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

## 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 motorvehicle-related portion of the overall NO<sub>X</sub> 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<sub>X</sub> 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<sub>X</sub> 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

<sup>&</sup>lt;sup>20</sup> 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.