

## Attachment H

### Registration Service Fees

### Guidance on How to Request Small Business Fee Waivers

#### Resources

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Questions and Answers on:

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Current as of December 2009

This is the Agency's current guidance on how to request fee waivers for small businesses under the Pesticide Registration Improvement Renewal Act (PRIA or PRIA 2). This guidance reflects the Agency's current thinking at this time. As the Agency gains additional experience with the review of fee waiver and fee reduction requests under PRIA 2, this guidance may change.

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#### General Guidance

##### 1. Can registration service fees be waived?

Yes. Section 33(b)(7)(F) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) contains the provisions for small business waivers. Specifically, an applicant that qualifies as a small business is eligible for a partial waiver of 50% or, in some cases, 75% of the registration service fee. Please note that PRIA 2 amended the small business waiver provisions and a 100% waiver is no longer available.

##### 2. When and where should I submit my request for a waiver of a registration service fee?

A request for a waiver or reduction must be submitted in writing together with the application and should be sent to:

By USPS Mail

Document Processing Desk  
(REGFEE)

Office of Pesticide Programs (7504P)  
U.S. Environmental Protection  
Agency

Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-0001

By Courier

Document Processing Desk (REGFEE)  
Office of Pesticide Programs

U.S. Environmental Protection Agency  
One Potomac Yard Room S-4900  
2777 S. Crystal Drive  
Arlington, VA 22202

All small business waiver requests must be accompanied by a partial payment of at least 25% of the appropriate fee. Therefore, if you are requesting a 75% waiver, you must submit 25% of the fee with your application. If you are requesting a 50% waiver, you must submit 50% of the fee with your application. The payment should be made by accessing the PRIA fee determination decision tree web site (or calling the appropriate Office of Pesticide Programs ombudsman) to identify the appropriate fee and then paying the fee by credit card or wire transfer through [Pay.gov](https://www.pay.gov) or by sending a check, money order or bank draft:

By USPS Mail:

U.S. Environmental Protection  
Agency  
Washington Finance Center  
FIFRA Service Fees  
P.O. Box 979074  
St. Louis, MO 63197-9000

By courier:

U.S. Bank  
Government Lockbox 979074  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63197  
(314) 418-4990

Documentation of payment should be attached to the front of your application and can be either a copy of the check or bank draft or a pay.gov acknowledgement of payment. This will assure that the EPA can match up your payment with the application.

### **3. What is the time frame for the Agency's determination to grant or deny requests for waivers of registration service fees?**

The Administrator must determine whether to grant or deny the 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.

### **4. How does EPA process waiver requests?**

The Agency will review the documentation provided by the applicant and other information in the Agency databases as well as other publicly available information to determine if the applicant meets the applicable criteria for a waiver. The Agency will respond in writing to the applicant with the decision regarding the waiver. If a portion of the fee is still due to the Agency, the letter will include the amount to be paid and instructions for submitting payment.

### **5. When does the decision time review period begin when a waiver has been granted or denied?**

If no additional fees are due, the decision time review period begins on the date the waiver is granted or 60 days after receipt of the waiver application, whichever is earlier. If a partial waiver is granted but additional fees are due, the decision review time period begins on the date the Agency receives certification of payment of the applicable registration fee. If a waiver or fee reduction request is denied, the decision time review period begins when the applicable registration service fee is received.

### **6. Will the registration service fees be refunded if the application is withdrawn?**

If the applicant withdraws a covered pesticide registration application during the first 60 days after the beginning of the applicable decision time review period, the Agency must refund all but 25% of the total registration service fee. If a covered pesticide registration application is withdrawn after the first 60 days of the applicable decision time review period, the Agency must determine what portion, if any, of the total registration service fee for the application may be refunded based on the proportion of the work completed at the time of withdrawal. The maximum that can be refunded is 75%.

### **7. What should I do if my application contains confidential information?**

You may assert a business confidentiality claim covering part or all of the information in the application at the time it is submitted to the Agency. If you wish to assert a claim of confidentiality, you must mark the document "CONFIDENTIAL BUSINESS INFORMATION" or with a similar designation, and must bracket all text so claimed. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures set forth under 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

**8. I received an invoice from the Agency in response to my application. I had submitted a waiver request with my application and I disagree with the Agency's decision on the waiver request. How can I appeal this decision?**

First, **do not pay the fee**. Instead, please submit a written response, including a rationale explaining your rationale for a different waiver determination. The written response should be submitted to:

By USPS Mail

Document Processing Desk  
(WAIVER APPEAL)

Office of Pesticide Programs (7504C)

U.S. Environmental Protection

Agency

Ariel Rios Building

1200 Pennsylvania Avenue, NW

Washington, DC 20460-0001

By Courier

Document Processing Desk (WAIVER APPEAL)

Office of Pesticide Programs

U.S. Environmental Protection Agency

One Potomac Yard Room S-4900

2777 S. Crystal Drive

Arlington, VA 22202

Once received by the Office of Pesticide Programs, your response will be reconsidered by the PRIA Waiver Workgroup. After the Agency has completed its review of the rebuttal, you will receive a telephone call from the Agency explaining the Agency's decision. If the Agency changes the waiver determination and fees are still due, you will receive a new invoice from the Agency requesting payment. If the Agency determines that the waiver can be granted and you have already paid the portion of the fee due, you will receive a letter granting your waiver request. If the Agency decides to maintain its original decision on the waiver request, you will be instructed to remit payment.

**9. Is there an Agency contact for questions on small business fee waivers?**

Yes, the Agency's contact for small business fee waivers is [Christopher Green](#) (green.christopher@epa.gov, 703-347-0367).

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**Guidance on Small Business Waivers**

**1. Under what circumstances is a small business eligible for a fee waiver?**

An applicant that meets the definition of a small business is eligible for a fifty percent (50%) waiver of the pesticide registration service fee. A small business means a corporation, partnership, or un-incorporated business that has 500 or fewer employees and during the 3-year period prior to the most recent maintenance fee billing cycle, has an average annual global gross revenue from pesticides that did not exceed \$60 million (including any such revenue from all of its affiliates). In addition, a small business that has average annual global gross revenues from pesticides of less than \$10 million (including any such revenue from all of its affiliates) over the past 3-year maintenance fee billing cycle at the time of the application is eligible for a 75% waiver of the pesticide registration service fee.

## **2. What is the previous “maintenance fee billing cycle” referred to in the statute?**

The "maintenance fee billing cycle" is a yearly cycle commencing on January 15th. Therefore, the relevant time periods for measuring whether an applicant meets the definition of a small business are the applicant's three fiscal years preceding the January 15th of the year in which the application is received.

## **3. What are affiliates of an applicant for purposes of requesting a small business fee waiver?**

Affiliates include direct and indirect subsidiary and parent entities of the applicant as well as entities that are controlled directly or indirectly by the owner(s) or any parent entity of the applicant. In addition, two unrelated entities are affiliates if they are both owned or controlled by the same entity or person. Specifically, business entities are affiliates of each other if, directly or indirectly, either entity controls or has the power to control the other entity, or a third entity controls or has the power to control both entities. Indicia of control include interlocking management or ownership, identify of interests among family members, shared facilities and equipment, and common use of employees. Accordingly, control is not limited to voting control over another entity.

## **4. What information should I include in my request for a fee waiver as a small business?**

The request should be in writing and include the following information:

- ← The company name and company number assigned by OPP to the applicant, the official mailing address under FIFRA, the telephone number and e-mail or fax number of the contact person regarding the fee waiver or reduction request.
- ← A certification signed by a responsible officer that the documentation submitted to support the waiver or reduction request is true, complete, and correct.
- ← An ownership structure chart depicting the relationship of the applicant to subsidiaries and parent entities that are directly or indirectly controlled by the owner(s) or any parent entity of the applicant, if appropriate. If the applicant does not have a parent entity, the percentage ownership interest of the direct and indirect owner(s) or shareholders of the applicant should be disclosed. If the applicant does not have a parent entity, the percentage ownership interest of the direct and indirect owner(s) or shareholders of the applicant should be disclosed. If the applicant does have a parent company (or companies), the ownership of the ultimate parent entity should also be disclosed.
- ← A narrative or explanatory information, if appropriate, addressing whether related entities are affiliates.
- ← A narrative or explanatory information, if appropriate, explaining how the applicant differentiated its global gross receipts from pesticides from other revenue and how such revenue was calculated, both for the applicant and for any affiliates. The rationale should explain what types of revenues have been excluded.
- ← Appropriate supporting documentation demonstrating that the criteria for the waiver or reduction from the registration service fee are met.

[Voluntary Small Business Waiver Form PDF](#) (1 p, 29 kb, [About PDF](#)) EXIT Disclaimer -- A workgroup comprising representatives of registrant companies and trade associations designed a form for assisting pesticide registrants when they submit small business waiver requests under the Pesticide Registration Improvement Act. EPA staff provided input to the process. Use of the form is voluntary and information submitted using the forms will be accepted by the Agency. Other formats that meet the requirements of the statute will be acceptable to the Agency as well.

## **5. What information is required for certification for a fee waiver?**

A certification should include:

1. information on business identification;
2. information regarding the number of employees of the applicant;
3. information regarding the ownership of the applicant and affiliated entities;
4. information regarding the global gross revenue from pesticides (of the applicant as well as any affiliates); and
5. a certification statement signed by a responsible officer that the information provided is true, complete, and correct. The following is a sample certification:

### **An Example of a Certification for Small Business**

#### **Section 1: Business Identification**

- ← Name of the applicant
- ← Company number assigned by OPP to the applicant
- ← Official mailing address under FIFRA
- ← Name of the contact person for the waiver or fee reduction request
- ← Phone number, fax number, and e-mail for the contact person

#### **Section 2: Small Business Criteria**

##### **A) Global Gross Revenue from Pesticides**

1. Do you have any subsidiaries? Please include any indirect subsidiaries (subsidiaries of subsidiaries or other subsidiaries of a parent entity) as well.
2. Do you have any parent entities? Please provide information regarding the ownership of your ultimate parent (including the percentage ownership/membership interest of each stakeholder).
  - a. If you do not have a parent entity, please provide information on the ownership of the applicant and the percentage ownership/membership interest of each stakeholder.
3. Do any stakeholders with a controlling interest in the applicant or any parent entity also directly or indirectly control or have the ability to directly or indirectly control any other entity?
4. Which affiliates, if any, have global gross revenue from pesticides?
5. Including affiliates, what is your global gross revenue from pesticides, averaged over the applicable three year period?
6. If you are distinguishing global gross revenue from pesticides from other gross revenue, please explain how you differentiated and calculated global gross revenue from pesticides alone.

##### **B) Employee Threshold**

1. Do you employ 500 or fewer employees? What is the number of employees?

#### **Section 3: Certification Statement**

“I, [*insert name of undersigned*], the [*insert title*] of [*insert name of applicant*], am authorized and have personal knowledge sufficient to make this certification on behalf of [*insert name of applicant*]. I hereby certify under penalty of perjury that the documentation submitted in connection with [*insert name of applicant*]’s this fee waiver request is true, complete, and correct in all material respects.”

Applicant’s Name

Applicant Signature

Title

Date

### **6. What should the certification statement say?**

The new law requires the accuracy of the documentation supporting a small business waiver request is certified by a responsible officer. A responsible officer is someone who is authorized and has sufficient personal knowledge to make the certification. An agent for the applicant is not a responsible officer. In addition, the Agency considers the information to be accurate if it is true, complete, and correct in all material respects. Thus, the sample certification is an acceptable model that complies with the statutory requirements.

If a certification statement is qualified in a manner such that the Agency is unable to determine that it was made by someone who is authorized to do so and has sufficient personal knowledge, e.g., the certification is qualified with a blanket “to the best of my knowledge” statement, the waiver request will be denied.

### **7. What information should be included in an ownership structure chart submitted in connection with a small business fee waiver?**

An ownership structure chart is a diagram that shows the relationship between the applicant and other entities, including parent and subsidiary entities. The ownership structure chart should show all the entities related to the applicant, either directly or through a parent or subsidiary entity, or by virtue of common ownership. If the applicant does not have a parent entity, the direct and indirect owner(s) or shareholders of the applicant should be disclosed. The ownership structure chart and accompanying narrative should include:

- ← all related entities and owners or shareholders (the company names and company numbers assigned by OPP to entities, if applicable; the official mailing address under FIFRA, if applicable; telephone number; fax number; and e-mail for each entity), and
- ← the relationship between the entities (i.e., identifying who the owners or interested parties are, identifying entities with any gross revenues from pesticides, and a factual disclosure with respect to the statutory “indicia of control”).

### **8. What documentation must I provide if my total gross revenue exceeds the threshold for a waiver but my global gross revenue from pesticides is less than the threshold?**

If the applicant is differentiating between gross revenue from pesticides from other gross revenue, the applicant should provide an explanation of how the applicant differentiated and calculated global gross revenue from pesticides from other gross revenue for itself and for its affiliates. If the applicant’s total global gross revenues from all sales (and not just pesticides) are well below the \$10 million threshold, the applicant does not need to differentiate between total global gross revenues and global gross revenues from pesticides alone.

### **9. How should I calculate the number of employees?**

To be eligible for a small business waiver, the applicant must have 500 or fewer employees at the time of submitting the application. Unlike the calculation for global gross receipts from pesticides, the calculation of the number of employees is limited to the employees of the applicant and does not include the employees of affiliates. The Agency currently believes that the number of employees should be calculated in a manner similar to how the Small Business Administration calculates the number of employees for purposes of its regulations. Therefore, the number of employees should be determined upon consideration of the totality of the circumstances, including factors relevant for tax purposes. Accordingly, the number of employees should include all individuals employed on a full-time, part-time, and temporary basis (including shared employees). Supporting documentation may, in part, include payroll

information and a recent IRS Form 941, together with a statement certifying the total number of individuals employed by the applicant.

**10. How should I calculate global gross revenues from pesticides?**

Global gross revenue from pesticides (as defined in FIFRA and the implementing regulations) is not limited to revenue from pesticides for which the applicant is the registrant but includes all revenue from the distribution or sale by the applicant or any of its affiliates of a substance (or mixture of substances) that is intended for a pesticidal purpose or is advertised as having pesticidal purpose, either in the United States or abroad, even if (i) the applicant is not the registrant and (ii) the substance or device is not registered in the United States. Thus, global gross revenue from pesticides includes revenue from pesticides that are not currently registered in the United States.; Global gross revenue from pesticides also includes all revenue from the sale or distribution of so-called “Section 25(b)” exempt pesticides. Global gross revenue from pesticides does not, however, include revenue from devices that are sold separately from a pesticide.

**11. What type of documentation should be included to support a small business waiver request?**

The documentation to support the waiver or fee reduction request should be reliable, pertinent, and comprehensive. The type of documentation that the Agency currently believes will aid it in making a decision regarding a small business waiver or fee reduction request includes, but is not limited to, such documents as: income tax returns filed with the Internal Revenue Service (such as IRS Forms 1065, 1120, or 1120S, as applicable), the applicant’s most recent IRS 941, and audited financial statements.

**12. What information should I include in my request for a small business waiver if my business is located in countries other than the United States?**

Foreign entities must provide the same information provided by domestic entities. However, if the information is not in English, the applicant's request may be denied because the Agency is unable to determine that the applicant meets the statutorily defined criteria for a small business. Therefore, documentation not in English should be accompanied by a translation with a certification that the translation is accurate. The Agency will consider the appropriate documentation supporting the request on a case-by-case basis.

**13. My gross revenue includes global pesticide sales paid by foreign currencies. What exchange rates should I use to convert my global pesticide sales into U.S. dollars?**

Global gross revenue from pesticides is calculated as an average during the 3-year period prior to the most recent maintenance fee billing cycle. The exchange rates to convert the global gross revenue into US dollars should also be the average during the same period. The applicant should include an explanation of the method used for averaging such revenues over the applicable period(s) as well as an explanation of how the exchange rate used was determined.

**14. I’d like to request a fee waiver for small business, but I am a newly formed start-up company. What supporting documentation should I submit?**

The Agency will consider these situations on a case-by-case basis. To the extent possible, the applicant should provide the same information as other applicants regarding the number of employees and affiliates. The applicant should disclose whether the ownership or management of the new entity had control over other entities with gross global revenue from pesticides in the prior applicable three-year period. The Agency will not grant a waiver if it determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver

**15. After the Agency has granted my request for a small business fee waiver on one registration application, how do I request the waiver for subsequent registration applications?**

EPA must determine that the applicant meets the statutory criteria for a small business fee waiver or reduction at the time of the request for each registration application. Therefore, you must provide a certification with each registration application. To the extent that previously submitted documentation is still valid and represents your company's current small business status, you can rely on these materials by reference.

If the previous request occurred during a prior maintenance fee billing cycle (i.e., prior to January 15)

- ← The applicant must submit all of the necessary documentation supporting the fee waiver/reduction request as if the request were being made for the first time.

If the previous request occurred during the current maintenance fee billing cycle and the information provided in connection with the prior request has not changed

- ← The applicant may reaffirm the information and the underlying documentation previously submitted by submitting a new certification statement that could read as follows:

"I, *[insert name of undersigned]*, the *[insert title]* of *[insert name of applicant]*, am authorized and have personal knowledge sufficient to make this certification on behalf of *[insert name of applicant]*. I hereby certify under penalty of perjury that, since *[insert name of applicant]*'s waiver request of *[insert date]*, there has been no change in the number of *[insert name of applicant]*'s employees, entities affiliated with *[insert name of applicant]* or average gross global revenue from pesticides, including any such revenue from affiliates and that the documentation submitted in connection with the request of *[insert date]* remains true, complete, and correct and remains valid.

Applicant's Name

Applicant's Signature

Title

Date

- ← While not required, the Agency asks that the applicant also provide a copy of the Agency letter granting the fee/waiver reduction as information in this letter helps the Agency expedite the waiver decision-making process.

If the previous request occurred during the current maintenance fee billing cycle and some of the information provided in connection with the prior request has changed

- ← The applicant can reaffirm the information and underlying documentation previously submitted to the extent that there have been no changes and provide updated documentation with respect to those pieces of information that have changed. In these instances, the applicant would provide the following:
  - ← A letter indicating what information in the last certification continues to remain "true, complete, and correct".
  - ← Materials documentation the information that has changed since the last certification.
  - ← A new certification that could read as follows:

"I, *[insert name of undersigned]*, the *[insert title]* of *[insert name of applicant]*, am authorized and have personal knowledge sufficient to make this certification on behalf of *[insert name of applicant]*. I hereby certify under penalty of perjury that the documentation submitted in connection with *[insert name of applicant]*'s waiver request is true, accurate, and complete in all



material respects. I further certify under penalty of perjury that, since *[insert name of applicant]*'s partial waiver request of *[insert date]* there has been no change in the *[include applicable elements]: number of employees/entity affiliations/average gross global revenue from pesticides, including any such revenue from affiliates]* and the documentation submitted in connection with the request of *[insert date]* remains true, complete, and correct and remains valid."

Applicant's Name

Applicant's Signature

Title

Date

- ← While not required, the Agency asks that the applicant also provide a copy of the Agency letter granting the fee/waiver reduction as information in this letter helps the Agency expedite the waiver decision-making process.