

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

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

PART I

Name of Statutory Instrument:

Dairy Industry (Dairy Produce Safety) 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 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—

- 1.1 The Regulations require adherence to the Kenyan standards of safety; the standards to be developed by the Board;
- 1.2 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;
- 1.3 The approved methods of treating dairy produce and the specifications for containers to use for carrying milk, whether in bulk or in small containers;
- 1.4 Examination, testing and grading of produce according to the Kenyan standards (relevant standards) and submit samples;

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DAY: Tuesday
TABBED BY: Hon. Kimani
HON. KIMANI

- 1.5 Samples of dairy produce to be submitted to a laboratory at own cost: every two months for milk collecting centre; and every six months for a processor and other industry operators;
- 1.6 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.
- 1.7 Where non-compliance is detected, all necessary steps must be taken to recall the affected product;
- 1.8 There is requirement for medical certificates for handlers of dairy produce at various stages.
- 1.9 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;
- 1.10 Records are required to be kept for all processes which are regulated.
- 1.11 It is an offence to fail to comply with any requirement under the Regulations;
- 1.12 Revoke the Dairy Industry (Carriage of Milk) Regulations and the Dairy Industry (Carriage of Milk) Orders that have been in existence.

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 are two subsidiary instruments which have been in existence for a long time, and which deal with handling of milk are the Dairy Industry (Carriage of Milk) Regulations and the Dairy Industry (Carriage of Milk) Orders. There are also regulations made under the Public Health Act (chapter 142 of the Laws of Kenya) which also affect the dairy industry.
- 2.7 These Regulations are made pursuant to s. 19 of the Dairy Industry Act and are meant to replace the existing regulations 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 notes¹ 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.

¹ See page 68

- 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

- 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:
 - 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 problem being addressed by the Regulations are: the existing Regulations on safety are inadequate. They do not provide for design and management of the facilities that are used for production, distribution and processing of dairy products. The proposed Regulations come up with a comprehensive framework to ensure quality by prescribing the requirements for dairy farmers, dairy premises, milk collection centres, milk bars, milk dispensers, cottage industry and mini dairy, calibration of equipment, labelling of produce and keeping of records.
- 4.5 The following were key results of consultations in various meetings with dairy industry stakeholders:
- a) That that the farmers and transporters lacked capacity to test milk and that there should be availed testing tools at each collection centre. Capacity to implement the Regulations was lacking;
 - b) That the detailed requirements prescribed under the Regulations could be a serious burden on the small farmer who may not meet the minimum requirements.
 - c) There was need to consider the needs of the small farmer in terms of the prescription on the type of transport due to capacity issues;
 - d) That there should be available more labs for testing of samples.
- 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;
- 5.2 The Ministry will liaise with the National Treasury to deal with other matters, such as fiscal incentives or disincentives with respect to dairy production. Cheaper inputs for producers and operators would enable them to more readily embrace the standards and requirements under the Regulations.
- 5.3 The Ministry will also ensure that there is an approved Dairy Policy document to guide the industry, which shall contain input b=y stakeholders.

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 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.

6.2 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.

6.3 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).

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 Ministry through the Board shall ensure that the farmer and the operator are sensitized on the new Regulations before they can be enforced against them;
- b) The Ministry through the Board shall carry out regulatory impact assessment at least once in the first three 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)
- c) dairyregulations2020@kdb.co.ke (Kenya Dairy Board)

HP LaserJet Professional P1606dn

Self Test / Device Configuration

Product Information

Product Name = HP LaserJet Professional P1606dn
Formatter Number = QQ308N2
Product Serial Number = VNC3B85881
Service ID = 27320
Firmware Datecode = 20120814
Software driver version = 20110504
Max Print Quality = FastRes 1200
Black Cartridge = CE278A

Network Information

Status = Not Connected
Host Name = NPIBBBBBA3
Hardware Address = 3C:4A:92:BB:BB:A3
Link Speed/Duplex = No Link
Total Packets Received = 0
Bad Packets Received = 0
Total Packets Transmitted = 0
IPv4 Address = 0.0.0.0
IP Subnet Mask = 0.0.0.0
IP Default Gateway = 0.0.0.0
Bonjour Name =
HP LaserJet Professional P1606dn
IP Configured By = Manual
DHCP/BOOTP Server = 0.0.0.0
WINS Server = 0.0.0.0
IPv6 Link Local Address =
IPv6 Stateless Addresses =
IPv6 DHCP Addresses =

Page Counts

Total Pages Printed = 30165
Input Jams = 51
Output Jams = 0
Paper Path Jams = 62
Narrow Media Page Count = 22
Total Jobs Printed = 12753
Average Job Size = 2.36
Average Coverage = 5

Memory Settings

Total Memory = 32 MBytes
Available Memory = 24 MBytes

Installed Personalities and Options

PCL Firmware Datecode = 20120814

Print Settings

Copies = 1
Auto Continue = Off
Orientation = Portrait
Economode = Off
Print Density = 3
IO Timeout = 120 secs
Jam Recovery = Off
Symbol Set = PC-8
Default Typeface = Courier
Paper Type = Plain
Manual Feed = Off
Wide A4 = No
Quiet Mode = Off
Sleep after = 5 minutes
Auto Off after = Never

Paper Size/Tray

Default Paper Size = A4

Status Log

Code	Page
10.1000	29794
10.1000	29491
13.0000	29491
13.0000	29489
13.0000	29488

HP LaserJet Professional P1606dn

Web Services

Enable HP Web Services

NOTE: HP Web Services requires the printer to be connected to a network.

1. Once the printer is connected to a network, enter the printer's network IP address into a Web browser. To find the printer's IP address, refer to the printer's user guide, or reprint this page after the printer is connected to the network.
2. On the Web page that appears, click on the HP Web Services tab.
3. Review and accept the terms of use, and then click the Enable button.

HP ePrint

Print from Anywhere

HP's free ePrint service provides an easy way to print from e-mail, anywhere and anytime. Simply attach a file to an e-mail, and send it to this printer's e-mail address. The attachment will print automatically on this printer. Supported attachment file types include .pdf, .jpg, .tif, and Microsoft Office(R) documents.

NOTE: Attachments may print differently than they appear in the software program which created them, depending on the original fonts and layout options used.

Your Printer is Protected

To help prevent unauthorized e-mail, HP assigns a random e-mail address to your printer, never publicizes this address, and by default does not respond to any sender. ePrint also provides industry-standard spam filtering and transforms e-mail and attachments to a print-only format to reduce the threat of a virus or other harmful content.

NOTE: The ePrint service does not filter e-mails based on content, so it cannot prevent objectionable or copyrighted material from being printed.

HP ePrintCenter

Use the HP ePrintCenter Web Site

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