

prevent or otherwise restrain use of a microbial pesticide in small-scale testing if it is determined that:

(1) Such use would create an imminent threat of substantial harm to health or the environment that is prohibited under paragraph (a) of this section; or

(2) The terms or conditions on which approval of the testing was granted under this subpart C are violated.

#### **PART 173—PROCEDURES GOVERNING THE RESCISSION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY FOR PESTICIDE USE VIOLATIONS**

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##### **§ 173.1 Applicability.**

These procedures govern any proceeding to rescind a State's primary enforcement responsibility for pesticide use violations conducted under section 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 *et seq.*

##### **§ 173.2 Definitions.**

For purposes of this part:

(a) *Administrator* means the Administrator of the United States Environmental Protection Agency or his delegate.

(b) *Notice of intent to rescind* means a notice to a State issued under § 173.3 which initiates a proceeding to rescind the State's primary enforcement responsibility for pesticide use violations.

(c) *State* means the agency or agencies primarily responsible for enforcing pesticide use laws or regulations within the State or jurisdiction undergoing rescission proceedings.

(d) *Party to the proceeding* shall mean the State or the Agency's Office of Enforcement.

(e) *Presiding Officer* means an attorney appointed by the Administrator to conduct the rescission proceeding. The Presiding Officer shall be an employee or representative of the Agency and shall not have had prior direct connection with the specific proceeding except in circumstances where subsequent hearings are in order.

##### **§ 173.3 Initiation of rescission proceedings.**

(a) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out such responsibility, or cannot carry out such responsibility due to the lack of adequate legal authority, the Administrator shall notify the State in writing of his intent to rescind its primary enforcement responsibility, in whole or in part, by serving upon the State a notice of intent to rescind.

(b) The notice of intent to rescind shall:

(1) Specify those aspects of the State's pesticide use enforcement program determined to be inadequate;

(2) Specify the facts which underlie the findings contained in the rescission notice;

(3) Have attached thereto copies of any relevant documents discoverable under the Federal Rules of Civil Procedure and the Freedom of Information Act which contain data relied upon by the Administrator in making his decision to issue the notice;

(4) Have attached thereto a copy of this part; and

(5) Be sent to the State by certified mail, return receipt requested.

(c) The State may respond in writing to the findings specified in the notice of intent to rescind.

##### **§ 173.4 Informal conference and settlement.**

(a) After receipt of a notice of intent to rescind, the State may request that an informal conference be held between appropriate State and EPA officials to discuss the findings made in the notice of intent to rescind. The informal conference shall then be held in the State.