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<sub>x</sub> 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-tocomments 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