



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

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (RETURNS, REPORTS AND ESTIMATES)
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 The Dairy Industry (Returns, Reports and Estimates) Regulations, 2020 is to provide the mechanisms for rendering returns, reports and estimates by dairy business operators to the County Government or the Board and to ensure that the County Government and the Board receive relevant data and information for planning purposes. Specifically, the Regulations provide —

- 2.1 That every dairy industry operator files with the County Executive Committee member in charge of dairy matters and the Board reports, returns or estimates relating to the production, distribution or sale of the dairy produce.
- 2.2 That the operator in the dairy industry is required in the same period to file all deductions made on the suppliers of daily produce, as well as the usage of those deductions.
- 2.3 That importers and exporters of dairy products are required to file returns with the Board within 10 days of importing or exporting dairy products, file with the Board reports, returns or estimates (and the Board shall avail information to County governments on quarterly basis).
- 2.4 Other reports may be required at any time by the Board or by the relevant County government. The information submitted under this Regulations is subject to the Data Protection Act.¹

¹ No. 24 of 2019

- 2.5 For revocation of the Dairy Industry (Returns, Reports and Estimates) (Distributors) Order, 1960;²

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 any negative impact on the fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters of the Bill of Rights, especially on the right to privacy, where relevant provisions of the Data Protection Act are applicable.
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.
- d) The Regulations enhance consumer protection in accordance with Article 46 of the Constitution of Kenya by ensuring availability of data and information on the dairy industry.

3.2 Economic Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by ensuring that all important statistics are availed to the Government, which in turn will be able to serve the private sector or individuals better because of better information;
- b) The Regulations do not require additional obligations by the operators except the requirement for submission of the readily available information in terms of quantities of dairy products delivered to the operators;
- c) The Regulations would ensure that there will be better collaboration between the Board and the County government in overseeing the industry, since both levels of government will have access to statistics and information in the industry;
- d) The Regulations mean that the dairy industry operator has more to do and will lead to a slight rise in compliance costs, but compliance by the operators will avoid fines that are the penalty for non-compliance, and also help improve the overall functioning of the industry.

3.3 Impact on the Public Sector

² L.N. 428/1960

- a) Clarity of the mutual relationship and roles between National Government (the Board) and relevant County governments;
- b) Will enable crucial data to be collected by the Board and the relevant County governments, hence improving policy-making that is informed by empirical evidence on the dairy industry;
- c) Increased data collection will be critical in directing policy choices and decisions to improve the dairy industry;
- d) The Ministry will need to enhance budgetary allocations because under the Regulations there will be a rise in costs of enforcing compliance, which has been enhanced and include County governments.

4. Other Practicable 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. These options need not stand alone but may supplement the Regulations. Amongst the options that were considered are:

- a) Maintaining *status quo*: maintaining the status quo would rob the current legal framework of the details that have been introduced in the proposed Regulations. The current regulations do not provide for the role of county governments, which have now been incorporated in the new Regulations.
- 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. Policy guidelines define them for the industry;
- c) Providing procedural rules: these are meant to guide those tasked with making decision in the industry, such as the manner of filing returns online, etc.

The options were considered and it was found necessary that the dairy industry needed the Regulations immediately but the proposed options would be used to bolster the implementation of the Regulations as much as possible. The other options are not desirable for the following reasons:

- a) Policy guidelines alone are not enforceable, hence the Government will be unable to achieve the objective of streamlining the dairy industry through tangible and enforceable obligations;
- b) Guidelines suffer from lack of reach and the certainty necessary for effectiveness. The timelines and the imperative nature of the obligations to report require a law to be in place;
- c) Rules and guidelines are meant to work within legal framework, hence their option is seriously limited.
- d) Maintaining the status quo would rob the current legal framework of the details that have been introduced in the proposed Regulations. The current regulations do not provide for

the role of county governments, which have now been incorporated in the new Regulations.

5. Conclusion

The Ministry conclude that the proposed Regulations are an improvement to the current legal framework for registration and licensing regime and will promote and improve the dairy industry for the benefit of the farmer, the operator and the general public. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Returns, Reports and Estimates) Regulations, 2020 be gazetted.