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under paragraph (a) of this section. A preproposal may be submitted to EPA any time prior to the submission of a proposal under paragraph (a) of this section. As soon as possible after the receipt of a preproposal, EPA shall certify to the applicant (and to any other issuing agency, as applicable) whether or not the project would be approvable. This certification may include comments indicating necessary modifications which would make the project approvable.

§ 57.603 Criteria for approval.

The approvability of any proposed research and development program shall be judged primarily according to the following criteria:

(a) The likelihood that the project will result in the use of more effective means of emission limitation by the smelter within a reasonable period of time and that the technology can be implemented at the smelter in question, should the smelter be placed on a SIP compliance schedule at some future date when adequately demonstrated technology is reasonably available;

(b) Whether the proposed funding and staffing of the project appear adequate for its successful completion;

(c) Whether the proposed level of funding for the project is consistent with the research and development expenditure levels for pollution control found in other industries;

(d) The potential that the project may yield industrywide pollution control benefits;

(e) Whether the project may also improve control of other pollutants of both occupational and environmental significance;

(f) The potential effects of the project on energy conservation; and

(g) Other non-air quality health and environmental considerations.

§ 57.604 Evaluation of projects.

The research and development proposal shall include a provision for the employment of a qualified independent engineering firm to prepare written reports at least annually which evaluate each completed significant stage of the research and development program, including all relevant information and data generated by the program. All reports required by this paragraph shall be submitted to EPA and also to the issuing agency if it is not EPA.

§ 57.605 Consent.

Each NSO shall incorporate by reference a binding written consent, signed by a corporate official empowered to do so, requiring the smelter owner to:

(a) Carry out the approved research and development program;

(b) Grant each issuing agency and EPA and their contractors access to any information or data employed or generated in the research and development program, including any process, emissions, or financial records which such agency determines are needed to evaluate the technical or economic merits of the program;

(c) Grant physical access to representatives and contractors of each issuing agency to each facility at which such research is conducted;

(d) Grant the representatives and contractors of EPA and the issuing agency reasonable access to the persons conducting the program on behalf of the smelter owner for discussions of progress, interpretation of data and results, and any other similar purposes as deemed necessary by EPA or any issuing agency.

§ 57.606 Confidentiality.

The provisions of section 114 of the Act and 40 CFR part 2 shall govern the confidentiality of any data or information provided to EPA under this subpart.

Subpart G—Compliance Schedule Requirements

§ 57.701 General requirements.

This section applies to all smelters applying for an NSO. Each NSO shall require the smelter owner to meet all of the requirements within the NSO as expeditiously as practicable but in no case later than the deadlines contained in this subpart or any other section of these regulations. For requirements not immediately effective, the NSO shall provide increments of progress and a schedule for compliance. Each schedule must reflect the extent to

which any required equipment or systems are already in place and the extent to which any required reports or studies have already been completed. Requirements for smelters to submit compliance schedules and the procedures which they must follow are outlined below.

§ 57.702 Compliance with constant control emission limitation.

(a) This section applies to all smelters which receive an NSO, but only to the extent this section is compatible with any SIP compliance schedule required by §§ 57.201(d)(2) and 57.705.

(b) Any NSO issued to a smelter not required to immediately comply with the requirements of subpart G under § 57.701 shall contain a schedule for compliance with those requirements as expeditiously as practicable but in no case later than 6 months from the effective date of the NSO, except as follows: Where a waiver is requested in accordance with subpart H, an NSO may be issued without a schedule for compliance with the requirements for which a waiver is being considered consistent with subpart H, pending a final decision on the request under subpart H. If a waiver is requested in accordance with subpart H, compliance with the requirements of subpart C which were deferred as a result of such request shall be achieved as expeditiously as practicable after, but in no case later than 6 months from a final decision by the issuing agency to deny a waiver under subpart H or disapproval by EPA of a waiver granted by the issuing agency. The time limits specified herein may be extended only if a smelter operator demonstrates that special circumstances warrant more time, in which case the compliance schedule shall require compliance as expeditiously as practicable. An NSO which does not contain a schedule for compliance with all the requirements of subpart C because a waiver has been requested in accordance with subpart H shall be amended in accordance with § 57.104 within three months after a final decision under subpart H so as to either grant a waiver of any remaining requirements of subpart C, or deny such a waiver and place the smelter on a compliance schedule for meeting those requirements. If the issuing agency grants a waiver and such waiver is disapproved by EPA, the issuing agency shall promptly amend the NSO so as to place the smelter on a compliance schedule meeting any remaining requirements of subpart C.

(c) Any schedule required under this section shall contain the following information and increments of progress to the extent applicable:

(1) Description of the overall design of the SO_2 control system(s) to be installed;

(2) Descriptions of specific process hardware to be used in achieving compliance with interim SO_2 constant controls including gas capacity values;

(3) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(4) The date for initiating on-site construction or installation of necessary equipment;

(5) The date by which on-site construction or installation of equipment is to be completed; and

(6) The date for achievement of final compliance with interim emission limitations.

§ 57.703 Compliance with the supplementary control system requirements.

This section applies to all nonferrous smelters applying for an NSO.

(a) Schedules for smelters with existing SCS. Each NSO shall require immediately upon issuance of the NSO operation of any existing supplementary control system and immediately upon the effective date of the NSO the assumption of liability for all violations of the NAAQS detected by any monitor in the SCS system. Each NSO shall require that within six months of the effective date of the NSO the smelter complete any measures specified in the smelter's approved SCS development plan not implemented at the time the NSO is issued, and assume liability for all violations of the NAAQS detected anywhere in the DLA (except as provided in subpart D of these regulations). Other requirements of subpart D such as the requirements for submission of reports records, and for ongoing

evaluation of the SCS shall be complied with at the times specified in subpart D and § 57.701.

(b) Compliance schedule for smelters with no existing SCS system. Where a smelter has no SCS at the time of issuance of the NSO, the NSO shall require compliance with the requirements of subpart D according to the following schedule:

(1) Within six months after the effective date of the NSO the smelter shall install all operating elements of the SCS system, begin operating the system, complete all other measures specified in its approved SCS development plan, begin compliance with the requirements of § 57.404, and assume liability for any violations of the NAAQS within its designated liability area (except as provided by subpart D), detected by the SCS monitors in place.

(2) Within nine months thereafter the smelter shall submit the SCS Report, assume liability for all violations of the NAAQS detected anywhere within its designated liability area, and comply with all other requirements of subpart D, except for those which subpart D specifies are to be satisfied at or after the close of such nine-month period, including requirements for submission of studies, reports, and records, and the requirements for continued review and evaluation of the SCS.

§ 57.704 Compliance with fugitive emission evaluation and control requirements.

This section applies only to smelters not required to submit SIP Compliance Schedules under § 57.705. Each NSO shall require that smelters satisfy each of the requirements of subpart E as expeditiously as practicable, taking into account the extent to which those requirements have already been satisfied, and in any event, within any deadlines specified below.

(a) *Plan for fugitive emission control.* The NSO shall provide that within a reasonable period after the submission of the report on the fugitive emission control study required by § 57.502, but within a period allowing sufficient time for compliance with the requirement of § 57.503 for amendment of the NSO, the smelter owner shall submit to the issuing agency for its approval a proposed fugitive emission control plan, including increments of progress, for compliance with the requirements of §§ 57.501 and 57.503.

(b) *SCS Report.* If the fugitive emission control plan submitted under paragraph (a) of this section proposes to meet the requirements of §§ 57.501 and 57.503 through the additional use of a supplementary control system, the plan shall demonstrate that the use of supplementary controls at that smelter to prevent violations of the NAAQS resulting from fugitive emissions is practicable, adequate, reliable, and enforceable. The plan shall contain increments of progress providing for completion of the implementation of each additional measure, and for corresponding compliance with the requirements of paragraphs (b) and (c) of § 57.404, within four months of approval of the plan by the issuing agency. The plan shall also provide that within three months after completion of implementation of those additional measures, the smelter shall fully comply with the requirements of §§ 57.401 and 57.501 (including the assumption of liability for violations of NAAQS within its designated liability area), and shall submit and additional SCS report for the approval of the issuing agency. This additional final report shall correspond to that submitted under § 57.405(b)(2), except that it need not contain the 3-month study described in § 57.405(b)(2)(iii).

(c) *NSO amendment.* The amendments of the NSO required under § 57.503 shall be affected by the issuing agency as follows:

(1) With respect to the additional use of SCS, upon approval or promulgation of the plan submitted under paragraph (a) of this section and upon approval or promulgation of the requirements for the system described in the additional SCS Report under paragraph (b) of this section;

(2) With respect to the additional use of engineering techniques, upon approval or promulgation of the compliance schedule required by paragraph (a) of this section.

§ 57.705 Contents of SIP Compliance Schedule required by § 57.201(d) (2) and (3).

This section applies to smelters which are required to submit a SIP Compliance Schedule as discussed below.

(a) Each SIP Compliance Schedule required by § 57.201(d) (2) and (3) must contain the following elements:

(1) Description of the overall design of the SO_2 control system(s) to be installed;

(2) Descriptions of specific process hardware to be used in achieving compliance with the SIP emission limitation including gas capacity values;

(3) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(4) The date for initiating on-site construction or installation of necessary equipment;

(5) The date by which on-site construction or installation of equipment is to be completed;

(6) The date for achievement of final compliance with SIP emission limitations; and

(7) Any other measures necessary to assure compliance with all SIP requirements as expeditiously as practicable.

(b) *Operations of SCS.* Smelters to which § 57.705 is applicable must comply with all elements of § 57.703.

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

§ 57.801 Purpose and scope.

(a) This subpart shall govern all proceedings for the waiver of the interim requirement that each NSO provide for the use of constant controls.

(b) In the absence of specific provisions in this subpart, and where appropriate, questions arising at any stage of the proceeding shall be resolved at the discretion of the Presiding Officer or the Administrator, as appropriate.

§ 57.802 Request for waiver.

(a) *General.* (1) Each smelter owner requesting a waiver shall complete, sign, and submit appendix A (Test for Eligibility for Interim Waiver). Copies of appendix A may be obtained from any EPA Regional Administrator, or from the Director, Stationary Source Compliance Division (EN–341), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Claims of confidentiality shall be made as provided in § 57.203.

(2) The smelter owner shall append to the completed and signed appendix A full copies of all documents, test results, studies, reports, scientific literature and assessments required by appendix A. To the extent that the material consists of generally available published material, the smelter owner may cite to the material in lieu of appending it to appendix A. The smelter owner shall specifically designate those portions of any documents relied upon and the facts or conclusions in appendix A to which they relate.

(b) *Effect of submitting incomplete application.* (1) The Administrator, or a person designated by him to review applications for waivers, may advise the smelter owner in writing whenever he determines that additional information is needed in order to make the waiver eligibility determinations required by section 119(d)(2) of the Act. The smelter owner shall promptly supply such information. All additional information requested under this paragraph and filed in the manner required by paragraph (d) shall be deemed part of appendix A.

(2) Failure to comply with the requirements of paragraphs (a) and (b)(1) of this section shall be grounds for denial of the requested waiver.

(c) *Time for requesting waivers.* Any request for a waiver must be submitted to the Administrator by the smelter owner at the time of the application for an NSO from the State or the Administrator, as the case may be. Where a smelter was issued a second period NSO by a State before these regulations went into effect, a request for a waiver shall be made and a completed appendix A shall be submitted, within sixty days of the effective date of these regulations, unless an extension is granted by the Administrator, or his designee, for good cause.

(d) *Submission of request.* A copy of appendix A (plus attachments) which has