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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;

(2) Revoke the order after notice and opportunity for hearing;

(3) Give notice of noncompliance and commence action under section 120 of the act; or

(4) Take any appropriate combinations of these actions.

(c) Under section 304 of the Act, any person may commence a civil action against an owner or operator of a smelter which is alleged to be in violation or any order approved under this part.

### § 57.106 Expiration date.

Each NSO shall state its expiration date. No NSO issued under this regulation shall expire later than January 1, 1988.

### § 57.107 The State or local agency's transmittal to EPA.

(a) *Content and bases of the State or local agency's NSO.* Issuance of an NSO by a State or local agency shall be completed by the issuing agency's transmittal to the appropriate EPA Regional Office of:

(1) The text of the NSO;

(2) The application submitted by the smelter owner, except for appendix A to this part, all correspondence between the issuing agency and the applicant relating to the NSO, and any material submitted in support of the application;

(3) A concise statement of the State or local agency's findings and their bases; and

(4) All documentation or analyses prepared by or for the issuing agency in support of the NSO.

(b) *The State or local agency's enforcement plan.* The transmittal under paragraph (a) of this section shall be accompanied by a description of the issuing agency's plans for monitoring compliance with and enforcement of the NSO. The transmittal shall also include a description of the resources which will be used to implement those plans. If the enforcement plans appear inadequate, EPA may require that the NSO be modified such that the NSO will be adequately enforced.

### § 57.108 Comparable existing SIP provisions.

Notwithstanding any other provision of this part, an NSO may contain provisions to which the affected smelter is subject under the applicable EPA-approved State Implementation Plan (SIP) for sulfur dioxide in lieu of the corresponding provisions which would otherwise be required under this part if the Administrator determines that those SIP provisions are substantially equivalent to the corresponding NSO provisions which would otherwise be required, and if the Administrator determines that the smelter is in substantial compliance with those SIP provisions. For the purposes of this section, provisions to which the affected smelter is subject under the applicable EPA-approved State Implementation Plan are those which became effective before the smelter owner applied for the NSO.

### § 57.109 Maintenance of pay.

The Administrator will not approve or issue an NSO for any smelter unless he has approved or promulgated SIP provisions which are applicable to the smelter and which satisfy the requirements of section 110(a)(6) of the Clean Air Act.

### § 57.110 Reimbursement of State or local agency.

As a condition of issuing an NSO, any issuing agency may require the smelter operator to pay a fee to the State or local agency sufficient to defray the issuing agency's expenses in issuing and enforcing the NSO.

### § 57.111 Severability of provisions.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the invalid provision of application.