

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

PARLIAMENT
OF KENYA
LIBRARY

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

PART I

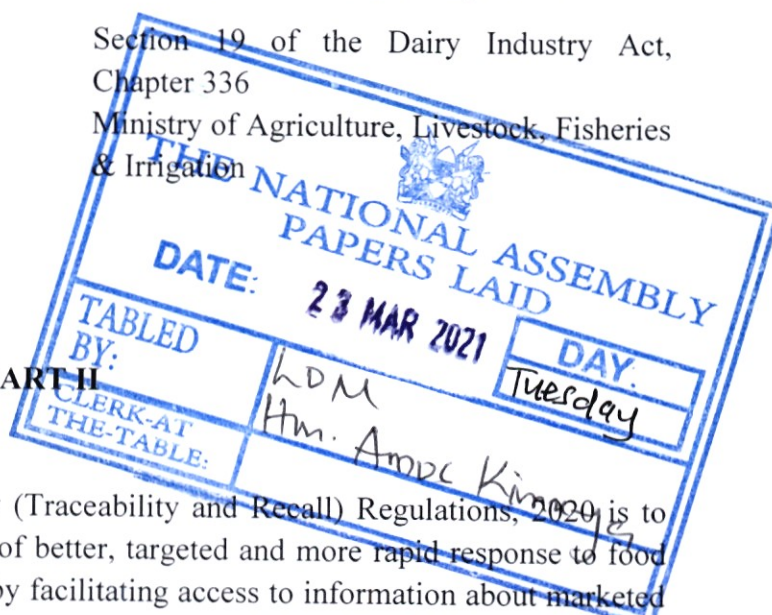
Name of Statutory Instrument: Dairy Industry (Traceability and Recall) Regulations, 2020
Name of the Parent Act: The Dairy Industry Act, Chapter 336
Enacted Pursuant to: Section 19 of the Dairy Industry Act, Chapter 336
Name of the Ministry/Department: Ministry of Agriculture, Livestock, Fisheries &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

PART II

1. Purpose of the Regulations

The purpose or object of the Dairy Industry (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 —

- 1.1 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;
- 1.2 That a consignment of dairy product must bear the details as provided at all time;
- 1.3 That an operator is required to establish a recall plan;
- 1.4 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.
- 1.5 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.”



- 1.6 For an offence where a person contravenes any of the provisions of the Regulations or who knowingly aids or abets contravention of the Regulations.

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 is no existing law or regulation on the subject of traceability.
- 2.7 These Regulations are made pursuant to s. 19 of the Dairy Industry Act and are meant 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.
- 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

¹ See page 68.

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 lack of mechanism to enable tracing of defective products that have entered the processing and distribution chains; lack of legal framework to compel the owner of defective dairy produce to recall it and deal with the resultant consequences.
- 4.5 The following were key results of consultations in various meetings with dairy industry stakeholders:
 - a) That the players in the industry need to be capacitated to deal with the issue of recall of product;
 - b) That the dairy produce need to be carefully handled as contamination could be done during bulking and it will be difficult to determine the source of the contamination;
 - c) That traceability adds to cost of production or dealing in dairy produce, and the Board should take the responsibility of tracing and recall.
- 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 shall build the capacity of the players in the dairy industry (primary producers, transporters, collectors for bulking, processors, distributors and sellers) to enable them deal with traceability and recall.
- 5.3 The Ministry will also ensure that there is an approved Dairy Policy document to guide the industry, which policy shall have the necessary input of the 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 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.

6.2 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 production and dealing as the measures required to be undertaken are costly, especially in tracing a product and recalling it.

6.3 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.

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 ensure that operators capture all the relevant data on the produce as required in the Regulations as this will be key to the success of traceability and recall;

- b) The Board shall build the capacity of the dairy industry players through training, provision of timely information and through extension services.
- c) Use of technology will be enhanced to facilitate the implementation of the Regulations.
- d) 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:

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