



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

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (REGISTRATION, LICENSING, CESS AND
LEVY) 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 & 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.