



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

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**REGULATORY IMPACT STATEMENT (RIS)**

**THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2019**

**FEBRUARY, 2019**

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## Introduction

The Regulatory Impact Statement for the proposed Crops (Horticultural Crops) Regulations, 2019 was prepared in accordance with the provisions of sections 6, 7(1) and 7(2) of the Statutory Instruments Act, 2013 (No. 23 of 2013). Section 6 of the Act requires the regulation making authority to prepare a regulatory impact statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Section 7(1) and 7(2) of the Act sets out the contents of a regulatory impact statement for the proposed regulations as follows:

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

The regulatory objectives and justifications are to:

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(Declaration of Special Crops) Horticultural Crops Order, 1967 (L.N. 228/1967) (revised 2012), made under the now repealed Agriculture Act (Cap. 318) of the Laws of Kenya. Currently applicable and proposed to be repealed by the Regulations is the Horticultural Crops Development Order, 2011 (L.N. 190/2011) made under the repealed Agriculture Act (Cap. 318). Horticultural crops and other crops were also governed by statutes which have since been repealed, including Agricultural Produce Marketing Act (Cap. 320), Canning Crops Act (Cap. 328) and various regulations made under these statutes.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

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

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

accountability through the National Horticulture Traceability System, which is the framework for tracing horticultural crops.

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

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

- 2.1.1 The proposed Regulations will provide clarity in the sharing of functions between the two levels of government which will lead to more efficient and effective service delivery.
- 2.1.2 Compliance to the proposed Regulations is expected to streamline management of the horticultural sector.
- 2.1.3 Both county and national governments are expected to increase their incomes from the prescribed fees for the application of registration and levies which revenues will be expected to be used in the betterment of the sector.
- 2.1.4 Streamlining of export systems by regulators at the exit point. This is a mandate by KEPHIS for some of the aspects of export produce requirements which have been outlined.
- 2.1.5 Full implementation of these Regulations will aid to advance the manufacturing pillar of the national government's Big Four Agenda through increased productivity in the horticulture industry. The Regulations will result in increased farm incomes, increased export revenues and foreign exchange earnings.

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

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

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

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

- 2.3.1 There are no foreseen negative impacts on fundamental rights and freedoms in relation to the proposed Regulations.
- 2.3.2 The proposed Regulations shall have a positive impact. They will provide better returns on their produce and investment to existing and new farmers. The Regulations will also create wealth and employment for more Kenyans in the rural areas. This would contribute to improved household incomes and enhances capacities to afford an adequate standard of living envisaged in article 43 of the Constitution.
- 2.3.3 Further, the proposed Regulations seek to advance the government policy of implementing reforms in the horticultural sector aimed at achieving the national goals set out in the Kenya Vision 2030 whereby the agricultural

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Economic impacts of the Regulations will include:

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

The social impacts of the Regulations will include:

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

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

The environmental impacts of the Regulations will include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **6.0 Conclusion**

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

## **7.0 Recommendations**

The RIA recommends the passing and operationalization of the proposed Crops (Horticultural Crops) Regulations, 2019.