sources required to have permits pursuant to section 502(a) of the Act and § 70.3 of part 70 (p. 2 of legal opinion), and authority to ''require that all applicable requirements be incorporated into an operating permit'' (p. 8 of legal opinion). In addition, NDEP has committed to implement all applicable requirements, including those that would necessitate State rule adoption prior to incorporation into the permit. (*See* Program Submittal, Section II.A.2., pp. II–1 to II–2.) EPA expects NDEP to issue permits to all major sources and to include all applicable requirements in those permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate it in order to have a fully approvable program.

In response to EPA's discussion in the NPRM (section II.A.2.c.) on insignificant activities, NDEP commented that two of the listed insignificant activities, agricultural land use and equipment or contrivances used for food processing, are ''unpermittable activities.'' EPA regards this comment as ambiguous given that NAC 445B.293.1 (previously NAC 445.705.1) requires, and the Attorney General's legal opinion confirms, that all major sources (with the two exceptions noted above) must obtain operating permits. Furthermore, EPA assumed that if information is provided in the application because it is needed to ''establish the basis for the applicability of standards'' (section 445B.295.2(b), previously 445.7054.2(b)), then the units subject to such standards (i.e., applicable requirements) would be contained in the permit. EPA expects NDEP to implement its insignificant activities provisions in a manner consistent with both part 70 and the provisions of the NAC relied upon in the NPRM, that is: (1) Emissions from insignificant activities must be considered in applicability determinations; (2) Class I permit applications may not omit any information needed to determine or impose any applicable requirement; and (3) if an applicable requirement applies to a unit at a major source, that unit must be permitted. In order to have a fully approvable program, NDEP must remove all ambiguity regarding the permitting of agricultural and food processing activities and clearly require all major sources to obtain Class I permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate that impediment prior to full program approval.

Also, in the NPRM, EPA noted that NDEP's program contains inconsistencies with regard to the applicability of nonmajor sources to title V. (*See* 60 FR 40141–40142, section II.A.2.a. ''applicability.'') EPA requested a letter from NDEP clarifying how it intends to carry out the applicability requirements in its program.

In the comment letter received from NDEP on September 6, 1995, the State informed EPA that it has already corrected the ambiguity regarding whether or not nonmajor sources subject to a section 111 or 112 standard are subject to title V. NDEP revised the Nevada Administrative Code on April 4, 1995 to clearly state that ''major,'' and not ''minor,'' new sources subject to sections 111 and 112 will be permitted as Class I–B sources.

2. Insignificant Activities

One commenter asserted that EPA's position in the NPRM regarding insignificant activities is inconsistent with the July 10, 1995 ''White Paper,'' which gives states flexibility in designating insignificant activities. EPA disagrees that the NPRM is inconsistent with the ''White Paper'' with regard to insignificant activities. EPA is not questioning the State's authority to identify insignificant activities; rather, EPA is rejecting the unbounded nature of some of the listed activities.

The meaning of the term ''insignificant'' as used in section 70.5(c) is that information is unessential for determining whether and how an applicable requirement applies at a source. If emissions at an activity are extremely low, that activity is unlikely to be subject to an applicable requirement. That is why EPA suggested that NDEP create an across-the-board emissions threshold above which activities could not qualify as insignificant. Without an across-the-board threshold or unit-specific limits, activities on NDEP's list, such as ''agricultural land use'' and ''equipment or contrivances used exclusively for the processing of food'' could be construed as being ''insignificant'' even if subject to an applicable requirement. Where there is a chance that an activity is subject to an applicable requirement (e.g., food processing activities may be subject to the yeast manufacturing NESHAP), EPA needs additional criteria, such as an emissions threshold, to ensure that the activity is insignificant for part 70 permitting purposes.

The commenter further contended that NDEP's regulation already prohibits activities subject to an applicable requirement from qualifying as insignificant. Nevertheless, the commenter asked whether the following language would resolve EPA's concerns: ''[N]o source subject to an applicable requirement may qualify as an insignificant activity.''

EPA disagrees that NDEP's regulation clearly prohibits activities subject to an applicable requirement from qualifying as insignificant. In fact, NDEP's list of insignificant activities contains activities, such as air-conditioning equipment, that are almost certainly subject to an applicable requirement. Unless NDEP removes from the list of insignificant activities those activities that are likely to be subject to a unit-specific applicable requirement, the language proposed by the commenter might only cause confusion. However, the language proposed by the commenter would help clarify that insignificant activities provisions do not exempt sources from title V and do not relieve sources from having to comply with any applicable requirements.

Another comment received on insignificant activities is that EPA's recommended emissions thresholds are arbitrary and unnecessary. The commenter pointed out that other state programs have allowed emission thresholds that are higher than EPA's recommended limits for HAP emissions.

As stated in the proposed notice, EPA will review and evaluate any emissions thresholds proposed by NDEP. Emissions thresholds should reflect state-specific circumstances. Part 70 specifically provides that the permitting authority is responsible for providing the ''criteria used to determine insignificant activities or emission levels.'' NDEP may use levels approved in other state programs as guidance.

3. Reporting of Permit Deviations

Both commenters disagreed with EPA's statement that each permit must define ''prompt'' for purposes of prompt reporting of deviations. According to the commenters, ''prompt'' is already defined in NAC 445B.232.4 (previously 445.667.4) as reporting any excess emissions within 24 hours. In addition, NAC 445B.326 (previously 445.7133) defines prompt for emergencies.

The purpose of defining ''prompt'' in either the title V program or the title V permit is to notify the source of its exact reporting obligation. While NAC 445B.232.4 defines ''prompt'' in an acceptable manner, it is not currently part of NDEP's title V program. However, NAC 445B.326 was submitted as part of NDEP's title V program, and EPA agrees that ''prompt'' has already been defined for emergencies covered by that provision.

Given that permits must contain ''all applicable reporting requirements'' and that the definition of ''applicable