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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

can be anticipated and scheduled in advance. In sulfuric acid plants, it includes among other items the screening or replacement of catalyst, the retubing of heat exchangers, and the routine repair and cleaning of gas handling/cleaning equipment.

(t) *Smelter owner and operator* means the owner or operator of the smelter, without distinction.

(u) *Supplementary control system* (SCS) means any technique for limiting the concentration of a pollutant in the ambient air by varying the emissions of that pollutant according to atmospheric conditions. For the purposes of this part, the term supplementary control system does not include any dispersion technique based solely on the use of a stack the height of which exceeds good engineering practice (as determined under regulations implementing section 123 of the Act).

(v) *Unauthorized dispersion technique* refers to any dispersion technique which, under section 123 of the Act and the regulations promulgated pursuant to that section, may not be used to reduce the degree of emission limitation otherwise required in the applicable SIP.

(w) Unless otherwise specified in this part, all terms shall have the same meaning given them by the Act.

[50 FR 6448, Feb. 15, 1985, as amended at 57 FR 5328, Feb. 13, 1992]

§ 57.104 Amendment of the NSO.

An NSO shall be amended whenever necessary for compliance with the requirements and purposes of this part.

(a)(1) *Issuance of amendment.* A State or local issuing agency may issue an amendment of any NSO it has issued. Any amendment issued by a State or local issuing agency shall be subject to approval by EPA to the same extent as was the original NSO. Any smelter owner may apply to the agency which originally issued its NSO for an amendment of the NSO at any time. Such an application shall be accompanied by whatever documentation is required by that agency (or EPA) to support the requested amendment.

(2)(i) Notwithstanding the requirements of paragraph (a)(1) of this section, amendments to SIP compliance schedule interim compliance dates in State-issued NSO's need not be submitted for EPA approval if the amendment does not delay the interim date by more than three months from the date as approved by the Administrator and if the final compliance date is unchanged. Delays longer than 3 months shall be handled according to the provisions of § 57.104(a)(1).

(ii) Changes made in accordance with this subparagraph may be effective immediately but must be submitted to EPA within seven days. EPA will give public notice of receipt of such changes by publication of a Notice in the FEDERAL REGISTER.

(3) In any case in which the issuing agency fails to issue an amendment necessary for compliance with the requirements and purposes of this part, EPA may, after first giving the issuing Agency notice, issue such amendment.

(b) *Revision of SCS Manual.* Operation in accordance with the revised provisions of an SCS operational manual (see § 57.402(e)) shall not be considered a violation of an NSO while the application for approval of those revisions as NSO amendments is pending before the issuing agency (or EPA) for approval: *Provided,* that:

(1) No violations of NAAQS occur in the smelter's Designated Liability Area during that time; and

(2) The smelter operator has not been informed by the issuing agency or EPA that its application is not adequately documented, unless such deficiency has been remedied promptly.

(c) *Notice and opportunity for hearing.* Notice and opportunity for public hearing shall be provided before issuance of all major amendments.

§ 57.105 Submittal of required plans, proposals, and reports.

(a) The failure of a smelter owner to submit any plan, report, document or proposal as required by its NSO or by this part shall constitute a violation of its NSO.

(b) If the Administrator determines that a nonferrous smelter is in violation of a requirement contained in an NSO approved under these regulations, the Administrator shall, as provided by section 119(f) of the Act:

(1) Enforce such requirement under section 113 (a), (b), or (c) of the Act;