



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

**REGULATORY IMPACT STATEMENT (RIS)
THE CROPS (NUTS AND OIL CROPS) REGULATIONS, 2019**

FEBRUARY, 2019

Introduction

The Regulatory Impact Statement for the proposed Crops (Nuts and Oil Crops) Regulations, 2019 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instrument 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 (2) of the Act 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 provide guidelines in the development and promotion of the Nuts and Oil Crops industry and in particular provide for:

- (a) Conditions and registration/licensing of nursery operators, growers, dealers and manufacturers.
- (b) Application, processing procedures and various forms.
- (c) Recommendation of general industry agreements or contracts.
- (d) Production, harvesting, processing and marketing.
- (e) Filing of statistical returns.
- (f) Imposition and administration of levies.
- (g) The regulations will significantly support the realization of the National Government's *Big Four Agenda* through improved food security, nutrition security and thus by extension will also contribute to improved health in the country.
- (h) In addition, the regulations will promote value addition of various nuts and oil crop commodities through agro-processing and thus also contribute to the realization of the manufacturing pillar while also creating more jobs in the nuts and oil crops sub-sector.
- (i) Such any other matters as may be deemed necessary for the better carrying into effect of the provisions of these regulations.

2.0 Statement on the Effect of the Proposed Regulations

2.1 Effects on the Public Sector

- (i) Full implementation of these regulations will advance the food security, health and manufacturing pillars of the National Government's *Big Four Agenda* through increased productivity of nuts and oil crops, value addition through nuts and oil crops manufacturing and improved health through enhanced nutrition security.
- (ii) The regulations will result in increased farm incomes, increased export revenues and foreign exchange earnings.
- (iii) The Government will, for the first time, establish a coherent nuts and oil crops sub-sector for streamlined oversight and better management.
- (iv) County Governments will have both the policy and its implementation strategy as a reference point for direct interventions at the local level, especially the mobilizations and providing agricultural advisory services to the farmers, and promoting sector development in the counties, and regulation of the industry at the county level.
- (v) Nuts and Oil Crops Directorate will have well developed structures in the sector for effective sector regulation and informed planning.

2.2 Effects on the Private Sector

- (i) Farmers and farmer organizations will access quality planting materials and market information more readily, access enhanced advisory services and support, improved and diverse market access, benefit from improved prices.
- (ii) Processors – consistent and reliable supply of quality raw materials for better business planning and operation and legal recognition of the many businesses now viewed as informal or illegal.
- (iii) Commodities dealers - legal recognition of the informal businesses, regular supply of produce for sustainable businesses, consistent product quality, and reliable and stable markets.
- (iv) Marketers and exporters - regular supply of products for sustainable businesses, consistent product quality, and development of reliable and stable markets.
- (v) Nursery operators - legal recognition of nurseries, advisory services and support, reliable market for planting materials.

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 will engender fundamental rights and freedoms of players in the nuts and oil crops value chain. 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 nuts and oil crops sub-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 nuts and oil crops sub-sector but also ensure consumers of Nuts and Oil Crops have quality and safe products to consume as required in article 46 of the Constitution.

3.0 Statement on Regulatory and Non-Regulatory Option

3.1 Option 1: Maintaining the *Status Quo*

Retaining the current regulatory status will have undesirable outcomes. In the longer term, this option means that the sector will continue to operate under outdated and uncoordinated legislation.

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 third 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 nuts and oil crops value chain as follows:

- (i) Support increased participation of the more efficient private sector in the nuts and oil crops sub-sector as opposed to middlemen controlling the sector, allowing for new investments in processing, produce aggregation, product formulation and product export.
- (ii) Enhance access to quality planting materials 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 and especially exploitation of farmers by middlemen.
- (iv) Maintain a realistic data base on the sub-sector for better planning.
- (v) Facilitate increased crop research and improved extension advisory services to farmers for increased production and improved produce quality.
- (vi) The passing and operationalization of the proposed regulations will therefore facilitate the revitalization and development of the Nuts and Oil Crops sub-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 4” Agenda.

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:

- (i) **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.
- (ii) **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 Nuts and Oil Crops sub-sector. Further, often these sorts of systems need their own regulations to establish the framework and may have additional costs to the government.
- (iii) **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.
- (iv) **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

The economic impacts of the regulations will include:

- (i) Increased agricultural production of nuts and oil crops.
- (ii) Increased exports of nuts and oil crops produce and products.
- (iii) Increased savings and investment by nuts and oil crops farmers.
- (iv) Foreign direct investment through new investments in production, warehousing/processing and marketing of nut and oil Crops - the returns will outweigh the initial costs.
- (v) Improved terms of trade - substitution of imported nuts and oil crops from increased local production.
- (vi) Increased job creation in the nuts and oil crops subsector.

The social impacts of the regulations will include:

- (i) Decreased poverty level among the nuts and oil crops farmers and the community in general.
- (ii) Improved income distribution among the nuts and oil crops farmers and the community in general.
- (iii) Improved access to social amenities among small growers as spin-off from investment along the nuts and oil crops value chain.
- (iv) Improved health status of the farmers and the community resulting to reduced child and maternal mortality and reduced disease incidences
- (v) Improved education levels and reduced illiteracy.

The environmental impacts of the regulations will include:

- (i) Improved land conservation, utilization and management will be a cost for the regulations that can easily balance out with improved access to clean affordable water by the households.
- (ii) Improved access to quality affordable energy by households.
- (iii) Reduced carbon emission.
- (iv) Reduced deforestation.
- (v) Soil degradation due to improved plant cover and reduced soil operations is a neutral cost impact.

4.2 Administration and Compliance Cost

- (i) Administration and ensuring compliance to the regulations is not costly bearing in mind the inherent structure already in place under the Ministry of Agriculture, Livestock, Fisheries and Irrigation that cascades to the county level and these regulations describe the roles at each level. Besides, implementation and compliance with the regulations will generate income from registration fees of farmers, importers and exporters. As such the regulatory framework is self-sustaining.
- (ii) On the part of farmers, increased production of Nuts and Oil Crops as well as increased quality of produce by far outweighs the initial cost that may be incurred by farmers in complying with the regulations.
- (iii) There will be additional cost in training staff in related institutions including County Governments for harmony of implementation. The benefit would be reduced costs due to joint training budgets.

4.3 Assessment of Return on Investment (Benefit)

The RIA has noted that operationalization of the regulations will be critical in assisting the nuts and oil crops farmers attain a level of productivity that will 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 volumes for the country. In broad terms, the RIA noted the following benefits:

- (i) Regulation will streamline and organize the sector for better functioning while allowing for fair competition and this will result to enhanced efficiency and development of the sector.
- (ii) The regulations will spur investment in the nuts and oil Crops value chain due to increased farmer confidence, thereby raking in venture capital.
- (iii) Increased access to quality planting materials by smallholders will result to increased acreage under nuts and oil Crops and increased yields and improved quality.
- (iv) New processors, dealers and other value chain actors will invest in the 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 and of acceptable quality for sustained operations of their businesses.
- (vi) A comprehensive sector data base will be maintained to inform sector planning and future investments.
- (vii) All businesses which have been operating illegally within the value chain will be legitimized and thus contribute more to the development of the sector and the economic sustainability.
- (viii) Increased national production and value addition will translate to increased exports of the different commodity products.
- (ix) Increased production will translate to increased job creation through farm labour and processing.
- (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 nuts and oil crops have immense potential to contribute to the Kenya's agricultural development and contribute to the realizations of national development objectives. The coconut crop is reported to have a potential of contributing over Kshs. 13 billion but its current contribution is about Kshs. 3.2 billion (AFA, 2015).

The current production of cashew nut averages 24,000 Metric tons, valued at about Kshs.891m, whereas the potential is estimated to be about 63,000 MT earning of over Kshs. 2 billion (NOCD/AFA, 2016). Currently coconut industry

supports over 350,000 people directly and another 500,000 indirectly, while cashew nut supports 70,000 people directly another 100,000 indirectly (AFA, 2015).

Macadamia is quickly evolving from a shade tree for coffee and macadamia nuts production is expanding fast and is rapidly replacing coffee in traditional coffee growing areas. In 2017, some 41,416 MT of macadamia nuts were produced earning some Kshs. 7.49 billion. The potential from the macadamia industry is enormous and is projected to exceed 100,000MT earning a possible over Kshs.18 billion in the next few years. Many farmers that are dependent on this sub-sector will earn their livelihoods from this crop (AFA, 2017).

There are other nuts and oil crops which though currently are considered less important than these three have huge potential and can contribute significantly to the national food security. These emerging export crops include: sunflower, ground nuts and sesame (simsim) among others. The development of these commodity industries will also contribute to improving livelihoods for millions of farmers while also creating job opportunities along different levels of the value chains.

4.5 Distribution of Impacts

The operationalization of the Regulations will generate more positive than negative impact/risks if the regulations are implemented with sufficient financial, logistical, technical and human resources with the impacts and more heavily on the government but positively on the private sector. The regulations are expected to translate to quickly turn around of each of the commodity industries and translate to improved productivity, both in quantity and quality.

The streamlined commodity industries will be a motivation to farmers to increase the area under these crops as well to improve crop husbandry practices. The increased production will directly result in increased incomes for the farmers and thus improved livelihoods through reduced Poverty Levels, improved income Distribution, better access to Water and sanitation, access to better health care and thus reduced child and maternal mortality, and access to better education and thus reduced illiteracy. The increases of the growing of these crops which are all perennial crops improve the land use management, reduce soil degradation and deforestation. In addition the increased production and development of

these industries will create many new job opportunities both at the farm level and within the different processes along these value chains.

The public sector, the regulation and coordination of a streamlined nuts and oil crops sector will be significantly improved. The improved production and value addition will contribute to increased exports and earning in foreign exchange for the country. In addition development of the nuts and oil crops sector in processing and value addition and especially will increase the availability of raw materials for local cooking oil and soap manufacturers who currently depend on imports and thus saving the foreign exchange used to finance these imports.

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 nuts and oil crops sub-sector and allow further decline in this sub-sector, including the following:

- (i) Continued traditional farming and neglecting of Nuts and Oil Crops due to poor confidence in the key sector players and in the commodities themselves.
- (ii) Limited access to high quality seeds and seedlings for crop establishment and renewal.
- (iii) Limited private sector participation, leaving the sub-sector to cartels who heavily exploit the farmers, demotivating them to improve production.
- (iv) Declining and unreliable production and further diminishing of Kenya's importance in the respective global commodities market.
- (v) 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.

The situation is not sustainable and thus maintaining the status quo is not a viable option for revitalization and development of the nuts and oil crops sub-sector.

5.2. 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 Nuts and Oil Crops Regulations should be passed and operationalized whereas the other practical options identified herein are not viable option. However, they can complement the regulations where no operational conflicts are apparent.

6.0 Conclusion

The sum assessment of the impacts of the proposed regulations makes a compelling case for passing and implementation of the Nuts and Oil Crops Regulations. The proposed regulations bear much promise in streamlining production, trade and problematic interactions among key players in the nuts and oil crops sub-sector.

7.0 Recommendations

The Regulatory Impact Assessment recommends the passing and operationalization of the proposed Crops (Nuts and Oil Crops) Regulations, 2019.