

108TH CONGRESS
1ST SESSION

S. 1664

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to provide for the enhanced review of covered pesticide products, to authorize fees for certain pesticide products, and to extend and improve the collection of maintenance fees.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2003

Mr. COCHRAN (for himself, Mr. HARKIN, Mr. ROBERTS, Mr. CRAIG, Mr. CRAPO, Mr. CHAMBLISS, Mr. MILLER, Mr. COLEMAN, Mr. NELSON of Nebraska, Mr. KOHL, Mr. TALENT, Mr. LUGAR, Mr. CONRAD, Ms. LANDRIEU, and Mr. BREAUX) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to provide for the enhanced review of covered pesticide products, to authorize fees for certain pesticide products, and to extend and improve the collection of maintenance fees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PESTICIDE REGISTRATION.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pesticide Registration Improvement Act of 2003”.

1 (b) REGISTRATION REQUIREMENTS FOR ANTI-
 2 MICROBIAL PESTICIDES.—Section 3(h) of the Federal In-
 3 secticide, Fungicide, and Rodenticide Act (7 U.S.C.
 4 136a(h)) is amended—

5 (1) in paragraph (2)(F), by striking “90 to 180
 6 days” and inserting “120 days”; and

7 (2) in paragraph (3)—

8 (A) in subparagraph (D)(vi), by striking
 9 “240 days” and inserting “120 days”; and

10 (B) in subparagraph (F), by adding at the
 11 end the following:

12 “(iv) LIMITATION.—Notwithstanding
 13 clause (ii), the failure of the Administrator
 14 to notify an applicant for an amendment to
 15 a registration for an antimicrobial pesticide
 16 shall not be judicially reviewable in a Fed-
 17 eral or State court if the amendment re-
 18 quires scientific review of data within—

19 “(I) the time period specified in
 20 subparagraph (D)(vi), in the absence
 21 of a final regulation under subpara-
 22 graph (B); or

23 “(II) the time period specified in
 24 paragraph (2)(F), if adopted in a

1 final regulation under subparagraph
 2 (B).”.

3 (c) MAINTENANCE FEES.—

4 (1) AMOUNTS FOR REGISTRANTS.—Section
 5 4(i)(5) of the Federal Insecticide, Fungicide, and
 6 Rodenticide Act (7 U.S.C. 136a–1(i)(5)) is amend-
 7 ed—

8 (A) in subparagraph (A)—

9 (i) by striking “(A) Subject” and in-
 10 serting the following:

11 “(A) IN GENERAL.—Subject”; and

12 (ii) by striking “of—” and all that
 13 follows through “additional registration”
 14 and inserting “for each registration”;

15 (B) in subparagraph (D)—

16 (i) by striking “(D) The” and insert-
 17 ing the following:

18 “(D) MAXIMUM AMOUNT OF FEES FOR
 19 REGISTRANTS.—The”;

20 (ii) in clause (i), by striking “shall be
 21 \$55,000; and” and inserting “shall be—

22 “(I) for fiscal year 2004, \$84,000;

23 “(II) for each of fiscal years 2005 and
 24 2006, \$87,000;

1 “(III) for fiscal year 2007, \$68,000;

2 and

3 “(IV) for fiscal year 2008, \$55,000;

4 and”; and

5 (iii) in clause (ii), by striking “shall
6 be \$95,000.” and inserting “shall be—

7 “(I) for fiscal year 2004, \$145,000;

8 “(II) for each of fiscal years 2005 and
9 2006, \$151,000;

10 “(III) for fiscal year 2007, \$117,000;

11 and

12 “(IV) for fiscal year 2008, \$95,000.”;

13 and

14 (C) in subparagraph (E)—

15 (i) by striking “(E)(i) For” and in-
16 serting the following:

17 “(E) MAXIMUM AMOUNT OF FEES FOR
18 SMALL BUSINESSES.—

19 “(i) IN GENERAL.—For”;

20 (ii) by indenting the margins of sub-
21 clauses (I) and (II) of clause (i) appro-
22 priately; and

23 (iii) in clause (i)—

1 (I) subclause (I), by striking
 2 “shall be \$38,500; and” and inserting
 3 “shall be—

4 “(aa) for fiscal year 2004,
 5 \$59,000;

6 “(bb) for each of fiscal years
 7 2005 and 2006, \$61,000;

8 “(cc) for fiscal year 2007,
 9 \$48,000; and

10 “(dd) for fiscal year 2008,
 11 \$38,500; and”; and

12 (II) in subclause (II), by striking
 13 “shall be \$66,500.” and inserting
 14 “shall be—

15 “(aa) for fiscal year 2004,
 16 \$102,000;

17 “(bb) for each of fiscal years
 18 2005 and 2006, \$106,000;

19 “(cc) for fiscal year 2007,
 20 \$82,000; and

21 “(dd) for fiscal year 2008,
 22 \$66,500.”.

23 (2) TOTAL AMOUNT OF FEES.—Section
 24 4(i)(5)(C) of the Federal Insecticide, Fungicide, and

Rodenticide Act (7 U.S.C. 136(a)–1(i)(5)(C)) is amended—

(A) by striking “(C)(i) The” and inserting the following:

“(C) TOTAL AMOUNT OF FEES.—The”;

and

(B) by striking “aggregate amount” and all that follows through clause (ii) and inserting “aggregate amount of—

“(i) for fiscal year 2004, \$26,000,000;

“(ii) for fiscal year 2005, \$27,000,000;

“(iii) for fiscal year 2006, \$27,000,000;

“(iv) for fiscal year 2007, \$21,000,000; and

“(v) for fiscal year 2008, \$15,000,000.”.

(3) DEFINITION OF SMALL BUSINESS.—Section 4(i)(5)(E)(ii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(E)(ii)) is amended—

(A) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively, and indenting the margins appropriately;

(B) by striking “(ii) For purposes of” and inserting the following:

“(ii) DEFINITION OF SMALL BUSINESS.—

“(I) IN GENERAL.—In”;

(C) in item (aa) (as so redesignated), by striking “150” and inserting “500”;

(D) in item (bb) (as so redesignated), by striking “gross revenue from chemicals that did not exceed \$40,000,000.” and inserting “global gross revenue from pesticides that did not exceed \$60,000,000.”; and

(E) by adding at the end the following:

“(II) AFFILIATES.—

“(aa) IN GENERAL.—In the case of a business entity with 1 or more affiliates, the gross revenue limit under subclause (I)(bb) shall apply to the gross revenue for the entity and all of the affiliates of the entity, including parents and subsidiaries, if applicable.

“(bb) AFFILIATED PERSONS.—For the purpose of item

(aa), persons are affiliates of each other if, directly or indirectly, either person controls or has the power to control the other person, or a third person controls or has the power to control both persons.

“(cc) INDICIA OF CONTROL.—For the purpose of item (aa), indicia of control include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.”.

(4) EXTENSION OF AUTHORITY FOR COLLECTING MAINTENANCE FEES.—Section 4(i)(5)(H) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(H)) is amended by striking “2003” and inserting “2008”.

(5) REREGISTRATION AND OTHER ACTIVITIES.—Section 4(g)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136a–1(g)(2)) is amended—

(A) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—The Administrator shall make a determination as to eligibility for reregistration—

“(i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)); and

“(ii) for all other active ingredients subject to reregistration under this section, not later than October 3, 2008.”;

(B) in subparagraph (B)—

(i) by striking “(B) Before” and inserting the following:

“(B) PRODUCT-SPECIFIC DATA.—

“(i) IN GENERAL.—Before”;

(ii) by striking “The Administrator” and inserting the following:

“(ii) TIMING.—

1 “(I) IN GENERAL.—Subject to
 2 subclause (II), the Administrator”;
 3 and
 4 (iii) by adding at the end the fol-
 5 lowing:

6 “(II) EXTRAORDINARY CIR-
 7 CUMSTANCES.—In the case of extraor-
 8 dinary circumstances, the Adminis-
 9 trator may provide such a longer pe-
 10 riod, of not more than 2 additional
 11 years, for submission of data to the
 12 Administrator under this subpara-
 13 graph.”; and

14 (C) in subparagraph (D)—

15 (i) by striking “(D) If” and inserting
 16 the following:

17 “(D) DETERMINATION TO NOT REREG-
 18 ISTER.—

19 “(i) IN GENERAL.—If”; and

20 (ii) by adding at the end the fol-
 21 lowing:

22 “(ii) TIMING FOR REGULATORY AC-
 23 TION.—Regulatory action under clause (i)
 24 shall be completed as expeditiously as pos-
 25 sible.”.

1 (d) OTHER FEES.—

2 (1) IN GENERAL.—Section 4(i)(6) of the Fed-
 3 eral Insecticide, Fungicide, and Rodenticide Act (7
 4 U.S.C. 136a–1(i)(6)) is amended—

5 (A) by striking “During” and inserting
 6 “Except as provided in section 33, during”; and

7 (B) by striking “2003” and inserting
 8 “2010”.

9 (2) TOLERANCE FEES.—Notwithstanding sec-
 10 tion 408(m)(1) of the Federal Food, Drug, and Cos-
 11 metic Act (21 U.S.C. 346a(m)(1)), the Adminis-
 12 trator of the Environmental Protection Agency shall
 13 not collect any tolerance fees under that section dur-
 14 ing the period beginning on the effective date of this
 15 section and ending on September 30, 2008.

16 (e) EXPEDITED PROCESSING OF SIMILAR APPLICA-
 17 TIONS.—Section 4(k)(3) of the Federal Insecticide, Fun-
 18 gicide, and Rodenticide Act (7 U.S.C. 136a–1(k)(3)) is
 19 amended—

20 (1) in the paragraph heading, by striking “EX-
 21 PEDITED” and inserting “REVIEW OF INERT INGRE-
 22 DIENTS; EXPEDITED”; and

23 (2) in subparagraph (A)—

24 (A) by striking “1997” and all that follows
 25 through “of the maintenance fees” and insert-

1 ing “2004 through 2006, approximately
2 \$3,300,000, and for each of fiscal years 2007
3 and 2008, between $\frac{1}{8}$ and $\frac{1}{7}$, of the mainte-
4 nance fees”;

5 (B) by redesignating clauses (i), (ii), and
6 (iii) as subclauses (I), (II) and (III), respec-
7 tively, and indenting appropriately; and

8 (C) by striking “resources to assure the
9 expedited processing and review of any applica-
10 tion that” and inserting “resources—

11 “(i) to review and evaluate new inert
12 ingredients; and

13 “(ii) to ensure the expedited proc-
14 essing and review of any application
15 that—”.

16 (f) PESTICIDE REGISTRATION SERVICE FEES.—The
17 Federal Insecticide, Fungicide, and Rodenticide Act (7
18 U.S.C. 136a et seq.) is amended—

19 (1) by redesignating sections 33 and 34 (7
20 U.S.C. 136x, 136y) as sections 34 and 35, respec-
21 tively; and

22 (2) by inserting after section 32 (7 U.S.C.
23 136w–7) the following:

1 **“SEC. 33. PESTICIDE REGISTRATION SERVICE FEES.**

2 “(a) DEFINITION OF COSTS.—In this section, the
3 term ‘costs’, when used with respect to review and deci-
4 sionmaking pertaining to an application for which reg-
5 istration service fees are paid under this section, means—

6 “(1) costs to the extent that—

7 “(A) officers and employees provide direct
8 support for the review and decisionmaking for
9 covered pesticide applications, associated toler-
10 ances, and corresponding risk and benefits in-
11 formation and analyses;

12 “(B) persons and organizations under con-
13 tract with the Administrator engage in the re-
14 view of the applications, and corresponding risk
15 and benefits information and assessments; and

16 “(C) advisory committees and other ac-
17 credited persons or organizations, on the re-
18 quest of the Administrator, engage in the peer
19 review of risk or benefits information associated
20 with covered pesticide applications;

21 “(2) costs of management of information, and
22 the acquisition, maintenance, and repair of computer
23 and telecommunication resources (including soft-
24 ware), used to support review of pesticide applica-
25 tions, associated tolerances, and corresponding risk
26 and benefits information and analyses; and

1 “(3) costs of collecting registration service fees
2 under subsections (b) and (c) and reporting, audit-
3 ing, and accounting under this section.

4 “(b) FEES.—

5 “(1) IN GENERAL.—Effective beginning in fis-
6 cal year 2004, the Administrator shall assess and
7 collect covered pesticide registration service fees in
8 accordance with this section.

9 “(2) COVERED PESTICIDE REGISTRATION AP-
10 PLICATIONS.—

11 “(A) IN GENERAL.—An application for the
12 registration of a pesticide covered by this Act
13 that is received by the Administrator on or
14 after October 1, 2003, shall be subject to a reg-
15 istration service fee under this section.

16 “(B) EXISTING APPLICATIONS.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), an application for the registration of a
19 pesticide that was submitted to the Admin-
20 istrator before October 1, 2003, and is
21 pending on the date of enactment of the
22 Pesticide Registration Improvement Act of
23 2003, shall be subject to a service fee
24 under this section if the application is for
25 the registration of a new active ingredient

1 that is not listed in the Registration Divi-
 2 sion 2003 Work Plan of the Office of Pes-
 3 ticide Programs of the Environmental Pro-
 4 tection Agency.

5 “(ii) TOLERANCE OR EXEMPTION
 6 FEES.—The amount of any fee otherwise
 7 payable for an application described in
 8 clause (i) under this section shall be re-
 9 duced by the amount of any fees paid to
 10 support the related petition for a pesticide
 11 tolerance or exemption under the Federal
 12 Food, Drug, and Cosmetic Act (21 U.S.C.
 13 301 et seq.).

14 “(C) DOCUMENTATION.—An application
 15 subject to a registration service fee under this
 16 section shall be submitted with documentation
 17 certifying—

18 “(i) payment of the registration serv-
 19 ice fee; or

20 “(ii) a request for a waiver from or
 21 reduction of the registration service fee.

22 “(3) SCHEDULE OF COVERED APPLICATIONS
 23 AND REGISTRATION SERVICE FEES.—

24 “(A) IN GENERAL.—Not later than 30
 25 days after the effective date of the Pesticide

1 Registration Improvement Act of 2003, the Ad-
2 ministrator shall publish in the Federal Reg-
3 ister a schedule of covered pesticide registration
4 applications and corresponding registration
5 service fees.

6 “(B) REPORT.—Subject to paragraph (6),
7 the schedule shall be the same as the applicable
8 schedule appearing in the Congressional Record
9 on pages S11631 through S11633, dated Sep-
10 tember 17, 2003.

11 “(4) PENDING PESTICIDE REGISTRATION AP-
12 PPLICATIONS.—

13 “(A) IN GENERAL.—An applicant that
14 submitted a registration application to the Ad-
15 ministrator before October 1, 2003, but that is
16 not required to pay a registration service fee
17 under paragraph (2)(B), may, on a voluntary
18 basis, pay a registration service fee in accord-
19 ance with paragraph (2)(B).

20 “(B) VOLUNTARY FEE.—The Adminis-
21 trator may not compel payment of a registra-
22 tion service fee for an application described in
23 subparagraph (A).

24 “(C) DOCUMENTATION.—An application
25 for which a voluntary registration service fee is

1 paid under this paragraph shall be submitted
2 with documentation certifying—

3 “(i) payment of the registration serv-
4 ice fee; or

5 “(ii) a request for a waiver from or
6 reduction of the registration service fee.

7 “(5) RESUBMISSION OF PESTICIDE REGISTRA-
8 TION APPLICATIONS.—If a pesticide registration ap-
9 plication is submitted by a person that paid the fee
10 for the application under paragraph (2), is deter-
11 mined by the Administrator to be complete, and is
12 not approved or is withdrawn (without a waiver or
13 refund), the submission of the same pesticide reg-
14 istration application by the same person (or a li-
15 censee, assignee, or successor of the person) shall
16 not be subject to a fee under paragraph (2).

17 “(6) FEE ADJUSTMENT.—Effective for a cov-
18 ered pesticide registration application received on or
19 after October 1, 2005, the Administrator shall—

20 “(A) increase by 5 percent the service fee
21 payable for the application under paragraph
22 (3); and

23 “(B) publish in the Federal Register the
24 revised registration service fee schedule.

25 “(7) WAIVERS AND REDUCTIONS.—

1 “(A) IN GENERAL.—An applicant for a
2 covered pesticide registration may request the
3 Administrator to waive or reduce the amount of
4 a registration service fee payable under this sec-
5 tion under the circumstances described in sub-
6 paragraphs (D) through (G).

7 “(B) DOCUMENTATION.—

8 “(i) IN GENERAL.—A request for a
9 waiver from or reduction of the registra-
10 tion service fee shall be accompanied by
11 appropriate documentation demonstrating
12 the basis for the waiver or reduction.

13 “(ii) CERTIFICATION.—The applicant
14 shall provide to the Administrator a writ-
15 ten certification, signed by a responsible
16 officer, that the documentation submitted
17 to support the waiver or reduction request
18 is accurate.

19 “(iii) INACCURATE DOCUMENTA-
20 TION.—An application shall be subject to
21 the applicable registration service fee pay-
22 able under paragraph (3) if, at any time,
23 the Administrator determines that—

1 “(I) the documentation sup-
2 porting the waiver or reduction re-
3 quest is not accurate; or

4 “(II) based on the documentation
5 or any other information, the waiver
6 or reduction should not have been
7 granted or should not be granted.

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

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

16 “(ii) notify the applicant of the deter-
17 mination.

18 “(D) MINOR USES.—

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

23 “(ii) SUPPORTING DOCUMENTA-
24 TION.—An applicant requesting a waiver
25 under this subparagraph shall provide sup-

1 porting documentation that demonstrates,
2 to the satisfaction of the Administrator,
3 that anticipated revenues from the uses
4 that are the subject of the application
5 would be insufficient to justify imposition
6 of the full application fee.

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

11 “(i) the application is solely associated
12 with a tolerance petition submitted in con-
13 nection with the Inter-Regional Project
14 Number 4 (IR-4) as described in section 2
15 of Public Law 89-106 (7 U.S.C. 450i(e));
16 and

17 “(ii) the waiver is in the public inter-
18 est.

19 “(F) SMALL BUSINESSES.—

20 “(i) IN GENERAL.—The Administrator
21 shall waive 50 percent of the registration
22 service fees payable by an entity for a cov-
23 ered pesticide registration application
24 under this section if the entity is a small

1 business (as defined in section
2 4(i)(5)(E)(ii)) at the time of application.

3 “(ii) WAIVER OF FEES.—The Admin-
4 istrator shall waive all of the registration
5 service fees payable by an entity under this
6 section if the entity—

7 “(I) is a small business (as de-
8 fined in section 4(i)(5)(E)(ii)) at the
9 time of application; and

10 “(II) has average annual global
11 gross revenues described in section
12 4(i)(5)(E)(ii)(I)(bb) that does not ex-
13 ceed \$10,000,000, at the time of ap-
14 plication.

15 “(iii) FORMATION FOR WAIVER.—The
16 Administrator shall not grant a waiver
17 under this subparagraph if the Adminis-
18 trator determines that the entity submit-
19 ting the application has been formed or
20 manipulated primarily for the purpose of
21 qualifying for the waiver.

22 “(iv) DOCUMENTATION.—An entity
23 requesting a waiver under this subpara-
24 graph shall provide to the Administrator—

1 “(I) documentation dem-
 2 onstrating that the entity is a small
 3 business (as defined in section
 4 4(i)(5)(E)(ii)) at the time of applica-
 5 tion; and

6 “(II) if the entity is requesting a
 7 waiver of all registration service fees
 8 payable under this section, docu-
 9 mentation demonstrating that the en-
 10 tity has an average annual global
 11 gross revenues described in section
 12 4(i)(5)(E)(ii)(I)(bb) that does not ex-
 13 ceed \$10,000,000, at the time of ap-
 14 plication.

15 “(G) FEDERAL AND STATE AGENCY EX-
 16 EMPTIONS.—An agency of the Federal Govern-
 17 ment or a State government shall be exempt
 18 from covered registration service fees under this
 19 section.

20 “(8) REFUNDS.—

21 “(A) EARLY WITHDRAWALS.—If, during
 22 the first 60 days after the beginning of the ap-
 23 plicable decision time review period under sub-
 24 section (f)(3), a covered pesticide registration
 25 application is withdrawn by the applicant, the

1 Administrator shall refund all but 10 percent of
2 the total registration service fee payable under
3 paragraph (3) for the application.

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

6 “(i) IN GENERAL.—If a covered pes-
7 ticide registration application is withdrawn
8 after the first 60 days of the applicable de-
9 cision time review period, the Adminis-
10 trator shall determine what portion, if any,
11 of the total registration service fee payable
12 under paragraph (3) for the application
13 may be refunded based on the proportion
14 of the work completed at the time of with-
15 drawal.

16 “(ii) TIMING.—The Administrator
17 shall—

18 “(I) make the determination de-
19 scribed in clause (i) not later than 90
20 days after the date the application is
21 withdrawn; and

22 “(II) provide any refund as soon
23 as practicable after the determination.

24 “(C) DISCRETIONARY REFUNDS.—

1 “(i) IN GENERAL.—In the case of a
2 pesticide registration application that has
3 been filed with the Administrator and has
4 not been withdrawn by the applicant, but
5 for which the Administrator has not yet
6 made a final determination, the Adminis-
7 trator may refund a portion of a covered
8 registration service fee if the Administrator
9 determines that the refund is justified.

10 “(ii) BASIS.—The Administrator may
11 provide a refund for an application under
12 this subparagraph—

13 “(I) on the basis that, in review-
14 ing the application, the Administrator
15 has considered data submitted in sup-
16 port of another pesticide registration
17 application; or

18 “(II) on the basis that the Ad-
19 ministrator completed portions of the
20 review of the application before the ef-
21 fective date of this section.

22 “(D) CREDITED FEES.—In determining
23 whether to grant a refund under this para-
24 graph, the Administrator shall take into ac-

1 count any portion of the registration service
2 fees credited under paragraph (2) or (4).

3 “(c) PESTICIDE REGISTRATION FUND.—

4 “(1) ESTABLISHMENT.—There is established in
5 the Treasury of the United States a Pesticide Reg-
6 istration Fund to be used in carrying out this sec-
7 tion (referred to in this section as the ‘Fund’), con-
8 sisting of—

9 “(A) such amounts as are deposited in the
10 Fund under paragraph (2);

11 “(B) any interest earned on investment of
12 amounts in the Fund under paragraph (4); and

13 “(C) any proceeds from the sale or re-
14 demption of investments held in the Fund.

15 “(2) DEPOSITS IN FUND.—Subject to para-
16 graph (4), the Administrator shall deposit fees col-
17 lected under this section in the Fund.

18 “(3) EXPENDITURES FROM FUND.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graphs (B) and (C) and paragraph (4), the Ad-
21 ministrator may make expenditures from the
22 Fund—

23 “(i) to cover the costs associated with
24 the review and decisionmaking pertaining
25 to all applications for which registration

1 service fees have been paid under this sec-
2 tion; and

3 “(ii) to otherwise carry out this sec-
4 tion.

5 “(B) WORKER PROTECTION.—For each of
6 fiscal years 2004 through 2008, the Adminis-
7 trator shall use approximately $\frac{1}{17}$ of the
8 amount in the Fund (but not more than
9 \$1,000,000, and not less than \$750,000, for
10 any fiscal year) to enhance current scientific
11 and regulatory activities related to worker pro-
12 tection.

13 “(C) NEW INERT INGREDIENTS.—For each
14 of fiscal years 2004 and 2005, the Adminis-
15 trator shall use approximately $\frac{1}{34}$ of the
16 amount in the Fund (but not to exceed
17 \$500,000 for any fiscal year) for the review and
18 evaluation of new inert ingredients.

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

22 “(A) shall be collected and made available
23 for obligation only to the extent provided in ad-
24 vance in appropriations Acts; and

1 “(B) shall be available without fiscal year
2 limitation.

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

6 “(A) maintained readily available or on de-
7 posit;

8 “(B) invested in obligations of the United
9 States or guaranteed by the United States; or

10 “(C) invested in obligations, participations,
11 or other instruments that are lawful invest-
12 ments for fiduciary, trust, or public funds.

13 “(d) ASSESSMENT OF FEES.—

14 “(1) DEFINITION OF COVERED FUNCTIONS.—In
15 this subsection, the term ‘covered functions’ means
16 functions of the Office of Pesticide Programs of the
17 Environmental Protection Agency, as identified in
18 key programs and projects of the final operating
19 plan for the Environmental Protection Agency sub-
20 mitted as part of the budget process for fiscal year
21 2002, regardless of any subsequent transfer of 1 or
22 more of the functions to another office or agency or
23 the subsequent transfer of a new function to the Of-
24 fice of Pesticide Programs.

1 “(2) MINIMUM AMOUNT OF APPROPRIATIONS.—

2 Registration service fees may not be assessed for a
3 fiscal year under this section unless the amount of
4 appropriations for salaries, contracts, and expenses
5 for the functions (as in existence in fiscal year 2002)
6 of the Office of Pesticide Programs of the Environ-
7 mental Protection Agency for the fiscal year (exclud-
8 ing the amount of any fees appropriated for the fis-
9 cal year) are equal to or greater than the amount of
10 appropriations for covered functions for fiscal year
11 2002 (excluding the amount of any fees appro-
12 priated for the fiscal year).

13 “(3) USE OF FEES.—Registration service fees
14 authorized by this section shall be available, in the
15 aggregate, only to defray increases in the costs asso-
16 ciated with the review and decisionmaking for the
17 review of pesticide registration applications and as-
18 sociated tolerances (including increases in the num-
19 ber of full-time equivalent positions in the Environ-
20 mental Protection Agency engaged in those activi-
21 ties) over the costs for fiscal year 2002, excluding
22 costs paid from fees appropriated for the fiscal year.

23 “(4) COMPLIANCE.—The requirements of para-
24 graph (2) shall have been considered to have been
25 met for any fiscal year if the amount of appropria-

1 tions for salaries, contracts, and expenses for the
2 functions (as in existence in fiscal year 2002) of the
3 Office of Pesticide Programs of the Environmental
4 Protection Agency for the fiscal year (excluding the
5 amount of any fees appropriated for the fiscal year)
6 is not more than 3 percent below the amount of ap-
7 propriations for covered functions for fiscal year
8 2002 (excluding the amount of any fees appro-
9 priated for the fiscal year).

10 “(5) SUBSEQUENT AUTHORITY.—If the Admin-
11 istrator does not assess registration service fees
12 under subsection (b) during any portion of a fiscal
13 year as the result of paragraph (2) and is subse-
14 quently permitted to assess the fees under sub-
15 section (b) during the fiscal year, the Administrator
16 shall assess and collect the fees, without any modi-
17 fication in rate, at any time during the fiscal year,
18 notwithstanding any provisions of subsection (b) re-
19 lating to the date fees are to be paid.

20 “(e) REFORMS TO REDUCE DECISION TIME REVIEW
21 PERIODS.—To the maximum extent practicable consistent
22 with the degrees of risk presented by pesticides and the
23 type of review appropriate to evaluate risks, the Adminis-
24 trator shall identify and evaluate reforms to the pesticide
25 registration process under this Act with the goal of reduc-

1 ing decision review periods in effect on the effective date
 2 of the Pesticide Registration Improvement Act of 2003 for
 3 pesticide registration actions for covered pesticide reg-
 4 istration applications (including reduced risk applica-
 5 tions).

6 “(f) DECISION TIME REVIEW PERIODS.—

7 “(1) IN GENERAL.—Not later than 30 days
 8 after the effective date of the Pesticide Registration
 9 Improvement Act of 2003, the Administrator shall
 10 publish in the Federal Register a schedule of deci-
 11 sion review periods for covered pesticide registration
 12 actions and corresponding registration service fees
 13 under this Act.

14 “(2) REPORT.—The schedule shall be the same
 15 as the applicable schedule appearing in the Congres-
 16 sional Record on pages S11631 through S11633,
 17 dated September 17, 2003.

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

21 “(A) covered pesticide registration applica-
 22 tions subject to registration service fees under
 23 subsection (b)(2);

24 “(B) covered pesticide registration applica-
 25 tions for which an applicant has voluntarily

1 paid registration service fees under subsection
2 (b)(4); and

3 “(C) covered pesticide registration applica-
4 tions listed in the Registration Division 2003
5 Work Plan of the Office of Pesticide Programs
6 of the Environmental Protection Agency.

7 “(4) START OF DECISION TIME REVIEW PE-
8 RIOD.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraphs (C) and (D), in the case of a
11 pesticide registration application accompanied
12 by the registration service fee required under
13 this section, the decision time review period be-
14 gins 21 days after the date on which the Ad-
15 ministrator receives the covered pesticide reg-
16 istration application.

17 “(B) COMPLETENESS OF APPLICATION.—
18 In conducting an initial screening of an applica-
19 tion, the Administrator shall determine—

20 “(i) whether—

21 “(I) the applicable registration
22 service fee has been paid; or

23 “(II) the application contains a
24 waiver or refund request; and

25 “(ii) whether the application—

1 “(I) contains all necessary forms,
 2 data, draft labeling, and, documenta-
 3 tion certifying payment of any reg-
 4 istration service fee required under
 5 this section; or

6 “(II) establishes a basis for any
 7 requested waiver or reduction.

8 “(C) APPLICATIONS WITH WAIVER OR RE-
 9 DUCATION REQUESTS.—

10 “(i) IN GENERAL.—In the case of an
 11 application submitted with a request for a
 12 waiver or reduction of registration service
 13 fees under subsection (b)(7), the decision
 14 time review period shall be determined in
 15 accordance with this subparagraph.

16 “(ii) REQUEST GRANTED WITH NO
 17 ADDITIONAL FEES REQUIRED.—If the Ad-
 18 ministrator grants the waiver or reduction
 19 request and no additional fee is required,
 20 the decision time review period begins on
 21 the earlier of—

22 “(I) the date on which the Ad-
 23 ministrator grants the request; or

1 “(II) the date that is 60 days
2 after the date of receipt of the appli-
3 cation.

4 “(iii) REQUEST GRANTED WITH ADDI-
5 TIONAL FEES REQUIRED.—If the Adminis-
6 trator grants the waiver or reduction re-
7 quest, in whole or in part, but an addi-
8 tional registration service fee is required,
9 the decision time review period begins on
10 the date on which the Administrator re-
11 ceives certification of payment of the appli-
12 cable registration service fee.

13 “(iv) REQUEST DENIED.—If the Ad-
14 ministrator denies the waiver or reduction
15 request, the decision time review period be-
16 gins on the date on which the Adminis-
17 trator receives certification of payment of
18 the applicable registration service fee.

19 “(D) PENDING APPLICATIONS.—

20 “(i) IN GENERAL.—The start of the
21 decision time review period for applications
22 described in clause (ii) shall be the date on
23 which the Administrator receives certifi-
24 cation of payment of the applicable reg-
25 istration service fee.

1 “(ii) APPLICATIONS.—Clause (i) ap-
2 plies to—

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

7 “(II) covered pesticide registra-
8 tion applications received on or after
9 the effective date of the Pesticide
10 Registration Improvement Act of
11 2003 but submitted without the appli-
12 cable registration service fee required
13 under this section due to the inability
14 of the Administrator to assess fees
15 under subsection (d)(1).

16 “(E) 2003 WORK PLAN.—In the case of a
17 covered pesticide registration application listed
18 in the Registration Division 2003 Work Plan of
19 the Office of Pesticide Programs of the Envi-
20 ronmental Protection Agency, the decision time
21 review period begins November 1, 2003.

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

1 “(g) JUDICIAL REVIEW.—

2 “(1) IN GENERAL.—Any applicant adversely af-
3 fected by the failure of the Administrator to make
4 a determination on the application of the applicant
5 for registration of a new active ingredient or new
6 use for which a registration service fee is paid under
7 this section may obtain judicial review of the failure
8 solely under this section.

9 “(2) SCOPE.—

10 “(A) IN GENERAL.—In an action brought
11 under this subsection, the only issue on review
12 is whether the Administrator failed to make a
13 determination on the application specified in
14 paragraph (1) by the end of the applicable deci-
15 sion time review period required under sub-
16 section (f) for the application.

17 “(B) OTHER ACTIONS.—No other action
18 authorized or required under this section shall
19 be judicially reviewable by a Federal or State
20 court.

21 “(3) TIMING.—

22 “(A) IN GENERAL.—A person may not ob-
23 tain judicial review of the failure of the Admin-
24 istrator to make a determination on the appli-
25 cation specified in paragraph (1) before the ex-

1 piration of the 2-year period that begins on the
2 date on which the decision time review period
3 for the application ends.

4 “(B) MEETING WITH ADMINISTRATOR.—

5 To be eligible to seek judicial review under this
6 subsection, a person seeking the review shall
7 first request in writing, at least 120 days before
8 filing the complaint for judicial review, a deci-
9 sion review meeting with the Administrator.

10 “(4) REMEDIES.—The Administrator may not

11 be required or permitted to refund any portion of a
12 registration service fee paid in response to a com-
13 plaint that the Administrator has failed to make a
14 determination on the covered pesticide registration
15 application specified in paragraph (1) by the end of
16 the applicable decision review period.

17 “(h) ACCOUNTING.—The Administrator shall—

18 “(1) provide an annual accounting of the reg-
19 istration service fees paid to the Administrator and
20 disbursed from the Fund, by providing financial
21 statements in accordance with—

22 “(A) the Chief Financial Officers Act of

23 1990 (Public Law 101–576; 104 Stat. 2838)

24 and amendments made by that Act; and

1 “(B) the Government Management Reform
2 Act of 1994 (Public Law 103–356; 108 Stat.
3 3410) and amendments made by that Act;

4 “(2) provide an accounting describing expendi-
5 tures from the Fund authorized under subsection
6 (c); and

7 “(3) provide an annual accounting describing
8 collections and expenditures authorized under sub-
9 section (d).

10 “(i) AUDITING.—

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

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

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

21 “(B) compliance with subsection (f);

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

24 “(D) the reasonableness of the allocation
25 of the overhead allocation of costs associated

1 with the review and decisionmaking pertaining
2 to applications under this section.

3 “(3) INSPECTOR GENERAL.—The Inspector
4 General of the Environmental Protection Agency
5 shall—

6 “(A) conduct the annual audit required
7 under this subsection; and

8 “(B) report the findings and recommenda-
9 tions of the audit to the Administrator and to
10 the appropriate committees of Congress.

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

16 “(k) REPORTS.—

17 “(1) IN GENERAL.—Not later than March 1,
18 2005, and each March 1 thereafter through March
19 1, 2009, the Administrator shall publish an annual
20 report describing actions taken under this section.

21 “(2) CONTENTS.—The report shall include—

22 “(A) a review of the progress made in car-
23 rying out each requirement of subsections (e)
24 and (f), including—

1 “(i) the number of applications re-
2 viewed, including the decision times for
3 each application specified in subsection (f);

4 “(ii) the number of actions pending in
5 each category of actions described in sub-
6 section (f)(3), as well as the number of
7 inert ingredients;

8 “(iii) to the extent determined appro-
9 priate by the Administrator and consistent
10 with the authorities of the Administrator
11 and limitations on delegation of functions
12 by the Administrator, recommendations
13 for—

14 “(I) expanding the use of self-
15 certification in all appropriate areas of
16 the registration process;

17 “(II) providing for accreditation
18 of outside reviewers and the use of
19 outside reviewers to conduct the re-
20 view of major portions of applications;
21 and

22 “(III) reviewing the scope of use
23 of the notification process to cover
24 broader categories of registration ac-
25 tions; and

1 “(iv) the use of performance-based
2 contracts, other contracts, and procure-
3 ment to ensure that—

4 “(I) the goals of this Act for the
5 timely review of applications for reg-
6 istration are met; and

7 “(II) the registration program is
8 administered in the most productive
9 and cost effective manner practicable;

10 “(B) a description of the staffing and re-
11 sources relating to the costs associated with the
12 review and decisionmaking pertaining to appli-
13 cations; and

14 “(C) a review of the progress in meeting
15 the timeline requirements of section 4(g).

16 “(3) METHOD.—The Administrator shall pub-
17 lish a report required by this subsection by such
18 method as the Administrator determines to be the
19 most effective for efficiently disseminating the re-
20 port, including publication of the report on the
21 Internet site of the Environmental Protection Agen-
22 cy.

23 “(1) SAVINGS CLAUSE.—Nothing in this section af-
24 fects any other duties, obligations, or authorities estab-
25 lished by any other section of this Act, including the right

1 to judicial review of duties, obligations, or authorities es-
 2 tablished by any other section of this Act.

3 “(m) TERMINATION OF EFFECTIVENESS.—

4 “(1) IN GENERAL.—Except as provided in para-
 5 graph (2), the authority provided by this section ter-
 6 minates on September 30, 2008.

7 “(2) PHASE OUT.—

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

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

20 “(C) SEPTEMBER 30, 2010.—Effective Sep-
 21 tember 30, 2010, the requirement to pay and
 22 collect registration service fees terminates.

23 “(D) DECISION REVIEW PERIODS.—

24 “(i) PENDING APPLICATIONS.—In the
 25 case of an application received under this

1 section before September 30, 2008, the ap-
 2 plication shall be reviewed in accordance
 3 with subsection (f).

4 “(ii) NEW APPLICATIONS.—In the
 5 case of an application received under this
 6 section on or after September 30, 2008,
 7 subsection (f) shall not apply to the appli-
 8 cation.”.

9 (g) CONFORMING AMENDMENTS.—The table of con-
 10 tents in section 1(b) of the Federal Insecticide, Fungicide,
 11 and Rodenticide Act (7 U.S.C. prec. 136) is amended—

12 (1) by striking the item relating to section
 13 4(k)(3) and inserting the following:

“(3) Review of inert ingredients; expedited processing of
 similar applications.”;

14 and

15 (2) by striking the items relating to sections 30
 16 and 31 and inserting the following:

“Sec. 30. Minimum requirements for training of maintenance applicators and
 service technicians.

“Sec. 31. Environmental Protection Agency minor use program.

“Sec. 32. Department of Agriculture minor use program.

“(a) In general.

“(b)(1) Minor use pesticide data.

“(2) Minor Use Pesticide Data Revolving Fund.

“Sec. 33. Pesticide registration service fees.

- “(a) Definition of costs.
- “(b) Fees.
 - “(1) In general.
 - “(2) Covered pesticide registration applications.
 - “(3) Schedule of covered applications and registration service fees.
 - “(4) Pending pesticide registration applications.
 - “(5) Resubmission of pesticide registration applications.
 - “(6) Fee adjustment.
 - “(7) Waivers and reductions.
 - “(8) Refunds.
- “(c) Pesticide Registration Fund.
 - “(1) Establishment.
 - “(2) Transfers to Fund.
 - “(3) Expenditures from Fund.
 - “(4) Collections and appropriations Acts.
 - “(5) Unused funds.
- “(d) Assessment of fees.
 - “(1) Definition of covered functions.
 - “(2) Minimum amount of appropriations.
 - “(3) Use of fees.
 - “(4) Compliance.
 - “(5) Subsequent authority.
- “(e) Reforms to reduce decision time review periods.
- “(f) Decision time review periods.
 - “(1) In general.
 - “(2) Report.
 - “(3) Applications subject to decision time review periods.
 - “(4) Start of decision time review period.
 - “(5) Extension of decision time review period.
- “(g) Judicial review.
 - “(1) In general.
 - “(2) Scope.
 - “(3) Timing.
 - “(4) Remedies.
- “(h) Accounting.
- “(i) Auditing.
 - “(1) Financial statements of agencies.
 - “(2) Components.
 - “(3) Inspector General.
- “(j) Personnel levels.
- “(k) Reports.
 - “(1) In general.
 - “(2) Contents.
- “(l) Savings clause.
- “(m) Termination of effectiveness.
 - “(1) In general.
 - “(2) Phase out.
- “Sec. 34. Severability.
- “Sec. 35. Authorization for appropriations.”.

1 (h) EFFECTIVE DATE.—This section and the amend-
2 ments made by this section take effect on October 1, 2003.

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