Commission Regulation (EU) No 691/2013 of 19 July 2013 amending Regulation (EC) No 152/2009 as regards methods of sampling and analysis (Text with EEA relevance)

COMMISSION REGULATION (EU) No 691/2013

of 19 July 2013

amending Regulation (EC) No 152/2009 as regards methods of sampling and analysis

(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 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules[(1)], and in particular Article 11(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed[(2)] acknowledged the need to update the provisions concerning sampling to take into account the recent developments in the way feed are produced, stored, transported and marketed.

(2) The sampling for the official control of pesticide residues in and on feed of plant and animal origin has to be performed in accordance with Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC[(3)]. The sampling requirements provided for in Directive 2002/63/EC are minimum requirements and the sampling requirements provided for in this Regulation are in general at least equal to or stricter than these minimum requirements with the exception of the size of the final sample for certain commodities. With the inclusion of the provisions as regards the size of the final sample for the control of pesticide residues, the methods of sampling provided in this Regulation can also be applied for the control of pesticide residues.

(3) Commission Regulation (EU) No 619/2011[(4)] lays down the methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired. For sampling, Regulation (EU) No 619/2011 makes reference to the provisions of Regulation (EC) No 152/2009 whereby it establishes specific provisions as regards the size of sample. The amendments introduced by this Regulation include specific provisions as regards the size of samples; therefore the methods of sampling provided for by Regulation (EC) No 152/2009 as amended by this Regulation should also be applied to the control of compliance with Regulation (EU) No 619/2011.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 691/2013. (See end of Document for details)*

(4) A period of time is needed to put the new method of sampling in place.

(5) Regulation (EC) No 152/2009 should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 152/2009 is amended as follows:

(1) Article 1 is replaced by the following:

Article 1

Sampling for the official control of feed, in particular as regards the determination of constituents, including material which contains or consists of or is produced from genetically modified organisms (GMOs), feed additives as defined by Regulation (EC) No 1831/2003 of the European Parliament and of the Council[(5)], undesirable substances as defined by Directive 2002/32/EC of the European Parliament and of the Council[(6)] shall be carried out in accordance with the methods set out in Annex I.

The method of sampling set out in Annex I is applicable for the control of feed as regards the determination of pesticide residues as defined in Regulation (EC) No 396/2005 of the European Parliament and of the Council[(7)] and control of compliance with Regulation (EU) No 619/2011.;

(2) Annex I is replaced by the text set out in Annex I to this Regulation;

(3) Annex II is replaced by the text set out in Annex II to this Regulation.

Article 2

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

It shall apply from 1 January 2014.

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

Done at Brussels, 19 July 2013.

For the Commission

The President

José Manuel BARROSO

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 691/2013. (See end of Document for details)*

ANNEX I

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METHODS OF SAMPLING

1. PURPOSE AND SCOPE

Samples intended for the official control of feed shall be taken according to the methods described below. Samples thus obtained shall be considered as representative of the sampled portions.

The purpose of representative sampling is to obtain a small fraction from a lot in such a way that a determination of any particular characteristic of this fraction will represent the mean value of the characteristic of the lot. The lot shall be sampled by repeatedly taking incremental samples at various single positions in the lot. These incremental samples shall be combined by mixing to form an aggregate sample from which representative final samples shall be prepared by representative dividing.

If by a visual inspection, portions of the feed to be sampled show a difference in quality from the rest of the feed from the same lot, such portions shall be separated from the rest of the feed and treated as a separate sublot. If it is not possible to divide the feed into separate sublots, the feed shall be sampled as one lot. In such cases, mention shall be made of this fact in the sampling report.

Where a feed sampled in accordance with the provisions of this Regulation is identified as not satisfying EU requirements, is part of a lot of feed of the same class or description, it shall be presumed that all of the feed in that lot is so affected, unless following a detailed assessment there is no evidence that the rest of the lot fails to satisfy the EU requirements.

2. DEFINITIONS

— Lot (or batch)	:	an identified quantity of feed determined to have common characteristics, such as origin, variety, type of packaging, packer, consignor or labelling, and in case of a production process, a unit of production from a single plant using uniform production parameters or a number of such units, when produced in continuous order and stored together.
— Sampled portion	:	A lot or an identified part of the lot or sublot.
— Sealed sample	:	a sample sealed in such a manner as to prevent any access to the sample without breaking or removing the seal.
— Incremental sample	:	A quantity taken from one point in the sampled portion.
— Aggregate sample	:	An aggregate of incremental samples taken from the same sampled portion.
— Reduced sample	:	A part of the aggregate sample, obtained from the latter by a process of representative reduction.
— Final sample	:	A part of the reduced sample or of the homogenised aggregate sample.
— Laboratory sample	:	a sample intended for the laboratory (as received by the laboratory) and can be the final, reduced or aggregate sample.

3. GENERAL PROVISIONS

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 691/2013. (See end of Document for details)*

— Sampling personnel: the samples shall be taken by persons authorised for that purpose by the competent authority.

— The sample has to be sealed in such a manner as to prevent any access to the sample without breaking or removing the seal. The seal's mark should be clearly identifiable and clearly visible. Alternatively, the sample can be put in a recipient which can be closed in such a manner that it cannot be opened without irreversibly damaging the receptacle or container, avoiding the re-use of the receptacle or container.

— Identification of the sample: the sample has to be indelibly marked and must be identified in such a way that there is an unambiguous link to the sampling report.

— From each aggregate sample at least two final samples are taken: at least one for control (enforcement) and one for the feed business operator (defence). Eventually, one final sample may be taken for reference. In case the complete aggregate sample is homogenized, the final samples are taken from the homogenized aggregate sample, unless such procedure conflicts with Member States' rules as regards the right of the feed business operator.

4. APPARATUS

4.1. The sampling apparatus must be made of materials which cannot contaminate the products to be sampled. Apparatus which is intended to be used multiple times must be easy to clean to avoid any cross-contamination.

4.2. **Apparatus recommended for the sampling of solid feed**

4.2.1. *Manual sampling*

4.2.1.1. Flat-bottomed shovel with vertical sides

4.2.1.2. Sampling spear with a long split or compartments. The dimensions of the sampling spear must be appropriate to the characteristics of the sampled portion (depth of container, dimensions of sack, etc.) and to the particle size of the feed.

In case the sampling spear has several apertures, in order to ensure that the sample is taken at the different locations alongside the spear, the apertures should be separated by compartments or sequentially staggered apertures.

4.2.2. *Mechanical sampling*

Appropriate mechanical apparatus may be used for the sampling of moving feed. Appropriate means that at least the whole section of the flow is sampled.

Sampling of feed in motion (at high flow rates) can be performed by automatic samplers.

4.2.3. *Divider*

If possible and appropriate, apparatus designed to divide the sample into approximately equal parts should be used for the preparation of reduced samples in a representative way.

5. QUANTITATIVE REQUIREMENTS AS REGARDS NUMBER OF INCREMENTAL SAMPLES

— The quantitative requirements in points 5.1 and 5.2 as regards the number of incremental samples are applicable for sampled portion sizes up to a maximum of 500 tonnes and which can be sampled in a representative way. The sampling procedure described is equally valid for quantities larger than prescribed maximum sampled portion size provided that the maximum number of incremental samples given in the tables below is ignored, the number of incremental samples being determined by the

square-root formula given in the appropriate part of the procedure (see point 5.3) and the minimum aggregate sample size increased proportionally. This does not prevent a large lot being divided into smaller sublots and each sublot sampled in accordance with the procedure described in points 5.1 and 5.2.

— The size of the sampled portion must be such that each of its constituent parts can be sampled.

— For very large lots or sublots (> 500 tonnes) and for lots which are transported or stored in such a way that sampling cannot be done in accordance with the sampling procedure provided for in points 5.1 and 5.2 of this chapter, the sampling procedure as provided for in point 5.3 is to be applied.

— In case the feed business operator is required by legislation to comply with this Regulation within the frame of a mandatory monitoring system, the feed business operator may deviate from the quantitative requirements as provided for in this chapter to take into account operational characteristics on the condition that the feed business operator has demonstrated to the satisfaction of the competent authority the equivalence of the sampling procedure as regards representativeness and after authorisation from the competent authority.

— In exceptional cases, if it is not possible to carry out the method of sampling set out as regards the quantitative requirements because of the unacceptable commercial damage to the lot (because of packaging forms, means of transport, way of storage etc.) an alternative method of sampling may be applied provided that it is as representative as possible and is fully described and documented.

5.1. **Quantitative requirements as regards incremental samples in relation to the control of substances or products uniformly distributed throughout the feed**

5.1.1. *Loose solid feed*

Size of sampled portion	**Minimum number of incremental samples**
≤ 2,5 tonnes	7
> 2,5 tonnes	√ 20 times the number of tonnes making up the sampled portion[a], up to 40 incremental samples

a Where the number obtained is a fraction, it shall be rounded up to the next whole number.

5.1.2. *Loose liquid feed*

Size of sampled portion	**Minimum number of incremental samples**
≤ 2,5 tonnes or ≤ 2 500 litres	4[a]
> 2,5 tonnes or > 2 500 litres	7[a]

a In case it is not possible to make the liquid homogeneous, the number of incremental samples has to be increased.

5.1.3. *Packaged feed*