



Biosecurity (National Psa-V Pest Management Plan) Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 13th day of May 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 66 of the Biosecurity Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Primary Industries given after being satisfied of the matters in section 65 of that Act, makes the following order.

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Order

- 1 Title**
This order is the Biosecurity (National Psa-V Pest Management Plan) Order 2013.
- 2 Commencement**
This order comes into force on 17 May 2013.

3 Interpretation

(1) In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

containment region means a geographic area that is—

- (a) determined and established in accordance with clause 7; and
- (b) part of a progressive containment programme, an intended outcome of which is to contain and, where possible, reduce the distribution of, Psa-V in that area for the term of the Plan

exclusion region means a geographic area that is—

- (a) determined and established in accordance with clause 7; and
- (b) part of an exclusion programme, an intended outcome of which is to prevent the establishment of Psa-V in that region for the term of the Plan

inoculum means an amount of Psa-V bacteria capable of infecting a kiwifruit plant

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

KVH means Kiwifruit Vine Health Incorporated

orchard means an area of land used for the cultivation of kiwifruit, or kiwifruit flowers or pollen, for commercial purposes

Plan means the National Psa-V Pest Management Plan made under clause 4

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 prior to its distribution to market

processor means a business that processes kiwifruit products and prepares those products for market

Psa-V means the virulent form of *Pseudomonas syringae* pv *actinidiae*

Psa-V orchard management plan means an orchard management plan required under clause 13

Psa-V risk management plan means a risk management plan required under clause 14

recovery region means a geographic area that is—

- (a) determined and established in accordance with clause 7; and
- (b) part of a sustained control programme, an intended outcome of which is to provide, at a manageable cost to persons in the kiwifruit industry,—
 - (i) for the sustained control of Psa-V in that area for the term of the Plan; and
 - (ii) for KVH, within 5 years, to demonstrate how kiwifruit production can effectively recover in that area

risk item includes (without limitation)—

- (a) kiwifruit plant material, such as budwood, rootstock, and compost;
 - (b) orchard infrastructure and equipment;
 - (c) fruit that may be contaminated with plant material (other than fruit that has been processed and packaged, whether for domestic consumption or for export);
 - (d) pollen and flowers;
 - (e) beehives.
- (2) Terms or expressions used and not defined in this order but defined in the Act have, in this order, the same meaning as in the Act.

Plan

4 National Psa-V Pest Management Plan

This order makes the National Psa-V Pest Management Plan.

5 Pest to be managed

The organism Psa-V is the pest to be managed in accordance with the Plan.

6 Plan's objectives: general

- (1) The primary objective of the Plan is to reduce the harmful effects of Psa-V on economic well-being by—
 - (a) preventing its spread; and
 - (b) minimising its impact on kiwifruit production.

- (2) The secondary objectives of the Plan are to achieve the following outcomes:
- (a) to ensure that exclusion regions are, and remain, free of Psa-V:
 - (b) to establish, on an ongoing basis, that the exclusion regions are free of Psa-V:
 - (c) to enable swift and decisive action to be taken to contain any outbreak of Psa-V in an exclusion region:
 - (d) to limit the further spread of Psa-V into, within, and from containment regions:
 - (e) to reduce, where possible, the distribution of Psa-V within containment regions:
 - (f) to reduce inoculum levels in recovery regions:
 - (g) to reduce the risk of Psa-V spreading from recovery regions to other places:
 - (h) to support the recovery of kiwifruit production in the recovery regions, by minimising overall production losses and enabling the successful establishment of new kiwifruit varieties.

7 Plan's objectives: establishment of exclusion regions, containment regions, and recovery regions

- (1) Exclusion regions, containment regions, and recovery regions, and the geographic boundaries of those regions, must be determined and established by KVH, taking into account the following primary criteria:
- (a) an exclusion region may be established where—
 - (i) Psa-V is not present in the region; and
 - (ii) Psa-V is not present in any place within 10 km of any boundary of that region:
 - (b) a containment region may be established where the Psa-V infection rate is, on average, less than 35% of the area of orchards in that region:
 - (c) a recovery region may be established where the Psa-V infection rate is, on average, 35% or more of the area of orchards in that region.
- (2) In addition to the criteria specified in subclause (1), KVH must, in considering whether to establish a region and, if so,

the type of region, take into account the following secondary criteria:

- (a) the degree of physical isolation of a particular area, and the extent to which that degree of isolation would be likely to reduce the risk of Psa-V naturally spreading to that area;
 - (b) whether there are natural barriers that reduce the risk of the natural spread of Psa-V into, within, or from a particular area;
 - (c) any other factors that would, or may, affect the levels of inoculum in a particular area, such as—
 - (i) the prevalence of Psa-V;
 - (ii) the density, or proximity, of orchards;
 - (iii) the particular varieties of kiwifruit plants and the levels of inoculum released by those varieties;
 - (iv) whether the symptoms of Psa-V are present in primary or secondary form;
 - (d) any other matters that KVH considers relevant.
- (3) KVH must ensure awareness of the regions established under this clause by making the type, and geographic boundaries, of each of those regions publicly available on an Internet site maintained by KVH.
- (4) To avoid doubt, KVH may, from time to time and in accordance with subclauses (1) to (3),—
- (a) vary or disestablish exclusion regions, containment regions, and recovery regions;
 - (b) determine and establish new exclusion regions, containment regions, and recovery regions.

8 Principal measures to be taken to achieve objectives

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

- (a) determining and establishing exclusion regions, containment regions, and recovery regions (*see* clause 7); and
- (b) carrying out monitoring, to enable an understanding of—
 - (i) the distribution of Psa-V; and

- (ii) where the levels of Psa-V present a significant risk to other orchards, regions, or other places; and
 - (iii) the impacts of Psa-V on kiwifruit varieties and cultivars; and
 - (iv) the overall impact of Psa-V on kiwifruit production; and
 - (v) the effectiveness of Psa-V control tools and management practices; and
 - (vi) the levels of compliance with the requirements of the Plan; and
- (c) preparing for, and being able to rapidly respond to, any new outbreak of Psa-V; and
 - (d) managing diseased and abandoned orchards and wild kiwifruit plants, to reduce or remove sources of inoculum; and
 - (e) imposing movement controls on risk items that are, or may be, capable of contributing to the spread of Psa-V; and
 - (f) providing for best-practice Psa-V management in orchards.

9 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, on a regular basis,—
 - (a) the numbers of exclusion regions, containment regions, and recovery regions, and how those numbers have changed over time;
 - (b) the number of Psa-V infections detected for the first time in exclusion regions, and the likely cause of the spread of the disease;
 - (c) the rate and pattern of the spread of Psa-V within containment regions;
 - (d) an estimate of the impact that Psa-V has had on kiwifruit production.

- (3) Whether the implementation of the principal measures is effective is to be measured by monitoring and recording, on a regular basis,—
- (a) the proportion of orchards in respect of which a Psa-V orchard management plan has been implemented:
 - (b) the level of preparedness within exclusion regions:
 - (c) the extent to which Psa-V risks associated with unmanaged orchards, abandoned orchards, and wild kiwifruit plants have been managed:
 - (d) the level of compliance with movement controls:
 - (e) the general level of awareness of, and the compliance with, requirements relating to Psa-V.

10 Sources of funding for implementation of Plan

The Plan is to be funded—

- (a) by kiwifruit growers from the levy paid under the Biosecurity (Psa-V—Kiwifruit Levy) Order 2013; and
- (b) from other funds (if any) received by KVH for the purpose of implementing the Plan.

11 Limitations, if any, on how funds collected under Biosecurity (Psa-V—Kiwifruit Levy) Order 2013 may be used to implement Plan

There are no limitations on how the funds collected by way of the levy under the Biosecurity (Psa-V—Kiwifruit Levy) Order 2013 may be used to implement the Plan.

12 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 power to seize evidence (*see* section 118 of the Act):
 - (h) the power to seize abandoned goods (*see* section 119 of the Act):
 - (i) the power to examine organisms (*see* section 121 of the Act):
 - (j) the power to apply any article or substance (*see* section 121A of the Act):
 - (k) the power to give directions (*see* section 122 of the Act):
 - (l) the power to vaccinate, etc (*see* section 123 of the Act):
 - (m) 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

13 Plan rules

- (1) Clauses 14 to 20 contain the Plan rules.
- (2) Every person commits an offence against the Act who fails to comply with any of Plan rules 2 to 7 (*see* section 154N(18) of the Act).

14 Plan rule 1: Psa-V orchard management plans

- (1) Every occupier of an orchard must, if that person is responsible for the management of the orchard, have, and operate in accordance with, a Psa-V orchard management plan.

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- (2) If the occupier of an orchard is not responsible, or for any reason cannot be made responsible, for the management of the orchard or cannot be identified, the owner of the orchard must comply with the requirements of subclause (1).
- (3) Every person referred to in subclause (1) or (2), as the case may be, must ensure that the relevant Psa-V orchard management plan includes, as a minimum, the following matters:
- (a) the orchard hygiene practices that will be implemented to reduce the risk of Psa-V entering, or spreading in or from, the orchard:
 - (b) the crop protection programme that will be applied to—
 - (i) protect kiwifruit plants from Psa-V;
 - (ii) manage the impacts of Psa-V;
 - (iii) reduce the risk of the spread of Psa-V;
 - (c) any other orchard management practices that will be applied to achieve the outcomes set out in paragraph (b)(i) to (iii):
 - (d) the Psa-V monitoring programme that will be implemented:
 - (e) if Psa-V is not already present in the orchard or the associated exclusion region, containment region, or recovery region (as the case may be), details of the actions to be taken—
 - (i) to ensure readiness for an outbreak of Psa-V; and
 - (ii) in the event that a Psa-V outbreak is detected within the orchard or the associated region for the first time:
 - (f) how the Psa-V orchard management plan complies with—
 - (i) the rules on reporting, providing information, and the minimum levels of crop protection set out in the Plan; and
 - (ii) any other relevant operational requirements, specified in the operational plan made under section 100B of the Act, that implement the Plan; and
 - (iii) any restricted place notice given under section 130 of the Act; and

- (iv) any other requirements specified in an existing controlled area notice issued by KVH under section 131 of the Act.
- (4) However, the obligations set out in subclauses (1) to (3) do not apply until 1 August 2013.

15 Plan rule 2: Psa-V risk management plans

- (1) Every kiwifruit post-harvest operator and every kiwifruit processor must have, and operate in accordance with, a Psa-V risk management plan.
- (2) Every person referred to in subclause (1) must ensure that the relevant Psa-V risk management plan includes, as a minimum, the following matters:
 - (a) the practices and procedures that will be applied in order to—
 - (i) reduce the risk of bins of fruit becoming contaminated with kiwifruit leaf and plant material prior to transport:
 - (ii) contain fruit that could be contaminated with kiwifruit leaf and plant material during transport:
 - (iii) remove, contain, and safely dispose of any residual contaminant kiwifruit leaf and plant material after transport or during processing:
 - (iv) sanitise fruit and any bins or other equipment used to transport or handle fruit prior to processing and packaging:
 - (v) ensure that any vehicles or equipment that leave the person's premises are free of kiwifruit leaf and plant material:
 - (vi) maintain a level of general hygiene that reduces the risk of any risk item that could be contaminated with Psa-V being moved from, or being allowed to leave, the post-harvest or processing facility:
 - (b) the system that will be applied to enable fruit to be traced, and how the integrity of that system will be maintained:
 - (c) how the Psa-V risk management plan complies with—

- (i) the rules on reporting and providing information set out in the Plan; and
 - (ii) any other relevant operational requirements, specified in the operational plan made under section 100B of the Act, that implement the Plan; and
 - (iii) any restricted place notice given under section 130 of the Act; and
 - (iv) any other requirements specified in an existing controlled area notice issued by KVH under section 131 of the Act.
- (3) Every person referred to in subclause (1) must provide KVH with a copy of that person's Psa-V risk management plan, and information that records how the person has operated in accordance with that plan, within 1 week of KVH requesting the plan and information.
- (4) However, the obligations set out in subclauses (1) to (3) do not apply until 1 August 2013.

16 Plan rule 3: reporting

Every person who recognises the symptoms, or potential symptoms, of Psa-V in an orchard must, within 48 hours of first recognising those symptoms, report those symptoms to KVH, or to any person or organisation approved by KVH for that purpose.

17 Plan rule 4: provision of information

- (1) Every person must provide KVH or an authorised person with any information of a kind described in subclause (3) within 48 hours of KVH or the authorised person requesting that information.
- (2) However, nothing in subclause (1) prevents KVH or the authorised person from granting the person more than 48 hours to provide the information and, in that case, the person must provide the information within the time granted.
- (3) The information is information that KVH or the authorised person (as the case may be) reasonably believes is necessary to—
- (a) monitor the distribution of Psa-V; or

- (b) monitor the level of Psa-V present; or
- (c) trace movements of any risk item in order to identify the source, or potential source, of any new Psa-V infection; or
- (d) identify where a risk item has been moved to and whether that movement could result in further Psa-V infection.

18 Plan rule 5: crop protection programme

- (1) Every occupier of an orchard must, if that person is responsible for the management of the orchard and if Psa-V is present in that orchard, have an effective crop protection programme in place.
- (2) If the occupier of an orchard is not responsible, or for any reason cannot be made responsible, for the management of the orchard or cannot be identified, the owner of the orchard must comply with the requirements of subclause (1).
- (3) Every person referred to in subclause (1) or (2), as the case may be, must—
 - (a) ensure that the relevant crop protection programme includes, as a minimum, the annual application of at least 1 effective crop protection product; and
 - (b) implement that programme.
- (4) In subclause (3)(a), **effective crop protection product** means a crop protection product that is included on a KVH list of approved crop protection products.

19 Plan rule 6: unmanaged orchards

- (1) Every occupier of an orchard must, if that occupier is responsible for the management of the orchard, ensure that the situation described in subclause (3) is not allowed to occur in relation to that orchard.
- (2) If the occupier of an orchard is not responsible, or for any reason cannot be made responsible, for the management of the orchard or cannot be identified, the owner of the orchard must ensure that the situation described in subclause (3) is not allowed to occur in relation to that orchard.

- (3) The situation is that KVH has found, on reasonable grounds, that—
- (a) the orchard is not being regularly managed in a way that effectively reduces the amount of Psa-V-infected material in the orchard; and
 - (b) the Psa-V disease situation in the orchard is significant and deteriorating; and
 - (c) as a result of that deterioration, the orchard is creating a significant Psa-V infection risk to—
 - (i) adjacent and nearby orchards; or
 - (ii) adjacent and nearby containment regions or exclusion regions.
- (4) In deciding whether, for the purposes of subclause (3)(c), there is a significant Psa-V infection risk, KVH must have regard to—
- (a) the nature and extent of the Psa-V symptoms present in the orchard; and
 - (b) the composition of different kiwifruit varieties grown in the infected orchard and the associated level of inoculum that each of those varieties could release; and
 - (c) the density, proximity, and Psa-V status of adjacent and nearby orchards; and
 - (d) the overall level of Psa-V infection within the region; and
 - (e) the number and nature of movements of risk items into, within, and from the orchard and the extent to which those movements could lead to the further spread of Psa-V.

20 Plan rule 7: abandoned orchards

- (1) Every occupier of an orchard must, if that occupier is responsible for the management of the orchard, ensure that—
- (a) kiwifruit plants in that orchard are winter pruned and tied by 1 October each year; and
 - (b) the majority of the commercially viable fruit on the kiwifruit plants in that orchard is harvested by 1 July each year.
- (2) If the occupier of an orchard is not responsible, or for any reason cannot be made responsible, for the management of the or-

chard or cannot be identified, the owner of the orchard must ensure that the requirements in subclause (1) are complied with.

(3) In subclause (1),—

commercially viable fruit means kiwifruit that meets the kiwifruit grade standards set by kiwifruit exporters or post-harvest operators from time to time

winter pruned means the preparation of a kiwifruit canopy after harvest and before bud-break in order to set a commercial crop.

Management agency

21 Management agency

The management agency responsible for implementing the Plan is KVH.

Miscellaneous matters

22 Actions that local authorities, etc, may take to implement Plan

There are no actions of the kind referred to in section 64(3)(j) of the Act that may be taken to implement, or contribute towards the costs of, the Plan.

23 Application of Plan to exclusive economic zone

The Plan does not apply to the exclusive economic zone or to any part of the exclusive economic zone.

24 Application of Plan to roads

The Plan does not cover any roads of the kind referred to in section 64(3)(l) of the Act.

Plan's commencement and termination dates

25 Plan's commencement and termination dates

The Plan commences on the date that this order comes into force and terminates on the 10th anniversary of that date.

Matters required by national policy direction

26 Matters required by national policy direction

The Plan will be implemented in accordance with any matters required by a national policy direction.

Rebecca Kitteridge,
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 17 May 2013, makes the National Psa-V Pest Management Plan (the **Plan**).

The matters that are required to be included in the Plan are set out in section 64 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 21*) and, as such, has various powers available to it to manage the organism Psa-V, which affects kiwifruit plants.

Clauses 6 and 7 set out the objectives of the Plan, and *clauses 8 and 9* deal with the principal measures to be taken to achieve these objectives and how their effectiveness is to be monitored and measured. *Clause 12* sets out the powers under Part 6 of the Act that are available to authorised persons (those appointed under section 103 of the Act) in relation to the implementation of the Plan. The principal measures available to KVH include—

- the determination and establishment of exclusion regions, containment regions, and recovery regions, each of which is defined in *clause 3*;
- monitoring, to enable a better understanding of the distribution and impact of Psa-V and how to best manage its spread and effects (including in relation to abandoned orchards and wild kiwifruit plants);
- the ability to impose movement controls on risk items (as defined in *clause 3*);

- providing for best-practice Psa-V management in orchards.

Clauses 10 and 11 provide that funding for the implementation of the Plan is to be by way of levies paid under the Biosecurity (Psa-V—Kiwifruit Levy) Order 2013 (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 13 deals with the Plan rules, which are set out in *clauses 14 to 20*. A person who fails to comply with a Plan rule (other than Plan rule 1: requirement to have and operate in accordance with a Psa-V orchard management plan) commits an offence (*see* section 154N(18) of the Act). Plan rules that place the primary responsibility on the occupier of the orchard also make provision for the owner of the orchard to bear responsibility in the event that the occupier is either not responsible (or cannot be held responsible) for the management of the orchard or cannot be identified. Plan rules 2 to 7 relate to—

- having, and operating in accordance with, a Psa-V risk management plan (Plan rule 2):
- reporting of symptoms, or of potential symptoms, of Psa-V (Plan rule 3):
- providing information to KVH or an authorised person (Plan rule 4):
- having an effective crop protection programme in place (Plan rule 5):
- unmanaged and abandoned orchards (Plan rules 6 and 7).

Clauses 22 to 24 deal with other matters that are required, by section 64 of the Act, to be included in the Plan, but which have no effect for the purposes of this Plan.

Clause 25 provides that the Plan commences when this order comes into force (17 May 2013: *see clause 2*) and terminates on the 10th anniversary of that date.

Finally, *clause 26* provides that the Plan is to be implemented in accordance with any matters required by a national policy direction.

**Biosecurity (National Psa-V Pest
Management Plan) Order 2013**

2013/139

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 16 May 2013.

This order is administered by the Ministry of Primary Industries.
