SCHEDULE s. 8

REGULATORY IMPACT STATEMENTS TO THE COFFEE (GENERAL) REGULATIONS 2017 No. [ ]

1. Purpose of the statutory instrument

1.1 The purpose of these Regulations is to provide for the regulation, promotion and development of the coffee industry in Kenya and specifically to provide for:-

i. Regulation of the coffee Industry players along the entire value chain,
ii. The licensing and registration procedures, requirements, filing of returns and Forms,
iii. The sharing of functions between the national and county government,
iv. Promotion and development of coffee trade locally and internationally,
v. Monitoring compliance along the value chain on aspects of coffee production, processing, trade and promotion,
vi. Imposition, administration and prescription of licensing and registration fees,
vii. Compliance with national and international standards,
viii. Promotion of Coffee Industry self-regulation and co-regulation,
ix. Licensee obligations to ensure good business relations between growers and dealers,
x. Provides effective dispute settlement mechanism and spells out penalties for non-compliance

1.2 Coffee Industry Performance

Over the years the coffee industry has been a major source of foreign exchange and is generally a source of livelihood to many Kenyans. An estimated 800,000 small scale farmers and 4,000 estates are involved in coffee production and significantly draw their livelihood from coffee earnings.

The industry supports about five (5) million people due to its effective forward and backward linkages and currently contributes about 0.2% to the GDP and 8% to the agricultural sector. The sub-sector is labour intensive and contributes 30% of the total employment in the agricultural sector.

Currently, a total of 113,500 Ha of land is under coffee production with production oscillating at about 50,000 mt of clean coffee (cc) a drop from an all-time high production of 130,000 mt of cc in 1988/1989. In 2015 the coffee industry earned the country Ksh.17.5 Billion in export earnings and Ksh.230 million in local sales.

2. Legislative Context

2.1 The Coffee Regulations are to bring into effect the provisions of the two newly enacted Acts i.e. The Agriculture and Food Authority Act, 2013 (AFA) and the Crops Act, 2013.

AFA became operational with effect from **17th January 2014,** while the Crops Act became effective from **1st August 2014**. The Acts consolidated and repealed various Acts relating to crops including the Coffee Act No 9 of 2001 so as to reduce duplication and overlap of functions among the former Agricultural regulatory institutions and increase operational efficiency.

These regulations replace the following regulations:-

a) Coffee (General)Rules, 2002, and
b) Coffee (Forms) Rules, 2012

3. Policy Background

The Government commenced reforms in the Agriculture Sector in 2003 with the formulation of the Economic Recovery Strategy for Wealth and Employment creation (ERS), the Strategy for Revitalization of Agriculture (SRA) and the Agriculture Sector Development Strategy (ASDS). The reforms focused on the review of the Legal and Regulatory framework of the Agriculture sector.

The Kenya Vision 2030 also recognizes Agriculture as a key driver in achieving the targets of 10% annual economic growth and value addition pillar. Under the Vision 2030 Second Medium Term Plan (2013 – 2017), implementation of the Consolidated Agricultural Reform Legislations which includes preparation of necessary regulations to actualize implementation of the Acts, and setting up institutions such as the Agriculture and Food Authority (AFA); and the Kenya Agricultural Livestock Research Organization (KALRO) is one of the envisioned flagship projects.

Implementation of the reforms culminated into enactment of three Acts namely the Agriculture and Food Authority (AFA) Act, 2013, Crops Act, 2013 and Kenya Agricultural & Livestock Research Organization Act, 2013.The AFA Act established the Agriculture & Food Authority, under section 3. The Crops Act repealed the statutes that had established the former regulatory institutions such as the Coffee Board of Kenya, Tea Board of Kenya, Kenya Sugar Board and other Agricultural Regulatory institutions. The Coffee Board of Kenya regulated the Coffee Industry before the merger and establishment of the Agriculture & Food Authority.

In addition, His Excellency the President appointed a National Taskforce on the Coffee Subsector Reforms on 3rd March, 2016 vide gazette notice No. 1332 which proposed major changes to the entire coffee value chain in order to increase the earnings of the coffee farmers. The Task Force was necessitated by the persistently low performance of the coffee industry attributed to a number of challenges.

3.1 Problem being addressed

However the industry has faced a number of challenges which has led to its low performance, namely;

a) High cost of production with a national average of 2.5kg/tree/year
b) Declining land parcels for coffee production
c) Declining soil fertility due to low input usage and inadequate soil conservation strategies
d) Poor corporate governance at grower institutions
e) Climate change effects
f) Aging coffee farming community
g) Fluctuating and unfavorable coffee prices

Consequently, the formulation of Coffee Industry Regulations is aimed at; providing solutions to some of the challenges enumerated.

4.0 Consolidation

These regulations with consolidate the Coffee(General) Rules, 2002 and Coffee (Forms) Rules, 2012.

5.0 Consultation

i.Stakeholders consulted

During the process of formulation of the Coffee (General) Regulations 2016, consultations were held with the stakeholders who included; growers, Coffee Farmers' Cooperative Societies, coffee estates, Kenya Coffee Traders Association (KCTA), Commercial Coffee Millers and Marketing Agents Association(CCMMAA), Kenya Coffee Producers Association, (KCPA) and Nairobi Coffee Exchange (NCE). Consultations by the National Task Force on the Coffee Subsector Reforms also informed the formulation of these regulations.

Further consultations will made with the representatives of the Council of Governors including the Chairman of the Agriculture Committee, County Executive members from various Counties, Attorney General's Office, Inter-governmental Relations Technical Committee and Kenya Law Reform Commission (KLRC).

ii. Outcome of the Consultations

NO	**Stakeholder**	**Period**	**PROPOSALS**	**REPONSE BY MINISTRY**
1.	Coffee growers; cooperative societies and coffee estates	October 23rd 2012 at CRF	Request for reduction of levies from the prevailing 4%	Levies abolished via the Finance Act, 2016 and the Coffee regulations have been amended accordingly
			There is need for an interface between AFA and cooperatives due to	Proposal to amend the cooperatives Societies Act to ensure punitive measures for non compliance

			challenges of management at the coffee cooperative societies	
2.	Coffee Traders Meeting Council of Governors	23rd October 2013 at Utalii 1st July 2015	Clarification on the licensing functions between AFA and County Governments	The regulations have clearly stated the various licenses to be issued by AFA and the County Governments
3.	Coffee growers consultative meeting at CRI	06 November 2016	Growers expressed their wish to have farmers with 1 ha licensed with Pulping Station Licence (PSL) or use of production to issue Pulping Station Licenses.	The Regulations have reduced the 2 Ha acreage requirement to 1Ha for PSL issuance.
4.	Coffee Industry Stakeholders meeting at KALRO	04th November 2015	Growers' non accessibility to the NCE auction was cited	The regulations have allowed the participation of grower millers at the auction through the grower millers' licence Secondly the regulations have provided for an extra day every fortnight for local traders

				to purchase clean coffee at the Exchange.
5.	Coffee growers' meeting at CRI Commercial Coffee Millers and Marketing Agents Association (CCMMAA)	06th November 2015 25th February 2016	Multiple licences issued to stakeholders was reported by growers and discussed at a CCMMAA meeting.	The regulations have eliminated a number of licences namely; grower marketer, commercial marketing agent and management agent certificate and expanded the scope of other licences such as grower miller.
6.	Commercial Coffee Millers and Marketing Agents Association (CCMMAA)	25th February 2016	Concerns were expressed that no criteria existed for the pricing of Kenya coffee. Reliance on international markets was misleading as Kenya coffee was of a much higher quality.	The regulations have provided for establishment of the Coffee pricing committee which shall propose indicative prices for guidance of the coffee industry. (pricing based on quality, NCE and International Prices)
7.	Coffee growers'	6th November	✓Growers who wish to	The regulations have

	meeting at CRI Kenya Planters Cooperative Union	2015	market their coffee through the NCE noted that the existing Bank Guarantee of USD 1 million was prohibitive. ✓ Growers reported that there were delays in the release of their coffee payments. KPCU Ltd on various occasions expressed dissatisfaction with the USD 1milion bank Guarantee as being prohibitive	established the Central Depository Unit (CDU) to replace the need for the Bank Guarantee and eliminate delays in the release of payments.
8.	Coffee growers meeting at CRI	6th November 2016	Growers observed that coffee prices were occasionally not competitive	The elimination of the 4% Ad valorem levies The elimination of the marketing agency licence The capping of cost of service at 15% of the net coffee earnings on the

				coffee sales.

6. Guidance

Once these Regulations come into operation, the Ministry shall undertake the following activities:

i. Stakeholder's sensitization for the different players along the coffee value chain.
ii. Training and Capacity building for the staff in the County governments.
iii. Consultation with the County governments during the implementation of the Regulations.

6. Impact

6.1 The impact on Fundamental Rights and Freedoms – no infringement is expected.

6.2 The impact on the Private Sector

i. Enhancement of operational efficiency, product quality and ease of doing business.
ii. Elimination of the 4% Ad valorem Levy shall translate to higher net returns to coffee growers.
iii. Timely release of payments to value chain players through establishment a Central Depository Unit.
iv. Establishment of a coffee pricing committee for release of indicative prices minimizes the exploitation of growers.
v. Effective recovery of loans owed to financial institutions through the established Central Depository Unit.
vi. Reduction of some licences within the value chain will enhance operational efficiency and governance.

6.3 The impact on the Public Sector

i. Compliance with National and International Standards would guarantee better prices leading to increased incomes, and improved livelihood to Industry players.
ii. The Advalorem levy (1%) elimination will lead to loss of income to the AFA- Coffee Directorate.
iii. Clarity in the sharing of functions between the two levels of government will lead to more efficient and effective

service delivery.

7. Monitoring and review

The success criteria includes;-

i. Higher number of applicants for Pulping Station Licences with the reduction of minimum acreage.
ii. Eliminated Ad valorem levies increases net earnings to farmers which will result to increase coffee production and earnings.
iii. The ease of doing business will lead to more players thus increasing competition and efficiency.
iv. Introduction of the roasters' licence will lead to growth of SMEs in coffee and Increase coffee consumption.

v. Enhanced compliance with national and international standards will result in higher coffee quality, improved prices and reduced complaints from coffee roasters and buyers.

vi. Due to stakeholder's consultation on the Regulations, stakeholder's compliance levels will increase.

vii. Improved relations between the National and County Governments will lead to increased consultations, harmonized coffee laws and joint growers' fora.

The outcomes will be subject to internal reviews by the Coffee Directorate after 12 months and the regulations may be amended accordingly. Regulatory impact assessment will also be conducted on a yearly basis to inform the need for additional changes within the Regulations.

8. Contact

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