INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000 and 6400, and Adopt Section 6471
Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone
(Second Generation Anticoagulant Rodenticide Products) as Restricted Materials

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirement of Title 14, CCR section 15252 and Public Resources Code section 21080.5 pertaining to state regulatory programs certified under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR sections 6000 and 6400, and adopt section 6471. This proposal will affect the pesticide regulatory program activities pertaining to pesticide chemicals designated as state-restricted materials. In summary, the proposed action would make all pesticide products containing the active ingredients brodifacoum, bromadiolone, difenacoum, or difethialone [second generation anticoagulant rodenticides (SGARs)] California-restricted materials; 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).

DPR anticipates delaying the effective date of this regulation by as much as six months to ensure there is adequate time for entities impacted by these regulations to comply with the new certification requirements.

SPECIFIC PURPOSE AND FACTUAL BASIS

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 pesticide 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.

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: first generation anticoagulant rodenticides (FGARs) containing active ingredients chlorophacinone, diphacinone, and warfarin; SGARs containing active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone; and acute toxicant (nonanticoagulant) rodenticides containing active ingredients bromethalin, cholecalciferol, and zinc phosphide.

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. However, this delayed action has a safety advantage because it provides time to administer the antidote (vitamin K1), which can save people, pets, and other nontarget animals that may have accidentally ingested the bait.

FGARs were developed in the 1940s and are considered "multiple dose" rodenticides because they typically require multiple feedings by a rodent over time to obtain a lethal dose. SGARs were developed in response to resistance issues reported with the FGARs, primarily warfarin. DPR registered bromadiolone in 1982, brodifacoum in 1983, difethialone in 1997, and difenacoum in 2008. In general, SGARs are more acutely 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 an 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 a lethal concentration of a SGAR, the nontarget predator can also be impacted by the rodenticide.

DPR Reevaluation of Brodifacoum

On December 30, 1999, at the request of the California Department of Fish and Game, now known as the California Department of Fish and Wildlife (DFW), DPR placed pesticide products containing the active ingredient brodifacoum into reevaluation. DFW expressed concern that California's wildlife are exposed and may be adversely affected by currently registered uses of brodifacoum, primarily from ingesting rodents with lethal concentrations of this SGAR.

When a pesticide enters the reevaluation process, DPR reviews existing data and any relevant new data to determine the nature or the extent of the potential hazard and to identify appropriate mitigation measures, if needed. DPR concludes reevaluations in a number of different ways. If the data demonstrates that use of the pesticide presents no significant adverse effects, DPR concludes the reevaluation without additional mitigation measures. If additional mitigation measures are necessary, DPR places appropriate restrictions on the use of the pesticide to mitigate the potential adverse effect. If the adverse impact cannot be mitigated, DPR cancels or suspends the registration of the pesticide product(s) unless the director makes a written finding that the benefits of registration clearly outweigh the risks.

In October 2001, while DPR was still conducting its data review as part of the reevaluation process, U.S. EPA completed its final draft ecological assessment of brodifacoum and several other rodenticides. Since it appeared that U.S. EPA had the same concerns as DPR and would initiate mitigation measures at a national level, DPR decided to wait for the completion of U.S. EPA's assessment and focus its reevaluation in coordination with U.S. EPA. In January 2003, U.S. EPA released its preliminary comparative ecological assessment for nine rodenticides. U.S. EPA's preliminary assessment indicated that of the nine rodenticides studied, brodifacoum appeared to pose the greatest potential overall risk to birds and nontarget mammals. Based on comments received, U.S. EPA revised its comparative ecological risk assessment on rodenticides in July 2004.

Throughout this period, DPR became aware of additional incidents of nontarget wildlife exposure to brodifacoum. Given the increased public interest in wildlife issues associated with brodifacoum and the length of time U.S. EPA was taking to complete its assessment, DPR began developing a number of proposed mitigation measures to address the problems associated with the use of brodifacoum and other SGARs. In January 2006, DPR made a recommendation that rodenticide baits containing brodifacoum, bromadiolone, and difethialone be restricted to indoor structural use only. However, DPR reconsidered its "indoor use-only" proposal based on comments received from pest control agencies, food processors, registrants, and the public. One of the main arguments presented against limiting rodenticides to indoor use-only is the need for food processing facilities to perform rodent control outside the facility to avoid contamination.

U.S. EPA Mitigation Efforts and Draft Cancellation Order

In January 2007, U.S. EPA issued its proposed risk mitigation decision for nine rodenticides. To mitigate ecological risks, the January 2007 document proposed classifying all SGAR bait products as federally restricted use pesticides, thus making them available for purchase and use only by certified pesticide applicators or persons under their direct supervision.

In May 2008, U.S. EPA announced its final *Risk Mitigation Decision for Ten Rodenticides (*RMD). The decision included the four SGAR active ingredients that are subject of this proposal (brodifacoum, bromadiolone, difenacoum, and difethialone), three FGAR active ingredients (chlorophacinone, diphacinone and its sodium salt, and warfarin and its sodium salt), and three nonanticoagulant rodenticides: (bromethalin, cholecalciferol, and zinc phosphide). The RMD focused on two major areas: (1) reducing children's exposure to rodenticide products used in the home and (2) reducing wildlife exposures and ecological risks. Registrants were expected to comply with the RMD provisions by June 4, 2011.

To minimize children's exposure to rodenticide products used in homes, the RMD specified that all FGARs and nonanticoagulant rodenticide bait products marketed to general consumers (primarily residential consumers) be sold as solid formulations with one of four types of bait stations depending on where the product is used.

To reduce wildlife exposures to SGARs and the ecological risks posed by SGARs, the RMD 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, nontarget wildlife, or children. U.S. EPA

believes the majority of lethal SGAR dosing to wildlife occur when relatively few food sources are available, as is typical in the residential setting, so U.S. EPA set forth requirements in the RMD to limit the use of SGARs to residential consumers. 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 as originally proposed in 2007, U.S. EPA implemented distribution and package size restrictions to minimize the availability of SGAR products to general consumers while maintaining livestock and poultry producers' access to SGARs on an unrestricted basis.

U.S. EPA's 2008 RMD specified that SGAR bait products labeled for use in and within 50 feet of agricultural buildings (not for use in and around homes) can only be sold in packages containing eight or more pounds of bait. Packages containing16 or more pounds of bait were intended for, although not limited to, professional applicators to apply within 50 feet in and around various buildings such as homes, agricultural facilities, industrial buildings, and commercial buildings. In February 2012, U.S. EPA expanded the 50-foot restriction to 100 feet for all non-consumer-size rodenticide products subject to the RMD and changed the term "building" to "man-made structures constructed in a manner so as to be vulnerable to commensal rodent invasions and/or to harboring or attracting rodent infestations" to address various concerns such as dumpsters and food storage structures that are often located more than 50 feet from buildings as a protective measure.

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.

As stated above, U.S. EPA intended the distribution and package size restrictions to address ecological concerns by removing SGARs from general consumer access, while still making these products available on an unrestricted basis to poultry and livestock producers and professional users, such as certified pesticide applicators. However, since these products were not designated as federal restricted-use pesticides, general consumers can still purchase and use these larger packages of rodenticides for indoor and outdoor use. Additionally, U.S. EPA's existing stocks provision for all consumer-use SGARs allow the continued sale of such products from consumer-oriented retail stores until supplies are exhausted.

It is important to note that one registrant, Reckitt Benckiser, refused to comply with U.S. EPA's mitigation measures and is still producing consumer-size SGAR products without the additional safety measures specified in the RMD. On January 30, 2013, U.S. EPA announced that it would proceed with its intent to cancel all remaining noncompliant Reckitt Benckiser products by issuing a formal Notice of Intent to Cancel pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act section 6(b). Reckitt Benckiser has requested a hearing in response to

U.S. EPA's cancellation notice. Until the outcome of the U.S. EPA hearing is determined, Reckitt Benckiser may continue to market its 12 noncompliant products.

Of the 12 Reckitt Benckiser products listed in U.S. EPA's Notice of Intent to Cancel, four are brodifacoum SGAR products that are also registered for use in California. These four products are still registered in California because U.S. EPA's initiation of a cancellation action is not a valid ground for state cancellation of the products. DPR also cannot refuse to renew a product's registration on that basis. However, the restricted materials designation proposed here would apply to these four consumer-sized Reckitt Benckiser products that are currently registered only for use in and around homes. If designated as California-restricted materials, these four brodifacoum products could only be sold in stores with a DPR-issued dealer license authorizing the sale of restricted materials and could only be purchased by certified applicators and, if the purchaser is not a structural pest control applicator, those with a restricted materials permit issued by the county agricultural commissioner (CAC). This is consistent with, and more strictly accomplishes, U.S. EPA's 2008 RMD goal to limit general consumer use of SGARs.

Restricted Materials Request, Data Review, and Findings

In July 2011, DPR received a request from DFW that DPR designate all SGARs as California-restricted materials in order to mitigate nontarget wildlife exposure in California. In response to DFW's request, DPR took steps to obtain wildlife incident and mortality data between 1995 and 2011, which it analyzed together with 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. Of the 492 nontarget mammals (e.g., red fox, mountain lion, bobcat, coyotes, and the federally endangered San Joaquin kit fox) and bird necropsies included in DPR's analysis, 368 (74.8 percent) had residues of one or more anticoagulant rodenticide (FGARs and SGARs). Of the 368 animals that tested positive for at least one anticoagulant rodenticide, 359 (97.6 percent) had residues of at least one SGAR while only 65 (17.7 percent) had residues of at least one FGAR.

Number (and Percent) of Total Samples that Tested Positive for One or More Anticoagulant Rodenticide and Number (and Percent) of Positive Samples that Tested Positive for SGARs

Total Number of Bird and Mammal Samples (necropsies)	Number of Samples Positive for One or More FGAR or SGAR	Number of Positive Samples Containing One or More SGAR
492	368 (74.8%)	359 (97.6%)

Of the 359 bird and mammal samples that tested positive for one or more SGAR, brodifacoum residues were found in approximately 94 percent of the positive samples, bromadiolone residues were found in approximately 51 percent of the positive samples, and difethialone residues were found in approximately 11 percent of the positive samples. Because of its relatively recent entry into the rodenticide market, none of the 492 total animals included in DPR's analysis were tested for difenacoum residues. Therefore, the lack of data showing difenacoum residues in animals is not indicative of a lack of exposure or toxicity.

Breakdown of Number (and Percent) of Samples Containing SGARs by SGAR Active Ingredient and Nontarget Animal Category

Category	Total Number of Samples Positive for One or More SGAR	Samples Positive for Brodifacoum	Samples Positive for Bromadiolone	Samples Positive for Difethialone
Birds	128	124 (96.9%)	42 (32.8%)	10 (7.8%)
Mammals[1]	231	215 (93.1%)	141 (61.0%)	31 (13.4%)
Total	359	339 (94.4%)	183 (51.0%)	41 (11.4%)

1. Mammals include red fox, mountain lion, bobcat, coyotes, and federally endangered San Joaquin kit fox.

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.

Basis for Restricting Use

Based on DPR's finding that baits containing SGARs present a hazard to nontarget wildlife, DPR proposes regulations to make the pesticide active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone California-restricted materials by adding them to the listing in 3 CCR section 6400(e). By doing so, all SGAR products containing these active ingredients will become 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 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 generally 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 general consumers, certified applicators are more likely to implement integrated pest management (IPM) strategies and use nonpesticidal measures, especially preventative strategies, before resorting to pesticides. Licensees and permit holders have additional requirements related to IPM than non-certified applicators. For example, IPM strategies are covered in the certification examination process and continuing education courses attended by certificate holders and licensees. Structural pest control operators are required to obtain two hours of continuing education in IPM during their renewal cycle. CACs, when evaluating a restricted material permit, shall determine if there is a feasible alternative, including the alternative of no pesticide application, or feasible mitigation measure that would substantially

reduce the adverse impact. 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 3 CCR 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 section 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 section 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 3 CCR 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.

DPR believes it is appropriate and consistent to restrict all SGAR products, including indoor use-only products, because products used indoors may still contribute to secondary exposures of concern. Rodents exposed to rodenticides indoors may not necessarily remain indoors if there is access in and out of the structure. In its 2007 *Proposed Risk Mitigation for Nine Rodenticides*, U.S. EPA indicated that although an indoor use-only limitation would reduce primary exposures to nontarget animals, it would not decrease secondary exposures. Because rodents move in and out of indoor spaces, a rodent exposed to rodenticide bait indoors may be preyed upon or die outdoors, resulting in potential secondary exposures. Since its introduction into the United Kingdom (UK) in 1975, brodifacoum products have been restricted to indoor use, except for a small number of time and location-limited outdoor approvals for experimental or emergency purposes. Despite the indoor use designation, a summary of wildlife incident investigation scheme data from 1997 to June 2011 showed that 9 percent of incidents involving SGARs were associated with brodifacoum. From 1984 to mid-2012, brodifacoum was associated with 14 percent of the reported incidents involving SGARs, even though brodifacoum is only registered for indoor use in the UK.[1] Therefore, DPR believes the most effective approach to minimize unintended exposures to nontarget wildlife, but allow for continued use of SGARS for certain situations, is to limit the use of these products to certified applicators who, based upon this certification, have demonstrated the knowledge and proficiency required to use restricted materials.

According to DPR pesticide sales data from 2009-2011, brodifacoum and bromadiolone account for most of the SGAR sales in California.

[1] *Environmental Risk Mitigation Measures for Second Generation Anticoagulant Rodenticides Proposed by the UK.* Health and Safety Executive 2012b. August 2012.

Pounds of SGARs Sold in California

Active Ingredient	2009	2010	2011
Brodifacoum	29.51	44.91	40.65
Bromadiolone	51.18	63.56	62.46
Difenacoum	0.27	0.23	0.05
Difethialone	5.84	8.07	11.46

According to DPR pesticide use data for brodifacoum and bromadiolone from 2009-2011, certified applicators used significantly more bromadiolone than brodifacoum.

Reported Pounds of Brodifacoum and Bromadiolone Used by Certified Applicators in California

Active Ingredient	2009	2010	2011
Brodifacoum	2.34	3.76	3.17
Bromadiolone	26.70	33.57	38.98

By comparing sales data with use reports from certified applicators over the same three-year period, DPR can estimate the percent of brodifacoum and bromadiolone pounds sold that are applied by certified applicators.

Estimated Percent of Brodifacoum and Bromadiolone Pounds Sold That Were Used by Certified Applicators

Active Ingredient	2009	2010	2011
Brodifacoum	8%	8%	8%
Bromadiolone	52%	53%	62%

While not all pounds of brodifacoum and bromadiolone sold in the state each year are necessarily used in the same year, the above tables indicate that noncertified users applied a significant amount of the brodifacoum sold in the state during the 2009-2011 period. This conclusion is supported by sales data for 2009-2011 showing that consumer-sized brodifacoum products accounted for approximately 89 percent of brodifacoum sold in California during this period, yet use of these products reported by certified applicators during the same time period accounted for less than one percent of brodifacoum products they used. Therefore, purchaser of consumer-sized brodifacoum products are the primary users of brodifacoum, which was the SGAR most commonly found in the wildlife incidents discussed above even though DPR sales data indicate that the pounds of bromadiolone sold has surpassed brodifacoum since 2002.

Although U.S. EPA's RMD established distribution and package size limitations to reduce the availability of SGARs to general consumers, residential consumers and other uncertified users are still able to purchase and use all SGARs since they are not federally-restricted. Further, until and unless Reckitt Benckiser consumer products are cancelled, they are still available to general consumers in California. Therefore, DPR is proposing to add an extra level of environmental

protection and is seeking to ensure that noncertified residential, institutional, and industrial consumers no longer have access to purchase and use SGARs by making them restricted materials. Certified applicators would still be able to use these products to address public health concerns prevalent in many different types of rodent-prone settings, such as food processing facilities and poultry houses.

In California, numerous residents live on the urban/rural edge and in rural areas on "ranchette" style properties (one to five acres of land per home). Due to the location and size of their property, people living in these areas, including ranchette owners, may shop at farm stores for supplies. Under current federal requirements, such individuals could purchase and use the 16 or more pound packages of SGARs, even though they are not a "certified applicator." DPR believes the unrestricted use of SGARs in these types of urban/rural edge locations may be a contributing factor to the number of secondary poisonings of nontarget wildlife reported in recent years.

In addition, rodenticides containing brodifacoum have been discovered during investigations of illegal marijuana growing operations. The off-label use of brodifacoum by illegal marijuana growers in remote sections of California has been linked to adverse impacts to fishers (*Martes pennant*), a member of the weasel family.[2] By restricting the general users access to all SGARs, the opportunities for illegal marijuana growers to readily purchase and deliberately misuse SGARs would be significantly reduced.

Restricting the sale and use of all SGARs ensures that the noncompliant consumer-size loose pellet formulations that will remain available during the U.S. EPA cancellation hearing will not be used in the noncertified users in the residential market unless such individuals obtain certification, a result that that is consistent with .U.S. EPA's intent to limit such use. This result will be reinforced by the fact that large quantities of SGARs, as restricted materials, can only be sold licensed pesticide dealers.

SGARs, as restricted materials, could only be possessed or used by a person who obtained a permit from the CAC, with the exception of certified applicators licensed by the Structural Pest Control Board who are exempt from this requirement. (See FAC sections 14006.5, 14006.6(d).) The permit requirement for SGARs resulting from this proposed regulation will provide an immediate and effective mechanism to facilitate CAC oversight of SGAR use by certified applicators (with the exception of those certified as a structural pest control operator). For agricultural use permits, CACs will be able to ensure label restrictions are followed and will be able to evaluate SGAR use in the specific local conditions of each application site if there are reports or concerns about nontarget wildlife being adversely impacted. This permit process is unique to California. The permit process has the advantage of allowing restrictions tailored to the unique characteristics of each use site, which may be difficult and too diverse to address in a general rule. The restrictions required to address problems unique to a site may not be necessary for every use site and may place unnecessary burdens on other applications.

In addition to eliminating direct general consumer use of SGARs, making SGARs California-restricted materials will allow DPR to collect critical information to help fulfill its responsibility

[2] http://www.iercecology.org/wp-content/uploads/2012/07/Gabriel-et-al_2012_AR-in-Fisher-Habitat.pdf. July 2012.

to continuously evaluate the impact of SGAR use and take additional steps, if necessary. General consumers have no obligation to report use. However, both certified applicators that use SGARs under a permit and applicators licensed by the Structural Pest Control Board must report use. Such reports, to the extent they indicate who, where, and in what amount these products are being used, could inform decisions to further mitigate any reported adverse impacts.

Additionally, DPR proposes to adopt 3 CCR 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. However, 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.

Not all current SGAR users will necessarily continue to use SGARs once they become restricted. Effective consumer-sized alternatives to SGARs are available. All rodenticides must demonstrate efficacy against target pests prior to registration. U.S. EPA has reviewed market survey data suggesting that for house mouse control (which accounts for approximately 90 percent of commensal rodent problems in U.S. households), there are minimal differences between the cost of consumer-sized SGARs and the alternative rodenticides that conform to U.S. EPA's RMD. Further, all the alternative consumer-size rodenticide products are block/solid formulations contained in a bait station or are sold with a bait station, which offers an increased level of protection for children, pets, and nontarget wildlife over the loose pellet SGARs currently being sold to consumers.

In summary, regulations designating SGARs as California-restricted materials will restrict their use to certified applicators and will significantly reduce the potential for adverse impacts to human health and the environment. Certified applicators have demonstrated their knowledge to make pest control decisions to control commensal rats and mice that comply with state and federal laws and regulations, and conform to industry best pest management practices that minimize adverse impacts to nontarget wildlife. Further, limiting use to within 50 feet of a man-made structure absent a determined need will reduce the extent of use and risk for harm to nontarget wildlife.

This proposal meets DPR's duty laid out in FAC section 11501(b) to protect the environment from environmentally harmful pesticides by prohibiting, regulation, or ensuring proper stewardship of those pesticides. This proposal is also consistent with the intent and provisions of Public Resources Code section 21080.5 that requires that the process used by DPR to propose

regulations governing pesticide use has among its principal purposes the protection of the environment.

CONSULTATION WITH OTHER AGENCIES

DPR consulted with DFW, California Department of Public Health, the Structural Pest Control Board, and CACs during the development of the text of the proposed regulation. Copies of correspondence with DFW are contained in the rulemaking file.

DPR also consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations, as specified in FAC section 11454, and the February 6, 1992, Memorandum of Agreement that was developed per FAC section 11454.2.

Potentially restricting SGARs has been an agenda item of the Pesticide Registration and Evaluation Committee (PREC) on March 16, 2012, and March 15, 2013. Copies of the PREC minutes are contained in the rulemaking file.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(5)]

DPR has not identified any feasible alternatives to the proposed regulatory action that would achieve the purpose of the regulations with less possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

In 2005, DPR proposed limiting the use of SGARs to indoor structural use only. However, based on the comments received from pest control agencies, food processors, registrants, and the public, DPR reconsidered its indoor use-only proposal and concluded that the indoor use-only proposal was not reasonable. One of the arguments presented against restricting rodenticides to indoor use-only was the importance of rodent control for food processing facilities outside of the facility (e.g., rodents and rodenticides present a contamination issue inside of facilities). In addition, further analysis determined that an indoor use-only limitation may not adequately achieve the mitigation sought by the regulations.

ECONOMIC IMPACT ON BUSINESSES [GOVERNMENT CODE SECTION 11346.2(b)(6)]

This proposed regulatory action would still allow all registered SGAR products to be sold in California. However, once restricted, these products can only be sold by DPR-licensed dealers and purchased/used by certified applicators. Further, with the exception of structural pest control operators, a restricted materials permit would be required from the CAC prior to possessing or using these products. DPR expects any possible losses in general retail sales of SGAR products to be offset by additional sales of other rodenticide products (FGAR and/or nonanticoagulant products) manufactured by the same companies. Therefore, the proposed regulation is not likely to have a significant adverse economic impact on these companies.

Rodent control in food-handling establishments, such as restaurants, food processing, and other institutional facilities, is especially critical since commensal rodents may contaminate food and

equipment. U.S. EPA estimates that more than 90 percent of food-handling establishments already rely on licensed pest control businesses for pesticide treatments. In addition, traps and other mechanical means, and effective alternative rodenticide products that are not restricted materials are still available to these establishments at comparable costs. Therefore, this proposal is not likely to have a significant adverse effect on these types of establishments that are most likely to rely on SGARs.

Some agricultural-related industries (such as large poultry houses) have a certified applicator on staff. This proposed regulatory action will have no significant impact on these businesses, because the staff certified applicator can continue to purchase and use SGARs to address rodent issues at these facilities. Other smaller agricultural-related industries that currently rely on SGARs as their primary rodent control tool around agricultural buildings may not have a certified applicator on staff. If these facilities want to continue using SGARs and do not already hire a licensed pest control business to apply pesticides, these businesses may choose to designate an employee to become certified to apply California-restricted material, a decision that is not likely to have a significant economic impact.

For other non-food/feed facility uses or in and around dwellings not already serviced by a licensed pest control business, DPR does not anticipate this proposal having a significant adverse economic impact because of the availability of effective alternative rodenticides on the general consumer market.

The document relied upon to make this determination is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs with the State of California: The proposed action would not create or eliminate jobs in California because alternative rodenticide products are available. Licensed pest control businesses could potentially have more customers if individuals and businesses want to continue to use SGARs to address their rodent problems, but any additional demand would generate additional revenue and could likely be handled by existing staff.

Creation of New Business or the Elimination of Existing Businesses with the State of California: Some businesses may choose to hire a pest control business to apply SGARs. This additional cost should not significantly affect business operations or have a significant adverse economic impact on the sector. This workload would be handled by existing pest control businesses and would not result in the creation of new businesses or the elimination of existing businesses. Additionally, effective alternative rodenticide products that are not restricted materials are still available on the general consumer market.

The Expansion of Businesses Currently Doing Business within the State of California: This proposal is unlikely to result in an expansion of business since many individuals and businesses already rely on pest control businesses. Any new demand would be spread out among the already existing pest control businesses in the state and would likely be handled with existing staff.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: Data indicate that exposure and toxicity to nontarget wildlife from SGARs is a statewide problem. In addition, the data suggest that the problem exists in both urban and rural areas. Restricting the availability of these types of rodenticides to certified applicators would ensure that only trained applicators are utilizing these products, reducing the likelihood of impacts to California's wildlife.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL [3 CCR SECTION 6110]

DPR has determined that there is no significant adverse environmental effect to water, air, nontarget species or human health that can reasonably be expected to occur, directly or indirectly, from the proposed regulatory action. While commensal rodents do present a public health concern, traps and other nonpesticidal mechanical means, as well other effective alternative rodenticide products would be available as nonrestricted pesticides. Further, SGARs would still be available through structural pest control applicators or other users who become certified applicators. The proposed action, rather than causing an adverse environmental effect, will enhance protection to wildlife in the environment--protection that will not occur if this proposal is not implemented. Therefore, there is no significant adverse environmental effect and no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations.

DOCUMENTS RELIED UPON

1. John McCamman, Director, California Department of Fish and [Wildlife]. Letter to Christopher Reardon, Acting Director, Department of Pesticide Regulation. July 11, 2011.

2. Elliott, John, Senior Research Scientist, Pacific Wildlife Research Centre. Memorandum to Gerald Bowes, Cal/EPA Scientific Peer Review Program. February 22, 2013.

3. Murray, Maureen, Clinical Assistant Professor, Tufts Cummings School of Veterinary Medicine. Review of Cal/EPA Department of Pesticide Regulation Assessment of the Hazard Posed by Second Generation Anticoagulant to Non-Target Organisms. February 22, 2013.

4. Rattner, Barnett A., Ecotoxicologist, USGS-Patuxent Wildlife Research Center. Peer Review of the Department of Pesticide Regulation's Assessment of the Hazard Posed by Second Generation Anticoagulant Rodenticides to Non-Target Wildlife.

5. Stone, David, Ph.D., Oregon State University. Memorandum to Gerald Bowes, Cal/EPA Scientific Peer Review Program. February 21, 2013.

6. Daniels, Deborah, Senior Environmental Scientist, Registration Branch, DPR. Memorandum to Ann Prichard, Chief, Registration Branch, DPR. "Second Generation Anticoagulant Rodenticides Assessment." June 27, 2013.

7. Daniels, Deborah, Senior Environmental Scientist, Registration Branch, DPR. Memorandum to Ann Prichard, Chief, Registration Branch, DPR. "Summary of Second Generation Anticoagulant Rodenticides Assessment Peer Review Comments and Responses." June 27, 2013.

8. Daniels, Deborah, Senior Environmental Scientist, Registration Branch, DPR. Memorandum to Ann Prichard, Chief, Registration Branch, DPR. "Summary of Second Generation Anticoagulant Rodenticides Assessment Comments and Responses." June 27, 2013.

9. United Kingdom Health and Safety Executive, "Environmental Risk Mitigation Measures for Second Generation Anticoagulant Rodenticides Proposed by the UK." August 2012.

10. U.S. Environmental Protection Agency. Risk Mitigation Decision for Ten Rodenticides. May 28, 2008.

11. Angel Chiri and Jin Kim, Biological Analysis Branch, U.S. Environmental Protection Agency. Memorandum to Kelly Sherman, Laura Parsons, and Susan Lewis, Special Review and Reregistration Division. Impact Assessment for Proposed Rodenticide Mitigation. September 20, 2006.

12. Keigwin, Richard P., Jr., Director, Pesticide Re-evaluation Division, U.S. Environmental Protection Agency. Memorandum to Lois, Rossi, Director, Registration Division. Commensal Rodenticide Products Outdoor 50 Foot Restriction for Professional Use Products. March 14, 2012.

13. Gabriel, Mourad W., Higley, J. Mark, Matthews, Sean M., Wengert, Greta M., and Poppenga, Robert. Discovery of Anticoagulant Rodenticides Dispersed in an Illegal Marijuana Grow Site within Several Fisher Territories in Northern California. July 12, 2012.

14. U.S. Environmental Protection Agency. Statement of Reason and Factual Basis for Notice of Intent to Cancel Registrations of, and Notice of Denial of Applications for, Certain Rodenticide Bait Products. January 29, 2013.

15. Pesticide Registration and Evaluation Committee Meeting Minutes. Dated March 16, 2012 and March 15, 2013.

16. Economic Analysis of Proposed Restrictions to Second Generation Anticoagulant Rodenticides. California Environmental Protection Agency, Agencywide Economic Studies Section, Air Resources Board. Memorandum from Tom Rosen-Molina to Linda Irokawa-Otani, Regulations Coordinator, DPR. June 11, 2013.