



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

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (DAIRY PRODUCE SAFETY) 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 and Objects of the Regulations

The purpose or object of Dairy Industry (Dairy Produce Safety) Regulations, 2020 is to provide for enhanced compliance to the safety standards of dairy produce; the promotion of self-regulation in the dairy industry through adoption of global best practices; and to provide oversight of the dairy industry. Specifically, the Regulations provide for—

- 2.1 The Regulations require adherence to the Kenyan standards of safety; the standards to be developed by the Board;
- 2.2 Introduction of several measures that are aimed at ensuring safety in milk production, transportation, bulking, storage, distribution and sale. At the farm level, hygienic milking areas and the use of clean milking equipment will contribute to reduction of losses;
- 2.3 The approved methods of treating dairy produce and the specifications for containers to use for carrying milk, whether in bulk or in small containers;
- 2.4 Examination, testing and grading of produce according to the Kenyan standards (relevant standards) and submit samples;
- 2.5 Testing of samples of dairy produce from dairy retail shops, supermarkets, grocery shops and other places where dairy produce are sold and to be examined at least quarterly. This is intended to verify that the dairy produce conform to the safety standards.
- 2.6 Where non-compliance is detected, all necessary steps must be taken to recall the affected product;

- 2.7 There is requirement for medical certificates for handlers of dairy produce at various stages.
- 2.8 There are sanitation requirements at different levels: storage and distribution; dairy farms; milk collection centres; milk bars; milk dispensers; cottage industry, mini dairy and processors;
- 2.9 Records are required to be kept for all processes which are regulated.
- 2.10 It is an offence to fail to comply with any requirement under the Regulations;
- 2.11 Revoke the Dairy Industry (Carriage of Milk) Regulations and the Dairy Industry (Carriage of Milk) Orders that have been in existence.

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 address matters that relate to the Bill of Rights, especially on consumer rights under article 46 of the Constitution of Kenya 2010 (right to quality and information to consumers on products in the market).
- c) The Regulations do not have negative impact on the environment or environmental rights of the people, but indeed enhance waste management and safety in terms of the environment, hence the Regulations promote the right to a clean and healthy environment.
- d) The Regulations provide for destruction of non-conforming produce through court process, hence preserving the right to property and fair administrative action.

3.2 Economic 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 enhance confidence amongst the consumers of the quality of the dairy produce because of the high standards introduced under the Regulations.
- c) The Regulations will professionalize the production of dairy produce.
- 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.

3.3 Impact on the Public Sector

- a) The public sector gains in the sense that the quality of produce is of interest to the Government, the consumer and the general public;
- b) The fact that the Regulations provide for safety of produce is important for both the public and the private sector and the country shall gain because high quality produce is more acceptable even in the international markets, and hence possible increased trade in the long run;
- c) The Regulations will indirectly create demand for more milk produce, hence contributing to the growth of the gross domestic product (GDP).
- d) The Regulations would involve a rise in costs of enforcing compliance, which has been enhanced to include enforcement by the relevant County governments. Supervision costs have been quantified elsewhere.

4. Options to Regulations

Regulation is not the only means of realizing a policy objectives. There are alternatives which could handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) *Maintain status quo*: this means that no regulation is introduced and the existing challenges will not be addressed, which are basically that the existing regulations and public health laws are not adequate to assure consumer safety of the dairy produce. The existing legal framework does not provide sufficiently for the obligations of different players in the industry and hence the proposed regulations make provisions for the requirements to be met by different players.
- 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-regulations*: this is where the industry regulates itself with minimal role of Government. Standard can be set by the cooperative societies for members and the need for prescriptive legislation will be lessened. The problem with self-regulation is that it requires a mature body which will set standards for the association and its members.
- d) *Co-regulation*: here the Government deals with some aspects while other aspects are left to be handled by the industry (e.g. cooperatives);
- 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. For example, instead of providing the conditions for the grant or renewal in the licence, the Board can set out minimum requirements on hygiene before renewal of permit or licence.
- f) *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 practices; 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.

The options were considered under the assessment and the conclusion reached that the options do not address directly the concerns of the industry at this moment and hence the option to gazette the Regulations is the most effective method of trying to solve the problem relating to safety and health of the consumer of the dairy produce.

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 (Dairy Produce Safety) Regulations, 2020 be gazetted.