

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51, 52 and 85**

[FRL-5141-8]

RIN-2060-AF15

Final Rule on Ozone Transport Commission; Low Emission Vehicle Program for the Northeast Ozone Transport Region**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: At the request of the Northeast Ozone Transport Commission (OTC), EPA is announcing today its final determination that reduction of new motor vehicle emissions throughout the Northeast Ozone Transport Region (OTR) is necessary to mitigate the effects of air pollution transport and to bring nonattainment areas in the OTR into attainment (including maintenance) of the national ambient air quality standard for tropospheric ozone (smog). This will assist OTR states in their efforts to reduce ozone pollution to the level necessary to protect public health. EPA today approves the recommendation of the OTC and promulgates a rule under sections 184 and 110 of the Clean Air Act (the Act) that requires emission reductions from new motor vehicles in the OTR equivalent to the reductions that would be achieved by the OTC Low Emission Vehicle (OTC LEV) program.

States would be relieved of their obligations under this requirement if EPA were to find that all automakers had opted into an acceptable LEV-equivalent new motor vehicle program. EPA believes that such a program, which would be far better than OTC LEV, could be agreed upon and adopted in the near future. States' obligations under this requirement could also be met by a state's revision of its state implementation plan to include the OTC LEV program. Today's action gives states additional flexibility by also allowing a state the option of adopting a set of measures that would achieve certain emission reductions needed to prevent the state's adverse pollutant transport impacts.

EPA is also promulgating a final rule today determining "model year" for purposes of section 177 and part A of title II of the Act, as that term is applied to on-highway motor vehicles.

DATES: The regulations to be codified in 40 CFR parts 51 and 52 are effective February 15, 1995. The regulations to be

codified in 40 CFR part 85 are effective February 23, 1995.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air Docket No. A-94-11, located at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, tel. (202) 260-7548.

Interested parties may inspect the docket between the hours of 8 a.m. to 5:30 p.m., Monday through Friday except on federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, US EPA, 401 M Street, SW., Washington, DC 20460, tel. (202) 260-7757.

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A. Introduction

In today's action, EPA takes a significant step towards the goal of reducing smog in the heavily populated northeast region of the country. The northeast has some of the most severe smog pollution in the country—pollution reaches levels much higher than are healthy. Ground-level ozone, the main harmful ingredient in smog, is produced by the combination of volatile organic compounds (VOCs) and nitrogen oxides (NO_x).¹ The chemical reactions that create smog take place while the pollutants are being blown through the air by the wind, which means that smog can be more severe miles away from the source of pollution than it is at the source.

Ground-level ozone causes health problems because it damages lung tissue, reduces lung function, and sensitizes the lungs to other irritants. Scientific evidence indicates that ambient levels of ozone not only affect people with impaired respiratory systems, such as asthmatics, but healthy adults and children as well. Exposure to ozone for six to seven hours at relatively low concentrations has been found to reduce lung function significantly in normal, healthy people during periods of moderate exercise. This decrease in lung function is often accompanied by such symptoms as chest pain, coughing, nausea, and pulmonary congestion.

Though these effects are not as well established in humans, animal studies

¹ In the upper atmosphere, or stratosphere, ozone occurs naturally and forms a protective layer, which shields us from the sun's harmful ultraviolet rays. However, in the lower atmosphere, or at "ground level," man-made ozone can cause a variety of problems to human health, crops and trees.

have demonstrated that repeated exposure to ozone for many months can produce permanent structural damage in the lungs and accelerate the rate of lung function loss, as well as the lung aging period. Each year ground-level ozone is also responsible for several billion dollars worth of agricultural crop yield loss. It also causes noticeable foliar damage in many crops and species of trees. Studies also indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems.

As part of efforts to reduce harmful levels of smog, today's action approves the recommendation of an organization of northeastern states that EPA require all the northeastern states to adopt the California car program to reduce significantly the pollution emitted by new cars and light-duty trucks. This requirement could be met either by state adoption of the California car program or by having a nationwide alternative car program in effect that would achieve emissions reductions at least equivalent to what the California car program would achieve. Motor vehicles are a significant cause of smog because of their emission of VOCs and NO_x. EPA has projected that, without the California car (or an equivalent) program in the northeastern states, highway vehicles will account for approximately 38% of NO_x and 22% of VOC anthropogenic (man-made) emissions in 2005. EPA currently estimates that VOC emissions should be reduced by approximately 95 tons per day and NO_x emissions by approximately 195 tons per day as a result of today's action.²

Since smog travels across county and state lines, it is essential for state governments and air pollution control agencies to cooperate to solve the problem. This is particularly true in the densely-populated northeast—for example, the smog that causes health problems in New York City is the result, in part, of cars driven in Pennsylvania, Maryland and elsewhere in the northeast. Through the Ozone Transport Commission (OTC), the northeastern states have made major strides in developing region-wide strategies for achieving healthy air quality. Today's action, a further step in implementing the OTC's region-wide approach, is necessary for the region to attain and maintain healthy air quality.

Although EPA believes that the northeastern states cannot achieve

healthy air quality unless their neighbors within the northeast adopt the California car program or a nationwide program is in effect, today's action gives the states much flexibility in filling this need. Today's action sets broad requirements that states must meet, but otherwise gives states as much flexibility as the Clean Air Act allows in structuring and implementing their motor vehicle programs. EPA will continue to work with the states to help develop and establish California car programs that work well regionally. Furthermore, EPA continues to support the efforts of parties who are working on a possible new nationwide approach to decreasing emissions from motor vehicles and believes such a nationwide program could be superior to region-wide adoption of the California car program. Such a nationwide program could relieve states of having to respond to today's SIP call. Finally, if an individual state achieves sufficient emission reductions from programs other than a new motor vehicle program (and other than the broadly practicable measures discussed later in this notice), that state will be allowed to do so instead of adopting the California car program.

B. LEV-Equivalent Program

Concurrently with processing the OTC recommendation, EPA has explored the possibility of a LEV-equivalent program.³ As explained below, EPA believes the OTC LEV program will provide significant benefits and is necessary to help the northeast achieve air quality goals. Nonetheless, as EPA stated in the SNPRM and at numerous public meetings, EPA believes that a LEV-equivalent program could provide far greater environmental and public health benefits to the OTR and the nation, and do so more efficiently than would the OTC LEV program. Under the Clean Air Act, however, such a program can only be achieved by agreement of the relevant parties—it cannot be imposed unilaterally by EPA or the states. In an effort to develop a LEV-equivalent program, EPA and the parties have been

³ In this notice, a "LEV-equivalent program" is an alternative voluntary nationwide program that would achieve emission reductions from new motor vehicles in the OTR equivalent to or greater than would be achieved by the OTC LEV program and that would advance motor vehicle emission control technology. This definition is based on comments EPA received and discussions at meetings of the Clean Air Act Advisory Committee's Subcommittee on Mobile Source Emissions and Air Quality in the Northeast States that indicated that the alternative voluntary federal program that the interested parties are discussing would have an advanced technology component.

involved in intensive and open discussions, particularly under the Clean Air Act Advisory Committee's Subcommittee on Mobile Source Emissions and Air Quality in the Northeast States that EPA established in August 1994.

EPA believes that a LEV-equivalent program would have significant advantages when compared to OTC LEV. First, a LEV-equivalent program would achieve the same or greater emission reductions for the OTR. Two factors are primarily responsible for the emissions equivalence. The LEV-equivalent program would provide for earlier introduction of Transitional Low Emission Vehicles ("TLEVs") in the OTR than would be required under the OTC LEV petition. Also, 2001 and later model year vehicles that are originally purchased outside the OTR and then move into the OTR will be approximately 70% cleaner for in-use VOC and NO_x emissions than the incoming vehicles (*i.e.*, Tier I vehicles) under the OTC LEV program. Second, the LEV-equivalent program would provide significant environmental and public health benefits for the rest of the country. Third, by requiring vehicles to meet the same tailpipe standard in both California and the rest of the country, and by harmonizing the other California and federal emission standards, the program could streamline the process for certifying a vehicle for sale, reduce auto manufacturers' testing and design costs, and provide other efficiencies in the marketing of automobiles. Fourth, the parties could use their resources to make the program succeed rather than continuing the resource-intensive battle that has been waged over the past few years between the states and the auto industry over the OTC LEV program.

EPA urges the parties to continue their efforts to reach an agreed-upon program. The effective date of today's SIP call is February 15, 1995. By giving states a full year to submit their SIP revisions after the effective date, this action allows the parties, particularly the states, to focus on the voluntary agreement for the next 45 days without simultaneously starting whatever legislative and regulatory action is necessary to adopt OTC LEV in case a LEV-equivalent program does not materialize. When states do begin legislative efforts, EPA urges them to structure their authority so that an approved alternative program can be adopted and implemented nationwide.

The alternative program under discussion contemplates using federal rulemaking to establish the program. In light of the significant progress that has already been made in developing an

² These emissions estimates are based on the most accurate data currently available. The Agency continues to analyze emissions data and modeling assumptions.

alternative program, EPA believes it is appropriate to initiate an expedited rulemaking process on the conventional car portion of a LEV-equivalent program, as described below. Although EPA cannot act unilaterally to impose a LEV-equivalent program, EPA believes that, in light of the parties' continuing efforts to reach agreement, it is time to start to develop the regulatory structure that the parties have discussed to implement an agreement. EPA intends to propose and take comment on the voluntary new motor vehicle emission program described below. EPA also intends to propose that the entire alternative program is environmentally superior to OTC LEV because the alternative is at least environmentally equivalent to OTC LEV in the OTR and it has additional environmental benefits for the rest of the nation.

Before issuing such a proposal, EPA will seek the advice and recommendations of the Clean Air Act Advisory Committee and Subcommittee that have been addressing these issues. Although many of these issues, particularly those that would be raised by the conventional car portion of the program, have already been discussed in numerous **Federal Register** notices and public meetings, EPA believes it is important to allow people and states who have not participated in this process to date an opportunity to be heard on the specific provisions of a potential new, nationwide motor vehicle emission program.

The LEV-equivalent program under discussion has two major components—a cleaner car to be sold nationwide and advanced motor vehicle pollution control technology. In the following subsections, EPA describes the nationwide cleaner car, the advanced technology program currently under discussion, the possible methods for enforcing a LEV-equivalent program, the criteria for finding that such a program would be an acceptable alternative for OTC LEV, and how an acceptable LEV-equivalent program would affect a state's obligations under today's action.

1. Cleaner Conventional Cars and Light-Duty Trucks

The first component of a LEV-equivalent program would be requirements for cleaner conventional cars and light-duty trucks that ultimately would result in nationwide sales of cleaner new motor vehicles. Starting with the 2001 model year, all new cars and light-duty trucks sold outside California would meet the California Low Emission Vehicle (LEV) standard. These vehicles would have up to 66% lower in-use VOC and 73%

lower in-use NO_x tailpipe emissions than vehicles meeting the federal Tier I Standards. Prior to the nationwide introduction of this vehicle, auto manufacturers would phase in cleaner cars and light-duty trucks in the OTR according to a schedule that would accomplish emission reductions in the OTR equivalent to the following schedule:

40% TLEVS⁴ for model years 1997–2000
 30% LEVs for model year 1999
 60% LEVs for model year 2000
 100% LEVs for model years 2001 and later

EPA cannot promulgate regulations requiring manufacturers to meet these standards prior to model year 2004 (see section 202(b)(1)(C) of the Act). Nonetheless, EPA can establish a voluntary program that would not apply to manufacturers until they opted into the program; then, once an auto manufacturer opted in, the voluntary standards would be implemented in a way that would be indistinguishable from mandatory standards.

In establishing such a program, several issues need to be addressed other than the tailpipe standards and phase-in schedule. EPA will seek comment on how to establish a banking and trading program, what exemptions should apply to small volume manufacturers, the extent to which federal standards (other than tailpipe standards) can be harmonized with California standards to reduce testing and design costs, how to incorporate California's on-board diagnostics system requirements, what process and timing are appropriate for allowing auto manufacturers to opt in, and other issues that would arise under the voluntary program.

2. Advanced Technology Vehicles

In the second component, auto manufacturers, utilities, and state and federal governments would commit to work together to further the development of advanced technology to control motor vehicle emissions. Representatives of the states and auto companies have been meeting independently and as a working group of a Subcommittee of the Clean Air Act Advisory Committee to develop an advanced technology component of a LEV-equivalent program. At this point in the discussions, they do not anticipate that EPA would take regulatory action to adopt the advanced technology component. Attachment A to

⁴ TLEV stands for transitional low emissions vehicle, which is cleaner than cars required by federal law.

this preamble is a current draft discussion paper of their ideas on the Advanced Technology Vehicle (ATV) component of a LEV-equivalent program. The parties have not yet reached agreement on this component.

3. Enforcement of a LEV-Equivalent Program

Given constraints imposed by Congress in the Clean Air Act, a LEV-equivalent program cannot be instituted without the consent of the auto manufacturers and the OTC states. The auto manufacturers must agree to any tailpipe regulations other than the current federal program or the California program. EPA is precluded by section 202(b)(1)(C) from modifying the mandatory tailpipe standards prior to model year 2004. States are precluded by sections 177 and 209 from adopting any program other than the California program. Thus, the only route left to a LEV-equivalent program is one in which the auto manufacturers voluntarily agree to additional regulation. The auto manufacturers have said that, in principle, they could agree to a voluntary program if it avoided the need to comply with OTC LEV in the OTC states. The OTC states, therefore, would have to agree not to require compliance with OTC LEV if the auto manufacturers were complying with a voluntary federal program.

EPA has suggested that a combination of EPA regulations, consent decree(s), and a memorandum of understanding could be used in combination to create an enforceable LEV-equivalent program. EPA anticipates that a memorandum of understanding may be necessary or appropriate to outline the general structure and some specifics of the LEV-equivalent program. EPA intends to propose that the cleaner conventional car component would be embodied in EPA regulations that would be issued after an expedited notice-and-comment rulemaking was completed. EPA suggests that the regulations be supplemented by a consent decree addressing obligations not in the regulations and providing additional assurance that the regulatory obligations will remain in effect. The states and automakers have discussed embodying the advanced technology vehicle component in a memorandum of understanding and a consent decree.

EPA intends to propose that it has statutory authority to promulgate the voluntary standards under sections 202(a) and 301(a) of the Clean Air Act. Section 202(a)(1) directs the Administrator to prescribe standards for control of air pollutant emissions from motor vehicles. EPA's prescription of

voluntary, as well as mandatory standards, is consistent with this authority under section 202(a)(1). Section 202(b)(1)(C) prohibits the Administrator from changing the emission standards (Tier I standards) established in section 202(g), (h) and (i) prior to model year 2004. However, this prohibition against EPA setting new mandatory standards does not negate EPA's authority to establish emission standards with which manufacturers may voluntarily comply. In addition, section 301(a) authorizes the Administrator to promulgate regulations necessary to carry out her functions under the Act. The voluntary standards discussed above would fall within the Administrator's duty to implement the broad air pollution reduction purposes of the Act, and specifically to control air pollution from motor vehicles.

4. Criteria for an Acceptable LEV-Equivalent Program

EPA is not determining in today's action what criteria an alternative program would need to meet for EPA to find that the program is an acceptable alternative to the OTC LEV program. EPA would determine the necessary criteria for equivalence as a part of any rulemaking that established or reviewed such an alternative program. However, EPA believes that one criterion that a LEV-equivalent program must meet is that it must have VOC and NO_x emissions reductions in the OTR equivalent to those that would be achieved by the OTC LEV program.⁵ Based on EPA's current analysis, a version of which was in a notice of data availability published on October 24, 1994 (59 FR 53395), EPA intends to propose that the alternative program described above meets this equivalence requirement.

In addition, an acceptable alternative program must be enforceable. A finding of enforceability would have to include a showing that the program, once in effect, would remain in effect. Therefore, today's action regarding the LEV-equivalent program is based on the assumption that automobile manufacturers would not be allowed to use "off-ramps"⁶ to exit from the program. The OTC has also stated that the advancement of motor vehicle emission control technology is one of

the criteria an alternative program must meet.

5. State Obligations if an Acceptable LEV-Equivalent Program is in Effect

Today's action recognizes that, if an acceptable LEV-equivalent program were in effect, then states would not be required to adopt OTC LEV regulations and submit them as a SIP revision. Under today's rule, if EPA were to determine later through rulemaking that a LEV-equivalent program was acceptable and were to find that it was in effect, states would not be obligated to adopt the OTC LEV program as long as the LEV-equivalent program stayed in effect. For example, if all the automakers opted into a LEV-equivalent program that did not allow them to opt out, states would not have to undertake the legislative and regulatory process necessary for adoption of the OTC LEV program. If something happened to disrupt or void the LEV-equivalent program, states would then be required to adopt OTC LEV because today's action would still make states responsible for ensuring that there were provisions for emission reductions from new motor vehicles.

In the SNPRM, EPA had raised the issue of whether states would need to adopt OTC LEV regulations if a LEV-equivalent program were in effect. Under one approach, states would adopt an OTC LEV program that allowed auto manufacturers the option of complying with a LEV-equivalent program instead of the OTC LEV standards; thus, OTC LEV would be in place as a "back stop" in case something happened to the LEV-equivalent program. For example, if a LEV-equivalent program allowed manufacturers to opt out if a state adopted the California LEV program, then the other states could not be assured that they would achieve the necessary reductions from a LEV-equivalent program. Therefore, states would need to have OTC LEV in place so that it would replace the LEV-equivalent program if that program were no longer in effect. EPA believes that, under certain circumstances, the "back stop" approach wastes state resources by requiring a rulemaking process for a program that should never be used. Thus, under today's rule, states could be relieved of the obligation to adopt OTC LEV if EPA determined in a later rulemaking that a LEV-equivalent program was an acceptable alternative to OTC LEV and found that the program was in effect.

C. Procedural Background

The OTC submitted a recommendation to EPA on February

10, 1994, that EPA require all states in the OTR to adopt an OTC LEV program. EPA extensively reviewed the background for this rulemaking in its September 22, 1994, supplemental notice of proposed rulemaking (SNPRM). See 59 FR at 48664-48667. This review included a description of the statutory scheme in which the rulemaking arises, a description of the ozone transport region provisions of the Clean Air Act, background regarding the OTC's development of the OTC LEV program, and a summary of EPA's actions in response to the OTC's recommendation. This background is not repeated in its entirety here, and the reader is referred to the SNPRM for further detail.

EPA has moved quickly to resolve the very complicated issues that the OTC's recommendation raises and has provided maximum opportunity for public participation. After receiving the OTC's recommendation on February 10, 1994, the Agency quickly published a notice announcing receipt of the OTC's recommendation, identifying its major elements, and briefly presenting EPA's framework for a process to respond and an approach for analyzing the issues. See 59 FR at 12914 (March 18, 1994). As announced on April 8, 1994, EPA held two days of public hearings on May 2-3, 1994, in Hartford, Connecticut. See 59 FR at 16811.

Before the public hearing and pursuant to section 307(d) of the Clean Air Act, EPA published a notice of proposed rulemaking (NPRM) that contained extensive information about EPA's approach to addressing the recommendation. See 59 FR 21720 (April 26, 1994). This notice detailed EPA's analytic framework for a decision and identified the central issues EPA was considering. EPA explained in the NPRM that the rulemaking procedures of section 307(d) would apply to any approval or partial approval of the recommendation, since those procedures are an excellent vehicle for ensuring an open, public process. See 59 FR at 21724. In the NPRM, EPA proposed in the alternative to approve, disapprove, or partially approve and partially disapprove the OTC recommendation.

After publication of EPA's proposal and the two days of initial public hearings, EPA held an additional series of three public "roundtable" meetings in Pennsylvania, New Hampshire, and New York. EPA held these meetings to provide specific analysis of the issues through interactive discussion among the various interested parties and members of the public. See 59 FR 28520 (June 2, 1994). At the end of these

⁵ The vehicle types subject to a LEV-equivalent program would need to be the same vehicle types (or a subset thereof) that would be subject to OTC LEV. Thus, emission reductions from heavy-duty trucks could not be used to assess the equivalence of a LEV-equivalent program.

⁶ An "off-ramp" is a provision allowing manufacturers to opt out of an alternative program if a certain trigger-event occurs, for example, if a state implemented a LEV program.

meetings, EPA extended the public comment organized public discussion of issues raised and resolved in this rulemaking. In addition to sharing their views in many public hearings and meetings, interested parties provided voluminous written comments on EPA's April 26 and September 22 proposals. These comments and other documents relevant to the development of this final rule are contained in the public docket for this rulemaking. The Agency has fully considered all of this information in developing today's final rule. EPA's responses to significant comments are contained in detailed response-to-comments documents that are contained in the public docket. Interested parties should consult those documents for EPA's response to the comments it received.

EPA has structured this final rule to follow the analytic framework that the Agency used in the NPRM and SNPRM. As explained above, rather than repeating the entire discussion in the SNPRM, EPA is adopting much of the rationale provided in the SNPRM as the statement of basis and purpose supporting today's final action. For this reason, this final rule notice summarizes and references much of the discussion in the SNPRM, and elaborates where needed to clarify or modify EPA's proposed rationale in light of the comments EPA received or to address issues left unresolved in the SNPRM. Although this notice and the SNPRM contain EPA's responses to some comments, the response-to-comments documents provide detailed responses to all other relevant, significant comments received. In addition to relying on this notice and the response-to-comments documents as the statement of basis and purpose for today's action, EPA is also relying for its statement of basis and purpose on the detailed explanations in the SNPRM, except where indicated otherwise in this final rule notice or the response-to-comments documents, or where statements in the SNPRM are inconsistent with statements in the final rule notice or response-to-comments documents.

II. Description of Action

EPA today is making the factual finding that emissions reductions from new motor vehicles equivalent to the reductions that would be achieved by the OTC LEV program are needed throughout the OTR to bring certain OTR nonattainment areas into attainment (including maintenance) by their applicable attainment dates. Based on that finding, EPA today is issuing to each of the states in the OTR a finding

that its SIP is substantially inadequate to meet certain requirements insofar as the SIP would not currently achieve those emission reductions. There are two possible ways to achieve these emission reductions and thereby cure this SIP inadequacy—state adoption of the OTC LEV program or establishment of an acceptable LEV-equivalent federal motor vehicle program. By virtue of today's findings of SIP inadequacy, unless an acceptable LEV-equivalent program is in effect, EPA is today finding the OTC LEV program necessary to achieve timely attainment (including maintenance) in certain nonattainment areas and therefore is requiring each OTC state to cure the inadequacy within one year by adoption of the OTC LEV program and submission of it as a SIP revision. However, if EPA issues a rule determining that a LEV-equivalent new motor vehicle program is acceptable and issues a finding that all the automakers have opted into that program nationwide, then the states would be relieved of their obligation to adopt OTC LEV.

As an alternative to achieving emission reductions from new motor vehicles, states could submit adopted measures sufficient to fill the gap in emission reductions that EPA identifies in today's rule as required to prevent adverse transport impacts on downwind attainment. By filling the gap in emission reductions between the measures EPA has identified in this notice as potentially broadly practicable measures and the amount necessary to prevent adverse transport impacts downwind, the state would demonstrate that it was unnecessary to adopt new motor vehicle controls for transport reasons.

EPA is approving the OTC's LEV recommendation based on the determination under sections 184(c) and 110(a)(2)(D) of the Act that the recommended LEV program is necessary throughout the OTR to bring certain OTR nonattainment areas into attainment by the applicable attainment dates, unless an acceptable LEV-equivalent program is in effect, and that the recommended LEV program is otherwise consistent with the Act. Approval of the OTC recommendation requires EPA to issue the finding of SIP inadequacy described above and to require states to respond within one year with SIP revisions requiring the OTC LEV program, unless an acceptable LEV-equivalent program is in effect. Independent of section 184, but based on the same factual finding of necessity, EPA also is requiring the actions described above under its SIP call

authority in section 110(k)(5)⁷ on the basis that the SIP for each state in the OTR is substantially inadequate to meet the requirements relating to pollution transport in section 110(a)(2)(D) and to mitigate adequately the interstate pollutant transport described in section 184.⁸

EPA's SIP call does not require states in the OTR to adopt California's Zero Emission Vehicle (ZEV) production mandate, but leaves this choice to each state's discretion. EPA has determined that section 177 of the Act allows states to adopt the California LEV program without adopting the ZEV mandate.

Finally, EPA is issuing regulations defining the term "model year" for purposes of section 177 and part A of title II of the Act, as that term applies to on-highway motor vehicles. The regulations provide that model year will apply on an engine family-by-engine family basis. This regulatory action codifies long-standing EPA guidance on this definition and should clarify the applicability of the two-year lead-time requirement in section 177.

III. Statutory Framework for the SIP Call

As mentioned above, authority for today's SIP call is premised both on EPA's approval of the OTC recommendation under section 184(c) and on EPA's independent authority under sections 110(a)(2)(D) and 110(k)(5), which would support such an action even in the absence of an OTC recommendation.⁹ For reasons described in the response-to-comments

⁷ Section 110(k)(5) authorizes the Administrator to require the state to revise the SIP as necessary to correct the deficiency whenever she finds that a SIP for an area is substantially inadequate to mitigate adequately the interstate pollutant transport described in sections 176A or 184 or to otherwise comply with any requirement of the Act.

⁸ Section 110(a)(2)(D) requires that SIPs contain adequate provisions to prevent emissions within the state that contribute significantly to nonattainment in, or interfere with maintenance by, any other state.

⁹ In addition, EPA believes it has authority to approve the OTC's recommendations under section 176A, the general transport commission provision of the CAA. For the reasons described in the response-to-comments documents accompanying this final action, which include the fact that the OTC refers to section 176A in its own by-laws, EPA believes that the Northeast OTC is a section 176A transport commission as well as a section 184 transport commission. As a consequence, EPA believes that, notwithstanding the fact that the OTC's recommendations themselves do not explicitly refer to section 176A, it may treat the OTC's recommendations as section 176A requests with recommendations, as well as section 184 recommendations, and act on them accordingly. References in this notice to EPA's analysis of and conclusions on the OTC petition under section 184 are intended to reflect also EPA's analysis of and conclusions on the petition treated as a request with recommendations under section 176A.

documents, EPA disagrees with comments claiming that EPA lacks such authority because the section 184 process is invalid under the United States Constitution, because section 110 does not authorize EPA to require states to adopt specific measures, or because an EPA SIP call requiring state regulation of emissions from new motor vehicles violates sections 177, 202, and 209 of the Act.

A. Section 184

EPA described the provisions of section 184 in detail in both the NPRM and SNPRM. See 59 FR at 21722-21724 and 59 FR at 48668. Section 184(c) explicitly provides that the Administrator is to review the OTC's recommendations to determine whether the control measures in the recommendations are necessary and otherwise consistent with the Act, and is to approve, disapprove, or partially disapprove and partially approve such recommendations. Upon approval, the Administrator is to issue to affected states a finding under section 110(k)(5) that the SIP for such state is inadequate to meet the requirements of section 110(a)(2)(D), and that each such state is required to revise its SIP to include the approved measures within one year after the finding is issued.

In the SNPRM, EPA addressed comments from both the auto manufacturers and the Natural Resources Defense Council (NRDC) regarding the validity of the section 184 scheme under the United States Constitution. Various other commenters also submitted comments on the constitutional questions. EPA has fully considered the comments and believes that section 184 is consistent with the Constitution, as discussed in the response-to-comments documents.

B. Section 110

EPA is interpreting section 110 of the Act to provide that it grants the Agency independent authority to issue today's SIP call, apart from any authority provided by section 184, for the reasons given below and in the SNPRM, 59 FR at 48667-48670 (col. 1), and further explained in detail in the response-to-comments document accompanying this final action. Section 110(a)(2)(D) requires that SIPs include adequate provisions prohibiting sources in the state from contributing significantly to nonattainment or interfering with maintenance in any other state. If EPA finds that a SIP is "substantially inadequate to * * * mitigate adequately interstate pollutant transport * * * or to otherwise comply with any requirement of this Act," including section

110(a)(2)(D), section 110(k)(5) requires EPA to issue a SIP call requiring the state to adopt the SIP revisions necessary to correct the inadequacy.

As proposed in the SNPRM, EPA concludes that sections 110(a)(2)(D) and (k)(5) authorize it to find at any time that a SIP is inadequate due to pollution transport. EPA believes that emissions reductions from new motor vehicles equivalent to those achieved by the OTC LEV program are necessary throughout the OTR to bring all of the OTR states into attainment (including maintenance) of the ozone NAAQS by their respective attainment dates; that, unless an acceptable LEV-equivalent program is in effect, OTC LEV is necessary because it is the only currently available method of achieving these reductions; that the states' SIPs are inadequate to the extent they do not provide for the emissions reductions from new motor vehicles equivalent to those achieved by the OTC LEV program; and that, unless EPA issues a finding that all automakers have opted into a LEV-equivalent program that EPA has determined by rule to be acceptable, the states must adopt the OTC LEV program to correct the deficiency within one year of the effective date of the finding of inadequacy, and that waiting to make this finding may compromise the states' ability to achieve the reductions by the time they are needed for timely attainment and maintenance thereafter. As discussed in the SNPRM, EPA concludes that, as it has done in the past, it may require submission of specific SIP measures pursuant to section 110(k)(5). Finally, as discussed in the SNPRM, EPA believes that it should find the states' SIPs inadequate only insofar as they do not contain the emissions reductions from new motor vehicles equivalent to those achieved by OTC LEV program because those reductions depend on vehicle fleet turnover, which will take an unusually long time to generate the needed emissions reductions.

EPA is basing today's final action in part on this independent authority under section 110, and it believes certain aspects of its explanation in the SNPRM merit elaboration. First, where EPA has found a measure to be necessary to prevent states from contributing significantly to other states' nonattainment, EPA concludes that section 110(k)(5) authorizes the Agency to find SIPs inadequate to the extent that they do not contain that measure. In this case, however, both EPA's SIP call under section 110(k)(5) and its necessity finding under section 184 are qualified by the assumptions EPA made in conducting the necessity analysis.

Because EPA assumed for purposes of its analysis that certain measures were not potentially practicable for all areas in the transport region and thus excluded such measures from consideration, the states' obligation under the SIP call could be met (1) by obtaining the necessary reductions from new motor vehicles through adoption of OTC LEV or through an alternative new motor vehicle program that achieved equivalent emissions reductions, or (2) by adopting alternative measures that will provide sufficient emission reductions to fill the gap in emission reductions needed to prevent significant transport impacts on downwind attainment, which would demonstrate that OTC LEV is not in fact necessary in that state.

Second, EPA continues to support the conclusions described in the SNPRM regarding the scope of this SIP call, 59 FR at 48669. The OTC LEV program is distinctive and warrants a finding under section 110(k)(5) that these SIPs are deficient insofar as they do not provide for emissions reductions from new motor vehicles equivalent to those achieved by that program. Model year 1999 and later vehicles will remain on the road until well after the attainment deadlines throughout the northeast. Failure to require that they meet LEV emissions standards will constitute an irrevocable loss in emissions reductions until those vehicles are replaced many years later. Therefore, it is important that the tighter LEV standards apply to these new vehicles if the reduced emissions will be necessary to achieve and maintain the NAAQS later.

A general finding of SIP inadequacy is not yet warranted. EPA recognizes the close connection between states' planning to address transport and their planning for reductions to ensure timely attainment. The November 15, 1994, deadline for states to submit modeled attainment demonstrations has now passed. However, of the states in the OTR that have submitted SIPs, none purports to provide for the emissions reductions needed to bring downwind states into attainment and continue maintenance of the ozone standard.¹⁰ Especially in such circumstances, EPA continues to believe that it has authority under section 110(k)(5) to find that the states' current SIPs are substantially inadequate for lack of a pollution

¹⁰ In the SNPRM, EPA incorrectly stated that the Act creates no deadline for submission of SIPs demonstrating compliance with section 110(a)(2)(D), and inadvertently omitted language it had drafted to explain that section 172(b), read in conjunction with section 172(c)(7), does establish a deadline for such SIPs for nonattainment areas. That date too has now passed.

control measure that must be adopted and implemented in the near term for the state to achieve fully the emissions reductions necessary to mitigate transport adequately. However, while the states' failure merits even closer EPA oversight of these states' progress in SIP development, EPA believes that a general finding of SIP inadequacy is not yet warranted. While, for the reasons described above, EPA is drawing an exception with respect to a finding of SIP inadequacy based on the absence of a LEV program from these SIP, EPA still believes it should generally allow states the first opportunity to address transport and their attainment demonstrations together in their forthcoming SIP revisions before the Agency exercises its SIP-call authority more broadly to address non-LEV deficiencies.

Even though the attainment demonstrations are now overdue, states are in the process of incorporating many additional control measures into their SIPs for purposes of meeting their obligations and are actively working to adopt regional strategies to address transport. In fact, as discussed in greater detail below, after publication of the SNPRM the OTC states signed a Memorandum of Understanding to adopt stringent controls on NO_x emissions from stationary sources that will apply region-wide throughout the OTR. EPA will continue to track the states' progress in adopting control measures to achieve the necessary reductions in time for downwind states to meet their attainment deadlines and to maintain the NAAQS thereafter, and if those efforts prove insufficient, EPA may consider making a more comprehensive finding of SIP inadequacy if other measures are lacking.

C. Consistency of EPA Action With Sections 177, 202 and 209 of the Act

EPA reaffirms its initial determination and rationale that its decision is consistent with sections 177, 202 and 209. See 59 FR 48670-48671. As discussed in the SNPRM, section 202(b)(1)(C) only precludes the Agency from promulgating national standards under section 202 that modify certain specified standards prior to model year 2004. This is not a general prohibition against all EPA action relating to the control of emissions from motor vehicles. In acting under section 184 and section 110, however, EPA is not imposing mandatory federal standards. Rather, EPA is requiring the states to exercise their own independent authority under section 177 to promulgate state regulations relating to

the control of emissions from motor vehicles. That state authority is not limited by section 202(b)(1)(C). Thus, this action relies not on EPA's authority under section 202 (which would be limited by section 202(b)(1)(C)), but on EPA's authority under sections 110 and 184, to mandate state action that would otherwise be discretionary.

Some commenters note that EPA is requiring states to act under section 177 in a manner that would otherwise be up to the discretion of the state.¹¹ However, as discussed above, sections 110 and 184 give the Administrator authority to impose "additional control measures" (i.e., measures over and above those required under other provisions of the Act) on states. Moreover, section 110(a)(2)(D) requires SIPs to contain provisions prohibiting "any source or other type of emissions activity" from emitting air pollution that interferes with attainment or maintenance in other states. This language is sufficiently broad to include motor vehicles. There is no indication that section 184 is limited in effect to stationary sources or that state standards for automobiles were excluded from the "additional control measures" that EPA could require under section 184.

IV. Basis for Requiring OTC LEV or a LEV-Equivalent Program

EPA's explanation of the proposed basis for approval of the OTC LEV recommendation comprises the primary subject of the SNPRM. See 59 FR at 48671-48694. This detailed explanation is not repeated here. Rather, the following discussion references many of the portions of the SNPRM on which EPA is relying for today's action. In addition to these references and a summary, this discussion only addresses changes to and elaborations upon EPA's explanation of its basis for action. In addition to the rationale set forth in this notice and the response-to-comments documents, EPA is also relying on the SNPRM as the basis for today's SIP call, except as otherwise explained in the response-to-comments documents or in this preamble, or where the SNPRM is inconsistent with those documents. EPA bases its requirement for states to adopt the OTC LEV program on its determinations that the emissions reductions that the program achieves are necessary to bring certain nonattainment areas into attainment (including maintenance) of the ozone standard by the dates applicable under

Subpart 2 of Part D of Title I of the Clean Air Act; that, unless an acceptable LEV-equivalent program is in effect, OTC LEV is necessary because there is no other currently available method of achieving these reductions from the same sources; and that requiring the OTC LEV program is consistent with other requirements of the Act. The basis for each of these determinations is described in detail in subsections A and B of this section of the notice.

A. Necessity

EPA's conclusion that the emission reductions achieved by the OTC LEV program are necessary to bring certain nonattainment areas in the OTR into attainment (including maintenance) of the ozone standard by their applicable dates is based on a series of statutory interpretations and factual determinations. As set forth in detail below, EPA is interpreting the "necessary" standard in section 184(c)—as well as the "significant contribution" and "interference" tests of section 110(a)(2)(D) read in conjunction with section 184(c)(5)—as authorizing the Agency to find "necessary" any potentially broadly practicable measure that, in light of the availability of other potentially broadly practicable measures, is needed to bring the downwind areas into timely attainment. EPA next analyzes the full magnitude of emission reductions needed for serious and severe nonattainment areas in the OTR to attain the standard, and the degree to which various sections of the OTR upwind of those respective nonattainment areas contribute to their nonattainment. From that analysis EPA concludes that 50-75% NO_x reductions from every portion of the OTR lying to the south, southwest, west and northwest of each of the serious and severe OTR nonattainment areas, as well as 50-75% VOC reductions from the portion of the OTR lying in or near (and upwind of) each of those nonattainment areas, are needed to bring each of those respective nonattainment areas into attainment by their respective attainment dates.

EPA then analyzes the potentially broadly practicable pollution control measures (other than emission standards for new motor vehicles) to determine whether they would achieve the necessary emission reductions; EPA concludes that they would not and that a significant shortfall would remain. Based on that conclusion, EPA finds that new motor vehicle tailpipe emission reductions are necessary to help fill that shortfall, and that, unless an acceptable LEV-equivalent program is in effect, the OTC LEV program is the

¹¹ This is likely to be true for any actions ordered under section 184 or 110. EPA would not need the authority of section 110 and 184 to require states to promulgate standards already required by law.

only program currently available to achieve those reductions, and hence that the OTC LEV program is necessary. EPA then concludes that the trading and migration of vehicles within the OTR provide a basis for requiring that the OTC LEV program be adopted even in the few portions of the OTR not upwind of a serious or severe nonattainment area in order to ensure that the necessary emission reductions from the various upwind portions of the OTR contributing significantly to those downwind nonattainment problems are actually achieved. Based on those findings, EPA then concludes that, unless an acceptable LEV-equivalent program is in effect, the OTC LEV program is necessary in every portion of the OTR to bring the serious and severe ozone nonattainment areas of the OTR into attainment by their respective attainment dates.

Finally, EPA concludes that it may interpret section 184's reference to attainment to incorporate maintenance of the ozone standard. EPA relies on that interpretation, on EPA's treatment of the OTR petition as resting also on the provisions in section 176A, and on EPA's independent authority under sections 110(a)(2)(D) and (k)(5) to address the interference of upwind states with maintenance of the standard by downwind states. Based on these, EPA concludes that it may and should make the same necessity and SIP inadequacy findings described above and approve the OTC recommendation, not only to assure timely attainment in the OTR's serious and severe nonattainment areas, but also because such reductions are necessary for those and certain other areas to maintain the ozone standard.

1. Legal Interpretation of Necessity

EPA discussed its interpretation of the "necessary" standard under sections 184(c) and 110(k)(5) in the SNPRM. See 59 FR at 48671-48675. EPA then proposed, under section 110(a)(2)(D), that contributing emissions are "significant," at least where EPA finds that controlling the emissions is necessary to bring any downwind area into attainment. EPA also proposed that contributing emissions "interfere" with downwind maintenance, at least where controlling the emissions is necessary for downwind areas to maintain the NAAQS. In particular, the Agency believes that the "necessary" standard requires the Agency to evaluate the emissions reductions needed and then determine whether potentially reasonable and practicable alternative measures could be adopted instead of the OTC LEV program to achieve the

needed reductions. *Id.* There are two different types of alternative measures that could affect a finding that OTC LEV is necessary. First, an alternative that achieves the same or greater emissions reductions from the same emissions sources (here, new motor vehicles) may render the OTC LEV program unnecessary. There are limited opportunities to develop an alternative to the OTC LEV program that would achieve the same or greater reductions from new motor vehicles. This is because section 202 bars EPA modification of the Tier I standards prior to model year 2004, and the states cannot, under sections 177 and 209, adopt standards other than the California standards. As discussed in the introduction to this notice and below, EPA has worked to explore the possibility of an alternative program to achieve equivalent reductions from new motor vehicles that would be consistent with these provisions. Such a program is not currently available to the OTC states. However, if EPA were to determine through rulemaking that a LEV-equivalent program is acceptable and to find that all the automakers had opted into the program, then states would not be required to adopt OTC LEV as long as the LEV-equivalent program remained in effect.

Second, certain alternative measures that are sufficient in the aggregate to achieve the necessary reductions without further reductions from new motor vehicles could likewise render the OTC LEV program unnecessary.

EPA's interpretation is consistent with its approach to interpreting the "necessary" standard under section 211(c)(4)(C) of the Act. See 59 FR at 48672. The interpretation certified by Congress under that section provides that measures are necessary if no other measures that would bring about timely attainment exist, or "if other measures exist and are technically possible to implement, but are unreasonable or impracticable." Similarly, EPA is concluding here that alternatives are available if they are at least potentially reasonable and practicable for application across the OTR, as well as sufficient to achieve the necessary reductions. Also, EPA's necessity determination and its SIP call are both subject to any state's ability to demonstrate, through adoption of alternative measures that EPA cannot currently find potentially practicable for all OTR areas, that the OTC LEV program is not in fact necessary to bring the downwind states into attainment (including maintenance), and thereby to prevent a significant contribution from that state to nonattainment in another

and to prevent interference with maintenance in a downwind state.

EPA must make any determination of the need for additional control measures in the context of factual uncertainty regarding issues such as whether measures are potentially broadly practicable, the amount of reductions needed, and the amount of reductions that particular measures will achieve in fact. EPA is making its determination based on the best information currently available. As explained in the SNPRM and elaborated upon in the response-to-comments documents, EPA believes that it should apply a general policy of resolving these uncertainties in favor of the public and the environment.

EPA noted in the SNPRM that the states' attainment plans were due two months later, and that the work the states had accomplished in assembling their attainment plans did not indicate that the OTC LEV program would be unnecessary to address the transport problem. See 59 FR at 48673. EPA has now received SIP submissions under section 182 (b)-(d), concerning attainment and rate-of-progress, that were due by November 15, 1994 from only a few of the states in the OTC. Of those received, none purports to achieve NO_x or VOC reductions sufficient to account for contributions to nonattainment problems further downwind. This further confirms that EPA should act now based on the best available information.

EPA discussed in its NPRM and SNPRM whether section 184, together with the legislative history, support giving "deference" to the OTC's recommendation regarding the necessity of the OTC LEV program, and EPA explicitly requested comment on that issue. See 59 FR at 21726-21727 and 59 FR at 48672. EPA has now considered the issue of deference to the OTC in light of the comments received and does not believe that the OTC, *per se*, deserves any special deference. EPA believes, however, that when states submit a request to EPA that EPA take specific action to implement section 110(a)(2)(D), whether under section 110(k)(5) alone or under sections 176A or 184, EPA should pay close attention to that request and consider it and any recommendations it makes carefully. EPA believes that this is appropriate in light of the fundamental role that states have historically played in implementing title I of the CAA and the expertise that states bring to bear on air pollution problems. In reviewing any such request from states, EPA remains obligated to consider independently all of the factual information available in determining whether any program

recommended by the states is necessary. In any event, in this instance, EPA's independent review of all the relevant factual information fully supports the conclusion that the OTC LEV program is necessary, and EPA has not accorded the OTC's recommendation deference in approving it.

2. Emission Reductions from OTC LEV or a LEV-Equivalent Program are Needed

(a) Magnitude of Reductions Needed for Attainment in 2005. The SNPRM contains EPA's detailed analysis of available modeling information regarding the magnitude of reductions needed for attainment in the serious and severe nonattainment areas in the OTR. See 59 FR at 48673-48675. EPA's conclusion is that NO_x emission reductions of 50% to 75% from a 1990 baseline emissions inventory are needed throughout the OTR to reach attainment of the ozone NAAQS in those serious and severe areas. EPA further concludes that VOC emissions reductions of 50% to 75% from a 1990 baseline emissions inventory are needed in and near (and upwind of) the Northeast urban corridor for attainment in the serious and severe areas. Some parts of the OTR may need reductions closer to the upper end of the range and other parts closer to the lower end, based on the emissions level in the particular area and the geographic location of the area.

As explained in the SNPRM, 59 FR at 48674, the 50% to 75% reductions are needed from a 1990 baseline emissions inventory, assuming that all growth in emissions since 1990 must be neutralized in addition to achieving these percentage reductions. The estimated target level of emissions implied by this percentage reduction will not vary over time, though the growth that must be neutralized will steadily increase. EPA derived this conclusion from extensive modeling studies that are described in the SNPRM but are not repeated here. See 59 FR at 48675.

EPA reviewed in detail the atmospheric modeling tools used to analyze the need for and effectiveness of various strategies, and the studies that had been completed at the time of the SNPRM. See 59 FR at 48674. These tools include the Regional Oxidant Model (ROM) and the Urban Airshed Model (UAM), which differ principally in the size of the modeling domain and the resolution of information about subunits in the photochemical grid. EPA also explained that the relationship between ROM and UAM modeling involves an iterative process. ROM applications provide boundary conditions (i.e., the

conditions of the ambient air at the upwind boundary of each of the UAM domains) for UAM analysis, and UAM analyses provide information about strategies that can be input for further ROM modeling to yield more refined boundary conditions for further UAM analysis.

The states' obligation to submit attainment demonstrations (due November 15, 1994) involves the use of UAM modeling to demonstrate that the adopted control measures will achieve attainment for their own nonattainment areas. As indicated above, only a few of the OTR states have submitted any of this information, including UAM modeling, and none has submitted the complete UAM modeling. As indicated in the SNPRM, EPA does not expect the UAM modeling to be completed in the near future. EPA does not believe it is appropriate to wait for the UAM attainment demonstrations (which have since become overdue) to reach a conclusion here. This is because ROM is the more important modeling tool for assessing transport and is sufficient to support certain key conclusions with respect to transport. Also, the OTC LEV and the LEV-equivalent programs depend on time for vehicle turnover to achieve reductions and delay could cause necessary reductions to be irrevocably lost. Current information justifies action now to avoid the very high risk of losing necessary reductions while awaiting further technical information from the states that is already overdue.

(b) Contribution Analysis

As described in more detail in the response-to-comments documents, EPA continues to rely on the ROM studies described in the SNPRM—the ROMNET and Matrix studies—to support its conclusions concerning transport and the amount of emissions reductions needed across the region for the serious and severe nonattainment areas in the Northeast corridor to attain. In the SNPRM, EPA examined the degree to which transport contributes to the ozone problem in each of those areas. See 59 FR at 48675-77. EPA acknowledged that it is enormously complicated to determine which reductions are needed for any specific area to avoid causing ozone exceedances downwind. The analysis depends on regional, urban, and wind trajectory modeling information and monitoring data, as well as information on controls assumed in the web of downwind areas and other upwind areas. In the SNPRM, EPA noted that the OTC relied on ROM studies and trajectory analyses to determine the extent to which upwind

areas contribute to exceedances downwind throughout the OTR. EPA continues to believe that these studies support its conclusions.

In the SNPRM, EPA also reviewed studies in which EPA examined surface winds and aloft winds data during the relevant times. As stated in the SNPRM, this information indicates that transport results in a large cumulative impact of emissions and ozone transported by surface winds from the south and southwest of each of the nonattainment areas along the Northeast urban corridor, and that transport also results from ozone and emissions transported by winds aloft from far to the west and northwest of each of the nonattainment areas along the corridor. EPA continues to believe that these studies support its conclusions.

More specifically, wind trajectory data support the conclusion that the following areas contribute to nonattainment and maintenance problems in the OTR, in the following manner (other areas may contribute as well): The Washington, D.C. nonattainment area—encompassing part of Virginia, the District of Columbia, and part of Maryland—is to the south-southwest of the Baltimore, Maryland, nonattainment area, and thus, according to wind trajectory data, ozone and emissions from those areas travel with the surface winds to contribute to the nonattainment problem in Baltimore. The Baltimore area itself, as well as the rest of Maryland, is to the south, southwest, or west of the Philadelphia, Pennsylvania nonattainment area, which includes parts of Pennsylvania, Delaware and New Jersey; thus ozone and emissions from Maryland contribute to that nonattainment problem. Ozone and emissions from western Pennsylvania, and western and northern Maryland, contribute to the Philadelphia problem as well. Ozone and emissions from the Philadelphia area contribute to the New York City area which lies to the northeast. Ozone and emissions from western and northern Pennsylvania and northern New Jersey, and the southern and western portions of upstate New York—which are to the west and northwest of the New York City area—also contribute to the nonattainment problem in that area, which comprises parts of New York, northern New Jersey, and southern Connecticut. The New York City area is to the southwest of Providence, Hartford, and Boston, and thus ozone and emissions from the New York City area contribute to those areas' problems. Ozone and emissions from upstate New York and northern Pennsylvania, which lie to the west and

northwest, also contribute to the problems in Hartford, Providence and Boston. Connecticut, Rhode Island, western Massachusetts, Vermont, and central and southern New Hampshire also contribute to the Boston problem, by virtue of lying to the southwest, west or northwest of Boston. By virtue of lying to the southwest of Portsmouth, New Hampshire, the states of Connecticut, Rhode Island, and Massachusetts contribute to Portsmouth's nonattainment problem. Western and northern New York State, Vermont, and central and southern New Hampshire lie to the west and northwest of the Portsmouth nonattainment area, and thus also contribute to the Portsmouth problem. The Boston area, as well as New Hampshire, Vermont, and New York State, lie to the southwest or west of Maine, and thus contribute to nonattainment and maintenance problems in Maine.

Recently, and too late for inclusion in the rationale of the SNPRM, three additional studies have become available, described below. These new studies confirm the conclusions indicated by the previous studies.

EPA has completed a modeling analysis for the OTC to examine the potential impacts of region-wide NO_x-oriented control strategies in portions of the eastern United States.¹² The pertinent purposes of this analysis were (1) to identify whether a set of alternative regional controls would reduce ozone transport into and along the Northeast "Urban Corridor" to below 120 ppb, and (2) to examine the incremental benefits, in term of ozone reductions in the Corridor, from the application of control strategies within the Corridor only and within the entire OTR. For this analysis, the "Urban Corridor" is defined as the contiguous serious and severe ozone nonattainment areas extending from Washington, DC, through Baltimore, Philadelphia, New York City, and New England to southern New Hampshire.

For the analysis EPA used ROM (see 59 FR at 48674), a photochemical grid model covering the eastern half of the United States and southeastern Canada. Model simulations were performed for two meteorological episodes: July 1-15, 1988 and July 13-21, 1991. The July 1988 period was a severe and widespread ozone episode in most sections of the modeling domain. During the July 1991 period, high ozone concentrations were limited to the Midwest and Northeast. Meteorological

weather patterns were quite favorable for large-scale ozone and precursor transport into and along the Urban Corridor during both episodes.

EPA modeled several scenarios simulating very significant emission reductions (on the order of 35-40% for NO_x and VOC) in the OTR. These scenarios included, among others, reductions from combinations of measures, including the Clean Air Act-mandated control programs, a 0.15 lb/MMBtu NO_x limit, an additional "corridor control package," and LEV. None of these emission reduction combinations was sufficient to reduce ozone levels to below 0.12 ppm throughout the region. Specifically, even with the most effective combination of measures, several areas, including the New York City area and parts of New England, were not in attainment by the year 2005. Specifically in New England, even the most effective combination of these measures did not result in attainment in the Boston area and parts of Connecticut and Rhode Island by the year 2005. Because emissions are lower in 2005 than in 1999 (the attainment year for serious areas in the OTR), it is a reasonable extrapolation from this data that an even greater nonattainment problem remained in 1999, and that a maintenance problem in these areas is to be expected. This provides additional support to EPA's conclusions from the SNPRM that very large emission reductions will be required throughout the OTR to bring all areas into attainment.

EPA also used ROM to examine the impact on air quality of a region-wide OTC LEV program applied in addition to a Clean Air Act 2005 base case scenario and a 0.15 lb/MMBtu NO_x program in the OTR. Given that, due to fleet turnover, reductions from the OTC LEV program would be only partially achieved by 2005, EPA's ROM analysis found the incremental improvements in ozone levels due to application of the OTC LEV program (reductions of 3-6 ppb in daily maximum ozone levels) to be relatively large. EPA found this incremental improvement from OTC LEV most evident when the LEV results are compared with the results of simulating the impact of a "corridor control strategy" that would result in similar emission reductions.

A further discussion of this recent model analysis is included in the response-to-comments documents.

New York State reached conclusions that support the studies described above, after applying the Urban Airshed Model (UAMIV) to the modeling domain being used in the New York and

Connecticut ozone attainment demonstrations.¹³ These studies utilized the CALMET procedure for generating meteorological inputs to UAM.

Consequently, resulting wind fields and mixing heights differed from those used in the ROM analyses and in earlier UAM studies conducted by the same investigators. New York State's most recent UAM study shows that it would be impossible to demonstrate attainment unless large reductions in regional ozone transported into the domain were realized. In this UAM study, it is shown that a local strategy reflecting 75% reduction in VOC and 25% reduction in NO_x combined with an upwind regional strategy reflecting 75% reduction in NO_x and 25% reduction in VOC would be necessary to attain the NAAQS throughout the New York UAM domain. These results add credence to the ROM matrix findings and results from ROM simulations performed for the OTC, which came to similar conclusions.

In the New York UAM analysis, both large VOC and large NO_x reductions were effective in reducing peak ozone concentrations, with the VOC controls being somewhat more so. However, predicted reductions in ozone were more extensive over a larger area when NO_x was reduced by large amounts. This latter finding with the UAM is consistent with ROM analyses that suggest that large NO_x reductions will be needed to reduce regional transport to at or below 120 ppb of ozone. As noted above, the New York UAM analyses to date are consistent in predicting that large reductions to incoming regional ozone (through control of ozone precursors) will be needed to demonstrate attainment further downwind with the UAM.

The New York UAM analysis uses more refined, localized meteorological estimates (CALMET), instead of coarser ROM meteorology, as well as the updated interim regional inventory, rather than 1985 National Acid Precipitation Assessment Program emissions. This study is close to what New York is expected to use for its attainment demonstration and rate-of-progress SIPs; thus, the study is particularly helpful.

Finally, EPA performed studies designed to determine the extent to which improved air quality in recent years is due to meteorological fluctuations compared to reduced VOC

¹² See "Summary of EPA Regional Oxidant Model Analyses of Various Regional Ozone Control Strategies", November 28, 1994.

¹³ See Kuruvilla, John et. al., "Modeling Analyses of the Ozone Problem in the Northeast", prepared for U.S. EPA, CA No. X819328-01-0, EPA document no. EPA-230-R-94-108, 1994.

emissions.¹⁴ These studies, discussed in more detail in the response-to-comments documents, included the development and application of a statistical procedure for normalizing apparent ozone air quality trends to account for confounding meteorological factors. The studies concluded that after meteorology is normalized, there has been a downward trend in ozone concentrations of 1–2% per year, from 1981 through 1993 (the end date of the studies). EPA then conducted a ROM test that examined the impact on ozone levels of the reduction in VOC and NO_x emissions between 1988 and 1991. ROM predicted a decrease in ozone levels that matched the decrease observed in the meteorological studies. EPA views these studies as confirmation of the validity of the ROM model's estimates.

For its conclusions, EPA relies on (1) the initial ROM studies showing that 50–75% NO_x reductions (from 1990 levels) from the OTR as a whole are needed to bring the serious and severe nonattainment areas into attainment by 2005; (2) the wind trajectory analysis supporting the conclusion that locations lying anywhere from the south through northwest of each of those nonattainment areas must contribute that level of NO_x reductions in order for each of those nonattainment areas, respectively, to attain; and (3) the subsequent ROM, NY UAM and meteorological studies confirming the results of the initial ROM and wind-trajectory analysis. Based on these, EPA concludes that 50–75% NO_x reductions from the 1990 levels in each state (or, in the case of Virginia, the portion of the state) in the OTR will be needed in order for each of the serious and severe areas from Baltimore northeast through Portsmouth, New Hampshire to attain the standard. In addition, based on the same analyses, EPA concludes that 50–75% VOC reductions from the 1990 levels are needed in and near and (upwind of) those nonattainment areas in order for each of those areas—including the portions of the Washington, Philadelphia, New York, Providence and Portsmouth areas just downwind and across state lines from those nearby upwind VOC sources—to attain the standard by their respective attainment dates.¹⁵ The need for this

¹⁴ See Briefing, "Urban Ozone Trends Adjusted for Meteorology"; See also Cox, William M. and Chu, Shao-Hung, "Meteorologically Adjusted Ozone Trends in Urban Areas: A Probabilistic Approach", *Atmospheric Environment*, Vol. 27B, No. 4, pp. 425–434, 1993.

¹⁵ For example, VOC sources in the northern Virginia portion of the Washington nonattainment area contribute to nonattainment in the Maryland portion of that area, and VOC sources in the New

large level of reductions, coupled with the wind trajectory data, form the basis for EPA's conclusions that virtually every area within the OTR contributes directly to a nonattainment or maintenance problem in a downwind state in the OTR.

(c) Analysis of Inventory and Options for Control Measures

The next step in EPA's analysis is to assess the options available for achieving the necessary reductions in NO_x across the OTR and in VOCs in and near the Northeast Corridor of the OTR, which is discussed in more detail in the SNPRM. See 59 FR at 48677–48684. For this step, EPA first assessed the best available information about the inventory of emissions across the OTR and then considered various potential control measures to reduce emissions by the necessary amount. In its analysis, EPA considered options that are at least potentially reasonable and practicable across the entire OTR (referred to herein as "potentially broadly practicable" measures). In other words, EPA has not considered options that, while perhaps potentially practicable to some extent in some locations, would be impracticable if applied to their full extent throughout the OTR.¹⁶

i. Inventory Analysis

EPA relied on the 1990 interim regional inventory used for ROM and UAM analyses and projected emissions growth to estimate NO_x and VOC emissions in 2005 (the attainment deadline for severe areas, except for the New York-New Jersey-Connecticut area with the slightly later deadline of 2007). EPA projected that highway vehicles will account for approximately 38% of the total NO_x inventory and 22% of the total VOC inventory in 2005, indicating that substantial motor vehicle controls would have to be an important part of a workable compliance plan for the OTR. EPA projected the gasoline-powered light-duty vehicle component of the inventory (the vehicle types that

Hampshire portions of the Boston nonattainment area contribute to nonattainment in the Massachusetts portion of that area.

¹⁶ EPA believes that whether such measures—particularly those involving local land-use, highway, or mass transit infrastructure changes—are practicable to some extent in individual areas depends on a consideration of local factors that can be conducted only by state and local citizens and governments. For that reason, EPA cannot itself either determine or assume that those measures are practicable to some extent in any particular area. As described elsewhere in this notice, however, EPA has left states the flexibility to demonstrate that such measures are indeed practicable and hence might close any emissions reductions shortfall so as to render emission reductions from new motor vehicles unnecessary.

would be subject to the OTC LEV program) to constitute 28% of total NO_x emissions and 19% of total VOC emissions in the 2005 inventory.

ii. Analysis of Options for Control Measures Without More Stringent New Motor Vehicle Standards

To identify and evaluate the full range of potentially broadly practicable control options, EPA first analyzed the impact of measures explicitly required by the Act, using the same ROM modeling tools used to assess the overall magnitude of reductions needed in the OTR. The Agency then analyzed other options to fill the shortfall in emissions reductions, including a stringent limit on NO_x emissions, measures EPA included in proposed Federal Implementation Plans (FIPs) for three areas in California, and measures listed in compilations of NO_x and VOC control measures prepared by EPA and the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). Recognizing uncertainties in various aspects of its analysis and EPA's authority to resolve those uncertainties in favor of health and environmental protection, EPA concludes that no combination of such measures would be sufficient to achieve the necessary amount of reductions without more stringent standards applicable to new motor vehicles.

EPA identified in the SNPRM the array of measures applicable to stationary and mobile sources under the Act, and described its modeling of the impacts of these measures on ambient ozone levels in the OTR. EPA calculated that application of these controls would achieve reductions by 2005 in the OTR of 20% for NO_x and 37% for VOCs from the 1990 baseline inventory, and concluded from ROM studies modeling the impacts of these measures that this level of reductions would be insufficient.

As explained in the SNPRM, EPA must account for problems in calculating the impact of control measures, including imperfect enforcement, control equipment malfunctions, and operating and maintenance problems. Accounting for such problems through a "Rule Effectiveness" factor diminishes the emissions reductions that one could expect if all sources could fully comply with rules at all times. See 59 FR at 48682. EPA noted that it had applied Rule Effectiveness considerations in calculating the overall impact of the Act-mandated controls for the ROM studies and for mobile sources within the MOBILE emissions model. See 59

FR at 48679 n.36 and 48682. However, EPA did not apply Rule Effectiveness values in calculating the impacts of other control measures, thereby making these measures overly optimistic.

In addition to the Act-mandated controls, EPA also examined the impact of a region-wide limit on NO_x emissions of 0.15 lbs/MMBtu (the "0.15 NO_x standard") for boilers, gas turbines, and internal combustion engines with a capacity of at least 250 MMBtu/hr. EPA calculated that this level of control would achieve a 15% reduction in inventory-wide NO_x emissions from a 2005 projected baseline, after application of other controls mandated in the Act. Together with the mandatory measures, this would achieve a total NO_x emissions reduction in the OTR of 32% from 1990 baseline levels.

EPA explained in the SNPRM that it evaluated the 0.15 NO_x standard as representing the maximum emissions reduction from large stationary sources that is not clearly unreasonable or impracticable. See 59 FR at 48679. By this EPA explained that it did not mean that EPA believes that such measures are in fact reasonable and practicable. See 59 FR at 48678.

In fact, on September 27, 1994—five days after publication of the SNPRM—eleven of the thirteen OTC member States signed a Memorandum of Understanding regarding regional NO_x controls (NO_x MOU) somewhat less stringent than the 0.15 NO_x standard. Only Massachusetts and Virginia have not signed the NO_x MOU.

Designed to build on the existing NO_x Reasonably Available Control Technology (RACT) program, the agreement represents a phased approach to controlling NO_x emissions from power plants and other large fuel combustion sources. The first component (called "phase II" because the existing NO_x RACT program is "phase I"), to be implemented by May 1999, would include three control zones in the region: An inner zone ranging from the Washington, DC, metropolitan area northeast to southeastern New Hampshire; an outer zone ranging from the inner zone out to western Pennsylvania; and a northern zone which includes much of northern New York and northern New England, including most of New Hampshire.

Control requirements under the MOU vary with the zone in which the various sources are located, with the most stringent requirements occurring in the inner zone. Affected sources (boilers and indirect heat exchangers with a maximum gross heat input rate of at least 250 MMBtu per hour and electric generating units producing at least

15MW of electricity) in the Inner Zone will be required to reduce NO_x emissions by 65 percent from base year levels or emit NO_x at a rate of no more than 0.2 lbs/MMBtu. In the Outer Zone, NO_x emissions must be reduced by 55 percent from base year levels by May 1, 1999, or emissions must be limited to no more than 0.2 lbs/MMBtu. Northern Zone controls remain at RACT levels during phase II.

The next phase (known as "phase III") would be implemented by May 2003. By that date, affected sources in both the Inner and Outer Zones must reduce NO_x emissions by 75 percent from base year levels or limit NO_x emissions to no more than 0.15 lb/MMBtu. Affected sources in the Northern Zone would be subject to regulations that would reduce their rate of NO_x emissions by 55 percent from base year levels, or would have to emit NO_x at a rate of no greater than 0.2 lbs/MMBtu.

The NO_x MOU provides for modified regulations for the May 1, 2003, targets if additional modelling and analysis show that these modified regulations, in combination with regulations for controlling VOCs, will result in attainment of the ozone standard throughout the OTR. In such a case, the NO_x MOU would have to be revised by December 31, 1998.

Based on EPA's 1990 interim emissions inventory, EPA estimates that the NO_x MOU will result in about a 70 percent reduction in NO_x from these sources, or slightly less than the reduction that would have occurred with the application of a region-wide 0.15 lbs/MMBtu standard. EPA estimates that more than three-fourths of the total NO_x reductions to be obtained under the NO_x MOU will be achieved by 1999.

In addition to the Act-mandated measures and region-wide NO_x controls, EPA also considered a variety of NO_x and VOC control measures from STAPPA/ALAPCO compilations, transportation control measures, California reformulated gasoline, and measures EPA proposed for FIPs for California areas. As summarized in the SNPRM, most of the NO_x source categories in the STAPPA/ALAPCO compilation were already encompassed within the 0.15 NO_x standard. The remaining STAPPA/ALAPCO categories of small stationary and area sources comprise an extremely small portion of the stationary source segment of the emissions inventory, and a still smaller portion of the overall inventory. EPA also calculated that the transportation control measures that EPA would consider potentially broadly practicable would yield only a combined reduction

of 2.5% from 1990 baseline inventory-wide NO_x reductions. In the SNPRM, EPA identified the option of extending the employee trip reduction (or employee commute options ("ECO")) program region-wide as potentially practicable. Upon further consideration, EPA believes it is more appropriate to characterize region-wide ECO as a measure that, while potentially practicable in some urban and suburban settings, cannot be considered broadly practicable if applied across the OTR. Deleting the emission-reduction benefits of extending ECO region-wide, however, merely buttresses the conclusions described above. For California reformulated gasoline, EPA calculated a 1.4% reduction in NO_x emission from 1990 baseline inventory-wide levels. For the proposed California FIP measures, EPA also did not find additional options that were not either inappropriate or unavailable in the OTR, or already encompassed within the Act-mandated controls or 0.15 NO_x standard. In sum, EPA concludes that all other potentially broadly practicable options will be needed in addition to more stringent controls for new motor vehicles throughout the OTR, in order for the serious and severe ozone nonattainment areas in the OTR to attain the ozone standard; those other options will not produce emissions reductions sufficient to remove the need for such motor vehicle controls. As described in the SNPRM, similar conclusions apply with respect to VOC emission controls in and near the urban Northeast Corridor nonattainment areas of the OTR.

iii. Determination Whether Reductions from OTC LEV or LEV-Equivalent Program Are Necessary

As discussed in the SNPRM and above, EPA has concluded that there are not sufficient broadly practicable options for making up the shortfall in emissions reductions necessary for attainment and that all of the emissions reductions associated with applying the OTC LEV or LEV-equivalent program are necessary. See 59 FR at 48683–48684. EPA calculated the impact of the OTC LEV program in 2005 from the 2005 projected inventory, over the reductions that will take place in New York and Massachusetts as a result of their existing LEV programs beginning in 1996. EPA did not account in those calculations for the emissions associated with migrating and visiting vehicles. EPA subsequently analyzed these migration effects and published a notice describing them on October 24, 1994, 59 FR 53396. Since that notice, EPA has done a more thorough analysis of these effects, which can be found in the RIA

located in section V of the docket. EPA now estimates that those migration effects result in a 16 ton per day increase in VOC emissions and a 28 ton per day increase in NO_x emissions in 2005 over EPA's previous estimates of highway vehicle emissions under the OTC LEV program. However, the benefits of the OTC LEV are still substantial and EPA continues to believe that the information above and in the SNPRM (see conclusion 59 FR at 48682) supports the conclusion that all of the emission reductions associated with the OTC LEV program are necessary and that no options other than that program are currently available to achieve reductions from new motor vehicles. The OTC LEV program is necessary unless an acceptable LEV-equivalent program is in effect.

The OTC LEV program would be reasonable and practicable in the OTR, as explained in the SNPRM, 59 FR at 48683-48684. EPA granted California a waiver for the LEV program based on a finding of technical feasibility and adequate lead-time; the California Air Resources Board (CARB) has continued to find the program feasible with certification of several categories of LEVs; New York and Massachusetts have also found that the program is reasonable; and the legislative history of section 177 reflects the notion that extension of California standards to other states would not place an undue burden on auto manufacturers.

iv. ZEV Equivalency

EPA requested comment in the SNPRM on whether it should use its authority under section 184 to include a "ZEV equivalency" requirement—*i.e.*, to require the OTR states to achieve the additional emissions reductions associated with the ZEV production mandate if the Agency were not to require the OTR states to adopt the ZEV mandate. See 59 FR at 48684. EPA noted that in an August 4, 1994, letter, the Chair of the OTC stated that, for purposes of discussing different options with the auto manufacturers, any alternative should be compared to the full LEV program, including the ZEV mandate. In addition, commenters suggested that EPA require that states' programs compel the automobile manufacturers either to sell ZEVs or to achieve equivalent reductions from the new vehicle sector.

EPA has decided that today's action should not require states to achieve those benefits of the ZEV production mandate that are not otherwise provided

by the OTC LEV program.¹⁷ First, EPA does not interpret the OTC's recommendation as recommending that EPA issue such a requirement. Regarding the ZEV production mandate, the OTC's February 10, 1994, recommendation states:

To the extent that a Zero Emission Vehicle sales requirement must be a component of a LEV program under Section 177, such a requirement shall apply. Further, if such a Zero Emission Vehicle sales requirement is not a required component of programs adopted under Section 177, individual States within the OTC may at their option include such a requirement and/or economic incentives designed to increase the sales of ZEVs in the programs they adopt.

Thus the OTC states clearly recommended that they be obligated to adopt the ZEV mandate only if it were legally required for adoption of the LEV program under section 177. Since EPA has concluded that states adopting the LEV program are *not* obligated to adopt the ZEV mandate under section 177 (see discussion in section IV.B.3. below), the OTC states have not recommended that EPA require state adoption of the ZEV mandate. The states also clearly expressed their wish to retain authority as individual states to adopt ZEV mandates. This in no way suggests that the states wanted EPA to require those who choose not to adopt a ZEV production mandate to achieve its benefits through other requirements applicable to manufacturers of new motor vehicles.

The February 10 recommendation does not elsewhere reflect any desire that EPA require the states to achieve the additional benefits associated with a ZEV mandate. The recitation clauses in the OTC's recommendation state the OTC's expectation that EPA should evaluate alternatives to the OTC LEV program according to specified criteria. This does not, however, amount to a request that EPA require that states achieve the benefits associated with the ZEV mandate. Rather, EPA believes this is best understood as indicating the OTC's desire that EPA should consider other options to achieve the same reductions from new motor vehicles through a LEV-equivalent program. In so

¹⁷ For purposes of today's action, the additional benefits of ZEVs are NMOG evaporative and NO_x tailpipe emissions. Because the LEV program's fleet NMOG average is unaffected by the ZEV mandate, the ZEV mandate does not affect fleet NMOG tailpipe emissions, but the mandate does result in increased reductions of NMOG evaporative and NO_x tailpipe emissions. Commenters also suggested that auto manufacturers be responsible for CO, toxics and CO₂ benefits of ZEVs, but consideration of these benefits is beyond the scope of the Agency's authority under section 184, which pertains solely to ozone pollution and its precursors.

doing, EPA believes the OTC's recommendation is best understood to underscore that such an option should also advance technology.

Second, the August 4, 1994 letter from the OTC does not support the view that EPA should require that states achieve the additional emissions benefits of the ZEV mandate. That letter does not purport to interpret the OTC's February 10 recommendation.¹⁸ Rather, that letter sets forth the OTC's principles in approaching negotiations with the automakers regarding a LEV-equivalent program. The August 4 letter reflects the OTC's desire that the OTC's agreement to accept a LEV-alternative would not deprive the OTC states of the ZEV benefits that they would otherwise have the option to require. This is entirely different from a recommendation that EPA *require* that the states achieve the ZEV benefits.¹⁹

d. The Effect of a Possible LEV-Equivalent Program on the Need for OTC LEV

As mentioned above, EPA is continuing to work with the interested parties to determine whether a LEV-equivalent program could be developed. Several commenters have argued that the possibility of a LEV-equivalent program precludes EPA from finding that OTC LEV is necessary. EPA disagrees with these commenters for the reasons given in the SNPRM, 59 FR 48683 (cols. 2-3). There is no currently available method (other than adoption of a LEV program under section 177) for a state unilaterally to require emission reductions from new motor vehicles. The alternative program being developed by interested parties is not an option that individual states can adopt now. The alternative requires the automakers' consent to tighter standards and the automakers have made it clear that their consent will not be given without certain conditions being met—including the condition that all OTC states agree to the alternative. Not all OTC states have agreed to an alternative, and EPA does not have authority to require them to do so. In addition, the automakers have indicated that their agreement to a LEV-equivalent program is contingent on New York and

¹⁸ EPA need not resolve whether it is appropriate to rely on such a letter to determine the OTC's intent.

¹⁹ Even if the OTC had intended that EPA require state programs requiring from the new motor vehicle sector the additional benefits provided by a ZEV production mandate, it is unlikely that EPA could issue such a requirement. EPA received no comments explaining how, without adopting a ZEV mandate, states could require the additional ZEV mandate emission benefits from the new motor vehicle sector and not violate sections 209 and 177.

Massachusetts dropping their ZEV programs. EPA cannot require those states to take such an action. Furthermore, the alternative would likely require either EPA regulations or a consent decree or both before it would be valid. EPA cannot now find that the OTC LEV program is unnecessary even though a LEV-equivalent program might become available in the near future. As discussed elsewhere in this notice, however, EPA has qualified its finding that OTC LEV is necessary by providing that that program will not be considered necessary, and hence will not be required, if and when EPA finds that an acceptable LEV-equivalent program is in effect.²⁰

e. Particular Circumstances of OTC LEV Program.

Several particular aspects of the OTC LEV program further support EPA's conclusion that it is necessary to adopt the program region-wide to attain the greatest amount of emissions reductions and to facilitate operation of the program, as explained in more detail in the SNPRM. See 59 FR at 48684-48685. These circumstances include: The interstate nature of the business of selling new cars, particularly among the smaller Northeast states and especially along their border areas; the need for states to adopt the program as soon as possible because the fleet turnover on which the emissions reductions depend takes substantial time; and the mobility of cars throughout the dense transportation infrastructure in the Northeast, so that the sale of cars meeting less stringent standards in part of the region could compromise environmental benefits across the region. The mobility of motor vehicles in the OTR supports the conclusion that the LEV program is needed throughout the OTR, to ensure that both the motor-vehicle-related portion of the overall NO_x reduction needed throughout the OTR, and the motor-vehicle-related portion of the overall VOC reductions needed in and near the urbanized Northeast Corridor, are actually achieved.

f. Conclusions Regarding Need for OTC LEV or a LEV-Equivalent Program for Purposes of Bringing Downwind States Into Attainment by the Dates Provided in Subpart 2 of Part D of Title I

The next step in EPA's analysis in the SNPRM was to address specifically the

need for the OTC LEV program by the 1999, 2005, and 2007 attainment deadlines for the serious and severe areas in the OTR. As noted above, EPA's conclusion that 50% to 75% reduction from a 1990 baseline inventory in NO_x emissions throughout the OTR and in VOC emissions in and near the urban areas is constant over time. EPA's modeling focused primarily on the 2005 inventory, at which time growth since 1990 must be offset in addition to achieving the 50% to 75% reductions. As EPA explained in the SNPRM, there is no reason to believe that the conclusion that emission reductions equivalent to those achieved by the OTC LEV program are necessary would be different for the New York-New Jersey-Connecticut severe area, which has a 2007 attainment deadline. This is because the control options EPA considered will not achieve such greater reductions in the extra two years so as to make up the shortfall needed for attainment. Also, each of these three states needs the program in order that the other two may attain by 2007, as they share a common airshed and commuters from each of these states contribute emissions to the others. For these same reasons, these three states may also need the program in order that the southern New Jersey-Philadelphia nonattainment area may attain by 2005.

Based on the ROM and trajectory analyses described in the SNPRM and the analysis of alternative control measures, EPA also believes that, unless an acceptable LEV-equivalent program is in effect, all of the OTR states need the OTC LEV program in order that serious areas with a 1999 attainment deadline may attain on time. As noted above, because emissions will be lower in the OTC nonattainment areas in 2005 than in 1999, it is a reasonable extrapolation from the modeling data that an even greater nonattainment problem will remain in 1999 than in 2005. Even the limited reductions from the OTC LEV program in model year 1999 are actually necessary, given the reductions that need to be achieved in upwind states in order for each of these areas to attain on time. Further, the attainment date for those serious areas may well extend beyond 1999. This provides another reason to resolve in favor of acting quickly, any uncertainties with regard to the need for an OTC LEV or LEV-equivalent program to bring serious areas into timely attainment. Three years of data are needed to actually achieve attainment, and the states may legally extend their attainment deadlines for two one-year periods if one exceedance of the

NAAQS occurs in the deadline year. It is quite possible that at least some of the serious areas with 1999 deadlines will need to rely on these extensions through 2001. Certainly current modeling indicates that the best chance for these areas to attain by their attainment dates would be through use of these one-year extensions. Emission reductions from the OTC LEV program would be necessary to offset growth and sustain attainment-level air quality in 2000 and 2001, when the program will generate increasing reductions due to fleet turnover.

In summary, based on the analysis in the SNPRM and consideration of the comments, EPA concludes that (1) emission reductions from the OTC LEV or a LEV-equivalent program are a necessary part of the 50-75% NO_x and VOC reductions needed from upwind states to bring serious and severe areas stretching from the Washington, DC nonattainment area to the Portsmouth, New Hampshire nonattainment area into attainment by the 1999, 2005, and 2007 deadlines applicable to those areas; (2) the reductions from OTC LEV or a LEV-equivalent program will be needed in areas located in a broad arc extending from the south through the northwest of each of those areas; (3) such a program is also needed in the remaining parts of the OTR to maintain the program's effectiveness in light of dealership trading and migration of vehicles throughout the OTR; and (4) the OTC LEV program is the only currently available program for reducing emissions from new motor vehicles. Therefore, EPA concludes that the OTC LEV program is necessary in each state (or in the case of Virginia, portion of the state) in order to bring all of those serious and severe nonattainment areas into attainment by those dates, unless an acceptable LEV-equivalent program is in effect.

3. OTC LEV or LEV-Equivalent Program is Also Needed for Maintenance

In the SNPRM, EPA also addressed how maintenance of the ozone NAAQS after it is achieved is relevant to EPA's analysis. See 59 FR at 48687-48690. First, EPA explained its legal authority to consider maintenance under both sections 110(k)(5) and 184, and then described why OTC LEV or a LEV-equivalent program is necessary for maintenance.

a. Legal Analysis

EPA concludes that it has authority to act, even under section 110(k)(5), even prior to submission of attainment demonstrations under section 182, to require submission of measures

²⁰ On another point raised in the SNPRM, EPA noted that it was considering an extension of its cross-border sales policy to Maine dealers. EPA has made this extension. See letters from Mary T. Smith to Honorable Olympia J. Snowe and Honorable William S. Cohen, dated October 12, 1994.

necessary for compliance with the maintenance aspects of section 110(a)(2)(D), as discussed in more detail in the SNPRM. In the SNPRM and NPRM discussions, EPA emphasized the relocation of maintenance in general to section 175A in the 1990 Amendments to the Act, together with the retention of maintenance as an explicit consideration under section 110(a)(2)(D) for purposes of addressing pollution transport. Particularly in light of the staggered attainment deadlines under section 181 for ozone, upwind areas with later deadlines may continue to generate emissions interfering with downwind maintenance in downwind areas with shorter attainment deadlines. As with the attainment analysis, EPA concludes that it is important to act now, because reductions from the OTC LEV and LEV-equivalent programs are dependent on fleet turnover, and delay would cause the irrevocable loss of emissions reductions necessary for downwind maintenance. Also, uncertainty in the factual analysis for maintenance should be resolved in favor of health and the environment for the same reasons EPA described in the attainment discussion.

EPA also concludes maintenance is a proper consideration under section 184(c), as described in more detail in the SNPRM and NPRM. While the language of section 184(c) references timely attainment and does not explicitly refer to maintenance, EPA concluded that "attainment" should be understood to include "maintenance" where the issue is whether measures are "necessary" to comply with pollution transport requirements. This is because it does not make sense to believe Congress intended that section 184 would not reach a measure in fact necessary for maintenance, when the result of a failure to implement the measure would therefore be downwind areas' relapse into nonattainment. Also, EPA believes that the OTC is an entity also established under section 176A, which encompasses both the attainment and maintenance aspects of section 110(a)(2)(D). Section 184 simply adds stringency to section 176A in light of the serious problem in the northeast. It therefore makes sense to believe Congress did not intend in section 184(c) to displace the more general authority of a commission under section 176A to make recommendations, and for EPA to approve recommendations, concerning both the attainment and maintenance aspects of section 110(a)(2)(D). EPA has reviewed the comments submitted on this issue and continues to believe that it has the

authority to consider maintenance when acting pursuant either to section 110 or section 184 for the reasons given in the SNPRM and in the response-to-comments documents.

Beyond that, as described earlier, EPA believes that it may treat the OTC submittal also as a request with recommendations under section 176A, which plainly authorizes EPA to approve such a request if its recommended measures are necessary to prevent interference with maintenance in downwind states under section 110(a)(2)(D).

b. Technical Analysis

EPA is concluding that, unless an acceptable LEV-equivalent program is in effect, the OTC LEV program is necessary for states in the OTR to maintain the ozone NAAQS after they achieve the standard, as discussed in the SNPRM. See 59 FR at 48688. EPA bases this conclusion on its analysis of emissions growth in the OTR which the additional measures must neutralize, even after sufficient controls for attainment by the attainment deadlines are in place. This growth results especially from increasing vehicle miles traveled (VMT), which tends to overcome reductions resulting from turnover to the Tier 1 standards and implementation of advanced inspection/maintenance programs. Therefore, the high level of reductions needed to attain the NAAQS are also needed from the same areas to maintain the NAAQS, and OTC LEV or a LEV-equivalent program is needed from those areas for the same reason.

The Agency's analysis of available control options shows that they are insufficient to produce the emissions reductions needed to bring downwind areas into attainment without more stringent standards for new motor vehicles. The Agency therefore concludes that such options would a *fortiori* be insufficient to achieve the emissions reductions needed to maintain the standard over two consecutive ten-year periods following redesignation (as required under section 175A). The additional ROM and meteorological studies described above tend to confirm that the serious areas in the Northeast Corridor—including the New England areas—will not be able to attain and maintain the ozone standard without a combination of measures including OTC LEV or a LEV-equivalent program. (The response-to-comments documents include additional support for this conclusion.)

EPA explained that the OTC LEV or LEV-equivalent program will continue to accrue additional benefits through the

year 2028. EPA calculated that in 2015 (the latest year for which it has projected emissions reductions), the program would yield a 39% reduction in NO_x emissions and a 38% reduction in VOC emissions from highway vehicles compared to emissions in that year without the program.

EPA acknowledges that for the most part, sources in Maine do not directly contribute emissions or ozone to an interstate ozone nonattainment problem. Maine is included because vehicles purchased in Maine may release emissions in parts of the OTR that do contribute to a nonattainment or maintenance problem. A vehicle purchased in Maine may travel to another state in the OTR because a Maine resident who purchased the vehicle in Maine moved to the other state or traveled there for purposes of work or recreation. This pattern is more common in southeastern Maine, which is close to the New Hampshire city of Portsmouth.

EPA's rationale for finding LEV necessary in New Hampshire is several-fold. Parts of southern and central New Hampshire are northwest of Boston, and trajectory studies support the hypothesis that emissions and ozone from these areas contribute to the Boston nonattainment problem. In addition, part of New Hampshire is in the Boston nonattainment area; thus, vehicles in this area generate local NO_x and VOC emissions that are part of the problem on the Massachusetts side of the state border. Vehicles in other parts of New Hampshire should be subject to the OTC LEV program for the same reason as vehicles in Maine, discussed above.

In addition, New Hampshire lies to the south and southwest of Maine, and thus contributes to Portland and other Maine nonattainment problems. Although the Maine areas are moderate with an attainment date of 1996, it is possible that the LEV reductions, which will not begin until 1999, will be necessary for attainment and maintenance in Maine. At the least, this possibility provides EPA with another reason to resolve any uncertainty over the necessity of OTC LEV in this state in favor of requiring OTC LEV.

Specifically, the OTC ROM and the New York UAM/ROM Study clarify the extent to which LEV may be needed for attainment and maintenance in the northeastern portions of the OTR. Both studies (i) apply ROM 2.2 to analyze what would happen with a recurrence of the July 1988 meteorological episodes in the year 2005, and (ii) incorporate the interim regional emissions inventory as well as emissions reductions from

controls required under the Clean Air Act Amendments. These studies find that, for the episode days modelled, ozone levels for the southeast coastal region in Maine hover at the 120 ppb standard. OTC ROM, figures A-2 and B-2; New York UAM/ROM Study, figures 15a-c and 18a-c. It should be noted that the ROM model tends to underestimate ozone levels in this seacoast region by failing to fully account for the impact of the seabreeze. The ROM model tends to show higher levels of ozone just off the coast, but it appears that seabreezes keep more of the ozone plume over the shore. Accordingly, it is quite possible that by the year 2005, this portion of Maine would remain in nonattainment notwithstanding the imposition of all mandated Clean Air Act controls.

The attainment date for this area is 1996. Emissions inventories are expected to decrease over time, so that the 2005 inventory is expected to be lower than inventories in the last part of the 1990s. Accordingly, ozone levels in the last part of the 1990s in Maine may be expected to be even higher than in the year 2005. For this reason, it is possible that Maine's attainment dates will be extended to or past 1999 through application of EPA's overwhelming transport policy. Even if Maine's attainment date remains 1996, Maine appears likely to have a problem maintaining the NAAQS standard in the late 1990s and early 21st century. Accordingly, EPA believes it relevant to inquire into how to assure attainment and maintenance of the ozone NAAQS in Maine.

The OTC ROM study shows that the beneficial impact of OTC LEV and .15 lb/MMBtu NO_x limits throughout the OTR is an ozone reduction of some 6-9 ppb, and that the beneficial impact of OTC LEV alone is approximately 3 ppb. The spatial impact of these reductions is difficult to discern from the ROM model due to, among other things, the large grids it employs; thus, it is not possible to isolate the benefits from stationary sources compared to mobile sources. Therefore, it is possible that reductions from motor vehicles will prove to be a necessary component of any control strategy designed to assure attainment and maintenance for the Maine coastal areas. It is further possible that emissions reductions from other mobile source measures will not prove to be sufficient, and therefore that the reductions from OTC LEV would be necessary.

Although the preceding conclusions are based on information that at present is uncertain, EPA believes that it is appropriate to resolve those uncertainties in favor of concluding that

the emission reductions that would be achieved by OTC LEV or an acceptable LEV-equivalent program throughout Maine and New Hampshire (as well as states to the south and west of Maine) are indeed needed to ensure maintenance (if not also timely attainment) in Maine.

4. Relevance of EPA Transport Policy

As described in the SNPRM, the Agency's September 1, 1994 transport policy addresses areas where overwhelming transport from upwind areas with later attainment dates is a dominant factor accounting for nonattainment in downwind areas with an earlier attainment date. Such downwind areas may not be able to attain by the deadline due to the impact of transport. EPA's policy is that states may seek to have EPA interpret the Act so that, if it is impracticable to accelerate controls upwind and other facts can be shown, then the downwind areas might have additional time to attain beyond the section 181(a)(1) dates. EPA anticipates that emissions reductions during any "extension period" for downwind areas would apply to reaching attainment rather than to maintenance. In addition, if EPA concludes that certain serious areas in the OTR will not be able to reach attainment by 1999, and do not qualify for any extensions, then they would be reclassified to a higher classification (i.e., "bump up") under section 181(b)(2) of the Act and would have additional time to attain. The OTC LEV or a LEV-equivalent program would ultimately also be necessary to achieve the reductions needed by any such area in the period after 1999 to attain by such later attainment dates.

B. Consistency of OTC LEV With Section 177 of the Clean Air Act

1. Introduction

EPA concludes that the OTC's recommendation is consistent with section 177 of the Act, and that implementation of the ZEV production mandate is unnecessary for the recommendation to be consistent with section 177, for the reasons given in greater detail in the response-to-comments document and in the SNPRM, 59 FR at 48690-48694. The aspects of the OTC recommendation identified as potentially implicating section 177 include: the statement in the OTC recommendation that adoption of California reformulated gasoline is not a part of the recommendation; the recommendation that EPA not require the ZEV production mandate except to the extent required under section 177;

and the recommendation's failure to explicitly incorporate California's regulations. Commenters raised other concerns about consistency of the OTC's recommendation with section 177, including: whether incorporation of the NMOG fleet average requirement would violate section 177; whether a state's incorporation of the California LEV program after the program is initiated in California would create a "third vehicle" due to California's credit banking provisions; and whether a state without a current nonattainment area or approved SIP can adopt the California LEV requirements.

EPA has reviewed the comments provided since the publication of the SNPRM and has concluded that the determination of consistency proposed in the SNPRM should be made final. Therefore, EPA finds that the OTC LEV recommendation is consistent with section 177 of the Act.

2. California Fuel Regulations

EPA finds that the OTC's choice not to include California's clean fuel requirements in its recommendation does not violate section 177 because it neither contravenes the "identical standards" requirement nor the "third car" prohibition of section 177. EPA addressed this issue in detail in the SNPRM and continues to rely on that discussion. See 59 FR at 48690-91. California's fuel provisions were not part of California's waiver application under section 209 and are not governed by section 209(a). Rather, they are addressed separately in section 211 of the Act. Section 211 allows states to regulate fuels differently than EPA if they can demonstrate that such regulation is necessary to meet air quality standards, except that California may regulate fuel without such a showing. California's fuel standards are thus not "standards * * * for which a waiver has been granted" under section 177. If states were obligated to adopt California's fuel standards to comply with section 177, then such states would also have to meet the necessary showing under section 211 with respect to the fuel requirements. This would contradict the structural separation in the Act between vehicle and fuel requirements. It would also erect a "necessary" hurdle to adopting vehicle standards identical to California's vehicle standards in a way not contemplated in section 177.

Moreover, given the specific language of section 177 (its references to section 209, its reference to waivers, and its use of the term "standards relating to control of emissions from new motor vehicles," which mirrors section 209's

language), it is clear that the "standards" that must be identical under section 177 are vehicle-based standards, not fuel standards. Finally, the legislative history indicates that Congress specifically decided not to include fuel requirements under section 177 when it reviewed section 177 in 1990.

Both federal courts that have reviewed the issue have found that failure of a state to promulgate California's fuel regulations does not violate section 177's requirement that an adopting state's standards be identical to California's standards. *Motor Vehicle Manufacturers Association v. NYDEC*, 17 F.3d 521 (2nd Cir. 1994) and *American Automobile Manufacturers Association v. Greenbaum*, No. 93-10799-MA (D. Mass. October 27, 1993) (the "New York case" and the "Massachusetts case", respectively). These decisions are in accord with EPA's position on this matter. For a more detailed discussion of this issue, review the response-to-comments documents and the SNPRM at 59 FR at 48690 (col. 3).

Likewise, EPA finds that the OTC's choice not to include the California fuel requirements does not violate section 177's "third vehicle" prohibition. The auto manufacturers claim higher sulfur levels in fuel found in the OTR would cause problems with California LEV emissions control systems, necessitating changes in design that would create a "third vehicle." EPA rejects this argument.

The voluminous data provided by manufacturers do not contradict the basic premises outlined by EPA in the SNPRM. This data refers to three issues related to increased sulfur in fuel in the northeast that manufacturers claim will cause the manufacture of "third vehicles." These are: The effects sulfur will have on California's on-board emissions diagnostics system (OBD II); the effects of sulfur on in-use recall testing; and the effects of sulfur on "maximum I/M cutpoints" (i.e., cutpoints of 1.5 times the applicable standard).

As the Agency made clear in the SNPRM, nothing in the OTC LEV recommendation requires manufacturers to build a third car. In fact, the OTC LEV petition requires that cars sold in the OTC be California-certified vehicles. Manufacturers can build the same car to meet both California's and the OTC's requirements. Any design change that a manufacturer makes is based on the manufacturer's choice to do so. As the Second Circuit made clear in its decision denying manufacturers' "third vehicle" claim in the context of the ZEV

production mandate, whatever design change "manufacturers choose to install on cars sold in New York is a marketing choice of theirs and not a requirement imposed by the (state)." *MVMA*, 17 F.3d 521, 538 (2nd Cir. 1994).

Manufacturers' claims regarding sulfur's effects on California OBD II systems center around the contention that manufacturers will use flange-mounted catalyst assemblies instead of welded ones in their vehicles sold in the northeast. This is not a significant change in the design of the vehicles, and it would be done to save consumer time and cost if the catalysts need to be replaced. This would be a marketing choice by manufacturers and does not provide the basis for a third vehicle claim.

This issue was addressed by the District Court in the New York case recently. In dismissing a virtually identical claim by manufacturers in the New York case, the District Court (Judge McAvoy) found that "the changes of which (manufacturers) complain are simply not required by New York's adoption of California's LEV program. Certainly New York has not expressly required that manufacturers change their emissions systems mounting. Likewise, (manufacturers) have failed to show that New York's adoption will *de facto* inevitably cause the switch from flanged to bolted assemblies." *MVMA*, Docket No. 92-CV-869, *slip op.* at 16 (N.D.N.Y. Oct. 24, 1994). In the Massachusetts case, the trial judge in AAMA has also denied manufacturers' request for a preliminary injunction on this issue, determining that manufacturers were unlikely to succeed on the merits of their claim. *AAMA*, Docket No. 93-10799-MA (D. Mass. Oct. 27, 1993.)

In addition, manufacturers' claims regarding "maximum I/M cutpoints" (i.e., cutpoints 1.5 times above the applicable standards) and state in-use recall testing are inapposite. The OTC recommendation did not include requests for either maximum I/M or in-use recall testing. It is uncertain whether state programs will include these provisions. Therefore, as such provisions are not required or otherwise implicated by this action, manufacturers' arguments that such programs will cause "third vehicles" are not ripe.

Another important issue noted by several commenters and Judge McAvoy is that a significant number of vehicles sold in California (those that permanently or, to a lesser extent, temporarily relocate) are likely to be subjected to fuels with the same sulfur levels as those in the northeast. In fact,

AAMA admits that permanently relocated California vehicles will likely need to have their converters replaced. However, according to AAMA, auto manufacturers apparently will choose not to equip California vehicles with the flange mounted converter assemblies, though manufacturers do not claim that such assemblies are forbidden by California regulations or that the way in which vehicle catalysts are mounted is relevant in California certification testing. Once again, any difference in vehicles is a manufacturer choice and is certainly not mandated by the provisions of the OTC LEV recommendation; nor is it an undue burden.

Moreover, as discussed more thoroughly in the response-to-comments documents, the legislative history shows that Congress intended to provide separate requirements for state regulation of vehicles and state regulation of fuels. As Judge McAvoy determined, Congress did not intend that differences in fuel requirements be used as criteria to invalidate state vehicle regulations under section 177. See *MVMA*, Docket No. 92-CV-869, *slip op.* at 19 (N.D.N.Y. Oct. 24, 1994).

Finally, as discussed in detail in the response-to-comments documents, EPA is not convinced that the factual data provided by manufacturers show that manufacturers will need to build a different car for the OTR than for California in model year 1999 and thereafter. First, manufacturers admit that the data they provide are generally applicable to vehicles built prior to the current model year or to model years 1996-1998. EPA notes that significant progress in developing catalyst formulations that are more tolerant of sulfur than current formulations may eliminate much of the concerns of manufacturers by the 1999 model year. Also, EPA believes that manufacturers have not shown that sulfur in fuel will, in and of itself, cause OBD II catalyst monitors to illuminate malfunction indicator lights by mistaking otherwise good catalysts as malfunctioning.

3. ZEV Production Mandate

EPA finds that the ZEV production mandate is not required to ensure consistency with section 177 for the reasons given in the SNPRM. See 59 FR at 48691-48692. EPA is leaving to each individual OTC state the decision as to whether to adopt the ZEV mandate.²¹ EPA is not resolving whether the ZEV mandate is an "emission standard."

²¹ EPA believes that the incorporation of the ZEV production mandate into a state's LEV program is consistent with the requirements of section 177.

Rather, the Agency concludes that the ZEV production mandate is not required to meet the identical standards provision under section 177, whether or not the mandate is a standard relating to control of emissions. Section 177 does not require adoption of all California standards for a particular model year, but only requires that if a state adopts motor vehicle standards, those standards that are adopted must be identical to California's standards.²² The ZEV production mandate and the remainder of the LEV program can be segregated from each other, and the ZEV mandate is not essential for implementation and enforcement of the remainder of the LEV program, which is a fully functional and enforceable motor vehicle emissions program. States adopting the LEV program therefore need not adopt the ZEV mandate to comply with the requirement for identical standards under section 177.

4. Incorporation of Minor Provisions of the California LEV Program

The OTC's recommendation does not spell out every detail of the California LEV program that it intended to incorporate into the recommended program. As discussed in more detail in the SNPRM and the response-to-comments documents, EPA interprets the OTC's recommendation to incorporate the requirement that standards be identical to the California LEV program, and to include any secondary requirements of the California program necessary to ensure consistency with section 177 for 1999 and later model year passenger cars and light-duty trucks. See 59 FR at 48693. Determinations regarding which portions of the California LEV program are required for consistency with section 177 will be made in the review of each state plan.

5. NMOG Fleet Average

State adoption of the NMOG fleet average does not violate section 177, as explained in the SNPRM. See 59 FR at 48693. The fleet average requirement is a primary component of the California program that is necessary to ensure specified emission reductions. Adoption of it by other states is consistent with the identical standards requirement of section 177. The NMOG average requires that a certain number of lower-

emitting vehicles must be sold in order to assure compliance, but does not prohibit the sale of any California-certified car. State incorporation of the NMOG average is therefore consistent with section 177's provision that states cannot restrict the sales of California-certified vehicles.

6. Averaging, Trading, and Banking

Manufacturers claim that states must allow manufacturers to carry over to OTR states any banked credits manufacturers have received in California in model years leading up to 1999. Since California's LEV program begins before model year 1999, each manufacturer is allowed to generate and bank credits under California's program prior to 1999. The manufacturer may use these credits to reduce the stringency of the NMOG standards it must meet in California in model year 1999 and, to some extent, later years. For OTC states that begin the program in model year 1999, manufacturers would not be able to generate and bank credits in that state before that year. Forcing manufacturers to meet the NMOG fleet average in 1999 without the ability to use banked credits would, according to manufacturers, violate section 177 by requiring a different vehicle mix and, in effect, more stringent standards, in 1999. Therefore, auto manufacturers arguably could have to meet a more stringent NMOG fleet average requirement in model year 1999 than they would have to meet in California in that year.

EPA concludes that the availability of credit banking in California prior to model year 1999 does not cause the OTC's recommended program to violate the identical standards requirement of section 177. In addition, states do not have to accept credits manufacturers have banked in California in model years prior to 1999.

The specific language of section 177 indicates that the existence of banked credits from a previous model year should not prevent states from enacting the same NMOG fleet average requirements as California has for 1999 and later years. Section 177 states that "any State * * * may adopt and enforce for any model year standards * * * and take other actions * * * if * * * such standards are identical to the California standards for which a waiver has been granted for such model year." (Emphasis added.) Section 177 explicitly refers to standards (and other actions) taken with regard to a specific model year. Thus, as the OTC LEV program's NMOG fleet average for the 1999 and later model years is identical to the California NMOG fleet average

that California has in effect for those model years, there is no conflict with section 177. Moreover, the "limitation on California vehicles" language is concerned with ensuring that "types" of California vehicles are not prohibited in section 177 states. It is not designed to ensure that manufacturers' vehicle mixes in all states are identical.

However, as discussed in part V below, EPA believes that a state, if it so chose, could implement the NMOG fleet average to account for manufacturers' inability to bank credits in that state prior to the start of the OTC LEV program in that state. EPA believes that there may be advantages to states and manufacturers if states did account for the manufacturers' inability to bank credits in OTC LEV programs prior to model year 1999. For further explanation, see EPA's discussion in the SNPRM (59 FR at 48694) and the response-to-comments documents.

7. Applicability of Section 177 in States Without Plan Provisions Approved Under Part D of Title I

All states in the OTR have plan provisions approved under part D of title I of the Act, and therefore satisfy this prerequisite for eligibility under section 177. All states other than Vermont have ozone nonattainment areas with associated SIPs approved under part D. Vermont has plan provisions approved under part D related to earlier nonattainment problems. See 40 CFR 52.2370(c)(10). In addition, EPA has very recently approved Vermont's plan provisions related to emissions statements in order to fulfill obligations under part D as revised by the 1990 Amendments to the Act.

V. Action on OTC Petition, Issuance of Findings of SIP Inadequacy, and Requirements for SIP Revisions

A. Action on OTC Petition and Explanation of SIP Call²³

Based on the factual conclusions and legal interpretations presented in section IV.A. above, EPA determines through today's action that, until such time as EPA finds that an acceptable LEV-equivalent program is in effect, adopting OTC LEV throughout the OTR is necessary to bring certain areas into attainment (including maintenance) by the dates provided in subpart 2 of part D of title I of the Clean Air Act. Based on the conclusions presented in section

²² In the SNPRM, 59 FR 48692, n. 72, EPA stated its belief that all standards applicable to a segregable program must be implemented to assure that specific vehicles are subject to the same emissions requirements. Upon further review, EPA believes that individual emission standards may be implemented as long as the "third car" and "sales limitation" requirements of section 177 are not violated by the omission of any standard.

²³ EPA is not relying on the discussion in section V. A. of the SNPRM (59 FR at 48694-48695) for the statement of basis and purpose for today's action, but is relying on the discussion in section V. B. (59 FR at 48695).

IV.B. above, EPA determines through today's action that OTC LEV is otherwise consistent with the Act. Based on those conclusions, EPA today approves the OTC's recommendation that OTC LEV be adopted throughout the OTR. As described elsewhere, however, EPA's approval of the OTC recommendation and the requirements that flow from it leave open the option for an acceptable LEV-equivalent program that would remove the need for the OTC LEV program.

In section IV.A., EPA discussed its factual finding that emission reductions from new motor vehicles equivalent to the reductions that would be achieved by the OTC LEV program are needed throughout the OTR to bring certain OTR nonattainment areas into attainment (including maintenance) by their applicable attainment dates. Based on this finding, EPA today finds under section 110(a)(2)(D) that each of those states (and in the case of Virginia, the portion of the state lying within the OTR) contributes significantly to nonattainment in, and interferes with maintenance by, another state with respect to the ozone standard. Because the SIPs for those states currently lack provisions requiring those emission reductions, EPA today finds under its independent section 110(k)(5) authority that each of those SIPs is substantially inadequate (1) to comply with section 110(a)(2)(D)'s requirement that each SIP contain adequate provisions prohibiting any emissions activity that will contribute significantly to nonattainment in, or interfere with maintenance by, another state with respect to the ozone standard; and (2) to mitigate adequately the interstate pollutant transport described in section 184. EPA is making the first of these findings also pursuant to the requirement of section 184(c)(5) that, upon approval of an OTC recommendation, EPA make "a finding under section 110(k)(5) that the implementation plan for such state is inadequate to meet the requirements of section 110(a)(2)(D)."

Section 184(c)(5) states that EPA's finding under section 110(k)(5) shall require the affected state to revise its SIP to include the approved control measure within one year after the finding is issued. Section 110(k)(5) itself provides that EPA must require the state receiving a finding of SIP inadequacy to revise its SIP "as necessary" to correct the inadequacies that are the subject of the finding. As described above, EPA is qualifying its finding that OTC LEV is necessary under sections 184 and 110(a)(2)(D), and hence is qualifying its approval of the OTC LEV

recommendation, by making each finding subject to the contingency that EPA will find that an acceptable LEV-equivalent program has come into effect. Thus, the SIP inadequacy would be cured for each such SIP if an acceptable LEV-equivalent program were in effect, and states would not have to submit a SIP revision to comply with today's action. Therefore, EPA has structured today's rule to require that each state in the OTR submit a SIP revision within one year from the effective date of the SIP call unless EPA finds that an acceptable, LEV-equivalent program is in effect.

As described earlier, EPA has based its necessity findings on the conclusions that there are insufficient potentially broadly practicable measures to achieve the necessary emission reductions without also applying OTC LEV or a LEV-equivalent program. A state would always have the option under section 110 to adopt whatever measures it may believe practicable for application within its borders. Thus, EPA is qualifying its finding of necessity, and hence is qualifying its approval of the OTC recommendation, by making each subject to the contingency that a state will actually adopt sufficient (non-LEV) measures beyond those EPA has identified as potentially broadly practicable so as to demonstrate that the OTC LEV program is not necessary for that state to cure the SIP inadequacy. EPA has structured its rule to provide that, unless an acceptable LEV-equivalent program is in effect, the SIP revisions required in response to the findings of SIP inadequacy must contain either the OTC LEV program or sufficient adopted alternative measures. These measures would be sufficient if, when combined with the emission reductions that would result in that state from the measures mandated by the Clean Air Act and all measures EPA has currently concluded are potentially broadly practicable, they would achieve 50 to 75% NO_x reductions from a 1990 baseline throughout that state and 50 to 75% VOC reductions from a 1990 baseline in the portions of the state in or near the line of serious and severe nonattainment areas along the Northeast Corridor.

As described above, today's SIP call keeps open the option of an acceptable²⁴ LEV-equivalent program,

²⁴The criteria for determining whether a LEV-equivalent program is acceptable will be established as part of the rulemaking on the acceptability of that program. However, to relieve states of their obligation to submit an OTC LEV program, EPA has assumed that a LEV-equivalent program would not allow manufacturers to opt out of the program after they had opted in. EPA is not addressing today

while ensuring that necessary emission reductions are not delayed. The finding of inadequacy would be cured and states would not have to adopt OTC LEV if an acceptable LEV-equivalent program were in effect (which EPA assumes for today's action would include a requirement that auto manufacturers could not opt out once they had opted in). If states take action to adopt or enact OTC LEV before discussions on the alternative program are concluded, EPA encourages states to structure their OTC LEV programs to provide for a future LEV-equivalent program that EPA finds is acceptable in a future rulemaking. Such a provision could give auto manufacturers the choice of complying with either the state's OTC LEV standards or the acceptable LEV-equivalent program.

To meet the requirements of this SIP call using an OTC LEV program, a state must exercise its authority under section 177 to adopt the NMOG fleet averages that are part of California's LEV program. The requirements for these are set forth in the following section. States are not required to adopt the ZEV mandate, but retain their authority to do so under section 177.

As described above, rather than submit an OTC LEV SIP revision, states may submit a "shortfall" program to meet today's SIP call. A "shortfall" SIP revision must contain adopted measures that make up the shortfall between (1) the emission reductions necessary to prevent adverse consequences on downwind nonattainment (*i.e.*, 50–75% NO_x reductions throughout the state and 50–75% VOC reductions in the portions of the state in, or near and upwind of the Northeast urban corridor), and (2) the emission reductions that would be achieved by the measures mandated by the Act and the potentially broadly applicable measures EPA identifies in this notice and the SNPRM. Such SIPs will include measures that EPA cannot now conclude are potentially practicable for the region as a whole. Therefore, states submitting a shortfall SIP in lieu of the OTC LEV program must submit fully adopted measures sufficient to fill completely the emission reduction shortfall, not just the emission reduction equivalent to the OTC LEV program, in order to make a convincing demonstration that OTC LEV is not necessary to prevent adverse impacts in downwind states. The submittal of (non-LEV) measures that would achieve only emissions reductions equivalent to what

whether states would need to adopt OTC LEV as a "back stop" if manufacturers could opt out of the program.

the OTC LEV or LEV-equivalent program would achieve might still leave a substantial shortfall. Thus, there would be no showing that a LEV program would be unnecessary to fill that remaining shortfall. The "shortfall" SIP measures cannot be measures that are mandated by the Clean Air Act or are among the potentially broadly applicable measures identified by EPA in this notice or the SNPRM. For purposes of determining whether such a shortfall SIP revision is complete within the meaning of section 110(k)(1) (and hence is eligible at least for consideration to be approved as satisfying today's SIP call), such a SIP revision must contain other adopted emission-reduction measures that, together with the identified potentially broadly applicable measures, achieve at least the minimum 50% reduction in NO_x emissions throughout those portions of the state within the transport region, and at least the minimum 50% reduction in VOC emissions within those portions of the state in or near (and upwind of) the urbanized portions of the Northeast Corridor.

B. State Requirements Under EPA SIP Call

To satisfy the requirement for an OTC LEV SIP revision under today's SIP call, unless EPA finds that an acceptable LEV-equivalent program is in effect, every state in the OTR is required to promulgate regulations that will mandate the OTC LEV program for new light-duty vehicles and trucks beginning in model year 1999. The regulations must be adopted no later than one year following the effective date of the SIP call and apply to 1999 and later model years. This will provide manufacturers with the two-year lead-time required under section 177.²⁵ The OTC LEV program applies to all passenger cars and light-duty trucks (0–5750 pounds loaded vehicle weight (LVW)) in the OTR.²⁶

The OTC LEV program generally requires that no 1999 or later model year vehicle may be sold, imported, delivered, purchased, leased, rented, acquired, received, or registered in the OTR unless such vehicle has received a certification from the California Air

Resources Board.²⁷ Each state must allow for the sale of California's Tier I, TLEV, LEV, ULEV and ZEV vehicles in that state. The emission standards for such vehicle classes must be identical to those in California. In addition, all states must promulgate California's NMOG fleet average requirements. The fleet averages for passenger cars and light-duty trucks 0–3750 lbs. LVW shall be identical to California's NMOG fleet averages for such classes of vehicles, as stated in the OTC recommendation. The NMOG fleet averages for larger light-duty trucks (3751–5750 lbs. LVW) shall be identical to California's NMOG fleet averages for such class of vehicles for the applicable model years.²⁸ As discussed below, states have considerable flexibility in implementing these NMOG fleet averages during the appropriate model years.

States must adopt California's provisions pertaining to averaging, banking and trading, hybrid electric vehicles, extensions and exemptions for intermediate and small volume manufacturers (as defined by California), and Reactivity Adjustment Factors (RAFTs) as necessary for certification in California. States also must adopt any other provisions of California's new motor vehicle regulations that are necessary to ensure compliance with section 177 of the Clean Air Act. EPA has not examined which other provisions are necessary to ensure compliance with section 177. The need for other provisions shall be addressed when individual states adopt or seek approval of the OTC LEV program.

States are not required to adopt California's ZEV production mandate. As discussed earlier in section IV.B.3., EPA does not believe that adoption of the production mandate is necessary to ensure compliance with section 177. The OTC did not recommend that EPA require states to incorporate the ZEV production mandate unless it was required by section 177, and EPA declines to use its discretion to require

²⁷ The OTC recommendation contained several exceptions to this requirement. For example, vehicles sold directly from one dealer to another dealer are not subject to this requirement. EPA expects that these exemptions will be included in state programs. EPA is not today ruling whether these exemptions are required, permitted or prohibited under the Act, although EPA notes that it received no comments providing any substantive arguments that these exceptions violate section 177.

²⁸ The NMOG fleet averages for passenger cars and light-duty trucks (0–3750 lbs. LVW) for the applicable model years, in grams per mile, are: 1999–0.113; 2000–0.073, 2001–0.070, 2002–0.068; 2003 and later years–0.062. The NMOG averages for light-duty trucks (3751–5750 lbs. LVW) are: 1999–0.150; 2000–0.099; 2001–0.098; 2002–0.095; 2003 and later–0.093.

states to incorporate the mandate. However, states are free, at their own discretion, to incorporate the mandate into their motor vehicle emission programs.

States also have significant discretion in the manner in which they implement the OTC LEV program. Though states must adhere to the requirements of section 177, EPA is not mandating specific methods that states must use to implement the program. In particular, EPA believes that states have significant discretion in the manner in which they implement the NMOG fleet average.

Given the regional nature of the OTC LEV program and the possible hardships to state governments and manufacturers in having to administer and comply with separate programs in thirteen different jurisdictions, states should attempt to coordinate their programs as much as possible. In particular, EPA believes that states could choose to give manufacturers the option of meeting the NMOG average on a region-wide basis, rather than having to meet the requirement on a state-by-state basis.²⁹ This will allow for more flexibility in enforcement and compliance, but will require more coordination among jurisdictions.

EPA also believes that states have the discretion to account for automakers' inability to bank credits in those states prior to 1999. This might be accomplished by accounting for banked credits that manufacturers have amassed in California (or perhaps in New York or Massachusetts) in model years prior to 1999 under the averaging, banking and trading provisions of the LEV program. As discussed above in part IV.B.3, EPA does not believe that states have an obligation to account for credits that manufacturers have received in California for early banking. A state program that includes California's NMOG average and California's averaging, banking and trading provisions is consistent with section 177, whether or not the state accounts for credits that are banked in California prior to the state's implementation of the LEV program. However, EPA believes that, in implementing the program, states can, consistent with section 177, account for banked credits. Given that the averaging, banking and

²⁹ For example, a state program could deem a manufacturer to be in compliance with a state's NMOG average if the manufacturer's sales in OTR states with identical requirements meet the NMOG average. There might be only small variations in vehicle mix from one state to another if the states have identical standards and are in the same region. If such variations have insignificant effects on a state's air quality, state-by-state compliance with NMOG averages might not be worth the administrative burden.

²⁵ Given today's model year regulations, the effective date of this rule, and the information in the docket on auto manufacturers' production schedules, EPA realizes that a few 1999 model year engine families might not be subject to OTC LEV. EPA does not anticipate that this will reduce emission benefits significantly.

²⁶ These requirements therefore apply to all 1999 and later model year vehicles in each state, except that these requirements only apply in the northern portion of Virginia that is a part of the OTR.

trading program was included by California to provide flexibility in meeting the program, EPA does not believe it is a breach of the identity requirement to allow states to account for banked credits in implementing the OTC LEV program. Also, if any states fail to implement the program in model year 1999, desire for regional consistency would also dictate that such states allow for any banked credits from other state programs in the implementation of their programs. In any case, states should coordinate with each other to ensure that the goals of regional consistency are not frustrated by differences in implementation of the NMOG fleet average.

Finally, as discussed in section VI.B.5, states may decide not to include the NMOG average in their implementation of the OTC LEV program in the initial model year if the state can only begin implementation of the program in the middle-to-end of the year. Manufacturers have objected that beginning implementation of the OTC LEV program in the middle of a calendar year would create significant problems for manufacturers in meeting the NMOG fleet average requirements for the first model year. This is because manufacturers meet the NMOG fleet average by coordinating their entire fleets to achieve the desired average. This process is susceptible to disruption when manufacturers must meet the NMOG average in the initial model year if the initial model year begins in the middle-to-end of a calendar year. This is because, under the model year regulations finalized today, only a portion of a manufacturer's fleet may be subject to the NMOG requirements for the initial model year if it is a "split" model year. EPA believes that manufacturers are well equipped to deal with this disruption by moving production start dates, especially given the two years of lead-time that manufacturers will have to coordinate their production schedules. However, given the fleet-wide nature of the NMOG fleet average and the desire for coordinated regional strategy, it may be appropriate for states that begin the OTC LEV program in the middle-to-end of a calendar year to refrain from implementing the NMOG fleet average for the initial model year. However, once the second model year begins, the NMOG fleet average must be a part of the state program. Also, states that initiate the OTC LEV program close to the beginning of the year (when disruption of the NMOG program should be minimal) should include the

NMOG fleet average as part of the OTC LEV program in the initial model year.

C. Sanctions

In the SNPRM, EPA addressed the imposition of sanctions in the case of state non-compliance with EPA's SIP call under section 110(k)(5) of the Act. EPA's rule to implement section 179 of the Act regarding sanctions specifies the order in which the statutory highway funding and offset ratio sanctions will apply, but does not address the imposition of sanctions in the case of state failure to comply with a SIP call under section 110(k)(5) of the Act. See 59 FR 38932 (Aug. 4, 1994) (sanctions rule). EPA therefore proposed in the SNPRM to extend the general scheme promulgated for sanctions under section 179 to the SIP call at issue here, with the 2:1 offset sanction applied first and the highway funding sanction applied second. EPA takes final action today to apply that general scheme to this SIP call.

EPA also requested comment on whether it should provide in the final rule that discretionary sanctions under section 110(m) of the Act would apply beginning immediately upon a finding of failure to submit the OTC LEV program (or a complete shortfall SIP revision) by the one-year deadline for that submission. EPA questioned whether the particular circumstances presented here by the two-year lead-time requirement may warrant such action. EPA is deferring final action on whether to exercise its discretion under section 110(m) to accelerate the imposition of sanctions if states fail to submit the OTC LEV program by the applicable deadline. The Agency will consider this issue further.

VI. Determination of Model Year

In the SNPRM, EPA proposed to promulgate regulations determining for purposes of Section 177 and Title II, Part A of the Act the definition of the term "model year" and certain related terms. See 59 FR at 48696-48698. EPA believed that this was a necessary step to remove any confusion regarding the commencement of a model year which may have resulted from conflicting views on this point in the New York and Massachusetts litigations regarding the adoption of the California LEV standards.

After review of the comments received on the proposed model year regulations published in the SNPRM, EPA has determined, for the reasons given below, in the SNPRM (59 FR 48697-48698), and in the response-to-comments documents, that it is appropriate at this time to promulgate

these proposed regulations as final rules. At the request of AAMA, EPA is adding language clarifying the term "date on which a vehicle or engine is first produced."

EPA's proposed model year regulations, which apply to section 177 and Title II, retained the definition of "model year" found in both the Act and in existing EPA regulations (promulgated under section 202) as essentially "the manufacturer's annual production period."³⁰ EPA's proposed model year regulations also codified the definition of "annual production period," which has appeared in various versions of EPA Advisory Circulars on this issue since 1972.

Under the proposed regulations, model year would be determined on an engine family basis for specific models within engine families, depending upon the date the first model in the engine family commences production. Therefore, the date upon which the model year begins may be different for each engine family that a manufacturer produces. EPA believes this approach is more appropriate than beginning model years industry-wide on a certain date (an alternative favored by the industry and discussed below) because it is more suited to the central purpose of section 177, which is to allow states to receive emission benefits from the California motor vehicle program while giving manufacturers two years of lead-time to prepare to meet the state standards. In addition, as discussed in the SNPRM (59 FR 48697), this approach provides manufacturers with substantial flexibility to continue to produce automobiles for one model year while initiating production of other models for a later model year.

EPA received critical comments on the proposed rule only from AAMA, which raised several objections. The main thrust of the AAMA argument is that the EPA model year regulations will cause more harm than good because they will compel manufacturers to provide both California and Federal vehicles to a single state in a single model year depending on that state's date of adoption of the California standards. For this reason, AAMA supported an industry-wide approach in which model years would begin on January 2 of the calendar year preceding the model year for which the model year is designated. However, as emphasized in the SNPRM, EPA believes that the model year regulations provide vehicle manufacturers the maximum flexibility in terms of adjusting the model year

³⁰ See 42 U.S.C. sec. 7521 (b)(3)(A)(i) (1993) and 40 CFR 86.082-2 (1994).

designations of their product line to meet marketing needs and product changes.

EPA's approach allows manufacturers to control the beginning of the model year for each of its engine families, since manufacturers control the date upon which its models begin production. Manufacturers are in the best position to determine the date that any model in an engine family commences production and manufacturers decide production start dates on a model-by-model basis. Therefore, the engine family approach allows manufacturers to avail themselves of the two year lead-time without allowing the state program to lag unnecessarily. By contrast, AAMA's approach (allowing the model year to begin on January 2 of the year previous to the calendar year for all models) would in fact turn the two year lead-time into, in the worst case, a three year lead-time (minus one day).

AAMA also commented that the EPA model year regulations could "obviate" the NMOG fleet average in a situation where manufacturers needed to provide California vehicles to a state for only part of a model year, and thus may have difficulties meeting the fleet average for that model year. EPA recognizes this possibility but notes that one way to solve the problem is to revise production and supply schedules to make sure the state fleet average is met. Given that manufacturers have two years to prepare to meet these requirements, this solution is within the capability of manufacturers. In any event, EPA notes that it is not today ordering that states must include the NMOG fleet average provisions in their state programs in a split model year. Though EPA believes that the NMOG average is important to ensure emission reductions in states with OTC LEV programs, EPA recognizes that states may wish to avoid some of the confusion manufacturers allege is possible in the introductory year of the program. If the application of NMOG fleet average creates a substantial hardship for manufacturers in the first year due to the adoption of OTC LEV by a state late in the year, the state may wish not to require manufacturers to comply with the NMOG fleet average for the first applicable model year.

In addition, AAMA asks for clarification regarding two points. First, AAMA asks EPA to declare whether the model year rules apply on a model-by-model basis or an engine family-by-engine family basis. Second, AAMA seeks clarification on how to determine the point of first production of a particular model. The model year rules are applied on an engine family basis.

Where an engine family contains more than one model, the model year for that engine family begins upon the first production of any model in that engine family. The date of first production of any model is the "Job 1 date," which is the date on which a manufacturer produces the first saleable unit of a specific model.

EPA received a request from AAMA to extend the comment period for the proposed model year regulations to allow more time to consider the issues. EPA rejects this request for the following reasons. EPA recognizes that because of its approval of the OTC recommendation, the OTC member states must now proceed to adopt the OTC LEV program one year from the effective date of the SIP call to ensure the minimum adequate lead-time for the standards to be effective in model year 1999. EPA believes that it is important to promulgate these final regulations now to eliminate any confusion regarding when a model year commences before these states begin the adoption process. EPA has provided the public with a full thirty-day comment period with an opportunity for hearing. In addition, as the model year issue has been the subject of litigation for the last two years, manufacturers have been aware of the central questions surrounding this issue.

For a more detailed discussion of the issues raised by EPA's model year regulations, including AAMA's comments and EPA's responses, please review the SNPRM, 59 FR 48697-48698, and the response-to-comments documents. The text of the final regulations, with minor changes from the proposal, appears below.

VII. Effective Date

The regulations to be codified in 40 CFR parts 51 and 52 (the "SIP call" regulations) are effective February 15, 1995. This is consistent with the requirement of the Administrative Procedure Act, codified at 5 U.S.C. 553(d), that publication or service of a substantive rule be made not less than 30 days before it becomes effective.³¹ EPA will assure that, by January 16,

³¹ EPA generally acts consistently with this provision and provides that a rule does not become effective until 30 days after the date of publication, but technically today's action is not subject to this provision. The EPA Administrator has determined that, pursuant to section 307(d)(1)(V) of the Act, the rulemaking procedures of section 307(d) apply. See 59 FR at 21724. Section 307(d)(1) specifically provides that "[t]he provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." Nowhere does subsection 307(d) expressly provide that section 553(d) of title 5 applies.

1995, either notice of today's action will be published in the **Federal Register** or EPA will have provided actual notice of this action to the states that have regulatory obligations as a result of this action. EPA will also make this notice available to other interested persons upon request prior to publication.

As EPA explained in its proposal, it is very important that states begin implementation of the OTC LEV program in model year 1999 to achieve the necessary emissions reductions. EPA had expressed concern in the SNPRM that, to ensure implementation for all models in model year 1999, states must adopt the program before January 2, 1996. See 59 FR at 48669-48670. Based on information in the docket on the production schedules for new models, EPA now believes that adoption of the OTC LEV program by mid-February, 1995, will not significantly reduce the emission benefits of the program for model year 1999.

The regulations to be codified in 40 CFR part 85 are effective February 23, 1995.

EPA believes that today's actions, including the finding of inadequacy, the SIP call and the promulgation of the model year regulations, are nationally applicable regulations under section 307(b)(1) of the Act. Alternatively, the Administrator determines that today's actions are nationwide in scope and effect and bases today's action on that determination. Today's action interprets sections 110, 184 and 177 in ways that are applicable nationwide. In addition, the SIP call affects 13 different jurisdictions in five different federal appellate circuits. Thus, under section 307(b), any petitions for review must be filed in the Court of Appeals for the D.C. Circuit within 60 days from the date that notice of this action appears in the **Federal Register**.

VIII. Statutory Authority

The statutory authority for this final rule may be found at sections 110, 176A, 177, 184, 202, 206, 209, 301 and 307 of the Clean Air Act, 42 U.S.C. 7410, 7506a, 7507, 7511c, 7521, 7525, 7543, 7601, and 7607.

IX. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, since this action could result in a rule that would have substantial impact, this notice is a "significant regulatory action" because the estimated range of annual costs of the OTC LEV program is between \$xx and \$xx. As such, this action submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations will be documented in the public docket for this rulemaking.

EPA has prepared an economic analysis for this rule under E.O. 12866. A copy of this analysis has been placed in the docket. A draft version of the Regulatory Impact Analysis was submitted to OMB for review as required by E.O. 12866. Any written comments from OMB and EPA responses to those comments will be placed in the public docket for this rulemaking. A final version of the analysis is available in the docket.

X. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601(a), provides that, whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA). While EPA has followed rulemaking procedures under 307(d) of the Clean Air Act, EPA believes it is not legally required to publish a general notice of rulemaking here, and hence that it need not prepare an RFA. But even if EPA is required to publish a general notice of rulemaking here, an RFA is required only for small entities that are directly regulated by the rule. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated). The OTC LEV program will directly regulate auto manufacturers. Since these auto manufacturers generally do not qualify as small businesses within the meaning

of the Regulatory Flexibility Act, EPA does not believe an RFA is needed for either the proposed or final rules, even if a rulemaking is required. Accordingly, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Nevertheless, the Agency has considered the effect of an OTC LEV program on new and used car dealerships as part of its regulatory impact analysis, even though such analysis is not required because these businesses would not be directly regulated under the rule. The results of this analysis, set forth in the RIA, indicate that the OTC LEV would not have a significant economic impact on automobile dealerships.

XI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Attachment A to the Preamble

Revised Draft Discussion Paper on ATV Component of 49-State Alternative

December 7, 1994.

I. Principles and Definition

The Advanced Technology Vehicle (ATV) component of a 49-State alternative to the OTC petition will be based on the following principles:

¶ Parties publicly commit to work in cooperation with each other to establish and maintain a sustainable, viable market for ATV's at the retail level.

¶ ATV program will be designed to achieve shared responsibility among states, EPA, DOE, fuel providers, fleet operators and auto manufacturers for achieving increases in ATV's.

¶ Phased program from infrastructure and vehicle development to fleet sales to retail sales will be pursued. Timeframes will be assigned to components of any alternative that will involve incremental steps toward accomplishing increases in ATV's.

¶ Vehicle yield from federal and State programs, municipal and private fleets, as well as approaches to provide vehicles to private consumers will be included.

¶ Parties will, at the initiation of the MOU and throughout the program, jointly develop sales estimates of fleet and consumer vehicles that all parties anticipate should be on the road at specific milestones.

¶ All parties commit that specific actions will be identified and

undertaken as necessary if estimates are not realized.

¶ Parties will develop a fuel neutral strategy based on achieving market longevity and environmental benefits. Infrastructure must be constructed under a joint strategy, but it is understood that states will make infrastructure choices according to regional needs.

¶ The definition of ATV for the purposes of this agreement will be (PARTIES WILL INSERT DEFINITION LATER).

II. Memorandum of Understanding

The Memorandum of Understanding is based on the agreement that all parties will contribute to a joint effort to create a sustainable, viable ATV market. All parties agree that the best strategy for achieving this market is to first utilize the federal fleet markets in order to establish a full range of viable vehicle technology, maximize the number of vehicles purchased through municipal and state fleet programs, create incentives to encourage private fleet purchases, establish infrastructure requirements, assess customer preference, and to systematically evaluate progress for the purposes of introducing vehicles to the private consumer as soon as possible.

Components of a joint strategy will include the following areas:

(1) Fleet Estimates—The foundation for introduction of ATV's will be the federal requirements under EPA Act. Parties will develop projections or estimates for anticipated number of vehicles resulting from the programs that will be used as objectives for gaining a number and types of vehicles on the road on a specific timeline. Parties will develop agreements for joining in the programs, including harmonizing EPA Act and the CAA of 1990, and maximizing federal fleet purchases. Parties will work jointly to develop programs and maximize municipal and private fleet purchases in the Northeast states. Parties will assume expanded municipal and private fleet vehicle sales for the purposes of estimation.

(2) Development of Objectives Based on Fleet and Consumer Sales Estimates—At the initiation of the MOU, parties will agree on assumptions for and will establish initial overall fleet and consumer vehicle sales estimates that can be reasonably expected in the OTR by 2004. Parties will jointly state that this estimated number of vehicles should be sold if initial assumptions prove to be correct and if all aspects of the strategy are successfully implemented. Annual sales estimates

will be revised as part of the annual meeting process.

(3) Problem Identification and Action Commitment—Parties will identify possible problems that might occur in the development of a viable market and examples of specific actions that might be contemplated in a joint evaluation process (specific actions are detailed in Section III below).

(4) Benchmark Criteria and Components of a Viable Market—Benchmark criteria will be developed for a long-term, sustainable market. Some criteria might include, but will not be limited to:

- fi Infrastructure development (fuel quality and price, station density, user friendly refueling, service support, incentives, quasi-public service and fuel sales).

- fi Vehicle development (range, life-cycle costs, safety and user convenience).

- fi Removal of regulatory impediments to ATV vehicle sales.

- fi Reliability and durability profile of fleets.

- fi Consumer needs surveyed from Federal, state and municipal fleets and then further defined.

- fi Fuel savings documented and demonstrated.

- fi Vehicle resale value documented and retained.

- fi Consumer-directed incentives in place.

(5) Joint ATV Program Implementation Process—Parties agree to oversee the implementation of this ATV agreement. This joint implementation process will include annual meetings to be held between principal representatives of the Northeast States and Auto manufacturers. Staff level meetings will occur during the course of a year to chart progress in the areas listed below and provide a basis for evaluation of progress. Possible areas for evaluation include, but are not limited to:

- fi Assumptions for Annual Sales Estimates.

- fi Funding for Federal Fleet Purchases.

- fi Technology and Vehicle Type Availability.

- fi State Procurement Requirements and Practices.

- fi Joint Marketing Efforts.

- fi Infrastructure Construction and Capabilities.

- fi Research and Data Needs.

- fi Other Information and Expertise Needs.

- fi Consumer Satisfaction Assessed and Consumer Confidence Built.

- fi Plans to Remove Roadblocks and Other Program Adjustments.

(6) Group Structure and Disagreement Settlement Process—A structure for the evaluation will be established by a working group at the initiation of the ATV program. This working group will design the structure of the annual meetings; designate the purpose, number, type and level of meetings to evaluate program progress; and, outline the issues of concern to be addressed. Specifically, responsibilities for discussion of the evaluation areas listed above will be delineated, possible scenarios for action should problems occur or milestones not be met by any party will be developed, and a process for resolving disagreements that arise will be defined.

It is agreed by all parties that primarily the auto manufacturers and states will be involved in the group structure discussions and the overall evaluation process, but that all key parties will be consulted for their advice throughout the process.

(7) Suggested Timeline for Introduction of ATV's—The ATV program will consist of three phases. If significant progress could be made early for any of these phases, parties could agree through annual meeting decisions to advance the timeline of for delivery of vehicles. The parties recognize the legitimacy of existing incentive programs and that new incentive programs may be instituted earlier than this timeframe. The conceptual and planning work for all phases of this process will proceed simultaneously, and lessons from existing programs will be applied in initiating these steps.

1996-98—EPAct for Federal, State and Fuel Provider Fleets

Manufacturers market ATV's to fleets. Infrastructure development begins. Incentive programs are established. Surveys are conducted to estimate potential demand for 1999-2001, including municipal and private fleets.

1999-2001—Add Municipal and Private Fleets

Manufacturers expand product offerings. Infrastructure expands. Incentive programs expand to municipal and private fleets. Surveys conducted to estimate 2002-2004 retail consumer demand. Criteria decided for maintaining sustainable retail sales.

2002-2004—Add Retail Consumer Offerings

According to establishment of adequate infrastructure, offer ATV's for retail consumer sales in all Northeast States. Incentive programs expand to retail consumers.

III. Summary of Commitments by All Parties

In this strategy, each party commits to provide certain results within an agreed upon timeframe. A summary of each parties' commitments follows.

Auto Manufacturers

- fi Auto manufacturers will supply private consumer ATVs in a timely manner in 2002, if commitments and criteria put forth in the MOU are met by all parties. Auto manufacturers will introduce ATV's sooner than 2002 if both parties agree that the criteria defining a viable market described in this agreement are met earlier.

The responsibility for supply ATVs includes modifying vehicles to the extent necessary for use in the Northeast, establishing adequate sales and support structure, technician training and service parts inventories in addition to vehicle design, development and manufacture.

- fi The Auto manufacturers agree to participate in the annual review process to assess the progress of the program and to determine how to develop a viable market for ATVs in the OTR. This includes participating in the projection of annual sales estimates and evaluating progress toward meeting those estimates.

- fi Auto Manufacturers agree to work with the states to determine what actions may be needed to adjust the program if sales estimates are not being met. This will include consideration of voluntary actions such as increasing public education and marketing, addressing weaknesses in infrastructure development, and discussing and addressing technological barriers or hardware problems. Auto manufacturers agree to implement the actions identified and agreed upon.

- fi Auto manufacturers agree to discuss pricing issues with states individually as requested to address vehicle pricing concerns.

State Representatives

- fi States will establish incentive programs to encourage the purchase of ATVs and direct state procurement policies in a manner consistent with Federal Practices. States will maximize purchases of ATVs in state fleets to the greatest extent possible.

- fi States agree to work to assist municipalities to conform with EPAct requirements as soon as feasible. States will also work to assist in the development of incentive programs for private fleet purchases of ATVs.

- fi States will participate in the annual review process to assess the

progress of the program and to determine how to develop a viable market for ATVs in the OTR. This includes participating in the projection of annual sales estimates and evaluating progress toward meeting estimates.

fi States agree to work with auto manufacturers to determine what actions may be needed to adjust the program if sales estimates are not met. This will include consideration of actions such as participating in public education efforts and joint marketing; addressing problems in fleet purchases, vehicle procurement processes or program funding in specific states; and providing information on fleet vehicle customer satisfaction and issues. States agree to implement the actions identified and agreed upon.

fi States agree to seek support of public service commissions in becoming involved in the ATV program, and emphasizing the importance of fueling infrastructure construction. States agree to initiate and support legislation to the greatest extent possible.

Others

fi Administration will direct Federal procurement practices favoring purchase of ATV's.

fi EPA will work with DOE to assure harmonization and consistency between CAA of 1990 and EPA Act.

fi Fuel and energy providers will purchase vehicles according to EPA requirements, establish refueling infrastructure, and contribute to the development of state incentive programs.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Volatile organic compounds.

40 CFR Part 82

Environmental protection, Air pollution control, Motor vehicle pollution, Penalties.

Dated: December 19, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter 1, is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 shall continue to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Subpart G is amended by adding a new § 51.120, to read as follows:

§ 51.120 Requirements for state implementation plan revisions relating to new motor vehicles.

(a) The EPA Administrator finds that the State Implementation Plans (SIPs) for the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, the portion of Virginia included (as of November 15, 1990) within the Consolidated Metropolitan Statistical Area that includes the District of Columbia, are substantially inadequate to comply with the requirements of section 110(a)(2)(D) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D), and to mitigate adequately the interstate pollutant transport described in section 184 of the Clean Air Act, 42 U.S.C. 7511C, to the extent that they do not provide for emission reductions from new motor vehicles in the amount that would be achieved by the Ozone Transport Commission low emission vehicle (OTC LEV) program described in paragraph (c) of this section. This inadequacy will be deemed cured for each of the aforementioned states (including the District of Columbia) in the event that EPA determines through rulemaking that a national LEV-equivalent new motor vehicle emission control program is an acceptable alternative for OTC LEV and finds that such program is in effect. In the event no such finding is made, each of those states must adopt and submit to EPA by February 15, 1996 a SIP revision meeting the requirements of paragraph (b) of this section in order to cure the SIP inadequacy.

(b) If a SIP revision is required under paragraph (a) of this section, it must contain the OTC LEV program described in paragraph (c) of this section unless the State adopts and submits to EPA, as a SIP revision, other emission-reduction measures sufficient to meet the requirements of paragraph (d) of this section. If a State adopts and submits to EPA, as a SIP revision, other emission-reduction measures pursuant to paragraph (d) of this section, then for purposes of determining whether such a SIP revision is complete within the meaning of section 110(k)(1) (and hence is eligible at least for consideration to be approved as satisfying paragraph (d) of this section), such a SIP revision must contain other adopted emission-reduction measures that, together with the identified potentially broadly practicable measures, achieve at least the minimum level of emission

reductions that could potentially satisfy the requirements of paragraph (d) of this section. All such measures must be fully adopted and enforceable.

(c) The OTC LEV program is a program adopted pursuant to section 177 of the Clean Air Act.

(1) The OTC LEV program shall contain the following elements:

(i) It shall apply to all new 1999 and later model year passenger cars and light-duty trucks (0–5750 pounds loaded vehicle weight), as defined in Title 13, California Code of Regulations, section 1900(b)(11) and (b)(8), respectively, that are sold, imported, delivered, purchased, leased, rented, acquired, received, or registered in any area of the state that is in the Northeast Ozone Transport Region as of December 19, 1994.

(ii) All vehicles to which the OTC LEV program is applicable shall be required to have a certificate from the California Air Resources Board (CARB) affirming compliance with California standards.

(iii) All vehicles to which this LEV program is applicable shall be required to meet the mass emission standards for Non-Methane Organic Gases (NMOG), Carbon Monoxide (CO), Oxides of Nitrogen (NO_x), Formaldehyde (HCHO), and particulate matter (PM) as specified in Title 13, California Code of Regulations, section 1960.1(f)(2) (and formaldehyde standards under section 1960.1(e)(2), as applicable) or as specified by California for certification as a TLEV (Transitional Low-Emission Vehicle), LEV (Low-Emission Vehicle), ULEV (Ultra-Low-Emission Vehicle), or ZEV (Zero-Emission Vehicle) under section 1960.1(g)(1) (and section 1960.1(e)(3), for formaldehyde standards, as applicable).

(iv) All manufacturers of vehicles subject to the OTC LEV program shall be required to meet the fleet average NMOG exhaust emission values for production and delivery for sale of their passenger cars, light-duty trucks 0–3750 pounds loaded vehicle weight, and light-duty trucks 3751–5750 pounds loaded vehicle weight specified in Title 13, California Code of Regulations, section 1960.1(g)(2) for each model year beginning in 1999. A state may determine not to implement the NMOG fleet average in the first model year of the program if the state begins implementation of the program late in a calendar year. However, all states must implement the NMOG fleet average in any full model years of the LEV program.

(v) All manufacturers shall be allowed to average, bank and trade credits in the same manner as allowed under the

program specified in Title 13, California Code of Regulations, section 1960.1(g)(2) footnote 7 for each model year beginning in 1999. States may account for credits banked by manufacturers in California or New York in years immediately preceding model year 1999, in a manner consistent with California banking and discounting procedures.

(vi) The provisions for small volume manufacturers and intermediate volume manufacturers, as applied by Title 13, California Code of Regulations to California's LEV program, shall apply. Those manufacturers defined as small volume manufacturers and intermediate volume manufacturers in California under California's regulations shall be considered small volume manufacturers and intermediate volume manufacturers under this program.

(vii) The provisions for hybrid electric vehicles (HEVs), as defined in Title 13 California Code of Regulations, section 1960.1, shall apply for purposes of calculating fleet average NMOG values.

(viii) The provisions for fuel-flexible vehicles and dual-fuel vehicles specified in Title 13, California Code of Regulations, section 1960.1(g)(1) footnote 4 shall apply.

(ix) The provisions for reactivity adjustment factors, as defined by Title 13, California Code of Regulations, shall apply.

(x) The aforementioned state OTC LEV standards shall be identical to the aforementioned California standards as such standards exist on December 19, 1994.

(xi) All states' OTC LEV programs must contain any other provisions of California's LEV program specified in Title 13, California Code of Regulations necessary to comply with section 177 of the Clean Air Act.

(2) States are not required to include the mandate for production of ZEVs specified in Title 13, California Code of Regulations, section 1960.1(g)(2) footnote 9.

(3) Except as specified elsewhere in this section, states may implement the OTC LEV program in any manner consistent with the Act that does not decrease the emissions reductions or jeopardize the effectiveness of the program.

(d) The SIP revision that paragraph (b) of this section describes as an alternative to the OTC LEV program described in paragraph (c) of this section must contain a set of state-adopted measures that provides at least the following amount of emission reductions in time to bring serious ozone nonattainment areas into

attainment by their 1999 attainment date:

(1) Reductions at least equal to the difference between:

(i) The nitrogen oxides (NO_x) emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures throughout all portions of the state that are within the Northeast Ozone Transport Region created under section 184(a) of the Clean Air Act as of December 19, 1994; and

(ii) A reduction in NO_x emissions from the 1990 statewide inventory in such portions of the state of 50% or whatever greater reduction is necessary to prevent significant contribution to nonattainment in, or interference with maintenance by, any downwind state.

(2) Reductions at least equal to the difference between:

(i) The VOC emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures in all portions of the State in, or near and upwind of, any of the serious or severe ozone nonattainment areas lying in the series of such areas running northeast from the Washington, DC, ozone nonattainment area to and including the Portsmouth, New Hampshire ozone nonattainment area; and

(ii) A reduction in VOC emissions from the 1990 emissions inventory in all such areas of 50% or whatever greater reduction is necessary to prevent significant contribution to nonattainment in, or interference with maintenance by, any downwind state.

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

2. Subpart A is amended by adding a new § 52.32, to read as follows:

§ 52.32 Sanctions following findings of SIP inadequacy.

For purposes of the SIP revisions required by § 51.120, EPA may make a finding under section 179(a) (1)-(4) of the Clean Air Act, 42 U.S.C. 7509(a) (1)-(4), starting the sanctions process set forth in section 179(a) of the Clean Air Act. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

3. Subpart H is amended by adding a new § 52.381, to read as follows:

§ 52.381 Requirements for state implementation plan revisions relating to new motor vehicles.

Connecticut must comply with the requirements of § 51.120.

4. Subpart I is amended by adding a new § 52.433, to read as follows:

§ 52.433 Requirements for state implementation plan revisions relating to new motor vehicles.

Delaware must comply with the requirements of § 51.120.

5. Subpart J is amended by adding a new § 52.498, to read as follows:

§ 52.498 Requirements for state implementation plan revisions relating to new motor vehicles.

The District of Columbia must comply with the requirements of § 51.120.

6. Subpart U is amended by adding a new § 52.1035, to read as follows:

§ 52.1035 Requirements for state implementation plan revisions relating to new motor vehicles.

Maine must comply with the requirements of § 51.120.

7. Subpart V is amended by adding a new § 52.1079, to read as follows:

§ 52.1079 Requirements for state implementation plan revisions relating to new motor vehicles.

Maryland must comply with the requirements of § 51.120.

8. Subpart W is amended by adding a new § 52.1160, to read as follows:

§ 52.1160 Requirements for state implementation plan revisions relating to new motor vehicles.

Massachusetts' adopted LEV program must be revised to the extent necessary for the state to comply with all aspects of the requirements of § 51.120.

9. Subpart EE is amended by adding a new § 52.1530, to read as follows:

§ 52.1530 Requirements for state implementation plan revisions relating to new motor vehicles.

New Hampshire must comply with the requirements of § 51.120.

10. Subpart FF is amended by adding a new § 52.1583, to read as follows:

§ 52.1583 Requirements for state implementation plan revisions relating to new motor vehicles.

New Jersey must comply with the requirements of § 51.120.

11. Subpart HH is amended by adding a new § 52.1674, to read as follows:

§ 52.1674 Requirements for state implementation plan revisions relating to new motor vehicles.

New York's adopted LEV program must be revised to the extent necessary for the state to comply with all aspects of the requirements of § 51.120.

12. Subpart NN is amended by adding a new § 52.2057, to read as follows:

§ 52.2057 Requirements for state implementation plan revisions relating to new motor vehicles.

Pennsylvania must comply with the requirements of § 51.120.

13. Subpart OO is amended by adding a new § 52.2079, to read as follows:

§ 52.2079 Requirements for state implementation plan revisions relating to new motor vehicles.

Rhode Island must comply with the requirements of § 51.120.

14. Subpart UU is amended by adding a new § 52.2385, to read as follows:

§ 52.2385 Requirements for state implementation plan revisions relating to new motor vehicles.

Vermont must comply with the requirements of § 51.120.

15. Subpart VV is amended by adding a new § 52.2453, to read as follows:

§ 52.2453 Requirements for state implementation plan revisions relating to new motor vehicles.

Virginia must comply with the requirements of § 51.120 with respect to the portion of Virginia that in 1990 was located in the Consolidated Metropolitan Statistical Area containing the District of Columbia.

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7507, 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, 7601(a), unless otherwise noted.

2. Part 85 is amended by adding subpart X to read as follows:

Subpart X—Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles Under Section 177 and Part A of Title II of the Clean Air Act

Sec.

- 85.2301 Applicability.
- 85.2302 Definition of model year.
- 85.2303 Duration of model year.
- 85.2304 Definition of production period.
- 85.2305 Duration and applicability of certificates of conformity.

Subpart X—Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles Under Section 177 and Part A of Title II of the Clean Air Act

§ 85.2301 Applicability.

The definitions provided by this subpart are effective February 23, 1995

and apply to all light-duty motor vehicles and trucks, heavy-duty motor vehicles and heavy-duty engines used in motor vehicles, and on-highway motorcycles as such vehicles and engines are regulated under section 177 and Title II part A of the Clean Air Act.

§ 85.2302 Definition of model year.

Model year means the manufacturer's annual production period (as determined under § 85.2304) which includes January 1 of such calendar year, provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

§ 85.2303 Duration of model year.

A specific model year must always include January 1 of the calendar year for which it is designated and may not include a January 1 of any other calendar year. Thus, the maximum duration of a model year is one calendar year plus 364 days.

§ 85.2304 Definition of production period.

(a) The "annual production period" for all models within an engine family of light-duty motor vehicles, heavy-duty motor vehicles and engines, and on-highway motorcycles begins either: when any vehicle or engine within the engine family is first produced; or on January 2 of the calendar year preceding the year for which the model year is designated, whichever date is later. The annual production period ends either: When the last such vehicle or engine is produced; or on December 31 of the calendar year for which the model year is named, whichever date is sooner.

(b) The date when a vehicle or engine is first produced is the "Job 1 date," which is defined as that calendar date on which a manufacturer completes all manufacturing and assembling processes necessary to produce the first saleable unit of the designated model which is in all material respects the same as the vehicle or engine described in the manufacturer's application for certification. The "Job 1 date" may be a date earlier in time than the date on which the certificate of conformity is issued.

§ 85.2305 Duration and applicability of certificates of conformity.

(a) Except as provided in paragraph (b) of this section, a certificate of conformity is deemed to be effective and cover the vehicles or engines named in such certificate and produced during the annual production period, as defined in § 85.2304.

(b) Section 203 of the Clean Air Act prohibits the sale, offering for sale, delivery for introduction into commerce, and introduction into commerce, of any new vehicle or engine not covered by a certificate of conformity unless it is an imported vehicle exempted by the Administrator or otherwise authorized jointly by EPA and U.S. Customs Service regulations. However, the Act does not prohibit the production of vehicles or engines without a certificate of conformity. Vehicles or engines produced prior to the effective date of a certificate of conformity, as defined in paragraph (a) of this section, may also be covered by the certificate if the following conditions are met:

(1) The vehicles or engines conform in all material respects to the vehicles or engines described in the application for the certificate of conformity:

(2) The vehicles or engines are not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity;

(3) The Agency is notified prior to the beginning of production when such production will start, and the Agency is provided full opportunity to inspect and/or test the vehicles during and after their production; for example, the Agency must have the opportunity to conduct selective enforcement auditing production line testing as if the vehicles had been produced after the effective date of the certificate.

(c) New vehicles or engines imported by an original equipment manufacturer after December 31 of the calendar year for which the model year was named are still covered by the certificate of conformity as long as the production of the vehicle or engine was completed before December 31 of that year. This paragraph does not apply to vehicles that may be covered by certificates held by independent commercial importers unless specifically approved by EPA.

(d) Vehicles or engines produced after December 31 of the calendar year for which the model year is named are not covered by the certificate of conformity for that model year. A new certificate of conformity demonstrating compliance with currently applicable standards must be obtained for these vehicles or engines even if they are identical to vehicles or engines built before December 31.

(e) The extended coverage period described here for a certificate of conformity (i.e., up to one year plus 364 days) is primarily intended to allow flexibility in the introduction of new

models. Under no circumstances should it be interpreted that existing models may "skip" yearly certification by

pulling ahead the production of every other model year.

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