

# CRS Report for Congress

## Pesticide Registration and Tolerance Fees: An Overview

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# Pesticide Registration and Tolerance Fees: An Overview

## Summary

The U.S. Environmental Protection Agency (EPA) is responsible for regulating the sale, use, and distribution of pesticides under the authority of two statutes. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.136-136y), a licensing statute, requires EPA to review and register the use of pesticide products within the United States. The Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a) requires the establishment of maximum limits (tolerances) for pesticide residues on food in interstate commerce. Although U.S. Treasury revenues cover most costs for administering these acts, fees paid by pesticide manufacturers and other registrants have supplemented EPA appropriations for many years.

The current authority to collect pesticide fees under the Pesticide Registration Improvement Act (PRIA; P.L. 108-199, Title V of Division G) expires at the end of FY2008, with phase-out authority at reduced levels for FY2009 and FY2010. PRIA, included in the Consolidated Appropriations Act of FY2004 enacted on January 23, 2004, amended FIFRA and modified the framework for collecting fees to enhance and accelerate the Agency's pesticide licensing (registration) activities. In March 2006, EPA released a report summarizing its second-year progress in implementing the PRIA provisions. According to the report, in FY2005, EPA expended \$11.2 million of the total \$20.3 million new registration fees collected in FY2005 (\$10.6 million) and carried forward from FY2004 (\$9.7 million). The remaining balance of \$9.1 million was carried forward to FY2006. By the end of FY2005, EPA reported the completion of 1,316 decisions subject to PRIA since its enactment in 2004. On August 3, 2006, EPA announced that it had completed 9,637 (99.1%) of the 9,721 required tolerance reassessments.

Authority for collecting pesticide fees dates back to the 1954 FFDCA amendments (P.L. 518; July 22, 1954), which, as passed, required the collection of fees "sufficient to provide adequate service" for establishing maximum residue levels (tolerances) for pesticides on food. Authority to collect fees was expanded with the 1988 FIFRA amendments (P.L. 100-532), primarily to help accelerate the reregistration process (i.e., a reevaluation of pesticides registered prior to 1984). EPA was authorized to collect a one-time reregistration fee and, through FY1997, annual maintenance fees. The 1996 amendments to FIFRA and FFDCA, or the Food Quality Protection Act (FQPA) (P.L. 104-170), extended EPA's authority to collect the annual maintenance fees through FY2001, including use of the fees to reevaluate "old" tolerances (tolerance reassessment). The authority to collect the maintenance fees expired in FY2001. Congress extended this authority annually through appropriations legislation until the enactment of PRIA.

Congress has prohibited EPA proposals to significantly increase revenues for these activities by modifying the fee structure and to include increased fee revenues in EPA budget proposals annually from FY1998 through FY2004. Despite the enactment of PRIA, the President's FY2005 and FY2006 budget requests included proposals to further increase pesticide fees, which were rejected by Congress. The FY2007 President's budget request included a similar proposal.

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# Pesticide Registration and Tolerance Fees: An Overview

## Introduction

The collection of fees to support U.S. Environmental Protection Agency (EPA) pesticide program activities has been a complex issue for more than 20 years. Authorities to collect fees in addition to appropriated funds have been provided over the years in part to accelerate the Agency's review efforts and to fund its increasing statutory responsibilities. Recent Administration proposals to modify and significantly increase pesticide fees have been at odds with the views of a range of stakeholders and controversial in Congress. Congress acted to address the issues of concern through pesticide fee provisions included in the Consolidated Appropriations Act of FY2004, enacted on January 23, 2004 (P.L. 108-199). However, the Administration has continued to propose approaches for additional fee revenues.

General U.S. Treasury revenues are used to cover most of the administrative costs of EPA's pesticide program, which implements requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.136-136y) and the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), as amended. However, fees also have been imposed on those who manufacture and distribute pesticides in U.S. commerce (i.e., registrants<sup>1</sup>) to supplement EPA appropriations. Provisions in the Consolidated Appropriations Act of FY2004, which have become known as the Pesticide Registration Improvement Act of 2003 (PRIA), modified existing pesticide fee authority to support specified activities and process improvements in an effort to achieve more timely completion of EPA's statutory obligations under the authority of FIFRA and FFDCA.

In March 2006, EPA reported, as required,<sup>2</sup> its FY2005 progress implementing PRIA. *Implementing the Pesticide Registration Improvement Act — Fiscal Year 2005* (hereafter referred to as EPA's PRIA implementation report) provides information about the registration process, including the status of its registration and reregistration activities, as well as EPA's efforts to improve the processes.

The following sections of this report provide a historical overview of federal authority regarding pesticide fees, including the amount of fee revenues collected

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<sup>1</sup> A registrant is defined as a person who has registered any pesticide pursuant to the provisions of FIFRA.

<sup>2</sup> Under Section 33(k) of PRIA, EPA is required to publish an annual report describing actions taken under this section during the past fiscal year, and is directed to include several elements. EPA released its inaugural progress report covering the period January 23, 2004, through September 30, 2004, in March 2005. The FY2004 and FY2005 reports are available at [<http://www.epa.gov/pesticides/fees/>].

over time, and summarizes the key elements of PRIA. For a more complete overview of the federal pesticide laws, refer to CRS Report RL31921, *Pesticide Law: A Summary of Statutes*, by Linda-Jo Schierow.

## Background

FIFRA is a licensing statute that requires EPA to register pesticide products before they can be sold, used, and distributed within the United States. EPA evaluates proposed pesticide registrations under a set of science-based safety standards. Before a registration can be granted for a “food use” pesticide, FFDCA<sup>3</sup> requires that a tolerance (the maximum amount of pesticide residue permitted in or on food and feed) or tolerance exemption be in place.

Under the standards introduced by the 1996 amendments to FIFRA and FFDCA (the Food Quality Protection Act or FQPA; P.L. 104-170), EPA establishes tolerances through rulemaking based on risk assessments and human health criteria to ensure a “reasonable certainty of no harm.” For pesticides that are not used on food, FIFRA requires EPA to determine whether and under what conditions the proposed pesticide use would present an unreasonable risk to human health or the environment. EPA is also required to reevaluate older, registered pesticides (i.e., reregistration)<sup>4</sup> and to reassess existing tolerances (i.e., tolerance reassessment)<sup>5</sup> to ensure they meet current safety standards. Congress has amended FFDCA and FIFRA over time to authorize the collection of fees to supplement appropriated funds for these pesticide review activities.

The 1954 amendments to FFDCA<sup>6</sup> authorized the collection of fees to provide adequate service for establishing maximum allowable residue levels (tolerances) for pesticides on food, and they remain the basis for current “tolerance fee” authority. Congress amended FIFRA in 1988 (P.L. 100-532), authorizing the collection of a one-time “reregistration fee” and, through FY1997, annual “maintenance fees” in an effort to accelerate reregistration (review of pesticides registered before 1984).

In the 1996 amendments to FIFRA and FFDCA (FQPA; P.L. 104-170), Congress, concerned with the continued pace of reregistration, extended EPA’s authority to collect the annual maintenance fees through FY2001. In addition, in an attempt to provide resources to address increased responsibilities of implementing new safety standards introduced with the 1996 amendments, maintenance fee authority was expanded to allow a portion of the collected revenues to be used to support the reevaluation of “old” existing tolerances (tolerance reassessment). These

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<sup>3</sup> FFDCA Sections 408 and 409.

<sup>4</sup> The 1988 amendments to FIFRA (P.L. 100-532) define “re-registration” as re-evaluation of pesticides registered prior to 1984.

<sup>5</sup> FIFRA and FFDCA as amended in 1996 (FQPA; P.L. 104-170), “tolerance reassessments” are defined as those tolerances in existence as of August 1996.

<sup>6</sup> Section 408(o), as amended, the Pesticide Residue Amendment of 1954 (P.L. No. 518, 21 U.S.C. 346(a)). The current authority resides in FFDCA Section 408(m), per the 1996 amendments to FFDCA (FQPA).

pesticide maintenance fees, along with tolerance fees based solely on petitions for establishing new tolerances, were the only pesticide fees collected by EPA during the eight years (FY1996-FY2003) prior to the enactment of PRIA. (A more detailed overview of pesticide fee authorities and revenues collected is presented later in this report).

The current (and previous) Administration has proposed modifications to the fee structure to significantly increase revenues, primarily to obtain supplemental resources to support increased administrative costs associated with implementing the requirements of FQPA. Proposals generally focused on finalizing a 1999 EPA proposed rule<sup>7</sup> to substantially revise tolerance fees and on a recommendation that Congress discontinue the legislative prohibition on pesticide registration fee authority<sup>8</sup> promulgated in 1988.

Shortly after its promulgation, the final 1988 pesticide registration fee regulation was challenged in court by the Chemical Specialties Manufacturers' Association,<sup>9</sup> which questioned the appropriateness of the statutory authority cited. Collection of these registration fees, as promulgated, was temporarily suspended through FY1997 by the 1988 amendments to FIFRA (Section 4[i][6]). Collecting registration fees as promulgated in 1988 continued to be prohibited subsequently by the 1996 FIFRA/FFDCA amendments (FQPA) and in provisions of annual appropriations bills, including the PRIA provisions in the FY2004 Consolidated Appropriations.

The Administration's proposed 1999 regulation to restructure the collection of tolerance fees met with similar resistance. Industry groups questioned the authority to expand fee collection under FFDCA<sup>10</sup> and the lack of a clearly defined schedule of specific Agency activities to be supported by fee revenues. These groups also generally opposed the EPA's justification for proposing a tenfold increase, requiring retroactive fee payments, and imposing fees for inert ingredients.<sup>11</sup> Congress initially prohibited promulgation of the tolerance fee rule in EPA's FY2000 appropriations (P.L. 106-377). Similar proposals to increase tolerance fees in EPA's annual budget requests from FY2001 to FY2004 were prohibited each year through appropriations legislation.

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<sup>7</sup> U.S. EPA, 64 *Federal Register* 31039-31050, June 9, 1999.

<sup>8</sup> EPA promulgated a rule for collecting registration fees under the authority of the Independent Offices Appropriation Act (IOAA) of 1952 (31 U.S.C. 9701). See Subpart U of CFR part 152, at 53 *Federal Register* 19108, May 26, 1988.

<sup>9</sup> *Chemical Specialties Manufacturers Association (now the Consumer Specialty Products Association) v. EPA*, No. 88-1525. D.D.C., July 25, 1988.

<sup>10</sup> Several industry groups disagreed and were concerned with EPA's interpretation that the statute provided authority to collect 100% of the cost of tolerance reassessment using fees. (EPA Docket # OPPT-301151 and OPPT-301151B.)

<sup>11</sup> Inert ingredients can be solvents or surfactants and often compose the bulk of the pesticide product. Some inerts are known to be toxic, and some are known to be harmless, but EPA lists most in the category "inerts of unknown toxicity." See [<http://www.epa.gov/oppr001/inerts/>].

PRIA prohibits collection of *any* tolerance fees through FY2008. Despite this prohibition, the Administration proposed similar additional tolerance fee revenues in FY2005 and FY2006 EPA budget requests. Language contained in the FY2005 supplemental appropriations for military funding enacted May 11, 2005 (P.L. 109-13, Sec. 6033), bans EPA from going forward with rulemaking for collecting pesticide tolerance fees. The Administration's FY2007 budget again proposed to modify the fee structure.

## **Key Provisions of the Pesticide Registration Improvement Act of 2004**

The "Pesticide Registration Improvement Act of 2003," or PRIA, temporarily supersedes the 1988 registration fee authority<sup>12</sup> and suspends tolerance fee authority under FFDCA through FY2008. Enacted as Title V of Division G of the FY2004 Consolidated Appropriations Act (P.L. 108-199), PRIA amended FIFRA and modified the framework for collecting fees to enhance and accelerate EPA review of pesticide applications registration and reregistration. PRIA seemed to address many of the issues associated with other recently proposed modifications, and it received the support of a large cross section of stakeholders, including organizations representing manufacturers and formulators, agricultural producers, and environmental and public interests.<sup>13</sup> These groups jointly favored the expected reforms and acceleration of EPA's decision process, the simplification of the fee authority, and the detailed schedule of activities determining the allocation of fees collected.

In addition to extending the existing authority to collect maintenance fees through FY2008 at initially increasing, then declining, levels, PRIA —

- provided new authority for EPA to collect "registration services fees," which would be phased out at the end of FY2010;
- prohibits collection of any tolerance fees through FY2008;
- required EPA to identify reforms to the pesticide registration process to substantially reduce the decision review period; and
- extended the statutory deadline for completing reregistrations for active ingredients that do not require tolerances to October 3, 2008; however, reregistration of active ingredients that require (food) tolerances or exemptions from tolerances were to be completed by August 3, 2006, as mandated under FQPA.<sup>14</sup>

The following is a brief overview of these key PRIA provisions and their status.

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<sup>12</sup> PRIA (P.L. 108-199) removes the prohibition on "other fees" by amending FIFRA Section 4(i)(6), replacing Sections 33 and 34 (7 U.S.C. 136x and 136y) through 2010. Thus the legislation temporarily replaces registration fee authority codified in 1988 (Subpart U of CFR part 152), through 2010.

<sup>13</sup> September 12, 2003, letter addressed to President George W. Bush, from a coalition of 30 organizations representing industry and public interests.

<sup>14</sup> P.L. 104-170, Title IV, Sec. 405.

**Reauthorization of Pesticide Registrant Maintenance Fees.** Annual maximum maintenance fees per registrant, and in aggregate, increased each year above the FY2003 levels for the first three years and will decline in the final two years.<sup>15</sup> For example, the annual maximum fee for registrants with less than 50 pesticide registrations increased from \$55,000 in FY2003 to \$84,000 in FY2004, and to \$87,000 in FY2005 and FY2006. That fee will decline in FY2007 to \$68,000 before returning to the FY2003 level of \$55,000 in FY2008. Similar changes from FY2003 fee levels occur for registrants with more than 50 registrations and for small businesses (as redefined in PRIA). The ability to obtain waivers continues to be available for public health pesticides. The annual statutory aggregate limit increased from \$21.5 million for FY2003 to \$26 million for FY2004 and \$27 million for FY2005 and FY2006; it will decline to \$21 million for FY2007 and \$15 million for FY2008.<sup>16</sup>

Maintenance fees continue to be assessed on existing pesticide registrations to fund reregistration, tolerance reassessment, and expedited processing of “similar” pesticides<sup>17</sup> and public health pesticides. The PRIA provisions in the FY2004 Consolidated Appropriations Act also amended FIFRA (7 U.S.C. 136a-1[k][3]) to explicitly designate the use of a portion of maintenance fees for the review of “inert” ingredients.<sup>18</sup> The 1996 FQPA placed greater emphasis on inert ingredients and clarified that these chemicals are covered by the definition of a pesticide chemical under FFDCA (section 201[q][1]), but not FIFRA. Therefore, EPA must make a determination regarding the establishment of tolerances for inert ingredients.

**Registration Services Fees.** PRIA inserted a new section (Section 33) in FIFRA establishing registration “services” fees that apply only to new pesticide applications (submitted on or after the effective date of PRIA), with provisional transitional allowances for pending applications. These fees are expected to cover a portion of the cost for review and decision making associated with a registration application, including associated tolerance determinations. As defined in PRIA, these costs include EPA staff, contractors, and advisory committees engaged in relevant activities for pesticide applications, associated tolerances, and corresponding risk and benefits information and assessment. Authority to collect service fees ends at the end of FY2008, with phase-out authority at reduced levels for FY2009 and FY2010.

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<sup>15</sup> P.L. 108-199, Division G, Title V, Section 501(c)(1)(D) and (E).

<sup>16</sup> Under the provisions of the 1988 amendments to FIFRA (P.L. 100-532), EPA calculates and adjusts the amount of annual maintenance fees collected per registrant, based on the number of registrants and the number of pesticide registrations, which is determined by the agency at the beginning of each fiscal year.

<sup>17</sup> Referred to as “Me-too” pesticides; see FIFRA section 4(k)(3)(i), “the initial or amended registration of an end-use pesticide that, if registered as proposed, would be identical or substantially similar in composition and labeling to a currently-registered pesticide....”

<sup>18</sup> Approximately \$3.3 million for FY2004 through FY2006, and between 1/8 and 1/7 of the annual aggregate maintenance fee amount authorized for FY2007 and FY2008 can be used for the review of inert ingredients (P.L. 108-199, Division G, Title V, Section 501[e]).

The EPA Administrator was directed to publish a detailed schedule of covered pesticide applications and corresponding registration service fees, as reported in the September 17, 2003, *Congressional Record* (S11631 through S11633). The amount of the fees varies depending on the specific “service” required. As required by the statute, EPA published the schedule of covered applications and registration service fees on March 17, 2004 (69 *Federal Register* 12771). In June 2005, EPA published a revised fee schedule (70 *Federal Register* 32327) based on a 5% increase in pesticide registration service fees, as authorized by PRIA (P.L. 108-199, Title V of Division G, section 33[b][6][B]). The new schedule applies to pesticide registration applications received on or after October 1, 2005.

**Pesticide Registration Fund.** PRIA established a Pesticide Registration Fund (“the fund”) in the U.S. Treasury, to be made available to EPA for purposes defined in the legislation, without fiscal year limitation. PRIA included a mandatory adjustment (5% increase) by FY2006 and provisions requiring that a portion of the amount in the fund (not less than \$750,000 and not more than \$1 million) be used to enhance scientific and regulatory activities for worker protection for FY2004 through FY2008. An additional portion of the fund (not to exceed \$500,000) is to be used for the evaluation of new inert ingredients.

Waivers or reductions of registration service fees for minor uses or small businesses are authorized in Section 33(b)(7) of PRIA, as are partial fee refunds, when applications are withdrawn or at the Administrator’s discretion. EPA developed guidance for applying for waivers of the registration service fee and provided relevant information on a dedicated website. EPA also established formulae for reducing certain registration service fees.<sup>19</sup> The Agency reported granting 342 of 479 waivers requested, at a reduction of \$11.1 million in registration service fees by the end of FY2005.<sup>20</sup>

To ensure that the appropriated funds are not reduced in lieu of fee revenues for the first three fiscal years (FY2004-FY2006), PRIA prohibited authorizing registration services fees unless the amount of appropriations for specified functions conducted by the EPA Office of Pesticide Programs in those years was no less than the corresponding FY2002 appropriation.<sup>21</sup> EPA appropriations for FY2004 (P.L. 108-199), FY2005 (P.L. 108-447), and FY2006 (P.L. 109-54), have met this requirement.

**Prohibition of “Tolerance Fees”.** Authority for collecting tolerance fees dates back as far as the 1954 amendments to FFDCA (P.L. 518; July 22, 1954), which, as passed, required the collection of fees “sufficient to provide adequate service” for establishing maximum residue levels (tolerances) for pesticides on food. (See below for a more detailed discussion.) PRIA prohibits EPA from collecting

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<sup>19</sup> Guidance for registration service fee waivers and reductions is available at [<http://www.epa.gov/pesticides/fees/questions/waivers.htm>]; information regarding the fee reduction formula is available at [[http://www.epa.gov/pesticides/fees/fee\\_reduction.htm](http://www.epa.gov/pesticides/fees/fee_reduction.htm)].

<sup>20</sup> See EPA’s FY2005 PRIA implementation accomplishments report, available at [[http://www.epa.gov/pesticides/regulating/fees/pria\\_annual\\_report\\_2005.htm](http://www.epa.gov/pesticides/regulating/fees/pria_annual_report_2005.htm)].

<sup>21</sup> *Ibid.*, see Section 33(d) Assessment of Fees.

“any” tolerance fees under the authority of section 408(m)(1) of FFDCFA (21 U.S.C. 346a[m][1]) through FY2008. Under PRIA, fee revenues to support tolerance review activities are allocated from maintenance fees (for tolerance reassessments) and registration service fees (for new and amended tolerances) for the next five years. On March 17, 2004, EPA published a notice suspending the collection of tolerance fees.<sup>22</sup>

**Other Pesticide Fees.** PRIA also removed the prohibition on “other fees” by amending FIFRA Section 4(i)(6) and by replacing Sections 33 and 34 (7 U.S.C. 136x and 136y) through 2010. Specifically, the collection of fees under the registration fee authority codified in 1988 (Subpart U of CFR part 152) is temporarily replaced and essentially prohibited by this provision.

**Pesticide Registration Process Reforms.** In conjunction with the increased fee revenues, a key provision of PRIA is the requirement for EPA to identify reforms<sup>23</sup> to the Agency’s pesticide registration process with the intent of reducing the current decision review period. The EPA Administrator was directed to publish in the *Federal Register* a schedule of decision review periods for pesticide registration activities covered by this legislation. The schedule was to be the same as the applicable schedule appearing in the September 17, 2003, *Congressional Record* (S11631 through S11633).

As discussed earlier in this report, a detailed schedule of covered pesticide applications, and corresponding registration service fees, was published on March 17, 2004.<sup>24</sup> In its first two PRIA implementation annual reports, released in March 2005 and March 2006, EPA described its efforts and accomplishments as of the end of FY2005 (discussed later).

**Statutory Deadline for Reregistration.** Section 501(c)(5) of PRIA modifies FIFRA (7 U.S.C. 136a-1[i][5][H]) with regard to completion deadlines for reregistration. All reregistrations, other than those requiring tolerances for use on food, must be completed no later than October 3, 2008. Reregistration of active ingredients that require tolerances or exemptions from tolerances were to be completed by August 3, 2006, as required by FFDCFA (Section 408[q][1][C]) for tolerance reassessment. On August 3, 2006, EPA announced that it had completed 9,637 (99.1%) of the 9,721 required tolerance reassessments.

**Reporting Progress Under PRIA.** PRIA required EPA to publish an annual report describing actions taken during each fiscal year. EPA was directed to include several elements in the report, including progress made in carrying out its obligations under the act, a description of the staffing and resources related to the costs associated with the review and decision making pertaining to applications, and the

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<sup>22</sup> 69 *Federal Register* 12542.

<sup>23</sup> *Ibid.* See also EPA’s FY2005 PRIA implementation accomplishments report, available at [[http://www.epa.gov/pesticides/regulating/fees/pria\\_annual\\_report\\_2005.htm](http://www.epa.gov/pesticides/regulating/fees/pria_annual_report_2005.htm)], Sections 33(e) Reforms to reduce Decision Time Periods, and (f) Decision Review Time Periods.

<sup>24</sup> 69 *Federal Register* 12771

progress in meeting the reregistration and tolerance reassessment timeline requirements. EPA released its inaugural report in March 2005 summarizing its first nine month progress implementing the provisions of the PRIA from January 23, 2004, through September 30, 2004.<sup>25</sup> The Agency's second PRIA progress report, released in March 2006, *Implementing the Pesticide Registration Improvement Act — Fiscal Year 2005*, covers the entire fiscal year.<sup>26</sup>

According to EPA's FY2005 progress report, the Agency collected \$10.6 million in new "registration service" fees in FY2005 and carried forward \$9.7 million of the \$14.7 million collected in FY2004. EPA reported expending \$11.2 million of the \$20.3 million available during the fiscal year, and that the remaining balance of \$9.1 million is being carried forward to FY2006. The majority (\$7.9 million) of the fee revenues expended were for increased payroll, reflecting the increase in staff hired to complete the reviews by the deadlines required by FQPA. EPA reported the completion of 1,098 decisions subject to PRIA in FY2005, compared with the 208 decisions completed during FY2004.

In FY2005, the Agency continued developing new process improvements and to refine those initiated during FY2004. More than 99% of the decisions were completed within the statutorily mandated decision review times, according to EPA. EPA also reported the expenditure of \$750,100 in fees collected for worker protection in FY2005. Activities included interaction with stakeholder groups, enhancement of safe practices and pesticide risk recognition training for workers and health-care providers, and expansion of occupational illness and injury surveillance. Section 33(c)(3)(b) of PRIA authorized the use of 1/17 of the registration fund (not less than \$750,000 but not more than \$1 million) for enhancing worker protection scientific and regulatory activities.

## **An Overview of Pesticide Fee Authorities**

Various changes and proposed changes to pesticide fee authority led up to the provisions in PRIA. Fees collected by EPA over time to support the pesticide program have included tolerance fees, registration fees, reregistration fees, and maintenance fees. Since 1996, EPA had collected tolerance fees, primarily for the establishment of pesticide residue limits (tolerances) on food, and maintenance fees, primarily for reregistration reviews and reassessment of existing tolerances. **Table 1** below provides a timeline of key pesticide fee authorities and implementation regulations; the following sections provide a brief description of these actions.

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<sup>25</sup> EPA, "First Annual Report on EPA Actions Implementing the Pesticide Registration Improvement Act — Fiscal Year 2004," March 1, 2005, available at [[http://www.epa.gov/pesticides/regulating/fees/pria\\_annual\\_report\\_2004.htm](http://www.epa.gov/pesticides/regulating/fees/pria_annual_report_2004.htm)]

<sup>26</sup> See [[http://www.epa.gov/pesticides/regulating/fees/pria\\_annual\\_report\\_2005.htm](http://www.epa.gov/pesticides/regulating/fees/pria_annual_report_2005.htm)]

**Table 1. Timeline of Key Legislation and Regulation Regarding Pesticide Fees**

Year	Legislation/Regulation	Pesticide Fee Authority/Action
1952	Independent Appropriations Act of 1952 (IOAA; 31 U.S.C. 9701)	Authorizes the head of each agency to prescribe regulations establishing a charge for a service or thing of value provided by the agency.
1954	Federal Food Drug and Cosmetic Act, amended (FFDCA; P.L. No. 518, 21 U.S.C. 346 [a])	Authorizes fees to accompany initial or modified petitions for establishing tolerances under FFDCA section 408 (o).
1986	EPA Registration Fee Regulation: Proposed (51 <i>Federal Register</i> 42974, Nov. 26, 1986)	Proposed a schedule of fees to accompany pesticide registration and experimental use permit applications, citing the authority of IOAA.
1988	EPA Registration Fee: Final Regulation (40 CFR 152[u] and 40 CFR 172)  Federal Insecticide, Fungicide and Rodenticide Act, amended (FIFRA; P.L. 100-532)	Establishes fees to accompany pesticide registration and experimental use permit applications; authority suspended by the FIFRA amendments passed later that same year (1988).  Authorizes reregistration and expedited processing fund: a one-time “reregistration” fee and annual “maintenance” fees through FY1997. Prohibited collection of other fees (including “registration fees” as defined in 40 CFR 152[u] and 40 CFR 172).
1996	Food Quality Protection Act (FQPA) (P.L. 104-170): FIFRA and FFDCA, amended	Extends authorization for maintenance fees through FY2001. FFDCA authority (Section 408[m]) amended to cover costs of all tolerance activities and directs EPA to deposit funds collected as maintenance fees to be used for reassessing existing tolerances as needed. Prohibits collection of registration fees as defined in 40 CFR 152(u) and 40 CFR 172) through FY2001.
1999	EPA Tolerance Fee Rule: Proposed (64 <i>Federal Register</i> 31039-31050, June 9, 1999)  FY2000 EPA Appropriations (P.L. 106-377)	Proposed establishment of a tenfold increase in existing tolerance fees and new “tolerance reassessment” fees, including fee for reviewing tolerances for inert ingredients. Fees, to be collected retroactively from 1996, would supplement authorized maintenance fees.  Prohibited promulgation of a final tolerance fee rule based on EPA’s 1999 proposal.
2000	FY2001 EPA Appropriations (P.L. 106-774)	Continued prohibition on promulgation of a final tolerance fee rule as proposed in 1999.

Year	Legislation/Regulation	Pesticide Fee Authority/Action
2001	FY2002 EPA Appropriations (P.L. 107-73)	Continued the prohibition on promulgation of a final tolerance fee rule based on the 1999 proposal and on collection of registration fees as codified in 1988. Maintenance fees reauthorized and aggregate limit increased.
2002	Farm Security Act (P.L. 107-171)	Senate-proposed pesticide fee authorities considered and deleted in Conference. Conferees questioned the legal basis for EPA's June 9, 1999, proposed rule (64 FR 31039) to collect tolerance fees retroactively and encouraged EPA to withdraw the proposal. (H.Rept. 107-424).
2002-2003	EPA Appropriations: FY2003 (P.L. 108-10) and FY2004 Continuing Resolution (P.L. 108- 135; through Jan. 31, 2004)  S. 1664 and H.R. 3188, proposed; the basis for PRIA provisions later included in the FY2004 Consolidated Appropriations Bill (P.L. 108-199)	Prohibited promulgation of a final tolerance fee rule based on the 1999 proposal. Continued prohibition of the collection of registration fees as codified in 1988. Maintenance fees reauthorized; maximum aggregate levels increased.  Would have authorized new a registration service fee, reauthorized maintenance fees, required pesticide regulation process reforms, and prohibited collection of tolerance fees.
2004	FY2004 Consolidated Appropriations Bill (P.L. 108-199; Division G, Title V), enacted January 23, 2004  FY2005 Consolidated Appropriations Act FY2005 (P.L. 108-447), enacted December 8, 2004	Authorized new registration "service" fee, reauthorizes maintenance fees, requires pesticide regulation process reforms, and prohibits the collection of tolerance fees.  Provided continued authorization for the collection of pesticide fees pursuant to P.L. 108-199.
2005	FY2005 supplemental appropriations for military funding (P.L. 109-13, Sec. 6033) enacted May 11, 2005	Banned EPA from going forward with rulemaking for collecting pesticide tolerance fees as prohibited by PRIA.
2006	Interior, Environment, and Related Agencies Appropriations <sup>a</sup> Act for FY2006 (P.L. 109-54), enacted August 25, 2005	Provided continued authorization for the collection of pesticide fees pursuant to P.L. 108-199.

**Source:** Prepared by the Congressional Research Service from the relevant laws and *Federal Register* notices.

- a. During the first session of the 109<sup>th</sup> Congress, the House and Senate Appropriations Committees reorganized their subcommittees, including placing EPA's appropriation under the Interior subcommittee after eliminating the VA-HUD and Independent Agencies subcommittee.

**FIFRA and FFDC A Pesticide Fee Collection Authority.** Authority for the collection of pesticide fees dates back as far as the 1954 amendments to FFDC A.<sup>27</sup> At the time, Section 408(o)<sup>28</sup> required the collection of fees to cover the costs of establishing maximum residue levels (“tolerances”) for pesticides on food. Until 1988, these tolerance fees were the only pesticide fees collected by EPA.

The 1988 amendments to FIFRA (P.L. 100-532) extensively expanded pesticide fee authority. The amendments included a nine-year schedule to accelerate the process of reregistration. To help defray the costs of the accelerated process, EPA was authorized to collect a one-time reregistration fee from producers for their pesticide active ingredients registered prior to 1984, and annual maintenance fees from pesticide registrants through FY1997, for each registered pesticide product. The amounts of fees per registrant were tiered, depending on the number of registrations per registrant, as determined by EPA each fiscal year.

Congress amended FIFRA in 1996 (FQPA; P.L. 104-70), extending EPA’s authority to collect the annual maintenance fees through FY2001. FQPA also expanded the authority under FFDC A to include the use of fees for purposes of reevaluating “old” tolerances (tolerance reassessment). FQPA requires EPA to ensure “reasonable certainty” of “no harm,” to analyze aggregate and cumulative effects of pesticides, and to apply safety factors for children. The new requirements introduced a host of responsibilities for EPA, particularly when establishing new tolerances and reassessing old tolerances.<sup>29</sup> Since its expiration September 30, 2001, the statutory authority for maintenance fees has been extended in annual EPA appropriations bills prior to the enactment of the PRIA provisions.<sup>30</sup>

**Other Pesticide Fee Authority.** In May 1988, prior to the 1988 FIFRA amendments, EPA had promulgated a final pesticide registration fee regulation,<sup>31</sup> citing the authority of the Independent Offices Appropriation Act (IOAA) of 1952 (31 U.S.C. 9701). Intended to defray increasing administrative costs of pesticide registration reviews, the final rule included a prescribed schedule of fees to be submitted with each application for registration, amended registration, or experimental use permit. Registration fees were to be deposited in the U.S. Treasury and not directly available to EPA. The regulation was challenged in court by the Chemical Specialties Manufacturers’ Association,<sup>32</sup> and the collection of registration

<sup>27</sup> Pesticide Residue Amendment of 1954, P.L. No. 518, 21 U.S.C. 346(a).

<sup>28</sup> This authority currently resides in FFDC A Section 408(m) (1996 FQPA).

<sup>29</sup> See CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation*, by Linda-Jo Schierow.

<sup>30</sup> The FY2001 statutory aggregate level of \$14 million established by the 1988 FIFRA amendments was increased to \$17 million in FY2002 (P.L. 107-73) and to \$21.5 million in FY2003 (P.L. 108-10). The final Continuing Resolution for FY2004 (P.L. 108-135) extended the maintenance fee as authorized in FY2003 (see H.J.Res. 69, Section 118).

<sup>31</sup> 40 CFR 152(u) and 40 CFR 172.

<sup>32</sup> *Chemical Specialties Manufacturers Association (now the Consumer Specialty Products Association) v. EPA*, No. 88-1525. D.D.C., July 25, 1988. The lawsuit has been held in (continued...)

fees under this authority was temporarily suspended through FY1997 by the 1988 amendments to FIFRA (Section 4[i][6]). Collecting registration fees under this authority continued to be prohibited through FY2001 by the 1996 FIFRA/FFDCA amendments (FQPA) and, subsequently, by annual appropriations bills from FY2002 through the FY2004 Continuing Resolution.<sup>33</sup>

**Proposed Pesticide Fee Authority Modifications.** In June 1999, EPA proposed a rule restructuring tolerance fees<sup>34</sup> in an effort to cover the cost of establishing initial tolerances and tolerance reassessments, including tolerance activities for “other” ingredients (namely, inert ingredients<sup>35</sup>). EPA proposed as much as a tenfold increase and the retroactive payment of fees for tolerance petitions submitted and reassessments initiated after FQPA was enacted in August 1996. Industry groups generally opposed the proposal. According to comments submitted to EPA, several industry groups disagreed and were concerned with, among other issues, EPA’s interpretation that the statute provided authority to collect 100% of the cost of tolerance reassessment using fees. These groups also generally opposed EPA’s justification for the tenfold increase in fees, the imposition of fees retroactively, and the potential effects of imposing fees for inert ingredients.<sup>36</sup>

The 106<sup>th</sup> Congress prohibited promulgation of the tolerance fee rule in EPA’s FY2000 appropriations (P.L. 106-74, Sec. 432). The 107<sup>th</sup> Congress considered approaches to revise the overall fees structure for pesticide programs and incorporated one approach in a manager’s amendment to the Senate version of the 2002 farm bill (S. 1731). The conference substitute deleted the fee provisions and was not included in the final Farm Security and Rural Investment Act of 2002 (P.L. 107-171). In the conference report accompanying the final bill (H.Rept. 107-424, p. 666), the managers “strongly encouraged” EPA to withdraw its proposed tolerance fee rule and to instead work with the appropriate committees for a solution. Similar proposals to increase tolerance fees, included in EPA’s annual budget requests for FY2001 through FY2004, have been prohibited each year by Congress in appropriations acts.<sup>37</sup> As discussed earlier in this report, the PRIA provisions enacted in 2004 prohibit the collection of *any* tolerance fees through FY2008.

Despite the PRIA prohibition on additional pesticide fees, the Administration proposed increased fees above those provided under PRIA in the FY2005, FY2006,

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<sup>32</sup> (...continued)

abeyance since the passage of the 1988 FIFRA amendments.

<sup>33</sup> Appropriations bills for VA-HUD and Independent Agencies passed by the 107<sup>th</sup> Congress (P.L. 107-73) and the 108<sup>th</sup> Congress (P.L. 108-10; P.L. 108-135, Continuing Resolution for FY2004, expired Jan. 31, 2004) contained similar prohibitive language.

<sup>34</sup> 64 *Federal Register* 31039-31050, June 9, 1999.

<sup>35</sup> The 1996 FQPA clarified that “inert” ingredients are covered by the definition of a pesticide chemical under FFDCA (section 201[q][1]).

<sup>36</sup> EPA Docket # OPPT-301151 and OPPT-301151B.

<sup>37</sup> Appropriations bills for VA-HUD and Independent Agencies passed by the 106<sup>th</sup> Congress (P.L. 106-377), the 107<sup>th</sup> Congress (P.L. 107-73), and the 108<sup>th</sup> Congress (P.L. 108-7, P.L. 108-135, FY2004 continuing resolution) contained similar prohibitive language.

and FY2007 budget requests for EPA. The 108<sup>th</sup> Congress rejected the President's FY2005 budget proposal to reinstate pesticide fees in the conference report on the Consolidated Appropriations Act for FY2005 (H.Rept. 108-792, p. 1597). In the first session of the 109<sup>th</sup> Congress, language contained in the FY2005 supplemental appropriations for military funding enacted May 11, 2005 (P.L. 109-13, Sec. 6033), banned EPA from going forward with rulemaking for collecting pesticide tolerance fees as prohibited by PRIA.

The President's FY2006 budget, included \$46.0 million in the form of "anticipated" revenues (offsetting receipts) to be derived from changes to fees for pesticide registrations.<sup>38</sup> The pesticide fees proposed by the Administration for FY2006 would be in addition to those currently authorized under PRIA. The FY2006 appropriations bill for Interior, Environment, and Related Agencies (P.L. 109-54, H.Rept.109-188), which includes EPA and was enacted August 2, 2005, did not reflect the Administration's additional anticipated pesticide fee revenues. The proposed fee changes in the Administration's request would have required congressional approval through the enactment of legislation. In its report on the bill, the House Appropriations Committee noted that no relevant legislation had been proposed and commented that EPA should not continue to spend time and resources proposing such actions in conflict with current authority (H.Rept. 109-80, p. 105-106).<sup>39</sup>

The President's FY2007 budget submitted to Congress in February 2006 proposed modifications to the current pesticide fees structure to collect \$56 million.<sup>40</sup> The 109<sup>th</sup> Congress adjourned without finalizing FY2007 appropriations for EPA and many other federal agencies but enacted a continuing resolution (P.L. 109-383, H.J.Res. 102) to provide funding for these agencies through February 15, 2007.<sup>41</sup>

## **Pesticide Program Fee Revenues and Appropriations**

Historical appropriated funding and fee revenues for the pesticide program activities provide context for the discussion of fees imposed on pesticide registrants to supplement EPA-appropriated revenues. The two sections that follow provide more detailed information regarding pesticide fee revenues over time and funds appropriated for EPA pesticide program activities in recent years.

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<sup>38</sup> Executive Office of the President, Office of Management and Budget, *Major Savings and Reforms in the President's 2006 Budget*, pp. 222-224. Available at [<http://www.whitehouse.gov/omb/budget/fy2006>].

<sup>39</sup> Executive Office of the President, Office of Management and Budget, *Major Savings and Reforms in the President's 2006 Budget*, available at [<http://www.whitehouse.gov/omb/budget/fy2007/pdf/savings.pdf>]

<sup>40</sup> Executive Office of the President, Office of Management and Budget, *Major Savings and Reforms in the President's 2006 Budget*, pp. 222-224, at [<http://www.whitehouse.gov/omb/budget/fy2006>]. See also *U.S. Environmental Protection Agency FY2006 Justification of Appropriation Estimates for the Committee on Appropriations*, available at [<http://www.epa.gov/ocfo/budget/>].

<sup>41</sup> See CRS Report RL33681 *FY2007 Regular Appropriations Acts: Procedures for End-of-Session Wrap-Up*, by Robert Keith.

**Revenues from Pesticide Fees.** Registration applications received on or after March 23, 2004, were subject to the new service fees under PRIA. In *The Pesticide Registration Improvement Act (PRIA) Implementation: 2004 Annual Report*, EPA indicates that it collected \$14.7 million in registration “service,” spending roughly \$5.0 million, during FY2004. The remaining balance of \$9.7 million was carried forward to FY2005, and EPA collected \$10.6 million in FY2005. The Agency spent approximately \$11.2 million of the total \$20.3 million available in FY2005, carrying the remaining balance of \$9.1 million forward to FY2006. EPA reported collection of \$25.9 million in maintenance fees in FY2004 and \$27.9 million in FY2005. EPA initiated collection of maintenance fees at the beginning of FY2004 under preexisting authority, prior to the reauthorization provisions included in PRIA. EPA is scheduled to complete its PRIA implementation report for FY2006 in March 2007.

Prior to the enactment of PRIA, the FY2003 appropriations were supplemented by an estimated \$23.0 million in authorized fees, including \$21.5 million in maintenance fees and \$1.5 million in tolerance fees, primarily for establishing new tolerances. The annual tolerance fee collected from each applicant is based on the specific actions required to process a submitted application and varies depending on the number and type of petitions received by the Agency in a given year. The amounts have been adjusted over time, based on an inflation calculation defined in statute.<sup>42</sup> For the 20 years prior to the enactment of PRIA, annual tolerance fees collected by EPA averaged about \$1.8 million. The amount of pesticides fees collected over the years varied, depending on the statutory authority at the time.

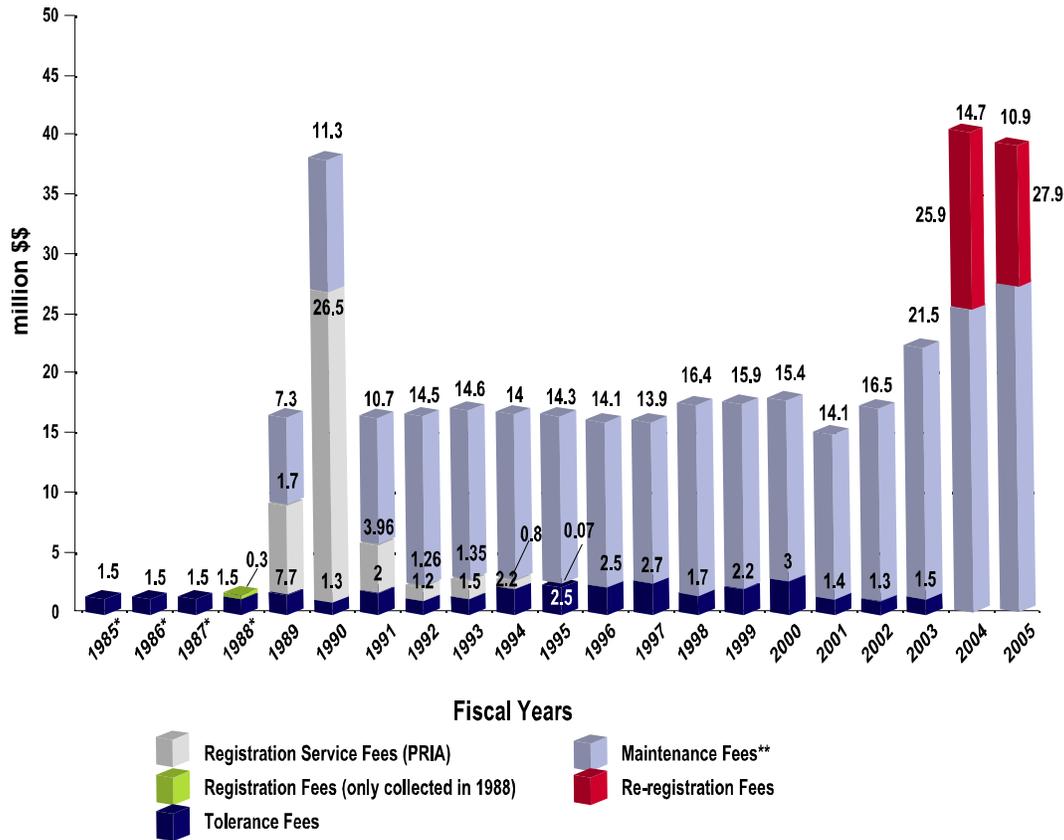
Reregistration fees varied considerably and were based, among other things, on whether the pesticide was an active ingredient registered for a major food or feed use or whether it was registered only for nonfood or nonfeed uses. The one-time active ingredient fee for reregistration ranged from \$0 for a pesticide used exclusively for minor uses and for certain antimicrobial active ingredients to \$150,000 for a major food or feed use active ingredient. By 1994, all authorized one-time reregistration fees had been collected, resulting in an estimated total of \$31.64 million.

**Figure 1** below provides a graphic illustration of the amount of tolerance fees, registration fees (only collected for a short period during FY1998), reregistration fees, maintenance fees, and registration service fees collected during FY1985 through FY2005, before and after the enactment of PRIA. The highest combined amount collected from the three fees for one year prior to the enactment of PRIA was an estimated \$39.1 million in 1990, the peak year for collection of the one-time reregistration fees.

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<sup>42</sup> Tolerance fees could be adjusted annually, based on annual percentage changes in federal salaries (40 CFR 180.33[o]). The most recent adjustment in May of 2003 was an increase of 4.27%, based on the 2003 pay raise for General Federal Schedule (GS) employees in the Washington DC/Baltimore MD metropolitan area (68 FR 24370, May 7, 2003).

**Figure 1. EPA Pesticide Program Fee Revenues, FY1985-FY2005**



**Source:** Prepared by Congressional Research Service (CRS) with information from the U.S. EPA Office of Prevention, Pesticides, and Toxic Substances.

\* Tolerance fees for FY1985-FY1988 are based on the average number of petitions per year (8-12) and the average fee per petition (\$150,000).

\*\* Maintenance fees are capped by legislation for each fiscal year: \$14 million for FY1989-FY1997; \$16 million for FY1998-FY2000; \$14 million for FY2001; \$17 million for FY2002; and \$21.5 million for FY2003. PRIA capped maintenance fees at \$26 million for FY2004 and \$27 million for FY2005.

The annual maintenance fee amount collected per registration is set in statute, dependent on the number of registrations held by a registrant. The fee amount is subject to adjustment by EPA, based on the annual aggregate limit, also established by statute. The initial 1988 authorization for maintenance fees set the annual aggregate at \$14.0 million for the nine-year period from FY1989 to FY1997. The 1996 FQPA authorized collection of an additional \$2 million (maximum aggregate of \$16 million) per year for FY1998, FY1999, and FY2000, and returned to the original aggregate limit of \$14 million in FY2001. The statutory authority for maintenance fees expired September 30, 2001, but was reauthorized in the annual appropriations bills. The amount was increased to \$17 million in FY2002 (P.L. 107-73) and to \$21.5 million in FY2003 (P.L. 108-7) and FY2004 (continuing resolution

P.L. 108-135,<sup>43</sup> through January 31, 2004). **Figure 1** above indicates that EPA generally collected the maximum aggregate limit as set by the statute in a given year.

**Pesticide Program Appropriated Funds.** Pesticide fee revenues are supplemental to appropriated funds provided for EPA's pesticide program activities. As in recent previous fiscal years, FY2006-appropriated funding (P.L. 109-54) for EPA's pesticide program activities was allocated within three of the eight EPA appropriations accounts: Science and Technology (S&T), Environmental Programs and Management (EPM), and State and Tribal Assistance Grants (STAG). For the three accounts combined, Congress provided \$161.8 million for FY2006 for EPA's pesticide program activities, an increase relative to each of the three previous fiscal years. **Table 2** shows enacted appropriations for FY2003 through FY2006, and proposed for FY2007, within the three appropriations accounts for the five EPA pesticide program activity areas as presented in Appropriations Committee reports and EPA fiscal year congressional budget justifications.<sup>44</sup>

**Table 2. EPA Appropriations for Pesticide Program Activities  
FY2003-FY2006 Enacted**  
(million dollars)

<b>Pesticide Program Activities by EPA Appropriations Account</b>	<b>FY2003 Enacted P.L. 108-7</b>	<b>FY2004 Enacted P.L. 108-199</b>	<b>FY2005 Enacted P.L. 108-447</b>	<b>FY2006 Enacted P.L. 109-54</b>	<b>FY2007 Budget Request</b>
<i>Environmental Program Management(EPM)</i>					
Registration	\$40.4	\$40.8	\$39.2	\$41.6	\$39.8
Reregistration	\$48.5	\$51.7	\$51.3	\$57.5	\$51.8
Field Programs	\$21.1	\$25.2	\$24.4	\$24.5	\$24.9
Sci. Policy & Biotech.	\$0.9	\$1.7	\$1.6	\$1.7	\$1.8
<i>Science &amp; Technology (S&amp;T)</i>					
Registration	\$2.1	\$2.3	\$2.5	\$2.5	\$2.8
Reregistration	\$2.4	\$2.4	\$2.5	\$2.5	\$2.8
<i>State &amp; Tribal Assistance Grants(STAG)</i>					
Implementation Grants	\$13.2	\$13.0	\$12.9	\$12.9	\$13.0
Enforcement Grants	\$20.3	\$19.8	\$19.3	\$18.6	\$18.7
<b>Total</b>	<b>\$148.9</b>	<b>\$156.8</b>	<b>\$153.7</b>	<b>\$161.8</b>	<b>\$155.6</b>

**Sources:** Prepared by the Congressional Research Service based on information from House and Senate Appropriations Committee Reports, Conference Reports accompanying appropriations, EPA Congressional Budget Justifications for FY2002-FY2007.

<sup>43</sup> See also P.L. 108-84, Sept. 30, 2003, and H.J.Res. 69 Section 118, 108<sup>th</sup> Congress, first session (2003).

<sup>44</sup> See [<http://www.epa.gov/ocfo/budget/>].

For FY2007, EPA programs are operating under a continuing resolution (P.L. 109-383, H.J.Res. 102), signed on December 9, 2006, that provides funding through February 15, 2007.<sup>45</sup> In the absence of a Senate-passed FY2007 Interior, Environment, and Related Agencies appropriations bill, programs within EPA and other agencies funded under this appropriations bill are operating at the lower of either the FY2006 appropriations or the FY2007 bill passed by the House in the second session of the 109<sup>th</sup> (H.R. 5386, H.Rept. 109-465) based on the continuing resolution formula.

## **Pesticide Registration and Reregistration Activities Since the Enactment of PRIA**

EPA uses registration service fees to supplement appropriations to develop improved registration review processes, hire new staff, and process registration applications under the deadlines identified in PRIA. The Agency uses the maintenance fees to supplement appropriations primarily for reregistration and tolerance review activities. By statute, tolerance reviews and reregistrations for food-use pesticides were to be completed by August 3, 2006, and all other reregistrations are to be completed by October 3, 2008.

**Registration Activities.** As discussed earlier in this report, EPA reported the completion of 1,316 decisions subject to PRIA between March 2004 (the effective date for PRIA implementation) and the end of FY2005. In addition, during the past two fiscal years (FY2004 and FY2005), EPA approved registrations for 50 new active ingredients, including 21 conventional (7 conventional reduced risk), 26 biopesticides, and 4 antimicrobials. During that same period, the Agency approved more than 917 new uses of previously registered active ingredients.<sup>46</sup>

Among its efforts to enhance the registration process, EPA reported that recommendations from several intra-Agency workgroups led to the development of pesticide registration procedures for front-end processing and screening, waivers and refunds, funds management, improved intra- and interagency coordination, and enhancements to the internal registration tracking system. EPA also created a “Process Improvement” workgroup under the auspices of the Pesticide Program Dialogue Committee (an advisory group) to evaluate recommended process improvements in the registration program. The workgroup, which was further expanded in FY2005, comprises representatives from individual registrant companies, pesticide trade associations, public interest groups, and Agency staff, and it continues to address process improvement questions.

**Reregistration/Tolerance Reassessment Activities.** EPA has integrated reregistration and tolerance reassessment processes in an effort to

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<sup>45</sup> See CRS Report RL33681 *FY2007 Regular Appropriations Acts: Procedures for End-of-Session Wrap-Up*, by Robert Keith.

<sup>46</sup> The number of new registrations and new uses were compiled with data from EPA *ProgramUpdate-Registration*, presented to the Pesticide Program Dialogue Committee (PPDC) for FY2004 on October 21, 2004, and for FY2005 on October 20, 2005. See [<http://www.epa.gov/pesticides/ppdc/>].

effectively meet its statutory obligations. When it completes a review of a pesticide for reregistration or tolerance reassessment, EPA issues one of the following risk management decision documents: a Reregistration Eligibility Decision (RED), an Interim Reregistration Eligibility Decision (IREED), or a Tolerance Reassessment Progress and [Interim] Risk Management Decision (TRED).<sup>47</sup>

EPA reported<sup>48</sup> that by the end of FY2005, it made reregistration decisions for 502 of the original 612 pesticide “cases,”<sup>49</sup> including 271 REDs and 231 canceled cases. The Agency must complete 112 more REDs to meet complete reregistration by the end of FY2008. EPA also reported the completion of 13 TREDs, 722 tolerance reassessment decisions, and the reassessment of 167 inert tolerance exemptions. On August 3, 2006 (the statutory deadline),<sup>50</sup> EPA announced it had completed reassessment of 9,637 (99.1%) of the 9,721 preexisting tolerances.<sup>51</sup> According to EPA, the reassessments resulted in the revocation of 3,200 food tolerances, the modification of 1,200 tolerances, and the retention of the remaining 5,237 tolerances. The remaining 84 tolerance reassessment decisions are for five carbamate pesticides: aldicarb, oxamly, carbaryl, formetanate and carbofuran. With the exception of aldicarb (23 tolerance decisions), individual tolerance reviews have been completed for the other four pesticides (61 tolerance decisions combined). A cumulative tolerance assessment of all five pesticides is required but cannot be conducted until individual tolerances for aldicarb have been completed. EPA has committed to completing the review requirements for these five carbamate pesticides in FY2007.

## Conclusion

Although EPA has made progress in recent years, timely completion of the statutory registration, reregistration, and tolerance assessment requirements for pesticides continues to be a concern for some Members of Congress, EPA, industry, and public interest groups. Historically, attempts to defray the increased costs of administering the pesticide program by modifying existing pesticide fee requirements through regulation and legislation have not been entirely successful.

Some of the key issues and concerns have been addressed, in part, by the pesticide fee provisions of Pesticide Registration Improvement Act of 2003 (PRIA), enacted under the FY2004 Consolidated Appropriations Act (P.L. 108-199). Most

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<sup>47</sup> For more detailed explanation of these decision documents, see [<http://www.epa.gov/pesticides/reregistration/index.htm>].

<sup>48</sup> EPA, *Reregistration & Tolerance Reassessment FY2005 Review/FY2006 Plan*, presented to the Pesticide Program Dialogue Committee (PPDC), October 20, 2005. See [<http://www.epa.gov/pesticides/ppdc/>].

<sup>49</sup> Related pesticide active ingredients are grouped into cases.

<sup>50</sup> The 1996 amendments to FIFRA and FFDCA included a schedule for completion of tolerance reviews: 33% by August 3, 1999; 66% by August 3, 2002; and, 100% by August 3, 2006 (FQPA P.L. 104-170, Title IV, Sec. 405).

<sup>51</sup> EPA, *Accomplishments under the Food Quality Protection Act (FQPA)*, August 3, 2006, [[http://www.epa.gov/pesticides/regulating/laws/fqpa/fqpa\\_accomplishments.htm](http://www.epa.gov/pesticides/regulating/laws/fqpa/fqpa_accomplishments.htm)].

notably, the PRIA provisions requiring specific decision process and schedule reforms, in conjunction with increasing fee revenues, have led to more timely completion of certain registration applications and reregistration reviews. Reforming the overall process implies accelerated implementation of stricter FQPA standards and expected associated improvements in the safety of pesticides in the market. It also suggests the possibility of greater availability of desired products, potentially safer and more effective, that reach the market sooner.

PRIA's prescriptive detailed schedule for the service fees is more commensurate with the specific EPA actions required than previous legislative provisions related to registration and tolerance fees, which were more generic. The schedule is expected to further promote efficiency in the overall process. The pesticide fee provisions included in PRIA also are expected to provide continued stability for resource planning purposes; stability has been lacking in recent years because of annual reauthorizations of maintenance fees and Administration budget proposals to modify fee authority.

EPA reported progress in developing process improvements and meeting shortened registration review deadlines during the first shortened fiscal year implementing PRIA (PRIA became effective March 23, 2004) and continued to make improvements in FY2005. How efficient the EPA's decision-making process becomes depends largely on the Agency's ability to continue to establish and effectively implement reforms while maintaining the protection of human health and the environment required by the statutes. To meet stricter statutory standards<sup>52</sup> and related "sound science" demands, EPA continues to develop and refine its scientific protocols and guidelines with input from stakeholders and the scientific community through various public forums.<sup>53</sup> However, as past experience has shown, this is a complex and time-consuming undertaking, affected by uncertainties and advances in technology that could enhance or inhibit the acceleration of the pesticide review process.

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<sup>52</sup> Stricter standards primarily refer to requirements introduced by FQPA in 1996 to perform more comprehensive risk assessment of pesticides, considering aggregate exposure, cumulative effects from pesticides sharing a common mechanism of toxicity, possible increased susceptibility of vulnerable populations (particularly infants and children), and possible endocrine or estrogenic effects. (See CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation*, by Linda-Jo Schierow.)

<sup>53</sup> Examples of EPA advisory workgroups and committees for pesticide science and procedural issues are available at [<http://www.epa.gov/pesticides/science/committees.htm>].