

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 the DDCFA. 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.

Development of the New Fee Schedule

DEA set the current fee schedule for the Diversion Control Program (DCP) through publication in the **Federal Register** on March 22, 1993. This announcement outlined the general categories of cost to be borne by the resulting Drug Diversion Control Fee Account (DDCFA) and delineated the fee categories indicated below:

Registrant class	Annual cost
Manufacturers	\$875
Distributors, Importers/Exporters	438
Dispensers/Practitioners	70
Researchers, Narcotic Treatment Programs	70

Since this announcement, the fees, which as required by law support the full cost of the Diversion Control Program, have not changed despite growth in the program and additional costs borne by the program (see the previous section). To recover the full costs of the DCP as required by law, DEA plans to incrementally raise the fees in accordance with its existing fee structure as follows:

Registrant class	Annual cost
Manufacturers	\$1,605
Distributors, Importers/Exporters	804
Dispensers/Practitioners	131
Researchers, Narcotic Treatment Programs	131

These increases in fees will go into effect 30 days after the publication of the final rule.

The determination of fees for the Fiscal Year 2004–2006 period covered by this notice is based on the expected Budget Authority for Fiscal Year 2004 (based on the President's Budget Request) and the estimated budget request and appropriation for each subsequent year plus the annual \$15 million transfer to the U.S. Treasury. In

addition to covering with fee funds all program elements and activities related to the registration and control of the manufacture, distribution and dispensing of controlled substances, DEA must transfer the first \$15 million of fee revenue to the General Fund of the Treasury each year. 21 U.S.C. 886a(1). For each fiscal year between Fiscal Year 1993 through Fiscal Year 1998, Congress appropriated an additional \$15 million to offset this requirement (a total infusion to the DDCFA of \$90 million). However, beginning in Fiscal Year 1999, Congress discontinued this additional appropriation.

The expected Budget Authority for Fiscal Year 2004 is \$118,561,000, which 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. Funds include \$12,518,000 for diversion investigation (for 93 positions), including OxyContin® diversion control and implementation of a system to detect Internet sites that may divert controlled substances and investigation of those sites, as warranted. This will permit DEA to conduct additional and more complex investigations into the diversion of pharmaceutical controlled substances. Other funds accounted for include \$12,098,000 (for 40 positions) to develop a system to permit the electronic transmission of controlled substances prescriptions from prescriber to pharmacy and to develop an electronic order form for Schedule I and II controlled substances. 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. The total cost of program enhancements for Fiscal Year 2004 is \$24,873,000. Including the mandatory transfer to Treasury of \$15 million, the total amount required to be recovered for Fiscal Year 2004 is \$133,561,000.

The anticipated President's Budget Request for Fiscal Year 2005 is \$142,265,000. This figure accounts for increases in program costs due to inflation (including such items as postage rate increase, increases in cost of employee health benefits, increases in GSA rent, etc.), costs of federal staff pay increases, and an additional \$20,578,000 (for 39 positions). This figure includes costs to support the

systems to permit the electronic transmission of controlled substances prescriptions and electronic orders of Schedule I and II controlled substances, the support and operation of DEA's Internet investigations, a major upgrade to the Automation of Reports and Consolidated Orders System (ARCOS), and significant improvements to registration customer/forms service. 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 \$157,265,000.

The anticipated President's Budget Request for Fiscal Year 2006 is \$145,307,000 which accounts for inflationary growth from the previous fiscal year estimate and increases in Federal staff salaries. Including the mandatory transfer to Treasury of \$15 million, the total amount required to be recovered for Fiscal Year 2006 is \$160,307,000.

To calculate inflationary growth, DEA used inflation figures of 1.5 percent for Fiscal Year 2004, 1.6 percent for Fiscal Year 2005 and 1.7 percent for Fiscal Year 2006 and salary increase assumptions of 2.0 percent for Fiscal Year 2004 and 3.4 percent for both Fiscal Year 2005 and Fiscal Year 2006, based on the President's Economic Assumptions. The total amount necessary to collect through fee funds for the Fiscal Year 2004–2006 period is \$451,133,000. Based on the amounts required to be collected for the 2004–2006 period to comply with the law, DEA developed the specific fee levels for each registrant category reflected in the previous table. To calculate these fees, DEA first estimated the number of paying registrants for this period and then used this figure combined with the amount required to be collected 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