

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

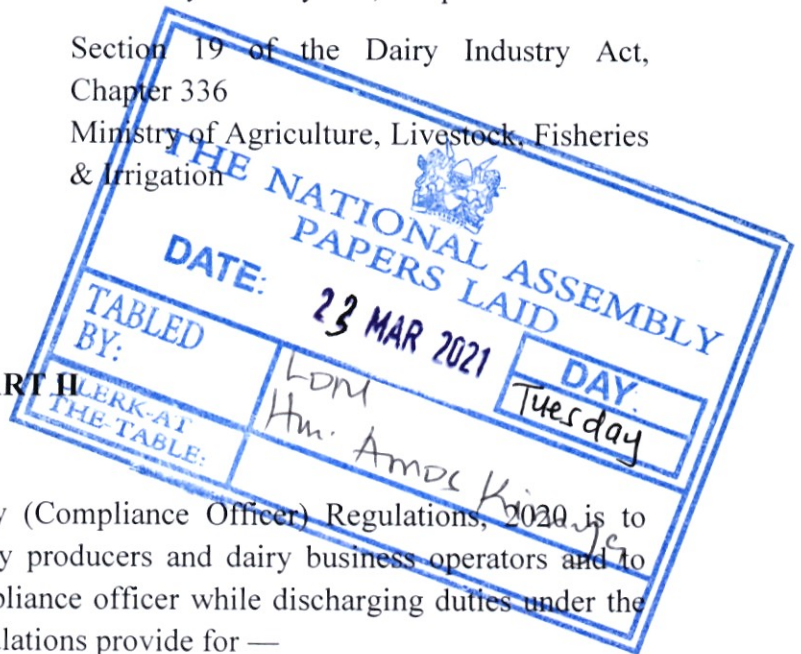
DAIRY INDUSTRY (COMPLIANCE OFFICER) REGULATIONS, 2020



PART I

Name of Statutory Instrument: Dairy Industry (Compliance Officer) 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 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 —

- 1.1 minimum qualifications for the compliance officers, and the Board shall keep a register of such officers;
- 1.2 The compliance officers have to follow the set procedure when carrying out their duties, including inspections, seizure and destruction of contraband goods;
- 1.3 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.
- 1.4 The Regulations also create offences by compliance officers, as well as others who may obstruct the officers.
- 1.5 Information that is collected in the course of their work is protected in accordance with the Data Protection Act.
- 1.6 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 in a court of law.

- 1.7 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.
- 1.8 There are forms provided in the schedule for seizure/receipt and for inspection notice;
- 1.9 Revocation of the Dairy Industry (Dairy Inspectors) Regulations are hereby revoked, Legal Notice Number 215 of 1964.

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 of Kenya 2010 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 one subsidiary instrument which has been in existence for a long time, and which deal with enforcement personnel: *the Dairy Industry (Dairy Inspector) Regulations*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 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 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.

¹ L N No 215/1964

² See page 68

- 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

- 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. Makueni;
 - 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 qualifications of the person entrusted with enforcing the dairy industry regulations, the manner of appointment, including how the County governments should be involved in the appointment and supervision, the conduct of the compliance officers in inspecting, seizing, impounding and destruction of non-conforming dairy produce. The

Regulations also address the manner of raising complaints against the compliance officers.

4.5 The following were key results of consultations in various meetings with dairy industry stakeholders:

- a) That there was need to use a friendly name for the enforcement officers, thus instead of being called “inspectors” they would be called “compliance officers”;
- b) That there should be proper identification of the compliance officers while on duty in the field;
- c) That there should be easily accessible mechanism for a person to verify the identity of the officer and to make complaint in case the officer failed to conduct himself or herself properly (appeal process).
- d) That a compliance officer should be accompanied by an extension officer when visiting premises for inspection.

4.6 The views of the stakeholders were considered in improving these Regulations.

5. GUIDANCE

5.1 Upon Gazettement 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. There is need for the stakeholders to understand their obligations under the different regulations to make it easy for a compliance officer to enforce the Regulations easily.

5.2 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. 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.

6.2 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.

6.3 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.

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 county governments shall have proper structures for nominating qualified persons to be appointed as compliance officers;
- b) The Board shall ensure that information on the compliance officers is available to the public in case they need to verify or report a compliance officer;
- c) 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:

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