

§ 57.104

40 CFR Ch. I (7-1-04 Edition)

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 re-

quirements 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.