semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed \$25 per ton per year (adjusted annually based on the Consumer Price Index ("CPI"), relative to 1989 CPI). The \$25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum," (40 CFR 70.9(b)(2)(i))

NDEP elected to collect fees below the presumptive minimum and to submit a detailed fee demonstration of fee adequacy. Nevada's fee regulation, NAC 445B.327, was amended on February 16, 1995 to cap fees at the 1995 level, thus charging \$\bar{3}\$.36 per ton of emissions of regulated pollutants. In addition, facilities must pay annual maintenance fees per permitted source. Given the amount of fees collected from title V sources for fiscal year 1995, NDEP estimated the total annual fee revenue from title V sources to be about \$599,893 during the first three years of the program.

In order to determine whether the title V fees would be adequate to cover the direct and indirect costs of the program, NDEP did a detailed workload analysis which incorporated all the activities involved in title V implementation. Based on this analysis, NDEP determined that four additional staff would have to be hired. Incorporating the cost of the four staff persons, a phased schedule for permitting sources, and other direct and indirect costs, NDEP estimated the total title V program costs to be approximately \$457,079 each year during the first three years of the program.

NDEP's fee analysis demonstrates that title V fees are expected to be sufficient to cover the costs of the title V program. In order to ensure continued fee adequacy, NDEP will keep an accounting system that details expenditures associated with direct title V activities and ensures that the State's

air quality management fund has adequate fee revenue to cover indirect program costs.

- 4. Provisions Implementing the Requirements of Other Titles of the Act
- a. Authority and Commitments for Section 112 Implementation

NDEP has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Nevada's enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. NDEP's submittal also contains a commitment to implement and enforce section 112 requirements and to adopt additional regulations as needed to issue permits that implement and enforce the requirements of section 112. The EPA has determined that the legal authority and commitments are sufficient to allow NDEP to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities,' signed by John Seitz.

b. Authority for Title IV Implementation

NDEP incorporated by reference part 72, the federal acid rain permitting regulations, on February 16, 1995. The incorporation by reference was codified in NAC 445B.221 and submitted to EPA on February 27, 1995 to be added to the State's title V operating permit program.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is proposing to grant interim approval to the operating permits program submitted by the Nevada Division of Environmental Protection, Bureau of Air Quality on November 22, 1993 and revised by the amended submittal made on February 8, 1995. If promulgated, NDEP must make the following changes to receive full approval:

(1) Revise NAC 445.7054.2(h)(2) to clearly require that compliance certifications submitted as part of the permit applications include the compliance status of all applicable requirements and the methods used for determining compliance with all applicable requirements. As NDEP's rule is currently written, a compliance

certification is part of the source's compliance plan, and the elements of the compliance plan are required to address all applicable requirements (NAC 445.7054.2(h)). However, the compliance certification provision, within the compliance plan framework, can be read, inappropriately, to narrow the scope of certifications to those applicable requirements that become effective during the term of the permit. Nonetheless, because NAC 445.7054.2(h)(1) requires a narrative description of the source's compliance status with respect to all applicable requirements, EPA believes part 70's compliance certification requirements will be substantially met for the interim approval period. (section 70.5(c)(9))

(2) Revise the definition of "regulated air pollutant" to include, in addition to those pollutants listed under NAC 445.5905: 1) any pollutant subject to requirements established under section 112 of the Act, including sections 112(g), (j), and (r); and 2) any Class I or Class II substance subject to a standard established by title VI of the Act. (Section 70.2, definition of "regulated"

air pollutant")

(3) NDEP's rule does not contain a title V permit application trigger for existing sources that become subject to the program after the program's effective date. NAC 445.7052.1 must be revised to include an application requirement for such sources. (section 70.5(a)(1)(i))

(4) NDEP's permit shield provisions in NAC 445.7114.1(j) are not fully consistent with part 70 and must be revised as follows: 1) clearly indicate that NAC 445.7114.1(j) provides for permit shields; 2) require the permit to expressly state that a permit shield exists or the permit is presumed not to provide such a shield (section 70.6(f)(2)); and 3) add a statement that the permit shield may not be extended to minor permit modifications (section 70.7(e)(2)(vi)).

(5) Add emissions trading provisions consistent with section 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-

by-case approval.

(6) A schedule of compliance contained in a title V permit must be consistent with that required in the permit application (section 70.6(c)(3)). While NDEP application provisions require all the necessary elements of a schedule of compliance, the permit requirements in NAC 445.7114.1(h) must be revised either by referencing the application requirements in NAC 445.7054.2(h)(3) or by adding that the schedule of compliance will contain a