

sample analyses for licit drugs; and a portion of the budget for DEA's agency-wide computer network, "Firebird", related to the work of the DCP. As was discussed more fully in previous rulemakings regarding the use of controlled substances fee funds, while these elements incidentally support diversion control efforts, because their overall function is not primarily devoted to diversion control, they have been included elsewhere in the DEA budget and not as part of fee-fundable activities. In the absence of specific guidance in the 1993 Appropriations Act as to which activities were encompassed within the DCP and thus fee-fundable, DEA has followed the plain language of the act and used the budget categories that had historically been included in the DCP budget request of the Attorney General. As described in DEA's 1996 **Federal Register** notice, for the purposes of budget formulation and appropriation, DEA historically has identified only those resources (with their overhead costs) that were specifically devoted to diversion control efforts as part of the DCP in its annual budget submission to Congress. Other resources which support a broad range of DEA activities, including diversion control, therefore have been included in the budget formulation and appropriation process and not funded through fee funds (61 FR 68631). At this time these activities will continue to be funded through appropriated funds as DEA considers how to better comply with the applicable laws in the future.

B. Budget Justification for Fee Increase

Several commenters questioned the justification for the budget increase necessitating the raise in registration and reregistration fees. Since the fees were last raised in 1993, costs of operating the Diversion Control Program (DCP) have increased. As described above, fee-fundable activities of the DCP include: scheduling, registration, investigation, inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, certain international activities relating to the registration and control of the manufacture, distribution and dispensing of controlled substances, and attendant management, personnel, administrative and clerical oversight for the DCP. Fee-fundable activities also include travel, rent, utilities, supplies, equipment and services associated with the above-listed activities.

The costs of the DCP have increased due to both the rising costs of "doing

business" over the past ten years as well as the implementation of a number of new initiatives and programs. One commenter raised concern that the increase in fees seemed to cover the increased costs of operating the DCP with less emphasis on new programs and activities. As summarized below, the increased costs of operating the DCP to date as well as the anticipated costs through Fiscal Year 2006 have included/include a number of new initiatives including: the creation of Tactical Diversion Squads in Fiscal Year 1997, responding to OxyContin® diversion, responding to Internet-based diversion, development of a system to permit electronic transmission of controlled substances prescriptions, development of controlled substances electronic order forms, upgrades to the Automation of Reports and Consolidated Orders System (ARCOS), significant improvements to registration customer/forms service, and increases in the number of diversion investigators.

In Fiscal Year 1994 the Budget Authority for the DCP was \$57.1 million. The Budget Authority for Fiscal Year 2004, based on the President's Budget, is \$ 118.6 million. The growth in the DCP has been driven by a number of factors some of which have been reflected in the DEA budget submissions such as the creation of Tactical Diversion Squads in Fiscal Year 1997. Other areas of DCP expansion include the costs of responding to the diversion of OxyContin® which involved opening 247 cases between October 1999 and March 2002, including 159 cases in Fiscal Year 2001 alone—a 270 percent increase from Fiscal Year 2000. These cases, for example, have led to 328 arrests.

DEA also has expended increased time and resources in responding to the diversion of licit controlled substances over the Internet, a concern of several commenters. DEA has opened a number of cases leading to arrests and convictions for illegal diversion over the Internet. In total the number of diversion arrests more than doubled in the five year period of Fiscal Year 1995 (444 arrests) to Fiscal Year 2000 (941 arrests). In Fiscal Year 2001 DEA made 871 diversion arrests. In Fiscal Year 2002 DEA made 714 arrests, and in the first six months of Fiscal Year 2003, DEA made 364 arrests.

The additional investigative and programmatic responsibilities to support investigations have required additional diversion investigators, headquarters staff and increased financial resources to support these staff and their efforts to prevent the diversion of licit controlled substances. Over the

past ten years the costs of supporting personnel and the costs of simply "doing business" have increased as a result of inflation and general rises in costs. These increases affect staff salaries, benefits, as well as the cost of program-related travel, rent, utilities, supplies, equipment and services associated with diversion control activities. The increasing costs of personnel, activities and general operations—including new initiatives—are shown in the following table that outlines the budget authority for each year from Fiscal Year 1994 to Fiscal Year 2006 (estimated). Note these figures do not include the required \$15 million transfer to the U.S. Treasury.

Fiscal year	Budget authority (millions)
FY94	\$57.1
FY95	58.4
FY96	62.2
FY97	67.8
FY98	73.2
FY99	76.7
FY00	80.3
FY01	83.5
FY02	86.2
FY03	89
FY04	118.6
FY05 (est.)	139.4
FY06 (est.)	147

C. Use of Estimated Budget Authorities

For Fiscal Years 2005 and 2006 the above budget authority estimates were derived using the President's Budget for Fiscal Year 2004. One commenter expressed concern that DEA was using estimated budget figures in its calculations for the Fiscal Year 2004–2006 period. Use of estimated budgets for future years is a common practice in budgeting to forecast future expenditures and plan future budgets. Because the President's Budget Request for the upcoming fiscal year is typically submitted to Congress in the spring of the prior year with approval following that, if DEA were to wait and use "actual", Congressionally-enacted budgets on which to base the fee schedule as suggested by the commenter, significant delays would result in calculating the fees, resulting in potential shortfalls to the fee account which, by statute, must support all activities of the DCP. Importantly too, adjusting the registration and especially the reregistration fees each year would cause significant confusion among registrants as to the correct amount to pay, particularly as the adjustment often would be effective immediately in order to comply with the statute that fees support the "full costs" of the DCP. The