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(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

that smelter is the most economically feasible for use at that smelter.

[50 FR 6448, Feb. 15, 1985, as amended at 51 FR 10211, Mar. 25, 1986]

§ 57.103 Definitions.

(a) *The Act* means the Clean Air Act, as amended.

(b) *Active use* refers to an SO_2 constant control system installed at a smelter before August 7, 1977 and not totally removed from regular service by that date.

(c) *Adequate SO_2* emission limitation means a SIP emission limitation which was approved or promulgated by EPA as adequate to attain and maintain the NAAQS in the areas affected by the stack emissions without the use of any unauthorized dispersion technique.

(d) *Administrative Law Judge* means an administrative law judge appointed under 5 U.S.C. 3105 (see also 5 CFR part 930, as amended by 37 FR 16787), and is synonymous with the term ''Hearing Examiner'' as formerly used in Title 5 of the U.S. Code.

(e) *The Administrator* means the Administrator of the U.S. Environmental Protection Agency, or the Administrator's authorized representative.

(f) *Ambient air* shall have the meaning given by 40 CFR 50.1(e), as that definition appears upon promulgation of this subpart, or as hereafter amended.

(g) *Ambient air quality* refers only to concentrations of sulfur dioxide in the ambient air, unless otherwise specified.

(h) *An approved measure* refers to one contained in an NSO which is in effect.

(i) *Assistant Administrator for Air and Radiation* means the Assistant Administrator for Air and Radiation of the U.S. Environmental Protection Agency.

(j) *Constant controls, control technology, and continuous emission reduction technology* mean systems which limit the quantity, rate, or concentration, excluding the use of dilution, and emissions of air pollutants on a continuous basis.

(k) *Effective date of an NSO* means the effective date listed in the FEDERAL REGISTER publication of EPA's issuance or approval of an NSO.

(l) *EPA and the Agency* means the Administrator of the U.S. Environmental Protection Agency, or the Administrator's authorized representative.

(m) *Fugitive emissions* means any air pollutants emitted to the atmosphere other than from a stack.

(n) *Issuance* of an NSO means the final transmittal of the NSO pursuant to § 57.107(a) by an issuing agency (other than EPA) to EPA for approval, or the publication of an NSO issued by EPA in the FEDERAL REGISTER.

(o) *Issuing agency*, unless otherwise specifically indicated, means the State or local air pollution control agency to which a smelter's owner has applied for an NSO, or which has issued the NSO, or EPA, when the NSO application has been made to EPA. Any showings or demonstrations required to be made under this part to the issuing agency, when not EPA, are subject to independent determinations by EPA.

(p) *Malfunction* means any unanticipated and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor design, poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. A malfunction exists only for the minimum time necessary to implement corrective measures.

(q) *Maximum production capacity* means either the maximum demonstrated rate at which a smelter has produced its principal metallic final product under the process equipment configuration and operating procedures prevailing on or before August 7, 1977, or a rate which the smelter is able to demonstrate by calculation is attainable with process equipment existing on August 7, 1977. The rate may be expressed as a concentrate feed rate to the smelter.

(r) *NAAQS and National Ambient Air Quality Standards,* unless otherwise specified, refer only to the National Primary and Secondary Ambient Air Quality Standards for sulfur dioxide.

(s) *Scheduled maintenance* means any periodic procedure, necessary to maintain the integrity or reliability of emissions control performance, which