

EXPLANATORY MEMORANDUM

(s. 5A of the Statutory Instruments Act, No. 23 of 2013)



DAIRY INDUSTRY (IMPORTS AND EXPORTS) REGULATIONS, 2020

PART I

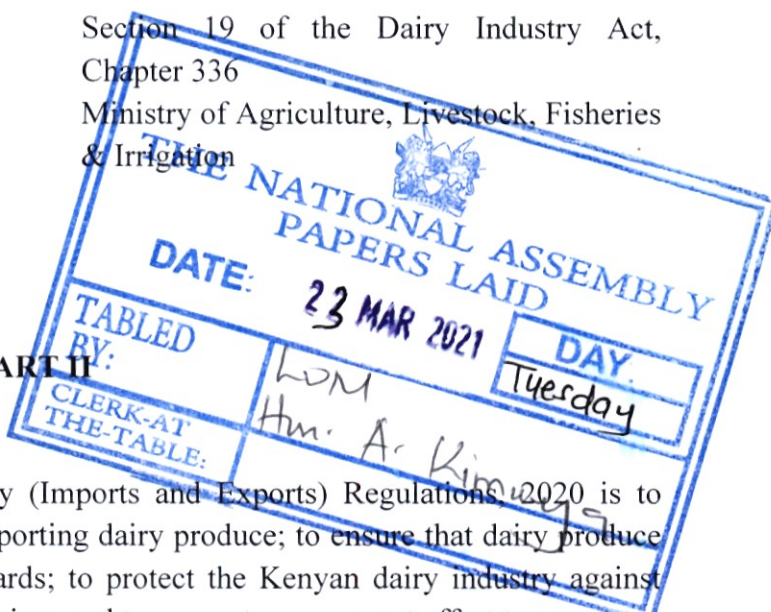
Name of Statutory Instrument:	Dairy Industry (Imports and Exports) Regulations, 2020
Name of the Parent Act:	The Dairy Industry Act, Chapter 336
Enacted Pursuant to:	Section 19 of the Dairy Industry Act, Chapter 336
Name of the Ministry/Department:	Ministry of Agriculture, Livestock, Fisheries & Irrigation
Gazetted on:	
Tabled on:	

PART II

1. Purpose of the Statutory Instrument

The purpose or object of the Dairy Industry (Imports and Exports) Regulations, 2020 is to provide for the procedure for importing or exporting dairy produce; to ensure that dairy produce imports and exports meet the relevant standards; to protect the Kenyan dairy industry against unfair trade practices or competition and dumping; and to support government effort to guarantee food security and self-sufficiency. Specifically, the Regulations provide for —

- 1.1 The requirement for import or export permit for those who wish to engage in the import and export business;
- 1.2 Imposition of import levy and penalty for default;
- 1.3 The involvement of the Directorate of Veterinary Services in allowing one to be cleared to import or export dairy produce;
- 1.4 the fees payable to the Board for import or export permit;
- 1.5 transit permit where dairy produce transits through the country;
- 1.6 power of a compliance officer to seize and destroy non-compliant produce, equipment, materials or additives;
- 1.7 offences relating to imports and exports;
- 1.8 revocation of the Dairy Industry (Imports and Exports) Regulations, Legal Notice No. 103 of 2004.



2. LEGISLATIVE CONTEXT

- 2.1 These Regulations are intended to address the challenges and shortcomings arising from the liberalization policies of the 1990s. The Regulations are also consistent with the Constitution and other relevant laws and regulations governing standards and food safety, including the Public Health Act, Chapter 242 of the Laws of Kenya, Food, Drugs and Chemical Substances Act, Chapter 254 of the Laws of Kenya, Standards Act, Chapter 496 of the Laws of Kenya, Environmental Management and Coordination Act, Chapter 387 of the Laws of Kenya, Pest Control Products Act, Chapter 355 of the Laws of Kenya, Cattle Cleansing Act, Chapter 358 of the Laws of Kenya, Veterinary Surgeon and Veterinary Para Professionals Act, No. 29 of 2011, Animal Diseases Act, Chapter 364 of the Laws of Kenya, Animal Technicians Act, No. 11 of 2010 and the Weights and Measures Act, Chapter 513 of the Laws of Kenya.
- 2.2 The earliest legal instrument to regulate the dairy industry is the Dairy Industry Act (“the Act”). The Act was assented to on 11th August 1958. Since that time, there have been about 13 amendments to the Act, the last one being in 2006.
- 2.3 Under the Act, there have been subsidiary instruments by way of regulations and orders. The main concerns of the amendments have been something to do with trying to help the dairy farmer obtain good prices for the milk, to ensure that dairy industry is competitive and to assure safety of the dairy produce to the consumer;
- 2.4 The Dairy Industry Act, by section 19, empowers the Cabinet Secretary to make regulations to provide for detailed issues and procedures that cannot appropriately be part of the Act. Amongst the issues to be regulated by the Cabinet Secretary are matters of registration of farmers, licensing of various actors in the industry, and the imposition of cess and levy;
- 2.5 With the promulgation of the Constitution of Kenya 2010, it becomes necessary for the Board to give room for the County governments to perform their part in the industry while the Board retains regulatory and oversight functions over the industry;
- 2.6 There has been only one subsidiary instrument which has been in existence for some time, and which deal with imports and exports: *Dairy Industry (Imports and Exports) Regulations, 2004*.¹
- 2.7 These Regulations are made pursuant to s. 19 of the Dairy Industry Act and are meant to replace the aforesaid regulations and help to fully operationalise the Dairy Industry Act.

3. POLICY BACKGROUND

- 3.1 The Constitution of Kenya 2010 provides a broad policy framework for the agriculture sector by assigning different roles to the National Government and the

¹ L.N. 103/2004.

County governments with respect to agriculture, which is the sector to which the dairy industry belongs.

- 3.2 There has been a policy specifically on the dairy industry, which was adopted by Parliament through a *Sessional Paper* in 2013. The objectives of the policy are to —
- a) improve the productivity and competitiveness of Kenya’s dairy and dairy Products;
 - b) positively contribute to the livelihoods of milk producing households;
 - c) increase domestic consumption of milk and milk products;
 - d) contribute to national food security,
 - e) transform the industry into an exporter of dairy animals and products;
 - f) maximize dairy exports in the regional and global markets; and
 - g) re-orient milk processing towards long life dairy products.
- 3.3 However, the Ministry has embarked on coming up with policy on the entire livestock industry. At the moment, there is a draft policy awaiting adoption: the *Draft Livestock Policy 2019* (‘draft Policy’).
- 3.4 The draft Policy, which is wider in scope than the *Sessional Paper No 5 of 2013*, also notes² that the Kenya Dairy Board has been performing both the regulatory and developmental roles. Some of the roles are now shared roles and the Regulations seek to attain this.
- 3.5 It is important to observe that despite the revision of the dairy industry policies, there has not been a corresponding review of the relevant legislation, which has left the policies less effective as they lack supportive legislation.
- 3.6 The standards for marketed milk in the regional markets are in place but the main challenge has always been the weak enforcement mechanism. The standards currently enforced are those of East African Community (EAC) which COMESA member countries have been advocating for adoption since 2007 for purposes of expanding the dairy industry trade in the region. Adherence to the EAC standards by the all actors in the value chain presents the path to ensuring quality products in the regional market. The introduction and enforcement of these dairy industry regulations will promote quality, clean and safe milk production and handling at all levels of the value chain.
- 3.7 Furthermore, the Regulations provide synergy and focus among the actors in the animal resource industry as they perform their respective roles while addressing animal health and food safety issues in livestock.
- 3.8 The Regulations are expected to revitalize the dairy sub-sector and guarantee the sustainability of dairy farming as a major economic thrust in the country and enhance Kenya’s leadership position in dairy production within the region and beyond.

4. CONSULTATION OUTCOME

² See page 68

- 4.1 As required under Article 10 of the Constitution of Kenya 2010 as well as under sections 6 and 7 of the Statutory Instruments Act, the Cabinet Secretary and the Board have held consultative fora involving stakeholders in March, 2020, as detailed under clause 4.3 below.
- 4.2 The following stakeholders have been involved in the development of the Regulations: dairy producers; transporters and distributors, dairy processors, importers and exporters of dairy, County governments, members of County assemblies in the in various regions, and other dealers in dairy and related products.
- 4.3 All the 47 counties were invited to participate in the consultations at different venues shown above. There were stakeholders' consultative meetings in different regions on the following dates and venues:
- a) 9th March 2020: Nyeri; Muranga;
 - b) 9th March 2020: Garissa;
 - c) 9th March 2020: Kitale;
 - d) 9th March 2020: Kakamega;
 - e) 10th March 2020: Kisumu;
 - f) 10th March 2020: Uasin Gishu; Elgeyo Marakwet & Nandi;
 - g) 10th March 2020: Makeni;
 - h) 11th March 2020: Marsabit;
 - i) 12th March 2020: Nakuru & Baringo;
 - j) 12th March 2020: Kisii;
 - k) 13th March 2020: Nyandarua & Laikipia;
 - l) 13th March 2020: Meru;
 - m) 13th March 2020: Mombasa, Kwale, Kilifi;
 - n) 13th March 2020: Kericho, Bomet & Narok.
- 4.4 The key problems being addressed by the Regulations are: the problem of cheap imports of milk produce, lack of proper data and information on imports and exports, and protection of the local dairy industry.
- 4.5 The following were key results of consultations in various meetings with dairy industry stakeholders:
- a) That both the Board and the County governments should get data and information on import and export;
 - b) That there was need to enhance import levy and penalty for evading or defaulting to pay the levy;
 - c) That the Ministry through the Board should protect the local dairy industry even as it allows import of dairy produce.
- 4.6 The views of the stakeholders were considered in improving these Regulations.

5. GUIDANCE

- 5.1 Upon gazettment of these Regulations, the Ministry shall, through the Board, organize meetings of key players/stakeholders to sensitize them on the requirements of the Regulations and how to ensure their effective compliance and implementation;
- 5.2 The Ministry shall liaise with the National Treasury to deal with more fiscal incentives or disincentives with respect to imports.
- 5.3 The Ministry will also ensure that there is an approved Dairy Policy document to guide the industry.

6. IMPACT STATEMENT

6.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters that relate to the Bill of Rights, especially on fair administrative actions (cancellation or suspension of licence, etc.) and the right to privacy (data protection).
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.

6.2 Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- b) The Regulations would ensure that there is better collaboration between the Board and the County government in overseeing the industry;
- c) The Regulations would promote local dairy production by making it expensive to import dairy produce, and avoids Kenya being a dumping ground;

6.3 Impact on the Public Sector

- a) Clarity of relationship and roles between National Government (the Board) and relevant County governments concerning imports and exports;
- b) Provide clear procedures for licensing importers and exporters of dairy produce by specifying the role of the Veterinary Services Directorate and the Board;
- c) The Regulations would involve a rise in costs of enforcing compliance by the Board but this is more than compensated by the resulting betterment of the industry.

7. MONITORING AND REVIEW

Regulations are designed to achieve goals which may relate to impact, effectiveness (in terms of cost and usability), net benefit or efficiency and finally, equity or fairness. The following measures shall be undertaken for the purpose of monitoring and review:

- a) The Board shall document activities relating to imports and exports and share with the County governments, for the purpose of harmonising the records;
- b) The Board shall ensure that it captures all the relevant data on the regulatory permits issued as this will inform decisions on policy matters;
- c) The Board will establish proper mechanisms for collecting, collating and analysing various dairy data and information, such as the quantities of dairy produce produced, and the deficit at any given time;
- d) The Board shall carry out regulatory impact assessment at least once in the first four years of these Regulations to ensure that the Regulations have no loopholes and if there are, to be addressed appropriately.

8. Contacts:

- a) cabinetsecretary@kilimo.go.ke (Ministry of Agriculture, Livestock, Fisheries & Cooperatives).
- b) directorpolicy@kilimo.go.ke (Director, Policy, Ministry of Agriculture, Livestock, Fisheries & Cooperatives)
- c) dairyregulations2020@kdb.co.ke (Kenya Dairy Board)




**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (REGISTRATION, LICENSING, CESS AND
LEVY) REGULATIONS, 2020**

NOVEMBER, 2020

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 MAR 2021	
DAY: Tuesday	
TABLED BY:	LDM
CLERK-AT THE TABLE:	Hon. Amos Kimunya Moses Lemuria

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations in addition to carrying out extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose & Objects of the Regulations

The purpose or object of Dairy Industry (Registration, Licensing, Cess and Levy) Regulations, 2020 is to provide for the regulation, licensing of various actors and imposition of cess and levy by the Kenya Dairy Board and County governments. Specifically, the Regulations provide for—

- 2.1 the registration of primary producers;
- 2.2 the licensing of dairy business operators;
- 2.3 the issuance of regulatory permit by the Board and license by the County governments;
- 2.4 the fees payable to the Board for regulatory permits;
- 2.5 registration, governance and responsibilities of out-grower institutions;
- 2.6 the procedure for applying for registration as primary producer or for license and regulatory permit;
- 2.7 keeping of register of primary producers and inspection by the public or stakeholders;
- 2.8 imposition of cess on dairy produce by the relevant County government;
- 2.9 offences relating to registration and licensing;
- 2.10 revocation of the Dairy Industry (Imposition of Cess and Levies) Regulations, Legal Notice Number 111 of 2004.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact

of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 **Impact on Fundamental Rights and Freedom**

- a) The Regulations are not expected to have a negative impact on the fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters that relate to the Bill of Rights, especially on fair administrative actions (cancellation or suspension of licence, etc.), right to privacy (data protection) and freedom of association (right of the dairy industry players to associate for business in the industry).
- c) The Regulations promote freedom of association for both the primary producers and processors by allowing options to choose the manner of associating for common purpose in the production;
- d) The Regulations do not have negative impact on the environment or environmental rights of the people.

3.2 **Impact on the Private Sector**

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- b) The Regulations will help the Government capture important statistics on the dairy industry, including the number of dairy farmers, the number of operators, the production by each dairy farmer, etc. and these are important to help the farmer or the operator get the relevant services.
- c) The Regulations will ensure that there is better collaboration between the Board and the County government in overseeing the industry;
- d) The Regulations will lead to a more vibrant dairy industry, with the attendant increase in economic activities of the dairy farmers, the processors and other actors in the industry. It is expected that if the Regulations are effectively enforced, they would result in economic and social empowerment of the people.
- e) The Regulations will result in an orderly industry.
- f) The Regulations add an additional layer of oversight to include the relevant County governments, which is a positive outcome for enhancing accountability of the players in the dairy industry and collaboration between the two levels of government.

3.3 **Impact on the Public Sector**

- a) Clarity of relationship and roles between National Government (the Board) and relevant County governments;

- b) Provide clear procedures for licensing processors and registering primary producers;
- c) Allowing the County governments to provide framework for grass-root support in extension services and monitoring of compliance with the Regulations as well as developing the dairy industry as the Board focuses on regulatory aspects;
- d) The Regulations would involve a rise in costs of enforcing compliance, which has been enhanced to directly include County governments in the oversight role.

4. Other Practical Options to Regulations

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. The Ministry considered other options that are available. The options are not necessarily mutually exclusive with the proposed Regulations. The Ministry will implement the options to the extent necessary, working alongside the Regulations. The options that were considered are:

- a) Maintain *status quo*: Letting the situation remain as it is. I means that there will be no registration of farmers and the issue of levy and cess will continue to be unclear.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;
- c) Self-regulation: this is where the industry regulates itself with minimal role of Government;
- d) Co-regulation: here the Government deals with some aspects while other aspects are left to be handled by the industry. This will be effective once the cooperatives are strengthened;
- e) Providing procedural rules: these are meant to guide those tasked with making decision in the industry, such as those who license processors to consider certain factors in granting or refusing licence. The Ministry will from time to time issue procedural guidelines to the primary producers, operators, the stakeholders and the general public.
- f) Using market instruments, e.g. competition may be used to create demand or to moderate prices, or even to discourage certain practices.
- g) Use of fiscal instruments: taxation may be used, for example to deter certain farming practices by making it more costly to carry out a harmful practice; to reduce the cost of production by emanating or zero-rating taxes on dairy inputs; to raise taxes on imported dairy products to discourage importation of dairy products, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various options would be used to bolster the implementation of the Regulations as much as possible.

None of the measures outlined above is sufficient to provide a clear framework the way Regulations would do. The law must always be concrete and certain. Law is much better in

protecting the rights of the farmer and the operator than any other non-legal instrument can accomplish.

5. Conclusion

The Ministry concludes that the proposed Regulations are an improvement to the current legal framework for registration and licensing regime, and if passed will promote and improve the dairy industry for the benefit of the farmer, the operator and the general public. The Regulations would help the Government to better manage the industry and deal with the matters arising in the industry more effectively.

6. Recommendation

It is recommended that the Dairy Industry (Registration, Licensing, Cess and Levy) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (RETURNS, REPORTS AND ESTIMATES)
REGULATIONS, 2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations in addition to carrying out extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of The Dairy Industry (Returns, Reports and Estimates) Regulations, 2020 is to provide the mechanisms for rendering returns, reports and estimates by dairy business operators to the County Government or the Board and to ensure that the County Government and the Board receive relevant data and information for planning purposes. Specifically, the Regulations provide —

- 2.1 That every dairy industry operator files with the County Executive Committee member in charge of dairy matters and the Board reports, returns or estimates relating to the production, distribution or sale of the dairy produce.
- 2.2 That the operator in the dairy industry is required in the same period to file all deductions made on the suppliers of daily produce, as well as the usage of those deductions.
- 2.3 That importers and exporters of dairy products are required to file returns with the Board within 10 days of importing or exporting dairy products, file with the Board reports, returns or estimates (and the Board shall avail information to County governments on quarterly basis).
- 2.4 Other reports may be required at any time by the Board or by the relevant County government. The information submitted under this Regulations is subject to the Data Protection Act.¹

¹ No. 24 of 2019

- 2.5 For revocation of the Dairy Industry (Returns, Reports and Estimates) (Distributors) Order, 1960;²

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have any negative impact on the fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters of the Bill of Rights, especially on the right to privacy, where relevant provisions of the Data Protection Act are applicable.
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.
- d) The Regulations enhance consumer protection in accordance with Article 46 of the Constitution of Kenya by ensuring availability of data and information on the dairy industry.

3.2 Economic Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by ensuring that all important statistics are availed to the Government, which in turn will be able to serve the private sector or individuals better because of better information;
- b) The Regulations do not require additional obligations by the operators except the requirement for submission of the readily available information in terms of quantities of dairy products delivered to the operators;
- c) The Regulations would ensure that there will be better collaboration between the Board and the County government in overseeing the industry, since both levels of government will have access to statistics and information in the industry;
- d) The Regulations mean that the dairy industry operator has more to do and will lead to a slight rise in compliance costs, but compliance by the operators will avoid fines that are the penalty for non-compliance, and also help improve the overall functioning of the industry.

3.3 Impact on the Public Sector

² L.N. 428/1960

- a) Clarity of the mutual relationship and roles between National Government (the Board) and relevant County governments;
- b) Will enable crucial data to be collected by the Board and the relevant County governments, hence improving policy-making that is informed by empirical evidence on the dairy industry;
- c) Increased data collection will be critical in directing policy choices and decisions to improve the dairy industry;
- d) The Ministry will need to enhance budgetary allocations because under the Regulations there will be a rise in costs of enforcing compliance, which has been enhanced and include County governments.

4. Other Practicable Options to Regulations

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. These options need not stand alone but may supplement the Regulations. Amongst the options that were considered are:

- a) Maintaining *status quo*: maintaining the status quo would rob the current legal framework of the details that have been introduced in the proposed Regulations. The current regulations do not provide for the role of county governments, which have now been incorporated in the new Regulations.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors. Policy guidelines define them for the industry;
- c) Providing procedural rules: these are meant to guide those tasked with making decision in the industry, such as the manner of filing returns online, etc.

The options were considered and it was found necessary that the dairy industry needed the Regulations immediately but the proposed options would be used to bolster the implementation of the Regulations as much as possible. The other options are not desirable for the following reasons:

- a) Policy guidelines alone are not enforceable, hence the Government will be unable to achieve the objective of streamlining the dairy industry through tangible and enforceable obligations;
- b) Guidelines suffer from lack of reach and the certainty necessary for effectiveness. The timelines and the imperative nature of the obligations to report require a law to be in place;
- c) Rules and guidelines are meant to work within legal framework, hence their option is seriously limited.
- d) Maintaining the status quo would rob the current legal framework of the details that have been introduced in the proposed Regulations. The current regulations do not provide for

the role of county governments, which have now been incorporated in the new Regulations.

5. Conclusion

The Ministry conclude that the proposed Regulations are an improvement to the current legal framework for registration and licensing regime and will promote and improve the dairy industry for the benefit of the farmer, the operator and the general public. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Returns, Reports and Estimates) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (COMPLIANCE OFFICER) REGULATIONS,
2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of the Dairy Industry (Compliance Officer) Regulations, 2020 is to provide mechanisms for inspection of primary producers and dairy business operators and to provide for procedures and conduct of a compliance officer while discharging duties under the Act and the Regulations. Specifically, the Regulations provide for —

- 2.1 minimum qualifications for the compliance officers, and the Board shall keep a register of such officers;
- 2.2 The compliance officers have to follow the set procedure when carrying out their duties, including inspections, seizure and destruction of contraband goods;
- 2.3 Fairness of the process require that an inspection or collection of samples or the taking of offending products are recorded in the presence of the owner or their representative.
- 2.4 The Regulations also create offences by compliance officers, as well as others who may obstruct the officers.
- 2.5 Information that is collected in the course of their work is protected in accordance with the Data Protection Act.
- 2.6 Regulation 16 is the most important in terms of due process. The clause provides for destruction of “product, material, substance, article, plant and machinery, or any other thing which he has reason to believe or about which he has received credible information to the effect that it has been used or is about to be used in contravention

of the provisions of the Act or its regulations.” The destruction follows a report to the police and prosecution of the suspected offender.

- 2.7 The Regulations also provide that where there is a case in court regarding the confiscated products, the same shall be disposed of in accordance with the directions of the court.
- 2.8 There are forms provided in the schedule for seizure/receipt and for inspection notice;
- 2.9 Revocation of the Dairy Industry (Dairy Inspectors) Regulations are hereby revoked, Legal Notice Number 215 of 1964.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations. There are in-built mechanisms which constrain the powers of a compliance officer against their subjects.
- b) The Regulations address matters that relate to the Bill of Rights, especially on fair administrative actions (seizure and destruction of dairy produce or equipment, etc.), right to privacy (protection of data and information).
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.

3.2 Impact on the Private Sector

It is anticipated that the Regulations would positively impact on the private sector by enhancing compliance with the Regulations on the part of individuals and organizations engaged in dairy production or business.

There is no expected adverse economic impact to the private sector.

3.3 Impact on the Public Sector

- a) Clarity of relationship and roles between National Government (the Board) and relevant County governments;
- b) The Regulations would ensure that there is better collaboration between the Board and the County government in overseeing the industry;
- c) The Regulations would involve a rise in costs of enforcing compliance, which has been enhanced and include County governments.

4. Options to Regulation

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Maintaining *status quo*: status quo does not for instance provide for the role of County governments. Status quo does not spell out the requirements for one to be a compliance officer.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. compliance officers, dairy farmers, distributors, importers and processors, etc. on what is expected of them;
- c) Self-regulations: this is where the industry regulates itself with minimal role of Government;
- d) Providing procedural rules: these are meant to guide those tasked with making decision in the industry, such as those who visit premises for inspection (what procedure to follow).

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various options would be used to bolster the implementation of the Regulations as much as possible.

Unlike the Regulations, the options available cannot be enforceable in a court of law, yet the compliance officer deals with enforcement of obligations imposed by the law.

5. Conclusion

The Ministry concludes that the proposed Regulations are necessary to fill the existing void in the Regulations and will promote and improve the dairy industry for the benefit of the farmer, the operator and the consumers of dairy produce. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Compliance Officer) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (TRACEABILITY AND RECALL)
REGULATIONS, 2020**

NOVEMBER, 2020

1. Introduction

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RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of the Dairy Industry (Traceability and Recall) Regulations, 2020 is to promote the safety of dairy produce by way of better, targeted and more rapid response to food incidents; to improve food law enforcement by facilitating access to information about marketed dairy produce and to provide mechanisms for safety assurance, tracing and recall of defective dairy produce. Specifically, the Regulations provide —

- 2.1 That a dairy industry operator to keep dairy records for at least three months to facilitate the identification of the suppliers, and minimum content of the record is provided. The information so kept is also required to be made available to the Board;
- 2.2 That a consignment of dairy product must bear the details as provided at all time;
- 2.3 That an operator is required to establish a recall plan;
- 2.4 That the obligation for recall is on the operator, who is required to inform the Board as soon as a decision to recall a product is reached.
- 2.5 That upon recall of a product, the “dairy business operator shall notify the consumer of the product identity, the nature of the risk, where the produce was sold and produce drop off points.”
- 2.6 For an offence where a person contravenes any of the provisions of the Regulations or who knowingly aids or abets contravention of the Regulations.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 **Impact on Fundamental Rights and Freedom**

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations promote consumer protection, which is a constitutional right under article 46 of the Constitution of Kenya 2010;
- c) The Regulations do not have negative impact on the environment or environmental rights of the people, but enhance those rights.

3.2 **Impact on the Private Sector**

- a) The Regulations are to ensure that the consumer is safe from harmful dairy produce;
- b) Despite these benefits, the Regulations will add cost of dairy transacting as the measures required to be undertaken will require substantial investment by the operator, especially in tracing a product and recalling it. But this cost is not so high compared to the benefits that will accrue from the Regulations, the main one being consumer protection.

3.3 **Impact on the Public Sector**

- a) The Regulations would help in the oversight of the dairy industry by the regulator and the County governments, by requiring proper records to be kept, as well as establishing a recall plan.
- b) The public will be better protected against harmful or contaminated produce or products.
- c) The Regulations involve a rise in the costs of enforcing compliance, because more monitoring resources would be needed, including skilled compliance officers.

4. **Options to Regulations**

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) *Maintain status quo*: this means having no regulation for traceability as currently is. Currently, there is no legal framework for traceability and recall.
- b) *Policy guidelines*: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;

- c) *Providing procedural rules:* these are meant to guide those tasked with making decision in the industry, such as those who license processors to consider certain factors in granting or refusing licence. For example, where a person lacks a recall plan, he or she may be denied a licence.

The options were considered and it was found necessary that the dairy industry needed regulations immediately, but the various options would be used to bolster the implementation of the Regulations as much as possible.

Policy and procedural guidelines cannot deal with traceability and recall. Defective products pose a serious risk to the consumer and the issue cannot be handled merely as a procedure. There has to be concrete law to guide and impose obligation to the operator to establish traceability and recall mechanism.

5. Conclusion

The Ministry conclude that the proposed Regulations are necessary to fill the existing void in the Regulations and will promote and improve the dairy industry for the benefit of the farmer, the operator and the consumers of dairy produce. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Traceability and Recall) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (MILK SALE CONTRACT) REGULATIONS,
2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of Dairy Industry (Milk Sale Contract) Regulations, 2020 is to ensure that there is fair trade in the sale of milk, and to protect the investment interests of both the buyer and seller of milk. Specifically, the Regulations provide that every sale contract in relation to milk shall be by way of a binding contract containing, at minimum —

- 2.1 details of parties to the contract;
- 2.2 duties and responsibilities of parties;
- 2.3 price per kilogram;
- 2.4 quantities;
- 2.5 oversupply or undersupply terms;
- 2.6 quality specifications;
- 2.7 testing and rejection terms;
- 2.8 transfer of ownership;
- 2.9 time of collection or delivery;
- 2.10 frequency of collection or delivery;
- 2.11 contractual period;
- 2.12 terms of payment, including payment of interests on late payments;
- 2.13 confidentiality;
- 2.14 waivers and amendment terms;
- 2.15 terms of termination of contract;
- 2.16 indemnification and insurance;

- 2.17 sanctions for failure to honor contractual obligations;
- 2.18 notices and demands;
- 2.19 *force majeure*;
- 2.20 dispute resolution mechanism.

The Regulations also provide for enforcement of the milk sale contracts, by providing for inspection by compliance officers, at any time, of such contracts to ensure that the terms of the contract are being complied with by both parties. It is an offence for failing to comply with the Regulations.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations, but will strengthen the right to property through strengthening the rights of the parties to milk sale contracts.
- b) The proposed Regulations will achieve consumer protection as far as the dairy farmer and the operator are concerned.
- c) The Regulations promote freedom of association for both the primary producers and process by allowing options to choose the manner of associations;
- d) The Regulations do not have negative impact on the environment or environmental rights of the people.

3.2 Impact on the Private Sector

- a) The Regulations would ensure that the investment interests of the farmer and the other players in the industry are secured to ensure reasonable return on investment.
- b) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- c) The Regulations will lead to a more vibrant dairy industry, with the attendant increase in economic activities by the dairy farmers, the processors and other actors in the industry. It is expected that if the Regulations are enforced, they would result in economic and social empowerment of the people through better pricing of dairy produce.

3.3 Impact on the Public Sector

- a) The Regulation will have general positive impact on the public sector because standard written contracts improve quality of dairy produce and hence make it easy for oversight of the sector that is orderly. Consumers are also better protected when the industry is more orderly.
- b) The proposed Regulations would reduce disputes that hitherto have arisen between players by making the terms of engagement more certain. This frees the government from unnecessary engagement to resolve disputes.

4. Other Practicable Options to Regulations

Prescribing terms of contract through regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Do nothing: it is also an option to do nothing and let the *status quo* prevail. However, this will not address the many disputes and exploitation of the weaker parties that happen in the dairy industry.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;
- c) Using market instruments, e.g. competition may be used to create demand or to moderate prices, or even to discourage certain practices.
- d) Use of fiscal instruments: taxation may be used, for example to deter certain farming practices by making it more costly to carry out a harmful practice; to reduce the cost of production by emanating or zero-rating taxes on dairy inputs; to raise taxes on imported dairy products to discourage importation of dairy products, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various other options ((b) to (d) would be used to bolster the implementation of the Regulations as much as possible.

Guidelines only amount to recommendations and cannot assure the competitiveness of the terms of contract between the farmer and the dairy operator.

The ideal option would have been to let the market forces to determine the terms of engagement between the farmer and other operators. But this has not worked due to the oligopolistic dairy industry and other factors that have made it difficult for the market to determine the terms of engagement. The end result is that a farmer is not assured of fair terms of contract.

5. Conclusion

The Ministry conclude that the proposed Regulations are an improvement to the current legal framework for registration and licensing regime and will promote and improve the dairy industry

for the benefit of the farmer, the operator and the general public. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Milk Sale Contract) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (PRICING OF DAIRY PRODUCE)
REGULATIONS, 2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations in addition to carrying out extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of the Dairy Industry (Pricing of Dairy Produce) Regulations, 2020 is to provide for the determination of the minimum milk prices by the Cabinet Secretary in consultation with the Board. Specifically, the Regulations provide for—

- 2.1 The protection of the farmers' investment by setting minimum prices for the milk;
- 2.2 Pricing based on the quality of milk, cost of production, transport costs and chilling costs to determine the minimum price;
- 2.3 A purchaser of milk, whether or not for bulking for further processing or sale, to pay the primary producer the price determined by the Cabinet Secretary on the advice of the Board, as per the Regulations.
- 2.4 Purchasers of milk being required to maintain records of the rate they pay to primary producers and such records may be inspected by a compliance officer at any time. It is an offence to obstruct a compliance officer in enforcing this obligation.
- 2.5 Offences relating to obstruction of an inspector who enforces the Regulations, and for contravening the Regulations generally (e.g. buying below the minimum price set);
- 2.6 Revocation of the Dairy Industry (Prices of Dairy Produces) Regulations.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and

the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 **Impact on Fundamental Rights and Freedom**

- a) The Regulations are not expected to have a negative impact on fundamental rights or freedoms of persons or institutions that are subject to the Regulations.
- b) The Regulations are meant to protect the farmer and guarantee minimum return on investment.
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.

3.2 **Impact on the Private Sector**

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- b) The Regulations would reduce the oligopolistic nature of the industry by fairly determining the minimum price for dairy produce;
- c) The Regulations will lead to a more vibrant dairy industry, with the attendant increase in economic activities of the dairy farmers, the processors and other actors in the industry. It is expected that if the Regulations are enforced, they would result in economic and social empowerment of the people.
- d) Despite these benefits, the Regulations in effect interfere with the liberalized market by introducing price controls, but the overall advantage is in favour of the industry. It is not unusual for the Government to control prices in key commodities, which has been successfully applied in the petroleum industry.

3.3 **Impact on the Public Sector**

- a) The Regulations would make competition more evenly balanced in the dairy industry in terms of pricing and this reduces the differences that usually lead to unfair economic returns to the small farmer;
- b) There is not expected any negative impact on the public sector.

4. Other Practicable Options to Regulation

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Maintaining the *status quo*: not to introduce any regulation, but operate without any regulation on prices.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;

- c) Using market instruments, e.g. competition may be used to create demand or to moderate prices, or even to discourage certain practices.
- d) Use of fiscal instruments: taxation may be used, for example to deter certain farming practices by making it more costly to carry out a harmful practice; to reduce the cost of production by emanating or zero-rating taxes on dairy inputs; to raise taxes on imported dairy products to discourage importation of dairy products, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various options would be used to bolster the implementation of the Regulations as much as possible. Taxation is not sufficient to deal with prices. For example, heavy taxation of imports cannot guarantee that the domestic dairy products would have competitive prices and that there will be no exploitation of those with weak bargaining power.

Guidelines only amount to recommendations and cannot assure the competitiveness of the prices.

The ideal option would have been to let the market forces to determine the prices of milk produce. But this has not worked due to the oligopolistic dairy industry and other factors that have made it difficult for the market to determine the process. The end result is that a farmer is not assured of a decent return on the investment.

5. Conclusion

The Ministry conclude that the proposed Regulations are an improvement to the current legal framework for registration and licensing regime and will promote and improve the dairy industry for the benefit of the farmer, the operator and the general public. Promulgating the Regulations is the only viable option to assure the farmer of stable prices for the dairy produce..

6. Recommendation

It is recommended that the Dairy Industry (Pricing of Dairy Produce) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (IMPORTS AND EXPORTS) REGULATIONS,
2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of the Dairy Industry (Imports and Exports) Regulations, 2020 is to provide for the procedure for importing or exporting dairy produce; to ensure that dairy produce imports and exports meet the relevant standards; to protect the Kenyan dairy industry against unfair trade practices or competition and dumping; and to support government effort to guarantee food security and self-sufficiency. Specifically, the Regulations provide for —

- 2.1 The requirement for import or export permit for those who wish to engage in the import and export business;
- 2.2 Imposition of import levy and penalty for default;
- 2.3 The involvement of the Directorate of Veterinary Services in allowing one to be cleared to import or export dairy produce;
- 2.4 the fees payable to the Board for import or export permit;
- 2.5 transit permit where dairy produce transits through the country;
- 2.6 power of a compliance officer to seize and destroy non-compliant produce, equipment, materials or additives;
- 2.7 offences relating to imports and exports;
- 2.8 revocation of the Dairy Industry (Imports and Exports) Regulations, Legal Notice No. 103 of 2004.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters that relate to the Bill of Rights, especially on fair administrative actions (cancellation or suspension of licence, etc.) and the right to privacy (data protection).
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.

3.2 Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- b) The Regulations would promote local dairy production by making it expensive to import dairy produce, and avoids Kenya being a dumping ground for foreign dairy products;
- c) The dairy farmer would be assured of a market for dairy produce and reasonable prices after cheap imports are restricted.

3.3 Impact on the Public Sector

- a) Clarity of relationship and roles between National Government (the Board) and relevant County governments concerning imports and exports;
- b) The Regulations would ensure that there is better collaboration between the Board and the County government in overseeing the industry;
- c) There will be clear procedures for licensing importers and exporters of dairy produce by specifying the role of the Veterinary Services Directorate and the Board in the Regulations;
- d) The Regulations would involve a rise in costs of enforcing compliance by the Board and resources would be required to ensure compliance.

4. Options to Regulation

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Maintaining status quo: the *status quo* imposes less severe levy on imports.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;
- c) Using market instruments, e.g. competition may be used to create demand or to moderate prices, or even to discourage certain practices, including imports.
- d) Use of fiscal instruments: taxation may be used, for example to subsidize local dairy farmer in order to compete with external dairy operators, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various options would be used to bolster the implementation of the Regulations as much as possible.

Maintaining *status quo* would mean that the low levy imposed on imports would continue applying. This levy has been a source of concern as it has not restricted imports in favour of the local dairy industry.

Policy guidelines lack a critical element of an effective regulatory regime: enforceability.

A tax on imports cannot be as punitive as a levy, hence the levy option is the best in protecting the dairy industry. Subsidy of local dairy farmers is undesirable as it cannot be administered over an indefinite period, hence this option is not tenable.

5. Conclusion

The Ministry conclude that the proposed Regulations are necessary to fill the existing void in the Regulations and will promote and improve the dairy industry for the benefit of the farmer, the operator and the consumers of dairy produce. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Imports and Exports) Regulations, 2020 be gazetted.



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (DAIRY PRODUCE SAFETY)
REGULATIONS, 2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations in addition to carrying out extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of Dairy Industry (Dairy Produce Safety) Regulations, 2020 is to provide for enhanced compliance to the safety standards of dairy produce; the promotion of self-regulation in the dairy industry through adoption of global best practices; and to provide oversight of the dairy industry. Specifically, the Regulations provide for—

- 2.1 The Regulations require adherence to the Kenyan standards of safety; the standards to be developed by the Board;
- 2.2 Introduction of several measures that are aimed at ensuring safety in milk production, transportation, bulking, storage, distribution and sale. At the farm level, hygienic milking areas and the use of clean milking equipment will contribute to reduction of losses;
- 2.3 The approved methods of treating dairy produce and the specifications for containers to use for carrying milk, whether in bulk or in small containers;
- 2.4 Examination, testing and grading of produce according to the Kenyan standards (relevant standards) and submit samples;
- 2.5 Testing of samples of dairy produce from dairy retail shops, supermarkets, grocery shops and other places where dairy produce are sold and to be examined at least quarterly. This is intended to verify that the dairy produce conform to the safety standards.
- 2.6 Where non-compliance is detected, all necessary steps must be taken to recall the affected product;
- 2.7 There is requirement for medical certificates for handlers of dairy produce at various stages.

- 2.8 There are sanitation requirements at different levels: storage and distribution; dairy farms; milk collection centres; milk bars; milk dispensers; cottage industry, mini dairy and processors;
- 2.9 Records are required to be kept for all processes which are regulated.
- 2.10 It is an offence to fail to comply with any requirement under the Regulations;
- 2.11 Revoke the Dairy Industry (Carriage of Milk) Regulations and the Dairy Industry (Carriage of Milk) Orders that have been in existence.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters that relate to the Bill of Rights, especially on consumer rights under article 46 of the Constitution of Kenya 2010 (right to quality and information to consumers on products in the market).
- c) The Regulations do not have negative impact on the environment or environmental rights of the people, but indeed enhance waste management and safety in terms of the environment, hence the Regulations promote the right to a clean and healthy environment.
- d) The Regulations provide for destruction of non-conforming produce through court process, hence preserving the right to property and fair administrative action.

3.2 Economic Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- b) The Regulations will enhance confidence amongst the consumers of the quality of the dairy produce because of the high standards introduced under the Regulations.
- c) The Regulations will professionalize the production of dairy produce.
- d) The Regulations will lead to a more vibrant dairy industry, with the attendant increase in economic activities of the dairy farmers, the processors and other actors in the industry. It is expected that if the Regulations are enforced, they would result in economic and social empowerment of the people.

3.3 Impact on the Public Sector

- a) The public sector gains in the sense that the quality of produce is of interest to the Government, the consumer and the general public;
- b) The fact that the Regulations provide for safety of produce is important for both the public and the private sector and the country shall gain because high quality produce is more acceptable even in the international markets, and hence possible increased trade in the long run;
- c) The Regulations will indirectly create demand for more milk produce, hence contributing to the growth of the gross domestic product (GDP).
- d) The Regulations would involve a rise in costs of enforcing compliance, which has been enhanced to include enforcement by the relevant County governments. Supervision costs have been quantified elsewhere.

4. Options to Regulations

Regulation is not the only means of realizing a policy objectives. There are alternatives which could handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Maintain *status quo*: this means that no regulation is introduced and the existing challenges will not be addressed, which are basically that the existing regulations and public health laws are not adequate to assure consumer safety of the dairy produce. The existing legal framework does not provide sufficiently for the obligations of different players in the industry and hence the proposed regulations make provisions for the requirements to be met by different players.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors.
- c) Self-regulations: this is where the industry regulates itself with minimal role of Government. Standard can be set by the cooperative societies for members and the need for prescriptive legislation will be lessened. The problem with self-regulation is that it requires a mature body which will set standards for the association and its members.
- d) Co-regulation: here the Government deals with some aspects while other aspects are left to be handled by the industry (e.g. cooperatives);
- e) Providing procedural rules: these are meant to guide those tasked with making decision in the industry, such as those who license processors to consider certain factors in granting or refusing licence. For example, instead of providing the conditions for the grant or renewal in the licence, the Board can set out minimum requirements on hygiene before renewal of permit or licence.
- f) Use of fiscal instruments: taxation may be used, for example to deter certain farming practices by making it more costly to carry out a harmful practices; to reduce the cost of production by emanating or zero-rating taxes on dairy inputs; to raise taxes on imported dairy products to discourage importation of dairy products, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various options would be used to bolster the implementation of the Regulations as much as possible.

The options were considered under the assessment and the conclusion reached that the options do not address directly the concerns of the industry at this moment and hence the option to gazette the Regulations is the most effective method of trying to solve the problem relating to safety and health of the consumer of the dairy produce.

5. Conclusion

The Ministry conclude that the proposed Regulations are necessary to fill the existing void in the Regulations and will promote and improve the dairy industry for the benefit of the farmer, the operator and the consumers of dairy produce. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Dairy Produce Safety) Regulations, 2020 be gazetted.