

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-2017	Business Unit BU_3930	Department Department of Pesticide Regulation	Priority No. LEG-7
Budget Request Name 3930-007-BCP-BR-2016-GB		Program 3540_PESTICIDE PROGRAMS	Subprogram 3540010_Pesticide Registration 3540019_Human Health and Environmental Assessment 3540073_Pest Management

Budget Request Description
 Medical Marijuana Implementation (AB 243)

Budget Request Summary
 The Department of Pesticide Regulation (DPR) requests three positions and \$700,000 from the Department of Pesticide Regulation Fund (DPRF) pursuant to Chapter 288, Statutes of 2015, (AB 243, Wood).

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR Project No. Date:		

If proposal affects another department, does other department concur with proposal? Yes No
 Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Jill Townzen <i>Jill Townzen</i>	Date 1/5/2016	Reviewed By Lu Saephakh <i>Lu Saephakh</i>	Date 1-5-2016
Department Director Brian Leahy <i>Brian Leahy</i>	Date 1/5/2016	Agency Secretary <i>[Signature]</i>	Date 1/6/16

Department of Finance Use Only	
Additional Review: <input type="checkbox"/> Capital Outlay <input type="checkbox"/> ITCU <input type="checkbox"/> FSCU <input type="checkbox"/> OSAE <input type="checkbox"/> CALSTARS <input type="checkbox"/> Dept. of Technology	
BCP Type: <input type="checkbox"/> Policy <input type="checkbox"/> Workload Budget per Government Code 13308.05	
PPBA Original Signed By: Ellen Moratti	Date submitted to the Legislature 1/7/16

A. Budget Request Summary

The Department of Pesticide Regulation (DPR) requests three positions and \$700,000 from the Department of Pesticide Regulation Fund (DPRF) pursuant to Chapter 288, Statutes of 2015 (AB 243, Wood).

Two positions are needed to develop new types of risk assessments for the risks associated with inhalation (smoking) risks of pesticide use on cannabis, as well as the dietary risks (edibles) associated with pesticide uses. An additional position is needed for the Registration Branch to review and process label submissions of Special Local Needs requests to the U.S. Environmental Protection Agency (U.S. EPA).

Contract funds will be used to contract with external research programs to assist with analyzing current cannabis cultivation and cultural practices, pests of concern, and treatments, including pesticide use.

The guidelines and outreach developed by the new positions and funding will aid in protecting the cultivators of medical cannabis and the consumers of harvested medical cannabis from pesticide exposure.

B. Background/History

When the Compassionate Use Act was approved in 1996, use of medical cannabis became legal. However, cultivation of medical cannabis has remained largely unregulated for nearly 20 years. Estimates suggest that there are currently over 40,000 cannabis cultivation sites in California, representing a large community of potential pesticide users. Key components of the bill require DPR to provide guidelines for the use of pesticides in cannabis cultivation and residue levels in harvested cannabis. Outreach to the newly regulated community will be essential in protecting human health and the environment.

DPR has exclusive authority to regulate pesticide sales and use in California. DPR's mission is to foster reduced-risk pest management and to protect human health and the environment by regulating pesticide sales and use. DPR achieves this partly through the continued reevaluation of available scientific data used. Prior to the registration of a pesticide in California, each use of that pesticide must be evaluated to ensure that it is effective and will not significantly harm human health or the environment when used according to label directions. Oversight continues through statewide licensing of pesticide professionals; evaluation of health impacts of pesticides through illness surveillance and risk assessment; environmental monitoring of air, water, and soil; and enforcement (with county agricultural commissioners [CACs]) of laws regulating pesticide use.

Federal Preemption

The label language that goes on a pesticide product is set and preempted at the federal level. The federal law, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), clearly states that only the federal government has authority over pesticide labeling. Prior to use in California, any pesticide must first be registered by U.S. EPA and then DPR. Because cannabis is not a federally-recognized crop there are no pesticides approved specifically for use on cannabis. The only pesticides that may be used consistent with the registered labeling are those registered for use on sites broad enough to include cannabis (e.g. green leafy plants) and exempt from tolerance requirements. Pesticide tolerances, *which are the maximum levels of pesticide residues allowable on a food crop*, can only be established at the federal level. Some pesticides that are exempt from registration requirements under FIFRA section 25(b) may also be used. With nearly 14,000 actively registered products containing over 1,000 different active ingredients, providing guidance on which products fit the requirements for use on cannabis will be a substantial workload.

FIFRA allows special registrations under specific circumstances. Under criteria in FIFRA section 24(c) Special Local Needs (SLN) registration, pesticide uses can be approved outside the regular U.S. EPA

registration process. Criteria for a SLN registration include data to support the use and justification that no other registered products are available to meet the SLN. However, any request for a SLN must meet all of the data requirements for registration and be evaluated by DPR scientists prior to the request being submitted to U.S. EPA. In some cases the evaluation will require a more substantial dataset than would normally be required because cannabis can be consumed in several different ways.

In 1996, the Food Quality Protection Act (FQPA) was passed, it amended the Federal Food, Drug, and Cosmetics Act and preempts states from establishing pesticide tolerances to ensure that all food uses of a pesticide active ingredient pose a reasonable certainty of no harm [United States Code title 7 section 346a(n)(4)]. Developing guidelines for safe pesticide residue levels on cannabis will be a new activity for DPR. For federally recognized crops, tolerances are only established for food uses. DPR will need to develop procedures for assessing risk associated with consuming cannabis that is either smoked or concentrated.

C. State Level Considerations

The California Environmental Protection Agency's (CalEPA's) mission is to restore, protect, and enhance the environment, to ensure public health, environmental quality, and economic vitality. DPR is one of six boards, departments, and offices (BDOs) under the authority of CalEPA. This proposal directly supports Goal #1 of DPR's Strategic Plan: Assure California's environment is not adversely affected by pesticides and that all people are protected from unacceptable pesticide risks.

The Department of Public Health (DPH) is mandated by the bill to license testing laboratories that will test harvested cannabis for concentration, pesticides, mold, and other contaminants. DPR anticipates the need for coordination with DPH in the development of guidelines for pesticide use in the cultivation of medical marijuana.

D. Justification

Currently, marijuana is not a federally-recognized crop; therefore neither U.S. EPA nor DPR has registered any pesticides for use on cannabis. This makes it difficult for medical cannabis cultivators to determine which pesticide can be used legally and safely in cannabis cultivation. AB 243 requires DPR to develop guidelines for use of pesticides in cannabis cultivation. DPR will evaluate the more than 14,000 pesticide products and 1,000 active ingredients to develop guidelines for pesticide use in cannabis cultivation. Since an SLN registration would be the only foreseeable way a pesticide can be registered for use on cannabis, DPR anticipates a large number of such registration requests will be submitted.

AB 243 requires DPR to develop guidelines for maximum tolerances in harvested cannabis. While DPR is preempted by federal law from establishing maximum pesticide tolerances for any cannabis used in food, DPR could mitigate residue on non-food cannabis through an SLN and can provide guidelines for identifying pesticide residue levels of potential health concern in harvested cannabis. This process will require consideration of the toxicity of the pesticide and its break down products and all possible routes of exposure to the residue. Because cannabis cultivation has largely remained unregulated DPR would need to contract with external research programs to identify current cultivation practices and develop procedures for establishing guidelines. To underscore the scope of outreach that will be needed, it is estimated that there are more cannabis cultivation sites in California than there are sites cultivating any currently legal and recognized crop.

Pesticide Registration Branch

The Pesticide Registration Branch (PRB) is responsible for processing and evaluating pesticide products before they can be used in California. After a pesticide use has been approved at U.S. EPA, it undergoes a second round of scientific evaluation in California. While California's pesticide registration parallels its federal counterpart in most respects, there are differences in application. DPR and

U.S. EPA may review the same group of toxicology studies, but DPR may rely on different studies to reach a registration decision. The conclusions may differ because DPR focuses on California-specific effects. For example, DPR may refuse to register a product because of potential effects on workers in California's labor-intensive agriculture. Each time a new crop or pest is added to the label, it is evaluated to determine if that pesticide's use is safe for humans and the environment, and will be efficacious when used as directed. PRB staff have expertise in chemistry, microbiology, plant physiology, pest and disease prevention, and ecotoxicology.

The Environmental Scientist position requested by PRB will be responsible for:

- Reviewing currently registered pesticide products to develop guidelines for use in cannabis cultivation.
- Developing guidelines for evaluating residue levels in harvested medical cannabis (including evaluation of physical and chemical properties and residue chemistry data).
- Reviewing and processing submissions of SLN requests, including coordinating with other state agencies, commodity groups, and pesticide companies concerning the types of data that will need to be submitted for evaluation.
- Submitting requests for SLNs to U.S. EPA and coordinating with their scientists.

Human Health Assessment Branch

The Human Health Assessment Branch (HHA) evaluates toxicological data and manages human health risk assessments to help protect humans who may be exposed to pesticides. Although DPR already assesses occupational and dietary risks associated with pesticide uses, the risks associated with smoking are a new type of risk assessment and new procedures will need to be established to evaluate that risk. HHA will need two Staff Toxicologists to conduct risk assessments for people exposed to pesticides in medical cannabis cultivation and processing facilities, and consumers smoking and orally consuming medical cannabis. Risk assessments are complex technical reports, which require scientific review of large data sets. With current staffing levels, DPR's risk assessment program would be unable to address the needs of this new program.

The two Staff Toxicologist positions requested by HHA will be responsible for:

- Developing guidelines for evaluating risk associated with smoking medical cannabis.
- Conducting risk assessments for use of pesticides on cannabis.
- Consulting with the Department of Public Health about pesticide residue levels in harvested medical cannabis.
- Evaluating toxicological data in support of SLN requests.

Contracts

The Department requests \$280,000 to contract with external research programs to develop and distribute effective and safe pest management practices for the production of medical marijuana. The development of effective and safe practices will first require an analysis of current cannabis cultivation and cultural practices, pests of concern, and treatments, including pesticide use. With information on current practices, DPR can then develop effective and safe pest management practices for the production of medical marijuana. This information will be incorporated into the Program's Pest Management Guidelines and/or other educational tools and materials, which will be used in DPR's outreach work to growers and to county departments of agriculture.

E. Outcomes and Accountability

Once DPR hires additional staff they will work together and consult with the Department of Public Health and contract funded entities to:

- Identify current pesticide practices in cannabis cultivation and review currently registered pesticide products.
- Develop guidelines for use of pesticides on cannabis.
- Develop training material and presentations for medical cannabis cultivators.

- Develop policies for assessing safe residue levels in harvested cannabis.
- Conduct assessments on the pesticides most commonly used in cannabis cultivation.
- Evaluate requests for SLN pesticide registrations.

DPR is committed to accountability and believes that its stakeholders and the public are entitled to timely, accurate information on what California's pesticide regulatory programs accomplish, how well they work, and how much they cost to administer. To provide the public accountability, DPR uses a functional-based approach to operational planning and accounting. DPR has 11 major program functions that are meaningful to the Legislature, the public, and other stakeholders, and uses the flexibility of its accounting system to track costs and provide reports by function, as well as by branch.

F. Analysis of All Feasible Alternatives

1. Do Nothing

Pro: This alternative would not require additional resources.

Con: Without the additional funding and personnel, DPR will not be able to meet the requirements of AB 243. The additional workload of preparing and implementing guidelines for the use of pesticides in cannabis cultivation and guidelines for pesticide residue levels in harvested cannabis could not be accomplished in a timely manner

2. Appropriate \$700,000 from the DPRF for three permanent positions, and contract dollars.

Pro: This alternative allows DPR to implement the requirements of AB 243.

Con: This alternative would require ongoing funds from the DPRF.

3. Amend the law.

Pro: This alternative will decrease the workload if the law were amended to remove DPR's mandated activities. Additional resources would not be needed.

Con: Medical cannabis cultivators would not get the guidance they seek with regards to pesticide use in medical cannabis cultivation and residue levels in harvested cannabis. The industry would continue to operate without regulatory oversight of pesticide use.

G. Implementation Plan

Hiring Plan for Positions: To meet the mandates of AB 243, DPR will work to fill the requested positions in a timely manner by taking the following steps:

1. Request positions within existing state civil service classifications that are appropriate for the work to be performed.
2. Hire from the existing lists of qualified applicants.
3. Begin recruitment efforts as early as possible, identifying the position as pending legislative and administrative approvals.

In the meantime, DPR will continue to consult with DPH to lay the groundwork for developing the guidelines for pesticide use in cannabis cultivation and for developing the procedures needed to develop guidelines for pesticide residue levels in harvested cannabis.

H. Supplemental Information

N/A.

I. Recommendation

DPR recommends alternative 2, appropriating \$700,000 from the DPRF to support three positions within the department and to contract with external research programs. The new positions will work together and consult with the Department of Public Health and the contract-funded programs to develop guidelines and other outreach material that can be used by all stakeholders, including medical cannabis cultivators, to protect workers and consumers.

BCP Fiscal Detail Sheet

BCP Title: Medical Marijuana Implementation (AB 243)

DP Name: 3930-006-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	3.0	3.0	3.0	3.0	3.0
Total Positions	0.0	3.0	3.0	3.0	3.0	3.0
Salaries and Wages						
Earnings - Permanent	0	244	244	244	244	244
Total Salaries and Wages	\$0	\$244	\$244	\$244	\$244	\$244
Total Staff Benefits	0	110	110	110	110	110
Total Personal Services	\$0	\$354	\$354	\$354	\$354	\$354
Operating Expenses and Equipment						
5301 - General Expense	0	6	6	6	6	6
5302 - Printing	0	3	3	3	3	3
5304 - Communications	0	6	6	6	6	6
5320 - Travel: In-State	0	6	6	6	6	6
5322 - Training	0	3	3	3	3	3
5324 - Facilities Operation	0	33	33	33	33	33
5340 - Consulting and Professional Services -	0	280	280	280	280	280
5346 - Information Technology	0	9	9	9	9	9
Total Operating Expenses and Equipment	\$0	\$346	\$346	\$346	\$346	\$346
Total Budget Request	\$0	\$700	\$700	\$700	\$700	\$700

Fund Summary

Fund Source - State Operations						
0106 - Department of Pesticide Regulation Fund	0	700	700	700	700	700
Total State Operations Expenditures	\$0	\$700	\$700	\$700	\$700	\$700
Total All Funds	\$0	\$700	\$700	\$700	\$700	\$700

Program Summary

Program Funding						
3540010 - Pesticide Registration	0	118	118	118	118	118
3540019 - Human Health & Environmental	0	302	302	302	302	302
3540073 - Pest Management	0	280	280	280	280	280
Total All Programs	\$0	\$700	\$700	\$700	\$700	\$700