



## Biosecurity (National Kiwifruit Pathway Management Plan) Order 2022

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 21st day of February 2022

Present:

Her Excellency the Governor-General in Council

This order is made under section 86 of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity given after being satisfied of the matters in section 85 of that Act.

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## **Order**

### **1 Title**

This order is the Biosecurity (National Kiwifruit Pathway Management Plan) Order 2022.

### **2 Commencement**

This order comes into force on 1 April 2022.

### **3 Interpretation**

In this order, unless the context otherwise requires,—

**Act** means the Biosecurity Act 1993

**budwood** means short lengths of young cane with buds from kiwifruit plants prepared for grafting onto the rootstock of another kiwifruit plant

**contamination** or **contaminated**, in relation to a risk item, means that the item—

- (a) is exhibiting unusual symptoms; or
- (b) is harbouring a high-risk organism; or
- (c) has visible soil or extraneous kiwifruit plant material

**growing media** means organic material that kiwifruit plants are grown in, including compost and mulch

**harmful organism** means an organism that causes, or has the potential to cause, harm to the New Zealand kiwifruit industry (including by having harmful effects on the production of kiwifruit or access to overseas markets for New Zealand-grown kiwifruit)

**high-risk organism** means a pest—

- (a) for which there are effective tools or measures available to control or reduce its potential impact; and
- (b) that meets any 2 or more of the following criteria:
  - (i) there is a high likelihood of the pest spreading on a kiwifruit industry pathway;
  - (ii) there is a high likelihood of the pest establishing and forming self-sustaining populations in orchards;
  - (iii) there is a high likelihood of the pest causing significant economic impacts if it establishes in orchards;
  - (iv) there is a high likelihood of the pest causing serious harm to the kiwifruit industry

**kiwifruit** means the fruit of any plant of the genus *Actinidia*

**kiwifruit contractor**—

- (a) means any person who supplies goods or services that involve the movement of a risk item to—
  - (i) an occupier or owner of an orchard; or
  - (ii) any other person who produces or supplies kiwifruit plants, kiwifruit shelter belt plants, kiwifruit plant material, budwood, or pollen; and
- (b) includes, but is not limited to,—
  - (i) artificial pollen applicators, beekeepers, and maturity clearance staff; and
  - (ii) contractors providing the following services:

- (A) vine work, pruning, and other canopy work:
- (B) spray application:
- (C) shelter trimming:
- (D) root pruning:
- (E) fertiliser and compost spreading:
- (F) pre-harvest assessments:
- (G) post-harvest bud counts:
- (H) pest monitoring:
- (I) harvesting kiwifruit:
- (J) technical advice:
- (K) orchard mapping:
- (L) irrigation:
- (M) infrastructure development

**kiwifruit industry pathway** has the meaning given by clause 5(2)

**kiwifruit plant** means living vines, including germplasm, of the genus *Actinidia*

**kiwifruit plant material** means all parts of a plant from the genus *Actinidia*, including budwood, seeds, pollen, and flowers

**kiwifruit post-harvest operator** means a business that provides services to the kiwifruit industry in relation to the harvesting, sorting, packing, and cool storage of kiwifruit before its distribution to market

**kiwifruit processor** means a business that processes kiwifruit and prepares them for market

**Kiwifruit Property Identification Number** or **KPIN** means the identification number issued by Zespri Group Limited that identifies a property where kiwifruit is grown

**kiwifruit shelter belt plants** means any plants, of a genus other than *Actinidia*, planted around the boundary of an orchard or orchards to protect kiwifruit from weather conditions

**KVH** means Kiwifruit Vine Health Incorporated

**notified to the public** means published on an Internet site maintained by KVH

**nursery** means any facility—

- (a) that—
  - (i) produces or holds kiwifruit plants or kiwifruit shelter belt plants for sale or movement outside of the property; and
  - (ii) is not an orchard; or

- (b) that is located adjacent to or within an orchard where the planting density in the facility is greater than that reasonably required to establish a full canopy within the orchard that the facility is located adjacent to or within

**occupier or owner of an orchard** means—

- (a) the occupier of the orchard; or
- (b) the owner of the orchard, but only if the occupier of the orchard—
  - (i) is not responsible for it; or
  - (ii) for any reason, cannot be made responsible for the management of it or cannot be identified

**orchard** means—

- (a) an area of orchard land entirely comprised within 1 certificate of title and described by 1 KPIN; or
- (b) an area of orchard land that is comprised within more than 1 certificate of title or described by more than 1 KPIN, and that is—
  - (i) contiguous other than being separated by a road, road reserve, driveway, or residential dwelling; and
  - (ii) owned or leased by the same person; and
  - (iii) managed as a single kiwifruit orchard operation

**orchard land**—

- (a) means—
  - (i) land used for, or intended to be used for, the cultivation of kiwifruit, budwood, kiwifruit flowers, or pollen for commercial purposes; or
  - (ii) land previously used for kiwifruit cultivation (or the cultivation of budwood, flowers, or pollen) if any kiwifruit vines remain on the land; and
- (b) includes a headland or shelter belt located immediately adjacent to any land described in paragraph (a)(i) or (ii)

**personal effects** includes footwear and clothing

**Plan** means the National Kiwifruit Pathway Management Plan made under clause 4

**pollen distributor** means—

- (a) any person who buys or receives pollen from a pollen mill operator; or
- (b) any person who—
  - (i) buys or receives pollen from another pollen distributor; or
  - (ii) distributes pollen as an intermediary between the pollen mill operator and the occupier or owner of an orchard, and is not the owner

or occupier of the orchard on which the pollen will be used for pollination

**pollen mill operator**—

- (a) means any person who collects, mills, sells, distributes, or artificially applies pollen; and
- (b) includes a grower who mills pollen for their own use

**risk item** means any organism, organic material, or other thing that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes or contains an organism that may cause unwanted harm to kiwifruit plants or the kiwifruit industry, including—

- (a) kiwifruit plant material; and
- (b) kiwifruit shelter belt plants; and
- (c) growing media; and
- (d) vehicles, machinery, and equipment (including beehives); and
- (e) personal effects

**sanitiser** means any product used to clean or disinfect a risk item by reducing the occurrence of plant pathogens.

*Plan*

**4 National Kiwifruit Pathway Management Plan**

This order makes the National Kiwifruit Pathway Management Plan.

**5 Pathways to be managed**

- (1) Kiwifruit industry pathways are the pathways to be managed in accordance with the Plan.
- (2) A **kiwifruit industry pathway** is a pathway on which specified goods are moved out of or into places in New Zealand where 1 or more of the following occurs in relation to kiwifruit plants or kiwifruit plant material (other than kiwifruit for sale):
  - (a) the plants are, or material is, grown or otherwise produced;
  - (b) the plants are, or material is, processed;
  - (c) the plants grow in the wild.
- (3) The **specified goods** are—
  - (a) kiwifruit plant material;
  - (b) kiwifruit shelter belt plants;
  - (c) growing media;
  - (d) personal effects;
  - (e) vehicles, machinery, and equipment (including beehives):

- (f) kiwifruit that may have come into contact with kiwifruit plant material, other than kiwifruit that have been processed and packaged for domestic consumption or export.

## **6 Plan's objectives: general**

The Plan's objectives are—

- (a) to reduce the spread of harmful organisms on kiwifruit industry pathways; and
- (b) to ensure that harmful organisms on kiwifruit industry pathways are detected early; and
- (c) to ensure that the origin and spread of harmful organisms on kiwifruit industry pathways can be rapidly traced; and
- (d) to increase and sustain awareness in the kiwifruit industry of—
  - (i) risks associated with the spread of harmful organisms on kiwifruit industry pathways; and
  - (ii) practices to manage those risks.

## **7 Plan's objectives: adverse effects of harmful organisms to be addressed**

The adverse effects of harmful organisms that the Plan addresses are—

- (a) adverse effects on economic well-being caused by 1 or more of the following:
  - (i) decreased kiwifruit production and increased costs of controlling harmful organisms on orchards:
  - (ii) restrictions on access for New Zealand-grown kiwifruit to overseas markets:
  - (iii) harm to the reputation of New Zealand-grown kiwifruit in overseas markets:
  - (iv) harm to the New Zealand economy that results from adverse effects on the kiwifruit industry that lead to reduced revenue and job losses:
- (b) adverse effects on economic well-being or the environment caused by growing practices that are needed to respond to harmful organisms, but are more costly or have greater adverse effects on the environment than the practices that would otherwise be used.

## **8 Plan's objectives: key known harmful organisms to be managed**

The key known harmful organisms that are to be managed in accordance with the Plan are—

- (a) *Actinidia* seed-borne latent virus:
- (b) *Ceratocystis fimbriata*:

- (c) *Meloidogyne incognita* (root-knot nematode);
- (d) *Neonectria microconidia*;
- (e) all *Phytophthora* species;
- (f) the virulent form of *Pseudomonas syringae* pv. *actinidiae* (Psa-V).

## 9 Plan's objectives: intermediate outcome

The Plan is a Pathway Programme in which the intermediate outcome for the programme is to reduce the spread of harmful organisms.

## 10 Plan's objectives: intended achievements in first 10 years

The following are intended to be achieved in the first 10 years after the Plan comes into force:

- (a) increased and sustained awareness in the kiwifruit industry of all risks associated with the spread of harmful organisms on kiwifruit industry pathways;
- (b) occupiers or owners of an orchard, kiwifruit post-harvest operators, and kiwifruit processors to have comprehensive risk management plans;
- (c) comprehensive risk management programmes for all kiwifruit plant material;
- (d) comprehensive risk management programmes for all orchard contractors that are proportionate to the level of risk they present;
- (e) systems in place to effectively trace risk items;
- (f) any spread of high-risk organisms on kiwifruit industry pathways to be limited and the existing freedom to move kiwifruit plant material between places to be maintained.

## 11 Principal measures to be taken to achieve objectives

The principal measures to be taken to achieve the objectives set out in clauses 6 to 10 are—

- (a) increasing awareness of—
  - (i) the risks associated with the spread of harmful organisms on kiwifruit industry pathways; and
  - (ii) practices to manage those risks; and
- (b) applying the results of science, research, and innovation to manage those risks; and
- (c) implementing programmes to manage those risks (for example, programmes relating to biosecurity awareness, hygiene, traceability, monitoring, and reporting); and
- (d) carrying out monitoring to enable—

- (i) an understanding of the level of risk associated with the spread of harmful organisms on kiwifruit industry pathways:
- (ii) an understanding of the effectiveness of practices and tools to manage that risk:
- (iii) early detection of the spread, or potential spread, of harmful organisms on kiwifruit industry pathways:
- (iv) an understanding of the levels of compliance with the requirements of the Plan; and
- (e) applying quarantine measures to pathways if—
  - (i) necessary to facilitate the safe movement of risk items; and
  - (ii) an acceptable level of protection can be achieved; and
- (f) applying targeted movement controls to—
  - (i) pathways that are, or may be capable of, spreading harmful organisms; and
  - (ii) specific sites where risk items are present and their potential movement off the site has the potential to spread harmful organisms; and
- (g) applying effective treatments to reduce the risk of the spread of harmful organisms on kiwifruit industry pathways; and
- (h) restricting the movement of, or applying additional measures to reduce the risk associated with movement of, risk items between the North and South Islands.

## **12 Means by which achievement of Plan's objectives to be monitored and measured**

- (1) The means by which the achievement of the Plan's objectives is to be monitored and measured is as set out in subclauses (2) and (3).
- (2) Whether the Plan's objectives are being achieved is to be measured by monitoring and recording the following on a regular basis:
  - (a) the change in national export production levels of kiwifruit over time:
  - (b) the level of compliance with the rules in the Plan:
  - (c) the level of biosecurity awareness and reporting in relation to the Plan:
  - (d) the level of uptake of biosecurity programmes and tools provided by the Plan:
  - (e) the rates and extent of establishment or spread of high-risk organisms associated with the pathways identified in the Plan:
  - (f) the traceability of risk items.
- (3) The operational plan required by section 100B of the Act must specify how the measures listed in subclause (2) are to be monitored and recorded.

**13 Sources of funding for implementation of Plan**

- (1) Implementation of the Plan is to be funded—
  - (a) by kiwifruit growers from the levy paid under the levy order; and
  - (b) from other funds (if any) received by KVH for the purpose of implementing the Plan.
- (2) In this clause and in clause 14, **levy order** means the Biosecurity (National Kiwifruit Pathway Management Plan—Kiwifruit Levy) Order 2022.

**14 Limitations, if any, on how funds collected under levy order may be used to implement Plan**

There are no limitations on how the funds collected by way of the levy under the levy order may be used to implement the Plan.

**15 Powers in Part 6 of Act to be used to implement Plan**

- (1) An authorised person appointed under section 103 of the Act for the purposes of the Plan may, in relation to the Plan, exercise all or any of the powers conferred on that person and specified in subclause (2).
- (2) The powers are—
  - (a) the power to require assistance (*see* section 106 of the Act):
  - (b) the power of inspection (*see* sections 109 and 112 of the Act):
  - (c) the power of entry in respect of offences (*see* sections 111 and 112 of the Act):
  - (d) the power to record information (*see* section 113 of the Act):
  - (e) the general powers (*see* section 114 of the Act):
  - (f) the power to apply articles or substances from an aircraft (*see* section 114A(3) of the Act):
  - (g) the use of dogs and devices (*see* section 115 of the Act):
  - (h) the power to seize evidence (*see* section 118 of the Act):
  - (i) the power to seize abandoned goods (*see* section 119 of the Act):
  - (j) the power to intercept risk goods (*see* section 120 of the Act):
  - (k) the power to examine organisms (*see* section 121 of the Act):
  - (l) the power to apply any article or substance (*see* section 121A of the Act):
  - (m) the power to give directions (*see* section 122 of the Act):
  - (n) the power to vaccinate, etc (*see* section 123 of the Act):
  - (o) the power to declare a place to be a restricted place (*see* section 130 of the Act).

- (3) KVH may, in relation to the Plan, exercise all or any of the powers conferred on KVH and specified in subclause (4).
- (4) The powers are—
  - (a) the power to act on default (*see* section 128 of the Act):
  - (b) the power to declare a specified area to be a controlled area (*see* section 131 of the Act):
  - (c) the power to recover costs (*see* section 135 of the Act):
  - (d) the power to waive all or any part of a debt (*see* section 136(3) of the Act).

### *Plan rules*

#### **16 Plan rules**

- (1) Clauses 17 to 27 contain Plan rules 1 to 11.
- (2) A person who fails to comply with any of Plan rules 1 to 11 commits an offence against the Act (*see* section 154N(18) of the Act).

#### **17 Plan rule 1: reporting**

A person who recognises that a risk item is, or is potentially, contaminated must, within 48 hours of first recognising the contamination, report the contamination—

- (a) to KVH; or
- (b) to any person who has been approved by KVH for that purpose and notified to the public.

#### **18 Plan rule 2: provision of information**

- (1) This rule applies—
  - (a) to a person if a rule in clauses 19 to 26 applies to that person; and
  - (b) in respect of risk items that may cause unwanted harm to cultivated kiwifruit plants.
- (2) A person must provide KVH or an authorised person with any information of a kind described in subclause (4) that KVH or the authorised person requests in writing.
- (3) The person must provide the information within the time period specified in the request, which must not be less than 24 hours from the time the request is made.
- (4) The information is any information about the location, condition, source, movement, or distribution of any risk item.

**19 Plan rule 3: kiwifruit orchard risk management plans**

- (1) An occupier or owner of an orchard must have, and operate in accordance with, a kiwifruit orchard risk management plan for that orchard.
- (2) An occupier or owner of an orchard must ensure that the kiwifruit orchard risk management plan for the orchard includes the following matters:
  - (a) a description of the risks in relation to kiwifruit industry pathways and how they are to be managed:
  - (b) the source and location of any plant material that enters the orchard, including new budwood, kiwifruit plants, pollen, compost, and kiwifruit shelter belt plants:
  - (c) the orchard hygiene practices that will be implemented to reduce the risk of harmful organisms entering and spreading in or from the orchard when entering, leaving, or moving within the orchard, including tool, vehicle, machinery, kiwifruit bin, and personal effects hygiene practices:
  - (d) the person or groups of persons likely to enter or leave the orchard and the steps to be taken to ensure that they—
    - (i) understand the requirements in the kiwifruit orchard risk management plan; and
    - (ii) comply with them:
  - (e) how risks relating to kiwifruit industry pathways will be monitored and reported.

**20 Plan rule 4: kiwifruit post-harvest operator and processor biosecurity risk management plans**

- (1) A kiwifruit post-harvest operator and a kiwifruit processor must have, and operate in accordance with, a biosecurity risk management plan.
- (2) A person referred to in subclause (1) must ensure that the biosecurity risk management plan includes the following matters:
  - (a) a description of the risks to be managed in relation to kiwifruit industry pathways:
  - (b) the steps that will be taken to manage the risks, including—
    - (i) the hygiene practices in respect of all vehicles, machinery, tools, bins, equipment, and personal effects to reduce the spread of harmful organisms; and
    - (ii) a requirement to use only sanitisers that are approved by KVH and notified to the public; and
    - (iii) the time before entering an orchard at which the sanitiser should be used:

- (c) the steps that will be taken to ensure that all kiwifruit post-harvest operator and kiwifruit processor personnel are aware, before entering an orchard, of—
  - (i) the risks to be managed in relation to kiwifruit industry pathways; and
  - (ii) the steps required to be taken to manage the risks; and
  - (iii) the reporting requirement in clause 17:
- (d) the system that will be applied to enable kiwifruit to be traced, and how the integrity of that system will be maintained.

## **21 Plan rule 5: kiwifruit contractor biosecurity risk management plans**

- (1) A kiwifruit contractor must have, and operate in accordance with, a biosecurity risk management plan.
- (2) A kiwifruit contractor must ensure that the biosecurity risk management plan includes the following matters:
  - (a) a description of the risks to be managed in relation to kiwifruit industry pathways:
  - (b) the steps that will be taken to manage the risks, including—
    - (i) the hygiene practices in respect of all vehicles, machinery, tools, bins, equipment, and personal effects to reduce the spread of harmful organisms; and
    - (ii) a requirement to use only sanitisers that are approved by KVH and notified to the public; and
    - (iii) the time before entering an orchard at which the sanitiser should be used:
  - (c) the steps that will be taken to ensure that all kiwifruit contractors are aware, before entering an orchard, of—
    - (i) the risks to be managed in relation to kiwifruit industry pathways; and
    - (ii) the steps required to be taken to manage the risks; and
    - (iii) the reporting requirement in clause 17.

## **22 Plan rule 6: safe movement of nursery plants and shelter belt plants**

- (1) This rule applies to the owner of a nursery who sells or moves kiwifruit plants or kiwifruit shelter belt plants to an orchard or another nursery.
- (2) The owner must,—
  - (a) immediately before the move, be registered with KVH; and
  - (b) have hygiene practices in place that ensure that, while the plants are grown at the nursery, all vehicles, machinery, tools, bins, equipment, and

- personal effects are clean and disinfected, using sanitisers approved by KVH and notified to the public; and
- (c) have practices in place to ensure that—
    - (i) the plants are free from high-risk organisms; or
    - (ii) the movement of plants to an orchard or another nursery will not result in a significant increase in risk to the kiwifruit industry; and
  - (d) have a crop protection programme to manage and prevent the spread of high-risk organisms while the plants are grown at the nursery; and
  - (e) have practices in place to ensure that growing media are not reused (*see also* rule 10); and
  - (f) have practices in place to ensure that all tools, containers, and surfaces used during the plant production process, including the grafting and pruning processes, have been cleaned and disinfected using sanitisers approved by KVH and notified to the public; and
  - (g) have production and storage areas that—
    - (i) are free of harmful organisms; and
    - (ii) ensure that nursery plant batches are not mixed; and
    - (iii) ensure that kiwifruit shelter belt plant batches are not mixed; and
  - (h) have practices in place to ensure that monitoring of kiwifruit plants and kiwifruit shelter belt plants for harmful organisms is carried out by persons with the relevant experience, knowledge, and training; and
  - (i) have practices in place to ensure that testing for high-risk organisms, if required, is carried out by a laboratory approved by KVH and notified to the public that—
    - (i) has appropriate sampling and diagnostic methods; and
    - (ii) is independent of the producer; and
  - (j) have a system that enables the tracing of kiwifruit and kiwifruit shelter belt plant propagation material and plants—
    - (i) back to the last growing location and batch; and
    - (ii) forward to the buyer or final destination; and
  - (k) have practices in place to ensure that records that enable the kiwifruit plant to be traced, including records of the entire chain of custody of the plants, are kept for a minimum of 7 years; and
  - (l) have practices in place to ensure that all other records are kept for a minimum of 3 years.
- (3) An owner is exempt from complying with the requirements in subclause (2), other than having to keep records under paragraph (k), if the orchard—
- (a) supplies 1,000 kiwifruit plants or fewer per year; and

- (b) supplies only orchards that are owned by the owner.

### **23 Plan rule 7: safe movement of orchard plants**

- (1) This rule applies to an occupier or owner of an orchard who moves kiwifruit plants to another orchard.
- (2) The occupier or owner of an orchard must,—
  - (a) immediately before the move, be registered with KVH; and
  - (b) have practices in place to ensure that any budwood coming into the orchard—
    - (i) is free from high-risk organisms; or
    - (ii) is unlikely to result in a significant increase in risk to the kiwifruit industry; and
  - (c) have a crop protection programme that uses products approved by KVH and notified to the public for use against high-risk organisms; and
  - (d) have practices in place to ensure that monitoring kiwifruit plants for harmful organisms is carried out by persons with the relevant experience knowledge and training; and
  - (e) have practices in place to ensure that testing for high-risk organisms, if required, is carried out by a laboratory approved by KVH and notified to the public that—
    - (i) has appropriate sampling and diagnostic methods; and
    - (ii) is independent of the producer; and
  - (f) have a system that enables the tracing of—
    - (i) kiwifruit plants from the occupier or owner to the buyer or final destination; and
    - (ii) kiwifruit plants and any budwood grafted onto those plants back to the last growing location; and
  - (g) have practices in place to ensure that records that enable kiwifruit plants to be traced, including records of the entire chain of custody of the plants, are kept for a minimum of 7 years; and
  - (h) have practices in place to ensure that all other records are kept for a minimum of 3 years.
- (3) Subclause (2)(f)(ii) does not apply in respect of a kiwifruit plant that was already growing, or budwood that was grafted, before 1 April 2022.

### **24 Plan rule 8: safe movement of budwood**

- (1) Subclauses (2) and (3) apply to an occupier or owner of an orchard who moves or sells budwood to another orchard or to a nursery.
- (2) The occupier or owner of an orchard must ensure that the budwood is produced by a producer who—

- 
- (a) has practices in place to ensure that they provide—
    - (i) budwood from orchards, or parts of orchards, that are free from high-risk organisms; or
    - (ii) budwood that is unlikely to result in a significant increase in risk to the kiwifruit industry; and
  - (b) has a crop protection programme that uses products approved by KVH and notified to the public for use against high-risk organisms; and
  - (c) has practices in place to ensure that monitoring of vines, for harmful organisms, from which budwood is collected is carried out by persons with the relevant experience, knowledge, and training; and
  - (d) has practices in place to ensure that testing for high-risk organisms, if required, is carried out by a laboratory approved by KVH and notified to the public that—
    - (i) has appropriate sampling and diagnostic methods; and
    - (ii) is independent of the producer; and
  - (e) has practices in place to ensure that all tools, containers, and surfaces used during the budwood collection process are cleaned and disinfected using sanitisers approved by KVH and notified to the public; and
  - (f) has practices in place to ensure that budwood is not collected from cuttings left on the ground after pruning; and
  - (g) has practices in place to ensure that budwood batches are free of high-risk organisms and that the batches are not mixed with other budwood batches; and
  - (h) has a system that enables the tracing of budwood—
    - (i) back to the orchard it is sourced from and to the relevant batch from that orchard; and
    - (ii) from the occupier or owner to the buyer or final destination; and
  - (i) has practices in place to ensure that records that enable budwood to be traced, including records of the entire chain of custody of the budwood, are kept for a minimum of 7 years; and
  - (j) has practices in place to ensure that all other records are kept for a minimum of 3 years.
- (3) An occupier or owner of an orchard is exempt from complying with the requirements in subclause (2), other than having to keep records under paragraph (i), if the orchard—
- (a) supplies budwood that enables grafting of 1000 kiwifruit plants or fewer per year; and
  - (b) supplies only orchards that are owned by the owner.
- (4) Subclause (5) applies to a person (a **budwood distributor**) who—

- (a) buys or receives budwood from an occupier or owner of an orchard who supplies budwood; or
  - (b) buys or receives budwood from another budwood distributor; or
  - (c) distributes budwood between an occupier or owner of an orchard who supplies budwood and an occupier or owner of an orchard.
- (5) If a budwood distributor moves or sells budwood, the budwood distributor must,—
- (a) immediately before the move, be registered with KVH; and
  - (b) have practices in place to ensure that any bags or containers within which budwood is stored remain sealed to prevent contamination or further contamination; and
  - (c) have a system that enables the tracing of budwood—
    - (i) back to the orchard it is sourced from and to the relevant batch from that orchard; and
    - (ii) forward to the buyer or final destination; and
  - (d) have practices in place to ensure that records that enable budwood to be traced, including records of the entire chain of custody of the budwood, are kept for a minimum of 7 years.

## **25 Plan rule 9: safe movement of pollen**

- (1) A person must not move pollen onto an orchard unless the pollen is produced by a pollen mill operator that,—
- (a) immediately before the move, is registered with KVH; and
  - (b) has practices in place to ensure that they only mill flowers—
    - (i) from orchards, or parts of orchards, that are free from high-risk organisms; or
    - (ii) that are unlikely to result in a significant increase in risk to the kiwifruit industry; and
  - (c) has a crop protection programme that uses products approved by KVH and notified to the public for use against high-risk organisms; and
  - (d) has practices in place to ensure that monitoring, for harmful organisms, of kiwifruit plants from which flowers are collected is carried out by persons with the relevant experience, knowledge, and training; and
  - (e) has practices in place to ensure that testing for high-risk organisms, if required, is carried out by a laboratory approved by KVH and notified to the public that—
    - (i) has appropriate sampling and diagnostic methods; and
    - (ii) is independent of the producer; and

- (f) has practices in place to ensure that all tools, containers, and surfaces used during the pollen milling process are cleaned and disinfected using sanitisers approved by KVH and notified to the public; and
  - (g) has practices in place to ensure that—
    - (i) pollen containers are sealed to prevent contamination; and
    - (ii) pollen containers are opened for the purpose of testing pollen viability in an area that is clean, sterile, and free of harmful organisms; and
  - (h) has practices in place to ensure that records that enable pollen to be traced, including the carrier records, are kept for a minimum of 7 years; and
  - (i) has practices in place to ensure that all other records are kept for a minimum of 3 years.
- (2) A pollen distributor that is not a pollen mill operator must not move pollen onto an orchard unless the distributor,—
- (a) immediately before the move, is registered with KVH; and
  - (b) has practices in place to ensure that—
    - (i) pollen containers are sealed to prevent contamination; and
    - (ii) pollen containers are opened for the purpose of testing pollen viability in an area that is clean, sterile, and free of harmful organisms; and
  - (c) has practices in place to ensure that records that enable pollen to be traced, including the carrier records, are kept for a minimum of 7 years.

## **26 Plan rule 10: safe movement of growing media**

- (1) This rule applies to a producer of growing media who moves growing media onto an orchard.
- (2) The producer must have practices in place to ensure that—
  - (a) the product is free from high-risk organisms; or
  - (b) movement of the growing media to the intended location is unlikely to result in a significant increase in risk to the kiwifruit industry.
- (3) The producer must have practices in place to ensure that records are kept for 7 years after each movement that—
  - (a) set out how this rule has been complied with; and
  - (b) enable the growing media to be traced, including records of—
    - (i) the orchard receiving the goods; and
    - (ii) the carrier taking the goods; and
    - (iii) the dates of delivery of the goods to the orchard.

**27 Plan rule 11: safe movement of risk items between North and South Islands***Final destination is orchard*

- (1) A carrier must not move a risk item between the North and South Islands to an orchard unless—
  - (a) the carrier notifies KVH in writing at least 7 days before the proposed movement; and
  - (b) KVH approves the movement; and
  - (c) for kiwifruit plant material, the carrier ensures that the material has been quarantined, in a facility approved by KVH or an authorised person for that purpose and notified to the public, for the period of time required (if any) to—
    - (i) enable both the mother plants and any progeny to be determined to be free of high-risk organisms; or
    - (ii) establish that the movement of the material to the intended location is unlikely to result in a significant increase in risk to the kiwifruit industry; and
  - (d) for vehicles, machinery, and equipment intended to be moved to an orchard or used for processing pollen, the carrier ensures that the vehicles, machinery and equipment are—
    - (i) free of visible soil and plant material; and
    - (ii) sanitised with a sanitiser approved by KVH and notified to the public before movement between the North and South Islands; and
    - (iii) stored and transported in a manner that avoids contamination by any high-risk organism.
- (2) The period of time required to comply with subclause (1)(c) must include, if applicable, the time for the material to be—
  - (a) explanted from the in vivo plant to generate tissue cultures; and
  - (b) prepared for deflasking, including rooting and hardening; and
  - (c) tested for disease, and for testing results to be returned.
- (3) An occupier or owner of an orchard who receives a risk item moved between the North and South Islands must have documented practices in place to ensure that they obtain evidence that the carrier has complied with this rule before accepting receipt of the goods.

*Final destination is nursery*

- (4) A carrier must not move kiwifruit plant material between the North and South Islands to a nursery unless—

- (a) the carrier has notified KVH in writing at least 7 days before the proposed movement; and
  - (b) KVH or an authorised person has approved the movement; and
  - (c) the carrier has ensured that the requirements in subclause (1)(c) have been met.
- (5) An owner of a nursery who receives kiwifruit plant material moved between the North and South Islands must have documented practices in place to ensure that they obtain evidence that the carrier has complied with this rule before accepting receipt of the goods.

*Moving pollen-related items*

- (6) A carrier must not move vehicles, machinery, or equipment between the North and South Islands for the purpose of pollen processing unless—
- (a) the carrier has practices in place to ensure that the item is stored and transported in a manner that avoids contamination by any high-risk organism, and complies with those practices; and
  - (b) the carrier notifies KVH in writing at least 7 days before the proposed movement; and
  - (c) KVH has approved the movement; and
  - (d) the item—
    - (i) is free of visible soil and plant material; and
    - (ii) is sanitised with a sanitiser approved by KVH and notified to the public before the movement.
- (7) In this rule, **carrier** means the person responsible for moving and preparing the risk items for movement between the North and South Islands.

*Management agency*

**28 Management agency**

The management agency responsible for implementing the Plan is KVH.

*Miscellaneous matters*

**29 Actions that local authorities, etc, may take to implement Plan**

A local authority may carry out management activities in respect of wild kiwifruit jointly with KVH and may contribute funds towards the costs of managing wild kiwifruit.

**30 Application of Plan to EEZ**

The Plan does not apply to the EEZ or to any part of the EEZ.

### 31 Application of Plan to roads

The Plan does not cover any roads of the kind referred to in section 84(3)(1) of the Act.

#### *Plan's commencement and termination dates*

### 32 Plan's commencement and termination dates

The Plan commences on 1 April 2022 and terminates at the close of 31 March 2032.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 1 April 2022, makes the National Kiwifruit Pathway Management Plan (the **Plan**).

The matters that are required to be included in the Plan are set out in section 84 of the Biosecurity Act 1993 (the **Act**).

In summary, the Plan, as made by *clause 4*, provides that Kiwifruit Vine Health Incorporated (**KVH**) is the management agency (*see clause 28*) and, as such, has various powers available to it to manage the risks related to the movement of specified goods on kiwifruit industry pathways.

*Clauses 6 to 10* set out the objectives of the Plan, and *clauses 11 and 12* deal with the principal measures to be taken to achieve these objectives and how their effectiveness is to be monitored and measured. *Clause 15* sets out the powers under Part 6 of the Act that are available to authorised persons (those appointed under section 103 of the Act) and KVH in relation to the implementation of the Plan.

*Clauses 13 and 14* provide that funding for the implementation of the Plan is to be by way of levies paid under the Biosecurity (National Kiwifruit Pathway Management Plan—Kiwifruit Levy) Order 2022 (the **levy order**) and any other funds received by KVH for the purposes of implementing the Plan, and that there are no limitations on the way in which the funds collected under the levy order may be used to implement the Plan.

*Clause 16* deals with the Plan rules, which are set out in *clauses 17 to 27*. A person who fails to comply with a Plan rule commits an offence (*see section 154N(18)* of the Act). Plan rules that place the primary responsibility on the occupier of the orchard also provide for the owner of the orchard to bear responsibility in the event that the occupier is not responsible (or cannot be held responsible) for the management of the orchard or cannot be identified. Plan rules 1 to 11 relate to—

- reporting the contamination or potential contamination of a risk item (Plan rule 1):
- providing information to KVH or an authorised person (Plan rule 2):
- having, and operating in accordance with, an applicable risk management plan (Plan rules 3 to 5):
- the safe movement of specified items (Plan rules 6 to 10):
- the safe movement of risk items between the North and South Islands (Plan rule 11).

*Clause 29* provides that a local authority may contribute funds to, and carry out management activities jointly with, KVH in respect of wild kiwifruit management.

*Clauses 30 and 31* deal with other matters that are required, by section 84 of the Act, to be included in the Plan, but which have no effect for the purposes of the Plan.

*Clause 32* provides that the Plan commences on 1 April 2022 and terminates at the close of 31 March 2032.

Issued under the authority of the Legislation Act 2019.  
Date of notification in *Gazette*: 24 February 2022.  
This order is administered by the Ministry for Primary Industries.