




**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
CO-OPERATIVES**

**IN THE MATTER OF THE *PROPOSED DAIRY INDUSTRY
REGULATIONS, 2020***

**IN THE MATTER OF SECTION 7(4) OF THE STATUTORY
INSTRUMENTS ACT, NO. 23 OF 2013**

CERTIFICATE OF COMPLIANCE

NOVEMBER, 2020

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 MAR 2021	
DAY: Tuesday	
TABLED BY:	LDM Hon. Amos Kimunya
CLERK-AT THE-TABLE:	Moses Lemana

Certificate of Compliance
(s. 7(4) of the Statutory Instruments Act)

The Ministry of Agriculture, Livestock, Fisheries and Irrigation, in accordance with section 6 of the Statutory Instruments Act, No. 23 of 2013, has undertaken an independent comprehensive regulatory impact assessment of the proposed *Dairy Industry Regulations, 2020*, that is to say:

1. Dairy Industry (Registration, Licensing, Cess and Levy) Regulations, 2020;
2. Dairy Industry (Returns, Reports & Estimates) Regulations, 2020;
3. Dairy Industry (Compliance Officer) Regulations, 2020;
4. Dairy Industry (Traceability and Recall) Regulations, 2020;
5. Dairy Industry (Milk Sale Contract) Regulations, 2020;
6. Dairy Industry (Pricing of Milk) Regulations, 2020;
7. Dairy Industry (Imports and Exports) Regulations, 2020; and
8. Dairy Industry (Dairy Produce Safety) Regulations, 2020.

In accordance with section 7(4) of the Statutory Instruments Act, I certify, in respect of each of the Regulations listed above, –

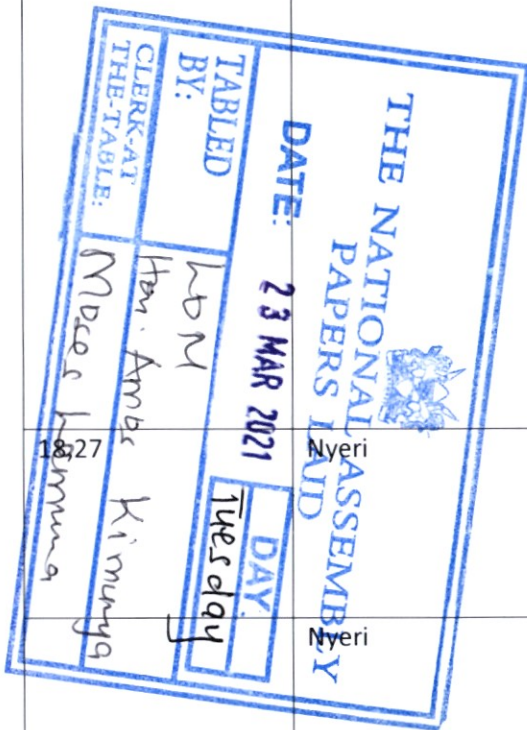
- a) that the requirements relating to regulatory impact statements as provided in the Statutory Instruments Act and the guidelines have been complied with; and
- b) that in my opinion, the regulatory impact statement prepared for each of the listed regulations adequately assesses the likely impact of the proposed Regulations

Dated this day of2020.


.....
Hon. Peter G. Munya, EGH
CABINET SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK,
FISHERIES AND CO-OPERATIVES

COMMENTS AND SUBMISSIONS BY STAKEHOLDERS ON DAIRY REGULATIONS 2020

REGULATION	FORUM LOCATION	PROPOSAL	JUSTIFICATION	ACTION BY TASK FORCE
	Nyeri	Can the method of collecting the Consumer Safety Levy be clarified further for stakeholders to understand how it will be operationalized?	Surveys conducted indicate that most of the milk sold to consumers is through the informal market, and hence the method of collecting levy only from actors in the formal market will be unfair to only a segment of actors and not all the consumers entirely.	<ol style="list-style-type: none"> The manner of collecting the consumer safety levy is clarified under Regulation 37 of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulation. The regulations aim at ensuring that all milk marketing channels meet consumer safety requirements for issuance of a regulatory permit. <p>1. DAIRY INDUSTRY (REGISTRATION, LICENCING,CESS AND LEVY) REGULATIONS2020.docx</p> <p>Recovery and remittance of consumer safety levy.PNG</p>
	Nyeri	Licensing and issuing of regulatory permits to processors will result to double taxation or licensing.	County Government will issue processors with Licenses and the Board will charge the same processors with a regulatory permit.	Licensing and Regulatory permits are different. Whereas licensing is a way of registering a business, regulatory permit is meant to ensure consumer safety.
	Nyeri	Dairy producers may not meet all the requirements in this regulation and hence will affect the volume of milk produced in the country		Not all regulations apply to the dairy producers. Implementation of these regulations will be supported by an extensive capacity building programs.
	Nyeri	Cancellation of licenses should take into consideration of the magnitude of the impact of cancellation considering that some action may have resulted from one or two officials and	Penalize the leaders instead rather than withdraw licenses	Reasons for cancelling a license are variant. If it is for safety reasons then the license may be cancelled to prevent harm to the consumers. Licenses may also be cancelled if the licensee has failed to pay for produce delivered to them.



1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		hence affect all the producers who are members of the cooperative or self-help group.		
Form F	Marsabit	There is need for categorization of the various license fees and payment structures in this regulation to accommodate the capacities of various actors.	License fees charged by the county, especially in cooling plants fee are weighty on the small-scale traders and producers at the county level. County operators and producers cannot operate without cooling plants and hence	The various license fees have been structured in accordance with their capacities. Categorization of licenses and permits.PNG
18,24	Marsabit	The fees set aside for the regulatory permit of processors at 25,000 and 50,000; will it be collected by the Board or the County Government.	If collected by the board then it will be double licensing as the same operator will be licensed by the county.	The Regulatory Permit will be issued by the Board.
37 (1)	Meru	Revise/review the rate of consumer safety levy	There are so many levies and fees charged on the producers and dairy business operators both by the national and the county government and the imposition of this levy will be an extra burden.	The proposed rate of levy has been calculated and found to be commensurate with the cost involved in ensuring compliance and consumer safety. The proposed charge was arrived at after benchmarking with similar charges in other dairy industries across the world.
8(2)	Meru	What mechanism will be put in place as regards the registration of the producers at the county level, so as to capture all the		The Board will develop an intergraded ICT system that will enable all players including producers to easily and cost effectively submit information to the County Regn of primary producers.PNG

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		farmers' details as required by the regulations.		
9(2)	Meru	How will the farmers who are in cooperatives or self-help groups be registered, especially in the umbrella of cooperatives as is common in Meru County.		The dairy cooperatives will play a major role in registration of milk producers. Regn of producers through coops.PNG
37(1)(2)	Meru	Consumer safety levy is too high and should not be heaped to the consumer. How will the informal market consumers pay consumer safety levy?	Its operationalization should be explained knowing that hawking takes a great chunk of the market and is also supporting consumers. It is unfair for only consumers in the formal chain to pay consumer safety levy and leave out consumers of the informal market.	The proposed rate of levy has been calculated and found to be commensurate with the cost involved in ensuring compliance and consumer safety. The proposed charge was arrived at after benchmarking with similar charges in other dairy industries across the world. All dairy business operators shall be required to comply milk quality and safety requirements. Informal milk marketers who wish to continue trading milk shall be required to transform and meet the requirements for them to be recognized as dairy operators.
21(1)(2)	Meru	Will cess be charged uniformly across the counties? There will be need to standardize the cess charged across counties to avoid exploitation by the counties.	Standard cess will reduce exploitation by county governments	The setting of fees or charges by County government is stipulated in the constitution and cannot be directed by the National government. However, the proposed regulations allow stakeholder consultation between the County government and their stakeholders. Payment of cess shall be at the devolved level of government and therefore will be determined by the individual County government.
21(1)(2)	Meru	Do not expose primary producers to the county	Charging cess on the producers by the county government will expose	The setting of fees or charges by County government is stipulated in the constitution and cannot be

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		governments as this will reduce or affect their operations through cess charging. 10 cents of the cess to go to the County Government and the remaining 10 cents to go to the Board.	harassment to the farmers. There should be a cessing formula agreed upon to facilitate development in the county just like the tea cess.	directed by the National government. However, the proposed regulations allow stakeholder consultation between the County government and their stakeholders. Payment of cess shall be at the devolved level of government and therefore will be determined by the individual County government.
21(1)	Meru	Remove “may impose” on the requirements of the county government to charge cess.		May is appropriate as it gives an option to charge or not to charge
Form F	Meru	License fee for cooling plants should be dropped in the current regulation	This will support the development of cooling plants in the county and discourage investments in cooling which has become the requirement for managing hygiene.	The fees charged on cooling plant has been set at low levels as not to discourage such investments Cooling plant permit fees.PNG
	Meru	Do not allow the County Government to manage aspects of regulating the dairy industry as it will be oppressive to the farmers and traders.		The role of the County government is stipulated in schedule 4 of constitution. However, counties shall operate under guidance polices and standards set at the National level. Further continuous capacity building will be conducted by the Board to counties.
2	Garissa	Redefine cottage industry to handle up to 1,000 litres of milk per day	Promote investment and sustainability of decentralized milk processing units	Increasing the volumes to 1000 for cottage industry will lockout many actors under this category who deal with low volumes.
37(1)	Makueni	Revise the rate of consumer safety levy from 1% to a flat rate of 40 cents per litre	Minimize add-on effects to the consumer price of milk and milk products	The proposed rate of levy has been calculated and found to be commensurate with the cost involved in ensuring compliance and consumer safety. The proposed charge was arrived at after benchmarking

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

				with similar charges in other dairy industries across the world The change from 40cents to a percentage is meant to avoid erosion over time due to inflation.
21(1)(2)	Makueni	(1) Remove the cess and levy payable to county governments (2) Commit cess and levy for service provision in the dairy industry	Ceiling is not provided and this may increase the costs of operation by primary producers and dairy business operators	1. Cess and levy are meant to support service delivery in the dairy industry. 2. To ensure uniformity across counties and avoid over burdening of primary producers the cess payable has been set to not more than 0.5 per cent of farm gate price. Cess by county 1.PNG
8(2)	Makueni	Provide for online registration of primary producers	Improve ease of registration	This has been provided for in regulation 8(2) of the Regulation electronic registration.PNG
Form F	Mombasa	Reconsider the need for regulatory permit as licensing is provided	Increased cost of compliance for certain categories of dairy business operators	Licensing is a Premise license issued by the County government whereas the regulatory permit issued by the Board is a food safety requirement whose aim is to ensure compliance to quality and safety requirements and shall be free for County based dairy operators.
21,37	Mombasa	(a) Expunge cess and levy payment to the county (b) Require cess and levy to be used for dairy development	Imbalances on cost of production between counties who cess and those who do not	Cess and levy are meant to support service delivery in the dairy industry.

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

			The ceiling is not set and may lead to higher costs of production	
Form F	Kakamega	Bring all licenses under KDB to avoid lots of regulators and duplicity of licenses (Harmonization of licenses) Dairy licenses are many, is it possible that they are reduced? Cess, permits, processors levy, county licenses, PHO requirements etc.		Whereas Consumer protection is a National function and attract levies payable to the Board; trade licenses is a function of the County government and license fees are payable to counties
21(1), 37(1)	Kakamega	Is the trader remitting from the consumer or is the trader also to pay the levy	-	The levy is paid once by the dairy business operator on behalf of the producers in the case of cess and consumer in the case of levy Cess by County govts.PNG Consumer safety levy.PNG
8	Kisumu	Double levy resulting from registration by Board and County Government		Registration will be done once by the County government and its free; therefore there is no double registration.
16 (a)	Kisumu	The use of the word "valid" presupposes that the certificate can be invalidated thus delete the word		The word valid is correctly used because it denotes that the certificate is in force and primary producer has not violated any part of the regulation
18(1)	Kisumu	The trade license to be issued by the County Government to		A dairy business license will be issued by the County Executive Committee Member

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		be the single business permit for ease of doing business		responsible for dairy matters before engaging in any dairy produce business or operation.
37 (1)	Kisumu	What is the difference between what was passed in parliament 0.2% and 1% per centum		0.2% which was passed by National Assembly is currently being debated in Senate where there is a proposed amendment to reinstate the rate to 1%. However the figure that will be agreed by the Senate and the National Assembly will take precedence.
37(1)	Kisumu	At what level does consumer pay	Matter clarified as provided by in regulation 37 (1)	The Dairy business operator will deduct the consumer levy and pass on the same to the consumer. Consumer safety levy.PNG
2	Kisii	Define the term “process” to bring out the exact meaning of process. To avoid any ambiguity in executing the law		This has been defined in the Regulation to remove any perceived ambiguity Defn of process.PNG
21 (1)(2)	Kisii	A county should charge cess on produce coming into the county so as to protect the producers of the consuming county		The Constitution presupposes that Kenya exists as a single economic unit and thus multiple charges goes against Article 191, 2(a) (b), 3(c)(ii,iii,iv), Conflict of laws.PNG
12	Kisii	Let the regulation be clear on how county will determine the conditions for certificate. It will open window of taxing or		The Regulation has specified that the registration shall be free and one off.

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		charging primary producers for registration		
	Kisii	Penalty for offence for failure to register – The officer issuing certificate should also pay penalty for fraudulent acquisition of primary producer license. To ensure county officers registering primary producers also take responsibility of offences committed		The penalty for misconduct of Compliance Officer is catered for by Regulation 18 of the Dairy Industry (Compliance Officers) Regulation. Offence by Compliance Officer.PNG
9(2)	Bomet	<ul style="list-style-type: none"> - Cooperatives to do the registration. Most primary producers are producing less than 1 litre so cooperatives level can handle the small scale producers - Let registration provide the minimum number of litres for one to qualify. We propose registration for those producing at least 50 litres. 		Registration by cooperatives is provided for in Regulation 9(2) of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulations Regn through coops.PNG
6	Bomet	Exclude farmers producing less than 50 litres		Registration is made to provide for quality and safety of all marketed milk dairy produce irrespective of the quantity should be traceable to a registered primary producer.

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

8	Bomet	All standards developed to be subjected to public participation Is the Act of Parliament in line with the regulations		It's a requirement all Standards are subjected to public participation. These regulations are aligned to Dairy Industry Act.
Form D	Bomet	In Form D include location of where the business operator is collecting milk for traceability	-	Form D captures the details of Primary Producer only. Form D.PNG
21(2)	Bomet	(2) Need clarification as relates to inter-county charges		There shall be no inter-county charges. Cess shall be charged at source Cess at source.PNG
7	Narok	Registration of farmers to be conducted by the county governments & to be free		Covered in the Regulation 7 of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulation. Regn free.PNG
24(3)	Nyandarua,Laikipia	Proposed for more categories for regulatory fees as follows 15000-20000 10,000- 15000 0-5000	With different fee for each category -Clarify the regulatory levy as charge is imposed on consumers	-The range provided by the Regulations allows for SMEs to thrive and create employment opportunities. -The players in informal sector pose serious consumer safety and levying them would be a way of promoting of hawking and hence undermining the sustainability of dairy industry

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		-The levy targets only the formal sector		
25	Kitale	Penalties for violation of any regulation should include suspension of license for a maximum of 3 months during which investigations will be carried and verdict made Promote diversification of milk products.		-This has been provided under regulation 27(2) of this regulation Suspension not exceeding 3 months.PNG -Promotion of diversification shall be addressed administratively.
	Uasin Gishu, Elgeyo Marakwet, Nandi	Registration should be voluntary and registered farmers should be encouraged through affirmative action as subsidies, training, loans and pricing	The requirement should be facilitative rather than inhibitive.	The registration becomes mandatory when one wants to do trade in dairy produce and is free.
21	Uasin Gishu, Elgeyo Marakwet, Nandi	If devolved will the funds be devolved Farmer is not well defined Cess by counties should be specified and harmonized		<ul style="list-style-type: none"> - Payment of cess has been devolved to the County as provided for in Regulation 21 of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulation - Farmers is defined as primary producer - Taxation laws by the County is provided for in the constitution. Cess by County govts.PNG Farmer as primary producer.PNG
4(d)	Nakuru, Baringo	Object of the regulation: Specify how levy will benefit the stakeholders	Too many multiple licenses/permits/certificates	This is addressed under Regulation 4(d) of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulation. Cess to benefit industry..PNG

1. THE DAIRY INDUSTRY (REGISTRATION, LICENCING, CESS AND LEVY) REGULATIONS, 2020

		Conditions for issuance of permit – Awareness or training for the dairy operator by KDB is required -		Awareness and training will be addressed administratively
21(2)	Nakuru, Baringo	Harmonize intercountry levy to avoid double taxation		This is addressed in Regulation 21 (2) of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulation. Dairy produce from another county.PNG
Form F	Nakuru, Baringo	-Payment of regulatory permit would disadvantage the small dairy traders -Cooperatives should not be compelled to pay for license for non-operative cooling plant -Regulators/ inter counties should harmonize licenses to avoid double payment	- This is double levy - Licensing is expensive and many same requirements e.g. medical certificates required by several counties for the same person	- Form F of the Third Schedule under the Dairy Industry (Registration, Licensing, Cess and Levy) Regulation provides for only the processors will be required to pay for regulatory permit fees. - Non operative dairy premises of all nature are not required to pay for license. - Licenses are only issued for the premise which is selling milk. Medical certificate is also issued once by the County of origin and shall serve inter-county trade. Most Permit fees free.PNG
	Nyeri	Adjust volumes of cottage industry to 1000 litres from the current definition of 500 litres per day	Most cottage industries handling more than 500 litres per day and hence will be breaking the law to operate above the defined limits.	Increasing the minimum volumes for cottage industries will lockout many entrepreneurs from carrying out dairy business cottage industries Form F.PNG
	Makueni	Enhance and graduate the penalties for food safety related offences	Discourage food fraud in the dairy industry	It is not possible to enhance the penalties beyond the provisions of the Dairy Industry Act and the Statutory Instruments Act. However, the Act is under review and the penalties will be revised once the Act is amended.