



December 29, 2020

ENF 20-20

TO: County Agricultural Commissioners

SUBJECT: NEW SECOND GENERATION ANTICOAGULANT RODENTICIDE
PROHIBITIONS AND ALLOWED USES – QUESTIONS AND ANSWERS

On September 29, 2020, Governor Newsom signed Assembly Bill (AB) 1788 (Chapter 250, Statutes of 2020) to prohibit uses of second-generation anticoagulant rodenticides (SGARs) due to their threat to mountain lions and other wildlife. Effective January 1, 2021, Food and Agricultural Code (FAC) section 12978.7 is amended and expanded to prohibit use of four SGARs—brodifacoum, bromadiolone, difenacoum, and difethialone—in California, with some exemptions, until the Department of Pesticide Regulation (DPR) completes its SGAR reevaluation and adopts any additional necessary restrictions. Until DPR certifies that all of the conditions in the law are met, **most uses of SGARs will be prohibited in California.**

The Legislature’s findings and text of the amended FAC section 12978.7 can be found at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1788.

Prohibited Uses

Under the amended law, prohibited uses include residential or home uses and most industrial and institutional uses. For example, prohibited uses include, use in and around restaurants (that do not have an attached brewery or winery), grocery stores, airports, offices, construction sites, transport vehicles (e.g. ships, trains, aircraft), ports and terminal buildings, shipyards, timber yards, schools, shopping malls, sewers, and sewage treatment plants. Many non-production agricultural uses are also prohibited (such as use around man-made structures at cemeteries, golf courses, and parks).

A violation of this amended law is subject to the standard enforcement response procedures under Title 3, California Code of Regulations (3 CCR) section 6128, and can include taking an administrative civil penalty under either FAC section 12999.5 or Business and Professions Code section 8617 or referring the case to either DPR or the Structural Pest Control Board for a statewide licensing action.

Allowed Uses

The amended law does not apply to certain specified uses and users, which are set forth in FAC section 12978.7, subsections (e) and (f). For those allowed uses and users, current pesticide laws and regulations (including product labeling, permit conditions, licensing and certification

requirements, and 3 CCR section 6471) must continue to be followed. If an allowed use requires a restricted material permit, the permit can still be issued.

Questions and Answers

To help ensure statewide consistency with the implementation of these new requirements, DPR prepared the following questions and answers.

General

1. Q: How many SGAR products are currently registered in California and subject to this newly amended law?

A: As of June 30, 2020, there were 69 DPR-registered SGAR products.

NOTE: As of May 2019, there were no longer any difenacoum products registered for use in California, however there may still be difenacoum products in the channels of trade. The requirements in 3 CCR section 6301(b) apply to these products, and would apply to any voluntarily canceled SGAR products in the future. Products not registered with DPR can no longer be sold by the registrant, but licensed dealers may sell their inventory for two years after the date of last registration. Product acquired by end users while the product was legally registered or from a licensed dealer during the two years after the product was last registered with DPR can be used until the product is exhausted provided the use is consistent with California's pesticide laws and regulations including the product labeling, any restricted material permit conditions, FAC section 12978.7, and 3 CCR section 6471.

2. Q: What SGAR uses are still allowed by exemptions in the newly amended law?

A: The law prohibits use of SGARs with limited exemptions allowing use for certain users and certain uses of SGARs, when allowed by the label.

User exemptions:

- Persons who are certified Vector Control Technicians employed by a vector control district or other government agency;
- Government agency employees protecting water supply infrastructure and facilities (e.g. wells, surface-water intakes, dams, reservoirs, storage tanks, drinking-water facilities, pipes, and aqueducts);

Use exemptions:

- For eradication of nonnative invasive species on offshore islands;
- To control an actual or potential infestation associated with an urgent, non-routine public health need declared by the State Public Health Officer or a local public health officer;
- For research authorized by DPR to provide information for DPR's reevaluation of SGARs;
- At medical waste generators as defined in Health and Safety Code section 117705, such as the following examples:
 - Medical, dental, and veterinary offices, clinics, hospitals, surgery centers, etc.;
 - Pet shops; and

- Trauma scene waste management practitioners;
- At FDA-registered and inspected facilities involved in commercial manufacture, preparation, compounding, etc., of drugs;
- On agricultural sites producing any horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee, or farm product; and
- At other noted sites, specifically:
 - A warehouse used to store foods for human or animal consumption;
 - A food manufacturing or processing plant, such as a slaughterhouse or cannery;
 - A factory, brewery, or winery;
 - On-farm water storage and conveyance (e.g., tanks and pipes); and
 - On-farm storage housing rights-of-way and other transportation infrastructure materials.

3. Q: Does the newly amended law provide any other exemption to federal or State laws and regulations?

A: No, federal and State law and regulation requirements for the allowed uses must continue to be followed. This includes:

- Requirements found on product labeling,
- Restricted material permit conditions,
- Licensing and certification by DPR or the Structural Pest Control Board, and
- 3 CCR section 6471.

Structural Uses

4. Q: How does this law affect structural pest control Branch 2 SGAR uses?

A: Registered Branch 2 companies practicing structural pest control are prohibited from using SGARs with certain limited exemptions allowed under the law (such as medical waste generators, slaughterhouses, factories, and certain warehouses) provided the use site is listed on the product labeling. As noted above, all other SGAR uses (like residential uses) are prohibited starting January 1, 2021.

5. Q: Currently, some agencies may contract with a DPR- or a Board-licensed pest control business to conduct rodent control with SGARs. Will this practice still be allowed?

A: As discussed above, most SGAR uses will be prohibited statewide starting January 1, 2021. The law provides specific exemptions to government agency employees using SGARs in specific circumstances: for protecting water supply infrastructure and facilities or for applications by vector control districts. The law does not provide for these applications to be conducted by professional pest control services under contract with a government agency. As these services would not be conducted by agency employees, these persons would be in violation of FAC section 12978.7.

6. Q: What is a factory under this law?

A: In FAC section 12978.7, the word “factory” is used in context with winery and brewery and thus is interpreted to be facilities related to the manufacture of food products.

In the context of this law, a factory is a facility that processes foods or engages in agricultural activities as defined in FAC section 564. Processes occurring at these food processing sites include canning, freezing, cooking, pasteurization or homogenization, irradiation, milling, grinding, chopping, slicing, cutting, or peeling food.

7. Q: The law exempts use of SGARs in “warehouse[s] used to store foods for human or animal consumption” Are distribution centers that contain food considered “warehouses”?

A: Distribution centers are not covered by the exemptions in the law and SGAR use in and around them is prohibited. The law exempts warehouses that are used to store foods for human or animal consumption. *Warehouse* is defined by Merriam-Webster as “a structure or room for the storage of merchandise or commodities.” Warehouses tend to store food products for longer periods of time and usually don’t serve consumers as they tend to be more focused on the retail supply chain.

While somewhat similar, distribution centers serve a different purpose than a warehouse. Distribution centers store products other than just food products and typically only for a short time. Flow of products through a distribution center is much greater and these facilities also offer other value-added services such as product mixing, order fulfillment, packaging, etc. Distribution centers can serve many different types of customers, including retailers and consumers.

8. Q: What if a building where use is exempt is within 50 feet of a building where use is prohibited?

A: Regardless of the buildings, facilities, or sites within 50 feet of an exempt use site, use of SGARs in or around any exempt site (e.g. the brewery) likely meets the exemption in the amended law. The use must follow the product labeling and all other current pesticide laws and regulations.

Other Uses and Permitting

9. Q: How does this law affect farmers, ranchers, or growers?

A: As noted above, all current pesticide laws and regulations continue to apply. Provided the use site is listed on the label, use of SGARs within 50 feet of agricultural buildings or agricultural man-made structures on a farm producing agricultural products, such as a poultry or cattle barn or an on-farm grain or hay storage structure, is unaffected.

However, there may be cases where a farmer or rancher has a grazing or agricultural lease in a wildlife habitat area (defined in the law as “any state park, state wildlife refuge, or state

conservancy”). Most SGAR use is broadly prohibited in those state areas, except as provided in FAC section 12978.7 subsection (e).

10. Q. What about public health uses?

A: As noted above, there are two exemptions for public health. One is for applications by Vector Control Technicians employed by vector control or pest abatement districts or agencies using SGARs for public health activities.

The law also provides a narrow exemption if the State Public Health Officer or a local public health officer declares a public health need where there is an urgent, non-routine situation posing a significant risk to human health and where it is documented that other rodent control alternatives, including nonchemical alternatives, are inadequate to control the rodent infestation. Under this narrow exemption, a pest control business could potentially conduct some limited SGAR applications within the scope and duration of the declaration. In the event of a declared local health emergency involving SGAR use for a public health need, as defined in FAC section 12978.7, please consult with your local public health officer.

11. Q: Who will notify the CACs when DPR authorizes SGAR use for research purposed?

A: In order to generate data for the reevaluation of SGARs, DPR may approve specific applications of SGARs in California. These research programs must be reviewed by DPR scientific staff involved in the reevaluation of SGARs and will receive approval from the director. As a courtesy, DPR will provide the local CAC with a copy of the approval. This is separate from the research authorization program detailed in 3 CCR 6260-6272.

12. Q: If the CAC previously issued a multi-year permit for a now prohibited use, what should be done?

A: Every restricted materials permit issued is automatically conditioned upon compliance with FAC Divisions 6 and 7, which includes the amended FAC section 12978.7 when it takes effect January 1, 2021. For an existing valid multi-year SGAR permit, the CAC should take appropriate measures to inform permittees of the requirements of this law and make them aware of the following:

- Notices of Intent for uses which do not comply with the law will be denied,
- Under FAC section 14008, failure to comply with the law is grounds for revoking the current permit as well as refusing future permits, and
- Individual certified applicator licenses or certificates can be revoked or suspended for failure to comply with the law.

When renewing SGAR permits, the CAC should discuss with permittees whether they have SGAR product in storage and whether their uses will comply with the law. If they no longer have any SGARs in storage or cannot legally use the product, the CAC should consider removing the pesticide from the permit.

13. Q: What can end users do with SGAR product they have in storage, which they can no longer use?

A: For all end users including structural pest control businesses, if the container is unopened the end user can consider contacting the dealer or registrant to ask about returning it. Alternatively, end users may contact their state or local hazardous waste disposal program to find out how to dispose of SGAR products appropriately.

For uses requiring a restricted material permit, under 3 CCR section 6412(b) the permittee is allowed to retain possession, except for sale, of any restricted material listed on the permit after the permit expires.

14. Q: Does this law affect SGAR applications on federal property?

A: Other than certain “pollution control standards,” federal agencies and their employees are not subject to California pesticide laws and regulations. The amended law instructs state agencies to encourage federal agencies to comply with the law’s requirements. However, pest control businesses licensed by DPR or registered with the Structural Pest Control Board conducting pest control on federal property are still subject to California laws and regulations.

If you have any questions about implementing these requirements please contact the Enforcement Branch Liaison assigned to your county.

Sincerely,

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cc: Mr. Joe Marade, DPR County/State Liaison
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