

LEGAL NOTICE No.....

THE DAIRY INDUSTRY ACT
(*Cap. 336*)

THE DAIRY INDUSTRY (COMPLIANCE OFFICERS) REGULATIONS, 2020

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SCHEDULE

THE DAIRY INDUSTRY ACT
(*Cap. 336*)

THE DAIRY INDUSTRY (COMPLIANCE OFFICER) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 19 of the Dairy Industry Act, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives, on the advice of the Kenya Dairy Board makes the following Regulations —

PART I — PRELIMINARY

- Citation 1
. These Regulations may be cited as the Dairy Industry (Compliance Officer) Regulations, 2020.
- Interpretation 2
. In these Regulations, unless the context otherwise requires —
- Cap 336 “Act” means the Dairy Industry Act;
“Board” means the Kenya Dairy Board;
“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to dairy industry;
“compliance officer” means a person appointed under regulation 5 of these regulations;
“County Executive Committee member” means the relevant County executive Committee member for the time being responsible for matters of dairy industry.
- Application 3
. These Regulations shall apply to all compliance officer and all aspects of inspection in the dairy industry.
- Objects of the Regulations 4
. The objects of these Regulation are —
(a) to provide mechanisms for inspection of primary producers and dairy business operators;
(b) to provide for procedures and conduct of a compliance officer.

PART II –APPOINTMENT, CONDUCT AND DUTIES OF COMPLIANCE OFFICERS

Appointment of compliance officers

5. (1) The Board shall appoint qualified persons to be a compliance officer for the purpose of these regulations and such appointment shall be affected through a gazette notice.
- (2) Where a need arises, and no conflict of interest exists, the Board may request the County Executive Committee member to nominate qualified staff of the County government for gazette by the Board as a compliance officer.
- (3) The Board, upon receiving the nominees from the County Government shall vet the nominee for suitability and if found suitable gazette the officer.
- (4) The compliance officer nominated by a County shall report on day to day matters to the relevant officer of the County Executive Committee member, and where the report involves dairy produce safety matters, the compliance officer shall report to the Board and to the County Executive Committee member
- (5) In dealing with dairy produce safety matters compliance officer nominated by the county shall act under the supervision of an assigned Boards supervisor.
- (6) The Board shall keep and maintain a register of all gazetted compliance officers.

Qualifications of compliance officers

6. Subject to these Regulations, a person qualifies for appointment as a compliance officer if the person—
- a) possesses a diploma or other higher qualification in dairy, animal or food science, public health, veterinary science or any other related fields;
 - b) has a minimum of two years’ experience in the dairy industry or any other related field as the Board may approve;
 - c) is an employee of the Board, the National Government or a County government.
 - d) Meets the requirement of the chapter 6 of the constitution of Kenya.

Revocation of appointment

7. The appointment of a compliance officer may be revoked —
- (a) if the compliance officer fails to comply with these Regulations;
 - (b) if a conflict of interests exists, or;
 - (c) for any other sufficient cause.
- (2) No revocation shall be effected unless the officer affected has been given an opportunity to respond to accusation made against him or her.
- (3) A compliance officer whose appointment has been revoked may appeal to the Board within 30 days of being notified of the revocation.

Identification of a compliance officer

8. (1) The Board shall issue to every compliance officer an identity document, authenticated by an authorized officer.
- (2) The Board shall ensure that there is an accessible mechanism for a person to verify the identity or particulars of a compliance officer while undertaking duties in the field or otherwise.

- (3) A compliance officer shall, before performing inspection duties and at all times whenever the officer intends to inspect premises or goods, or to perform any other act, in furtherance of the inspection, which is likely to affect another person's right, identify himself or herself to that person by producing the identity document.
- (4) A compliance officer shall ensure that the identification document is —
 - (a) at all times secured and avoid its unauthorized use;
 - (b) legible and clear for proper identification and when lost, defaced or destroyed, to be reported and replaced immediately; and
 - (c) returned to the Board upon the compliance officer ceasing to be employed as such.

Powers of a
compliance officer

- 9. (1) A compliance officer may—
 - (a) at any reasonable time, enter premises whether, plant, facility, structure, place or area in connection with which he or she has reason to believe that an offence under this regulation is being, is about to or has been committed, in order to investigate and obtain evidence;
 - (b) examine or test or cause to be examined or tested, any dairy produce to which the Act or the Regulations apply and which is found in or at such premises, plant, facility, structure, place or area;
 - (c) examine or test or cause to be examined or tested any equipment, material, substance or other article which is used or is suspected to be used or likely to be used at or in connection with the collection, evaluation, processing, packing or storing of any dairy produce;
 - (d) inspect the operations or process in connection with any action referred to in paragraph (c), and demand from the owner or the person in whose custody the dairy produce, equipment, material, substance or things concerned are, or who supervises such operations or processes, any information or explanation regarding the operation, process, material, substance or thing;
 - (e) order correction of non-compliances detected or closure of dairy or any related business in the manner specified in the inspection notice or order set out in Form B of the Schedule;
 - (f) examine and make copies of or take extracts from any book or document either in hard copy or electronically in respect of which he or she reasonably suspects that it relates to such dairy produce, material or any other thing, irrespective of whether or not it is kept on or at the place, premises, facility or conveyance concerned or at any other place or area, and demand from the owner of such book or document or from the person who has it in his or her custody an explanation regarding any record or entry therein;

- (g) seize and remove from any premises, place, area or vehicle any dairy produce, or the whole or any part of material, substance, equipment or any other thing, or any book or document relating to such dairy produce, premises, place, area or vehicle, material, substance or other article or sale of the dairy produce, material, substance or thing which he has reasonable cause to believe constitutes evidence of contravention of any of the provisions of the Act or these Regulations.
- (h) examine any dairy produce, product, material, substance, equipment or any other thing and —
 - (i) if, in the compliance officer's professional determination, there is need for further analysis, take samples thereof in such quantities as is reasonable in the circumstances and give a dairy business operator the reason for his or her determination; and
 - (ii) where a compliance officer determines that there is nothing wrong with the produce, material, substance, equipment or thing, make a record covering the relevant period of inspection accordingly and give a copy of that record to the concerned dairy business operator; or
 - (iii) as soon as the results of the analysis are known, inform a dairy business operator in writing of the results, including, if any, remedial action the dairy business operator is required to take.
- (i) inspect any process or operation, manufacture, production, processing, mixing, packaging or treatment that may relate to any dairy product which is or appears to be carried out in those premises or places for purposes of determining whether or not the provisions the Act or these Regulations are being contravened; and
- (j) require from a dairy business operator or any person whom he reasonably believes to be in charge or control of any premises, place, dairy produce, material, substance or thing being inspected, to supply information or produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, records, receipts, invoices, shipping bills, bills of lading, documents containing mixing instructions, operational procedures or other documents or papers which are reasonably suspected or expected to be in the operator's possession the production of which will render successful inspection.

(2) Any seizure or confiscation made under these Regulations shall be recorded in Form A as set out in the Schedule.

Inspection facilities, etc.

10. (1) A compliance officer may at any reasonable time, inspect any farm, where dairy activity is being carried on or is about to be carried on in relation thereto, for the purpose of ascertaining compliance with the Act or the Regulations.
- (2) Where a compliance officer has reason to believe that the dairy product, material, substance, equipment or other thing which is the subject of inspection under these Regulations, or any record or thing connected therewith, is in a dwelling house, the compliance officer shall request the owner, the occupant or the person who appears to be in charge thereof for permission to enter the house to conduct an inspection.
- (3) Where the occupant neglects or delays to grant permission, the compliance officer may seek the assistance of the nearest police officer to facilitate a forced entry into the business premise and the owner, the occupant or the person who appears to be in charge of the house or premises shall cooperate with the compliance officer until the inspection is concluded.

Collection of books, records, documents, etc

11. (1) A compliance officer shall take such steps as are reasonably practicable to afford a primary producer or dairy business operator of anything or other person who appears to be engaged in dairy production of business, that is the subject of inspection under these Regulations, an opportunity to be present during the inspection and the primary producer or dairy business operator, assignee or agent shall have the right to put any relevant questions to the compliance officer and the compliance officer shall be obligated to answer unless the questions are calculated to, in any way, defeat the inspection.
- (2) Where, in the process of inspection, the compliance officer takes any copy or extract of book, record, document, material or other thing, the officer shall issue to the person from whom custody any book, record, document, material or any other thing has been taken a confiscation receipt in Form A in the First Schedule, and the recipient of the receipt shall sign the duplicate thereof except where the original document are required as evidence of possible prosecution for an offence under the Act or regulations.
- (3) If the person to whom the receipt is issued under paragraph 2 refuses to sign the duplicate of the receipt, the compliance officer shall record the circumstances of the refusal to sign and this shall be prima facie evidence of obstruction of a compliance officer.

(4) Anything taken away from a dairy business operator under this regulation shall, at the conclusion of the purposes for which it is taken, and where practicable, be expeditiously returned in whole or in part to the operator or other person unless the thing taken is part of the evidence for possible prosecution for an offence under the Act or the Regulations.

Collection of
samples and
information

12. (1) A sample required pursuant to these Regulations shall be taken —

- (a) at no cost;
- (b) with such care as not to prejudice the results and in the best opinion of the compliance officer that the sample is representative of the whole; and
- (c) in accordance with the method of sampling prescribed in the relevant standard in the presence of the primary producer, the dairy business operator or their representatives and, in their absence, the compliance officer shall take the sample and record the circumstances under which the sample is taken.

(2) A primary producer or dairy business operator or their representatives shall give the compliance officer all reasonable assistance as the compliance officer may require, including the actual taking of samples, to enable carrying out of duties under these Regulations and shall provide the compliance officer with any relevant information which may be required.

(3) In the course of the performance of duties under these regulations, the compliance officer may put any relevant question to a dairy business operator assignee, agent or other person, but no person shall be compelled to give an answer that will incriminate the person.

(4) Where a primary producer or dairy business operator or their representatives being interrogated by a compliance officer requests for more time to prepare a written response, the compliance officer may allow the primary producer or dairy business operator or their representatives reasonable time not exceeding five working days, to prepare and provide the written answer.

Seizure and
destruction

13. (1) In consultation with the supervisor, a compliance officer may at any time seize, any product, material, substance, article, plant and machinery, or any other thing which he has reason to believe or about which he has received credible information to the effect that it has been used or is likely to be used in contravention of any of the provisions of the Act or these Regulations.

(2) Where a compliance officer seizes any dairy produce, equipment, materials or additives, the compliance officer shall issue a seizure receipt to the primary producer or dairy business operator with the details of the dairy produce confiscated in Form A of the First Schedule.

(3) A compliance officer carrying out seizure shall file a complaint without delay at the nearest police station for possible prosecution, with or without the owner or a representative consent in writing on the destruction or forfeiture of the subject dairy produce, equipment, materials or additives to the Board.

(4) Any destruction pursuant to these Regulations shall be carried out in compliance with the relevant law and regulations.

(5) Where the owner of seized dairy produce, equipment, materials or additives institutes legal proceedings in relation to the seizure, the process shall be concluded as may be directed by the court, unless in the meantime the legal proceedings are dismissed, in which case the process shall proceed as provided under these Regulations.

Protection of information

14. The information or document obtained under these Regulations shall be handled in accordance with any relevant provision of the Data Protection Act, 2019.

Offences

15. (1) A compliance officer who —

- (a) solicits for, or receives in connection with any of his duties, a payment or other reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward whether or not he is entitled to claim;
- (b) enters into any agreement to do, abstain from doing, permit, conceal or connive at any act whereby the Board is or may be defrauded, or which is contrary to any of the provisions of these Regulations or contrary to the power conferred to the compliance officer;
- (c) discloses, except for the purposes of these regulations or when required to do so as a witness in a court of law or with the approval of the Board, information acquired by him in the performance of his duties relating to a person, premises, place, material, substance or thing being or already inspected, or
- (d) uses his or her position to enrich himself or herself or any other person,

commits an offence and is liable on conviction to fine not exceeding ten thousand shillings or to imprisonment not exceeding twelve months or both such fine and imprisonment.

(2) Any person who —

- (a) in any manner or style, willfully obstructs, impedes or hinders a compliance officer, or a police officer accompanying the compliance officer, from exercising any of his powers or performing duties under these regulations;
- (b) knowingly makes a false statement in terms of questions put to him or information required from him under these regulations;
- (c) refuses or neglects to furnish any information or to produce any document, to attend at any place when required, or instigates any person to disobey or make it difficult for the compliance officer to conduct inspection;
- (d) assaults or threatens a compliance officer or any person lawfully accompanying the compliance officer or discharging duties under these Regulations;
- (e) refuses or unreasonably delays to obey any instructions given to him by the compliance officer for the attainment of the purposes of these regulations; or
- (f) abets or facilitates the violation of any of the provisions of this regulation,

commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or, both.

Complaints
against
compliance
officers

16. (1) Where a primary producer or a dairy business operator is aggrieved by a decision or action of a compliance officer, the primary producer of dairy business operator may immediately, not later than 14 days, lodge a written complaint to the Board.
- (2) Upon receipt of a complaint the Board shall investigate and make a decision and communicate to the complainant within 30 days.
- (3) Where the complainant is not satisfied with the decision of the Board, the complainant may appeal to the Cabinet Secretary within 30 days of the decision.

Revocation of LN
No.215/1964
Sub Leg

17. The Dairy Industry (Dairy Inspector) Regulations are hereby revoked.

SCHEDULE

FORM A (reg.13(2))

THE DAIRY INDUSTRY (COMPLIANCE OFFICER) REGULATIONS 2020

THE KENYA DAIRY BOARD

SEIZURE /CONFISCATION RECEIPT

Serial No A.....

The following dairy produce has been seized by.....
on behalf of the Kenya Dairy Board in accordance with the powers given under the Dairy Industry
(Compliance Officer) Regulations 2020.

From (Name)..... Vehicle.....
(if bicycle list frame number)

Address.....

Type and quantity of dairy produce seized.....
Containers seized.....
Books or records seized.....
Any other item seized.....
.....
.....

How disposed of.....
Date..... Signed.....
Witness.....
.....

Note: The person issuing this receipt should ensure that he/she obtains a receipt from any person to whom he/she disposes or whom he leaves in charge of any item mentioned in this receipt.

THE DAIRY INDUSTRY (COMPLIANCE OFFICERS) REGULATIONS 2020

INSPECTION NOTICE/ORDER

S/No:.....

KENYA DAIRY BOARD

COMPLIANCE OFFICER AT THE DIVISION

INSPECTION NOTICE/ORDER

Branch: _____ Date: _____

INSPECTION PARTICULARS

Name of premise: _____ Located at: _____

Licence No: _____ Category: _____

Volume of milk (On site) _____ (litres) Nature of milk: _____

Following an inspection conducted at your premise(s) on (date) _____ at (time) _____ the following non-compliances were established:

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____

You are hereby notified that you are to correct the non-compliances identified at your premises **[IMMEDIATELY]** or **[WITHIN FOURTEEN (14) DAYS]** of this notice or **[CLOSE THE BUSINESS OPERATIONS]**, failure to which necessary enforcement action will be undertaken in accordance with the Dairy Industry (Compliance Officer) Regulations.

Client Acknowledgement

Compliance Officer

Name _____

Name _____

Designation: _____

Designation: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

DISTRIBUTION DETAILS:

ORIGINAL: CLIENT COPY

DUPLICATE: BRANCH FILE COPY

TRIPPLICATE: TO HEAD OFFICE

Dated the2020

Hon. Peter Munya, EGH
Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives