

(Legislative Supplement No. 11)

LEGAL NOTICE NO. 16

THE DAIRY INDUSTRY ACT

(Cap. 336)

THE DAIRY INDUSTRY (REGISTRATION,
LICENSING, CESS AND LEVY) REGULATIONS, 2021

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SCHEDULES

THE DAIRY INDUSTRY ACT

(Cap. 336)

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—

DAIRY INDUSTRY (REGISTRATION, LICENSING, CESS AND LEVY) REGULATIONS, 2021

PART I—PRELIMINARY

1. These Regulations may be cited as the Dairy Industry (Registration, Licensing, Cess and Levy) Regulations, 2021 Citation
2. In these Regulations unless the context otherwise requires — Interpretation
- “Act” means the Dairy Industry Act; Cap. 336
- “application” means an application for the grant, renewal transfer or removal of a regulatory permit or licence;
- “authorized officer” means an officer of the Board appointed or delegated to undertake the issuance, suspension, cancellation, or renewal of a regulatory permit;
- “aggregator” means a person who collects milk from a primary producer for the purpose of bulking, processing or for resale.
- “Board” means the Kenya Dairy Board;
- “body corporate” means a registered entity under any law;
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to dairy industry;
- “cooling plant” means a facility established to bulk and cool milk;
- “consumer safety levy” means a charge imposed on local dairy produce and payable by the dairy business operator to the Board;
- “cottage industry” means a small scale, decentralized dairy manufacturing business whose handling capacity does not exceed 500 kilograms of milk per day;
- “county department” means the county department of a relevant county which is responsible for matters relating to the dairy industry;
- “County Executive Committee member” means the County Executive Committee member for the time being responsible for dairy matters;
- “cost of processed milk” means the amount paid for milk used for processing by the dairy business operator to another dairy business operator or primary producer, or cost incurred in the production of the milk by own farm or in the case of imported dairy produce, the cost

shall be the declared value at the point of entry.

“dairy business operator” means a person who handles dairy produce for business but does not include a primary producer, wholesalers and retailers of packaged dairy produce.;

“dispenser” means a vending machine that dispenses processed dairy produce to consumers;

“licence” means a business licence issued by a county department;

“local dairy produce” dairy produce sourced locally from Kenya or from countries trading in dairy produce with Kenya within a common market protocol.

“milk bar” means a dairy retail outlet where dairy produce is dispensed to a consumer for own consumption;

“mini dairy” means a dairy manufacturing business whose handling capacity is in excess of 500 kilograms but not exceeding 10,000 kilograms per day;

“permit” means a regulatory permit issued under these Regulations;

“permit holder” means a person who is issued with a regulatory permit;

“person” includes a group of persons or organization, whether corporate or otherwise, who produce, handle or offer milk or milk products for sale;

“premise” includes any building, tent or structure together with the land on which it is situated and the adjoining land used in connection therewith, and includes any vehicle, conveyance or vessel in respect of which a regulatory permit is in force;

“primary producer” means a person who produces milk for sale but does not include a person employed by the primary producer for that purpose;

“producer group” means a group of persons or primary producers who have come together for the purpose of collective production, marketing or sale of dairy produce;

“process” means a series of actions or steps taken in order to achieve a particular end;

“processor” means a person who processes dairy produce in excess of 10,000 kilograms per day;

“register” means a register kept in pursuant to these Regulations;

“regulatory permit” means the permit issued by Board, and includes a renewed regulatory permit;

“relevant standard” means the standards for the quality of the dairy produce, product or equipment used in the dairy industry,

determined by the Kenya Bureau of Standards or a regional or international convention or protocol.

3. These Regulations apply to all matters relating to the registration of primary producers and the issuance of licences, regulatory permits and the imposition of cess or levy on dairy produce. Application

4. The objects of these Regulation are to — Objects of the Regulation

- (a) provide for the procedure for registering a primary producer, licensing, issuance of a licence or a regulatory permit to a dairy business operator;
- (b) provide the basis for charging cess or levy with respect to dairy produce;
- (c) ensure quality and safety of marketed dairy produce; and
- (d) create an enabling environment for sustainable investment in the dairy industry.

PART II—REGISTRATION OF PRIMARY PRODUCERS

5. (1) A person who wishes to be a primary producer shall register under this regulation. Registration of primary producers

(2) Paragraph (1) shall not apply to a primary producer who produces milk and sells to a neighbor for domestic consumption.

(3) A person who contravenes sub-regulations (1) or obtains registration through fraudulent misrepresentation of any material fact commits an offence and is liable to a fine not exceeding two thousand shillings or one-month imprisonment or to both.

6. (1) Registration of a primary producer shall be submitted to the respective county department and shall be in Form A of the First Schedule. Application for registration

(2) Where a primary producer is a member of a cooperative society, other registered producer groups, the cooperative, producer group or aggregator and not the primary producer, shall submit the list of its members for registration with the County Government.

(3) Upon receipt of a dully filled Form A from a primary producer, the County Government shall without prejudice register the primary producer and issue the primary producer with a unique number.

(4) No fee shall be payable by a primary producer as a requirement for registration.

(5) The registration as a primary producer is a one-off process.

(6) A county department shall establish strategies to ensure that every primary producer is registered.

7. (1) A dairy cooperative society, a producer group or aggregator shall maintain an updated register of its members who are primary producers. Register of primary producers

(2) A county government shall maintain and update, on quarterly basis, a register of all primary producers.

(3) The county government shall submit to the Board details of

registered primary producers on quarterly basis, in Form G in the Seventh Schedule.

(4) The Board shall annually update the register kept pursuant to these Regulations.

(5) A primary producer who ceases to operate as a primary producer shall notify the respective county government for deregistration as a producer.

(6) A person who has been deregistered but who wishes to resume operations shall make a fresh application for registration in accordance with the provisions of regulation 6.

8. (1) A register maintained pursuant to this regulation shall be open to inspection by any interested person only for official or legitimate purpose excluding commercial and advising purposes and for that reason the register shall at all times during working hours, be open to inspection in a place accessible to the person seeking to inspect and such person may, at his own cost, take notes there from or photocopy the whole or part of the contents of the register. Inspection of register

(2) Where a person, other than an officer of the county department in their official capacity, makes notes from or photocopies contents of a register as is permitted under sub regulation (1), the person shall pay to the account of the county government such an amount of inspection fee as the county may determine from time to time and the fee charged shall take into account any mutilation, defacement or mishandling, as the case may be, of the register by the person inspecting.

(3) The county department may make corrections of any clerical error apparent on the register, but shall not make corrections of any substantive nature.

(4) A record of all errors corrected under this regulation shall be kept in writing at all times and,

(5) Inspection of register will be conducted in pursuant to the provisions of the Access to Information Act and Data Protection Act.

PART III—LICENCING OF DAIRY BUSINESS OPERATORS

9. (1) A person shall not carry on the business of a dairy business operator unless the person has a valid dairy business license from the relevant county government. Dairy business license

(2) An application for a dairy business license shall be in Form B of the Second Schedule.

(3) The county government shall consider and make a decision on the application and shall communicate to the applicant within 30 days.

(4) A licence shall be valid for 12 months from the date of issue.

(5) Delays in the processing of Dairy Business Permit from the county government will not affect the operations of the dairy provided that the application for a business permit had already been submitted by the dairy business operator.

(6) A person who has submitted an application for a dairy business licence under this Part may continue his operations while awaiting the communication referred to in paragraph (3).

(7) Where the county government rejects an application for a dairy business license, the applicant shall cease their operations as a dairy business operator with effect from the date of receipt of the communication of rejection.

(8) A person who is dissatisfied with the decision of the county government may, within 30 days of the communication of the decision, appeal to the court.

10. (1) The fees payable on an application for a dairy business licence shall be as set out in Form F of the Fifth Schedule. Licensing fee

(2) A county government may waive part of or all the fee required under this regulation.

11. Despite regulation 9 no application for a dairy business licence shall be considered or a licence issued unless the applicant has in force a valid regulatory permit issued under regulation 14. Condition of issuance of licence

12. (1) A county government may impose cess not exceeding 0.5 per cent of the farm gate price payable by a primary producer, which may be collected by the aggregator or the Board and remitted to the county department within a period of twenty days after the last day of the month during which the dairy produce in respect of which the cess is payable was aggregated. Imposition of cess

(2) A county government shall not impose or charge cess on dairy produce emanating from another county.

13. A person who operates in contravention to regulation 11 or fails to pay or remit cess under regulation 12(1) commits an offence is liable on conviction to fine not exceeding ten thousand shillings or a term of imprisonment of twelve months or to both such fine and imprisonment. Offences

PART IV—REGULATORY PERMIT AND CONSUMER SAFETY LEVY

14. (1) A person shall not operate a dairy business unless the person holds a Regulatory permit issued by the Board under these regulations. Regulatory Permit

(2) An application for a regulatory permit shall be made to the Board in Form C in the Third Schedule and shall be accompanied by the fees specified in Form E in the Fifth Schedule.

(3) A regulatory permit shall be in Form D in the Fourth Schedule.

(4) The Board shall, upon being satisfied that the applicant meets the necessary requirements, and within 30 days of receipt of the application—

(a) grant a new Regulatory permit;

- (b) renew a Regulatory permit; or
- (c) transfer an existing Regulatory permit.

(5) A person who is dissatisfied with the decision of the Board, may, within 30 days of being notified of the decision, appeal to the office of the Cabinet Secretary. If dissatisfied, they shall pursue legal redress.

15. The Board shall, before issuing a regulatory permit, be satisfied that—

Prior
inspection of
premises

- (a) any person taking part in the storage, handling, distribution or sale of dairy produce on the premises in respect of which the application is made or to which an existing regulatory permit relates has a valid medical certificate;
- (b) on inspection, the premises in respect of which the application is made or to which a regulatory permit relates are —
 - (i) in good repair;
 - (ii) are not deficient in accommodation or sanitary or drainage requirements;
 - (iii) are in a clean and wholesome condition;
 - (iv) are provided with plant and equipment adequate for the purpose of the business.
- (c) the plant or equipment is satisfactorily maintained or utilized and the owner of the premises, the applicant or the regulatory permit holder is able to guarantee to the satisfaction of the Board that necessary repairs or cleansing will be carried out; and
- (d) the plant or equipment provided within a time specified by the Board, and that the premises, plant and equipment are maintained and utilized to the satisfaction of the Board.

16. (1) Where the applicant for a regulatory permit is a corporate body, the license shall be issued in the name of the body corporate.

Regulatory permit to
corporate bodies

(2) Any person who for the time being is a manager of the body corporate shall be subject to the duties and liabilities imposed upon the holder of the regulatory permit.

(3) No transfer of the regulatory permit shall be necessary where a change occurs in the office of the manager, but any person for the time being holding that office shall be subject to the duties and liabilities imposed upon the holder of the regulatory permit.

17. (1) A regulatory permit shall be valid for a period of twelve months from the date of issue.

Duration of permit

(2) A renewal of the permit under paragraph (1) shall be issued subject to regulation 15.

(3) A holder of a regulatory permit shall apply for a renewal three months prior to the expiry of the regulatory permit.

18. The Board may issue the following regulatory permits —
- (a) Milk bar regulatory permit;
 - (b) Mini dairy regulatory permit;
 - (c) Dairy produce dispenser regulatory permit;
 - (d) Cottage industry regulatory permit;
 - (e) Cooling plant regulatory permit;
 - (f) Processor regulatory permit.
19. (1) A regulatory permit holder shall conspicuously display or cause to be displayed the regulatory permit in force on the premises to which it relates.
- (2) A regulatory permit holder who fails or neglects to so display the regulatory permit as provided under this regulation commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
20. (1) Regulatory permit is not transferrable except as provided by clause 19(2) of this regulation.
- (2) A regulatory permit assignee or agent shall be subject and liable to the same duties, obligations and penalties under these regulations as if they were the regulatory permit holder:
- (3) An act done or omitted to be done by an employee in contravention of any of the provisions of these Regulations shall be deemed also to be the act or omission of the employer and any proceedings for an offence arising out of that act or omission may be taken against both employer and employee.
21. A person who causes or permits a display on his or her premises or on premises under his or her control, any words, letters or sign falsely purporting that he is a regulatory permit holder commits an offence and is liable upon conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year as per the Dairy Industry Act, or both.
22. (1) A dairy business operator who sells dairy produce, offers or exposes it for sale except under and in accordance with, and on such premises as may be specified in, a regulatory permit, commits an offence and is liable on conviction —
- (a) for a first offence, to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding twelve months, or to both; and
 - (b) for a second or subsequent offence, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years, or to both.
23. (1) The Board may refuse to issue a regulatory permit, remove, suspend or cancel a regulatory permit if the Board is satisfied

Types of regulatory permits

Display of regulatory permit

Responsibility of permit holder

Purporting to be a regulatory permit holder.

Sales contrary to permit

Authentication of a regulatory

that the applicant, or the regulatory permit holder—

permit.

- (a) has failed to give particulars of any conviction which he is required to give under these regulations;
- (b) has conducted in an improper manner the obligations to which an existing regulatory permit relates;
- (c) has failed to comply with any condition imposed under an existing regulatory permit.
- (d) has in use dairy equipment, material or additive which does not meet the relevant standard;
- (e) has failed to provide material facts stated in the application;
- (f) is in default in the payment of any sum due to the Board or arising from any contractual arrangements with a producer or agent of a producer;
- (g) is deregistered;
- (h) has contravened a provision of these Regulations;
- (i) has not fulfilled the requirement for grant of a regulatory permit;
- (j) has not paid a primary producer for milk delivered.

(2) A suspension of a regulatory permit shall not exceed 3 months.

25. (1) A holder of a regulatory permit shall be an agent of the Board for the purpose of collecting and remitting the consumer safety levy.

Powers of the Board

(2) A dairy business operator shall remit a consumer safety levy on the dairy produce processed or imported at the rate of forty cents per kilogram of milk processed or one per centum of the cost of milk processed or imported, whichever is higher.

(3) A person who is required under these regulations to pay or remit levy to the Board, shall do so on a monthly basis and in each case within a period of ten days after the last day of the month during which the milk or dairy produce in respect of which the levy is payable was processed provided that for imported dairy produce the consumer safety levy shall be payable prior to entry of the produce into the country.

26. (1) A person who fails, neglects or otherwise refuses to pay or remit the consumer safety levy on time as provided for under these Regulations shall, in addition to paying the consumer safety levy —

Recovery and
Remittance of
consumer safety levy

- (a) pay a penalty of twenty-five percent interest for the first month or part of a month in which the levy remains unpaid; and
- (b) pay penalty of twelve percent compound interest for each subsequent month or part of a month in which the levy remains unpaid.

27. The interest rates set out in this regulation are monthly interest rates. Penalty and interest on unpaid levy

28. A person who contravenes any of the provisions of these Regulations for which a penalty is not provided commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year or both. General Penalty

29. The Dairy Industry (Imposition of Cess and Levies) Regulations are hereby revoked. Revocation of LN No. 111 of 2004 Sub Leg

FIRST SCHEDULE
APPLICATION FOR REGISTRATION AS PRIMARY PRODUCER
FORM A (Reg. 6(1))
COUNTY LOGO/EMBLEM
REGISTRATION OF PRIMARY PRODUCERS

Application for Registration Form:

To be filled by all dairy farmers producing milk for sale. The duly filled form should be returned to the County Executive Committee Member responsible for dairy matters.

Name(s) of Owner/Farmer(s)ID No.....

Name of Farm

TelephoneMobile

Postal Address

Postal Address (if different from Farm Address).....

E-mail address

Physical Location:

CountySub-County.....Ward.....

LocationSub-Location.....Village.....

Land Reference No.....

Type of ownership: *(Tick as appropriate)*

Corporation Partnership Individual Other

Type of operation: *(Tick as appropriate)*

Commercial breeder Milk Producer

For Official Use Only:

Entry No:.....

Farm Reference:.....

Approved/Not Approved:..... Reason for Rejection:.....

Registration Certificate No:.....

Name of issuing officer;.....Designation:.....

Official Stamp.....Date:.....

SECOND SCHEDULE
FORM B (Reg. 11(2))
COUNTY LOGO/EMBLEM
APPLICATION FOR DAIRY BUSINESS REGISTRATION

To be filled by all dairy business operators engaged in dairy business. The duly filled form should be returned to the County Executive Committee Member responsible for dairy matters.

Name(s) of Business Operator ID No.

Name of Business (if applicable).....

Telephone Mobile

Postal Address

Postal Address (if different from Business Address).....

E-mail address

Physical Location:

County Sub-County..... Ward.....

Township..... Street (where applicable).....

Plot No.....

Type of ownership: *(Tick as appropriate)*

Corporation Partnership Individual Other

Type of operation: *(Tick as appropriate)*

Milk Bar Milk Dispenser

Cottage Industry Mini Dairy Cooling Plant Processor

For Official Use Only:

Entry No:.....

Plot GPS Reference(where applicable).....

Approved/Not Approved:..... Reason for Rejection:.....

Registration Certificate No:.....

Name of issuing officer; Designation:

Official Stamp..... Date:.....

THIRD SCHEDULE



FORM C (Reg. 16(2))

KENYA DAIRY BOARD

P.O. Box 30406-00100 TEL:310559/335057 FAX:24406

E-mail: info@kdb.co.ke

Serial No:.....

APPLICATION FOR A REGULATORY PERMIT

To be filled by dairy business operator. The duly filled form should be returned to the Chief Executive Officer, Kenya Dairy Board.

I (Name).....

Address.....Tel. No.....Mobile No:.....

E-mail.....Fax.....hereby apply for a Regulatory permit to produce/process/sell/dispose of the quantities of dairy produce specified in column(1)of the schedule to this application to the person (s) or class of persons specified in column(2) of the said schedule within the area specified in column (3) on the said schedule for the period specified in column (4) on the said schedule.

	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Nature of Dairy Produce	Quantity per Day	For sale to whom (andwhether wholesale or Retail)	Area	Period

Full name of business Location of Business.....

Address.....Tel.....Fax.....

E-mail.....Date.....Signature & Stamp.....

(if signature is on behalf of a limited Company, Estate or Partnership, this must be stated)
FOR OFFICIAL USE ONLY

The Compliance Officer Remark.....

Name.....Signature & Stamp.....

Officer in charge's Remarks:

Signature & Stamp.....

Kenya Dairy The Management Licensing Committee Recommended/Deferred/Rejected

.....

Signature.....

Issue Date.....

FOURTH SCHEDULE
FORM D (Reg. 16(3))
THE KENYA DAIRY BOARD
REGULATORY PERMIT TO
PRODUCE/PROCESS/SELL/ OF DISPOSE DAIRY PRODUCE



Licence No.....
 Category.....
 Serial Number
 Name.....Station:.....
 Postal Address.....Physical Address.....
 Telephone No.....e-mail.....

Is hereby permitted to produce/process/sell/dispose of the quantities of dairy produce specified in Column 1 of the Schedule to this licence to the person(s) or class of persons specified in Column 2 of the said Schedule within the area specified in Column 3 of the said schedule for the period(s) specified in Column 4 of the said schedule subject to the following terms and conditions:

1. The Kenya Dairy Board reserves the right to modify or vary this permit from time to time upon giving to the permit holder thirty (30) day's previous notice in writing.
2. This permit is subject to immediate cancellation if the permit holder is in default in payment of any obligations due to the Board arising from any contractual arrangements with producers or their agents.
3. This permit is liable to immediate cancellation if the permit holder contravenes any of the conditions of the permit or otherwise acts in contravention of the Dairy Industry (Registration, Licensing, Cess & Levy) Regulations, 2021.

SCHEDULE

COLUMN 1		COLUMN 2	COLUMN 3	COLUMN 4
Nature of Dairy Produce	Quantity Per Day	For Sale to whom (and whether Wholesale or Retail)	Area	Period

BY ORDER OF THE KENYA DAIRY BOARD

Expiry Date.....
 Issue Date.....

**FIFTH SCHEDULE
THE KENYA DAIRY BOARD
FORM E (Reg. 12(1);16 (2))**

FEE PAYABLE UNDER THESE REGULATIONS

<i>Category of Regulatory Permit Fees</i>		<i>KSh.</i>
1.	Application Fee	Free
2.	Regulatory permit fee (Processor handling above 20,000 litres per day)	50,000
3.	Regulatory permit fee (Processor handling below 20,000 litres per day)	25,000
4.	Milk bar permit fee	Free
5.	Mini dairy permit fee	Free
6.	Dairy produce dispenser permit fee	Free
7.	Cottage industry permit fee	Free
8.	Cooling plant permit fee (below 5,000 litres capacity)	Free
9.	Cooling plant permit fee (Above 5,000 litres capacity)	Free

<i>Category of Licences and Certificates</i>		<i>KSh.</i>
1.	Application (licences & registration)	Free
2.	Primary producer registration	Free
3.	Processor licence	25,000
4.	Milk bar licence	2,500
5.	Mini dairy licence	6,000
6.	Dairy produce dispenser licence	2,500
7.	Cottage industry licence	4,000
8.	Cooling plant licence	1,000

SIXTH SCHEDULE
QUARTERLY REPORT BY COUNTY GOVERNMENT
FORM F (Reg. 8(3))

County Government of

Report for the period.....

Number of registered primary producers at end of last quarter.....

Number of producers who have been deregistered in the quarter.....

Number of registered primary producers as at today.....

For Official Use Only:

Entry No:.....

County Reference:.....

Posted into the main Register

Name of officer;..... *Designation:*.....

Official Stamp..... *Date:*.....

Dated the 9th February, 2021.

PETER MUNYA,
Cabinet Secretary for Agriculture,
Livestock, Fisheries and Co-operatives