IV.B. above, EPA determines through today's action that OTC LEV is otherwise consistent with the Act. Based on those conclusions, EPA today approves the OTC's recommendation that OTC LEV be adopted throughout the OTR. As described elsewhere, however, EPA's approval of the OTC recommendation and the requirements that flow from it leave open the option for an acceptable LEV-equivalent program that would remove the need for the OTC LEV program.

In section IV.A., EPA discussed its factual finding that emission reductions from new motor vehicles equivalent to the reductions that would be achieved by the OTC LEV program are needed throughout the OTR to bring certain OTR nonattainment areas into attainment (including maintenance) by their applicable attainment dates. Based on this finding, EPA today finds under section 110(a)(2)(D) that each of those states (and in the case of Virginia, the portion of the state lying within the OTR) contributes significantly to nonattainment in, and interferes with maintenance by, another state with respect to the ozone standard. Because the SIPs for those states currently lack provisions requiring those emission reductions, EPA today finds under its independent section 110(k)(5) authority that each of those SIPs is substantially inadequate (1) to comply with section 110(a)(2)(D)'s requirement that each SIP contain adequate provisions prohibiting any emissions activity that will contribute significantly to nonattainment in, or interfere with maintenance by, another state with respect to the ozone standard; and (2) to mitigate adequately the interstate pollutant transport described in section 184. EPA is making the first of these findings also pursuant to the requirement of section 184(c)(5) that, upon approval of an OTC recommendation, EPA make "a finding under section 110(k)(5) that the implementation plan for such state is inadequate to meet the requirements of section 110(a)(2)(D).

Section 184(c)(5) states that EPA's finding under section 110(k)(5) shall require the affected state to revise its SIP to include the approved control measure within one year after the finding is issued. Section 110(k)(5) itself provides that EPA must require the state receiving a finding of SIP inadequacy to revise its SIP "as necessary" to correct the inadequacies that are the subject of the finding. As described above, EPA is qualifying its finding that OTC LEV is necessary under sections 184 and 110(a)(2)(D), and hence is qualifying its approval of the OTC LEV

recommendation, by making each finding subject to the contingency that EPA will find that an acceptable LEV equivalent program has come into effect. Thus, the SIP inadequacy would be cured for each such SIP if an acceptable LEV-equivalent program were in effect, and states would not have to submit a SIP revision to comply with today's action. Therefore, EPA has structured today's rule to require that each state in the OTR submit a SIP revision within one year from the effective date of the SIP call unless EPA finds that an acceptable, LEV-equivalent program is in effect.

As described earlier, EPA has based its necessity findings on the conclusions that there are insufficient potentially broadly practicable measures to achieve the necessary emission reductions without also applying OTC LEV or a LEV-equivalent program. A state would always have the option under section 110 to adopt whatever measures it may believe practicable for application within its borders. Thus, EPA is qualifying its finding of necessity, and hence is qualifying its approval of the OTC recommendation, by making each subject to the contingency that a state will actually adopt sufficient (non-LEV) measures beyond those EPA has identified as potentially broadly practicable so as to demonstrate that the OTC LEV program is not necessary for that state to cure the SIP inadequacy EPA has structured its rule to provide that, unless an acceptable LEV equivalent program is in effect, the SIP revisions required in response to the findings of SIP inadequacy must contain either the OTC LEV program or sufficient adopted alternative measures. These measures would be sufficient if, when combined with the emission reductions that would result in that state from the measures mandated by the Clean Air Act and all measures EPA has currently concluded are potentially broadly practicable, they would achieve 50 to 75% NO_X reductions from a 1990 baseline throughout that state and 50 to 75% VOC reductions from a 1990 baseline in the portions of the state in or near the line of serious and severe nonattainment areas along the Northeast Corridor.

As described above, today's SIP call keeps open the option of an acceptable ²⁴ LEV-equivalent program,

while ensuring that necessary emission reductions are not delayed. The finding of inadequacy would be cured and states would not have to adopt OTC LEV if an acceptable LEV-equivalent program were in effect (which EPA assumes for today's action would include a requirement that auto manufacturers could not opt out once they had opted in). If states take action to adopt or enact OTC LEV before discussions on the alternative program are concluded, EPA encourages states to structure their OTC LEV programs to provide for a future LEV-equivalent program that EPA finds is acceptable in a future rulemaking. Such a provision could give auto manufacturers the choice of complying with either the state's OTC LEV standards or the acceptable LEVequivalent program.

To meet the requirements of this SIP call using an OTC LEV program, a state must exercise its authority under section 177 to adopt the NMOG fleet averages that are part of California's LEV program. The requirements for these are set forth in the following section. States are not required to adopt the ZEV mandate, but retain their authority to do so under section 177.

As described above, rather than submit an OTC LEV SIP revision, states may submit a "shortfall" program to meet today's SIP call. A "shortfall" SIP revision must contain adopted measures that make up the shortfall between (1) the emission reductions necessary to prevent adverse consequences on downwind nonattainment (*i.e.*, 50–75% NO_X reductions throughout the state and 50-75% VOC reductions in the portions of the state in, or near and upwind of the Northeast urban corridor), and (2) the emission reductions that would be achieved by the measures mandated by the Act and the potentially broadly applicable measures EPA identifies in this notice and the SNPRM. Such SIPs will include measures that EPA cannot now conclude are potentially practicable for the region as a whole. Therefore, states submitting a shortfall SIP in lieu of the OTC LEV program must submit fully adopted measures sufficient to fill completely the emission reduction shortfall, not just the emission reduction equivalent to the OTC LEV program, in order to make a convincing demonstration that OTC LEV is not necessary to prevent adverse impacts in downwind states. The submittal of (non-LEV) measures that would achieve only emissions reductions equivalent to what

²⁴ The criteria for determining whether a LEVequivalent program is acceptable will be established as part of the rulemaking on the acceptability of that program. However, to relieve states of their obligation to submit an OTC LEV program, EPA has assumed that a LEV-equivalent program would not allow manufacturers to opt out of the program after they had opted in. EPA is not addressing today

whether states would need to adopt OTC LEV as a "back stop" if manufacturers could opt out of the program.