



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

**REGULATORY IMPACT STATEMENT**

**THE DAIRY INDUSTRY (COMPLIANCE OFFICER) 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 after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

## **2. Purpose and Objects 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 —

- 2.1 minimum qualifications for the compliance officers, and the Board shall keep a register of such officers;
- 2.2 The compliance officers have to follow the set procedure when carrying out their duties, including inspections, seizure and destruction of contraband goods;
- 2.3 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.
- 2.4 The Regulations also create offences by compliance officers, as well as others who may obstruct the officers.
- 2.5 Information that is collected in the course of their work is protected in accordance with the Data Protection Act.
- 2.6 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.
- 2.7 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.
- 2.8 There are forms provided in the schedule for seizure/receipt and for inspection notice;
- 2.9 Revocation of the Dairy Industry (Dairy Inspectors) Regulations are hereby revoked, Legal Notice Number 215 of 1964.

### **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 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.

#### **3.2 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.

There is no expected adverse economic impact to the private sector.

#### **3.3 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.

#### **4. Options to Regulation**

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. Amongst the options that were considered are:

- a) Maintaining *status quo*: status quo does not for instance provide for the role of County governments. Status quo does not spell out the requirements for one to be a compliance officer.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. compliance officers, dairy farmers, distributors, importers and processors, etc. on what is expected of them;
- c) Self-regulations: this is where the industry regulates itself with minimal role of Government;
- d) Providing procedural rules: these are meant to guide those tasked with making decision in the industry, such as those who visit premises for inspection (what procedure to follow).

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.

Unlike the Regulations, the options available cannot be enforceable in a court of law, yet the compliance officer deals with enforcement of obligations imposed by the law.

#### **5. Conclusion**

The Ministry concludes that the proposed Regulations are necessary to fill the existing void in the Regulations and will promote and improve the dairy industry for the benefit of the farmer, the operator and the consumers of dairy produce. Promulgating the Regulations is the only viable option.

#### **6. Recommendation**

It is recommended that the Dairy Industry (Compliance Officer) Regulations, 2020 be gazetted.