

CRS Report for Congress

Pesticide Registration and Tolerance Fees: An Overview

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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. 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. EPA is also required to reevaluate older, registered pesticides (i.e., “reregistration” for pesticides registered prior to 1984, and more recently, registration review) and to reassess existing tolerances (i.e., tolerance reassessment) to ensure they meet current safety standards. 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 as a means of increasing the pace of the agency’s activities under FIFRA and FFDCA.

The Pesticide Registration Improvement Act (PRIA 1), included in the Consolidated Appropriations Act, 2004 (P.L. 108-199, Title V of Division G), 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. The amendments included reauthorization of maintenance fees primarily to support activities related to existing registrations, and established registration service fees to be submitted with applications for new registrations. The Pesticide Registration Improvement Renewal Act, or PRIA 2 (P.L. 110-94), enacted October 9, 2007, reauthorized and revised these fee provisions, which would have expired at the end of FY2008. In March 2008, EPA reported the completion of 4,283 registration and reregistration decisions subject to PRIA since its enactment in 2004, including 1,620 decisions during FY2007. For FY2007, EPA reported expending \$15.1 million of the \$25.4 million received in the form of new registration fees in FY2007 (\$13.1 million) and carried forward from FY2006 (\$12.3 million).

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). The 1996 amendments to FIFRA and FFDCA, or the Food Quality Protection Act (FQPA) (P.L. 104-170), extended EPA’s authority to collect certain fees through FY2001. Congress extended this authority annually through appropriations legislation prior to the enactment of PRIA in 2004.

The FY1998-FY2004 President’s budget requests included proposals to modify existing fee structures to further increase revenues for pesticide activities. These proposals were not adopted in legislation and in some cases specifically prohibited by Congress. In each fiscal year budget request since PRIA was enacted in 2004, EPA has included proposals to further increase pesticide fees beyond those authorized. These proposals were not adopted by Congress in each year through FY2008. The FY2009 request included similar proposals.

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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. Current and past 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). This authority for collection of pesticide fees would have expired at the end of FY2008 (with phase-out authority at reduced levels for FY2009 and FY2010). Enacted October 9, 2007, P.L. 110-94 — the Pesticide Registration Improvement Renewal Act (referred to as PRIA 2),¹ revised and reauthorized the pesticide fee collection provisions effective retroactively to the beginning of FY2008 through FY2012. PRIA 2 passed in both houses of the Congress by unanimous consent.

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., registrants²) to supplement EPA appropriations. Provisions in the Consolidated Appropriations Act of FY2004, which became known as the Pesticide Registration Improvement Act of 2003 (PRIA or PRIA 1), 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. PRIA 2 (P.L. 110-94) renews this authority with some technical revisions, primarily modifications to the fee payment process and an expansion of the range of categories of pesticide registration (licensing) activities subject to fees.

¹ S. 1983 was passed by unanimous consent in the Senate on August 2, 2007, and by unanimous consent in the House on September 24, 2007.

² A registrant is defined as a person who has registered any pesticide pursuant to the provisions of FIFRA.

Congress has granted EPA authority to collect fee revenues as a means of accelerating the pace of the agency's activities to meet its statutory obligations required under FIFRA and FFDCA. These activities include review of the science when evaluating new pesticide registrations, and the establishment of the maximum residue allowance (a "tolerance") as necessary. Also included is EPA's reevaluation of older pesticide registration and existing tolerances (i.e., tolerance reassessment) to ensure they meet current standards for protecting human health and the environment (see more detailed discussion in the following section of this report).

In March 2008, EPA released its annual PRIA progress report.³ *Implementing the Pesticide Registration Improvement Act - Fiscal Year 2007* (or EPA's FY2007 PRIA implementation report) provides information about the registration process, including the status of its registration and reregistration⁴ activities, as well as EPA's efforts to improve the processes. EPA reported the completion of 1,620 decisions subject to PRIA in FY2007, compared with 1,347 at the end of FY2006, 1,098 during FY2005, and 208 decisions completed during FY2004.

The following sections of this report provide a historical overview of federal authority regarding pesticide fees, including the amount of fee revenues collected over time, and summarizes the key elements of PRIA and the revisions reflected in PRIA 2. 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, FFDCA⁵ 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

³ Under § 33(k) of PRIA, EPA was required to publish an annual report describing actions taken under this section, and directed to include several elements. EPA released its inaugural progress report covering the period January 23, 2004, through September 30, 2004, in March 2005, and released subsequent fiscal reports on an annual basis thereafter. The PRIA implementation report for FY2007 and previous annual reports for FY2004, FY2005, and FY2006 are available at [<http://www.epa.gov/pesticides/fees/>].

⁴ The 1988 amendments to FIFRA (P.L. 100-532) define "reregistration" as reevaluation of pesticides registered prior to 1984. The use of the term reregistration throughout this CRS report is as defined by the 1988 amendments.

⁵ FFDCA §§ 408 and 409.

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) and to reassess existing tolerances (i.e., tolerance reassessment)⁶ 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 FFDCA⁷ 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 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 fee authorities and revenues collected is presented in “A Historical Overview of Pesticide Fee Authorities,” later in this report.)

The current (and previous) Administration 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 rule⁸ to substantially revise tolerance fees and on a recommendation that Congress discontinue the legislative prohibition on pesticide registration fee authority⁹ promulgated in 1988.

⁶ 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.

⁷ Section 408(o), as amended, the Pesticide Residue Amendment of 1954 (P.L. No. 518, 21 U.S.C. §46(a)). The current authority resides in FFDCA § 408(m), per the 1996 amendments to FFDCA (FQPA).

⁸ U.S. EPA, 64 *Federal Register* 31039-31050, June 9, 1999.

⁹ 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.

Shortly after its promulgation, the final 1988 pesticide registration fee regulation was challenged in court by the Chemical Specialties Manufacturers' Association,¹⁰ 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 FFDCA¹¹ 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.¹² 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 through appropriations legislation.

PRIA as enacted in 2004 (PRIA 1) specifically prohibited collection of *any* tolerance fees, and temporarily replaced (essentially prohibited) other fee authority through FY2008. Despite this prohibition, the Administration proposed similar additional tolerance fee and other pesticide fee revenue increases in the FY2005, FY2006, FY2007, and FY2008 EPA President's budget requests. These proposals were not adopted by Congress. Language contained in the FY2005 supplemental appropriations for military funding enacted May 11, 2005 (P.L. 109-13 § 6033) banned EPA from going forward with rulemaking for collecting pesticide tolerance fees. PRIA 2 (P.L. 110-94), enacted October 9, 2007, continued the prohibition of other fee authority through FY2012. However, the Administration's FY2009 budget again proposed to modify the pesticide fee structure.

The following section summarizes the key provisions of PRIA 2 as enacted.

¹⁰ *Chemical Specialties Manufacturers Association (now the Consumer Specialty Products Association) v. EPA*, No. 88-1525. D.D.C., July 25, 1988.

¹¹ 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.)

¹² Inert ingredients can be solvents or surfactants and often compose the bulk of the pesticide product. Some inerts are known to be toxic; others are known to be harmless. EPA lists most in the category "non-food inert ingredients." See [<http://www.epa.gov/oppr001/inerts/lists.html>].

Key Provisions of the Pesticide Registration Improvement Renewal Act as Enacted in 2007

The Pesticide Registration Improvement Renewal Act (P.L. 110-94) or PRIA 2 — effective retroactively to October 1, 2007¹³ — amended and reauthorized provisions of the Pesticide Registration Improvement Act of 2003 (P.L. 108-199),¹⁴ or PRIA 1. PRIA 1 had amended FIFRA and modified the framework for collecting fees to enhance and accelerate EPA review of pesticide registration and reregistration applications, temporarily superseding the 1988 registration fee authority¹⁵ and suspending tolerance fee authority under FFDCA through FY2008.

As enacted in 2004, PRIA 1 seemed to address many of the issues associated with previously proposed modifications, and received the support of a large cross section of stakeholders, including organizations representing manufacturers and formulators, agricultural producers, and environmental and public interests.¹⁶ These groups jointly favored the acceleration of EPA's decision process, the simplification of the fee authority, and the detailed schedule of activities determining the allocation of fees collected. The changes reflected in PRIA 2 have generally continued to receive similar support from various groups.¹⁷

PRIA 2 amended certain PRIA 1 provisions under FIFRA, most notably the addition of 40 new registration application categories and clarification to existing categories, and changes to small business fee waiver options. PRIA 2 also extended the baseline budget protection for the Office of Pesticide Programs (OPP); if congressional appropriations fall below the amount allocated to OPP in FY2002 by more than 3%, authority to assess fees is suspended. In addition, PRIA 2

- extended authority to collect maintenance fees through FY2012;
- renewed authority for EPA to collect “registration services fees,” which would be phased out at the end of FY2014;
- continued the prohibition on the collection of any tolerance fees through FY2012;
- amended the authority for use of funds in the Reregistration and Expedited Processing Fund to include use for registration review;

¹³ Relevant registration applications received between March 23, 2004, and September 30, 2007, are processed under PRIA 1 fees, decision review periods, and procedures.

¹⁴ Enacted as Title V of Division G of the FY2004 Consolidated Appropriations Act.

¹⁵ PRIA 1 (P.L. 108-199) removed the prohibition on “other fees” by amending FIFRA §4(i)(6), replacing §§33 and 34 (7 U.S.C. §36x and 136y) through 2010, and thus temporarily replacing registration fee authority codified in 1988 (Subpart U of CFR part 152).

¹⁶ September 12, 2003, letter addressed to President George W. Bush, from a coalition of 30 organizations representing industry and public interests.

¹⁷ See CropLife America's press release, October 11, 2007, at [http://www.croplifeamerica.org/design_06/viewer.asp?pageid=220]; see also Consumer Specialty Products (CSPA) and Natural Resources Defense Council (NRDC) joint press release, October 10, 2007, at [<http://www.cspa.org/>].

- required pesticide registrations to be reviewed every 15 years;¹⁸ and
- required EPA to identify reforms to the pesticide registration process to substantially reduce the decision review period.

The following is a brief overview of these key PRIA 2 provisions.

Reauthorization of Pesticide Registrant Maintenance Fees

Under PRIA 2, the annual maximum maintenance fees per registrant, and in aggregate, remain constant for each of the fiscal years FY2008 through FY2012, simplifying the formulae under PRIA 1.¹⁹ The annual statutory aggregate limit is \$22.0 million for each of the fiscal years FY2008 through FY2012.²⁰ PRIA 2 amended FIFRA, changing the annual maximum fee for registrants with *less than* 50 pesticide registrations to \$71,000 for each of the fiscal years FY2008 through FY2012; or \$50,000 if a registrant is a small business (as redefined in PRIA 2). The annual maximum each fiscal year FY2008 through FY2012 for registrants with *more than* 50 registrations is changed to \$123,000; \$86,000 if a registrant is a small business. Waivers continue to be available for public health pesticides.

Maintenance fees continue to be assessed on existing pesticide registrations to fund registration reviews and tolerance reassessment. 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 (§ 201(q)(1)), but not FIFRA. Therefore, EPA must make a determination regarding the establishment of tolerances for inert ingredients. PRIA 2 extended the authority to collect maintenance fees so as to explicitly designate the use of a portion (between 1/8 and 1/7) of the annual aggregate maintenance fees collected for

- the expedited processing of proposed new products that are “similar” or identical to existing products,²¹
- proposed label amendments that require no review of scientific data,
- proposed registrations of public health pesticide uses; and

¹⁸ PRIA 1 had extended the statutory deadline for completing reregistrations for active ingredients that do not require tolerances to October 3, 2008; reregistration of active ingredients that require (food) tolerances or exemptions from tolerances were required to be completed by August 3, 2006, as mandated under FQPA (P.L. 104-170, Title IV, § 405).

¹⁹ Under PRIA 1, annual maximum maintenance fees per registrant, and in aggregate, increased each year above the FY2003 levels for the first three years and declined in the final two years (P.L. 108-199, Division G, Title V, §501(c)(1)(D) and (E)).

²⁰ 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. The annual aggregate authorized under PRIA 1 increased from \$21.5 million for FY2003 to \$26 million for FY2004 and \$27 million for FY2005 and FY2006; it declined to \$21 million for FY2007 and \$15 million for FY2008.

²¹ Referred to as “Me-too” pesticides; see FIFRA §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.”

- the review and evaluation of new “inert” ingredients.²²

Registration Services Fees

PRIA 1 established registration “services” fees that apply only to new pesticide applications (submitted on or after the effective date of PRIA), with transitional allowances for pending applications. PRIA 2 extended this authority in a new FIFRA Section 33. 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 initially under PRIA 1, 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 FY2012, with phase-out authority at reduced levels through FY2014.

The category or type of application, the amount of the pesticide registration service fee, and the corresponding decision review timeframe in which the agency is to make a decision are prescribed in the act. The EPA Administrator is directed to publish a detailed schedule of covered pesticide applications and corresponding registration service fees, as reported in the July 31, 2007, *Congressional Record* (S10409 through S10411).²³ The amount of the fees varies depending on the specific “service” required. PRIA 2 includes mandatory adjustments of the registration service fees — a 5% increase beginning with registration applications received October 1, 2008 through September 30, 2010, and an additional 5% increase of the service fee in effect as of September 30, 2010.

PRIA 2 modified the existing authorizations for waivers or reductions of registration service fees for minor uses or small businesses under Section 33(b)(7)F of FIFRA, and for partial fee refunds when applications are withdrawn or at the Administrator’s discretion.²⁴ PRIA 2 amended the small business waiver provisions such that a 100% waiver is no longer authorized; a qualified small business is eligible for a partial waiver of 50% or, in some cases, 75% of the registration service fee

²² See footnote defining the term “inert,” earlier in this report.

²³ Under PRIA 1, the registration fees schedule was per the September 17, 2003, *Congressional Record* (S11631 through S11633). 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, §33(b)(6)(B)). EPA began implementing the new schedule for pesticide registration applications received on or after October 1, 2005.

²⁴ 7 U.S.C. §136w-8(b)(7)(F). During FY2004, EPA developed guidance for applying for waivers of the registration service fee under PRIA 1 and provided relevant information on a dedicated website. EPA also established formulae for reducing certain registration service fees. This guidance for registration service fee waivers and reductions, including recent updates, is available at [<http://www.epa.gov/pesticides/fees/questions/waivers.html>]; information regarding the fee reduction formula is available at [http://www.epa.gov/pesticides/fees/fee_reduction.htm].

available under the new provisions. During FY2007, EPA granted 374 of 387 waiver applications reviewed; 258 of those granted were 100% small business waivers.²⁵

Pesticide Registration Fund

As established under PRIA 1, PRIA 2 retains the Pesticide Registration Fund (“the fund”) in the U.S. Treasury, to be made available to EPA for purposes defined in the act, without fiscal year limitation.²⁶ PRIA 2 amended certain provisions regarding the fund, including a requirement that approximately 1/17 of the amount in the fund, but not less than \$1 million of the total amount in the fund, be used to enhance scientific and regulatory activities for worker protection for FY2008 through FY2012. PRIA 1 had required a range of \$750,000 to \$1 million for worker protection activities. Additionally, a new provision in PRIA 2 requires \$750,000 for each of the years FY2008 and 2009, and \$500,000 for each of the years FY2010 through 2012 is to be used for “Partnership Grants,” for projects supporting pesticide risk reduction. Another \$500,000 for each of the years 2008 through 2012 is to be used to carry out a “pesticide safety education program.”

To ensure that the appropriated funds are not reduced in lieu of fee revenues, PRIA 2 extended the prohibition on authorizing registration services fees unless the amount of congressional appropriations for specified functions conducted by the EPA Office of Pesticide Programs remains no less than 3% below the corresponding FY2002 appropriation.²⁷ PRIA 2 also continues to stipulate that the authorization to collect and obligate fees must be provided in advance in appropriations acts.²⁸ These requirements have been met in EPA appropriations for FY2004 through FY2008.²⁹

Prohibition of “Tolerance Fees”

PRIA 2 continues to prohibit EPA from collecting “any” tolerance fees under the authority of section 408(m)(1) of FFDCA.³⁰ 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 more detailed discussion below under “A Historical Overview of Pesticide Fee Authorities.”) Under PRIA 2, fee revenues to support tolerance assessments are

²⁵ Based on information provided to CRS directly by EPA’s Office of Pesticide Programs, May 12, 2008.

²⁶ 7 U.S.C. §136w-8(c).

²⁷ FIFRA §33(d)(2) Assessment of Fees (7 U.S.C. §136w-8(d)(2)).

²⁸ FIFRA § 33(c)(4) Collections and Appropriations (7 U.S.C. §136w-8(c)(4)).

²⁹ FY2004 (P.L. 108-199), FY2005 (P.L. 108-447), FY2006 (P.L. 109-54), FY2007 (P.L. 110-5), and FY2008 (P.L. 110-161).

³⁰ 21 U.S.C. §346a(m)(1). PRIA 1 prohibited collection of tolerance fees through FY2008; EPA published a notice suspending the collection of tolerance fees (69 *Federal Register* 12542, March 17, 2004).

allocated from maintenance fees (for tolerance reassessments) and registration service fees (for new and amended tolerances), through FY2012.

Prohibition of Other Pesticide Fees

PRIA continues to prohibit “other fees” by amending FIFRA Section 4(i)(6) and by replacing 2010 with 2014.³¹ 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.

Reregistration and Expedited Process Fund

PRIA 2 amends FIFRA and expands the authorization of the use of moneys collected and deposited in the previously established Reregistration and Expedited Process Fund.³² The use of this fund has been expanded to include offsetting costs of “registration reviews under section 3(g).”³³ Prior to this amendment, money in the fund was only to be used to offset the cost of reregistration³⁴ and for the expedited review of inert ingredients. PRIA 2 establishes a deadline of October 1, 2022, for EPA to complete registration review decisions for all pesticides registered as of October 1, 2007.³⁵

EPA completed the reregistration of active ingredients that require (food) tolerances or exemptions from tolerances, required to be completed by August 3, 2006, as mandated under FQPA (P.L. 104-170, Title IV, § 405). PRIA 1 had extended the statutory deadline for completing reregistrations for active ingredients that do not require tolerances to October 3, 2008, which EPA expects to meet. EPA’s final rule for the registration review program as published in the August 9, 2006, *Federal Register*, replaces the agency’s pesticide reregistration and tolerance reassessment programs as they approach completion.³⁶ The agency began implementing the registration review program at the start of FY2007. (See more detailed discussion later in this report.)

Reporting Progress Under PRIA

PRIA 2 extends the requirement that EPA publish an annual report describing relevant actions taken during each fiscal year, through March 1, 2014. PRIA 2 also retains, with some technical modifications, specific elements to be included in the

³¹ 7 U.S.C. §136-1(i)(6).

³² 7 U.S.C. §136a-1(k)(1).

³³ The Food Quality Protection Act (FQPA) of 1996 amended FIFRA to add section 3(g), “Registration Review,” with the goal of review a pesticide’s registration every 15 years.

³⁴ The revaluation of pesticides registered prior to 1984 as defined by the 1988 amendments to FIFRA (P.L. 100-532).

³⁵ The Food Quality Protection Act (FQPA) of 1996 amended FIFRA to add section 3(g), “Registration Review,” with the goal of review a pesticide’s registration every 15 years.

³⁶ 71 *Federal Register* 45719.

report. Examples of these reporting elements include 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 progress in meeting the goals for registration review and reregistration timeline requirements. A key provision of PRIA 1 in conjunction with the increased fee revenues was the requirement for EPA to identify reforms³⁷ to the agency's pesticide registration process with the intent of reducing the current decision review period. EPA released reports in March 2005, March 2006, and March 2007; its most recent report, *Implementing the Pesticide Registration Improvement Act — Fiscal Year 2007*, was released in March 2008.³⁸ These reports summarize improvements and accomplishments for each of the fiscal years. (See discussion under "Pesticide Registration and Reregistration Activities Since the Enactment of PRIA.")

A Historical Overview of Pesticide Fee Authorities

Various changes and proposed changes to pesticide fee authority led up to the 2004 enactment of PRIA 1. Fees collected by EPA over time to support the pesticide program have included tolerance fees, registration fees, reregistration fees, and maintenance fees. Between 1996 and 2004, EPA 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.

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 § 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)	Establishes fees to accompany pesticide registration and experimental use permit applications; authority suspended by the FIFRA amendments passed later that same year (1988).

³⁷ Ibid. See also EPA's FY2005 PRIA implementation accomplishments report, available at [http://www.epa.gov/pesticides/fees/2005annual_report/pria_annual_report_2005.htm], Sections 33(e), Reforms to reduce Decision Time Periods, and (f), Decision Review Time Periods.

³⁸ Each of the reports are available at [<http://www.epa.gov/pesticides/fees/>].

Year	Legislation/Regulation	Pesticide Fee Authority/Action
	Federal Insecticide, Fungicide and Rodenticide Act, amended (FIFRA; P.L. 100-532)	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 (§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. 106-74)	Continued prohibition on promulgation of a final tolerance fee rule as proposed in 1999.
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 1 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 Act (P.L. 108-199; Division G, Title V), enacted Jan. 23, 2004 FY2005 Consolidated Appropriations Act (P.L. 108-447), enacted Dec. 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 during FY2005 pursuant to P.L. 108-199.

Year	Legislation/Regulation	Pesticide Fee Authority/Action
2005	FY2005 supplemental appropriations for military funding (P.L. 109-13, §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 ^a Act for FY2006 (P.L. 109-54), enacted August 25, 2005	Provided continued authorization for the collection of pesticide fees during FY2006 pursuant to P.L. 108-199.
2007	Revised Continuing Appropriations Resolution for FY2007 (P.L. 110-5, H.J.Res. 20), enacted Feb. 15, 2007 S. 1983 introduced August 2, 2007, basis for PRIA 2 became P.L. 110-94, enacted Oct. 9, 2007 FY2008 Consolidated Appropriations Act (P.L. 110-161; Division F, Title II), enacted Dec. 26, 2007	Provided continued authorization for the collection of pesticide fees during FY2007 pursuant to P.L. 108-199, by providing funding under the authority, conditions, and limitations provided in the applicable appropriations Act for FY2006 (P.L. 109-54). Reauthorizes, with some modification, PRIA 1 as enacted Jan. 23, 2004, in the FY2004 Consolidated Appropriations Bill (P.L. 108-199; Div. G, Title V). Provided continued authorization for the collection of pesticide fees during FY2008 pursuant to P.L. 110-94.

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

a. During the first session of the 109th 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 FFDCA Pesticide Fee Collection Authority

Authority for the collection of pesticide fees dates back as far as the 1954 amendments to FFDCA.³⁹ At the time, § 408(o)⁴⁰ required the collection of fees to cover the costs of establishing maximum residue levels (“tolerances”) for pesticides on food. Until 1988, 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.

³⁹ Pesticide Residue Amendment of 1954, P.L. No. 518, 21 U.S.C. §346(a).

⁴⁰ This authority currently resides in FFDCA § 408(m) (1996 FQPA).

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 FFDCA 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.⁴¹ After its expiration September 30, 2001, the statutory authority for maintenance fees was extended in annual EPA appropriations bills prior to the enactment of the PRIA provisions.⁴²

Other Pesticide Fee Authority

In May 1988, prior to the 1988 FIFRA amendments, EPA promulgated a final pesticide registration fee regulation,⁴³ 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,⁴⁴ and the collection of registration fees under this authority was temporarily suspended through FY1997 by the 1988 amendments to FIFRA (§ 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.⁴⁵

Proposed Pesticide Fee Authority Modifications

In June 1999, EPA proposed a rule restructuring tolerance fees⁴⁶ in an effort to cover the cost of establishing initial tolerances and tolerance reassessments, including

⁴¹ See CRS Report 96-759, *Pesticide Legislation: Food Quality Protection Act of 1996 (P.L. 104-170)*, by Linda-Jo Schierow.

⁴² 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 fees as authorized in FY2003 (see H.J.Res. 69, §118).

⁴³ 40 CFR 152(u) and 40 CFR 172.

⁴⁴ *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 abeyance since the passage of the 1988 FIFRA amendments.

⁴⁵ Appropriations bills for VA-HUD and Independent Agencies passed by the 107th Congress (P.L. 107-73) and the 108th Congress (P.L. 108-7; P.L. 108-135, Continuing Resolution for FY2004, expired January 31, 2004) contained similar prohibitive language.

⁴⁶ 64 *Federal Register* 31039-31050, June 9, 1999.

tolerance activities for “other” ingredients (namely, inert ingredients⁴⁷). 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.⁴⁸

The 106th Congress prohibited promulgation of the tolerance fee rule in EPA’s FY2000 appropriations (P.L. 106-74, §432). The 107th 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.⁴⁹ As discussed earlier in this report, the PRIA 1 provisions enacted in 2004 prohibited the collection of *any* tolerance fees through FY2008, and PRIA 2 continues this prohibition through 2012.

Despite the PRIA prohibitions on additional pesticide fees, the Administration proposed increased fees above those provided under PRIA in the FY2005, FY2006, FY2007, and FY2008 budget requests for EPA. The 108th 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 109th 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 request included \$46.0 million, and the FY2007 request included \$56 million, in the form of “anticipated” revenues (offsetting receipts) to be derived from changes to fees for pesticide registrations.⁵⁰ The

⁴⁷ The 1996 FQPA clarified that “inert” ingredients are covered by the definition of a pesticide chemical under FFDCA § 201(q)(1).

⁴⁸ EPA Docket # OPPT-301151 and OPPT-301151B.

⁴⁹ Appropriations bills for VA-HUD and Independent Agencies passed by the 106th Congress (P.L. 106-377), the 107th Congress (P.L. 107-73), and the 108th Congress (P.L. 108-7, P.L. 108-135, FY2004 continuing resolution) contained similar prohibitive language.

⁵⁰ 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/>]

pesticide fees proposed by the Administration for FY2006 and FY2007 would have been 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, and the Revised Continuing Appropriations Resolution for FY2007 (P.L. 110-5, H.J.Res. 20), enacted on February 15, 2007, did not reflect the Administration's additional anticipated pesticide fee revenues. The proposed fee changes in the Administration's requests would have required congressional approval through the enactment of legislation. In its report on the FY2006 appropriations, 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).

The President's FY2008 budget submitted to Congress in February 2007 proposed modifications to the current pesticide fees structure to collect \$66 million in anticipated revenues,⁵¹ which included increases for registration service fees, reinstatement of tolerance fees, and additional fees to offset the cost of implementing the EPA's recently initiated Registration Review Program.⁵² The Consolidated Appropriations Act for FY2008 (P.L. 110-161) enacted December 26, 2007, which included EPA's FY2008 appropriations in Title II of Division F, did not reflect the Administration's additional anticipated pesticide fee revenues. The President's FY2009 budget, submitted in February 2008, contains similar proposed modifications and increases for pesticide fees.

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.

⁵⁰ (...continued)
omb/budget/fy2006].

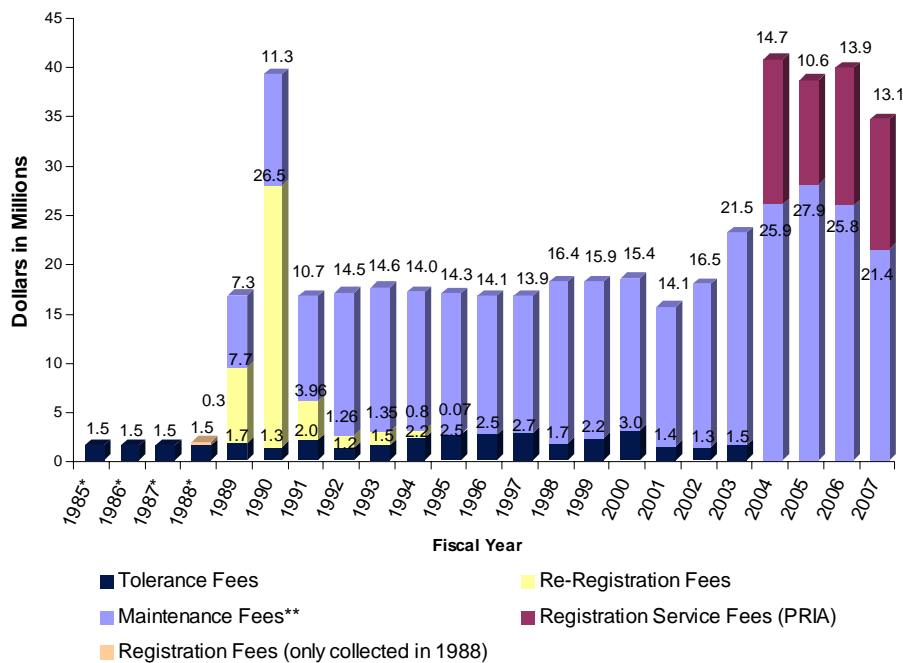
⁵¹ Executive Office of the President, Office of Management and Budget, *Major Savings and Reforms in the President's 2008 Budget*, at [<http://www.whitehouse.gov/omb/budget/fy2008>]. See also *U.S. Environmental Protection Agency FY2008 Justification of Appropriation Estimates for the Committee on Appropriations*, available at [<http://www.epa.gov/ocfo/budget/>].

⁵² See [http://www.epa.gov/oppsrrd1/registration_review/index.htm] for more information regarding EPA's Registration Review Program.

Revenues from Pesticide Fees

The amount of pesticides fees collected over the years has varied, depending on the statutory authority at the time. **Figure 1** below provides a graphic illustration of the amount of tolerance fees, registration fees (only collected for a short period during FY1988), reregistration fees, maintenance fees, and registration service fees collected during FY1985 through FY2007, before and after the enactment of PRIA 1 in January 2004. 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.

Figure 1. EPA Pesticide Program Fee Revenues, FY1985-FY2007



Source: Prepared by Congressional Research Service (CRS) with information from the U.S. EPA Office of Pesticide Programs.

* 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 have been 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 1 capped maintenance fees at \$26 million for FY2004, \$27 million for FY2005 and FY2006, \$21 million for FY2007, and \$15 million for FY2008. PRIA 2 extended the authority and set the annual statutory aggregate limit for maintenance fees at \$22.0 million for FY2008 through FY2012.

Registration applications received on or after March 23, 2004, were subject to the new service fees under PRIA 1. In the *Pesticide Registration Improvement Act (PRIA) Implementation: 2007 Annual Report*, EPA reported receiving a net total of \$13.1 million in new “registration service” fees in FY2007. The net total reflects subtracting \$0.62 million in the form of refunds for overpayments and withdrawals

of applications. EPA reported expending \$15.1 million of the \$25.4 million available during the fiscal year, which included \$12.3 million carried forward from FY2006. The remaining FY2007 balance of \$10.3 million is being carried forward to FY2008. The total FY2007 expenditure was a 40% increase above the FY2006 total expenditure of \$10.8 million. Although the majority (47%) of the fee revenues expended in FY2007 was for payroll, the FY2007 payroll amount of \$7.1 million was more than the FY2006 level of \$5.8 million (54%), but below the FY2005 level of \$7.9 million (71%). Contract expenditures continued an increasing trend from \$2.2 million (20% of fees expended) in FY2005 to \$4.0 million (37%) in FY2006 to \$7.0 million (46%) in FY2007.

During FY2004, the initial year of collecting fees under PRIA, EPA indicated that it collected \$14.7 million in new “registration service” and spent roughly \$5.0 million. The remaining FY2004 balance of \$9.7 million was carried forward to FY2005. EPA reported collecting \$10.6 million in FY2005 in its second annual report. The agency spent approximately \$11.1 million of the total \$20.3 million available in FY2005, carrying the remaining balance of \$9.2 million forward to FY2006. **Table 2** below presents EPA’s reported expenditures of fees collected during each fiscal year FY2004-FY2007, including the distribution of expenditures by pesticide program activity.

Table 2. EPA Expenditures from the Pesticide Registration Fund by Program Activity: FY2004 - FY2007

(dollars in thousands)

Program Activity	FY2004	FY2005	FY2006	FY2007
Payroll	\$2,535.3	\$7,898.2	\$5,819.8	\$7,111.6
Contracts	\$1,591.3	\$2,228.8	\$4,013.1	\$6,979.5
Worker Protection	\$430.0	\$750.1	\$750.0	\$750.0
Other Expenses	\$455.8	\$274.3	\$221.6	\$302.7
Total Expenditures	\$5,012.4	\$11,151.4	\$10,804.5	\$15,143.8

Source: U.S. EPA, *Pesticide Registration Improvement Act (PRIA) Implementation: 2007 Annual Report*, February 29, 2008 [<http://www.epa.gov/pesticides/fees/>].

Annual maintenance fee amounts collected per registration are 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 (P.L. 100-532) 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 extended by Congress annually through appropriations legislation for FY2002, FY2003, and a portion of FY2004 to the enactment of PRIA. The annual aggregate limit was \$17 million for FY2002 (P.L. 107-73), \$21.5 million for FY2003 (P.L. 108-7), and \$21.5

million for a portion of FY2004 through January 31, 2004, by continuing resolution P.L. 108-135.

PRIA 1, included in the Consolidated Appropriations Act of FY2004 (P.L. 108-199), extended the existing authority to collect maintenance fees through FY2008 at initially increasing, then declining, levels. PRIA set the annual statutory aggregate limit at \$26 million for FY2004, \$27 million for FY2005 and FY2006, \$21 million for FY2007, and \$15 million for FY2008. PRIA 2 extended the authority and set the annual statutory aggregate limit for maintenance fees at \$22.0 million for each of the fiscal years FY2008 through FY2012. **Figure 1** above indicates that EPA generally collected the maximum aggregate limit as set by the statute in a given year. In the fiscal years following the enactment of PRIA, EPA collected \$25.9 million in maintenance fees in FY2004 (EPA initiated collection of maintenance fees at the beginning of FY2004 under preexisting authority, prior to the reauthorization provisions included in PRIA 1), \$27.9 million in FY2005, \$25.8 million in FY2006, and \$21.4 million in FY2007.

The annual tolerance fee collected from each applicant was based on the specific actions required to process a submitted application and varied 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.⁵³ For the 20 years prior to the enactment of PRIA, annual tolerance fees collected by EPA averaged about \$1.8 million.

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 combined total of \$31.64 million.

EPA Pesticide Program Appropriated Funds

In recent fiscal years, appropriated funding for EPA's pesticide program activities has been 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). **Table 3** shows enacted appropriations for FY2003 through FY2008.⁵⁴

⁵³ 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).

⁵⁴ The Revised Continuing Appropriations Resolution for FY2007 (P.L. 110-5, H.J.Res. 20), enacted on February 15, 2007, provides FY2007 appropriations for EPA and numerous other federal agencies at the same level as provided under the authority and conditions stipulated in the applicable appropriations Acts for FY2006, unless otherwise specified in P.L. 110-5.

(continued...)

**Table 3. EPA Appropriations for Pesticide Program Activities,
FY2003-FY2008 Enacted**

(dollars in millions)

Pesticide Program Activities by EPA Appropriations Account	FY2003 Enacted P.L. 108-7	FY2004 Enacted P.L. 108-199	FY2005 Enacted P.L. 108-447	FY2006 Enacted P.L. 109-54	FY2007 Enacted P.L. 110-5	FY2008 Enacted P.L. 110-161
<i>Environmental Programs and Management (EPM)</i>						
Registration	\$40.4	\$40.8	\$39.2	\$41.6	\$40.4	NR
Reregistration	\$48.5	\$51.7	\$51.3	\$57.5	\$52.6	NR
Field Programs	\$21.1	\$25.2	\$24.4	\$24.5	NR	NR
Science Policy & Biotechnology	\$0.9	\$1.7	\$1.6	\$1.7	NR	NR
<i>EPM Subtotal</i>	<i>\$110.9</i>	<i>\$119.4</i>	<i>\$116.5</i>	<i>\$125.3</i>	<i>\$119.5</i>	<i>\$116.3</i>
<i>Science & Technology (S&T)</i>						
Registration	\$2.1	\$2.3	\$2.5	\$2.4	NR	NR
Reregistration	\$2.4	\$2.4	\$2.5	\$2.5	NR	NR
<i>S&T Subtotal</i>	<i>\$4.5</i>	<i>\$4.7</i>	<i>\$5.0</i>	<i>\$4.9</i>	<i>\$5.7</i>	<i>\$5.8</i>
<i>State and Tribal Assistance Grants (STAG)</i>						
Implementation Grants	\$13.2	\$13.0	\$12.9	\$12.9	\$12.9	\$12.8
Enforcement Grants	\$20.3	\$19.8	\$19.3	\$18.6	\$18.6	\$18.4
<i>STAG Subtotal</i>	<i>\$33.5</i>	<i>\$32.8</i>	<i>\$32.2</i>	<i>\$31.5</i>	<i>\$31.5</i>	<i>\$31.2</i>
Total	\$148.9	\$156.9	\$153.7	\$161.7	\$156.7	\$153.3

Sources: Prepared by the Congressional Research Service based on information from House and Senate Appropriations Committees, conference reports and explanatory statements accompanying appropriations, and EPA's Congressional Budget Justification.

Note: NR indicates that a separate line item amount was not reported for that particular activity in a given fiscal year.

Pesticide fee revenues are supplemental to appropriated funds provided for EPA's pesticide program activities. PRIA 1 and PRIA 2, in fact, included provisions to ensure that the fee revenues would not be offset by potential decreases in appropriations. As a condition of the statutes, authorization to assess registration services fees is suspended if congressional appropriations for specified functions conducted by the EPA Office of Pesticide Programs fall below a minimum amount relative to corresponding FY2002 congressional appropriations.⁵⁵ The minimum

⁵⁴ (...continued)

P.L. 110-5 included no such specifications for EPA's pesticide program activities.

⁵⁵ FIFRA §33(d) Assessment of Fees (7 U.S.C. §136w-8(d)(2)). Under PRIA 2, if congressional appropriations for a fiscal year fall below the amount allocated to OPP in FY2002 by more than 3%, authority to assess fees is suspended.

appropriations level has been met and the fee collection authority maintained for each of the subsequent fiscal years through FY2008.

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 has used the maintenance fees to supplement appropriations primarily for reregistration (i.e., a reevaluation of pesticides registered prior to 1984) 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. In anticipation of completing the pesticide reregistration and tolerance reassessment programs, EPA published a final rule for the “registration review” program in the *Federal Register* on August 9, 2006.⁵⁶ Through this registration review program, EPA plans to review pesticides registered as of October 2007 approximately every 15 years, consistent with FIFRA as amended. The agency began implementing the registration review program at the start of FY2007.

PRIA 1 had modified FIFRA with regard to completion deadlines for reregistration.⁵⁷ 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 FFDCA (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. EPA reported that it completed the remaining 84 tolerance reassessment decisions in September 2007, following the agency’s conclusion of the N-methyl carbamate (NMC) cumulative risk assessment.⁵⁸ PRIA 2 requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

A key provision of PRIA 1 and PRIA 2, in conjunction with the increased fee revenues, is the requirement for EPA to identify reforms⁵⁹ to its pesticide registration process with the intent of reducing the agency’s decision review times. EPA has reported implementation of a number of process improvements to monitor workload and ensure that PRIA due dates are being met. As required under PRIA, EPA released annual PRIA implementation reports describing these process improvements and other efforts and accomplishments for each of FY2004-FY2007. EPA released

⁵⁶ 71 *Federal Register* 45719.

⁵⁷ 7 U.S.C. §36a-1(g)(2)(A).

⁵⁸ U.S. EPA [<http://www.epa.gov/oppsrrd1/tolerance/reassessment.htm>].

⁵⁹ Ibid. See also EPA’s FY2005 PRIA implementation accomplishments report, available at [http://www.epa.gov/pesticides/fees/2005annual_report/pria_annual_report_2005.htm], subsections 33(e), Reforms to Reduce Decision Time Periods, and (f), Decision Review Time Periods.

its inaugural report in March 2005 summarizing its first nine months of progress implementing the provisions of the PRIA from January 23, 2004, through September 30, 2004, and three subsequent reports were released in March 2006, March 2007, and March 2008.⁶⁰

Registration Activities

As discussed earlier in this report, EPA reported the completion of 4,273 decisions subject to PRIA between March 2004 (the effective date for PRIA implementation) and the end of FY2007. In addition, during the past three fiscal years (FY2004-FY2006), EPA completed decisions (either registration decisions or publications of import tolerances) for 82 new active ingredients, including 32 conventional (seven conventional reduced risk), 41 biopesticides, and 10 antimicrobials. During that same period, the agency approved more than 605 new uses of previously registered active ingredients.⁶¹

EPA also reported the expenditure of \$750,000 in fees collected for worker protection program activities in FY2007, similar to the FY2006 and FY2005 levels. Activities included continued interaction with stakeholder groups through the agency's Pesticide Program Dialogue Committee, enhancement of safe practices and pesticide risk recognition training for workers and health-care providers, and expansion of occupational illness and injury surveillance. PRIA 1 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. PRIA 2 retained the same proportional distribution for worker protection, but increased the minimum to not less than \$1 million.⁶²

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. Based in part on recommendations from the Committee, the agency continued to develop new process improvements during FY2007, and to refine those initiated during previous fiscal

⁶⁰ The reports are available at [<http://www.epa.gov/pesticides/fees/>].

⁶¹ The number of new registrations and new uses were compiled by CRS with data from EPA *Program Update-Registration*, presented to the Pesticide Program Dialogue Committee (PPDC) for FY2004 on October 21, 2004, for FY2005 on October 20, 2005, and for FY2006 and for FY2007 on October 18, 2007 (see [<http://www.epa.gov/pesticides/ppdc/>]), as well as data provided by EPA's Office of Pesticide Programs in a written communication to CRS on November 28, 2006.

⁶² 7 U.S.C. 138w-8(c)(3)(B).

years. EPA continues to focus on several areas identified by the stakeholder groups, including labeling consistency, communication of schedules, clarifications of certain application requirements and improved guidance materials, and electronic submissions.⁶³

Reregistration/Tolerance Reassessment Activities

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 (IRED), or a Tolerance Reassessment Progress and [Interim] Risk Management Decision (TRED).⁶⁴ Increased resources, and the adoption of integrated reregistration and tolerance reassessment process improvements under PRIA 1 have contributed to EPA more effectively meeting its statutory obligations.

EPA reported that by March 2008, it had completed reregistration decisions for 589 of the original 613 pesticide “cases,”⁶⁵ including 360 REDs and 229 canceled cases.⁶⁶ The agency must complete the 24 remaining REDs to meet complete reregistration by the end of FY2008. On August 3, 2006 (the statutory deadline),⁶⁷ EPA announced it had completed reassessment of 9,637 (99.1%) of the 9,721 preexisting tolerances.⁶⁸ 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 for five carbamate pesticides — aldicarb, oxamyl, carbaryl, formetanate and carbofuran — were completed in September 2007 as part of EPA’s cumulative risk assessment for N-methyl carbamates pesticides.⁶⁹

⁶³ See “Process Improvements in the Registration Program” in EPA’s *Pesticide Registration Improvement Act (PRIA) Implementation: 2007 Annual Report*, February 29, 2008 [<http://www.epa.gov/pesticides/fees/>].

⁶⁴ For more detailed explanation of these decision documents, see [<http://www.epa.gov/pesticides/reregistration/index.htm>].

⁶⁵ Related pesticide active ingredients are grouped into cases; the 613 cases encompass approximately 1,150 pesticide active ingredients.

⁶⁶ EPA’s website [http://www.epa.gov/oppsrrd1/reregistration/reregistration_facts.htm].

⁶⁷ 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, § 405).

⁶⁸ EPA, *Accomplishments under the Food Quality Protection Act (FQPA)*, August 3, 2006, at [http://www.epa.gov/pesticides/regulating/laws/fqpa/fqpa_accomplishments.htm].

⁶⁹ The Food Quality Protection Act requires EPA to assess the cumulative risks of pesticides that share a common mechanism of toxicity, or act the same way in the body. For more information on EPA’s cumulative risk assessments, see [<http://www.epa.gov/oppsrrd1/cumulative/index.htm>].

Registration Review⁷⁰

The 1996 amendments to FIFRA (FQPA) included, among other things, a provision for the periodic review of pesticide registrations. Under section 3(g)(1)(A), Registration Review, “The Administrator shall by regulation establish a procedure for accomplishing the periodic review of registrations. The goal of these regulations shall be a review of a pesticide’s registration every 15 years.” Such periodic review is necessary to determine if all registered pesticides continue to meet the statutory standard of no unreasonable adverse effects, taking into account changes in scientific capabilities for assessing risk, as well as changes in policies and pesticide use practices over time. As published in August 2006, EPA’s registration review final rule replaces the agency’s reregistration and tolerance reassessment programs, which are nearly completed.

EPA has indicated that as of May 1, 2008, there are 722 registration review cases, comprising 1,135 active ingredients.⁷¹ The majority of these review cases are conventional pesticides (473 cases and 630 active ingredients), but also include antimicrobial pesticides, biochemical pesticides, and microbial pesticides. To meet its goal of reviewing each registered pesticide every 15 years, EPA anticipates it will require decisions on at least 45 cases (more than 70 pesticide active ingredients) annually. EPA initiated implementation of registration review in early FY2007, opening 23 registration review case dockets by the end of the fiscal year. According to the published registration review schedule for the next four years (FY2008 through FY2011), EPA plans to open 45 cases in FY2008, and will begin opening roughly 70 pesticide dockets annually beginning in FY2009.⁷² The agency anticipates that it will continue at this annual pace through FY2017 so that most of the currently registered pesticides will have dockets opened by the end of that fiscal year, with the exception of certain biopesticide dockets, which are expected in FY2018 through FY2020.

Conclusion

Although there has been some progress in recent years, EPA’s timely completion of the statutory registration, reregistration, and tolerance assessment requirements for pesticides has been 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.

⁷⁰ For a more detailed overview of EPA’s registration review process see [http://www.epa.gov/oppsrrd1/registration_review/reg_review_process.htm].

⁷¹ For updated information on EPA’s schedule for opening dockets to begin pesticide registration reviews during the next four years (2008-2011), see the agency’s website at [http://www.epa.gov/oppsrrd1/registration_review/explanation.htm].

⁷² EPA, *Registration Review: Summary of Planned Schedule for Opening Registration Review Dockets by Fiscal Year 2008 to 2011*, November 1, 2007 [http://www.epa.gov/oppsrrd1/registration_review/schedule_summary.pdf].

The Pesticide Registration Improvement Renewal Act, or PRIA 2 (P.L. 110-94), enacted October 9, 2007, reauthorizes and revises fee provisions enacted January 23, 2004 (P.L. 108-199, PRIA 1). PRIA 2 continues to address some of the key issues and concerns regarding EPA's pesticide registration reviews. Most notably, the provisions requiring specific decision process and schedule reforms, in conjunction with increased fee revenues, have led to more timely completion of certain registration applications and reregistration reviews. Reforming the overall process has led to accelerated implementation of stricter FQPA standards and associated improvements in the safety of pesticides in the market. It has also contributed to the availability of new products, potentially safer and more effective, into the market sooner.

The prescriptive detailed schedules for the service fees included in PRIA 1 and PRIA 2, have been more commensurate with the specific EPA actions required than previous legislative provisions related to registration and tolerance fees, which were more generic. The implementation of these schedules have improved the efficiency in the overall process. The pesticide fee provisions included in PRIA 1 and retained in PRIA 2, also provide stability for resource planning purposes; stability had been lacking previously 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 PRIA 1 (PRIA became effective March 23, 2004) and continued to report improvements through the end of FY2007. Further improvement in the efficiency of the EPA's decision-making process under PRIA 2 is dependent 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 standards⁷³ 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.⁷⁴ 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.

⁷³ Stricter standards primarily refer to requirements introduced by FQPA in 1996 to perform more comprehensive risk assessment of pesticides, and consider 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 96-759, *Pesticide Legislation: Food Quality Protection Act of 1996 (P.L. 104-170)*).

⁷⁴ Examples of EPA advisory workgroups and committees for pesticide science and procedural issues are available at [<http://www.epa.gov/pesticides/science/committees.html>].