

EIR Functional Equivalency Evaluation Requirements,

Continued

Step 3 -- Determine likelihood of adverse impact

If there is a sensitive site near the treatment area, the CAC should presume that there is a likelihood, or at least the potential, of substantial adverse environmental impacts. However, there may be data to support that it is not likely and the presumption can be rebutted.
(Reference: 3 CCR section 6432).

Step 4 -- Existing mitigation

Determine if regulations or pesticide product labeling adequately mitigate the hazard or prohibit the application. If the hazard is addressed by requirements already in place, there may no longer be a likelihood of substantial adverse environmental impacts and therefore, no need for further mitigation. The permit may be issued. Permits are automatically conditioned upon compliance with the laws and regulations (*FAC section 14007*); duplication in permit conditions is not recommended. However, providing pertinent laws and regulations in the form of information is often desirable. It is also not necessary to duplicate labeling requirements as permit conditions, since pesticide use must not be in conflict with labeling (*FAC section 12973*).

For some pesticides, specific buffer distances are cited in the regulations, labeling, or recommended permit conditions. If not, the judgment of the CAC must be used.

Step 5 -- Additional mitigation

Title 3, CCR section 6426 requires the permit applicant (grower) and his/her pest control adviser to consider **mitigation measures** to reduce the risks of the use of a restricted material before applying for a permit. While this specific requirement is directed at agricultural use, the general requirement to consider mitigation measures applies to all permits. To determine compliance with this requirement, the CAC should ask the permit applicant to identify the mitigation measures that were considered and document his/her response. If the applicant acknowledges that they did not consider mitigation, the CAC should refuse the permit at this time and direct them to comply with section 6426.

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EIR Functional Equivalency Evaluation Requirements,

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Step 5 -- Additional mitigation (continued)

Determine if there are any additional measures that would further mitigate the hazard. If there are, evaluate if they are reasonable, practical, and effective. If they are feasible, the CAC may issue the permit, conditioned upon use of those additional feasible mitigation measures. It is DPR's longstanding policy adopted at the initial granting of functional equivalency to consider and apply feasible mitigation measures before requiring that the CAC consider alternatives. However, this does not preclude the CAC from suggesting, or the user from considering, alternatives at any point in the permit process.

Step 6 -- Alternatives

Title 3, CCR section 6426 requires the permit applicant (grower) and his/her pest control adviser to consider **alternatives** to the use of a restricted material before applying for a permit. While this specific requirement is directed at agricultural use, the general requirement to consider alternatives applies to all permits. To determine compliance with this requirement, the CAC should ask the permit applicant to identify the alternatives that were considered and document his/her response. If the applicant acknowledges that they did not consider alternatives, the CAC should refuse the permit at this time and direct them to comply with section 6426.

DPR has developed for growers and PCAs a template alternatives worksheet for each restricted material on permit applications and accompanying guidance (Appendix B). The worksheet documents the grower's/PCA's consideration of alternatives, which is required by regulation. The information is necessary in order for the permit application to be deemed complete.

If none of the potential mitigation measures considered in Step 5 are feasible and a likelihood of significant adverse environmental impact remains, it means the CAC must now consider alternatives. If there is a feasible alternative, the permit must be denied and the alternative used [FAC section 14006.5 reference to FAC section 12825(c)]. The alternative may be a non-pesticide procedure, a non-restricted material, or other permit material. If it is another permit material, it means the CAC returns to Step 1 and begins the process all over again with that alternative pesticide.

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