describe under which reading the State desires EPA to act on its program.

## b. Integrated Permit

NDEP's program combines the requirements for operating permits and construction permits ("integrated program"). All title V sources are identified as Class I sources and must obtain Class I operating permits that meet the requirements of title V and part 70. Sources subject to State requirements only (i.e., not subject to the requirements of title V or part 70) are identified as Class II sources and are outside the scope of this proposed approval. Existing Class I sources will be subject to Class I-A requirements, and new or modified Class I sources will be subject to Class I-B requirements.

The regulations that implement the integrated program are contained in the Nevada Administrative Code ("NAC") sections 445.430–445.846. This interim approval addresses only those elements that pertain to operating permit program requirements for title V sources as identified above. The proposed approval is not being made under EPA's title I authority, and hence, is not amending Nevada's new source review program.

## c. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

NDEP's list of insignificant activities is set out in NAC 445.705.3 and referred to as permit "exemptions." Despite being called "exemptions," NAC 445.705.3 ensures that potential emissions from these activities will be included in all Class I applicability determinations. In addition, NAC

445.7054.2(b) requires Class I permit applications to describe all points of emissions and all activities "in sufficient detail to establish the basis for the applicability of standards and fees,' thus ensuring that the application will not omit information needed to determine whether or how a requirement of the Act applies at a source. EPA interprets the terms "all points of emissions" and "all activities which may generate emissions of [the] air pollutants" in NAC 445.7054.2(b) to include those from NDEP's list of insignificant activities at NAC 445.705.3.

NDEP's insignificant activities are defined by source or activity type in combination with a given size or rate. Activities without a specified size or rate cut-off qualify as insignificant if they are below the major source threshold. This high cut-off, when viewed in conjunction with the listed activities like "agricultural land use" and "equipment or contrivances used exclusively for the processing of food" would almost certainly result in necessary information being left off of the permit application. In order to be fully approvable, NDEP must provide additional criteria that will limit insignificant activities to activities that are unnecessary for evaluating the applicability of requirements at a facility.

For other State and district programs, EPA has proposed to accept, as sufficient criteria for full approval, emission levels defining insignificant activities of two tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for hazardous air pollutants ("HAP") and other toxics (40 CFR section 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Nevada. This request for comment is not intended to restrict the ability of other States and districts to propose, and EPA to approve, different emission levels if the state or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

## d. Variances

NDEP has authority under State law to issue a variance from State requirements. Sections 445.506, 445.511, 445.516, and 445.521 of the NRS allow the State to grant relief from enforcement action for permit violations. EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State law.

The EPA has no authority to approve provisions of State or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

## e. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and NDEP has not defined "prompt" in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the