

## § 173.8

rescind be withdrawn and that the rescission proceeding be terminated.

(c) If, following the close of the hearing, the Presiding Officer finds that the State has not corrected the deficiencies in its program, the Presiding Officer shall issue a decision recommending that the State's primary enforcement responsibility for pesticide use violations be rescinded in whole or in part.

(d) The recommended decision of the Presiding Officer shall become final Agency action forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Administrator is taken from it by a party to the proceeding, or (2) the Administrator elects, *sua sponte*, to review the recommended decision.

## § 173.8 Final order.

(a) If the State does not request a hearing within the sixty-day time period and the Administrator has not issued an order withdrawing the notice of intent to rescind, the Administrator shall issue a final order as soon as practicable after the time for public comment on the notice of intent to rescind has elapsed. The final order shall either withdraw the notice of intent to rescind and terminate the proceeding or rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(b) If a hearing has been held and the Presiding Officer has made a recommended decision, then either the Office of Enforcement or the State may appeal the recommended decision to the Administrator or the Administrator may elect to review the recommended decision on his own initiative.

(c) After an appeal or *sua sponte* review the Administrator shall issue a final order terminating the rescission proceeding or rescinding, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(d) In no event may the Administrator issue his final decision sooner than ninety (90) days after service of the notice of intent to rescind on a State.

## 40 CFR Ch. I (7-1-00 Edition)

(e) Any final order, or a recommended decision which becomes a final order under §173.7(c), shall be published in the FEDERAL REGISTER.

## § 173.9 Judicial review.

The State may appeal an order rescinding, in whole or in part, its primary enforcement responsibility for pesticide use violations to the appropriate federal court pursuant to section 16 of FIFRA.

## PART 177—ISSUANCE OF FOOD ADDITIVE REGULATIONS

### Subpart A—General Provisions

Sec.

177.1 Scope and applicability.

177.3 Definitions.

### Subparts B–D [Reserved]

### Subpart E—Procedures for Filing Petitions

177.81 Petition for establishment, modification, or revocation of a food additive regulation.

177.84 Deficient or incomplete petitions.

177.86 Acceptance for review.

177.88 Publication of notice.

177.92 Amendments or supplements to petitions.

177.98 Withdrawal of petitions.

177.99 Demand for action.

### Subpart F—Submission of Scientific and Technical Information

177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.

177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.

177.110 Additional data requirements; waiver of requirements.

177.116 Sample of food additive.

### Subpart G—Administrative Actions

177.125 Action after review.

177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.

177.135 Effective date of regulation.

### Subpart H—Judicial Review

177.140 Judicial review.

AUTHORITY: 21 U.S.C. 348, 371(a) 331(j); Reorg. Plan No. 3 of 1970.