AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

Subpart A—General

Sec.
57.101 Purpose and scope.
57.102 Eligibility.
57.103 Definitions.
57.104 Amendment of the NSO.
57.105 Submittal of required plans, proposals, and reports.
57.106 Expiration date.
57.107 The State or local agency's transmittal to EPA.
57.108 Comparable existing SIP provisions.
57.109 Maintenance of pay.
57.110 Reimbursement of State or local agency.
57.111 Severability of provisions.

Subpart B—The Application and the NSO Process

57.201 Where to apply.
57.202 How to apply.
57.203 Contents of the application.
57.204 EPA action on second period NSOs which have already been issued.
57.205 Submission of supplementary information upon relaxation of an SO_2 SIP emission limitation.

Subpart C—Constant Controls and Related Requirements

57.301 General requirements.
57.302 Performance level of interim constant controls.
57.303 Total plantwide emission limitation.
57.304 Bypass, excess emissions and malfunctions.
57.305 Compliance monitoring and reporting.

Subpart D—Supplementary Control System Requirements

57.401 General requirements.
57.402 Elements of the supplementary control system.
57.403 Written consent.
57.404 Measurements, records, and reports.
57.405 Formulation, approval, and implementation of requirements.

Subpart E—Fugitive Emission Evaluation and Control

57.501 General requirements.
57.502 Evaluation.
57.503 Control measures.
57.504 Continuing evaluation of fugitive emission control measures.
57.505 Amendments of the NSO.

Subpart F—Research and Development Requirements

57.601 General requirements.
57.602 Approval of proposal.
57.603 Criteria for approval.
57.604 Evaluation of projects.
57.605 Consent.
57.606 Confidentiality.

Subpart G—Compliance Schedule Requirements

57.701 General requirements.
57.702 Compliance with constant control emission limitation.
57.703 Compliance with the supplementary control system requirements.
57.704 Compliance with fugitive emission evaluation and control requirements.
57.705 Contents of SIP Compliance Schedule required by §57.201(d) (2) and (3).

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

57.801 Purpose and scope.
57.802 Request for waiver.
57.803 Issuance of tentative determination; notice.
57.804 Request for hearing; request to participate in hearing.
57.805 Submission of written comments on tentative determination.
57.806 Presiding Officer.
57.807 Hearing.
57.808 Opportunity for cross-examination.
57.809 *Ex parte* communications.
57.810 Filing of briefs, proposed findings, and proposed recommendations.
57.811 Recommended decision.
57.812 Appeal from or review of recommended decision.
57.813 Final decision.
57.814 Administrative record.
57.815 State notification.
57.816 Effect of negative recommendation.

APPENDIX A TO PART 57—PRIMARY NONFERROUS SMELTER ORDER (NSO) APPLICATION

AUTHORITY: Secs. 110, 114, 119, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7414, 7419, and 7601); sec. 406 of Pub. L. 95–95.

SOURCE: 50 FR 6448, Feb. 15, 1985, unless otherwise noted.

Subpart A—General

§57.101 Purpose and scope.

(a) *Applicability of the regulations.* The regulations in subparts A through H govern:

(1) The eligibility of smelters for a Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act;

(2) The procedures through which an NSO can be approved or issued by EPA; and

(3) The minimum contents of each NSO required for EPA issuance or approval under section 119. Subpart I *et seq.*, will contain NSOs in effect for individual smelters.

(b) *State authority to adopt more stringent requirements.* Nothing in this part shall preclude a State from imposing more stringent requirements, as provided by section 116 of the Clean Air Act.

§ 57.102 Eligibility.

(a) A primary copper, lead, zinc, molybdenum, or other nonferrous smelter is eligible for an NSO if it meets the following conditions:

(1) The smelter was in existence and operating on August 7, 1977;

(2) The smelter is subject to an approved or promulgated sulfur dioxide (SO_2) State Implementation Plan (SIP) emission limitation which is adequate to ensure that National Ambient Air Quality Standards (NAAQS) for SO_2 are achieved without the use of any unauthorized dispersion techniques; and

(3) The Administrator determines, based on a showing by the smelter owner, that no means of emission limitation applicable to the smelter which would enable it to comply with its SIP stack emission limitation for SO_2 has been adequately demonstrated to be reasonably available (taking into account the cost of compliance, nonair quality health and environmental impact, and energy considerations) in accordance with § 57.201(d)(1).

(b) For the purposes of these regulations:

(1) The following means of emission limitation shall be considered adequately demonstrated for nonferrous smelters. (Taking into account nonair quality health and environmental impact and energy considerations, but not the cost of compliance).

(i) *Retrofit control technologies.* (A) Sulfuric acid plant in conjunction with an adequately demonstrated replacement technology or process modification;

(B) Magnesium oxide (concentration) scrubbing;

(C) Lime/limestone scrubbing; and

(D) Ammonia scrubbing.

(ii) *Replacement or process modifications.* (A) Flash smelting;

(B) Oxygen enrichment;

(C) Supplemental sulfur burning in conjunction with acid plant;

(D) Electric Furnace;

(E) Noranda process;

(F) Fluid bed roaster;

(G) Continuous smelting (Mitsubishi) process; and

(H) Strong stream/weak stream gas blending.

(2) Each adequately demonstrated means of emission limitation which would enable a smelter to comply with its SIP emission limitation for SO_2 shall be considered applicable to the smelter unless the smelter operator demonstrates that the use of a particular system at that smelter is technically unreasonable, for reasons specific to that site.

(3) An applicable means of emission limitation which would enable a smelter to comply with its SIP emission limitation for SO_2 shall be considered adequately demonstrated to be reasonably available to the smelter (taking into account the cost of compliance) if the information submitted under §§ 57.107(a) and 57.203(b) (plus any necessary supplemental information) shows, according to the criteria, procedures, and tests contained in appendix A to this part and in accordance with § 57.201(d)(1), that both of the following two tests are met.

(i) *The rate of return test.* The present value of the smelter's future net cash flow (during and after investment in constant control technology) is more than book value of the smelter's net investment in constant dollars.

(ii) *The profit protection test.* The constant control technology expenditure reduces the present value of the smelter's forecast pretax profits by less than 50%.

(c) When applying for an NSO, a smelter must establish, for purposes of applying the financial eligibility tests, which adequately demonstrated constant control technology applicable to