

US Environmental Protection Agency, Office of Mobile Sources

August 1997

GUIDANCE ON USE OF OPT-IN TO RFG AND LOW RVP REQUIREMENTS IN OZONE SIPS

I. Introduction

The purpose of this guidance document is to establish policy guidelines for applying section 211(c)(4) of the Clean Air Act (CAA or Act) to State Implementation Plan (SIP) submissions that propose motor vehicle fuel measures as control strategies to reduce ozone. In particular, this guidance addresses issues related to state opt-in to the federal reformulated gasoline (RFG) program and state low Reid vapor pressure (RVP) gasoline requirements that are more stringent than the federal RVP requirements. The primary purpose of this guidance is to help the regional offices respond to state SIP submissions containing fuel control measures. This guidance should also help states to understand the different statutory requirements concerning state actions on fuel controls and to decide whether and how to use fuel measures for ozone control.

II. Background

Fuel control measures are effective strategies for states to use to reduce ozone pollution. The two primary approaches to fuel controls are state opt-in to the federal RFG program, and state adoption of a low RVP requirement that is more stringent than the applicable federal RVP requirement. While both approaches reduce volatile organic compounds (VOCs), which are precursors to ozone, they differ in their overall environmental benefits, whether they are administered by the state or federal government, and the statutory provisions governing their adoption. In general, the CAA provides that states are preempted from adopting their own fuel control requirements different from existing federal requirements. However, EPA may waive preemption under certain circumstances, as discussed below. State opt-in to the RFG program is not preempted because EPA establishes and enforces the RFG requirements at the federal level and the Act provides explicit authority for states to opt-in to the federal requirements under section 211(k).

State adoption of low RVP gasoline requirements is controlled by section 211(c)(4) of the CAA. Section 211(c)(4)(A) prohibits states from prescribing or attempting to enforce any "control or prohibition" of a "characteristic or component of a fuel or fuel additive" if EPA has promulgated a control or prohibition applicable to such characteristic or component under section 211(c)(1). This preemption does not apply if the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this prohibition for a nonidentical state standard

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contained in a state SIP where the standard is "necessary to achieve" the primary or secondary NAAQS that the SIP implements. EPA can approve such a state SIP provision as necessary if the Administrator finds that "no other measures that would bring about timely attainment exist," or that "other measures exist and are technically possible to implement, but are unreasonable or impracticable."

The federal RFG program is authorized under section 211(k) of the CAA. EPA regulations specify content and performance requirements for cleaner reformulated gasoline, which reduces motor vehicle emissions of VOCs, NO_x, CO, and toxics. Ozone non-attainment areas where the CAA does not mandate RFG may opt-in to the federal RFG program under section 211(k)(6). To opt-in to RFG, the State Governor would apply to EPA, and EPA would set an effective date for the program to apply in that area, which could be no later than one year from the date of application.¹

Changes in factual circumstances related to fuel controls over the past several years make it appropriate for EPA to reconsider and clarify its approach to approval of state low RVP programs, particularly in the context of a state's ability to opt-in to RFG. States now considering adopting fuels provisions as a control measure are under different circumstances than were present during the early state fuels program SIP approvals from 1989 through the early 1990s. At that time, RFG was not yet available, so the main fuel control for ozone reductions was low RVP requirements. Also, many states then considering fuels measures were facing large shortfalls in emissions reductions. Thus, it was relatively straightforward for the states to justify the need for state low RVP requirements under section 211(c)(4) and obtain a waiver from federal preemption. To demonstrate necessity, states could show that even if they adopted all other measures that could be perceived as reasonable and practicable, they would still need the additional emissions reductions from the proposed fuels measure. This allowed EPA to approve preemption waivers without states making a detailed showing regarding the reasonableness and practicability of the other measures.

More recent SIP revisions related to fuels commonly involve states that have already substantially controlled ozone pollution and need only one or two additional measures to produce sufficient ozone reductions for attainment. With several alternative measures available, states need to make careful choices regarding the best approach for their individual circumstances. If a state selects low RVP requirements, it must adequately demonstrate that other measures are unreasonable or impracticable for EPA to approve a waiver from federal preemption. This situation requires a more detailed analysis of what measures could be considered reasonable and what justifications would suffice to show that a given other measure was unreasonable or impracticable.

¹EPA has proposed regulations that would allow former nonattainment areas also to participate in the Federal Reformulated Gasoline program. (62 Fed. Reg. 15074, 3/28/97).

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Changes in EPA administrative procedures also enhance the need for guidance on these issues. Until recently, all proposed approvals of SIP revisions containing state fuel controls had been reviewed by the Office of Mobile Sources and the Office of General Council. Since 1995, portions of the SIP approval process have been decentralized to the EPA regional offices, which has increased the potential for regional variation in the processing of the waiver provisions. A recent court decision has highlighted the potential dangers to the Agency of inconsistent policy approaches across regional offices. Western States Petroleum Assn. v. Env'tl. Protection Agency concerned a challenge to EPA's decision to condition approval of the State of Washington's Title V air pollution permit program on Washington's repeal of an exemption for insignificant emissions units. The court rejected EPA's decision on the basis that it was inconsistent with EPA's approval of such state Title V program provisions in other regions. See 87 F.3d 280 (9th Cir. 1996). This raises the concern that different approaches to state fuels measures across regional offices, including different levels of scrutiny and different justifications for Agency actions, could undercut the Agency's ability to implement its preferred policies. This guidance is intended to help EPA regional offices maintain a more consistent review process for fuels programs in SIPs.

Finally, this guidance is designed to be a resource for states to use in selecting ozone control strategies. States generally engage in a careful and extensive process to select ozone control measures, which requires a state to develop and evaluate options long before the state sends EPA a request to opt-in to federal RFG or a SIP revision adopting low RVP. It is far more efficient for states to have complete information to help evaluate carefully all available measures early in the process. Making the information in this guidance available to states early on will ensure that states understand the legal and technical prerequisites for each of the available control measures and should encourage states to obtain complete information regarding the advantages and disadvantages of different options.

This guidance does not establish a binding norm and is not finally determinative of the issues addressed. The Agency will make decisions in any particular case by applying the law and applicable regulations and guidelines to the specific facts at issue. The issues addressed in this guidance will also be addressed in notice and comment rulemaking undertaken by EPA to review individual state SIP revisions under section 211(c)(4)(C).

III. Fuels Control Options

A. Benefits of State Opt-In to RFG as an Ozone Control Measure

EPA supports state opt-in to RFG as an environmentally beneficial, cost-effective, and administratively simple ozone control measure. When selecting a fuel control measure, EPA encourages states to give careful consideration to the relative benefits of RFG. RFG has a

number of environmental benefits superior to other fuel controls. RFG is intended to be substantially cleaner than conventional gasoline. Compared to conventional gasoline, the RFG requirements provide significant reductions of certain compounds that contribute to air pollution, in particular, reductions of volatile organic compounds (VOC) and nitrogen oxides (NOx), which contribute to ozone pollution, as well as reductions in carbon monoxide (CO) and toxic emissions. Phase I RFG (1995-1999) requires 15% VOC reduction, 15% toxics reduction, and no increases in NOx. Phase II RFG (begins 2000) requires about 27% VOC reduction, 22% toxics reduction and 6% NOx reduction.² While VOCs are also addressed by low RVP requirements, low RVP fuel has little or no effect on reducing NOx. If NOx control is deemed important now or will become important after VOC reduction occurs, RFG will likely have the greatest effect on ozone over the long term. In addition, while states working on ozone non-attainment problems naturally focus on ozone reductions, the health concerns presented by CO and toxics should not be understated. Since RFG provides CO benefits similar to an oxygenated fuels program, areas that need CO emissions reductions (i.e. CO non-attainment areas) or areas that need to maintain CO levels in the face of rising vehicle-miles-traveled (VMT) would benefit from RFG. Moreover, only RFG provides significant toxics benefits year-round. Areas that are out of attainment for ozone may have high toxics levels, and so could further benefit from RFG.

Federal RFG also has advantages in terms of ease of adoption. State opt-in to RFG requires only a request from the Governor to EPA, which EPA must grant. While EPA sets the effective date of the program through notice-and-comment rulemaking, there is no hurdle that the state must clear for EPA approval. For approval of a low RVP requirement, the state must provide modeling or technical analyses, identify other measures, estimate reductions achieved from different measures, successfully demonstrate necessity and provide all of this information to EPA in a SIP revision.³ EPA must then make a necessity finding and approve the SIP revision through notice-and-comment rulemaking.

Finally, regardless of which fuel control is chosen for a given area, an enforcement program is necessary to assure that the fuel meets the requirements. With opt-in to federal RFG, the enforcement program for an area will be added to the already existing federal compliance system, and thus will not burden the state. In contrast, if the state requires low RVP gasoline, oversight will be a state function.

²Although refiners must meet the overall RFG performance targets for the fuel produced, benefits may vary by local area depending on the mix of vehicles in the geographic area. States should model the benefits of RFG for the area under consideration to estimate more accurately the emissions benefits that can be expected.

³With regard to the demonstration through modeling or technical analyses, States should work with their regional EPA offices to determine the type of demonstration that would be appropriate for a given area.

B. State Low RVP Program as an Ozone Control Measure

1. Approval of Low RVP as an Ozone Control Measure in SIP:

Under sections 211(c) and 211(h) of the CAA, EPA has promulgated nationally applicable federal standards for RVP levels of motor vehicle gasoline. Because a federal control applies to the fuel characteristic RVP, non-identical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the Act prohibits state regulation of fuel characteristics or components for which EPA has adopted a control or prohibition, unless the state control is identical to the federal control. Under section 211(c)(4)(C), EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the national primary or secondary ambient air quality standard (NAAQS) that the plan implements. EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable.⁴

a. Necessary Information for Waiver Request

If a state decides to pursue a state low RVP requirement rather than opt-in to federal RFG, the state must submit a SIP revision adopting the state fuel control and apply for a waiver from federal preemption. The state must include in its petition specific information showing the measure is necessary to meet the ozone NAAQS, based on the statutory requirements for showing necessity. The waiver request must:

- 1) Identify the quantity of reductions needed to reach attainment (note that the necessity showing must be framed in terms of reductions needed for attainment of the NAAQS, not reasonable further progress and 15% plan requirements);
- 2) Identify possible other control measures and the quantity of reductions each would achieve;
- 3) Explain in detail, with adequate factual support, which of those identified control measures are considered unreasonable or impracticable; and
- 4) Show that even with the implementation of all reasonable and practicable measures, the state would need additional emissions reductions for timely attainment, and the state fuel measure would supply some or all of such additional reductions.

⁴Of course, any SIP revision must also comply with all requirements specified in section 110(a)(2) of the CAA before approval by EPA.

b. Determining Whether Other Measures Are "Unreasonable or Impracticable"

In determining whether other ozone control measures are unreasonable or impracticable,⁵ reasonableness and practicability should be determined in comparison to the low RVP measure that the state is petitioning to adopt. This is not an abstract consideration of whether the other measures are reasonable or practicable, but rather a consideration of whether it would be reasonable or practicable to require such other measures in light of the potential availability of the preempted state fuel control. Some measures may be reasonable and practicable for certain areas of the country, but given the advantages of a low RVP requirement under the specific circumstances of the particular area, the other measures may be comparatively unreasonable or impracticable. Finding another measure unreasonable or impracticable under this criteria would not necessarily imply that the measure would be unreasonable or impracticable for other areas, or even the same area, under different circumstances.

While the basis for finding unreasonableness or impracticability is in part comparative, the state still must provide solid reasons why the other measures are unreasonable or impracticable and must demonstrate these reasons with adequate factual support. Reasons why a measure might be unreasonable or impracticable for a particular area include, but are not limited to, the following: length of time to implement the measure; length of time to achieve ozone reduction benefits; degree of disruption entailed by implementation; other implementation concerns, such as supply issues; costs to industry, consumers and/or the state; cost-effectiveness; or reliance on commercially unavailable technology. A strong justification for finding a measure unreasonable or impracticable may depend upon the combination of several of these reasons. Regions should consider as many of these factors as may apply in evaluating each measure that a state rejects as unreasonable or impracticable. Also, small differences in overall costs or cost-effectiveness are generally not sufficient to make a measure unreasonable, and states should not attempt to justify low RVP requirements on that basis alone. Cost is one component of an overall assessment of comparative reasonableness and practicability

For example, two programs may achieve comparable emission reductions, but implementation of the measure other than the state fuel measure may involve substantially more disruption by requiring development and imposition of a new state regulatory program, together with significant capital investment in necessary technology. In addition, these hurdles to implementation may mean that there would be a substantial comparative delay in emissions reductions. Under such circumstances, the other measure may well be unreasonable in comparison to a low RVP requirement.

2. Approval of Low RVP as a Contingency Measure in SIP

⁵"Impracticable" is defined as "[n]ot capable of being done or carried out." This differs from "impractical," which is defined as "[u]nwise to put into effect or maintain in practice." Webster's II New Riverside Dictionary (1994).

Use of low RVP requirements as a contingency measure may arise under either of two separate provisions of the CAA, depending upon whether the area is in attainment or nonattainment for the ozone NAAQS. Section 175A requires an area redesignating to attainment to include contingency measures in the maintenance plan to promptly correct any violation of the standard that occurs after redesignation. Section 172(c)(9) requires a nonattainment area to include contingency measures in the nonattainment plan to address any failure to achieve reasonable further progress milestones or failure to attain by the attainment date. In addition to the section 172(c)(9) contingency measures, under section 182(c)(9), the SIP for a serious area must also include contingency measures to be undertaken if the area fails to meet any applicable milestone.

The existing Agency policy on approval of low RVP requirements as a contingency measure addresses only maintenance contingency measures under section 175A. See Memo from Michael Horowitz, Office of General Counsel, U.S. EPA to William L. MacDowell, Air and Radiation Division, Region 5, U.S. EPA, Requirements for Reduced RVP in State Maintenance Plans (Nov. 8, 1993); 59 FR 48395 (Sept. 21, 1994) (Approval of Maintenance Plan for Preble County, OH). Under this policy, EPA may approve a low RVP requirement as a maintenance contingency measure without making a necessity finding before the approval. The approval is subject to a subsequent necessity finding at the time of the violation, and the State must commit to adopt a backup measure in the event that EPA does not find necessity. However, for contingency measures for nonattainment areas, the language of sections 172(c)(9) and 182(c)(9) does not appear to allow the Agency to approve the contingency measure subject to a subsequent necessity finding. Thus, for section 172(c)(9) and 182(c)(9) contingency measures, the Agency must find necessity prior to approval of low RVP requirements as a contingency measure.

a. Low RVP as a Contingency Measure in a Maintenance Plan

The Agency intends to maintain its current policy concerning use of a low RVP requirement as a contingency measure for maintenance plans. EPA may approve such a measure subject to a subsequent necessity finding at the time of the violation, if the State commits to adopt a backup measure in the event that EPA does not find necessity. This is derived from the Agency's general approach to contingency measures in maintenance plans. EPA generally has not required states to have preadopted contingency provisions in their maintenance plans; rather, states are only required to commit to a schedule to adopt and implement identified measures. Thus, identification of the contingency measure, together with a commitment to a schedule for adoption and implementation of a backup measure in the event that the State cannot implement the identified measure, is sufficient to meet the criteria for an approvable maintenance contingency measure. The need for subsequent EPA action and consequent uncertainty about whether the state will be able to implement the measure would not bar EPA's approval of the measure.

While EPA will not require a necessity finding at the time of approval of low RVP maintenance contingency measures, the Agency encourages States to demonstrate necessity so EPA can make a necessity finding up front, subject to any later determination that the measure is

no longer necessary. The State would still have to commit to a schedule to adopt and implement an unspecified backup measure if EPA later withdrew the necessity finding. Where EPA makes a necessity finding up front, EPA would be able to reevaluate the necessity finding if changed factual circumstances so warranted, but need not do so as a matter of course (see further discussion below). Once EPA has found necessity, the State could implement the low RVP contingency measure immediately upon a violation, without further action by the State or EPA. This approach would reduce the uncertainty about whether EPA could waive preemption for the low RVP requirement. It would also avoid the delay associated with the State developing and submitting to EPA a necessity demonstration and EPA determining necessity through notice and comment rulemaking.

b. Low RVP as a Contingency Measure in a Nonattainment Plan

For nonattainment areas, EPA must find necessity under section 211(c)(4)(C) before approving a low RVP requirement as a contingency measure in a nonattainment SIP, in order to satisfy the requirement in sections 172(c)(9) and 182(c)(9) for contingency measures to take effect without further action. EPA would make such a necessity finding subject to any subsequent determination that the measure is no longer necessary, due to a change in the factual conditions present at the time the contingency measure is triggered. EPA would also require the State to commit to adopt an unspecified backup measure for low RVP as a contingency measure in the event that EPA later withdraws the necessity finding.

Sections 172(c)(9) and 182(c)(9) include specific language, absent from section 175A, which appears to preclude EPA from approving a contingency measure before making a necessity finding. Section 172(c)(9) states that contingency "measures shall ... take effect in any such case without further action by the State or the Administrator." Section 182(c)(9) similarly states that contingency measures "shall be included in the plan revision ... to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone." In contrast, section 175A only requires "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard...." If EPA did not find necessity prior to approval of the contingency measure, before the State could implement a low RVP requirement it would have to submit a demonstration to EPA that the measure is necessary and EPA would have to conduct rulemaking to determine whether to find necessity. This process would conflict with the section 172(c)(9) and 182(c)(9) directives that the contingency measure shall take effect without further State or EPA action.

In making a necessity finding at the time it approves the contingency measure, EPA would find that the low RVP requirement would be necessary if the contingency measure were triggered by a failure to make reasonable further progress or to attain. To find necessity, EPA would have to evaluate the state's identification of all other measures available to achieve the NAAQS and determine that they were unreasonable or impracticable. EPA might find necessity under two possible scenarios. First, the state could estimate the quantity of reductions that would likely be needed to achieve the NAAQS if the contingency measure were triggered and could determine that low RVP gasoline is the only measure available that would achieve these reductions, and EPA could concur. EPA could then find that if the contingency measure were

triggered and at least this quantity of reductions were needed to achieve the NAAQS, low RVP gasoline would be necessary and no further rulemaking would be required at the time of the trigger. Under the second scenario, while there would be other measures available to achieve the NAAQS upon trigger of the contingency measure, EPA could find that those other measures would be unreasonable or impracticable, based on the criteria discussed above.

All of these assessments will depend upon factual conditions that are subject to change over time, such as the magnitude of reductions needed, and the availability, effectiveness, cost and timing of other measures. If the factual conditions on which EPA based the necessity finding had changed substantially at the time that the measure was triggered, EPA could reevaluate whether the low RVP requirement was still necessary under section 211(c)(4)(C). However, EPA expects in most cases such a reevaluation would not be necessary. Thus, EPA would make any up-front necessity finding for a contingency measure subject to subsequent revocation, if warranted by the factual conditions at the time the measure was triggered.

EPA expects that revocation of a necessity finding would occur rarely. EPA would have a sound basis for making any initial necessity finding. Also, in most cases reasonable and practicable emissions control measures will become increasingly difficult to find as emissions sources increase over time. Consequently, EPA believes that an initial finding that a low RVP requirement is necessary is highly likely still to be valid at the time the contingency measure is triggered.

EPA is requiring that a state commit to a schedule to adopt and implement an unspecified backup measure for a low RVP contingency measure. However, the approved contingency measure is the low RVP requirement, which EPA has found necessary, and this measure can be implemented without further state or federal action. EPA is requiring the state to commit to adopt a backup as a condition for approval of the contingency measure, but not as part of the contingency measure itself. EPA is requiring this commitment as a matter of approvability of the SIP contingency measure, to address the contingency that the low RVP measure may no longer be necessary at the time the contingency measure is triggered. Without a commitment, if EPA revoked the necessity finding when the contingency measure was triggered, the SIP would be deficient and EPA would have to issue a SIP call requiring submittal of a new contingency measure. With a commitment to adopt a backup, however, the state would proceed under the SIP to adopt and implement the backup measure as soon as EPA determined that the low RVP measure was no longer necessary and therefore could not be implemented.

APPENDIX A

EXAMPLE LANGUAGE FOR A FINAL RULE APPROVAL OF A STATE LOW RVP REQUIREMENT FOR AN AREA CURRENTLY IN NONATTAINMENT

[NOTE: An area designated attainment but with a recent violation may also be able to show necessity for a low RVP requirement, in that further reductions may be necessary to attain the NAAQS, but the language below would have to be modified accordingly.]

Summary

EPA is approving the State Implementation Plan (SIP) revision submitted by the State of [state]. This revision will reduce emissions of volatile organic compounds from gasoline by limiting the Reid vapor pressure (RVP) of gasoline sold between [date] and [date] to [xx] pounds per square inch (psi). EPA is also finding that the [state] low RVP requirements are necessary to achieve the national ambient air quality standard (NAAQS) for ozone and are therefore excepted from preemption under section 211(c)(4) of the Clean Air Act.

Background

[Insert discussion of history of action; description of state requirement, including numeric standard, timing, geographic scope, any exemption for ethanol fuel, etc.; other relevant background.]

Federal Preemption

Under sections 211(c) and 211(h) of the CAA, EPA has promulgated nationally applicable federal standards for RVP levels in motor vehicle gasoline. Because a federal control applies to the fuel characteristic RVP, non-identical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the CAA prohibits state regulation of fuel characteristics or components for which EPA has adopted a control or prohibition, unless the state control is identical to the federal control. Under section 211(c)(4)(C), EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the national primary or secondary ambient air quality standard (NAAQS) that the plan implements. EPA may approve a state fuel requirement as necessary if no other measures would bring about timely attainment, or if other measures exist and are technically possible to implement but are unreasonable or impracticable. While the [state] low RVP requirement *[describe in earlier section of notice]* would otherwise be preempted by the federal RVP requirements, this exception will apply and the state can implement the low RVP requirement if EPA finds it is necessary to achieve the ozone NAAQS and approves it as a revision to the SIP.

APPENDIX A

Analysis of the SIP

A. Approval of Preempted State Fuel Control Program

[State] has submitted to EPA data and analysis to support a finding under section 211(c)(4)(C) that the state's low RVP requirement is necessary for [nonattainment area] to achieve the ozone NAAQS. The state has (1) identified the quantity of reductions of VOCs needed to achieve attainment of the ozone NAAQS; (2) identified all other control measures and the quantity of reductions each would achieve; and (3) shown that even with the implementation of all reasonable and practicable control measures, the state would need additional emissions reductions for [nonattainment area] to meet the ozone NAAQS on a timely basis, and that the [state] low RVP requirement would supply [some/all] of such additional reductions.

[State] submitted to EPA its demonstration of necessity for the low RVP requirement in the [state] SIP revision to incorporate its [attainment demonstration, 15% plan, contingency plan, etc.]. The state's submission used [description of modelling or other analytical techniques] to estimate the quantity of emissions of VOCs necessary to achieve the ozone NAAQS [by 19xx (if appropriate to add year)]. [Add further discussion of modelling/analysis if appropriate] Based on this analysis, [state] estimates that VOC emissions reductions of [yy quantity/unit of time] in [nonattainment area] are necessary to achieve the ozone NAAQS by 19[xx].

[NOTE: If the state submission shows quantity of reductions needed to meet the 15% plan, notice must explain that those 15% reductions are necessary to achieve the NAAQS.]

[NOTE: Approach below assumes that state first looked at all control measures and then decided which were reasonable and practicable. If the state first selected only the reasonable and practicable control measures, and then identified emissions reductions from those selected measures, the following discussion must be modified accordingly.]

Next, [state] evaluated [all/a very broad range of] potential other control measures and the estimated quantity of reductions that could be achieved through implementation of each measure. The state evaluated the following measures:

[Control measure--e.g. Stage II vapor recovery] = [Quantity of emissions reductions/day, month, etc.]

[Repeat above for each potential control measure]

APPENDIX A

If the state were to implement all control measures evaluated, the state estimates that it would reduce emissions of VOCs by [insert zz--total quantity of emission reductions from all potential control measures]

[If zz is less than yy total reductions needed for attainment, insert a.:]

[a. Because implementation of all available control measures would produce insufficient emissions reductions to attain the ozone NAAQS, additional emissions reductions are needed to attain the NAAQS and the state's low RVP requirement is necessary to produce [some of] those reductions.] *OR*

[If zz is greater than yy total reductions needed for attainment, insert b.:]

[b. Next, the state evaluated which of the identified potential control measures are reasonable and practicable.]

[If used insert b. above, continue with following paragraph. Otherwise, proceed to conclusion paragraph.]

Of the control measures identified above, for purposes of section 211(c)(4)(C), [ozone control measures X, Y, Z] is/are considered [unreasonable/impracticable] for [area] to implement in comparison to the state's low RVP requirement. *[NOTE: measures are more likely to be unreasonable than impracticable because impracticable means not capable of being done or carried out. However, impracticability may be found, for example, where the emissions reductions are needed in time for an impending attainment deadline, and the control measure could not be in place before that deadline.]* [Control measure X] would be [unreasonable/impracticable] in comparison to the low RVP requirement because [insert several sentences of explanation and factual support]. *[Repeat for each control measure rejected as unreasonable or impracticable.] [See guidance for types of factors that alone, or more likely, in combination, may make a control measure unreasonable or impracticable.]*

[conclusion paragraph]

If [state] implemented all reasonable and practicable control measures, [state] estimated that they would reduce VOC emissions by [vv quantity]. Thus, EPA finds that even if [state] were to implement all of the identified [reasonable and practicable] control measures, an additional [xx quantity] of VOC emissions reductions would be needed for [area] to achieve timely attainment of the ozone NAAQS. *[Modify if there are no reasonable and practicable control measures]* [State's] low RVP gasoline program addressed in today's notice will supply [some/all] of the needed additional reductions, and hence, the State's low RVP requirements are necessary under section 211(c)(4)(C) to achieve timely attainment of the ozone NAAQS.

MEMORANDUM

SUBJECT: Guidance on Use of Opt-in to RFG and Low RVP Requirements
in Ozone SIPS

FROM: Margo T. Oge, Director
Office of Mobile Sources

TO: Regional Air Division Directors

The Office of General Counsel and the Fuels and Energy Division have, with input from our regional fuels program contacts, developed the attached guidance on State Implementation Plan (SIP) actions containing fuel measures to control ozone. We have written this guidance in response to numerous inquiries by the regions for such guidance in applying section 211(c)(4) to state fuel programs. Last year, a consortium of oxygenated fuel marketers and promoters filed a protest with the Agency, citing inconsistencies in several recent SIP actions where approvals of state low Reid vapor pressure (RVP) programs were not, according to the consortium, appropriately executed within the statutory requirements at section 211(c)(4).

The Office of Mobile Sources views this guidance as a dynamic document--one that can be expanded in the future for applying 211(c)(4) to state fuels programs which might be considered as effective pollution control strategies. For further clarification, we have included an appendix with the document: Appendix A - "Example Language for a Final Rule Approval of a State Low RVP Requirement for an Area Currently in Nonattainment."

I hope the attached document will help to provide clarification and guidance for regions addressing state fuel waiver requests. I look forward to working with you in the future application of this guidance.

If you have any questions, please contact Winstead McCall of my staff at (202) 233-9029.

Attachment

cc: OGC
FED
OAR
OAQPS

OFFICE OF AIR AND RADIATION

**GUIDANCE ON USE OF OPT-IN TO RFG AND LOW RVP
REQUIREMENTS IN OZONE SIPS**

AUGUST 1997

**U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF MOBILE SOURCES
FUELS AND ENERGY DIVISION
WASHINGTON, D.C. 20460**