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## **Pesticide Registration and Tolerance Fees: An Overview**

**Updated December 19, 2005**

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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.

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 passage of the Pesticide Registration Improvement Act (PRIA) of 2003 (P.L. 108-199, Title V of Division G).

The PRIA provisions were included in the Consolidated Appropriations Act for FY2004 (P.L. 108-199), enacted on January 23, 2004, primarily in response to ongoing concerns about EPA’s timely review and licensing of pesticides. PRIA amends FIFRA and modifies the framework for collecting fees to enhance and accelerate the Agency’s pesticide licensing (registration) activities. In March 2005, EPA released a report summarizing its first-year progress in implementing the PRIA provisions. EPA collected \$14.7 million in new registration service fees in FY2004 (spending \$5 million) and \$10.9 million in FY2005. The Agency developed new procedures for screening pesticide licensing applications and managing pesticide funds, and it enhanced the existing internal pesticide registration tracking system. Through the end of FY2005, EPA completed 1,512 registration decisions out of 2,850 submissions subject to PRIA since its enactment in 2004.

EPA proposals to significantly increase revenues supporting these activities by modifying the fee structure, and attempts to include increased fee revenues in EPA budget proposals annually from FY1998 through FY2004, were prohibited by Congress. Despite the enactment of PRIA, proposals to further increase pesticide fees were included in the President’s FY2005 and FY2006 budget requests. These proposals also have been rejected by Congress, as reflected in reports accompanying these appropriations. This report will be updated as events warrant.

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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 or 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 2005, EPA reported, as required,<sup>2</sup> its first fiscal year (January 23, 2004 through September 30, 2004) progress implementing PRIA. *"The Pesticide Registration Improvement Act (PRIA) Implementation: 2004 Annual Report"* (referred to throughout this report as EPA's PRIA implementation report) provides information about the registration process and EPA's efforts to improve the process, as well as the status of its registration and reregistration activities.

This CRS report provides a historical overview of federal authority regarding pesticide fees, including the amount of fee revenues collected over time, and

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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. The report can be accessed at [<http://www.epa.gov/pesticides/fees/>], accessed December 6, 2005.

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 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

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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” is 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).

(FY1996-FY2003) prior to the enactment of PRIA. (A detailed overview of pesticide fee authorities and collected revenues is presented below).

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. 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. 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), bans EPA from going forward with rulemaking for collecting pesticide tolerance fees.

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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." (U.S. EPA website at [<http://www.epa.gov/opprd001/inerts/>], accessed December 8, 2005).

## 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 amends FIFRA and modifies 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

- provides 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;
- requires EPA to identify reforms to the pesticide registration process to substantially reduce the decision review period; and
- extends the statutory deadline for completing reregistrations for active ingredients that do not require tolerances to October 3, 2008.

**Reauthorization of Pesticide Registrant Maintenance Fees.** Annual maximum maintenance fees per registrant, and in aggregate, will increase each year above the FY2003 levels for the first three years and will decline in the final two years.<sup>14</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 will occur for registrants with more than 50 registrations and for small businesses (as redefined in PRIA). The ability to obtain waivers will continue 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>15</sup>

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

<sup>15</sup> Under the provisions of the 1988 amendments to FIFRA (P.L. 100-532), EPA calculates (continued...)

Maintenance fees continue to be assessed on existing pesticide registrations to fund reregistration, tolerance reassessment and expedited processing of “similar” pesticides<sup>16</sup> and public health pesticides. The PRIA provisions in the FY2004 Consolidated Appropriations Act also amend FIFRA (7 U.S.C. 136a-l[k][3]) to explicitly designate the use of a portion of maintenance fees for the review of “inert” ingredients.<sup>17</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 also 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.

The EPA Administrator is 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 vary 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 Federal Register Notice (70 *Federal Register* 32327) announcing 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 establishes 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 includes a mandatory adjustment (5% increase) by FY2006 and provisions requiring that a portion of the

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<sup>15</sup> (...continued)

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>16</sup> Also 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>17</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]).

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>18</sup>

To assure that the appropriated funds are not reduced in lieu of fee revenues for the first three fiscal years (FY2004-FY2006), the legislation prohibits authorizing registration services fees unless the amount of appropriations for specified functions conducted by the EPA Office of Pesticide Programs in those years is no less than the corresponding FY2002 appropriation.<sup>19</sup> Funding appropriated for EPA for FY2004 (P.L.108-199), FY2005 (P.L.108-447), and FY2006 (P.L. 109-54), has 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 "any" tolerance fees under the authority of section 408(m)(1) of FFDCA (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 (69 *Federal Register* 12542).

**Other Pesticide Fees.** PRIA also 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. 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 the legislation is the requirement for EPA to identify reforms<sup>20</sup> to the Agency's pesticide registration process with the intent of

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<sup>18</sup> Guidance for service registration fee waivers and reductions can be accessed at [<http://www.epa.gov/pesticides/fees/questions/waivers.htm>]; information regarding the fee reduction formula can be accessed at [[http://www.epa.gov/pesticides/fees/fee\\_reduction.htm](http://www.epa.gov/pesticides/fees/fee_reduction.htm)]. Both websites were accessed December 5, 2005.

<sup>19</sup> Ibid., see Section 33(d) Assessment of Fees.

<sup>20</sup> Ibid., see Sections 33(e) Reforms to reduce Decision Time Periods, and (f) Decision (continued...)

reducing the current decision review period. The EPA Administrator is directed to publish in the *Federal Register* a schedule of decision review periods for pesticide registration activities covered by this legislation. The schedule is 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 (69 *Federal Register* 12771). In its first PRIA implementation annual report released in March 2005, EPA described its efforts and accomplishments as of the end of FY2004 (see below).

**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. Reregistration of active ingredients that require tolerances or exemptions from tolerances must be completed by August 3, 2006, as required by FFDCA (Section 408[q][1][C]) for tolerance reassessment. All other reregistrations must be completed no later than October 3, 2008.

**Reporting Progress Under PRIA.** PRIA requires EPA to publish an annual report describing actions taken during each fiscal year. EPA is 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 progress in meeting the reregistration and tolerance reassessment timeline requirements. In March 2005, EPA released a report summarizing its first year progress implementing the provisions of the PRIA (*The Pesticide Registration Improvement Act [PRIA] Implementation: 2004 Annual Report*), covering the period from January 23, 2004, through September 30, 2004.<sup>21</sup> According to the EPA report, by the end of FY2004, the Agency collected \$14.7 million in new “registration service” fees, spending roughly \$5 million. The remaining balance of \$9.7 million was carried forward to FY2005. EPA reported the initiation of several process improvements and completion of 208 decisions subject to PRIA during the fiscal year, and 1,081 applications subject to PRIA pending in the Agency’s registration queue.

## 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 has 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** 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>20</sup> (...continued)

Review Time Periods.

<sup>21</sup> See [[http://www.epa.gov/pesticides/regulating/fees/pria\\_annual\\_report\\_2004.htm](http://www.epa.gov/pesticides/regulating/fees/pria_annual_report_2004.htm)], accessed December 5, 2005.

**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.  Prohibits promulgation of a final tolerance fee rule based on EPA’s 1999 proposal.
2000	FY2001 EPA Appropriations (P.L. 106-774)	Continues prohibition on promulgation of a final tolerance fee rule as proposed in 1999.
2001	FY2002 EPA Appropriations (P.L. 107-73)	Continues 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.

Year	Legislation/Regulation	Pesticide Fee Authority/Action
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)	Prohibits 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	Authorizes new registration "service" fee, reauthorizes maintenance fees, requires pesticide regulation process reforms, and prohibits the collection of tolerance fees.  Provides 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	Bans 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	Provides 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 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.<sup>22</sup> At the time, Section 408(o)<sup>23</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 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,” 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>24</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>25</sup>

**Other Pesticide Fee Authority.** In May 1988, prior to the 1988 FIFRA amendments, EPA had promulgated a final pesticide registration fee regulation,<sup>26</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>27</sup> and the collection of registration fees under this authority was temporarily suspended through FY1997 by the 1988 amendments to FIFRA (Section 4[i][6]). Collecting registration fees under this

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<sup>22</sup> Pesticide Residue Amendment of 1954, P.L. No. 518, 21 U.S.C. 346(a).

<sup>23</sup> This authority currently resides in FFDCA Section 408(m) (1996 FQPA).

<sup>24</sup> See CRS Report RS20043, *Pesticide Residue Regulation: Analysis of Food Quality Protection Act Implementation*, by Linda-Jo Schierow.

<sup>25</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 \$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>26</sup> 40 CFR 152(u) and 40 CFR 172.

<sup>27</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 abeyance since the passage of the 1988 FIFRA amendments.

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>28</sup>

**Proposed Pesticide Fee Authority Modifications.** In June 1999, EPA proposed a rule restructuring tolerance fees<sup>29</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>30</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>31</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,<sup>32</sup> have been prohibited each year by Congress in appropriations acts.<sup>33</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 and FY2006 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

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<sup>28</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 January 31, 2004) contained similar prohibitive language.

<sup>29</sup> 64 *Federal Register* 31039-31050, June 9, 1999.

<sup>30</sup> The 1996 FQPA clarified that “inert” ingredients are covered by the definition of a pesticide chemical under FFDCA (section 201[q][1]).

<sup>31</sup> EPA Docket # OPPT-301151 and OPPT-301151B.

<sup>32</sup> See EPA Budget Proposals and Congressional Justifications for FY2001-FY2005 on EPA’s website ([<http://www.epa.gov/ocfo/budget/index.htm>]), accessed December 9, 2005.

<sup>33</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.

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, submitted to Congress in February 2005, included \$46.0 million in the form of "anticipated" revenues (offsetting receipts) to be derived from changes to fees for pesticide registrations.<sup>34</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).

## Pesticide Program Fee Revenues and Appropriations

The historical appropriated funding and fee revenues for the pesticide program activities provides 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.

**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 the fee revenue has been carried forward to FY2005. EPA collected \$10.9 million in FY2005. EPA collected \$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.

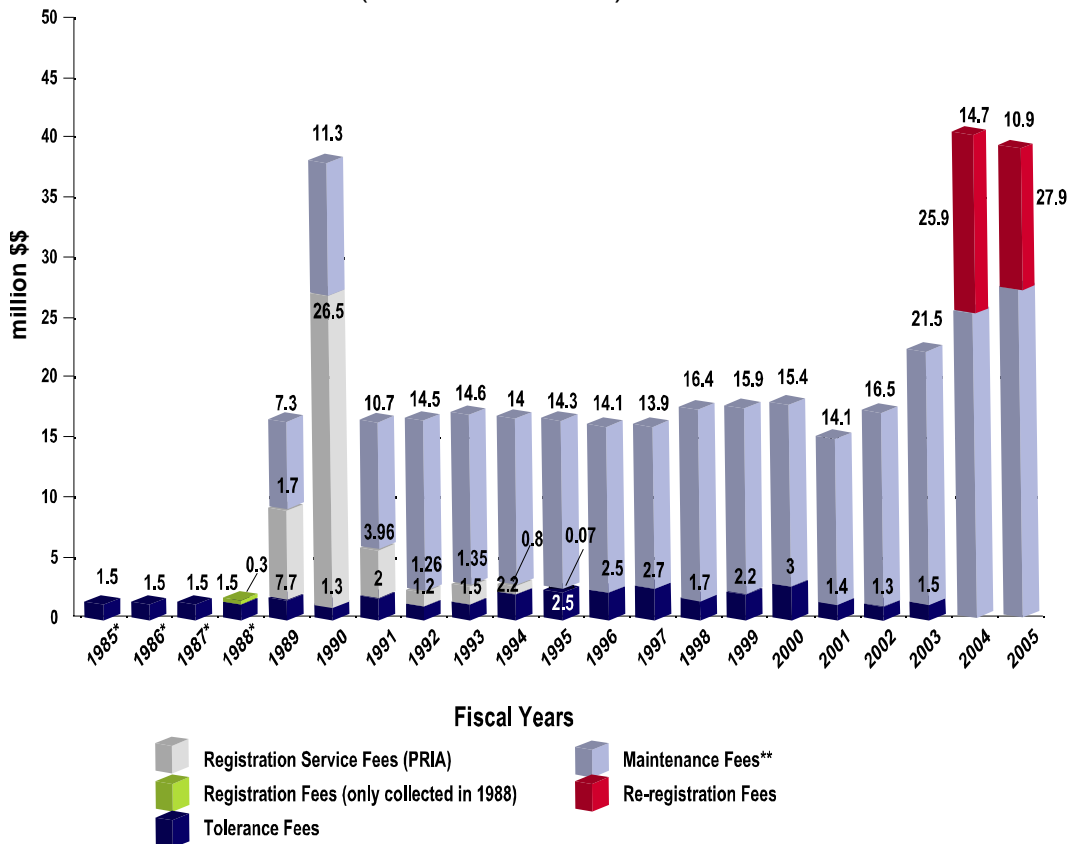
Prior to the enactment of PRIA, the FY2003 appropriations were supplemented by an estimated \$23.0 million in authorized fees, including \$21.5 million in maintenance fees and \$1.5 million in tolerance fees, primarily for establishing new tolerances. The amount of pesticides fees collected over the years varied, depending on the statutory authority at the time. **Figure 1** provides a graphic illustration of the amount of tolerance fees, registration fees (only collected for a short period during

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<sup>34</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 online at [http://www.whitehouse.gov/omb/budget/fy2006], accessed December 5, 2005.

FY1998), reregistration fees, maintenance fees, and registration service fees collected during the period 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.

**Figure 1. EPA Pesticide Program Fee Revenues, FY1985-FY2005**  
(millions of dollars)



**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 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>35</sup> For the 20 years prior to the enactment of PRIA, annual tolerance fees collected by EPA have 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, an estimated total of \$31.64 million (see **Figure 1** above).

The annual amount collected per registration for maintenance fees 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 authorized was increased to \$17 million in FY2002 (P.L. 107-73) and \$21.5 million in FY2003 (P.L. 108-7) and FY2004 (continuing resolution P.L. 108-135,<sup>36</sup> through January 31, 2004). **Figure 1** indicates that EPA generally collected the maximum aggregate limit as set by the statute in a given year.

**Pesticide Program Appropriated Funds.** FY2006-appropriated funding (P.L. 109-54) for EPA's pesticide program activities is allocated within three of the eight EPA appropriations accounts, as has been the case in recent previous fiscal years: Science and Technology (S&T), Environmental Programs and Management (EPM), and State and Tribal Assistance Grants (STAG). For the three accounts combined, Congress provided more funding for FY2006 for EPA's pesticide program activities than it appropriated in each of the three previous fiscal years. The conference report (H. Rept. 109-188) specifies FY2006 funding within these accounts for five pesticide program areas, the same as those presented in the President's FY2006 budget request and described in detail in the *U.S. Environmental Protection Agency FY2006 Justification of Appropriation Estimates for the Committee on Appropriations*.<sup>37</sup> **Table 2** shows enacted appropriations for FY2003 through FY2006, within the three appropriations accounts for the five EPA pesticide program activities.

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<sup>35</sup> Tolerance fees can 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).

<sup>36</sup> See also P.L. 108-84, September 30, 2003, and H.J.Res. 69 Section 118, 108<sup>th</sup> Congress 1<sup>st</sup> Session (2003).

<sup>37</sup> EPA-205/R-05-001, can accessed at [<http://www.epa.gov/ocfo/budget/2006/2006cj.htm>].

**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>
<i>Environmental Program Management(EPM)</i>				
Registration	\$40.4	\$40.8	\$39.2	\$41.5
Reregistration	\$48.5	\$51.7	\$51.3	\$55.0
Field Programs	\$21.1	\$25.2	\$24.4	\$24.7
Sci. Policy & Biotech.	\$0.9	\$1.7	\$1.6	\$1.8
<i>Science &amp; Technology (S&amp;T)</i>				
Registration	\$2.1	\$2.3	\$2.5	\$2.5
Reregistration	\$2.4	\$2.4	\$2.5	\$2.5
<i>State &amp; Tribal Assistance Grants(STAG)</i>				
Implementation Grants	\$13.2	\$13.0	\$12.9	\$13.1
Enforcement Grants	\$20.3	\$19.8	\$19.3	\$18.9
<b>Total</b>	<b>\$148.9</b>	<b>\$156.8</b>	<b>\$153.7</b>	<b>\$159.9</b>

**Source:** Prepared by the Congressional Research Service and based on information from House and Senate Appropriations Committee Reports, Conference Reports accompanying appropriations, and EPA Congressional Budget Justifications for FY2002-FY2006.

## **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 are to be completed by August 3, 2006, and all other reregistrations are to be completed by October 3, 2008.

**Registration Activities.** Among its initial efforts, 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. Also during FY2004, EPA 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 comprises representatives from individual registrant companies, pesticide trade associations, public interest groups, and Agency staff, and it continues to address process improvement questions.

The Agency reported the completion of 1,512 decisions out of 2,850 registration submissions subject to PRIA between March 2004 (the effective date for PRIA implementation) and the end of FY2005. More than 99% of the decisions were completed within the statutorily mandated decision review times, according to EPA.<sup>38</sup>

**Reregistration/Tolerance Reassessment Activities.** EPA has integrated reregistration and tolerance reassessment processes in an effort to 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 (IREL), or a Tolerance Reassessment Progress and [Interim] Risk Management Decision (TRED).<sup>39</sup>

EPA reported<sup>40</sup> that by the end of FY2005, it made reregistration decisions for 502 of the original 612 pesticide “cases,”<sup>41</sup> including 271 REDs and 231 canceled cases. EPA also reported the completion of 13 TREDs, 722 tolerance reassessment decisions, and the reassessment of 167 inert tolerance exemptions. More than 7,800 tolerance reassessments have been completed, and EPA expects that all 9,721 preexisting tolerances will be reassessed by the August 3, 2006 FQPA deadline. Of the 1,904 tolerances remaining, 528 have been individually assessed through IRELs. These interim assessments are also to be considered in a cumulative assessment before the reassessment is considered complete.

## 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 Congress, EPA, industry, and public interest groups. 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 notably, the PRIA provisions requiring specific decision process and schedule reforms, in conjunction with increasing fee revenues, are expected to lead to more timely completion of registration applications and reregistration reviews. Reforming

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<sup>38</sup> EPA, *Program Update-Registration*, presented to the Pesticide Program Dialogue Committee (PPDC), October 20, 2005. See [<http://www.epa.gov/pesticides/ppdc/>], visited December 5, 2005.

<sup>39</sup> For more detailed explanation of these decision documents, see EPA’s website [<http://www.epa.gov/pesticides/reregistration/definitions.htm>], visited December 9, 2005.

<sup>40</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/>], visited December 5, 2005.

<sup>41</sup> Related pesticide active ingredients are grouped into cases.

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 generally 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). 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>42</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>43</sup> However, as past experience shows, 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>42</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>43</sup> For examples of EPA advisory workgroups and committees for pesticide science and procedural issues, access [<http://www.epa.gov/pesticides/science/committees.htm>], visited December 9, 2005.