

SEC. 33. ø7 U.S.C. 136w-8; PESTICIDE REGISTRATION SERVICE FEES.

(a) DEFINITION OF COSTS.—In this section, the term “costs”, when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means—

(1) costs to the extent that—

(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;

(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and

(C) advisory committees and other accredited persons

or organizations, on the request of the Administrator, en-

gage in the peer review of risk or benefits information asso-

ciated with covered pesticide applications;

(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and

(3) costs of collecting registration service fees under sub-sections (b) and (c) and reporting, auditing, and accounting under this section. (b) FEES.—

(1) IN GENERAL.—Effective beginning on the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall assess and collect covered pesticide registration service fees in accordance with this section.

(2) COVERED PESTICIDE REGISTRATION APPLICATIONS.—

(A) IN GENERAL.—An application for the registration of a pesticide covered by this Act that is received by the Administrator on or after the effective date of the Pesticide Registration Improvement Act of 2003 shall be subject to a registration service fee under this section.

(B) EXISTING APPLICATIONS.—

(i) IN GENERAL.—Subject to clause (ii), an application for the registration of a pesticide that was submitted to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003 and is pending on that effective date shall be subject to a service fee under this section if the application is for the registration of a new active ingredient that is not listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

(ii) TOLERANCE OR EXEMPTION FEES.—The amount of any fee otherwise payable for an application described in clause (i) under this section shall be reduced by the amount of any fees paid to support the related petition for a pesticide tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

- (C) DOCUMENTATION.—An application subject to a registration service fee under this section shall be submitted with documentation certifying—
- (i) payment of the registration service fee; or (ii) a request for a waiver from or reduction of the registration service fee. (3) SCHEDULE OF COVERED APPLICATIONS AND REGISTRATION SERVICE FEES.—
- (A) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of covered pesticide registration applications and corresponding registration service fees.
- (B) REPORT.—Subject to paragraph (6), the schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003. (4) PENDING PESTICIDE REGISTRATION APPLICATIONS.—
- (A) IN GENERAL.—An applicant that submitted a registration application to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003, but that is not required to pay a registration service fee under paragraph (2)(B), may, on a voluntary basis, pay a registration service fee in accordance with paragraph (2)(B).
- (B) VOLUNTARY FEE.—The Administrator may not compel payment of a registration service fee for an application described in subparagraph (A).
- (C) DOCUMENTATION.—An application for which a voluntary registration service fee is paid under this paragraph shall be submitted with documentation certifying—
- (i) payment of the registration service fee; or
- (ii) a request for a waiver from or reduction of the registration service fee.
- (5) RESUBMISSION OF PESTICIDE REGISTRATION APPLICATIONS.—If a pesticide registration application is submitted by a

person that paid the fee for the application under paragraph (2), is determined by the Administrator to be complete, and is not approved or is withdrawn (without a waiver or refund), the submission of the same pesticide registration application by the same person (or a licensee, assignee, or successor of the person) shall not be subject to a fee under paragraph (2).

(6) FEE ADJUSTMENT.—Effective for a covered pesticide registration application received on or after October 1, 2005, the Administrator shall—

(A) increase by 5 percent the service fee payable for

the application under paragraph (3); and

(B) publish in the Federal Register the revised registration service fee schedule. (7) WAIVERS AND REDUCTIONS.—

(A) IN GENERAL.—An applicant for a covered pesticide registration may request the Administrator to waive or reduce the amount of a registration service fee payable under this section under the circumstances described in subparagraphs (D) through (G).

(B) DOCUMENTATION.—

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(i) IN GENERAL.—A request for a waiver from or reduction of the registration service fee shall be accompanied by appropriate documentation demonstrating the basis for the waiver or reduction.

(ii) CERTIFICATION.—The applicant shall provide to the Administrator a written certification, signed by a responsible officer, that the documentation submitted to support the waiver or reduction request is accurate.

(iii) INACCURATE DOCUMENTATION.—An application shall be subject to the applicable registration service fee payable under paragraph (3) if, at any time, the Administrator determines that—

(I) the documentation supporting the waiver

or reduction request is not accurate; or

(II) based on the documentation or any other

information, the waiver or reduction should not

have been granted or should not be granted.

(C) DETERMINATION TO GRANT OR DENY REQUEST.—As soon as practicable, but not later than 60 days, after the date on which the Administrator receives a request for a waiver or reduction of a registration service fee under this paragraph, the Administrator shall—

(i) determine whether to grant or deny the request; and

(ii) notify the applicant of the determination.

(D) MINOR USES.—

(i) IN GENERAL.—The Administrator may waive or reduce a registration service fee for an application for minor uses for a pesticide.

(ii) SUPPORTING DOCUMENTATION.—An applicant requesting a waiver under this subparagraph shall

provide supporting documentation that demonstrates,

to the satisfaction of the Administrator, that anticipated revenues from the uses that are the subject of

the application would be insufficient to justify imposition of the full application fee.

(E) IR-4 WAIVER.—The Administrator shall waive the registration service fee for an application if the Administrator determines that—

(i) the application is solely associated with a tolerance

petition submitted in connection with the Inter-

Regional Project Number 4 (IR-4) as described in section

2 of Public Law 89-106 (7 U.S.C. 450i(e)); and

(ii) the waiver is in the public interest. (F) SMALL BUSINESSES.—

(i) IN GENERAL.—The Administrator shall waive 50 percent of the registration service fees payable by an entity for a covered pesticide registration application under this section if the

entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application.

(ii) **WAIVER OF FEES.**—The Administrator shall waive all of the registration service fees payable by an entity under this section if the entity—

(I) is a small business (as defined in section

(II) has average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed \$10,000,000, at the time of application. (iii) **FORMATION FOR WAIVER.**—The Administrator shall not grant a waiver under this subparagraph if the Administrator determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver.

(iv) **DOCUMENTATION.**—An entity requesting a waiver under this subparagraph shall provide to the Administrator—

(I) documentation demonstrating that the entity

is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

(II) if the entity is requesting a waiver of all

registration service fees payable under this section,

documentation demonstrating that the entity

has an average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not

exceed \$10,000,000, at the time of application.

(G) **FEDERAL AND STATE AGENCY EXEMPTIONS.**—An agency of the Federal Government or a State government shall be exempt from covered registration service fees under this section. (8) **REFUNDS.**—

(A) **EARLY WITHDRAWALS.**—If, during the first 60 days after the beginning of the applicable decision time review period under subsection (f)(3), a covered pesticide registration application is withdrawn by the applicant, the Administrator shall refund all but 10 percent of the total registration service fee payable under paragraph (3) for the application.

(B) **WITHDRAWALS AFTER THE FIRST 60 DAYS OF DECISION REVIEW TIME PERIOD.**—

(i) IN GENERAL.—If a covered pesticide registration application is withdrawn after the first 60 days of the applicable decision time review period, the Administrator shall determine what portion, if any, of the total registration service fee payable under paragraph (3) for the application may be refunded based on the proportion of the work completed at the time of withdrawal.

(ii) TIMING.—The Administrator shall—

(I) make the determination described in clause

(i) not later than 90 days after the date the application is withdrawn; and

(II) provide any refund as soon as practicable after the determination. (C) DISCRETIONARY REFUNDS.

—
(i) IN GENERAL.—In the case of a pesticide registration application that has been filed with the Administrator and has not been withdrawn by the applicant, but for which the Administrator has not yet made a final determination, the Administrator may refund a portion of a covered registration service fee if the Administrator

Administrator determines that the refund is justified. January 23, 2004 **Sec. 33**
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(ii) BASIS.—The Administrator may provide a re-fund for an application under this subparagraph—

(I) on the basis that, in reviewing the applica

tion, the Administrator has considered data sub

mitted in support of another pesticide registration

application; or

(II) on the basis that the Administrator com

pleted portions of the review of the application be-

fore the effective date of this section.

(D) CREDITED FEES.—In determining whether to grant

a refund under this paragraph, the Administrator shall take into account any portion of the registration service

fees credited under paragraph (2)

or (4). (c) PESTICIDE REGISTRATION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a Pesticide Registration Fund to be used in carrying out this section (referred to in this section as the “Fund”), consisting of—

(A) such amounts as are deposited in the Fund under

paragraph (2);

(B) any interest earned on investment of amounts in

the Fund under paragraph (4); and

(C) any proceeds from the sale or redemption of invest

ments held in the Fund.

(2) DEPOSITS IN FUND.—Subject to paragraph (4), the Administrator shall deposit fees collected under this

section in the Fund. (3) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C)

and paragraph (4), the Administrator may make expenditures from the Fund—

(i) to cover the costs associated with the review

and decisionmaking pertaining to all applications for

which registration service fees have been paid under

this section; and

(ii) to otherwise carry out this section.

(B) WORKER PROTECTION.—For each of fiscal years 2004 through 2008, the Administrator shall use approximately $\frac{1}{17}$ of the amount in the Fund (but not more than \$1,000,000, and not less than \$750,000, for any fiscal year) to enhance current scientific and regulatory activities related to worker protection.

(C) NEW INERT INGREDIENTS.—For each of fiscal years 2004 and 2005, the Administrator shall use approximately

$\frac{1}{34}$ of the amount in the Fund (but not to exceed \$500,000

for any fiscal year) for the review and evaluation of new

inert ingredients.

(4) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section and amounts deposited in the Fund—

(A) shall be collected and made available for obligation

only to the extent provided in advance in appropriations

Acts; and

(B) shall be available without fiscal year limitation.

(5) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this section shall be—

(A) maintained readily available or on deposit; January 23, 2004 **101 FIFRA**
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(B) invested in obligations of the United States or guaranteed by the United States; or

(C) invested in obligations, participations, or other in
instruments that are lawful investments for fiduciary, trust,
or public funds. (d)

ASSESSMENT OF FEES.—

(1) **DEFINITION OF COVERED FUNCTIONS.—**In this sub-section, the term “covered functions” means functions of the Office of Pesticide Programs of the Environmental Protection Agency, as identified in key programs and projects of the final operating plan for the Environmental Protection Agency submitted as part of the budget process for fiscal year 2002, regardless of any subsequent transfer of 1 or more of the functions to another office or agency or the subsequent transfer of a new function to the Office of Pesticide Programs.

(2) **MINIMUM AMOUNT OF APPROPRIATIONS.—**For fiscal years 2004, 2005, and 2006 only, registration service fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

(3) **USE OF FEES.—**Registration service fees authorized by this section shall be available, in the aggregate, only to defray increases in the costs associated with the review and decision-making for the review of pesticide registration applications and associated tolerances (including increases in the number of full-time equivalent positions in the Environmental Protection Agency engaged in those activities) over the costs for fiscal year 2002, excluding costs paid from fees appropriated for the fiscal year.

(4) **COMPLIANCE.—**The requirements of paragraph (2) shall have been considered to have been met for any

fiscal year if the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) is not more than 3 percent below the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

(5) SUBSEQUENT AUTHORITY.—If the Administrator does not

assess registration service fees under subsection (b) during any

portion of a fiscal year as the result of paragraph (2) and is

subsequently permitted to assess the fees under subsection (b)

during the fiscal year, the Administrator shall assess and col

lect the fees, without any modification in rate, at any time dur

ing the fiscal year, notwithstanding any provisions of subsection (b) relating to the date fees are to be paid.

(e) REFORMS TO REDUCE DECISION TIME REVIEW PERIODS.—To

the maximum extent practicable consistent with the degrees of risk

presented by pesticides and the type of review appropriate to evalu

ate risks, the Administrator shall identify and evaluate

reforms to January 23, 2004

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the pesticide registration process under this Act with the goal of reducing decision review periods in effect on the effective date of the Pesticide Registration Improvement Act of 2003 for pesticide registration actions for covered pesticide registration applications (including reduced risk applications).

(f) DECISION TIME REVIEW PERIODS.—

(1) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of decision review periods for covered pesticide registration actions and corresponding registration service fees under this Act.

(2) REPORT.—The schedule shall be the same as the applicable schedule appearing in the Congressional

Record on pages S11631 through S11633, dated September 17, 2003.

(3) APPLICATIONS SUBJECT TO DECISION TIME REVIEW PERIODS.— The decision time review periods specified in paragraph (1) shall apply to—

- (A) covered pesticide registration applications subject to registration service fees under subsection (b)(2);
 - (B) covered pesticide registration applications for which an applicant has voluntarily paid registration service fees under subsection (b)(4); and
 - (C) covered pesticide registration applications listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.
- (4) START OF DECISION TIME REVIEW PERIOD.—

(A) IN GENERAL.—Except as provided in subparagraphs (C), (D), and (E), in the case of a pesticide registration application accompanied by the registration service fee required under this section, the decision time review period begins 21 days after the date on which the Administrator receives the covered pesticide registration application.

(B) COMPLETENESS OF APPLICATION.—In conducting an initial screening of an application, the Administrator shall determine—

- (i) whether—
 - (I) the applicable registration service fee has been paid; or
 - (II) the application contains a waiver or re-fund request; and
 - (ii) whether the application—
 - (I) contains all necessary forms, data, draft labeling, and, documentation certifying payment of any registration service fee required under this section; or
 - (II) establishes a basis for any requested waiver or reduction.
- (C) APPLICATIONS WITH WAIVER OR REDUCTION REQUESTS.—

(i) IN GENERAL.—In the case of an application sub

mitted with a request for a waiver or reduction of
reg
istration service fees under subsection (b)(7), the
deci
sion time review period shall be determined in
accord

ance with this subparagraph. January 23, 2004 **103 FIFRA Sec. 33**

(ii) REQUEST GRANTED WITH NO ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request and no additional fee is required, the decision time review period begins on the earlier of—

(I) the date on which the Administrator grants the request; or

(II) the date that is 60 days after the date of

receipt of the application.

(iii) REQUEST GRANTED WITH ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request, in whole or in part, but an additional registration service fee is required, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

(iv) REQUEST DENIED.—If the Administrator denies the waiver or reduction request, the decision time re-view period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee. (D) PENDING APPLICATIONS.—

(i) IN GENERAL.—The start of the decision time re-view period for applications described in clause (ii) shall be the date on which the Administrator receives certification of payment of the applicable registration service fee.

(ii) APPLICATIONS.—Clause (i) applies to—

(I) covered pesticide registration applications for which voluntary fees have been paid under subsection (b)(4); and

(II) covered pesticide registration applications

received on or after the effective date of the Pesticide

Registration Improvement Act of 2003 but

submitted without the applicable registration service

ice fee required under this section due to the inability of the Administrator to assess fees under subsection (d)(1).

(E) 2003 WORK PLAN.—In the case of a covered pesticide registration application listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency, the decision time review period begins on the date that is 30 days after the effective date of the Pesticide Registration Improvement Act of 2003.

(5) EXTENSION OF DECISION TIME REVIEW PERIOD.—The Administrator and the applicant may mutually agree in writing to extend a decision time review period under this subsection. (g) JUDICIAL REVIEW.—

(1) IN GENERAL.—Any applicant adversely affected by the failure of the Administrator to make a determination on the application of the applicant for registration of a new active ingredient or new use for which a registration service fee is paid under this section may obtain judicial review of the failure solely under this section.

(2) SCOPE.—

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(A) IN GENERAL.—In an action brought under this subsection, the only issue on review is whether the Administrator failed to make a determination on the application specified in paragraph (1) by the end of the applicable decision time review period required under subsection (f) for the application.

(B) OTHER ACTIONS.—No other action authorized or required under this section shall be judicially reviewable by a Federal or State court. (3) TIMING.—

(A) IN GENERAL.—A person may not obtain judicial review of the failure of the Administrator to make a determination on the application specified in paragraph (1) before the expiration of the 2-year period that begins on the date on which the decision time review period for the application ends.

(B) MEETING WITH ADMINISTRATOR.—To be eligible to seek judicial review under this subsection, a person seeking the review shall first request in writing, at least 120 days before filing the complaint for judicial review, a decision review meeting with the Administrator.

(4) REMEDIES.—The Administrator may not be required or permitted to refund any portion of a registration service fee paid in response to a complaint that the Administrator has failed to make a determination on the covered pesticide registration application specified in paragraph (1) by the end of the applicable decision review period. (h) ACCOUNTING.—The Administrator shall—

(1) provide an annual accounting of the registration service fees paid to the Administrator and disbursed from the Fund, by providing financial statements in accordance with—

(A) the Chief Financial Officers Act of 1990 (Public Law 101-576; 104 Stat. 2838) and amendments made by that Act; and

(B) the Government Management Reform Act of 1994 (Public Law 103-356; 108 Stat. 3410) and amendments made by that Act;

(2) provide an accounting describing expenditures from the Fund authorized under subsection (c); and

(3) provide an annual accounting describing collections and expenditures authorized under subsection (d). (i) AUDITING.—

(1) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

(2) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this section shall include an analysis of—

(A) the fees collected under subsection (b) and disbursed;

(B) compliance with subsection (f);

(C) the amount appropriated to meet the requirements of subsection (d)(1); and

(D) the reasonableness of the allocation of the overhead allocation of costs associated with the review and decisionmaking pertaining to applications under this section. January 23, 2004

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(3) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall— (A) conduct the annual audit required under this sub-section; and (B) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

(j) PERSONNEL LEVELS.—All full-time equivalent positions supported by fees authorized and collected under this section shall not be counted against the agency-wide personnel level goals of the Environmental Protection Agency.

(k) REPORTS.—

(1) IN GENERAL.—Not later than March 1, 2005, and each March 1 thereafter through March 1, 2009, the Administrator shall publish an annual report describing actions taken under this section.

(2) CONTENTS.—The report shall include—

(A) a review of the progress made in carrying out each

requirement of subsections (e) and (f), including—

(i) the number of applications reviewed, including

the decision times for each application specified in sub-

section (f);

(ii) the number of actions pending in each category of actions described in subsection (f)(3), as well as the number of inert ingredients;

(iii) to the extent determined appropriate by the Administrator and consistent with the authorities of the Administrator and limitations on delegation of functions by the Administrator, recommendations for—

(I) expanding the use of self-certification in all

appropriate areas of the registration process;

(II) providing for accreditation of outside re-viewers and the use of outside reviewers to conduct the review of major portions of applications; and

(III) reviewing the scope of use of the notification process to cover broader categories of registration actions; and

(iv) the use of performance-based contracts, other contracts, and procurement to ensure that — (I) the goals of this Act for the timely review of applications for registration are met; and

(II) the registration program is administered

in the most productive and cost effective manner

practicable;

(B) a description of the staffing and resources relating to the costs associated with the review and decisionmaking pertaining to applications; and

(C) a review of the progress in meeting the timeline re

quirements of section 4(g).

(3) METHOD.—The Administrator shall publish a report re

quired by this subsection by such method as the Administrator

determines to be the most effective for efficiently disseminating

the report, including publication of the report on the Internet

(l) SAVINGS CLAUSE.—Nothing in this section affects any other duties, obligations, or authorities established by any other section of this Act, including the right to judicial review of duties, obligations, or authorities established by any other section of this Act.

(m) TERMINATION OF EFFECTIVENESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the authority provided by this section terminates on September 30, 2008.

(2) PHASE OUT.—

(A) FISCAL YEAR 2009.—During fiscal year 2009, the requirement to pay and collect registration service fees applies, except that the level of registration service fees pay-able under this section shall be reduced 40 percent below the level in effect on September 30, 2008.

(B) FISCAL YEAR 2010.—During fiscal year 2010, the requirement to pay and collect registration service fees applies, except that the level of registration service fees pay-able under this section shall be reduced 70 percent below the level in effect on September 30, 2008.

(C) SEPTEMBER 30, 2010.—Effective September 30, 2010, the requirement to pay and collect registration service fees terminates.

(D) DECISION REVIEW PERIODS.—

(i) PENDING APPLICATIONS.—In the case of an application received under this section before September 30, 2008, the application shall be reviewed in accordance with subsection (f).

(ii) NEW APPLICATIONS.—In the case of an application received under this section on or after September 30, 2008, subsection (f) shall not apply to the application.