

LEGAL NOTICE NO.....

THE PLANT PROTECTION ACT
(Cap. 324)

IN EXERCISE of the powers conferred by section 8 of the Plant Protection Act, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation makes the following Order—

THE PLANT PROTECTION (WOOD PACKAGING MATERIALS) ORDER, 2019

Citation. **1.** This Order may be cited as the Plant Protection (Wood Packaging Materials) Order, 2019.

Interpretation. **2.** In this Order, —

Cap 324. “Act” means the Plant Protection Act;

 “approved phytosanitary measures” means the phytosanitary procedures prescribed in ISPM No. 15;

 “debarked wood” means wood from which the surrounding bark has been removed;

 “dunnage” means wood packaging material used to secure or support a commodity but which does not remain associated with the commodity;

 “IPPC” means the International Plant Protection Convention, as deposited with the Food and Agriculture Organization in Rome in 1951 and as subsequently amended;

 “ISPM No. 15” means the International Standard for Phytosanitary Measures No. 15 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention established by the Food and Agriculture Organization of the United Nations;

 “National Plant Protection Organization” means the official service established by a government to discharge the functions specified by the International Plant Protection Convention;

 “operator” means a person who is authorized by the Service under this Order to treat and mark wood packaging materials;

 “premises” includes any land, building, vehicle, vessel, aircraft, freight container or railway wagon;

“remanufactured wood packaging material” means wood packaging material that has had more than approximately one third of its components replaced;

“repaired wood packaging material” means wood packaging material that has had up to approximately one third of its components removed and replaced;

No. 54 of 2012. “Service” means the Kenya Plant Health Inspectorate Service established under the Kenya Plant Health Inspectorate Service Act, 2012;

“service life” means the total period during which wood packaging material remains in use or is ready to be used in a productive process;

“the mark” means the ISPM No. 15 mark which contains the information specified in paragraph 10;

“treatment” means the official procedure for the killing, inactivation or removal of pests, or for rendering pests infertile or for devitalization;

“treatment facility” means the premises and any equipment thereon where wood packaging materials are treated; and

“wood packaging material” means wood or wood products, excluding paper products, used in supporting, protecting or carrying a commodity and includes a pallet or dunnage.

Object of this Order.

3. The object of this Order is to reduce the risk of introduction and spread of pests associated with the movement of wood packaging material used in trade by prescribing phytosanitary measures.

Application of this Order.

4. This Order prescribes the standards for wood packaging materials used in trade and establishes controls for the use of the mark denoting compliance with the plant health requirements for such wood packaging material.

Exemption from the application of this Order.

5. The following articles are exempted from the provisions of this Order—

- (a) wood packaging material made entirely from thin wood of a thickness not exceeding six millimetres;
- (b) wood packaging material made wholly of processed wood material such as plywood, particle board, oriented strand board or veneer that has been created using glue, heat or pressure, or a combination thereof;
- (c) barrels for wines and spirits that have been heated during manufacture;
- (d) gift boxes for wine, cigars and other commodities made from wood that has been processed or manufactured in a way that renders it free of pests;
- (e) sawdust, wood shavings and wood wool; and

(f) wood components permanently attached to freight vehicles and containers.

Restrictions on treatment and marking of wood packaging materials.

6. (1) All wood packaging materials used in trade shall—
- (a) be bark free;
 - (b) be subjected to an approved method of treatment; and
 - (c) display the mark to prove compliance with ISPM No 15.

(2) A person shall not treat or affix the mark to any wood packaging material except as authorised by the Service.

(3) A person shall not affix any mark other than an ISPM No. 15 mark to wood packaging material for indicating that it has been subjected to an approved phytosanitary measure.

(4) A person who contravenes any provision of this paragraph commits an offence.

Re-use of previously certified wood packaging materials.

7. Any wood packaging material that is treated and marked in accordance with this Order but is not repaired, remanufactured or otherwise altered shall not require re-treatment or re-affixing of the mark throughout its service life.

Repaired, remanufactured or recycled wood packaging materials.

8. (1) If any wood packaging material is repaired, remanufactured or recycled, the operator shall obliterate any previous mark and shall re-treat and affix the mark to the wood packaging material.

(2) Wood packaging material may be re-treated, destroyed or otherwise seized by the Service if—

- (a) there is doubt that the wood packaging material has been repaired, remanufactured or recycled;
- (b) there is doubt that the wood packaging material has been treated in accordance with this Order; or
- (c) it is difficult to ascertain the origin of the wood packaging material.

Approved treatment options for wood packaging materials.

9. (1) Wood packaging material shall be subjected to the approved treatment prescribed in ISPM No. 15.

(2) The Service shall monitor treatment facilities.

Marking requirements for wood packaging materials.

10. (1) Any wood packaging material that has been subjected to treatment shall display the mark according to the model set out in the Third Schedule.

(2) The mark shall bear the following information—

- (a) a two-letter country code;
- (b) a three-digit operator code that is assigned by the Service to the operator who treats the wood packaging material;
- (c) a treatment code;

- (d) the IPPC Mark; and
- (e) any other information, provided that such information is not complicated, misleading or wrong.

(3) The mark shall be —

- (a) clearly visible when the wood packaging material is in use;
- (b) legible;
- (c) permanent and not transferable; and
- (d) in any colour other than red or orange.

Imported wood packaging materials.

11. (1) If imported wood packaging material does not comply with the provisions of this Order, the Service shall intercept such wood packaging material at the point of entry and may destroy, treat or return the wood packaging material to the sender at the importer's, exporter's or their agent's costs, whichever is applicable.

(2) If wood packaging material of Kenyan origin is returned to Kenya for non-compliance with ISPM No. 15, the Service shall ensure that the wood packaging material is treated and the mark is affixed on it before re-export.

Application for certificate of authorization.

12. (1) A person who intends to treat any wood packaging material and affix the mark to the material shall apply to the Service for authorisation.

(2) An application under sub-paragraph (1) shall be in Form 1 set out in the First Schedule and shall be accompanied by —

- (a) a certified copy of the certificate of incorporation or business registration certificate;
- (b) a certified copy of the certificate of registration, licence or other authorization to use approved chemicals issued by the organisation responsible for pest control chemicals;
- (c) details of the location of the treatment facility; and
- (d) the prescribed fee as set out in the Second Schedule.

(3) Upon receipt of the application, the Service shall assess the applicant's treatment facility to ascertain its suitability for the treatment of wood packaging materials.

(4) During the assessment under sub paragraph (3), the Service shall assess —

- (a) whether the applicant has appropriate facilities and equipment that can treat wood packaging materials in accordance with the requirements of ISPM No. 15;
- (b) whether the applicant has systems for tracing back products to the treatment facility and maintains a record of the same; and
- (c) any other matter which the Service deems appropriate.

(5) If satisfied that the applicant's facility and equipment have the capacity to competently undertake the treatment, the Service shall issue a

Certificate of Authorisation to the applicant in Form 2 set out in the First Schedule.

(6) Where an applicant intends to operate more than one treatment facility, each facility shall be assessed independently, and a Certificate of Authorization shall be issued in respect of each facility.

(7) If the Service refuses to grant a Certificate of Authorisation, it shall inform the applicant of such refusal in writing and give reasons for the refusal.

(8) A Certificate of Authorisation shall be valid for twelve months from the date of issuance.

Application for renewal of certificate.

13. (1) An operator may apply for renewal of the Certificate of Authorization at least one month before its expiry in Form 3 set out in the First Schedule.

(2) On receipt of an application for renewal of a Certificate of Authorization, the Service shall —

- (a) assess whether the operator is able to carry out, in a proper manner, any approved treatment to which the application relates and whether the operator should be permitted to apply the mark to wood packaging material treated by him; and
- (b) renew the certificate or notify the operator that his application is rejected.

Content of certificates.

14. A Certificate of Authorization shall —

- (a) specify any approved treatment that it authorises the operator to carry out and in respect of which the mark may be applied;
- (b) specify any information which the Service requires to be included in the mark; and
- (c) specify the period for which it remains valid.

Transfer and use of the operator code.

15. (1) An operator shall not transfer or permit another person to use the three-digit operator code assigned to him by the Service.

(2) A person who contravenes subparagraph (1) commits an offence.

Suspension or cancellation of certificates.

16. (1) If, in the opinion of the Service, an operator —

- (a) does not properly carry out an approved treatment to which the certificate of authorization relates;
- (b) otherwise treats wood packaging material in a manner that the Service considers inappropriate to continue to permit the operator to apply the mark to wood packaging material treated by him; or
- (c) does not comply with any provision of this Order, the Service shall give the operator seven days to correct the deficiency.

(2) If the operator fails to correct the deficiency within the period stipulated in sub paragraph (1), the Service shall, by notice in writing, suspend or cancel the operator's certificate with immediate effect.

Termination of operations.

17. (1) An operator who intends to terminate his operations shall notify the Service thirty days before the termination of operations.

(2) Upon receipt of the notice under sub-paragraph (1), the Service shall cancel the registration of the operator.

(3) For purposes of this paragraph, an operator who fails to renew a certificate of authorisation within thirty days from the date of expiry shall be deemed to have terminated his operations.

Register of approved operators.

18. The Service shall keep a register of approved operators and the register shall be open for public inspection upon payment of the prescribed fee.

Returns.

19. An operator shall provide quarterly returns of the quantity of wood packaging material treated in each treatment facility, with clear traceability to the facilities.

Inspection.

20. (1) An inspector may enter any premises for purposes of ascertaining whether any order from an inspector or this Order has been complied with.

(2) The inspection conducted under sub-paragraph (1) shall include an assessment of—

- (a) the sources and types of wood used and the volumes processed;
- (b) the treatment methods used at the premises;
- (c) the available facilities for segregation of treated material from that which is not treated;
- (d) the intended use of the wood packaging material;
- (e) the market for which the wood packaging material is produced;
- (f) the records of the raw materials purchased and the wood packaging material produced; and
- (g) quality assurance systems and relevant documentation.

(3) An inspector entering any premises pursuant to subparagraph (1) may—

- (a) observe and monitor the manufacture of wood packaging material;
- (b) examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material;
- (c) examine or take samples of wood packaging material, or its components;

- (d) inspect or make copies of any documents or records relating to the manufacture, treatment of or trade in wood packaging materials; or
- (e) take photographs of the premises, any material or other items found in the premises or any activity carried on in the premises in connection with the manufacture or treatment of wood packaging material.

(4) Where an inspector knows or has reasonable grounds for suspecting that a person has affixed or intends to affix the mark to wood packaging material other than in accordance with this Order, the inspector may seize from that person or from any premises at which the inspector believes the mark has been or may be affixed, any stencil, template or other item that appears to him capable of being used for affixing the mark, or any other mark which may be intended to indicate that wood packaging material has been subjected to an approved treatment.

(5) An inspector shall give to the person in charge of the seized items a seizure notice as set out in the Fourth Schedule and inform the person of his rights under this paragraph to make a claim.

(6) Where an inspector is not able to remove the seized items immediately, the inspector shall serve a seizure notice on the person in charge of the items and mark the items in any way he deems fit for purposes of identifying them and prohibiting their movement or use until they are collected.

(7) Any person claiming that any seized item was not liable to seizure shall, within one month of the seizure, notify the Service of his claim at the address specified in the seizure notice, setting out the grounds.

(8) If the notification under sub-paragraph (7) is not received within one month, the Service may at its discretion destroy the seized items.

(9) If the notification under sub-paragraph (7) is received within one month, the Service shall either return the seized items or initiate proceedings for an order for their destruction by way of a complaint in a magistrates' court and, if the court finds that any seized items were used to affix the mark to wood packaging material other than in accordance with this Order, or were intended to be so used, it shall order their destruction.

(10) The Service may recover all reasonable costs incurred to secure the destruction of the seized items from the person on whom the seizure notice was served.

Offences.


21. A person who contravenes any provision of this Order commits an offence and shall be liable, upon conviction, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months.

FIRST SCHEDULE

FORMS

Form 1

(p. 12(2))

| | | | | | | | |
|--|-------|--|--|---------------------------|--|-------------------------|-----------|
| <p>THE KENYA PLANT HEALTH INSPECTORATE SERVICE</p>  <p>ISPM NO.15 APPLICATION FOR AUTHORISATION</p> | | | | | | | |
| Part A. Applicant's Information | | | | | | | |
| Name of applicant | | | | Date of application | | | |
| Address | | | | Physical location | | | |
| Approved treatment to be used | HT | | MB | | Other | | |
| Certificate of registration of company | Valid | | Not Valid | Certificate of use of MB | Valid | | Not Valid |
| Application fee | Paid | | Not paid | Authorization Renewal fee | Paid | | Not paid |
| Part B. Capacity to implement approved treatment | | | | | | | |
| Marking equipment (describe) Attach extra sheet if space is inadequate | | | | | | | |
| Nature of equipment (list available equipment) | 1. | | | 2. | | | |
| | 3. | | | 4. | | | |
| Status of Quality Manual (Description of process should be clearly stated without alteration as was approved on application) | | | | | | | |
| Status of marking equipment (describe) | | | | | | | |
| The sizes of the heating chamber/drying furnace (If more than one chamber, use additional forms) | | | | | | | |
| Length (..... mm) | | | Height (front mm, rear mm) | | | Width (..... m) | |
| Position of the ceiling above the pile | | | Position of the fans | | | Position of the heaters | |
| Position of the air outlets | | The type of material used for the wall of the drying furnace | | | The type of isolation used in the wall of the drying furnace | | |
| Other type of heating chamber (Describe) | | | | | | | |
| Drying Furnace Operations | | | | | | | |

| | |
|--|---|
| Fan capacity (Fan number Total kW) | Existing heating capacity |
| Common boiler system (Exists/Non-existent) | Type of heating elements |
| Type of air outlets (No and type, plus the number of impeller vacuum dampers, if applicable) | Type of control system |
| Control sensors of the drying furnace | |
| Type (Wet/Dry temperature sensors) | |
| Number and position (Number of wet/dry temperature stations | Number and position (Number of wet/dry temperature stations |
| Recommendation for corrections, adjustment of facility | |
| Verification of persons: | |
| Number of trained staff | |
| Type and Level of training | |
| Waste management measures (describe) | |
| C. For official use only | |
| Certificate of treatment (International model or equivalent) Ref No. | Suggested amendments on certificate |
| Provisional Number assigned to applicant: IPPC-KE- | |

THE KENYA PLANT HEALTH INSPECTORATE SERVICE



**CERTIFICATE OF AUTHORISATION TO TREAT AND MARK WOOD
PACKAGING MATERIAL**

This is to certify that _____ (name of
_____ (physical location)
has been authorized to treat wood packaging material by way of _____
(Approved treatment)

Authorization expires on _____

Certificate No. _____ Date issued _____

Date

.....
MANAGING DIRECTOR

THE KENYA PLANT HEALTH INSPECTORATE SERVICE



RENEWAL OF AUTHORITY TO USE MARK

| | | | |
|--|-----------------------------|-------------------|--|
| Folio Number: ****-1 - 99 | Treatment agent No: | Approved measure | Date |
| Address | Physical location | | Date of authorization |
| Certificate of registration of company | Valid | Not Valid | Certificate of use of MB Valid Not Valid |
| Authorization Renewal fee | Paid | Not paid | |
| Monitoring and auditing documents Completed | All | Some | None |
| Breach of authorized mark | Wrong treatment regimes | Unauthorized mark | Other |
| Recommendations by inspection team on verification of facilities and persons (Part C of Form No.5) | | | |
| Pending/Suspension | | Time provided | |
| Repeat of treatment/Correction | | Time provided | |
| Cancellation | | Time provided | |
| Renewal granted | | Time provided | |
| | | | |
| Signature and Stamp | Name of authorizing officer | | Date |

SECOND SCHEDULE

(p. 12(2)(d))

| SERVICE OFFERED | FEEES IN KSHS. |
|---|-----------------------|
| 1. Application fee (non- refundable) | 2,000 |
| 2. Authorization for treatment and marking fee | 10,000 |
| 3. Annual renewal fee | 22,000 |
| 4. Treatment 20 ft. container | 6,000 |
| 5. Treatment-dunnage, planks, wooden boxes, wedges and others | 3,600 |
| 6. Marking-Standard Pallet charges per pallet | 30 |
| 7. Marking dunnage, planks, wooden boxes, wedges and others per consignment | 1,200 |
| 8. Search fees | 200 |

THIRD SCHEDULE

p.10(1)

| | |
|---|------------------------------|
|  | KE - 000 YY |
|---|------------------------------|

THE KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)



REPUBLIC OF KENYA
MINISTRY OF AGRICULTURE
P.O.BOX 30028
TEL. 2718841
NAIROBI – KENYA

KENYA PLANT HEALTH
INSPECTORATE SERVICE
(KEPHIS)
P.O. BOX 49592-00100
TEL. 020-6618000/0709 891 000,
Email: director@kephis.org
NAIROBI-KENYA

Pursuant to the Plant Protection (Wood Packaging Materials) Order, 2019, the wood packaging materials listed below have been seized.

Wood Packaging Material:

Botanical name:

Quantity:

Country of origin/Place of treatment:

Mode of transport:

Documents and reference no; (AWB No. Bill of Lading,)

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Sample inspected:

.....

Reasons for seizure:

.....

Action taken:

.....

Name and address of importer/ wood packaging facility:

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Name and address of the exporter:

.....

Place of seizure:

Date:

Name of inspector:

Signature:

&

Organization Stamp

Cc. Customs & Excise Department

Note: No financial liability with respect to this notice shall attach to KEPHIS

Made on..... 2019

MWANGI KIUNJURI,
Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation.