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<sub>X</sub> 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" <sup>6</sup> 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 LEVequivalent 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 LEVequivalent 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 LEVequivalent program. Therefore, states would need to have OTC LEV in place so that it would replace the LEVequivalent 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

<sup>&</sup>lt;sup>5</sup> 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.

<sup>&</sup>lt;sup>6</sup> 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.