

other information supporting a claim or defense.

(f) *Entry, inspection, and samples.* The requester must provide DoD a right of entry at reasonable times to any facility, establishment, place, or property under the requester's control which is the subject of or associated with the requester's request for indemnification or defense and must allow DoD to inspect or obtain samples from that facility, establishment, place, or property.

(g) *Additional information.* The Deputy General Counsel will advise a requester in writing of any additional information that must be provided to adjudicate the request for indemnification or defense. Failure to provide the additional information in a timely manner may result in denial of the request for indemnification or defense.

(h) *Adjudication.* The Deputy General Counsel will adjudicate a request for indemnification or defense and provide the requester with DoD's determination of the validity of the request. Such determination will be in writing and sent to the requester by certified or registered mail.

(i) *Reconsideration.* Any such determination will provide that the requester may ask for reconsideration of the determination. Such reconsideration shall be limited to an assertion by the requester of substantial new evidence or errors in calculation. The requester may seek such reconsideration by filing a request to that effect within 30 days of receipt of determination. A request for reconsideration must be received by the Deputy General Counsel within 30 days after receipt of the determination. Such a request must be sent to the same address as provided for in paragraph (a) of this section and provide the substantial new evidence or identify the errors in calculation. Such reconsideration will not extend to determinations concerning the law, except as it may have been applied to the facts. A request for reconsideration will be acted on within 30 days from the time it is received. If a request for reconsideration is made, the six month period referred to in section 330(b)(1) and section 1502(e)(2)(A) will commence from the date the requester receives DoD's denial of the request for reconsideration.

(j) *Finality of adjudication.* An adjudication of a request for indemnification constitutes final administrative disposition of such a request, except in the case of a request for reconsideration under paragraph (i) of this section, in which case a denial of the request for reconsideration

constitutes final administrative disposition of the request.

Dated: December 2, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary of the Interior

#### 43 CFR Part 49

#### Bureau of Land Management

#### 43 CFR Part 8360

#### Fish and Wildlife Service

#### 50 CFR Part 27

[Docket NPS-2016-0003; FWS-93261, FXRS1263090000, FF09R81000, 167; BOR-RR83530000, 178R5065C6, RX.59389832. 1009676; BLM-17X.LLW0240000.L10500000. PC0000.LXSIPALE0000; NPS-GPO Deposit Account 4311H2]

**RIN 1093-AA16**

#### Paleontological Resources Preservation

**AGENCY:** Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service; Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior (DOI) proposes to promulgate regulations under the Paleontological Resources Preservation Act. Implementation of the proposed rule would preserve, manage, and protect paleontological resources on lands administered by the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, and the U.S. Fish and Wildlife Service and ensure that these federally owned resources are available for current and future generations to enjoy as part of America's national heritage. The proposed rule would address the management, collection, and curation of paleontological resources from federal lands using scientific principles and expertise, including collection in accordance with permits; curation in an approved repository; and maintenance of confidentiality of specific locality data. The Paleontological Resources Preservation Act authorizes civil and criminal penalties for illegal collecting, damaging, otherwise altering or defacing, or for selling paleontological

resources, and the proposed rule further details the processes related to the civil penalties, including hearing requests and appeals of the violation or the amount of the civil penalties.

**DATES:** Comments on the proposed rule must be received by February 6, 2017. Comments on the information collection requirements must be received by January 6, 2017.

**ADDRESSES:** You may submit comments, identified by Regulation Identifier Number (RIN) 1093-AA16, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. NPS-2016-0003.

- *Mail to:* Julia Brunner, Geologic Resources Division, National Park Service, P. O. Box 25287 Denver, CO 80225-0287.

*Instructions:* All submissions received must include the RIN for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Please make comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any recommended changes. Where possible, comments should reference the specific section or paragraph of the proposed rule that is being addressed. DOI may not necessarily consider or include in the administrative record for the final rule comments that are received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*Comments on the Information Collection Aspects of the Proposed Rule:* You may review the Information Collection Request online at <http://www.reginfo.gov>. Follow the instructions to review DOI collections under review by OMB. Send comments (identified by RIN 1093-AA16) specific to the information collection aspects of this proposed rule to:

- Desk Officer for the Department of the Interior at OMB-OIRA at (202) 295-5806 (fax) or *OIRA\_Submission@omb.eop.gov* (email); and

- Jeffrey Parrillo, Office of the Secretary, Departmental Information Collection Clearance Lead, Department of the Interior, 1849 C Street NW., Mailstop MIB-7056, Washington, DC 20240 (mail); or [jeffrey\\_parrillo@ios.doi.gov](mailto:jeffrey_parrillo@ios.doi.gov) (email).

*System of Records Notice:* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with this part. A System of Records Notice is being developed and will be published in the **Federal Register**.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and search for Docket No. NPS-2016-0003.

**FOR FURTHER INFORMATION CONTACT:** Julia F. Brunner, Geologic Resources Division, National Park Service, by telephone: (303) 969-2012 or email: [Julia\\_F\\_Brunner@nps.gov](mailto:Julia_F_Brunner@nps.gov). Persons who use a telecommunications device for deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 1999, the Senate Interior Appropriations Subcommittee requested that DOI, the U.S. Department of Agriculture (USDA) Forest Service (FS), and the Smithsonian Institution prepare a report on fossil resource management on federal lands (see Sen. Rep. 105-227, at 60 (1998)). The request directed these entities 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 federal lands. During the course of preparing the report, the agencies held a public meeting to gather public input. The DOI report to Congress, "Assessment of Fossil Management of Federal and Indian Lands," was published in May 2000.

After the report was released, the Paleontological Resources Preservation Act (PRPA) was introduced in the 107th Congress. PRPA was modeled after the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-470mm), and emphasized the recommendations and guiding principles in the May 2000 report. The legislation was reintroduced in subsequent Congresses through the 111th Congress when it was included as a subtitle in the Omnibus Public Land Management Act, which became law on

March 30, 2009. Legislative history<sup>1</sup> demonstrates that PRPA, which is now codified at 16 U.S.C. 470aaa-aaa-11, was enacted to preserve paleontological resources for current and future generations because these resources are non-renewable and are an irreplaceable part of America's heritage. PRPA requires that implementation be coordinated between the Secretaries of the Interior and Agriculture (16 U.S.C. 470aaa-1).

##### II. Development of the Proposed Rule

PRPA requires DOI and USDA to issue regulations as appropriate to carry out the law. Accordingly, DOI and USDA formed an interagency coordination team in April 2009 to draft the proposed regulations. The interagency coordination team included paleontology and archaeology program leads and regulatory specialists from the Bureau of Land Management (BLM), the National Park Service (NPS), the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (FWS) (the bureaus), and the FS.

On May 23, 2013, the FS published a proposed rule that would implement PRPA with respect to National Forest System lands (78 FR 30810). On April 17, 2015, the FS published these regulations as final (80 FR 21588).

##### III. Section-by-Section Analysis of the Proposed Rule

This proposed rule would address management of paleontological resources on federal lands under the jurisdiction of the Secretary of the Interior, and managed by BLM, Reclamation, NPS, and FWS. The proposed rule would amend title 43 of the Code of Federal Regulations (CFR) by adding a new part 49 entitled "Paleontological Resources Preservation." In accordance with 16 U.S.C. 470aaa-1, the proposed rule would outline how the four bureaus would manage, protect, and preserve paleontological resources on federal land using scientific principles and expertise. Most of the proposed rule, specifically subparts A through H, would apply to all four bureaus. The only exception is subpart I, which would apply only to BLM and Reclamation, governing casual collecting (collecting common invertebrate and plant paleontological resources without a permit) on certain

lands administered by those bureaus. PRPA does not allow casual collecting in areas administered by NPS or FWS, and therefore subpart I would not apply to these two bureaus. The following is a section-by-section analysis of subparts A through I.

##### *Managing, Protecting, and Preserving Paleontological Resources (Subpart A)*

What does this part do (§ 49.1)?

Proposed § 49.1 would restate the purposes of PRPA and summarize the contents of the proposed rule.

What terms are used in this part (§ 49.5)?

Proposed § 49.5 would define certain terms used in the proposed rule. The bureaus believe that most of the terms are readily understood, but discuss the following in more detail below:

*Associated records* would mean original records or copies of those records, in the context of collections. If original records are not available for some reason, copies of those records are acceptable. Associated records would include primary, public, and administrative records.

*Authorized officer* would mean the bureau director or employees to whom the Secretary of the Interior has delegated authority to make a decision or to take action, or both, under PRPA. Bureaus may have multiple authorized officers. The authorized officer consults as appropriate with bureau technical specialists, outside experts, bureau partners, museum curators, or others in making decisions and taking action.

*Collection* would mean paleontological resources removed from geological context or taken from federal lands and any associated records, consistent with the definition of museum property in Part 411 of the Departmental Manual (411 DM). Because permits may be issued only to further paleontological knowledge, public education, or management of paleontological resources, any collections made under those permits should likewise further these goals. Such collections would be deposited in an approved repository. Paleontological resources that are determined by the authorized officer as not furthering or no longer furthering paleontological knowledge, public education, or management of paleontological resources (such as resources that lack provenience or are overly redundant) may, nevertheless, because they are still of paleontological interest and provide information about the history of life on earth, be assigned to project or working

<sup>1</sup> 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).

collections, including non-museum collections.

*Curatorial services* would mean managing and preserving a museum collection over the long term according to DOI (currently 411 DM) and bureau museum and archival standards and practices.

*Nature* would mean physical features, identifications, or attributes of the paleontological resource. Including this definition in the proposed regulations would clarify the type of information that PRPA exempts from disclosure.

*Paleontological resources* would mean any fossilized remains, traces, or imprints of organisms preserved in or on the Earth's crust, except for:

(1) Those that are found in an archaeological context and are 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) Cultural items, as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); or

(3) Resources determined in writing by the authorized officer to lack paleontological interest or not provide information about history of life on earth, based on scientific and other management considerations.

Thus, under PRPA and the proposed regulation, fossils are "paleontological resources" unless they are found in an archaeological context and are archaeological resources, or are cultural items under the Native American Graves Protection and Repatriation Act, or are determined by an authorized officer to lack paleontological interest or not provide information about the history of life on earth.

An example of a fossil that is found in an archaeological context and is therefore an archaeological resource would be a fossil that was collected by prehistoric peoples and is now part of an archaeological site. In this case, the fossil has been removed from its original geological context and is now important primarily for its archaeological informational value. A fossil found in an archaeological context is not a paleontological resource under PRPA or the proposed rule, but may still have scientific value for paleontological investigations and be protected under other authorities. Fossils that are merely in geographical proximity to archaeological resources but are not necessarily in an archaeological context, are therefore not necessarily archaeological resources.

Fossils that the authorized officer determines to not have paleontological interest or not provide information

about the history of life on earth, such as fossil fuel deposits or limestone units, would not be considered paleontological resources under PRPA or the proposed rule, although they would remain subject to other laws and regulations. For example, fossils on NPS-administered lands that are not considered paleontological resources would still be protected as natural and cultural resources under the NPS Organic Act of 1916, NPS regulations, and NPS policies. As another example, fossils on BLM-administered lands that are not considered paleontological resources would still be subject to consideration under the Federal Land Policy and Management Act of 1976 (FLPMA), thus allowing BLM to track and report scientific activities, such as research on non-vertebrate microfossils, without requiring that those fossils be managed as paleontological resources or otherwise be subject to PRPA.

Petrified wood is managed as a paleontological resource when on or from lands administered by NPS, Reclamation, and FWS. On lands administered by BLM, petrified wood (defined by the Petrified Wood Act of 1962, Pub. L. 87-713, 76 Stat. 652, Sept. 28, 1962 as agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter, and identified as a mineral material under the Materials Act of 1947) is subject to commercial sale at 43 CFR part 3600 and free use regulations at 43 CFR part 3622. Therefore, on BLM lands, petrified wood may be managed as a paleontological resource, but the savings provisions in PRPA (16 U.S.C. 470aaa-10) prevent the imposition of additional restrictions on the sale or free use of petrified wood. When it is not subject to sale or free use, petrified wood on BLM-administered lands may be managed as a paleontological resource and/or under the authority of FLPMA.

Geological units including but not limited to limestones, diatomites, chalk beds, and fossil soils (*i.e.*, paleosols) would not be considered paleontological resources under the proposed rule. However, the occurrence of discrete paleontological resources within geological units would be considered paleontological resources and, therefore, subject to PRPA and the proposed rule. Determinations about whether a fossil is or is not a paleontological resource would be committed to the authorized officer's discretion, based on scientific or other management considerations. A determination that a fossil is or is not a paleontological resource may be reversed at a later time, at the

authorized officer's discretion, based on scientific or other management considerations.

Fossils such as conodonts and nonvertebrate microfossils would be considered paleontological resources when they, as part of a scientific research design, provide critical information toward the understanding of geological units, biological evolution, climate change, and other scientific questions. However, in accordance with section 6311 of PRPA, the proposed rule would not require a permit for the collection of conodonts or nonvertebrate microfossils in association with authorized oil, gas, geothermal, or other minerals activities that are permitted under other authorities. Casual collection of conodonts or nonvertebrate microfossils may be permissible on certain BLM- or Reclamation-managed lands consistent with the limitations defined in subpart I of the proposed rule. Bureaus may individually determine that certain conodonts or nonvertebrate microfossils lack paleontological interest and therefore are not paleontological resources on all or on portions of land they administer.

When paleontological resources on certain BLM- and Reclamation-managed lands are common plant or invertebrate fossils, they may be casually collected in compliance with subpart I of the proposed rule. They are still paleontological resources (meaning that they have paleontological interest and provide information about the history of life on earth), but PRPA authorizes the limited collection of these resources on lands administered by BLM and Reclamation where such collection is consistent with the laws governing the management of those lands, PRPA, and subpart I of the proposed rule.

*Paleontological site* would mean a locality, location, or area where a paleontological resource is found; the site can be relatively small or large. The definition of paleontological site is never synonymous with "archaeological site" as used in 43 CFR part 7.

*Working collection* would mean paleontological resource collections that are not intended for long-term preservation and care as museum collections. Departmental policy on working collections is expanded in Section 1.7, 411 DM, *Identifying and Managing Museum Property*.

Does this part affect existing authorities (§ 49.10)?

Proposed § 49.10 would state that the proposed rule preserves the authority of the Secretary of the Interior under this and other laws and regulations to manage, protect, and preserve

paleontological resources on federal land under the jurisdiction of the Secretary. PRPA and the proposed rule complement the bureaus' other authorities for paleontological resource management. The proposed rule would be consistent with existing bureau practices and would clarify the responsibilities of the bureaus to preserve, protect, and manage paleontological resources.

When does this part not apply (§ 49.15)?

Proposed § 49.15 would state that the proposed rule does not impose additional requirements on activities permitted under the general mining or mineral laws, does not apply to Indian land, and does not apply to land other than federal land as defined in the proposed rule. This is consistent with the savings provisions of the PRPA. This section means that the bureaus will not add requirements under PRPA and the proposed rule to mining- and mineral-related permits. For example, the bureaus may not cite PRPA or the proposed rule in the list of mitigation measures that is attached to an approved mining plan of operations. However, because PRPA and the proposed rule do not limit the applicability of other legal authorities such as the Mining in the Parks Act and FLPMA, the bureaus may continue to cite those other authorities as protection for paleontological resources when authorizing or conditioning land or resource uses under those authorities. This section would also clarify that, under PRPA, the word "reclamation" means reclamation in the context of mining and mineral activities and not the broader context of all federal reclamation activities.

Does this part create new rights or entitlements (§ 49.20)?

Proposed § 49.20 would state that the proposed rule would not create a right or standing to file suit for persons who are not officers or employees of the United States acting in that capacity. It would repeat section 6311 of PRPA (16 U.S.C. 470aaa-10) for public notice and clarity.

What information concerning the nature and specific location of paleontological resources is confidential (§ 49.25)?

Proposed § 49.25 would implement the provision in PRPA that exempts information about the nature and specific location of a paleontological resource from disclosure under the Freedom of Information Act and any other law unless the authorized officer determines that disclosure would: (1) Further the purposes of PRPA; (2) not

create risk of harm to or theft or destruction of the resource or site containing the resource; and (3) be in accordance with other applicable laws. This proposed section would also require a written agreement between the bureau and the party seeking the disclosure, which would ensure that the recipient of the disclosure does not publicly distribute or otherwise release, disclose, or share the information. For example, a partner repository would not be permitted to post specific locality information on-line, but if authorized to do so in a written agreement could still share such information for educational or scientific uses that would not create harm or risk to the resource. The agreement to maintain confidentiality of released information would ensure that the release of confidential information in one situation would not trigger the requirement of the bureau to release that same information to other requestors.

How will the bureaus conduct inventory, monitoring, and preservation activities (§ 49.30)?

Proposed § 49.30 would explain that the bureaus will conduct inventory, monitoring, and preservation activities based upon scientific and resource management principles and practices, and clarify that these activities are undertaken by each bureau internally or may be coordinated with other agencies, non-federal partners, scientists, and the general public where appropriate and practical. Such coordination might take place through mechanisms such as agreements, permits, grants, citizen science efforts, or other arrangements. For public notice and clarity, § 49.30 would repeat section 6302 of PRPA, 16 U.S.C. 470aaa-1.

How will the bureaus foster public education and awareness (§ 49.35)?

Proposed § 49.35 would explain that the bureaus will establish a program to increase public awareness, coordinated with other agencies, non-federal partners, scientists, and the general public where appropriate and practical. National Fossil Day, an annual multi-agency and multi-partner event, is a successful example of how the bureaus are already working to increase public awareness. For public notice and clarity, § 49.35 would repeat section 6303 of PRPA, 16 U.S.C. 470aaa-2.

When may the bureaus restrict access to an area (§ 49.40)?

Proposed § 49.40(a) would state that the authorized officer may restrict access to or close areas to collection to protect resources or provide for public safety. For public notice and clarity,

paragraph (a) would repeat section 6304(e) of PRPA, 16 U.S.C. 470aaa-3(e). Proposed § 49.40(b) would clarify that other authorities may also be used to restrict access to or close areas in order to preserve or protect paleontological resources or provide for public safety. This authority supplements the bureaus' existing authority and procedures for restricting access to areas or closing areas to collection (see BLM regulations at 43 CFR 8364.1; Reclamation regulations at 43 CFR 423.29; FWS regulations at 50 CFR 25.21; and NPS regulations at 36 CFR 1.5).

#### *Paleontological Resources Permitting—Requirements, Modifications, and Appeals (Subpart B)*

Since 1906, the bureaus have permitted the collection of paleontological resources under various legal and regulatory authorities. Permitting will continue under PRPA and the proposed regulations.

When is a permit required on federal land (§ 49.50)?

Proposed § 49.50 would clarify when a permit is required and who must have a permit. A permit would be required for collecting paleontological resources or disturbing paleontological sites except for casual collecting on certain lands managed by BLM or Reclamation where casual collecting is allowed. The conditions for casual collecting are defined in subpart I of this proposed rule. Proposed § 49.50(b) states a permit may be required by a bureau for paleontological investigative activities that do not involve collection or disturbance in order to track and report on scientific activities or for other purposes. Proposed § 49.50(c) states a permit would be required for federal employees to disturb paleontological sites or collect paleontological resources although bureaus may implement this requirement on a programmatic basis, consistent with their internal processes. The bureau personnel so authorized must meet the professional requirements defined in § 49.60 of the proposed rule, and have experience appropriate to the planned work. The approval must be issued by the bureau managing the land. All collected materials are the property of the Federal Government, and must be managed and curated consistent with the requirements of subpart C of the proposed rule.

Who can receive a permit (§ 49.55)?

Proposed § 49.55 would establish that applicants who meet the qualification requirements of proposed § 49.60, provide a complete application, and

meet the permit issuance criteria may receive a permit. This proposed section would not affect valid permits issued before the effective date of the proposed rule.

What criteria must a permit applicant meet (§ 49.60)?

Proposed § 49.60(a)(1)–(4) would describe qualifications needed for an applicant to receive a permit. PRPA requires the bureaus to ensure that proposed work under a permit will further paleontological knowledge or public education and that the applicant is qualified to carry out the permitted activity. In order to accomplish both requirements, the proposed regulations would require the applicant and others overseeing work under the permit to have experience and qualifications in paleontology appropriate to the tasks they are to perform. For the applicant, an advanced degree in paleontology or equivalent experience and prior field experience has been the baseline for this requirement for all of the bureaus for more than 20 years and is consistent with similar policy for archaeology permits that are authorized under the Archaeological Resources Protection Act of 1979. The authorized officer may grant a permit to an applicant who lacks an advanced degree or specialized experience if the authorized officer is satisfied that the applicant's education and experience are sufficient to carry out the work that is proposed. The authorized officer may grant the permit, grant the permit with limitations, or deny the permit based on the applicant's education, experience, and past performance, and qualifications of persons named in the application as overseeing work.

Proposed § 49.60(b) states that past performance will also be considered, and includes any aspect that could affect performance under the permit being applied for. This would include compliance with previous permits, relevant civil or criminal violations, or relevant indictments or charges.

Where must a permit application be filed and what information must it include (§ 49.65)?

In order to ensure consistency among bureaus, proposed § 49.65 lists the information that a permit applicant is required to provide before a bureau can issue a permit under this subpart. Proposed § 49.65(a) would require permit applicants to submit an application to the bureau that administers the federal land where the proposed activity would be conducted. For activities on lands administered by BLM, Reclamation, and FWS, permit

applicants would use DI Form 9002 (*Paleontological Resource Use Permit Application*). For activities on lands administered by NPS, permit applicants would use NPS's Research Permit and Reporting System (RPRS). This paragraph would also clarify that it is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form and process, and respond to that bureau's requests for information in a timely manner.

Proposed § 49.65(b) would describe the information requirements that the permit application forms would include.

How will a bureau make a decision about a permit application (§ 49.70)?

Proposed § 49.70(a) and (b) would identify how a bureau evaluates and decides on a permit application. Because permit approval would be partially based on whether the proposed repository for the collection under the permit would meet the standards of 411 DM, proposed § 49.70(c) would require the authorized officer to work with the permit applicant and proposed repository to decide whether to approve that repository for the collection. The phrase "the authorized officer may" means that the authorized officer has discretion to approve or deny a permit based on information provided by the applicant, past and present performance, management considerations, bureau policy, and other considerations.

What terms and conditions will a permit contain (§ 49.75)?

Proposed § 49.75(a) would specify that a permit would include but not be limited to certain terms and conditions. Section 6304 of PRPA lists three required permit terms and conditions. The proposed rule would require additional terms and conditions in order to enhance consistency among bureaus as emphasized by section 6302(b) of PRPA. For approved activities on lands administered by BLM, Reclamation, and FWS, the authorized officer would issue the permit using DI Form 9003 (*Paleontological Resource Use Permit*). For approved activities on lands administered by NPS, the authorized officer would issue the permit under the NPS RPRS.

Proposed § 49.75(a)(3) would clarify that the permittee is responsible for ensuring that the resource site or recovered paleontological materials are not put at risk as a result of work that is done under the permit. For example, if fossils are exposed by collection or excavation, they must be protected from

damage, theft, or other harm for the period they are exposed to risk. Additionally, the permit would not authorize permittees to modify the environment around an area of work. For example, permittees would not be allowed to cut trees, create roads, or grade parking areas.

Proposed § 49.75(a)(8) would require a permittee to report suspected resource damage or theft to the authorized officer after learning of such damage or theft. Such reporting should be done as soon as possible, but in all cases must be done within 48 hours. Based on the bureaus' experience, 48 hours is a reasonable timeframe for such reporting.

Proposed § 49.75(a)(9) would clarify that collections made under a permit must be deposited in the approved repository, and that the permittee must notify the bureau of the deposit. The notification of deposit is required because the bureau must know the nature, condition, and location of federally owned paleontological resources in order to meet PRPA's mandate to manage these resources using scientific principles and expertise, and to meet Departmental museum management requirements. Documentation of the transfer of paleontological resources from the care of the permittee to the care of the approved repository is necessary so that the bureau, the permittee, and the approved repository will each know which party is responsible for the care and management of the paleontological collection.

To avoid a situation where bureaus or repositories could have large collections of paleontological resources that are costly to maintain or no longer contribute to science, the proposed rule would allow the authorized officer to determine that specimens that are found to be redundant, lack adequate associated data, or otherwise are determined not to further paleontological knowledge, public education, or management of paleontological resources may be removed from museum collections and placed into working collections.

Proposed § 49.75(a)(10) would clarify that all paleontological resources collected under a permit remain federal property. The resources that are not collected, but instead are left *in situ* or otherwise are left in the field by the permittee, also remain federal property. Removal of any paleontological resources from federal land not in accordance with this subpart may constitute theft of federal property.

Proposed § 49.75(a)(12) would state that the permittee is responsible for the costs of carrying out the permitted

activity, including curation costs, consistent with specific or programmatic direction from the authorized officer.

Proposed § 49.75(a)(13) would require a permittee to provide reports as required by the bureau in the permit. The permittee will ensure that reports are submitted in a timely fashion and contain the information necessary to ensure accountability for federal resources. For activities that were conducted on lands administered by BLM, Reclamation, or FWS, reports would be submitted using DI Form 9005 (*Paleontological Permit Report Cover Sheet*) or DI Form 9006 (*Paleontology Consulting Report Summary Sheet*). For activities that were conducted on lands administered by NPS, reports would be submitted under the NPS RPRS. Proposed § 49.75(a)(16) would state that a permittee may not transfer the permit to another person.

Proposed § 49.75(b) would authorize the bureau to hold a permittee responsible for complying with applicable permit terms and conditions after it has expired or been cancelled, suspended, or revoked. Like all terms and conditions, this requirement would be enforceable under the criminal and civil penalties provision of this part, and would enable bureaus to preserve paleontological resources and maintain accountability by requiring that affected resource sites be left in a good condition, collections be transferred to the approved repository in a timely manner, that associated records be produced, and that reports be submitted, regardless of the status of the permit.

Proposed § 49.75(c) would provide that the authorized officer may include in the permit additional terms and conditions necessary to carry out the purposes of this part.

Proposed § 49.75(d) would provide that for activities approved on lands administered by BLM or Reclamation, the authorized officer may provide a permittee with DI Form 9007 (*Paleontology Work Notice to Proceed*), which contains site-specific guidance and stipulations for the permittee. The Notice to Proceed is considered part of or an addendum to the permit. Proposed § 49.75(e) would provide that persons who do not comply with the terms of a permit issued under this part may be subject to civil or criminal penalties.

When and how may a permit be modified, suspended, revoked, or cancelled (§ 49.80)?

Proposed § 49.80 would identify when and how a permit may be modified, suspended, revoked, or

cancelled. The authorized officer would notify a permittee of such actions verbally or in writing. Any verbal notification would be confirmed by a written order delivered as soon as practicable after issuance of the verbal order. The notification would be immediately effective upon the permittee's receipt of the verbal or written notification, whichever is received first.

Proposed § 49.80(a) would identify when a permit may be modified. Common permit modifications may include changing the duration of a permit, changing personnel that are named on a permit, changing the geographic area that is authorized under a permit, making minor modifications to the stratigraphic context or scope of work, or adding or altering supplemental terms and conditions to a permit. These modifications may be requested by the permittee or initiated by the bureau. The authorized officer may issue a new permit or require the permittee to submit a new application when a modification would substantially change the scope of the existing permit.

Proposed § 49.80(b) would identify when activities under a permit may be suspended. Common reasons for a suspension include the discovery of potential resource conflicts, failure of the permittee to follow terms and conditions, resource protection issues, or budget or staffing concerns. A suspension would last no longer than 45 days, and may be lifted by the authorized officer when the reasons for suspension no longer apply, or when conditions for lifting a suspension have been met. After 45 days, if the circumstances prompting the suspension have not been resolved, the suspension will end and the authorized officer may modify, revoke, or cancel the permit, as appropriate to the specific circumstance.

Proposed § 49.80(c) would identify when a permit may be revoked. A permit will be revoked when, for example, a permittee fails to follow the terms and conditions of a permit, is charged with a civil or criminal violation under PRPA or under other applicable laws, or is found ineligible to hold a paleontology permit.

Proposed § 49.80(d) would identify when a permit may be cancelled. Cancellation would differ from revocation in that it would terminate a permit for reasons that do not relate to improper or poor performance on the part of the permittee. Cancellation is not a negative action and should not be cause to deny a future permit to the applicant. Cancellation may occur when

administrative or resource issues warrant, and may follow a 45-day suspension, or may occur without a suspension occurring. A permittee may request a permit to be cancelled for any reason, or the bureau may need to cancel the permit for administrative or management reasons. Although PRPA does not specifically reference permit cancellation, the proposed regulations include this option because permit cancellation is a form of permit modification (changing the end date of the permit) and is therefore within the scope of PRPA.

Proposed § 49.80(e) would specify that the authorized officer will notify a permittee of the modification, suspension, revocation, or cancellation either verbally or in writing. Proposed § 49.80(f) would specify that notifications of modification, suspension, revocation, or cancellation are effective upon the permittee's receipt of the written notification.

Can a permit-related decision be appealed (§ 49.85)?

Authorized officers have discretion to make permit-related decisions based on information provided by the applicant, past and present performance, management considerations, bureau policy, and other considerations. Proposed § 49.85 would state that permit-related decisions may be appealed.

What is the process for appealing a permit-related decision (§ 49.90)?

Proposed § 49.90 would specify the processes for appealing permit-related decisions. BLM and FWS each have applicable regulations, and NPS already has a process in place. Reclamation will develop an appeals process for permit decisions and will document the process in Reclamation's system of written directives. The appeals process may include a review by the applicable Reclamation Regional Director, followed by appeal to Reclamation's Commissioner, similar to the process in place for land use decisions found at 43 CFR part 429.

Has OMB approved the information collection provisions of this part (§ 49.95)?

Proposed § 49.95 would describe the information collection status of this part.

#### *Management of Paleontological Resource Collections (Subpart C)*

The proposed requirements provided in subpart C are consistent with requirements provided for

archaeological collections at 36 CFR part 79.

Where are collections deposited (§ 49.200)?

Proposed § 49.200 would clarify that collections made under a permit issued under this part must be deposited in a repository approved by the authorized officer. Collections made prior to the effective date of the proposed rule would be subject to the terms and conditions of the original collection permit or agreement, which is also consistent with guidance in current DOI museum policy.

How will bureaus approve a repository for a collection made under this part (§ 49.205)?

Proposed § 49.205(a) would grant the authorized officer discretion to approve a repository for a collection based on several factors, including appropriate scope of collections, qualified curation staff, adequate public access, compliance with DOI museum collection standards, and consistency with bureau management goals. Approval of a repository is necessary for both federal and non-federal repositories.

Proposed § 49.205(b) would clarify that when the authorized officer approves a repository for the collection, that repository will be listed in the approved permit and will remain approved to curate the collection unless the authorized officer determines that any one of the considerations in paragraph (a) of this section is no longer met. In that case, the repository would be notified and would have a reasonable amount of time to:

- (1) Correct the deficiency;
- (2) Move the collection to another approved repository; or
- (3) Take other actions the authorized officer requests.

In situations involving movement of the collection to another approved repository, the first repository would likely ship the collection to the second repository in accordance with the authorized officer's instructions. The bureau would then close the deposit agreement with the first repository and enter into a new agreement with the second repository.

What is the process for depositing the collection at the approved repository (§ 49.210)?

Proposed § 49.210 would clarify the process for depositing paleontological collections at the approved repository. Under proposed § 49.210(a), the authorized officer would work with the permittee and approved repository,

using scientific principles and expertise, to ensure that the collection is complete and that the content of the collection would further paleontological knowledge, public education, or management of paleontological resources. In addition, the authorized officer would review any existing agreement between the bureau and the approved repository to determine if that agreement adequately addresses requirements that are specific to the collection and either develop a new agreement, or amend an existing agreement, if an adequate agreement does not exist.

Under proposed § 49.210(b), the permittee or the repository would submit DI Form 9008 (*Repository Receipt for Collections (Paleontology)*) to the authorized officer. This form would include but not be limited to a certification by the permittee that the collection was deposited at the repository, and a certification by the approved repository's authorized official that the collection has been received.

For repository managers concerned that the curation requirements of PRPA and the proposed rule could lead to unrealistic or burdensome curation requirements, the proposed rule addresses these concerns in three ways. First, a repository may agree or decline to curate a collection of paleontological resources. Second, the authorized officer is ultimately responsible for determining the content of the collection, with input from the permittee and the repository, and ensuring that the collection meets bureau management goals. Third, the proposed rule specifies that the standard for collection under permit and deposit into an approved repository is that the collection furthers paleontological knowledge, public education, or management goals for paleontological resources. If a proposed collection would not meet this standard, then the collection should not be permitted. If the authorized officer determines that a collection formerly met this standard but no longer does, then part or all of the collection may be removed from the approved repository, transferred to a working collection, or managed in other ways consistent with DOI standards in 411 DM and bureau museum management procedures. Note that, in such a circumstance, that collection is still comprised of paleontological resources. If the specimens in a collection are determined by the authorized officer to no longer have paleontological interest or provide information about the history of life on earth, then they are not

paleontological resources as defined in PRPA and the proposed rule. All of these aspects of the proposed rule should ameliorate the concerns of repository managers that the requirements in PRPA would be burdensome.

What terms and conditions must the agreement between the bureau and approved repository contain (§ 49.215)?

Proposed § 49.215 would specify the terms and conditions that must be included in an agreement between the bureau and the repository. The terms and conditions provided in this section are consistent with 411 DM. Several of these terms and conditions are addressed below for further clarification.

First, proposed § 49.215(a)(2) would clarify that the Federal Government retains ownership of all paleontological resources collected under a permit, regardless of where the resources reside, who discovered or collected them, or who assumes administrative responsibility for their care. Bureaus may transfer all or portions of collections of paleontological resources to other federal bureaus (including the Smithsonian) either by loan or by administrative transfer without changing the fact that they are owned by the Federal Government.

Proposed § 49.215(a)(6) requires that agreements describe any special procedures or restrictions for access to controlled property, consumptive use, reproduction, or curatorial services, including loans. These terms are all defined in 411 DM.

Proposed § 49.215(a)(11) would clarify that one of the terms and conditions is a statement that employees cannot take any action that results in collection encumbrance, seizure, theft, damage, or other issues, and closely follows 36 CFR part 79 and DOI policy in 411 DM. The prohibition against damaging a collection does not prevent consumptive use that is approved by the bureau in a permit, agreement, or other written documentation.

What are the standards for managing the collections (§ 49.220)?

Proposed § 49.220 would provide standards for managing collections made under this part that are consistent with DOI policy for the management of museum collections found at 411 DM. Particular provisions of this proposed section are addressed below.

Proposed § 49.220(a)(1) would make collections and locality data available subject to the confidentiality provisions of the proposed rule and PRPA.



Proposed § 49.220(b) would authorize repositories to charge reasonable fees, consistent with applicable law, to cover their costs of making federal paleontological resources available to the public.

#### *Prohibited Acts (Subpart D)*

What acts are prohibited (§ 49.300)?

For public notice and clarity, proposed § 49.300 would restate the prohibitions contained in section 6306 of PRPA (16 U.S.C. 470aaa–5). Under PRPA and this section, a person may not:

(a) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on federal land unless this activity is conducted in accordance with PRPA and this part. For example, this would prohibit moving or relocating a paleontological resource from its *in situ* geologic context without authorization under the proposed rule. Such authorization would be in the form of a permit or casual collection consistent with subpart I of this part.

(b) 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 federal land in violation of any provision, rule, regulation, law, ordinance, or permit in effect under federal law, including PRPA and this part.

(c) 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 federal land.

(d) Make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from federal land. This provision would apply when a person knew or should have known that information was false, or when there was intent to deceive, misrepresent, or mislead.

#### *Criminal Penalties (Subpart E)*

What criminal penalties apply to violations of this part (§ 49.400)?

Proposed § 49.400 would describe what criminal penalties apply to persons who commit prohibited acts under this part. Bureaus may utilize other authorities to issue citations for criminal violations involving paleontological resources.

Proposed § 49.400(a) would state that criminal penalties would not apply with

respect to paleontological resources in the lawful possession of a person on or before March 30, 2009, which is the date that PRPA was enacted.

Proposed § 49.400(b) would authorize penalties upon conviction for persons who knowingly violate or counsel, procure, solicit, or employ another person to violate subpart D of this proposed rule. If the value of the paleontological resources involved (which means the sum of the commercial and scientific value of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved) is more than \$500, penalties would be assessed in accordance with Title 18 of the U.S. Code and/or may include imprisonment for up to 5 years. If the value of the paleontological resources involved is less than \$500, penalties would be assessed in accordance with Title 18 of the U.S. Code and/or may include imprisonment for up to 2 years. A court may award restitution, which may also be called penalties or damages, to the bureau for injuries to paleontological resources, in lieu of or in addition to fines.

Proposed § 49.400(c) would state that the term “value of the paleontological resources involved” would be explained in subpart G of this proposed rule.

Proposed § 49.400(d) would state that in the case of a second or subsequent violation by the same person, the amount of the penalties assessed under this subpart may be doubled.

Proposed § 49.400(e) would authorize law enforcement officers to issue citations for minor violations under the bureaus’ existing enforcement authorities, such as misdemeanor penalties, rather than relying solely on the criminal penalties provided by PRPA.

#### *Civil Penalties (Subpart F)*

When can the authorized officer assess a civil penalty (§ 49.500)?

Proposed § 49.500 would state that the authorized officer may assess a civil penalty upon any person who violates the provisions of the proposed rule or a permit issued under the proposed rule, and that each violation would be considered a separate offense.

How does the authorized officer serve a notice of violation (§ 49.505)?

Proposed § 49.505 would state the authorized officer may serve a notice of violation in person, by certified mail, return receipt requested, or other verifiable delivery method upon a person that the authorized officer believes has committed a violation of the proposed rule.

What is included in the notice of violation (§ 49.510)?

Proposed § 49.510 would describe the contents of a notice of violation.

How is an objection to a notice of violation made and proposed civil penalty made and resolved (§ 49.515)?

Proposed § 49.515 would state that a person who receives a notice of violation and proposed civil penalty has 30 days from the date of receipt in which to file a written objection with the authorized officer. The person must state the reasons for the objection, provide any supporting documentation, and sign the objection.

By written notice, the authorized officer would sustain or deny the objection based on the information in the objection and any information provided upon request. If the authorized officer concludes there was no violation, the objection would be sustained, the notice of violation revoked, and no civil penalty would be assessed. If the authorized officer finds that a violation occurred, the objection would be denied. If the authorized officer finds that a violation occurred but the proposed civil penalty was too high, the objection would be denied in part and sustained in part.

When will the authorized officer issue a final assessment of civil penalty (§ 49.520)?

Proposed § 49.520 would state that if the person who was served with a notice of violation and proposed civil penalty does not file a timely objection, or files a timely objection which is denied, the authorized officer would issue a final assessment of civil penalty.

How will the authorized officer calculate the amount of a proposed and final assessment of civil penalty (§ 49.525)?

Proposed § 49.525 would explain the factors that the authorized officer will take into account when calculating a proposed and a final assessment of civil penalty. For a first violation, the authorized officer considers the factors listed in § 49.525(a) and (b) and assesses a penalty. For example, the penalty might be \$1,000.

Under proposed § 49.525(c), penalties for subsequent violations may be doubled. Thus, if a person who has already been assessed a civil penalty for a particular violation commits another prohibited act, the authorized officer may double the penalty for that act. For example, if the penalty for the second prohibited act would be \$1,200 under the factors listed in paragraphs (a) and (b) of this section, the authorized officer



would have the discretion to double this penalty and assess the person \$2,400. When doubling penalties for subsequent violations, the authorized officer must be mindful of § 49.525(d), which caps penalties at an amount equaling twice the cost of response, restoration, and repair plus twice the cost of scientific or fair market value of the resources (whichever is greater).

Proposed § 49.525(d)(2) authorizes civil penalties for damages to paleontological resources and paleontological sites. If other resources or sites are damaged, the bureaus can utilize their authorities under laws such as the Endangered Species Act, the Archaeological Resources Protection Act, the National Park System Resources Protection Act, and other statutes to pursue separate legal or administrative remedies.

Proposed § 49.525(e) would direct the authorized officer to use proposed subpart G of this proposed rule to determine scientific or commercial values and the cost of response, restoration, and repair.

Proposed § 49.525(f) would state that the final assessment may be equal to, less than, or more than the proposed civil penalty.

How will the authorized officer issue the final assessment of civil penalty (§ 49.530)?

Proposed § 49.530 would state that the authorized officer would serve the final assessment of civil penalty by certified mail, return receipt requested, or another verifiable delivery method. The proposed section would also describe the required content of the final assessment.

What are the options and timeframe to respond to the final assessment of civil penalty (§ 49.535)?

Proposed § 49.535 would provide that a person who receives a final assessment of civil penalty must exercise one of two options within 30 days of the date the assessment is received: (1) Accept the assessment by filing a written notice with the authorized officer or paying the assessed penalty, or (2) file a request for hearing before an administrative law judge with the Departmental Case Hearings Division (DCHD), Office of Hearings and Appeals, DOI in accordance with § 49.535(b). The request for hearing will be dismissed if it is not timely filed with DCHD and may be dismissed if it does not contain all information described in proposed § 49.535(b).

If the person fails to file under either option within 30 days, the assessment will be deemed accepted. Acceptance of

the assessment waives the right to hearing.

What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment (§ 49.540)?

If a person files a request for a hearing with an administrative law judge, proposed § 49.540 would explain the procedures for that hearing.

What will be included in the administrative law judge's decision (§ 49.545)?

Proposed § 49.545 would describe the contents of the administrative law judge's decision and would state that such decision would become effective 31 days from the date of the decision absent a timely appeal of the decision.

How can the administrative law judge's decision be appealed (§ 49.550)?

Proposed § 49.550 would provide the person who filed a request for the hearing with an administrative law judge, as well as the bureau, with the opportunity to appeal that judge's decision by submitting a written dated appeal of the decision to the DOI Office of Hearing and Appeals via certified mail, return receipt requested, or other verifiable delivery method, and would also describe the contents of the appeal documents and the mailing addresses where the appeal documents must be sent.

What procedures govern an appeal of an administrative law judge's decision to the OHA Director (§ 49.555)?

Proposed § 49.555 would state that the appeal to OHA is governed by 43 CFR part 4, subparts A and G, and other provisions of 43 CFR part 4, where applicable.

When must the civil penalty be paid (§ 49.560)?

Proposed § 49.560 would explain decisions that are considered final administrative decisions. A person has 30 days from the date of those final decisions to fully pay the final assessment of civil penalty or agree to a payment schedule.

When may a person assessed a civil penalty seek judicial review (§ 49.565)?

Proposed § 49.565 would explain that, within 30 days of the OHA decision, a person may file a petition for judicial review in the United States District Court for the District of Columbia or in the district where the violation occurred, and that the deadline for payment of the civil penalty will be

stayed pending resolution of the judicial review.

What happens if a civil penalty is not paid on time (§ 49.570)?

Proposed § 49.570 would describe the consequences of failing to fully pay the final assessment of civil penalty by the required deadlines.

How will collected civil penalties be used (§ 49.575)?

Proposed § 49.575 would state that civil penalties collected under this subpart are available without further appropriation to the bureau that administers the federal land or paleontological resources that were the subject of the violation, and may be used by the bureau for several purposes, including: Protection, restoration, or repair of the paleontological resources and sites that were the subject of the action, and protection, monitoring, and study of the resources and sites; and provision of educational materials to the public about paleontological resources, paleontological sites, or resource protection; or payment of rewards.

*Determining Values and the Costs of Response, Restoration, and Repair (Subpart G).*

Proposed subpart G would provide direction on determining values and the cost of response, restoration, and repair under this part. The authorized officer may consult with subject matter experts, such as resource specialists, area specialists, and law enforcement specialists, in determining these values.

What is scientific value (§ 49.600)?

Proposed § 49.600 would describe scientific value. PRPA uses the term "paleontological value" in the section on prohibited acts and criminal penalties, and then switches to "scientific value" in the section on civil penalties. The bureaus agree that the two terms are synonymous and that for purposes of consistency and clarity only the term "scientific value" would be used in the proposed rule.

What is commercial value (§ 49.605)?

Proposed § 49.605 would describe commercial value. PRPA uses the term "commercial value" in the section on prohibited acts and criminal penalties, and then switches to "fair market value" in the section on civil penalties. The bureaus agree that the two terms are synonymous and for the purposes of consistency and clarity only the term "commercial value" would be used in the proposed rule.

What is the cost of response, restoration, and repair (§ 49.610)?

Proposed § 49.610 would define the cost of response, restoration, and repair. In some cases, it may be appropriate for the estimated cost of response, restoration, and repair to be peer reviewed. The values and costs should be determined by paleontologists with appropriate expertise.

#### *Forfeiture and Rewards (Subpart H).*

Will a violation lead to forfeiture of a paleontological resource (§ 49.700)?

Proposed § 49.700 would explain when a violation will lead to the forfeiture of paleontological resources. When there are civil or criminal forfeitures, paleontological resources are either returned to, or remain in, the administrative authority of the Federal Government. Where appropriate, the bureau will initiate forfeiture under a cooperative agreement with agencies that have forfeiture regulations.

What rewards may bureaus pay to those who assisted in enforcing this part (§ 49.705)?

Proposed § 49.705 would describe the rewards that may be paid for assistance in enforcing the proposed rule. Proposed § 49.705(a) would establish that the bureau may pay a reward to the person or persons who assist the bureau by furnishing information that leads to a finding of a civil or criminal violation. Rewards will not be paid for the discovery or reporting of a paleontological resource (*i.e.*, there is no bounty for discovering a fossil).

#### *Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands (Subpart I)*

Is casual collecting allowed on lands administered by NPS or FWS (§ 49.800)?

Proposed § 49.800 would explain that PRPA does not allow casual collecting in areas managed by NPS or FWS. In those areas, collecting any paleontological resource must be conducted in accordance with a permit issued by NPS or FWS under subpart B of this proposed rule.

Is casual collecting allowed on lands administered by BLM or Reclamation (§ 49.805)?

Under proposed § 49.805(a), casual collecting would continue as currently authorized on lands administered by BLM, except that the PRPA terms “negligible disturbance” and “reasonable amount” defined under

§ 49.810 must be followed. Casual collecting will not be allowed on BLM lands that are or become closed to casual collecting, BLM-administered national monuments, BLM-administered national conservation areas, outstanding natural areas, forest reserves, or cooperative management and protection areas, except where the bureau has specifically determined that casual collection would not impair the intent of the preservation designation. Because BLM must “conserve, protect, and restore [these] nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations,” the bureau must ensure that these areas would not be negatively affected by casual collecting (establishment of the National Landscape Conservation System, 16 U.S.C. 7202). Closures or restrictions may be short term, long term, or permanent. The BLM is requesting public comment regarding the range of designations listed in § 49.805(a)(2) as prohibiting or restricting casual collection, including whether and why additional designations should be included or currently proposed designations excluded from the list.

Proposed § 49.805(b) would explain that casual collecting of common invertebrate or plant paleontological resources will be allowed on land administered by Reclamation only in locations where Reclamation has established a special use area for casual collecting using processes defined in Reclamation’s regulation at 43 CFR part 423, *Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies*. This proposed paragraph would also state that casual collecting is prohibited on Reclamation project land that is administered by NPS or FWS.

Proposed § 49.805(c) would clearly place full responsibility on persons interested in casual collecting to ascertain which bureau manages the land where those persons would like to collect paleontological resources, whether the land is open to casual collecting, and what may be collected in an area, and to obtain information about the managing bureau’s casual collecting procedures.

What is casual collecting (§ 49.810)?

Proposed § 49.810(a) would restate the PRPA definition of casual collecting. Proposed § 49.810(a)(1) through (a)(5) would provide specific definitions for the terms used in the PRPA definition.

Under proposed § 49.810(a)(1), only common invertebrate and common plant paleontological resources may be casually collected. Common

invertebrate and common plant paleontological resources are invertebrate or plant fossils that have been established by the bureaus, based on available scientific information and current professional standards, as having ordinary occurrence and widespread distribution.

Although these particular resources may be common, they are still paleontological resources as defined in PRPA and the proposed rule. That is, they have paleontological interest and provide information about the history of life on earth.

Not all invertebrate or plant paleontological resources are common. If the resources are not common, they may only be collected under a permit. It may not always be possible for a collector to identify in the field whether a fossil is common. When in doubt, collectors should err on the side of caution and collect only the resources that they know are common. The bureaus may hold a trained amateur, avocational paleontologist, or professional to a higher standard of knowledge than the general public about whether or not a fossil is common.

If a knowledgeable collector makes an unanticipated discovery of an uncommon paleontological resource while casually collecting, that collector shall not collect that resource because he or she is not authorized to do so. Instead, the collector should alert the relevant bureau. If the collector wishes to pursue collection, he or she must obtain a permit to collect the uncommon resource. If the collector does collect the uncommon resource without a permit, that collector may be subject to penalties.

Proposed § 49.810(a)(2) would establish “reasonable amount” for casual collecting as 25 pounds per day per collector, not to exceed 100 pounds per year per collector. This proposed definition would also clarify that pooling of multiple daily amounts by one or more collectors to obtain pieces in excess of 25 pounds is not allowed. The bureaus determined that the 25 pounds per day per collector, and the 100 pounds per year per collector, are reasonable amounts based on BLM’s long experience with the collecting of petrified wood and other fossils from BLM lands before PRPA was enacted. These amounts represent a balance between PRPA’s mandate to allow casual collecting and other laws that require the bureaus to protect and manage other natural and cultural resources.

The proposed prevention of the pooling of multiple daily amounts

would add clarification and be consistent with existing BLM regulations at 43 CFR 3622.4 governing the collecting of petrified wood.

The bureaus considered defining “reasonable amount” as equaling two quarts instead of 25 pounds, but decided that the use of a weight limit, rather than a size limit, is more consistent with existing collection standards that are already understood by the public and the bureaus.

Proposed § 49.810(a)(3) would clarify that “negligible disturbance” for casual collecting means little or no change to the surface of the land, and minimal or no effect to natural and cultural resources. This proposed definition would specify that in no circumstance may the surface disturbance exceed 1 square yard (3 feet by 3 feet) per individual collector; that in cases of multiple collectors each square yard of surface disturbance must be separated by at least 10 feet; and that all areas of surface disturbance must be backfilled with the material that was removed in order to render the disturbance substantially unnoticeable to the casual observer. The reason for using the “1 square yard” maximum is that this would be similar to longstanding BLM practice, and such consistency is encouraged by PRPA. In the context of compliance with the National Environmental Policy Act (NEPA) in the issuance of research permits for BLM, for instance, a proposal to engage in surface disturbance of anything larger than 1 square meter is not usually subject to categorical exclusion but is subject to further analysis under NEPA. The fossil-collecting community should, therefore, already be familiar with this type of threshold. For purposes of managing “negligible disturbance,” 1 square yard is considered to be approximately equal to 1 square meter.

The proposed definition would also specify that collecting areas need to be separated by at least 10 feet where there is surface disturbance. The separation would reduce cumulative effects to other resources. Where there is no surface disturbance, there is no need to separate collecting areas.

Proposed § 49.810(a)(4) would address the uses to which casually collected resources can be put. Casually collected resources may be used only for noncommercial personal use, which means a use other than purchase, sale, financial gain, or research. The restriction on any commercial use of casually collected resources is not new. For instance, rules of conduct applicable to BLM-managed public lands currently allow casual collecting of paleontological resources only for

“noncommercial purposes” (43 CFR 8365.1–5(b)).

Proposed § 49.810(a)(5) would define the kinds of tools that may be used to casually collect these resources. These tools must be small, such as a geologic hammer, trowel, or sieve; they cannot use or be operated by a motor, engine, or other mechanized power source; and they must be light and small enough to be hand-carried by one person. A tool that exceeds this definition cannot be used to casually collect these resources.

Proposed § 49.810(b) would enable the authorized officer to establish limitations on casual collecting, in addition to the limitations already contained in the proposed rule. Examples of additional limitations include reducing the maximum weight for “reasonable amount,” decreasing the threshold for negligible disturbance, limiting depth of allowable disturbance, limiting specific tools that may be used, defining what is common in a specific area, establishing time or duration limits for collecting, establishing limits to avoid cumulative effects, and establishing parameters for safety.

Proposed § 49.810(c) would clarify that casual collecting is not allowed when any of the parameters that restrict casual collecting (reasonable amount, common invertebrate and plant paleontological resources, personal noncommercial use, negligible disturbance and non-powered hand tools) is exceeded or does not apply. Casual collecting is a limited exception to the overarching permit requirement of PRPA, and is allowed under the presumption that the “commonness” of these resources, in combination with limitations on amount, surface disturbance, tools, and eventual use of the collected resources, contributes to the underlying objective of protecting paleontological resources on federal lands. Proposed § 49.810(c) also clarifies that casual collecting in excess of the specified limitations is prohibited and subject to civil and criminal penalties.

#### **IV. Proposed Conforming Amendment to 43 CFR part 8360—Visitor Services; Sections 8360.0–3, Authority, and 8365.1–5, Property and Resources**

PRPA requires the BLM to allow the casual collecting of common invertebrate and plant paleontological resources, which is consistent with existing BLM policy. However, this rule would amend the text at existing 43 CFR 8365.1–5 to conform to the language used by PRPA.

The authority citations for 43 CFR part 8360 and the list of authorities at § 8360.0–3 would each be amended to add PRPA (16 U.S.C. 470aaa *et seq.*).

PRPA introduces the term “casual collecting” to define the noncommercial collection of invertebrate and plant fossils, which was previously authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*). PRPA and the proposed regulations at part 49 use the term “paleontological resources” instead of the term “fossils” to describe resources that are managed under PRPA.

The current § 8365.1–5 would be amended to conform to the terms introduced by PRPA. The specific changes are:

- § 8365.1–5(b)(2) would be amended to remove the phrase “common invertebrate and common plant fossils;”
- § 8365.1–5(b)(4) would be amended to remove “and” in order to maintain grammatical structure;
- § 8365.1–5(b)(5) would be amended to add “and” in order to maintain grammatical structure; and
- A proposed new § 8365.1–5(b)(6) would be added to include “common invertebrate and plant paleontological resources” on the list of things that may be collected from BLM public lands in reasonable amounts for noncommercial purposes. The paragraph also provides a reference to proposed part 49, which would authorize and provide rules for casual collecting.

#### **V. Proposed Conforming Amendment to 50 CFR Part 27—Prohibited Acts, § 27.63, Search for and Removal of Other Valued Objects**

PRPA states that a paleontological resource may not be collected from federal land without a permit issued under that authority. The proposed amendment at § 27.63 would add a paragraph that states that a permit is required in order to collect paleontological resources and would provide a reference to proposed part 49, which would authorize and provide rules for issuing permits under PRPA.

Proposed new § 27.63(c) would state that permits are required for paleontological studies on national wildlife refuges in accordance with the provisions at proposed 43 CFR part 49.

#### **VI. Compliance With Other Laws, Executive Orders, and Department Policy**

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866

while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act (RFA)*

This proposed rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report titled "Proposed Paleontological Resources Preservation Regulations, 43 CFR part 49: Economic Analysis In Support Of E.O. 12866 and Regulatory Flexibility Act Compliance," which can be viewed at [www.blm.gov/paleontology](http://www.blm.gov/paleontology) by clicking on the link entitled "Proposed Paleontological Resources Preservation Regulations, 43 CFR part 49: Economic Analysis In Support Of E.O. 12866 and Regulatory Flexibility Act Compliance."

#### *Small Business Regulatory Enforcement Fairness Act*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act (UMRA)*

This proposed rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. This rule will not have a significant or unique effect on state, local, or tribal governments or the private sector. The

rule addresses the management of paleontological resources from lands managed by BLM, Reclamation, FWS, and NPS, and imposes no requirements on other agencies or governments. A statement containing information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (Executive Order 12630)*

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This proposed rule is not a government action capable of interfering with constitutionally protected property rights. It would implement the new statutory authority for managing, preserving, and protecting paleontological resources on federal lands and is consistent with prior policies, procedures, and practices for the collection and curation of paleontological resources on federal land. Private property is not affected. A takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule addresses the management of paleontological resources on and from lands managed by the BLM, Reclamation, FWS, and NPS, and imposes no requirements on other agencies or governments. It does not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

#### *Civil Justice Reform (Executive Order 12988)*

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)*

DOI strives to strengthen its government-to-government relationship with Indian tribes through a

commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under DOI's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation is not required. This proposed rule applies to lands managed by BLM, Reclamation, FWS, and NPS. It does not apply to and has no direct effect on tribal trust lands or lands subject to a restriction on alienation imposed by the United States.

DOI is sending a letter to notify the 566 federally recognized Indian tribes that the proposed rulemaking is being published in the **Federal Register**. DOI invites responses to the notification letter.

#### *Paperwork Reduction Act of 1995 (PRA)*

This proposed rule contains a collection of information that has been submitted to OMB for approval under the PRA (44 U.S.C. 3501 *et seq.*). DOI and its bureaus may not conduct or sponsor, and no one is required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has reviewed and approved the information collection requirements associated with the NPS' application and reports for paleontological permits (OMB Control Number 1024-0236).

DOI proposes to collect the following information associated with paleontological permits for work on lands administered by the BLM, Reclamation, and FWS:

*Permit application (§ 49.65).* Permit applicants proposing to work in areas administered by BLM, Reclamation, or FWS must provide the information requested by DI Form 9002 (*Paleontological Resource Use Permit Application*). Such information includes:

- (1) Applicant's name, affiliation, and contact information.
- (2) Current resume for the applicant and all other persons who will oversee fieldwork and other work.
- (3) Description, estimated start and end dates of proposed work, and maps and other location information.
- (4) Purpose and methodology of proposed work, including a detailed scope of work or research plan for the proposed activity, logistical information, methods that will be employed to explore for or remove the paleontological resources, proposed content and nature of any collection to be made under the permit.
- (5) Bonding information.

(6) Information about the proposed repository.

(7) Information on the applicant's past performance on previous permits.

*Change of personnel* (§ 49.75(a)(2)). Permittee must report changes in the persons who are conducting activities under the permit, and submit the credentials of any new persons to the authorized officer for approval.

*Locality information* (§ 49.75(a)(1) & (7)). Permittee will record locality information on DI Form 9004 (*Paleontological Locality Form*), or in another format approved by the bureau in the permit that captures the same information.

*Resource damage or theft* (§ 49.75(a)(8)). Permittee must report suspected resource damage or theft of paleontological or other resources to the authorized officer as soon as possible, but not to exceed 48 hours after learning of such damage or theft.

*Repository receipt* (§ 49.75(a)(9) & (10)). Permittee must deposit the collection in the approved repository and provide the bureau with DI Form 9008 (*Repository Receipt for Collections* (*Paleontology*)), which includes a certification by the permittee that the collection was transferred to the repository and a certification by the approved repository's authorized official that the collection was received.

*List and description of paleontological resources* (§ 49.75(a)(11)). If the permittee has not transferred the collection to the

approved repository by the due date of the annual report or other schedule approved for the permit, the permittee must provide the authorized officer a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

*Reports* (§ 49.75(a)(15)). Permittees conducting activities on lands administered by BLM, Reclamation, or FWS must submit reports to the bureaus using DI Form 9005 (*Paleontological Permit Report Cover Sheet*), or DI Form 9006 (*Paleontology Consulting Report Summary Sheet*).

*Amendments to permits* (§ 49.80(a)). Permittees may request a modification to a permit. Modification requests will include permittee name, permit number, and the reason(s) for the modification request.

*Objecting to a Notice of Violation* (§ 49.515(a) & (b)). When a person receives a notice of violation, the person has 30 days from the date the notice was received to object by submitting to the authorized officer documentation to support the position that the person did not commit a violation or that the proposed penalty should be reduced or eliminated.

*Responding to a civil penalty* (§ 49.535(a)). A person may request a hearing on the authorized officer's final assessment of a civil penalty by filing a request for hearing via certified mail (return receipt requested or other verifiable delivery method) to the

Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, 351 S. West Temple, Room 6.300, Salt Lake City, Utah 84101. The request for hearing must include the following information:

(1) The reasons for challenging the final assessment;

(2) The relief sought and the basis for the relief;

(3) A copy of the original notice of civil violation and proposed civil penalty assessment;

(4) A copy of any objection and supporting documentation filed under § 49.515(a);

(5) A copy of the final assessment of civil penalty; and

(6) A certificate of service acknowledging service of the request for hearing with the accompanying documentation on the Office of the Solicitor.

*OMB Control No.*: 1093-NEW.

*Title*: Application and Reports for Paleontological Permits, 43 CFR part 49.

*Form Number(s)*: DI Forms 9002, 9004, 9005, 9006, and 9008.

*Description of Respondents*: Individuals; organizations; businesses (museums and universities); state, tribal, or local governments that collect paleontological resources or disturb paleontological sites on DOI lands.

*Respondent's Obligation*: Required to obtain or retain a benefit.

*Frequency of Collection*: On occasion.

Requirement	Total annual responses	Completion time per response (hours)	Total annual burden hours
Permit Application—DI Form 9002—§ 49.65; DI Form 9003—§ 49.75(a); DI Form 9007—§ 49.75(d) .....	440	4	1,760
Report Change of Personnel—§ 49.75(a)(2) .....	100	1	100
Locality Information—DI Form 9004—§ 49.75(a)(1) & (7) .....	300	1	300
Report Resource Damage or Theft—§ 49.75(a)(8) .....	50	1	50
Repository Receipt—DI Form 9008—§ 49.75(a)(9)&(10) .....	300	1	300
List and Description of Paleontological Resources—§ 49.75(a)(11) .....	100	1	100
Reports—DI Form 9005, Permit Report Cover Sheet—§ 49.75(a)(15) .....	374	5	1,870
Reports—DI Form 9006, Consulting Summary Report—§ 49.75(a)(15) .....	66	5	330
Request Amendment to Permit—§ 49.80(a) .....	200	1	200
Objecting to a Notice of Violation—§ 49.515(a)&(b) .....	10	10	100
Responding to a Civil Penalty—§ 49.535(a) .....	5	10	50
<b>Totals</b> .....	<b>1,945</b>	<b>.....</b>	<b>5,160</b>

*Estimated Nonhour Cost Burden*: None.

Send comments specific to the information collection aspects of this proposed rule to the Desk Officer for the Department of the Interior with a copy to the Office of the Secretary Information Collection Clearance Officer, Department of the Interior. See

the **DATES** and **ADDRESSES** sections for specific instructions.

#### *National Environmental Policy Act*

This proposed rule is anticipated to be categorically excluded from National Environmental Policy Act analysis under DOI categorical exclusion, 43 CFR 46.210(i), which covers "Policies, directives, regulations, and guidelines:

that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case."

The categorical exclusion is appropriate and applicable for the

following reasons. Several of the provisions of this proposed rule are specifically administrative, financial, legal or procedural in nature, and therefore are subject to the first part of the categorical exclusion. For instance, the provisions for permit modification, suspension, revocation, or cancellation are all administrative or procedural in character, as are the rule's provisions establishing procedures to challenge any of these decisions. Similarly, the proposed rule sets forth specifics of the administration of civil and criminal penalties associated with violation of the provisions of the rule and of PRPA.

Both the establishment of the permit system, and future decisions to close lands to casual collecting (and, conversely, to open lands to casual collecting where that use is not already authorized) are subject to the second part of the categorical exclusion. Issuance of a permit (whether programmatic or individual in scope) for the collection of paleontological resources itself requires agency compliance with NEPA. Moreover, a permit must contain permit conditions, supported by appropriate NEPA analysis, that ensure the underlying project or action will continue to meet regulatory requirements throughout the entire duration of the permit. Likewise, any decision to close or open lands to casual collecting also requires agency compliance with NEPA and may contain conditions, supported by appropriate NEPA analysis, that ensure the appropriate management of these resources. Because the environmental effects of this proposed rule are too speculative to lend themselves to meaningful analysis, and the environmental consequences of any of these decisions will be analyzed in detail at the time the permit application or proposed opening or closing to casual collecting is evaluated and before a decision is made, the rule is subject to the second part of DOI categorical exclusion, 43 CFR 46.210(i).

Pursuant to 43 CFR 46.205(c), DOI has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances, at 43 CFR 46.215, and has found that none applies to this rule. Therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required for this rulemaking.

Even though neither an EA nor an EIS must be prepared for this rule, the BLM has elected to prepare an EA to inform decision makers regarding the possible effects of two specific provisions as applied to the public lands BLM manages, as allowed under DOI's regulations implementing NEPA, 43

CFR 46.300(b)(1). BLM-administered lands are open to casual collection of paleontological resources unless specifically closed by a site-specific decision. As such, casual collection has been and will continue to occur on certain public lands.

PRPA provides specific authority and limits under which this activity can take place. In particular, PRPA allows for "casual collecting," which is defined as "the collecting of a reasonable amount of common invertebrates 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" (Pub. L. 111–11, section 6301(1), 123 Stat. 1172), and specifies that the Secretary of the Interior is to determine how these terms are to be defined. The rule's proposed definitions for "negligible disturbance" and "reasonable amount" describe the conditions limiting any casual collection activities on certain public lands managed by the BLM. The BLM is preparing an EA for these proposed definitions, which will immediately apply to casual collection on BLM public lands when this rule is finalized. The EA is under development and may be found at [www.blm.gov/paleontology](http://www.blm.gov/paleontology). The BLM welcomes input from the public on the EA, which may be revised in response to public input as well as further agency review. It is expected that analysis will be qualitative and descriptive in character, and consist largely of presenting the possible negative consequences that might result from not defining these terms carefully, as well as describing the considerations that informed the proposed definitions and the alternatives considered.

#### *Effects on the Energy Supply (Executive Order 13211)*

This proposed rule is not a significant energy action under the definition in Executive Order 13211. DOI has determined that this proposed rule will not have substantial direct effects on energy supply, distribution, or use, including a shortfall in supply or price increase. The rule has no bearing on energy development and will have no effect on the volume or consumption of energy supplies. A Statement of Energy Effects is not required.

#### *Clarity of This Regulation*

DOI is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe the DOI has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help us to revise the rule, please make comments as specific as possible. For example, tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

#### *Drafting Information*

This proposed rule reflects the efforts of staff in BLM, Reclamation, FWS, and NPS.

#### *Public Participation*

DOI, whenever practicable, affords the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. All comments must be received by midnight of the close of the comment period. We will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

#### *Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, please know that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### **List of Subjects**

##### *43 CFR Part 49*

Casual collecting, Civil penalties, Collecting, Commercial value, Confidentiality, Criminal penalties, Curation, Museums, Natural resources, Paleontological resources, Paleontology, Permits, Prohibited acts, Prohibitions, Public awareness, Public education, Recreation, Reporting and record keeping requirements, Repository, Research, Scientific principles, Scientific value.

**43 CFR Part 8360**

Penalties, Public lands, Recreation activities, Recreation and recreation areas.

**50 CFR Part 27**

Wildlife refuges.

For reasons stated in the preamble, the Department of the Interior proposes to amend title 43 of the CFR by adding part 49 and amending part 8360 and to amend part 27 of title 50, as set forth below:

**Title 43: Public Lands: Interior****Subtitle A—Office of the Secretary of the Interior**

■ 1. Add part 49 to title 43 to read as follows:

**PART 49—PALEONTOLOGICAL RESOURCES PRESERVATION****Subpart A—Managing, Protecting, and Preserving Paleontological Resources**

Sec.

- 49.1 What does this part do?
- 49.5 What terms are used in this part?
- 49.10 Does this part affect existing authorities?
- 49.15 When does this part not apply?
- 49.20 Does this part create new rights or entitlements?
- 49.25 What information concerning the nature and specific location of paleontological resources is confidential?
- 49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?
- 49.35 How will the bureaus foster public education and awareness?
- 49.40 When may the bureaus restrict access to an area?

**Subpart B—Paleontological Resources Permitting—Requirements, Modifications, and Appeals**

- 49.50 When is a permit required on federal land?
- 49.55 Who can receive a permit?
- 49.60 What criteria must a permit applicant meet?
- 49.65 Where must a permit application be filed and what information must it include?
- 49.70 How will a bureau make a decision about a permit application?
- 49.75 What terms and conditions will a permit contain?
- 49.80 When and how may a permit be modified, suspended, revoked, or cancelled?
- 49.85 Can a permit-related decision be appealed?
- 49.90 What is the process for appealing a permit-related decision?
- 49.95 Has OMB approved the information collection provisions of this part?

**Subpart C—Management of Paleontological Resource Collections**

- 49.200 Where are collections deposited?

- 49.205 How will bureaus approve a repository for a collection made under this part?
- 49.210 What is the process for depositing the collection at the approved repository?
- 49.215 What terms and conditions must the agreement between the bureau and approved repository contain?
- 49.220 What are the standards for managing the collections?

**Subpart D—Prohibited Acts**

- 49.300 What acts are prohibited?

**Subpart E—Criminal Penalties**

- 49.400 What criminal penalties apply to violations of this part?

**Subpart F—Civil Penalties**

- 49.500 When can the authorized officer assess a civil penalty?
- 49.505 How does the authorized officer serve a notice of violation?
- 49.510 What is included in the notice of violation?
- 49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?
- 49.520 When will the authorized officer issue a final assessment of civil penalty?
- 49.525 How will the authorized officer calculate the amount of a proposed and final assessment of civil penalty?
- 49.530 How will the authorized officer issue the final assessment of civil penalty?
- 49.535 What are the options and timeframe to respond to the final assessment of civil penalty?
- 49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?
- 49.545 What will be included in the administrative law judge's decision?
- 49.550 How can the administrative law judge's decision be appealed?
- 49.555 What procedures govern an appeal of an administrative law judge's decision to the OHA Director?
- 49.560 When must the civil penalty be paid?
- 49.565 When may a person assessed a civil penalty seek judicial review?
- 49.570 What happens if a civil penalty is not paid on time?
- 49.575 How will collected civil penalties be used?

**Subpart G—Determining Values and the Costs of Response, Restoration, and Repair**

- 49.600 What is scientific value?
- 49.605 What is commercial value?
- 49.610 What is the cost of response, restoration, and repair?

**Subpart H—Forfeiture and Rewards**

- 49.700 Will a violation lead to forfeiture of a paleontological resource?
- 49.705 What rewards may bureaus pay to those who assisted in enforcing this part?

**Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands**

- 49.800 Is casual collecting allowed on lands administered by NPS or FWS?
- 49.805 Is casual collecting allowed on lands administered by BLM or Reclamation?
- 49.810 What is casual collecting?

Authority: 16 U.S.C. 470aaa–aaa–11.

**Subpart A—Managing, Protecting, and Preserving Paleontological Resources****§ 49.1 What does this part do?**

This part:

- (a) Directs the Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) (collectively referred to as “the bureaus”) to manage, protect, and preserve paleontological resources on federal land using scientific principles and expertise;
- (b) Coordinates paleontological resources management among the bureaus;
- (c) Promotes public awareness; provides for collection under permit; clarifies that paleontological resources cannot be collected from federal land for sale or purchase; establishes civil and criminal penalties; sets curation standards; and
- (d) Authorizes casual collecting of common invertebrate and plant fossils from certain BLM-administered land and certain Reclamation-administered land.

**§ 49.5 What terms are used in this part?**

The terms used in this part have the following definitions.

*Act* means title VI, subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. 470aaa–470aaa–11).

*Ad Hoc Board* means an Ad Hoc Board of Appeals appointed by the Director, Office of Hearings and Appeals, Department of the Interior.

*Approved repository* means a federal or non-federal facility that provides curatorial services and that is approved by the authorized officer to receive collections made under this part.

*Associated records* means original records or copies thereof, regardless of format, that include but are not limited to:

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



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

(3) Administrative records and reports generated during the permitting process that pertain to survey, excavation, or study of the paleontological resource.

*Authorized officer* means the bureau director or employee to whom the Secretary of the Interior has delegated authority to take action under the Act. Delegation will follow applicable Department and bureau procedures.

*Bureau* means Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), or National Park Service (NPS).

*Collection* means paleontological resources removed from geological context or taken from federal land, and associated records or replicas.

*Consumptive use* means the alteration or destruction of a paleontological specimen or portion of a specimen for scientific research.

*Cost of response, restoration, and repair* means the costs to respond to a violation of the provisions of this part or a permit issued under this part and the costs of restoration and repair of the paleontological resources or paleontological sites damaged as a result of the violation. Those costs are described in greater detail in § 49.610.

*Curatorial services* means managing and preserving a museum collection over the long term according to Department and bureau museum and archival standards and practices.

*Day* means a calendar day.

*DCHD* means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior.

*Department or DOI* means the Department of the Interior.

*Federal land* means land controlled or administered by the Secretary of the Interior, except for Indian land.

*Fossilized* means preserved by natural processes, such as burial in accumulated sediments, preservation in ice or amber, or replacement by minerals, which may or may not alter the original organic content.

*Indian land* means land of federally-recognized Indian tribes or Indian individuals which is either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

*Nature* means physical features, identifications, or attributes of the paleontological resource.

*OHA* means the Office of Hearings and Appeals, DOI.

*OHA Director* means the Director, Office of Hearings and Appeals, DOI.

*Paleontological resource* means any fossilized remains, traces, or imprints of organisms preserved in or on the Earth's crust, except for:

(1) Those that are found in an archaeological context and are 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) "Cultural items," as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); or

(3) Resources determined in writing by the authorized officer to lack paleontological interest or not provide information about history of life on earth, based on scientific and other management considerations.

*Paleontological site* means a locality, location, or area where a paleontological resource is found; the site can be relatively small or large.

*Specific location* means any description or depiction of a place in such detail that it would allow a person to find a paleontological resource or the site from which it was collected.

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

*Working collections* means paleontological resource collections that are not intended for long-term preservation and care as museum collections.

#### **§ 49.10 Does this part affect existing authorities?**

No. This part preserves the authority of the Secretary of the Interior and the bureaus under this and other laws and regulations to manage, protect, and preserve paleontological resources on federal land.

#### **§ 49.15 When does this part not apply?**

(a) The regulations in this part do not invalidate, modify, or impose additional restrictions or permitting requirements on mineral, reclamation, or related multiple use activities for which authorization exists or permits are issued under the general mining, mineral leasing, geothermal leasing, or mineral materials disposal laws.

(b) The regulations in this part do not apply to Indian land.

(c) The regulations in this part do not apply to any land other than federal land as defined in this part, or resources other than paleontological resources as defined in this part.

#### **§ 49.20 Does this part create new rights or entitlements?**

(a) This part does not 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.

(b) Only an officer or employee of the United States acting in that capacity has standing to file a civil action in a court of the United States to enforce this part.

#### **§ 49.25 What information concerning the nature and specific location of paleontological resources is confidential?**

(a) In keeping with section 6309 of the Act, information concerning the nature and specific location of a paleontological resource is exempt from disclosure under the Freedom of Information Act and any other law unless the authorized officer determines that disclosure would:

(1) Further the purposes of the Act;

(2) Not create risk of harm to or theft or destruction of the resource or site containing the resource; and

(3) Be in accordance with other applicable laws.

(b) If the authorized officer determines that a proposed disclosure would meet the requirements of paragraphs (a)(1)–(a)(3) of this section, then the authorized officer will, prior to disclosing the information, enter into a written agreement with the party seeking the disclosure. Such agreement will provide stipulations focused on ensuring that the recipient of the disclosure does not publicly distribute or otherwise release, disclose, or share the information.

(c) No disclosure complying with paragraph (b) of this section will be considered an official public disclosure for purposes of the Freedom of Information Act.

#### **§ 49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?**

(a) The bureaus will develop plans and procedures for the inventory and monitoring of paleontological resources on and from federal land in accordance with applicable laws and regulations.

(b) The bureaus will manage, protect, and preserve paleontological resources on and from federal land using scientific principles and expertise.

(c) Activities under paragraphs (a) and (b) of this section will be coordinated with other agencies, non-federal partners, the scientific community, and the general public where appropriate and practicable.

**§ 49.35 How will the bureaus foster public education and awareness?**

The bureaus will establish a program to increase public awareness about the significance of paleontological resources on or from federal land. This effort will be coordinated with other agencies, non-federal partners, the scientific community, and the general public where appropriate and practicable.

**§ 49.40 When may the bureaus restrict access to an area?**

(a) The authorized officer may restrict access to an area or close areas to collection of paleontological resources to protect paleontological or other resources or to provide for public safety.

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

**Subpart B—PALEONTOLOGICAL RESOURCES PERMITTING— REQUIREMENTS, MODIFICATIONS, AND APPEALS****§ 49.50 When is a permit required on federal land?**

(a) A permit is required for any person to collect paleontological resources or disturb paleontological sites, except for casual collecting on certain lands managed by the BLM or Reclamation, which is defined and addressed in subpart I of this part.

(b) A permit may be required by a bureau for activities that do not involve collection or disturbance.

(c) A permit is required for Federal Government personnel to collect paleontological resources or disturb paleontological sites unless the bureau authorizes the action by programmatic or other means.

**§ 49.55 Who can receive a permit?**

Applicants who demonstrate that they meet the qualification requirements described in § 49.60, who provide a complete application as described in § 49.65, and whose proposed activity meets the issuance criteria described in § 49.70 may receive a permit.

**§ 49.60 What criteria must a permit applicant meet?**

(a) Permit applicant qualification requirements include:

(1) A graduate degree from an accredited institution in paleontology or related field of study with a major emphasis in paleontology or equivalent academic training to undertake the proposed activity;

(2) Experience in collecting, analyzing, summarizing, and reporting paleontological data, and preparing collections for long-term care;

(3) 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

(4) Other expertise, knowledge, or experience required by the bureau in policies or procedures.

(b) Past performance by the applicant will also be considered. Past performance includes compliance with previous permits, relevant civil or criminal violations, or current indictments or charges.

**§ 49.65 Where must a permit application be filed and what information must it include?**

(a) A permit applicant must submit an application to the bureau that administers the federal land where the proposed activity would be conducted. It is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form and process, and respond to that bureau's requests for information in a timely manner.

(b) A permit applicant proposing to work in areas administered by BLM, Reclamation, or FWS must provide the information requested by DI Form 9002 (*Paleontological Resource Use Permit Application*). A permit applicant proposing to work in areas administered by NPS must provide the information requested by the NPS's Research Permit and Reporting System. Such information, for purpose of both DI Form 9002 and the NPS System, includes:

(1) The applicant's name, affiliation, and contact information.

(2) A current resume for the applicant and all other persons who oversee work under the permit, and any additional information demonstrating that the applicant possesses the qualifications required by § 49.60.

(3) A description, estimated start and end dates, and maps and other location information for the proposed work.

(4) Purpose and methodology of proposed work, including a detailed scope of work or research plan for the proposed activity, logistical information, methods that will be employed to explore for or remove the paleontological resources, proposed content and nature of any collection to be made under the permit, collection management processes, timetable for transfer to the proposed repository, and any additional information that will help the authorized officer identify the extent, nature, and impacts of the proposal.

(5) Bonding information, if required by the bureau.

(6) Information about the proposed repository for any collection that would be made under the permit, including:

(i) Name, location, and contact information for the proposed repository;

(ii) Written verification from the proposed repository confirming that it will agree to receive the collection; and

(iii) Names of organizations responsible for costs of curatorial services.

(7) Information on the applicant's past performance on previous permits.

(c) Because of the span of activities covered by paleontological permits and the different management needs and resources of each bureau, applicants may not be required to provide all of the information listed in paragraph (b) of this section. Each bureau will have the discretion to ask for less information.

**§ 49.70 How will a bureau make a decision about a permit application?**

(a) The authorized officer will assess whether the permit application complies with other applicable authorities.

(b) The authorized officer may issue a permit upon determining that:

(1) The applicant possesses the qualifications required by § 49.60;

(2) The permitted activity and any collection that would be made under the proposed permit would further paleontological knowledge, public education, or management of paleontological resources;

(3) The permitted activity would be consistent with the purpose and management objectives defined for the federal land; and

(4) The permitted activity would be conducted in a manner that would avoid or reduce adverse effects to significant natural or cultural resources.

(c) The authorized officer will work with the permit applicant and proposed repository to decide whether to approve the proposed repository, based on the criteria described in § 49.205(a), for the collection that would be made under the permit.

**§ 49.75 What terms and conditions will a permit contain?**

(a) The authorized officer will use DI Form 9003 (*Paleontological Resource Use Permit*) when issuing permits for activities on lands administered by BLM, Reclamation, and FWS. The authorized officer will use the NPS Research Permit and Reporting System when issuing a permit for activities on lands administered by NPS. Permit terms and conditions will include but are not limited to:

(1) Permittee must not release, disclose, or share information about the specific location of paleontological resources without the prior written permission of the authorized officer.

(2) Permittee must report in writing to the authorized officer any change in the persons who are conducting activities under the permit, and submit the credentials of any new persons for approval.

(3) Permittee must protect paleontological sites and associated resources from harm resulting from the work under the permit, and is responsible for the actions of all persons working under the permit.

(4) Permittee, or a designee approved by the authorized officer and named on the permit, must be on site at all times when fieldwork is in progress and have a copy of the signed permit on hand.

(5) Permittee must comply with all vehicle or access restrictions, safety or environmental restrictions, local safety conditions or restrictions, and applicable federal, state, and local laws.

(6) Permittee acknowledges that the geographic area within the scope of the permit may be subject to other uses, and will take steps to avoid or minimize potential conflicts with such uses.

(7) Permittee will record locality information on DI Form 9004 (*Paleontological Locality Form*), or in another format approved for use under the permit that captures the same information.

(8) Permittee must report suspected resource damage or theft of paleontological or other resources to the authorized officer as soon as possible, but not to exceed 48 hours after learning of such damage or theft.

(9) A copy of the permit must be kept with the collection during transport and shared with the approved repository.

(10) Permittee must deposit the collection in the approved repository and provide the bureau with DI Form 9008 (*Repository Receipt for Collections (Paleontology)*), which includes but is not limited to a certification by the permittee that the collection was transferred to the repository and a certification by the approved repository's authorized official that the collection was received.

(11) If the permittee has not transferred the collection to the approved repository by the due date of the annual report or other schedule approved for the permit, the permittee must provide the authorized officer a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

(12) Permittee acknowledges that all paleontological resources collected under the permit will remain federal property, and that he or she will not sell, trade, exchange, or keep for personal use the paleontological resources collected under the permit.

(13) Permittee must acknowledge the permitting bureau in any report, publication, paper, news article, film, television program, or other media resulting from the work performed under the permit.

(14) Permittee is responsible for the costs, monetary and otherwise, of the permitted activity, including fieldwork, data analysis, report preparation, curation of the collection and its associated records consistent with subpart C of this part.

(15) Permittees conducting activities on lands administered by BLM, Reclamation, or FWS must submit reports to the bureaus using DI Form 9005 (*Paleontological Permit Report Cover Sheet*), or DI Form 9006 (*Paleontology Consulting Report Summary Sheet*). Permittees conducting activities on lands administered by NPS must submit reports to the NPS under the NPS Research Permit and Reporting System.

(16) Permittee must comply with timelines established by the permit.

(17) Permittee must conduct the work consistent with the permit.

(18) Permittee must not transfer the permit.

(b) A permittee must continue to comply with applicable terms and conditions in the event of permit expiration, suspension, cancellation, or revocation unless specified otherwise by the authorized officer.

(c) The authorized officer may include in the permit additional terms and conditions necessary to carry out the purposes of this part, including a bond where warranted.

(d) For activities approved on lands administered by BLM or Reclamation, the authorized officer may provide permittees with DI Form 9007 (*Paleontology Work Notice to Proceed*), which contains site-specific guidance and stipulations for the permittee. The Notice to Proceed is part of the permit.

(e) Persons who do not comply with the terms of a permit issued under this part may be subject to civil or criminal penalties.

**§ 49.80 When and how may a permit be modified, suspended, revoked, or cancelled?**

(a) *Modification.* The authorized officer may modify a permit at the permittee's request; or when resource, safety, or other administrative or

management reasons make permit modification appropriate; or when there is a violation of a term or condition of a permit issued under this part.

(b) *Suspension.* The authorized officer may suspend for up to 45 days activities under the permit when resource, safety, or other administrative or management reasons make permit suspension appropriate, or when the permittee violates a term or condition of the permit. If the issue prompting suspension is not resolved within the 45-day period, the authorized officer may modify, revoke, or cancel the permit as appropriate to the specific circumstance.

(c) *Revocation.* The authorized officer may revoke a permit when the permittee violates a term or condition of a permit, is found to be ineligible for a permit, or when the permittee fails to take the actions necessary for ending a suspension. The authorized officer will revoke a permit immediately if any person working under the authority of the permit is convicted of a criminal offense or assessed a civil penalty under this part.

(d) *Cancellation.* The authorized officer may cancel a permit when the permittee requests cancellation, or when resource, safety, or other administrative or management reasons make permit cancellation appropriate. Cancellation of a permit does not imply fault on the part of the permittee.

(e) Notification of modification, suspension, revocation, or cancellation.

(1) The authorized officer will notify the permittee of the modification, suspension, revocation, or cancellation verbally or in writing. The authorized officer will, as soon as practicable, confirm a verbal notification with a written notification. A written notification will be served on the permittee by certified mail, return receipt requested, or another verifiable delivery method. The notification will explain the reason for the modification, suspension, revocation, or cancellation.

(2) In the case of a suspension, the written notification will also include the conditions or actions necessary for ending the suspension; the anticipated duration of the suspension or schedule for resolution of the conditions that led to the suspension; and a statement that the permit will be modified, revoked, or cancelled if the conditions that led to the suspension are not resolved.

(3) The notification will inform the permittee how to appeal the modification, revocation, suspension, or cancellation.

(f) Immediately effective. A modification, suspension, revocation, or cancellation is in full force and effective

immediately upon the permittee's receipt of the written notification of the modification, suspension, revocation, or cancellation.

**§ 49.85 Can a permit-related decision be appealed?**

Permit applicants and permittees may appeal the denial of a permit application, and the modification, suspension, revocation, or cancellation of an issued permit.

**§ 49.90 What is the process for appealing a permit-related decision?**

A permit-related decision may be appealed using processes defined by the issuing bureau.

(a) Permit-related decisions by BLM may be appealed under the process explained at 43 CFR part 4, subpart E.

(b) Permit-related decisions by FWS may be appealed under the process explained at 50 CFR 36.41(i).

(c) Permit-related decisions by Reclamation may be appealed under the process used for other types of scientific research and collecting permits issued by Reclamation, which will be specified in writing in the permit-related decision.

(d) Permit-related decisions by NPS may be appealed under the process used for other types of scientific research and collecting permits issued by NPS, which will be specified in writing in the permit-related decision.

**§ 49.95 Has OMB approved the information collection provisions of this part?**

BLM, Reclamation, NPS, and FWS use the information collected under this part to manage, protect, and preserve paleontological resources on and from federal land. The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this part and assigned OMB Control No. 1093–XXXX. OMB has approved the information collection requirements for NPS Research Permit and Reporting System, which includes paleontological permits, and assigned OMB Control No. 1024–0236. A federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Office of the Secretary, Departmental Information Collection Clearance Lead, Department of the Interior, 1849 C Street NW., Mailstop MIB–7056, Washington, DC 20240.

**Subpart C—Management of Paleontological Resource Collections**

**§ 49.200 Where are collections deposited?**

(a) A collection from federal land made under a permit issued under this part will be deposited in the repository approved by the authorized officer under § 49.205.

(b) The curation of paleontological resources collected from federal land before January 6, 2017 is governed by the terms and conditions of the original collection permit or agreement.

**§ 49.205 How will bureaus approve a repository for a collection made under this part?**

(a) During the permit application process under subpart B of this part, the authorized officer will decide whether or not to approve a repository for the deposit of the collection that will be made under the permit, based on whether the:

(1) Repository has facilities and staff that provide curatorial services as defined in this part;

(2) Repository has a scope of collections statement or similar policy document that identifies paleontological resources as part of the repository's acquisition policy;

(3) Repository has access to paleontological and curatorial staff trained and experienced in managing and preserving paleontological resource collections;

(4) Repository's past and current performance meets applicable Departmental standards;

(5) Deposit would meet the bureau's management goals for the collection; and

(6) Repository will not release specific location data to the public except as consistent with § 49.25 or as provided in an agreement between the repository and the bureau.

(b) When the authorized officer approves a repository for the collection, that repository will be listed in the approved permit, and will remain approved to curate the collection unless the authorized officer determines that any one of the considerations in paragraph (a) of this section is no longer met. In that case, the authorized officer will notify the repository in writing and provide a reasonable time for the repository to:

(1) Correct the deficiency;

(2) Move the collection to another approved repository; or

(3) Take other actions the authorized officer requests.

**§ 49.210 What is the process for depositing the collection at the approved repository?**

(a) The authorized officer will take the following actions before the collection is deposited at the approved repository:

(1) Work with the permittee and approved repository, using scientific principles and expertise, to ensure that the collection is complete and that the content of the collection will further paleontological knowledge, public education, or management of paleontological resources;

(2) Review any existing agreement between the bureau and the approved repository to determine if that agreement adequately addresses requirements that are specific to the collection; and

(3) Develop a new agreement, if an adequate agreement does not exist between the repository and the bureau.

(b) After the collection is deposited at the approved repository, the permittee or the repository will submit DI Form 9008 (*Repository Receipt for Collections (Paleontology)*), to the authorized officer. This form includes but is not limited to a certification by the permittee that the collection was deposited at the repository, and a certification by the approved repository's authorized official that the collection has been received.

**§ 49.215 What terms and conditions must the agreement between the bureau and approved repository contain?**

(a) Agreements between the bureau and approved repository will contain the following information as deemed appropriate by the authorized officer:

(1) Statement (updated as necessary) that identifies the collection or group of collections at the approved repository.

(2) Statement that asserts federal ownership of the collection.

(3) Statement of work to be performed by the approved repository.

(4) Statement of the responsibilities of the bureau and of the approved repository for the long-term care of the collection.

(5) Statement that collections are available for scientific and educational uses and that the specific location data may be shared consistent with § 49.25.

(6) Description of any special procedures or restrictions for access to controlled property, consumptive use, reproductions, or curatorial services, including loans.

(7) Statement describing the frequency, methods, and reporting process for inventories.

(8) Statement that all exhibits, publications, and studies of paleontological resources will

acknowledge the bureau that administers the collection.

(9) Statement that copies of any publications or reports resulting from study of the collection will be made available to the bureau.

(10) Statement describing how collection management records will be made available to the bureau that administers the collection.

(11) Statement that employees of the repository will take no actions whereby any of the collection shall or may be encumbered, seized, taken, sold, attached, lost, stolen, destroyed or damaged.

(12) Effective term of the agreement and procedures for modification, cancellation, suspension, extension, and termination of the agreement, including costs.

(13) Additional terms and conditions as needed to manage the collection.

(b) The agreement must be signed by an authorized representative of the approved repository and the authorized officer.

#### **§ 49.220 What are the standards for managing the collections?**

(a) Each approved repository must:

(1) Provide curatorial services consistent with § 49.5, and make the collections available for scientific research, public education, and management uses that further the Act, subject to § 49.25;

(2) Ensure that use of the collections is consistent with Departmental and bureau museum management standards and the terms of the agreement between the bureau and the approved repository;

(3) Obtain approval of the authorized officer on a case-by-case basis before conducting or allowing reproduction or consumptive use of part or all of the collection, unless another procedure for obtaining such approval is defined in the agreement between the bureau and the approved repository;

(4) Obtain approval of the authorized officer and follow Departmental and bureau policy when moving part or all of the collection from museum to working collections; and

(5) Conduct inventories consistent with Departmental and bureau museum management standards, and report the results to the bureau.

(b) The approved repository may charge reasonable fees, consistent with applicable law, to persons who use, or institutions that borrow, part or all of a collection. Fees may cover costs for handling, packing, shipping, and insuring the collection, photocopying associated records, and other costs associated with that use.

### **Subpart D—Prohibited Acts**

#### **§ 49.300 What acts are prohibited?**

A person may not:

(a) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on federal land unless this activity is conducted in accordance with the Act and this part.

(b) 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 federal land in violation of any provision, rule, regulation, law, ordinance, or permit in effect under federal law, including the Act and this part.

(c) 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 federal land.

(d) Make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from federal land.

### **Subpart E—Criminal Penalties**

#### **§ 49.400 What criminal penalties apply to violations of this part?**

(a) The penalties in this section do not apply with respect to paleontological resources in the lawful possession of a person on or before March 30, 2009.

(b) Anyone who knowingly violates or counsels, procures, solicits, or employs another person to commit a prohibited act identified in subpart D of this part will, upon conviction, be assessed:

(1) Fines in accordance with 18 U.S.C., or imprisonment of up to 5 years, or both, if the sum of the commercial and scientific value of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is more than \$500; or

(2) Fines in accordance with 18 U.S.C., or imprisonment of up to 2 years, or both, if the sum of the commercial and scientific value of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is \$500 or less.

(c) Commercial and scientific values and the cost of response, restoration, and repair are determined under subpart G of this part.

(d) In the case of a second or subsequent violation by the same

person, the amount of the penalties assessed under this subpart may be doubled.

(e) To the extent that a prohibited act under this subpart involves a violation of other applicable law, the violator may be subject to other criminal penalties.

### **Subpart F—Civil Penalties**

#### **§ 49.500 When can the authorized officer assess a civil penalty?**

(a) The authorized officer may assess a civil penalty upon any person who violates the provisions of this part or a permit issued under this part, in accordance with the process explained in this subpart.

(b) For purposes of this subpart, each violation is considered a separate offense.

#### **§ 49.505 How does the authorized officer serve a notice of violation?**

The authorized officer may serve a notice of violation in person, by certified mail, return receipt requested, or other verifiable delivery method upon a person that the authorized officer believes has committed a violation of this part.

#### **§ 49.510 What is included in the notice of violation?**

A notice of violation will include:

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

(b) A citation of the provisions of this part or a permit issued under this part alleged to have been violated;

(c) The amount of civil penalty proposed;

(d) Notification of the right to await the final assessment of civil penalty or to object to the notice of violation and proposed civil penalty, and the right to file a request for hearing of the final assessment of civil penalty. The notice shall also inform the person of the right to seek judicial review upon the issuance of the final administrative order under this subpart; and

(e) The name and contact information of the authorized officer who is serving the notice of violation.

#### **§ 49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?**

(a) *Filing Objection.* A person served with a notice of violation and proposed civil penalty may file a written objection with the authorized officer within 30 days of the date the notice was received.

(b) *Content of Objection.* The objection must:

(1) Clearly and concisely state the reasons why the person believes that the person did not commit a violation and/

or that the proposed civil penalty should be reduced or eliminated;

(2) Be accompanied by any documentation supporting the person's reasons for objecting; and

(3) Be signed by the person or the person's authorized representative.

(c) *Issuing Determination.* The authorized officer will issue a determination, served on the person by a verifiable delivery method, sustaining or denying the objection to the notice of violation and/or proposed civil penalty based on the information contained in the written objection or furnished to the authorized officer upon further request.

(d) *Content of Determination.* In the determination, the authorized officer will:

(1) Sustain the objection and revoke the notice of violation and proposed civil penalty, if the authorized officer determines that the information warrants a conclusion that no violation occurred;

(2) Deny the objection, if the authorized officer determines that the information warrants a conclusion that a violation occurred and that the proposed civil penalty is not too high; or

(3) Deny the objection in part and sustain it in part, if the authorized officer determines that the information warrants a conclusion that a violation has occurred, but the amount of the civil penalty too high.

**§ 49.520 When will the authorized officer issue a final assessment of civil penalty?**

The authorized officer will issue a final assessment of civil penalty:

(a) If the person served with a notice of violation and proposed civil penalty does not file a timely objection; or

(b) If the person does file a timely objection that is denied in whole or in part under § 49.515.

**§ 49.525 How will the authorized officer calculate the amount of a proposed and final assessment of civil penalty?**

(a) The authorized officer will determine the amount of the civil penalty by taking into account:

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

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

(3) Other factors that the authorized officer considers relevant, such as prior violations or warnings or evidence of malicious intent;

(4) Information provided under § 49.515 or furnished to the authorized officer upon his or her request; and

(5) Mitigating factors, which may include return of paleontological resources and whether the person will provide information that may assist the bureau.

(b) Scientific and commercial values and the cost of response, restoration, and repair are determined under subpart G of this part.

(c) In the case of any subsequent violation by the same person, the authorized officer may calculate a penalty in accordance with paragraph (a) of this section and double it for that subsequent violation.

(d) The maximum penalty assessed under paragraph (c) of this section for any one violation may not exceed the sum of:

(1) Two times the cost of response, restoration, and repair of paleontological resources and paleontological site damage; plus

(2) Two times the scientific or commercial value, whichever is greater as determined by the authorized officer, of the paleontological resources and paleontological sites destroyed or not recovered.

(e) The authorized officer will use subpart G of this part to determine scientific or commercial values and the cost of response, restoration, and repair.

(f) The final assessment may be equal to, less than, or more than the proposed civil penalty.

**§ 49.530 How will the authorized officer issue the final assessment of civil penalty?**

(a) The authorized officer will serve the final assessment of civil penalty by certified mail, return receipt requested, or other verifiable delivery method.

(b) The final assessment of civil penalty will include:

(1) The facts and conclusions that are the bases for the authorized officer's determination that a violation occurred;

(2) The basis for the authorized officer's determination of the amount of civil penalty assessed;

(3) Notification of the rights to accept the final assessment of civil penalty or, alternatively, to file a request for hearing on the final assessment with a DCHD administrative law judge under § 49.535(a)(2).

(4) A statement that the civil penalty must be paid within 30 days of the date that the final assessment of civil penalty is received, unless the person served with the final assessment of civil penalty files a request for hearing in accordance with this subpart and the procedures specified in the notice.

**§ 49.535 What are the options and timeframe to respond to the final assessment of civil penalty?**

(a) *Response Options.* A person who receives a final assessment of civil penalty may, within 30 days of the date the assessment is received, do one of the following:

(1) Accept the final assessment, either in writing, by payment of the proposed penalty, or by failing to timely file a request for hearing under paragraph (a)(2) of this section; or

(2) File a request for a hearing on the final assessment before a DCHD administrative law judge via certified mail, return receipt requested, or other verifiable delivery method with the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, 351 S. West Temple, Room 6.300, Salt Lake City, Utah 84101.

(b) *Content of Request for Hearing.* A request for hearing must:

(1) Be signed by the person who receives the final assessment of civil penalty or a representative qualified to represent that person under 43 CFR 1.3;

(2) Identify the final assessment of civil penalty being challenged;

(3) State clearly and concisely the reasons for challenging the final assessment, including the reasons why the person believes that he or she did not commit a violation and/or that the proposed civil penalty should be reduced or eliminated;

(4) State the relief sought and the basis for that relief;

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of any objection and supporting documentation filed under § 49.515(a); and

(iii) A copy of the final assessment of civil penalty; and

(6) Contain a certificate acknowledging service of the request for hearing with the documentation listed in paragraph (b)(5) of this section on the Office of the Solicitor at the address identified in paragraph (c) of this section.

(c) *Service.* The person filing a request for hearing must simultaneously send a copy of the request and the accompanying documentation to the Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

(d) *Dismissal of Hearing Request.*

(1) If the request for hearing is not received by DCHD within 30 days of the date of receipt of the final assessment, the request for hearing will not be considered and the hearing will be dismissed.

(2) The request for hearing may be dismissed for failing to meet any of the requirements of paragraph (c) of this section.

(e) *Waiver of Hearing Right.* A person who accepts the final assessment under paragraph (a)(1) of this section waives the right to a hearing.

**§ 49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?**

(a) Upon receipt of a request for hearing under § 49.535(a)(2), DCHD will assign an administrative law judge to preside over the hearing process and issue a decision. DCHD will promptly notify the parties of the assignment. Thereafter, all pleadings, papers, and other documents in the hearing process must be filed directly with that judge, with copies served on the other party.

(b) An attorney from the Office of the Solicitor, DOI, will represent the bureau. The attorney will enter his or her appearance on behalf of the bureau and file all motions and correspondence between the bureau and the person who filed the request for hearing. Subsequently, any service upon the bureau must be made to the attorney.

(c) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A and B, and in 43 CFR 4.422 through 4.437 will apply to the hearing process under this subpart.

(d) The hearing will be conducted in accordance with 5 U.S.C. 554. The bureau will have the burden of proving by a preponderance of the evidence the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing and incorporation of the hearing transcript in the record, the administrative law judge will issue a written decision in accordance with § 49.545 and serve it on the parties.

**§ 49.545 What will be included in the administrative law judge's decision?**

(a) The administrative law judge's written decision will set forth:

- (1) The findings of fact and conclusions of law;
- (2) The reasons and bases for the findings; and
- (3) An assessment of the penalty, if any.

(b) The amount of any penalty assessed will:

- (1) Be determined in accordance with this subpart; and
- (2) Not be limited by the amount assessed by the authorized officer under § 49.525 or by any offer of mitigation or remission previously made.

(c) The administrative law judge's decision will become effective 31 days from the date of the written decision unless a timely appeal of the decision is filed under § 49.550.

**§ 49.550 How can the administrative law judge's decision be appealed?**

(a) *Filing appeal.* Within 30 days of the date of the administrative law judge's decision, either party to the hearing process (the person who filed the request for hearing or the bureau) may appeal the administrative law judge's decision to the OHA Director by filing a notice of appeal via certified mail, return receipt requested, or other verifiable delivery method to the Director, Office of Hearings and Appeals, Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) *Content of notice of appeal.* The notice of appeal must:

(1) Be signed by the person filing the appeal or a representative qualified to represent that person under 43 CFR 1.3;

(2) Identify the administrative law judge's decision being appealed, including the DCHD docket number;

(3) State clearly and concisely the reasons for challenging the decision, including:

(i) The reasons why the person believes that he or she did not commit a violation and/or that the proposed civil penalty should be reduced or eliminated; and

(ii) A concise but complete statement of the facts relied upon to challenge the decision;

(4) State the relief sought and the basis for that relief;

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of the final assessment of civil penalty; and

(iii) A copy of the administrative law judge's decision; and

(6) Contain a certificate acknowledging service of the notice with the documentation listed in paragraph (b)(5) of this section on the other party to the hearing process at the address listed on the administrative law judge's decision.

(c) *Service.* The person filing a notice of appeal must simultaneously send a copy of the notice and the accompanying documentation to each of the following entities at the address listed on the administrative law judge's decision:

- (1) The other party to the hearing process; and
- (2) DCHD.

(d) *Dismissal of appeal.* If the notice of appeal is not received by the OHA

Director within 30 days of the date of the administrative law judge's decision, the notice of appeal will not be considered and the appeal will be dismissed.

(e) *Stay of payment deadline.* If the administrative law judge's decision is appealed to the OHA Director, the deadline for payment of the penalty will be stayed pending resolution of the appeal.

**§ 49.555 What procedures govern an appeal of an administrative law judge's decision to the OHA Director?**

(a) Upon receipt of a notice of appeal filed under § 49.550(a), the OHA Director will appoint an Ad Hoc Board to consider the appeal and issue a decision thereon.

(b) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A, B, and G, will apply to the appeal proceedings under § 49.550.

**§ 49.560 When must the civil penalty be paid?**

A person assessed a civil penalty has 30 days from the date of the final administrative decision in which to make full payment of the final assessment of the civil penalty, or agree to a payment schedule. For the purposes of this subpart, the final administrative decision is:

(a) The final assessment of civil penalty if the person served with the final assessment does not file a timely request for hearing under § 49.535(a)(2).

(b) The administrative law judge's decision on the request for hearing if a timely appeal to the OHA Director is not filed under § 49.550(a); or

(c) The decision of the Ad Hoc Board of Appeals appointed by the OHA Director if a timely appeal of the administrative law judge's decision was filed under § 49.550(a).

**§ 49.565 When may a person assessed a civil penalty seek judicial review?**

A person may file a petition for judicial review in the United States District Court for the District of Columbia or in the district where the violation occurred, within 30 days of the decision of the Ad Hoc Board of Appeals appointed by the OHA Director. For purposes of the Act and this part, that decision will be considered a final administrative order. The deadline for payment of the civil penalty will be stayed pending resolution of the judicial review.

**§ 49.570 What happens if a civil penalty is not paid on time?**

(a) If the civil penalty is not paid by the required deadlines, the United



States may take action to collect the penalty assessed plus interest, attorneys' fees, and collection costs.

(b) Failure to pay a civil penalty assessed under this subpart is a debt to the United States.

(c) Failure to pay a civil penalty assessed under this subpart may prevent a person from obtaining a future authorization for activities related to paleontological resources on federal land as well as receiving other future federal funding or assistance.

(d) By assessing a civil penalty under this subpart, the United States does not waive the right to pursue other legal or administrative remedies.

**§ 49.575 How will collected civil penalties be used?**

Civil penalties collected under this subpart are available without further appropriation to the bureau that administers the federal land or paleontological resources that were the subject of the violation, and may be used only to:

(a) 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;

(b) Provide educational materials to the public about paleontological resources, paleontological sites, or resource protection; or

(c) Pay rewards under subpart H of this part.

**Subpart G—Determining Values and the Costs of Response, Restoration, and Repair**

**§ 49.600 What is scientific value?**

The scientific value of a paleontological resource is the value of the scientific and educational information associated with the resource. It is determined by the authorized officer based upon the estimated costs of obtaining the scientific and educational information from the disturbed paleontological site if the prohibited act had not occurred. These costs may include, but are not limited to:

- (a) Research design development;
- (b) Fieldwork;
- (c) Laboratory analysis;
- (d) Curation;
- (e) Reports or educational materials; and
- (f) Lost visitor services or experience.

**§ 49.605 What is commercial value?**

The commercial value of a paleontological resource is the monetary value of that resource, and is determined by the authorized officer using comparable sales information,

appraisals, market value, or other information for comparable resources. If there is no comparable sales information, appraisal, market value, or other information, the authorized officer will determine the commercial value of the paleontological resource using other methods such as scientific value or the cost of response, restoration, and repair.

**§ 49.610 What is the cost of response, restoration, and repair?**

The cost of response, restoration, and repair of a paleontological resource or paleontological site is determined by the authorized officer, and includes but is not limited to the costs of:

- (a) Law enforcement investigations;
- (b) Immediate stabilization;
- (c) Longer term response, restoration, and repair, including but not limited to reconstructing or stabilizing the resource or site, salvaging the resource or site, erecting physical barriers or other protective devices or signs to protect the site, and monitoring the site;
- (d) Fossil preparation, stabilization, and conservation;
- (e) Storage and curation of the resources; and
- (f) Reporting upon the above activities.

**Subpart H—Forfeiture and Rewards**

**§ 49.700 Will a violation lead to forfeiture of a paleontological resource?**

(a) A paleontological resource with respect to which a violation under this part occurred is stolen federal property and is subject to forfeiture.

(b) The bureau may either deposit forfeited resources into an approved repository, or transfer or assign administration of the forfeited resources to federal or non-federal institutions to be used for scientific or educational purposes.

**§ 49.705 What rewards may bureaus pay to those who assisted in enforcing this part?**

(a) The bureau may pay a reward to the person or persons furnishing information leading to a finding of civil violation or criminal conviction.

(b) The reward may be no more than half of the penalties collected. If several persons provide the information, the bureau may divide the reward among them.

(c) The funds for the reward may come from the penalties collected or from appropriated funds.

(d) An officer or employee of federal, state, or local government who furnishes information or renders service in the performance of official duties is not eligible for a reward under this section.

**Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands**

**§ 49.800 Is casual collecting allowed on lands administered by NPS or FWS?**

Casual collecting of paleontological resources is not allowed on lands administered by NPS or FWS. On those lands, collecting any paleontological resource must be conducted in accordance with a permit as described in subpart B of this part.

**§ 49.805 Is casual collecting allowed on lands administered by BLM or Reclamation?**

(a) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by BLM in accordance with this subpart, except:

(1) On any BLM-administered land that is closed to casual collecting in accordance with this part, other statutes, executive orders, regulations, or land use plans; or

(2) On BLM-administered national monuments, national conservation areas, outstanding natural areas, forest reserves, or cooperative management and protection areas, except where allowed by other statutes, executive orders, regulations, or land use plans.

(b) Casual collecting of common invertebrate or plant paleontological resources is allowed on land administered by Reclamation only in locations where Reclamation has established a special use area for casual collecting using processes defined in 43 CFR part 423, *Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies*. Casual collecting is prohibited on Reclamation project land that is administered by NPS or FWS.

(c) Persons interested in casual collecting are responsible for learning which bureau manages the land where they would like to collect paleontological resources, learning if the land is open to casual collecting, learning what may be collected in an area, and obtaining information about the managing bureau's casual collecting procedures.

**§ 49.810 What is casual collecting?**

(a) Casual collecting means the collecting without a permit 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 or paleontological or other resources.

(1) *Common invertebrate or plant paleontological resources* are invertebrate or plant fossils that have been established as having ordinary occurrence and wide-spread distribution. Not all invertebrate or plant paleontological resources are common.

(2) *Reasonable amount* means a maximum of 25 pounds per day per person, not to exceed 100 pounds per year per person. Pooling of individuals' daily amounts to obtain pieces in excess of 25 pounds is not allowed.

(3) *Negligible disturbance* means little or no change to the surface of the land and minimal or no effect to natural and cultural resources, specifically:

(i) In no circumstance may the surface disturbance exceed 1 square yard (3 feet × 3 feet) per individual collector;

(ii) For multiple collectors, each square yard of surface disturbance must be separated by at least 10 feet;

(iii) All areas of surface disturbance must be backfilled with the material that was removed so as to render the disturbance substantially unnoticeable to the casual observer.

(4) *Non-commercial personal use* means a use other than for purchase, sale, financial gain, or research.

(5) *Non-powered hand tool* means a small tool, such as a geologic hammer, trowel, or sieve, that does not use or is not operated by a motor, engine, or other mechanized power source, and that can be hand-carried by one person.

(b) In order to preserve paleontological or other resources, or for other management reasons, the authorized officer may establish limitations on casual collecting, including but not limited to reducing the weight of common invertebrate or plant paleontological resources below the amount specified in this subpart;

limiting the depth of disturbance; establishing site-specific dates or locations for collecting; or establishing what is common in a specific area.

(c) Collecting common invertebrate or plant paleontological resources inconsistent with any of the limitations in paragraphs (a) or (b) of this section is not casual collecting, and must be immediately discontinued.

(d) Collecting common invertebrate or plant paleontological resources inconsistent with this subpart is a prohibited act and may result in civil or criminal penalties.

## Subtitle B—Regulations Relating to Public Lands

### Subchapter A—General Management

#### PART 8360—VISITOR SERVICES

■ 2. Revise the authority citation for part 8360 to read as follows:

**Authority:** 16 U.S.C. 470aaa *et seq.*, 670 *et seq.*, 877 *et seq.*, 1241 *et seq.*, and 1281c; and 43 U.S.C. 315a and 1701 *et seq.*

■ 3. Revise § 8360.0–3 to read as follows:

#### § 8365.0–3 Authority.

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877 *et seq.*), the National Trails System Act (16 U.S.C. 1241 *et seq.*), and the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*).

■ 4. Amend § 8365.1–5 by revising paragraphs (b)(2), (b)(4), and (b)(5) and adding paragraph (b)(6) to read as follows:

#### § 8365.1–5 Property and resources.

\* \* \* \* \*

(b) \* \* \*

(2) Nonrenewable resources such as rocks, mineral specimens, and semiprecious gemstones;

\* \* \* \* \*

(4) Mineral materials as provided under subpart 3604;

(5) Forest products for use in campfires on the public lands. Other collection of forest products shall be in accordance with the provisions of Group 5500 of this title; and

(6) Common invertebrate and plant paleontological resources as provided under subpart 49 of this title.

\* \* \* \* \*

## Title 50: Wildlife and Fisheries

### PART 27—PROHIBITED ACTS

■ 5. The authority citation for part 27 continues to read as follows:

**Authority:** 5 U.S.C. 685, 752, 690d; 16 U.S.C. 460k, 460l–6d, 664, 668dd, 685, 690d, 715i, 715s, 725; 43 U.S.C. 315a.

■ 6. Amend § 27.63 by adding paragraph (c) to read as follows:

#### § 27.63 Search for and removal of other valued objects.

\* \* \* \* \*

(c) Permits are required for the collection of paleontological resources on national wildlife refuges in accordance with the provisions of 43 CFR part 49.

**Elizabeth Klein,**

*Principal Deputy Assistant Secretary, Policy Management and Budget.*

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