Delta Port and the Tsawwassen Ferry Terminal.

• Expand the U.S. VMRS requirements to match those of Canada which include all vessels 20 meters or more in length.

Next Steps

The PARS contains a number of recommendations, which will be implemented in various ways by U.S. and Canadian Authorities. A brief synopsis of how the various proposals will proceed towards implementation follows:

1. Changes to the TSS, ATBA, and adding recommended routes will require approval by the International Maritime Organization (IMO). Any changes to the TSS will be accomplished through the rulemaking process.

2. Changes to the U.S. VTS Regulations, including the designation of a VTS Special Area with associated rules, will be accomplished through the rulemaking process.

3. The designation of an RNA with associated rules will be accomplished through the rulemaking process.

4. Changes to aids to navigation resulting from the above actions will be accomplished through standard established procedures, i.e., notification of proposed changes in the Local Notice to Mariners with an opportunity for comment and notification of the final changes.

5. Revisions to the operating procedures for the CVTS will be developed by the Joint Coordinating Group and published in the CVTS Users Manual.

6. Canadian authorities will follow their own, but similar implementation process.

Conclusion

We appreciate the comments we received concerning the PARS. We will provide ample opportunity for additional comments on any recommended changes to existing routing or operational measures that require codification through notices of proposed rulemakings (NPRM's) published in the **Federal Register**.

Dated: January 16, 2001.

R.C. North,

U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 01–1847 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC86

Special Regulations; Areas of the National Park System; Religious Ceremonial Collection of Golden Eaglets From Wupatki National Monument

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) has preliminarily determined that under certain circumstances it is appropriate to allow the Hopi Tribe to collect golden eaglets within Wupatki National Monument, a unit of the National Park System, for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act.

DATES: Written comments will be accepted by mail, fax, or electronic mail through March 23, 2001.

ADDRESSES: Comments should be addressed to: Kym Hall, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC 20240. Fax: (202) 208–6756. Email: WASO_Regulations@nps.gov.

FOR FURTHER INFORMATION CONTACT: Sam Henderson, Superintendent, Wupatki National Monument, 6400 N. Highway 89, Flagstaff, Arizona 86004. Telephone: (520) 526–1157. Fax: (520) 526–4259. Email: WUPA_superintendent@nps.gov or Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service, 1849 C Street, N.W., Room 3410, Washington, DC 20240. Telephone: (202) 208–5475. Fax: (202) 208–0870. Email: Pat_Parker@nps.gov

SUPPLEMENTARY INFORMATION:

Existing Regulations

A subsection of NPS regulations, promulgated in 1983, prohibits ''possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state'' living or dead wildlife or fish, plants, paleontological specimens, or mineral resources, or the parts or products of any of these items, except as otherwise provided. 36 CFR 2.1(a).

Another provision of these regulations authorizes NPS to issue permits allowing the collection of national park system resources for research upon certain conditions. 36 CFR 2.5(b). No such permit may be issued except to:

> an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies.

In addition, a permit may not be issued if ''removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the park area.''

Subsection 2.5(c) prohibits issuing a permit to take a specimen that is listed as an endangered or threatened species under state or federal law unless the specimen ''cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species.'' Subsection 2.5(f) prohibits issuing a research collection permit in park areas where the enabling legislation prohibits the killing of wildlife.

NPS regulations allow a park superintendent to ''designate certain fruits, berries, nuts or unoccupied seashells which may be gathered by hand for personal use or consumption'' if ''the gathering or consumption will not adversely affect park wildlife,'' or otherwise adversely affect the plant species, or park resources. 36 CFR 2.1(c)(1). Another subsection addresses the ceremonial use of NPS resources, stating that the regulations ''shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 [wildlife protection] or § 2.3 [fishing].'' 36 CFR § 2.1(d). The preamble to this rulemaking explained that the provision was added in response to comments that had ''questioned the applicability'' of the regulation in such circumstances, and went on to say:

> The Service recognizes the American Indian Religious Freedom Act directs the exercise of discretion to accommodate Native religious practice consistent with statutory management obligations. The Service intends to provide reasonable access to, and use of, park lands and park resources by Native Americans for religious and traditional

activities. However, the National Park Service is limited by law and regulations from authorizing the consumptive use of park resources. (48 FR 30,252 (1983)).

The Need To Revise the Regulations

In 1999, members of the Hopi Tribe requested permission from the NPS to take golden eaglets from Wupatki National Monument for religious purposes. Citing the National Park Service Organic Act and 36 CFR 2.1, 2.2, and 2.5, the NPS denied the Hopi request. The Assistant Secretary for Fish and Wildlife and Parks then withdrew the NPS denial in order to reconsider the issue. Upon advice of the Solicitor, as explained below, the proposal is being made to change the regulation to allow favorable action on the Hopi request.

The practice of eagle gathering is at the heart of the Hopi religious ceremonial cycle and the Hopi culture. The eagle serves as the link between the spiritual world and the physical world of the Hopi, a connection that embodies the very essence of Hopi spirituality and belief. Golden eaglets are gathered from nests soon after birth and are kept and raised to fledglings in Hopi villages. Later, during the Niman Kachina ceremony, the golden eagles are sacrificed and ''sent'' to their spiritual home. The eagles' feathers are subsequently used in all Hopi religious ceremonies such as the Kachina, Flute, and Snake ceremonies. The cyclical relationship between the eagle and the Hopi is renewed annually through the practice of eaglet gathering, sustaining the connection between the spiritual and physical worlds for the next generation of Hopi.

The importance that the Hopi attach to the ceremonial gathering of eagles is expressed in Article IV of the Tribal Constitution approved by Secretary of the Interior Ickes on December 19, 1936:

> The Tribal Council shall negotiate with the United States Government agencies concerned, and with other tribes and other persons concerned, in order to secure protection of the right of the Hopi Tribe to hunt for eagles in its traditional territories, and to secure adequate protection for its outlying, established shrines.

Only a few of the Hopi clan and religious societies bear the important ceremonial obligation of eagle gathering, and each of these has a traditional area from which it—and no other clan or society that is not related to it—may gather eagles. Hopi clan ownership of traditional eagle nests is well documented in the anthropological literature. ''The nests of eagles near village ruins are owned by the descendants of clans which once lived in their neighborhood.'' Jesse Walter Fewkes, Property Rights in Eagles Among the Hopi, 2 American Anthropologist (n.s.), 690–707, 693 (1900). ''The territory around the Hopi villages where eagles may be found is, and has been from time immemorial, divided into portions or allotments, which are controlled by certain clans or families. These territories extend as far as 50 and 60 miles from the villages.'' H.R. Voth, Notes on the Eagle Cult of the Hopi, collected in H.R. Voth, Brief Miscellaneous Hopi Papers, Field Columbian Museum, Publication 157, 107–109, Anthropological Series 11(2)(1912). Clan ownership of eagle nesting areas corresponds to the early settlement areas and migration routes of the clans before they arrived at their modern villages. The Hopi regard the eagles as embodying the spirits of their ancestors, and the clan areas often contain, or are very close to, Hopi clan ruins.

Anthropologists have described the ''famous nest at Wupatki'' as an important area for traditional eagle gathering by the Hopi. Florence H. Ellis, The Hopi: Their History and Use of Lands (n.d.) 149–154, collected in Hopi Indians (1974). Wupatki National Monument was set aside by President Coolidge in 1924 under the authority of the Antiquities Act, 16 U.S.C. §§ 431–33. The Proclamation is silent on eagle gathering. It identified the purpose of the monument in language common to the time; that is, to reserve and protect ''prehistoric ruins built by the ancestors of a most picturesque tribe of Indians still surviving in the United States, the Hopi or People of Peace.'' Proc. No. 1721 (43 Stat. 1977).

Legal Considerations

The National Park Organic Act created the NPS and defined its purpose in relevant part as follows:

> The service * * * shall promote and regulate the use of the Federal areas known as national parks, monuments and reservations * * * by such means and measures as conform to the fundamental purpose * * * which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

The 1916 Act further authorizes the Secretary of the Interior to make ''such rules and regulations as he may deem necessary or proper for the use and management of'' the National Park System, and to ''provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of'' units of the National Park System. 16 U.S.C. 3.

In 1978, section 1 of the Organic Act was amended to include these provisions:

> Congress declares * * * [that the] National Park System [shall be] preserved and managed for the benefit and inspiration of all the people of the United States * * * [and] directs that the promotion and regulation of the various areas of the National Park System * * * shall be consistent with and founded in the purpose established by Section 1 * * * to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a–1.

With some exceptions, the NPS has generally prohibited consumptive uses of National Park System resources except as specifically authorized by Congress. Applicable regulations generally prohibit hunting of wildlife, and prohibit removal of plants, paleontological, archeological, cultural or mineral resources, but allow recreational fishing and the collection of fruits, nuts, and berries for personal consumption. See 36 CFR 2.1(a); 2.1(c); 2.2 and 2.3.

Constitutional Considerations and Statutes, Court Decisions, and Executive Orders that Address Indian Religious Ceremonial Concerns

The following discussion explains why we believe applicable laws and policies allow the NPS to accommodate the Hopi's religious ceremonial interest in collecting golden eaglets (*Aquila chrysaeots*) at Wupatki National Monument to the extent it will not result in impairment of the resources protected by the National Park Service Organic Act.

Constitutional considerations. The leading judicial guidance on the intersection between management of federal non-Indian lands and Indian religious practices is *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988). The Supreme Court there made clear that the First Amendment's free exercise clause permits curtailing Indian religious practices on federal lands in appropriate circumstances. See also *U.S.* v. *Hugs,* 109 F.3d 1375 (9th Cir. 1997) (permit requirement of Bald and Golden Eagle Protection Act does not violate free exercise clause when applied to Native

American religious practices, even though it imposed a substantial burden on the practice of Native American religions in which eagles and eagle parts ''play a central role,'' because it was the least restrictive means of serving the compelling governmental interest of protecting eagles, while permitting access to eagles and eagle parts for religious purposes); Regulation of Hardrock Mining (Solicitor's Opinion M #36999, Dec. 27, 1999) (Constitution does not compel rejection of the proposed mining plan on BLM-managed public land even though it would seriously and irreparably degrade a cultural resource of importance to a nearby Indian Tribe). The Constitution does not, in other words, require the National Park Service to accommodate uses, by Indians or others, of national park system resources for religious ceremonial purposes. The Supreme Court also said in *Lyng*, however, that ''the Government's rights to the use of its own land * * * need not and should not discourage it from accommodating [Indian] religious practices * * *'' 485 U.S. at 454. See also Solicitor's Opinion M #36999, at 5. Such accommodations may be undertaken in appropriate cases without raising questions under the establishment clause of the First Amendment. See *Bear Lodge Multiple Use Assoc.* v. *Babbitt,* 175 F.3d 814 (10th Cir. 1999), cert. denied, 2000 WL 305849 (March 27, 2000) (upholding Park Service's encouragement of a voluntary month-long ''no-climb'' period at Devil's Tower National Monument in order to accommodate Indian religious practices); Office of Legal Counsel, Department of Justice, Memorandum to the Secretary of the Interior—Permissible Accommodation of Sacred Sites, September 18, 1996, p. 1 (federal government ''has broad latitude to accommodate the use of sacred sites by federally recognized Indian tribes'' without violating the establishment clause).

Such accommodations may appropriately provide preferences for Indian tribes and their members. Such preferences have unique and deep roots in American law, and may be upheld when similar practices involving others might not pass muster. See, e.g., *Morton* v. *Mancari,* 417 U.S. 535 (1974) (Bureau of Indian Affairs hiring preference for Indians upheld because policy was based on political relationship between Tribes and Federal Government); *Rupert* v. *Director, U.S. Fish & Wildlife Service,* 857 F. 2d 32 (1st. Cir. 1992) (upholding exemption from criminal prosecution for possession of eagle feathers by members of federally recognized tribes); *Peyote Way Church of God* v. *Thornburgh,* 922 F.2d 1210, 1217 (5th Cir. 1991) (upholding statutory exemption from laws prohibiting peyote possession for Native American Church members, the court noting that the federal-tribal relationship ''precludes the degree of separation between church and state ordinarily required by the First Amendment''); *United States* v. *Gibson,* 2000 WL 117987 (11th Cir. Aug. 21, 2000) (limitation of religious use exemption under Bald and Golden Eagle Protection Act to Indians who were members of federally recognized tribes did not violate non-tribal members'' constitutional or statutory free exercise rights).

The Religious Freedom Restoration Act (RFRA). RFRA, enacted in 1993, 42 U.S.C. 2000bb *et seq.,* provides that the government may substantially burden a person's exercise of religion only if the exercise is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling governmental interest.[1] There is a reasonable argument that the NPS regulations prohibiting collection of golden eaglets in Wupatki National Monument may substantially burden the Hopis' exercise of religion, to the extent that collection of these resources may be regarded as a necessary element in the Hopis' religious ceremony. Whether the prohibition could be sustained under RFRA would depend on whether there is a compelling governmental interest at stake, and whether the prohibition is the least restrictive means of furthering it. Since the NPS is charged with the conservation of wildlife under its Organic Act, 16 U.S.C. 1, it is understood that the NPS has a compelling governmental interest in the absolute bar on the take of wildlife for all purposes except scientific research. There is a question however if this prohibition is the least restrictive means to further that interest. The question becomes more difficult given the Hopi religion's necessity of taking a golden eaglet from a specific location of historical and religious importance, in this instance, Wupatki National Monument. Prohibiting this religious exercise may amount to a substantial burden on their religion. Cf. *Callahan* v. *Woods,* 736 F.2d 1269, 1272 (9th Cir. 1984) (''If the compelling state goal can be accomplished despite the exemption of a particular individual, then a regulation which denies an exemption is not the least restrictive means of furthering the state interest.'') We do not have to reach these questions here, however, if the NPS has the authority to, and has decided to accommodate, the Hopi Tribe's religious ceremonial collection of golden eaglets at Wupatki National Monument. Plainly the RFRA encourages, and does not prohibit, such accommodation.

The American Indian Religious Freedom Act (AIRFA). This Act, enacted in 1978, declares ''the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the[ir] traditional religions * * * including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.'' 42 U.S.C. 1996. The second section of AIRFA, not codified in the U.S. Code, requires the President to direct the various federal agencies responsible for administering relevant laws to ''evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices,'' and directed the President to report to Congress with twelve months of enactment the results of the evaluation. 92 Stat. 469.

The Secretary of the Interior convened a task force of federal agencies, which issued the report called for by Congress. American Indian Religious Freedom Act Report (Federal Agencies Task Force, August 1979). The Task Force discussed, among other things, the problem of restricting the gathering of indigenous natural substances from federal lands for use in Indian religious ceremonies and practices, noting in particular that the ''gathering of a specific plant or animal may be forbidden or limited by conservation statutes.'' *Id.* at 51–53. It recommended that each agency ''accommodate Native American religious practices to the fullest extent possible'' under existing statutes, and also that agencies ''revise existing regulations, policies and practices to provide for separate consideration of any Native American religious concerns * * *. *Id.* at 62–63. The report also recommended that agencies ''provide exemptions from restrictions on access to and gathering, use and possession of federal property for Native American religious purposes similar to those provided for scientific purposes.'' *Id.* at 63.

AIRFA does not create any judicially enforceable rights. *Lyng* v. *Northwest*

[1] The Supreme Court has held that RRA is unconstitutional as applied to state governments, *City of Boerne* v. *Flores,* 521 U.S. 507, 117 S.Ct. 2157 (1997), but the question here is the impact of RFRA on the federal government.

Indian Cemetery Protective Ass'n, 485 U.S. 439, 455, 471 (1988). Courts have, however, construed AIRFA to require federal agencies to:

> learn about, and to avoid unnecessary interference with, traditional Indian religious practices, [and to] evaluate their policies and procedures in light of the Act's purpose, and ordinarily should consult Indian leaders before approving a project likely to affect religious practices. AIRFA does not, however, declare the protection of Indian religions to be an overriding federal policy, or grant Indian religious practitioners a veto on agency action.

Wilson v. *Block*, 708 F.2d 735, 746 (D.C. Cir. 1983) *cert. denied*, 464 U.S. 956 (1983). Thus AIRFA requires federal agencies to consider, but not necessarily to defer to, Indian religious values. *Id.* at 747. See also *Havasupai Tribe* v. *U.S.*, 752 F. Supp. 1471, 1488 (D. Ariz. 1990), *aff'd* 943 F.2d 32 (9th Cir. 1991), *cert. denied*, 503 U.S. 959 (1992); cf. *Lyng, supra*, 485 U.S. at 454.

Executive Orders and other Policy Statements. A 1994 policy statement, and Executive Orders issued in 1996 and 1998, have all promoted government accommodation of Indian religious practices within the limits of agency discretion. President Clinton's ''Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes'' (1994) recognizes the important place eagles occupy in many Native American religious and cultural practices and directs executive departments and agencies to ''work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law.'' 59 FR 22,953 (Apr. 29, 1994).

President Clinton's 1996 Executive Order on Sacred Sites directs that federal agencies:

> shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

Executive Order 13,007, section 1, 61 FR 26,771 (1996). The Order defines ''sacred site'' as a ''specific, discrete, narrowly delineated location of Federal land'' identified by tribal interests as ''sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion.'' *Id.* § 1(b)(iii). While the Order does not reach directly to the collection of plants or wildlife on federal land for Indian religious purposes, it is suggestive of accommodation where possible. The Departmental Manual implementing the Sacred Sites Executive Order requires Interior agencies to establish procedures that accommodate ''access to and ceremonial use by religious Indian practitioners of Indian sacred sites'' and to ''consult with tribal governments and give full consideration to tribal views in its decision making process.'' 512 DM §§ 3.4(1)(b); 3.7 (1998).

President Clinton's 1998 Executive Order on Consultation and Coordination with Indian Tribal Governments states in pertinent part that ''each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements.'' No. 13,084, 63 FR 27655 (May 14, 1998). Recently, President Clinton reaffirmed the United States' commitment to consultation with Indian tribal governments and issued Executive Order 13175 (November 6, 2000) which details the process agencies must follow to ensure meaningful and timely input from tribal officials in the development of regulations or policies that have tribal implications.

None of these executive directives purport to (nor could they) provide legal authority to override existing laws such as those that govern management of the national park system. To the extent permitted by law, however, they direct federal agencies to accommodate uniquely Indian needs.

General discussion and conclusion. In light of the statutes, court decisions, executive orders and other legal considerations discussed above, we believe the NPS has a reasonable legal basis for promulgating a regulation that allows the Hopi Tribe to collect golden eaglets at Wupatki National Monument for religious ceremonial purposes. The collection of golden eaglets from specific geographic areas is an important part of the Hopi religion, and there is an ancestral and historical connection between the Hopi Tribe and Wupatki National Monument. The proposed regulation would allow the NPS to include terms and conditions, including gathering times, take limits, and permit tenure, that are sufficient to protect the park resources against impairment, and would require compliance with the Bald and Golden Eagle Protection Act.

The proposed regulation, and the accompanying environmental assessment, applies only to this narrow situation. It is possible that the NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits. Any further rule change must follow notice and comment and other procedures required by applicable law. The current proposal is to deal strictly and exclusively with the Hopi Tribe's proposal to collect golden eaglets at Wupatki National Monument.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the National Park Service, Ranger Activities Division, Suite 7408, 1849 C St. NW., Room 7413, Washington, DC 20240. You may also comment via the Internet to WASO_Regulations@nps.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please include ''RIN 1024–AC86'' in your subject line and your name and return address in the body of your message. Finally, you may hand-deliver comments to Kym Hall, National Park Service, 1849 C St. NW., Room 7413, Washington, DC 20240. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Drafting Information: The principal author of this proposed interpretive rule is John Leshy, Solicitor, Department of the Interior.

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, OMB has determined the rule not to be significant.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule does not interfere with actions taken or planned by another agency. The Hopi must obtain a permit from the Fish and Wildlife Service before being allowed to collect golden eaglets. However, this rule does not at all affect the standards, times or necessary elements for obtaining that permit. This rule only addresses the ability of the Hopi to collect golden eaglets from Wupatki National Monument after they have received the necessary permit from FWS.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or monetary loan programs or the rights or obligations of their recipients.

(4) This proposed rule may be controversial because it proposes to allow a new collection of wildlife, but it proposes to do so only in very extremely limited circumstances, for a single or very few specimens of a single species of non-endangered wildlife in a single unit of the National Park System for a very narrowly defined purpose by a single entity, and only then when it is determined by the U.S. Fish & Wildlife Service and the National Park Service to be consistent with the laws protecting wildlife and with the laws preventing impairment of natural resources in the National Park System, respectively.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The economic effects of this rule are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will have no effect on small or large businesses. It addresses only the Hopi Tribe's religious ceremonial collection of golden eaglets at Wupatki National Monument and involves no small businesses. This rule:

1. Does not have an annual effect on the economy of $100 million or more.

2. Does not represent a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule. The rule addresses only Hopi collection of golden eaglets from Wupatki National Monument, and no private property rights are involved or affected.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses only the collection of golden eaglets from Wupatki National Monument, a unit of the national park system, and such activity does not require state activity.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The preamble clearly explains that the rule creates a special exception to 36 CFR 2.1(d) which allows the Hopi to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes subject to conditions sufficient to prevent impairment.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties. It does not require submissions under the Paperwork Reduction Act or OMB form 83–I.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A draft Environmental Assessment has been completed. Copies of that assessment may be obtained through one of several methods.

—Internet: http://www.nps.gov/wupa/
—By email: wupa_superintendent@nps.gov
—By mail: Superintendent, Wupatki National Monument, 6400 N. Highway 89, Flagstaff, Arizona 86004.

Public comments regarding the Environmental Assessment may be submitted to Kym Hall, National Park Service, 1849 C Street NW., Room 7413, Washington, DC 20240, by email to WASO_regulations@nps.gov, or by fax at (202) 208–6756. Public comments will be accepted through March 19, 2001.

Government-to-Government Relationship With Tribes

In accordance with the Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249) and 512 DM 2, we have identified potential effects on the Hopi Indian Tribe. The proposed regulation, and the accompanying environmental analysis, applies only to this narrow situation. It is possible that the NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits. Any further rule change must follow notice and comment and other procedures required by applicable law. The current proposal is to deal strictly and exclusively with the Hopi Tribe's proposal to collect golden eaglets at Wupatki National Monument. We have consulted with the Hopi Tribe regarding the proposed rule. We will further consider their comments, and the comments of all interested parties, that are received during the comment period.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in body type and is preceded by the symbol ''§'' and a numbered heading; for example, **§ 7.101 Wupatki National Monument** (5) Is the

description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also email the comments to this address: Exsec@ios.doi.gov.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

Accordingly, we propose to amend Part 7 of 36 CFR as set forth below:

PART 7—SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM

1. The table of contents is amended by adding § 7.101 to read as follows:

Sec.

* * * * *

7.101 Wupatki National Monument.

2. The authority for Part 7 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q) 462(k). Sec. 7.96 also issued under D.C. Code 8–137 (1981); D.C. Code 40–721 (1981). Sec. 7.101 also issued under 42 U.S.C. 2000bb; 42 U.S.C. 1996; Executive Orders No. 13084, 13007, 13175.

3. Add § 7.101 to read as follows:

§ 7.101 Wupatki National Monument.

(a) *Collection of golden eaglets from Wupatki National Monument by Hopi Tribe.* Upon terms and conditions sufficient to prevent impairment to park resources, and upon a showing that the Tribe has a valid permit to collect golden eaglets under the Bald and Golden Eagle Act, 16 U.S.C. 668–668d, the Superintendent of Wupatki National Monument shall grant a permit to the Hopi Tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes.

(b) [Reserved].

Dated: January 12, 2001.

Kenneth L. Smith,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 01–1743 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–3–7474; FRL–6934–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing full approval of revisions to the Vehicle Inspection and Maintenance (I/M) Program for the Dallas/Fort Worth (DFW), Houston-Galveston Area (HGA) and El Paso (ELP) ozone nonattainment areas adopted by the State of Texas. The revisions replace the two-speed idle test in Dallas and Tarrant Counties with ASM–2, expand the upgraded I/M program to cover the entire DFW nonattainment area plus five additional counties, and implement On-Board Diagnostic (OBD) testing in Dallas, Tarrant, Harris, and El Paso Counties. The I/M SIP revision is part of the DFW Attainment Demonstration.

DATES: Comments must be received on or before February 21, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

What Is the Status of the Current I/M Program in Texas?

A low-enhanced vehicle I/M program called the Texas Motorist Choice (TMC) Program is operating in the Dallas-Fort Worth, Houston, and El Paso ozone nonattainment areas. The program consists of a 2-speed idle test and gas cap test in Dallas, Tarrant, Harris, and El Paso counties, the core counties of the program. In addition, the program has a remote sensing component to identify gross polluters that commute into the core counties from Denton and Collin Counties in the Dallas-Fort Worth area, and from seven surrounding nonattainment counties in the Houston area. An interim conditional approval for this program was proposed on October 3, 1996 (61 FR 51651). An interim final conditional approval was published on July 11, 1997 (62 FR 37138). The conditions were removed from the interim approval on April 23, 1999 (64 FR 19910).

The State submitted an approvable 18-month demonstration on February 8, 1999, as required by the National Highway System Designation Act of 1995 (NHSDA), Public Law 104–59, section 348(c)(1). The program was not fully approved at that time because one provision of the interim approval required that the State provide evidence that the remote sensing program be effective in identifying the shortfall in number of vehicles needed to make up for the lack of a tailpipe testing program in all the nonattainment counties. The State began the remote sensing program in October 1998. Because the State submitted this I/M SIP revision in which it expands geographic coverage, the requirement to cover the shortfall with remote sensing (the final barrier to final full approval) is eliminated when the new I/M tests start in each county in the DFW area.

Why Is the State Submitting This SIP Revision to the I/M Program?

The DFW nonattainment area was bumped up from moderate to serious effective March 23, 1998 (63 FR 8128). An attainment demonstration submitted in March 1999 was found to be incomplete, which started a Federal sanction clock (64 FR 29570, June 2, 1999). This I/M SIP revision was submitted as part of the new DFW attainment demonstration. Modeling has shown that NO_X reductions are essential to reaching attainment in the DFW area. As a result, the Texas Motorist Choice I/M program has been revised to include measurement for NO_X emissions and to provide additional NO_X emission reductions by expanding coverage of the program to all four counties within the nonattainment area (Dallas, Tarrant, Collin and Denton) and selected attainment counties in the DFW Consolidated Metropolitan Statistical Area (CMSA).