is prior art under 35 U.S.C. 102 (a) or (e) and which substantially shows or describes but does not claim the same patentable invention, as defined in 37 CFR 1.601(n), or on reference to a foreign patent or to a printed publication, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under 37 CFR 1.42, 1.43 or 1.47, may submit an appropriate oath or declaration to overcome the patent or publication. The oath or declaration must include facts showing a completion of the invention in this country or in a NAFTA or WTO member country before the filing date of the application on which the U.S. patent issued, or before the date of the foreign patent, or before the date of the printed publication. When an appropriate oath or declaration is made, the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

(2) A date of completion of the invention may not be established under this section before December 8, 1993, in a NAFTA country, or before January 1, 1996, in a WTO Member country other than a NAFTA country.

* * * * *

Dated: March 21, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–10501 Filed 4–28–95; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 122–1–6982a; FRL–5198–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Nonattainment Area, Transportation Control Measure Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the California State Implementation Plan (SIP) for ozone for Santa Barbara County, which was submitted to EPA on November 14, 1994. This direct final approval action deletes a transportation control measure (TCM) from the federally-approved 1982 California ozone SIP and replaces it with a TCM from the state-adopted 1994 California ozone SIP. The intended effect of direct final approval of this SIP revision is to control emissions of ozone precursors in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or 1990 Act).

DATES: This direct final action is effective on June 30, 1995 unless adverse or critical comments are received by May 31, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State submittal and EPA's technical support document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted SIP revision are available for inspection at the following locations:

Mobile Sources Section (A–2–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), ANR 443, 401 ''M'' Street SW., Washington, DC 20460

California Air Resources Board, 2020 ''L'' Street, Sacramento, CA 92123

Santa Barbara County Air Pollution Control District, 26 Castillian Drive B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Deborah Schechter, Mobile Sources Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1978, Santa Barbara County was designated an ozone nonattainment area by EPA under the provisions of the Clean Air Act, as amended in 1977. 43 FR 8964, 40 CFR 81.305. On December 31, 1982 the State of California submitted the 1982 ozone SIP for Santa Barbara County.

EPA approved California's 1982 ozone SIP for Santa Barbara County and published the **Federal Register** document on December 20, 1983 (48 FR 56215). The 1982 Santa Barbara County SIP, or Air Quality Attainment Plan (AQAP), submitted in 1982 included nine TCMs. One of these was the Goleta Transit Center, a transit center with limited park-and-ride capability in downtown Goleta. No emission reduction credit was claimed for this TCM in the 1982 AQAP. According to the Santa Barbara County Association of Governments (SBCAG), the Goleta Transit Center and its ancillary park-and-ride lot were constructed in 1980 and operated until 1985. The facilities were closed and sold by the Santa Barbara Metropolitan Transit District (SBMTD) in October 1985 due to insufficient usage.

On November 15, 1990, the Clean Air Act Amendments of 1990 (1990 Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On November 14, 1994, the California Air Resources Board (CARB) submitted the 1994 ozone SIP to EPA. The portion of this SIP for the Santa Barbara County nonattainment area, the 1994 Clean Air Plan (CAP), stated that the TCMs in the 1994 CAP superseded those in the 1982 AQAP. The 1994 CAP was adopted by the Santa Barbara County Air Pollution Control District (SBAPCD) on November 2, 1994 and later by CARB on November 14, 1994.

On January 18, 1995, the SBAPCD provided a letter to EPA requesting expedited rulemaking action to replace the Goleta Transit Center TCM in the 1982 AQAP with TCM–5, Improve Commuter Public Transit Service, in the 1994 CAP.

In a letter to the State dated March 24, 1995, EPA found the submittal of TCM–5 complete.

II. Summary and Evaluation of SIP Revision

Section 176(c) of the Clean Air Act (CAA) prohibits any metropolitan planning organization (MPO) designated under section 134 of title 23 of the United States Code, from approving any transportation project, program, or plan which does not conform to a SIP approved under section 110 of the CAA. The federal transportation conformity regulation (40 CFR part 51, subpart T) implements the transportation-related requirements of section 176(c). Section 51.418 of the regulation requires the transportation plan and program to provide for the timely implementation of transportation control measures (TCMs) from the applicable federally-approved implementation plan. A TCM is defined in section 51.392 as any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentration of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

Under the federal transportation conformity rule, before an MPO or the Department of Transportation (DOT) can approve a transportation plan or program, a conformity determination must be made which shows timely implementation of all of the TCMs in the approved SIP and demonstrates that all obstacles to TCM implementation have been removed. In the case of Santa Barbara County, the nine TCMs identified in the 1982 SIP must meet the timely implementation criterion in order for the transportation plan and program to be approved and projects to be funded. Because the Goleta Transit Center was implemented but was later discontinued, this TCM cannot be found to meet the criterion of timely implementation.

The preamble to the conformity regulation at 58 FR 62198 states that if the original project sponsor or the cooperative planning process decides not to implement the TCM or decides to replace it with another TCM, a SIP revision which removes the TCM will be necessary before plans and programs may be found in conformity. (In order to be approved by EPA, such a SIP revision must include substitute measures that achieve emissions reductions sufficient to meet all applicable requirements of the CAA, including section 110(l).)

In order to meet the requirement of the conformity regulation for timely implementation of TCMs and to enable FHWA to approve SBCAG's transportation plan and program, Santa Barbara County and the State of California have opted to revise the SIP to delete the Goleta Transit Center TCM from the SIP and replace the measure with an alternative TCM for which timely implementation can be demonstrated. On November 14, 1994, California submitted a SIP revision for Santa Barbara County which replaces the Goleta Transit Center TCM with TCM–5, Improve Commuter Public Transit Service.

The state-adopted 1994 SIP commits to implement the following levels of transit service associated with TCM–5:

1. SBMTD Isla Vista/Santa Barbara City College (SBCC) Express Service: SBMTD will continue to operate an express bus line between Isla Vista and SBCC (about 25 miles). The service was initiated in September 1993.

2. SBMTD Downtown Waterfront Shuttle Service and Expansion: SBMTD will continue to provide electric shuttle service along State Street and on the Waterfront in the City of Santa Barbara. In addition, SBMTD will purchase two additional electric-powered buses to expand this service.

3. APCD Clean Air Express and Expansion: The SBAPCD will continue to operate compressed natural gas (CNG) commuter bus service from the northern county and Ventura County into Santa Barbara. Four new buses, for a total of nine, will be added to this service.

4. Santa Maria Area Transit (SMAT) New Service Lines and Expansion: SMAT will maintain new Route 6 which was added in 1993. Another route, Route 7, will be added to this service. In addition, SMAT will purchase one new CNG bus to serve Route 7.

5. Santa Ynez Transit Expansion: A new electric bus will be purchased for expansion of fixed route service in the Santa Ynez Valley.

6. Santa Barbara Rail Service Expansion (AMTRAK): Two additional trains per day are planned between Santa Barbara and San Diego. Improvements to the existing Santa Barbara rail station have also been programmed to support the service expansion.

The SIP anticipates a reduction of 3,301 daily vehicle trips, or a total of 45,410 daily VMT in 1996 from the implementation of TCM–5. The reduction in vehicle trips and VMT is estimated to lead to emission reductions of 36.2 kg ROG/day and 73.1 kg NO_X/day in 1996. The 1982 ozone SIP took no emission reduction credit for the Goleta Transit Center. SBMTD survey data indicated that an average of seven persons per day were using the transit center and the park-and-ride lot was providing free parking for patrons of nearby businesses. Because TCM–5 is expected to result in significantly greater reductions in vehicle trips, VMT, and emissions than the Goleta Transit Center, the SIP revision does not weaken the federally-approved 1982 SIP.

III. EPA's Action

This action approves TCM–5, contained in the California ozone SIP for Santa Barbara County submitted to EPA by the State of California on November 14, 1994. The action also deletes the Goleta Transit Center from the 1982 ozone SIP. This latter TCM is no longer subject to the timely implementation criterion of the conformity regulation. EPA has evaluated the submitted TCM and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, TCM–5 in Santa Barbara's SIP revision is being approved under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and (l) and part D. Today's action does not affect the remainder of the submitted 1994 ozone SIP revision for Santa Barbara County. EPA will take separate action on the bulk of Santa Barbara's 1994 ozone SIP revision in future rulemaking.

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

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment 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 adverse or critical comments be filed. This action will be effective June 30, 1995, unless, by May 31, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based a separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 30, 1995.

IV. Regulatory Process

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation.

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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA 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, I certify 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2). The OMB has exempted this action from review under Executive Order 12866.

V. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182(b) of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 19, 1995.

Jeff Zelikson,

Acting Regional Administrator.

Subpart F of 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. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(211) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(211) Revised Clean Air Plans for ozone for the following APCDs submitted on November 14, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara Air Pollution Control District

(1) TCM–5, Improve Commuter Public Transit Service, adopted on November 2, 1994

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[FR Doc. 95–10613 Filed 4–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5200–1]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Kenmark Textile Corporation site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Kenmark Textile Corporation site from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that all appropriate Hazardous Substance Response Trust Fund (Fund)—financed responses under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State of New York have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Doug Garbarini, Section Chief, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007–1866, (212) 637–4263.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Kenmark Textile Corporation site, Farmingdale, Suffolk County, New York. A notice of intent to delete for this site was published in the **Federal Register** (59 FR 64644) on December 15, 1994. The closing date for comments on the Notice of Intent to Delete was January 17, 1995. EPA received no verbal or written comments of the proposed deletion.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 10, 1995.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.