

Section 3.2

How Requirements of Public Resources Code Section 21080.5 Are Addressed by the Program

Requirements for a functionally equivalent program

Public Resources Code section 21080.5(d)(1) provides for EIR functional equivalency when the regulatory program of a State agency operates under a plan that includes a description of the proposed activity that addresses both alternatives to the activity and mitigation measures to minimize any significant adverse effect of the activity on the environment. For purposes of this section, the CAC is a State agency. (*PRC section 21080.5*)

Scope

This discussion will focus on the permit program and briefly discuss the registration program. The Administrative Procedure Act, found in the Government Code beginning at section 11340 (administered by the Office of Administrative Law), specifically controls the adoption of regulations. This parallel process includes many of the aspects required of a functionally equivalent program, and will not be addressed here.

Inter-disciplinary approach

The EIR functionally equivalent program must use an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decision-making. The permitting process, administered by the CACs, relies on the data submission and evaluation conducted on pesticide products during the registration process to identify potential hazards and suggest example mitigation measures if pesticide labeling and regulations do not adequately mitigate the hazard. Use of a pesticide under a restricted materials permit must be in compliance with the registered labeling.

DPR scientists use an interdisciplinary approach working closely with other state agencies, including the California Department of Fish and Wildlife and California Department of Public Health, as well as agencies within the California Environmental Protection Agency, including the Air Resources Board, Department of Toxic Substances Control, Office of Environmental Health Hazard Assessment, and State Water Resources Control Board. DPR regularly consults with members of at least three committees which are composed of representatives from many different disciplines, including environmental interest groups, farm labor organizations, and consumer advocates. The CACs use the determinations made about the pesticide to properly consider environmental impacts and appropriately condition permits to mitigate any significant adverse impacts.

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Protection of the environment

The enabling legislation of the regulatory program must include protection of the environment among its principal purposes. The overall purposes of the pesticide regulatory program are found in FAC section 11501. They include protection of the environment from environmentally harmful pesticides by prohibiting, regulating, and ensuring proper stewardship of those pesticides. The implementation of pest management systems to achieve acceptable levels of control with the least possible harm to the environment is also encouraged.

The criteria for designating pesticides as restricted materials in FAC section 14004.5 includes hazard to the environment from drift and hazard of persistent residues that could lead to contamination of the environment. Food and Agricultural Code section 14006.5 requires the CAC to consider local site-specific environmental conditions before issuing any permit. Food and Agricultural Code section 14006.5 also prohibits the CAC from issuing a permit if the pesticide:

- Has demonstrated serious uncontrollable adverse effects;
- Use is less of a public value or greater detriment to the environment than the benefit received from its use; or
- Has a feasible alternative that is demonstrably less destructive to the environment (*FAC section 12825*).

Food and Agricultural Code sections 12824 and 12825 require DPR to eliminate from use any pesticide that:

- Endangers the environment;
- Is not beneficial;
- Is misrepresented;
- For which the detriment is greater than the benefit;
- For which there is a less detrimental alternative;
- Outlines general criteria to evaluate pesticides.

Food and Agricultural Code section 12824 also authorizes the Director to establish specific criteria to evaluate pesticides. Reevaluation criteria are found in 3 CCR section 6221.

Food and Agricultural Code section 14102 requires DPR to "... take whatever steps are necessary to protect the environment."

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