

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA PLUM MARKETING PROGRAM

Effective April 20, 1994
Incorporating Amendments Through April 19, 2004

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Originally Effective April 20, 1994
With Amendments Through April 19, 2004

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this program, the following terms shall have the following meanings:

1. "Act" means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code as amended or as may be hereafter amended.

2. "Department" means the Department of Food and Agricultural of the State of California.

3. "California Plum Marketing Program" or "Program" means, unless the context indicates otherwise, this marketing order, directly affecting producers of plums, which is issued by the Department, pursuant to the provisions of the Act.

4. "California Plum Marketing Board", "California Plum Board", and "Board" are synonymous and mean the California Plum Marketing Board created pursuant to Article II of this Program.

5. "Person" means and individual, partnership, firm, corporation, association, affiliate, or other business unit.

6. "Plums", for the purposes of this Program, means any and all varieties of plums and prunes, which are produced in California and marketed in fresh form.

7. "Producer" and "Grower" are synonymous and mean any person who produces plums for market in fresh form and who has a proprietary interest therein. A person producing for sale on a daily basis two hundred (200) pounds or less of plums shall not be deemed to be a producer, provided that the total volume marketed by such person is sold directly to consumers. Officers of corporations actively engaged in growing plums are considered to be growers. *(Amended April 19, 2004)*

8. "Box", for the purposes of this marketing order, means a twenty-eight (28) pound container used for marketing plums. Other weight classifications in standardized boxes pursuant to Title 3 of the Administrative Code of California are acceptable.

9. "Handler" is synonymous with shipper and means any person who handles plums (except a common or contract carrier transporting fruit owned by another person).

10. "Grower-Handler" means any producer who may also perform the function of a handler as herein defined.

11. "Books and Record" means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other written data reflecting operations under this Program.

12. "Marketing Season", "Fiscal Year", and "Fiscal Period" are synonymous and mean the period beginning March 1 of any year and extending through the end of February of the following year.

13. "Pure grower" means the grower is not an employee or officer of a packing business; or if he/she is an officer or employee of a packing business, that specific packing business packs 75% or more of its plums from said grower. A pure producer is synonymous with pure grower. *(Amended April 19, 2004)*

ARTICLE II

CALIFORNIA PLUM MARKETING BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. A board to be known as the California Plum Marketing Board is hereby established to assist the Department in the administration of this Program. The Board shall be composed of thirteen (13) members, all of whom shall be producers of plums as herein defined.

2. In addition to the producer members, upon recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member to the Board to represent the general public. Such persons shall not be affiliated in any way with respect to the production or marketing of plums and still have all of the rights and privileges, including voting, of any other member or alternate member of the Board.

3. There shall be an alternate member for each member of the Board. The alternate shall be selected in the same manner and for the same term as the member, *Provided*, that when the Board sends nomination ballots to all growers to select nominees, members and then alternates will be chosen based on a descending ranking of votes received. *(Amended April 19, 2004)*

4. The producer members and producer alternate members shall be appointed by the Department from nominations received for that purpose.

5. The regular term of office of the members and alternate members of the Board, except the initial Board, shall be two (2) years, beginning with the effective date of this Program and continuing at the pleasure of the Department through the last day of February of the applicable marketing season or until their successors have been duly appointed and have qualified. To provide for a staggered term of office for appointees to the initial Board, seven (7) members and their alternates shall serve a two (2) year term and six (6) members and their alternates shall serve a one (1) year term. *(Amended April 19, 2004)*

6. No person, including members of the initial Board, shall serve more than three (3) consecutive two-year terms of office or a total of six (6) consecutive years; provided, however, an appointment to fill less than two year term of office shall not be included in determining (3) consecutive terms of office.

7. Producers on the Board shall be by districts as herein described, or as district representation may be changed from time to time by recommendation of the Board and approval of the Department, to maintain equitable representation in accordance with the areas of production. Any such change of district representation shall be deemed a minor amendment

to this Program. Said districts and Board representation shall be described [based on current production] as follows:

District No. 1 The "Northern California District" shall be represented by one (1) member and one (1) alternate and shall consist of the following counties: Placer, El Dorado, Sutter, Yuba, Solano, San Joaquin, Sacramento, Stanislaus, Merced, and all other counties north, east, and west of Merced County. Either the member or the alternate shall be a pure grower. If a pure grower declines the nomination or is not available to serve, the position may be filled by a grower-handler.

District No. 2 The "Fresno District" shall be represented by six (6) members and six (6) alternates, provided that three (3) members and three (3) alternates shall be pure growers. The Fresno District shall consist of the counties of Fresno and Madera.

District No. 3 The "Tulare District" shall be represented by four (4) members and four (4) alternates, provided that two (2) members and two (2) alternates shall be pure growers. The Tulare District shall consist of the counties of Tulare and Kings.

District No. 4 The "Kern District" shall be represented by two (2) members and two (2) alternates, provided that one (1) member and one (1) alternate shall be pure growers. The Kern District shall consist of Kern County and all other counties within the State of California not included in any other district as described herein.
(Amended April 19, 2004)

Section B. NOMINATION AND APPOINTMENT OF THE MEMBERS AND ALTERNATES OF THE PLUM MARKETING BOARD.

1. Nominations of persons eligible to serve on the initial Plum Marketing Board shall be made and received at the public hearing held on this Program.

2. The Department shall appoint the initial members and their alternates from nominations received at such public hearing and such nominations shall include terms of office and shall be in accordance with the district representation as set forth in Section A of this Article.

3. The Department shall cause to be held each year a Board approved nomination procedure in each of the producer districts herein established, for the purpose of receiving nominations for producer members and producer alternate members of the Marketing Board. If a district has only one (1) member and one alternate (1) the nomination procedure will occur in that specific district based on when the term of the member expires. In making appointments of producer members and their respective alternates to the Board, the Department shall give due consideration to nominations received during the producer nomination process. Furthermore, for the Plum Marketing Board only growers who are present at such nomination meetings, or whom may receive nomination forms if the nominations are conducted via a mail process, may participate in the nomination of nominees for members and their alternates. All known growers will receive a ballot for the nominees in the district in which they produce and are entitled to vote accordingly. A grower who produces in multiple districts is allowed to vote only in one district, and may exchange his ballot for the nominees in another district provided the grower is producing in the district for which he wants to participate. (Amended April 19, 2004)

4. Each producer member and producer alternate member of the Board shall be, during his/her term of office, a producer, or an authorized employee of a producer, in the district from which he/she is appointed. (Amended April 19, 2004)

Section C. FAILURE TO NOMINATE. In the event producer nominations are not made pursuant to Section B of this Article, the Department may appoint the members of the Board and their respective alternates, without regard to producer nominations, from persons who are qualified as provided for in Section A of this Article.

Section D. QUALIFICATION. Any person appointed by the Department as a member as an alternate member of the Board shall qualify by filing with the Department a written acceptance and such other documents as may be required.

Section E. ALTERNATE MEMBERS. An alternate member of the Board shall, in the absence of the member for whom he is an alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meeting. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act in his place and stead until a successor of such member is appointed and has qualified.

Section F. VACANCIES. The Department shall fill any vacancy occasioned by the death, removal, resignation, or disqualification of any number or alternate member of the Board. In replacing a member or alternate member of the Advisory Board, the Department may take into consideration any nomination made by the remaining members; provided, however, that such nominees shall be appointed in accordance with the provisions of Section A of this Article.

Section G. ORGANIZATION.

1. The California Plum Marketing Board shall not perform any of its duties nor exercise any of the powers herein granted when more than four (4) vacancies in its membership exist.

2. Nine (9) members of the Board, or their voting alternates, shall constitute a quorum. *(Amended April 19, 2004)*

3. Any action of the Board shall require the affirmative vote of a majority present, but in any event shall not be less than six (6) voting members, *Provided*, that actions of the Board with respect to recommendations for regulations or expenses and assessments, pursuant to Article V, Section A and Section D, and Article VI, Section A, shall require at least nine (9) affirming votes. *(Amended April 19, 2004)*

4. The Board shall elect a chairman and a vice chairman from its membership, and a secretary and such other officers as it may desire who may or may not be members of the Board, and may adopt such rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary.

5. A legal entity shall not be represented on the Board by more than one (1) person, either as a member or an alternate member.

Section H. COMMITTEES. Subcommittees may be established as needed, as recommended by the Board, to assist the Board and the Department in performing the duties authorized pursuant to this Program. The Department may appoint such additional subcommittees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Program. *(Amended April 19, 2004)*

Section I. EXPENSES. The members of the Board, alternate members when acting as members or when requested by the Board, and subcommittee members shall be reimbursed for necessary expenses incurred by them in the performance of their duties and in the exercise of their powers hereunder. *(Amended April 19, 2004)*

Section J. DUTIES AND POWERS OF THE PLUM MARKETING BOARD. The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department.

1. To administer all the provisions of this Program.
2. To recommend to the Department the establishment of any of the administrative rules and regulations authorized under and relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department any amendments to this Program.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Program.
6. To assist the Department in the collection of such necessary information and data as the Department or the Board may deem necessary to the proper administration of this Program and of the Act.
7. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions to provide the Department with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall be at all times be subject to examination by the Department or its duly authorized representative.
8. To recommend to the Department employment of such personnel, including private counsel, as may be deemed necessary, and to determine the compensation, duties, and terms of employment of such personnel, subject to the approval of the Department.
9. To receive, invest, borrow, pledge, or disburse funds pursuant to the provisions of Article 10 of the Act.

Section K. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD. The members of the committees hereunder duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any producer, handler, grower-handler, or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board, alternate, committee member, or employee. The liability of the members of the Board, its committees, or employees, shall be several and not joint, and no member or alternate member shall be liable for the default of any other member or alternate member. The Plum Board shall provide Directors and Officers Insurance for all members and alternates of the Board. *(Amended January 1, 1999)*

ARTICLE III

GENERAL RESEARCH

Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES. The California Plum Marketing Board is authorized, subject to the approval of the Department, to undertake or cause to be conducted, to administer, and to expend monies for research relating to the production and distribution of plums. Such research activities may include, but shall not be limited to research, development and survey programs relating to acreage, varietal development, improvement, production, harvesting, handling, transportation from field to packing locations and from packing locations to market, and preparation for market of any or all varieties of plums. With the approval of the Department, the Board may expend money, enter into contracts with qualified research agencies, and do all things necessary and proper to the conduct of a plum research, development and survey program, limited only by the provisions of Sections 58892 and 58892.1 of the Act.

Section B. DISSEMINATION OF RESEARCH INFORMATION. The Marketing Board with the approval of the Department, may release, distribute, and disseminate the results of research studies, and information obtained as a result of research, to appropriate parties.

ARTICLE IV

ADVERTISING, SALES PROMOTION, AND MARKET DEVELOPMENT

Section A. ADVERTISING AND SALES PROMOTION.

1. The California Plum Marketing Board is hereby authorized to prepare plans and administer programs and expend monies, subject to the approval of the Department, for promoting the sale of plums for the purpose of maintaining existing markets or creating new or larger domestic and export markets for plums; or, for the prevention, modification or removal of trade barriers which obstruct the free flow of plums to any market, and for educational programs designed to acquaint growers, handlers, consumers, or other interested persons with the availability and location of supplies and demand for plums, quality improvement methods, and nutritional values as applied to plums; provided that any promotional plans so developed and conducted shall be directed toward promoting the sales of plums without reference to a particular private brand name or trade name, except as authorized by the Act; and, provided further, that promotion plans or programs make no false or unwarranted claims on behalf of plums, nor disparage the quality, value, sale or use of any other agricultural commodity. With the approval of the Department, the Board may enter into contracts with State, regional or national programs for the promotion of plums and undertake any activities provided by all of the authority for advertising and sales promotion contained in the Act. In addition to the foregoing and as part of its sales promotion and market development authorization, the Board may present facts to, and negotiate with, state, federal, or foreign governmental agencies on matters which effect the marketing of plums.

2. The Board may recommend and the Department may approve provisions for the establishment of regulations for, and rules for the permissive use of an official Board brand, trade name or label, or other designation of grade, quality or condition as provided for in the Act.

Section B. RESEARCH OF ECONOMIC AND MARKETING CONDITIONS. Whenever the Board deems it necessary, or at such times as the Department may require, the Board may investigate or cause to be investigate economic or marketing conditions affecting plums. Such research investigation may include as many of the following facts as may be applicable.

1. Supply of plums at to the quality, type, or form available or about to become available;
2. Present and prospective demand for the various qualities, types, and forms of plums;
3. Other pertinent economic and marketing factors affecting the marketing of plums.

Upon completion of any such research or investigation, the Board may prepare a report of its findings setting forth the research and may release or distribute such information or results to appropriate parties.

ARTICLE V

QUALITY STANDARDS AND INSPECTION

Section A. RECOMMENDATION OF QUALITY STANDARDS. In carrying out the provisions of this Marketing Program and to facilitate the enforcement and administration thereof, the Board may recommend, and the Department may approve, grade and quality standards for plums as may be developed and recommended by the Marketing Board. Such standards and recommendations may include maturity, container descriptions, color, and other quality factors; however, any such recommendations and standards shall not be lower than any existing State or Federal regulations. To assist in the development of appropriate recommendations and standards, the Board shall utilize the Maturity Committee and such other committees as authorized herein.

1. The following plum minimum maturity standard is hereby established, as recommended by the Board: There shall be a two-tier minimum maturity standard for plums which shall be defined as "US #1", mature for the first tier maturity level, and "California Well-Mature", defined as distinctively more advanced in maturity than US #1, shall be in the second tier maturity level. As used herein, "US #1" and "mature" means the same as defined in the U.S. Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538).

2. Size designations and nomenclature for plums, as recommended by the Board, shall be determined and established and the Board may utilize a committee, as authorized herein, to assist in the development of appropriate size designations and nomenclature. Neither reference to size in this section refers to quality standards.

3. Any specific grade or quality standard for plums approved by the Department under this authority may be revised, modified, or otherwise amended on an annual basis prior to May 1 of each marketing year, and such revision, modification, or amendment shall be subject to the approval of the Department upon recommendation of the Board. However, any such grade or quality standard approved hereunder shall remain in effect and apply for the entire marketing year for which such standard was approved. Grade and quality standards shall remain in effect unless and until revised, modified, or amended. *(Amended January 1, 1999)*

Section B. INSPECTION AND CERTIFICATION. During any period or periods in which quality standards are in effect, all plums for which standards are effective shall be inspected and certified by an authorized inspection agency in accordance with rules and regulations as the Board may recommend and the Department may approve and issue.

Section C. INSPECTION AGENCY. The Marketing Board is authorized to make suitable arrangements for inspection and certification by an established and experienced agency, or the Board, with the approval of the Department, may employ its own inspectors.

Section D. ADMINISTRATIVE RULES AND REGULATIONS. Administrative rules and regulations, as necessary to carry this Article into effect, may be recommended by the Board and approved by the Department in any season when quality standards and inspection procedures are made effective by the Department pursuant to this Marketing Program; provided, that any such recommendations shall be made no later than May 1 of each year. Failure of the Board to make recommendations on or before the deadline date will mean that such administrative regulations in effect for the immediately preceding marketing season will automatically apply for the current marketing season.

Section E. COMPLIANCE.

1. The Board may arrange for the issuance of inspection certificates or other such evidence of compliance as the Board deems necessary and proper to ensure compliance with the quality standards and any administrative rules issued and made effective by the Department pursuant to the provisions of this Marketing Program.

2. The Board or its designee may waive the inspection requirements of this Article where it is determined that inspection is not available; provided, that all deliveries made under such waiver shall comply with all regulations in effect.

3. During any period in which quality standards are made effective by the Department, any producer shall be authorized to sell or market only those plums which comply with applicable regulations as evidenced by an inspection certificate, an inspection waiver, or a special permit issued by the Board or its authorized inspectors, and no person shall market, handle, or transport any plums in violation of any regulation made effective pursuant to this Marketing Program.

4. The Department through its duly authorized representatives and agents, including Board personnel, shall have access, solely for the purposes of investigating possible violations of any Board program, to the records of producers, public and private property transportation agencies, and handlers of plums and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores, and transportation facilities and other places in which plums are kept, stored, handled or transported. All information obtained shall be confidential and shall not be disclosed except when required in a judicial proceeding,

5. Any person who violates the provisions of this Marketing Program, or the orders of the Department issued pursuant hereto, or administrative rules and regulations made effective hereunder, shall be subject to the penalties prescribed by the Act.

ARTICLE VI

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD.

1. At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. The Board shall also recommend a rate or rates of assessment to be levied upon producers of California plums upon a uniform basis, sufficient to provide adequate funds to defray the proposed expenditures and reserves as set forth in said budget or budgets.

2. Board recommendations for budgets and rates of assessment shall require at least nine (9) affirming votes. *(Amended April 19, 2004)*

3. The total rate of assessment which the Board may recommend shall not exceed twenty cents (\$0.20) per twenty-eight (28) pound box, and assessment rates per box shall be adjusted and prorated to be equivalent for boxes with other net weights. *(Amended April 19, 2004)*

Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENTS BY THE DEPARTMENT. If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of the Program, it may approve such budgets and rates; provided, however, that in no event shall said rates of assessment exceed the maximum authorized in this Program.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS

1. The obligation to pay assessments under this Program shall apply to producers on all plums produced for market by said producers, delivered to handlers, prepared for market and marketed by said handlers. To facilitate collection, each handler of plums shall pay the entire applicable assessment on all plums received by him from a producer at the rates approved by the Department pursuant to the provisions of this Program. The handler shall, however, deduct any assessment paid for and on behalf of the producer from any money owed by the handler to the producer. The Department shall verify that proper payment has been made by handlers for and on behalf of producers.

2. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In any event of failure of any person to pay any assessment payable hereunder, the Department may file a complaint against such person in a State court of competent jurisdiction for the collection thereof, pursuant to the provisions of Section 58929 of the Act.

3. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such unpaid assessment.

Section D. REFUNDS. Any monies collected as assessments during a marketing season and not expended in connection with the respective marketing operations may, at the

discretion of the Department, be refunded at the close of any marketing season upon a pro rata basis to all persons from whom assessments were collected, or such portions of such monies as may be recommended by the Board and approved by the Department may be carried over into the next succeeding marketing season whenever the Department finds that such monies may be required to assist in defraying the cost of operating this marketing order in such succeeding marketing season; provided, that upon termination by the Department of this marketing order, any and all monies remaining and not required by the Department to defray the expenses of this marketing order shall be returned by the Department upon a pro rata basis to all persons from whom such funds were collected; provided, further, however, that if the Department finds that the amounts so returnable are so small as to make impracticable the computation and remitting of such pro rata refund to such persons, the Department may use such funds to defray the expenses incurred by it in the formulation, issuance, administration or enforcement of any subsequent marketing order for plums produced within the area. Thereafter, if there are any monies remaining which have not been used by the Department as herein provided, such monies shall be withdrawn from the approved depository and paid to the University of California at Davis for agricultural research purposes.

ARTICLE VII

GENERAL PROVISIONS

Section A. PROHIBITION OF ACTIVITIES NOT AUTHORIZED UNDER THIS PROGRAM. This Program does not authorize and expressly prohibits, as activities under this Program, any control or regulation of the volume and quantity of plums which may be marketed during any marketing season.

Section B. ADMINISTRATIVE RULES AND REGULATIONS. Upon the recommendation of the California Plum Marketing Board, the Department is authorized to issue and make effective such administrative rules and regulations and interpretations of terms as may be necessary to carry out the purposes and attain the objectives of this Program.

Section C. COORDINATION WITH OTHER STATE OR FEDERAL MARKETING ORDERS. Insofar as may be practicable, the administration of this Program may be coordinated with any other marketing order or agreement or program that may be effective for plums under either State or Federal statutes, or may be coordinated with State or Federal marketing orders or agreements or programs for any other commodity.

ARTICLE VIII

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or its duly authorized or designated representatives such information as may be, from time to time, requested by it relating to their operations under this Program, and shall permit the inspection by said Department or its duly authorized or designated representatives of such portions of their books and records as relate to operations under this Program.

Section B. REPORTS TO THE MARKETING BOARD. Upon request of the Marketing Board, made with the approval of the Department, each person shall furnish to the Board in such manner and at such times as the Board prescribes, and in addition to such other reports as are specifically provided for herein, such other information as will enable the Board to

perform its duties and to exercise its powers in the proper administration and enforcement of this Program.

Section C. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him to any other person, save to a person with like right to obtain the same, or any attorney employed by the Department to give legal advice thereupon, or by court order. Proprietary information obtained in confidence shall be maintained in confidence. *(Amended January 1, 1999)*

Section D. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him tends to incriminate him or subjects him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by it

ARTICLE IX

APPEALS

Section A. GRIEVANCE PROCEDURE. The Board shall establish a grievance procedure in accordance with the policies and guidelines of the Department.
(Added January 1, 1999)

Section B. APPEALS. Any person regulated by this Program may petition the Department to review any order or decision of the Marketing Board. Any such petition must be filed in writing setting forth the facts upon which it is based and must be filed prior to December 31 of the marketing season in which any such order or decision was made or issued.

Section C. EFFECT OF APPEAL. Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of the Marketing Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any such petition and may revise any order or decision upon which an appeal is taken.

ARTICLE X

RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Program in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding.

ARTICLE XI

DURATION OF IMMUNITIES

Section A. DURATION OF IMMUNITIES. The benefits, privileges, and immunities conferred by virtue of the provisions hereof shall cease upon its termination except with respect to acts done under and during the time the provisions hereof are in force and delete effect.

ARTICLE XII

AGENTS

Section A. AGENTS OF THE DEPARTMENT. The Department may designate and authorize any person or persons to act as its agent or agents with respect to any provision of this Marketing Order.

ARTICLE XIII

DEROGATION

Section A. DEROGATION. Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Department or of the State to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XIV

SEPARABILITY

Section A. SEPARABILITY. If any provision, authority, section, sentence clause, or part of the Marketing Program is, for any reason, held or declared to be invalid, or the applicability thereof to any person circumstance, or thing is held or declared to be invalid, such decision, declaration, or action shall not affect, invalidate, modify, or terminate the remaining provisions, authorities, sentences, clauses, or parts of this Marketing Program or the applicability thereof to any other person, circumstance, or thing affected thereby.

ARTICLE XV

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME. This program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department or by operation of law in accordance with the provisions of the Act; provided, that beginning in 1999 and every fifth (5th) year thereafter, the Department shall conduct a referendum of producers of plums to determine whether or not this Program or any specific authorized activity granted herein should be terminated.

Section B. TERMINATION. The Department shall suspend or terminate this Marketing Program or any of the specifically authorized activities thereof if it finds from the referendum vote set forth in Section A of this Article that discontinuance is favored by a majority of the producers voting in the referendum; provided, that such majority delivered during the preceding season more than fifty percent (50%) of the volume of plums delivered during such season by all producers eligible to vote in the referendum. Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Department shall suspend or terminate this Program or any provision thereof whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6, Chapter 1, Division 21 of said Food and Agricultural Code, that this Program or any provision thereof is contrary to or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restriction therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department shall also suspend the provisions of or terminate this Program in accordance with the provisions of Section 59082, 59084 or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT. Unless otherwise expressly provided for in the notice of amendment, suspension or termination, no amendment, suspension, or termination of the Program issued by the Department shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Program not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any rite or remedy of the Department or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Program.