



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

**REGULATORY IMPACT STATEMENT**

**THE DAIRY INDUSTRY (TRACEABILITY AND RECALL)  
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 (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 —

- 2.1 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;
- 2.2 That a consignment of dairy product must bear the details as provided at all time;
- 2.3 That an operator is required to establish a recall plan;
- 2.4 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.
- 2.5 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.”
- 2.6 For an offence where a person contravenes any of the provisions of the Regulations or who knowingly aids or abets contravention of the Regulations.

## **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.
- 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.

### 3.2 **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 dairy transacting as the measures required to be undertaken will require substantial investment by the operator, especially in tracing a product and recalling it. But this cost is not so high compared to the benefits that will accrue from the Regulations, the main one being consumer protection.

### 3.3 **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.

## 4. **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. Amongst the options that were considered are:

- a) *Maintain status quo*: this means having no regulation for traceability as currently is. Currently, there is no legal framework for traceability and recall.
- 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) *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. For example, where a person lacks a recall plan, he or she may be denied a licence.

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.

Policy and procedural guidelines cannot deal with traceability and recall. Defective products pose a serious risk to the consumer and the issue cannot be handled merely as a procedure. There has to be concrete law to guide and impose obligation to the operator to establish traceability and recall mechanism.

## **5. Conclusion**

The Ministry conclude 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 (Traceability and Recall) Regulations, 2020 be gazetted.