date of the final decision or the date of the final judgment, as the case may be). The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney's fees and costs for collection proceedings. This section does not preclude the use of other collection methods such as Treasury offset, where appropriate.

§ 291.33 Use of recovered amounts.

Penalties and/or restitution collected shall be available to the authorized officer and without further appropriation may be used only as follows:

- (a) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites; and/or
- (b) To provide educational materials to the public about paleontological resources, sites, and their protection; and/or
- (c) To provide for the payment of rewards as provided in § 291.40.

§ 291.34 Criminal penalties.

(a) A person who knowingly violates or counsels, procures, solicits, or employs another person to violate § 291.27 shall, upon conviction, be fined in accordance with Title 18, United States Code, or imprisoned not more than 5 years, or both; but if the sum of the commercial and paleontological value of the paleontological resources involved and the cost of restoration and repair of such resources does not exceed \$500, such person shall be fined in accordance with Title 18, United States Code, or imprisoned not more than 2 years, or both.

(b) Paleontological and commercial values and the cost of restoration and repair are determined under §§ 291.37 through 39 of this Part.

§ 291.35 Multiple offenses.

In the case of subsequent or repeat violations by the same person, the amount of the monetary penalty assessed may be doubled.

§ 291.36 General exception.

The provisions in §§ 291.28 through 35 do not apply to any person with respect to any paleontological resource which was in the lawful possession of such person prior to the date of enactment of the Act.

§ 291.37 Scientific or paleontological value.

The scientific value of any paleontological resource involved in a violation of the prohibitions contained in this Part or conditions of a permit issued pursuant to this Part shall be the value of the information associated with the paleontological resource. The term “scientific value” can be used interchangeably with the term “paleontological value.” This value shall be determined in terms of the costs of the retrieval of the

scientific and educational information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports or educational materials or displays as would be necessary to realize the information potential.

§ 291.38 Fair market or commercial value.

The fair market value of any paleontological resource involved in a violation of the prohibitions contained in this Part or conditions of a permit issued pursuant to this Part shall be the commercial value of the resources, determined using the condition of the paleontological resource prior to the violation, to the extent that its prior condition can be ascertained. The term “fair market value” can be used interchangeably with the term “commercial value.” Fair market value of paleontological resources can be established through the use of comparable sales or pricing information, advertisements for comparable resources, appraisals, or other information on legal or illegal markets.

§ 291.39 Cost of response, restoration, and repair.

The cost of response, restoration, and repair of paleontological resources involved in a violation of prohibitions contained in this Part or conditions of a permit issued pursuant to this Part, shall be the sum of the costs incurred for response, investigation, assessment, emergency restoration, or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include but need not be limited to the costs of:

- (a) Reconstruction of the paleontological resource;
- (b) Stabilization and/or salvage of the paleontological resource;

- (c) Ground contour reconstruction and surface stabilization;
- (d) Research necessary to carry out reconstruction or stabilization;
- (e) Physical barriers or other protective devices or signs, necessitated by the disturbance of the paleontological resource, to protect it from further disturbance;
- (f) Examination and analysis of the paleontological resource including recording remaining paleontological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
- (g) Storage, preparation, and curation;
- (h) Site monitoring; and
- (i) Preparation of reports relating to any of the above activities.

§ 291.40 Rewards.

(a) The authorized officer may, at his or her discretion, pay from penalties collected under §§ 291.28 through 36, or from appropriated funds, an amount up to half of the penalties collected to any person who furnishes information which leads to a finding of the civil violation(s) or to the criminal conviction(s).

(b) If several persons provided the information, the amount may be divided at the discretion of the authorized officer among the persons.

(c) No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of their official duties shall be eligible for payment.

§ 291.41 Forfeiture.

(a) *Forfeiture.* All paleontological resources with respect to which a violation under §§ 291.28 through 36 occurred and which are in the possession of any person, are

subject to forfeiture proceedings. All forfeitures will be initiated pursuant to cooperative agreements with agencies having law enforcement authority and forfeiture regulations in place.

(b) *Transfer of Administration of Forfeited Resources.* The administration of forfeited resources may be transferred to Federal or non-Federal institutions to be used for scientific or educational purposes, in furtherance of the purposes of the Act.

//s// Mary Wagner _____ May 15, 2013 _____
Mary Wagner, (date)
Associate Chief,
Forest Service.

[FR Doc. 2013-12173 Filed 05/22/2013 at 8:45 am; Publication Date: 05/23/2013]