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 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b> 27 <sup>th</sup> July, 2020		KILIMO HOUSE CATHEDRAL ROAD P.O. Box 30028-00100 NAIROBI
DATE: 05 AUG 2020		DAY: _____
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Ref. No. MOALF/CS/ADM/43

**Mr. Michael Sialai, EBS,**  
Clerk of the National Assembly,  
Parliament Buildings,  
**NAIROBI**

Dear

*Clerk*

**RE: THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020**

Please refer to the above subject matter.

Following the enactment of the Crops Act, 2013, the Ministry of Agriculture, Livestock, and Fisheries & Cooperatives has now prepared the Crops (Horticultural Crops) Regulations, 2020 for the horticultural crops sub-sector. The said regulations have gone through the requisite statutory processes and have been published through the Office of the Attorney General.

In line with the provisions of the Statutory Instruments Act, please find attached the said regulations together with the requisite statutory documents for consideration by the National Assembly Committee on Delegated Legislation:

- a) The Crops (Horticultural Crops) Regulations 2020 (The hard copy from the Government printers will be availed once available).
- b) Explanatory Memorandum.
- c) Regulatory Impact Statement.
- d) Regulatory Impact Assessment Report
- e) The Kenya Gazette and Newspaper Advert
- f) Report on stakeholder Comments and Submissions.
- g) The certificate indicating compliance with provisions of the Statutory Instruments Act.

Yours

*Sincerely*

**Hon Peter Muhya, MGH**  
**CABINET SECRETARY**

Encls

NATIONAL ASSEMBLY  
**RECEIVED**  
30 JUL 2020  
CLERK'S OFFICE  
P. O. Box 41842, NAIROBI

# THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

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**THE CROPS (HORTICULTURAL  
CROPS) REGULATIONS, 2020**



**SPECIAL ISSUE**

Kenya Gazette Supplement No. 109

1387

8th July, 2020

(Legislative Supplement No. 70)

LEGAL NOTICE NO. 118

THE CROPS ACT

(No. 16 of 2013)

THE CROPS (HORTICULTURAL CROPS) REGULATIONS,  
2020

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*Regulation*

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THE CROPS ACT

(No. 16 of 2013)

THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 40 of the Crops Act, 2013, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives in consultation with the Agriculture and Food Authority and the county governments, makes the following Regulations—

THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

PART I—PRELIMINARY

1. These Regulations may be cited as the Crops (Horticultural Crops) Regulations, 2020. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Crops Act, 2013;

“Authority” means the Agriculture and Food Authority established under section 3 of the Agriculture and Food Authority Act, 2013;

“agreement” means a negotiated and binding arrangement between a dealer and a grower of horticultural produce; No. 14 of 2013

“collection centre” means an area established close to growers for bulking of produce for purposes of collective marketing and enforcement of quality standards;

“crops inspector” means a person who is appointed as such, in writing, by the Authority in accordance with section 27 of the Act;

“dealer” means a natural person, a company or a firm engaged in collecting, transporting, storing, buying or selling horticultural produce and includes a ship chandler, an exporter, an importer, processor or a marketing agent;

“domestic market” means a market for horticultural produce that is situated within the country;

“export” means the selling of horticultural produce in a market that is outside Kenya;

“financial year” means the period of twelve months commencing on the first of July and ending on the thirtieth June of the subsequent year;

“grower” means a person who cultivates horticultural crops in Kenya and includes a smallholder and a plantation grower;

“horticultural crop” means a crop listed under the First Schedule;

“import” means to bring into Kenya horticultural produce from another country;

“levy” means a payment imposed on horticultural produce based on a criterion determined and published in the gazette by the cabinet secretary;

“marketing agent” means a natural person, company or firm engaged in buying horticultural produce for sale in the domestic market or export market;

“mother block” means an established area for plants known to be free from diseases and true to type that is used as a source of stock for propagation for the purpose of obtaining clean grafting or budding material;

“national horticulture standards” means the Kenyan Horticulture Standards formulated and registered by the Kenya Bureau of Standards in consultation with the Authority and the horticulture industry;

“nursery” means an area for raising and selling horticulture seedlings including tissue culture laboratories, greenhouses, shed nets and open fields;

“nursery seedling operator” means a person who raises horticulture seedling for sale;

“postharvest” means any process that horticultural produce is subjected to from the time the crop is harvested to the time the crop is consumed;

“potable water” means water that has been tested and confirmed to be suitable for use in the processing of horticultural produce;

“produce” means the harvested part of horticultural crop including roots, tubers, fruits, leafy part, berries or cut flowers ;

“produce handling facility” means an area where horticultural produce is assembled for purposes of grading, sorting, packaging or storage and includes collection centres, pack houses, cold stores, supermarkets, retail and wholesale markets and grading sheds;

“retail market” means a place where horticultural produce is sold to consumers;

“rootstock” means a plant, including a stump, which already has an established healthy root system onto which a cutting or a bud from another plant is grafted;

“scion” means a detached portion of a plant, a bud or shoot that is intended for grafting or budding to a rootstock;

“seedling” means a plant that is sexually or asexually propagated as a vegetative planting material;

“ship chandler” means a person registered and authorized by the Authority to supply horticultural produce to a ship or an aircraft;

“traceability” means the ability to track horticultural produce and process owner from production to the final consumer and vice versa;

“value addition” means the process of capturing and creating value of produce from its original state and includes sorting and grading, packaging, prepacking, canning and freezing;

“vessel” means a carrier which can be used to convey horticultural produce from one point to another and includes a person, vehicle, ship, airplane, bicycle, handcart or motorbike; and

“wholesale market” means a place where goods or merchandise are sold to retailers, industrial, commercial, institutional or other large-scale business users.

3. These Regulations shall apply to all horticultural crops specified in the First Schedule— Application.

- (a) grown, processed or marketed in Kenya; and
- (b) imported to or exported from Kenya.

4. The object of these Regulations is to promote, develop and regulate the growth of the horticulture industry, to ensure that growers and dealers meet produce quality and food safety standards and to provide for the— Object of the Regulations.

- (a) organization and coordination of the horticulture industry;
- (b) reduction of duplication and overlap of functions among institutions involved in the regulation of the horticulture industry;
- (c) registration of nursery operators, grower associations and dealers;
- (d) increased productivity and production of safe and quality horticultural produce;
- (e) safe handling, storage, value addition and efficient distribution of horticultural produce;
- (f) improved market access of horticultural produce; and
- (g) establishment of systems for collection of integrated real time data for the horticulture value chain.

#### PART II— PRODUCTION AND PRODUCTIVITY

5. (1) A commercial nursery operator shall not procure rootstock, scion or seed from a source that is not approved. Approved sources of planting materials.

(2) A person who contravenes sub regulation (1) commits an offence.

6. (1) A person shall not operate a commercial nursery or a mother block for supply to the domestic market unless the person holds a valid certificate of registration from the respective county government. Obligation to register nurseries and mother blocks.

(2) A person shall not operate a commercial nursery or mother block for supply to the export market unless the person holds a valid certificate of registration from the Authority.

(3) A person who contravenes sub regulation (1) or (2) commits an offence.

7. (1) A person who intends to operate a commercial nursery or a mother block for supply to the domestic market shall apply for registration to the respective county government in Form 1 set out in the Second Schedule. Registration of nurseries or mother blocks for domestic market.

(2) The county government shall not issue a certificate of registration unless a county crops inspector has visited and inspected the site and has confirmed that the applicant complies with the following requirements—

- (a) sanitation standards are maintained at the propagation area;
- (b) the seedlings are protected from diseases and pests;
- (c) the area is free from organic and inorganic litter;
- (d) there is clear separation of operations, including soil mixing and potting, seedling area, grafting area, hardening area and dispatch;
- (e) the water source is year-round, adequate, of recommended PH and is free from chemical and microbial contamination;
- (f) the planting media used is free from microbial and chemical contamination;
- (g) the nursery layout is secured from animals and other pests;
- (h) the layout has East to West orientation, has a gentle slope and allows for good drainage;
- (i) there are structures in place for the nursery operations including shade nets, polytunnels and insect proof net, a certified laboratory for tissue culture material and a hardening off area;
- (j) the scion, seeds or rootstock are obtained from an approved source;
- (k) the nursery seedlings are labelled with the seedling type, date of planting, grafting or budding where applicable;
- (l) the seedlings ready for dispatch are tagged or labelled appropriately indicating the seedling variety;
- (m) the distribution records of the nursery showing the buyer's name, county, sub county, ward, postal address and varieties purchased are maintained;
- (n) the nursery is located one hundred meters away from the orchard to prevent cross pollination; and
- (o) the operator or the operator's agent has adequate knowledge of nursery management and horticultural techniques in respect of the horticultural crops to be grown.

(3) The county government shall, if satisfied that the applicant meets the requirements in sub regulation (2), issue a certificate of registration in Form 2 set out in the Second Schedule to the applicant in respect of the inspected site.

(4) A certificate of registration for a commercial nursery or a mother block shall not be transferrable and shall expire at the end of the financial year.

(5) An application for renewal of registration shall be made to the respective county government at least three months before the expiry date in Form 1 set out in the Second Schedule.

8. (1) A person who intends to operate a commercial nursery or mother block for supply to the export market shall make an application to the Authority in Form 3 set out in the Second Schedule.

Registration of nurseries or mother blocks for export market.

(2) The Authority shall issue a certificate of registration after a crops inspector has visited and inspected the site and confirmed that it complies with the following minimum requirements—

- (a) sanitation standards are maintained at the propagation area;
- (b) the seedlings are protected from diseases and pests;
- (c) the area is free from organic and inorganic litter;
- (d) there is clear separation of operations, including soil mixing and potting, seedling area, grafting area, hardening area and dispatch;
- (e) the water source is year-round, adequate, of recommended PH and is free from chemical and microbial contamination;
- (f) the planting media used is free from microbial and chemical contamination;
- (g) the nursery layout is secured from animals and other pests;
- (h) the layout has East to West orientation, has a gentle slope and allows for good drainage;
- (i) there are structures in place for the nursery operations including shade nets, polytunnels, insect proof nets, a certified laboratory for tissue culture material and hardening off area;
- (j) the scion, seeds or rootstock are obtained from an approved source;
- (k) the nursery seedlings are labelled with the seedling type, the date of planting, grafting or budding, as the case may be;
- (l) the seedlings ready for dispatch are tagged or labelled appropriately, indicating the seedling variety;
- (m) the distribution records of the nursery showing the buyer's name, county, sub county, ward, postal address and varieties purchased are maintained;
- (n) the nursery is located 100 meters away from the orchard to prevent cross pollination; and
- (o) the personnel working in the nursery have basic training in nursery management.

(3) The Authority shall, if satisfied that the applicant meets the requirements in sub regulation (2), issue a certificate of registration in Form 4 set out in the Second Schedule to the applicant in respect of the inspected site.

(4) A certificate of registration issued under this regulation shall not be transferrable and shall expire at the end of the financial year.

(5) An application for renewal of registration shall be made to the Authority at least three months before the expiry date in Form 3 set out in the Second Schedule.

9. (1) An operator of a commercial nursery or a mother block shall, on request by an inspector, produce the certificate of registration.

Conditions of  
nursery  
registration  
certificate

(2) A person who contravenes this regulation commits an offence.

10. The Authority or county government may revoke a certificate of registration issued to a nursery or a mother block operator if that operator contravenes the provisions of the Act, any regulations issued under the Act or any conditions specified in the certificate.

Revocation of  
certificate of  
nursery or mother  
block registration

11. (1) A nursery operator shall not sell planting materials that have not been certified by the Kenya Plant Health Inspectorate Service.

Certification of  
planting materials

(2) A person who contravenes this regulation commits an offence.

12. (1) A commercial nursery operator who is registered by the Authority or county government shall keep records of distributed planting materials and shall produce the records on demand for inspection.

Nursery records  
and returns

(2) The records referred to in sub regulation (1) shall indicate the varieties purchased and the buyer's name, county, sub-county, ward and postal address.

(3) A nursery operator shall submit annual statistical returns to the Authority Form 5 set out in the Second Schedule.

(4) A person who contravenes sub regulation (1) or (3) commits an offence.

13. (1) A plantation grower or a grower association may apply to the Authority for registration in Form 6 set out in the Second Schedule.

Registration of  
grower  
associations

(2) The application made under sub-regulation (1) shall be accompanied by—

- (a) a certificate of registration;
- (b) a list of the association's officials;
- (c) a list of the registered members;
- (d) a list of horticultural crops grown by the members;
- (e) the code of conduct for the association.

(2) No fee shall be charged for the registration of grower associations.

(3) The Authority shall, if satisfied that the applicant meets the requirements for registration, enter the name and particulars of the association in the register and issue a certificate of registration subject to such terms and conditions as it deems necessary.

14. (1) A person who intends to deal in horticultural crops in the domestic market shall make an application to the Authority in Form 7 set out in the Second Schedule.

Registration of dealers in the domestic market.

(2) If the Authority is satisfied that the applicant meets the registration requirements, the Authority shall issue a certificate of registration to the applicant.

(3) A certificate of registration issued under this regulation shall be in Form 8 set out in the Second Schedule.

(4) A dealer shall conspicuously display the certificate issued under sub-regulation (3) at his place of business.

(5) A certificate of registration issued under this regulation shall not be transferrable shall be valid until the thirtieth of June next following the date of issue.

(6) An application for renewal of registration shall be made to the Authority at least three months before the expiry date in Form 7 set out in the Second Schedule.

15. (1) A clearing agent who intends to clear horticultural produce shall apply to the Authority for registration in Form 9 set out in the Second Schedule.

Registration of horticultural produce clearing agents.

(2) The application under sub regulation(1) shall be accompanied by—

- (a) the fee set out in the Third Schedule
- (b) a copy of the certificate of incorporation;
- (c) a copy of the customs license;
- (d) a copy the Kenya Revenue Authority PIN certificate;
- (e) a copy of the certificate from the Kenya International Freight and warehouse Association of Kenya;
- (f) a contract or an agreement between the clearing and forwarding agent and the exporter;
- (g) two coloured passport photos for a processing clerk;
- (h) a copy of the national identification card for the processing clerk; and
- (i) a copy of a certificate of good conduct from the National Police Service for the processing clerk.

(3) The Authority shall, if satisfied with that the application meets the registration requirements, enter the name of the applicant in the register and issue the applicant with a certificate in Form 10 set out in the Second Schedule subject to such terms and conditions it deems necessary.

### PART III—QUALITY ASSURANCE AND MARKETING

16. (1) The Authority shall, in collaboration with relevant Government agencies and county governments, ensure that horticultural crop inputs and produce conform to these Regulations, national, regional and international horticulture standards.

Monitoring of quality standards.

(2) Every county government shall facilitate the development of market infrastructure to support the implementation of national standards.

17. (1) A person shall not use water, planting media or fertilizer that contains microbial or chemical contaminants for production of horticultural crops.

Safe production and handling of horticultural produce.

(2) Water used for postharvest and processing of horticultural produce shall be of potable quality.

(3) Every county government shall ensure that all collection centres, retail and wholesale markets, food stores and pack houses are provided with sanitary facilities.

(4) A person who contravenes sub-regulation (1) or (2) commits an offence.

18. (1) Horticultural produce shall be harvested at the right stage of maturity for the intended use.

Produce handling and grading at the farm

(2) Harvested produce shall be handled by personnel with skills and knowledge on food safety.

(3) Horticultural produce shall be harvested in the morning or evening or during cool parts of the day and kept under a shade.

(4) Harvested produce shall be protected from dust and other contaminants.

(5) Appropriate harvesting equipment and containers shall be used for harvesting horticultural produce.

(6) Horticultural produce shall be harvested using clean crates or clean buckets.

(7) Horticultural produce shall be sorted and graded as appropriate and produce unfit for the market shall be separated from marketable produce at the field level.

(8) A collection shed shall be constructed for receiving produce at the field level.

(9) A collection shed shall—

- (a) be accessible to both growers and dealers;
- (b) be designed to allow for a store, working area and shade;
- (c) have floors, doors, wall surfaces made with materials which are easy to clean and disinfect;
- (d) be constructed to allow for adequate ventilation, lighting, effective produce inspection and made of acceptable materials;
- (e) have potable water and adequate sanitation facilities;
- (f) have waste disposal facilities;
- (g) have clear documentation procedures and document control systems; and

(h) have traceability details of any produce that is collected.

(10) A person who contravenes sub-regulation (1), (2), (4), (6), (8) or (9) commits an offence.

19. (1) The processing and packaging of horticultural produce shall be carried out under clean, hygienic and safe conditions as set out in the National Horticulture Standards and the Public Health Act.

Minimum conditions for produce handling facilities.

(2) The working areas and premises of a produce handling facility shall be kept free of waste materials.

Cap. 242.

(3) Any person who is within a produce handling facility shall wear protective clothing at all times.

(4) Any hand used equipment or grading table shall be rust proof and easy to clean.

(5) The floor layout for a produce handling facility shall allow for smooth flow of produce with adequate separation of raw materials and finished products.

(6) The floors, doors and wall surfaces of a produce handling facility shall be made of impervious, non-absorbent, non-toxic washable material which is easy to clean and disinfect.

(7) A produce handling facility shall have adequate ventilation, temperature control and lighting.

(8) A produce handling facility shall be designed and constructed to prevent entry of dust, domestic animals, rodents, insects, birds, or any other unwanted animals.

(9) A person shall not smoke, eat or drink in a produce handling facility and appropriate signs shall be displayed in the facility to that effect.

(10) Packaging materials shall be kept off the floor in a clean dry storage area that is free from the risk of contamination.

(11) Horticultural produce shall move through the facility operation in the order that it is received, first in first out.

(12) The traceability of horticultural produce shall be documented throughout the process chain.

(13) A person who contravenes any provision in this regulation commits an offence.

20. (1) The packaging material for horticultural produce shall be designed to suit the transport handling system and shall meet market requirements.

Requirements for packaging, transportation and storage of horticultural produce and products.

(2) The package weight of horticultural produce shall not exceed fifty kilogrammes.

(3) The packaging material used for horticultural produce shall have the capacity to contain the produce, enabling the required quantity to be handled as one-unit up to the targeted destination without collapsing.

(4) Horticultural produce shall, during storage and transportation, be kept at the temperature and humidity levels prescribed in the specific commodity standards for that produce.

(5) Horticultural produce shall not be stored or transported together with other produce which may contaminate them or otherwise adversely affect their quality.

(6) A vessel for transportation of horticultural produce shall be built and equipped to ensure maintenance of optimal temperatures and hygiene and to prevent damage, contamination and spoilage of produce.

(7) Horticultural produce offered for export shall conform to the national labelling and packaging standards.

(8) Every packaging material for horticultural produce for the export market shall be branded as "produce of Kenya" using the national logo prescribed by the national institution responsible for branding.

(9) A person handling horticultural produce shall—

- (a) after every six months, undergo a medical test and be issued with a medical certificate; and
- (b) be trained on produce handling.

(10) A person who contravenes any provision in this regulation commits an offence.

21. (1) A grower shall use only the pest control products registered by Pest Control Product Board in accordance with the label instructions.

Safe use of pesticides.

(2) A grower shall maintain all records of pest control products used and avail the records to a crops inspector on demand.

(3) The minimum records kept by a grower for traceability shall include—

- (a) the name of the crop previously grown in the same field;
- (b) the type of seed used;
- (c) seed dressing product used;
- (d) date of planting;
- (e) pest and disease records;
- (f) pest product used in spraying;
- (g) method of application of pest control products;
- (h) weather conditions during the application of pest control products;
- (i) date and rate of application of pest control products;
- (j) irrigation frequency and dates of irrigation;
- (k) harvesting dates and weather conditions during harvesting;

- (l) the spray operator and equipment used; and
- (m) sprayer and equipment calibration records.

(4) A person shall not use post-harvest treatment products that are not registered by the Pest Control Product Board.

(5) A person who contravenes any provision of this regulation commits an offence.

22. (1) A dealer in horticultural produce shall declare to the Authority the source of his produce—

Traceability of produce.

- (a) in the case of a farm owned by the dealer, in Form 11 set out in the Second Schedule;
- (b) in the case of produce sourced from contracted growers, in Form 12 set out in the Second Schedule; or
- (c) in the case of produce obtained from retail or wholesale markets, in Form 13 set out in the Second Schedule.

(2) A dealer in horticultural produce shall put in place the National Horticulture Traceability System or an equivalent traceability system as may be approved by the Authority.

(3) A dealer in horticultural produce shall not deal with marketing agents who are not registered with the Authority.

(4) A dealer in horticultural produce shall put in place a quality management system for withdrawal and recall of produce to address food safety concerns with potential to harm human health.

(5) A person who contravenes any provision in this regulation commits an offence.

23. (1) A grower supplying produce to a dealer shall sign a contract with the dealer.

Contract farming.

(2) A dealer shall not—

- (a) sponsor the growing of a horticultural crop for trading without notifying the Authority;
- (b) collect produce from a sponsored production scheme unless authorized in writing to do so by the sponsoring firm;
- (c) return horticultural produce collected from a grower contrary to the contract; or
- (d) impose contractual terms on the grower that do not comply with the horticultural code of conduct.

(3) A person who contravenes regulation (2) commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a period not exceeding six months or both.

24. (1) Produce in collection centres, stores, pack houses, markets, warehouses may be randomly sampled and tested by the Authority in collaboration with county government and relevant agencies from time to time to ensure conformity with food safety and quality requirements.

Enforcement of quality standards.

(2) A dealer shall not operate without a compliance certificate in Form 14 set out in the Second Schedule.

(3) A dealer shall not be issued with a compliance certificate unless a Crops inspector—

(a) has visited and inspected the farm and confirmed that it complies with food safety and quality standards; and

(b) is satisfied that the dealer has adequate knowledge of national, regional and international market requirements.

25. Horticultural produce that does not conform to the set national and international standards and has been declared so by the Authority shall—

Consequences of non-compliance with standards

(a) in the case of produce that does not comply with food safety standards, be seized, detained or destroyed at the cost of the offender; and

(b) in the case of produce presented using forged export documents or exported using forged phytosanitary certificate, export certificate or any compliance certificate, be destroyed upon interception and the offender suspended from export dealership for one year.

26. (1) A person who intends to be registered as an importer of horticultural produce shall apply to the Authority for a horticultural produce import licence in Form 15 set out in the Second Schedule.

Import licence.

(2) The application under sub regulation (1) shall be accompanied by—

(a) a copy of the certificate of incorporation, for local companies;

(b) a copy of the certificate of compliance for a branch of a foreign company;

(c) Kenya Revenue Authority PIN certificate for the company;

(d) a valid tax compliance certificate from the Kenya Revenue Authority;

(e) a copy of a valid business permit;

(f) copies of the identity cards or passports of the directors;

(g) copies of a passport and valid work permit of the directors, if they are foreigners;

(h) the fee set out in the Third Schedule.

(3) The Authority may require the personal attendance of the applicant or an authorized representative of the applicant for interview before granting a licence.

(4) If the Authority is satisfied that the applicant has satisfied the requirements for registration, the Authority shall issue the applicant with an import licence in Form 16 set out in the Second Schedule.

(5) If the Authority refuses to grant an import licence, it shall inform the applicant of such refusal in writing, giving reasons thereof.

(6) A licence issued under this regulation shall be valid from first July up to thirtieth of June of the following calendar year unless earlier cancelled.

(7) An import licence shall not be transferrable.

(8) A person who imports horticultural produce without a valid horticultural crop import licence commits an offence.

27. (1) A registered importer who intends to import a consignment of horticultural produce shall apply to the Authority for a horticultural produce import certificate in Form 17 set out in the Second Schedule. Import certificate.

(2) The application under sub regulation (1) shall be accompanied by—

- (a) copies of importation and customs entry documentation;
- (b) the import permit for shipment of the specific consignment;
- (c) evidence of payment of duties and levies;
- (d) a certificate of origin and contact details of the exporters and importers from whom the consignment was procured; and
- (e) the fee set out in the Third Schedule.

(2) The Authority shall, on receipt of the application, analyse samples of the consignment in respect of which the application is made at the port of entry.

(3) If the Authority is satisfied that the consignment of horticultural crops meets the import requirements, the Authority shall issue the applicant with an import certificate in form 18 set out in the Second Schedule.

(4) Any consignment of horticultural produce that is smuggled or does not conform to the quality standards shall be seized, detained and disposed of or destroyed in an appropriate manner by the Authority at the cost of the offender.

(5) A person who contravenes regulation (1) commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or imprisonment for a period not exceeding one year, or both.

28. (1) A person who intends to be registered as an exporter of horticultural produce shall apply to the Authority for a horticultural produce export licence in Form 19 set out in the Second Schedule. Export licence.

(2) The application under sub regulation (1) shall be accompanied by—

- (a) a copy of the certificate of incorporation, for local companies;
- (b) a copy of the certificate of compliance for a branch of a foreign company;
- (c) the Kenya Revenue Authority PIN certificate for the company;

- (d) a valid tax compliance certificate from the Kenya Revenue Authority;
  - (e) a copy of a valid business permit;
  - (f) copies of the identity cards or passports of the directors;
  - (g) copies of a passport and valid work permit of the directors, if they are foreigners;
  - (h) the registration fee set out in the Third Schedule;
  - (i) produce traceability records;
  - (j) contracts from contracted produce sources; and
  - (k) documents indicating that the applicant operates from a registered packing facility.
- (3) The Authority shall, upon receipt of the application—
- (a) inspect the farm where the horticultural produce is grown and issue the applicant with a farm inspection report, if the inspected farm complies with good agricultural practices;
  - (b) inspect the pack house facility and issue the applicant with a pack house inspection report and enter the pack house in the register, if the facility has complied with food safety requirements; and
  - (c) inspect the transport vessel used for transporting produce and issue the applicant with a transport inspection report, if the vessel has complied with food transportation standards.
- (4) The Authority may require the personal attendance of the applicant or an authorized representative of the applicant for an interview before granting a license.
- (5) The Authority shall, if satisfied with the application, enter the name of the exporter in the register and issue the applicant with an export licence in Form 20 set out in the Second Schedule subject to such terms and conditions it deems necessary.
- (6) If the Authority refuses to grant an export licence, it shall inform the applicant of such refusal in writing, giving reasons thereof.
- (7) A license issued under this regulation shall not be transferrable and shall be valid from first July to thirtieth of June of the following calendar year unless earlier cancelled.
- (8) An application for renewal of an export licence made thirty days before the expiry of an export licence and shall be in Form 19 set out in the Second Schedule shall be accompanied by—
- (a) certified copy of business trading permit from the respective county government;
  - (b) valid tax compliance certificate from the Kenya Revenue Authority;
  - (c) farm and pack house inspection report from the Authority;
  - (d) annual marketing and production returns for the previous year and season;

- (e) records of produce traceability;
- (f) contracts from contracted produce sources; and
- (g) documents indicating that the applicant operates from a registered packing facility.

(9) A person who exports horticultural produce without a valid horticultural crop export licence commits an offence.

29. (1) A person who intends to export a consignment of horticultural produce shall apply to the Authority for an export certificate in Form 21 set out in the Second Schedule. Export certificate.

(2) The application in sub regulation (1) shall be accompanied by—

- (a) a copy of the horticultural produce export license;
- (b) a copy of the consignment invoice certified by Kenya Plant Health Inspectorate Service indicating—
  - (i) the product name;
  - (ii) the destination of the product;
  - (iii) the consignee;
  - (iv) the flight details;
  - (v) the unit value of the produce, indicating the currency; and
  - (vi) the weight of each product being exported in Kilograms; and
- (c) a maturity inspection report for mangoes and avocados.

(3) If the Authority is satisfied that the consignment of horticultural produce meets the export requirements, the Authority shall issue the applicant with an export certificate in Form 22 set out in the Second Schedule.

(4) A person who exports horticultural produce from Kenya without an export certificate commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or imprisonment for a period not exceeding one year, or both.

30. (1) A registered exporter or importer of horticultural produce shall maintain accurate records of transactions relating to horticultural produce and shall submit quarterly returns to the Authority in Form 23 set out in the Second schedule. Import and export returns.

(2) A person who contravenes sub-regulation (1) commits an offence.

31. An applicant for or a holder of a licence or certificate who is aggrieved by a decision of the Authority on or in respect of— Appeals.

- (a) the grant, refusal, renewal, variation or revocation; or
- (b) the conditions imposed on the grant, renewal or variation, of a licence, may appeal to the Cabinet Secretary.

(2) An appeal under this regulation shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

#### PART IV – MISCELLANEOUS PROVISIONS

32. The applicable fees for services rendered under these Regulations shall be as set out in the Third Schedule. Fees

33. (1) There shall be a levy, based on the customs value, imposed on all horticultural crops destined for export other than those canned, bottled, preserved, dehydrated or delivered to operators for canning and processing factories at the rate of 0.25 per cent of the customs value. Levies.

(2) There shall be a levy imposed on all horticultural crops—

- (a) imported as finished products at the rate of four percent of the import value; and
- (b) imported as fresh products or raw materials at a rate of two percent of the import value.

(3) The levy due under sub regulation (3) shall be remitted to the Authority not later than the tenth day of the month following the month during which the levy was due.

(4) Any levy imposed under this regulation which remains unpaid shall be recovered by the Authority as a civil debt due to it from the person by whom it is payable.

(5) A person who fails to remit any levy on time as provided under these regulations shall, where directed by the Authority in writing, in addition to paying the levy—

- (a) pay an interest of twenty-five percent for the first month or part of the month in which the levy remains unpaid; and
- (b) pay twelve percent compound interest for each subsequent month or part of the month in which the levy remains unpaid.

(6) The interest rate set out in sub regulation (2) shall be payable on a monthly basis.

(7) The levy imposed under paragraph (1) and (2) shall be used for the operations of the Authority and development of the industry.

34. (1) The Authority may alter, suspend or revoke a license or certificate issued under these Regulations if in its opinion the Act, these Regulations or a condition of the licence has been contravened. Alteration, suspension and revocation of licences or certificates.

(2) The Authority shall, before altering, suspending or revoking a license, give the person a fourteen days' notice to make representations.

35. A person who contravenes the provisions of these Regulations for which no specific penalty is provided commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or both. General penalty

36. Any certificate or license issued before these Regulations come into operation shall remain valid until expiry, and subsequent certificates or license shall be issued under these Regulations. Transitional provisions

37. The Horticultural Crops Development Authority Order, 2011 is revoked. Revocation L.N No 190 of 2011.

## FIRST SCHEDULE

Horticultural Crops

r. 2, 3

## FRUIT TREES

<i>Common Name</i>	<i>Botanical Name</i>
Apple	<i>Pyrus malus L.</i>
Apricot	<i>Prunus armeniaca</i>
Avocado	<i>Persea spp</i>
Bananas and plantains	<i>Musa sp</i>
Berries	<i>Rubus sp.</i>
Bread fruit	<i>Artocarpus altilis</i>
Cape Gooseberry	<i>Physalis peruviana</i>
Carambola	<i>Averrhoa carambola</i>
Cherimoya	<i>Annonacherimola</i>
Chinese pear	<i>Pyrus prunifolia</i>
Citrus	<i>All citrus species</i>
Custard apple	<i>Annona sp.</i>
Date palm	<i>Phoenix dactylifera</i>
Goose berries	<i>All species</i>
Grapes`	<i>Viti ssp</i>
Guava	<i>Psidium guajava</i>
Jackfruit	<i>Artocarpus heterophyllus</i>
Litchi	<i>Litchi chinensis</i>
Litchi	<i>Nephelium litchi</i>
Loquat	<i>Eriobotrya caaponica</i>
Mango	<i>Mangifera indica</i>
Melons`	<i>Cucumis melo</i>
Mountain Pawpaw	<i>Carica candanacensis</i>
Mulberries	<i>Morus sp.</i>
Nectarine	<i>.Prunus sp. L.</i>
Passion fruit	<i>Passiflora spp</i>
Pawpaw...	<i>Carica papaya</i>
Peach	<i>Prunus persica L.</i>
Pear	<i>Pyrus communis L.</i>
Pineapple	<i>Ananas comosus</i>
Plum	<i>Prunus sppL</i>
Pomaganate	<i>Punica granatum</i>
Quince	<i>Cydonia oblonga</i>
Strawberries	<i>Fragaria spp</i>
Sweetsop (Sugar apple)	<i>Annona squamosa</i>
Water melon `	<i>Citrullus lanatus</i>
White sapote	<i>Casimiroa edulis</i>
<i>Any other fruits of economic value</i>	

## A. MEDICINAL AND AROMATIC PLANTS

<i>Common Name</i>	<i>Botanical Name</i>
Aloe	<i>Aloe vera</i>
Artemesia	<i>Artemesia annua</i>
Salvia	<i>Salvia solarea</i>

*All other medicinal and aromatic plants of commercial value*

## B. VEGETABLES

<i>Common Name</i>	<i>Botanical Name</i>
Amaranth	<i>Amaranthus</i> spp.
Artichoke	<i>Cynara cardunculus</i> var. <i>scolymus</i>
Jerusalem artichokes	<i>Helianthus tuberosus</i>
Asparagus	<i>Asparagus officinalis</i>
Beet root	<i>Beta vulgaris</i>
Broccoli/cauliflower	<i>Brassica oleracea</i> var. <i>botrytis</i>
Brussels sprouts	<i>Brassica oleracea</i> var. <i>gemnifera</i>
Cabbage	<i>Brassica oleracea</i> var. <i>capitata</i>
Carrot	<i>Daucus carota</i>
Celery / Celeriac	<i>Apium graveolens</i>
Chervil	<i>Anthriscus cerefolium</i>
Chicory	<i>Cichorium intybus</i>
Chillies	<i>Capsicum</i> spp
Chinese cabbage	<i>Brassica chinensis</i>
Cluster bean (green)	<i>Cyamopsis tetragonoloba</i>
Collards / Kale.	<i>Brassica oleracea</i> var. <i>ancephala</i>
Coriander	<i>Coriandrum sativa</i>
Cowpeas (leafy) chora	<i>Vigna unguiculata</i>
Cucumber	<i>Cucumis sativa</i>
Dill	<i>Arethum graveolens</i>
Dioscorea	<i>Dioscorea</i> sp
Dudhi (kaddu)	<i>Lagenaria siceraria</i>
Edible Mushroom	<i>Agaricus species</i>
Eggplants	<i>Solanum melongena</i>
Endive	<i>Cichorium endivia</i>
French beans	<i>Phaseolus vulgaris</i>
Garden cress	<i>Lespidium sativa</i>
Garden pea	<i>Pisium sativum</i>
Green maize	<i>Zea mays</i>
Horseradish	<i>Armoracia rusticana</i>
Karella	<i>Mormodica charantia</i>
Kohlrabi	<i>Brassica oleracea</i> var. <i>gongylodes</i>
Leek	<i>Allium porrum</i>
Lettuce	<i>Lactuca sativa</i>
Loofah	<i>Luffa cylindrical</i>
New Zealand spinach	<i>Tetragonia expansa</i>
Okra	<i>Hibiscus esculentus</i>
Onion/ garlic	<i>Allium cepa</i>
Parsley	<i>Petroselinum crispum</i>
Parsnip	<i>Pastina casativa</i>
Pea	<i>Pisum sativum</i>
Pepper	<i>Capsicum</i> spp.
Pumpkin/Squash/Courgette	<i>Cucurbita pepo</i>
Pumpkins	<i>Cucurbita</i> sp.
Radish	<i>Raphanus sativus</i>
Rhubarb	<i>Rheum rhaponticum</i>
Runner bean.	<i>Phaseolus coccineus</i>
Rutabaga	<i>Brassica napobrassica</i>
Snow peas.	<i>Pisium sativum</i> var. <i>saccharatum</i>

<i>Common Name</i>	<i>Botanical Name</i>
Spinach	<i>Spinacea oleracea</i>
Sugar beet	<i>Beta vulgaris</i>
Sugar snaps.	<i>Pisium sativum</i>
Swiss chard	<i>Beta vulgaris</i>
Tomato	<i>Solanum lycopersicum</i>
Turnip	<i>Brassica rapa</i>
Watercress	<i>Nasturtium officinale</i>

Any other vegetables of economic value

#### FLOWERS AND ORNAMENTAL PLANTS

<i>Common Name</i>	<i>Botanical Name</i>
Agapanthus/African Lily	<i>Agapanthus spp. A.umbellatus</i>
Alstroemeria/Peruvian Lily	<i>Alstroemeria Aurantiaca</i>
Amaranthus	<i>Amaranthus 1407 peg (Amaranthus acanthochoiton)</i>
Amми/White Dill/Bishops Flower	<i>Ammi majus</i>
Amми/White Dill/Bishops Flower	<i>Ammi visnaga</i>
Anthuriums/Flamingo Flower	<i>Anthurium Sp</i>
Arabicum	<i>Ornithogalum saundersiae</i>
Asparagus Fern	<i>Asparagus 1407 peg (Asparagus aethiopicus)</i>
Asters/Michaelmas Daisy	<i>Aster Sunhelence, Aster Novi-belgii</i>
Astrantia	<i>Astrantia 1407 peg (Astrantia major)</i>
Begonia	<i>Begonia 1407 peg (Begonia obliqua)</i>
Bupleurum	<i>Bupleurum rotundifolium "graffiti"</i>
Callistaphus	<i>Callistaphus 1407 peg (Callistaphus chinensis)</i>
Carnations	<i>Dianthus caryophyllus</i>
Carthamus/Safflower/Saffon	<i>Carthamus tinctoris</i>
Celosia	<i>Celosia 1407 peg. (Celosia cristata)</i>
Chrysan. Cuttings/Pot Mum	<i>Dendratherma 1407 peg/1407flora / Chrysanthemum sp</i>
Craspedia	<i>Craspedia 1407 peg (Craspedia uniflora)</i>
Crocsmia	<i>Crocsmia 1407 peg (Crocsmia aurea)</i>
Delphinium/Larkspur	<i>Delphinium 1407 peg (Delphinium elatum)</i>
Dianthus	<i>Dianthus 1407 peg (Dianthus caryophyllous)</i>
Dianthus	<i>Dianthusa 1407 peg (Dianthusa caryophyllous)</i>
Dill	<i>Anethum 1407 peg (Anethum graveolens)</i>
Easter Lily	<i>Lilium Longiflorum</i>
Echinops	<i>Echinops 1407 peg (Echinops ritro)</i>
Eryngium/Sea Holly/Alphine	<i>Eryngium Sp</i>
Eucalyptus	<i>Eucalyptus L'H'er eg (Eucalyptus oblqua)</i>
Freesia	<i>Freesia 1407 peg (Freesia refracta)</i>
Gerbera/Transvaal Daisy	<i>Gerbera Hybrids</i>
Gladiolus/Sword Lily	<i>Gladiolus hybrids</i>
Grass	<i>Cortaderia Sp and Zoysia Spp</i>
Gypsophilla/Baby Breath Species	<i>Gypsophila paniculata</i>
Helianthus	<i>Helianthus annus</i>
Heliconia	<i>Heliconia 1407 peg Heliconia psittacorum</i>
Hypericum	<i>Hypericum 1407 peg (Hypericum perforatum)</i>
Lavender	<i>Lavandula spp</i>
Leather Leaves(L) Fern	<i>Rumohra adiantiformis</i>

Lisianthus/Prairie	<i>Eustoma grandiflorum</i>
Gentian/Wildflower	
Longiflora	<i>Ecopsis longiflora</i>
Million Stars	<i>Gypsophila paniculata</i>
Mobbydick	<i>Gomphocarpus 1408 peg Gomphocarpus physocarpa and Gomphocarpus fruticosus</i>
Molucella/Bells of Ireland	<i>Molucella leavis</i>
Montbretia	<i>Crosmia 1408 peg (Crosmia x crosmiflora)</i>
Orchids	<i>Cymbidium hybriden</i>
Ornithogalum/Star Of Bethlehem	<i>Ornithogalum Thyrsoides</i>
Panicum	<i>Panicum 1408 peg (Panicum virgatum)</i>
Papyrus	<i>Papyrus eg (Cyperus papyrus)</i>
Pelargonium Cuttings	<i>Pelargonium SP eg (Pelargonium cucullatum)</i>
Pennisetum	<i>Pennisetum 1408 peg (Pennisetum polystachion)</i>
Phlox	<i>Phlox S peg (Phlox paniculata)</i>
Phormium	<i>Phormium 1408 peg (Phormium tenax)</i>
Ranunculus	<i>Ranunculus Sp (Ranunculus asiaticus)</i>
Roses	<i>Rosa spp</i>
Rudbeckia/Coneflower	<i>Echinacea Purpurea</i>
Ruscus	<i>Ruscus aculeatus</i>
Saundersisiae	<i>Ornithogalum saundersiae</i>
Scabiosa	<i>Scabiosa 1408 peg (Scabiosa caucasica)</i>
Setaria	<i>Setaria 1408 peg (Setaria viridis)</i>
Solidago/Garden Rod	<i>Solidago gardensis</i>
Solidaster/Garden Plant	<i>Solidaster luteus</i>
Statice/Sea Lavender	<i>Limonium spp</i>
Strelitzia and hybrids	<i>Strelitzia 1408 peg (Strelitzia reginae)</i>
Sunflower	<i>Helianthus annus</i>
Trachelium	<i>Trachelium caeruleum</i>
Tuberose	<i>Polianthes tuberosa</i>
Veronica	<i>Veronica Spicata</i>
Zantedeschia/Calla Lily/Arum Lily	<i>Zantedeschia Sp</i>

And any other flower and ornamental plants of economic value

## SECOND SCHEDULE

Form I

r. 7(1), (5)

### APPLICATION FOR REGISTRATION OF HORTICULTURAL CROPS NURSERY OR MOTHER BLOCK

COUNTY GOVERNMENT OF.....

(To be filled in triplicate)

1. Full name of Applicant .....
2. PIN.....ID No.....Huduma No.....
3. Postal Address.....Tel.....Email.....
4. County.....Sub County.....Ward .....
5. L.R. No.....

6. Water source: Rivers/Dam/Boreholes, others (specify) .....

7. Type of material applied for to be produced:

Crop/variety	No. of Seedlings	Source of Seed/ rootstock and scion
.....	.....	.....
.....	.....	.....

I confirm that I shall abide by the regulations and ensure that all planting material has been inspected and approved by County crops inspectors.

Applicant's signature .....

Date.....

**PART II**

<p><b>FOR OFFICIAL USE</b></p> <p>County crops Inspector Remarks .....</p> <p>.....</p> <p><i>Recommended /Not recommended</i></p> <p>County Crop Inspector name.....Signature.....</p> <p>Date.....</p> <p>Approved/Not Approved by: County Executive Committee in charge of Agriculture</p> <p>Name .....Signature.....Date .....</p>
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**CONDITIONS**

1. Application for registration should be sent to the County where the nursery/mother block is located
2. This form shall be accompanied by the prescribed fees and submitted to the County government.

Form 2

r. 7(3)

**CERTIFICATE OF REGISTRATION OF HORTICULTURAL NURSERY/MOTHER BLOCK**

COUNTY GOVERNMENT OF.....

1. Name of certificate holder .....
2. P.O. Box ..... of .....
3. Is/are registered to operate an Horticultural nursery for the year .....
4. Located at County .....Sub-county .....Ward.....
5. L.R.No.....GPScoordinates.....Altitude.....Northing.....Eastings.....
6. The following planting materials will be produced

Crop Type/ variety	approximate No of seedlings	Remarks (condition of seeds/seedlings)

Registration No. ....

Signed..... Date:.....

(County Executive Committee member in charge of Agriculture)

Conditions

1. This certificate is valid for 1 year from date of issue
2. This certificate is not transferable to any other person or nursery site
3. All seed, rootstock or scion must be from approved source
4. No sale of planting material before certification by the National Plant Protection Organization.
5. The application for renewal of registration should be sent to the County where the nursery/mother block is located so as to reach at least 3 months before expiry date.
6. All certified materials which cannot be sold during the certification season will be subjected to re-certification before redistribution.
7. A copy of the certificate shall be sent to the Authority within 15 days of registration by the respective County government.

Form 3

r. 8(1), (5)

THE AGRICULTURE AND FOOD AUTHORITY

APPLICATION FOR OPERATION OF NURSERY OR MOTHER BLOCK FOR  
SUPPLY TO THE EXPORT MARKET

(To be filled in triplicate)

1. Full name of Applicant .....
2. PIN.....ID No..... Huduma number .....
3. Postal Address.....Tel.....Email.....
4. County.....Sub County.....Ward .....
5. L.R. No..... GPS coordinates –Altitude.....N/S.....E.....
6. Water source: Rivers/Dam/Boreholes, others (specify) .....
7. Type of material to be exported:

Crop/variety	No. of Seedlings	Source of Seed	Remarks


I confirm that I shall abide by the regulations and ensure that all planting material has been inspected and approved by the inspectors.

Applicant's signature .....Date.....

PART II

<b>FOR OFFICIAL USE</b>	
<i>Recommended /Not recommended</i>	
Crop Inspector name.....	Signature..... Date.....
Remarks.....	
Checked by:	
Authorized Officer Name.....	Signature..... Date .....
Approved/Not Approved by:	
Director General .....	Signature.....Date .....

Form 4

r. 8(3)

**THE AGRICULTURE AND FOOD AUTHORITY**  
**CERTIFICATE OF REGISTRATION FOR NURSERY OR MOTHER BLOCK FOR**  
**SUPPLY TO THE EXPORT MARKET**

*(To be filled in triplicate)*

Full name of certificate holder.....

P. O. Box ..... Email .....Mobile No.....

Is/are registered to export Horticultural seedlings for the year .....

Name of County .....Sub-County .....Ward.....

L.R. No..... GPS coordinates -Altitude.....N/S.....E.....

The following planting materials will be produced

Types	number of planting stock	remarks

Registration No. ....

Signed ..... Date:.....

(Director General)

AGRICULTURE AND FOOD AUTHORITY

Conditions

1. This certificate is valid for one financial year.
2. This certificate is not transferable to any other person, or nursery site
3. All seed must be from approved source
4. No export of planting material before final visual inspection and approval by KEPHIS.
5. The application for renewal of this certificate shall be made to the Authority so as to reach at least 3 months before expiry date.
6. Tolerance levels of virus diseases incidence in the nursery is 0.5% of total number of plants.
7. All certified materials which can't be sold during the certification season will be subjected to certification after (6) six months.

FORM 5

r. 12(3)

## HORTICULTURE NURSERY OPERATOR STATISTICAL RETURNS FORM

*(To be completed in triplicate)*

## THE AGRICULTURE AND FOOD AUTHORITY

Name of the Nursery operator .....

1. Telephone/ Mobile number ..... P.O. Box ..... Nearest Town.....
2. Period of returns.....Month ..... Year .....

Declaration:

Crop	Variety	Number of seedlings raised within the period	Number of seedlings issued/sold./ distributed	Balance of seedlings	Average price of a seedling over the period (KES)

I hereby declare that the information I have given above, to the best of my knowledge, is true and complete.

Name of the Nursery Operator .....Date .....

Signature .....

3. For official use only:

Name of Inspector .....

Date .....Signature .....

Official Agriculture and Food Authority

***NB** This form must be filled and submitted to the Agriculture and Food Authority, not later than the fifteenth day of January and fifteenth day of July of every year.*

Form 6

r. 13(1)

APPLICATION FOR REGISTRATION OF PLANTATION GROWER/ GROWERS  
ASSOCIATION*(To be filled in triplicate)*A – Particulars of Applicant (New/Renewal - *delete as appropriate*):

1. Name of Company .....
2. Certificate of Incorporation No.....
3. List Names and Identity Card Nos. for Directors

Name	ID/Passport No	Email address	Telephone number	Remarks
1.				
2.				
3.				

*Remarks Provide Work Permits for Directors for Foreign based Companies*

4. VAT Registration No. .... PIN .....
5. Postal address..... Postal code.....Town.....
6. Telephone No.....E-mail.....Website.....
7. Physical address: Building.....Street.....Town.....

B – Particulars of Land Parcel for plantation growers

1. L.R. No. or No's.....
2. County.....
3. Sub County.....
5. Ward.....

Type of crop	Variety	Acreage/Population	Average yield

*NB: For permanent crops indicate the plant population*

I confirm that I shall abide by the requirements of the Horticulture Crops Regulations.

Full name of applicant.....Signed.....

Date.....

PART C

FOR OFFICIAL USE
Remarks.....

<p>.....</p> <p><input type="checkbox"/> Recommended      <input type="checkbox"/> Not Recommended</p> <p>Authorized Officer Agriculture and Food Authority</p> <p>Signature.....</p> <p>Date .....</p>
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## Attachments

- (a) Certificate of registration or incorporation
- (b) Copies of the Constitution or Articles and Memorandum of Association;
- (c) A copy of the register of members
- (d) Products handled

Form 7

r. 14(1), (6)

**APPLICATION FOR REGISTRATION AS A HORTICULTURAL PRODUCE  
DEALER IN THE DOMESTIC MARKET**

*(To be filled in triplicate)**New applicant Renewal*

1. Name of Applicant .....
  - Postal Address.....
  2. Physical address.....
  3. Registered Office.....LR. No. ....Street .....
  - Tel. No. ....Fax No.....
  - E-mail.....Website .....
  4. Place where the premise is located: County.....Sub-County.....Ward.....
  5. VAT Registration No / ID. No. ....PIN .....
  6. Year of Incorporation of Company .....and Registration No. ....
- (Attach copies of, company incorporation certificate ID of Directors and current Single Business Permit where applicable)*
7. Type of dealership e.g. Processor /Transporter/marketing agent/.  
(specify) .....
  8. Types of Produce/ Products for the market .....
  9. Sources of supply for Produce

Name of county	Sub county	Ward	Name of buyers

Attach contractual agreements if outsourcing for buyers

I hereby declare that the particulars which I have given are true and accurate to the best of my knowledge and belief.

10. Applicant Signature.....Date .....

<p><b>FOR OFFICIAL USE</b></p> <p>Remarks:</p> <p>Approved/Not approved.....</p> <p>11. Checked by:</p> <p>Officer Name..... Signature..... Date .....</p> <p>Approved by:</p> <p>Name .....Signature.....</p> <p>Date .....</p>
--

**CONDITIONS**

1. Consideration of this application will be on condition that the applicant satisfies the Authority that he is capable of complying with national standards and any other legal requirements.
2. The dealer shall produce such documentary evidence as requested to support the statements made above.
3. A dealer shall pay all dues to the Authority before his application can be considered.
4. The Authority has the right to approve or reject this application. In case of rejection reasons will be given and the applicant can reapply.

Form 8

r.14(3)

**CERTIFICATE OF REGISTRATION OF PRODUCE DEALER FOR THE DOMESTIC MARKET**

Name .....

Type of dealership.....;

P. O. Box : .....Tel.....

Physical Address.....

L.R. No. ....

Street: .....

is hereby certified as a dealer (specify *Type of dealership e.g Processor /Transporter/Buyer/ Grocery etc* ) of horticulture produce/products under this Regulation for the following products:

.....  
 .....

Date of Registration.....

Date of expiry.....

Signed.....

Name .....

(CEC in charge of Agriculture)

Official Rubber stamp of the respective County government

**CONDITIONS**

The certificate is not transferable.

The certificate may be revoked, suspended or altered according to the provisions of this regulations.

Form 9

r. 15(1)

**APPLICATION FOR REGISTRATION OF CLEARING AGENT FOR HORTICULTURAL CROPS**

*(To be filled in triplicate)*

1. Full name of Applicant .....

2. Postal Address.....Registered Office.....L. R. No.  
 Street .....Tel. No..... Fax  
 No. ....Email..... Website .....

3. Place where the premise is located: Ward.....Sub-County.....Sub  
 County.....

4. VAT Registration No / ID. No. .... PIN .....

5. Year of Incorporation of Company .....and Registration No. ....

*(Attach copies of, company incorporation certificate ID of Directors and current Single Business Permit)*

6. Commodity types handled .....

7. List of horticultural export companies contracting your service (Attach service level agreement) .....

8. List full names documentation clerks (attach copies of ID and passport photograph)

9. I hereby declare that the particulars which I have given are true and accurate to the best of my knowledge and belief.

Applicant Signature..... Position.....

Date .....

Form 10

r. 15(3)

CERTIFICATE OF REGISTRATION FOR CLEARING AGENTS FOR HORTICULTURAL CROPS

Name: .....

P. O. Box : .....Tel.....

Physical Address.....

L.R. No. ....

Street: .....

is hereby certified as a clearing agent for of horticultural produce for the following export Companies:

.....  
.....

Date of Registration.....

Date of expiry.....

Signed.....

Name .....

Director General/Authorized officer

Official Rubber stamp of the Authority

CONDITIONS

1. The certificate is not transferable.
2. The certificate may be revoked, suspended or altered according to the provisions of this regulations.
3. The Authority shall be notified when changes under this registration occur within 14 days.

Form 11

r. 22(1)(a)

## DECLARATION OF PRODUCE SOURCE FROM DEALER OWNED FARMS

Company name:						Physical business location:				
Company registration number						Certificate of registration number:				
Address: P.O. Box:						E-mail:				
Phone No.						Date:				
No.	Farm Name	Trace Code	County	Subcounty/ Ward	Specific Farm location	Crop	Area of crop (Acre)	No of Trees (for fruit trees)	Production per season (Kg)	Certification Status

Form 12

r. 22(1)(b)

## DECLARATION OF PRODUCE SOURCE FROM CONTRACTED FARMS

Company name		Physical business location:	
Company registration number		Certificate of registration number	
Address: P.O. Box:		E-mail:	
Phone No.		Date:	
Name of association (where applicable )			

Name of farmer .....Trace code.....  
 Mobile No.....ID NO.....Email .....  
 County.....Sub county..... ward.....  
 Location/ LR No.....GPS altitude.....N/S..... E.....  
 Farmer's and crop production details

Name of crop	Variety	Area (acre)	Production (MT)	Certification Status

CONDITIONS

- Attach duly signed contracts for each of farmer indicated above
- A different form should be filled for each crop

Name of company representative:..... Designation ..... Date  
 Signature .....  
 Stamp:.....

Form 13

r. 22(1)(c)

DECLARATION OF PRODUCE SOURCE FROM RETAIL OR WHOLESALE  
 MARKETS

Company name	Physical business location:
Company registration number	Certificate of registration number
Address: P.O. Box:	E-mail:
Phone No.	Date:
Name of association (where applicable )	

Market supply information

Name of supplier	Contact detail	Type of crop	Name of market	County	Subcounty

CONDITIONS

- Information for each market source and crop type should be provided
- An inspection will be conducted for each produce source

Name of company representative:..... Designation ..... Date  
 Signature .....  
 Stamp:.....

Form 14

r.24 (2)

COMPLIANCE CERTIFICATE

This is to certify that the following horticulture produce/products

- 1.....
- 2.....

3.....

have been inspected and meet the national, regional and international standards.

Scope Including:

- 1. Transport
- 2. Farm
- 3. Retail outlet
- 4. Pack house

Consignment details

Name of dealer ..... Type of dealership.....

Registration certificate/license number.....

Validity period: from ..... To .....

Date of issue ..... time issued ..... a.m./p.m.

Signature .....

Director General

Agriculture and Food Authority

Form 15

r.26(1)

**HORTICULTURAL PRODUCE IMPORTERS APPLICATION FORM**

- 1. Name of business/company.....(attach copy of certificate of incorporation)
- 2. Physical business location.....
- 3. Postal address.....
- 4. Telephone: Mobile No.....  
Fixed line No.....
- 5. KRA P.I.N No .....(attach copy)
- 6. E-mail address.....
- 7. Location of horticulture produce handling facilities .....
- 8. List the Company's intended imports of major horticultural produce and the respective country of origin.

No.	Produce	Country	Quantity (Kgs) Annually
I.			
II.			
III.			
IV.			
V.			

9. Provide the following details regarding the company's intended supply of imported horticultural produce

(I) Supply/distribution into the domestic market:

No.	Name of client (Supermarket, Hotel, Grocery stores etc.)	Physical location (building street)	Major produce to be supplied
I.			
II.			
III.			
IV.			
V.			

(II) Re-exported produce and the respective countries

No.	Re-exported produce	Country
I.		
II.		
III.		
IV.		
V.		

I hereby declare that the particulars which I have given are true and accurate to the best of my knowledge and belief.

Date:..... Name of Authorized Signatory:.....

Company Stamp/ Seal ..... Signature.....

Form 16

r.26(4)

HORTICULTURAL PRODUCE IMPORT LICENSE

Name importer .....

License Number.....

Address: .....Tel.....

L.R. No. ....

Street: .....

is hereby licensed as an importer under this Regulation for the following horticultural produce:

1.....

2.....

3.....  
 The License expires on.....  
 Date of issue.....  
 Signed.....  
 Name .....

(Director General)

Official stamp of the Authority

CONDITIONS

1. Any changes to the source of produce and list of buyers submitted to the Authority by the dealer shall be notified in advance to the Authority in writing
2. This License is not transferable.
3. This License may be revoked, suspended or altered in circumstances outlined in section 23 of the Crops Act.

Form 17

r. 27(1)

APPLICATION FOR IMPORT CERTIFICATE

Name of import company .....  
 Address ..... Telephone .....  
 Email ..... Physical location .....  
 Contact person .....  
 Import license Number .....  
 Import date and time .....  
 Point of entry ..... Type of vessel and number .....  
 Type of product:  Fresh produce  processed product (Tick as appropriate)

Produce Type (Hs Code)	Quantity (Kilograms)	Country of origin	Value (F.O.B) KES

FOR OFFICIAL USE

Checked by:

Name of officer ..... Signature..... Date .....

Approved by:

Director General..... Signature ..... Date .....

Official rubber stamp

Form 18

r. 27(3)

## IMPORT CERTIFICATE

Name of Dealer.....

Address.....Tel.....

Email.....Physical Location.....

Contact person .....

Import Certificate Registration No. ....

Validity period from.....to.....

Point of entry/delivery.....

Is hereby authorized to import the following;  Fresh produce  Processed product (*Tick as appropriate*)

Produce Type (Hs Code)	Quantity (Kilograms)	Country of Origin	Value (F.O.B) KES

FOR OFFICIAL USE

Checked by:

Officer Name.....Signature..... Date .....

Approved by:

Director General .....Signature.....Date .....

Official Rubber stamp

Terms and Conditions:

1. The Authority may vary, suspend or cancel the horticulture produce import certificate issued if the holder fails to abide with the national horticulture produce standards.
2. The importer shall provide all the information of the transaction in question to the Authority on demand.
3. The import permit may be suspended without notice where such importer infringes the legal requirements as set out in the laws of Kenya.
4. The holder of this certificate shall submit monthly returns to the Authority in the prescribed format
5. A registered importer shall provide, on request by the Authority;
  - a) Original copies of importation and customs entry documentation.

- b) An import permit for shipment of the specific consignment.
  - c) Evidence of payment of duties and levies.
  - d) A certificate of origin and contact details of the exporters and importers from whom they procured.
6. All consignments whether repacked or in original package shall bear in bold print, the name and contact details of the consignor, consignee and the country of origin.
  7. Produce intended for importation into the country shall be sampled and analysed for conformity to national food quality and safety standards and requirements at the point of entry by the Authority.
  8. Any consignment of horticulture produce that is either smuggled or does not conform to the quality standards, shall be seized, detained and disposed of or destroyed in an appropriate manner by the Authority at the cost of the offender.
  9. Horticulture produce and products whose documentation does not meet the requirements of the Authority shall be seized and detained for verification and may be released to the consignee through issuance of a release order from the Authority.

Form 19

r. 28(1)

## APPLICATION FOR EXPORT LICENSE FOR HORTICULTURAL PRODUCE

*(To be filled in triplicate)*

1. Full name of Applicant .....
  2. Postal Address.....Registered Office.....L. R. No. ....  
Street .....Tel. No. .... Fax No. ....  
E-mail.....Website.....
  3. Place where the premise is located: Ward.....Sub-County..... County.....
  4. VAT Registration No / ID. No. .... PIN .....
  5. Year of Incorporation of Company .....and Registration No. ....  
*(Attach copies of, company incorporation certificate ID of Directors and current Single Business Permit)*
  6. Types of Produce/ Products for the market .....
  7. Sources of supply for Produce .....
  8. List of buyers for produce (Attach contractual agreements if outsourcing) ...
- I hereby declare that the particulars which I have given are true and accurate to the best of my knowledge and belief.
- Applicant Signature.....
- Date .....

<b>FOR OFFICIAL USE</b>		
Checked by:		
Officer Name.....	Signature.....	Date .....
Approved by:		
Director's Name .....	Signature.....	Date .....

*The Authority has the right to approve or reject this application. In case of rejection reasons will be given and the applicant can reapply.*

General Conditions

1. Consideration of this application will be conditional on the applicant satisfying the Authority that the Applicant is capable of complying with national and International Standards and any other legal requirements.
2. The dealer shall produce such documentary evidence as requested to support the statements made above.
3. Dealers in export shall produce a valid contractual agreement in the prescribed form between themselves and the entities from which they source their produce and also the entities to which they sell their produce.
4. A dealer shall pay all dues to the Authority before his application can be considered.

Form 20

r. 28(5)

**HORTICULTURAL PRODUCE EXPORT LICENSE**

Name exporter .....

License Number.....

Address: .....Tel.....

L.R. No. ....

Street: .....

is hereby licensed as an exporter under this Regulation for the following products:

1.....

2.....

3.....

The License expires on.....

Date of issue.....

Signed.....

Name .....

(Director General)

Official stamp of the Authority

CONDITIONS

- 9. Any changes to the source of produce and list of buyers submitted to the Authority by the dealer shall be notified in advance to the Authority in writing.
- 10. This License is not transferable.
- 11. The License may be revoked, suspended or altered in circumstances outlined in Crops Act para 23

Form 21

r.29(1)

APPLICATION FOR EXPORT CERTIFICATE

Name of Export Company.....  
 Address.....Tel.....  
 Email.....Physical Location.....  
 Contact person .....  
 Export License No. ....  
 Export date and time Date:.....Time.....  
 Point of Exit.....

Is hereby authorized to export the following;  Fresh produce  Processed product (*Tick as appropriate*)

Produce Type (Hs Code)	Quantity (Kilograms)	Country of Origin	Value (F.O.B) KES

FOR OFFICIAL USE

Checked by:

Officer Name.....Signature..... Date .....

Approved by:

Director General .....Signature..... Date .....

Official Rubber stamp

Form 22

r.29 (2)

EXPORT CERTIFICATE

Name of Dealer ..... Registration No. ....  
 Address.....Tel.....  
 Email.....Physical Location.....  
 Contact person .....  
 Validity period from.....to.....  
 Point of exit.....  
 Export certificate for the following;  Fresh produce  Processed product ( *Tick as appropriate*)

Produce Type (Hs Code)	Quantity (Kilograms)	Country of Origin	Value (F.O.B) KES

*NB: Attach invoice*

FOR OFFICIAL USE

Checked by:  
 Authorized Officer’s Name .....  
 Signature..... Date .....

Official Rubber stamp of the Authority

Terms and Conditions:

1. The exporter shall provide all the information of the transaction in question to the Authority on demand.
2. The export permit may be suspended without notice where such exporter infringes the legal requirements as set out in the laws of Kenya.

Form 23

r. 30(1)

QUARTERLY RETURNS ON IMPORT/EXPORT OF HORTICULTURAL CROPS  
 PRODUCE AND PRODUCTS .

*(To be filled in triplicate)*

- 1) Name/Business name of importer/exporter as appearing on the registration certificate.....
- 2) Certificate No.....

- 3) Postal address.....Code:.....
- 4) Tel..... Email.....
- 5) Contact person .....
- 6) Returns for the period (indicate in quarters) .....

Quarter	Name of crop produce or product	Quantity (Kilograms) Imported/exported	Customs Value (KES)	Country of origin/destination country	Point of entry/exit

*NB: Indicate the applicable quarter Q1: January – March; Q2: April – June; Q3: July – Sept; Q4: Oct - Dec*

I hereby declare that the particulars which I have given are true and accurate to the best of my knowledge and belief.

Applicant's Signature..... Date .....

Official stamp/seal

### THIRD SCHEDULE

#### FEES AND LEVIES

REGISTRATION AND PERMIT CATEGORIES	FEES (KES)	VALIDITY	RESPONSIBILITY
Dealers registration for the domestic market	5,000.00	Annual	Authority
Pack house registration	5,000.00	Annual	Authority
Export license fee	10,000.00	Annual	Authority
Importer registration	10,000.00	Annual	Authority
Export Levy	0.25 % of Customs value	Per consignment	Authority
Import levy – Finished products	4% of import value	Per consignment	Authority
Import levy – Raw materials	2% of import value	Per consignment	Authority
Inspection for nursery/mother block	1,000.00	Annual per site	Authority
Inspection for produce conformity	1,000.00	Per inspection	Authority
Audits due to non-compliance to national, regional and international standards	100% of the inspection cost of systems audit	Per inspection	Authority

REGISTRATION AND PERMIT CATEGORIES	FEES (KES)	VALIDITY	RESPONSIBILITY
Nursery operator /Mother block registration for export market			Authority
Annual turnover of 0 to 50,000	1,000.00	Annual	Authority
Annual turnover of 50,001-250,000	2,500.00	Annual	Authority
Annual turnover of 250,001-500,000	5,000.00	Annual	Authority
Annual turnover above 500,000	7,500.00	Annual	Authority

Made on the 15th June, 2020.

PETER MUNYA,  
Cabinet Secretary,  
Ministry of Agriculture, Livestock, Fisheries and Cooperatives



**EXPLANATORY  
MEMORANDUM**



## SCHEDULE

[Section 8.]

### EXPLANATORY MEMORANDUM

### EXPLANATORY MEMORANDUM TO

### THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

No. [ ]

#### PART I

<b>Name of the Statutory Instrument:</b>	The Crops (Horticultural Crops) Regulations, 2020
<b>Name of the Parent Act:</b>	The Crops Act, 2013 (No. 16 of 2013)
<b>Enacted Pursuant to:</b>	Section 40 of the Crops Act, 2013 (No 16 of 2013)
<b>Name of the Ministry/Department:</b>	Ministry of Agriculture, Livestock, Fisheries and Irrigation. State Department for Crops Development

Gazetted on:

Tabled on:

#### PART II

##### 1. Purpose of the Statutory Instrument

The main purpose of the Horticultural Crops Regulations is to implement and enforce the provisions of the Crops Act, 2013 (No. 16 of 2013) in as far as they relate to horticultural crops. The Regulations are intended to provide guidelines in the development and promotion of the horticultural crops industry and in particular to provide for:

- (a) Application, processing procedures and forms for horticultural crops.
- (b) Contractual guidelines between produce dealers and horticulture producers.
- (c) Procedures and conditions for registration, licensing produce dealers and horticulture nursery operators as well as issuance of licenses.
- (d) Adoption of the national and international standards applicable to horticultural crops.
- (e) Align and streamline the operations of the stakeholders and dealers in the horticultural crops sector.
- (f) Provide a framework for inter-agency collaboration in the horticultural crops industry at both the national and county levels.
- (g) Ensure reliability of data that is collected and disseminated to the players in the horticultural crops industry.
- (h) Improve the returns from production, marketing and international trade in the horticultural crops.
- (i) Improve the returns from production, marketing and domestic trade in the horticultural crops.
- (j) Create an administrative environment for smooth running of affairs in the horticultural crops industry.

## **2. Legislative Context**

- 2.1 The Horticultural Crops Regulations are to bring into effect the provisions of the Agriculture and Food Authority Act, 2013 (AFA) and the Crops Act, 2013.
- 2.2 The AFA Act became operational on 17<sup>th</sup> January, 2014 while the Crops Act became effective from 1<sup>st</sup> August, 2014<sup>1</sup> via *Legal Notice No. 110 of 2014*.
- 2.3 At the point of enacting the Crops Act, a number of Acts were repealed so as to reduce duplication and overlap of functions among the former agricultural regulatory institutions and increase operational efficiency.
- 2.4 The Horticultural Crops Directorates replaced the former Horticultural Crops Development Authority.
- 2.5 The Constitution of Kenya by taking into consideration the Fourth Schedule.

### **3. Policy Background**

- 3.1 When the Economic Recovery Strategy for Wealth and Employment Creation, 2003 (ERS-WEC-2003) and the Strategy for the Revitalization of Agriculture, 2004 (SRA) were formulated, there was need for reforms in the agriculture sector in Kenya.
- 3.2 The policy document, SRA was as a result of the interpretation of the ERS-WEC-2003. This was launched in 2005 for the period running from 2004 to 2014.
- 3.3 It was noted and observed that the legal and regulatory framework in the agriculture sector was outdated and that they overlapped and lacked coherence which led to low competitiveness and effectiveness in this sector.
- 3.4 Kenya Vision 2030 also recognizes agriculture as the key driver of the long term agenda on social, economic and political transformation as it would aid in achieving the 10% annual economic growth rate envisaged in the economic pillar of Vision 2030.
- 3.5 The background set out above led to a repeal of the previous laws and regulations and brought into being the three main acts now applying in the agricultural sector. These are: The Agriculture and Food Authority Act 2013 (AFA), the Crops Act, 2013 and the Kenya Agricultural and Livestock Research Act, 2013 (No. 17 of 2013).
- 3.6 The BIG FOUR AGENDA of the government is now an entrenched policy objective of setting the development pace in the country and this directly applies to horticulture in terms of food security and manufacturing perspectives.
- 3.7 As stated above, the Regulation's main objective is to provide for the operationalization and implementation of the provisions of the Crops Act, 2013 in so far as it relates to horticultural crops, considering that the Act provides for fundamental and substantive provisions for the growth and development in all scheduled crops in general.

### **4. Consultation outcome**

- 4.1 The county governments were extensively consulted when formulating the Regulations. In particular, consultations were made with the representatives of the Council of Governors including the Chairman of the Agriculture Committee and County Executive members from various Counties.

- 4.2 Other key stakeholders were also consulted and various consultations were held all over the country. These included the small holders in the horticultural industry in Migori County, Kisumu County, Siaya County, Busia County, Vihiga County, Kakamega County, and Homabay County. Meetings were also held by Agricultural Development Corporation (ADC), Kenya Marine & Fisheries Research Institute (KEMFRI), Kenya Agricultural and Livestock Research Organization (KALRO), Kenya Plant Health Inspection Services (KEPHIS) etc. Other submissions were brought in by Fresh Produce Exporters Association of Kenya (FPEAK), and Kenya Flower Council (KFC).
- 4.3 Consultations were also carried out with the Attorney General's Office, Transitional Authority (T.A) and the Kenya Law Reform Commission (KLRC).
- 4.4 The following is the outcome of the Consultations. Consultations by KEPHIS, PCPB, KFC, FPEAK and KALRO included: dealing with non-compliant products and levies review. The consultations with counties included functions and levy distribution between the two levels of government. Consultations with Kenya Human Rights Commission were seeking to enhance the protection of farmers in the contractual guidelines.

No.	QUESTIONS/OPINIONS BY STAKEHOLDERS	RESPONSE BY MINISTRY
1.	Why Tobacco was not included as a scheduled crop when AFA was established?	Inclusion of Tobacco as a scheduled crop.
2.	Whether the regulations on weights of 50kg affect storage are applicable to small scale farmers?	The law is applicable throughout the handling process to protect the health of the handlers. However, it is not applicable when it is done in the home.
3.	There are losses in the industry and need to be prevented to eliminate competitiveness of the	Regulations have been made to make the handler responsible for the loses/spillage be made accountable.

	product.	
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## 5. Guidance

- 5.1 Stakeholder sensitizations were conducted for the different players in the horticultural crops subsector.
- 5.2 There will be consultations with the County Governments during the implementation of the Regulations.
- 5.3 Training and Capacity building for the staff in the County governments will be conducted.
- 5.4 AFA and the Horticultural Crops Directorate in conjunction with county governments will continually provide guidance on the implementation of the Regulations as will be necessary.
- 5.5 A robust monitoring and evaluation programme will be implemented where the implementation of the Regulations will be regularly monitored and evaluated.

## 6. Impact

### 6.1 The Impact on Fundamental Rights and Freedoms

- 6.1.1 There are no foreseen impacts on fundamental rights in relation to the Horticultural Crops Regulations.
- 6.1.2 The proposed Regulations are expected to have positive impact on the rights and freedoms of individuals and communities. They will provide better returns on their produce and investment to existing and new farmers. The Regulations will also create wealth and employment for more Kenyans in the rural areas. This would contribute to improved household incomes and enhance capacities to afford an adequate standard of living envisaged in article 43 of the Constitution.
- 6.1.3 The proposed Regulations also seek to advance the Government policy of implementing reforms in the horticultural crops sub- sector aimed at achieving the national goals set out in the Kenya Vision 2030 whereby the agricultural sector is a key driver of economic growth and value addition. The Regulations will not only enhance public participation of the players in the sub-sector but also ensure consumers of the horticultural crops products have quality and safe products to consume as required in Article 46 of the Constitution.

### 6.2 The Impact on the Private Sector

- 6.2.1 To the broader private sector, the enactment of the Regulations is expected to enhance operational efficiency and the ease of doing

business. Such ease and efficiency are expected to act as incentives for private investors to increase their investments in the sector. The private sector will therefore benefit from the increased volumes from horticulture. Compliance with national and international standards will guarantee better prices leading to increased incomes, and improved livelihood to industry players. In addition, the Regulations are expected to reduce exploitation of growers who engage in contractual agreements with dealers.

6.2.2 To the consumers; both local and international consumers are also expected to benefit from the proposed Horticultural Crops Regulations. The Regulations provide that all stakeholders must adhere to national and international food safety and quality standards in production, post-harvest handling, transportation, storage and processing. The Regulations will encourage supply of safe horticultural products to consumers. In addition, adherence to Good Agricultural Practices will enable producers to reduce inappropriate use of chemicals such as fertilizers and pesticides. This eventually will help to reduce on both air and water pollution.

### **6.3 The Impact on the public sector**

6.3.1 The proposed Regulations will provide clarity in the sharing of functions between the two levels of government (national and counties) which will lead to more efficient and effective service delivery. Compliance to the proposed Regulations is expected to streamline management of the horticultural sector in Kenya. Both county and national governments are expected to increase their incomes from the prescribed fees for the application of registration and levies which revenues will be expected to be used in the betterment of the sector.

6.3.2 Full implementation of these Regulations will advance the food security, health and manufacturing pillars of the National Government's Big Four Agenda through increased productivity of horticultural crops, value addition through horticultural crop production and improved health through enhanced nutrition security and food safety.

6.3.3 The Regulations will also result in increased farm incomes, increased export revenues and foreign exchange earnings.

## **7. Monitoring and Review**

7.1 It is expected that the Regulations shall be a subject of great interest to all stakeholders particularly because of its potential to offer improvement

in incomes, increase foreign exchange earnings, create employment, reduce poverty and enhance the living standards of Kenyans.

- 7.2 The parent ministry working together with AFA and County Governments will thus work hand in hand with the various stakeholders to promote research and reviewing of its effectiveness towards promoting growth and development of this vibrant horticultural crops sub-sector that will increase the market for horticultural products locally and internationally.
- 7.3 The two levels of government will collaborate in ensuring adherence to the Regulations and national standards at production, handling and marketing stage while ensuring food safety and security.
- 7.4 AFA in conjunction with county governments (where necessary) will implement a robust monitoring and evaluation programme to monitor the implementation of the Regulations as detailed in the Regulatory Impact Statement.

## **8. Contact**

The Principal Secretary  
State Department for Crops Development  
Ministry of Agriculture, Livestock, Fisheries and Irrigation  
Kilimo House, Cathedral Road  
P.O. Box 30028  
Nairobi.  
Or by Email: [psagriculture@kilimo.go.ke](mailto:psagriculture@kilimo.go.ke)

The Director General  
Agriculture and Food Authority  
Tea House, Naivasha Road off Ngong Road,  
P.O Box 37962-00100  
Nairobi.  
Or by Email: [info@agricultureauthority.go.ke](mailto:info@agricultureauthority.go.ke)

**REGULATORY IMPACT  
STATEMENT**

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

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**REGULATORY IMPACT STATEMENT (RIS)**

**THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020**

**FEBRUARY, 2019**

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## Introduction

The Regulatory Impact Statement for the proposed Crops (Horticultural Crops) Regulations, 2020 was prepared in accordance with the provisions of sections 6, 7(1) and 7(2) of the Statutory Instruments Act, 2013 (No. 23 of 2013). Section 6 of the Act requires the regulation making authority to prepare a regulatory impact statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Section 7(1) and 7(2) of the Act sets out the contents of a regulatory impact statement for the proposed regulations as follows:

### 1.0 A Statement of the Objectives and Reasons for the Proposed Regulations

The regulatory objectives and justifications are to:

- 1.1 Consolidate and improve the Regulations that relate to the horticultural crops. The Regulations define crops which fall under the category of horticultural crops in the First Schedule of the Crops Act, 2013. This schedule is an improvement of the Agricultural (Declaration of Special Crops) Horticultural Crops Order, 1967 (L.N. 228/1967) (revised 2012), made under the now repealed Agriculture Act (Cap. 318) of the Laws of Kenya. Currently applicable and proposed to be repealed by the Regulations is the Horticultural Crops Development Order, 2011 (L.N. 190/2011) made under the repealed Agriculture Act (Cap. 318). Horticultural crops and other crops were also governed by statutes which have since been repealed, including Agricultural Produce Marketing Act (Cap. 320), Canning Crops Act (Cap. 328) and various regulations made under these statutes.
- 1.2 Align the operations of the stakeholders and commercial dealers in the horticultural crops sector. The Regulations seek to regulate the operations of the nursery and mother block operators, produce dealers and producers through *inter alia*, the application of common local and international standards in registration, licensing and enforcement of safety standards.
- 1.3 Adopt the national and international standards in order to ensure compliance with standards in produce handling, processing of

produce, transportation, harvesting, among others in order to achieve quality assurance.

- 1.4 Implement and provide for the collaborative framework established in the Fourth Schedule to the Constitution of Kenya, 2010 by formalizing and providing the framework for performance of distinct roles as well as cooperation between the National Government and County Governments. The Regulations spell out the distinctive roles of the two levels of government and areas of collaboration, such as capacity building, in line with the Agriculture and Food Authority Act, 2013.
- 1.5 Provide a framework for inter-agency collaboration in the horticultural crops industry. For instance, the Regulations make provisions for the collaborative functions between Kenya Plant and Health Inspectorate Services and AFA to ensure proper regulation of the horticultural crops industry.
- 1.6 Ensure reliability of data that is collected and disseminated to the players in the horticultural crops industry. Over time, the horticultural sector has grappled with the unreliable data collection and reporting which affects the policy decisions taken by public authorities. Accordingly, the Regulations make legal requirements for submission of accurate quarterly returns by dealers to AFA and accurate record keeping by nursery operators.
- 1.7 Improve the returns from the production, marketing and international trade in the horticultural crops through decisive assignment of roles of key players in each stage of regulation.
- 1.8 The Regulations align closely to the BIG FOUR AGENDA which hinges on food security. Horticulture sub-sector will play a pivotal role in enhancing food security in the country whereas the proposed Regulations will create support mechanisms for smallholder horticulture farmers by providing incentives for increased economic benefits for sector players.
- 1.9 Overall, the Regulations seek to create an administrative environment for smooth running of affairs in the horticultural crops industry in Kenya

through use of forms and adoption of systems that enhance accountability through the National Horticulture Traceability System, which is the framework for tracing horticultural crops.

## **2.0 Statement on the Effect of the Proposed Regulations**

### **2.1 Effects on the Public Sector**

2.1.1 The proposed Regulations will provide clarity in the sharing of functions between the two levels of government which will lead to more efficient and effective service delivery.

2.1.2 Compliance to the proposed Regulations is expected to streamline management of the horticultural sector.

2.1.3 Both county and national governments are expected to increase their incomes from the prescribed fees for the application of registration and levies which revenues will be expected to be used in the betterment of the sector.

2.1.4 Streamlining of export systems by regulators at the exit point. This is a mandate by KEPHIS for some of the aspects of export produce requirements which have been outlined.

2.1.5 Full implementation of these Regulations will aid to advance the manufacturing pillar of the national government's Big Four Agenda through increased productivity in the horticulture industry. The Regulations will result in increased farm incomes, increased export revenues and foreign exchange earnings.

### **2.2 Effects on the Private Sector**

2.2.1 Enhancement of operational efficiency and the ease of doing business. Such ease and efficiency are expected to act as incentives for private investors to increase their investments in the sector.

2.2.2 Increased volumes from horticulture.

- 2.2.3 Compliance with national and international standards will guarantee better prices leading to increased incomes, and improved livelihood to industry players.
- 2.2.4 Self-regulation by the private sector will enhance compliance of the Regulations.
- 2.2.5 Reduce exploitation of growers who engage in contractual agreements with dealers and protection of exporters from poaching of produce.
- 2.2.6 To the consumers; both local and international consumers are also expected to benefit from the proposed Regulations. The Regulations provide that all stakeholders must adhere to national and international food safety and quality standards in production, post-harvest handling, transportation, storage and processing.
- 2.2.7 The Regulations will encourage supply of safe horticultural products to consumers.
- 2.2.8 Adherence to good agricultural practices will reduce inappropriate use of chemicals such as fertilizers and pesticides. This eventually will help to enhancement of consumption of safe food and in the conservation of the environment.

### **2.3 Effects on Fundamental Rights and Freedoms**

- 2.3.1 There are no foreseen negative impacts on fundamental rights and freedoms in relation to the proposed Regulations.
- 2.3.2 The proposed Regulations shall have a positive impact. They will provide better returns on their produce and investment to existing and new farmers. The Regulations will also create wealth and employment for more Kenyans in the rural areas. This would contribute to improved household incomes and enhances capacities to afford an adequate standard of living envisaged in article 43 of the Constitution.
- 2.3.3 Further, the proposed Regulations seek to advance the government policy of implementing reforms in the horticultural sector aimed at

achieving the national goals set out in the Kenya Vision 2030 whereby the agricultural sector shall be a key driver of economic growth and value addition. The Regulations will not only enhance public participation of the players in the sub-sector but will also ensure consumers of horticultural products have quality and safe products to consume as required by article 46 of the Constitution.

2.3.4 The proposed Regulations will enhance the intensification in cultivation of vegetables, fruits and flowers by both small scale and large scale producers and will also improve marketing structures, including adequate refrigeration facilities to help increase the shelf life of the produce for both domestic and international markets.

### **3.0 Statement on Regulatory & Non-Regulatory Options**

#### **3.1 Option 1: Maintaining the *Status Quo***

The option of not promulgating or adopting the Regulations will mean that the Regulations made under the repealed statutes will continue to apply. This will mean that there will be gaps in the regulatory framework considering that there is urgent need to implement and enforce the provisions of the Crops Act which has consolidated laws relating to the agricultural sector and has repealed various statutes that applied to this sector. The proposed Regulations are targeted at the specific categories of crops and have consolidated and improved existing regulatory framework.

Such gaps or inefficiencies in the current regulatory framework will reduce operational efficiency especially in the horticultural sector. This will prolong the quest for solutions to challenges towards achievement of government goals of ensuring increase in incomes, food security and international trade. The option of maintaining the status quo is thus not sustainable and the RIA recommends that the Horticultural Crops Regulations, 2020 be adopted in order to improve on the horticultural sector's performance and to ensure that achievement of Vision 2030 becomes a reality.

If the *status quo* is maintained, county governments will not play any role in the regulation of the sub-sector thus contravening the Fourth Schedule of the Constitution, section 6 of the Crops Act, 2013 section 29 of the AFA Act and relevant provisions of the County Governments Act, 2012 (No. 17 of 2012).

### **3.2 Option 2: Passing the Regulations**

In case the proposed Regulations on horticultural crops are accepted and passed, they will enable compliance with National and International Standards which is expected to translate to better prices leading to increased incomes, improved livelihood to Industry players and the enhancement of food safety in the domestic market for a healthier society. In addition, clarity in the sharing of functions between the two levels of government (national and county) will lead to more efficient and effective service delivery. These Regulations are also important for other Regulations in providing the much needed complementarity and holistic growth in Kenya's agricultural sector. The Regulations will also enhance operational efficiency and quality of horticultural crops and their products.

The Regulations have further taken cognisance of the changing environment in the horticulture market and have also provided for regulation of domestic horticulture market products.

### **3.3 Option 3: Other Practical Options**

Other practical options of achieving the objectives of the proposed Regulations could include dissemination of information and education, market-based structures, self-regulation and co-regulation. The RIA did not, however, note these as feasible options of achieving the objectives of the proposed Regulations.

Doing nothing may mean that the provisions of the two newly enacted Acts that is, The AFA) and the Crops Act, and Fourth Schedule of the Constitution may not be fully effected. The option of doing nothing is very costly and may retard the growth of horticultural sector which eventually may have serious consequences on the achievement of Kenya's Vision 2030 which under Second Medium Term Plan (2013 – 2017), implementation of the Consolidated Agricultural Reform Legislation include preparation of necessary Regulations to actualize implementation of the Acts, and setting up institutions such as the Agriculture and Food Authority.

## **4.0 Costs-Benefit Analysis (CBA)**

### **4.1 Economic, Environmental and Social Impacts**

Economic impacts of the Regulations will include:

- a) increase in both productivity and production of horticultural produce for both local and export markets.
- b) ensure that an organized horticultural industry benefits from increased export of fruits, flowers and other horticultural products to the European Union and other destinations.
- c) lead to increased value addition and product diversification resulting from improved economic incentive of enhanced export markets.
- d) increase earnings from horticultural exports and this will ensure steady flow of foreign exchange for the exchequer and key stakeholders.
- e) Smallholder horticultural farmers, producer organizations and cooperative societies will benefit from a more organized sector thus enhancing incomes received for producers, processors, transporters and other value chain actors in the sector.
- f) steady income of direct foreign investment through new investments in production, value addition and marketing of Kenyan horticultural products.
- g) Improved Terms of trade - substitution of imported specialty horticultural products with local products.
- h) Increased job creation in the horticulture industry.

The social impacts of the Regulations will include:

- a) The sub-sector has largely been responsible for decreased poverty levels among the horticultural farmers and the community in general because it confers frequent income from continuous production of commercial horticultural crops for domestic and foreign markets. The proposed Regulations are leading towards enhancing this positive trend.
- b) The Regulations point towards enhancing group action in production, thus more and more improved income distribution among the smallholder horticultural farmers and the community in general will be realized in the medium and long run.

- c) For communities living around large scale producers of horticultural crops, the Regulations encourage corporate social responsibility leading to improved access to water and sanitation among the households.
- d) The Regulations will enhance healthy production of crops for consumption leading to improved health status of the horticultural households and the community resulting to reduced child and maternal mortality and reduced disease incidences. Healthy crops mean healthy families.
- e) Full implementation of these Regulations will aid to advance the food security, health and manufacturing pillars of the National Government's Big Four Agenda through increased productivity of horticultural food crops, value addition through horticultural food crops manufacturing and improved health through enhanced nutrition security.
- f) The Regulations will also result in increased farm incomes, increased export revenues and foreign exchange earnings.

The environmental impacts of the Regulations will include:

- a) Greater corporate social responsibility by investors who plough back surplus resources towards environmental conservation activities.
- b) Responsible use of agro-chemicals that would harm the environment and have an effect on human health.
- c) Improved access to quality infrastructure services including water, electricity, roads and other amenities in workers living quarters.
- d) Improved Land conservation, utilization and management.
- e) Reduced soil degradation due to improved plant cover and reduced soil operations.

#### **4.2 Administration and Compliance Cost**

The RIA noted that resources would be required for operationalization of the Regulations which will include human resource and operation costs for enforcement well as for awareness creation of the Regulations to the different stakeholders in the horticultural crops sector. More resources will go to the implementation of the wider National Agriculture Policy which supports extension services for strengthening knowledge transfer and technology distribution among the farmers.

The broad objective of the Regulations is to accelerate and sustain growth and development of the horticultural industry in order to enhance its contribution

towards food security, poverty reduction as well as employment and wealth creation. It is noted that passing and operationalization of the Regulations, will be critical in facilitating further development of the horticultural industry leading to improved productivity, increased value addition, efficiency in horticultural crops production, processing and marketing to guarantee improved incomes for the horticultural smallholder farmers leading to improved livelihoods and social welfare for communities, while also guarantying other businesses within the value chains good returns and higher export earnings for the country, particularly considering that the sub-sector is one of the leading foreign exchange earner for the country.

The specific inherent benefits of the horticultural Regulations across the value chain are as follows:

- (i) facilitate increased production and better handling of horticulture produce that will lead to high quality produce.
- (ii) enhance provision of the sub-sector's support services like finances, insurance and technical advisory services.
- (iii) promote value addition and increase domestic and external trade.
- (iv) develop and improve infrastructure to support the horticultural industry particularly in major production areas.
- (v) establish, strengthen and entrench institutional, legal and regulatory framework in the horticultural industry.
- (vi) promote mechanisms for socio-economic and environmental sustainability while addressing cross-cutting issues.
- (vii) promote horticultural investment in the ASALS.

### **4.3 Quantification of the Benefits**

The Government of Kenya's National Economic Survey 2017 paints a bright spot with regard to performance of the horticultural industry in Kenya. This can be summarized as below:

The value of horticulture production rose 41% in 2017 compared with 2016 on account of good prices. Market data from the Horticulture Crops Directorate indicates overall sales rose by more than 29% between 2016 and 2017. The total value of horticultural produce exported between 2016 and 2017 increased by 11.7%. The value of domestic horticulture production has been growing over the years as it is evidenced by these figures. The marked increase in exports was

attributed to compliance with the export market requirements by majority of the exporters especially to the European Union.

In 2016, the value of flowers, fruits and vegetables increased by 13, 12 and 12 % respectively as compared to 2015. The cut-flower export still remains the largest earner, contributing over 70% of the total fresh produce annual earnings. Earning from flower exports increased by 11.6% between 2016 and 2017 representing a strong growth trajectory, (Economic Survey, 2017).

For domestic horticulture, currently, 95% of all fruit and vegetable produced in Kenya is consumed domestically, and the domestic market accounts for over 95% of the total growth in quantity of fruit and vegetable production. The traditional local marketing system, including urban wholesale markets, continues to play the dominant role in FFV (fresh fruits and vegetables) marketing in the country (Tegemeo, 2016).

The proposed Regulations will render traditional wholesale markets highly attractive to buyers concerned with assuring high quality and food safety while reducing procurement cost. Currently, over 8 million small-holder farmers produce horticulture crops and they stand to gain when the new Regulations are put in place. Because of growth in urban centres occasioned by high population increase and effects of devolution, local urban markets for horticulture are likely to grow to a level of 10-20% over the next decade. Small-holder horticulture farmers and small traders will be incorporated in the FFV market although supermarkets may extend the dualism currently seen between export and domestic systems into the domestic system itself, (Tegemeo, 2016).

The improved performance of the sector in real terms both for domestic and export orientation implies that efficient and proper legislation and regulations in the sector is meant to accelerate the growth so far experienced.

#### **4.4 Distribution of Impacts**

The implementation of the Horticultural Crops Regulations is expected to benefit all the stakeholders in the sector. This can best be achieved if the implementation is done with sufficient support from all the stakeholders and institutions involved. The impacts of the implementation of the Regulations are expected to be wide-spread.

The production of horticulture is expected to increase as more farmers are incentivized to revert to horticultural production or increase crop acreage by a more efficient production system that provide the much needed support to them and is obligated to pay them promptly for their deliveries. Improved access to quality planting materials and research findings supported by better agricultural advisory services will further contribute to increased production.

Environmental pollution is expected to reduce. This is because growers are expected to use the right amounts of chemicals. The release of chemical residues in the air and rivers will be reduced if the growers adhere to the set phyto-sanitary standards. In addition, use of required amounts of chemicals will reduce contamination of horticultural products such as onions, cabbages, kales and tomatoes. Therefore, this will help to address the complex issue of food safety in the country.

The foregoing is expected to have a positive impact on the health of consumers. Farmers are expected to benefit from the strict Regulations concerning contracts with dealers. Dealers who enter into contracts with farmers will be expected to train them on the best practices. The use of good practices is expected to result to increased yields thus high productivity which may attract higher incomes. A well-organized horticultural sector is expected to increase international trade which may translate into increase in the GDP thus the growth of the Kenyan economy.

This RIA observes that an efficient horticultural sector is expected to attract more investors who may end up creating employment for Kenyans especially the youth. Reduced unemployment rate is expected to reduce the crime rates for the betterment of the society at large.

## **5.0 Reasons why other Regulatory Options are not Appropriate**

The other regulatory options have been considered and it was found necessary that the horticulture industry needed the Regulations in order to improve performance and benefit flows in the sector which is a key foreign exchange earner and important for small-holder farmers who depend on it for their livelihoods. If the *status quo* is maintained county governments will not play any role in the regulation of the sub-sector thus contravening the Fourth Schedule of the Constitution of Kenya, 2010, section 6 of the Crops Act, section 29 of the AFA Act and relevant provisions of the County Governments Act, 2012.

## **6.0 Conclusion**

The Draft Regulations provide for proper regulation, promotion, development and oversight of the horticultural crops industry in Kenya. The operationalization of the Regulations is poised to generate more positive than negative impacts.

## **7.0 Recommendations**

The RIA recommends the passing and operationalization of the proposed Crops (Horticultural Crops) Regulations, 2020.

**REGULATORY IMPACT**  
**ANALYSIS REPORT**



## MUNYAO, MUTHAMA & KASHINDI

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### FINAL REGULATORY IMPACT ANALYSIS REPORT

### THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

FOR

AGRICULTURE AND FOOD AUTHORITY (AFA)

FEBRUARY, 2019

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## LIST OF ABBREVIATIONS

AFA	Agriculture and Food Authority
ASALs	Arid and Semi-Arid Lands
CBA	Cost Benefit Analysis
EU	European Union
GAP	Good Agricultural Practices
GDP	Gross Domestic Product
KALRO	Kenya Agriculture and Livestock Research Organization
KBS	Kenya Bureau of Statistics
KEPHIS	Kenya Plant health Inspectorate Service
KRA	Kenya Revenue Authority
M&E	Monitoring and Evaluation
NEMA	National Environment Management Authority
OECD	Organization for Economic Cooperation and Development
RIA	Regulatory Impact Assessment
SDG	Sustainable Development Goals
UK	United Kingdom
UN	United Nations
US	United States

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## **1.0 INTRODUCTION AND BACKGROUND**

### **1.1 Introduction**

Agriculture remains the backbone of the Kenyan economy. It provides for the livelihoods of a vast majority of the Kenyan population, earns the country foreign exchange, reduces poverty levels and enhances the living standards of Kenyans. According to the recent Kenya National Bureau of Statistics Economic Survey (2018), agriculture is the single largest sector of Kenya's economy accounting for about 31% of the Gross Domestic Product (GDP). Agriculture is thus a very important aspect of the country's growth and development. For the sector to thrive as well as it does and as it should, there has to be adequate and proper Regulations.

The Agriculture and Food Authority (AFA) is the regulatory authority for the food and agriculture sector in Kenya. The AFA is a state corporation that was established under section 3 of the Agriculture and Food Authority Act, 2013 (No. 13 of 2013) (AFA Act). The AFA Act consolidated the laws on the regulation and promotion of agriculture and makes provision for the respective roles of the national and county governments in agriculture and related matters, in line with the provisions of the Fourth Schedule of the Constitution of Kenya, 2010.

The AFA Act repealed the Agriculture Act (Cap. 318) of the Laws of Kenya. The Agricultural (Declaration of Special Crops) Horticultural Crops Order of 1967 (L.N. 228/1967) merely declared certain horticultural crops to be special crops under the Agriculture Act but did not have elaborate provisions regulating the horticultural sub-sector. The substantive regulatory provisions are found in the Horticultural Crops Development Order, 2011 (L.N. 190/2011) also made under the repealed Agriculture Act. The Agricultural (Declaration of Special Crops) Horticultural Crops Order of 1967 (revised 2012) and the Horticultural Crops Development Order, 2011 are proposed to be replaced by the Horticultural Crops Regulations, 2020.

AFA is the successor of former regulatory institutions in the agricultural sector that were merged into Directorates under AFA. The Horticultural Crops Directorate is the one vested with the responsibility of overseeing the regulation, development and promotion of horticultural crops. The Directorate has replaced the Horticultural Development Authority.

Article 93 of the Constitution of Kenya, 2010 establishes a Parliament that has a tri-partite mandate i.e. representative, legislative and watchdog of other arms of government through checks and balances. Article 94(5) of the Constitution provides that no other person or body has power to make legislation except as provided for in the Constitution or legislation. Article 94(6) provides for such donated legislative mandate and confers to a state organ, state officer or person the authority to make provisions that have a legal force. The donated legislative mandate must be within express specification, purpose and objectives.

The Crops Act, 2013 (No. 16 of 2013) was enacted in 2013. Its objectives are to accelerate the growth and development of agriculture in general, enhance productivity and incomes of farmers and the rural population, improve investment climate and efficiency of agribusiness and develop agricultural crops as export crops that will augment the foreign exchange earnings of the country, through promotion of the production, processing, marketing, and distribution of crops in suitable areas of the country.

Section 40 of the Crops Act, 2013 read together with section 46 of the AFA Act, gives power to the Cabinet Secretary in consultation with the AFA and county governments to make regulations for the better carrying into effect of the provisions of the Act. The Acts provide for the formulation of various regulations, rules and guidelines to operationalize the AFA and Crops Acts.

The Statutory Instruments Act, 2013 (No. 23 of 2013) came into operation on the 25<sup>th</sup> of January 2013. It compels administrative authorities and officials to observe the provisions of the Act in coming up with subsidiary legislation with an aim of promoting legal effectiveness, clarity and intelligibility of proposed regulations to anticipated users through an '*explanatory memorandum*' that gives a brief description of its purpose, legislative context, policy background, impact, among other considerations. The key requirements of this Act are: consultations with stakeholders in line with section 5 and preparation of a regulatory impact statement in line with sections 6, 7 and 8 of the Act.

Horticultural crops in Kenya include fruits, vegetables and flowers among other crops. The horticulture subsector is one of the top foreign exchange earners for the country generating approximately US \$ 1 billion annually. The sub-sector contributes approximately 1.45% to the national GDP out of which 1% is generated from the flower industry. It is estimated that the sub-sector contributes to 50% of Kenyan's foreign exchange. The sub-sector also supports livelihoods of 80% of the Kenyan population (Economic Survey, 2017).

The horticulture industry is currently the fastest growing agricultural sub-sector and is ranked third in terms of foreign exchange earnings from exports after tourism and tea. Fruits, vegetables and cut flowers production are the main aspects of horticultural production in Kenya.

Kenya has a long history of growing horticultural crops for both domestic and export markets. Kenya's ideal tropical and temperate climatic condition makes it favorable for horticulture production and development. About two million people are employed in the sub-sector, most of them small-scale growers who constitute 80% of the producers. This alleviates poverty and provides higher incomes to small-scale farmers (Economic Survey, 2017).

A well-developed and dynamic private sector has profitably marketed many horticultural products to international markets. Government intervention has been minimal, mainly facilitating the sectoral growth through infrastructure development, incentives and support services. Structural and macro-economic reforms and introduction of a more liberal trading environment has also provided a major boost to the country's horticultural prospects. The tremendous performance of the horticulture sub-sector presents an ideal opportunity for investors.

There are however, a number of challenges and problems facing the horticultural industry, which include: seasonal roads that get muddy during rainy seasons which hinders accessibility between farms and collecting centers; inadequate refrigeration facilities which leads to reduction of quality as a result of rot,; and the marketing system lacks proper organization. In addition, freight charges are considerably high and this leads to marginal profit; the production cost is considerably high due to hiked input prices.

## **1.2 Rationale and Justification for a Regulatory Impact Assessment**

Over the last few decades, Regulatory Impact Assessments (RIAs) have emerged as key instruments to support evidence-based and coordinated policy-making. The systematic use of RIA is recognized as a key means to improve the efficiency, transparency and accountability of decision making. RIA typically encourages several "good governance" features and contributes to a better business-enabling environment. Starting in the US and the UK in the 1980s, RIA gained popularity and traction in the second half of the 1990s. By 2015, all 34 members of the OECD at the time reported to have "some form of RIA" in place.

RIA is a flexible tool that helps governments make better regulatory and other policy decisions based on information and empirical analysis about the potential consequences of Government action. The aim of an RIA is to ensure that better policy options are chosen by establishing a systematic and consistent framework, including stakeholder consultation, for assessing the potential impacts of Government action.

A systematic application of RIA, when embedded in the policy process, trains decision-makers to ask and answer targeted questions, at the beginning of the policy cycle, about the need for and goals of regulation, and the possible consequences of government action. The many methods used in RIA – including benefit-cost, cost-effectiveness, and least-cost tests, and partial tests such as administrative burden and small-business tests – are means of giving order to complex qualitative and quantitative information about the potential effects of regulatory measures.

The final products of this systematic process of analysis are self-contained documents called RIAs (or Regulatory Impact Statements, RISs). The RIAs deal with substantive policy issues, are read and utilized by decision makers, and normally available for public scrutiny and subject to the evaluation, but increasingly so in parallel with the drafting phase of an independent oversight authority. Although methodologies vary across countries, a number of key elements are common. A RIA normally includes:

- i. Problem definition and justification for regulatory action;
- ii. Data, on which the analysis is based;
- iii. Results of the consultation with affected parties and stakeholders;
- iv. Identification of a number of feasible policy options;
- v. Estimation and comparison of the different (qualitative and quantitative) impacts of each policy option;
- vi. Selection of a preferred option accompanied by a prospective analysis of its implementation and, more recently, providing basis for ex-post review.

There is no single RIA model. The institutional set-up for RIA depends on legal, political, economic and social conditions. However, good practices have been identified internationally, and there are converging patterns of how RIA is

institutionalized. The institutional framework for RIA often includes legal provisions which embed RIA in the policy formulation process, and stipulates criteria about its scope of applicability. A Governmental body is often tasked with the oversight of the quality of RIA documents and the RIA process.

RIA is a broad tool now used in most developed countries and an increasing number of developing and transition countries to improve the understanding of economic and social welfare impacts of regulation. It is widely recognized as an important mechanism, which can contribute to improving the business environment, and to promote regulatory efficiency and effectiveness. RIA allows policy-makers to assess trade-offs, consider new ways to regulate and identify the most suitable alternatives to regulation. In essence, RIA is a method of:

- (i). systematically and consistently examining the positive and negative impacts arising from proposed Government actions; and
- (ii). communicating the information to decision-makers and other stakeholders.

RIA is an important factor in designing a good quality law as it helps to provide valid arguments supporting a planned regulation. The process is designed to improve the quality of regulation by ensuring that the decision-maker is fully informed when making regulatory instruments. The RIA process is designed to encourage careful consideration, at an early stage, of the fundamental question of whether regulatory action is required or whether policy objectives can be achieved by alternate or non-regulatory measures, with lower costs for business and the community. RIA may sometimes indicate that non-legislative measures are the best solution to a particular social and economic problem. Thus, RIA helps to avoid the production of redundant laws and reduce the bureaucratic burden on enterprises.

Kenyan courts have made decisions to underscore the importance of RIA in coming up with Regulations. In *Kenya Association of Manufacturers & 2 others v Cabinet Secretary, Ministry of Environment and Natural Resources & 3 Others [2017] eKLR* the court stated that it is strictly incumbent on a regulation-making body to make assessment of the regulations on the stakeholders and that failure to conduct it has the potential of rendering a statutory instrument null and void if challenged on that basis.

Accordingly, Kenyan courts have underscored the need to strictly comply with the Statutory Instruments Act, 2013. First, the courts have found that a regulatory impact assessment must begin with consulting stakeholders as that is the only sure way of determining the regulatory impact on the stakeholders, whether individual

or juridical persons. Secondly, as was addressed in *British American Tobacco Ltd v Cabinet Secretary for the Ministry of Health & 4 others* [2015] eKLR, the mode of consultations is key but this depends on the circumstances of each case as was held in the case of *Republic v MOALF & Others Ex parte Council of Governors and Harrison Munyi (as the Chairman of the New National Farmers' Association)* [2016] eKLR.

Regarding the process that the assessment ought to take, the court in *Okiya Omtatah Okoiti v Commissioner General, Kenya Revenue Authority & 2 others* [2017] eKLR posited the chronology of the procedure as follows; consultation of stakeholders; regulatory impact assessment; preparation of an explanatory memorandum and tabling of the statutory instrument in the relevant house and consideration of the same by Committee of Delegated Legislation. This is in line with the requirements of the Statutory Instruments Act.

### **1.3 Objectives of the Assignment**

Section 40 of the Crops Act, 2013 gives the Cabinet Secretary in charge of agriculture the power to make regulations for the better carrying out of the provisions of the Act. In light of this, AFA in consultation with the County Governments and relevant stakeholders made the Horticultural Crops Regulations, 2018. AFA engaged the firm of Munyao, Muthama and Kashindi Advocates to undertake the Regulatory Impact Assessment of these Regulations.

The main objective of the assignment was to conduct a Regulatory Impact Assessment (RIA) of the Regulations. The RIA seeks to evaluate the impact and effects of the draft Regulations both on the public and private sectors to inform the choice of the most appropriate way to achieve objectives of the proposed Regulations by evaluating the major feasible alternatives of intended legislative action and other practical non-regulatory options.

The specific objectives of the following assignment were:

- (a) Undertake an assessment of the draft Regulations in terms of its economic, environmental and social impact and the likely administration and compliance costs;
- (b) Assess the impact of the draft Regulations on the private and public sectors;
- (c) Assess the effect of the draft Regulations on fundamental rights and freedoms;
- (d) Assess the effects of the draft Regulations;

- (e) Indicate other practicable means of achieving the objectives of the draft Regulations including other regulatory or non-regulatory options and reasons for or against these means;
- (f) Prepare a regulatory impact statement for the draft Regulations;
- (g) Prepare explanatory memorandum for the draft Regulations;
- (h) Prepare notices on the Regulatory Impact Statements for publication in the *Kenya Gazette* and 2 other daily newspapers of wide circulation;
- (i) Prepare for the Cabinet Secretary a compliance certificate for the draft Regulation as per section 7(3) and 7(4) of the Statutory Instruments Act
- (j) Assess any other pertinent issue with respect to the draft Horticultural Crops Regulations;
- (k) Prepare and submit a final legislative and policy review report on the draft Regulations to the Board for their consideration.

#### **1.4 Methodology and Approach**

The approach to the assignment entailed detailed desk review and synthesis of the draft Regulations, Crops Act, 2013, AFA Act, agriculture policy and strategies, Vision 2030, Constitution of Kenya, 2010 and other key policy documents, qualitative analysis, quantitative analysis, comparative analysis, trend analysis of data from these documents, trend analysis of judicial decisions on regulatory impact assessment and public participation and key informant interviews and focused group discussions to validate secondary data obtained from the documents.

#### **1.5 Policy Background for Horticultural Crops**

Agriculture sectoral reforms in Kenya gained momentum in the year 2003. The Government came up with the Strategy for Revitalizing Agriculture, 2004-2014. The strategy was as a result of the interpretation and implementation of the Economic Recovery Strategy for Wealth and Employment Creation (ERS-WEC-2003). This was launched in 2005 for the period running from 2004 to 2014.

Separately, the Government also set up the Economic Recovery Strategy which was to run from the year 2003 to 2007. The policy underscored that the poverty in rural Kenya could be alleviated through improvement of food security in the rural areas. The focus on food security gained more momentum when the Government of Kenya came up with Vision 2030 in the year 2007.

In the year 2009, the Government adopted the Agriculture Sector Development Strategy. The purpose of the strategy was to align all agricultural initiatives to Kenya Vision 2030. Also formulated in the same year was the National Food Security and Nutrition Policy. It was the first policy to focus on nutrition roles. Further, it established a platform of ensuring that relevant ministries and agencies cooperate towards the achievement of food security.

These initiatives formed the basis of the passing of the AFA Act and Crops Act, 2013 in the year 2013 which led to the repeal of the Cotton Act, (Cap. 335) and Sisal Industry Act, (Cap. 341) of Laws of Kenya.

The Crops Act, 2013 was enacted to accelerate the growth and development of agriculture, enhance productivity and incomes of farmers and the rural population, improve investment climate and efficiency of agribusiness and develop agricultural crops as export crops. For purposes of promoting the production, processing, marketing, and distribution of crops in suitable areas, the Act introduces, among others, the reduction and circumvention of unnecessary regulatory bureaucracy in the sector.

Sustained horticultural production is essential to realization of the goals and targets of the Kenya Vision 2030. Despite the significant growth that the industry has attained, the sub-sector was however operating without policy and regulation until 2011-2012 when the Horticultural Crops Development Order, 2011 came into operation and the National Horticulture Policy respectively were made. The lack of policy and regulation in the sector brought serious challenges both locally and internationally. The National Horticulture Policy was developed to ensure the growth and competitiveness of the industry is sustained into the future. The domestic horticultural market constitutes about 95 percent of the total production but contributes almost the same value as the 5 percent of volume exported. Exports are 70% flowers which have high premium prices compared to fresh fruits and vegetables which mainly drive the domestic market. This is largely due to poor handling of produce throughout the value chain but more so, after harvest. The policy gave a lot of consideration to promotion of physical markets, their management, the entire marketing function and maintenance of standards to promote domestic horticultural market as well as advance the export market. Measures at ensuring both socio-economic and environmental sustainability were also given prominence in the policy. The policy was therefore timely, coming when the industry had become robust and set to grow to even greater heights.

The broad objective of the policy was to accelerate and sustain growth and development of the horticultural industry in order to enhance its contribution

towards food security, poverty reduction as well as employment and wealth creation. The specific policy objectives towards the broad objective were thus to:

- i) Facilitate increased production of high-quality horticultural produce.
- ii) Enhance provision of the sub-sector's support services like finances, insurance and technical advisory services.
- iii) Promote value addition and increase domestic and external trade.
- iv) Develop and improve infrastructure to support the horticultural industry particularly in major production areas.
- v) Establish, strengthen and entrench institutional, legal and regulatory framework in the horticultural industry.
- vi) Promote mechanisms for socio-economic and environmental sustainability while addressing cross-cutting issues.
- vii) Promote horticultural investment in the ASALs.

In line with Vision 2030, the policy focus was to increase horticultural production through opening up new areas especially in ASALs, intensifying productivity, enterprise diversification, and encouraging small-scale farmers to realize economies of scale. Other issues of emphasis in production included providing adequate and affordable quality planting material; adopting appropriate crop production management practices; access to affordable financial services and insurance schemes; providing agricultural inputs; and promoting urban and peri-urban horticulture.

The proposed Regulations have been made to implement the Government's policies and objectives of increasing the efficiency and performance of the horticultural sector.

## **1.6 Objectives of the Horticultural Crops Regulations**

The Regulations are made under the Crops Act, 2013 which consolidated and repealed various statutes relating to crops. The Act has provisions for the growth and development of agricultural crops and other connected purposes. The Regulations' main objective is to provide for the operationalization and implementation the provisions of Crops Act, 2013 in so far as it relates to the horticultural crops considering that the Act provides for fundamental and substantive provisions for the growth and development in all scheduled crops in general. The specific objectives of the Regulations are as follows:

1. Consolidate and improve the Regulations that relate to the horticultural crops. The Regulations define crops which fall under the category of horticultural crops in the First Schedule. This schedule is an improvement of the Agricultural (Declaration of Special Crops) Horticultural Crops Order of 1967(L.N. 228/1967), made under the now repealed Agriculture Act, (Cap. 318) of the Laws of Kenya. Also currently applicable and proposed to be repealed by the Regulations is the Horticultural Crops Development Order, 2011 also made under the repealed Agriculture Act. Horticultural crops together with other crops were also governed by other statutes which have since been repealed including Agricultural Produce Marketing Act (Cap. 320)., Canning Crops Act (Cap. 328) and various other Regulations made under these statutes.
2. Align the operations of the stakeholders and dealers in the horticultural crops sector. The Regulations seeks to regulate the operations of the nursery and mother block operators, produce dealers, exporters, importers and producers through *inter alia*, the application of common local and international standards in registration, licensing and enforcement of safety standards.
3. Adoption of the national and international standards to ensure compliance with standards in produce handling, processing of produce, transportation, harvesting among others in order to achieve quality assurance.
4. Implement and provide for the collaborative framework established in the Fourth Schedule to the Constitution by formalizing and providing the framework for performance of distinct roles as well as cooperation between the national government and county governments. The Regulations spell out the distinctive roles of the two levels of government and areas of collaboration such as capacity building in line with the AFA Act.
5. Provide a framework for inter-agency collaboration in the horticultural crops industry. For instance, the Regulations make provisions for the collaborative functions between Kenya Plant and Health Inspectorate Services and AFA to ensure proper regulation of the horticultural crops industry;

6. Ensure reliability of data that is collected and disseminated to the players in the horticultural crops industry. Over time, the horticultural sub-sector has grappled with the unreliable data collection and reporting which affects the policy decisions taken by public authorities. Accordingly, the Regulations make legal requirements for submission of accurate quarterly returns by dealers to AFA and accurate record keeping by nursery operators.
7. The Regulations will significantly support the realization of the national government's *Big Four Agenda* through improved food security, nutrition security and by extension will also contribute to improved health in the country.
8. In addition, the regulations will promote value addition of various food items through agro-processing and thus also contribute to the realization of the manufacturing pillar while also creating more jobs in the horticultural crops sub sector.
9. Improve the returns from the production, marketing and international trade in the horticultural crops through decisive assignment of roles of key players in each stage of regulation.
10. Overall, the Regulations seek to create an administrative environment for smooth running of affairs in the horticultural crops industry in Kenya through use of forms and adoption of systems that enhance accountability through the National Horticulture Traceability System, which is the framework for tracing horticultural crops.

### **1.7 Assessment of the Nature and Extent of the Problem**

Agriculture plays an important role in the Kenyan economy. This importance is reflected in the positive correlation between growth in the agricultural sector and that of the national economy in the past in which the economy grows if agriculture grows and vice versa. The horticultural industry is a significant contributor to agricultural Gross Domestic Product (GDP). The horticultural industry therefore remains a leading success story in Kenya. It is among the leading foreign exchange earners, contributes to food security, and is a source of livelihood to the majority of rural people who practice one form of horticulture or another. These achievements were realized despite the absence of updated set of regulations in the sub-sector. It is however, no longer feasible to sustain the

achievements or spur further growth of the industry without an effective and supportive regulation that takes into account the dynamic nature of horticulture business.

The proposed Regulations outline the Government's intended measures in streamlining the horticulture industry. Such measures include the licensing and registration procedures, requirements, filing of returns, the sharing of functions between the national and county governments, , monitoring compliance along the value chain on aspects of horticultural production, processing, trade and promotion, imposition, administration and prescription of licensing and registration fees, compliance with national and international standards, promotion of horticulture industry self-regulation and co-regulation, and licensee obligations to ensure good business relations between growers and dealers

RIA finds the scope of the problem to be very important as the horticultural regulations are to bring into effect the provisions of the two enacted Acts that is, the AFA Act and the Crops Act, 2013. The regulations will reduce duplication and overlap of functions which existed under the former agricultural regulatory institutions and increase operational efficiency in the horticultural sector.

The proposed Horticultural Crops Regulations have clearly provided guidelines on how the sector should operate. The Regulations provides the registration and licensing procedures for all dealers who are intending to establish a nursery or a mother block in any area for horticultural crops and supply at either local or international levels. The Regulations highlight guidelines governing agreements between producers and dealers of horticultural produce. All dealers engaged in contract farming with producers will be required to inform the relevant authority in writing. This is critical as it will help to monitor and regulate operation of horticultural contracts. The Regulations are therefore expected to spur the growth of the sub-sector. However, implementation of Regulations has been a problem in the country due to barriers such as corruption and inefficiency of those given the responsibilities of implementation. In implementing the Regulations, the Government through AFA working in conjunction with the county governments to ensure that there are always measures in place to ensure challenges such as corruption and other forms of inefficiencies are addressed. The Regulations also provide for capacity building of county government officers and other stakeholders. AFA and the Horticultural Crops Directorate in conjunction with the county governments should always be keen to ensure that capacity building programs are organized for farmers especially smallholder farmers.

## **1.8 Regulatory Contextualization**

The Horticultural Crops Regulations, 2020 have correctly focused at both production and marketing of horticultural crops at both local and international levels. The adherence to national and international food safety and quality standards in production, provisions on registration and licencing, traceability of crops, safety operations, submissions of returns and inspections, post-harvest handling, transportation, storage and processing; guidelines on contractual agreements and fair pricing for farmers will support local, regional and international trade.

The AFA Act, 2013 and Crops Act, 2013 are fairly new laws that are yet to be fully implemented. Consequently, the formulation of the Horticultural Crops Regulations is necessary for the better carrying of the provisions of the highlighted Acts of Parliament.

## **2.0: EFFECTS OF THE PROPOSED REGULATIONS**

This chapter outlines the groups of persons likely to be affected by the proposed regulations and the impact of the proposed Regulations on both public and private sectors. It also examines the likely impact of the proposed Regulations on the realization of fundamental rights and freedoms of the affected groups.

### **2.1 Possible Positive Impacts of the Regulations**

Generally, several stakeholders in the horticultural sector will come out as winners as a result of the implementation of the Horticultural Crops Regulations, 2019. The benefits from the regulations will depend on the scope, financing and efficacy of their implementation. The following will be some of the expected benefits as a result of the acceptance and passing of the regulations.

#### **i. Impact on the Government**

The proposed Regulations will provide clarity in the sharing of functions between the two levels of Government which will lead to more efficient and effective service delivery. Compliance to the proposed Regulations is expected to streamline management of the horticultural sub-sector in Kenya. Both county and national governments are expected to increase their incomes from the prescribed fees for the application of registration and levies, which income is expected to better manage the sub-sector.

#### **ii. Impact on broader private sector**

The enactment of the Regulations is expected to enhance operational efficiency and the ease of doing business, which will act as incentives for private investors to increase their investments in the sub-sector. The private sector will therefore benefit from the increased volumes from horticulture. Compliance with national and international standards will guarantee better prices leading to increased incomes, and improved livelihood to industry players. In addition, if well implemented and adhered to, the regulations will reduce exploitation of growers who engage in contractual agreements with dealers.

iii. Impact on consumers

Both local and international consumers are also expected to tremendously benefit from the proposed Regulations. The Regulations provide that all stakeholders must adhere to national and international food safety and quality standards in production, post-harvest handling, transportation, storage and processing. These regulations if well implemented and adhered to will encourage supply of safe horticultural products to consumers. In addition, adherence to Good Agricultural Practice (GAP) will reduce inappropriate use of chemicals such as fertilizers and pesticides. This eventually will enhance consumption of safe food and assist in the conservation of the environment.

## **2.2 Possible Negative Impacts of the Regulations**

The Government will implement the Horticultural Crops Regulations in a manner that does not adversely affect any of its intended beneficiaries. This will require that associated (potential) risks be noted early and that mechanisms be put in place for their mitigation as the implementation of the Regulations starts. The RIA notes that the following will be the associated risks that may pose a loss to some stakeholders if the Regulations are not implemented well:

i. Consumers

As described in the final Regulations, every dealer shall provide contracted producer with sufficient training, during the contract period on group management and administration Good Agricultural Practices (GAP) thus training cost will be incurred. In addition, producers with intentions to supply at local or export will be required to register with the respective county government or authority, therefore, will be expected to pay prescribed fees. Dealers will also be required to acquire health certificates from KEPHIS when moving their produce and/or products across the country. Such transactions are expected to increase the costs of production which might lead to increase of prices of horticultural produce and products. AFA in conjunction with county governments will need to monitor and evaluate the applicable fees to ensure that any increase in production costs is minimal and outweighed by the major benefits the regulations will introduce to the sub-sector.

ii. Farmers

Ensuring that farmers adhere to GAPs is important as it is expected to translate into high quality produce which can fetch high incomes especially at the global market. There could be limited knowledge among farmers regarding the implementation of the practices for example the right amounts and types of fertilizers, pesticides, herbicides and fungicides to use. Therefore, the possibility of farmers (especially smallholder farmers) failing to adhere to most requirements of GAPs and food safety and quality standards exists. It is critical, therefore, that capacity building of farmers on the right practices be prioritized.

iii. Private Sector Players

The Private sector players have been left out on the assessment. These are exporters, local market traders, logistics service. Farmers should also be included in the benefits analysis.

### 3.0: REGULATORY AND NON-REGULATORY OPTIONS

This chapter highlights other regulatory and non-regulatory options that could be adopted by AFA in regulating the horticultural crops sub-sector in Kenya.

Alternatives to rule-based regulation are usually more flexible than a rule-based approach, since they do not require setting the rules out in legislation which then takes more time and effort to develop and change. Such alternatives are usually adopted if the objectives of the proposed regulations can be achieved through other alternatives.

There are three main options to consider before deciding whether or not to implement the regulations:

- i. If the existing regulations are sufficient to address the issues in the regulations proposals, a decision may be made to do nothing and therefore dismiss the proposed regulations. A decision could be made that the regulations be integrated into existing regulatory frameworks, which should be improved to include the points being proposed.
- ii. A decision may be made to maintain the *status quo* and instead enhance an on-going implementation of the Crops Act, 2013 and strengthen the aspects related to horticulture in that Act and other strategies without necessarily having new regulations in place; and
- iii. A decision may be made to adopt the regulations depending on the outcome of the cost-benefit analyses.

#### 3.1 Option 1: Maintaining the Status Quo

*Status quo* will mean that the requirements of the Constitution under Fourth Schedule regarding the shared roles of the national and county governments are not met and similarly, this would mean that the dynamic market requirements are subsequently and inherently not addressed.

The option of not promulgating or adopting the regulations will mean that the regulations made under the repealed statutes will continue to apply. The implication is that there will be gaps in the regulatory framework considering that there is urgent need to implement and enforce the provisions of the Crops Act, 2013 which has consolidated laws relating to the agricultural sector and repealed various statutes that applied to this sector. The proposed Regulations are targeted

to the specific categories of crops and have consolidated and improved existing regulatory framework.

Such gaps or inefficiencies in the current regulatory framework will reduce operational efficiency especially in the horticultural sector. This will prolong the quest for solutions to challenges towards achievement of government goals of ensuring increase in incomes, food security and international trade. The option of maintaining the *status quo* is thus not sustainable and the RIA recommends that the Horticultural Crops Regulations, 2019 be adopted in order to improve on the horticultural sub-sector's performance and to ensure that achievement of Vision 2030 becomes a reality.

### **3.2 Option 2: Passing the Regulations**

In case the proposed regulations on horticultural crops are passed, they will enable compliance with national and international standards which is expected to translate to better prices leading to increased incomes, and improved livelihood to Industry players. In addition, clarity in the sharing of functions between the two levels of government (national and county) will lead to more efficient and effective service delivery. These Regulations are also important for other Regulations in providing the much needed complementarity and holistic growth in the Kenya's agricultural sector. The Regulations will also enhance operational efficiency and quality of horticultural crops and their products.

### **3.3 Option 3: Other Practical Options**

Other practical options of achieving the objectives of the proposed Regulations could include dissemination of information and education, market-based structures, self-regulation and co-regulation. The RIA did not however, note these as feasible options of achieving the objectives of the proposed regulations.

As highlighted in chapter 1, doing nothing may mean that the provisions of the two newly enacted Acts that is, the AFA Act, 2013 and the Crops Act, 2013 and Fourth Schedule of the Constitution may not be fully implemented. The option of doing nothing is very costly and may retard the growth of horticultural sector which eventually may have serious consequences on the achievement of Kenya's Vision 2030 which under Second Medium Term Plan (2013 – 2017), implementation of the Consolidated Agricultural Reform Legislations

include preparation of necessary Regulations to actualize implementation of the Acts, and setting up institutions such as the Agriculture and Food Authority.

## **4.0: COST-BENEFIT ANALYSIS (CBA)**

This chapter provides an analysis of the potential costs and benefits of using the proposed regulations in regulating the horticulture sub-sector. It analyses the economic, environmental and social impacts as well as the administrative and compliance costs of adopting the proposed regulations. It also assesses and quantifies the return on investments of the proposed regulations; and how the impact of the proposed regulations is likely to be distributed among the affected parties.

### **4.1 Economic, Environmental and Social Impacts**

#### 4.1.1 Economic Impacts:

Kenya's horticultural sector is dynamic and contributes a significant share of agricultural domestic product compared to other sub-sectors in the agriculture sector. The Government's objective to transform the agricultural sector into a profitable, commercially-oriented and competitive economic activity is well articulated.

The proposed horticultural Regulations will bring order to one of the most important foreign exchange earner for the country and a key livelihood source for millions of smallholder resource poor farmers. In a nutshell, the following economic benefits will be realized as a result of the regulations:

- (i) There will be an increase in both productivity and production of horticultural produce for both local and export markets.
- (ii) The Regulations will ensure that an organized horticultural industry benefits from increased export of fruits, flowers and other horticultural products to the European Union (EU) and other destinations including new markets like the Far East.
- (iii) The proposed Regulations will lead to increased value addition and product diversification resulting from improved economic incentive of enhanced export markets.
- (iv) Regulations will increase earnings from horticultural exports and this will ensure steady flow of foreign exchange for the exchequer and key stakeholders.
- (v) Smallholder households, producer organizations and cooperative societies will benefit from a more organized sector thus enhancing incomes received for producers, processors, transporters and other value chain actors in the sector.

- (vi) There will be steady income of direct foreign investment through new investments in production, value addition and marketing of Kenyan horticultural products
- (vii) Improved Terms of trade - substitution of imported specialty horticultural products with local products
- (viii) Increased job creation in the horticulture industry.

#### 4.1.2 Environmental Impacts:

The proposed Regulations to a greater extent, have been drafted with due consideration for sustainable crop production and environmental management through a raft of measures that will conserve biodiversity. The Regulations will lead to the following benefits for stakeholders:

- (i) Greater corporate social responsibility by investors who plough back surplus resources towards environmental conservation activities.
- (ii) Low or reduced use of agro-chemicals that would harm the environment and have an effect on human health.
- (iii) Improved access to quality infrastructure services including water, electricity, roads and other amenities in workers living quarters.
- (iv) Reduced greenhouse gases i.e. carbon emission.
- (v) Improved land conservation, utilization and management.
- (vi) Reduced soil degradation due to improved plant cover and reduced soil operations.

#### 4.1.3 Social Impacts:

The sub-sector is dominated by majorly small-scale farmers (approximately 8 million) who account for about 80% of the horticultural production, while commercial export is dominated by large-scale growers. Smallholder growers' average land parcels range from 1 acre -2.5 acres [1 hectare] in size, and in most cases, smallholder vegetable farmers usually own less than one half of an acre, whereas medium to large commercial farms range from 1 hectare to more than 50 hectares (Horticulture report, 2014). For vegetable farmers, the parcel of land for production is much less. The implication is that proposed Regulations will have greater social impact on the larger proportion of producers as follows:

- (i) The sub-sector has largely been responsible for decreased poverty levels among the horticultural farmers and the community in general because it confers frequent income from continuous production of commercial horticultural crops for domestic and foreign markets. The proposed Regulations are leading towards enhancing this positive trend.

- (ii) The Regulations point towards enhancing group action in production, thus more and more improved income distribution among the horticultural farmers and the community in general will be realized in the medium and long run.
- (iii) For communities living around large scale producers of horticultural crops, the Regulations encourage corporate social responsibility leading to improved access to water and sanitation among the horticultural farmers.
- (iv) The Regulations will enhance healthy production of crops for consumption leading to improved health status of the horticultural farmers and the community resulting to reduced child and maternal mortality and reduced disease incidences. Healthy crops mean healthy horticultural crops farmers.
- (v) Full implementation of these regulations will aid to advance the food security, health and manufacturing pillars of the national government's *Big Four Agenda* through increased productivity of horticultural crops, value addition through horticultural crops manufacturing and improved health through enhanced nutrition security.
- (vi) The regulations will also result in increased farm incomes, increased export revenues and foreign exchange earnings.
- (vii) The launch of the Kenya Horticulture Standard KS1758 part II for fruits and vegetables is significant. The significance of this standard and the role it plays in the facilitation of flowers, fruits and vegetables export cannot be gainsaid. This standard is set to become mandatory for issuance of an export license. The standard establishes a level playing field and facilitates market access.

## **4.2 Administration and Compliance Cost**

The Regulations propose the imposition of levies, fees or charges on producers and dealers of all scheduled crops.

The RIA has noted that resources would be required for operationalization of the Regulations which will include human resource and operation costs for enforcement well as for awareness creation of the Regulations to the different stakeholders in the horticultural crops sub-sector. Additional resources will go to the implementation of the wider National Agriculture Policy which supports extension services for strengthening knowledge transfer and technology distribution among the farmers, whose implementation will augment the achieving of the objectives of the Regulations.

It has already been noted that recent policies, legislative and regulatory reforms by the Government are aligned to the national objective of transforming agriculture into an innovative, commercially oriented and modern agriculture. This objective is well captured in Vision 2030, and the ASDS 2009-2020. This has implications on administration and compliance costs as follows:

- The Horticultural Crops Development Authority (HCDA) is now Horticultural Crops Directorate (HCD) under the AFA Act. The proposed Regulations have set out the functions of the HCD which may call for additional management costs.
- In particular, the HCD is mandated to facilitate development, promotion, coordination and regulation of the horticultural sector in all aspects ranging from promotion of safety and quality standards, and facilitating access to local and international markets.

The budgetary allocation for the agricultural sector has not been consistent with the Maputo and Malabo Declarations which requires countries to allocate at least 10% of the national budgets to agricultural sector. Kenya's allocation to the sector in 2014/15 fiscal year was 5.8% of national budget which is comparatively lower in the East African region. County allocations to the agriculture sector averaged an estimated 4% in 2014 meaning that actual allocations towards small-scale horticultural development could be much lower or nil. The national budget for 2017/2018 financial year allocated lower resources towards Crop Development and Management (MTEF programme classification) which among other things is to provide funding for smallholder empowerment project and purchase of specialized materials and supplies for high value crops (CABE, 2017).

The foregoing calls for more resource allocation to deal with horticultural crops development and the agricultural sector in general, so as to ensure that the objectives of the substantive legislation and the proposed regulations are achieved.

### **4.3 Assessment of Return on Investment (Benefit)**

The broad objective of the Regulations is to accelerate and sustain growth and development of the horticultural industry in order to enhance its contribution towards food security, poverty reduction as well as employment and wealth creation. It is noted that passing and operationalization of the Regulations, will be

critical in facilitating further development of the horticultural industry leading to improved productivity, increased value addition, efficiency in horticultural crops production, processing and marketing to guarantee improved incomes for the smallholder farmers leading to improved livelihoods and social welfare for communities, while also guarantying other businesses within the value chains good returns and higher export earnings for the country, particularly considering that the sub-sector is one of the leading foreign exchange earner for the country.

The specific inherent benefits of the horticultural Regulations across the value chain are as follows:

- (a) The Regulations will facilitate increased production of high-quality horticultural produce.
- (b) The Regulations will enhance provision of the sub-sector's support services like finances, insurance and technical advisory services.
- (c) The Regulations will promote value addition and increase domestic and external trade.
- (d) The Regulations will develop and improve infrastructure to support the horticultural industry particularly in major production areas.
- (e) The Regulations will establish, strengthen and entrench institutional, legal and regulatory framework in the horticultural industry.
- (f) The Regulations will promote mechanisms for socio-economic and environmental sustainability while addressing cross-cutting issues.
- (g) The Regulations will promote horticultural investment in the ASALs.

#### **4.4 Quantification of the Benefits**

The Government of Kenya's National Economic Survey paints a bright spot with regard to performance of the horticultural industry in Kenya. This can be summarized as below:

The value of horticulture production rose 41 per cent last in 2017 compared with 2016 on account of good prices. Market data from the Ministry of Agriculture, Livestock, Fisheries and Irrigation's Horticulture Department indicates overall sales rose from KSh. 216 billion in 2016 to KSh. 305 billion in 2017. The total value of horticultural produce exported in 2017 increased from KSh. 101.5 billion in 2016 to KSh. 115 billion last year (Economic Survey, 2017). The value of domestic horticulture production has been growing over the years as it is evidenced by these figures. The marked increase in exports was attributed to compliance with the export market requirements by majority of the exporters especially to the EU.

This was also attributed to the opening up new markets like Russia, Japan and Korea

In 2016 the value of flowers, fruits and vegetables increased by 13, 12 and 12 per cent respectively as compared to 2015. The cut-flower export still remains the largest earner, contributing over 70 per cent of the total fresh produce annual earnings. Flower exports contributed KSh. 82.24 billion, up from KSh. 70.83 billion earned in 2016, representing 11.6 per cent growth, on export volume of 159,961 tonnes. Fruits and vegetables earned KSh. 9 billion and KSh. 24 billion, on export volumes of 56,945 tonnes and 87,240 tonnes respectively in 2017 (Economic Survey, 2017).

The improved performance of the sector implies that efficient and proper legislation and regulations in the sector is meant to accelerate the growth so far experienced.

For Domestic Horticulture, currently, 95% of all fruit and vegetable produced in Kenya is consumed domestically, and the domestic market accounts for over 95% of the total growth in quantity of fruit and vegetable production. The traditional local marketing system, including urban wholesale markets, continues to play the dominant role in FFV (fresh fruits and vegetables) marketing in the country (Tegemeo, 2016).

The proposed Regulations will render traditional wholesale markets highly attractive to buyers concerned with assuring high quality and food safety while reducing procurement cost. Currently, over 8 million smallholder farmers produce horticulture crops and they stand to gain when the new Regulations are put in place. Because of growth in urban centres occasioned by high population increase and effects of devolution, local urban markets for horticulture are likely to grow to a level of 10-20% over the next decade. Smallholder horticulture farmers and small traders will be incorporated in the FFV market although supermarkets may extend the dualism (Tegemeo, 2016).

#### **4.5 Distribution of Impacts**

The implementation of the Horticultural Crops Regulations is expected to benefit all the stakeholders in the sector. This can best be achieved if the implementation is done with sufficient support from all the stakeholders and institutions involved. The impact of the implementation of the Regulations is expected to wide-spread.

The production of horticulture is expected to increase as more farmers are incentivized to revert to horticultural production or increase crop acreage by a more efficient production system that provide the much needed support to them and is obligated to pay them promptly for their deliveries. Improved access to quality planting materials and research findings supported by better agricultural advisory services will further contribute to increased production.

Environmental pollution is expected to reduce. This is because growers are expected to use the right amounts of chemicals. In addition, use of required amounts of chemicals will reduce contamination of horticultural products such as onions, cabbages, kales and tomatoes. Therefore, this will help to address the complex issue of food safety in the country.

The foregoing is expected to have a positive impact on the health of consumers. Farmers are expected to benefit from the strict Regulations concerning contracts with dealers. Dealers who enter into contracts with farmers will be expected to train them on the best practices. The use of good practices is expected to result to increased yields thus high productivity which may attract higher incomes. Well organized horticultural sub-sector is expected to increase international trade which may translate into increase in the GDP thus the growth of the Kenyan economy.

This RIA observes that an efficient horticultural sub-sector is expected to attract more investors who may end up creating employment for Kenyans especially the youth. Reduced unemployment rate is expected to reduce the crime rates for the betterment of the society at large.

## **5.0: REASONS WHY OTHER REGULATORY OPTIONS ARE NOT APPROPRIATE**

This chapter provides justifications why other regulatory and non-regulatory options highlighted in chapter three are not appropriate in regulating the horticultural crops subsector in Kenya.

Parliament enacted the Crops Act, 2013 which came into force on 1st August 2014. Section 40 of the Act delegated regulation-making powers to the Cabinet Secretary responsible for matters relating to agriculture who is expected to consult with AFA and county governments before making the regulations. The Horticultural Crops Regulations are made pursuant to section 40 of the Crops Act, 2013 and are meant to fully operationalize the Crops Act, 2013 as far as horticultural crops as scheduled crops is concerned.

As required under Article 10 of the Constitution as well as under the Statutory Instruments Act, 2013, the Cabinet Secretary has held consultative forums involving stakeholders for a considerable period of time, especially between the years 2015 and 2018. Various categories of stakeholders have been involved in the development of the Horticultural Crops Regulations.

It is instructive to note that the Horticulture Regulations are not expected to have negative impact on fundamental rights and freedoms of persons or institutions that are subject to the Regulations. Similarly, the Regulations do not have negative impact on the environment or environmental rights of the people. It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward horticulture production and processing.

A well-functioning horticultural sub-sector is considered a viable solution for the country's need for cash crop diversification, enhanced food nutrition, income generation, employment creation and foreign exchange earning in addition to providing raw material for agro-processing industries.

The other regulatory options have been considered and it was found necessary that the horticulture industry needed regulations in order to improve performance and benefit flows in the sector which is a key foreign exchange earner and important for smallholder farmers who depend on it for their livelihoods.

## 6.0: OUTCOME OF STAKEHOLDER PARTICIPATION

This chapter examines the legal requirements for public participation. It also analyses the outcomes of the public consultations conducted in coming up with the proposed regulations with an aim of assessing whether those consultations meet the threshold set for public participation in Kenya.

### 6.1 Legal Basis for Public Participation

The Constitution of Kenya, 2010 provides for national values and principles of good governance and participation of the people of Kenya. Article 10 provides for the involvement of the people in the enactment of any law. The national values and principles bind all state organs, state officers, public officers and all persons whenever they, *inter alia*, apply the Constitution and enact any law.

Section 5(1) of the Statutory Instruments Act, 2013 requires a regulation-making body to make appropriate consultations with persons who are likely to be affected by the proposed instrument. The impetus of this provision is twofold. First, it makes consultations mandatory when a Regulation affects business or restricts competition. Secondly, it sets the consultation test of appropriateness which must be met. While having regard to what consultation is appropriate, the Act requires a regulation-making body to take two steps that is to draw attention of experts and afford adequate opportunity to interested persons to make their comments on the proposed contents of the Regulations.

Regarding the form of the consultations, section 5(3) of the Statutory Instruments Act, 2013 requires that there be an invitation, whether direct or indirect to persons likely to be affected and followed by invitation of submissions or public hearings. Apart from the mandatory form, the regulation-making body has the discretion of adopting other formalities of consultation.

The courts of law have in several instances provided for the modes of ensuring public participation is effective. For instance, in *IEBC v NASA-Kenya & 6 others* 2017 eKLR, [Para 164-5]; the Court of Appeal stated that,

*“...the mode, degree, scope and extent of public participation is to be determined on a case by case basis. What is critical is a reasonable notice and reasonable opportunity for public participation. In determining what is reasonable notice a realistic time frame for public participation should be*

given. In addition, the purposes and level of public participation should be indicated. Reasonableness is also to be determined from the nature and importance of legislation or decision to be made, and the intensity of the impact of the legislation or decision on the public. The length of consultation during public participation should be given and the issues for consultation. Mechanisms to enable the widest reach to members of public should be put in place; and if the matter is urgent the urgency should be explained."

Further, in *Poverty Alleviation Network & others v President of the Republic of South Africa & 19 others*, CCT 86/08 [2010] ZACC 5; public participation was emphasized in the following terms;

"...engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision."

The totality of all those pronouncements therein reproduced brings forth the following cardinal points:

1. Public participation was never intended to be a suggestion, superfluous or ornamental, rather to have a substantive bite, enforced and implemented. It must be put into practice.
2. Public participation must never be of mere cosmetic venture, formality and public relations exercise, rather to be conducted in a manner that informs the public of what is at stake, how it will impact on the society and the end document should mirror and reflect the spirit of the public in concern.
3. Public participation should never be equated to mere consultations. The product of legislation ought to be a true reflection of the public participation so that the end product bears the seal of approval by the public.

## **6.2 Stakeholder Engagement**

### **6.2.1 Stakeholder(s) Mapping**

The outlined requirements oblige AFA to conduct a stakeholder mapping of the players in the horticultural industry in Kenya. A review of the Regulations reveals that the Horticultural Crops Regulations shall have a direct impact on the dealers, growers, owners of produce handling and processing facilities, importers and exporters of horticultural produce and county governments. Consumers of the crops will also be affected both directly and indirectly.

### **6.3 Actual Consultation**

#### **6.3.1 National Level Consultation (Government)**

Government bodies such as the representatives of the State Department of Crops Development representatives were consulted.

#### **6.3.2 National Level Consultation (Non-government)**

Another stakeholder forum was held at Panari Hotel on 14<sup>th</sup> April, 2015. The invitations were made to various multi-level stakeholders ranging from dealers. The Fresh Produce Exporters Association of Kenya and the Kenya Flower Council also made written submissions to the Authority on the draft Regulations.

#### **6.3.3 County Level**

AFA adopted a plan for the engagement of county governments on the mandate of AFA, its roles and the need to collaborate with the counties as key stakeholders noting the shared functions of the national and county governments under the Constitution. AFA also took cognizance of judicial precedent on consultation of county governments including the case of *Republic v MOALF & Others Ex parte Council of Governors and Harrison Munyi (as the Chairman of the New National Farmers' Association) [2016] eKLR*. The stakeholder forums were conducted in Migori, Siaya, Homabay, Busia, Kakamega and Vihiga counties on various dates between 10<sup>th</sup> and 18<sup>th</sup> February, 2015 when the Horticulture Crops Directorate made elaborate presentations on the draft Regulations. Another forum was conducted in Ole-Sereni where the county officials from Nyandarua and Kirinyaga counties were met and gave their opinions.

#### **6.3.4 Experts and Academia**

The Authority consulted experts from public universities being Kenyatta University, University of Nairobi and Jomo Kenyatta University of Agriculture and Technology.

## **6.4 Adequacy of Stakeholder Consultations**

### **6.4.1 Extent of Incorporation of Stakeholders' Comments**

The issues raised by the stakeholders were mainly on double taxation, payment of levies by small farmers, data validation and the need for sensitization of counties, control of crop diseases such as tomato wilt, plant health approvals, stakeholders' sensitization with commodity counties. AFA technical officers were also invited to review the draft Regulations. During the plenary sessions, the invitees were allowed to raise concerns. Key among the concerns were need for collaboration with county governments, increase in research funding, AFA's capacity to employ staff, need to revise forms and the unreliability of data.

Stakeholder sensitization was undertaken in the county of Nakuru on 5<sup>th</sup> of June, 2015. In addition, the draft Regulations were reviewed to capture the useful comments received from the relevant counties and stakeholders to wit the use of the term authority for consistency, differentiation between the role of the county and the national government, validity period of licences and provision for mediation among other useful comments were incorporated into the Regulations through amendments.

### **6.4.2 Justification for non-inclusion of certain comments**

The comments on the control of diseases were not included because the same is effectively dealt with under the Pest Control Products Act (Cap. 346) and Plant Protection Act, (Cap. 324). In keeping with the Crops Act's objective of preventing over-regulation in the agricultural sector, it was not prudent to include the same under the Regulations. The comments on the increase in staff capacity were not included but dealt with in the Regulations to the effect that inspectors at county levels shall be responsible to the Authority.

### **6.4.3 Overall Extent of Consultations**

There was a multi-level stakeholder consultation before coming up with the Regulations. The stakeholders were representatives from various counties, and sub-sectors in the horticultural crops industry. The consultations were also conducted at national and non-national levels. The stakeholders from the

research and academia were also invited to the forums. The stakeholder forums were conducted strategically, with different group separately, and each stakeholder was made to know about the contents of the Regulations through presentations by AFA officials and the consequential inquiries were answered and more significant ones amended.

The players in the horticultural industry in Kenya being the dealers, producers, owners of produce handling and processing facilities, importers and exporters of horticultural produce, academic experts and county governments were extensively consulted in the formulation of the Regulations. The rest of the public members who were not notified directly will have an opportunity to comment once the explanatory memorandum is published in the *Kenya Gazette* in accordance with section 8(1) of the Statutory Instruments Act, 2013.

The upshot of the foregoing is that the draft Regulations have met the appropriateness test set under section 5 of the Statutory Instruments Act, 2013 due to proper mapping of the stakeholders including experts. The plenary discussions also show that the stakeholders were afforded reasonable opportunity to make submissions and their concerns were all addressed during public hearings and plenary sessions and where excluded, the exclusions were properly justified.

The stage of the regulatory impact assessment has just been past the stakeholders consultations. The current stage is the preparation of the impact statement as well as the explanatory memorandum. Accordingly, the first three steps identified by the court and the Statutory Instruments Act, 2013 and have been strictly complied with.

The consultations conducted by AFA are complete and in line with the current jurisprudence developed by our court on adequacy of stakeholder consultations.

## 7.0: ENFORCEMENT AND COMPLIANCE

This chapter looks at the effectiveness of the enforcement measures and compliance requirements provided in the proposed regulations.

The RIA has verified that the regulations have included sufficient enforcement and compliance mechanisms to ensure implementation.

The Fourth Schedule to the Constitution provides that agriculture is both a national government and a county government role. The national government has the task of developing agricultural policy while the county governments retain the vast majority of the agricultural functions including crop and animal husbandry. In line with this provision, the regulations provides for AFA, a national authority, and the structures within the county governments as administrative bodies that shall ensure compliance with its provisions.

The Regulations have proposed regulatory tools to aid the administrative bodies in ensuring compliance. The tools include provisions for registration, licensing, record keeping among other requirements for produce dealers, nursery and mother block operators. Regulation 4 provides for registration of nurseries or mother blocks with attendant mandatory provisions set out under Regulation 5. These requirements shall ensure strict adherence to the standards set in the Regulations.

Pursuant to Regulation 13, the provisions on registration shall be enforced through imposition of criminal sanctions for non-compliance with the registration. The licencing authorities (either AFA or county governments) shall have the powers to revoke certificate of registration and to cancel a licence as a tool of ensuring compliance with the provisions of the Crops Act and these Regulations and the conditions of licence or certificate.

In addition, the Regulations shall utilize the National Horticulture Traceability System to ensure safety and quality controls. Pursuant to Regulation 18, the contravention of the traceability requirements shall attract penal sanctions.

The Regulations shall also seek to adopt the national and international standards to ensure compliance with standards in produce handling, processing of produce, transportation, harvesting among others. The compliance requirement shall be enforced by imposition of criminal sanctions pursuant to the provisions of Regulation 21.

There will be inspectors appointed in line with Regulation 23 of the Horticultural Crops Regulations. The inspectors shall carry out inspections for all scheduled horticultural crops in vessels, land, vehicles or land that are listed in the First Schedule to the Regulations. The inspectors at County level shall be responsible to the Authority and shall work in close collaboration with the County executive committee member for agriculture in discharging their functions. The inspectors shall be responsible for, among other things, inspecting and conducting enquiries to ascertain whether these Regulations or the terms and conditions of the respective licence or registration are being complied with; demand the production by a licence or certificate holder of the licence for examination; and seize and remove anything in respect of which the inspector has reasonable grounds to believe that an offence under this Act is being or has been committed. The inspectors will be required to carry out periodic checks. The Authority is also expected to provide capacity building for the inspectors.

Compliance with the inspection requirement shall be enforced by the criminal sanctions.

For all the non-compliance issues whose penalties are not provided under the Regulations, the Regulations provide a general penalty for non-compliance.

## 8.0: REVIEW, MONITORING AND EVALUATION

This chapter provides for reviews and monitoring and evaluation techniques that could be adopted by AFA to ensure full implementation of the proposed Regulations.

It is expected that the Regulations shall be a subject of great interest to all stakeholders particularly because of its potential to offer improvement in incomes, increase foreign exchange earnings, create employment, reduce poverty and enhance the living standards of Kenyans. The parent Ministry working together with AFA and county governments will thus work hand in hand with the various stakeholders to promote research and reviewing of its effectiveness towards promoting growth and development of this vibrant horticultural crops sub-sector that will increase the market for sisal and cotton locally and internationally.

The RIA recommends the establishment of a horticultural database where all information regarding production and marketing of various horticultural produce and products for all the counties involved will be recorded.

A ten-step process can serve as a guide in establishing an M&E system during the implementation of the Regulations, as listed below:

1. Conduct a readiness assessment.
2. Agree on outcomes to monitor and evaluate.
3. Develop key indicators to monitor outcomes.
4. Gather data on baseline indicators.
5. Plan for improvements and set realistic targets.
6. Monitor performance results.
7. Conduct mid-level and end-term evaluation to inform reviews, collaborative learning as well as decision making.
8. Analyse performance data.
9. Use findings for reviews
10. Sustain the M&E system within Government by linking to the M&E grid under the Kenya Bureau of Statistics (KBS)

## **9.0: CONCLUSION AND RECOMMENDATIONS**

This chapter provides other laws and policies that could complement the proposed Regulations. It also provides concluding observations regarding the proposed Regulations and makes a specific recommendation on whether the proposed Regulations should be adopted and implemented.

### **9.1 Linking the Regulations to other legislation and policies**

The RIA notes that the proposed Horticultural Crops Regulations, 2020 do not contradict nor overlap any current policies but rather they are meant to bring into effect the Crops Act, 2013 and Agriculture and Food Authority Act, 2013. The essential policies, strategies and regulations that Horticultural Crops Regulations, 2018 relate to include;

1. Constitution of Kenya, 2010
2. Crops Act, 2013
3. Agriculture and Food Authority Act, 2013
4. National Food and Nutrition Security Policy
5. National Agribusiness Strategy
6. National Seed Policy, 2010
7. National Land Policy, 2009
8. Agricultural Sector Gender Policy
9. Kenya Agricultural and Livestock Research Organization Act, 2013
10. Kenya Youth Agribusiness Strategy 2017-2021
11. Kenya's Vision 2030
12. UN-SDGs, 2015
13. Malabo Declaration, 2014

### **9.2 Conclusion**

The raft Regulations provide for proper regulation, promotion, development and oversight of the horticultural crops industry in Kenya. The operationalization of the Regulations is poised to generate more positive than negative impacts/risks.

### **9.3 Recommendations**

The RIA recommends the passing and operationalization of the proposed Crops (Horticultural Crops) Regulations, 2020.

## 10.0: PERTINENT ISSUES

### Definitions

1. The definitions under Regulation under Chapter 2 should be arranged in alphabetical order as is the practice and requirement in legislative drafting.

### Penalties and sanctions

The sanctions imposed by various Regulations are contrary to the provisions of section 24(5) of the Statutory Instruments Act, 2013 which require that subsidiary legislation should not impose penalties of more than KShs. 20,000 and 6 months imprisonment. This applies to all provisions which impose sanctions including Regulations 16(6), 21 and 28. There have been previous litigation on the issue in the case of *British American Tobacco Ltd v Cabinet Secretary for the Ministry of Health & 4 others [2015] eKLR* and regulations which contravened this requirement on penalties were declared invalid.

### Repeal of existing regulations

A new Regulation should be added at the end to repeal the Agricultural (Declaration of Special Crops) Horticultural Crops Order of 1967 (L.N. 228/1967) and Horticultural Crops Development Order, 2011 (L.N. 190/2011) (and any other subsidiary legislation applicable in the sub-sector).

**Regulation 26(1)(2)(i):** The reference to Horticulture Authority must be error. It should be changed to Directorate.

## 11.0 REFERENCES

1. Constitution of Kenya 2010.
2. Agriculture and Food Authority Act, 2013 (No. 13 of 2013)
3. Crops Act, 2013 (No. 16 of 2013)
4. Statutory Instruments Act, 2013 (No. 13 of 2013)
5. CABE (2017), *Creating Employment in Horticulture Sector in Kenya: Productivity, Contracting and Marketing Policies*
6. ERS-WEC (2003), *Economic Recovery Strategy for Wealth and Employment Creation*
7. ES (2017), *Economic Survey*
8. Horticulture (2014), *Horticulture validated Report*

9. Kenya National Bureau of Statistics Economic Survey (2018)

10. Tegemeo (2016). Tegemeo Institute of Agriculture Policy and Development

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# THE KENYA GAZETTE

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## CORRIGENDA

IN Gazette Notice No. 1215 of 2019, *amend* the expression printed as "Njuki Mwaniki, (Rtd.) Major Gen." to read "Njuki Mwaniki, (Rtd.) Lt. Gen."

IN Gazette Notice No. 12428 of 2018, Cause No. 21 of 2018, *amend* the second petitioner's name printed as "Joseph Kahigia Kamunge" to read "Joseph Kahihia Kamunge", the name of deceased person printed as "Joseph Maina Eliud" to read "Njenga Gituru", the date of death printed as 22nd March, 2017 to read "3rd August, 2017" and the place of death printed as "Kiserian" to read PCEA, Kikuyu Hospital in Kenya" where it appears.

IN Gazette Notice No. 4224 of 2018, Cause No. 2 of 2018, *amend* the expression printed as "for a grant of letters of administration intestate" to read "for a grant of letters of administration with will annexed" and the place of death printed as "Bishop Kioko Hospital" to read "M.P. Shah Hospital" where it appears.

IN Gazette Notice No. 1266 of 2019, *amend* the expression printed as "deceased's son and daughter" to read "the deceased's brother and sister" where it appears.

IN Gazette Notice No. 1457 of 2019, *amend* the proprietor's name printed as "Charles Newton Wanjiku" to read "Charles Newton Wanjuki".

IN Gazette Notice No. 5474 of 2018, *amend* the expression printed as "Cause No. 284 of 2018" to read "Cause No. 284 of 2017".

IN Gazette Notice No. 1602 of 2019, *amend* the expression printed as "(ID/3015607)" to read "(ID/30156107)".

IN Gazette Notice No. 1626 of 2019, *amend* the expression printed as "Mutira/Kangai/1254" to read "Mutira/Kangai/1254 and 1255" where it appears.

## GAZETTE NOTICE NO. 1906

## THE KENYA INFORMATION AND COMMUNICATIONS ACT

(No. 2 of 1998)

## EXTENSION OF TERM

IT IS notified for public information that the Cabinet Secretary for Information, Communications and Technology has extended the period of appointment of the Taskforce for Developing a Policy and Regulatory Framework for Privacy and Data Protection in Kenya contained in Gazette Notice No. 7857 of 2018, for a period of six (6) months, with effect from the 15th September, 2018.

Dated the 18th February, 2019.

JOE MUCHERU,

Cabinet Secretary for Information, Communications and Technology.

## GAZETTE NOTICE NO. 1907

## THE STATE CORPORATIONS ACT

(Cap. 446)

## KENYA YEARBOOK ORDER

(L. N. 187 of 2007)

## APPOINTMENT

IN EXERCISE of the powers conferred by paragraph 3 (2) (j) of the Kenya Yearbook Order, 2007, the Cabinet Secretary for Information, Communications and Technology appoints—

Caroline Mukeli  
Nemaisa Kiereini  
Wilson Kipkazi

to be members of the Kenya Yearbook Board for a period of three (3) years, with effect from the 8th February, 2019.

Dated the 8th February, 2019.

JOE MUCHERU,

Cabinet Secretary for Information, Communication and Technology.

## GAZETTE NOTICE NO. 1908

## THE CROPS ACT

(No. 16 of 2013)

## REQUEST FOR COMMENTS

REQUEST for Comments on the Regulatory Impact Statement and on the Crops (Tea Industry) Regulations, 2019; Crops (Horticulture) Regulations 2019; Crops (Nuts and Oil) Regulations, 2019; Crops (Fibre) Regulations, 2019 and Crops (Pyrethrum) Regulations, 2019.

The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation is in the process of promulgating the following Regulations as provided for under section 40 of the Crops Act, 2013.

- The Crops (Horticulture) Regulations;
- The Crops (Tea Industry) Regulations;
- The Crops (Nuts and Oil) Regulations;
- The Crops (Fibre) Regulations;
- The Crops (Pyrethrum) Regulations.

In compliance with the provisions of the Crops Act, 2013 and the Statutory Instruments Act, 2013, the Ministry announces to the public the availability of the regulations listed herein above as well as the Regulatory Impact Statements for each of the regulations.

The main objective of the above Regulations, is to provide for the regulation, promotion and development of the respective industry value chain in Kenya. The respective Regulatory Impact Statement contains detailed information on each of the regulation.

The Constitution of Kenya, 2010, Crops Act, 2013 and the Statutory Instruments Act, 2013 provides that the public participates in the decision making process through the submission of comments to the Ministry. It is in this spirit that we request the public to participate by submitting their comments to the Ministry through the provided address.

All interested persons should submit written comments on the Regulations listed herein above and on the respective Regulatory Impact Statement using prescribed public comments form, to reach the undersigned not later than fourteen (14) days from the date of publication of this notice.

The draft Regulations and the Regulatory Impact Statement for all the regulations as well as public comments form can be accessed through the following websites: [www.agricultureauthority.go.ke](http://www.agricultureauthority.go.ke); [www.kilimo.go.ke](http://www.kilimo.go.ke). The draft Regulations, and Regulatory Impact Statements are also available on request at the Agriculture and Food Authority offices, Tea House Office, Naivasha Road, off Ngong Road during normal working hours.

Public forums to discuss the draft Regulations, and the respective Regulatory Impact Statement shall be held as per the schedule below:

Regulation	Venue	Date	Time
The Crops (Horticulture) Regulations.	HCD Offices, Nairobi Horticultural Centre, Embakasi North, Mazao Road, Nairobi	26th March, 2019	9.00 a.m.
The Crops (Tea Industry) Regulations.	AFA, Tea Directorate Offices, Tea House, Nairobi	25th March, 2019	9.00 a.m.
	Tea Trade Centre, Nyerere Avenue Mombasa	29th March, 2019	10.00 a.m.

Regulation	Venue	Date	Time
The Crops (Nuts and Oil) Regulations.	National Horticulture Research Institute Kalro, Kandara, Murang'a	28th March, 2019	9.00 a.m.
	Kenya School of Government, Matuga Kwale	9th April, 2019	9.00 a.m.
The Crops (Fibre) Regulations.	Machakos University College Machakos	2nd April, 2019	9.00 a.m.
	Maseno ATC, Kisumu	4th April, 2019	9.00 a.m.
The Crops (Pyrethrum) Regulations.	Pyrethrum Processing Company (PPCK) Offices, along General Mathenge Road, Nakuru	3rd April, 2019	9.00 a.m.

Send your written comments to either:

The Principal Secretary  
State Department for Crops Development  
Ministry of Agriculture, Livestock, Fisheries and Irrigation  
Kilimo House, Cathedral Road,  
P.O. Box 30028,  
Nairobi.  
Or by Email: psagriculture@kilimo.go.ke

The Director-General  
Agriculture and Food Authority  
Tea House, Naivasha Road, off Ngong Road,  
P.O. Box 37962-00100,  
Nairobi.  
Or by E-mail: info@agricultureauthority.go.ke

Dated the 22nd February, 2019.

MWANGI KIUNJURI,  
*Cabinet Secretary*  
for Agriculture, Livestock, Fisheries and Irrigation.

#### GAZETTE NOTICE NO. 1909

#### TASKFORCE OF SUGAR INDUSTRY STAKEHOLDERS TO MAKE RECOMMENDATIONS FOR THE DEVELOPMENT OF THE SUGAR INDUSTRY IN KENYA

##### EXTENSION OF TERM

IT IS notified for the general information of the public that the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation has further extended the period of the Taskforce appointed *vide* Gazette Notice No. 11711 and extended *vide* Gazette Notice No. 345 of 2019 to the 31st March, 2019 (both days inclusive), with effect from the 7th January, 2019.

Dated the 19th February, 2019.

MWANGI KIUNJURI,  
*Cabinet Secretary*  
for Agriculture, Livestock, Fisheries and Irrigation.

#### GAZETTE NOTICE NO. 1910

#### TASKFORCE OF MAIZE INDUSTRY STAKEHOLDERS TO MAKE RECOMMENDATIONS FOR THE DEVELOPMENT OF THE MAIZE INDUSTRY IN KENYA

##### EXTENSION OF TERM

IT IS notified for the general information of the public that the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation has further extended the period of the Taskforce appointed *vide* Gazette Notice No. 11710 and extended *vide* Gazette Notice No. 344,

from the 7th January, 2019 to the 31st March, 2019 (both days inclusive), with effect from the 7th January, 2019.

Dated the 19th February, 2019.

MWANGI KIUNJURI,  
*Cabinet Secretary*  
for Agriculture, Livestock, Fisheries and Irrigation.

#### GAZETTE NOTICE NO. 1911

#### MINISTRY OF SPORTS, CULTURE AND HERITAGE

#### THE ORGANIZING COMMITTEE (OC) FOR THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF) WORLD, UNDER 20 CHAMPIONSHIPS, NAIROBI, 2020

##### APPOINTMENT

IT IS notified for general information that following the successful bid by Kenya to host the 2020 International Association of Athletics Federations (IAAF) World Under 20 Championships and the signing of the Event Organisational Agreement (EOA) for the Championships that will be held in Nairobi, the Cabinet Secretary for Sports, Culture and Heritage has appointed committees to be known as the Steering Committee (SC) and Organizing Committee (OC).

##### (a) Steering Committee Representatives of:

Office of the President  
Governor, Nairobi County  
Cabinet Secretary, Ministry of Sports, Culture and Heritage  
Cabinet Secretary, Ministry of Interior and Co-ordination of National Government  
Cabinet Secretary, The National Treasury  
Cabinet Secretary, Ministry of Transport, Infrastructure, Housing Development and Public Works  
Cabinet Secretary, Ministry of Foreign Affairs  
Principal Secretary/ Sports, Ministry of Sports, Culture and Heritage  
Chairman, IAAF World Under 20 Championships  
Chief Executive Officer, IAAF World Under 20 Championships, 2020  
Director-General, Sports Kenya

to be members of the Steering Committee effective from the 1st January, 2019 for a period of one (1) year and eight (8) months.

##### (b) Organizing Committee (Secretariat):

Chairman—Gen. Jackson Tuwei  
Chief Executive Officer—Michael Agwingi Rabar  
Assistant, Chief Executive Officer—Mary Mwaki  
Chief Operations Officer—Regina Gachora  
Director of Ticket Operations and Knowledge Management—Barnabas Korir  
Assistant Director of Ticket Operations and Knowledge Management—Maxwell Nyamu  
Director, Finance and Administration—Farrah Kasim  
Assistant Director, Finance and Administration—David Miano  
Director, Legal—Emmanuel K. Gichohi  
Assistant Director, Legal—Christine Mangwana  
Director of ICT—Gatwiri Kinia  
Assistant Director, ICT—Hesbon Malwenyi  
Director, Security and Accreditation—Joseph Kiget  
Assistant Director, Security and accreditation—Joseph Chirchir  
Director, Protocol—Colonel Matigo Marwanga  
Assistant Director, Protocol—Susan Kamau  
Director, Technical and Competition—Ibrahim Hussein  
Assistant Director, Technical and Competition—Paul Mutwii  
Director, Marketing and Commercial—Zaheeda Suleiman  
Assistant Director, Marketing and Commercial—Robert Nyanga'aya  
Director, Media, Broadcasting and Communication—Michael Okinyi  
Assistant Director, Media, Broadcasting and Communication—Chris Mbaisi  
Director, Transport—Charles Welangai  
Assistant Director, Transport—Vincent Kaduki  
Director, Logistics—Douglas Wakihuri  
Assistant Director, Logistics—Mohamed Bashir Ibrahim  
Director, Medical and Ant-Doping—Jared Nyakiba (Dr)



**MINISTRY OF AGRICULTURE, LIVESTOCK,  
FISHERIES AND IRRIGATION  
STATE DEPARTMENT FOR CROPS**

**THE CROPS ACT  
(No. 16 of 2013)**

**REQUEST FOR COMMENTS**

Request for Comments on the Regulatory Impact Statements and on the Crops (Tea Industry) Regulations, 2019; Crops (Horticulture Crops) Regulations 2019; Crops (Nuts and Oil Crops) Regulations, 2019; Crops (Fibre Crops) Regulations, 2019 and Crops (Pyrethrum) Regulations, 2019.

The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation is in the process of promulgating the following Regulations as provided for under Section 40 of the Crops Act, 2013 (No. 16 of 2013).

- a) **The Crops (Horticulture Crops) Regulations;**
- b) **The Crops (Tea Industry) Regulations;**
- c) **The Crops (Nuts and Oil Crops) Regulations;**
- d) **The Crops (Fibre Crops) Regulations;**
- e) **The Crops (Pyrethrum) Regulations.**

In compliance with the provisions of the Crops Act, 2013 and the Statutory Instruments Act, 2015 (No. 23 of 2013), the Ministry announces to the public the availability of the regulations listed herein above as well as the Regulatory Impact Statements for each of the regulations.

The main objective of the above Regulations, is to provide for the regulation, promotion and development of the respective industry value chain in Kenya. The respective Regulatory Impact Statement contains detailed information on each of the regulations.

The Constitution of Kenya, 2010, the Crops Act, 2013 and the Statutory Instruments Act, 2013 provides that the public participates in the decision making process through the submission of comments to the Ministry. It is in this spirit that we request the public to participate by submitting their comments to the Ministry through the provided address.

All interested persons should submit written comments on the regulations listed herein above and on the respective Regulatory Impact Statement using prescribed public comments form, to reach the undersigned not later than **fourteen (14) days from the date of publication of this notice.**

The draft Regulations and the Regulatory Impact Statement for all the regulations as well as public comments form can be accessed through the following websites: [www.agricultureauthority.go.ke](http://www.agricultureauthority.go.ke); [www.kilimo.go.ke](http://www.kilimo.go.ke). The draft Regulations, and Regulatory Impact Statements are also available on request at the Agriculture and Food Authority offices, Tea House Office, Naivasha Road, off Ngong Road during normal working hours.

**Public forums to discuss the draft Regulations, and the respective Regulatory Impact Statement shall be held as per the schedule below:**

NO	REGULATION	VENUE	DATE	TIME
1.	<b>The Crops (Horticulture Crops) Regulations.</b>	Horticultural Crops Directorate Headquarters, North Airport Road, opposite the JKIA cargo terminal on Mazao road. <b>NAIROBI</b>	26 <sup>th</sup> March 2019	9.00am
2.	<b>The Crops (Tea Industry) Regulations.</b>	AFA-Tea Directorate Offices, Tea House, <b>NAIROBI</b>	25 <sup>th</sup> March 2019	9.00am
		Tea Trade Centre, Nyerere Avenue <b>MOMBASA</b>	29 <sup>th</sup> March 2019	10.00am
3.	<b>The Crops (Nuts and Oil Crops) Regulations.</b>	National Horticulture Research Institute KALRO, Kandara <b>MURANGA</b>	28 <sup>th</sup> March 2019	9.00am
		Kenya School of Government, Matuga <b>KWALE</b>	9 <sup>th</sup> April 2019	9.00am
4.	<b>The Crops (Fibre Crops) Regulations.</b>	Machakos University College <b>MACHAKOS</b>	2 <sup>nd</sup> April 2019	9.00am
		Meseno ATC <b>KISUMU</b>	4 <sup>th</sup> April 2019	9.00am
5.	<b>The Crops (Pyrethrum) Regulations.</b>	Pyrethrum Processing Company (PPIC) Offices along General Mathenge Road <b>NAKURU</b>	3 <sup>rd</sup> April 2019	9.00am

Send your written comments to either:

**The Principal Secretary  
State Department for Crops Development  
Ministry of Agriculture, Livestock, Fisheries and Irrigation  
Kilimo House, Cathedral Road  
P.O. Box 30028  
Nairobi.  
Or by Email: [psagriculture@kilimo.go.ke](mailto:psagriculture@kilimo.go.ke)**

**The Director General  
Agriculture and Food Authority  
Tea House, Naivasha Road off Ngong Road,  
P.O Box 37962-00100  
Nairobi.  
Or by Email: [info@aia.go.ke](mailto:info@aia.go.ke)**

**HON. MWANGI KIUNJURI, EGH, MGH  
Cabinet Secretary  
Ministry of Agriculture, Livestock, Fisheries and Irrigation**

**REPORT ON STAKEHOLDER  
COMMENTS AND SUBMISSIONS**

## HORTICULTURAL CROPS DIRECTORATE SUMMARY OF CONSULTATIONS

Summary of consultations done on Horticulture regulations

	<b>Stakeholder</b>	<b>Period</b>	<b>Responses</b>	<b>Action taken</b>
1	Kenya Flower Council and flower growers	12/11/2015 15/10/2016	<p>Justification needed to be made on the proposed License fee</p> <p>The validity period for the License needed to be changed from 3 years to annual</p> <p>What was the ability of the Directorate to regulate nurseries and register growers</p>	<p>It was agreed that the levies will be used to support the industry and enhance directorate enforcement of the regulations.</p> <p>The validity period of export license has been agreed to be one year as per Crops Act 2015</p> <p>The Directorate has delegated the registration nursery and growers to County governments</p>
2	Fresh produce Exporters Association	12/11/2015 15/10/2016	There was overlap and duplication of roles by regulators in the industry	The Crops Act has outlined the role of the directorate to avoid overlap
3	County governments	2015 to 2018	<p>-Dealers dealing in produce to be traded in at the Counties should be registered by the Counties.</p> <p>-Nursery operators and mother blocks should be registered by the counties because they operate at the county level.</p>	The regulations have been reviewed to allow Counties to register nurseries, witness buyer/exporter contracts, issue planting material movement permit, and clear exporters.

Stakeholder	Period	Responses	Action taken
4 Kenya Plant Health Inspectorate Service	12/11/2015	<p>The regulation should address the issue of non-conforming products finding its way to the market. The law should be made more punitive to those not conforming</p> <p>The regulations should specify that exports shall be accompanied by a Phytosanitary certificate to avoid exporters from by passing the system</p>	The proposed regulations took in the opinion and has been included in the regulations
5 Growers	12/11/2015	How quality and food safety have been addressed in the regulations	These issues have been incorporated in the regulation
6 Kenya Human rights Commission	9 June, 2016	Clear articulation of point of ownership of horticultural products and handling of rejects	Suggestions were adopted
Industry Associations (Fresh produce Exporters Association of Kenya, Kenya Flower Council and Fresh Produce Consortium Kenya) KEPPSA and AAK	25 <sup>th</sup> and 26 <sup>th</sup> March 2019, February 2020	90 days duration is a long wait for issuance to a new license applicant because of the physiological nature of the crop, the duration for issuance to be brought down to 30 days.	Amended to export licence within 21 days.
		-Memorandum and articles of association to be replaced by CR12	Amended to reflect list of directors and shareholders
		-Authority will consider late application on renewal of license but shall come up with a penalty (omit reasonable cause as it is ambiguous)	Amended as suggested

Stakeholder	Period	Responses	Action taken
		<p>-Rephrase the sentence on forbidding use of contaminated sites to “Areas currently or previously used as dumpsites”</p> <p>-Quantify the allowable distance</p> <p>-Replace raw human to read sewage since raw human cannot be quantified</p> <p>-On dealing with non-conforming products only those that contain injurious, hazardous or harmful substances that affects human health, or compromises food safety then the produce can be destroyed by the inspector.</p> <p>For traceability purposes for domestic produce, issuances of receipts to be provided from point of purchase of produce by the seller or producer.</p> <p>Domestic market vendors must have documentation for source of produce. (Give more details on requirements)</p> <p>A vendor Shall demonstrate withdrawal or recall for produce that has potential concerns to food safety</p>	<p>Amended as suggested</p> <p>Amended and removed the word "near to"</p> <p>Regulation is Amended to include sewer lines that include human waste.</p> <p>Amended as suggested</p> <p>The suggestions have been adopted</p> <p>The regulations amended to require demonstration of traceability</p> <p>The regulation has been amended to require demonstration of recall and withdrawal</p>

Stakeholder	Period	Responses	Action taken
		<p>Rules should protect both the exporter and farmer</p> <p>Produce not eligible for export should be marked NOT for Export and it ends there.</p> <p>Time frame on offence and penalties to be specified e.g. 7-14 days etc.</p> <p>The levies collected should not be allocated to research institutions and Counties. 50% of the levies should be allocated to the Associations</p> <p>KS1758 to be included in the relevant laws / Relevant Government Agency</p> <p>Prohibiting movement of planting materials e.g. traditional planting materials such as bananas from the nearest nursery/farm, to neighboring farms will create unnecessary bureaucracy</p> <p>The Directorate to give justification on the proposed increment on levies since the revenue goes to the Government</p> <p>Powers of entry. Rephrase to competent person</p> <p>KS1758 to be included in the relevant laws / Relevant Government Agency</p> <p>Duplication/Overlapping of some of duties between KEPHIS and HCD</p>	<p>These are already provided in the contract guidelines shown in schedule.....</p> <p>Amend to delete all the texts after NOT for Export.</p> <p>The guidelines have provided the timelines for compliance</p> <p>The regulation not amended. The Act provides for how the funds shall be used and research is included and Authority expenses</p> <p>Regulation not as the KS1758 is covered under the standards in the regulation</p> <p>Movement of planting materials within countries will not require a permit but a sales receipt</p> <p>The regulation amended to set the levies at 0.25% from 2% of total revenues</p> <p>Regulation is not amended as the Act talks about appointment of inspectors as the competent persons.</p> <p>Regulation not amended as the KS1758 is covered under the standards in the regulation</p> <p>The roles for each institution are defined by the respective Acts</p>

Stakeholder	Period	Responses	Action taken
		<p>Agricultural Experts to be registered (Rephrase)</p> <p>Combine penalties on conformity</p> <p>Given the readiness of Counties and for the purpose of quality, HCD should have an oversight of Nursery registration</p> <p>The registration of professionals is misplaced under quality &amp; market</p> <p>The Directorate to work on modalities to ensure only quality seeds are in the market</p> <p>The directorate to look into charges during transportation of produce from one county to another since they pay cess</p> <p>Whether the levies to be charged by the County and HCD will be merged or treated as a single entity or each will have its own levy outlined</p> <p>There should be a clause added on capacity building.</p> <p>The introduction of levies will kill the growers</p> <p>Flower exporters should have different guidelines on contracts</p> <p>Members of associations to be exempted from inspections</p>	<p>Amended the regulation and replaced Professionals with Agricultural Experts</p> <p>Not amended</p> <p>Not amended. oversight role will be played by the Authority during inspections</p> <p>Not amended since registration of professionals is addressing the quality produce due according to quality of services they provide</p> <p>The mandate is for KEPHIS</p> <p>Charges will be done at the point of loading and movement permit issued from the county of origin</p> <p>It will not be merged because each Act outlines collection of levies</p> <p>National Government in collaboration with the Authority will provide specialized trainings to farmers as per the crops Act section 8</p> <p>The commodity fund is meant to benefit the farmers. Only exporters are being charged levies</p> <p>Guidelines provided are general and can be modified for various dealers</p> <p>Under the crops Act section 28 no one is exempted from inspections</p>

Stakeholder	Period	Responses	Action taken
		<p>Clarification to be made on which officer to be given records for inspection purposes</p> <p>The Directorate to clarify further whether both the dealer and grower need to register</p> <p>The Directorate to clarify composition of the arbitration committee</p>	<p>Inspectors appointed by the Authority are the ones to be given the records</p> <p>This has been adequately clarified</p> <p>A regulation has been introduced establishing a dispute resolution committee</p>
8	Pest Control Product board	<p>26<sup>th</sup> March 2019</p> <p>The PCPB Act does not deal with procurement</p>	<p>Amended procurement has been replaced with importation and Agrochemicals with Pest control products</p> <p>-Not amended as the nursery fee charged id for inspection services.</p>
9	Nursery operator	<p>26<sup>th</sup> March 2019</p> <p>-Issuing of registration certificate by counties will hinder ease of doing business for operators with nurseries in different counties as they will be charged by each county. They prefer being registered by the Directorate.</p> <p>- It is not clear how the public will identify sources of rootstock, scion, or seed planting material</p> <p>-Provide Proper structures/handling Facilities for planting material at the markets</p>	<p>-Amended the regulation to provide for the authority in collaboration with National Research Institution establish mother blocks</p> <p>-The suggestion is provided for under minimum requirements for markets therefore no amendment required</p>
10	Suppliers of Fresh fruits, vegetables and flowers	<p>26<sup>th</sup> March 2019</p> <p>-Suppliers operating in different counties will be charged multiple times for registration certificate and yet they also pay cess to the counties</p>	<p>The regulations indicate that dealers are registered by the Authority. No amendment was needed.</p>
11	National assembly Committee on Legislative affairs	<p>14<sup>th</sup> April 2019</p> <p>Should make special consideration for small farmers in registration of dealers</p>	<p>Amended to include the word commercial so as to be specific operators who are in business</p>

			An appeal mechanism for the applicant should be introduced to take care of grievances and complaints in the registration process	Not amended
			How will this be implemented? Elaborate and make it specific	This has been revised "shall" has been replaced with "may" to read; The Authority may in collaboration with the County Government and Research Institutions establish mother blocks on either public or private land.  Research institution to be replaced with the national Institution responsible for horticulture research
			Overregulation of the industry was raised	No change on this as the benefit accompanying registration will include traceability and capacity building.
			Duration of licence should be one year from date of licence issuance.	Not amended. Crops Act clause 20 (3) recommended for miscellaneous amendment to cater for the licence to last for 12 months from the date of licence issuance
			Does not have to be defined though it should take a year	Amended through deletion.
			The regulation should compel the necessary institutions to protect the areas from any farming activity e.g. NEMA, County Government	Amended. An additional regulation for this aspects have been included
			-Moderate the language to incorporate county government support/role. -Make it important not compulsory -Include how AFA can support	Amended. The regulation has been reworked to read;  The regulations shall compel the specific relevant institutions to put measures in

			-Ensure the role of PCPB is very clear on this regulation	place to ensure safe use of chemicals by growers.
			-Rework to incorporate or accommodate local farmer	Not amended
			-The regulation should Facilitate / Promote contract farming. -The penalty is unreasonable Rework with the small farmer in mind -Is passive on the role of county government	Amended the penalty to fifty thousand shillings.
			Is AFA accredited?	Has been amended to issuance of a compliance certificate
			To be guided by clause 26 and 27 of Crops Act	Amended to conform to delegation of appointing county crops inspector at the county level under clause 26 (2) of the Crops Act.
			Are the clusters private and how is government involved? It should be very clear	Amended. -Inclusion of cluster in the definitions. -Included explanation that clusters are privately owned and that Counties will do legislation to provide for the fund
			Justification on proposed increased levy	The levy is supposed to cater for development of the industry.



## AGRICULTURE AND FOOD AUTHORITY (AFA)

**EVENT & DATE:** Meeting to consider Regulations, 2019 by the Senate Sessional Committee  
On Delegated Legislations

**DATE:** Wednesday 14<sup>th</sup> August 2019










**VENUE & COUNTY:** Bamburi Beach Hotel, North Coast, Mombasa County

**TIME:** 8.30 A.M.

### ATTENDANCE LIST

S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)			SIGNATURE
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4	Sen. <del>Bamburi N. Kambua</del> Poreno	SENATE	bamburi1@yahoo.com	M			✓	
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## AGRICULTURE AND FOOD AUTHORITY (AFA)

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S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
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S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
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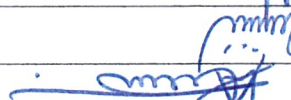
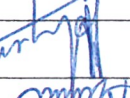
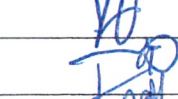
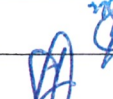

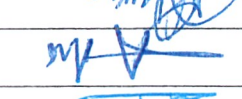
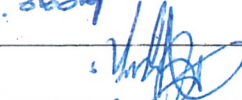
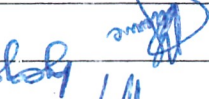
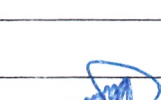
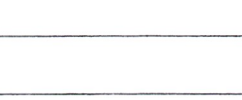

S.NO.	NAME	DIRECTOR'S DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
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36	Burk Chelimo	PAFCAS MOALFI	jk.nth@yahoo.com	F	<input checked="" type="checkbox"/>	<input type="checkbox"/>	







BAMBURI BEACH HOTEL  
 CONFERENCE AGRICULTURE & FOOD AUTHORITY  
 DATE 14/8/2019

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1 Athol O'Neil	
2 Jennifer Longus	
3 Lorine O'Neil	
4 Dickson Kottari	
5 Clement Hayes	
6 Grace Waiata	
7 Josephine Winiya	
8 Richard Oudang	
9 Leonard K. Kutea	
10 Andrew P. P. P.	
11 Shadrach Onger	
12 Lucy N. N. N.	
13 Michael N. N.	
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## AGRICULTURE AND FOOD AUTHORITY (AFA)

**EVENT & DATE:** Meeting to consider Regulations, 2019 by the Senate Sessional Committee  
On Delegated Legislations

**DATE:** Thursday 15<sup>th</sup> August 2019

**VENUE & COUNTY:** Bamburi Beach Hotel, North Coast, Mombasa County

**TIME:** 8.30 A.M.

### ATTENDANCE LIST

S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1	Mwangi Kunjiri	MOA/LF		M	✓		
2	Milioni Majau	MOA/LF	Majau@biomimail.com	M	✓		
3	Joseph Ngunjo	MOA/LF	josephking3@yahoo.com	M	✓		
4	Jabirha Kiangugi	MOA/LF	wanyuabogse@gmail.com	F	✓		
5	Kimofai Raymond	AFA			✓		
6	David MURITHI	MOA/LF		M	✓		
7	Lucy Kamutu	MOA/LF	lucykmole@gmail.com	F	✓		
8	Beatrice Nyamwani	AFA/FA	beatrice_nyamwani@yahoo.com		✓		
9	Shadrack Cyguy	AFA-HQ	shadrackcyguy@gmail.com	M	✓		







## AGRICULTURE AND FOOD AUTHORITY (AFA)

**EVENT & DATE:** Meeting to consider Regulations, 2019 by the Senate Sessional Committee  
On Delegated Legislations

**DATE:** Thursday 15<sup>th</sup> August 2019

**VENUE & COUNTY:** Bamburi Beach Hotel, North Coast, Mombasa County

**TIME:** 8.30 A.M.

### ATTENDANCE LIST

S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)			SIGNATURE
					< 35	35 to 59	> 59	
1	NAOMI N. KAMAYI	FIBRECD - AFA	nkamayin@guwai.com			F		
2	Arshada Jettun	AFA - FCD	arshada@yahoo.com	M		✓		
3	Peter O. Ousika	MPAFAI - SOCS Policy	spowick@yahoo.com	M		✓		
4	Willfred Mwamungu	AFA - NSCD	Mwamungu@yohw.co	M		✓		
5	Jennifer Kunyus	MPICD	jenniferkunyus@gmail.com	F		✓		
6	Dickson M. Kathuni	AFA-MPIED	dkathuni@afango.ke	M		✓		
7	LORINE OCHARI	AFA-MPIED	lochari@afango.ke	F		✓		
8	JULIUS BINSHO	AFA-TO	julio@afango.ke	M		✓		



S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)			SIGNATURE
					< 35	35 to 59	> 59	
	John Kumu	AFA-TEA	Johnkumu@go.ke					
	Samuel Njorō	AFA-TEA	Samuelnjorogmail.com					
	James Kimutai	AFA - (CASA)	James.kimutai@gmail.com		✓			
	TERESIA GITARA	MOA	gitakateresia@gmail.com		✓			
	Dr. Andrew Tumui	CAS MOALFI	CAS@kilemo.go.ke		✓			
	Ruth Othelmo	PA/CAS MOALFI	ruthothelmo@gmail.com		✓			
	Josephine Simuyi	AFA-HCD	jsimuyi@ff.go.ke	F	✓			
	Grace Nyabwa	AFA-HCD	grace.nyabwa@gmail.com	F	✓			
	Josephine Mushi	CAS Office MOALFI	josephinemushi@kilemo.go.ke	F	✓			
	John Josephine	HOA - (CASA office)	mbalumwajigmail.com	M	✓			
	Glady Njorō	MOA - CS (office)	gnjorogmail.com	F	✓			
	CAROLINE WAMAITA	MOALF	carolinegichuri@yahoo.com	F	✓			
	DAVID MOSWIK	MOALF	moswikenapth@gmail.com	M	✓			
	JARTEH NG'ENICET	MOALF	ngartenh@gmail.com	M	✓			



30



## AGRICULTURE AND FOOD AUTHORITY (AFA)

**EVENT & DATE:** Meeting to consider Regulations, 2019 by the Senate Sessional Committee  
On Delegated Legislations

**DATE:** Thursday 15<sup>th</sup> August 2019

**VENUE & COUNTY:** Bamburi Beach Hotel, North Coast, Mombasa County

**TIME:** 8.30 A.M.

### ATTENDANCE LIST

S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1	Carol Omwamba	AFA/HCD	carolinomwamba@aafk.com	F		✓	ER
2	Grace Nyakba	AFA-HCD	gracenyakba@gmail.com	F		✓	GN
3	Josephine Simuyi	AFA	JSimuyi@afs.go.ke	F		✓	JS
4	Terry Gakwayi	MOALFSI	gakwayi@jmail.com	F		✓	TG
5	Shadrach Dugi	AFA-AFA	sayingi2000@gmail.com	M		✓	SD
6	Beatrice Ngunjiri	AFA-FD	beatrice_ngunjiri@yahoo.com	F		✓	BN
7	Peris Wanjuki	AFA-LEGAL	wanjuki2001@gmail.com	F		✓	PW
8	Philis Ng'ani	market	philisnganieghwora@gmail.com	F		✓	PN



(14)

S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)			SIGNATURE
					< 35	35 to 59	> 59	
9	Grace Agui	WAOALFSDCS	graceagui@gmail.com	F			✓	
10	Evelynne Hezi	PBU	evelynnehezi@gmail.com	F			✓	
11	Daniel Kaseg	MOALF-PSU	DanielKaseg@yahoo.com	M			✓	
12	Winnie Ulothe	AFA	Wulotho@dep.gov.ke	F			✓	
13	Lucy N. Njenga	WAOALFST-SDCS	Lucynjenga@yahoo.com	F			✓	
14	Clemet Murega	AFA - MPICD	muregam@yahoo.com	M			✓	
15	Andrew B. Bodi	AFA - IR-GA	Andrewbod@gmail.com	M			✓	
16	Richard Njenga	AFA - NOCA	richardnjenga@gmail.com	M			✓	
17	Bernard Ondoye	AFA - HES	bernardondoye@gmail.com	M			✓	
18	Wilis Audi	AFA - NOCD	willisaudi@gmail.com	M			✓	
19	Raymond Kimani	AFA - HGV		M			✓	
20	Mary Nwai	AFA - ID	marynwai@gmail.com	F			✓	
21	Martha Wairimu	AFA UGG		F			✓	





# AGRICULTURE AND FOOD AUTHORITY (AFA)




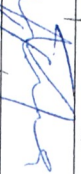

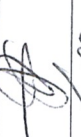


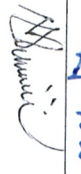
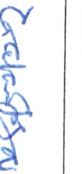

MEETING WITH CONSULTANT TO REVIEW FINAL REPORTS ON THE REGULATORY IMPACT ASSESSMENT FOR THE DRAFT REGULATIONS.

HELD ON MONDAY 28<sup>TH</sup> JANUARY, 2019 AT TEA HOUSE

## ATTENDANCE LIST

S.NO	NAME	DESIGNATION/ DIRECTORATE	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1.	Peris. W. Mudida	AFA-LEUACI	Watenzo01@gmail.com	F	✓		
2.	Wilis Audi	AFA - NOCD	wilisaudi@gmail.com	M	✓		
3.	Bernard Kiseva	AFA - TEA D	Kiseva.bern@teaboard.org.ken	M	✓		
4.	Adhola Jotun	AFA - KBR E	jonadhola@yahoo.com.ken	M	✓		



S.NO	NAME	DESIGNATION/ DIRECTORATE	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
5.	Dr. Omondi L. David	MNK ADVOCATES	Omondi.L.rouino@mmkadv.com	M	<input checked="" type="checkbox"/>		
6.	LENE KARITHARI	MME ADVOCATES	lenekarithari@gmail.com	F		<input checked="" type="checkbox"/>	
7.	MOTOKI POLYCARP	MUK ADVOCATES	Polycarp@guail.com	M	<input checked="" type="checkbox"/>		
8.	Tim MUECHIEL	" "	muechiel@gmail.com	M	<input checked="" type="checkbox"/>		
9.	GEORGE NYAMU	" "	gnyamu@gmail.com	M	<input checked="" type="checkbox"/>		
10.	Dr. Felix Mwangi	MNK ADVOCATES	director@ceradconsult.com	M	<input checked="" type="checkbox"/>		
11.	Pete Mwangi	Food director	petemwangi@gmail.com	M	<input checked="" type="checkbox"/>		
12.	ANDREW USOBU	AAA - LEGAL	Andrewusobu@gmail.com	M	<input checked="" type="checkbox"/>		
13.	DICKSON KATHURI	AAA - NRIED	dkathuri@afa.go.ke	M	<input checked="" type="checkbox"/>		
14.	MURRAY G. YAKO	AAA - HCD	Murraygako@gmail.com	M	<input checked="" type="checkbox"/>		
15.	Josphine Simiyu	" "	jsimiyu@afa-go-ke	F	<input checked="" type="checkbox"/>		
16.							
17.							





## AGRICULTURE AND FOOD AUTHORITY (AFA)

**EVENT & DATE:** Meeting to consider Regulations, 2019 by the Senate Sessional Committee  
On Delegated Legislations

**DATE:** Thursday 15<sup>th</sup> August 2019

**VENUE & COUNTY:** Bamburi Beach Hotel, North Coast, Mombasa County

**TIME:** 8.30 A.M.

### ATTENDANCE LIST

S.NO.	NAME	DIRECTORATE/DEPARTMENT/ ORGANIZATION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1	Barbara A. Kibuka	Senate	bkibuka1@yahoo.com	M	✓		
2	Mohammed Khatu	Senate	Khatuhabach@gmail.com	M	✓		
3	Senjudith Pareno	Senate	parenyjudith1@gmail.com	F	✓		
4	Sen. Farhys Heji	Senate	farhysheji@gmail.com	F	✓		
5	Sen. S. Poghisio	Senate	spoghisio87@gmail.com	M	✓		
6	Njingura S-N	Senate	sningjura@parliament.go.ke njingura@DES9@gmail.com	M	✓		
7	Joseph Mwangi	Senate	mwangijoseph@gmail.com	M	✓		
8	Josphine Kusingi	Senate	jusingius@gmail.com	F	✓		








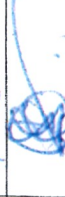










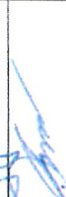
## AGRICULTURE AND FOOD AUTHORITY (AFA)

RETREAT TO REVIEW THE DRAFT REGULATIONS UNDER CROPS ACT  
HELD ON TUESDAY, 5<sup>TH</sup> MARCH, 2019 IN MACHAKOS

### ATTENDANCE LIST

S.NO	NAME	DESIGNATION/ DIRECTORATE	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1.	Peris W Mudiaga	AFA- WEAT	wokawoo1@yahoo.com	F		<input checked="" type="checkbox"/>	
2.	Josephine Simiyu DILIBRO YAKO	AFA-HCD	jsimiyu@afk.go.ke	F		<input checked="" type="checkbox"/>	
3.		AFA- HCD	niffre@afk.go.ke@gmail.com	M		<input checked="" type="checkbox"/>	
4.	Achola John	AFA - FBR E	jsachola@yahoo.com	M		<input checked="" type="checkbox"/>	
5.	John Njoroge	DDA/Agriculture Div.	irungunjoroge@yahoo.com	M		<input checked="" type="checkbox"/>	
6.	Peter O. Owoko	ASA / Policy	spowoko@yahoo.com	M		<input checked="" type="checkbox"/>	



S.NO	NAME	DESIGNATION/ INSTITUTION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
7.	Jettar K. Mumu	State Dept for crops Development Policy	jkmumu@yahoo.com	M	✓		
8.	SAMUEL NFAIRE	AFA - TID	Snyairo@tforardh.ke	M	✓		
9.	Dickson M Kathuri	AFA - NPICD	dkathuri@afa.go.ke	M	✓		
10.	Teresie Gwagvu	State Council on Gender - AG	gathgucery@gmail.com	F	✓		
11.	Beatrice Nyamwamba	AFA - Food	beatrice.nyamwamba @yatuwoi.com	F	✓		
12.	DIANA NKATHA	AFA - LEGAL	nikathadiana8@yahoo .com	F	✓		
13.	ANDREW DISOBO	AFA - LEGAL	Andrewdisoba@afa.go.ke	M	✓		
14.	Jude Quasim	AFA - LEGAL	quasim.jude@yahoo.com	M	✓		
15.	Rishik Akhmal	AFA - CD	rishikakuma@yahoo.com	M	✓		
16.	Willis Audi	AFA - NOCD	willisaudi@gmail.com	M	✓		
17.	JOSEPHINE OCUUJA	AFA - LEGAL	-	F	✓		
18.	Kenneth N. Mburu	Agres - Policy & Legal	kenn.nlaw@gmail.com	M	✓		
19.	JOSHUA-OLWAZALI	MOA/FAI-	joshuaolwazali@gmail.com	M	✓		








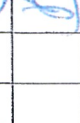

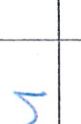
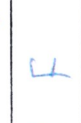
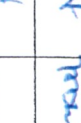
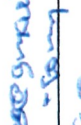



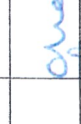
## AGRICULTURE AND FOOD AUTHORITY (AFA)

RETREAT TO REVIEW THE DRAFT REGULATIONS UNDER CROPS ACT  
HELD ON WEDNESDAY, 6<sup>TH</sup> MARCH, 2019 IN MACHAKOS

### ATTENDANCE LIST

S.NO	NAME	DESIGNATION/ DIRECTORATE	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1.	Andrew Ojoo	ITLS	Andrew.Ojoo@nfa.go.ke	M	✓		
2.	Peris W. Mudiaga	ILM-KEATL	wakaw2001@yahoo.com	F	✓		
3.	Achola John	IM-R/C-KARE	johnachola@yahoo.com	M	✓		
4.	John Mjenge	DDA/MOALF&I	mungu.mjenge@yahoo.com	M	✓		
5.	John K. Mumeni	SADA/MOALF&I	jk.mumeni@yahoo.com	M	✓		
6.	Peter O. Orosko	ABA/MOALF&I	spwosko@yahoo.com	M	✓		



S.NO	NAME	DESIGNATION/ INSTITUTION	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
7.	Erish Akumad	AA-ED	erishakumad@gmail	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8.	Samuel Njane	AFA-ITD	Syjan@techandwrite	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9.	Diason Katturari	AFA-MPUC	d.katturari@afagovke	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
10.	Willis Audi	AFA-NOCD	willisaudi@gmail.com	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11.	Teresc Georgegy	Legal Minist of Agric.	gathagutery@gmail.com	F	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12.	Joska Oluwalu	MOA/FAI- Horticulture	joshuwalumpu@gmail	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13.	DIANA NKATHA	LEGAL - AFA	nkathadiana@gmail.com	F	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14.	JOSEPHINE OLUWU	LEGAL - AFA	-	F	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
15.	Jude Awagere	AFA-SD	awagerejude@gmail.com	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16.	Daniel USithi	NCE	danielusithi@gmail.com	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17.	MILKED O. SHAG	AFA-HOD	milkedogalans@gmail.com	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
18.	Beatrice Nyamwami	AFA-FIS	beatrice.nyamwami@gmail.com	F	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
19.	Kenneth N. Mbarasa	AgS - Policy & Legal	kenneth.n.mbarasa@gmail.com	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	







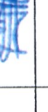
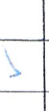









## AGRICULTURE AND FOOD AUTHORITY (AFA)

RETREAT TO REVIEW THE DRAFT REGULATIONS UNDER CROPS ACT  
HELD ON THURSDAY, 7<sup>TH</sup> MARCH, 2019 IN MACHAKOS

### ATTENDANCE LIST

S.NO	NAME	DESIGNATION/ DIRECTORATE	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1.	ANDREW DISEDO	AFA - LEGAL	Andrewd@maf.ac.ke	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2.	Peris W. Mudiaga	L.M - LEGAL	Wmudiaga@maf.ac.ke	F	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3.	Sanel ofia	AFA - TRD	Sanelofia@maf.ac.ke	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4.	Adhola John	AFA - TRD	johnad@maf.ac.ke	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
5.	Peter O. Oboko	ADA - Policy M.A	spowoko@maf.ac.ke	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6.	Jathan K. Mumu	SAAA - Policy	JKmumu@maf.ac.ke	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	



S.NO	NAME	DESIGNATION/ INSTITUTION	E-MAIL ADDRESS	GENDER	AGE (Years)			SIGNATURE
					< 35	35 to 59	> 59	
7.	DICKSON M KATHUKU	AFA - MPID	d.kathuki@afaj.go.ke	M	✓			
8.	WILLIS AUDI	AFA - NOCD	willisaudi@gmail.com	M	✓			
9.	Teresia Guthagu	N/A	guthagu@ymail.com	F	✓			
10.	JOSHUA OUMTALI	MOALFI	joshuaoumal5@gmail.com	M	✓			
11.	Beatrice Nyamwami	AFA - PD	beatrice.nyamwami@yulivo.com	F	✓			
12.	Knock Akuma	AFA - CD	Knockakuma@yahoo.com	M	✓			
13.	DIANA KATHUKIA	AFA - LEGAL	mathadiona@gmail.com	F	✓			
14.	Kenneth N. Mbari	Ops - Policy & Legal	kenn.nlaw@gmail.com	M	✓			
15.	John Mjorge	DDA/MOALFI	irungu.mjorge@yahoo.com	M	✓			
16.	JOSEPHINE OUMTI	AFA - LEGAL	jozphj@gmail.com	F				
17.	Jule Chesir	AFA - SP	chesirjule@gmail.com	M	✓			
18.	Abhola John	N/A - KERE	jabhola@yahoo.com	M	✓			
19.	WILFRED O. VIKO	*** - HCD	Wilfredgalano@gmail.com	M	✓			





## AGRICULTURE AND FOOD AUTHORITY (AFA)

RETREAT TO REVIEW THE DRAFT REGULATIONS UNDER CROPS ACT  
HELD ON FRIDAY, 8<sup>TH</sup> MARCH, 2019 IN MACHAKOS

### ATTENDANCE LIST

S.NO	NAME	DESIGNATION/ DIRECTORATE	E-MAIL ADDRESS	GENDER	AGE (Years)		SIGNATURE
					< 35	> 35 to 59	
1.	Adhikari Jethu	AFA - ICBRS	foodhol@yachos.com	M		✓	
2.	DIANA NKATHA	AFA - LEGXC	nkathadiana@gmail.com	F	✓		
3.	Beahule Nyamwaya	AFA - FF	beahule_nyamwaya@yachos.com	F		✓	
4.	Jashara Oluwaya	MOALFI	jasharaoluwaiya@gmail.com	M		✓	
5.	Teresia Gathagu	MOALFI	gathaguteria@gmail.com	F		✓	
6.	WILFRED ZI YARO	AFA - HCD	wilfredzikona@gmail.com	M		✓	



S.NO	NAME	DESIGNATION/ INSTITUTION	E-MAIL ADDRESS	GENDER	AGE (Years)			SIGNATURE
					< 35	35 to 59	> 59	
7.	Kenneth N. Mburu	Res- Policy & Legal	kenm.law@gmail.com	M	✓			
8.	Willis M. Auedi	AFA - NOCD	willisaudi@gmail.com	M	✓			
9.	Dickson M. Kathuni	AFA - NPIED	dicksonm@afa.go.ke	M	✓			
10.	Enosh O. Akhanna	AFA - CD	enoshakum@exabio.c	M	✓			
11.	Jatta K. Muniu	NOALD & I - Policy	jkmuniu@yahoo.com	M	✓			
12.	Peter O. Owendu	MEBEXPI Policy	spowokw@cytelkenya.com	M	✓			
13.	Peris W. Muedide	AFA - LEGAL	watcw2012@yahoo.com	F	✓			
14.	Jude Omondi	AFA - SD	omondi.jude@gmail.com	M	✓			
15.	John Mjoroge	DDA/MOALF&E	ningu@njoroge@yahoo.com	M	✓			
16.	JOSEPHINE OCUUTI	AFA - LEGAL	ocuti.j@ gmail.com	F				
17.								
18.								
19.								





## **AGRICULTURE AND FOOD AUTHORITY**

(Miraa, Pyrethrum and Other Industrial Crops Directorate)

Tea House, Naivasha Road, Off Ngong Road

P.O Box 37962-00100, Nairobi

Date: 11/3/2019

### **BACK TO OFFICE REPORT ON REGULATIONS REVIEW RETREAT IN MACHAKOS 4<sup>TH</sup> -8<sup>TH</sup> MARCH 2019**

#### **1.0 Introduction**

The retreat was organized by the legal department for all regulations managers and guided by the policy department of the MoALFI and the state counsel and legal advisor to the CS. The objective was to align the regulations as required by the Statutory Instruments Act, harmonize common regulations for all commodities, align general penalties as per the crops act, and harmonize/correct the drafting issues for uniformity. The exercise took place 4<sup>th</sup> – 8<sup>th</sup> March 2019 at Gelian Hotel Machakos.

#### **2.0 Methodology**

The process of review involved presentation of all the regulations per respective commodity and scrutinization of each clause by clause, regulation by regulation and comments noted for correction and addition before the regulations are presented to the final stakeholder meeting as per the **Gazette Notice 1909** and per notice on printed press, daily nation dated 7<sup>th</sup> Thursday of March 2019.

The respective directorates are additionally required to plan as per the schedule attached for the stakeholder presentation of comments and presentation. This shall be followed by an internal preparatory meeting with the committee on Parliamentary Committee on Delegated Legislations for their buy-in prior to the official meeting and presentation with the same. Legal department will spearhead the preparations.

12.	Regulation 13	Lack of quoting the form for registration of the register	<ul style="list-style-type: none"> <li>Quote the exact form and its particulars</li> </ul>
13.	Regulation 14	Kenya pyrethrum market access	<ul style="list-style-type: none"> <li>Use of the work directorate</li> <li>Consider the side notes to be grading</li> <li>Expound on the conditions for one to qualify to access the data</li> <li></li> </ul>
14.			<ul style="list-style-type: none"> <li>Introduce a regulation on trading.</li> <li>Payments of growers, international property rights, Royalties.</li> <li></li> </ul>
15.	Part IV: regulation 16		<ul style="list-style-type: none"> <li>Definition of pyrethrum flowers</li> <li>The whole clause to be reviewed</li> <li>Qualifications of officers weighing and analyzing flowers</li> <li>Description of the procedure/methodology</li> <li>Schedule of when the inspections will be conducted</li> <li>Appointment of the control lab</li> <li>16(4)(f) avoid being too wordy</li> </ul>
16.		Release orders and export/import permit	<ul style="list-style-type: none"> <li>Too much regulation of export/imports which may hinder revival process.</li> </ul>
17.		Registration of imports/exports	<ul style="list-style-type: none"> <li>Definition of pyrethrum product</li> <li>Fines to be referred to the schedules,</li> </ul>
18.	Regulations 23 (3)	Registration of growers	<ul style="list-style-type: none"> <li></li> </ul>
19.	Regulation 25	Verification of export and import	<ul style="list-style-type: none"> <li>Delete repetition of KRA</li> </ul>
20.	Regulations 26	Issuance of release order	<ul style="list-style-type: none"> <li>Attach Pyrethrum Industry Guidelines</li> </ul>
21.	Regulations 28(2)	Crops Arbitration Tribunal	<ul style="list-style-type: none"> <li>Harmonize miscellaneous provisions</li> <li>Establish a Dispute Resolution Committee for the crop, procedure of establishing, memberships,</li> </ul>
22.	Transition clause	Not available	<ul style="list-style-type: none"> <li>Introduce a transition clause for existing agreements and licenses</li> </ul>
23.	Use of forms	Not available	<ul style="list-style-type: none"> <li>Clause on use of all forms possible alterations</li> </ul>
24.	Pricing committee	Not available	<ul style="list-style-type: none"> <li>Establish a committee advisory</li> </ul>

## 5.0 Way forward

- i. Remove the functions of the directorate
- ii. Terry Gathagu (Legal Counsel) to confirm the objects and purpose
- iii. Expunge the crop inspectors provision – minimum qualification (harmonize with food regulations)
- iv. Ability modify the forms – borrow from food regulations
- v. Certificate of conformity for the exports
- vi. Change of all dates to 2019 and in the year

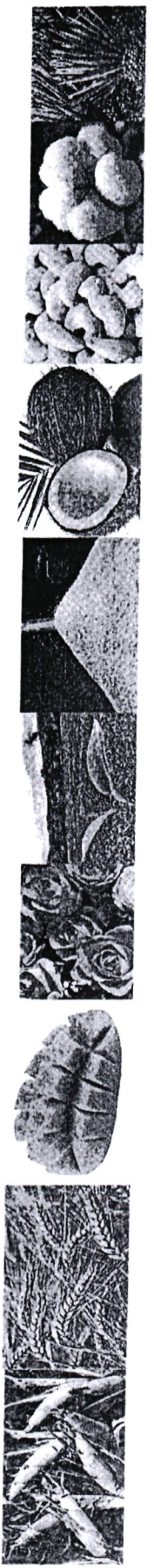
payable shall in any event not exceed ten per cent of the gate value of the agricultural or aquatic product.


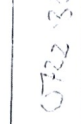
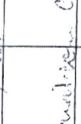
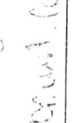


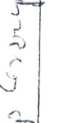
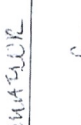

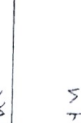
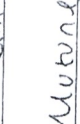
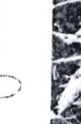
- vii. Possible fees that can
  - a. Product conformity inspection fee
  - b. Site inspection fees
  - c. Farm inspection per acre
- viii. Warehousing receipting system (WRS) – is still a bill and shall not be anticipated in the regulation as and when that happens. In summary, let the warehouses be checked and ensure to comply with standards.



**AGRICULTURE AND FOOD AUTHORITY (AFA)**  
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**VENUE: HCD HEADQUARTERS, NAIROBI**  
**ATTENDANCE LIST**

S.NO	NAME	ORGANIZATION	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
						<35	35 to 59	>59	
1	Muri Njiru	beautiflow	complanar@beautiflow.com kikombe@beautiflow.com	0710087298	F		33		
2	Nedias Githungo	Panda Flowers	bigmama@pandaflowers.com	0713615208	M		37		
3	AUDREY NAINANUSA	FRANCHISE HORTICULTURE	audrey@nainanusa.com	0723379566	F		30		
4	TEJESH NISANJI	PRINCESSA FLOWERS	prince@princessaflowers.com	0726510150	M		50		
5	EVANS MARI	PODME FLOWERS LTD	evans@podmeflowers.com	0726229586	M		34		
6	JENNIS KIGAMBA	Urban Development Kenya Limited	jenjis.kigamba@urban.com	0723665507	M		36		
7	Dennis Rotini	Sun Horticulture Ltd	dennis@sunhorticulture.com	0720322801	M		30		
8	KISHORE INEOROR	Panda flowers LTD	kishore@pandaflowers.com	073652120	M		48		
9	AUTO NG'UMESTACK	Magna Flowers (K) LTD	auto@magnaflores.com	0725783348	M		38		



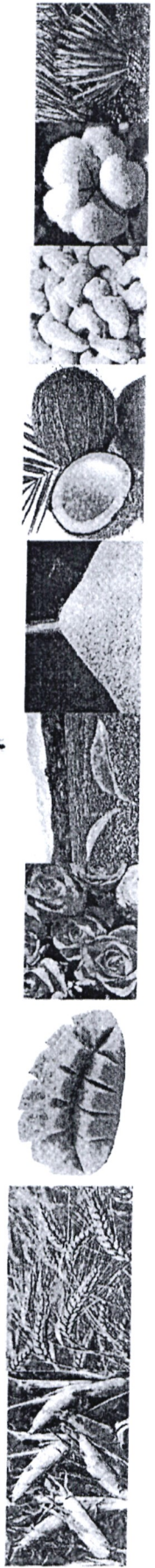
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10	NIRVANA MARIANNA	KUETHINE + NAGEL	nirvanna.marianna@kuethine-nagel.com	0700494293	M	✓		
11	Siobhán Wynn	Research	Siobhan.Wynn@Research	0722 30795	M		✓	
12	RUBY KEEGA	Research Solutions Ltd	Ruby.Keega@ResearchSolutionsLtd	0792705160	M	✓		
13	Ariana Issana	OLN JORDAN	Ariana.Issana@OLNJORDAN	0721971713	F			
14	Pans Alajo	Farm Focus	Pans.Alajo@FarmFocus	070092668	M		✓	
15	JULIANA TELA	GARDEN ROSES	Juliana.Tela@GardenRoses	0722154788	F		✓	
16	Nirvan Jundne	Black Tulip Group	nirvan@blacktulipgroup.com	0737248500	M	✓		
17	Geetha Thiraku Alwar	TUNARU	geetha.thiraku@tunarucorp.com	0720526330	M		✓	
18	Simon Mutisa Mwanja	Singa Agro Ltd	simonmutisamwanja@singagro.com	0724243395	M	✓		
19	Jano Kangithe	Florens Kenya Ltd	Jano.Kangithe@FlorensKenya.com	0722 253196	F		✓	
20	Conrad Simiyu	Florens Kenya Ltd	Conrad.Simiyu@FlorensKenya.com	0715980975	M			
21	Gyros Mutune	Key Egg Port	gyros@keyeggport.com	0716026939	M	✓		



S.NO	NAME	ORGANIZATION	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
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22	KENNEDY C KONGKI	P.S. Lone Flora Hotel	kes@pdsavett.com pds@pdsavett.com	0721920401	F	✓			
23	JAMES MUMUSU	P.J. Dams flower Ltd	Pjdamsflowers@ M) dms. com	0734411009	M		✓		
24	MICHAEL KIRUMU	AFRI-CALIA (A.L.I)	accounts@afri-calia	07833678	M		✓		
25	Kennedy Kimani	HARVESTI LIMITED	esph@harvesti.com	0728615674	M	✓			
26	AVEL NMBUWA	Isinger Roses Ltd	hr-admin@isinger.com	0721964740	F		✓		
27	GERMANY KARUMI	MEAROSE FARM	otkarumep@mea.com	073189835	M		✓		
28	BAS SNIK	KOOS ROSET	bas@koosroses.com	07353362	M		✓		
29	PATRICK MBUGUA	WILDFIRE	patrick.mbugua@wildfire- flowers.com	0721053300	M				
30	JOSEPH WANJOH	CHAIRMAN SUPPLIERS	joeph@wanjoh.com	0711556430 0759630334	M	✓		68%	
31	BONIFACE MUNDANI	Regal Flora Holland	bonifacemundani@ regalfloraholland.com	0721295214	M		✓		
32	Jules Kenia	Lakemaria flowers Ltd	Jules@lakemaria.com	0722222221	M		✓		
33	WALTER OROO	Exotic Peas Field	info@exoticfields.com	0715834510	M				



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34	ANNE WANGICHU	FRIGOLEN	anne.wangichu@frigolen.com	722 38812	F		✓		
35	Elizabeth Githika	FRIGOLEN		125410524	M	✓			
36	Peter GATHIKA	BEAUTYLINE LTD.	peter@beautyline.com	072139255	M		✓		
37	Paul Muliwa	VR EXHIBIT	lxfpx@vreature.com	07999006	M		✓		
38	Peter Mureithi	Lamona LTD	admin@lamonahome.co	072035474	M	✓			
39	Philip Kuiti	NINI	philip.k@nini.td.com	072686773	M		✓		
40	Julius Muechiri	Stokman Rozen	julius@stok.co.ke	0722200890	M		✓		
41	Rob LETCHER	DREA	rob.l@theredemiter.com	0741-404606	M		✓		
42	NIKASHA MATHIAN	EAGA	nikasha@eaga.co.ke	073903802	F		✓		
43	SAMUEL GICHUVA	POLLEN LTD	info.pollen@syngenta.co.ke	072197523	M		✓		
44	Andrew TUBE	Star Roses	atusei@starroses.co.ke	072195360	M		✓		



S.NO	NAME	ORGANIZATION	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
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43	RUTH MURRAY	AGRAKI FRESH LTD	info@agrakifresh.com	072433392	F	<input checked="" type="checkbox"/>			
44	SOPHIA HUNGAI	...	...	072558987	F				
47	TRANSONIA	...	...	0723497407	F				
48	MARILEE KARELICI	WINDSIVE FLOWERS LTD	thm@windsiveflowers.com	0724947352	M				
49	Dumo Dngora	MOALFI	kenoruno163@gmail.com	0711916766	M		<input checked="" type="checkbox"/>		
50	Severine K. Manene	MOALFI	Manene34@gmail.com	074748731	M		<input checked="" type="checkbox"/>		
51	PAUL MUNGAI	PRIME PRODUCTS INTL LTD	primeinternational@plb.co.ke	0722325653	M				
52	DENISH SHIRATI	ALLEGHENY GREENS LTD	allegheengreens@gmail.com	0729691321	M		<input checked="" type="checkbox"/>		
53	JOSEPH MUSEE	KARIMI LTD	info@karimi.com	072876533	M		<input checked="" type="checkbox"/>		
54	GEORGEY AMANI	EXECUTIVE ATHLETICS	Georrey@amania.com	072154978	M		<input checked="" type="checkbox"/>		
55	MILWA EXANS	FIDES (K) LTD	myfingerx@fidesgroup.com	0728787152	M		<input checked="" type="checkbox"/>		
56	TERESIA NICHENYA	CLOVERFLOWERS LTD	cloverflowers@stages.co.ke	0704415065	F		<input checked="" type="checkbox"/>		



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57	David Atrose	Danlag Wafind Netherlands Dev. Org (SNU)	info@danlagwafind.org d72276367	072276367	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
58	Gilhan Kedung	Siron Lesos	gkcedung@sin.com.j	0721246247	F	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
59	Patrick Njeng	Cafan Zan	Pijengcedung@cafan.com	072853576	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	[Signature]
60	Gustafy Mburika	Plinra	gustafy@burika.com	072267026	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
61	RUTH YHYD	Tambora Ltd	ruthofhivers@tambora.com	073352476	F	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
62	Kelvin K. Ngizi	IPS KENYA	info@kelvinngizi.com	072110819	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
63	NICHOLAS KATHGIA	Red Lands Roses	nicholas@redlandsroses.com	0722497407	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
64	Susani Munisi	KATHANI	munisi@kathani.com	07219005	F	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
65	Cedrick Mutsys	LESATIMA	cedrick@lesatima.com	0723065710	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
66	Fred Karemu	NAP-JA	fred@nap-ja.com	0721770622	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
67	David Nyang'oro	LESATIMA	info@nyangorodavid.com	070391191	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]
68	FRANCIS	LESATIMA	francis@lesatima.com	0721922007	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	[Signature]



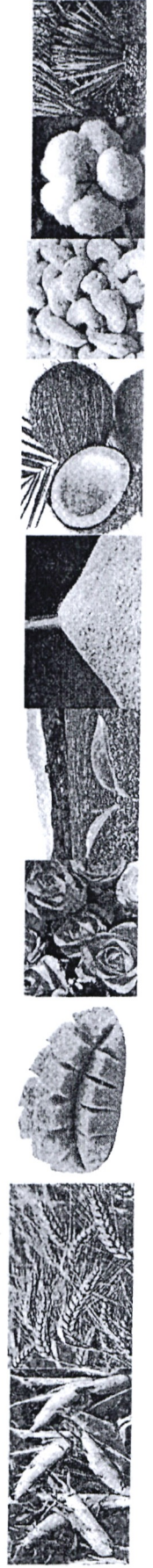


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S.NO	NAME	ORGANIZATION	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
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69	Joseph Musinga	SACCO FRESH LTD	info@siacco-fh.com	0761 720502	M			✓	
70	Wachira Theuri	NATHS ENT LTD	wachira@nathsent.co.ke	0720729684	M			✓	
71	JOSEPH OIENI	HARVEST LIMITED	compliance@harvestflowers.com	0723843333	M			✓	
72	JOSEPH KAMAU	KARIKI LTD	kamau.joseph@banki.co.ke	071332984	M		✓		
73	Kenneth Njiru	K (SE) UGANDA	kennethnjiru@kuganda.com	072584284	M			✓	
74	VINCENT ANJALYAN	FIBER KENYA LTD	VANDANING@NUMMENOZANG.COM	070596047	M			✓	
75	Nancy Wabwila	Agynostic		072533123	M			✓	
76	Dr Seth Wabwila	MMK Advocates	wabwila@mmk.com	0720890528	M			✓	
77	Margeline Mwangi	MMK Advocates	mwangimargeline@gmail.com	0705798181	F			✓	



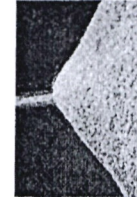
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78	Amos Mwanje	Phone	amwanje@kwafo.com	072237005	M		✓		
79	Yvonne Wamari	N.R.O ERSE AMARIL	yvonne@nriinternation.com	070366314	F		✓		
80	Dennis Mwirigi	Flamingo Horticulture.	dennis.mwirigi@flamingo.net	0724749843	M		✓		
81	Jalid Vindi	HCO	jalid.vindi@hco.gov.ke	0715224375	M		✓		
82	Henry Mbari	Fanuki Fresh	admin@fanukifresh.com	0720191355	M		✓		
83	DENNIS MAMWEKA	GO FOR GREEN LTD	dennis@goforgreen.co.ke	072744470	M		✓		
84	BENJAMIN MURIDI	Mr FRESH FRESH FRUIT EXPORTS LTD	benjamin@freshfruit.co.ke	0722203781 0723221610	M		✓		
85	LAWA OUDO	ORCHARD BLOOD	lawa@orchardblood.co.ke	0722919781	F		✓		
86	Simon Kibuit	KBOYS FRESH FRESH	simon@kboysfresh.co.ke	0722696150	M		✓		
87	Agnes Kavua	IKUAT	agnes@ikuat.co.ke	072555352	F		✓		
88	ARON WAINUMU	LINEX	aron@linex.co.ke	0722244122	F		✓		
89	LUDIA KIMANI	RETRAK	ludia@retrak.co.ke	0721733112	F		✓		



S.NO	NAME	DIRECTORATE/ DEPARTMENT	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
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90	MARTHA AKALE	SIGNET TRUUS	akaluma@signetgroup.com	0729470111	F	✓			
91	JULIETH RIBWA	NAPUW IRINDEE	irin@napuw.com	0728128215	F	✓			
92	Geoffrey M. Kamau	KALRO	geoffrey.kamau@kalro.org	0721315877	M		✓		
93	Eunice M. Mutua	Select Fresh Produce Kenya Ltd	eunice-mkenia@select.com	0732520350 0720520350	F		✓		
94	NICHOLAS OCSH	J.K.O.A.T	ocsh@jkoat.or.ke	0729820799	M	✓			
95	PATIENCE KENYOTA	JKUAT	patience@jkuat.ac.ke	0706490205	F	✓			
96	ANITA WANGI	AGROMA	anita@agroma.co.ke	075407999	F	✓			
97	KIPPAN JAMES	SILVANA	james.kippan@silvana.co.ke	0704194111	M	✓			
98	JATARIU N'YONGI	AGVIA HEART LTD	jatariu@agvia.com	0724136628	M	✓			
99	Samuel Mwangi	Nine Fruits Ltd (Kenya)	Samuel@ninefruits.com	0725019497	M	✓			
100	Kennedy Kwibya	Nine Fruits (Kenya) Vegetables	kennedy@ninefruits.com	0703625422	M	✓			
101									



S.NO	NAME	DIRECTORATE/ DEPARTMENT	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)		SIGNATURE
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111	Isbenish Mulyan	Organization						
112	LUCY W. LAMUKUNYA	FRESH	lucy.wanjira@nyajira.go.ke	0722768936	F	39		[Signature]
113	JOSEPH MINGA KIHATO	SUPPLIER		0721966854	M	51		[Signature]
114	Nabachon Nuge	FTNDAK	Manufacturets@ 2fresh.com	0722352486	M	52		[Signature]
115	ERIC MUKUNA	MEAT & BONE	eric.mukuna@nyajira.go.ke	0722670011	M	42		[Signature]
116	CHRISTINE WANJIRA	INTERPLANT PROSECA LTD	info@interplant.co.ke	0729060124	F	39		[Signature]
117	Benedict Muliwo	Public Address System	MultiService@nyajira.go.ke	0721331085	M	35		[Signature]
118	RICHARD SIGUNAH	SUPARI GROUP	rsigunah@supari.com	0713011200	M			[Signature]
119	CAROL MUMBI	FCK	Amulya@ fresh.com	020 2088469	F			[Signature]
120	IYA NYANJA	FRESH	info@fresh.com	0725067722	F			[Signature]
121	TENTU MUIANIKI GITAU	MCFARM	mgitau29@gmail.com	07223472243	M			[Signature]
122								



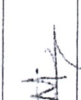


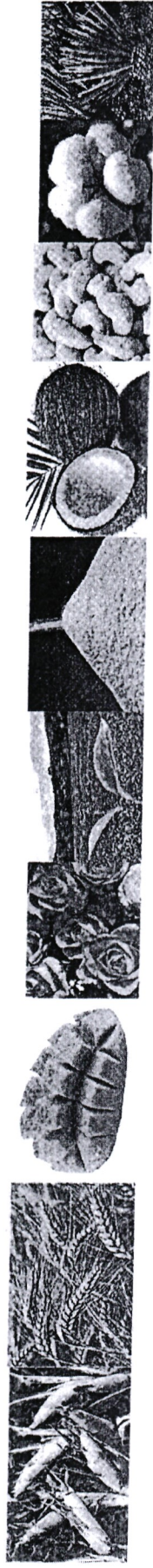
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122	Gilvan Allen	Mabruco Ltd	gilvan28@gmail.com	0721741772	M		✓		Allen
123	Mungendo Ezekiel	Sevens basket Ltd	Mungendoezekiel@gmail.com	0719882949	M	✓			Ezekiel
124	Angeline Mwira	KEPHIS	amwairaw@kephis.org	0724945215	F		✓		Angeline
125	Caren Cassio	AFA-MCA	Caren.cassio@gmail.com	0723900717	F		✓		Cassio
126	Mungendo Isaac	DePaf. Stays	isacmungendo@yahoo.com	0721541651	M		✓		Isaac
127	Aracelis chent	JIKUAT	aracelischent@gmail.com	0729088055	F		✓		Aracelis
128	Allan Edhiambo	JKUAT	edhiamboallan@gmail.com	071858296	M		✓		Edhiambo
129	Iria Muthau	JKUAT	iriamuthau@gmail.com	071823720	F		✓		Muthau
130	Getube Issie	JKUAT	getubegetube@gmail.com	0700490557	F		✓		Getube
131	Edhur Wairimu	JKUAT	edhurwairimu@gmail.com	6715746349	F		✓		Edhur
132	SELOMON KAMAU	JKUAT	Selomon.kjy@gmail.com	0702657161	M		✓		Selomon
133	ADHIAMBO WINNY	JKUAT	adhiambowinny@gmail.com	070454145	F		✓		Adhiambo



S.NO	NAME	DIRECTORATE/ DEPARTMENT	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
						<35	35 to 59	>59	
134	Cardlyne Marondi	JKUNT	cardlyne.mardi.3@gmail	0721659050	F	✓			Cardlyne
135	PETER MURHANA	JKUAT	Pmurhans.kc@gmail.com	0716348550	M	✓			Peter
136	Timon Buer	HCD	boenfinn@gmail.com	0723741442	M	✓			Timon
137	Alex ONYANGO	GHUNT	MUDAGMAIL.COM	071486321	M	✓			Alex
138	NAOM NYAUNDI	HCD	naomyinyancham1300	0717479200	F	✓			Naomy
139	BERTRICE NG'ANGU	AFA-HCD	beautifyingju@yahoo.com	0711405530	F	✓			Bertrice
140	Symba Alungu	AFA-HCD	luxcedawu	0723622800	F	✓			Symba
141	Wilberda Njumbi	AFA - HCD	Wilberda.njumbi@gmail	0717345552	F				Wilberda
142	David Kirui	AFA HCD	davidkirui30@gmail.com	071624371	M	✓			David
143	Monica Sanyal	Agriculture	afripreo@gmail.com	0720202164	F	✓			Monica
144	Ujaina George	Farmer	-	0733614272	M	✓			Ujaina
145	Jedip Maweo	Farmer	merwee.jedip@yahoo.com	0723741448	M	✓			Jedip



S.NO	NAME	DIRECTORATE/ DEPARTMENT	E-MAIL ADDRESS	PHONE NO.	GENDER	AGE (Years)			SIGNATURE
						<35	35 to 59	>59	
142	Nickolas Chege	farmer/meru	chegebc@gmail.com	072600001	M			<input checked="" type="checkbox"/>	
144	SAMUEL KIRIMI	FARMER/ENDBY	SARMIK@Yahoo.com	0721601309	M			<input checked="" type="checkbox"/>	
150	Nickel Gitau	Farmer/Nyeri	-	0711001132	M			<input checked="" type="checkbox"/>	





## AGRICULTURE AND FOOD AUTHORITY

### HORTICULTURAL CROPS DIRECTORATE

Nairobi Horticultural Centre next to JKIA,  
P.O. Box 42601 - 00100  
Telephone: 020-2088469, 020-2131560  
Email: [md.hcda@gmail.com](mailto:md.hcda@gmail.com) Website: [www.afa.go.ke](http://www.afa.go.ke)

Ref: AFA/HCD/ADM/21(72)

18<sup>th</sup> February 2019

The Chief Executive Officer  
Kenya Flower Council (KFC)  
P. O Box 56325 – 00200

**NAIROBI**

Email: [kfc@wanachi.com](mailto:kfc@wanachi.com), [ceo@kenyaflowercouncil.org](mailto:ceo@kenyaflowercouncil.org), [info@kenyaflowercouncil.org](mailto:info@kenyaflowercouncil.org)

The Chief Executive Officer  
Fresh Produce Consortium - Kenya  
P. O Box 30592 – 00100  
Surveyors Court, Woodvale Groove, Westlands

**NAIROBI**

Email: [ojepat@fpckkenya.org](mailto:ojepat@fpckkenya.org), [info@fpckkenya.org](mailto:info@fpckkenya.org)

The Chief Executive Officer  
Fresh Produce Exporters Association of Kenya (FPEAK)  
P. O Box 40312 – 00100  
New Rehema House, 4th Floor, Rhapta Road, Westlands

**NAIROBI**

Email: [info@fpeak.org](mailto:info@fpeak.org), [chiefexecutive@fpeak.org](mailto:chiefexecutive@fpeak.org)

#### **RE: REQUEST FOR COMMENTS**

The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation is in the process of promulgating the Crops (Horticulture) Regulations, as provided for under section 40 of the Crops Act, 2013.

The main objective of the above Regulations is to provide for the regulation, promotion, and development of the horticulture Industry value chain in Kenya.

The constitution of Kenya, 2010, Crops Act, 2013 and the statutory Instruments Act, 2013 provides that the public participates in the decision making process through submission of comments to the Ministry.

It is in this spirit that we request to have a meeting on **Monday 25<sup>th</sup> March 2019** at the HCD Offices, Nairobi Horticulture Centre, Embakasi North, Mazao road, Nairobi at 9. 00am to discuss the draft Regulations, and the respective impact Statement.

We look forward to your attendance and active participation. The draft regulations can be downloaded from our website, [www.afa.go.ke](http://www.afa.go.ke)



**WILFRED G. YAKO**

**FOR: INTERIM HEAD OF DIRECTORATE**



## AGRICULTURE AND FOOD AUTHORITY

### HORTICULTURAL CROPS DIRECTORATE

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P.O. Box 42601 - 00100  
Telephone: 020-2088469, 020-2131560  
Email: [md.hcda@gmail.com](mailto:md.hcda@gmail.com) Website: [www.afa.go.ke](http://www.afa.go.ke)

Ref: AFA/HCD/ADM/21(71)

18<sup>th</sup> February 2019

TO : CEC Members - Agriculture Livestock & Irrigation

**RE: REQUEST FOR COMMENTS**

The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation is in the process of promulgating the Crops (Horticulture) Regulations, as provided for under section 40 of the Crops Act, 2013.

The main objective of the above Regulations is to provide for the regulation, promotion, and development of the horticulture Industry value chain in Kenya.

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It is in this spirit that we request to hold a public forum on **Tuesday 26<sup>th</sup> March 2019** at the HCD Offices, Nairobi Horticulture Centre, Embakasi North, Mazao road, Nairobi at 9. 00am to discuss the draft Regulations, and the respective impact Statement.

We look forward to your attendance and active participation. Counties are asked to facilitate their representatives to the forum. The draft regulations can be downloaded from our website, [www.afa.go.ke](http://www.afa.go.ke)

**WILFRED G. YAKO**  
**FOR: INTERIM HEAD OF DIRECTORATE**



# AGRICULTURE AND FOOD AUTHORITY

## HORTICULTURAL CROPS DIRECTORATE

Nairobi Horticultural Centre next to JKIA,  
P.O. Box 42601 - 00100  
Telephone: 020-2088469, 020-2131560  
Email: [md.hcda@gmail.com](mailto:md.hcda@gmail.com) Website: [www.afa.go.ke](http://www.afa.go.ke)

Ref: AFA/HCD/ADM/21(73)

18<sup>th</sup> February 2019

Ministry of Agriculture, Livestock and Fisheries  
State Department of Crop Development  
Kilimo House.  
P O Box 30028 - 00100

**NAIROBI**

### **RE: REQUEST FOR COMMENTS**

The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation is in the process of promulgating the Crops (Horticulture) Regulations, as provided for under section 40 of the Crops Act, 2013.

The main objective of the above Regulations is to provide for the regulation, promotion, and development of the horticulture Industry value chain in Kenya.

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**WILFRED G. YAKO**  
**FOR: INTERIM HEAD OF DIRECTORATE**



## HORTICULTURE CROPS DIRECTORATE

### STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME:..... ABDUL ALEEM.....

EMAIL..... info@kenfluxaa.com.....

ORGANIZATION:..... Kenfluxaa Ltd.....

QUESTION:..... ON levy.....

..... FOB value.....  
..... It is noted that C & F invoices are taken as  
FOB, while 55% of C & F invoices are the costs  
that include freight, cleaning, inspection, auction costs  
etc. Now we have noted that HCB's single window  
system is considering as FOB. This means we have  
to pay levy for the costs as well we therefore  
define clearly FOB value.....

QUESTION REFERRED TO (Regulation/  
PAGE)..... 10<sup>th</sup> Schedule Export levy.....

..... why to move from volume to value as it  
to generate more revenue.....

### COMMENTS/PROPOSED INPUTS/ CORRECTIONS

..... we already have Revenue Authority, to  
get taxes for Govt.  
..... of 2% is levy you are putting then it should  
on profit of the company makes, but not on invoice value  
..... so No. 1 let us decide what is FOB value??

..... final suggestion: status quo is maintained until  
we involve stakeholders into this draft and involve  
all associations of Horticultural / Floricultural sectors



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: MICHAEL KARUME

EMAIL: ACCOUNTS@AFRICALLA.COM

ORGANIZATION: AFRICALLA KENYA LTD

QUESTION:

① DOUBLE FARM INSPECTION BY KEPHIS AND HCD.

② LEVY FEES SHOULD REMAIN AT 0.30% TONNAGE

③

QUESTION REFERRED TO (Regulation/  
PAGE)

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

THE REGULATIONS SHOULD BE PUT ON HOLD UNTIL FURTHER CONSULTATIONS



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME:.....Nirakar R. Jundax.....

EMAIL.....nj@btfgroup.com.....

ORGANIZATION:.....Black Tuplip Group.....

QUESTION: ① Farm inspection fees applies to the area under cultivation or the total area of farm??

② Does Part III Clause 27/3 applies to Floriculture industry.

QUESTION REFERRED TO (Regulation/  
PAGE) ① Tentative Schedule

② Part III clause 27/3

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

- Looks like the document is drafted without consultation with stakeholders as there are many questions

- Taxes indicated in document are very high and the flower business will not sustain

- Farm inspection by REPHIS & County is duplication

①  
26/3/19



## HORTICULTURE CROPS DIRECTORATE

### STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: Denish Shrestha

EMAIL: allegheenygreensLtd@gmail.com, denish.weaver@yahoo.com

ORGANIZATION: Allegheny Greens Ltd

QUESTION: The Contracting of farmers.  
Has County Government aligned their respective  
departments to tackle this or this will result into delay  
of these crucial documents. Article (5).

\* My opinion  $\Rightarrow$  let the contract remain between the  
Exporter/ farmer but witnessed by the Hcd regional officer

\* Let more powers be given to hcd officers in their region  
to handle issues of poaching and raise the same to Hq for  
for actions. This will help in food safety and price hike.

QUESTION REFERRED TO (Regulation/  
PAGE) (6) article (5) - (5) clause 7. Charging of growers registration  
Combs. Might decide to charge more or what exporters beside the  
produce price they give to farmers. May not be suitable.

### COMMENTS/PROPOSED INPUTS/ CORRECTIONS

Levies: Inspection for product conformity - 1000/- Not clear  
based on what is too much still  
Produce facility inspection - 5000 - twice per year or more or more  
besides license fee. You have raised from 5000 - 22000  
Audit due to inspection - 100% of the cost - Not clear. Po Invo  
on transport.

- Avoid Broker registrations by the Authority as they contribute  
to a breach in food safety objectives.



## HORTICULTURE CROPS DIRECTORATE

### STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: NIKHILAS... GATTIMEL.....

EMAIL: [bycinc@pentaflowers.co.ke](mailto:bycinc@pentaflowers.co.ke)

ORGANIZATION: Penta Flowers.....

QUESTIONS: ① What is the point of increasing levy charges from 30 cents/kg to 2% F.O.S per consignment?

② Why has the county government & HCD been given the mandate to designate markets?

③ The increase in levies is unacceptable and not reality based as it aims to kill the flower industry.

QUESTION REFERRED TO (Regulation/  
PAGE) SECTION ~~34~~ 34, SECTION 27, Schedule 10.

COMMENTS/PROPOSED INPUTS/ CORRECTIONS  
- Retain status quo i.e. 30 cents per kg to remain as is.

- Let the delimitation of markets be the preserve of the individual businesses.

- Retain the old levies under the HCD order of 2011.



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: NICHOLAS KAMIGA

EMAIL: nicholas.kamiga@ipskenya.com

ORGANIZATION: Allfruit LTD

QUESTION:

QUESTION REFERRED TO (Regulation/  
PAGE) (9) page (7)

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

→ Remove the grey area on the certification on Nursery operators especially on plant material movement.

Refer to section (9)

→ Protect the small scale nursery operators from bureaucracy



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: ERICK Oguno

EMAIL: eoguno@gmail.com

ORGANIZATION: SOCAA

QUESTION: - Why is registration of professionals not clearly outlined?

Why is professional registration under Quality & Market?

Can we have registration of professionals clearly outlined including belonging to professional society/body?

QUESTION REFERRED TO (Regulation/PAGE): Part II & Part III part 25

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

Just like growers, nurseries & dealers have been regulated, there is need to also regulate the professionals. As it is now, it does not make sense to get inspectors to inspect processes that have not been implemented professionally. The biggest challenge we face is due to unregulation of professionals.

We need to either add registration of professionals or farm Managers/Agonomists to part II or create a new part. Remove the mention on professional registration from part III. Professional registration needs to be self-regulated by virtue of professional societies which have a vetting process that can be verified by the authority.





HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME:.....*H. M. R. H. R. V. G. I. C. N. C. D.*.....

EMAIL.....

ORGANIZATION:.....*Chennai*.....

QUESTION:.....

*Please this is not the title of H.C.D. - is it?*

QUESTION REFERRED TO (Regulation/

PAGE) *13 Article 23 the whole of the not favouring mother the farmer.*

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

*Please H.C.D. go back - I am a duty of being a bridge of (1) farmer (2) Government & Nation.*



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: BETTY MUSEMBI

EMAIL: bmusembi@snv.org

ORGANIZATION: SNV - Netherlands Development Organization

QUESTION: 1- Clarify on who does the inspection and certification i.e. either the county government inspector or KEPHIS or HCD.

✓ There is a lot of overlap on that.

2- Levies to be reviewed and cess taxes to be harmonized.

QUESTION REFERRED TO (Regulation/  
PAGE) Clause 31 page 16  
10<sup>th</sup> schedule

COMMENTS/PROPOSED INPUTS/ CORRECTIONS  
N/A



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: GILBERTIAN KADENZI M.

EMAIL: gkadenzi@siiv.org

ORGANIZATION: NETHERLANDS DEVELOPMENT ORGANIZATION

QUESTION:

1: Conditions for licensing of dealers are clear. However, can a grower be as well a dealer? Yes. How are such dealers licensed?

2: Overlapping roles between county govt, Kephis and HCD needs to be clarified as this has an impact on overall taxes/costs

QUESTION REFERRED TO (Regulation/PAGE)

Article 17 Part 2

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

Seeking clarification on Q1 & Q2



26/03/2019

HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: IRENE WAMBUI NGATA

EMAIL: NGATA.IRENE@GMAIL.COM

ORGANIZATION: LYNNEX COMPANY LIMITED

QUESTION: Why has the government failed to provide cooling facilities in counties for horticulture produce?

QUESTION REFERRED TO (Regulation/PAGE)

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

- NO ADOPTION OF REGULATIONS
- PROPOSED REGULATIONS ARE TO OPPRESS THE EXPORTERS/FARMERS AND NOT GROWERS/DEALER
- MOST OF COUNTY GOVERNMENTS HAVE NO SYSTEMS TO SUPPORT FARMERS HENCE NO VALUE FOR ANY THE PROPOSED LEVY





HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME:.....M. B. I. AM..... Kimau.....

EMAIL.....m.b.i.am.....kimau.....@.....kariuki.....biz.....

ORGANIZATION:.....KARIUKI..... LTD.....

QUESTION: → The 12.5 times levy is killing the industry. As we say we are supporting a big 4 agenda, the bill is heavily killing horticulture industry heavily. In mind the growing cost is drastically gone up. → propose all the licensed payment to be divided to county govt to reduce the bureaucracy which also goes hand in hand with cost and excess document

QUESTION REFERRED TO (Regulation/PAGE) → Article 34  
→ General devaluation of horticulture industry

COMMENTS/PROPOSED INPUTS/ CORRECTIONS  
→ maintain the levy as it is now  
→ leave the licensing to one firm  
of govt either county or central  
govt not all  
→ consolidate certification to one office



## HORTICULTURE CROPS DIRECTORATE

### STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: RANISA C. KESKEI

EMAIL: Legal@pickapylora.com

ORGANIZATION: P.I. NAVE FLEDA LIMITED

QUESTION: 1. Under the Seventh schedule under the obligations of the Producers & Traders clause (a)(ii) - what does degradingly blocks mean?

Besides the ~~examples~~ <sup>examples</sup> include the county government, what does this document seek to cover? What was going in the previous ~~laws~~ laws

QUESTION REFERRED TO (Regulation/  
PAGE)

### COMMENTS/PROPOSED INPUTS/ CORRECTIONS

1. Define "Planning to be used"
  2. Section 23(d) Contracting itself
  3. Allow for over dispute resolution alternatives. Top of the list being Arbitration
  4. The levies are oppressive
  5. Freedom to contract - feel the industry is being micro-managed.
6. In the guidelines for the contract, using an example of the flower industry, the prices of the flowers are determined by the auction. Flowers, in regard to quantity, are also determined upon an order. Quantity and price cannot be put into any contracts. His proposal is to allow flower farmers to draft contracts with regard to their interests.



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: Eunice Mbeneka Mutha

EMAIL: eunice.mbeneka@gmail.com - 0733580350

ORGANIZATION: Select Fresh Produce Kenya Ltd

QUESTION: /comment

Thank you for your continued support. Please could you retain some of the budget allocated to Research, Capacity Building & Markets development

HCD is best positioned to capacity build farmers/SMEs to go to their next level & even better because you go to many trade fairs so you can connect/reward farmer groups with markets. Basically you should run an export training programme I have relevant partners in Kenya/Ireland to teach on Incoterms, trade

QUESTION REFERRED TO (Regulation/ Instruments etc - PAGE)

COMMENTS/PROPOSED INPUTS/ CORRECTIONS



AGRICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: CHRISTINE WANJIRA

EMAIL: info@interplantea.co.ke

INTERPLANT ROSES EA LTD

QUESTION:

Why should we be paying taxes to multiple countries yet we have already paid for the permit

QUESTION REFERRED TO (Regulation/PAGE) 92

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

The levy proposed is unsustainable due to the high cost of running the business.

- Please do not kill the horticulture industry as there will push the investors to other countries with the less restricting policies.



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: Verninah Wambui

EMAIL: info.ke@nirp.international.com

ORGANIZATION: NIRP East Africa Ltd.

QUESTION: Why is there introduction of lene's that are not sustainable by the industry to the benefit of country cost which are not helpful at all. The need for devaluation for agricultural industry - there is also duplication of lene's as follows

Farm inspection - This is done by KEPHIS  
Inspection of product conformity - This is done by KEPHIS  
Import Levy - Raw material - This is done by KEPHIS  
(propagation flowers)

QUESTION REFERRED TO (Regulation/  
PAGE) 52 Tenm schedule

Why do we have double taxation on these lene's? Why increase Export license 5 times more of the current fee?

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

1. Kindly bring on board KFC, KEPHIS on board being bodies that understand the horticulture industry. Consider to facilitate the industry to grow instead of killing by introduction of lene's that are not sustainable.

2. In future always involve other stakeholders before drafting any amendments/ regulations in order not to ~~adopt~~ <sup>adopt</sup> the whole drafted regulation.

3. Maintain status Quo at the moment until there is further consultation with KFC, SPEAK & KEPHIS to have a proper regulation to improve the industry to another level.





ARDA  
Our Crops, Our Wealth.

## HORTICULTURE CROPS DIRECTORATE

### STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: Julius Mucitia

EMAIL: julius@srk.co.ke

ORGANIZATION: Stokman Bazen Ltd.

QUESTION: Flowers & ornamentals is currently self regulated right from the breeders, propagators, growers and exporters. KEPHIS is playing an important role in this. What capacity does the County government have at present to justify their involvement and why duplicate what has been working well so far?

QUESTION REFERRED TO (Regulation/  
PAGE):

The whole document.

### COMMENTS/PROPOSED INPUTS/ CORRECTIONS

Set up separate stakeholder groups that have different products to come up with proposals on regulations that directly affect them.





## HORTICULTURE CROPS DIRECTORATE

### STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: Julius UGAMBA

EMAIL: info@oserian.com Julius.ugamba@oserian.com

ORGANIZATION: OSERIAN DEVELOPMENT COMPANY LIMITED

QUESTION: i) Section 25 (d) Not clear on what type of documentation require surcharge = ksh 1000 is unreasonable for farmers.

ii) Section 34 Export levy of 2% of F.O.B value is too expensive and not sustainable for the farmers. Current levy should remain in main.

iii) Section 17 (4) (i) (e) Valid members of an industry Association to be defined.

QUESTION REFERRED TO (Regulation/  
PAGE)

### COMMENTS/PROPOSED INPUTS/ CORRECTIONS

Proposal  
Section 25 (d) → Surcharge should be scrapped out

Fourth schedule → Annual Dealers limit - 25,000 from the limit  
Ksh 5,000 is too high. Ksh 5,000 should remain.

→ Adds due to interception or notification from the market → 100%  
of the cost - should be made clear and have an upper limit.

→ 2% of the levy on F.O.B should be reviewed to 0.2%  
or the state quo remain of ksh 0.25 per kg.

General recommendation  
→ Need to consider having different regulations per crop and  
type of business e.g. flowers & ornamentals, fruits & vegetables  
and planting materials.



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: JOSEPH OTIENO

EMAIL: [comphane@harvestflowers.com](mailto:comphane@harvestflowers.com)

ORGANIZATION: HARVEST LIMITED

QUESTION: Comphane with KSh 1758 comes with an immense lot. This affects the producers due to inspections and audits including statutory audits, inspections & certification audits.

QUESTION REFERRED TO (Regulation/  
PAGE) II

Traceability of produce - article 22 (a)

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

The dealers otherwise known as consolidators control a significant percentage of flower exports. They (consolidators) don't incur costs of KSh 1758. This creates an imbalance of trade. The consolidators need to be regulated as much. During vetting, they use our certificates to get clearance.



HORTICULTURE CROPS DIRECTORATE

STAKEHOLDERS' INPUTS/COMMENTS/ ENQUIRIES

NAME: Kennedy Kimyeli

EMAIL: Kennedy.kimyeli@harvestaffairs.com

ORGANIZATION: HARVEST LIMITED

QUESTION:

1. Levies fee
2. Inspection fee/interception fee
3. Dealers registration 25,000 is high

QUESTION REFERRED TO (Regulation/  
PAGE)

COMMENTS/PROPOSED INPUTS/ CORRECTIONS

- Interception fee clarification
- Dealers registration to remain 5000
- Interception and Documentation interpretation
- More Research and Capacity building

**CERTIFICATE OF  
COMPLIANCE**



STATUTORY INSTRUMENTS ACT, NO. 23 of 2013

CERTIFICATE OF COMPLIANCE

(UNDER THE STATUTORY INSTRUMENTS ACT, NO. 23 OF 2013, SECTION 7(4))

THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

Whereas the Cabinet Secretary for Agriculture, Livestock, Fisheries and cooperatives has published the **Crops (Horticultural Crops) Regulations, 2020** pursuant to the powers conferred by section 40 of the Crops Act No. 16 of 2013, IT IS HEREBY CERTIFIED that the aforesaid **Crops (Horticultural Crops) Regulations, 2020**:

- a) Meet the requirements relating to regulatory impact statement in the Statutory Instruments Act No. 23 of 2013 and the guidelines have been complied with; and
- b) In my opinion, the regulatory impact statement adequately assesses the likely impact of the Proposed Crops (Food Crops) Regulations, 2020.

Dated this .....*29th*..... Day of .....*July*.....2020

Signature of Cabinet Secretary

HON. PETER MUNYA, MGH

CABINET SECRETARY,

MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES