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with those rules and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service has received approval by the Office of Management and Budget to collect cave nomination information under clearance number 0596–0123 and confidential information under 0596–0122. The information provided for the cave nominations will be used to determine which caves will be listed as ''significant'' and the information in the requests to obtain confidential cave information will be used to decide whether to grant access to this information. Response to the call for cave nominations is voluntary. No action may be taken against a person for refusing to supply the information requested. Response to the information requirements for obtaining confidential cave information is required to obtain a benefit in accordance with section 5 of the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4304).

PART 291—PALEONTOLOGICAL RESOURCES PRESERVATION

Sec.

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AUTHORITY: 16 U.S.C. 470aaa through 470aaa–11.

SOURCE: 80 FR 21630, Apr. 17, 2015, unless otherwise noted.

§ 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 preservation, management, and protection of paleontological resources on National Forest System 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 National Forest System lands 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 National Forest System 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 part.

§ 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:

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

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

(3) *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.

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 National Forest System lands under a permit.

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.

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:

(1) Accessioning, cataloging, labeling, and inventorying a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection;

(6) Handling, cleaning, sorting, and stabilizing a collection in such a manner as to preserve it; and

(7) 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. As used herein, the term ''National Forest System lands'' refers to Federal land controlled or administered by the Secretary of Agriculture.

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. Research, in the context of these regulations, is considered to be a structured activity undertaken by qualified individuals with the intent to obtain and disseminate information via publication in a peer-reviewed professional scientific journal or equivalent venue, which increases the body of knowledge available to a scientific community.

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:

(1) Any materials associated with an archaeological resource (as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(2) Any cultural item (as defined in section 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-hundred pounds by weight, not to exceed twenty-five pounds per day.

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. A recipient of such information may be required to sign 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 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 paragraph (b) of this section to be a paleontological resource;

(3) Geological units, including, but not limited to, limestones, diatomites, and chalk beds).

§ 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 National Forest System 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) and § 291.27(a)(3) 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 statutes, 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–3(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/or experience commensurate to the nature and scope of 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 commensurate to the type, nature and scope of work proposed in the application; and

(3) The applicant meets any additional qualifications as may be required by the Authorized Officer that are considered necessary to undertake the proposed project in the context of the project location.

(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) through (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 § 291.6.

(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 the permittee's 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 and/or approved repository will be responsible for all costs for the proposed activity, including fieldwork and collections maintenance, unless otherwise addressed in a separate written document

(q) The permittee will comply with the permit terms and conditions established 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 Permit reports.

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/or 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 6306 or is assessed a civil penalty under 16 U.S.C. 470aaa 6307.

(c) Suspensions, modifications, and revocations shall be administered in accordance with the procedures set forth in 36 CFR part 214.

§ 291.20 Appeals.

A permittee may appeal the denial or revocation of a permit in accordance with 36 CFR part 214. Pending the appeal, the decision of the Authorized Officer remains in effect unless determined otherwise in accordance with 36 CFR part 214, 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 National Forest System lands 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, an Agency paleontologist 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 § 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 at levels appropriate to the nature and use of the paleontological collections maintained by that repository.

§ 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, in consultation with an Agency paleontologist, 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, and computerized axial tomography (CAT) scans. Routine photographic and/or digital reproductions would not require individual approvals, providing the reproductions are not made for commercial purposes, and that the reproductions do not require transfer of the specimen(s) to a different facility.

(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 by repository staff and/or repository research affiliates will credit the Agency that administers the collection;

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

(12) A statement that accession, catalog, and inventory information will be made available to the Authorized Officer or their staff

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

(14) 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;

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

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

(17) 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 the 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) *Determination of civil penalty amount.* 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 §§ 291.37 through 291.39 considered relevant by the Authorized Officer in assessing the penalty.

(b) *Multiple offenses.* 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) *Determination of scientific and fair market values and cost of response to, and restoration and repair.* Scientific and fair market values and the cost of response to, and restoration and repair are determined as described in §§ 291.37 through 291.39.

§ 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 291.33, 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 through 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 after the final administrative decision and the person has not filed a petition for judicial review of the decision in accordance with paragraph (a) of this section; or after a court in an action brought in paragraph (a) of this section 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 if 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 291.39.

§ 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 291.35 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, and/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 291.36, 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 291.36 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.

PART 292—NATIONAL RECREATION AREAS

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