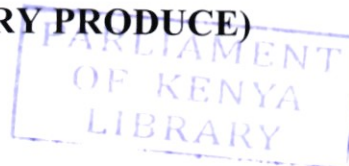


EXPLANATORY MEMORANDUM
(s. 5A of the Statutory Instruments Act, No. 23 of 2013)

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



PART I

Name of Statutory Instrument: Dairy Industry (Pricing of Dairy Produce) Regulations, 2020

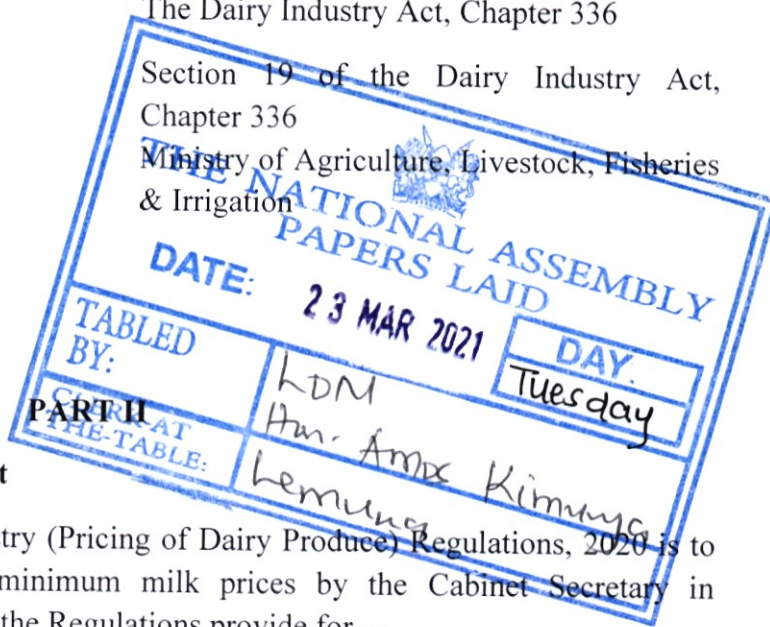
Name of the Parent Act: The Dairy Industry Act, Chapter 336

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:



1. Purpose of the Statutory Instrument

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—

- 1.1 The protection of the farmers' investment by setting minimum prices for the milk;
- 1.2 Pricing based on the quality of milk, cost of production, transport costs and chilling costs to determine the minimum price;
- 1.3 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.
- 1.4 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.
- 1.5 The Cabinet Secretary on the advice of the Board, to set the maximum consumer price for dairy produce.

- 1.6 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);
- 1.7 Revocation of the Dairy Industry (Prices of Dairy Produces) 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 set out under the Act. Amongst the issues to be regulated by the Cabinet Secretary are matters of registration of farmers, determination of prices of dairy produce, 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 of developing the industry while the Board retains the oversight function;
- 2.6 There are two subsidiary instruments which have been in existence for a long time dealing with pricing of dairy produce: *Dairy Industry (Prices of Dairy Produce) (Kisumu) Order, 1971*¹ and *the Dairy Industry (Prices of Dairy Produce) Order, 1977*;²

¹ L N 62/1971

² L N 143/1977

- 2.7 These Regulations are to replace the existing Regulations and 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 notes³ 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 See page 68

- 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 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: fluctuation in dairy prices, low return on milk or dairy produce due to different production factors in different regions; and lack of mechanism to address changes in demand and supply of milk.
- 4.5 The views of stakeholders were incorporated into the Regulations except where the law could not allow or the majority were of a different view.
- 4.6 The following were key results of consultations in various meetings with dairy industry stakeholders:
 - a) That the prices be set after a consultative process with the stakeholders;

- b) That the prices would be based on certain factors including price differentials, based on regions;
 - c) There was need to give incentives to producers to base their milk prices on quality, as this would lead to improvement of milk quality in the industry, which guarantees better returns.
- 4.7 The views of stakeholders were incorporated into the Regulations except where the law could not allow or the majority were of a different view.

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 relevant agency to deal with other issues relating to pricing, such as fiscal incentives or disincentives with respect to dairy production. Fiscal incentives have impact on the cost of production, hence affecting the pricing formula.
- 5.3 The Board shall device ways to promote quality than quantity-based dairy production and pricing mechanisms to promote good milk production practices.
- 5.4 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 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

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 reduce the oligopolistic nature of the industry by fairly determining the minimum price for dairy produce;
- c) By providing for the maximum consumer prices, the Regulations will benefit the consumer by cushioning the consumer against unpredictable price fluctuation of prices.

- 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 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.

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 will undertake studies in the industry periodically to determine the impact of the various factors of production on milk prices,
- b) The Board shall ensure that it captures or obtains all the relevant data on the dairy industry and related sectors as these will inform decisions on policy matters, including prices of milk and milk products;
- c) The Board will establish mechanisms for collecting, collating and analysing various dairy data and information, pegged on relevant performance indicators (i.e., pegged on how well the Regulations are producing the desired effects);
- d) The Ministry through 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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