MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND IRRIGATION

REGULATORY IMPACT STATEMENT (RIS)

THE CROPS (PYRETHRUM) REGULATIONS, 2019

FEBRUARY, 2019
Introduction

The Regulatory Impact Statement (RIS) for the Draft Crops (Pyrethrum) Regulations, 2019 was prepared in accordance with the provisions of sections 6 and 7 of the Statutory Instruments Act, 2013 (No. 23 of 2013). Section 6 of this 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. Sub-section (1) and (2) of section 7 set 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 objective and justification is to develop, promote and protect the pyrethrum industry for the benefit of the pyrethrum growers and other stakeholders in the pyrethrum industry through:

I. Registration of pyrethrum growers through the processors;
II. Licensing and registering processors, commercial nursery operators and dealers in pyrethrum as prescribed in Form A12;
III. Coordination of the activities of stakeholders and organizations within the pyrethrum industry;
IV. Identifying and recommending research areas in consultation with relevant research organizations and other pyrethrum industry stakeholders;
V. Facilitating the flow of research findings to interested parties through County departments of Agriculture;
VI. Promoting arbitration and mediation of disputes among parties in the industry;
VII. Promoting and encouraging the use of environmentally friendly technologies in the pyrethrum sub-sector;
VIII. Collecting and analyzing pyrethrum statistics and maintain a data base for the same that would be available to stakeholders upon request; and
IX. Promoting the efficiency and development of the pyrethrum industry through the establishment of appropriate institutional linkages.
X. Contribution to the manufacturing pillar of the National Government's Big Four Agenda by providing raw materials for increased agro-processing of pyrethrum volumes produced.
2.0 Statement on the Effect of the Proposed Regulations

2.1 Effects on the Public Sector

I. 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 Pyrethrum sector. A robust pyrethrum industry will mitigate health related issues from synthetic agrochemicals and agrochemical products due to its biodegradable nature. The regulations will result in increased export revenues and foreign exchange earnings.

II. The Government will re-establish a coherent pyrethrum sector for streamlined oversight and improved management.

III. County Governments will have a well-organized policy and strategy implementation structure at the local level, especially the mobilization of farmers, regulation and better coordination of the sector in the county, and promoting sector development in the counties.

IV. The Miraa, Pyrethrum and other Industrial Crops Directorate will have improved sector structures, systems and implementation framework for more effective sector regulation and planning.

2.2 Effects on the Private Sector

I. Pyrethrum sector players: processors, dealers, formulators, nursery operators, both local and international, will stand to benefit from a competitive pyrethrum sector and protected from the unfair competition and regulation by a state agency that combines both business interests and regulatory roles.

II. Sustainable business can once again thrive in the pyrethrum industry; this will attract new local and foreign investors to invest in the sub-sector.

III. Pyrethrum farmers will have a choice on which processor to work with, while access to quality planting materials and research findings will be improved, as will payments which will be paid within a stipulated timeline.

IV. The broader agricultural sector and national economy will benefit from the increased volumes of production and exports that will enable Kenya reclaim her position in the global pyrethrum market and thus increased of foreign exchange earnings; whilst creating employment and improving livelihoods of farmers through increased earnings.

V. Academia and research organizations will also be winners in this regard because the regulations create a demand for their services.
2.3 Effects on Fundamental Rights and Freedoms

I. The proposed regulations were benchmarked against the Bill of Rights in the Constitution of Kenya, 2010 and they do not impact negatively on the fundamental rights and freedoms contained therein.

II. 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.

III. Further, the proposed regulations seek to advance the government policy of implementing reforms in the pyrethrum 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 also ensure consumers of pyrethrum have quality and safe products to consume as required in Article 46 of the Constitution.

3.0 Statement on Regulatory and 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. Examples of this are:

- making use of existing regulation;
- simplifying or clarifying existing regulation;
- improving enforcement of existing regulation; or
- 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. Regulation aims to set rules to protect and benefit people, businesses and the environment, stabilizing markets and addressing market failures to support economic growth. Regulation can also create costs for businesses, the private and the public
sectors. It can, if overused, poorly designed or implemented, stifle competitiveness and growth.

The passing and operationalization of the proposed regulations will strengthen the institutional, legal and regulatory framework in the Pyrethrum sub-sector as follows:

i. Support increased participation of the more efficient private sector in the pyrethrum sector, allowing for new investments in processing, produce aggregation, product formulation and product export.

ii. Enhance access to quality seed and seedlings to meet demand for new crop establishment and renewal of existing fields.

iii. Streamline coordination of players within the sub-sector and remove underhand dealings that negatively impact on the sub-sector.

iv. Develop and maintain a realistic data base on the sub-sector for better planning.

v. Enhance access to technical data by stakeholders to support existing and pyrethrum business to be established in future.

vi. Facilitate increased crop research and improved extension services to farmers for increased production and quality.

These regulations are thus important for the revival and renewed growth of the once vibrant pyrethrum sub-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 behavioral 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.

1. Alternatives to regulation

The alternatives to regulation include:

a) No new intervention/do nothing: - This may include making use of existing regulation; simplifying or clarifying existing regulation; improving enforcement of existing regulation; or making legal remedies more accessible or cheaper
and as discussed in the section above, status quo in the sector are likely to remain.

b) Information and education: Information and education can be used to empower stakeholders to make their own decisions, improving choice for mutual benefit of all. 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 and so 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 and it will increase costs for government and businesses that will be providing the information and education required.

c) Incentive/market-based structures.

The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers etc. 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 the pyrethrum sector. Further, often these sorts of systems need their own regulations to establish the framework and may have additional costs to the government and are unlikely to be effective in the pyrethrum industry.

2. Alternatives models of regulation

Alternative modes of regulation include:

a) Self-regulation

An industry or a profession can self-regulate, for example through the use of codes of conduct, customer charters, standards or accreditation. In many cases rules and codes of conduct will be formulated by other industry representative or organization under their own initiative.

b) Co-regulation.

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where industry may work with government to develop a code of practice and enforcement would be by the industry or a professional organization and accredited by government.
4.0 Costs-Benefit Analysis (CBA)
The implementation of policies and regulatory frameworks comes with gains and losses as well as benefits and penalties. Whereas the losses and penalties can be summed up as costs or inputs, the gains and benefits are summed up as outputs or products. All these occur over a span of time calling the capture of this stream of costs and products over time.

4.1 Economic, Environmental and Social Impacts
Economic impacts of the regulations will include:
   I. Increased agricultural production of pyrethrum.
   II. Increased exports of pyrethrum volumes and products.
   III. Increased value addition and product diversification.
   IV. Increased earnings from pyrethrum products exports.
   V. Increased Savings and Investment by farm families.
   VI. Foreign Direct Investment through new investments in production, value addition and marketing of Kenyan pyrethrum products.
   VII. Improved Terms of trade - substitution of imported pyrethrum based pesticides with locally formulated products.
   VIII. Increased job creation in the pyrethrum sector.

The social impacts of the regulations will include:
   I. Decreased poverty level among the farm families and the community in general.
   II. Improved Income distribution among the farm families and the community in general.
   III. Improved access to water and Sanitation among the farm families due to increased incomes.
   IV. Improved health status of the farm families and the community, resulting in reduced maternal and child mortality and general health improvement.
   V. Improved education levels and reduced illiteracy levels.

The environmental impacts of the regulations will include:
   I. Improved access to clean affordable water by the households.
   II. Reduced deforestation.
   III. Improved access to quality affordable energy by households.
   IV. Reduced carbon emission.
   V. Improved Land conservation, utilization and management.
VI. Reduced soil degradation due to improved plant cover and reduced soil operations.

4.2 Administration and Compliance Cost
The RIA notes that resources would be required for operationalization of the regulations which will include human resource and operational costs for enforcement as well as for awareness creation of the regulations to the different stakeholders in the pyrethrum 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.

4.3 Assessment of Return on Investment (Benefit)
Passing and operationalization of the regulations will be critical in facilitating further development of the pyrethrum sector. First, by liberalizing the once controlled sector to allow participation of the private sector, improved level of productivity, increased value addition, efficiency in pyrethrum production, manufacturing and marketing to guarantee improved incomes for the farmer and thus improved livelihoods and social welfare for communities, while also guaranteeing other businesses within the value chains good returns and higher export earnings for the country.

In broad terms, the RIA notes the following broad benefits:

I. The regulations will open up the once closed sector to allow entry of new investors for better functioning while allowing for fair competition and this will result in enhanced efficiency and development of the sector.

II. Improved and more efficient agricultural advisory services will support the farmers to improve the productivity of their pyrethrum and also improve on quality.

III. Increased access to quality planting materials by smallholders will result in increased pyrethrum acreage, increased yields and improved quality.

IV. New manufacturers, processors, dealers and other value chain actors will be attracted to invest in the more efficient pyrethrum sector providing farmers with alternative market options for their produce.

V. Processors, dealers, and other value chain actors will be assured of sufficient quantities of produce/products of acceptable quality for sustained operations of their businesses.
VI. A comprehensive sector database will be maintained to inform sector planning and future investments.

VII. More efficient pyrethrum marketing structure will eliminate brokers and excessive exploitation of growers.

VIII. Increased national production and value addition will translate to increased exports of the pyrethrum products.

IX. Increased production will translate to increased job creation through farm labour, pyrethrum processing and products manufacturing, value addition, marketing and auxiliary services.

X. Increased production will also translate to increased exports and thus increased foreign exchange earnings.

XI. Research in the sector will be focused to address identified issues and support further development of all spheres of the sector.

4.4 Quantification of the Benefit

The acreage under pyrethrum in 2017 was estimated at about 3,300 acres and which yielded some 236 MT of dry flowers translating to an average yield of 71Kg per acre (PPCK, 2018). This compares dismally to the average yield of about 250Kgs per acre when the sector’s performance was at its peak in the 1990s. This represents about a 70% drop in productivity which has a potential of yielding up to 400Kg per acre annually. Under ideal situation, through the use of quality planting materials and other interventions proposed in the regulations, the reported 3,300 acres under pyrethrum cultivation in 2017 would have produced 825 MT of pyrethrum earning farmers some estimated Kshs. 179 million compared to only about Kshs. 50m farmers earned in year 2017, while potential export earnings would have increased by more than 300% from the Kshs.109.2m realized in 2016/17 to over Kshs. 300 million. In the late 1990’s, Kenya realized the highest ever production of pyrethrum in a single year, producing over 18,000 MT of pyrethrum flowers earning farmers an equivalent of over Kshs. 3 billion at the current prices. This potential still exists and a well regulated and revitalized pyrethrum sector can develop to this and even higher levels (KNBS, 2017; PBK, 2010).

4.5 Distribution of Impacts

The operationalization of the regulations will generate more positive than negative impacts/risks if the regulations are implemented with sufficient financial, logistical, technical and human resources. First, the production of pyrethrum is expected to increase as more farmers are incentivized to revert to pyrethrum
growing or increase crop acreage by more efficient production systems 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. Increased farm incomes will allow farmers hire extra labour to work on their farms to support the increased farm production as well as contribute to new capital formation. Other processes within the value chain will also create employment opportunities.

The impacts will also be non-monetary. As more is produced, more farmers will focus on intensive on-farm production rather than the sprawl of agriculture due to the population pressure on resources, including wetlands, forests, etc. The more farmers realize increased returns from their land, the better it will be for the environment as the crop yields on the same operated arable land will increase and be sustained rather than creating a sprawl into new land openings, while the land will be maintained under a good crop cover given that pyrethrum is a perennial crop. Socially the farm families' livelihoods will be enhanced and sustained, allowing for better health care, education and wealth creation among the families.

The public sector, the regulation and coordination of a streamlined pyrethrum sector will be significantly improved, with the Government and its agencies' role being strictly that of regulation and leaving sector business to the private sector. The improved production and value addition will contribute to increased exports and earning in foreign exchange for the country. In addition, development of the pyrethrum sector in processing and value addition and especially formulators will increase the availability of pyrethrum based pesticides which are safer for local use, substituting part of the large volume of pesticides that are imported.

5.0 Reasons why other Regulatory Options are not Appropriate

5.1 Option 1: Maintaining the Status Quo
Maintaining the status quo will only sustain the challenges facing the pyrethrum sub-sector and allow further decline in this sub-sector, including the following:
   I. Continued abandoning/shunning of pyrethrum farming due to loss of faith in the key sector players and in the crop itself.
   II. Limited access to high quality seeds and seedlings for crop establishment and renewal.
III. Limited private sector participation, leaving the sub-sector as a monopoly for less business efficient public agency.

IV. Declining production and further diminishing of Kenya’s importance in the global pyrethrum market.

V. Monopoly of the sector through the successor of the PBK to continues, with the inefficient management of the sector that has led to its current state.

VI. 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, section 29 of the AFA Act and relevant provisions of the County Governments Act, 2012 (No. 17 of 2012).

The situation is not sustainable, and the RIA recommends that the proposed regulations be put in place to revitalize the pyrethrum sector for the sector to effectively contribute to the realization of the objectives of the Vision 2030, the national Agriculture Sector Development Strategy and the Big Four Agenda.

5.2 Option 2: Other Practical Options
The other practical options set out in section 3.3 above were weighed against the need to pass the proposed regulations. Therefore, considering the cost benefit analysis; the economic, environmental and social costs; administration and compliance costs; assessment of the return on investment; and quantification of the benefit of the proposed regulations, it is concluded that the proposed Crops (Pyrethrum Industry) Regulations should be passed and operationalized whereas the other practical options identified herein are not viable options. However, they can complement the regulations where no operational conflicts are apparent.

6.0 Conclusion
The proposed Regulations if effectively implemented will provide a favorable environment to make the pyrethrum sector once again attractive to potential growers and to investors in the pyrethrum industry, thus providing the industry with an opportunity to revive and revitalize the industry.

7.0 Recommendations
The regulatory impact assessment recommends passing and operationalization of the proposed Crops (Pyrethrum) Regulations, 2019.