

process also would result in increased fee calculation, fee collection, and related operating costs for the DCP which would translate to higher registration fees.

#### *D. Calculation of Current Fee*

The President's Fiscal Year 2004 budget was calculated using the Fiscal Year 2003 budget as a base and adjusting for inflation, salary increases and programmatic increases or enhancements. The Fiscal Year 2004 budget of \$118,561,000 for the DCP was submitted by the President to Congress on February 3, 2003. The Fiscal Year 2004 budget authority of \$118,561,000 (that does not include the \$15 million transfer to the U.S. Treasury) accounts for increases in program costs due to inflation, increases in federal staff salaries, and additional funds to undertake a number of new initiatives to prevent, detect and eliminate the diversion of controlled substances while ensuring an adequate supply for legitimate medical and scientific purposes. Additional funds would support diversion investigation (93 positions), OxyContin® diversion control, and implementation of a system to detect Internet sites that may divert controlled substances and investigation of those sites, as warranted. Because the registration fees have not been raised since 1993, in recent years the DCP has not been operating with the ideal staffing level of diversion investigators due to budget constraints. The additional funds for OxyContin® and improved Internet diversion control will permit DEA to conduct additional and more complex investigations into the diversion of pharmaceutical controlled substances. Additional funds also would support forty positions and the development of systems to permit the electronic transmission of controlled substances orders and controlled substances prescriptions. These electronic alternatives will provide a similar or higher degree of security/integrity than current paper-based systems and will help DEA to meet its legal mandates under the Government Paperwork Elimination Act. Several commenters highly praised the electronic systems and the increased efficiencies afforded to industry. By increasing reliance on technological resources, the electronic systems also will help to control DCP costs in the future; two commenters raised the issue of streamlining DCP operations and controlling costs through greater reliance on technological resources. The total cost of program enhancements for Fiscal Year 2004 is \$27,062,000. Including the mandatory transfer to

Treasury of \$15 million, the total amount required to be recovered for Fiscal Year 2004 is \$133,561,000.

To calculate the anticipated President's Budget Request for Fiscal Year 2005, DEA used a baseline of the Fiscal Year 2004 President's Budget of \$118,561,000 (described above) and adjusted the baseline figure for increases in program costs due to inflation (including such items as postage rate increases, increases in cost of employee health benefits, increases in GSA rent, etc.), and costs of federal staff pay increases. The anticipated President's Budget Request for Fiscal Year 2005 is \$139,364,000. This figure, revised since the Notice of Proposed Rulemaking in February 2003 because of new guidance on inflationary figures and updated capital asset planning and budgetary information, includes costs to support systems to permit the electronic transmission of controlled substances prescriptions and electronic orders of Schedule I and II controlled substances (systems highly desired and praised by industry, including commenters to the proposed rule), the support and operation of DEA's Internet investigations, a major upgrade to the Automation of Reports and Consolidated Orders System (ARCOS), significant improvements to registration customer/forms service, and 39 additional positions related to these activities. Other funds accounted for include liaison, policy, regulatory, and analytical activities of the Diversion Control Program. Including the mandatory transfer to Treasury of \$15 million, the total amount required to be recovered for Fiscal Year 2005 is \$154,364,000.

The anticipated President's Budget Request for Fiscal Year 2006 of \$147,028,000 was calculated using the same method. This figure also has been revised since the proposed rule based on updated budget figures and reflecting changes in inflationary growth guidance from the Department of Justice. DEA used the anticipated budget request for Fiscal Year 2005 and adjusted that figure for inflationary growth and increases in federal staff salaries, rent and other overhead costs. Including the mandatory transfer to Treasury of \$15 million, the total amount anticipated to be required to be recovered for Fiscal Year 2006 is \$162,028,000.

In calculating inflationary growth, DEA used inflation figures of 1.5 percent for Fiscal Year 2004, 1.5 percent for Fiscal Year 2005 and 1.6 percent for Fiscal Year 2006 and salary increase assumptions of 4.1 percent for Fiscal Year 2004 and 3.4 percent for both Fiscal Year 2005 and Fiscal Year 2006,

based on the Fiscal Year 2005 Department of Justice Modular Cost Standards and the President's Economic Assumptions, respectively.

To calculate the fee schedule for Fiscal Year 2004–2006, DEA used the total amount necessary to collect for the Fiscal Year 2004–2006 period of \$449,953,000 and, based on specific statistical calculations, then calculated the fee for each registrant category. To comply with the law that DEA recover the full costs of the DCP, DEA then developed the specific fee levels for each registrant category.

To calculate the fee for each registrant category, DEA first estimated the number of paying registrants for the Fiscal Year 2004–2006 period and then used this figure combined with the full amount required to be collected for this period to set the new fee rate. To calculate the number of paying registrants, DEA used logarithmic regression analysis to project the yearly registrant figures based on historical registrant data for the period of Fiscal Year 1994 through Fiscal Year 2001.

DEA then estimated the number of registrants for each registrant category since different registrant categories pay different fees. Because there were insufficient data for some activities to perform regression analysis, DEA used the percentage for each category using data from the corresponding cycle years in the past.

Finally, based on the analyses conducted, DEA developed the fees for each registrant category consistent with its current fee structure. In doing so, DEA opted to set the fee level for a three-year period (Fiscal Years 2004–2006) to avoid the heavy burden on registrants and the additional administrative expenses to DEA that resetting the fee each year would impose. Accordingly, the fee schedule (see below) developed reflects the total amount necessary to be collected for the full three-year period (Fiscal Years 2004–2006) divided by projected registrants and accounting for projected registrant growth by category for each fiscal year. Because different categories of registrants pay different amounts, DEA weighted the number of registrants in each category to ensure the appropriate reflection in the fee schedule. Because the registrant fees reflect the total amount necessary to be collected for the Fiscal Year 2004–2006 period, there is the possibility that DEA may accumulate additional funds beyond those necessary for actual program operations in the initial year (Fiscal Year 2004), but in the final year of the period (Fiscal Year 2006) fee collections are anticipated to fall short