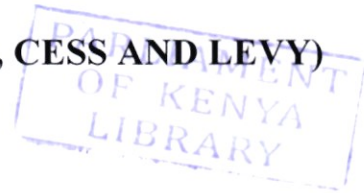


EXPLANATORY MEMORANDUM

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

DAIRY INDUSTRY (REGISTRATION, LICENSING, CESS AND LEVY) REGULATIONS, 2020



PART I

Name of Statutory Instrument: Dairy Industry (Registration, Licensing, Cess and Levy) 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:

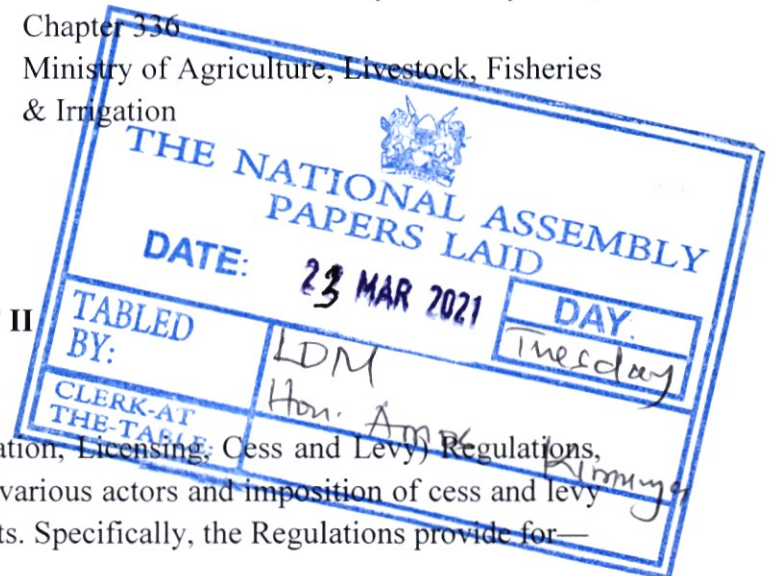
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PART II

1. Purpose 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—

- 1.1 the registration of primary producers;
- 1.2 the licensing of dairy business operators;
- 1.3 the issuance of regulatory permit by the Board and license by the County governments;
- 1.4 the fees payable to the Board for regulatory permits;
- 1.5 registration, governance and responsibilities of out-grower institutions;
- 1.6 the procedure for applying for registration as primary producer or for license and regulatory permit;
- 1.7 keeping of register of primary producers and inspection by the public or stakeholders;
- 1.8 imposition of cess on dairy produce by the relevant County government;
- 1.9 offences relating to registration and licensing;



- 1.10 revocation of the Dairy Industry (Imposition of Cess and Levies) Regulations, Legal Notice Number 111 of 2004.

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 part of the Act. Amongst the issues to be regulated by the Cabinet Secretary are matters of registration of farmers, 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 in the industry while the Board retains regulatory and oversight functions over the industry;
- 2.6 There are two subsidiary instruments which have been in existence for a long time, dealing with registration, licensing, levy and cess, that is to say, *the Dairy Industry (Licensing of Retailers) Regulations, 1961*¹ and the *Dairy Industry (Imposition of Cess and Levy) Regulations, 2004*.²
- 2.7 These Regulations are made pursuant to s. 19 of the Dairy Industry Act and are meant to fully operationalise the Dairy Industry Act.

¹ L.N. 287/1961

² L N 111/2004, amended again in 2010

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.
- 3.7 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.

³ See page 68

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, and did participate, in the consultations at different venues shown above. There were stakeholders' consultative meetings in various regions 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: the problem of milk hawking, lack of proper data and information on dairy industry; informal nature of milk production and marketing; insufficient procedural guidelines to address the roles of the Board and that of County governments with respect to regulation and oversight of the dairy industry and the levying of consumer safety levy.
- 4.5 The following were key results of consultations in various meetings with dairy industry stakeholders:
 - a) That some form of milk hawking be allowed;
 - b) That registration should be done by the county government;
 - c) That there was need to ensure that there was no double taxation;
 - d) That the cess rates should be part of the Regulations.
- 4.6 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. IMPACT STATEMENT

5.1 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.

5.2 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 ensure that there is better collaboration between the Board and the County government in overseeing the industry;
- c) 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.
- d) 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.

5.3 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.

6. 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 county governments shall properly document activities and notify the Board on the licences issued to the relevant dairy industry players by County government, for the purpose of harmonising and updating the records;
- b) The Board shall ensure that it captures all the relevant data on the regulatory permits issued as this will inform decisions on policy matters;
- c) The Board will establish proper 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 to ensure the intended impact is achieved

7. Contacts:

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