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# **Fees for Maintenance and Evaluation of Pesticide Registrations: Current Law and Legislation in the 115<sup>th</sup> Congress**

Updated August 6, 2018

**Congressional Research Service**

<https://crsreports.congress.gov>

R45282



## Fees for Maintenance and Evaluation of Pesticide Registrations: Current Law and Legislation in the 115<sup>th</sup> Congress

Division G of Title II of the Consolidated Appropriations Act, 2018 (P.L. 115-141) extended U.S. Environmental Protection Agency (EPA) authority to collect fees from the pesticide industry for the maintenance and evaluation of pesticide registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. 136 et seq.) until the end of FY2018. Two types of industry-paid fees supplement annual appropriations from the General Fund to support EPA's pesticide regulatory program.

Without the extension, the authority to collect *maintenance fees* would have expired at the end of FY2017 under the Pesticide Registration Improvement Extension Act of 2012 (PRIA 3; P.L. 112-177). Maintenance fees are paid by pesticide registrants to retain existing pesticide registrations, which govern the terms and conditions for lawful pesticide distribution and use.

Additionally, without the extension, PRIA 3 would have gradually phased out the authority to collect *registration service fees* by the end of FY2019. Registration service fees are paid by applicants who seek EPA review of applications associated with pesticide registrations (e.g., new registrations, amendments to existing registrations).

If these fee authorities are not reauthorized or extended after FY2018, pursuant to PRIA 3, the authority to collect maintenance fees would expire and the authority to collect registration service fees would be phased out by the end of FY2019.

Since FY2004, total maintenance fees collected by EPA have ranged from \$21.4 million to \$28.7 million per fiscal year and total registration service fees have ranged from \$10.6 million to \$18.6 million per fiscal year. Maintenance and registration service fees collected each fiscal year have provided approximately one-fourth of the total appropriation for EPA's pesticide program activities.

In the 115<sup>th</sup> Congress, the House-passed H.R. 1029, the Pesticide Registration Enhancement Act of 2017, and the Senate amendment to H.R. 1029, the Pesticide Registration Improvement Extension Act of 2018, would reauthorize the collection of maintenance fees until the end of FY2023 and registration service fees until the end of FY2025. The amount that EPA may collect in registration service fees would be reduced by 40% for FY2024 and 70% for FY2025 in a phase out.

Both the House and Senate versions of H.R. 1029 would increase the cap on annual maintenance fees per registrant by 12% and the aggregate for all maintenance fees from \$27.8 million per fiscal year to an average amount of \$31.0 million per fiscal year.

Both the House and Senate versions of H.R. 1029 would revise registration service fee amounts for different actions the applicant may request the agency to conduct and certain time frames in which EPA is required to complete review of a requested action.

The Senate amendment to H.R. 1029 would require EPA to implement without revision two final rules promulgated during the previous administration before October 1, 2021. The two EPA rules address standards for the protection of agricultural workers from pesticide exposures and the certification of applicators that use restricted use pesticides. The Senate amendment to H.R. 1029 would also direct the U.S. Government Accountability Office to publish a report on the use of designated representatives and their effect on the availability of pesticide application and hazard information.

On June 21, 2018, the House passed H.R. 2, the Agriculture and Nutrition Act of 2018, which includes a provision that would enact House-passed H.R. 1029. The Senate amendment to H.R. 2, the Agriculture Improvement Act of 2018, does not include a similar provision. On July 18, 2018, the House requested a conference with the Senate to resolve differences between the House and Senate versions of H.R. 2.

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August 6, 2018

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The Pesticide Registration Improvement Extension Act of 2012 (PRIA 3), which amended certain provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), reauthorized the U.S. Environmental Protection Agency (EPA) to collect and use two types of fees to enhance and accelerate the agency’s pesticide registration program and related activities.<sup>1</sup> *Maintenance fees*, which pesticide registrants must pay to keep existing pesticide registrations reviewed and issued by EPA, help to partially fund the agency’s periodic reevaluation of registrations. PRIA 3 authorized the collection of maintenance fees until the end of FY2017. *Registration service fees*, which applicants must pay when seeking EPA review of various applications related to pesticide registrations, help to partially defray the costs of evaluating such applications. At the end of FY2017, PRIA 3 would have reduced the rate in which EPA may collect registration service fees annually over two years. However, successive continuing resolutions and, most recently, the Consolidated Appropriations Act, 2018, extended the authority to collect both types of fees until the end of FY2018 without a reduction in the amount of registration fees that EPA may collect.<sup>2</sup>

This report provides historical background on both types of fees and summarizes current statutory provisions regarding such fees and legislation introduced in the 115<sup>th</sup> Congress that would reauthorize the authority to collect fees.

## Background

FIFRA requires EPA to review and register the use of pesticide products meeting certain statutory criteria and periodically reevaluate existing pesticide registrations (i.e., registration review). Section 408 of the Federal Food, Drug, and Cosmetic Act requires EPA to establish maximum limits (“tolerances”) for pesticide residues in or on food and animal feed.<sup>3</sup> EPA assesses fees on pesticide manufacturers and distributors, referred to as “registrants,” for pesticide registrations and pesticide-related applications. These fees, which are deposited in designated funds within the U.S. Treasury and subsequently appropriated, combined with discretionary appropriations from the General Fund of the U.S. Treasury pay for EPA’s pesticide regulatory activities.

Since 1954, Congress has authorized the collection of various fees to partially defray certain costs associated with federal pesticide regulation activities. Additional annual appropriations fund the majority of the costs. Enacted as part of the Consolidated Appropriations Act, 2004, the Pesticide Registration Improvement Act of 2003 (PRIA 1) established the current pesticide fee framework.<sup>4</sup> PRIA 1 modified provisions originally enacted in 1988 that authorized the collection and use of maintenance fees to enhance and accelerate a one-time EPA review of pesticide registrations that the agency issued prior to November 1, 1984 (i.e., reregistration). PRIA 1 also authorized the collection and use of registration service fees to defray costs associated with EPA review of applications for registering new pesticide active ingredients and products, adding new uses to existing pesticide registrations, establishing and amending tolerances, and amending pesticide labels. PRIA 1 established a schedule that provided the fee amounts associated with various

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<sup>1</sup> P.L. 112-177. FIFRA is codified at 7 U.S.C. §136 et seq. For more information on FIFRA, see CRS Report RL31921, *Pesticide Law: A Summary of the Statutes*, by Jerry H. Yen and Robert Esworthy.

<sup>2</sup> P.L. 115-56, P.L. 115-90, P.L. 115-96, P.L. 115-120, and P.L. 115-123 were all continuing resolutions that extended the authority to collect fees in FY2018. The Consolidated Appropriations Act, 2018 (P.L. 115-141) extended such authority until the end of FY2018 without a reduction in the amount of registration fees that EPA may collect.

<sup>3</sup> 21 U.S.C. §346a.

<sup>4</sup> P.L. 108-199, Division G, Title V.

review activities and required EPA to complete its review of submitted applications within specific timeframes depending on the category of application if the agency collected the fee.<sup>5</sup>

In 2007, the Pesticide Registration Improvement Renewal Act (PRIA 2) reauthorized and amended the pesticide fee framework.<sup>6</sup> PRIA 2 added new categories of applications for which registration service fees may be assessed, revised the schedule of timeframes in which EPA is required to make a decision on an application, and adjusted the fee amounts for both maintenance and registration service fees.<sup>7</sup>

With the enactment of PRIA 3 in 2012, Congress reauthorized and further amended the pesticide fee framework. The current pesticide fee framework, as amended by PRIA 3 and extended by the Consolidated Appropriations Act, 2018, is summarized in the following sections.

## **Pesticide Maintenance Fees**

In accordance with the Consolidated Appropriations Act, 2018, the authority to collect pesticide maintenance fees expires on September 30, 2018.

FIFRA Section 4, as amended by PRIA 3, sets annual maximum maintenance fees per registrant generally based on the number of registrations held.<sup>8</sup> Congress also established a cap on the aggregate amount of maintenance fees that EPA may collect annually (\$27.8 million per fiscal year) from FY2013 through FY2018. If a registrant does not pay the required maintenance fee for its pesticide registration, Section 4 authorizes EPA to cancel the pesticide registration. Section 4 provides “small businesses” with certain fee reductions and exempts registrations of certain public health pesticides from the payment of maintenance fees.

Collected maintenance fees are deposited as receipts in the “Reregistration and Expedited Processing Fund” in the U.S. Treasury. These receipts are made available to EPA as mandatory appropriations for offsetting costs associated with (1) evaluating inert ingredients and expedited processing of certain applications within specified statutory time frames, and (2) reevaluating registered pesticides (including setting tolerances).<sup>9</sup> Additionally, Section 4 requires EPA to use up to \$800,000 per year from FY2013 through FY2018 to enhance information systems capabilities to improve tracking of pesticide registration decisions.

## **Pesticide Registration Service Fees**

In accordance with the Consolidated Appropriations Act, 2018, EPA’s authority to collect registration service fees begins to phase out starting at the end of FY2018. If the authority to collect registration service fees is not extended or reauthorized, pursuant to PRIA 3, the amount

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<sup>5</sup> PRIA 1 specified that the fee schedule shall be the same as the schedule presented in “Pesticide Registration Applications,” morning business in the Senate, *Congressional Record*, daily edition, vol. 149 (September 17, 2003), pp. S11631-S11633.

<sup>6</sup> P.L. 110-94.

<sup>7</sup> PRIA 2 updated the fee schedule to that printed in “Pesticide Registration Improvement Renewal Act,” morning business in the Senate, *Congressional Record*, daily edition, vol. 153 (July 31, 2007), pp. S10409-S10411.

<sup>8</sup> 7 U.S.C. §136a-1.

<sup>9</sup> Mandatory appropriations or direct spending refers to budgetary resources provided by laws other than appropriation acts. For more information, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by James V. Saturno.

of registration service fees that EPA may collect would be reduced by 70% for FY2019 and, at the end of FY2019, the authority to collect registration service fees would expire.

FIFRA Section 33, as amended by PRIA 3, sets registration service fee amounts for 189 different actions that may be requested by the applicant (e.g., review of new registration applications or amendments to existing applications).<sup>10</sup> EPA must complete requested actions within specified timeframes, which vary based on the category of action. Section 33 presents the current fee schedule, which is subject to certain adjustments by EPA, and specified timeframes for the completion of requested actions.<sup>11</sup>

Section 33 provides “small business” fee reductions, and EPA may exempt from or waive a portion of the registration service fee for applications seeking to register “minor uses” of a pesticide. Applications involving tolerance setting in the “public interest” and federal and state governmental entities are exempt from the payment of registration service fees.

The authority to collect and obligate registration service fees under FIFRA Section 33 must be provided, in advance, by annual discretionary appropriations. Section 33 prohibits EPA from assessing registration service fees if appropriations for salaries, contracts, and expenses for specified functions of the EPA Office of Pesticide Programs (excluding any fees appropriated) are less than the corresponding FY2012 appropriation (\$128.3 million).<sup>12</sup> Generally, EPA confirms whether minimum appropriations have been met to determine whether the agency is authorized to assess registration service fees for the fiscal year. However, for FY2013 through FY2018, annual appropriations have authorized EPA to assess registration service fees notwithstanding the condition of minimum appropriations.<sup>13</sup>

Section 33 requires EPA to deposit collected pesticide registration service fees as receipts in the “Pesticide Registration Fund” in the U.S. Treasury. Unlike receipts in the “Reregistration and Expedited Processing Fund,” the expenditure of receipts in the “Pesticide Registration Fund” is subject to annual appropriations acts. Once Congress appropriates the fee receipts, EPA may use them without fiscal year limitation for the following purposes:

- covering costs associated with the review and decisionmaking of applications received with the payment of the applicable registration service fee;
- enhancing scientific and regulatory activities related to worker protection;
- awarding worker protection partnership grants (\$500,000 in aggregate annually from FY2013 through FY2018); and
- carrying out a pesticide safety education program (\$500,000 annually from FY2013 through FY2018).

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<sup>10</sup> 7 U.S.C. §136w-8.

<sup>11</sup> Previously, FIFRA, as amended by PRIA 1 and PRIA 2, referenced a schedule of fees that was printed in the *Congressional Record*.

<sup>12</sup> U.S. Congress, Senate Committee on Appropriations, Subcommittee on Department of the Interior, Environment, and Related Agencies, *Department of the Interior, Environment and Related Agencies Appropriations for Fiscal Year 2015*, hearing on H.R. 5171, 113<sup>th</sup> Cong., April 9, 2014, S.Hrg. 113-631 (Washington: GPO, 2015), pp. 122-123.

<sup>13</sup> For example, the Consolidated Appropriations Act, 2018 (P.L. 115-141) authorizes EPA to assess pesticide registration service fees under FIFRA Section 33 for FY2018 notwithstanding the condition that minimum appropriations be met. Of the total FY2018 enacted appropriations for EPA, the exact amount provided for the specified functions of the EPA Office of Pesticide Programs is not readily reported to determine whether minimum appropriations would have been met.

## Accounting, Auditing, and Reporting

FIFRA requires the Inspector General of EPA to annually audit the Reregistration and Expedited Processing Fund and Pesticide Registration Fund in accordance with the act and the Chief Financial Officers Act of 1990, as amended.<sup>14</sup> The Inspector General must submit the findings and recommendations of the audit to EPA and certain congressional committees.<sup>15</sup> Additionally, FIFRA requires EPA to annually report on various aspects of its pesticide program activities.<sup>16</sup>

## Fees and Appropriations for EPA Pesticide Program Activities

Congress appropriated a total of \$8.89 billion for EPA for FY2018 in the Consolidated Appropriations Act, 2018 and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018.<sup>17</sup> Of the total FY2018 enacted appropriations for EPA, the exact amount provided for the specified functions of the EPA Office of Pesticide Programs referenced above is not readily reported. As mentioned above, the Consolidated Appropriations Act, 2018, authorizes EPA to assess registration service fees notwithstanding the condition of minimum appropriations.<sup>18</sup>

From FY2004 through FY2018, collected maintenance fees ranged from \$21.4 million to \$28.7 million per fiscal year.<sup>19</sup> In the same time period, collected registration service fees ranged from \$10.6 million to \$18.6 million per fiscal year.<sup>20</sup> Collected maintenance and registration service fees each year are estimated to provide one-fourth of the total appropriation for EPA's pesticide program activities.

## Legislation in the 115<sup>th</sup> Congress

Congress initiated legislative efforts to reauthorize the collection of maintenance and registration service fees in 2017. Congress did not enact reauthorization legislation but extended the authority to collect fees for one year through FY2018 appropriations. The House and Senate have passed separate versions of reauthorization legislation, summarized below, that await the resolution of differences.

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<sup>14</sup> For more information on the Chief Financial Officers Act of 1990 and other topics relevant to federal financial reporting, see CRS Report R42975, *Federal Financial Reporting: An Overview*, coordinated by Garrett Hatch.

<sup>15</sup> Reports of the EPA Inspector General are available at EPA, "OIG Reports," updated July 12, 2018, <https://www.epa.gov/office-inspector-general/oig-reports>.

<sup>16</sup> Historical and current annual reports are available at EPA, "Annual Reports on PRIA Implementation," updated February 27, 2018, <https://www.epa.gov/pria-fees/annual-reports-pria-implementation>.

<sup>17</sup> Title II of Division G of P.L. 115-141 and Subdivision 1 of Division B of P.L. 115-123. For more information on EPA FY2018 appropriations, see CRS In Focus IF10717, *U.S. Environmental Protection Agency (EPA) FY2018 Appropriations: Congressional Action*, by Robert Esworthy and David M. Bearden.

<sup>18</sup> "Administrative Provisions—Environmental Protection Agency" in Title II of Division G of P.L. 115-141.

<sup>19</sup> EPA annual reports on PRIA implementation present the amount of maintenance fees collected each year. EPA, "Annual Reports on PRIA Implementation," updated February 27, 2018, <https://www.epa.gov/pria-fees/annual-reports-pria-implementation>.

<sup>20</sup> EPA annual reports on PRIA implementation present the amount of registration service fees collected each year. EPA, "Annual Reports on PRIA Implementation," updated February 27, 2018, <https://www.epa.gov/pria-fees/annual-reports-pria-implementation>.

## H.R. 1029 and Senate Amendment

On March 20, 2017, the House passed the Pesticide Registration Enhancement Act of 2017 (H.R. 1029, H.Rept. 115-49), which would reauthorize the collection of both fees and amend the activities that fees may fund. On June 28, 2018, the Senate passed an amendment to H.R. 1029, renamed the Pesticide Registration Improvement Extension Act of 2018.

Both versions of H.R. 1029 would

- reauthorize the collection of maintenance fees and registration service fees through FY2023 and FY2025, respectively;
- increase the cap on annual maintenance fees per registrant by 12% and the aggregate for all maintenance fees from \$27.8 million per fiscal year to an average amount of \$31.0 million per fiscal year;
- direct EPA annually to set aside not more than \$500,000 in the Reregistration and Expedited Processing Fund for expedited rulemaking and guidance development related to evaluating the efficacy of pesticides in controlling certain invertebrate pests;
- direct EPA annually to set aside not more than \$500,000 in the Reregistration and Expedited Processing Fund for enhancing the good laboratory practices standards compliance monitoring program;
- revise registration service fee amounts for different actions the applicant may request the agency to conduct;
- add more actions in which registration service fees may be assessed; and
- revise certain time frames in which EPA is required to complete review of a requested action.

The Senate amendment to H.R. 1029 would require EPA to carry out and not revise two final rules before October 1, 2021, with one exception.<sup>21</sup> EPA promulgated both rules during the previous administration.

One rule amended elements of the existing agricultural worker protection standard (e.g., training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and providing supplies for routine washing and emergency decontamination).<sup>22</sup> The Senate amendment would authorize EPA to propose and promulgate revisions to the standard that address application exclusion zones.

The other rule revised standards for certified pesticide applicators (“Pesticides; Certification of Pesticide Applicators”), amending elements of the existing standard with the stated intent of protecting applicators, the public, and the environment from risks associated with the use of restricted use pesticides.<sup>23</sup>

Additionally, the Senate amendment to H.R. 1029 would direct the U.S. Government Accountability Office to publish a report by October 1, 2021, on the use of designated

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<sup>21</sup> EPA, “Pesticides; Agricultural Worker Protection Standard Revisions,” November 2, 2015, 80 *Federal Register* 67496-67574 and EPA, “Pesticides; Certification of Pesticide Applicators,” January 4, 2017, 82 *Federal Register* 952-1050.

<sup>22</sup> The Agricultural Worker Protection Standard is codified at 40 C.F.R. Part 170.

<sup>23</sup> Federal certification standards for pesticide applicators are codified at 40 C.F.R. Part 171.

representatives.<sup>24</sup> The report must examine the effect of designated representatives on the availability of pesticide application and hazard information and worker health and safety. In addition, the report must include any recommendations to prevent the misuse of pesticide application and hazard information.

## H.R. 2

Section 9119 of H.R. 2, the Agriculture and Nutrition Act of 2018, as passed by the House on June 21, 2018, would enact House-passed H.R. 1029 into law.<sup>25</sup> The Senate amendment to H.R. 2, the Agricultural Improvement Act of 2018, passed by the Senate on June 28, 2018, does not include a similar provision. On July 18, 2018, the House requested a conference with the Senate to resolve differences between the House and Senate versions of H.R. 2.<sup>26</sup>

## Concluding Observations

The two prior PRIA reauthorizations were enacted into law without roll call votes in the House and the Senate, suggesting a general consensus for extending the pesticide fee framework. In floor statements, members have recognized a coalition of organizations that represent the pesticide industry, state agricultural departments, and environmental and farmworker interests for developing PRIA in the early 2000s and assisting with reauthorizing legislation.<sup>27</sup> However, the current iteration of PRIA reauthorization has not resulted in a final enactment due, in part, to disagreements between the House and Senate on EPA administration and enforcement of certain FIFRA regulations.

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<sup>24</sup> The bill does not explicitly define designated representative. FIFRA also does not use the term, but EPA's Agricultural Worker Protection Standard regulations define designated representative as someone who is designated to request and obtain a copy of pesticide application and hazard information on behalf of an agricultural worker or pesticide handler from an agricultural employer in accordance with the regulation.

<sup>25</sup> For more information on House-passed H.R. 2, see CRS Report R45197, *The House Agriculture Committee's 2018 Farm Bill (H.R. 2): A Side-by-Side Comparison with Current Law*, coordinated by Mark A. McMinimy.

<sup>26</sup> For a side-by-side comparison of the House- and Senate-passed versions of H.R. 2, see CRS Report R45275, *The House and Senate 2018 Farm Bills (H.R. 2): A Side-by-Side Comparison with Current Law*, coordinated by Mark A. McMinimy.

<sup>27</sup> Sen. Chambliss, "Pesticide Registration Improvement Renewal Act," remarks in the Senate, *Congressional Record*, daily edition, vol. 153 (August 3, 2007), p. S10894 and Rep. Davis, "Pesticide Registration Enhancement Act of 2017," remarks in the House, *Congressional Record*, daily edition, vol. 163 (March 20, 2017), p. H2207.

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