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(3) At any time during the term of an NSO which does not contain a SIP compliance schedule, EPA or the issuing agency may reevaluate the availability of technology to the smelter. If EPA or the issuing agency determines that adequately demonstrated technology is reasonably available to permit the smelter to comply with its SIP by or before January 1, 1988, the NSO shall be amended within 3 months time after such determination. The amendment shall require compliance with all SIP requirements by or before January 1, 1988, and shall include a compliance schedule meeting the requirements of §57.705. The determination that adequately demonstrated technology is reasonably available shall be made by reapplying the same appendix A financial eligibility tests required by subpart B, updated by economic data reflecting current operating conditions and currently demonstrated control technology. Any such determination and amendment shall be governed by the provisions of this part and section 119 of the Clean Air Act.

(4) Notice and opportunity for public hearing in accordance with section 119 of the Clean Air Act must be provided before issuance of any NSO.

(e) A smelter that does not have any constant SO_2 controls or whose existing constant SO_2 controls when in full operation and optimally maintained are not sufficient to treat all strong SO_2 streams may apply for a waiver of the requirements of subpart C to install interim constant controls by submitting an application under subpart H. A waiver may be granted only with respect to the requirement to eliminate bypass of constant controls through the installation of new constant control equipment, not with respect to the requirements for optimum maintenance and operation of existing equipment. EPA shall then determine the smelter's ability to afford installation of the required additional interim constant SO_2 control equipment at the smelter based on financial eligibility information analyzed according to the financial test prescribed in appendix A. A waiver of the requirement for additional interim constant controls will be granted if EPA determines in accordance with the procedures of subpart H that imposition of this requirement would necessitate closure of the smelter for at least one year.

§ 57.202 How to apply.

(a) *Letter of intent.* To initiate an application for an NSO, the owner or operator of a smelter shall send a letter of intent to an appropriate air pollution control agency. The letter of intent shall contain a statement of the owner's intent to apply for an NSO, and an agreement to provide any information required under this part. The letter of intent shall be signed by a corporate official authorized to make such commitments. Upon receipt of any letter of intent by the issuing agency, the SIP emission limitation for sulfur dioxide, as to that applicant, shall be deemed suspended for 60 days. The 60 day suspension may be extended for good cause at the discretion of the Administrator.

(b) *Complete application.* (1) Within the period referred to in paragraph (a) of this section, the smelter owner shall submit its completed application pursuant to §57.201. Receipt of all parts of a substantially complete application postmarked within the original or extended application period shall be deemed to continue the suspension of the SIP emission limitation for SO_2 until the issuing agency issues or declines to issue an NSO. This suspension shall in all cases terminate, however, 90 days after receipt of the substantially completed application, unless extended for good cause at the discretion of the Administrator. If, in the Administrator's judgment, good faith effort has been made to submit a complete application, additional time may be granted to allow for correction of minor deficiencies.

(2) If an issuing agency transmits an NSO to EPA for approval before the expiration of the suspension of the Federal SIP emission limitation, the suspension shall continue until EPA approves or disapproves the NSO.

§ 57.203 Contents of the application.

(a) *Claim of confidentiality.* The smelter owner may make a business confidentiality claim covering all or part