MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES

AGRICULTURE AND FOOD AUTHORITY
(COFFEE DIRECTORATE)

REGULATORY IMPACT STATEMENT (RIS)

THE CROPS (COFFEE)(GENERAL)(AMENDMENT) REGULATIONS, 2022

MARCH, 2022

1.0 Introduction

The Regulatory Impact Statement for the proposed The Crops (Coffee)(General)(Amendment) Regulations, 2022 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instruments Act, 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:

2.0 A Statement of the Objectives and Reasons for the Proposed Regulations

The proposed regulations seek to amend the provisions of the Crops (Coffee)(General) Regulations 2019 and enhance the regulation of the coffee subsector in Kenya. Specifically, the purpose and object of the regulations include to;

i. Give effect to section 40 of the Crops Act, 2013;
ii. Provide for licences to be issued by the licensing authorities;
iii. Provide for the obligations of licence holders and service providers, and the protection and regulation of their interests along the value chain;
iv. Recognize the grower of coffee as the owner of coffee until the coffee is sold and paid for;
v. Provide for the protection of growers' rights along the value chain;
vi. Provide for a transparent and timely clearing and settlement of coffee sales proceeds to the growers and service providers;
vii. Provide for the collection and maintenance of data related to coffee;
viii. Ensure improvement of coffee standards, increased production and support; and
ix. Regulate the coffee industry in Kenya.

3.0 Statement on the Effect of the Proposed Regulations

3.1 Effect on the Public Sector

i. The Authority will strengthen and streamline the regulatory framework of the coffee industry by having clear identification, definition and distinction of all industry actors and the roles for the different coffee value chain actors and to eliminate conflicting roles by some of these actors which often results in colluding and underhand dealings in the sector to the detriment of other sector actors and especially farmers.

ii. The incorporation of the national body for the time being responsible for standards in the development, oversight and enforcement of quality standards in the coffee sector will facilitate and support the development, implementation and compliance with the standards in the coffee industry.

iii. Continuous inspections and surveillance of industry players by the Authority to allow the Authority to continuously monitor compliance of all industry players and as well to access their eligibility for issuance or renewal of licenses and to oversight the coffee sector performance in general.

iv. Supervision of coffee Cooperative Societies will be strengthened through the introduction of two five-year term limits for directors of coffee Co-Operatives, the requirement of not more than two-thirds of the directors being of one gender, and directors to meet the requirements of Chapter Six of the Constitution.

v. The county governments will have a role in the issuance of distinguishing marks and grower codes which will promote the coffee quality and standards compliance and growers coding and registration for branding and effective produce traceability and also in the registration of miller- marketers at the county level for approval of miller licence applications before issuance by the Authority.

vi. The requirement that research in coffee and for results validation be done only by KALRO is removed which will allow on-farm research even for own use by large abled large estates, and use of indigenous technical knowledge in coffee farming especially among smallholder farmers and reduce the cost of research.

vii. The Authority in consultation with industry stakeholders will have the responsibility of developing a training curriculum, conducting examinations and issuance of certificates for coffee liquorers.

viii. The different licences and fees prescribed in the regulations will generate additional revenue for the Authority.

3.2 Effects on the Private Sector

The proposed Regulations will affect the private sector in the following ways:-

i. The clear identification, definition and distinction of industry actors and their roles for the different coffee value chain actors will eliminate conflicting roles by some coffee industry actors which often results in colluding underhand dealings in the sector to the detriment of other sector actors, especially farmers.

ii. The licensing of independent coffee auction organizers will ensure fair trading in the coffee auctions devoid of any form of collusions or effects of vested interest by non-independent auction organizers.

iii. The licensing of miller-marketers will allow such millers to engage directly in coffee marketing without having to engage alternative marketing agents at a cost that erodes farmers' incomes.

iv. The incorporation of the national body for the time being responsible for standards in the development, oversight and enforcement of quality standards in the coffee will facilitate and support the sector private sector meet internationally acceptable standards and branding for entry into alternative global coffee markets.

v. Regular inspections and surveillance of industry private sector players by the Authority will ease the process of issuance or renewal of licenses due to the continuous monitoring of compliance.

vi. Licensing of grower miller means that a grower who mills own parchment or mbuni will market their produce themselves, which encourages more growers to invest in milling facilities, and thus be responsible for the quality of their produce.

vii. Governance in Cooperatives will be strengthened through the introduction of two five-year term limits for directors of coffee Co-operatives, the requirement of not more than two-thirds of the directors being of one gender, and directors to meet the requirements of Chapter Six of the Constitution, thus improved efficiency and farmers' returns.

viii. Providing for the coffee factory by resolution of its members in an annual general meeting to register as Societies under the Co-operative Societies Act will allow them to register as Societies and manage their own affairs and avoid inefficiencies within large Cooperatives which erode profits of well-performing factories.

ix. Proposed licensing protocol in the industry will prevent a holder of a coffee buyer's licence or any other entity associated with such holder to be licensed as a miller-marketer, roaster or warehouseman to prevent the development of oligopolistic or even monopolistic coffee agencies that would be a threat to the survival of smallholder coffee organizations who are the backbone of the Kenyan coffee sector.

x. Appointment of a licensed miller-marketer for the milling parchment and mbuni coffee and the marketing of clean coffee by growers of a coffee factory by the management committee and ratification by growers through a resolution of members in an annual general meeting will ensure competitiveness. This is expected to promote transparency, members' participation and efficiency in the delivery of services and with disclosures of all charges and fees.

xi. The capping of marketing fees, milling losses allowable and cost of coffee milling and related activities (handling, sorting, grading, packaging, warehousing charges) will protect growers from excessive charges for services and ensure efficiency, thus ensuring better returns for growers.

xii. Prohibition of coffee miller-marketers to offer farmers financial support will protect growers from borrowings by society management against the members' assets or coffee deliveries and often leaves societies heavily indebted.

xiii. Prohibiting miller-marketers or their agents from participating in the buying of coffee and also prohibiting parallel directorships and cross-ownership of shares in miller-marketers and coffee buying companies will ensure fair trade practices in coffee marketing and eliminate possible acts of colluding by players with multiple interests.

xiv. Direct coffee sales will be subject to price competition at the Nairobi Coffee Auctions whereby the direct sales price shall serve as a reserve price. This will ensure that coffee farmers will not be victims of depressed prices even from prospective direct sales.

xv. All payments to growers for coffee sold and for services rendered for such coffee whether, by miller-marketers, warehousemen, auction organizers, coffee societies and factories will be paid into their individual accounts from the direct settlement system. This will protect payments due to growers and other service providers from possible risks of diversion, misappropriation, unallowable appropriations and even delayed disbursement of payments.

xvi. Payments to factories or societies from the direct settlement system for operations and maintenance to five per centum of the value of coffee sold net of the milling, warehousing and marketing costs, protecting farmers from excessive charges.

xvii. Nairobi Coffee Auction service agreements with commercial banks which qualify and are appointed to offer the services of Direct Settlement System services for the coffee subsector which will further secure growers' dues.

xviii. Licensing of independent coffee liquorers and cupping centres will ensure fair practices in coffee liquoring and grading.

xix. The interest rate on borrowing by a coffee factory/Cooperative society against growers' assets such as land, machinery, equipment held in trust by the growers' coffee factories Co-operative societies is capped at five percent per annum; factories or societies shall only contract loans or advances with the support of a resolution passed by a majority of the growers; a breach of these requirements constitute an offence and any loans borrowed in breach of this provision shall be statutorily converted. This will protect members' interests in the society/factory.

xx. All marketing agent licenses existing as of 30th June 2021 to remain valid until a Direct Settlement System is established for the processing of coffee sales proceeds and other ancillary services. This will ensure continuity in business during the transition phase until the envisaged changes are fully in place.

xxi. The different licences and fees prescribed in the Amendment Regulations will marginally increase the cost of doing business in the coffee sector.

3.3 Effects on Fundamental Rights and Freedoms

The proposed Regulations shall have a positive impact on fundamental rights and freedoms in the following ways:-

i. **Consumer Protection**

The draft Amendment Regulations seek to promote consumer protection by ensuring quality guarantees of the coffee in the consumption market. Specifically, clause 6 amends the functions of the Agriculture and Food Authority by imposing additional powers to develop, oversee and enforce as the case may be the national regulations, coffee industry standards and industry code of practice and other quality standards in the coffee industry in collaboration with Kenya Bureau of Standards. The Amendment Regulations also empower the Authority to undertake inspections and surveillance of industry players. These powers are aimed at ensuring that the production, importation and sale of coffee meet the quality standards and the end product are of merchantable quality. Additionally, clause 10 provides for the clearance and registration of miller-marketer by county governments before issuance of licenses for milling and marketing of coffee to applicants. Compliance with the licensing requirements will ensure that the set standards are observed as measures of consumer protection. The provisions of the Amendment Regulations, therefore, reinforce consumer protection.

These provisions of the Amendment Regulations are in line with the provisions of article 46 of the Constitution. The Constitution under Article 46(1) guarantees consumers the right to goods and services of reasonable quality. The proposed Amendment Regulations will protect consumers from the consumption of poor-quality coffee.

ii. **Access to information**

Article 35 of the Constitution guarantees the right of access to information held by another person and is required for the exercise or protection of any right or fundamental freedom. This is reflected in the proposed amendment regulations under clause 7 which proposes to amend regulation 7 of the General Regulations and substitutes the registration requirement. The Amendment Regulations mandate the Authority to undertake registration of all coffee warehousemen, warehouses, coffee mill-marketer, grower marketers, grower millers, auction organizers, coffee buyers, roasters, importers and certification companies, maintain up to date register on them and share the register with respective county governments. The information management systems maintained by the county government including the database on registers will be accessible to the public as necessary for the subsector.

iii. **Affirmative action**

The Constitution provides for equality and non-discrimination. Specifically, Article 27 (8) requires the implementation of the constitutional principle on equality and non-discrimination such that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. The Amendment Regulations seek to enforce this provision under clause 7 by incorporating provisions mandating the Cooperative Societies to ensure that not more than two-thirds of the members are of one gender while appointing its board of directors.

iv. **Economic and social rights**

Article 43 of the Constitution of Kenya, 2010 provides for economic and social rights. It affirms the right of individuals and communities to an adequate standard of life including the right to be free from hunger and have adequate food of acceptable quality. The proposed Amendment Regulations, if enacted into law, shall create employment opportunities in coffee plantations and production which in turn shall ensure the realization of economic rights.

3.0 Statement on Regulatory & 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 regulatory framework, thus maintaining the *status quo*. Examples of this are: -

i. Making use of existing laws, regulations and/or guidelines;
ii. Simplifying or clarifying existing regulation;
iii. Improving enforcement of existing regulation; or
iv. Making legal remedies more accessible or cheaper.

3.2 Option 2: Passing the Regulations

The Government can achieve its policy objectives by using taxpayer money or through a range of non-spending interventions, including regulation. The purpose of these is to provide for the regulation, promotion and development of the coffee industry in Kenya for the benefit of the Coffee growers and other stakeholders in the Coffee industry. These Regulations aim to set rules to protect and benefit people, businesses and the environment, stabilizing markets and addressing production, processing and market failures to support the development of the industry. Regulations could also create costs for businesses and the public sectors. It could if overused, poorly designed or implemented, stifle competitiveness and growth.

Adoption and operationalization of the proposed regulations will: -

i. Strengthen regulation and surveillance in the coffee industry by having clear identification, definition and distinction of all industry actors and their roles for the different coffee value chain actors.

ii. Streamline and coordination of players within the coffee industry to remove underhand dealings from multiple conflicts of interest by dominant industry players that negatively impact the coffee industry development or on certain actors in the chain including in the production, processing, marketing and export of coffee.

iii. Strengthen governance, efficiency and transparency in coffee cooperatives to the benefit of the societies' membership and the coffee industry in general.

iv. Promote fair trade practices through the introduction of independent coffee auction organizers, coffee liquorers and cupping centres.

v. Capping limits of marketing fees, milling losses allowable, operation and maintenance costs and cost of coffee milling and related activities; and Interest rate on borrowing will protect growers from excessive or exorbitant fees by service providers.

vi. Direct coffee sales will be subjected to price competition at the Nairobi Coffee Auctions whereby the direct sales price shall serve as a reserve price. This will ensure that coffee farmers will not be victims of depressed prices even from purposively direct sales.

vii. All payments to growers for coffee sold and for services rendered will be paid directly into their individual accounts from the direct settlement system. This will protect such payments from possible risks of diversion, misappropriation, and misdirected appropriations or even delayed disbursement.

viii. Farmers' interests and assets including coffee deliveries will be secured by the prohibition of financial support from coffee miller-marketers to societies and the capping of interest on borrowings.

ix. Increase growers' participation in decision making including the appointment of licensed miller-marketer for the milling of their parchment and buni coffee and approval of borrowings.

x. Eligible coffee factories by resolution of their members in an annual general meeting can register as societies under the Co-operative Societies Act to manage their own affairs and avoid inefficiencies within large cooperatives which erode profits of well-performing factories.

xi. Develop and maintain a realistic database of the coffee industry inclusive of registers on the various coffee value chain actors, coffee production and processing, and coffee stocks movement in Kenya for better sector control and planning.

The Regulations are thus important for the development of the coffee sector and industry for the benefit of all sector/industry stakeholders, especially the coffee farmers and to contribute to the overall development of the agricultural sector in the country in general.

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.

3.3.1 Alternatives to Regulations

Alternatives to regulation include:

i. **No new Intervention/Do Nothing:**

This may include making use of existing laws (or none) and regulations; simplifying or clarifying existing laws and regulations; improving enforcement of existing laws and regulations, or making legal remedies more accessible or cheaper and as discussed in the section above status quo in the sector is likely to remain since it has been noted that though the Crops (Coffee) (General) Regulations, 2019 were gazetted and have been implemented to provide for the regulation, promotion and development of the coffee industry in Kenya, gaps identified in the implementation of these regulations have necessitated their amendment to be able to realize fully the intended purposes of the said regulations.

ii. **Information and Education**

Information and education can be used to empower coffee industry actors including farmers and other industry actors and stakeholders to make their own decisions, improving choice for the mutual benefit of all. However, there are potential risks associated with this. The information and education can take time to make an impact. Access to information on the coffee industry is a big challenge as documentation in the industry has remained limited to be useful and still even the ability to use the available information can vary within the sector and the community and so may not reach all equally. It may also not be straightforward to assess how people will react or change their behavior in response to the information provided. It will also increase costs for the government and businesses that will be providing the information and education required.

iii. **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 in the coffee industry whose structures are yet to be properly defined in the country. Further, often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the coffee industry.

3.3.2 Alternatives Models of Regulation

Alternative models of regulation include;

i. **Self-Regulation**

Self-regulation entails industry players developing a framework to self-regulate a sector. This could be done through the use of codes of conduct or practice, customer charters, standards or accreditation. In many cases, rules and codes of conduct or practice will be formulated by the industry representatives or organizations under their own initiative. In absence of universal well-developed and all-inclusive industry organizations as in the coffee industry, self-regulation currently cannot be effectively possible.

ii. **Co-Regulation**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice whose enforcement would be by the industry or a professional organization and accredited by the government. In absence of universal well-developed and all-inclusive industry organizations as in the coffee industry, effective co-regulation is not possible currently in the country.

4.0 Costs-Benefit Analysis (CBA)

4.1 Economic, Environmental and Social Impacts

a) Economic Impacts of the Regulations:

The economic benefits of the proposed regulations include;

Economic Benefits

i. Increased coffee production: The increased efficiency in coffee processing and marketing resulting from the different interventions proposed in these regulations including improved governance, capped limits for the processing fee, marketing fees, milling losses allowable, maintenance costs and cost of coffee milling and Interest rate on borrowing will increase returns to growers which will motivate them to improve the management of their coffee, increase acreage and attract other farmers into the sector which will contribute to an increase in agriculture and national GDPs.

ii. Improved Kenya coffee prices: Improved surveillance, monitoring and compliance to the regulations including quality standards will make Kenya's coffee more preferred in the market and will attract premium prices which will cascade to the growers and other service providers along the value chain

iii. Employment creation: The well-developed and regulated coffee sector in the country will support the maintenance of existing jobs in the industry as well as create new employment opportunities both on-farm and off-farm. On-farm employment opportunities will be created by a need for increased labour for the increasing coffee production as a result of new/increased investments, enhanced access to support services and an enabling environment, (re-)investment in coffee farms and engaging the rural population in production including crop establishment and management, harvesting and sorting. Off-farm employment opportunities will arise from coffee milling and processing and marketing. The industry auxiliary services including financial and insurance services will also create more employment opportunities in these fields.

iv. Increased farm incomes: A streamlined marketing structure with no exploitation of farmers by cartels, increased production and supply of coffee to the market, increased efficiency across processing and marketing processes and increased access to niche markets will increase incomes for farm families and estates engaged in coffee production.

v. Increased trading and value addition in coffee, further contributing to increased agriculture and national GDPs including the development and marketing in branded and specialty Kenya coffees.

vi. Increased foreign exchange earnings from increased regional and international trading and export of coffee

vii. Increased savings and investment by the different actors within the coffee industry by farm families; warehouse operators, traders, processors etc.

viii. The numerous fees prescribed in the regulations will increase revenue collection for the Authority.

Economic Costs of the Proposed Regulations

i. Effective implementation of the Regulations will require increased investment for compliance and licenses which will increase the cost of doing business. This cost is likely to be transferred to the consumer thus increasing the coffee prices.

ii. Implementation of these regulations will require concerted efforts and investments to support a rigorous and effective regulatory system from the Authority, county governments and other complimenting agencies.

iii. The national and county governments have to invest in coffee sector stakeholders' education to introduce the regulations to them for their total buy-in before the full and effective implementation.

iv. Given a large number of actors in the coffee-growing zones and the industry and their spread across the country, the investment to monitor for compliance and/or enforcement has to be significant to realize and sustain the benefits of the regulations.

v. The Regulations will also introduce additional transactional costs and bureaucracy due to the many processes envisaged in the Regulations resulting in increased cost of doing business and time delays for businesses.

b) The Social Impact of the Regulations

The social benefits of the proposed Regulations are:

i. Source of livelihoods: coffee is of extreme importance to smallholder farmers in the coffee-growing zones and remains the primary and the most important source of livelihood in these zones.

ii. Improved education levels and reduced illiteracy, health and social amenities access in the societies due to improved incomes and improved income distribution, thus improved social wellbeing of the rural communities.

iii. The reduced tide of rural-urban migration in search of employment opportunities due to increased employment opportunities created by the coffee sector in the rural areas.

iv. Improved income distribution among the farm families and the communities in general and thus reduced inequalities due to production and increased participation of women and youth in the coffee sector.

Social Costs of the Proposed Regulation

The social costs of the proposed Regulations are: -

i. Increased land area for coffee production may reduce the land available for food production, resulting in reduced food production and thus threatening food security at household, regional and national levels.

ii. Increased coffee production and collection may increase child labour engagement in the revamped and the financially attractive coffee industry.

c) The Environmental Impacts of the Regulations

The environmental benefits of the proposed Regulations are:

i. Reduced soil degradation due to improved and sustained plant cover from coffee and shade trees.

ii. Improved soil structure and fertility from the recycling of coffee pulp as manure.

The possible negative impact of the Regulations may include: -

i. Increased contamination of water bodies from effluents from increased pulping stations.

ii. Increased soil degradation due to increased soil operations in the establishment and management of coffee fields and application of basal fertilizers.

iii. Increased environmental degradation and loss of important pollinators from the increased use of agrochemicals to support increased and quality coffee production.

iv. Poor disposal of coffee pulp from the coffee millers.

However, with proper and effective implementation of these regulations, these negative environmental impacts can be significantly mitigated and impacts reduced.

4.2 Administration and Compliance Cost

RIA noted that resources would be required for operationalization of the regulations which will include human resources and operation costs for inspections and enforcement as well as for awareness creation of the regulations to the different coffee producers and coffee industry players. It is assumed that additional resources will go to the implementation of the wider national agricultural and trade policies which support coffee production, coffee processing research and development, provision advisory services to commercial coffee farmers for strengthening knowledge transfer and technology distribution among the farmers, capacity building of industry actors, and in the implementation of the regulations, individual national coffee industry, agricultural and trade strategies, the Government's Big 4 agenda, Vision 2030, County CIDPs and other relevant sector national policies and strategies.

4.3 Assessment of Return on Investment (Benefit)

Passing and operationalization of the proposed Amendment Regulations will be critical in facilitating the development of the coffee sector, by further streamlining the structure of Kenya's coffee industry to allow coordinated regulation of the coffee value chain, create a level playfield for all value chain players and promote fair trade practices to support the production, processing and marketing of coffee which will contribute to the realization of Kenya's manufacturing pillar's aspirations as envisioned in the Big 4 agenda, ASGTS and the agricultural sector and national objectives in the Vision 2030 development blueprint.

The proposed Amendment Regulations will in particular reform the processing of coffee in Kenya which has remained a weak link in the value chain due to the high losses experienced both in quality and quantities during processing and the high charges that growers have to meet for processing services and processors' dishonesty. Coffee millers have not been bearing any responsibility to their clients on their produce and growers have had no role in the processing of their coffee. The proposed regulations will change this and will give the growers a voice on the appointment and over the sighting of millers and the contracts signed with millers will cap the allowable milling losses to 19% of parchment coffee milled and the cost of coffee milling and related activities (handling, sorting, grading, packaging, warehousing charges) not to exceed Kshs. 4,000.00/ton of coffee delivered. This will protect growers from excessive charges for services rendered by miller-marketers and ensure processing efficiency thus enabling better returns for growers.

Equally, the Amendment Regulations cap marketing fees at up to one per centum of the value of the coffee sold while also granting an independent auction organizer the role of conducting business at the coffee auction from the Exchange as the case has been. The introduction of an independent auction organizer, independent coffee liquorers and licensing of cupping centres will ensure fair trade practices in quality assessment processes and the coffee auctions.

The regulations will also ensure separation of roles within the coffee industry and prevent the possibility of coffee buyers developing into oligopolistic or even monopolistic coffee agencies that would vertically integrate multiple roles in the sector from buying, processing and marketing coffee, and with time dominate and destabilize the sector which would be a threat to the survival of smallholder coffee organizations who are the backbone of the Kenyan coffee sector.

The Amendment Regulations also propose a raft of interventions that will strengthen governance in the coffee Cooperative societies including limiting directors' term of service to two terms of 5 years each, two-third gender representation, the integrity of directors and increased participation of members in the making of key decisions such as the appointment of service providers and borrowing of finances. This is expected to enhance the performance of these Cooperatives and reduce losses, reduce colluding in underhand deals of the society management decision making and unapproved borrowing which has driven many coffee cooperatives into unserviceable debts.

In broad terms, the RIA notes that the following broad benefits and returns on investment will be achieved: -

i. The Regulations will support reform of the coffee industry into a well-structured, streamlined, and regulated industry with clearly defined roles and mandates for the different industry actors and will specifically transform and improve coffee processing and marketing for the benefit of all coffee sectors stakeholders and the country.

ii. Promote coffee quality standard and further value addition including speciality coffee, the development and application of distinguishing marks and growers coding which will promote sector documentation, quality assurance and also will improve the competitiveness of Kenya’s coffee in the regional and global coffee and niche coffee markets.

iii. Support the development of coffee agro-enterprises including among smallholder farmers through the licensing of grower-millers who have generally faced challenges to establish themselves in an industry dominated by a few and which will allow such growers to be responsible for the quality of their produce as well as avoid high processing costs charged by service providers.

iv. Improved access to comprehensive reliable data and information continuously maintained by the Authority and the different actors in the coffee sector will provide a planning and decision-making basis both for the Government and private sector businesses in the coffee value chain and industry in general.

v. Sustain and create additional employment opportunities both on-farm and off-farm across the coffee sector and supportive industry auxiliary services, trading and marketing, processes within the sector.

vi. Strengthen governance, efficiency and transparency in coffee cooperatives to the benefit of the societies' membership and the coffee industry in general and for the sustainability of the cooperatives.

vii. Increased incomes for coffee producers resulting from increased coffee production, reduced production costs, improved coffee quality and thus better coffee prices, further coffee value addition and fair trade practices, and thus improved livelihoods and social well-being of the rural communities.

viii. Increased national coffee production, quality and trading will translate into increased foreign exchange earnings, improved balance of trade with specific trading partners, and an increased contribution to the agricultural and national gross domestic product (GDP).

ix. Regulate coffee imports and exports thus controlling illegal trade actions that can negatively impact the Local coffee and export markets by distorting demand and prices.

4.4 Quantification of the Benefit

The proposed amendments in the regulations mainly introduce various structural changes in the processing and marketing of coffee and seek to define, distinguish and separate the roles of the different actors in coffee processing and marketing in Kenya's coffee industry to streamline this industry. Kenya's coffee industry is characterized by wide variances across all parameters that can be used to quantify the benefits or the cost of the proposed changes. For example, the average yield is estimated at 302kg/ha for smallholder farms and 556kg/ha for estate farms; while Cooperative societies are required by law to pay farmers at least 80% of the total upon delivery of their cherries, cherry repayment rates differ from region to region and from society to society, ranging from 84.6% to as low as 10.2%; Further, according to KALRO, the highest production cost is Kshs 52.30/kg while the lowest production cost is Kshs 10/kg depending on different varieties and management style.

Equally, the costs for processing and marketing vary widely as these two nodes of the value chain have been dominated by cartels who are out to maximize profits above everything else and unfortunately, growers and especially smallholder farmers have no control over these two nodes. Smallholder farmers often are also victims of underhand deals between these cartels and Cooperative society management who cut deals on the cost of services in these two areas for personal gains which makes the actual cost of processing and marketing vary very widely and difficult to determine.

These wide variations make it difficult to establish a factual representative cost-benefit analysis of the proposed amendments due to the absence of universally accepted standard base figures. The proposed Amendment Regulations, however, introduce specific expected results for selected key different parameters in various coffee processing and marketing processes. These include: -

i. Licensed miller-marketers shall charge up to one per centum of the value of the coffee sold as marketing fees.

ii. The milling losses allowable under this clause may be capped at nineteen percent of parchment coffee milled.

iii. The cost of coffee milling and related activities (handling, sorting, grading, packaging, warehousing charges) shall not exceed Ksh4,000.00/ton of coffee delivered.

iv. Payments to factories or societies from the direct settlement system for operations and maintenance maybe five per centum of the value of coffee sold net of the milling, warehousing and marketing costs.

v. The interest rate on borrowing by a coffee factory against growers' assets held in trust by the growers' coffee factories and coffee Cooperative societies such as assets, land, machinery, equipment, shall be capped at five percent per annum.

As shown in the table below, the average cost of milling one tonne of parchment in the selected coffee millers is Kshs. 5765.00. With the regulations capping the milling tariffs at Kshs. 4000.00 a saving of Kshs. 1765.00 per tonne of parchment will be realized which represents a saving of about 31% on average on milling tariffs and which goes back to the growers, thereby increasing their returns. The savings will be greater for growers whose millers have been charging higher tariffs than the average of Kshs. 5765.00 per tonne of parchment-like Kipkelion, Great Rift Valley Mill and NGK (Kshs. 7410.00 per tonne); Gusii and Kahawa Bora (Kshs. 6270.00) translating to 46% and 36% savings on milling tariffs which would significantly change the returns growers receive.

Table 1: Comparative analysis of milling tariffs for selected millers in Kenya

No	Miller	Milling tariffs ($)per tonne of parchment	Milling tariffs (Kshs) per tonne of parchment	Proposed milling limit per tonne (Kshs)	Milling tariffs savings/ tonne (Kshs)	Percent milling tariffs savings (%)
1.	CKCM	45	5130	4000	1130	22.0
2.	NKG	65	7410	4000	3410	46.0
3.	Gusii	55	6270	4000	2270	36.2
4.	Kipkelion	65	7410	4000	3410	46.0
5.	NKPCU affiliates	40	4560	4000	560	12.3
6.	Sasini	55	6270	4000	2270	36.2
7.	Thika Coffee Mills	45	5130	4000	1130	22.0
8.	CMS Eldoret	45	5130	4000	1130	22.0
9.	Great Rift Valley Mill	65	7410	4000	3410	46.0
10.	Kahawa Bora	55	6270	4000	2270	36.2
11.	Othaya FCS mill (Ksh 6 per kg)	53	6042	4000	2042	33.8
12.	Tharaka Nithi	40	4560	4000	560	12.3
13.	Meru County Coffee Mill	40	4560	4000	560	12.3
14.	Lower Eastern Coffee Mill	40	4560	4000	560	12.3
	Average	**51**	**5765**	**4000**	**1765**	**30.6**
	Exchange rate $ 1 = Kshs 114.00					

(Source: AFA)

Similarly, the capping on allowable interest rates on borrowing by coffee Cooperative societies at 5% per annum will generate additional savings which will further increase returns to smallholder coffee growers who are members of these societies. The current interest rate the cooperatives have to pay for borrowing from commercial sources is between 12 – 24%. Capping the interest rates on cooperatives borrowing at 5% as proposed in these regulations will translate to savings on interest payable on borrowing by between 7 – 19% as shown in the table below, a saving that will further enhance returns to growers.

Table 2: Interest rate savings on borrowings with capped interest rates.

Credit source	Current rates (%)		Proposed Limit (%)	Savings on Interest rates (%)	
	Minimum	Maximum		Minimum	Maximum
Commercial	12	24	5	7	19

(Source: AFA)

Additional savings that will further increase returns to farmers will be realized from other proposals in these regulations including the introduction of a maximum allowable loss in the processing of 19%, limiting marketing fees to a maximum of 1% and limiting operations and maintenance costs payable to factories to 5% and with all savings accrued expected to return to the growers, the profitability of the coffee enterprise is set to significantly improve and make the crop once again attractive to farmers.

From the above discussion, it can be concluded that the implementation of the amendments of the proposed regulations will no doubt transform the coffee industry in Kenya with clear benefits that outweigh the resultant costs of the implementation of these Amendment Regulations to the benefit of all coffee stakeholders and particularly the coffee growers. Importantly, the regulations are supporting the efforts to revitalize the coffee industry to its former status as a key crop contributing to the livelihoods of millions of Kenyans and leading in the foreign exchange earning industry in the country.

5.0 Reasons why other Regulatory Options are not appropriate

5.1 Option 1: Maintaining the *Status Quo*

Maintaining the status-quo will mean the country does not reform the regulatory framework and structure to support the promotion, development, processing, marketing, and regulation of the coffee industry for the benefit of growers and other stakeholders in the industry which will deny coffee farmers, millers, marketers and other interested parties the prospects to benefit from the many opportunities in an organized and streamlined coffee industry while also curtailing realization of the country's agricultural and national development objectives, including the following:

i. Organized cartels will continue to dominate coffee buying, processing and marketing in the country to the detriment of all other actors in the sector including growers and especially smallholder farmers' new investors by distorting market demand, prices and quality specifications. This will discourage growers and may frustrate some farmers to even uproot the crop and discourage new entrants into the sector.

ii. The cost for key services in the processing and marketing of coffee will remain exaggerated which will erode growers' returns, making the coffee enterprise appear unprofitable compared to other cash crops and other farm enterprises which may drive farmers from the crop.

iii. Coffee Cooperative societies which handle most smallholders' produce will continue to operate dismally with poor governance, high milling losses, unwarranted high-cost borrowings and indebtedness, corruption deals and discouraging participation of women and youth in the industry which may also frustrate growers to abandon the crop.

iv. The maintenance of the existing jobs in the industry and the anticipated employment opportunities to be created by a revamped coffee sector will not be realized.

v. Maintenance of coffee production, processing and marketing data in the country will not be mandatory and future coffee industry planning and decision making by both public and private sector industry actors will not be based on any reliable real-time data and information.

vi. Eligible growers will be denied the opportunity to mill their own coffee by being licensed as grower-millers and thereby take responsibility for the quality and losses of their produce.

vii. Milling losses will remain high, increasing losses, especially for farmers resulting in declining returns and thus livelihoods for farmers and other actors' traders who rely on coffee for income.

viii. The quality of Kenyan coffee particularly from smallholder farmers will continue to remain poor and thus attracting low prices or even market rejection.

The situation is undesirable, and the RIA recommends that the proposed Amendment Regulations be implemented to realize the optimal development, promotion, and regulation of the coffee industry for the benefit of the coffee industry actors and other stakeholders across the wider coffee value chain in the country for this industry to effectively contribute to the realization of the objectives of the ASGTS, the Government's Big 4 Agenda and Vision 2030 and the respective Counties' CIDPs and the different county policies and strategies on agricultural development.

5.2. Other Practical Options

Alternatives to regulation include:

i. **No New Intervention/Do Nothing**

This may include making use of the existing regulations and laws; simplifying or clarifying existing regulations and laws; improving enforcement of existing regulations; or making legal remedies more accessible or cheaper. However, with this approach, the status quo is likely to remain as the Crops (Coffee) (General) Regulations, 2019 have been implemented from the year 2019 and gaps identified have necessitated these proposed amendments. In absence of any new intervention, the coffee sector would therefore remain as it currently is and this will be to the detriment of all the sector stakeholders and the country in general.

ii. **Information and Education**

Information and education can be used to empower stakeholders to make their own decisions, improving choices for the mutual benefit of all. However, information and education can take time to make an impact and still may not be acceptable to all. This approach may increase costs for the government and businesses that will be providing the information and education required. The desired objectives are unlikely to be realized within a reasonable time for the common good of all.

iii. **Incentive/Market-Based Structures**

The government can use economic instruments, such as taxes, subsidies, 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 and often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the coffee sector in Kenya as its structures are yet to be well developed.

5.3 Alternatives Models of Regulation include:

i. **Self-Regulation**

The coffee sector in the country does not have a universal all-inclusive industry representation that could formulate and implement codes of conduct or practice, customer charters, standards or accreditation system acceptable to all sector actors for self-regulation and the necessary mechanisms to monitor the effective implementation of such self-regulation. This makes effective self-regulation in the coffee sector as it is currently not possible.

ii. Co-Regulation

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice whose enforcement would be by the industry or a professional organization accredited by the government. The coffee sector in Kenya currently has no universally accepted and all-inclusive industry representative organization(s) that can mobilize and organize the actors towards this and thus co-regulation is practically not possible currently.

6.0 Conclusions

The proposed Amendment Regulations if approved and effectively implemented will strengthen formal controls and regulations in the coffee industry and streamline the industry structures and environment including roles of all the different sector actors, monitoring and surveillance, and compliance enforcement structures and enhance efficiency while regulating costs of services to support the revitalizing and development of the coffee industry for the benefit of coffee growers and all other stakeholders.

7.0 Recommendations

The RIA thus recommends the passing and operationalization of the proposed Amendment Regulations.