Commission Implementing Regulation (EU) No 254/2013 of 20 March 2013 amending Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 254/2013

of 20 March 2013

amending Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC[(1)], and in particular Article 74(1) and Article 132 thereof,

Whereas:

(1) From the review of Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)[(2)], conducted pursuant to Article 22(2) of that Regulation, it results that that Regulation should be amended in various respects.

(2) For reasons of legal certainty, it is appropriate to clarify the consequences of late payments to the Agency. The Agency should not refund fees or charges paid before the rejection of the submission concerned. However, fees or charges paid after such rejection should be refunded as undue payments.

(3) With respect to updates of a registration concerning confidentiality claims, it is appropriate that fees should be applied consistently regardless of when the request is made. With respect to updates of a registration other than tonnage band updates, it is appropriate to provide for the possibility for the registrant to request an extension of the second deadline for payment of the corresponding fee in order to give additional time to the registrant to make the payment.

(4) For reasons of legal certainty, it is also appropriate to clarify the existing provisions on reduced fees for confidentiality claims in joint submissions or by lead registrants.

(5) With respect to fees for applications under Article 62 of Regulation (EC) No 1907/2006 and charges for reviews of authorisations under Article 61 of that Regulation, each exposure scenario should no longer automatically be considered as one use since the number of additional uses applied for in an authorisation application or authorisation review report may not necessarily be identical to the number of exposure scenarios included in those submissions.

(6) It should also be clarified that the Agency should issue one invoice covering the base fee or charge and all additional fees or charges, including in cases of joint authorisation applications and joint review reports.

(7) The Agency may request evidence that the conditions for a reduction of fees or charges or for a fee waiver apply. In order to be able to verify that those conditions are met, it is necessary to require the submission of such evidence in one of the official languages of the Union or, if it is available only in another language, with a certified translation into one of the official languages of the Union.

(8) It is also appropriate, following the review of the fees and charges, in line with Article 22(1) of Regulation (EC) No 340/2008, in the light of the applicable average annual inflation rate of 3,1 % for April 2012 published by Eurostat, to adapt the standard fees and charges in line with that rate.

(9) The existing reduced fees and charges applicable to micro, small and medium-sized enterprises (SMEs) should be further reduced in order to minimise the regulatory burden and the numerous practical challenges faced by SMEs in complying with REACH obligations, in particular with the registration obligation, as identified in the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions in accordance with Article 117(4) of REACH and Article 46(2) of CLP, and a review of certain elements of REACH in line with Articles 75(2), 138(2), 138(3) and 138(6) of REACH[(3)].

(10) In order to rebalance the distribution of fees and charges across various company size classes, the standard fees and charges should be further increased by 4 % in the registration area and by 3,5 % in the authorisation area taking into account, on the one hand, the costs of the Agency and the related costs of the services provided by the competent authorities of the Member States, and, on the other hand, the further reduction of fees and charges for SMEs and the number of SMEs involved.

(11) The overall adjustment of fees and charges is fixed at such a level that the revenue derived from them when combined with other sources of the Agency's revenue pursuant to Article 96(1) of Regulation (EC) No 1907/2006 is sufficient to cover the cost of the services delivered.

(12) Regulation (EC) No 340/2008 should therefore be amended accordingly.

(13) For reasons of legal certainty, this Regulation should not apply to valid submissions which are pending on the date of entry into force of this Regulation.

(14) Given that the phase-in substances referred to in Article 23(2) of Regulation (EC) No 1907/2006 must be registered by 31 May 2013, this Regulation should enter into force as a matter of urgency.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 340/2008 is amended as follows:

(1) In Article 3, paragraph 7 is replaced by the following:

7. Where the registration has been rejected due to the failure of the registrant to submit missing information or due to his failure to pay the fee before expiry of the deadlines, the fees paid in relation to that registration before its rejection shall not be refunded or otherwise credited to the registrant.

(2) In Article 4, paragraph 7 is replaced by the following:

7. Where the registration has been rejected due to the failure of the registrant to submit missing information or due to his failure to pay the fee before expiry of the deadlines, the fees paid in relation to that registration before its rejection shall not be refunded or otherwise credited to the registrant.

(3) Article 5 is amended as follows:

(a) In paragraph 2, the following subparagraphs are inserted after the second subparagraph:

For change in the access granted to information in the registration, the Agency shall levy a fee per item for which an update is made, as set out in Tables 3 and 4 of Annex III.

In the case of an update concerning study summaries or robust study summaries, the Agency shall levy a fee for each study summary or robust study summary for which the update is made.

(b) In paragraph 6, the third subparagraph is replaced by the following:

Where the payment is not made before the expiry of the second deadline, in the case of other updates, the Agency shall reject the update. Where the applicant so requests, the Agency shall extend the second deadline provided that the request for extension has been submitted before the expiry of the second deadline. Where the payment is not made before the expiry of the extended deadline, the Agency shall reject the update.

(c) Paragraph 7 is replaced by the following:

7. Where the update has been rejected due to the failure of the registrant to submit missing information or due to his failure to pay the fee before expiry of the deadlines, the fees paid in relation to that update before its rejection shall not be refunded or otherwise credited to the registrant.

(4) In Article 6, paragraph 3 is replaced by the following:

3. In the case of a request that refers to a joint submission, the Agency shall levy a reduced fee, as set out in Annex IV. In the case of a request by the lead registrant, the Agency shall levy a reduced fee to the lead registrant only, as set out in Annex IV.

(5) In Article 7, paragraph 5 is replaced by the following:

5. Where a notification or the request for an extension has been rejected due to the failure of the manufacturer, importer, or producer of articles to submit missing information or due to his failure to pay the fee or charges before expiry of the deadlines, the fees or charges paid in relation to that notification or that request for an extension before their respective rejection shall not be refunded or otherwise credited to the person making the notification or the request.

(6) In Article 8, the third subparagraph of paragraph 2 is replaced by the following:

The Agency shall issue one invoice covering the base fee and any applicable additional fees, including in the case of a joint authorisation application.

(7) In Article 9, the third subparagraph of paragraph 2 is replaced by the following:

The Agency shall issue one invoice covering the base charge and any applicable additional charges, including in the case of a joint review report.

(8) In Article 13(3), the following subparagraph is inserted after the first subparagraph:

Where the evidence to be submitted to the Agency is not in one of the official languages of the Union, it shall be accompanied with a certified translation into any of those official languages.

(9) In Article 22, paragraph 2 is replaced by the following:

2. The Commission shall also keep this Regulation under continual review in the light of significant information becoming available in relation to underlying assumptions for anticipated income and expenditure of the Agency. By 31 January 2015, the Commission shall review this Regulation with a view to amend it, if appropriate, taking into account in particular the costs of the Agency and the related costs of the services provided by the competent authorities of the Member States.

(10) Annexes I to VIII to Regulation (EC) No 340/2008 are replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall not apply to valid submissions pending on 22 March 2013.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 254/2013. (See end of Document for details)*

Done at Brussels, 20 March 2013.

For the Commission

The President

José Manuel BARROSO