

§ 173.9

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.

(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 174—PROCEDURES AND REQUIREMENTS FOR PLANT-INCORPORATED PROTECTANTS

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174.510 *Bacillus thuringiensis* Cry1Ac protein in all plants; exemption from the requirement of a tolerance.

174.511 *Bacillus thuringiensis* Cry1Ab protein in all plants; exemption from the requirement of a tolerance.