

## § 53.6

substantially deficient or incomplete and cannot be processed until additional information is submitted to complete the application and specify the general areas of substantial deficiency.

(f) Send notice to the applicant that additional tests will be conducted by the Administrator, specifying the nature of and reasons for the additional tests and the estimated time required (in such cases, the 120-day period shall commence 1 calendar day after the additional tests have been completed).

### § 53.6 Right to witness conduct of tests.

(a) Submission of an application for a reference or equivalent method determination shall constitute consent for the Administrator or the Administrator's authorized representative, upon presentation of appropriate credentials, to witness or observe any tests required by this part in connection with the application or in connection with any modification or intended modification of the method by the applicant.

(b) The applicant shall have the right to witness or observe any test conducted by the Administrator in connection with the application or in connection with any modification or intended modification of the method by the applicant.

(c) Any tests by either party that are to be witnessed or observed by the other party shall be conducted at a time and place mutually agreeable to both parties.

### § 53.7 Testing of methods at the initiative of the Administrator.

(a) In the absence of an application for a reference or equivalent method determination, the Administrator may conduct the tests required by this part for such a determination, may compile such other information as may be necessary in the judgment of the Administrator to make such a determination, and on the basis of the tests and information may determine that a method satisfies applicable requirements of this part.

(b) In the absence of an application requesting the Administrator to consider revising an appendix to part 50 of

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

this chapter in accordance with § 53.16, the Administrator may conduct such tests and compile such information as may be necessary in the Administrator's judgment to make a determination under § 53.16(d) and on the basis of the tests and information make such a determination.

(c) If a method tested in accordance with this section is designated as a reference or equivalent method in accordance with § 53.8 or is specified or designated as a reference method in accordance with § 53.16, any person or entity who offers the method for sale as a reference or equivalent method thereafter shall assume the rights and obligations of an applicant for purposes of this part, with the exception of those pertaining to submission and processing of applications.

### § 53.8 Designation of reference and equivalent methods.

(a) A candidate method determined by the Administrator to satisfy the applicable requirements of this part shall be designated as a reference method or equivalent method (as applicable), and a notice of the designation shall be submitted for publication in the FEDERAL REGISTER not later than 15 days after the determination is made.

(b) A notice indicating that the method has been determined to be a reference method or an equivalent method shall be sent to the applicant. This notice shall constitute proof of the determination until a notice of designation is published in accordance with paragraph (a) of this section.

(c) The Administrator will maintain a current list of methods designated as reference or equivalent methods in accordance with this part and will send a copy of the list to any person or group upon request. A copy of the list will be available for inspection or copying at EPA Regional Offices.

### § 53.9 Conditions of designation.

Designation of a candidate method as a reference method or equivalent method shall be conditioned to the applicant's compliance with the following requirements. Failure to comply with any of the requirements shall constitute a ground for cancellation of the designation in accordance with § 53.11.

## Environmental Protection Agency

## § 53.9

(a) Any method offered for sale as a reference or equivalent method shall be accompanied by a copy of the manual referred to in § 53.4(b)(3) when delivered to any ultimate purchaser.

(b) Any method offered for sale as a reference or equivalent method shall generate no unreasonable hazard to operators or to the environment during normal use or when malfunctioning.

(c) Any analyzer, PM<sub>10</sub> sampler, or PM<sub>2.5</sub> sampler offered for sale as part of a reference or equivalent method shall function within the limits of the performance specifications referred to in § 53.20(a), § 53.30(a), § 53.50, or § 53.60, as applicable, for at least 1 year after delivery and acceptance when maintained and operated in accordance with the manual referred to in § 53.4(b)(3).

(d) Any analyzer, PM<sub>10</sub> sampler, or PM<sub>2.5</sub> sampler offered for sale as a reference or equivalent method shall bear a prominent, permanently affixed label or sticker indicating that the analyzer or sampler has been designated by EPA as a reference method or as an equivalent method (as applicable) in accordance with this part and displaying any designated method identification number that may be assigned by EPA.

(e) If an analyzer is offered for sale as a reference or equivalent method and has one or more selectable ranges, the label or sticker required by paragraph (d) of this section shall be placed in close proximity to the range selector and shall indicate clearly which range or ranges have been designated as parts of the reference or equivalent method.

(f) An applicant who offers analyzers, PM<sub>10</sub> samplers, or PM<sub>2.5</sub> samplers for sale as reference or equivalent methods shall maintain an accurate and current list of the names and mailing addresses of all ultimate purchasers of such analyzers or samplers. For a period of 7 years after publication of the reference or equivalent method designation applicable to such an analyzer or sampler, the applicant shall notify all ultimate purchasers of the analyzer or PM<sub>2.5</sub> or PM<sub>10</sub> sampler within 30 days if the designation has been canceled in accordance with § 53.11 or § 53.16 or if adjustment of the analyzer or sampler is necessary under § 53.11(b).

(g) If an applicant modifies an analyzer, PM<sub>10</sub> sampler, or PM<sub>2.5</sub> sampler

that has been designated as a reference or equivalent method, the applicant shall not sell the modified analyzer or sampler as a reference or equivalent method nor attach a label or sticker to the modified analyzer or sampler under paragraph (d) or (e) of this section until the applicant has received notice under § 53.14(c) that the existing designation or a new designation will apply to the modified analyzer, PM<sub>10</sub> sampler, or PM<sub>2.5</sub> sampler or has applied for and received notice under § 53.8(b) of a new reference or equivalent method determination for the modified analyzer or sampler.

(h) An applicant who has offered PM<sub>2.5</sub> samplers or analyzers for sale as part of a reference or equivalent method may continue to do so only so long as the facility in which the samplers or analyzers are manufactured continues to be an ISO 9001-registered facility, as set forth in subpart E of this part. In the event that the ISO 9001 registration for the facility is withdrawn, suspended, or otherwise becomes inapplicable, either permanently or for some specified time interval, such that the facility is no longer an ISO 9001-registered facility, the applicant shall notify EPA within 30 days of the date the facility becomes other than an ISO 9001-registered facility, and upon such notification, EPA shall issue a preliminary finding and notification of possible cancellation of the reference or equivalent method designation under § 53.11.

(i) An applicant who has offered PM<sub>2.5</sub> samplers or analyzers for sale as part of a reference or equivalent method may continue to do so only so long as updates of the Product Manufacturing Checklist set forth in subpart E of this part are submitted annually. In the event that an annual Checklist update is not received by EPA within 12 months of the date of the last such submitted Checklist or Checklist update, EPA shall notify the applicant within 30 days that the Checklist update has not been received and shall, within 30 days from the issuance of such notification, issue a preliminary finding and notification of possible cancellation of the reference or equivalent method designation under § 53.11.