

EXPLANATORY MEMORANDUM

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

THE DAIRY INDUSTRY (RETURNS, REPORTS AND ESTIMATES) REGULATIONS, 2020

PART I

Name of Statutory Instrument: Dairy Industry (Returns, Reports and Estimates) Regulations, 2020

Name of the Parent Act: The Dairy Industry Act, Chapter 336

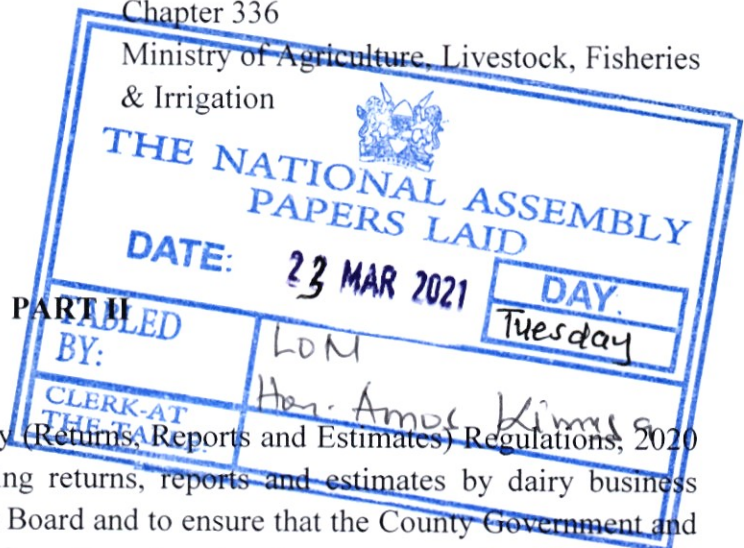
Enacted Pursuant to: Section 19 of the Dairy Industry Act, Chapter 336

Name of the Ministry/Department: Ministry of Agriculture, Livestock, Fisheries & Irrigation

Gazetted on:

Tabled on:

PARLIAMENT
OF KENYA
LIBRARY



1. Purpose 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 —

- 1.1 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.
- 1.2 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.
- 1.3 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).

- 1.4 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
- 1.5 For revocation of the Dairy Industry (Returns, Reports and Estimates) (Distributors) Order, 1960;²

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 on the oversight of the dairy industry, while the Board retains regulatory and oversight functions over the industry;
- 2.6 Concerning submission of reports and returns, there has been the Dairy Industry (Returns, Reports and Estimates) (Distributors) Order, 1960³ to provide for reports and returns to the Board.

¹ No. 24 of 2019

² L.N. 428/1960

- 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.

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 notes⁴ 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 L N. 428/1960

⁴ See page 68

- 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.

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 the County governments should receive all the reports and share with the Board;
 - b) That the procedure for returns should be simplified; use of online filing system was recommended;
 - c) That the Regulations should be clear at what level of the dairy industry value chain are reports, returns and estimates to be made.
- 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. GUIDANCE

- 5.1 Upon Gazettement of these Regulations, the Ministry shall, through the Board, organize meetings of key players/stakeholders to sensitize them on the requirements of the Regulations and how to ensure their effective compliance and implementation;
- 5.2 The Ministry shall pursue mechanisms that ensure that the relevant data is obtained in the most convenient way and to ensure that it is analysed regularly to inform policy direction.
- 5.3 The Ministry will also ensure that there is an approved Dairy Policy document to guide the industry.

6. IMPACT STATEMENT

6.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have any 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 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.

6.2 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 better because of better information;
- b) The Regulations do not require additional obligations by the operators except for provision of the readily available information in terms of quantities;
- 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 in the industry;

- d) The Regulations on returns also mean that the dairy industry operator has more to do and will lead to a slight rise in compliance costs, but compliance will avoid fines that are the penalty for non-compliance.

6.3 **Impact on the Public Sector**

- 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 the collected information;
- c) Increased data collection will be critical in directing policy choices and decisions to improve the dairy industry;

7. **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 Board shall ensure that it captures all the relevant data on the dairy industry and analyse it periodically to inform decisions;
- b) The Board will establish proper mechanisms for collecting, collating and analysing various dairy data and information, pegged on relevant performance indicators (i.e , how well the Regulations are producing the desired effects);
- c) The Ministry through the Board shall carry out regulatory impact assessment at least once in the first three years of these Regulations to ensure that the Regulations have no loopholes and if there are, to be addressed appropriately.

8. **Contacts:**

- a) cabinetsecretary@kilimo.go.ke (Ministry of Agriculture, Livestock, Fisheries & Cooperatives).
- b) directorpolicy@kilimo.go.ke (Director, Policy)
- c) dairyregulations2020@kdb.co.ke (Kenya Dairy Board)