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-tocomments 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