

LEGAL NOTICE NO. 108

THE PLANT PROTECTION ACT
(Cap. 324)

IN EXERCISE of the powers conferred by section 3 of the Plant Protection Act, the Minister for Agriculture makes the following Rules:—

THE PLANT PROTECTION (IMPORTATION OF PLANTS, PLANT PRODUCTS AND REGULATED ARTICLES) RULES, 2009

1. Citation

These Rules may be cited as the Plant Protection (Importation of Plants, Plant Products and Regulated Articles) Rules, 2009.

2. Interpretations.

In these Rules, unless the context otherwise requires -

“Authorized Officer” means the Managing Director of the Kenya Plant Health Inspectorate Service;

“consignment” means a quantity of plants, plant products or regulated articles composed of one or more lots being moved from one country to another and covered by a single phytosanitary certificate;

“import permit” means an official document authorizing importation of a plant, plant product or regulated article in accordance with specified phytosanitary requirements;

“interception” means the refusal or controlled entry of an imported consignment due to failure to comply with phytosanitary rules;

“National Plant Protection Organization” means the Kenya Plant Health Inspectorate Service;

“pest risk analysis” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

“phytosanitary certificate” means the official document which attests to the phytosanitary status of any consignment affected by phytosanitary rules;

“phytosanitary certificate for re-export” means the official document which attests to the phytosanitary status of a consignment for re-export;

“phytosanitary measure” means any legislation or official procedure for the prevention of the introduction or spread of pests;

“plant product” means any unmanufactured material of plant origin including grain and those manufactured products that, by their nature or their processing, may create a risk of the introduction and spread of pests;

“plant quarantine procedures” means procedures followed for importation of risk-associated

materials that require quarantine;

“point of entry” means an airport, sea port or land border point officially designated for the importation of consignments or entrance of passengers;

“provisional quarantine area” means an area where a quarantine pest is present and is being officially controlled on a temporary basis and may include among others, private farms and institutions;

"quarantine station" means an official station for holding plants, plant products or regulated articles under quarantine;

“quarantine pest” means a pest of potential economic significance to the area endangered and not yet present there, or present but not widely distributed and being officially controlled;

“regulated article” means any packaging, conveyance, container, soil and other organism, object or material capable of harbouring or spreading pests, that requires phytosanitary measures;

“standard operating procedures” means documented steps and sequences established and amended by the National Plant Protection Organization indicating the methods for enforcing of plant health measures;

“treatment” means an officially authorized procedure for the killing, removal or rendering of pests inactive or infertile;

“risk” means the possibility of an undesirable phytosanitary situation.

3. Importation to conform to Rules.

A person shall not import a plant, plant product or regulated article except in the manner provided for under these Rules.

4. (1) The National Plant Protection Organization shall from time to time provide information -

(a) for the purposes of application for phytosanitary certificate and import permit ; and

(b) on the official designated points of entry for the importation of plant, plant product or regulated article.

(2) The information shall be availed in print, electronic or any other form or manner that ensures access and use by intending applicants. Information on import requirements.

5. Import permits and phytosanitary certificates.

(1) A person shall not import a plant, plant product or regulated article unless that person has—

(a) an import permit granted by the National Plant Protection Organization; and

(b) the original phytosanitary certificate issued by the relevant authority of the exporting country.

(2) Notwithstanding paragraph (1), the National Plant Protection Organization may, upon the written approval by the Authorized Officer, exempt a plant, plant product or regulated article from the requirement of obtaining an import permit or phytosanitary certificate.

(3) An application for an import permit under paragraph (1) (a) shall be made to the National Plant Protection Organization in the prescribed form and the applicant shall pay the prescribed fees.

6. Import permits and phytosanitary certificates.

Any person who arrives in Kenya with a plant, plant product or regulated article whether as accompanied or checked-in baggage, shall declare such items to the inspector at the point of entry.

7. Inspection and inspection hours.

(1) An importer shall, report the arrival of any consignment of plants, plant products or regulated articles and apply for phytosanitary inspection to the inspector in charge of a point of entry.

(2) An application for phytosanitary inspection under paragraph (1), shall be made in writing and delivered to the inspector in the prescribed form.

(3) Where a person who is in charge of a point of entry has knowledge of the arrival of any plant, plant product or regulated article in Kenya, that person shall report such arrival to the inspector, and retain custody of the plant, plant product or regulated article, until the inspector approves its release.

(4) An inspector shall inspect the plant, plant product, or regulated article at the point of entry and verify the documentation to ensure that the consignment complies with the import phytosanitary requirements.

(5) Where a consignment is sealed and labeled, the National Plant Protection Organization may, upon application by the importer and payment of the prescribed fees, require an inspection to be carried out by the inspector at the final destination.

(6) An inspection under paragraph (4) or (5) shall be carried out -

(a) during regular business hours; or

(b) at any other time upon the request of the importer and payment of the prescribed fee.

8. Tests and follow up inspections.

The inspector shall on the basis of the import requirements and the nature of the imported material—

(a) inspect the consignment;

(b) take samples for laboratory tests; and

(c) undertake follow up inspection during active growth stages.

9. Import clearance.

An inspector shall not allow the entry of any imported plant, plant product or regulated article into Kenya unless—

(a) an importer has presented to the inspector permit, certificate and any other document; and

(b) the plant, plant product or regulated article has been presented to and released by the inspector in accordance with these Rules.

10. Notification of interceptions.

(1) Where the inspector is satisfied that a consignment does not meet all the phytosanitary requirements, he shall intercept the consignment and notify the consignee and the relevant authority of the exporting country in writing.

(2) A consignment that is intercepted under paragraph (1), shall be seized, detained and treated, disposed or destroyed.

(3) An inspector who causes a consignment or plant, plant product or regulated article to be so seized, detained and treated, disposed of or destroyed shall, as soon as practicable, notify in writing the consignee through an interception notice.

11. Pest risk analysis and information.

(1) Where risk associated with the imported plant, plant product or regulated article is unknown, the National Plant Protection Organization shall undertake a pest risk analysis.

(2) The National Plant Protection Organization may request for the pest risk analysis information from the relevant authority of the exporting country.

12. Import procedures and quarantines.

(1) Where upon conducting a pest risk analysis it is determined that the risks associated with importation of a plant, plant product or regulated article are -

(a) minimal, the National Plant Protection Organization may grant importation permit;

(b) substantially high, the National Plant Protection Organization may grant permit for importation under plant quarantine procedures;

(c) very high, the National Plant Protection Organization shall prohibit the importation except for the purpose of restricted essential scientific research and experiment or education.

(2) An inspector shall ensure that the importation of any plant, plant product or regulated article shall not present significant risk to agriculture or natural environment of Kenya and such plant, plant product or regulated article shall be subjected to the quarantine procedures specified in paragraph (1) (b).

(3) The National Plant Protection Organization may, while undertaking a quarantine procedure use its standard operating procedures to designate any of its substation as a quarantine station or specific area or facility as a provisional quarantine.

(4) Where a provisional quarantine facility has been designated within the property of the importer, the importer shall ensure that the product is not taken from the quarantine facility without the approval of National Plant Protection Organization.

(5) The National Plant Protection Organization shall regularly review the situation of any quarantine area or facility and as soon as –

- (a) the relevant quarantine pest is eradicated; or
- (b) it is of the opinion that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the affected area, the National Plant Protection Organization shall, by written notice served on all affected owners or occupiers of any area or premises, lift the quarantine.

13. Consignment for re-export.

(1) Where a consignment imported for re-export is repacked or split up, but its phytosanitary integrity is not lost, the National Plant Protection Organization shall issue a phytosanitary certificate for re-export.

(2) Where a consignment imported for re-export—

- (a) loses its integrity;
- (b) is processed; or
- (c) is exposed to infection or infestation by a pest,

the National Plant Protection Organization shall consider the consignment as if it was being exported from Kenya.

(3) A re-export consignment shall be accompanied by its original phytosanitary certificates or a certified copy in addition to the re-export phytosanitary certificate.

14. Consignment in transit.

(1) The National Plant Protection Organization shall not issue a phytosanitary certificate or a re-export phytosanitary certificate to an importer where a consignment is in transit through Kenya and the consignment has not been exposed to infestation or contamination by pest.

(2) Where the consignment in transit is handled in such a manner that it loses its integrity or is exposed to infection or infestation by pest, it shall be considered as a consignment for export and a phytosanitary certificate shall be issued in accordance to these Rules.

15. Importation of seeds. Cap. 326

Any person who is importing seed shall, in addition to these Rules, comply with the requirements of the Seed and Plant Varieties Act.

16. Authorities to assist and co-operate in minimizing threats from risks.

A person in charge of a point of entry shall -

(a) assist the inspector in ensuring that no threat is caused to the plant resources of Kenya where waste is being disposed off from -

- (i) aircraft, ships, vehicles, rail and pleasure craft arriving in Kenya,
- (ii) premises which process or wash imported plants, plant products, or regulated articles;

(b) assist the inspector in the performance of their function and exercise of their powers under these Rules by providing such facilities and assistance as the National Plant Protection

Organization may require to implement these Rules.

17. Offences and penalties.

(1) A person who contravenes any of the provision of these Rules commits an offence and shall be liable on conviction to a fine of two thousand shillings or imprisonment for a term not exceeding six months or both.

(2) A plant, plant product or regulated article that has been imported into Kenya in contravention to the provisions of these Rules shall be -

(a) intercepted and destroyed;

(b) sent back to sender or origin; or

(c) treated and released,

by the National Plant Protection Organization at the cost of the importer or the owner.

Made on the 16th June, 2009.

WILLIAM RUTO,
Minister for Agriculture.