

Specific Procedural Requirements of Public Resources Code Section 21080.5(d)(2) and (3), Continued

6. Notice available for comment

The Notice of Decision must be available for a reasonable time for review and comment* by the public and other agencies.

Generally, there is no routine notice to other agencies for review and comment when an individual permit is issued. If other agencies have an interest in any particular permit, this could be discussed during the CAC consultation, pursuant to 3 CCR section 6122. The need for timely pest control makes this delay impractical.

The permits are available in the CAC's office for review and request for reconsideration provided in FAC section 14009. Any person who will be directly affected by the proposed application may appeal the CAC's final decision to the Director.

Title 3, CCR sections 6110, 6116, and 6118 all relate to decisions of the Director relating to the adoption of standards being available to the public and other agencies for review and comment.

7. Description of proposed activity

The plan or other written document must include a description of the proposed activity*.

Food and Agricultural Code section 14006.5 and 3 CCR sections 6430 (non-agricultural) and 6438 (agricultural) outline the requirements for the information describing the proposed activity that must be provided to the CAC with the application for a permit.

The proposed labeling for the product submitted with the application for registration describes the scope of the legal uses that would be allowed (cite).

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8. Mitigation measures

The plan or other written document must describe mitigation measures* that would lessen the environmental impact of the proposed activity.

Title 3, CCR section 6426 requires pest control advisers and growers to consider and adopt any feasible mitigation measures for the proposed activity. Title 3, CCR section 6432 requires the CAC, when evaluating the permit application, to determine if there are feasible mitigation measures and if there are, to condition the permit upon use of those mitigation measures. Title 3, CCR section 6556 requires certification on the recommendation that any feasible mitigation measures have been considered and adopted.

Food and Agricultural Code section 12824 requires DPR to thoroughly evaluate each pesticide and place mitigating conditions upon its use to mitigate hazards.

9. Alternatives

The plan or other written document must describe alternatives* to the proposed activity.

Title 3, CCR section 6426 requires pest control advisers and growers to consider and adopt any feasible alternatives to the proposed activity. Title 3, CCR section 6556 requires certification on the recommendation that feasible alternatives have been considered. Title 3, CCR section 6432 requires the CAC, when evaluating the permit application, to determine if there is a feasible alternative.

Food and Agricultural Code section 12824 requires DPR to thoroughly evaluate each pesticide and eliminate from use any pesticide that endangers the environment. DPR is required to continuously evaluate all registered pesticides.

* Section 5, Chapter 308, Statutes of 1978 expressly exempts permits from the requirements to prepare and make public a plan or other written documentation, prepare written responses to significant environmental points raised, and file a notice of decision with the Secretary of the Resources Agency. However, this exemption does not prohibit the CAC from documenting or otherwise keeping a record of their decision-making, nor does it place any limitations on the permit application process, including what type of information the CAC can request from its applicants.

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The issuance of a permit for pesticide use is subject to, and CACs must comply with, requirements that permits not be approved as proposed if feasible mitigation measures or feasible alternatives are available that would substantially lessen any significant adverse environmental impact. Permits are also subject to the requirements that there be guidelines for the orderly evaluation of the proposed activity that there be consultation with all public agencies that have legal jurisdiction.

Section 3.4

Scope of Certified Activities

Background

A regulatory program certified pursuant to PRC section 21080.5 is exempt from Chapters 3 and 4, and section 21167 of CEQA. The Secretary of the Resources Agency has certified the following specified activities of the pesticide regulatory program administered by DPR and the CACs as EIR functionally equivalent:

- The registration, evaluation, and classification of pesticides.
 - The adoption, amendment, or repeal of specified regulations and standards.
 - The regulation of the use of pesticides through the permit system administered by the CACs.
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Not Exempt

A certified program is not exempt from Chapters 1, 2, 2.5, 4.5, and 5 of CEQA. These chapters are described below.

**CEQA:
Chapter 1**

Chapter 1 of CEQA contains the legislative intent. It declares that it is the policy of the State to “take all actions necessary to protect, rehabilitate, and enhance the environmental quality of the State.” It also declares that “all agencies of the State government which are found to affect the quality of the environment shall regulate their activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.”

Courts decisions^{6,7} have made it clear that these broad mandates apply to certified programs such as pesticide regulation. Chapter 1 of CEQA also contains a policy that agencies “should not approve projects (permits) if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the projects”

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⁶ EPIC v. Johnson (1985) 170 Cal. App. 3d 604

⁷ Laupheimer v. State of California, 200 Cal. App. 3d 440