

§ 53.13 Hearings.

(a)(1) After granting a request for a hearing under § 53.12, the Administrator will designate a presiding officer for the hearing.

(2) If a time and place for the hearing have not been fixed by the Administrator, the hearing will be held as soon as practicable at a time and place fixed by the presiding officer, except that the hearing shall in no case be held sooner than 30 days after publication of a notice of hearing in the FEDERAL REGISTER.

(3) For purposes of the hearing, the parties shall include EPA, the applicant or interested person(s) who requested the hearing, and any person permitted to intervene in accordance with paragraph (c) of this section.

(4) The Deputy General Counsel or the Deputy General Counsel's representative will represent EPA in any hearing under this section.

(5) Each party other than EPA may be represented by counsel or by any other duly authorized representative.

(b)(1) Upon appointment, the presiding officer will establish a hearing file. The file shall contain copies of the notices issued by the Administrator pursuant to § 53.11(b)(1), together with any accompanying material, the request for a hearing and supporting data submitted therewith, the notice of hearing published in accordance with paragraph (a)(2) of this section, and correspondence and other material data relevant to the hearing.

(2) The hearing file shall be available for inspection by the parties or their representatives at the office of the presiding officer, except to the extent that it contains information identified in accordance with § 53.15.

(c) The presiding officer may permit any interested person to intervene in the hearing upon such a showing of interest as the presiding officer may require; provided that permission to intervene may be denied in the interest of expediting the hearing where it appears that the interests of the person seeking to intervene will be adequately represented by another party (or by other parties), including EPA.

(d)(1) The presiding officer, upon the request of any party or at the officer's discretion, may arrange for a pre-

hearing conference at a time and place specified by the officer to consider the following:

- (i) Simplification of the issues.
- (ii) Stipulations, admissions of fact, and the introduction of documents.
- (iii) Limitation of the number of expert witnesses.
- (iv) Possibility of agreement on disposing of all or any of the issues in dispute.
- (v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the presiding officer and made part of the record.

(e)(1) Hearings shall be conducted by the presiding officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to exclusion by the presiding officer of irrelevant, immaterial, or repetitious evidence.

(2) Witnesses shall be placed under oath.

(3) Any witness may be examined or cross-examined by the presiding officer, the parties, or their representatives. The presiding officer may, at his/her discretion, limit cross-examination to relevant and material issues.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased from the reporter.

(5) All written statements, charts, tabulations, and data offered in evidence at the hearing shall, upon a showing satisfactory to the presiding officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute part of the record.

(6) Oral argument shall be permitted. The presiding officer may limit oral presentations to relevant and material issues and designate the amount of time allowed for oral argument.

(f)(1) The presiding officer shall make an initial decision which shall include written findings and conclusions and the reasons therefore on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made part of the record. The initial decision

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shall become the decision of the Administrator without further proceedings unless there is an appeal to, or review on motion of, the Administrator within 30 calendar days after the initial decision is filed.

(2) On appeal from or review of the initial decision, the Administrator will have all the powers consistent with making the initial decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the presiding officer for additional proceedings. The decision by the Administrator will include written findings and conclusions and the reasons or basis therefore on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

§ 53.14 Modification of a reference or equivalent method.

(a) An applicant who offers a method for sale as a reference or equivalent method shall report to the EPA Administrator prior to implementation any intended modification of the method, including but not limited to modifications of design or construction or of operational and maintenance procedures specified in the operation manual (see § 53.9(g)). The report shall be signed by an authorized representative of the applicant, marked in accordance with § 53.15 (if applicable), and addressed as specified in § 53.4(a).

(b) A report submitted under paragraph (a) of this section shall include:

(1) A description, in such detail as may be appropriate, of the intended modification.

(2) A brief statement of the applicant's belief that the modification will, will not, or may affect the performance characteristics of the method.

(3) A brief statement of the probable effect if the applicant believes the modification will or may affect the performance characteristics of the method.

(4) Such further information, including test data, as may be necessary to explain and support any statement required by paragraphs (b)(2) and (b)(3) of this section.

(c) Within 30 calendar days after receiving a report under paragraph (a) of this section, the Administrator will

take one or more of the following actions:

(1) Notify the applicant that the designation will continue to apply to the method if the modification is implemented.

(2) Send notice to the applicant that a new designation will apply to the method (as modified) if the modification is implemented, submit notice of the determination for publication in the FEDERAL REGISTER, and revise or supplement the list referred to in § 53.8(c) to reflect the determination.

(3) Send notice to the applicant that the designation will not apply to the method (as modified) if the modification is implemented and submit notice of the determination for publication in the FEDERAL REGISTER.

(4) Send notice to the applicant that additional information must be submitted before a determination can be made and specify the additional information that is needed (in such cases, the 30-day period shall commence upon receipt of the additional information).

(5) Send notice to the applicant that additional tests are necessary and specify what tests are necessary and how they shall be interpreted (in such cases, the 30-day period shall commence upon receipt of the additional test data).

(6) Send notice to the applicant that additional tests will be conducted by the Administrator and specify the reasons for and the nature of the additional tests (in such cases, the 30-day period shall commence 1 calendar day after the additional tests are completed).

(d) An applicant who has received a notice under paragraph (c)(3) of this section may appeal the Administrator's action as follows:

(1) The applicant may submit new or additional information pertinent to the intended modification.

(2) The applicant may request the Administrator to reconsider data and information already submitted.

(3) The applicant may request that the Administrator repeat any test conducted that was a material factor in the Administrator's determination. A representative of the applicant may be present during the performance of any such retest.