



MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES

**(STATE DEPARTMENT FOR CROP DEVELOPMENT & AGRICULTURAL
RESEARCH)**

DRAFT REGULATORY IMPACT STATEMENT (RIS)

**THE NATIONAL CEREALS AND PRODUCE BOARD (NATIONAL FOOD RESERVE)
REGULATIONS 2022**

MAY, 2022

1.0 Introduction

The Regulatory Impact Statement for the proposed National Cereals and Produce Board (National Food Reserve) Regulations 2021 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instruments Act, 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 (2) of the Act set out the contents of a regulatory impact statement for the proposed regulations as follows:

2.0 A Statement of the Objectives and Reasons for the Proposed Regulations

The general objective of the Regulations is to facilitate better carrying out of the purposes and functions of the National Cereals and Produce Board established pursuant to National Cereals and Produce Board Act. The specific objectives are to:

- a) Establish and maintain a National Food Reserve in the country.
- b) Provide for food commodities price stabilization in the country

3.0 Statement on the Effect of the Proposed Regulations

3.1 Effect on the Public Sector

- i. The Government will establish a harmonized and streamlined national food reserve under one agency devoid of competing interests from other multiple agencies with other roles in food reserves management.
- ii. The management of the National Food Reserve will be enhanced with a central command and thus reducing the decision-making time and avoiding delays in decision making.
- iii. Adequate food stock availability and price stability will be more assured with the establishment of a functional, efficient and effective National Food Reserve by addressing food supply and price fluctuations across surplus and low supply periods.
- iv. The immense NCPB storage capacity which is currently underutilized (13%) will be put into economic use by the Board and also made available (at least 25% of capacity) to private sector actors involved in National Food Reserve stock management, earning the Board rental revenues.
- v. The development of an efficient National Food Reserve and will support and fast-track full implementation of the warehouse receipt system Act 2019 and its Regulations and thus facilitate the development of a functional and effective warehouse receipt system in the country to the benefit of all stakeholders including the smallholder farmers.

- vi. The public cost in the management of the National Food Reserve will be reduced with the private sector holding and managing most of the food reserves in the country and thus bearing most of the cost of food stock management, saving the government the current high cost of food stock management.
- vii. Restructuring of NCPB to enable the Board to undertake commercial storage and trading in food commodities alongside the role of being the National Food Reserve Agency will allow the generation of own financial incomes and thus reduce dependency on the exchequer.
- viii. The clustering and registration of smallholder farmers and agro-dealers around aggregation centres (cooperatives or warehouses) for storage, bulk inputs sourcing and marketing will provide real-time data on the active number of actors in each of the staple food commodities value chains, production, stocks and stock movement, inputs and services sources and requirements and produce marketing for more informed planning and decision making.
- ix. The warehouses and cooperatives affiliated with NCPB Trading Agency will provide extension and input services to registered farmers as part of business development complementing services of the stretched public extension and inputs supply services.
- x. The Food Balance Committee advisories to the National Food Reserve Agency will be informed by specific developed tools and analytics that support decision making, thus decisions will always be better informed and in the public interest.
- xi. The Food Reserve physical stock and warehouse receipts will be competitively procured and sold, and thus more transparent, eliminating possibilities of any underhand dealings that may result in loss of public assets and resources.
- xii. The increased use of certified, licensed more appropriate and suitable warehouses in the country for storage will significantly reduce the post-harvest losses of agricultural produce and thereby reduce the need for food imports to bridge the frequent food deficits.
- xiii. The WRS will provide individual County Governments with a well-organized agriculture marketing structure at the local level inclusive of all the WRS actors and producers for effective regulation and better coordination of the sector in the county and promoting agriculture produce value chains, agro-processing and trading developments in the counties.
- xiv. Promotion and adoption of food safety, hygiene and produce quality standards envisaged in the WRS will ensure access to quality and healthy food in the country, reducing health challenges resulting from consumption of poor quality food, contaminated and unhealthy foods, contributing to reducing public health provision costs.
- xv. Improved access to affordable finance by farmers and traders using WRS receipts as collaterals will provide the much-needed capital to enable the farmers and traders

to increase their production and grow their businesses respectively, increasing agricultural production and trading and so contributing to the growth of the agricultural and the national GDP.

- xvi. Better storage facilities and localized warehouse receipting can help farmers hold back more harvests for their local consumption requirements thus enhancing local food security and reducing the dependency on relief food.
- xvii. The transaction levy introduced towards cost recovery and sustainability of the National Food Reserve Fund will generate additional revenue for NCPB.

3.2 Effects on the Private Sector

The proposed Regulations will affect the private sector in the following ways:-

- i. The private sector participation in the National Food Reserve management will be increased through business opportunities created in the design of the proposed National Food Reserve and the conducive policy environment that supports the growth of predictable agricultural markets.
- ii. The competitive procurement and sale of Food Reserve physical stock and warehouse receipts in a transparent manner will eliminate fears and suspicions of unfair trade practices and attract more private sector actors' participation in the opportunities created in the WRS and the National Food Reserve.
- iii. Food availability, food access and price stability will be more guaranteed to the population with the establishment of a functional, efficient and effective National Food Reserve by reducing food supply and price fluctuations across surplus and low supply periods.
- iv. The private sector investing in the WRS and produce trade will be able to access and utilize part of the idle immense NCPB storage capacity for use, saving them the huge capital investment required to put up such facilities or leasing unsuitable food storage facilities.
- v. Farmers registered with their local warehouses/cooperatives will enter into production contracts with them, guaranteeing them stable produce markets and prices.
- vi. The reduced fluctuations in produce prices and supply through the season will increase the confidence of farmers, traders and other agropreneurs to sustain and increase their production and business volumes.
- vii. The development of an efficient warehouse receipt system will transform agricultural production, trading and agro-processing businesses enhancing their sustainability and viability
- viii. The clustering, registration and organizing of smallholder farmers around aggregation centres (cooperatives or warehouses) for storage, bulk inputs sourcing and marketing will enable farmers to benefit from economies of scale in inputs sourcing and collective marketing.
- ix. Farmers and traders will benefit from the alternative extension, input and business development support services from warehouses and cooperatives affiliated with NCPB

- Trading Agency to complement services received from the public extension and inputs supply services.
- x. The increased use of more appropriate and suitable warehouses for produce storage will significantly reduce the post-harvest losses of agricultural produce and thereby increase farmers, traders and processors' returns.
 - xi. Enhance quality and safety standards of produce from the farms, stored and processed products to better promote human and environmental health and safety.
 - xii. Increase access to affordable credit for farmers, traders and other WRS receipt holders for re-investment to increase production, value addition or diversify operations.
 - xiii. Better storage facilities and localized warehouse receipting can help farmers hold back more harvests for their local consumption requirements, enhancing household and local food security, and reducing the dependency on relief food.
 - xiv. Promote the development of organized and better-structured agriculture produce markets with harmonized produce/products quality and operations standards.
 - xv. Increase access to reliable real-time industry data and information to inform business decisions making.
 - xvi. Create employment opportunities in the increased agricultural production, warehouse receipt system operations and trade, thus improving the livelihoods of many families across this system.
 - xvii. Provide surplus-producing smallholders farmers with a market window that can help them secure the best possible deals during produce harvest seasons.
 - xviii. Promote fair trade practices and eliminate unscrupulous players in the agriculture produce value chains marketing, especially the exploitive middlemen.
 - xix. The transaction levy introduced will increase the cost of doing business for stakeholders

3.3 Effects on Fundamental Rights and Freedoms

The proposed Regulations shall have a positive impact on fundamental rights and freedoms in the following ways:-

i. Economic and Social Rights

The primary objective of the draft National Food Reserve Regulations 2021 is *inter-alia* to provide for food commodities price stabilization. Under clause 8 of the Regulations, the price stabilization measures to be employed include the sale and purchase of food reserve commodities into and out of the National Food Reserve through the Warehouse Receipt System. This framework seeks to promote socio-economic rights as guaranteed under the Constitution. Article 43(1)(c) provides that every person is entitled to the right to be free from hunger and to have adequate food of acceptable quality. In the implementation of the said Regulations, this right will be realized because prices of goods and services will be stable and affordable to many citizens thus increasing their purchasing power to enable them to sustain themselves from hunger and poverty.

ii. Access to Information

The draft Regulations establish systems where information will be available for access by the public. For instance, the Food Balance Sheet Committee is the custodian of relevant information relating to the national food reserve. This information is important in advising the Cabinet Secretary, the Board and the County Governments on the country's food supply, utilization and distribution status. This provision re-enforces the right to access to information guaranteed under article 35 of the Constitution.

iii. Consumer Protection

Article 46 of the Constitution provides that every consumer has a right to goods and services of reasonable quality as well as to the information necessary for them to gain full benefit from goods and services. The Regulations will cushion consumers from the fluctuation of prices through price stabilization thus promoting consumer protection.

3.0 Statement on Regulatory & Non-Regulatory Options

3.1 Option 1: Maintaining the *Status Quo*

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing legislative framework, thus maintaining the status quo. For example: -

- i. Making use of existing laws, regulations and/or guidelines;
- ii. Simplifying or clarifying existing regulations;
- iii. Improving enforcement of existing regulations; or
- iv. Making legal remedies more accessible or cheaper.

3.2 Option 2: Passing the Regulations

Government can achieve its policy objectives by using taxpayer's money or through a range of non-spending interventions, including regulation. Regulations aim to set rules to protect and benefit people, businesses and the environment, stabilizing markets and addressing market failures to support economic growth. Regulations can also create costs for businesses, third parties and the public sector. It can if overused, poorly designed or implemented, stifle competitiveness and growth in the National Food Reserve development.

Adoption and operationalization of the proposed regulations will: -

- a) Support increased participation of the more efficient private sector in maintaining the National Food Reserve, allowing for a more food reserve that will support the Country's agricultural development agenda as envisaged in the Big 4 agenda, Vision 2030 and ASTGS.
- b) Enhance food access and food price stability for increased food security for all segments of the population.
- c) Harmonize legal frameworks that affect the establishment and management of the National Food Reserve in the country.
- d) Streamline and coordinate actors within the food industry to promote production, and compliance to the industry quality standards, promote transparent and fair trade practices and remove underhand dealings that negatively impact the food trading and storage industry and often lead to the loss of public resources.
- e) Promote cost-effective management of public food reserves by incorporating private sector stockholding in strategic food reserves.
- f) Develop and maintain a reliable real-time database of national food reserve inclusive of active farmers, production, traders, aggregators and warehouse registers, food stocks and stock movements, etc. in Kenya for better coordination, planning and decision making.

- g) Reduce the post-harvest losses of agricultural produce, thereby increasing incomes for farmers and traders from the sale of increased volumes of produce, while enhancing food security.
- h) Promote fair trade practices and eliminate unscrupulous players in the agriculture produce value chains marketing, and especially the exploitive middlemen.
- i) Facilitate further development of an efficient warehouse receipt system in the country.

These regulations are thus important for the establishment, maintaining, streamlining and organizing of the National Food Reserve for its further development and to enhance its role in supporting the development of the wider agricultural sector.

3.3 Option 3: Other Practical Options

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, existing policies can be improved, without further regulation, using techniques such as behavioural insight or changing enforcement practices to improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure.

Alternatives to regulation include:

i. No New Intervention/Do Nothing

This approach may include making use of existing laws and regulations; simplifying or clarifying existing laws and regulations; improving enforcement of existing laws and regulations; or making legal remedies more accessible or cheaper. As discussed in the section above status quo in the sector are likely to remain. This would imply the industry continues to continue to operate under the current legal framework which creates conflicts and duplicates of roles and mandates the different agencies and still leaves the roles of the defunct SFTRF unplaced. This will continue to limit the development of the functional and efficient National Food Reserve in Kenya. It will also subject the country to recurring cycles of food insecurity, wide fluctuations in food and agricultural produce prices and supply, high cost of maintaining food reserves, high post-harvest and storage losses, prevalent trade malpractices, especially in the grain industry, mismanagement of strategic food reserves, financial malpractices in strategic reserves management, and government domination in the management of national food reserves, shutting out the more efficient public sector to the disadvantage of all food industry and agricultural sector stakeholders and the population in the country, implying that these and other current challenges in this field will continue.

ii Information and Education

Information and education can be used to empower National Food Reserve players to make their own decisions, improving choice for the mutual benefit of all and these work to change behaviour

through the provision of greater information or by changing the distribution of information; that is, making information that may be available to some businesses and consumers available to others.

However, there are potential risks associated with this. Information and education can take time to make an impact. Access to information and the ability to use it can vary within a community or region and so it may not reach all equally. It may also not be straightforward to assess how people will react or change their behaviour in response to the information provided. It will also increase costs for the government and businesses that will be providing the information and education required.

iii Incentive/Market-Based Structures

The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers among others as initiatives to realize the desired objectives. These initiatives however are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures, unlike in the Kenyan food industry, especially in the grains sector. Further, often these sorts of systems need their regulations to establish the framework and may have additional costs to the government and are unlikely to be effective in the unstructured Kenyan food reserves sector.

Alternatives to regulation

i. Self-Regulation

An industry or a sector can self-regulate, for example, through the use of codes of conduct, customer charters, standards or accreditation. In many cases, rules, codes of conduct, industry-based accreditation arrangements; and voluntary adoption of standards will be formulated by the industry representatives or organizations under their own initiative.

Ideally, private sector self-regulation in addition to government regulation can be a cost-effective and efficient means of ensuring the establishment and management of an efficient national strategic food reserve. This sector in Kenya however lacks an all-inclusive Industry association and most players are not affiliated to any of the many sector/industry associations or affiliations which very limited membership and limited scope and influence in the industry and the majority of players in this industry are not obliged to observe any self-regulation interventions propagated by any of the many associations in existing in this space.

i. Co-Regulation

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice and enforcement would be by the industry or a professional organization and accredited by the government. The specific types of instruments or mechanisms that may be created under a self-regulatory regime are similar under a co-regulatory framework, but co-

regulation entails explicit government involvement. It is the degree of government involvement and legislative backing that determines the difference between the two. When used in the right circumstances these instruments can offer significant advantages over traditional command and control regulation, including: greater flexibility and adaptability; potentially lower compliance and administrative costs; an ability to address industry-specific and consumer issues directly; and quick and low-cost complaints handling and dispute resolution mechanisms.

Both self and co-regulatory approaches have the potential to be efficient policy instruments because of their flexibility. They can be tailored to the specific issue they are designed to address and can change quickly in response to changing circumstances. However, there can also be negative consequences: there must be adequate protection in place to ensure that the regime is not captured by the industry or professional association and so promote narrow interests rather than the wider community interest.

However, based on the reasons given above on the unsuitability of self-regulation as a way of regulating the national food reserve, co-regulation in Kenya is also not feasible and the current challenges and inefficiencies will persist to the detriment of the national food security and the development of the agricultural sector in Kenya in general.

4.0 Costs-Benefit Analysis (CBA)

4.1 Economic, Environmental and Social Impacts

4.1.2 Economic Impacts of the Regulations:

The economic benefits of the proposed regulations include;

Economic Benefits

The economic benefits of the proposed regulations include: -

- i. Reduce cost management of public food reserves by incorporating private sector stockholding in the national food reserves and enabling improved access to more reliable data on private stockholding and thus forecast food shortages more realistically.
- ii. Reduced post-harvest and storage losses which is a key contributor to food insecurity in Kenya. According to the Tegemeo institute, the national maize post-harvest losses are estimated to be between 12 and 20 percent of the total national production of 40 million 90-kg bags on average translates to a loss is between 4.8 and 8 million bags annually
- iii. Reduced food imports - the country experiences on average a shortage of 20-30% of her staple foods requirement and has to import to fill in this gap draining the much-needed foreign exchange. The use of suitable food storage facilities will significantly reduce the above losses; hence reducing the demand for food imports.
- iv. Increased access to credit especially for farmers and traders using WRS receipts as collaterals, will provide the much need finances for farmers and traders to increase their operating levels in agricultural production and trade activities
- v. Increased agricultural production and trading: The increased access to affordable credit for farmers will see increased investment in agricultural production and trading of these food reserves commodities which will contribute to an increase in the agriculture and national GDPs.
- vi. Increase business opportunities and employment creation through the increased agricultural production, increased private sector participation in national food reserve opportunities, WRS, marketing and trading.
- vii. Increased farm incomes from the reduced fluctuations supply of agricultural produce to the market, the reduced price volatility, and increased agricultural, predictable produce market development will increase incomes for farm families engaged in the production and trading of agriculture produce in the WRS.
- viii. Increased/new direct investment in production, warehousing, value addition, marketing and trading, and other auxiliary services to benefit from an improved business environment and fair trade practices
- ix. Affordable and accessible food items for households due to reduced fluctuations in food of supply and improved food price stability, reducing household cost of living.

- x. Promote agriculture produce value chains, agro-processing, marketing and trading development across the country.

Economic Costs

The implementation of the proposed regulations will however have some economic costs including:-

- i. Effective implementation of the Regulations will require increased investment in new and/or repair of NCPB and private warehouse infrastructure, increased personnel costs by hiring professional personnel, other WRS requirements including insurance, certification and licenses which will increase the cost of doing business. This cost is likely to be transferred to the consumer thus increasing the cost of food.
- ii. The National and County Governments have to invest in stakeholders' education to introduce the role of the private sector and business opportunities in the National Food reserve management and to make business cases for their respective county stakeholders.
- iii. Given a large number of actors in the National Food Reserve commodities agriculture produce value chains and industries and their spread across the country, the investment to monitor for compliance has to be significant to realize and sustain the benefits of the regulations.
- iv. The framework for the implementation of these regulations will require multi-stakeholders platforms involving the NCPB, county governments, WRS Council, other complimenting agencies and stakeholders to support rigorous and effective implementation.

4.1.2 Social impacts of the proposed regulations

The social benefits of the proposed Regulations are:

- i. Improved food security for the population across the country due to increased access to affordable food and reduced fluctuations in supply.
- ii. Stability in staple food prices as a result of reduced price volatility caused by the wide fluctuations in supply during surplus and low supply seasons.
- iii. Improved food safety - High quality, healthy and hygienic food may be available for all the population due to the widespread adoption of food quality and warehouse operations standards.
- iv. Increased incomes and improved income distribution among the farm families and the communities in general from the increased production of agricultural produce, warehousing, agro-processing and trading
- v. Improved general population health status from improved food security, and food quality and reduced food price volatility, thus reducing food and nutrition-related health complications.

- vi. Improved social well-being of the rural communities (improved housing, education and health services access etc.) due to improved incomes
- vii. The reduced tide of rural-urban migration in search of employment opportunities due to resulting employment creation in agricultural production, WRS, commodity trading and agro-processing in the rural areas;
- viii. Reduced food aid dependency by families in the country

Social costs of the proposed regulation

The social costs of proposed Regulations are:

- i. Change in dietary habits held for a long time as a result of the introduction of diversity in national food reserve commodities.

4.1.3 Environmental impacts of the proposed regulation

The environmental benefits of the proposed Regulations are:

- i. Reduced soil degradation due to improved plant cover from increased investment in the production of the national food reserve commodities value chains
- ii. Improved land utilization and management due to increased investments from the more easily accessible credit

The possible negative impact of the Regulations may include:

- i. Increased soil degradation due to increased soil operations to support increased agriculture produce production
- ii. Poor disposal of condemned/contaminated warehoused and aggregated produce and products from the warehouses.

However, with proper and effective implementation of these regulations, these negative environmental impacts can be significantly mitigated and impacts

4.2 Costs, Benefits Analysis and Assumptions

From the above discussions, it is quite clear that the expected economic, social and environmental benefits from the implementation of the draft regulations heavily outweigh the corresponding costs. The analysis of the cost and benefits of implementation of the draft regulations is however based on the following assumptions: -

- i. Implementation of the regulations will be undertaken in a holistic manner where all provisions of the regulations will be implemented and not partially selected provisions are implemented.

- ii. The country's development strategies, political, manufacturing, trade and policy environment will continue to prioritize and support the development of the agriculture sector.
- iii. The climatic conditions will remain favourable for agricultural production.
- iv. Kenya's agricultural products will continue to access current and other alternative global markets.
- v. All stakeholders and actors including farmers' will respond rationally to the implementation of the proposed regulations and voluntarily comply with the proposed regulations.
- vi. The additional revenue generated from the various fees and levies will be used to further the development of the National Food Reserve.

4.2 Administration and Compliance Cost

The RIA notes that resources would be required for operationalization of the Regulations which will include human resources and operation costs for monitoring, compliance and enforcement as well as for awareness creation of the Regulations to the different stakeholders in the agricultural sector and particularly the large population of smallholder farmers in the country and for promoting and supporting the development of the National Food Reserve and warehouse infrastructure in the country. It is assumed that additional resources will go to the implementation of the wider national agriculture policies which support extension services now a devolved function for strengthening knowledge transfer and technology distribution among the farmers and in the implementation of the regulations, Agriculture Sector Transformation and Growth Strategy, the Government's Big 4 agenda and vision 2030, individual County CIDPs and agriculture and trade sectors specific policies and strategies and other relevant sector national policies and strategies.

4.4 Assessment of Return on Investment (Benefit)

Passing and operationalization of the proposed Regulations will be critical in facilitating the establishment and maintenance of the National Food Reserve in Kenya. This will significantly transform the marketing of the national food reserve food commodities most of which are currently poorly structured, promote the production and consumption of standardized high quality, hygienic, food products, and enhance credit access, especially for small farmers and traders using WRS receipts as collaterals, reduce produce post-harvest losses, create a level playing field for all players and promote transparent and fair trade practices to support the establishment and

maintaining of the National Food Reserve and to support Kenya's agricultural development and manufacturing pillars as envisioned in the Vision 2030, the Big 4 agenda, ASTGS and individual counties' CIDPs and the other various county policy instruments to enhance food and nutrition security.

The regulations will also promote increased agricultural production and productivity, improve farmers' incomes and thus improve their livelihoods from the enhanced access to credit by farmers, most of whom currently have limited access to capital to increase or intensify production.

The implementation of the regulations will also create numerous employment opportunities both on-farm to increase production and off-farm in the national food reserve stock management, warehouse operations and auxiliary services.

In broad terms, the RIA noted that the following broad benefits and returns on investment will be achieved:

- i. The Regulations will support the establishment of a well-structured, efficient and cost-effective National Food reserve with significant private sector participation which will moderate food supply and food price fluctuations and support agricultural commodities markets development and improve price stability for these commodities.
- ii. Harmonize the legal framework to remove conflicting and duplication of roles in the National Food Reserve sector.
- iii. Promote an open, transparent and efficient establishment and maintenance of the National Food Reserve free from the often expensive underhand deals and irregularities
- iv. Reduce post-harvest and storage food losses from the use of the suitable WRS certified warehouses, thus reducing food deficits and the need for food imports.
- v. Improve access to comprehensive reliable data and information to form the planning and decision-making basis both for the Government and private sector businesses on food security, business opportunities, agricultural commodities production and produce stocks
- vi. Improve access to credit through the use of WRS receipts as collateral, especially by smallholder farmers and traders, most of whom have limited access to capital to increase or intensify production and trade to improve production and trading volumes.
- vii. Promote the full implementation of the WRS Act 2019 and WRS regulations 2021 to support the full development of the WRS in Kenya
- viii. Promote adoption and compliance of staple food standards while creating a level playing field for all warehouse receipt system actors and promoting fair trade in the WRS and the country.

- ix. Improve health status of the population with reduced incidences of malnutrition and NCDs health challenges due to improved food security and nutrition, food quality and improved affordable food access
- x. Create new employment opportunities both on-farm and off-farm across the National Food Reserve structure, agriculture production, warehousing, warehousing auxiliary services, trading and marketing processes.
- xi. Increase incomes for farm families resulting from an increase in agricultural production, and thus improved livelihoods and social well-being of the rural communities.
- xii. An increase in national agricultural production and value addition will translate into increased agriculture and national GDP.

4.5 Quantification of the Benefit

As stated above, sufficient reliable data for cost-benefit analysis of the National Food Reserves is not readily available and valuing changes in policies such as these regulations and how to establish and quantify how such changes impact the economy, society and the environment remains a big challenge. **We still waiting for data to complete this section.**

5.0 Reasons Why Other Regulatory Options Are Not Appropriate

5.1 Option 1: Maintaining the *Status Quo*

Maintaining the status-quo will mean the country does not provide a conducive legal and regulatory framework for the establishment and maintenance of the National Food Reserve in the country which will deny the country a food safety net to fall back to in case of an unprecedented shortage of staple food commodities as well as denying farmers and other interested parties the prospects to benefit from the many opportunities created by the establishment and maintaining of an effective National Food Reserve while also curtailing realization of the country's development objectives, including the following:

- i. The current existing legal framework gaps including the conflicting and duplication of roles will remain, hampering any efforts to establish a cost-effective and efficient National Reserve leaving the country vulnerable to food insecurity.
- ii. The government will continue to bear the high cost of maintaining the National Food Reserve with little or no participation of the private sector in this important role.
- iii. Food supply and food prices will continue to fluctuate, making access and affordability of food to some segments of the population or in some seasons a challenge.
- iv. With a fast-growing population, food security for all Kenyans will remain unattainable and a significant section of the population will continue to be dependent on the food relief and the country will continue to rely on regular maize imports to meet the national food needs.
- v. The anticipated food reserve commodities value chain and market development will not be realized, thus hampering revamping and supporting further development of the country's agricultural sector as envisaged in ASTGS, Vision 2030 and the government's Big 4 agenda.
- vi. Post-harvest and food storage losses will remain high, increasing the national food deficit and thus increasing the need for food imports.
- vii. Credit access for smallholder farmers and small traders will continue to be limited, denying them the much-needed capital to re-invest in their businesses to increase production and trade.
- viii. In absence of accurate reliable real-time data and information on the food situation, planning for the national food security will continue to depend on unverifiable data and information.
- ix. Poor handling of agricultural produce and food materials will continue subjecting the Kenyan consumers to unhygienic, contaminated food, contributing to increased health problems.
- x. The anticipated employment opportunities to be created through increased agricultural production, national food reserve and warehouses operations and other complimenting services will not be realized.

This situation is undesirable. Thus the RIA recommends that the proposed Regulations be implemented to support the establishment and development of the National Food Reserve in the country to effectively contribute to the realization of the objectives of the Vision 2030, the National food and nutrition policy, the Agricultural Sector Transformation and Growth Strategy, the National Agriculture Sector Development Strategy, the Government's Big 4 Agenda and the respective individual Counties' CIDPs, policies and strategies on food and nutrition security

5.2 Option 2: Other Practical Options

Alternatives to regulation include:

i. No new intervention/do nothing

This may include making use of existing regulations; simplifying or clarifying existing regulations; improving enforcement of existing regulations; or making legal remedies more accessible or cheaper. But with this approach, the status quo in maintaining the food reserve in the country is likely to remain and the country may not be able to establish and maintain a suitable, efficient and cost-effective national food reserve to bridge the gap in food demand during periods of low food production and shortages and to stabilize staple foods commodities markets and prices to support increased agricultural production and thus build towards sustainable national food security and self-sufficiency in the long term.

ii. Information and Education;

Information and education can be used to empower stakeholders to make their own decisions, improving choices for the mutual benefit of all. However, information and education can take time to make an impact and still may not be acceptable to all. This approach may increase costs for the government and businesses that will be providing the information and education required. The desired objectives are unlikely to be realized within a reasonable time for the common good of all.

iii. Incentive/Market-Based Structures;

The government can use economic instruments, such as taxes, subsidies, and initiatives to realize the desired objectives. These initiatives, however, are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures and often these sorts of systems need their regulations to establish the framework and may have additional costs to the government and are unlikely to be effective in the food security industry.

5.3 Alternatives Models of Regulation

i. Self-regulation

This requires the industry to have a well-developed industry representative(s) that is fully acceptable to all industry players and who willingly subscribe to the representative's objectives, standards, code of regulation etc. The country lacks all-inclusive industry representative(s) that brings together all or individual segment players through which self-regulation mechanisms can be applied across the entire food business chain or within individual business segments. Stakeholders in this business chain are numerous, diverse and are spread across the county and include the millions of smallholder farmers, produce aggregators, processors, traders, and transporters among others as such association's rules and codes of conduct if any cannot, therefore, be effectively enforced across this spectra actors and consequently self-regulation may not be an effective option.

ii. **Co-regulation**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice and enforcement would be by the industry or a professional organization that is accredited by the government. As discussed above this industry currently has no all-inclusive, wholly accepted industry representative(s) at the moment and thus co-regulation is practically not possible.

6.0 Conclusion

The National Food Reserve needs to be well-structured and regulated for the reasons discussed in the previous parts of this report. The purpose of the proposed regulations is to establish and maintain the National Food Reserve to provide for food reserve stocks and food commodities price stabilization. The regulations identify National Food Reserve commodities as maize, beans, rice, fish, powdered milk and canned beef which will enhance the nutrition security of the national food reserve. The regulation also establishes the Food Balance Sheet Committee that will advise on quantities of the base stock and food commodities for price stabilization based on the prevailing market demand and supply conditions and on price stabilization measures to be applied which may include the sale and purchase of Food Reserve commodities into and out of the National Food Reserve through the Warehouse Receipt System. In addition, it provides for the funding of the activities of the National Food Reserve and the Food Balance Sheet Committee. These regulations are therefore critical for enhancing national food security and improving agricultural production and productivity across the country's entire agricultural sector including facilitating the development of predictable produce markets and will thus support the realization of the national agricultural sector and economic objectives including food and nutrition security, agro-processing and industrialization, environmental preservation and employment creation.

In addition to the anticipated economic, social and environmental benefits of an efficient and well-regulated national food reserve, the proposed regulations will also support the full development of

a warehouse receipt system in the country as WRS is the proposed model for the establishment and maintaining of the national food reserve to ensure national food self-sufficiency, food security and sustain agricultural development in the country, saving the scarce foreign exchange regularly used on food imports.

The proposed Regulations will therefore act as regulatory tools for the realization of the above benefits in the interest of the national common good.

10.2 Recommendation

The RIA thus recommends the passing and operationalization of the proposed Regulations.