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-tocomments 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.