



December 18, 2023

ENF 23-19

TO: County Agricultural Commissioners

SUBJECT: DIPHACINONE: RESTRICTED MATERIAL STATUS, PROHIBITIONS,  
ALLOWED USES, AND QUESTIONS AND ANSWERS

This letter announces a recent revision to Food and Agricultural Code (FAC) section 12978.7 by Assembly Bill (AB) 1322 (Chapter 836, Statutes of 2023). Effective January 1, 2024, **most uses of the rodenticide diphacinone are prohibited and most products containing diphacinone are required to be sold by licensed dealers.**

The Legislature’s findings and text of the amended law can be found at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB1322](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1322).

This letter highlights the changes to FAC section 12978.7 relative to diphacinone, and provides an update to certain topics covered in ENF letters 20-20 and 21-13 relative to the use of the four second generation anticoagulant rodenticides (SGARs, products containing brodifacoum, bromadiolone, difenacoum, and difethialone).

**Diphacinone as a Restricted Material**

AB 1322 added a new subsection (d) to FAC section 12978.7 which states:

(d) Except as provided in subdivision (f) or (g), the use of diphacinone is prohibited in this state and diphacinone shall be considered a restricted material pursuant to Section 14004.5 until the director makes the certification described in subdivision (i).

This new subsection is interpreted to mean any diphacinone use prohibited by the amended law (see “Prohibited Uses” below) is classified as a restricted material. The practical impact of this subsection is:

- 1) Effective January 1, 2024, diphacinone products labeled for any use prohibited by the amended law can only be sold to an end user by a DPR-licensed pest control dealer.
- 2) Effective January 1, 2024, it is unlawful to use diphacinone for a prohibited use.
- 3) For diphacinone uses allowed under FAC section 12978.7 subsections (f) and (g) (see “Allowed Uses” below) **no restricted material permit is required.**

These restrictions also apply to products containing diphacinone sodium salt. These products are liquid formulations which are diluted with water and applied in liquid bait stations, and quickly convert to diphacinone in the environment.

### **Prohibited Uses**

Under the amended law, most uses of SGARs and diphacinone are prohibited. For example, these prohibitions include residential or home uses and most industrial and institutional uses. Prohibited uses include use in and around restaurants (that do not have an attached brewery or winery), grocery stores, airports, offices, construction sites, ports and terminal buildings, shipyards, timber yards, schools, shopping malls, sewers, and sewage treatment plants. In addition, many non-production agricultural uses (such as cemeteries, golf courses, parks, highways, and railroads) are also prohibited.

In addition, the definition of “Wildlife habitat area” in subsection (a)(4) was expanded by AB 1322 to include “any park or wildlife refuge managed by a state agency, regional government, or quasi-government agency, or by a special district.” Use of an SGAR or diphacinone in a wildlife habitat area is prohibited unless the use meets one of the exemptions in subsection (f).

### **Allowed Uses**

The broad prohibition on using an SGAR or diphacinone in California does not apply to certain specified users and uses, as set forth in FAC section 12978.7 subsections (f) and (g). As explained by ENF letter 20-20 response to Question 2 and the addendum in ENF letter 21-13, these users and uses are:

#### *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:*

- Use by a mosquito or vector control district, including use under a contract with a pest control businesses licensed by the Department or registered with the Structural Pest Control Board.
- For eradication of nonnative invasive species on offshore islands.
- If the Department of Fish and Wildlife determines the use is required to control or eradicate an invasive rodent population for the protection of threatened or endangered species or their habitats.
- 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 SGAR or diphacinone reevaluations.
- 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.
- 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 facilities to protect on-farm water supply systems, facilities, and related infrastructure. This includes on-farm areas such as waterways, irrigation canals, levies, dams, ponds, reservoirs, wells, water tanks, irrigation pumps and pump houses, and drip tape or other irrigation lines outside of farm fields.
  - On-farm storage housing rights-of-way and other transportation infrastructure materials to protect on-farm transportation infrastructure. This includes on-farm areas such as driveways (including driveways to barns and houses), farm or ranch roads (such as along farm fields), and bridge or culvert embankments.

For an allowed SGAR or diphacinone use the product labeling and other applicable pesticide laws and regulations must continue to be followed. In the event of a conflict between labeling requirements, other pesticide laws and regulations, and FAC section 12978.7, the strictest requirement must be followed.

### **Questions and Answers**

These changes will likely pose significant challenges to registrants, retailers, pest control dealers, end users, and pesticide enforcement personnel. To help ensure statewide consistency with the implementation of these new requirements, DPR prepared the following questions and answers. A subsequent letter may be issued to address additional questions.

Product Sales

**1. Q: Will retailers be allowed to sell existing stocks of diphacinone products after January 1, 2024?**

A: Many diphacinone products are currently required to be sold by licensed dealers, by virtue of the product being labeled either as a “Restricted Use Pesticide” or including an “agricultural use” under California’s broad legal definition in FAC section 11408.

There are also many diphacinone products which can currently be sold by retailers because they do not meet these requirements. These other products’ registered labeling may contain prohibited and allowed uses under the amended FAC section 12978.7.

Because uses prohibited under FAC section 12978.7 are restricted materials starting January 1, 2024, only licensed pest control dealers can sell to end-users diphacinone products labeled for any prohibited use. DPR anticipates the vast majority of diphacinone products will be required to be sold by licensed pest control dealers. This has the practical effect of limiting most consumer sales of diphacinone products.

For those products which currently may be sold by retailers AND which are labeled only for uses allowed by the amended FAC section 12978.7, those products could continue to be sold by retailers in 2024. However, DPR anticipates this scenario is unlikely given many diphacinone product labels contain a mix of uses prohibited and allowed under FAC section 12978.7. Starting January 1, 2024, DPR anticipates the vast majority of diphacinone products will be required to be sold by licensed pest control dealers.

**2. Q: If diphacinone products labeled for a prohibited use are on the retail shelf after January 1, 2024, what is the consequence?**

A: Unlawful sales of restricted materials may be subject to administrative and civil enforcement actions pursuant to FAC sections 12998, 12999.4, and 12999.5.

**3. Q: Does the law apply to retailers selling diphacinone online?**

A: Yes. After January 1, 2024, if you encounter an online retailer selling a product with prohibited uses who is not a licensed dealer, please collect the available information (such as website or social media link; retailer name, address, phone number; and screenshot of webpage or advertising language, or copy of the online brochure) and refer to DPR’s Product Compliance Unit for follow-up.

**4. Q: What should retailers who are not pest control dealers do with existing stocks?**

A: Existing stocks must be removed from sale by January 1, 2024. Existing stocks may be recovered by distributors or appropriately disposed of. Retailers may contact their state or local hazardous waste disposal program to find out how to dispose of diphacinone products appropriately.

**5. Q: How will licensed dealers determine if a diphacinone product can be sold?**

A: In accordance with existing requirements, such as Title 3, California Code of Regulations section 6568 which requires dealers to obtain a copy of the permit authorizing the use prior to delivery of the pesticide, dealers routinely question potential purchasers to determine if regulatory requirements can be met prior to sale or delivery of the pesticide.

This will be especially important for diphacinone products as product labeling may contain a mix of uses either prohibited or allowed under FAC section 12978.7. Only certain uses on a diphacinone product label may be prohibited under FAC section 12978.7 and only those uses would require a permit. A pest control dealer would meet its obligation by determining whether a prospective purchaser's stated intent for the use is allowed by FAC section 12978.7 and the use sites on the product labeling to determine if the sale can be made without obtaining a copy of a permit. We are also developing a fact sheet for pesticide dealers to make available to diphacinone purchasers to explain the requirements of FAC section 12978.7.

**6. Q: County Agricultural Commissioner Offices currently sell diphacinone rodent bait for agricultural uses. How will they be impacted by the amended law? Can they continue to sell the bait?**

A: Since 2011, the diphacinone treated grain products sold by Commissioners (either 0.005% or 0.01%) have been labeled as "Restricted Use Pesticides" as required by U.S. EPA. Existing law (FAC section 12102) provides the dealer licensing requirements of FAC section 12101 do not apply to federal, state, or county agencies which provide pesticides for agricultural use, such as these products.

Like many other diphacinone products, these two diphacinone treated grain products are labeled for uses both prohibited and allowed under the amended FAC section 12978.7. Specifically:

- Prohibited uses may include use along highways, railroad lines, utilities, and in campgrounds and recreational areas.
- Allowed uses may include use in and around livestock buildings; in dormant vineyards, orchards, and groves; non-crop borders and fallow fields; and pastures and rangeland.

A commissioner selling these diphacinone products should determine if the purchaser intends to use the product for a use allowed under FAC section 12978.7. If a commissioner sells a diphacinone product for a prohibited use, it could subject them to various legal liabilities.

Structural Uses

**7. Q: How do the changes affect Branch 2 diphacinone uses?**

A: Registered Branch 2 companies practicing structural pest control are prohibited from using diphacinone with certain limited exemptions allowed under the law (such as for vector control applications or at medical waste generators, slaughterhouses, factories, and certain warehouses) provided the use site is listed on the product labeling. As noted above, all other diphacinone uses (such as use in residential areas) are prohibited starting January 1, 2024.

Other Uses

**8. Q: How do the changes affect diphacinone use by farmers, ranchers, or growers?**

A: Under the amended law, FAC section 12978.7 subsections (g)(2), (g)(3)(D), and (g)(3)(E) permit use on agricultural sites producing farm products, an agricultural production site housing water storage and conveyance facilities, and an agricultural production site housing rights-of-way and other transportation infrastructure. The prohibition on diphacinone use by FAC section 12978.7 does not apply to these uses. As such, these allowed diphacinone uses are unaffected by the amended law provided the product is registered for such use. For these allowed uses **no permit for diphacinone is required**.

However, there may be cases where a farmer or rancher has a grazing or agricultural lease in a wildlife habitat area (as noted above, the scope of this definition has expanded).

Diphacinone use is broadly prohibited in wildlife habitat areas, except as provided in FAC section 12978.7 subsection (f).

**9. Q: What can end users do with diphacinone products they have in storage which they can no longer use?**

A: For all end users, if the container is unopened the end user can consider contacting the dealer or registrant to ask about returning it. Alternatively, end users who may have open containers, including homeowners and apartment managers, may contact their state or local hazardous waste disposal program to find out how to dispose of diphacinone products appropriately.

**10. Q: Does this law affect diphacinone 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.

Restricted Material Permits

**11. Q: Who needs a restricted material permit to purchase or use diphacinone?**

A: Due to the unique wording of FAC section 12978.7(d), the resulting situation is substantially different from other situations where if a particular use is included on a product label, an end user looking to purchase or use the product would require a restricted material permit from the Commissioner.

Diphacinone uses prohibited by FAC section 12978.7 are restricted materials; allowed uses are exempt from the requirement. As the prohibited uses are unlawful, a diphacinone permit application for a prohibited use does not meet an objectively determined minimum requirement to allow for legal use of a diphacinone product. A County Agricultural Commissioner cannot issue a permit for diphacinone for a prohibited use.


For diphacinone uses allowed under FAC section 12978.7 subsections (f) and (g) (see “Allowed Uses” above) **no restricted material permit is required.**

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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