

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone
as Restricted Materials (Second Generation Anticoagulant Rodenticide Products)
DPR Regulation No. 13-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6000 and 6400, and adopt section 6471 of Title 3, California Code of Regulations (3 CCR). The proposed action would designate the active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone as California-restricted materials, making all second generation anticoagulant rodenticide (SGAR) products restricted materials. Also, this proposed action would add additional use restrictions for SGARs, and revise the definition of private applicator to refer to the federal definition of agricultural commodity found in Title 40, Code of Federal Regulations (40 CFR) section 171.2(5).

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on September 3, 2013. Comments regarding this proposed action may also be transmitted via e-mail to <dpr13002@cdpr.ca.gov> or by facsimile at 916-324-1452.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

Pesticides must be registered (licensed for sale and use) with the U.S. Environmental Protection Agency (U.S. EPA) before they can be registered in California. DPR's preregistration evaluation is in addition to, and complements, U.S. EPA's evaluation. Before a pesticide can be sold or used, both agencies require data on a product's toxicology and chemistry--how it behaves in the environment; its effectiveness against targeted pests, and the hazards it poses to nontarget organisms; its effect on fish and wildlife; and its degree of worker exposure.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

Commensal rodents, such as the house mouse, Norway rat, and roof rat, are public health pests that generally live in close association with humans and are dependent upon human habitats for food, water, and shelter. Rodenticides currently registered for use in California to control aboveground commensal rodents fall into three categories: acute toxicant (nonanticoagulant) rodenticides; first generation anticoagulant rodenticides (FGARs); and SGARs containing the active ingredient brodifacoum, bromadiolone, difenacoum, or difethialone.

Anticoagulant rodenticides work by inhibiting a rodent's ability to produce several key blood clotting factors, thus causing the poisoned rodent to die from internal bleeding. Anticoagulant rodenticide baits may take several days following ingestion of a lethal dose to kill the rodent. SGARs were developed in response to resistance issues reported with the FGARs. In general, SGARs are more toxic than FGARs because they are designed to be lethal after a single feeding instead of after multiple doses. Since it takes several days for a rodent to die after feeding on a SGAR, rodents may feed on the SGAR bait multiple times before dying. As a result, rodent carcasses may contain residues of SGARs many times over the lethal dose. If a nontarget predator feeds on a rodent containing lethal concentrations of a SGAR, the nontarget predator can also be impacted by the rodenticide.

In 2008, U.S. EPA prohibited all consumer-size SGAR products and required bait stations be used for all outdoor aboveground uses, with a specific requirement that tamper-resistant bait stations be used for placements within reach of pets, domestic animals, children, or nontarget wildlife to reduce wildlife exposures to SGARs and ecological risks posed by SGARs. U.S. EPA believes the majority of lethal SGAR dosing to wildlife occurs when relatively few food sources are available, as is typical of residential settings, so U.S. EPA set forth more requirements to limit the use of SGARs in that environment. Although tamper-resistant bait stations protect wildlife from primary exposures and directly accessing bait, they do not protect nontarget wildlife from secondary exposures to rodenticides that may occur when preying on poisoned rodents; therefore, U.S. EPA determined that it was necessary to address the significant risks to nontarget wildlife resulting from consumer-use SGARs. In lieu of making SGARs restricted use pesticides, U.S. EPA implemented distribution and package size restrictions to minimize the availability of SGAR products to residential consumers while maintaining livestock and poultry producers' access to SGARs on an unrestricted basis.

In addition, U.S. EPA specified as a term/condition of sale/distribution in the reregistration notices of all SGAR products that the registrant cannot sell or distribute these products in a manner that results in sales of these products in stores oriented towards residential consumers. The registrant can only sell or distribute these products in a manner that results in sales of these products in stores oriented towards agricultural consumers (i.e., farm, agricultural, tractor stores) and pest control operators.

In July 2011, DPR received a request from Department of Fish and Wildlife (DFW) that DPR designate all SGARs as California-restricted materials in order to mitigate wildlife exposure in California. In response to DFW's request, DPR analyzed wildlife incident and mortality data between 1995 and 2011, land use data, and rodenticide use and sales data between 2006 and 2010. DPR considered data from multiple sources, including DFW, private agencies and individuals, available journal articles, and other resources. After reviewing all the data obtained from both

urban and rural areas, DPR finds that SGAR exposure and toxicity to nontarget wildlife is a statewide problem, regardless of the setting. DPR finds that the use of SGARs presents a hazard related to persistent residues in target animals resulting in impacts to nontarget wildlife.

Although U.S. EPA established distribution and package size limitations to reduce the availability of SGARs to residential consumers, residential consumers and other uncertified users are still able to purchase and use all SGARs since they are not federally restricted. Based on DPR's findings that baits containing SGARs present a hazard to nontarget wildlife, DPR proposes to add to section 6400(e) the pesticide active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone, designating these active ingredients as California-restricted materials. By doing so, this proposed action will make all SGAR products restricted materials.

In accordance with FAC section 14015, restricted materials can only be possessed or used by, or under the direct supervision of, a certified private applicator or a certified commercial applicator. Section 6000 defines certified commercial applicator to include a person holding a valid structural pest control operator or field representative license issued by the Structural Pest Control Board. Commercial and private applicators become certified by taking an examination to demonstrate they have the knowledge and proficiency required to use restricted materials.

Restricting the use of all SGARs to only certified applicators will significantly reduce unintended exposures to nontarget wildlife. Certified applicators have the knowledge and ability to use pesticides safely and effectively. Certification will ensure that SGARs are properly used, placed, and monitored, and that poisoned target rodents, the primary source of secondary poisonings in nontarget wildlife, are properly disposed of. Certified applicators perform qualitative site assessments to determine how to effectively control the target species. SGARs are only one of a number of tools which certified applicators may use for effective rodent control. In contrast to noncertified residential, institutional, or industrial users, certified applicators are more likely to implement integrated pest management strategies and use nonpesticidal measures, especially preventative strategies, before resorting to pesticides. When toxicants are used, they are monitored and limited for a focused duration to reduce the amount of time the bait is available in the environment.

DPR's current definition of private applicator in section 6000 refers to an individual who uses or supervises the use of a pesticide for the purpose of producing an agricultural commodity. Section 6000 defines "agricultural commodity" to specifically exclude livestock, poultry, and fish, and therefore, under this current definition, the producers of livestock, poultry, and fish do not qualify for a private applicator certificate. DPR proposes to amend the definition of "private applicator" to adopt the definition of "agricultural commodity" found in 40 CFR 171.2(5). This will provide livestock, poultry, and fish producers the option of obtaining a private applicator certificate instead of a DPR-issued qualified applicator certificate or license, to use these products around structures involved in their operations. 40 CFR 171.2(5) states: "The term agricultural commodity means any plant, or part thereof, or animal, or animal product produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals." DPR is not amending the definition of "agricultural commodity" found in section 6000. That definition will remain the same and is applicable wherever referenced

within 3 CCR which primarily references "agricultural commodity" in connection with use reporting requirements.

Additionally, DPR proposes to adopt section 6471 to add further use restrictions on brodifacoum, bromadiolone, difenacoum, and difethialone by prohibiting the placement of aboveground baits containing these active ingredients more than 50 feet from a man-made structure unless there is a feature associated with the site that is harboring or attracting the pests targeted on the label between the 50-foot limit and the placement limit specified on the label. In 2012, U.S. EPA extended the maximum allowable placement of SGAR baits from 50 feet to 100 feet from the structure. However, as the distance from the structure increases, the allowable amount of bait at the site also increases to account for the larger perimeter. Since SGARs are intended to protect the structure from rodent invasions, DPR believes that in most cases, baiting within 50 feet of the man-made structure should adequately protect the structure. In cases where it is necessary to bait beyond 50 feet, this proposed restriction will reinforce the idea that bait placements should be based on a careful evaluation of the site. If a certified applicator has evidence to indicate that a bait placement needs to occur beyond 50 feet due to evidence of rodent harborage or attraction, the certified applicator may make the necessary bait placement.

Adoption of these regulations will provide a benefit to the environment by adding an extra level of environmental protection and reducing unintended exposures to nontarget wildlife.

These proposed regulations are not inconsistent or incompatible with existing state regulations. DPR is the only state agency that has the authority to regulate pesticides. No other state agency has the authority to designate pesticides as restricted materials. DPR is not aware of any state agencies regulating the use of rodenticides.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

CAC offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR negotiates an annual work plan with the CACs for enforcement activities.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

Federal, state, and municipal agencies charged with rodent/vector control should already have employees who are certified by DPR to apply restricted materials.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation is unlikely to have a significant cost impact on representative private persons or businesses. It is estimated that businesses that use SGARs such as agricultural operations or food-handling establishments may face minor additional costs associated with hiring a pest control business or having the owner/employee become a certified applicator. The estimated annual cost is \$118 - \$1,500. These conservative estimates likely overstate the costs involved in meeting the regulation because individuals and firms could readily substitute a lower cost alternative product currently on the market that does not require a certified applicator. Therefore, the actual costs to agricultural operations and food-handling establishments are likely considerably lower.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulations should benefit the environment and the health of California residents by ensuring that only certified applicators will be able to purchase and apply SGARs thereby reducing nontarget wildlife exposures. These products would still be available to address public health concerns prevalent in many different types of rodent-prone settings, such as food processing facilities and poultry houses. DPR is not aware of any specific benefits this proposed regulation would have on worker safety.

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, 12111, 12781, 12976, 13145, 14001, 14004.5, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11401.2, 11408, 11410, 11501, 11701, 11702(b), 11704, 11708(a), 12042(f), 12103, 12971, 12972, 12973, 13145, 13146, 14004.5, 14005, 14006, and 14102.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted below:

Ann Hanger, Staff Environmental Scientist
Pesticide Registration Branch
916-324-3535

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date