in publications, including films, television, and radio, and to use approved credit lines.

(6) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, ''Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission.''

(7) Electronic Users. Links to other sites from the Library of Congress's site should adhere to the Appropriate Use Policy for External Linking in the Internet Policies and Procedures Handbook. Requests for such linkage must be submitted to the Public Affairs Office for review and approval.

(8) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions, if use has been approved by the Public Affairs Officer, in consultation with the Office of General Counsel.

(9) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy in consultation with the General Counsel and the Public Affairs Officer.

(e) *Prohibitions and Enforcement.* (1) All violations, or suspected violations, of this part, shall be reported to the Office of the General Counsel as soon as they become known. Whoever, except as permitted by laws of the U.S., or with the written permission of the Librarian of Congress or his designee, falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the Library of Congress shall be subject to criminal penalties pursuant to law.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirement of this part, the General Counsel shall take whatever steps are necessary, including seeking the assistance of the U.S. Department of Justice, to enforce the provisions of the applicable statutes and to seek all means of redress authorized by law, including both civil and criminal penalties.

Dated: January 30, 1998.

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–3860 Filed 2–20–98; 8:45 am]

BILLING CODE 1410–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL147–1a, IL156–1a; FRL–5965–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 23, 1996, and January 9, 1997, the State of Illinois submitted to EPA two site-specific State Implementation Plan (SIP) revision requests for Solar Corporation's (Solar) manufacturing facility located in Libertyville, Lake County, Illinois. The January 23, 1996, request seeks to revise the State's Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) requirements applicable to certain Solar adhesive operations. The January 9, 1997, request seeks to grant a temporary variance from VOM RACT requirements applicable to Solar's automotive plastic parts coating operations. In this action, EPA is approving the above requested SIP revisions through a ''direct final rulemaking;'' the rationale for this approval is discussed below.

DATES: This final rule is effective April 24, 1998 unless adverse written comments are received by March 25, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request and Technical Support Document (TSD) for this rulemaking action are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Air Programs Branch (AR–18J) at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(2) of the Act requires States to adopt RACT rules covering ''major sources'' not already covered by a Control Techniques Guideline (CTG) for all areas classified moderate nonattainment for ozone or above.[1] The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as ''severe'' nonattainment for ozone, and therefore is subject to the Act's non-CTG RACT requirement.

Under section 182(d) of the Act, sources located in severe ozone nonattainment areas are considered ''major sources'' if they have the potential to emit 25 tons per year or more of VOM.[2] Solar's Libertyville facility has the potential to emit more than 25 tons of VOM per year, and therefore is subject to RACT requirements.

II. Solar Operations

Solar owns and operates a facility in Libertyville, Illinois which produces custom-made, fabric covered and/or painted plastic decorative components for manufacturers of automobiles and electronic home and office products. The decorative components produced by Solar for the home and office electronics industry include speaker grilles for stereos and televisions, pressure-formed thermoplastic back enclosures for large-screen and projection television sets, and other decorative molded parts and fabric wrapped subassemblies. Solar's automotive interior products include speaker grilles, vinyl- and fabric-clad door trim components, injection molded decorative assemblies, seating trim

[1] A definition of RACT is cited in a General Preamble-Supplement published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT. Sources which are not covered by a CTG are called ''non-CTG'' sources.

[2] VOM, as defined by the State of Illinois, is identical to ''Volatile Organic Compounds'' (VOC), as defined by EPA.

component, and electronic subassemblies.

III. Non-CTG Adhesives Adjusted Standard

A. Existing SIP Requirements

On October 21, 1993, and March 4, 1994, the State of Illinois submitted RACT rules covering major non-CTG sources in the Chicago severe ozone nonattainment area, which includes subparts PP, QQ, RR, TT, and UU of Part 218 of the 35 Illinois Administrative Code (IAC), as a revision to the Illinois SIP. The SIP revision was approved by EPA on October 21, 1996 (61 FR at 54556). Prior to Illinois' non-CTG rule adoption, the State's RACT rules did not apply to Solar because the facility's emissions were below the rules' applicability threshold of 100 TPY or more of VOM. Pursuant to section 182(b), the State lowered the applicability threshold to include as major sources all sources with a potential to emit 25 TPY or more VOM. Solar, which had not been affected by the 100 ton RACT rules, became subject to the 25 ton RACT rules.

Among the non-CTG rule provisions Solar became subject to is subpart PP, which contains VOM control requirements for miscellaneous fabricated product manufacturing processes. Under subpart PP, Solar would be required either to use adhesives which do not exceed 3.5 pounds of VOM per gallon (lbs VOM/gallon) as-applied, or to operate emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent (%). Subpart PP is based upon requirements promulgated under the Chicago VOC Federal Implementation Plan (FIP). In developing the FIP, the EPA used information from existing coating CTGs and the State and EPA's regulatory experience to establish the 3.5 lbs VOM/gallon limitation for non-CTG coating operations.

B. Solar Adjusted Standard

On February 28, 1995, Solar and the Illinois Environmental Protection Agency (IEPA) filed a joint petition for an adjusted standard with the Illinois Pollution Control Board (Board). The adjusted standard petition requested that Illinois relax the stringency of the VOM limit for Solar's adhesive application from 3.5 lbs VOM/gallon as-applied, to 5.75 lbs VOM/gallon as-applied.

In its petition, Solar noted that the technical support for the non-CTG limitation promulgated under the Chicago FIP and adopted by Illinois did not take into account the necessary characteristics of adhesives used to adhere fabric to plastic parts for the home entertainment and auto industry, which is Solar's specific industry. Further, Solar justified the rule relaxation based upon its own technical support demonstrating that the 3.5 lbs VOM/limit is technically and economically infeasible, and that a 5.75 lbs VOM/gallon limit for its adhesive operations is RACT for the facility.

A public hearing on the adjusted standard petition was held on July 18, 1995, in Libertyville, Illinois. On July 20, 1995, the Board adopted a Final Opinion and Order, AS 94–2, granting the adjusted standard requested by Solar. The adjusted standard also became effective on July 20, 1995. On August 14, 1995, the IEPA filed a motion to modify the final Board Order. On September 1, 1995, Solar filed a response to the IEPA's motion to modify. On September 7, 1995, the Board adopted the IEPA's proposed changes to the final opinion, noting that the language of the July 20, 1995, opinion would not be affected. The IEPA formally submitted the adjusted standard for Solar on January 23, 1996, as a site-specific revision to the Illinois SIP for ozone.

C. Criteria for Evaluating Adjusted Standard

The EPA has identified VOC control levels in its CTGs and non-CTG control evaluations that it presumes to constitute RACT for various categories of sources. However, case-by-case RACT determinations may be developed that differ from EPA's presumptive norm. The EPA will approve these RACT determinations as long as a demonstration is made that they satisfy the Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated. To make this demonstration, it must be shown that the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not and cannot be expected to be reasonably available. The EPA will determine on a case-by-case basis whether this demonstration has been made, taking into account all the relevant facts and circumstances concerning each case. A demonstration must be made that reasonable efforts were taken to determine and adequately document the availability of complying coatings or other kinds of controls, as appropriate. If it is conclusively demonstrated that complying low-solvent coatings are unavailable, the EPA would consider an alternative RACT determination based on the lowest level of VOM control technically and economically feasible for the facility.

D. Solar's Efforts To Meet the Non-CTG SIP Requirement

To comply with the 3.5 lbs VOM/gallon non-CTG SIP requirement, Solar investigated reformulation of adhesives, water-based adhesives, alternatives to adhesives, and catalytic oxidation add-on control. In testing adhesive technologies, Solar attempted to meet the 3.5 lbs VOM/gallon SIP limit while meeting customer aesthetic and environmental performance specifications. Solar's customers require the company to conduct various tests on its products to determine whether the fabric bonds withstand a wide variety of temperatures and humidities which the products will be subject to during shipment and actual use.

Solar's adhesive supplier attempted to reformulate the adhesives it sells to Solar to bring the adhesives into compliance, and was able to increase the solids content of Solar's primary adhesive from 20% to 30%, thereby reducing the VOM content from 6.02 lbs VOM/gallon to 5.49 lbs VOM/gallon. The supplier, however, determined that further reduction could not be achieved without increasing the solids content to 50%, which would result in an adhesive so viscous that it could not be applied with either a manual gun or auto-spray. Solar also investigated partially reformulating Solar's primary adhesive using acetone, which resulted in the adhesive drying too fast before the fabric could be properly adhered to the plastic. In addition to trying adhesive reformulation, Solar and its adhesive supplier conducted major test trials of several two-component water-based adhesives. However, the testing showed that the adhesives set too quickly, which was unacceptable given that Solar's process requires repeated repositioning of fabric to ensure the proper tautness of the fabric on each plastic part.

The January 1996 State submittal also provides documentation of Solar's contacts with two other adhesive suppliers to determine whether they could offer low-emitting adhesives to Solar which would both meet the 3.5 lbs VOM/gallon limit, as well as meet the performance specifications of Solar's customers. However, according to the State submittal, these suppliers did not offer adhesives which would meet the performance specifications of Solar's

customers in the majority of its adhesive operations.

After EPA received the January 1996 submittal, EPA requested that IEPA and Solar analyze whether Solar can use the adhesives or techniques of two California companies in compliance with South Coast Air Quality Management District adhesive limits, James B. Lansing (JBL) and Fleetwood Motor Homes (Fleetwood). IEPA submitted subsequent documentation on July 23, 1997, indicating that Solar cannot use the adhesives used at the California JBL and Fleetwood plants because the plants have distinguishable products and processes involving different adhesive bonding requirements than that of Solar.

Besides seeking compliant adhesives, Solar has tried adhesiveless processes as an alternative to adhesives by conducting test trials with sonic welding and use of a heat plate. Solar was unsuccessful with sonic welding because of the curved surfaces of many of its plastic components. However, Solar was somewhat successful with the heat plate technique and now uses a heat plate to bond cloth to about 20% of the plastic parts it produces. Yet, Solar cannot use the hot plate technique in more operations because for this technique to be feasible, the plastic part must have sufficient cross section to withstand the heat generated in bonding.

As for add-on controls, Solar investigated catalytic oxidation as a means of achieving 81% capture and control of VOM emission from the manual spray booths and auto-spray machines. Radian Corporation's consultants examined Solar's operations estimated costs for catalytic oxidation control to be $25,000 and $10,000 per ton for the manual spray guns and auto-spray machines, respectively. Solar contends that these costs are economically unreasonable for the facility.

E. EPA Analysis of Solar's Adjusted Standard

Based on the information and technical support IEPA provided in its submittal, the EPA finds that the non-CTG SIP requirements are not technically or economically feasible for the Solar Libertyville facility's adhesive process, and that a limit of 5.75 lbs VOM/gallon limit on adhesive content is RACT for the facility. For a more detailed analysis of this SIP revision, please refer to the TSD available from the Region 5 office listed above.

IV. Variance for Automotive Plastic Parts Coating Limit

A. Existing SIP Requirements

On October 26, 1995, EPA approved Illinois RACT regulations covering plastic parts coating operations in the Chicago ozone nonattainment area. The regulations establish VOM emission limitations which can be met in one of four ways: (1) use of coatings which meet a specified VOM content limit (218.204(n) and (o)); (2) meet a daily-weighted average limit for those coating lines that apply coatings from the same coating category (218.205(g)); (3) use of an add-on capture system and control device which meets an 81% VOM capture and control efficiency (218.207(i)); or, (4) meet a cross-line averaging limit (218.212).

Solar through its variance petition seeks temporary relief from 218.204(n)(1)(B)(i), which requires operations that apply air dried color coating to automotive interior plastic parts to meet a VOM content limit of 0.38 kg/l or 3.2 lbs/gallon, by March 15, 1996.

B. Solar Variance

On May 22, 1996, Solar filed its petition for variance from 35 IAC 218.204(n)(1)(B)(i) with the Board. On July 15, 1996, the IEPA filed its recommendation of support for the variance. A public hearing on the variance petition was held on August 9, 1996, in Libertyville, Illinois. On September 5, 1996, the Board adopted a Final Opinion and Order, PCB 96–239, granting the variance requested by Solar. On September 13, 1996, Solar signed a certificate of acceptance, which binds Solar to all terms and conditions of the granted variance. The IEPA formally submitted the variance for Solar on January 9, 1997, as a site-specific revision to the Illinois SIP for ozone.

The variance was granted because Solar presented adequate proof to the Board that immediate compliance with section 218.204(n)(1)(B)(i) would result in an arbitrary or unreasonable hardship which outweighs the public interest in attaining immediate compliance with regulations designed to protect the public. Such a burden of proof is required by Illinois law before a variance can be granted.

As of the date of the Illinois submittal, Solar replaced approximately 98% of its coatings to water-based products. However, Solar's coating supplier needed extra time to reformulate the remaining paints to water-based so as to comply with the State's VOM content requirement. Also, additional time was needed for any unanticipated delays and to ensure that the water-based coatings meet customer specifications.

Solar indicated in its variance petition that it hired a consultant to investigate the use of add-on controls to comply with the State's RACT requirements. The consultant studied carbon adsorbers, thermal and catalytic afterburners, as well as condensers, and estimated that the cost to install capture and control equipment at the spray booths would be more than $25,000 per ton. Solar contends that the use of any add-on controls is economically unreasonable because it has reformulated 98% of its paints, and only 134.25 gallons of non-compliant paint will be used.

IEPA agrees with Solar's position that daily-weighted averaging is not an appropriate option for Solar because Solar's coating lines are subject to different VOM content limits. As for cross-line averaging, this compliance option would require an operational change to pre-existing coating lines. Since Solar has committed to reformulating its paints as a means to achieve compliance, the IEPA contends in the submittal that requiring Solar to make an operation change for the five remaining non-compliant paints is not an effective or reasonable alternative. The IEPA further notes that these options are not appropriate for Solar because Solar is seeking temporary, not permanent relief.

The variance, Solar's use of non-compliant interior automotive coating is limited to the 134.25 gallons of the above coatings Solar has in stock. The variance indicates the vendor number, VOM content, and gallons allowed to be used for each of the five non-compliant coatings in stock. Solar is not allowed to use any other non-compliant coatings under the variance. Solar is also limited to a total of 0.67 tons of VOM emissions from these compliant coatings over a 12 month period beginning May 22, 1996. The variance terminates on the earlier of two dates: May 22, 1997, or when the water-based interior automotive coatings are available and approved as substitutes for the non-compliant coatings specified in the variance.

The variance provides that Solar shall send monthly status reports to IEPA providing various information regarding the non-compliant interior automotive coatings. Once a water-based automotive interior coating is available and approved by Solar's customers as a substitute for a coating covered by the variance, the variance for that coating no longer applies and the coating becomes subject to 35 IAC 218.204(n)(l)(B)(i). The variance

requires Solar to notify the IEPA within 10 days after any non-compliant interior automotive coating subject to the variance is converted to a water-based coating is approved and available to use.

C. EPA Analysis of Solar Variance

Based on the information provided in the SIP submittal, the EPA finds that the variance for Solar is justified, and the compliance milestone provisions required by the variance represent a reasonable approach to bringing the Solar facility into compliance with the automotive plastic parts coating limit in a timely manner. Therefore, the EPA finds this SIP submittal approvable.

V. Final Action

The EPA is approving, through direct final rulemaking action, Illinois' January 23, 1996, site-specific SIP revision for Solar's Libertyville, Illinois facility, which relaxes the VOM content limit required for its adhesive operations from 3.5 lbs VOM/gallon to 5.75 lbs VOM/gallon. The EPA is also approving, through direct final rulemaking action, Illinois' January 9, 1997, site-specific SIP revision which provides a temporary variance from the State's plastic parts coating rule for Solar's Libertyville facility.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This rule will become effective without further notice unless the Agency receives relevant adverse written comment on the parallel notice of proposed rulemaking (published in the proposed rules section of this **Federal Register**), within 30 days of today's document. Should the Agency receive such comments, it will publish a document informing the public that this rule did not take effect. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 29, 1998.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(135) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(135) On January 23, 1996, Illinois submitted a site-specific revision to the State Implementation Plan which relaxes the volatile organic material (VOM) content limit for fabricated

product adhesive operations at Solar Corporation's Libertyville, Illinois facility from 3.5 pounds VOM per gallon to 5.75 pounds VOM per gallon.

(i) Incorporation by reference. July 20, 1995, Opinion and Order of the Illinois Pollution Control Board, AS 94–2, effective July 20, 1995.

3. Section 52.720 is amended by adding paragraph (c)(136) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(136) On January 9, 1997, Illinois submitted a site-specific revision to the State Implementation Plan which grants a temporary variance from certain automotive plastic parts coating volatile organic material requirements at Solar Corporation's Libertyville, Illinois facility.

(i) Incorporation by reference. September 5, 1996, Opinion and Order of the Illinois Pollution Control Board, PCB 96–239, effective September 13, 1996. Certificate of Acceptance signed September 13, 1996.

[FR Doc. 98–4378 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR Part 222

[Docket No. 980212035–8035–01]

RIN 1018–AE24

Habitat Conservation Plan Assurances (''No Surprises'') Rule

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final rule.

DATES: This rule is effective March 25, 1998.

SUMMARY: This final rule codifies the Habitat Conservation Plan assurances provided through section 10(a)(1)(B) permits issued under the Endangered Species Act (ESA) of 1973, as amended. Such assurances were first provided through the ''No Surprises'' policy issued in 1994 by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (jointly referred to as the ''Services,'') and included in the joint FWS and NMFS Endangered Species Habitat Conservation Planning Handbook issued on December 2, 1996 (61 FR 63854). The No Surprises policy announced in 1994 provides regulatory assurances to the holder of a Habitat Conservation Plan (HCP) incidental take permit issued under section 10(a) of the ESA that no additional land use restrictions or financial compensation will be required of the permit holder with respect to species covered by the permit, even if unforeseen circumstances arise after the permit is issued indicating that additional mitigation is needed for a given species covered by a permit. The Services issued a proposed rule on May 29, 1997 (62 FR 29091) and the comments received on that proposal have been evaluated and considered in the development of this final rule. This final rule contains revisions to parts 17 (FWS) and 222 (NMFS) of Title 50 of the Code of Federal Regulations necessary to implement the Habitat Conservation Plan assurances.

ADDRESSES: To obtain copies of the final rule or for further information, contact Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., 20240; or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (Telephone 703/358–2171, or Facsimile 703/358–1735), or Nancy Chu, Chief, Endangered Species Division, National Marine Fisheries Service (Telephone (301/713–1401, or 301/713–0376).

SUPPLEMENTARY INFORMATION: These final regulations and the background information regarding the final rule apply to both Services. The proposed rule has been revised based on the comments received. The final rule is presented in two parts because the Services have separate regulations for implementing the section 10 permit process. The first part is for the final changes in the FWS's regulations found at 50 CFR 17.22 and 17.32, and the second part is for the final changes in NMFS's regulations found at 50 CFR 222.22.

Background

Section 9 of the ESA generally prohibits the ''take'' of species listed under the ESA as endangered. Pursuant to the broad grant of regulatory authority over threatened species in section 4(d) of the ESA, the Services' regulations generally prohibit take of species listed as threatened. See, e.g., 50 CFR 17.31 and 17.21 (FWS). Section 3(18) of the ESA defines ''take'' to mean ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' FWS regulations (50 CFR 17.3) define ''harm'' to include ''significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.''

Section 10 of the ESA, as originally enacted in 1973, contained provisions allowing the issuance of permits authorizing the taking of listed species under very limited circumstances for non-Federal entities. In the following years, both the Federal government and non-Federal landowners became concerned that these permitting provisions were not sufficiently flexible to address situations in which a property owner's otherwise lawful activities might result in limited incidental take of a listed species, even if the landowner were willing to plan activities carefully to be consistent with the conservation of the species. As a result, Congress included in the ESA Amendments of 1982 provisions under section 10(a) to allow the Services to issue permits authorizing the incidental take of listed species in the course of otherwise lawful activities, provided that those activities were conducted according to an approved conservation plan (habitat conservation plan or HCP) and the issuance of the HCP permit would not jeopardize the continued existence of the species. In doing so, Congress indicated it was acting to ''* * * address the concerns of private landowners who are faced with having otherwise lawful actions not requiring Federal permits prevented by section 9 prohibitions against taking * * * '' H.R. Rep. No. 835, 97th Cong., 2d Sess. 29 (1982) (hereafter ''Conf. Report'').

Congress modeled the 1982 section 10 amendments after the conservation plan developed by private landowners and local governments to protect the habitat of two listed butterflies on San Bruno Mountain in San Mateo County, California while allowing development activities to proceed. Congress recognized in enacting the section 10 HCP amendments that:

'' * * * significant development projects often take many years to complete and permit applicants may need long-term permits. In this situation, and in order to provide sufficient incentives for the private sector to