§ 7419. Primary nonferrous smelter orders

(a) Issuance; hearing; enforcement orders; statement of grounds for application; findings

(1) Upon application by the owner or operator of a primary nonferrous smelter, a primary nonferrous smelter order under subsection (b) of this section may be issued—

(A) by the Administrator, after thirty days’ notice to the State, or

(B) by the State in which such source is located, but no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this chapter.

Not later than ninety days after submission by the State to the Administrator of notice of the issuance of a primary nonferrous smelter order under this section, the Administrator shall determine whether or not such order has been issued by the State in accordance with the requirements of this chapter. If the Administrator determines that such order has not been issued in accordance with such requirements, he shall conduct a hearing respecting the reasonably available control technology for primary nonferrous smelters.

(2) (A) An order issued under this section to a primary nonferrous smelter shall be referred to as a “primary nonferrous smelter order”. No primary nonferrous smelter may receive both an enforcement order under section 7413 (d) of this title and a primary nonferrous smelter order under this section.

(B) Before any hearing conducted under this section, in the case of an application made by the owner or operator of a primary nonferrous smelter for a second order under this section, the applicant shall furnish the Administrator (or the State as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). The statement of the grounds for the proposed order shall be provided by the Administrator or the State in any case in which such State or Administrator is acting on its own initiative. Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of such hearing. No primary nonferrous smelter order may be granted unless the applicant establishes that he meets the conditions required for the issuance of such order (or the Administrator or State establishes the meeting of such conditions when acting on their own initiative).

(C) Any decision with respect to the issuance of a primary nonferrous smelter order shall be accompanied by a concise statement of the findings and of the basis of such findings.

(3) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(b) Prerequisites to issuance of orders

A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on August 7, 1977;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

(3) such smelter is unable to comply with such requirement by the applicable date for compliance because no means of emission limitation applicable to such smelter which will enable it to achieve
compliance with such requirement has been adequately demonstrated to be reasonably available
(as determined by the Administrator, taking into account the cost of compliance, non-air quality
health and environmental impact, and energy consideration).

(c) Second orders

(1) A second order issued to a smelter under this section shall set forth compliance schedules
containing increments of progress which require compliance with the requirement postponed as
expeditiously as practicable. The increments of progress shall be limited to requiring compliance
with subsection (d) of this section and, in the case of a second order, to procuring, installing,
and operating the necessary means of emission limitation as expeditiously as practicable after
the Administrator determines such means have been adequately demonstrated to be reasonably
available within the meaning of subsection (b)(3) of this section.

(2) Not in excess of two primary nonferrous smelter orders may be issued under this section to
any primary nonferrous smelter. The first such order issued to a smelter shall not result in the
postponement of the requirement with respect to which such order is issued beyond January 1,
1983. The second such order shall not result in the postponement of such requirement beyond

(d) Interim measures; continuous emission reduction technology

(1) (A) Each primary nonferrous smelter to which an order is issued under this section shall be
required to use such interim measures for the period during which such order is in effect as
may be necessary in the judgment of the Administrator to assure attainment and maintenance
of the national primary and secondary ambient air quality standards during such period, taking
into account the aggregate effect on air quality of such order together with all variances,
extensions, waivers, enforcement orders, delayed compliance orders and primary nonferrous
smelter orders previously issued under this chapter.

(B) Such interim requirements shall include—

(i) a requirement that the source to which the order applies comply with such reporting
requirements and conduct such monitoring as the Administrator determines may be
necessary, and

(ii) such measures as the Administrator determines are necessary to avoid an imminent
and substantial endangerment to health of persons.

(C) Such interim measures shall also, except as provided in paragraph (2), include continuous
emission reduction technology. The Administrator shall condition the use of any such interim
measures upon the agreement of the owner or operator of the smelter—

(i) to comply with such conditions as the Administrator determines are necessary to
maximize the reliability and enforceability of such interim measures, as applied to the
smelter, in attaining and maintaining the national ambient air quality standards to which
the order relates, and

(ii) to commit reasonable resources to research and development of appropriate emission
control technology.

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology
may be waived with respect to a particular smelter by the State or the Administrator, after notice
and a hearing on the record, and upon a showing by the owner or operator of the smelter that such
requirement would be so costly as to necessitate permanent or prolonged temporary cessation
of operations of the smelter. Upon application for such waiver, the Administrator shall be notified
and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title
5. At such hearing the Administrator shall require the smelter involved to present information
relating to any alleged cessation of operations and the detailed reasons or justifications therefor.
On the basis of such hearing the Administrator shall make findings of fact as to the effect of such
requirement and on the alleged cessation of operations and shall make such recommendations as
he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 7621 of this title.

(4) In the case of any smelter which on August 7, 1977, uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) Termination of orders

At any time during which an order under this section applies, the Administrator may enter upon a public hearing respecting the availability of technology. Any order under this section shall be terminated if the Administrator determines on the record, after notice and public hearing, that the conditions upon which the order was based no longer exist. If the owner or operator of the smelter to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under subsection (c) of this section.

(f) Violation of requirements

If the Administrator determines that a smelter to which an order is issued under this section is in violation of any requirement of subsection (c) or (d) of this section, he shall—

(1) enforce such requirement under section 7413 of this title,

(2) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(3) give notice of noncompliance and commence action under section 7420 of this title, or

(4) take any appropriate combination of such actions.

Footnotes

1 See References in Text note below.


References in Text


Prior Provisions

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, was classified to section 1857c–10 of this title and provided for the authority to deal with energy shortages, prior to repeal by Pub. L. 95–95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413 (d)(5) of this title.

Amendments


Subsec. (d)(3). Pub. L. 95–190, § 14(a)(26), substituted “7621” for “7619”.

Subsec. (e). Pub. L. 95–190, § 14(a)(27), substituted “an order under this section” for “such order”.

Footnotes

1 See References in Text note below.

Effective Date

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.