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D specifies are to be satisfied at or after the close of such nine-month period, including requirements for submission of studies, reports, and records, and the requirements for continued review and evaluation of the SCS.

§ 57.704 Compliance with fugitive emission evaluation and control requirements.

This section applies only to smelters not required to submit SIP Compliance Schedules under § 57.705. Each NSO shall require that smelters satisfy each of the requirements of subpart E as expeditiously as practicable, taking into account the extent to which those requirements have already been satisfied, and in any event, within any deadlines specified below.

(a) *Plan for fugitive emission control.* The NSO shall provide that within a reasonable period after the submission of the report on the fugitive emission control study required by § 57.502, but within a period allowing sufficient time for compliance with the requirement of § 57.503 for amendment of the NSO, the smelter owner shall submit to the issuing agency for its approval a proposed fugitive emission control plan, including increments of progress, for compliance with the requirements of §§ 57.501 and 57.503.

(b) *SCS Report.* If the fugitive emission control plan submitted under paragraph (a) of this section proposes to meet the requirements of §§ 57.501 and 57.503 through the additional use of a supplementary control system, the plan shall demonstrate that the use of supplementary controls at that smelter to prevent violations of the NAAQS resulting from fugitive emissions is practicable, adequate, reliable, and enforceable. The plan shall contain increments of progress providing for completion of the implementation of each additional measure, and for corresponding compliance with the requirements of paragraphs (b) and (c) of § 57.404, within four months of approval of the plan by the issuing agency. The plan shall also provide that within three months after completion of implementation of those additional measures, the smelter shall fully comply with the requirements of §§ 57.401 and 57.501 (including the assumption of liability for violations of NAAQS within its designated liability area), and shall submit and additional SCS report for the approval of the issuing agency. This additional final report shall correspond to that submitted under § 57.405(b)(2), except that it need not contain the 3-month study described in § 57.405(b)(2)(iii).

(c) *NSO amendment.* The amendments of the NSO required under § 57.503 shall be affected by the issuing agency as follows:

(1) With respect to the additional use of SCS, upon approval or promulgation of the plan submitted under paragraph (a) of this section and upon approval or promulgation of the requirements for the system described in the additional SCS Report under paragraph (b) of this section;

(2) With respect to the additional use of engineering techniques, upon approval or promulgation of the compliance schedule required by paragraph (a) of this section.

§ 57.705 Contents of SIP Compliance Schedule required by § 57.201(d) (2) and (3).

This section applies to smelters which are required to submit a SIP Compliance Schedule as discussed below.

(a) Each SIP Compliance Schedule required by § 57.201(d) (2) and (3) must contain the following elements:

(1) Description of the overall design of the SO_2 control system(s) to be installed;

(2) Descriptions of specific process hardware to be used in achieving compliance with the SIP emission limitation including gas capacity values;

(3) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(4) The date for initiating on-site construction or installation of necessary equipment;

(5) The date by which on-site construction or installation of equipment is to be completed;

(6) The date for achievement of final compliance with SIP emission limitations; and

(7) Any other measures necessary to assure compliance with all SIP requirements as expeditiously as practicable.

(b) *Operations of SCS.* Smelters to which § 57.705 is applicable must comply with all elements of § 57.703.

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

§ 57.801 Purpose and scope.

(a) This subpart shall govern all proceedings for the waiver of the interim requirement that each NSO provide for the use of constant controls.

(b) In the absence of specific provisions in this subpart, and where appropriate, questions arising at any stage of the proceeding shall be resolved at the discretion of the Presiding Officer or the Administrator, as appropriate.

§ 57.802 Request for waiver.

(a) *General.* (1) Each smelter owner requesting a waiver shall complete, sign, and submit appendix A (Test for Eligibility for Interim Waiver). Copies of appendix A may be obtained from any EPA Regional Administrator, or from the Director, Stationary Source Compliance Division (EN–341), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Claims of confidentiality shall be made as provided in § 57.203.

(2) The smelter owner shall append to the completed and signed appendix A full copies of all documents, test results, studies, reports, scientific literature and assessments required by appendix A. To the extent that the material consists of generally available published material, the smelter owner may cite to the material in lieu of appending it to appendix A. The smelter owner shall specifically designate those portions of any documents relied upon and the facts or conclusions in appendix A to which they relate.

(b) *Effect of submitting incomplete application.* (1) The Administrator, or a person designated by him to review applications for waivers, may advise the smelter owner in writing whenever he determines that additional information is needed in order to make the waiver eligibility determinations required by section 119(d)(2) of the Act. The smelter owner shall promptly supply such information. All additional information requested under this paragraph and filed in the manner required by paragraph (d) shall be deemed part of appendix A.

(2) Failure to comply with the requirements of paragraphs (a) and (b)(1) of this section shall be grounds for denial of the requested waiver.

(c) *Time for requesting waivers.* Any request for a waiver must be submitted to the Administrator by the smelter owner at the time of the application for an NSO from the State or the Administrator, as the case may be. Where a smelter was issued a second period NSO by a State before these regulations went into effect, a request for a waiver shall be made and a completed appendix A shall be submitted, within sixty days of the effective date of these regulations, unless an extension is granted by the Administrator, or his designee, for good cause.

(d) *Submission of request.* A copy of appendix A (plus attachments) which has been completed for the purpose of requesting a waiver of constant control requirements shall be filed with the Administrator, addressed as follows: Director, Stationary Source Compliance Division (EN–341), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attn: Confidential Information Unit.

(e) *Eligibility.* A smelter shall be eligible for consideration under this subpart only if it establishes that (1) its existing strong stream controls, if any, lack the capacity while in full operation to treat all strong stream sulfur dioxide emissions and (2) bypass of strong stream controls due to excess strong stream sulfur dioxide emissions cannot be avoided with improved operation and maintenance of existing strong stream controls and process equipment.

(f) *Criteria for decision.* The Administrator shall grant or approve a waiver, whichever is appropriate, for any eligible smelter as to which he finds, in accordance with the methods and procedures specified in appendix A, that: