

# **Regulatory frame work in use of food additives in Kenya**

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# 1 Introduction

Food additives have been in use in Kenya for many years. In early years, both processing aids and food additives have been used under the general term food additives. However, to improve the clarity of the terms, Codex Alimentarius Commission provided definitions for both food additives and processing aids with the aim of differentiating the two terms. This definitions have been adopted for the purposes of regulations in Kenya. Codex defined food additives as, 'substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its byproducts becoming a component of or otherwise affecting the characteristics of such foods. The term does not include contaminants or substances added to food for maintaining or improving nutritional qualities' while processing aid is defined as, 'substance or material, not including apparatus or utensils, and not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product'. The difference in the two definitions is very thin and mainly on the use where food additive use is wider while that of processing aids is limited to processing or treatment of food material.

At national level, regulation of food additives has evolved over the years. It started with the publication of Food, Drugs and Chemicals substances Act, Cap 254 in May 1965 under which the regulations related to food additives were first published and have been reviewed and updated over years. Later in 1974, the Standards Act Cap 496 was published which also provided for the publication of national standards and to which a number of standards were developed in the area of food additives. In the initial years this two Acts appeared to contradict and overlap in their mandates but in recent years there is harmony especially in the regulation of food additives.

The ratification by the government of the World Trade Organization's Technical Barrier to Trade and Sanitary and Phyto Sanitary treaty (WTO TBT/SPS), most Codex standards have taken the center stage as the basis of regulation. As a result, the General Standard for Food Additives (GSFA) is increasingly being used in the regulation of food additives. However, the GSFA in its current form at times does not provide explicit guidelines on all additives but in some cases leaves it to the national authorities to make decision on some additives. In addition to the level

of safe use of the additives, the quality specification of most of the food additives is also based on the Codex standards

## **2 Regulatory frame work**

### **2.1 Basis and objectives of regulatory frame work in Kenya**

The main objective of any regulation and standard is to ensure that the safety of the consumers is protected. In addition, the regulations and standards should also be developed in such a way that they ensure the quality of the product is good and that they facilitate fair trade while protecting the environment.

It is in this understanding that criteria for the development of standards and regulations have been developed and adopted both at international level and at country level. In respect to food additives, the justification for the use is acceptable when such use has an advantage which cannot be achieved from alternative source or technology, safe to consumers, does not mislead the consumer, and has a scientifically justifiable technological function. They should in particular be used when one or more of the following functions cannot be achieved by any other means.

- i. Preservation of nutritional quality
- ii. Provision of necessary ingredients or constituents for foods manufactured for groups of consumers having special dietary needs;
- iii. enhancing the keeping quality or stability of a food or to improve its organoleptic properties, provided that this does not change the nature, substance or quality of the food so as to deceive the consumer;
- iv. providing aids in the manufacture, processing, preparation, treatment, packing, transport or storage of food, provided that the additive is not used to disguise the effects of the use of faulty raw materials or of undesirable (including unhygienic) practices or techniques during the course of any of these activities.

### **2.2 Status of regulations in Kenya**

Kenya has adopted two way of regulating food additives based on existing laws. Food additives are regulated through the use of regulation usually published under the Food, Drugs and Chemicals Substance Act, Cap 254 which was assented to in May 1965 with a number of amendments with the latest version being in 2002 and national standards under the Standards Act Cap 496 assented to in 1974.

Based on this two laws and the ratification by Kenya on the World Trade Organization's Technical Barrier to Trade and Sanitary and Phyto Sanitary (WTO-TBT/SPS) treaty, the Codex

standards which are recognized under the treaty for international food trade, have also been adopted either by reference or as text as part of either national standards or regulations.

The regulations and standards cover the following broad areas;

#### **a) Labeling of food additives and products containing food additives**

To ensure compliance to the principle of protecting consumers from being misled, declaration of food additives used in any product in Kenya is mandatory. This also applies to prepackaged food additives to be offered for sale. In all food products specification standards which have allowed the use of food additive, a mandatory clause is included requiring declaration of the food additives used by name.

The Food, Drugs and Chemicals Substance Act Cap 254 has provided minimum requirements for labeling any food containing additives through:

- i. Regulations 16 *label declaration of food containing artificial sweeteners*;
- ii. Regulation 35, *labeling of substances used as food additives*;
- iii. Regulation 49 *Labeling of food containing food colour*, and
- iv. Regulation 178, *Labeling of food containing non-nutritive sweeteners*.

In the case of sale of food additives in smaller units, Kenya has adopted the codex standard Codex Stan 107 – 1981, *General Standard for the labelling of Food Additives when sold as such*, which provides a guideline and requirements for the contents of the label.

The identification of the food additives in Kenya including both the name and the numbering (where used) should be in accordance to the International Numbering system (INS) as published by Codex Alimentarius Commission and not by other nomenclatures such as EN.

#### **b) Specification of the food additives**

The quality and safety specifications of any food additives used in Kenya should have the approval of the Codex Alimentarius Commission and that it must have undergone the whole process of safety evaluation.

The Food, Drugs and Chemicals Substance Act Cap 254 under food standards has also provided specification of some of the food additives especially food colours. However, due to limitation on continuous research, Kenya has to large extent depended on the latest specification as published by CAC. In this regard, the food additive specification should comply with latest edition of CAC/MISC 6 – 2013, *List of Codex Specifications for Food Additives*,

#### **c) Use of food additives**

The use of food additives in food products and the addition levels are primarily guided by the Codex Stan 192, *General standard for Food additives (GSFA)*, as amended from time to time by

the commission. Cap 254 in its second schedule has also provided limits for use of food additives but most of these levels are based on earlier version of the Codex Standards. To facilitate the use of latest version of Codex 192, a revised version of Kenya Standard 660 part 1 on guide for the safe use of food additives allows the use of the latest version of Codex 192 as adopted by CAC. This inclusion was also to ensure compliance with WTO treaty on the use of internationally published standard for trade.

However, some exceptional cases do happen and especially where the use of the specific additives is subjected to note 161 (subject to national legislation) of the GSFA. In this case reference should also be made to either the national regulation or any existing standard and where not explicitly stated either in the regulation or standards, appropriate approval should be sought from the respective office. Some of the additives bearing such a note and that have been subject of national debate include the general use of non-nutritive sweeteners where while the Codex allows it for use in beverages, Cap 254 of the laws of Kenya has restricted its use to products of special dietary use. This means that anyone intending to use the sweeteners must demonstrate that the product is a special dietary product.

To ensure effective use of food additives based on scientifically approved technological justification, guidance is provided by Codex guideline CAC/GL 36 – 1989, *Class names and the international numbering system for food additives*. This guideline classifies the food additives in terms of functional classes such as acidity, sweeteners, provides the definition of the class and describes the technological function of that specific functional class. The guidelines also provide the International Numbering System (INS) and names of all approved food additives. It should be noted that a food additive may have a number of justifiable technological function and may be used in different ways; however, the use levels in any case shall not exceed the maximum allowable limits.

#### **d) Inclusion of new additives for use in Kenya**

The regulations in Kenya provide for introduction of a new additives or amendment (Change) to either the level of use or extension of use additives to other food products. Regulation 36 under Part II for the Food, Drugs and Chemicals Substances Act provides guidelines on how such request should be made. Among other condition require the party to submit a request the minister for health providing information related to:

- i). Description of the food additives including its chemical name, method of manufacture, chemical and physical properties, composition and specification;
- ii). The purpose and amount of use of that particular food additive;
- iii). Method of analysis to determine the amount used in a particular food product;

- iv). Supporting data of its effectiveness based on the technological justification;
- v). Test done to determine its safety to the consumers;
- vi). Data indicating the residue of the food additives in the final products and
- vii). Provide a sample of the food additive in question.

### **3.0 Challenges of regulating the use of food additives in Kenya**

#### **3.1 Lack of continuous research on food additives**

Research in the area of food additives has not been emphasized in Kenya and little has been done on this area. This has led to the country depending on research finding from other countries and even made it difficult for the country's effective participation in setting up levels at international level. Lack of this capacity has also left the country exposed to the effect of negative activism on some food additives where in case of an allegation we lack data to counter such allegation. It is also difficult for the minister even to provide for provisional permission on the use of some additives which are either under evaluation by Codex or it is in discussion stages of Codex since we lack independent data to make our decision. This has led to industries waiting for long before using certain cost effective or even better food additives despite some other countries using the same additives. This is even more complicated especially where the local manufacturers are also acting as agents for their parent companies based in those countries which have allowed the use of that particular food additive.

#### **3.2 Misuse of food additives**

In some instances, the use of food additives is usually misused especially in the informal sectors either due to lack of knowledge on the use of the additive or a deliberate use to mislead consumers. The mostly abused additives are in the general class of sweetening agents, food colours and preservatives mainly by manufacturers seeking the flavor, eye appeal and extended shelf life of their products.

#### **3.3 Negative publicity of food additives**

Though not common, negative and in most cases false information related to food additives especially in respect of their effect to health has been propagated to the general population. While it is generally accepted that misuse of food additive just like any other product may have negative safety effect to the general population, most of those alarming messages do not give exceptions or condition into which the use that particular can contribute to the referred safety

concern. Example includes statements like food additives cause cancer without being specific for example on which additives or at what amount of use.

#### **4.0 Conclusion**

Regulation of food additives just like any other product in Kenya need close collaboration between research institutions, regulatory bodies, manufacturers of the additives, users and consumer bodies for appropriate regulation on their use. This is possible through regular sharing of information and concerns about the food additives.

In principle, the regulation on the use of food additives is guided by the Codex General Standard for Food Additives. As such as a country we need to take active participation in the work of Codex committee on Food additives either by direct participation in the committee's work or effective participation while developing the national position/comments on the work of the committee and national level.

## References and further reading

1. The Food, Drugs and Chemicals Substance Act, Cap 254 of the Laws of Kenya
2. The Standard Act, Cap 496 of the Laws of Kenya
3. Codex Alimentarius Commission Procedural Manual, 21<sup>st</sup> Edition, WHO/FAO 2013
4. CAC/MISC 6 – 2013, List of Codex Specification for food additives
5. Codex Guidelines CAC/GL 36 – 1989, Class names and International numbering System for Food additives
6. Codex Guidelines CAC/GL 66 – 2008, Guidelines for the use of flavouring
7. Codex Guidelines CAC/GL 75 – 2010, Guidelines on substances used as processing aids
8. Codex Standard, Codex Stan 192 – 1995, General Standard for Food Additives
9. Kenya Standard, KS 660 Part 1, Guide to safe use of food additives, general