

**OFFICE OF EMERGENCY SERVICES
PROPOSED REGULATIONS
INITIAL STATEMENT OF REASONS**

**CALIFORNIA CODE OF REGULATIONS
TITLE 19
DIVISION 2
CHAPTER 4**

Statement of Reasons: General Information and Background

Pesticides are unique among toxic substances. They are not an unwanted byproduct of another process, but are instead industrial chemicals produced specifically for their toxicity to a target pest. In order to do this job, these toxins must be purposely introduced into the environment. This means that the regulation of these substances cannot focus solely on assessing their toxicity, but also on managing the risk of exposure associated with their application to the environment.

The California Food and Agriculture Code § 12972 requires users of any pesticide to apply it in such a manner as to prevent substantial drift to nontarget areas. However, due to unintentional overspray, unexpected winds, accidental release or negligence, pesticide drift into unintended areas is not an uncommon occurrence.

The pesticide drift bill (SB 391) came about in response to a number of pesticide drift exposure incidents affecting residential communities, resulting in illness and hospitalization, at great expense to both local and state governments. The applicable part of SB 391, chaptered as Food and Agricultural Code, § 12997.7, requires the California Environmental Protection Agency (in consultation with other state, county and local agencies, and the public) to develop six protocols to help the first responder to a pesticide drift exposure incident better identify the chemical of concern and respond to the health and safety needs of the affected population

Per SB 391, these six protocols must be included in the area plan for each Administering Agency or Certified Unified Program Agency (CUPA), where applicable. The regulations for the area plan are located in the California Code of Regulations, Title 19, Division 2, Chapter 4, Article 3, and are under the regulatory purview of the Governor's Office of Emergency Services. The proposed regulations were developed, following a series of public meetings, by the Governor's Office of Emergency Services, in consultation with the Department of Pesticide Regulation, the Office of Environmental Health Hazard Assessment, the California Environmental Protection Agency, and representatives of the California County Agricultural Commissioners.

Rather than create a new section containing only pesticide drift exposure incident protocols, thus creating a special category of hazardous materials responses, the proposed new protocols have been integrated into the existing area plan minimum standards.

References and Authorities

Authority: Food and Agricultural Code §12997.7 (enabling statute for these regulations.)

References: Food and Agricultural Code §12753 and 12997.7

Health and Safety Code, Division 20, Chapter 6.95, §25503(c),(d) and (f)

California Code of Regulations, Title 19, Division 2, Chapter 4, §§ 2720-2728

Article 1. Definitions

§2660. Pesticide Drift Exposure Incident.

“Pesticide drift exposure incident” means an unintended airborne transport of a pesticide to non-target areas, potentially resulting in exposures that could affect public health and safety and the environment. For the purposes of this Chapter, the term “pesticide” has the same meaning as “pesticide”, as defined in the Food and Agricultural Code, Section 12753.

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2660

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2660

This section provides a definition, for the purposes of the area plan, of a pesticide drift exposure incident.

Necessity - §2660

For the purpose of clarity, this definition describes the type of event to which the requirements added to the area plan by Food and Agricultural Code, §12997.7 apply. Placement of this definition in Article 1 applies it to all of Chapter 4. In addition to Article 3 (Minimum Standards for Area Plans), it may, in the future, be a useful definition for the purposes of Article 2 (Spill Reporting), Article 4 (Minimum Standards for Business Plans) and Article 5 (Warning Signs for Agricultural Handlers).

Article 3. Minimum Standards for Area Plans

Subsection (c) is added to Section 2720.

§2720. Proposed Area Plans.

The proposed area plan, as required by Section 25503(d) of the Health and Safety Code, shall include:

(c) procedures for responding to pesticide drift exposure incidents;

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2720

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2720

This section provides a summary of the elements of the area plan. New subsection (c) includes a pesticide drift exposure incident as one of the required elements.

Necessity - §2720

This subsection is to clarify the necessity of integrating the required pesticide drift exposure incident procedures into the area plan.

Subsection (d) is added to Section 2723.

§2723. Pre-Emergency Planning.

Area plans shall include, but not be limited to:

(d) procedures, developed in consultation with the Local Health Officer, to inform medical providers regarding eligibility for reimbursement pursuant to Section 12997.5 of the Food and Agricultural Code, where applicable;

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2723(d)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2723(d)

One of the protocols required by Food and Agricultural Code §12997.7 to be included in the area plan is §12997.7(b)(6). “(b) The protocols shall include, but

not be limited to, all of the following: (6) Protocols to notify medical providers regarding eligibility for reimbursement pursuant to Section 12997.5.”

Necessity - §2723(d)

The protocol required by Food and Agricultural Code §12997.7(b)(6) is a pre-emergency planning protocol, so it is included in Title 19 §2723 as new subsection (d).

Subsection (f) of Section 2723 is amended.

§2723. Pre-Emergency Planning.

Area plans shall include, but not be limited to:

(f) development of an integrated response management system providing standardized organizational structure, terminology, and procedures for use during any release or threatened release of hazardous materials, to include pesticide drift exposure incidents. The administering agency shall incorporate into the area plan specific agency roles within the Standardized Emergency Management System, including procedures for agency notification and responsibility for public safety and information pursuant to Section 2726 for all emergency responses, to include pesticide drift exposure incidents. The administering agency shall consult with the County Agricultural Commissioner and the Local Health Officer when incorporating their statutory duties into a pesticide drift response, and when assigning other specific agency responsibilities for pesticide drift exposure incidents;

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2723(f)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2723(f)

One of the protocols required by Food and Agricultural Code §12997.7 to be included in the area plan is §12997.7(b)(2). “(b) The protocols shall include, but not be limited to, all of the following: (2) Protocols to delineate specific agency responsibilities and the process for responding to calls, notifying residents, and coordinating evacuation, if needed.”

Necessity - §2723(f)

The protocol concerning agency responsibilities required by Food and Agricultural Code §12997.7(b)(2) is a pre-emergency planning protocol, so it is included in Title 19 §2723(d) with existing agency responsibility language.

Subsection (g) is added to Section 2723.

§2723. Pre-Emergency Planning.

Area plans shall include, but not be limited to:

(g) procedures, established in consultation with the County Agricultural Commissioner and the Local Health Officer, with assistance from the Department of Pesticide Regulation, to provide immediate access to pesticide-specific information for responders to pesticide releases. This information will assist emergency response and emergency medical services personnel in identifying and characterizing any pesticides which have the potential to come into contact with one or more individuals as the result of a pesticide drift exposure incident within the jurisdiction.

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2723(g)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2723(g)

One of the protocols required by Food and Agricultural Code §12997.7 to be included in the area plan is §12997.7(b)(1). “(b) The protocols shall include, but not be limited to, all of the following: (1) Protocols for requesting and providing immediate access to pesticide-specific information necessary to assist emergency medical services personnel in identifying pesticides that may be causing a pesticide drift exposure incident and appropriate treatments.”

Necessity - §2723(g)

The protocol required by Food and Agricultural Code §12997.7(b)(1) is a pre-emergency planning protocol, so it is included in Title 19 §2723 as new subsection (g).

Subsection (e) is added to Section 2724.

§2724. Notification and Coordination.

Area plans shall include, but not be limited to:

(e) procedures, developed in consultation with the Local Health Officer, to ensure access to health care within 24 hours of an exposure resulting from a pesticide drift exposure incident and up to a week after the incident.

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2724(e)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2724(e)

One of the protocols required by Food and Agricultural Code §12997.7 to be included in the area plan is §12997.7(b)(5). “(b) The protocols shall include, but not be limited to, all of the following: (5) Protocols to ensure access to health care within 24 hours of the exposure and up to a week after the exposure..”

Necessity - §2724(e)

The protocol required by Food and Agricultural Code §12997.7(b)(5) is a notification and coordination protocol, so it is included in Title 19 §2724 as new subsection (e).

Subsections (a)(1), (a)(5) and (a)(8) of Section 2725 are amended.

§2725. Training.

(a) At a minimum, area plans shall establish provisions for training of emergency response personnel in the following areas:

- (1) emergency procedures for first response to a release or threatened release of hazardous materials, to include pesticide drift exposure incidents;
- (5) identification of medical facilities capable of providing treatment appropriate for hazardous material incidents, to include pesticide drift exposure incidents;
- (8) first-aid procedures for hazardous material incidents, including pesticide exposure;

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2725(a)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2725(a)

Even though there is no express requirement for training in Food and Agricultural Code §12997.7 , it is not reasonable to assume that existing training requirements of §2725(a) will automatically extend to the new protocols required for inclusion into the area plan. The existing requirements are specific enough to warrant inclusion of the pesticide drift exposure incidents.

Necessity - §2725(a)

These amendments will clarify that hazardous materials training must include pesticide drift specific procedures.

Subsection (c) is added to Section 2726.

§2726. Public Safety and Information.

Area plans shall include, but not be limited to:

(c) procedures, developed in consultation with the County Agricultural Commissioner, to notify residents of a pesticide drift exposure incident and a procedure to assist in the coordination of an evacuation, if deemed necessary by emergency response personnel;

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2726(c)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2726(c)

One of the protocols required by Food and Agricultural Code §12997.7 to be included in the area plan is §12997.7(b)(3). “(b) The protocols shall include, but not be limited to, all of the following: (3) Protocols to establish emergency shelter procedures and locations to be used in the event evacuation is needed.”

Necessity - §2726(c)

The protocol required by Food and Agricultural Code §12997.7(b)(3) is a public safety and information protocol, so it is included in Title 19 §2726 as new subsection (c).

Subsection (d) is added to Section 2726.

§2726. Public Safety and Information.

Area plans shall include, but not be limited to:

(d) procedures to identify all languages known to be spoken in the administering agency’s county or city, as the case may be, and ensure that any individual is able to access services in their native language as required by Section 11135 of the Government Code. The area plan will outline what these services are and how they will be provided in the languages identified;

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2726(d)

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2726(d)

One of the protocols required by Food and Agricultural Code §12997.7 to be included in the area plan is §12997.7(b)(4). “(b) The protocols shall include, but not be limited to, all of the following: (4) Protocols to access services in all languages known to be spoken in the affected area in accordance with Section 11135 of the Government Code..”

Necessity - §2726(d)

The protocol required by Food and Agricultural Code §12997.7(b)(4) is a public safety and information protocol, so it is included in Title 19 §2726 as new subsection (d).

Section 2728 is amended.

§2728. Incident Critique and Follow-Up.

Area plans shall describe provisions for the critique and follow-up of major incidents of a release or threatened release of hazardous material, including pesticide drift exposure incidents. The critique shall include an interagency meeting to evaluate the response, to improve future response, and to determine if any area plan revisions are required.

Public Problem, Administrative Requirement, or Other Condition or Other Circumstance that the Regulation is Intended to Address - §2728

Food and Agricultural Code §12997.7 addresses establishment by regulation of minimum standard pesticide drift protocols, for the purpose of amending area plans.

Specific Purpose of Regulation - §2728

Even though there is no express requirement for after-action reports in Food and Agricultural Code §12997.7, it is not reasonable to assume that existing requirements of §2728 will automatically extend to pesticide drift exposure incidents.

Necessity - §2728

This amendment will clarify that the response to pesticide drift exposure incidents must include after-action meetings and critiques, just like any other hazardous material release.