

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 within the United States. The Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a) requires the establishment of maximum limits (tolerances) for pesticide residues on food in interstate commerce. Although U.S. Treasury revenues cover most costs for administering these acts, fees paid by pesticide manufacturers and other registrants have supplemented EPA appropriations for many years.

The Pesticide Registration Improvement Renewal Act, or PRIA 2 (P.L. 110-94), enacted October 9, 2007, reauthorizes and revises fee provisions enacted on January 23, 2004. The authority to collect pesticide fees under the Pesticide Registration Improvement Act (PRIA 1), included in the Consolidated Appropriations Act of FY2004 (P.L. 108-199, Title V of Division G), would have expired at the end of FY2008. The 2004 PRIA amended FIFRA and modified the framework for collecting fees to enhance and accelerate the agency's pesticide licensing (registration) activities. In March 2007, EPA reported the completion of 2,663 decisions subject to PRIA since its enactment in 2004, including 1,347 decisions during FY2006. EPA also reported completing 9,637 (99.1%) of the 9,721 tolerance reassessments required by statute to be completed by August 2006. For FY2006, EPA reported expending \$10.8 million of the \$20.3 million received in the form of new registration fees in FY2006 (\$13.9 million) and carried forward from FY2005 (\$9.2 million). The balance of \$12.3 million was carried forward to FY2007.

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

Congress has prohibited EPA proposals to significantly increase revenues for these activities by modifying the fee structure and to include increased fee revenues in EPA budget proposals annually from FY1998 through FY2004. Since PRIA 1, the President's FY2005 through FY2008 budget requests also have included proposals to further increase pesticide fees, which also have been rejected by Congress.

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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. Enacted October 9, 2007, P.L. 110-94 — the Pesticide Registration Improvement Renewal Act (referred to as PRIA 2),¹ revises and reauthorizes the pesticide fee collection provisions 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.

In March 2007, EPA reported, as required,³ its FY2006 progress implementing PRIA. *Implementing the Pesticide Registration Improvement Act — Fiscal Year 2006* (hereafter referred to as EPA's FY2006 PRIA implementation report) provides information about the registration process, including the status of its registration and reregistration activities, as well as EPA's efforts to improve the processes. EPA reported the completion of 1,347 decisions subject to PRIA in FY2006, compared with 1,098 at the end of FY2005 and 208 decisions completed during FY2004. A FY2007 progress report is anticipated for March 2008.

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, FFDCA⁴ 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)⁵ 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.

³ Under § 33(k) of PRIA, EPA was required to publish an annual report describing actions taken under this section and is directed to include several elements. EPA released its inaugural progress report covering the period January 23, 2004, through September 30, 2004, in March 2005, and its second report covering FY2005 in March 2006. The FY2004, FY2005, and FY2006 reports are available at [<http://www.epa.gov/pesticides/fees/>].

⁴ FFDCA §§ 408 and 409.

⁵ The 1988 amendments to FIFRA (P.L. 100-532) define "re-registration" as re-evaluation of pesticides registered prior to 1984.

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.

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 the section “An Overview of Pesticide Fee Authorities” later in this report).

The current (and previous) Administration has proposed modifications to the fee structure to significantly increase revenues, primarily to obtain supplemental resources to support increased administrative costs associated with implementing the requirements of FQPA. Proposals generally focused on finalizing a 1999 EPA proposed rule⁸ to substantially revise tolerance fees and on a recommendation that Congress discontinue the legislative prohibition on pesticide registration fee authority⁹ promulgated in 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.

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.

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

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 specifically prohibits collection of *any* tolerance fees, and temporarily replaces (essentially prohibits) other fee authority through FY2008. Despite this prohibition, the Administration proposed similar additional tolerance fee and other pesticide fee revenues in the FY2005, FY2006, and FY2007 EPA President's budget requests. 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. The Administration's FY2008 budget again proposed to modify the fee structure. The Pesticide Registration Improvement Renewal Act or PRIA 2 (P.L. 110-94) enacted October 9, 2007, continues the prohibition of other fee authority through FY2012.

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

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 — amends and reauthorizes provisions of the Pesticide Registration Improvement Act of 2003 (P.L. 108-199),¹⁴ or PRIA 1. PRIA 1 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

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/opprd001/inerts/lists.html>].

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 (continued...)

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 these groups.¹⁷

PRIA 2 amends 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 extends 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

- extends existing authority to collect maintenance fees through FY2012;
- renews authority for EPA to collect "registration services fees," which would be phased out at the end of FY2014;
- continues the prohibition on the collection of any tolerance fees through FY2012;
- amends the authority for use of funds in the Reregistration and Expedited Processing Fund to include use for registration review;
- requires pesticide registrations to be reviewed every 15 years;¹⁸ and
- requires 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.

¹⁵ (...continued)

§4(i)(6), replacing §§33 and 34 (7 U.S.C. §36x and 136y) through 2010. Thus the legislation temporarily replaces registration fee authority codified in 1988 (Subpart U of CFR part 152), through 2010.

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/>].

¹⁸ PRIA 1 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).

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 reregistration 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 FFDCFA (§ 201(q)(1)), but not FIFRA. Therefore, EPA must make a determination regarding the establishment of tolerances for inert ingredients. PRIA 2 extends 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
- 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 extends this authority in a new FIFRA Section 33. These fees are expected to cover a portion of the cost for review and

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 ...”

²² *Ibid.*, footnote 12.

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 modifies 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

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.²⁵ 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

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. Guidance for registration service fee waivers and reductions is available at [<http://www.epa.gov/pesticides/fees/questions/waivers.htm>]; information regarding the fee reduction formula is available at [http://www.epa.gov/pesticides/fees/fee_reduction.htm]. The agency reported granting 336 of 379 waivers requested, at a reduction of \$5.8 million in registration service fees by the end of FY2006 (see EPA’s FY2006 PRIA implementation accomplishments report, available at [http://www.epa.gov/pesticides/fees/2006annual_report/pria_annual_report_2006.htm]).

²⁵ 7 U.S.C. §136w-8(c).

enhance scientific and regulatory activities for worker protection for FY2008 through FY2012. The 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 extends 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.²⁶ Further, PRIA 2 continues to stipulate that the authorization to collect and obligate registration fees must be provided in advance in appropriations acts.²⁷ EPA appropriations for FY2004 through FY2008 have met these requirements.²⁸

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.²⁹ 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 the heading “An Overview of Pesticide Fee Authorities”). Under PRIA 2, fee revenues to support tolerance assessments are 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 2014.³⁰ 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.

²⁶ FIFRA §33(d)(2) Assessment of Fees (7 U.S.C. §136w-8(d)(2)).

²⁷ FIFRA § 33(c)(4) Collections and Appropriations (7 U.S.C. §136w-8(c)(4)).

²⁸ 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).

²⁹ 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).

³⁰ 7 U.S.C. §136-1(i)(6).

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.³¹ The use of this fund has been expanded to include offsetting costs of “registration reviews under section 3(g).” Prior to this amendment, money in the fund was only to be used to offset the cost of reregistration and for the expedited review of inert ingredients.

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 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 reregistration and tolerance reassessment timeline requirements. A key provision of PRIA 1 in conjunction with the increased fee revenues was the requirement for EPA to identify reforms³² to the agency’s pesticide registration process with the intent of reducing the current decision review period. EPA released reports in March 2005 and March 2006, and its third report, *Implementing the Pesticide Registration Improvement Act — Fiscal Year 2006*, was released March 2007.³³ These reports summarized improvements and accomplishments for each of the fiscal years (see more detailed discussion under the heading “Pesticide Registration and Reregistration Activities Since the Enactment of PRIA”). The next report is expected to be published in March 2008.

An 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.

³¹ 7 U.S.C. §136a-1(k)(1).

³² 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.

³³ Each of the reports are available at [<http://www.epa.gov/pesticides/fees/>].

**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) 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 (§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.

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 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 pursuant to P.L. 108-199.
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 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 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 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.³⁴ At the time, § 408(o)³⁵ 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.

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.³⁶ 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.³⁷

Other Pesticide Fee Authority

In May 1988, prior to the 1988 FIFRA amendments, EPA promulgated a final pesticide registration fee regulation,³⁸ 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

³⁴ Pesticide Residue Amendment of 1954, P.L. No. 518, 21 U.S.C. §346(a).

³⁵ This authority currently resides in FFDCA § 408(m) (1996 FQPA).

³⁶ See CRS Report 96-759, *Pesticide Legislation: Food Quality Protection Act of 1996 (P.L. 104-170)*, by Linda-Jo Schierow.

³⁷ The FY2001 statutory aggregate level of \$14 million established by the 1988 FIFRA amendments was increased to \$17 million in FY2002 (P.L. 107-73) and to \$21.5 million in FY2003 (P.L. 108-10). The final Continuing Resolution for FY2004 (P.L. 108-135) extended the maintenance fee as authorized in FY2003 (see H.J.Res. 69, §118).

³⁸ 40 CFR 152(u) and 40 CFR 172.

challenged in court by the Chemical Specialties Manufacturers' Association,³⁹ 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.⁴⁰

Proposed Pesticide Fee Authority Modifications

In June 1999, EPA proposed a rule restructuring tolerance fees⁴¹ in an effort to cover the cost of establishing initial tolerances and tolerance reassessments, including tolerance activities for “other” ingredients (namely, inert ingredients⁴²). 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.⁴³

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.⁴⁴ As discussed earlier in this report, the PRIA 1 provisions

³⁹ *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.

⁴⁰ 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.

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

⁴² The 1996 FQPA clarified that “inert” ingredients are covered by the definition of a pesticide chemical under FFDCA § 201(q)(1).

⁴³ EPA Docket # OPPT-301151 and OPPT-301151B.

⁴⁴ 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.

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.⁴⁵ The 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,⁴⁶ 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.⁴⁷ 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.

⁴⁵ Executive Office of the President, Office of Management and Budget, *Major Savings and Reforms in the President's 2006 Budget*, available at [<http://www.whitehouse.gov/omb/budget/fy2006>].

⁴⁶ 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/>].

⁴⁷ See [http://www.epa.gov/oppsrrd1/registration_review/index.htm] for more information regarding EPA's Registration Review Program.

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.

Revenues from Pesticide Fees

Registration applications received on or after March 23, 2004, were subject to the new service fees under PRIA 1. In its *Pesticide Registration Improvement Act (PRIA) Implementation: 2004 Annual Report*, EPA indicated that it collected \$14.7 million in new registration “service,” and spent roughly \$5.0 million, during FY2004. The remaining 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.

According to EPA’s FY2006 PRIA progress report, the agency received a net total of \$13.9 million in new “registration service” fees in FY2006. The net total reflects subtracting \$0.73 in the form of refunds for overpayments and withdrawals of applications. EPA reported expending \$10.8 million of the \$23.1 million available during the fiscal year, which included \$9.2 million carried forward from FY2005. Again, the remaining balance of \$12.3 million is being carried forward to FY2007. Although the majority (54%) of the fee revenues expended in FY2006 were for payroll, the FY2006 payroll amount of \$5.8 million was less than the FY2005 level of \$7.9 million (71%). Contract expenditures, on the other hand, have increased from \$2.2 million (20% of fees expended) in FY2005 to \$4.0 million (37%) in FY2006.

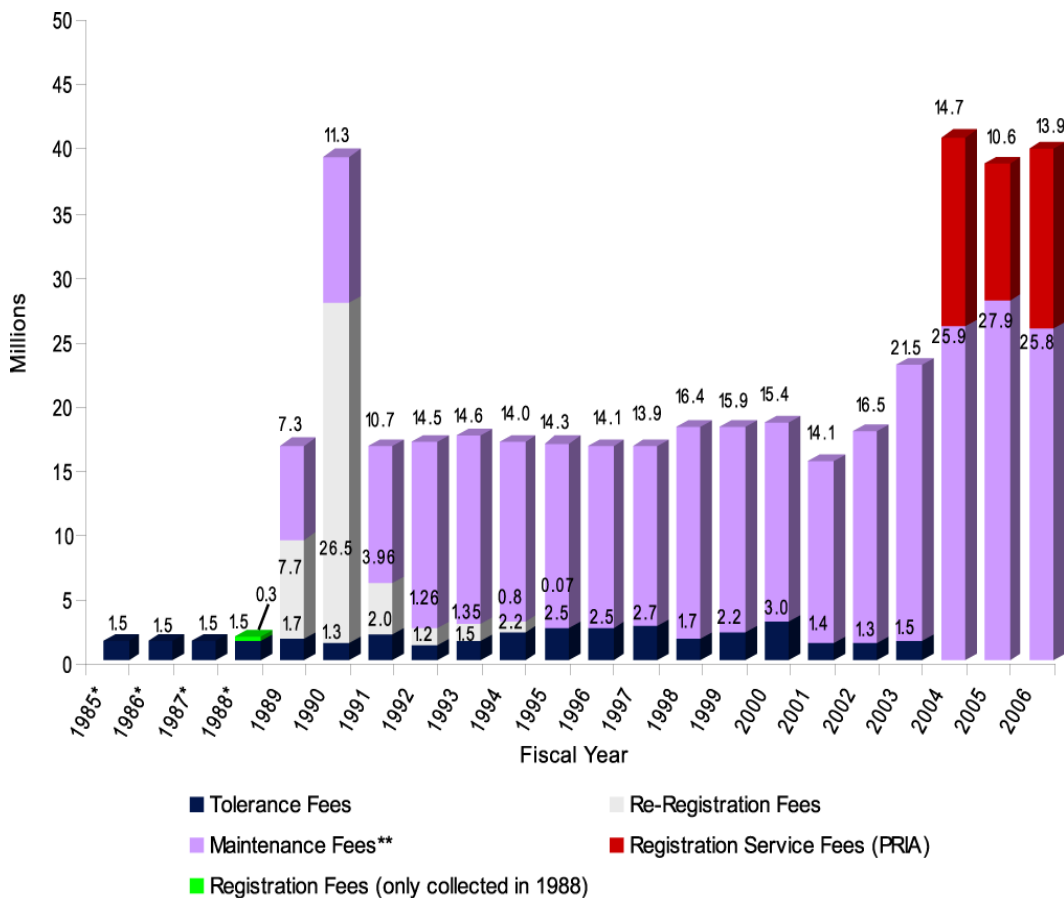
Prior to the enactment of PRIA, the FY2003 appropriations were supplemented by an estimated \$23.0 million in authorized fees, including \$21.5 million in maintenance fees and \$1.5 million in tolerance fees, primarily for establishing new tolerances. The annual tolerance fee collected from each applicant is based on the specific actions required to process a submitted application and varies depending on the number and type of petitions received by the agency in a given year. The amounts have been adjusted over time, based on an inflation calculation defined in statute.⁴⁸ For the 20 years prior to the enactment of PRIA, annual tolerance fees collected by EPA averaged about \$1.8 million. The amount of pesticides fees collected over the years varied, depending on the statutory authority at the time.

⁴⁸ 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).

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

Figure 1 below provides a graphic illustration of the amount of tolerance fees, registration fees (only collected for a short period during FY1998), reregistration fees, maintenance fees, and registration service fees collected during FY1985 through FY2006, 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-FY2006



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 and FY2006.

EPA reported collection of \$25.9 million in maintenance fees in FY2004, \$27.9 million in FY2005, and \$25.8 million in FY2006. EPA initiated collection of maintenance fees at the beginning of FY2004 under preexisting authority, prior to the reauthorization provisions included in PRIA. The annual maintenance fee amount collected per registration is set in statute, dependent on the number of registrations held by a registrant. The fee amount is subject to adjustment by EPA, based on the annual aggregate limit, also established by statute. The initial 1988 authorization (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 reauthorized in annual appropriations. Prior to PRIA, the annual aggregate limit was increased to \$17 million in FY2002 (P.L. 107-73) and to \$21.5 million in FY2003 (P.L. 108-7) and FY2004 (continuing resolution P.L. 108-135, through January 31, 2004).

As discussed earlier in this report, PRIA 1 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.

Pesticide Program Appropriated Funds

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.⁴⁹ This condition has been met for each of the subsequent fiscal years through FY2008.

In recent fiscal years, appropriated funding for EPA's pesticide program activities was allocated within three of the eight EPA appropriations accounts: Science and Technology (S&T), Environmental Programs and Management (EPM),

⁴⁹ 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.

and State and Tribal Assistance Grants (STAG). **Table 2** shows enacted appropriations for FY2003 through FY2007.⁵⁰ The line item program activities within the three appropriations accounts presented in the table are as reported in Appropriations Committee reports and EPA fiscal year congressional budget justifications.

Table 2. EPA Appropriations for Pesticide Program Activities, FY2003-FY2007 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.

⁵⁰ 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. P.L. 110-5 included no such specifications for EPA's pesticide program activities.

Pesticide Registration and Reregistration Activities Since the Enactment of PRIA

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

PRIA 1 modified FIFRA with regard to completion deadlines for reregistration.⁵¹ 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 continued its efforts to complete the remaining 84 tolerance reassessment decisions during FY2007.

A key provision of PRIA 1, in conjunction with the increased fee revenues, was the requirement for EPA to identify reforms⁵² to its pesticide registration process with the intent of reducing the current decision review period. EPA has reported implementation of a number of process improvements to monitor workload and ensure that PRIA due dates are met. In its three PRIA implementation annual reports, released in March 2005, March 2006, and March 2007, EPA described these process improvements and its other efforts and accomplishments for each of the fiscal years FY2004 through FY2006. EPA released 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, 2004.⁵³ The agency's second PRIA progress report covering the entire FY2005 was released in March 2006, and its third report, *Implementing the Pesticide Registration Improvement Act — Fiscal Year 2006*, was released March 2007.⁵⁴

⁵¹ 7 U.S.C. §36a-1(g)(2)(A).

⁵² 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.

⁵³ EPA, *First Annual Report on EPA Actions Implementing the Pesticide Registration Improvement Act — Fiscal Year 2004*, March 1, 2005, available at [http://www.epa.gov/pesticides/fees/2004annual_report/pria_annual_report_2004.htm].

⁵⁴ The reports are available at [<http://www.epa.gov/pesticides/fees/>].

Registration Activities

As discussed earlier in this report, EPA reported the completion of 2,663 decisions subject to PRIA between March 2004 (the effective date for PRIA implementation) and the end of FY2006. 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.⁵⁵

EPA also reported the expenditure of \$750,100 in fees collected for the worker protection program activities in FY2006, similar to the FY2005 level. Activities included continued interaction with stakeholder groups, enhancement of safe practices and pesticide risk recognition training for workers and health-care providers, and expansion of occupational illness and injury surveillance. 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 work protection but increased the minimum to not less than \$1 million.⁵⁶

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 FY2006 and FY2007, and to refine those initiated during FY2004 and FY2005. Slightly less than 100% of the registration and tolerance decisions were completed within the statutorily mandated decision review times, according to EPA.

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

⁵⁵ 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 (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.

⁵⁶ 7 U.S.C. 138w-8(c)(3)(B).

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).⁵⁷

EPA reported⁵⁸ that by the end of FY2006, it made reregistration decisions for 559 of the original 613 pesticide “cases,”⁵⁹ including 330 REDs and 229 canceled cases. The agency must complete 54 more REDs to meet complete reregistration by the end of FY2008. On August 3, 2006 (the statutory deadline),⁶⁰ EPA announced it had completed reassessment of 9,637 (99.1%) of the 9,721 preexisting tolerances.⁶¹ According to EPA, the reassessments resulted in the revocation of 3,200 food tolerances, the modification of 1,200 tolerances, and the retention of the remaining 5,237 tolerances. The remaining 84 tolerance reassessment decisions are for five carbamate pesticides: aldicarb, oxamly, carbaryl, formetanate and carbofuran. With the exception of aldicarb (23 tolerance decisions), individual tolerance reviews have been completed for the other four pesticides (61 tolerance decisions combined). A cumulative tolerance assessment of all five pesticides is required but cannot be conducted until individual tolerances for aldicarb have been completed.

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 remains 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.

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 increasing 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

⁵⁷ For more detailed explanation of these decision documents, see [<http://www.epa.gov/pesticides/reregistration/index.htm>].

⁵⁸ See [http://www.epa.gov/oppsrrd1/reregistration/reregistration_facts.htm].

⁵⁹ Related pesticide active ingredients are grouped into cases; the 613 cases encompass approximately 1,150 pesticide active ingredients.

⁶⁰ 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).

⁶¹ EPA, *Accomplishments under the Food Quality Protection Act (FQPA)*, August 3, 2006, at [http://www.epa.gov/pesticides/regulating/laws/fqpa/fqpa_accomplishments.htm].

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 standards⁶² 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.⁶³ 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.

⁶² 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)*).

⁶³ Examples of EPA advisory workgroups and committees for pesticide science and procedural issues are available at [<http://www.epa.gov/pesticides/science/committees.htm>].